

APPLICATION FORM FOR THE ISSUE OF A LICENCE BY THE ESSENTIAL SERVICES COMMISSION OF SA UNDER THE WATER INDUSTRY ACT

Application Form

THIS REGULATORY DOCUMENT SHOULD BE READ IN CONJUNCTION
WITH THE FINAL ADVICE



Enquiries concerning the currency of this form should be addressed to:

Essential Services Commission of South Australia
GPO Box 2605
Adelaide SA 5001

Facsimile: (08) 8463 4449
Telephone: (08) 8463 4444
Freecall: 1800 633 592 (SA and mobiles only)
E-mail: licensing@escosa.sa.gov.au
Web: www.escosa.sa.gov.au

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Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012

Application Form

TABLE OF CONTENTS

Information for applicants before filling out this form	1
Purpose of this form	1
1. The Applicant	4
1.1 Identity of applicant	4
1.2 Legal identity of applicant	4
1.3 Address and Contact Details of applicant	4
1.4 Contact Person on behalf of applicant	5
1.5 Contact person for licence fees	5
2. The Licence	6
2.1. A detailed description of the retail services for which a licence is sought	6
2.2. Date from which Licence is sought	6
3. Suitability of Applicant to Hold a Licence	7
3.1. Standard of honesty and integrity shown by applicant	7
3.2. Standard of honesty and integrity shown by officers and major shareholders (if relevant) of the applicant	7
3.3. Names and addresses of the officers of applicant	8
3.4. Names and addresses of major shareholders of applicant (not relevant for local council applicants)	9
3.5. Details of the group members (not relevant for local council applicants)	10
3.6. Additional information	10
3.7. Financial resources available to the applicant	11

**Application form for the issue of a licence by the Essential Services Commission of SA under
the Water Industry Act 2012**

Application Form

3.8. Human resources available to the applicant	11
3.9. Technical resources available to the applicant	12
3.10. Contracts	12
3.11. Suitable and appropriate infrastructure	13
3.12. Risk management	13
3.13. Licences held by the applicant in other Australian jurisdictions	14
3.14. Previous unsuccessful licence applications in other Australian jurisdictions	14
3.15. Licences held by associates of the applicant	14
3.16. Compliance program	14
3.17. Additional information	15
4. Factors specified in the Essential Services Commission Act 2002	16
5. Application Fees	17
6. Declaration	18

INFORMATION FOR APPLICANTS BEFORE FILLING OUT THIS FORM

Purpose of this form

This form is to be completed by persons making an application to the Essential Services Commission of South Australia (the **Commission**) for the issue of a licence to provide a retail service (or undertake any other activity for which a licence is required by the regulations) in the water industry in South Australia.

The Commission may consider joint applications from two or more persons who wish to hold a licence jointly. Persons making joint applications must ensure that each of the applicants completes a separate application form together with a covering letter explaining that the application is for a licence to be jointly held.

Basis for this form

Section 19(1) of the *Water Industry Act 2012* (the **Act**) provides that an application for the issue of a licence must be made to the Commission in a form approved by the Commission. This is the form approved by the Commission.

Use of this form and applicant's responsibility

For the purpose of this application form, a reference to the term "Officer" include the applicant's directors and secretary, and/or other persons who make or participate in making decisions that affect a substantial part of the business of the applicant (e.g. Chief Executive Officer, Chief Financial Officer, General Manager etc.).

Applicants should list the information requested in the spaces provided in this form and enclose additional information when required. Applicants must take all reasonable steps to ensure the information provided in the application form is complete, true and correct and are required to make a declaration to that effect. Failure to disclose information or misrepresent any matter relevant to such information may result in a licence not being issued or in the suspension or cancellation of a licence at a later time.

Applicants are responsible for providing the Commission with current, accurate and relevant information. This will ensure that the application is processed promptly and without delay. All applications are assessed on a case-by-case basis. If insufficient information is provided with an application, the Commission will request additional information to be submitted before the application is considered further. This may cause delays in the assessment of the application.

Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012

Application Form

Prior reading

It is essential that licence applicants read the Commission's Water Bulletin – "*Licensing Arrangements for the Water Industry*" before they fill out this form. This Bulletin is available on the Commission's website www.escosa.sa.gov.au under water/licensing. Applicants should also familiarise themselves with the regulatory obligations set out in the Act and the Water Retail Code that will apply to entities that provide retail services.

Licence conditions

Section 25 of the Act requires the Commission to impose certain conditions in licences. The Commission strongly recommends that applicants review these mandatory conditions. Applicants must be familiar with the relevant conditions and be confident that they can comply with the conditions. The Commission will have regard to the scale and nature of the operations undertaken by an applicant in imposing these conditions and will be available to consult with an applicant in this regard.

Consultation and Confidentiality

The Commission will consult with relevant government, industry and consumer groups in the conduct of its licensing functions through a public consultation process. Consequently, applications and/or supporting information will be made available on the Commission's website and in hard copy from the Commission's office for this purpose.

If applicants believe that they are providing confidential information when completing this form they should write "this information is confidential" after any such information. It is the applicant's responsibility to ensure this is clearly highlighted on the form. Applicants should also provide a 'non-confidential' version of the form capable of publication on the Commission's website.

The Commission will use information supplied in applications and in support of applications in accordance with the requirements of Part 5 of the *Essential Services Commission Act 2002*. Applicants claiming confidentiality are encouraged to familiarise themselves with Part 5. Applicants should note that the Commission may be required to disclose confidential information in some circumstances.

Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012

Application Form

How to lodge an application

Applicants should send their completed application form in writing and electronically.

In writing to: Essential Services Commission of SA
 GPO Box 2605
 Adelaide SA 5001

Electronically to: licensing@escosa.sa.gov.au

Application fee

Applicants must also enclose an application fee (which is to be set by the Treasurer) with their application. This fee must be received by the Commission in cleared funds before it can commence assessing an application.

Annual licence fee

Holding a licence incurs an annual licence fee. The licence fees are set by the Treasurer, however, are collected by the Commission. At annual intervals, the Commission, on behalf of the Department of Treasury and Finance, will send to each licensee an invoice for the relevant annual licence fee. Licence fees are to be paid on receipt of an invoice via one of the payment options set out in the invoice.

A licence cannot be issued until the first annual licence fee has been paid.

1. THE APPLICANT

Applicants must answer all questions in this section.

1.1 Identity of applicant

State the full name of the applicant. The applicant should be the person/entity that will be providing a retail service (e.g. retail or distribution operations etc). The Commission can also consider joint applications from two or more persons who wish to jointly hold the licence. Joint applicants should each complete an application form, and submit their application forms at the same time, with a covering letter explaining that a joint application is being made.

Name: The Flinders Ranges Council

1.2 Legal identity of applicant

Provide information about the applicant, (i.e. whether the applicant is a natural person, proprietary limited or public company, partnership or local government body etc). If the applicant is a body corporate, please also state the jurisdiction in which the applicant is registered, and the applicant's ABN/ACN.

The Flinders Ranges Council is a body corporate under the Local Government Act 1999 established by proclamation 1st January 1997, ABN: 43 952 255 151

1.3 Address and Contact Details of applicant

Business Address:

**1 Seventh Street
Quorn
South Australia 5433**

Postal Address (if different to Business Address):

**PO Box 43
Quorn
South Australia 5433**

Telephone: 08 8620 0500

E-mail: eho@frc.sa.gov.au

Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012

Application Form

1.4 Contact Person on behalf of applicant

The full name, title and contact details of a person to whom the Commission can direct enquiries and correspondence about the application.

Full Name: Colin Davies
Title: Chief Executive Officer
Business Address:
1 Seventh Street
Quorn
South Australia 5433
Postal Address (if different to Business Address):
PO Box 43
Quorn
South Australia 5433
Telephone: 08 8620 0500
E-mail: ceo@frc.sa.gov.au

1.5 Contact person for licence fees

The full name or title of the person to whom the Commission can direct enquiries and correspondence about licence fees.

