



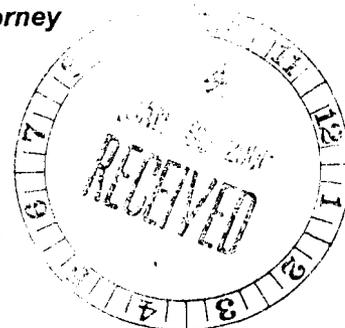
Norfolk Southern Corporation
 Law Department
 Three Commercial Place
 Norfolk, Virginia 23510-9241

2011

James R. Paschall
Senior General Attorney

Writer's Direct Dial Number
 (757) 629-2759
 fax (757) 533-4872

January 27, 2006



via fax (202) 565-9004
 and original and 10 copies via DHL Express

Honorable Vernon A. Williams, Secretary
 Surface Transportation Board
 1925 K Street, N.W.
 Washington, DC 20006.

Re: STB Docket No. AB-290 (Sub-No. 237X), Norfolk Southern Railway Company - Abandonment Exemption - in Baltimore County, MD

Dear Mr. Williams:

On January 3, 2006, the Board served notice in the subject proceeding that on December 14, 2005, Norfolk Southern Railway Company ("NSR") filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903-05 to abandon its freight operating rights and rail freight service over 12.8 miles of a line of railroad between milepost UU-1.0 at Baltimore, MD, and milepost UU-13.8 at Cockeysville, MD (the "Line"). NSR also seeks exemption from 49 U.S.C. 10904 [offer of financial assistance ("OFA") procedures] and 49 U.S.C. 10905 [public use conditions] because the Line's right-of-way is owned by the Maryland Department of Transportation ("MDOT"), which will continue to use the Line for the public purpose of providing light rail commuter passenger service through the Maryland Transit Administration ("MTA"). Replies to NSR's petition were due on or before January 23, 2006. The Board stated that a final decision in this proceeding will be issued by April 3, 2006.

James Riffin ("Riffin") filed a protest or opposition to the petition for exemption with the Board before the January 23, 2006 due date. Riffin's filing is dated January 13, 2006. NSR received a copy of the filing on January 17, 2006. The Board's regulations require that a petitioner's entire case be filed with the petition. In some cases and under certain circumstances, the Board has permitted petitioners to reply to protests, opposition statements or replies. This case presents circumstances in which an NSR response to Mr. Riffin's statement is necessary for the Board to decide this matter on a

full and accurate record. NSR needs to respond to Mr. Riffin's filing in order to prevent substantial prejudice to NSR (and for that matter, to MDOT) that would result from the false and misleading statements made by Mr. Riffin. We do not wish to imply that we ascribe a negative connotation to Mr. Riffin's motives by using these words of art, but we do contend that Mr. Riffin's filing contains several erroneous, incomplete and immaterial statements that would be seriously prejudicial to NSR if left uncorrected and taken at face value. Therefore, NSR requests that the Board accept into the record and consider the information provided in this letter in making a final decision in this proceeding.

In its discretion, the Board has construed its rules liberally to permit petitioners to respond to opposition statements when the response addresses important and prejudicial issues or questions raised by the opposing party, helps to clarify the record or the arguments, identifies important errors or mis-statements in the opposing statement, and is submitted soon after the opposing statement is filed so that the Board's handling of the proceeding will not be unduly delayed or hindered.¹ This letter meets those criteria and will assist the Board in reaching a just determination of the issues on the most complete and accurate possible record. The Board has accepted responses of this type even without a formal request or motion to do so. Nonetheless, NSR hereby formally moves or requests that the Board exercise its discretion to accept into the record and to consider this letter in response to Mr. Riffin's protest or opposition statement in order to correct and complete the record that Mr. Riffin has substantially distorted with his statement.²

Riffin's Interest In the Case. Riffin's opposition to the petition and his filing of a notice of intent to file an offer of financial assistance represent his third attempt (as far as we know) to gain an interest in all or part of the former, mostly abandoned, Northern

¹This letter is submitted only four days after Riffin's statement was due. Acceptance of this letter into the record will not delay the processing of this proceeding or hinder the Board's ability to reach and serve a decision by April 3, 2006.

