

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

**Order Instituting Rulemaking to Examine the
Commission's Post-2008 Energy Efficiency
Policies, Programs, Evaluation, Measurement,
and Verification, and Related Issues.**

**Rulemaking 09-11-014
(Filed November 20, 2009)**

**COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M)
TO JOINT WORKSHOP REPORT: SEPTEMBER 27, 2010 WORKSHOP ON ENERGY
EFFICIENCY AND COMMUNITY CHOICE**

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October 29, 2010

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I. INTRODUCTION

In accordance with the September 22, 2010 *Administrative Law Judge's Ruling Altering Proceeding Schedule* (ALJ Ruling), Pacific Gas and Electric Company (PG&E) submits the following comments to the *Joint Workshop Report: September 27, 2010 Workshop on Energy Efficiency and Community Choice* (Joint Workshop Report), filed on October 22, 2010.¹

II. EXECUTIVE SUMMARY

The Joint Workshop Report addresses a workshop held on September 27, 2010, the topic of which was the application process by Community Choice Aggregators (CCAs) to administer cost-effective Energy Efficiency (EE) programs. In addition, the Joint Workshop Report responds to the following specific question posed by the Commission:

whether the procedures set forth in D.03-07-034 by which any party, including a Community Choice Aggregator (CCA), may apply to administer

¹ By Motion dated October 28, 2010, Women's Energy Matters requested that the Commission adopt an Amended Revised Joint Workshop Report. PG&E will respond to that Motion by a separate filing and does not address it herein.

cost-effective energy efficiency and conservation programs, are adequate or whether changes need to be made.”²

In these Comments, PG&E interprets the term “administer,” as used in the above-quoted question, to be defined in the same manner as the Commission defined the term “administrator” in Decision (D.) 03-07-034; that is, as any party that receives funding for and implements EE programs pursuant to Section 381 of the Public Utilities Code.³

In D.03-07-034, the Commission ruled that a CCA application (or any other party’s application) to administer cost-effective EE programs through third-party solicitation was appropriate. While the Joint Workshop Report acknowledges that not every aspect of the third-party program solicitation is the same today as it was in 2003,⁴ PG&E believes that process remains adequate as applied to CCAs and other third parties today. Notably, no CCA has yet tried to seek funds for an EE program under this existing process. Thus, PG&E believes that CCA concerns about the existing process are premature and hypothetical at best.

For years, the third-party program has proven to be a successful means of providing access to EE funding of cost-effective EE programs for qualified third parties. Aside from the fact that the third-party solicitation process is currently established, tested and available, the existing process ensures:

- coordination of third-party program efforts with the remainder of the portfolio administered by the Investor-Owned Utilities (IOUs) to ensure it is balanced, cost-effective, and reflects CPUC policy in totality;
- that third party programs support the statewide goals and initiatives

² Assigned Commissioner Ruling and Scoping Memo (ACR) issued September 22, 2010 in Phase II of R.09-11-014.

³ D.03-07-034, Attachment A, p.1; *see also id.*, p.7, fn 2 (“We interpret ‘administrator’ in this context to mean any entity implementing an energy efficiency program which is the subject of Section 381, which authorizes the expenditure of certain funds on energy efficiency programs. This contrasts with the Commission’s energy efficiency policy manual, which distinguishes ‘administrators’ from ‘implementers.’”).

⁴ Joint Workshop Report, p. 3.

implemented by the CPUC, both as adopted in the California Energy Efficiency Strategic Plan and as approved in the IOUs' respective portfolios; and

- adequate Commission oversight and accountability to ratepayers of programs funded by ratepayer dollars through application of uniform Commission policies and standards.

At the September 27, 2010, workshop, CCA representatives and others raised one primary concern with respect to the adequacy of the existing third-party application process: that the IOUs may be biased against CCAs in the program evaluation and selection process.⁵ As described in these Comments, PG&E believes this concern is unwarranted.

The existing program selection process – referred to in the Joint Workshop Report as the “Third Party Option” – is implemented by a uniform Commission-approved scoring methodology; is overseen in all critical points by Energy Division (ED) representatives; and is ultimately reviewed and approved by the Commission. The Commission has discretion to exercise the level of oversight it deems appropriate and reasonable to support this process. For these reasons, the existing third-party solicitation process remains adequate and flexible enough to accommodate applications from CCAs, including adequate CPUC oversight of CCA participation in the solicitation process.