Full Name: Colin Davies
Title: Chief Executive Officer
Business Address:
1 Seventh Street
Quorn
South Australia 5433
Postal Address (if different to Business Address):
PO Box 43
Quorn
South Australia 5433
Telephone: 08 8620 0500
E-mail: ceo@frc.sa.gov.au

2. THE LICENCE

Applicants must answer all questions in this section.

2.1. A detailed description of the retail services for which a licence is sought

For example:

Water: drinking- residential and/or non-residential;

Water: non-drinking – residential and/or non-residential;

Sewerage: residential and/or non-residential; and

Sewerage – trade waste – non-residential.

Applicants should provide detailed information in respect of where the retail services will be provided and to whom (i.e. type and number of customers)

Quorn Community Wastewater Management Scheme (CWMS), Quorn South Township Only - 339 connections

2.2. Date from which Licence is sought

If the applicant seeks to have the licence issued by a certain date, provide this date. Please note that the Commission does not undertake to issue the licence by this date. Applicants should usually allow the Commission a minimum of eight weeks to consider an application, as a public consultation period of several weeks forms part of the Commission's consideration of licence applications.

1st January 2018

3. SUITABILITY OF APPLICANT TO HOLD A LICENCE

Applicants must answer all questions in this section.

3.1. Standard of honesty and integrity shown by applicant

In deciding whether the applicant is a suitable person to hold a licence, the Commission may:

consider the applicant's previous commercial and other dealings, and

the standard of honesty and integrity shown in those dealings.

Please provide information that will assist the Commission in its consideration of this matter. If the applicant:

has been found guilty of any criminal offence,

has been successfully prosecuted under any Territory, State or Commonwealth legislation (such as the Australian Securities and Investments Commission Act 2001 or the Competition and Consumer Act 2010); or

has been the subject of disciplinary action,

details of such matters must be disclosed. Failure to disclose such information or misrepresent any matter relevant to such information may result in the cancellation of a licence.

The Commission may use the service of an external expert to assist with the assessment of the applicant's standard of honesty and integrity.

The Council has not been convicted of any criminal offence. The Council has never been prosecuted under any State or Commonwealth legislation as far as the current CEO and Elected Members are aware. The Council welcomes any further investigation by the Commission.

3.2. Standard of honesty and integrity shown by officers and major shareholders (if relevant) of the applicant

Applicants should address responses to this question in the same manner as 3.1 above.

The Council has not been convicted of any criminal offence. The Council has never been prosecuted under any State or Commonwealth legislation as far as the current CEO and Elected Members are aware. The Council welcomes any further investigation by the Commission.

Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012

Application Form

3.3. Names and addresses of the officers of applicant

State the names and addresses of the officers of the applicant. "Officers" of the applicant include the applicant's directors and secretary, or other persons who make or participate in making decisions that affect a substantial part of the business or operations of the applicant that will be licensed.

Full Name: Peter Slattery
Office Held: Mayor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Ken Anderson
Office Held: Councillor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Ronald Daniel
Office Held: Councillor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Nicole Downing
Office Held: Councillor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Greg Flint
Office Held: Councillor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Julian Hipwell
Office Held: Councillor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Scott Reubenicht
Office Held: Councillor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Clinton Ryks-Jones
Office Held: Councillor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Garry Thompson
Office Held: Councillor
Business Address: 1 Seventh Street, QUORN
State: SA 5433

Full Name: Colin Davies
Office Held: Chief Executive Officer
Business Address: 1 Seventh Street, QUORN
State: SA Post Code: 5433

Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012

Application Form

Full Name: Roy O'Conner
Office Held: Works Manager
Business Address: 1 Seventh Street, QUORN
State: SA Post Code: 5433

3.4. Names and addresses of major shareholders of applicant (not relevant for local council applicants)

Not Applicable

3.5. Details of the group members (not relevant for local council applicants)

This is information about entities controlled by the applicant, or by the ultimate parent entity of the applicant (if applicable).

Not Applicable

3.6 Additional information

Please answer the following questions.

