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January 16, 2001

VIA INTERNET E-FILING

David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street N.E., Room 1A
Washington D.C. 20426

Re: U.S. Department of Energy - Bonneville Power Administration

FERC Docket No. RT01-35-000

Our File No. 071000/121831

Dear Mr. Boergers:

Attached for filing in above referenced proceeding is the Protest of Public
Generating Pool to RTO Filing Utilities' s Amended Supplemental Compliance Filing
and Request For Declaratory Order, and to Consolidate and Request For Leave to File
Answer and Protest.

Thank you for your assistance in this matter.

Sincerely,

Raymond S. Kindley

RSK:kbe
Enclosure
cc: officialservicelist

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

)	
Avista Corporation)	
Bonneville Power Administration)	Docket No. RT01-35-000
Idaho Power Company)	
The Montana Power Company)	
Nevada Power Company)	
PacifiCorp)	
Portland General Electric Company)	
Puget Sound Energy, Inc.)	
Sierra Pacific Power Company)	

**PROTEST OF PUBLIC GENERATING POOL TORT OF FILING
UTILITIES' SAMENDED SUPPLEMENTAL COMPLIANCE FILING
AND REQUEST FOR DECLARATORY ORDER, AND TO
RT OF FILING UTILITIES' ANSWER TO MOTION TO
CONSOLIDATE AND REQUEST FOR LEAVE TO
FILE ANSWER AND PROTEST**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2000), the Public Generating Pool¹ ("PGP") hereby submits its Protest in the above-captioned docket. PGP submits this Protest pursuant to the Commission's notice dated December 15, 2000, regarding the supplemental documents filed on December 5, 2000, by the utilities listed in the caption above (the "Filing Utilities").

¹ PGP is a non-profit, voluntary association of five publicly owned electric utilities in the state of Washington: Public Utility District No. 1 of Cowlitz County, Public Utility District No. 1 of Douglas County, Public Utility District No. 2 of Grant County, and The City of Seattle, City Light Department.

I. Summary of Protest

Part of the Filing Utilities have supplemented their first filing regarding the organization and operation of RTOWest with revised documents and request the Commission to provide guidance on the acceptability of the submitted draft contracts. Some of these documents are incomplete, especially the proposed Transmission Operating Agreement. Three of the Filing Utilities also object to terms, or lack of terms, within the draft Transmission Operating Agreement that the Filing Utilities submitted.

Also, the Filing Utilities, and subgroup thereof, have substantially changed their requests to the Commission regarding the approvals they seek. Initially a subgroup requested the Commission to provide a declaratory order approving the concept embodied in draft agreements submitted to the Commission. Now, subgroup of the Filing Utilities ask for preliminary guidance on those agreements. This inconsistency demonstrates that the Filing Utilities still have fundamental organizational issues to resolve regarding the development of RTOWest.

PGP strongly objects to many aspects of the Filing Utilities' supplemental filing. In addition to the Filing Utilities' failure to develop operational documents that they all support, the draft Transmission Operating Agreement contains provisions that will bar the participation of non-jurisdictional utilities such as PGP members in RTOWest. PGP requests the Commission to not take any action regarding the documents filed by the Filing Utilities, or subgroup thereof, until the Filing Utilities takes substantial steps to correct the fundamental problems in their filings, especially the proposed Transmission Operating Agreement.

II. Introduction

The Filing Utilities submitted to the Commission on October 23, 2000, a *Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order No. 2000* (“Filing Utilities’ First Supplemental Compliance Filing”) to establish RTOWest as a non-profit, regional transmission organization in compliance with Order 2000.² The Filing Utilities requested the Commission to provide a declaratory order issued on an expedited basis regarding: (i) the form of RTOWest First Restated Articles of Incorporation and RTOWest Bylaws as proposed in the filing Attachments R and J; (ii) the scope and configuration of RTOWest as proposed in the filing; and (iii) the form of the Agreement Limiting Liability Among RTOWest Participants in Attachment Y of the filing.³