²Precedent for the Board's consideration of responses such as this include *Pyco Industries, Inc. – Alternative Rail Service – South Plains Switching, Ltd. Co.*, STB Finance Docket No. 34802 (STB served January 26, 2006); *Norfolk Southern Railway Company – Abandonment Exemption – In Nottoway, Prince Edward, Cumberland, and Appomattox Counties, VA*, STB Docket No. AB-290 (Sub-No. 252X)(STB served January 18, 2005); *Union Pacific Railroad Company -- Abandonment Exemption -- in Rio Grande and Mineral Counties, CO*, STB Docket No. AB-33 (Sub-No. 132X)(STB served June 22, 2004); *CSX Transportation, Inc. -- Abandonment Exemption -- (Between Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 590X)(STB served Dec. 12, 2001), *Buffalo & Pittsburgh Railroad, Inc. -- Abandonment Exemption -- In Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 3X)(STB served Sept. 18, 1998) and several other recent cases.

Central Railway (later Conrail) line between Baltimore (or Cockeysville), Maryland and York, Pennsylvania in furtherance of his desire to become the operator or an excursion or dinner train on a railroad line in the area. The Board rejected two previous efforts by Mr. Riffin to use the Board's exemption procedures in misplaced efforts to acquire interests in or at least operating rights over all or part of the Line, despite the fact that Mr. Riffin had no agreements with the owners of the railroad rights-of-way, in *James Riffin d/b/a the Northern Central Railroad — Acquisition and Operation Exemption — in York County, PA*, STB Finance Docket No. 34501 (STB served January 23, 2005); and, *James Riffin d/b/a The Northern Central Railroad — Acquisition and Operation Exemption — in York County, PA and Baltimore County, MD*, STB Finance Docket No. 34484 (STB served April 20, 2004).

Riffin has never been, and is not now, a shipper or receiver of freight on the Line. He has taken some actions, which his filing does not fully describe, in order to present himself to the Board in this case in the guise of a shipper, rather than in his "Northern Central Railroad" business guise. We fill in the details below.

Riffin's apparent purpose is to use his protest of the abandonment proposal as a starting point from which to file an OFA to acquire NSR's rights and interests in the Line. The only reasonable conclusion is that this is in furtherance of his dinner excursion/passenger train scheme. He has no definite interest in shipping or receiving freight and little interest in providing freight transportation except as needed to support his amusement train. Riffin has made no secret in his past filings with the Board and his public statements that his interest in freight operating rights is mainly to use such rights to gain access to the right-of-way to run his planned excursion train. His past actions also have included attempts to use his status as a "railroad" to argue that the application of state and local environmental, zoning or other laws, ordinances or regulations for activities that he expansively views as related to his planned railroad operations are pre-empted by federal law. We see no reason to think he would not attempt to take this type of action again if he actually gained control of a railroad common carrier or railroad operating rights.

Riffin's interest in shipping or receiving freight - other than very old, empty freight cars, or passenger cars, for use on his "railroad" - is non-existent, despite his speculative claims about his possible future interest in moving some traffic. His actions and statements heretofore show that his interest in providing freight transportation over the Line is at best an adjunct to his dinner train scheme. See the attached Exhibit A, a newspaper article from *The York Dispatch*. Regardless, any interest Mr. Riffin might have in establishing a short line railroad operation on the Line provides no basis upon which to oppose NSR's abandonment of its operating rights. A bona fide, plausible and adequately financed freight operating plan, which Mr. Riffin has not provided so far, is a requirement for Board approval of an acquisition under an OFA, and is another matter.

Riffin Has No Status As A Shipper On the Line; Undelivered Cars at Bayview Yard. Riffin accurately points out that MTA took the Line out of service in March 2005

in order to build a second track on the Line. MDOT made arrangements to provide all shippers on the Line with subsidies for alternate transportation arrangements. Since the shippers agreed to this alternate arrangement, NSR's common carrier obligation with respect to them continued to be honored during the period the Line was out of service.

