

No. 26722

WESTCHESTER RAIL COAL DEALERS BUREAU ET AL.
v. DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

Submitted April 15, 1936. Decided May 20, 1936

Rates on anthracite, in carloads, from the Pennsylvania anthracite region to destinations in Westchester County, N. Y., found not to have been or to be unreasonable. Complaint dismissed.

John T. Money, F. B. McElroy, and C. B. Ackerman for complainants.

Edwin H. Burgess, Marion B. Pierce, Henry D. Boynton, H. A. Poveleite, Walter J. Larrabee, William I. Woodcock, Jr., Howard B. Thomas, Carleton W. Meyer, and Jervis Langdon, Jr., for defendants.

Ernie Adamson, Edward W. Kerwin, and P. W. Moore for interveners.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS TATE, MAHAFFIE, AND SPLAWN

MAHAFFIE, *Chairman*:

Complainants filed exceptions to the examiner's proposed report.

Complainants are individuals, copartnerships, and corporations dealing in anthracite coal and fuel oil in Westchester County, N. Y., and their incorporated organization formed for mutual benefit. By complaint filed October 13, 1934, they allege that the rates charged on all sizes of coal from the anthracite fields of Pennsylvania to destinations in Westchester County were and are unreasonable. Rates for the future and reparation are sought. Except as indicated, rates will be stated in amounts per long ton, exclusive of emergency charges.

The Long Island Coal Merchants Association and the Chamber of Commerce of the Borough of Queens intervened at the hearing, but offered no testimony and asked for no affirmative relief.

The anthracite fields of Pennsylvania are located in the northeastern part of that State and are known as the Wyoming, Lehigh, and Schuylkill regions. This area embraces about 100 miles from

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north to south, with an average width of about 5 miles. The carriers serving one or more of these regions are made defendants herein.¹

Westchester County is the suburban area north of metropolitan New York. It extends from the Hudson River on the west to the Connecticut State line and Long Island Sound on the east, and to Putnam County on the north. It is dotted with cities and towns, including Yonkers, Mount Vernon, and New Rochelle in the southern part, and White Plains in the center, and there are many populous points along Long Island Sound. The Hudson, Harlem, and Putnam divisions of the New York Central Railroad Company grid-iron the greater part of the county; the main line of the New York, New Haven and Hartford Railroad Company serves the section along Long Island Sound. The New Haven's electric subsidiary, the New York, Westchester & Boston Railway Company, reaches points along the Sound and inland as well. Some destinations, such as Mount Vernon, are common to all three delivering carriers and others to two carriers, but the majority are local points. These delivering carriers are also defendants. Predominantly a residential section, the area is a large consumer of the so-called prepared sizes of anthracite, that is, chestnut, stove, egg, and lump sizes, and of the pea size to a more limited extent. Consumption of buckwheat and smaller sizes, which are used for industrial purposes, is relatively small.

The direct routes from substantially more than 90 percent of the mines in the anthracite region to these destinations are through New York Harbor. These routes are by car float from the New Jersey piers of the various carriers, over the North River to the New York Central's terminal on the shore of Manhattan Island at Sixtieth Street, if the shipment be destined for delivery to a point on the New York Central; or from the New Jersey piers by car float up the East River to Oak Point yard, the New Haven's terminal at Harlem River. The distance by car float from the New Jersey railheads ranges from 1.1 to 5.8 nautical miles to Sixtieth Street, and from 11.75 to 14.5 nautical miles to Oak Point yard. Some shipments from the Jersey shore for destinations on the New Haven reach the Oak Point yard by car float to Bay Ridge, N. Y., on Long Island, 3.5 miles, and thence to Oak Point over lines of the Long Island Rail Road Company and the New York Connecting Rail Road Company by way of Hell Gate Bridge, 20 miles.

