UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.	Docket No. ER23-2977-000

MOTION FOR LEAVE TO RESPOND AND RESPONSE OF AMERICAN MUNICIPAL POWER, INC., MISSOURI ELECTRIC COMMISSION, SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY, AND WPPI ENERGY

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission) Rules of Practice and Procedure,[1] American Municipal Power, Inc. ("AMP"), Missouri Joint Municipal Electric Utility Commission d/b/a the Missouri Electric Commission ("MEC"), Southern Minnesota Municipal Power Agency ("SMMPA"), and WPPI Energy ("WPPI") (collectively, "Midwest TDUs") move for leave to respond and respond to the December 6, 2023 Motion for Leave to Answer and Answer filed by Midcontinent Independent System Operator, Inc. ("MISO").[2] MISO's Answer responds to, among other things, Midwest TDUs' Protest[3] of MISO's filing in this proceeding to revise the resource adequacy provision of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff ("Tariff") to use sloped

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[1] 18 C.F.R. §§ 385.212-.213.

[2] Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator, Inc. (Dec. 6, 2023), eLibrary No. 20231206-5149 ("MISO Answer").

[3] Protest and Motion to Reject of American Municipal Power, Inc., Missouri Electric Commission, Southern Minnesota Municipal Power Agency, and WPPI Energy (Nov. 3, 2023), eLibrary No. 20231103-5186 ("Midwest TDU Protest").

demand curves, which MISO refers to as Reliability Based Demand Curves or "RBDCs."[4]

The Commission previously issued a Deficiency Letter on MISO's initial RBDC Filing.[5] MISO notes in its Answer that the numerous "issues addressed in questions asked by the Commission in the November 22 Letter overlap with issues raised in comments and protests," and that MISO "will address certain issues solely in its response to the Commission's letter while others are addressed below."[6] To avoid unnecessary duplication and promote clarity, Midwest TDUs will largely defer addressing MISO's responses to our arguments that fall within the scope of the Deficiency Letter and should be further addressed in MISO's response to the Deficiency Letter.[7] And because MISO's limited Answer leaves unclear which of our arguments MISO may be addressing in the course of responding to the Deficiency Letter, Midwest TDUs also cannot comment at this time on important arguments MISO has entirely ignored, but reserve the right to do so in commenting on MISO's response to the Deficiency Letter.

Instead, Midwest TDUs' response below focuses on two critical deficiencies in MISO's Answer: (1) MISO's continued failure to demonstrate that sloped demand curves are appropriate or needed in the MISO region, much less that its ill-defined RBDC proposal will produce just and reasonable results in a clear, transparent, and non-

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[4] MISO, Reliability Based Demand Curve (Sept. 29, 2023), eLibrary No. 20230929-5322 ("RBDC Filing").

[5] FERC, Deficiency Letter (Nov. 22, 2023), eLibrary No. 20231122-3043 ("Deficiency Letter").

[6] MISO Answer at 2.

[7] For instance, we do not respond here to MISO's limited response (MISO Answer at 21-22) to arguments regarding its failure to identify the method it will use to calculate the RBDC Opt Out Adder after the first year, as that issue is the subject of Question 8 in the Deficiency Letter.

discriminatory manner; and (2) its failure to address the flaws with its proposed RBDC Opt Out aspect of its proposal.

I. MOTION FOR LEAVE TO RESPOND

Although the Commission's Rules prohibit answers to answers unless otherwise authorized,[8] the Commission has the authority to waive this prohibition for good cause[9] and has done so where an answer would assist the Commission's decision-making process.[10] Midwest TDUs' response will aid the Commission's understanding of MISO's proposed Tariff revisions and the specific concern raised in Midwest TDUs' Protest. Midwest TDUs respectfully request leave to submit the following response.

II. RESPONSE

A. MISO's Answer fails to explain how it will implement its RBDC proposal, much less demonstrate that it is just and reasonable.