During this out of service period, in August and September, 2006, Riffin consigned six empty tank cars and three empty flatcars from himself to himself at Cockeyville, MD. Riffin's statement should not be read to suggest that these cars were to be received by him at Cockeyville for loading or unloading of freight. That was not his purpose for attempting to have the cars moved to Cockeyville. Instead, Mr. Riffin views these cars as the beginning of his railroad fleet. Although in the absence of further information it would have been plausible to view these cars as bound for scrapping, it seems apparent that Mr. Riffin wishes to store these cars, somewhere, for future use on his "railroad." On page 4 of Mr. Riffin's statement filed September 14, 2004 in STB Finance Docket No. 34501, Mr. Riffin stated: "He [Riffin] has purchased six tanker cars, to be used to transport ethanol. He also has three 89-foot flat cars, which may be used for intermodal purposes." Of course, Mr. Riffin has no freight of his own to transport, and he has no way to use the cars to transport freight as a common or contract carrier.

So Mr. Riffin owned these cars for at least eleven months before he decided to move them to Cockeyville, at a time when he knew or should have known they could not be delivered. However, this coincidentally was opportune time for him to set up this failure of delivery of these cars as a basis his spurious argument that he is a shipper on the Line. (He appears before the Board as a short line railroad or a shipper, depending on what suits his argument best in a particular case.) Mr. Riffin knew that NSR would file to abandon the Line at some time in the near future because the Line had been unnecessarily listed on NSR's system diagram map. Mr. Riffin refers to this in his letter to you received July 14, 2003 and placed in the docket in STB Finance Docket No. 34375.

In hindsight, it seems that NSR should have embargoed the Line when the legitimate shippers on the Line had made their alternative transportation arrangements. We will do that as soon as possible to prevent any other misunderstandings concerning whether the Line is in service, unlikely though any reasonable requests for service over the Line might be during the processing of this case. It also seems that NSR should not have accepted these cars for delivery to Cockeyville at all, both because of the status of the Line and because Riffin had no place where he could receive the cars at Cockeyville or at any other station on the Cockeyville Branch.

Baltimore Gas & Electric has a track at Cockeyville, so consignment of cars to that station would not necessarily raise questions at origin since the Cockeyville Branch had not been embargoed. Only later did it become clear to NSR operating personnel at Baltimore that these cars had been consigned both to a location at which

they could not be delivered due to the out of service status of the Line and because the party to which they were to be delivered had no public or private track at that station to which the cars could be delivered.

We do not know whether Riffin attempted to gain access to the BG&E track for placement of these cars, but he has never claimed to have such access and replies to our recent inquiries to BG&E personnel indicate he does not. We are not surprised about this because we think it is unlikely that BG&E would be willing to have Mr. Riffin's old freight cars sit on the track at its facility until such time, if ever, as Mr. Riffin started his railroad operations. He certainly received no freight in them and has none to load in them. His own past statements to the Board indicate he does not want the cars in order to scrap them but to use them as part of his "railroad" car fleet.

After it became clear that these cars could not be delivered to Cockeysville from Bayview, local NSR operating personnel and Mr. Riffin could not work out an arrangement for delivery of the cars to an alternate location in the Baltimore area. This would not have suited Mr. Riffin's agenda in any event. Since Mr. Riffin could come up with no alternative location on which to place these cars, they have remained at Bayview Yard. This impasse has come to the attention of NSR headquarters personnel only after Mr. Riffin filed his statement in this proceeding. Since then, we have attempted to contact Mr. Riffin about disposition of these cars without success. He has not returned our calls. We intend to send him a letter presently in which he will be given a short period of time to provide us with alternate delivery instructions. If he does not do so, we will return the cars to York, PA or their point of origin without charge to Mr. Riffin, we will refund any payments he has made to NSR for moving them to Bayview, and we will not charge him demurrage or storage charges for the period of time during which the cars have been kept at Bayview Yard. The two passenger cars that Mr. Riffin tried to have moved to Cockeysville at an earlier date were returned to origin.

We believe that Mr. Riffin bears most, if not all, of the responsibility for the fact that these nine empty, aged cars could not be delivered and have remained at Bayview Yard. He consigned the cars, quite obviously for storage for possible future use on his "railroad" and not for loading or unloading of any freight from or to him. He did this long after he purchased the cars and at a time when he had to know they could not be delivered to the stated location. Mr. Riffin does own at least one building on or near the Line but has no siding or other track upon which railroad cars can be delivered at that location nor does he appear to conduct any business from which freight would be sent or received via rail. Thus, Mr. Riffin was in a position to know these nine cars could not be delivered to him at Cockeysville not only because of the absence of a delivery track, but because MTA's track work adjacent to his location meant the entire line was out of service.