¹ These are the Central Railroad Company of New Jersey, the Delaware and Hudson Railroad Corporation, the Delaware, Lackawanna and Western Railroad Company, Erie Railroad Company, Lackawanna and Wyoming Valley Railroad Company, Lehigh and New England Railroad Company, Lehigh Valley Railroad Company, New York, Ontario and Western Railroad Company, the Pennsylvania Railroad Company, and Reading Company.
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During 1932, 1933, and 1934, shipments of prepared sizes of anthracite delivered by the New York Central in Westchester County aggregated 688,164 tons, practically all of which was floated across New York Harbor to the Sixtieth Street float bridges of the New York Central. During the same period the New Haven and its electric subsidiary delivered 230,665 tons which it had received over routes through the harbor, and 227,483 tons over the all-rail routes by way of Poughkeepsie, N. Y. More than 80 percent of the prepared sizes of anthracite to Westchester County during this 3-year period moved over routes through New York Harbor. The three producing regions are accorded the same rates to any given point in Westchester County, but the routes over which these rates apply vary greatly in length. The distances used herein are the average distances for the rail hauls, without a distance allowance for the harbor service, over short tariff routes through New York Harbor from all of these origin groups to the destination groups.

The movement to these destinations consists chiefly of prepared sizes, and reference to rates will be to those on prepared sizes, except as indicated. The average loading is 45 tons. The rates assailed are joint through rates which, prior to August 11, 1933, were equivalent to rates in effect prior to 1912 as modified by the general rate changes. There were three groups of destinations in Westchester County to which the rates on prepared sizes were \$3.65, \$3.78, and \$4.03, depending somewhat on distance. The average distance beyond Sixtieth Street to points on the New York Central in the three groups were 20, 31, and 41 miles, respectively. Distances from Oak Point to destinations on the New Haven are in some instances less than those from Sixtieth Street, but the water haul to Oak Point is longer than to Sixtieth Street.

The joint rates were originally based upon the rail factors from origins to Jersey City, N. J., plus charges for the harbor service to Sixtieth Street or to Oak Point, and the rail service beyond. Effective August 11, 1933, the joint rates to these three groups were reduced to \$3.28 on all sizes. A rate of \$3.02 was also made effective on buckwheat no. 2 and smaller sizes to a few destinations. These reductions were made after coal dealers in Westchester County advised defendants that water competition and the increasing use of oil as a domestic fuel necessitated reduction in rates. The benefit of these reductions was not generally passed on to the consumers. There appears to have been no agreement among the instant complainants on this point, but one complainant testified that he would give consumers the benefit of any future reductions resulting from

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the findings herein. A rate of \$2.65 is sought both for the future and the past. The basis for this rate is not explained.

The record is voluminous. Much of the evidence is conflicting, and some has little probative value. A witness testified on behalf of complainants as to operating conditions in and around the harbor and on various railroads. He offered a cost study relating to float service between other points, which study was a copy of an exhibit in another proceeding before this Commission. It was objected to by defendants upon a number of grounds, including its materiality and relevancy and that certain defendants in this proceeding had no opportunity to cross-examine the person who prepared the exhibit. The exhibit was originally prepared by one of the present defendants, but all of the defendants here were not defendants in that proceeding. The examiner refused to admit the exhibit in evidence. The rejection of the exhibit was proper.

Complainants refer to decisions dealing with rates on this commodity to other destinations, certain of which will be hereinafter considered, and to rates on anthracite and iron ore from and to other points. They stress the fact that the rates here assailed are higher, when measured by the so-called Holmes & Hallowell scale, than are many of the compared rates. The compared rates on iron ore and the relation to distance scales have little probative value as to reasonable rates to these destinations which involve a haul across New York Harbor.

The rate from the anthracite fields to the west side of New York Harbor, including Jersey City, was \$2.39 at the time of the hearing. This rate is the present equivalent of the \$1.45 rate prescribed to Jersey City in *Rates for Transportation of Anthracite Coal*, 35 I. C. C. 220, for application over the single direct lines, an average distance of 161.4 miles. This rate is presumably reasonable for the hauls to Jersey City, but the parties are not in accord as to the proper method of constructing reasonable rates to points beyond Jersey City. We have never prescribed for application on anthracite, or on all traffic, an arbitrary for the float service across New York Harbor. The carriers contend that a charge of 70 cents per net ton, or 78 cents per long ton, for this service should be reflected in the through rates to these destinations, and that the additional service through the congested area of New York City amply justifies the assailed rates. The 78-cent charge, as hereinafter shown, finds support in *Buckland v. Boston & A. R.*, 139 I. C. C. 88, and certain other decisions. Complainants, on the other hand, contend that this allowance is excessive, and that the through rates are much higher than those prescribed for similar hauls in trunk-line territory, 215 I. C. C.

even conceding a distance allowance, which they say should not exceed 20 constructive miles, for the movement through New York Harbor.