Is the applicant a resident of, or does it have permanent establishment in, Australia? If the answer to this question is "no", please provide further details.

Yes

Is the applicant under external administration (as defined in the Corporations Act 2001) or under a similar form of administration under any laws applicable to it in any jurisdiction? If the answer to this question is "yes", please provide further details.

Not Applicable

Is the applicant immune from suit in respect of the obligations under the Water Industry Act 2012? If the answer to this question is "yes", please provide further details.

No

Is the applicant capable of being sued in its own name in a court of Australia? If the answer to this question is "no", please provide further details

Yes

3.7. Financial resources available to the applicant

Provide information about the financial resources available to the applicant which provides sufficient evidence of the current and ongoing financial capacity of the applicant to effectively provide the relevant retail services (e.g. bank guarantees, credit history and business continuity arrangements).

If the applicant is a company, please enclose a copy of the audited profit and loss statement and balance sheet for the previous two financial years, including the director's report and the audit opinion. If the applicant is a subsidiary company, please also provide a copy of the audited profit and loss statement and balance sheet of the applicant's parent company for the previous two financial years.

If an applicant is a local council, please enclose a copy of the audited profit and loss statement and balance sheet for the previous two financial years.

Applicants should also submit copies of any business plans which detail the strategic direction of the applicant, including its objectives, identified opportunities in the market place and forecast results.

The following reports are available on Council's website: www.frc.sa.gov.au

- **Audited Financial Statements for 2017/18 and 2016/17;**
- **Adopted Annual Business Plan and Budget 2017/18**
- **Strategic Management Plan 2012/22**
- **Long Term Financial Plan 2017/37**

3.8. Human resources available to the applicant

Provide information about the human resources available to the applicant, for example, the number of employees and the experience of these employees in providing the services for which the licence is sought. If the applicant will employ contractor/s to assist with the licensed operations, please provide the name of that contractor/s, and details about the experience of the contractor/s in such operations and details of the processes in place to ensure the contractor/s will comply with the regulatory obligations imposed by the licence.

- **Roy O'Connor, Works Manager**
- **Danny Martin, Works Team Leader**
- **Anthony Agnew, Contracts & Assets**
- **Xylem Water Solutions - pumps and electrical systems**
- **Pipeline Solutions - plumbing & line cleaning**
- **Quorn Pumping Service - pumping out septic**
- **Wallbridge & Gilbert - consulting engineers.**

3.9. Technical resources available to the applicant

Applicants are asked to provide details about the availability of technical resources to be used in carrying out the services for which a licence is sought. The information should include details about the technically qualified staff available to the applicant and (if relevant) of experience gained in similar operations.

Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012

Application Form

Applicants must also provide details of the systems and processes to be used to market and/or communicate with customers, to provide bills, to follow up payments and process customer move-ins and move-outs and deal with customer enquiries and complaints.

Refer to 3.8.

Rates billings processes, including:

- provision of a copy of the information on the rates notice to demonstrate how challenges to the charges are pursued;
- billing information (e.g. payment options);
- frequency (e.g. customers are billed quarterly by way issue a rates notices.

The relevant water /sewerage charge is detailed on the rates notices, which are issued within 30-60 days of payments falling due in September, December, March and June, pursuant to section 181 of the Local Government Act 1999);

- where applicable, that water/ sewerage service rates and / or charges are imposed in reliance upon section 155 of the Local Government Act 1999), and that Council will impose fines and / or interest in respect of late payments pursuant to section 181(8) of the Local Government Act 1999;
- where applicable, the issue of reminder notices;
- consequences of non-payment and payment difficulties, e.g. option to enter into agreed payment plan, outstanding charges are recoverable by way of debt recovery proceedings in a Court of competent jurisdiction and, option to sell land for non-payment of rates under section 184 of the Local Government Act 1999; and
- Council's obligation to maintain the Assessment Record under section 172 of the Local Government Act 1999, which includes details of every piece of land in the Council's area to which a water/ sewerage rate and/ or service charge attaches and the person who is liable to pay the service rate or charge, thereby constituting a record of Council's water/ sewerage service "customers".