Despite Mr. Riffin's responsibility with respect to these cars, NSR believes that NSR's refund of any charges collected from Mr. Riffin for the movement of these cars,

the return of the cars to origin without charge (if necessary) and waiver of any accrued charges for storage of the cars should more than make up for any mistake NSR may have made with respect to the handling of the cars.

It is unfortunate that NSR did not handle the disposition of Mr. Riffin's cars more promptly. We believe our current and proposed further handling of the matter will appropriately correct any mishandling of the matter and will do so without attempting to place any expense on Mr. Riffin.

Mr. Riffin has not shown that his attempt to have these empty cars delivered to him at Cockeysville make him a customer on the Line or that he has any railroad freight traffic for NSR at all. He has presented no basis for the Board to conclude that he is an objecting shipper or on which the Board should deny or dismiss the petition.

Typographical Error In Milepost Number. It is plainly absurd for Mr. Riffin to suggest that a single and obvious typographical error with respect to the milepost at one end of the Line justifies dismissal of the petition. The milepost is stated correctly on the map and in numerous other places in the petition.

Abandonment of Additional Former Conrail Operating Rights. Mr. Riffin has raised one legitimate question that requires explanation to the Board and further action by NSR. It does not require either dismissal or denial of the subject petition, however.

In the subject petition, NSR has filed for an exemption from the prior approval requirements of the Act in order to abandon the remaining active right-of-way of the Cockeysville Branch that was acquired by NSR from Conrail in 1999 and on which all active shippers on the Line are located. Mr. Riffin questions whether the Line for some distance beyond Milepost UU-13.8 ever was formally abandoned. Upon further investigation, we have determined that Conrail's operating rights did extend at least a short distance beyond Milepost UU-13.8 and we can not find any record of the formal abandonment of this additional segment of right-of-way. There is no track on most or all of this segment but the right-of-way is intact and some track and material is still next to or along it even though it is not on the right-of-way in usable condition.

NSR proposes to rectify this situation by filing as promptly as possible a notice of exemption to abandon this long inactive railroad line segment along which no current or recent customers are or have been located and of which few people were even aware. No current shipper or other party will be injured or prejudiced by NSR filing this separate notice of exemption in the near future. Indeed, if anything, there will be a benefit to clearing up the status of the short segment of former line that was not previously formally abandoned. While NSR can not state that the notice of exemption can be filed and made effective coincident with the effective date of the petition, we will do our best to move this along quickly. Under the circumstances, we will embargo the entire line, as indicated above, and file the notice of exemption as soon as possible. We regret not being able to include this short segment in this petition, the need for a further filing and

the possibility that a small island operation technically might be created for a short period of time. However, since there are no customers on that long inactive segment, an embargo will prevent any problem or question concerning the availability of rail service over the inactive, and indeed nonexistent, line from arising during the brief period that the isolated segment technically will remain a line of railroad.

NSR only will abandon the active segment of the Line within the mileposts stated in the petition pursuant to an exemption in this proceeding. The abandonment of this segment will not prevent service to any legitimate railroad customer who might demand service on the additional segment for which NSR presently will seek from the Board an exemption for its abandonment. Thus, the need for NSR to clarify the status of this small remaining inactive segment of the Line through a further filing, regardless of its location at the end of the subject Line, provides no basis for denying or dismissing the petition in this case. NSR, as well as MDOT, would be unnecessarily inconvenienced and be subject to unwarranted delay and expense if NSR were required to file this entire petition again simply to remove the operating rights from a short and long dormant adjacent segment of track on which it is apparent that no service will be operated, and indeed, which few people other than Mr. Riffin knew might even continue technically to exist.

Riffin's Statement Concerning Vegetable Oil. Riffin's statements concerning shipments of vegetable oil for his own account are speculative and dubious on their face. Moreover, on page 5 of his statement filed September 14, 2004 in STB Finance Docket No. 34552, a companion declaratory order proceeding with STB Finance Docket No. 34501, Riffin stated that he was engaged in a controversy with the State of Maryland over the non-permitted placement of an empty 6,000 fuel storage tank on his property. Riffin stated that he wanted to use the tank to store fuel used in his railroad operations.