Additionally, a small subset of the Filing Utilities (the Bonneville Power Administration, Idaho Power Company, and PacifiCorp) separately requested the Commission to issue a declaratory order finding that the *concepts* as a package embodied in the proposed Transmission Operating Agreement and Agreement to Suspend Provisions of Pre-Existing Transmission Agreements are acceptable to the Commission and are consistent with the requirements of Order 2000.⁴

PGP and its members submitted to the Commission on November 20, 2000, Motion to Intervene and a Protest and Comment regarding the Filing Utilities’ proposal to form RTOWest and their requests for declaratory orders. PGP’s Protest

² *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶31,092 (2000), *review pending sub. nom. Public Utility District No. 1 of Snohomish Cty., WA v. FERC*, Nos. 00-1174, et al. (D.C. Cir.)

³ Filing Utilities’ First Supplemental Compliance Filing at 5.

⁴ *Id.* at 5-6.

and Comment provided that the Filing Utilities' First Supplemental Compliance Filing failed to meet the requirements of Order 2000 and contained other significant deficiencies. Additionally, PGP notified the Commission that the Filing Utilities' proposed Transmission Operating Agreement contained many barriers to participation by non-jurisdictional utilities in RTOWest. PGP requested that the Commission deny the Filing Utilities' motions for declaratory orders on their October Compliance Filing as submitted.

On December 5, 2000, the Filing Utilities, in whole or in part, filed three additional submissions containing materials for the Commission's consideration in the above-referenced docket: (i) *Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000: Docket No. RT01-35-000*; (ii) *Filing Utilities' Answer to Motion to Consolidate and Request Leave to File Answer to Protest to the RTOWest October 23, 2000 Filing* ; and (iii) *Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order No. 2000*.

All of the Filing Utilities submitted the *Filing Utilities' Answer to Motion to Consolidate and Request for Leave to File Answer to Protest to the RTOWest October 23, 2000 Filing* ("Filing Utilities' Answer"). The Filing Utilities request the Commission to issue an expedited declaratory order approving the proposed governance structure, Articles of Incorporation, Bylaws, scope and configuration of RTOWest, and the Agreement Limiting Liability Among RTOWest Participants. Additionally, the Filing Utilities request the Commission to review and provide guidance on the acceptability of the revised Transmission Operating Agreement and

the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements. ⁶

The Filing Utilities' Answer acknowledges that the Filing Utilities may again revise these agreements prior to their Stage 2 filing. ⁷

A subset of the Filing Utilities (known as the "Concurring Utilities") submitted an *Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order 2000: Docket No. RT01-35-000* ("Concurring Utilities Filing"). The Concurring Utilities are Avista Corporation, the Bonneville Power Administration, Idaho Power Company, The Montana Power Company, PacifiCorp, and Puget Sound Energy, Inc. The Concurring Utilities' amended compliance filing provides revisions of the previously filed forms of the Transmission Operating Agreement and the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements. The Concurring Utilities request the Commission to review the agreements as submitted with their filing and provide preliminary guidance regarding the acceptability of the concepts and specific provisions they contain.

The Concurring Utilities argue against the position taken by the remaining Filing Utilities (Portland General Electric Company, Nevada Power Company and Sierra Pacific Power Company) in their supplemental compliance. The Concurring Utilities claim that they will negotiate the issue of export fees in the development of their Stage 2 filing. Although the Concurring Utilities acknowledge that the revised agreements are non-binding and remain subject to modification with the Stage 2 process, they request the Commission to provide guidance regarding the acceptability of the concepts and specific provisions of the revised agreements.

⁵ Filing Utilities' Answer at 38.

⁶ *Id.* at 38.