Complaints Handling including for internal review of Council decisions under Section 270 of the Local Government Act 1999;

Records Management;

WHS including Incident Reporting;

Emergency Management;

3.10. Contracts

Applicants must provide reasonable evidence that they are able to meet reasonably foreseeable obligations under contracts for the sale and supply of water or the sale or supply of sewerage services (or both) as the case may be.

The Council, as a statutory authority, has available to it powers under the Local Government Act 1999 to impose and recover rates and / or charges for providing prescribed services (waste water) to meet the costs of establishing, operating, maintaining, improving and replacing (including by future capital works and taking into account the depreciation of assets) these services. Council has local contractors who are able to provide maintenance and repair services to various components of the service (CWMS).

Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012

Application Form

3.11. Suitable and appropriate infrastructure

The Commission may not issue a licence unless it is satisfied that the infrastructure to be used in connection with the relevant service is appropriate for the purposes for which it will be used. Applicants are therefore asked to provide a detailed description of the infrastructure that will be utilised by the applicant in providing the retail services for which the licence is sought and verify that the infrastructure has been (or will be) developed in accordance with relevant Australian Industry Codes and Australian Standards with reference to technical specifications or reports. If an applicant does not own the infrastructure to be used in delivering the relevant retail services, the applicant must provide information regarding the binding arrangements that are (or will be) in place with the owner of the infrastructure in regards to the use of the infrastructure.

The Council owns the CWMS infrastructure (e.g. gravity network, pipelines and pump stations, etc.).

Council Declares that:

- **the Scheme meets all licensing requirements of the EPA and the Department of Health**
- **it complies with relevant Australian Standards (applying at the time of construction of each scheme); and**
- **it is currently operating without problem and is fit for purpose**

3.12. Risk management

Provide confirmation and reasonable evidence that the applicant's management has identified the risks associated with the retail services it intends to provide and has established, utilises and relies upon risk management systems and processes which are adequate, accurate and current to address those risks. A copy of the applicant's risk management strategy should be submitted.

Business Continuity Plan (available on council's website)

Application form for the issue of a licence by the Essential Services Commission of SA under the Water Industry Act 2012
Application Form

3.13. Licences held by the applicant in other Australian jurisdictions

If the applicant holds, or has previously held, a retail services licence or equivalent in other Australian jurisdictions please provide details. If a licence previously held has been suspended or cancelled, please provide details.

Not Applicable

3.14. Previous unsuccessful licence applications in other Australian jurisdictions

Please state whether the applicant has applied for a water retail licence or equivalent in another Australian jurisdiction and not been issued with a licence, and provide relevant details.

Not Applicable

3.15. Licences held by associates of the applicant

If an associate of the applicant (within the meaning of the Corporations Act) holds a water retail licence in South Australia or in other Australian jurisdictions, please provide details.

Not Applicable

3.16. Compliance program

Applicants are required to submit a copy of their Compliance Program which details what compliance systems the applicant has (or will have) in place and a description of how these systems will ensure compliance with the applicable regulatory obligations imposed by a licence and the Water Retail Code.

The Flinders Ranges Council will use the Local Government Association template once it has been developed.

3.17 Additional information

The Commission encourages applicants to provide any additional information they consider would be of assistance in supporting the application. Please provide below.

The Flinders Ranges Council has been licensed by ESCOSA, as required by Part 4 of the Water Industry Act 2012, since 7 February 2013. The nature of this Licence, as defined by the Act, categorized the Council as a Minor (2) Retailer, for its operation of CWMSs in Hawker and Quorn.

The Council is currently seeking to separate its licensing obligations into two distinct and separate licenses, one for the Hawker CWMS and one for the Quorn CWMS.

This action has been motivated by what the Council regards as a punishment for attempting to fulfill its compliance obligations pursuant to the South Australian Public Health Act 2011 (SAPHA), wherein deliberate efforts were made to ensure that all eligible properties connected to the relevant CWMS. This increase in compliance with the SAPHA, resulted in a 500% increase in ESCOSA Licence fees, from \$1,150.00 to \$6,900.00.