As an alternative, PG&E also proposes that CCAs wishing to apply to administer an EE program may apply through the IOUs' Local Government Partnership (LGP) Program -- referred to in the Joint Workshop Report as the “LGP Option”. The LGP Option represents a lower level of competition than the existing third-party process, as CCAs had expressed concern over the competitive nature of the Third-Party Option, yet remains subject to the benefits of a similar level of Commission oversight. In the Joint Workshop Report (at p. 10),

⁵ While PG&E does not agree with the premise that the IOUs would be biased against a CCA in program evaluation and selection, PG&E acknowledges the CCAs' concern in this regard.

PG&E proposes a modification to the existing LGP program that addresses concerns raised by the CCAs at the workshop: if a CCA applies to the LGP program, PG&E proposes that an Energy Division staff, or its delegated representative or independent reviewer, participate in the program negotiations and decision-making process for the CCA's request to ensure fairness.

The CCAs propose implementation of a new application procedure – referred to in the Report as the “CCA Option” -- that would take place completely outside the scope of the IOUs' portfolio and respective third-party program solicitations. However, it has not been established that such changes need to be made to the existing third-party process, particularly given the Commission's capacity for involvement and oversight in the existing process. The CCAs suggest that a direct application process would be the simplest administrative path for approval, coordination and oversight of CCA-controlled EE programs. Allowing each CCA and/or other third-party to apply outside of the IOUs' respective portfolio third-party program solicitations and/or operate programs independent of other statewide efforts raises numerous logistical and substantive questions regarding program operation and eligibility (opt-in/opt-out provisions); allocation of EE goals among applicants, coordination of numerous individual programs with statewide objectives; applying uniform evaluation and reporting criteria and processes; the extent of the Commission's jurisdiction over the CCA's use of ratepayer funds; recovery of program funds; and the potential for customer confusion and/or gaming.⁶

For these reasons, PG&E submits that the current third-party process is adequate as

⁶ Workshop participants briefly brainstormed regarding issues that could potentially arise through a direct application process, but the full extent of these issues was not addressed in the workshop and is beyond the scope of the question posed by the Commission regarding the adequacy of the existing application procedures. However, if the Commission considers adopting the CCA Option, these issues must first be fully addressed.

applied to CCA application to administer cost-effective EE programs. The Commission should confirm that CCAs should apply to administer cost-effective EE programs through the third-party or LGP program solicitations subject to the level of oversight the Commission deems reasonable.

III. THE CURRENT THIRD PARTY AND/OR LOCAL GOVERNMENT PROGRAM SOLICITATION IS ADEQUATE FOR CCA APPLICATION AND BEST SUPPORTS THE COMMISSION'S STATEWIDE GOALS AND POLICIES.

A. Overview

Starting with the 2006-2008 EE program cycle, PG&E has solicited and selected third-party and LGP programs under rules established by the CPUC, including statewide coordination of bidding and active involvement by the Peer Review Group (PRG). The PRG is a group established by the CPUC that includes Energy Division as an ex officio member; and that provides oversight of the Third Party and LGP program selections.⁷

The selection process for the 2009-2011 (now 2010-2012) program cycle started in the fall of 2007. The IOUs and the PRG spent months developing a fair, transparent procedure for awarding third-party contracts and government partnerships for the anticipated 2010-2012 portfolio. As described in the "Peer Review Group Report on the 2009-2011 Energy Efficiency Applications" dated September 12, 2008, and filed in A.08-07-021 *et al* (at p. 6):

...the utilities presented their plan to offer a staggered approach for third party program solicitations in order to reduce the burden of concurrent multiple solicitations on both the third-parties and the utilities. Instead of submitting multiple RFPs for the solicitations at the same time, each of the utilities planned to release various 'flights' throughout the fall and winter of 2007 with corresponding PRG meetings in the spring of 2008 to review the proposed selections. To help facilitate this process, the IOUs established a new website

⁷ Policy Manual 4.0, adopted by Assigned Commissioner and ALJ Ruling dated Aug. 6, 2008, in R.06-04-010, p. 18.