As an initial matter, MISO fails to justify shifting from a vertical demand curve to its proposed sloped demand curves. Although MISO attempts to support this dramatic shift with the bald assertion that "conditions have changed,"[11] MISO does not meaningfully respond to Midwest TDUs' arguments and instead points back to its own testimony (which Midwest TDUs addressed in our Protest), with telling omissions.[12] Notably, in claiming that conditions have changed, MISO's Answer omits its earlier claim that Load-Serving Entity ("LSE") reliance on the Planning Resource Auction

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[8] 18 C.F.R. § 385.213(a)(2).

[9] 18 C.F.R. § 385.101(e).

[10] *See, e.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,249, P 16 (2022) (accepting answers to answers "because they have provided information that assisted us in our decision-making process").

[11] MISO Answer at 5.

[12] *See id.* at 5-6.

("PRA") to meet Planning Reserve Margin Requirements ("PRMR') is increasing.[13] MISO also fails to acknowledge, much less make any attempt to rebut, Midwest TDUs' demonstration of MISO's failure to support this claim of increasing reliance on the PRA.[14] MISO's failure to defend what it previously claimed was a key reason for its RBDC Filing is illustrative of MISO's failure to carry its burden to show that its proposed departure from the approach repeatedly reaffirmed by the Commission[15] is just and reasonable.

MISO's defense of the specifics of its RBDC proposal are equally flawed. As discussed below, MISO (1) fails to provide a cogent explanation of how it will implement multiple RBDCs in a coherent, just, and reasonable manner; (2) fails to comply with the Federal Power Act by omitting central elements of this proposal from the Tariff, and instead leaving them to be specified through business practices subject to MISO's discretion without any Commission review; and (3) fails to show that the Commission's previous approval of *different* sloped demand curves in *different* Regional Transmission Organizations and Independent System Operators (collectively, "RTOs") supports MISO's specific proposal in this proceeding.

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[13] *See, e.g.*, RBDC Filing, Transmittal Letter at 3 and 8 (stating that RERRAs, public power utilities, utility planners and others "increasingly rely on the PRA"); RBDC Filing, Tab C, Prepared Direct Testimony of Todd Ramey at 6 (claiming that Market Participants "have increased their reliance on the PRA").

[14] *See* Midwest TDUs Protest at 9-10.

[15] *Id.* at 5-8. MISO's Answer (at 4) concedes that Midwest TDUs' "have done an excellent and thorough job of laying out the historical evolution of MISO's Resource Adequacy construct."

1. MISO's two new simplified examples do not address Midwest TDUs' concerns, nor do they demonstrate that MISO's application of multiple RBDCs is just and reasonable.

MISO claims that "the System-Wide and Sub-Regional RBDCs proposed in MISO's filing will interact in a manner that produces clear rates that are just and reasonable."[16] But rather than explaining how this interaction will work or addressing the specific questions raised by Midwest TDUs, MISO provides two hypothetical examples that provide little, if any, evidence that its RBDC Filing is just and reasonable.[17]

At the outset, the nature of these examples—under a "simplistic system" with no consideration of Local Clearing Requirements ("LCRs"), Capacity Import Limits ("CILs"), and Capacity Export Limits ("CELs")—means that they can provide limited, if any, help in understanding how MISO's proposal will work in the real world. MISO also never links these examples to anything in its proposed Tariff language, which is what must be shown to be just and reasonable.

Moreover, MISO avoids squarely addressing the concern Midwest TDUs raised in our protest. Midwest TDUs showed that, based on stakeholder material and MISO's own testimony, "MISO's use of regional RBDC curves may produce price separation between MISO North/Central and MISO South even when there is no binding subregional transfer constraint."[18] The two examples in MISO's Answer have no binding subregional transfer

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[16] MISO Answer at 22.

[17] *Id.* at 22-26.