The float service is described in detail. The cars are moved from the break-up yards in Jersey City to float bridges over which they pass to car floats. About 20 cars constitute a load for the float and the loading is a difficult operation, particularly with heavy-loading commodities. About eight moves of an engine back and forth over the float bridge are required to load a 3-track float. Additional time is necessary in loading heavy commodities, such as anthracite, because of the time required to keep the float properly balanced, and these floats must be short loaded. After loading, the float is lashed to a tug and moved across the harbor. The usual operation on the water movements to Sixtieth Street is of one or two car floats to a tug. The time consumed for the round trip to Sixtieth Street, under normal conditions in the harbor, is from three and a half to four hours for all the carriers except the New York, Ontario & Western, for which movement two and a half hours are consumed. The New Haven float service from Greenville Piers, N. J., to Bay Ridge, 3.5 nautical miles, takes three to three and a half hours for the round trip. The route to Oak Point takes four hours of tug operation, and the necessary time for loading and unloading makes the time for the round trip about six hours. Each float movement is handled by a crew of eight men, with captain and licensed engineer. This statement describes operations under favorable weather conditions, which prevail about 10 days in a month. During the balance of the time, when there is fog, rain, snow, or strong wind, more time is required. In comparing the float movement with a movement on land, an experienced witness stated that "In a land operation we can move 90 cars a distance of 100 miles with less man-hours and equipment than it takes to move 40 cars, two floats, of anthracite for the round trip." It should be noted in this connection that the harbor service is not the only terminal service necessary on this traffic.

Complainants call attention to the fact that, according to a cost study made in the *Lighthouse Cases*, 203 I. C. C. 481, 493, the cost to the New Haven for interchange car-float traffic in general between New Jersey terminals and the Harlem River was estimated to be 11 cents a ton. How close an index this would be of the service rendered on anthracite on car floats of other carriers, or just what value may be placed on these cost figures, is open to speculation. The figures were confined to shore-to-shore costs and did not cover the cost of transferring the freight to or from floats or any other costs on the

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shores. Furthermore, this study specifically excluded coal and grain and the results showed a wide variation in cost for different carriers.

Complainants cite certain rates to show that the spread between the east and west sides of the harbor is less than the 78 cents which defendants claim to be proper. They show a spread of 25 cents between rates to Jersey City and to points in New York and Brooklyn. However, these rates applied on buckwheat and smaller steam sizes of anthracite, which are in competition with bituminous coal and subject to market conditions not affecting prepared sizes of anthracite. The spread was generally 50 cents on the pea size and \$1 on prepared sizes. Complainants stress the showing that the spread in the assailed rates, Westchester County over Jersey City, is substantially greater than the spread in the class rates. They argue that since there is little, if any, difference between the class rates to the west and east sides of the harbor, there should be no greater difference in the rates on coal to the same points. The class rates to New York Harbor points reflect the competitive situation over a long period when certain carriers had an all-rail line to Manhattan Island and lines of other carriers ended at the Jersey shore, necessitating the use of lighterage service across the harbor. This is fully explained in *New York Harbor Case*, 47 I. C. C. 643, and the *Lighterage Cases*, *supra*. Those conditions are not, and have not been, reflected in the anthracite rates. Neither the New York Central nor the New Haven reach the anthracite fields with their own lines, and none of the originating carriers have lines to Manhattan Island or Westchester County. These circumstances are naturally reflected in the spread in rates.