Riffin's Arguments Concerning NSR's Environmental Report. Riffin raises a number of erroneous arguments concerning NSR's compliance with the Board's environmental regulations. Clearly, the amount of traffic that will be diverted from the subject Line does not meet the thresholds for further analysis of various potential environmental impacts and would not do so if the small additional amount of traffic that Mr. Riffin postulates has moved or could move over the Line were added to the total amount NSR uses in its report. Before traffic ceased moving on the Line in March 2005, fewer than one car per day on average traversed the Line over distances between 4.5 and 12.8 miles. There is no way such a small number of car movements could trigger the need to do a more extensive environmental analysis in this case.

Hearsay Statements Concerning Shipper Opposition. Riffin admits that he speaks only for himself but goes on to state that the three shippers on the Line secretly desire that the Line remain in service but were coerced by MDOT into agreements that subsidize or equalize their transportation costs in return for their support of the abandonment of NSR's rights. Clearly, Riffin's statements concerning his

conversations with employees or officers of the shippers can be accorded no weight under these circumstances. Indeed, MDOT or the shippers themselves have placed letters of support from those companies into the record in this case.

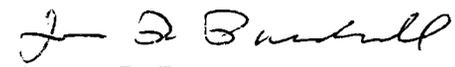
Other Statements. To the extent Mr. Riffin might assert he has made other statements that justify his requests for relieve, rather than just variations on the same themes, we believe the Board will find these are either repetitious arguments or immaterial or irrelevant statements on their face and that they require no additional comment, much less that they provide any basis to deny or dismiss NSR's petition.

Conclusion. Mr. Riffin has pointed out two matters that require correction or further action by NSR but has not presented any basis on which the Board should deny the petition. In fact, Mr. Riffin's statements are so incomplete or misleading that NSR's request to have this letter accepted into the record and considered in the disposition of this case in order to correct or clarify the points raised by Mr. Riffin is justified in order to prevent considerable prejudice to NSR and to assist the Board in reaching a decision. Because this letter is filed so soon after the due date for protests, no one will be prejudiced by its acceptance into the record and the Board's handling of this matter should not be delayed. Mr. Riffin's statement requires correction or clarification. He has presented no basis upon which the Board should deny or dismiss the petition.

The Board should find there is no basis in Riffin's statement or other need to subject NSR, and MDOT, to the substantial delay, inconvenience and expense required to refile this petition in order to handle the two matters raised by Riffin that we acknowledge require further action. Given his history and motivation, Riffin should not be allowed to cause additional time and expense to the parties in order to correct two minor problems that he either largely created himself or stumbled upon and which are causing no harm or prejudice to any shipper or legitimately interested party.

We appreciate your handling and consideration of this.

Yours very truly,


James R. Paschall

Enclosure

cc: Mr. James Riffin
1941 Greenspring Drive
Timonium, MD 21093

cc:

Catherine H. LaFiandra
IMERYS
100 Mansell Court East
Suite 300
Roswell, GA 30076-4860

E.C.C.A. Calcium Products, Inc. d/b/a
IMERYS Pigments and Additives Group
P. O. Box 125
10000 Beaver Dam Road
Cockeysville, MD 21030

Kenneth W. DeFontes, Jr.
President and CEO
Baltimore Gas & Electric Company
P. O. Box 1475
Baltimore, MD 21201

Thomas Q. Minarik
Plant Manager
Fleischmann's Vinegar Company, Inc.
1900 Brand Avenue
Baltimore, MD 21209

Charles A. Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 2001-1401

David L. Ganovski
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

Md. man has train, will travel; Railroad buff wants to run freight, passenger service on Rail Trail
The York Dispatch (York, PA) April 13, 2004 Tuesday

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The York Dispatch (York, PA)

April 13, 2004 Tuesday

SECTION: TOP STORIES

LENGTH: 871 words

HEADLINE: Md. man has train, will travel;
Railroad buff wants to run freight, passenger service on Rail Trail

BYLINE: By JACK SHOLL Dispatch/Sunday News

BODY:

It's the perfect fit as far as railroad buff **James Riffin** is concerned: York County has tracks, but no trains; he has a train, but no tracks.