Portland General Electric Company (“PGE”), Nevada Power Company (“Nevada”), and Sierra Pacific Power Company (“Sierra Pacific”) filed their version of a supplemental compliance filing titled *Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order No. 2000* (“PGE/Nevada/Sierra Pacific Filing”). PGE, Nevada, and Sierra Pacific note that when the Filing Utilities jointly submitted their first compliance filing in October 2000, the majority of the Filing Utilities required additional time to fully review the proposed Transmission Operating Agreement and the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements.⁸ PGE, Nevada, and Sierra Pacific now contend that additional revisions may be needed to resolve existing hurdles before the Filing Utilities will mutually approve the Transmission Operating Agreement and Agreement to Suspend Provisions of Pre-Existing Transmission Agreements.⁹ PGE, Nevada, and Sierra Pacific disagree with the remaining Filing Utilities regarding the appropriateness or nature of export fees for the transmission of energy exported by RTOWest.¹⁰ They urge the Commission to direct the remaining Filing Utilities to include in the financial modeling of transfer charges analyses of the effects of export fees.¹¹ PGP, Nevada, and Sierra Pacific conclude that final approval by the Commission of these agreements would be premature.¹²

III. The Compliance Filings Are Still Incomplete

⁷ *Id.* at 38.

⁸ PGE/Nevada/Sierra Pacific Filing at 2

⁹ *Id.* at 4

¹⁰ *Id.* at 5

¹¹ *Id.* at 6

¹² *Id.* at 4

Review of the compliance filings by the Concurring Utilities and the subgroup of PGE, Nevada, and Sierra Pacific clearly demonstrates that the Filing Utilities as a group still disagree about fundamental issues regarding the operation of RTOWest. PGE, Nevada, and Sierra Pacific state in their supplemental compliance filing that they have been unable to reach agreement with the other six Filing Utilities on the appropriateness or nature of export fees for RTOWest.¹³ They request that the Commission order the other Filing Utilities to include analyses of export fees in the financial modeling of transfer charges.¹⁴

The Concurring Utilities, on the other hand, urge the Commission to reject the request by PGE, Nevada, and Sierra Pacific.¹⁵ The Concurring Utilities want to negotiate the transfer charges and allocation of firm transmission rights instead modeling the impacts of export fees. These negotiations will proceed under the assumption that the RTO pricing proposal will not include export fees.¹⁶ The Concurring Utilities further provide:

The Concurring Utilities view a proposal for concurrent modeling and consideration of export fee proposal to be an invitation for an open-ended repetition of the difficult Stage I pricing debate. We must move forward to try to implement the Transmission Operating Agreement proposal, addressing specific problems if they arise as a result of Stage 2 negotiations with alternatives designed to address those problems.¹⁷

The Concurring Utilities admit that the export fee issue is closely tied to work on the Transmission Operating Agreement pricing proposal, so closely tied that modeling and concurrent consideration of export fee proposals will likely cause the

¹³ *Id.* at 5

¹⁴ *Id.* at 7

¹⁵ Concurring Utilities' Filing at 5.

¹⁶ *Id.* at 4

¹⁷ *Id.* at 5.

parties to repeat the pricing debate that has been the primary obstacle to the development of RTOWest.

Additionally, both groups have implicitly retracted their request of the Bonneville Power Administration, Idaho Power, and PacifiCorp for the Commission to issue a declaratory order finding that the concepts in the earlier proposed agreements are acceptable to the Commission and consistent with the requirements of Order 2000.¹⁸ Now both groups merely ask the Commission to provide preliminary guidance on the acceptability of the agreements.¹⁹

The individual members of the Filing Utilities simply have not reached agreement on fundamental issues. Until such agreement is reached, the Concurring Utilities and the other disagreeing utilities will continue to negotiate and revise the Transmission Operating Agreement. It would be premature at this time for the Commission to step in and provide any determination regarding the acceptability of the Transmission Operating Agreement or the Agreement to Suspend Provisions of Pre-Existing Transmission Agreements. It is highly likely that any agreements the Commission approves now will significantly change before the Filing Utilities' Stage 2 filings.

IV. Cost–Benefit Analysis

In the Filing Utilities' Answer, they argue that a cost-benefit analysis is neither appropriate nor necessary in the instant docket, because the overall costs and

¹⁸Filing Utilities' First Supplemental Compliance Filing at 5.