In *Buckland v. Boston & A. R.*, *supra*, a distance scale was prescribed on slag from Bethlehem and Hokendauqua, Pa., to points in New Jersey, New York, and New England. The scale prescribed was specifically made subject to the addition of 70 cents per net ton for hauls involving car-float or lighterage service in the New York Harbor district on traffic to points in New York or New England. The slag shipments in that proceeding originated at points in Pennsylvania through which anthracite is handled to Westchester County and, if consigned to New England, moved through New York Harbor over the routes here considered in connection with the New Haven. Slag is of lower value than anthracite, moves in the same type of equipment, and receives the same kind of float service. Following the proceeding last cited, the Commission, in a number of recent decisions, has approved an arbitrary of 70 cents per net ton for the harbor service on many commodities of lower value than anthracite, including limestone and sand, which move in similar equipment. See *National Slag Co. v. Atlantic City R. Co.*, 181 I. C. C. 699; 215 I. C. C.

American Lime & Stone Co. v. Pennsylvania R. Co., 201 I. C. C. 467; and *Industrial Sand Cases, 1930*, 188 I. C. C. 99, 204 I. C. C. 159. In *Ketcham v. Pennsylvania R. Co.*, 194 I. C. C. 325, the Commission on reconsideration found not unreasonable the applicable cross-harbor charge of 85 cents on brick from Cliffwood, N. J., to New York and points on Long Island. The present record is not convincing that a cross-harbor charge of 78 cents per long ton is too high for the service here considered. That amount will be deducted from the assailed rate before computing earnings on this traffic.

The line-haul movement beyond Sixtieth Street and Oak Point is described in detail. Dealing first with the operating conditions on the New York Central, seven classifications are necessary to line the cars up for outbound movement after they are unloaded from the floats. This requires three and sometimes four handlings of the same car, whereas no special classification is required on merchandise traffic. The handling required was stated to be greater on this traffic than on traffic for team-track delivery at Sixtieth Street. The outbound movement from Sixtieth Street is through the densely populated portion of New York City. There are dangerous street crossings which are protected by gates and watchmen, two grades which necessitate extra engine power and speed restrictions, and unusual policing is required. A shipment from Sixtieth Street to Westchester County moves north across Harlem River to Spuyten Duyvil to the main passenger line of the New York Central. At the latter point, there is an average of a train every 7 minutes 18 seconds and, during the peak hour of the morning, there is one train every 3 minutes. Traffic destined to the Hudson division is moved directly north along the Hudson River. For Putnam division deliveries, cars move through Spuyten Duyvil rock cut. Traffic for Harlem division points, which makes up the bulk of the anthracite deliveries by the New York Central in Westchester County, moves south through Mott Haven yard. Here the traffic density is greater than at Spuyten Duyvil. There is an average of one train every 2 minutes 39 seconds, and during the peak hour there is one train every 58 seconds. During certain hours, the passenger traffic over this division prevents movement of freight trains. Back hauls and extra switching are required to effect delivery in this congested area. Defendants stress the fact that these services are performed in part in the heart of the largest city in the world, and in part in a densely populated commuting area containing four cities and a number of suburbs. The New York Central and the New Haven carried a daily average of 88,000 commuters from and to this territory in

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1934. During the past four years, the number of passengers per day has averaged 100,000.

The distribution of anthracite in this territory is to many scattered destinations but in no great volume to any one destination. Locomotives moving from Sixtieth Street are operated only to 34.7 percent of their capacity. It has been impossible to reduce the number of trains, and the locomotives used are of the lightest type practicable for this service. The direct expense in connection with the operation of these trains is virtually the same whether or not they take their full load.

Operating conditions at Oak Point, the New Haven's principal water-front terminal, are analogous to those on the New York Central. Oak Point is hemmed in by water and by the industrial and residential districts of the Bronx. It is a combined floating and land interchange yard. The tracks for classifying and making up trains adjoining the float bridges have a capacity of only 20 cars each, which necessitates rehandling many cars over two or more tracks in making up trains. There is no room for expansion of this yard. Here occurs interference with passenger traffic similar to that shown in connection with the New York Central. During peak hours the commuting and passenger trains are spaced at intervals of about three and one-half minutes. The freight yards at Oak Point, New Rochelle, and Port Chester hold cars until the peak rush is over. No such conditions exist in delivering coal at any other point on the New Haven.