In separating its CWMS operations into two distinct licenses, where the Hawker Scheme services 167 connections, the Council would remain a Minor Service Provider, incurring a more reasonable and manageable license fee and possibly avoid the need for the Council to increase its levy charges just to cover the remarkable increase in ESCOSA Licence fees.

4. FACTORS SPECIFIED IN THE ESSENTIAL SERVICES COMMISSION ACT 2002

In considering a licence application, the Commission must have as its primary objective the protection of the long term interests of consumers with respect to the price, quality and reliability of essential services, and must also have regard to the need to:

- a) promote competitive and fair market conduct;*
- b) prevent misuse of monopoly or market power;*
- c) facilitate entry into relevant markets;*
- d) promote economic efficiency;*
- e) ensure consumers benefit from competition and efficiency;*
- f) facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment;*
- g) promote consistency in regulation with other jurisdictions.*

If the applicant believes that information about their application would assist the Commission in its consideration of these factors, the applicant should provide such information below.

From Local Government Association:

Most of the townships in regional South Australia are provided with wastewater services by Local Government through various forms of CWMS. Councils did not "choose" to become involved in the provision of wastewater services as historically this was the role the South Australian Engineering and Water Supply Department (E&WS) and subsequently SA Water under the Sewerage Act 1929.

From the early 1960s the State Government sought to encourage Councils to construct a cheaper form of communal drainage in regional towns based on linking existing septic tanks.

The then Local Government Act 1934 was amended to provide Councils with the necessary powers to construct and charge for these schemes. Councils were provided with financial subsidies and technical assistance originally by the Department of Health and subsequently by the Department of Local Government and the E&WS. The LGA agreed to take over the management of the State Government subsidy program in 2005. Over time 39 Councils manage more than 170 separate CWMS.

In regional areas, the provision of CWMS was a public service provided by a Council when the State Government's water utility was unwilling to do so, presumably on the basis of scale and economic considerations.

Care should be taken to ensure that that where Councils are involved in CWMS operations that regulation by ESCOSA is commensurate with the scale of the scheme(s).

5. APPLICATION FEES

Applicants for a licence must pay the Commission an application fee which is fixed by the Treasurer. Please enclose this fee with the application. An application cannot be considered until this fee has been received.

Application Fee is \$0 as per Minister's advice (the scheme was in operation prior to 30 June 2012).

6. DECLARATION

All information in this application for the issue of a licence to authorise the provision of retail services in the water industry in South Australia must be verified by a Statutory Declaration of the applicant, in accordance with the provisions of the *Oaths Act 1936* (SA)¹, stating that the information contained in the application is true and correct to the best of the applicant's knowledge, information and belief.

In conjunction with this declaration, evidence of the relevant authority of the declarant to sign on behalf of the applicant must also be provided to the Commission.²

Statutory Declaration

I, Colin Davies, of The Flinders Ranges Council

do solemnly and sincerely declare that the information contained in this Application for the issue of a licence to authorise the provision of retail services in the water industry in South Australia is true and correct to the best of my knowledge information and belief.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Date 6/9/17

Signature 

(Where the applicant is a body corporate, the declaration must be made by a person authorised by body corporate to sign on its behalf)

Declared at: Quorn this 6 day of SEP 2017

Before me: Kenneth Paul Anderson J.P.

(Signature of Justice of the Peace or other person authorised under the *Oaths Act 1936*)

NO. 23787.

- 1 Or equivalent legislation in other Australian jurisdictions.
- 2 The Commission will accept a copy of a Board or Council minute (or circulating resolution) giving approval for the declarant to sign on behalf of the applicant as evidence of the relevant authority.

**Application form for the issue of a licence by the Essential Services Commission of SA under
the Water Industry Act 2012**

Application Form



The Essential Services Commission of South Australia

Level 8, 50 Pirie Street Adelaide SA 5000

GPO Box 2605 Adelaide SA 5001

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