¹⁹PGE/Nevada/Sierra Pacific at 6. They request "the Commission to provide preliminary guidance regarding the concepts and specific provisions" in the agreements. Concurring Utilities' Filing at 4.

benefits will be addressed “at another time or in other forums.”²⁰ The Filing Utilities further conclude, without any hard evidence and with only scant logic, that “RTO West will support efficient markets.”²¹ The Filing Utilities’ Answer does not specify the type(s) of efficiency to be expected (e.g., technical, allocative, or productive), nor does it identify what markets might be so enhanced (e.g., transmission, power, or ancillary services). Given the disastrous effects of the California experiment in deregulation, the PGP finds these responses unconvincing. Approval of any particular structure for RTO West will not be prudent or responsible without considering the costs and benefits of the specific proposal, including whether there can be any reasonable likelihood of enhanced efficiency of markets. Accordingly, PGP requests the Commission to not take any action on the Filing Utilities’ supplemental filing until they complete, through a collaborative process, an accurate and thorough analysis of the expected costs and benefits of the proposed RTO West structure. PGP also requests that such an analysis include benefits and costs from the perspective of consumers in the RTO West area.

V. Interference with Competitive Markets for Interconnected Operations Services or Ancillary Services

In their original Compliance Filing in October 2000, the Filing Utilities provided that RTO West would acquire and provide ancillary services, subject to limitations in time and to the absence of competitive markets in such services. In Section 7.1 of the revised Transmission Operating Agreement, the Concurring

They request “the Commission to review the agreements as submitted with this filing and provide preliminary guidance regarding the acceptability of the concepts and specific provisions they contain.”

²⁰Filing Utilities’ Answer at 15-16.

Utilities have extended the period during which RTOWest may provide ancillary services on a longer-than-day-ahead basis to 90 days from the date on which such arrangements are made, if there is no competitive market in ancillary services. This change creates new concerns that compound those identified in the PGP's initial Protest in this docket, regarding the likely effects of RTOWest on the development of competitive markets for ancillary services.

PGP pointed out in its initial protest that the Filing Utilities had failed to provide sufficient detail on the nature of the markets for ancillary services that would be affected (limited or stimulated) by the formation and operation of RTOWest. This omission has not been corrected in the additional filings; the Concurring Utilities' revised filings still fail to provide sufficient detail to determine the effect of RTOWest on the markets for ancillary services, so it is entirely premature to conclude that pre-approval of such a rolling 90-day purchase strategy is appropriate.

PGP's concern is reinforced by the deletion of "provider of last resort" language in Section 7.1 of the revised Transmission Operating Agreement, which implies that RTOWest will have a more dominant role in ancillary service markets than was originally contemplated. This concept should not receive final approval without a clearer and fuller understanding of the nature of the markets so affected. The PGP remains concerned that RTOWest will dominate markets for ancillary services in its area, by taking on obligations that preclude, or provide an incentive for RTOWest to interfere with, self-provision.

The revised Transmission Operating Agreement also substitutes the term "Interconnected Operations Services" ("IOS") for Ancillary Services ("AS") at

²¹Filing Utilities' Answer at 28.

several key points. As a general matter, this substitution may interfere with the self-supply of Ancillary Services by transmission customers of RTOWest. The substitution of terms runs the risk of blurring the distinctions already established by the Commission that may support the development of competitive markets in Ancillary Services, by preserving the right of self-supply. For example, in Section 7.3.1, the revised Transmission Operating Agreement eliminates the ability to self-supply Ancillary Services, although these are the very services that transmission customers have the right to self-supply through current Commission policy and open-access transmission tariffs. Section 7.3.1 thus appears to contradict Commission policy in places since Order 888. PGP strongly objects to any provision in an organic agreement of RTOWest that will, or may, interfere with the self-supply of ancillary services. Before the Commission provides any approvals, the Filing Utilities need to make changes to avoid elimination of the rights of self-supply.