[18] Midwest TDUs Protest at 25-26 (citing MISO, *Reliability-Based Demand Curve(s)* at 23, RASC-2019-8 (Aug. 22-23, 2023), https://cdn.misoenergy.org/20230822-23%20RASC%20Item%2006a%20Reliability%20Based%20Demand%20Curves%20Presentation%20(RASC-2019-8)629946.pdf; RBDC Filing, Tab D, Prepared Direct Testimony of Zakaria Joundi ("Joundi Testimony") at 35-36).

constraint, and happen to show "no price separation across the Sub-Regions and between LRZ A and LRZ B."[19] MISO, however, does not demonstrate (or even claim) that these two examples reasonably reflect the full range of potential real-world scenarios to which its RBDC proposal would apply.

For instance, each of the two examples shows that the intersections of supply and demand is (1) $20-$10/MW for the systemwide RBDC, (2) $18-$12/MW for the N/C Sub-Region RBDC, and (3) $15-$7/MW for the South Sub-Region RBDC.[20] In each example, the marginal resource has an offer of $14/MW, which falls within the price range for all of the potential supply and demand curve intersections. In this particular scenario, MISO shows there is no price separation where there is no binding subregional transfer constraint. But significantly, MISO never acknowledges, much less addresses, its own previous examples provided in filed testimony and presentations to stakeholders that *do* show price separation where there is no binding subregional transfer constraint, which Midwest TDUs' Protest identified and discussed.[21]

Critically, MISO still does not answer the core question of whether price separation is possible in the absence of a binding subregional transfer constraint, and if so, how such results would be just and reasonable. MISO's silence is deafening. Absent clear responses to questions that go to the foundation of the rates MISO is proposing to

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[19] MISO Answer at 24, 25.

[20] *Id.* at 23-26. While both Scenario A and Scenario B have the same price ranges, in Scenario A "for both Sub-Regions, the associated Sub-Regional RBDC clearing is at a higher quantity (MW) than that from the Systemwide RBDC clearing" and therefore "the Sub-Regional RBDC requirements are binding requirements in both Sub-Regions." *Id.* at 23-24. In Scenario B, in "the South Sub-Region the cleared quantity (MW) from the Systemwide RBDC is higher," and therefore "the Systemwide RBDC requirement is a binding requirement" for the South Sub-Region. *Id.* at 25.

[21] Midwest TDUs Protest at 25-26.

charge, the Commission can have no basis for confidence that MISO's novel and complex RBDC proposal will produce just and reasonable rates.

2. Implementation of the RBDCs primarily through business practices, not the Tariff, violates the Federal Power Act.

MISO doubles down on its intention to omit essential aspects of its RBDC proposal from its Tariff and implement its proposal primarily through business practices, which MISO can alter without notice at its sole discretion and which will not be subject to any Commission review. MISO's attempt to evade Commission review of how MISO will develop and implement its RBDCs, and ultimately determine rates for Commission-jurisdictional service, cannot be squared with the requirements of the Federal Power Act.

MISO claims that its Tariff does not need to include central elements of its RBDC proposal, such as the scaling factors used to convert MRI Curves into RBDCs, Monte Carlo analysis, and calculation of Net CONE, because those elements are "not a rate."[22] That is not the relevant standard. "[A]ll rates and charges for any transmission or sale subject to the jurisdiction of the Commission, *and the classifications, practices, and regulations affecting such rates and charges*" must be "file[d] with the Commission."[23] And courts have confirmed that "*practices* that affect rates and service *significantly*" must be stated in a tariff.[24] MISO's argument is particularly strained where, as is the case here, a rate is not stated but rather determined through a methodology. MISO's own RBDC Filing confirms the basic notion that Federal Power Act section 205's filing requirement is not narrowly limited to numerical, stated rates.

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[22] MISO Answer at 18-19.

[23] 16 U.S.C. § 824d(c) (emphasis added).

[24] *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (first emphasis added).