The 60-year-old Timonium, Md., man wants to restart commercial and passenger service on the former Penn Central tracks that follow the Heritage Rail Trail through the southern part of the county.

Riffin made his pitch yesterday during a meeting with the county commissioners.

"I'm not doing it strictly for profit," he said afterward. "I'm looking for a place to run my train. You guys have got a track, and I need to fix it up a little bit so I can drive my train."

Right of way: The Heritage Rail Trail is managed by the York County Parks Department, but the Pennsylvania Department of Transportation owns the right of way.

More than 250,000 people annually walk or ride bicycles along the 22-mile trail, which opened in 1999. One of York County's largest tourist attractions, it includes several historic bridges and the hand-dug Howard Tunnel, which opened in 1838.

Plans to extend the Heritage Rail Trail north of York City and construct a similar trail to Hanover have been under consideration.

Love of trains: Riffin, who described himself as a former teacher of business and business law at Towson University in Maryland, explained in a phone interview that he "fell in love" with trains two years ago when he visited an exhibition of private luxury railway cars from all over the country at the Baltimore and Ohio Railroad Museum in Baltimore.

He said he believes he can run a train service profitably over time on the old Penn Central line if he can get a significant amount of freight to carry. He has his eye on recapturing customers who once used the train to haul materials such as lumber and bricks.

But Riffin said he's just as much interested in driving what would amount to his own full-scale model railroad.

According to Riffin, he has a lot of the rolling stock assembled. He said he already owns some freight cars and two vintage 1954 passenger cars in excellent shape.

Riffin suggested to the commissioners that he would lease the line, which is in need of repair, for \$1 a year and then restore it.

The commissioners directed county Solicitor David Craun to spell out for Riffin the basic conditions that would need to be met.

Craun said he expected to have the list, along with questions for Riffin, by the end of the week. He said Riffin's responses would help the commissioners decide if there was a bona fide offer.

One absolute condition would be that the trail part of the rail-trail continue in operation, Craun said. Also, the state would need to be consulted about any lease arrangements.

The state lease obligates the county to upgrade the line and accommodate freight service "if an operator decides to provide freight service on that rail," County Administrator/Chief Clerk Chuck Noll said. Riffin said he would repair the line himself, absolving the county of what Noll said could be "an extremely large financial obligation."

Repairs: If his plan is accepted, Riffin said he initially would replace the worn wooden ties on the track.

"I will fix the track at no expense to York County or the state of Pennsylvania. I have a complete set of equipment with the track layers, graders, et cetera, and know how to operate it."

Riffin said he has enough money from investments to initiate the work, and he might rely on loans, investors and volunteers down the road.

Long history: The rail line has a long history of service through the county, the last being a passenger excursion service that folded in 2002.

It's the second-oldest rail line in America, started after the Baltimore & Ohio, Riffin said. It began as the Northern Central Railway, completed from Baltimore to York in 1838, and the only railroad going north and south. In 1911 Pennsylvania Railroad leased the assets of Northern Central, which eventually merged with New York Central to become Penn Central. Penn Central abandoned the line in the 1970s after Hurricane Agnes.

The Maryland and Pennsylvania Railroad/York Rail operated the line until 1990, and then from 1998 to 2001 an excursion train with dining facilities ran from New Freedom, sometimes as far as York.

In shuttering the excursion railroad in 2001, company president Kenneth Bitten cited low sales and financial considerations as the primary reasons. However, he also noted that issues with New Freedom borough, the train's base, were instrumental. Residents and borough officials had complained about noise and unsightly storage. The company's assets were to be auctioned off when service ended.

Riffin said he was aware that some communities had had problems with trains in the past. "We don't want to be where we're not welcome," he said. "We will listen to what the concerns are -- if they have a valid base, we won't do it, like running a train at 2 a.m."

Riffin said he would not use New Freedom as a base of operations. Rather, he said, his

preference would be in Maryland or somewhere near York.

-- Reach Jack Sholl at jsholl@yorkdispatch.com

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