In making such changes, the Filing Utilities must take care that the correct term is used in each context, distinguishing between situations in which RTOWest is acquiring services from those in which RTOWest is providing services. In some cases, the language from the initially filed Transmission Operating Agreement referring to Ancillary Services is preferable; in other cases, it may be necessary to refer to both Ancillary Services and Interconnected Operations Services (e.g., §§ 7.3.1 and 7.4 of the revised Transmission Operating Agreement). Also, there is a contradiction between the definitions section of the Transmission Operating Agreement and the body of the Transmission Operating Agreement itself. ²²

²² See also the revised definitions in Attachment A, which refer to Self-Provision and Self-Tracking of Ancillary Services, in apparent contradiction of § 7.3.1 of the Transmission Operating Agreement.

VI. Definition of “Load Service Obligation”

In Attachment A to the revised Transmission Operating Agreement, the Concurring Utilities expand the definition of “Load Service Obligation” to include loads where the Executing Transmission Owner has a legal obligation to provide transmission service. This clarification, while laudable, reinforces PGP’s earlier conclusion that Firm Transmission Rights (“FTRs”) for load growth should be provided to customers with both Point-to-Point (“PTP”) and Network Transmission (“NT”) service. PGP member utilities have a legal obligation to provide service to specified retail (and in some cases wholesale) loads, whether or not they have elected in the past (or the present) to rely on PTP or NT service purchased from the Bonneville Power Association. There is no basis for discrimination against one class of customers (PTP) and in favor of another (NT), by granting the latter, but not the former, FTRs for load growth, notwithstanding the fact that both customer classes have Load Service Obligations.

VII. Unauthorized Delegation of Rate Making Authority

In its protests submitted in November 2000, the PGP argued that the Transmission Operating Agreement proposed by the Filing Utilities was inconsistent with statutory requirements governing the establishment of transmission rates by the Bonneville Power Administration.²³

The Concurring Utilities’ revised Transmission Operating Agreement fails to respond to this statutory oversight. Section 13.1.1 of the revised Transmission Operating Agreement now states that “RTOWest... shall apply Company Costs and other costs to derive Company Rates paid by the Executing Transmission

Owner's Company Loads." This revision clearly provides that RTOWest will determine rates for the transmission owner parties to the Transmission Operating Agreement, including the Bonneville Power Administration. Given the clear provisions of §7(i) of the Northwest Power Act, ²⁴ RTOWest cannot establish rates to be charged to Bonneville Power Administration transmission customers, even if they are labeled "Company Loads." Furthermore, under applicable Washington law, the governing boards of non-jurisdictional transmission owners cannot delegate by contract such rate-making authority to RTOWest. ²⁵ Even if these legal barriers to the delegation of rate-making authority to RTOWest were not present, PGP members would be unwilling to delegate this authority to any entity. This contract provision appears to far exceed the intent of Order 2000. This is another example of why PGP requests the Commission to not approve of the Filing Utilities' supplemental documents.

VIII. Alternative Export Charges

In their supplemental compliance filing, PGE, Nevada and Sierra Pacific identify a difference of opinion with the Concurring Utilities regarding either the appropriateness or the nature of an export fee for the transmission of energy exported from RTOWest. They correctly point out that additional information is required about the potential effects of exports on end-users.

²³ See Protest of Public Generating Pool at 12.

²⁴ Pacific Northwest Power Planning and Conservation Act, Section 7(i), 16 U.S.C. §839e(i).

²⁵ Terrace Heights Sewer District of Yakima Cty v. Fred Young *et al.*, 3 Wn.App.206, 437 P.2d 414 (1970); See also 12 McQuillin, Municipal Corporations §34.147.50.

PGP strongly supports their request that the Commission direct the Concurring Utilities to include analyses of export fees during the modeling of transfer charges in Stage 2. Recent events have demonstrated that the chaotic conditions in the dysfunctional electricity markets of California can easily and quickly spread to other parts of the Western Systems Coordinating Council (“WSCC”). It is both reasonable and responsible to have a clear idea of the broad effects of any restructuring proposal before it is implemented, rather than exposing consumers to unnecessary risks in electricity pricing. The Commission should direct the Concurring Utilities to present in their Stage 2 filings complete and accurate analyses of the expected effects of various export pricing proposals on end-use consumers in the RTOWest area. Also, the Concurring Utilities should be required to demonstrate the superiority, measured from the perspective of consumers, of any proposed approach to the pricing of transmission of electricity exports.