The particular elements of MISO's RBDC proposal noted above have a direct and significant effect on the rate customers pay at the end of the day. MISO does not dispute, for instance, that the use of different scaling factors to convert MRI Curves into RBDCs will ultimately produce a different rate.[25] Given that scaling factors are what produce the actual units for the RBDCs used to determine prices, they are among the elements of MISO's proposal that *most* directly affect the final rate charged. As a result, these essential elements of its proposed RBDC process must be stated in the Tariff.

MISO's Answer also illustrates the fundamental problems with implementing its RBDC proposal outside of the Tariff. For instance, MISO states that "[t]he method used to calculate the System Scaling Factor is set forth in Equation 2 of the Brattle testimony."[26] Although the use of the capitalized terms "Equation 2" and capitalized "System Scaling Factor" may seem to imply some level of precision, neither of those are mentioned anywhere in the Tariff. Moreover, MISO concedes that this so-called equation is "somewhat discretionary."[27] Whether and how MISO uses one, two, three, or four seasons to determine this scaling factor will impact the rates customers actually pay, yet that key step is neither stated in MISO's Tariff language nor clearly explained in its filings. As a result, neither the Commissioners nor customers have notice of how MISO will determine rates for Commission-jurisdictional service, as the Federal Power Act requires.

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[25] *See* Midwest TDUs Protest at 31-33.

[26] MISO Answer at 18 (citing RBDC Filing, Tab E, Written Testimony of Dr. Kathleen Spees, Dr. Samuel A. Newell, and Dr. Linquan Bai ("Brattle Testimony") at 22).

[27] *Id.*

Equally important, because this "Equation 2" is not stated in the Tariff, MISO is free to switch to a different methodology without notice or Commission review. This same problem is highlighted in the "PRA formulations with RBDCs," which MISO's Answer refers to (for the first time in this proceeding) as providing "more details on how MISO PRA will model the proposed RBDCs" and ultimately produce clear, just, and reasonable rates.[28] The cited PRA Formulation document is only a "draft document" that explicitly states "*MISO may revise or terminate this document at any time at its discretion without notice*."[29] This caveat highlights the problem with MISO's proposed non-Tariff approach. If these formulations can be changed at MISO's sole discretion, they cannot be the basis for the Commission finding MISO's RBDC proposal to be just and reasonable.

The draft PRA Formulation document correctly notes that it cannot "be interpreted to contradict, amend or supersede the Tariff,"[30] but that underscores yet another deficiency with MISO's RBDC proposal. Because the proposed Tariff language lacks details or guiderails for how MISO will implement its RBDC proposal, there is nothing on file with the Commission against which MISO's informal business practices can be evaluated for inconsistencies. As a result, this necessary constraint on informal business practices not superseding the Tariff is meaningless. MISO would instead have free rein to make changes in its business practices that directly and significantly affect

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[28] MISO Answer at 22 (citing MISO, PRA Formulation with Reliability Based Demand Curves (RBDCs) – DRAFT, https://cdn.misoenergy.org/20231004%20RASC%20Item%2004b%20PRA%20Formulation%20with%20RBDCs%20-%20DRAFT630354.pdf ("PRA Formulation")).

[29] PRA Formulation at 1 (emphasis added).

[30] *Id.*

rates, which is contrary to the Commission's obligations under the Federal Power Act section 205.[31]

3. The Commission's past approval of *different* sloped demand curves in *different* RTOs provides no support for MISO's specific RBDC Filing before the Commission.

Finally, MISO concedes that its RBDC proposal differs from the sloped demand curves in other RTOs in significant ways, but argues that Midwest TDUs were wrong for pointing this out in our protest.[32] This misconstrues Midwest TDUs' point. MISO need not adopt the same approach used in other RTOs; indeed, MISO has historically *not* used a sloped demand curve precisely because of key differences between it and other RTOs.[33]

The problem is that MISO's RBDC Filing repeatedly refers to the use of sloped demand curves in other RTOs to argue that MISO's specific RBDC proposal here is just and reasonable.[34] MISO cannot have it both ways. It cannot satisfy its obligation to justify its proposed Tariff revisions in this proceeding by relying on the Commission's acceptance of (different) sloped demand curves implemented in other RTOs, while at the same time arguing that comparisons to other RTOs are inapt. Ultimately, MISO must explain and demonstrate the specific Tariff language it has filed is just, reasonable, and not unduly discriminatory. It has failed to do so.