...to streamline the process and improve access and transparency of the RFP process as well as to provide a consolidated location for information that potential bidders could easily access.⁸

PG&E and the other IOUs developed selection criteria for the third-party program that were reviewed with the PRG, and similar selection criteria were used to select LGP programs for the 2010 – 2012 program cycle. The statewide coordination on the bidding timeline was successful in maximizing the response rates, as was the third-party bid process and the participation and oversight by the PRG.

B. Third Party Option

The third-party program has proven to be a successful means of providing access to EE funding for qualified third parties. The process is subject to significant oversight by the PRG, as well as the Commission itself who ultimately reviews and approves the IOUs' respective portfolio applications. In addition, the process provides a transparent and currently available means by which CCAs can propose cost-effective EE programs for their customers.

PG&E and the Commission rely on third-party programs to enhance existing program design and introduce new, innovative approaches to capture cost-effective savings. In D.07-10-032, the Commission required the IOUs to allocate 20 percent of their respective portfolio budget to competitively bid third-party programs to foster innovation and improve portfolio performance.

The solicitation process promotes statewide consistency and offers a broad range of opportunities to third parties. Through this process, PG&E's 2010-2012 portfolio includes 50 third-party programs. In 2010-2012, PG&E offered two unique types of solicitations for

⁸ The website can be located at: <https://www.pepma-ca.com/>

new third-party programs: Targeted Solicitations and Statewide General Solicitations. This two-pronged approach is consistent with the Commission’s direction to conduct a competitive bid “for the purpose of soliciting new ideas and proposals for improved portfolio performance.”⁹

The Targeted Solicitation is intended to support currently-identified program needs and markets. The Statewide General Solicitation is an open solicitation designed to allow bidders to submit proposals of their own design and to help fill portfolio gaps and ascertain newer methods or program designs. It offers bidders the opportunity to propose their program ideas and strategies to augment PG&E’s existing programs. Through the Statewide General Solicitation, bidders have the opportunity to submit an abstract describing their program concepts to a single IOU, to multiple IOUs, or to all four IOUs, based on the bidder’s preference. The programs selected through the Statewide General Solicitation yield new program approaches that may be unproven in the marketplace, bring innovation into the portfolio, and help sustain cost-effective energy efficiency for the longer-term.

PG&E worked closely with the PRG throughout the third-party program development and selection process for 2010-2012. The PRG was heavily engaged with the IOUs during the portfolio planning process. Through discussions and PRG meetings, the PRG provided feedback on third-party requests for proposals (RFPs), selection criteria and proposals, coordination with other statewide efforts, reviewing scoring proposals and making recommendations regarding the selection of programs.

Over the course of the 2010-2012 proposal evaluation and selection process, PG&E met with the PRG to discuss the proposals, review PG&E’s proposal scoring, and get PRG

⁹ Policy Manual 4.0, *supra*, p. 15.

input on the final selections. While the PRG concurred generally with PG&E's proposal scoring and selections, there were several instances where the PRG offered additional recommendations, which PG&E adopted. For example, in two cases, the PRG requested that PG&E advance a program to contract negotiations that PG&E had not recommended. In another case, PG&E recommended that a program advance to Stage 2 of the Statewide General Solicitation, but the PRG expressed concern that it would conflict with a strategy identified in the Strategic Plan and recommended that it not be advanced. PG&E adopted the recommendations and proposed changes of the PRG in those instances.

To date, no CCA has chosen to apply through this Third Party Solicitation process. However, as described above, the process itself is transparent and readily available. It provides the right balance of programming flexibility and oversight, but ensures statewide coordination with California's EE goals and objectives. The PRG's significant involvement in the 2010-2012 proposal evaluation and selection process, as described above, mitigates the CCAs' concern that IOUs may be biased against them in the program evaluation and selection process. For these reasons, PG&E believes that the Third Party Solicitation process is adequate and that the CCA Option is neither necessary nor appropriate.

C. LGP Option

Like the existing third-party solicitation process, the Commission actively oversees the LGP program scoring and selection process. This process may also be an appropriate application path for CCAs as it is not as highly competitive as the third-party process.

In 2007-2008, the IOUs and the PRG met for many months to collaboratively develop a process for the 2009-2011 (now 2010-2012) solicitation. These meetings resulted in a "Call for Abstracts – Local Government Partnerships," that included input from the local governments, quasi-government agencies, and other interested stakeholders. Abstracts were

scored based on the following eight components: (1) cost efficiency of the program, (2) skill and experience of the government or quasi-government, (3) demonstrated commitment to these types of programs, (4) inclusion of municipal facilities and infrastructure, (5) feasibility of the program, (6) integrated approach, (7) comprehensiveness, and (8) innovation that reflects the Strategic Planning Process. These eight components were the end result of many PRG/IOU meetings, including one that was held specifically to gather input from governments and quasi-government agencies.