IX. Filing Utilities’ Conflicting Positions

In addition to objecting to each other’s filings, the Filing Utilities are also failing to address issues regarding participation by non-jurisdictional utilities. The Filing Utilities’ Answer acknowledges that PGP’s first Protest and Comments objected to provisions in the Transmission Operating Agreement that precluded participation by non-jurisdictional utilities.²⁶ Instead of taking steps to eliminate those barriers, the Filing Utilities dismiss these requests as premature since the Filing Utilities are not addressing Transmission Operating Agreement issues at this time and will instead address them after the parties have had an opportunity to address the

²⁶Filing Utilities’ Answer at 29-30.

December 1, 2000, revision to the Transmission Operating Agreement. ²⁷ The Filing Utilities request the Commission, however, to review and provide preliminary determinations now regarding the acceptability of the proposed Transmission Operating Agreement. Commission action now will likely further erode consideration of non-jurisdictional utilities' interests in the development of RTOWest.

PGP strongly objects to the Filing Utilities' requests for piecemeal approvals from the Commission. PGP members are highly concerned that their interests will not be given due consideration by the Filing Utilities in the development of the Transmission Operating Agreement if the Commission provides preliminary approval of that agreement or any other agreement. With preliminary approval, the Filing Utilities will have less incentive to give due consideration to the issues raised by non-jurisdictional utilities. PGP requests the Commission not to approve any documents submitted by the Filing Utilities until all documents are completed, so the Commission and the participating parties will be able to know how all the agreements and organizational structure of RTOWest will work together.

X. Socialization of Power Costs

The Concurring Utilities also include a new Section 5.2.3 in the revised Transmission Operating Agreement, which permits economic payments in lieu of restoration of Total Transfer Capability ("TTC") and the recovery of such payments as "transmission costs." The revised agreement does not define the term "economic payments." Without this definition, such payments could involve the market value of

²⁷ *Id.* at 30.

power purchased or not sold due to the diminished TTC, and the classification of such value as a “transmission cost” that could be recovered from all transmission customers of RTOWest. This payments scheme could thus socialize (through RTOWest transmission charges) some power costs that are now, and in the future should be, appropriately borne by power customers. The Commission should not permit such a socialization of costs. PGPre requests the Commission to reject this new provision.

XI. New Cost Allocation Standards

In its earlier Protest and Comment, the PGPre argued against the ability of RTOWest to assign costs in a manner that may violate the Bonneville Power Administration’s statutory obligations under Section 7 of the Northwest Power Act. In the revised Transmission Operating Agreements submitted on December 1, the Concurring Utilities create a new standard for such cost allocations by RTOWest. Instead of allocating costs to those who “benefit” from new facilities, RTOWest may allocate costs to those who “need” such facilities. This change, although apparently subtle, would interfere with the ability of transmission customers to decide how much transmission service they require to serve load reliably, and could interfere with the cost-effective use of demand-side management techniques that could substitute for new transmission facilities.

XII. Requested Relief

For the above-stated reasons, the PGP requests that the Commission not take any action towards approving any portion(s) of the filings until (a) the Stage 2 filings are complete, (b) the Filing Utilities provide a cost-benefit analysis of RTOWest, and (c) other deficiencies described here, and in our earlier Protest, are cured.

Respectfully submitted this 16th day of January, 2001.

SCHWABEWILLIAMSON&WYATT

Raymond S. Kindley, OSB #96491
Of Attorneys for PGP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served, via first class mail, the foregoing
PROTEST OF PUBLIC GENERATING POOL TORT OF FILING UTILITIES' SAMENDED
SUPPLEMENTAL COMPLIANCE FILING AND REQUEST FOR DECLARATORY ORDER, AND TO
CONSOLIDATE AND REQUEST FOR LEAVE TO FILE ANSWER AND PROTEST, upon each person
designated on the attached official service list compiled by the Secretary in this proceeding.

DATED at Portland, Oregon, this 16th day of January, 2001.

Raymond S. Kindley

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