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[31] 16 U.S.C. § 824d.

[32] MISO Answer at 21.

[33] *See* Midwest TDUs Protest at 3-10.

[34] *See, e.g.*, MISO RBDC Filing, Transmittal Letter at 9, 10, 18.

B. MISO's Answer does not explain away the serious flaws in its proposed RBDC Opt Out.[35]

MISO's Answer concedes that Midwest TDUs correctly explained the proposed RBDC Opt Out, but claims that the "underlying PRMR risk is no different than that identified by the Midwest TDUs in discussing the proposed RBDC Opt Out process."[36] That assertion is plainly incorrect in a number of fundamental ways.

Significantly, only the proposed RBDC Opt Out process has a three-year RBDC Lock-In Period for 100% of the PRMR *plus* the Opt Out Adder. Thus, while all LSEs face "underlying PRMR risk"[37] on an *annual* basis, that risk is radically different from that associated with making the *three-year*, 100% PRMR plus Opt Out Adder commitment required by those considering the proposed RBDC Opt Out. Again, in light of the proposed consequences for an LSE's failure to meet its three-year RBDC Opt Out commitment, MISO cannot credibly claim that the risk posed by the RBDC Opt Out is "comparable" to that faced by "regulated LSEs [that] have been successful in planning for resource adequacy through their state integrated resource planning processes" given the uncertainties of annually updated PRMRs.[38]

MISO cannot sweep aside these problems with the 100% scope and three-year duration of the proposed RBDC Opt Out by characterizing this important aspect of its

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[35] As noted above, to minimize duplication and confusion given MISO's Answer here and its future response to the Commission's Deficiency Letter, Midwest TDUs defer addressing arguments plainly within the scope of the Deficiency Letter in this response, and reserve our right to comment at this juncture on important arguments pertaining to the proposed RBDC Opt Out that MISO has entirely ignored.

[36] MISO Answer at 11.

[37] *Id.*

[38] *Id.* (emphasis added).

filing as a "business decision" that LSEs must make.[39] Any LSE action can be described as a business decision, but that does not exempt relevant Tariff provisions from the statutory requirement that they be just and reasonable.

MISO also cannot dismiss Midwest TDUs' concerns about the reasonableness of the proposed RBDC Opt Out given the undue risks of other changes beyond an LSE's control during the three-year RBDC Lock-In Period. MISO notes that future market rule changes during that period will be separately evaluated by the Commission.[40] While future tariff changes must be filed under Federal Power Act section 205 and will be subject to Commission review, that does not lessen the risk to an LSE considering the RBDC Opt Out of such changes occurring during the three-year RBDC Lock-In Period. In any event, market rule changes subject to Commission review are just one example of potential changes outside of an LSE's control that could occur during this three-year period.[41]

In addition, only the RBDC Opt Out includes the draconian penalties to which an LSE would be subject were it to miss the 100% PRMR plus RBDC Opt Out Adder commitment in one or more seasons during the three-year period.[42] Those not subject to

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[39] *Id.*

[40] *Id.* at 21-22. Of course, MISO's point ignores that much of its RBDC proposal is implemented through its business practices, and that MISO may make significant changes to those unilaterally, and without Commission review. *See supra* Part II.A.2.

[41] *See* Midwest TDUs Protest at 12-15.

[42] Notably, MISO's Answer makes no attempt to address Midwest TDUs' demonstration, Midwest TDUs Protest at 16-19, that the proposed RBDC Opt Out Deficiency Charge is grossly excessive. The Deficiency Letter at 8-9, Question 13, asks MISO about the changes to how it calculates the Capacity Deficiency Charge. MISO's calculation of the RBDC Opt Out Deficiency Charge suffers from the same deficiencies as the proposed Capacity Deficiency Charge. Midwest TDUs reserve the right to address the calculation of the RBDC Deficiency Charge in commenting on MISO's response to the Commission's Deficiency Letter.