Both parties have referred to a number of decisions dealing with rates on anthracite from and to various points in trunk-line territory. These proceedings have been reviewed in a number of our decisions and it is not deemed necessary here to set out a detailed summary of those decisions. However, the following table compares the rates assailed with those prescribed or approved in certain of the proceedings referred to by the parties. The destinations selected as representative of the \$3.65 group as a whole are Mount Vernon, Tuckahoe, New Rochelle, Port Chester, Hastings-on-Hudson, Irvington, and Dunwoodie. Representative points for the \$3.78 group are Croton-on-Hudson, Peekskill, and Ardsley. For the \$4.03 group the selected points are White Plains, Pleasantville, Mount Kisco, and Goldens Bridge. The distances used for each group are the average distances over the short tariff harbor routes, without allowance for the distance through the harbor. A deduction of 78 cents has been made from the through rate before computation of the earnings. The average distance used in connection with the present rate of \$3.28 to all destinations is the average distance to all of the above-named points.

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Destination	Origin	Distance	Rate approved or pre-scribed	Rate assailed	Net ton-mile earnings
		<i>Miles</i>	<i>Cents</i>	<i>Cents</i>	<i>Miles</i>
Camden, N. J.	Lehigh	154	¹ 277		⁸ 16.1
Do.	do.	154	278		16.1
Do.	Schuylkill	154	¹ 277		16.1
Do.	do.	154	265		15.4
Do.	Wyoming	234	¹ 290		11.1
Do.	do.	234	278		10.6
Atlantic City, N. J.	Schuylkill	203	¹ 353		⁸ 15.5
Do.	do.	203	328		14.4
Do.	Wyoming and Lehigh	268	¹ 365		12.2
Do.	do.	268	340		11.3
Baltimore, Md.	All regions	224	⁴ 302		⁸ 12
Washington, D. C.	do.	260	⁴ 328		11.3
Baltimore, Md.	Schuylkill	210	284		12.1
Washington, D. C.	do.	238	309		11.6
Trenton, N. J.	All regions	152	239		⁶ 14
Staten Island group 2	Mines on L. V. and C. R. R. of N. J.	172	252		⁷ 13.1
Northern New Jersey	All regions	152	239		⁸ 14
Local New Jersey points	Schuylkill mines on Reading	164	252		⁹ 13.7
Southern New Jersey	Schuylkill	189	287		¹⁰ 13.6
Do.	do.	203	297		13.1
Do.	Wyoming and Lehigh	212	300		12.6
Do.	Schuylkill	203	308		13.5
Do.	Wyoming and Lehigh	227	310		12.2
Do.	do.	231	320		12.3
Westchester County:					
\$3.65 group	All regions	201		¹¹ 365	12.7
\$3.78 group	do.	211		¹¹ 378	12.7
\$4.03 group	do.	212		¹¹ 403	13.7
All destinations	do.	209		¹² 328	10.7

¹ Found not unreasonable in the past.

² *South Jersey Retail Coal Merchants Assn. v. A. C. R. Co.*, 209 I. C. C. 722, on reargument and reconsideration.

³ *Atlantic City Coal Dealers Credit Bureau v. A. C. R. Co.*, 209 I. C. C. 737, on reargument and reconsideration.

⁴ Found not unreasonable.

⁵ *Baltimore Coal Exc. v. Baltimore & O. R. Co.*, 196 I. C. C. 15; 204 I. C. C. 207.

⁶ *Central N. J. Coal Exc. v. Central R. Co. of N. J.*, 167 I. C. C. 723.

⁷ *Richmond County Coal Merchants Assn. v. B. & O. R. Co.*, 101 I. C. C. 154; 152 I. C. C. 61.

⁸ *Sussex County Fuel Club v. Erie R. Co.*, 167 I. C. C. 193.

⁹ *Dept. of Institutions & Agencies v. Central R. Co. of N. J.*, 181 I. C. C. 319.

¹⁰ *Tri-County Coal Dealers' Assn. v. Atlantic City R. Co.*, 178 I. C. C. 213.

¹¹ Prior to August 11, 1933.

¹² Present rate.

Certain of the hauls covered by the foregoing table include a float movement across the Delaware River at Camden, N. J., or a bridge crossing. On exceptions, complainants argue that these comparisons do not present a true picture, inasmuch as the 78-cent deduction was not made for the water haul under the compared rates. The determination of the issues in the cited proceedings did not depend upon a specific allowance for the water crossings. Other considerations there controlling received careful treatment in the reports in those proceedings. Examination of the reports will show that the entire hauls were considered. For example, in *South Jersey Retail Coal Merchants Assn. v. A. C. R. Co.*, 209 I. C. C. 722, the distances shown above include a constructive mileage for the Delaware River crossings. Those rates are, therefore, comparable as all-rail rates for the all-rail distances. When these things are considered, the foregoing table is persuasive that the assailed rates in effect prior to 215 I. C. C.

August 11, 1933, were not out of line with other rates prescribed or approved in trunk-line territory. It follows that the present rates are not unreasonable. This conclusion is supported by the spread in the assailed rates over the rates to Jersey City, when the transportation beyond that point is considered.

In *Elem Coal Co. v. Lehigh Valley R. Co.*, 80 I. C. C. 647, rates on prepared sizes of anthracite of \$3.65 after August 1, 1922, from these origins to Claremont, N. Y., 15 miles from Sixtieth Street, were found not unreasonable. That is the only proceeding, until the present complaint,² in which anthracite rates, including a water service across New York Harbor, have been before this Commission. Claremont Park is directly intermediate to every point on the Harlem division covered by this complaint.

The rates on pea coal and smaller sizes were lower than the rates on prepared sizes prior to August 11, 1933. There appears to be no fixed relation between rates on prepared and smaller sizes, and there is no evidence upon which we can now fix a proper relation. The present record does not, therefore, afford a basis for determination of reasonable maximum rates on the smaller sizes.

We find that the rates assailed were not and are not unreasonable. The complaint will be dismissed.

SPLAWN, *Commissioner*, dissenting:

Transportation of anthracite by rail to destinations in Westchester County includes car-float service in New York Harbor from the New Jersey piers of the various carriers to either the terminal of the New York Central on Manhattan Island at Sixtieth Street or to Oak Point yard, the terminal of the New Haven at Harlem River. In the determination of the reasonableness of the assailed rates, an important factor to be considered is whether or not the amount included in the rates for the car-float service represents the cost of this service plus a reasonable profit. Defendants contend that before comparison of the assailed rates can properly be made with other rates on anthracite, an amount equal to 78 cents per gross ton for the car-float service should be deducted from the assailed rates. In making this contention they assumed the burden of proving that 78 cents is a reasonable amount to include in the total rate from origin to destination. Defendants did not introduce any evidence as to the cost of the car-float service, but relied solely on several decisions in which 78 cents per gross ton was found to be a reasonable charge for the car-float service rendered in connection with the transportation of certain commodities other than anthra-

²No. 26878, *Long Island Coal Assn., Inc., v. Long Island R. Co.*, now pending, places in issue the rates on anthracite to numerous destinations on Long Island.

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cite. An analysis of the decisions relied on shows that they were based on *Buckland v. Boston & A. R.*, 139 I. C. C. 88, decided in 1928. In that case, division 2, in prescribing a scale of rates on slag for application from points in Pennsylvania to destinations in New York and New England, accepted a suggestion of complainant's traffic witness that a charge of 78 cents per gross ton should be added to the Jersey City rate for the car-float service in New York Harbor. Neither in *Buckland v. Boston & A. R.*, *supra*, nor in the other cases relied on by defendants, were the charges prescribed for the car-float service based upon evidence of costs. During the past two years the float service has been performed by a single agency under which the car floats and tugs of the various railroads reaching New York Harbor are pooled and used interchangeably. Even if the charge prescribed in *Buckland v. Boston & A. R.*, *supra*, and subsequent cases for application on commodities other than anthracite were, when they were prescribed, proper for application on anthracite, the fact that the car-float services have been consolidated and are now performed by a single agency casts doubt upon the propriety of accepting a figure arrived at in 1928 upon an inadequate record.

Without attempting to pass upon the reasonableness of the rates assailed, I am of the opinion that this case should be reopened for further hearing upon the question of the proper amount to be included in the rates from origins to destinations for the car-float service in New York Harbor.

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