MISO's RBDC Opt Out (for instance, those participating in the FRAP) could make additional purchases in the PRA rather than face enormous deficiency charges if, for example, construction of a unit were delayed.

MISO acknowledges concerns that the RBDC Opt Out Adder will result in procurement of capacity in excess of MISO's one-day in ten-year loss of load expectation ("LOLE") system reliability standard, but attempts to sidestep them by responding: "This is not always the case; at times, an LSE's obligation *using the RBDC Opt Out* may be higher than an *LSE participating in the RBDC*, and at times it may be lower," and characterizing that as part of the risk calculation.[43] While the Opt-Out Adder may or may not exceed the final PRMRs applicable to those participating in the PRA (an important unresolved question that cannot be evaluated at all beyond Planning Year 2025/2026 because MISO does not state how the RBDC Opt Out Adder will be determined for those LSEs electing to use the RBDC Opt Out after this first year[44]), there is no dispute that the RBDC Opt Out will exceed the one-in-ten system reliability standard. The PRMR Opt Out Adder will always be an *addition* to (and can never decrease[45]) the results of the Initial PRMR, which reflects the results of MISO's 1-in-10 LOLE study.[46]

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[43] MISO Answer at 12 (emphasis added).

[44] *See* Midwest TDUs Protest at 13-14; Deficiency Letter at 5, Question 8. MISO notes that it will discuss aspects of its Opt Out Adder calculation in response to the Deficiency Letter, MISO Answer at 12 n.37, which Midwest TDUs will respond to accordingly.

[45] The RBDC Opt Out Adder is defined as "[a] percent quantity that is equal to or greater than zero." RBDC Filing, Tab A, Redline Tariff ("Tab A (Redline Tariff)") § 1.R (proposed definition of Reliability Based Demand Curve Opt Out Adder (RBDC Opt Out Adder)). MISO also explains that although the RBDC Opt Out Adder, for the first year, will be based on an average of simulated RBDC clearing prices for the prior three years, MISO will "replac[e] clearing quantities that are less than the PRM target with zero values." RBDC Filing, Joundi Testimony at 45.

[46] *See* RBDC Filing, Transmittal Letter at 13 ("The PRM is established based on the 0.1 LOLE target."); RBDC Filing, Tab A (Redline Tariff) § 1.I (defining "Initial Planning Reserve Margin Requirement (Initial PRMR)" as "[t]he PRMR based on the Planning Reserve Margin established in the Loss of Load

Although MISO is correct that LSEs are not forced to take the RBDC Opt Out option, that does not mean that MISO is exempt from its burden under Federal Power Act section 205 of demonstrating that the entirety of its filing, including this important element of its proposal,[47] is just and reasonable. MISO has not met that burden here, and its response to numerous protestors who support the Entergy Advance Fixed Resource Adequacy Plan ("AFRAP") misses the mark for that reason. The issue is not whether the Entergy AFRAP would be an improvement over a proposal that was nevertheless just and reasonable. Rather, the contrast between the Entergy AFRAP and MISO's proposed RBDC Opt Out highlights the serious deficiencies in MISO's RBDC Opt Out proposal that make it not just and reasonable.

CONCLUSION

For the reasons above, and those stated in Midwest TDUs' Protest, the Commission should reject MISO's RBDC Filing or otherwise take actions to ensure that MISO's RBDC proposal does not become effective without changes that demonstrate that it is just and reasonable.

Expectation (LOLE) study.").

[47] *See, e.g.*, MISO Answer at 12 (characterizing the RBDC Opt Out as "important").

Respectfully submitted,

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December 21, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 21st day of December, 2023.

/s/ Anree G. Little
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