After abstracts were distributed and evaluated, PG&E met with its PRG to evaluate and make recommendations on the abstracts. Typically, these recommendations stated that an abstract should go forward as submitted, that changes to the program or budget should be made, or that an abstract should be rejected outright. Consideration was also given to ensure there was no overlap in geographic areas and that the programs would coordinate and integrate in terms of design and outreach with the remainder of the programs available to the customers in that area. The IOUs then worked with the governments or quasi-government agencies to bring their programs in line with the PRG's suggestions.

The LGP Option proposed by PG&E would allow a CCA to apply for funding to implement EE programs in the same manner as existing LGPs. Again, as stated above with respect to the Third Party Option, the CCAs have provided no reason why the existing processes in place for solicitation of EE programs are inadequate.

However, PG&E wishes to address the concern expressed by CCAs at the workshop that any proposal they submit might not receive the same treatment as it would if it were submitted by a non-CCA entity. In recognition of this concern, PG&E proposed the following modification to the LGP program in the LGP Option presented in the Joint

Workshop Report: that is, if a CCA submits a proposal in the LGP application process, Energy Division, or its delegated reviewer may participate program negotiations and the decision making process to ensure fairness.

IV. THE CCA'S PREFERRED APPLICATION PROCEDURE IS NOT CONSISTENT WITH THE COMMISSION'S OVERARCHING OBJECTIVES FOR EE PROGRAM ADMINISTRATION.

The CCAs propose that, rather than apply either of the existing processes described above, the Commission implement a new procedure that provides for the CCA to apply directly to the Commission to administer its own EE program. As discussed above, given the Commission's oversight authority, it has not been established that the existing third-party (or LGP) solicitations are inadequate or that a direct application to the Commission outside of the IOUs' respective portfolios is required to provide the appropriate level of Commission oversight in the program valuation and selection process. As such, development and implementation of a completely new procedure is not warranted.

More importantly, the CCAs' proposed approach is not preferable to the existing procedures for the following reasons:

(A) Despite the CCAs' statement that a direct application process represents the "simplest" administrative approach, in reality, implementing a direct application procedure raises numerous administrative issues with respect to alignment with the Commission's statewide EE goals and coordination with the IOUs' approved portfolios; and

(B) A direct application procedure to administer EE programs independent of the IOUs' programs raises policy questions regarding the extent of CPUC jurisdiction over the CCAs' ratepayer-funded programs and the application of the Commission's reporting and EM&V requirements to third-party programs as required by statute.

A. Application and Administration of Energy Efficiency Programs Outside of the IOUs' EE Portfolios Will Hinder The Commission's Statewide Goals and Objectives.

In recent years, the Commission has gone to great lengths to ensure coordination of

EE programs to support a statewide vision. One example of this statewide implementation focus is the adoption of the California Long Term Energy Efficiency Strategic Plan (Strategic Plan) in 2008.¹⁰ The Strategic Plan coordinates the efforts of various EE stakeholders towards achievement of long-term EE programs and savings to support California's ambitious Energy Efficiency goals.¹¹

Establishing an independent application and/or implementation structure for a CCA outside of the established IOU EE portfolio is inconsistent with the Commission's statewide coordination efforts. It is also at odds with the Legislature's direction to the Commission in AB 117 to ensure that a CCA or other third-party application "[a]ccommodates the need for broader statewide or regional programs."¹² The CPUC has already concluded that this could be addressed by having CCAs go through the then-existing third-part solicitation process. As discussed above, implementation of such an independent structure is not required to address the CCAs' concern about potential IOU bias against CCAs through the third-party or LGP processes.¹³

B. Application and Administration of Energy Efficiency Programs Outside of the IOUs' EE Portfolios, Which Apply Standards Deemed Appropriate by the CCA, Is Not Consistent With Commission Policy or Statutory Requirements.

In providing for CCA application to administer cost-effective EE programs, the legislature and the Commission were clear that certain Commission evaluation criteria and

¹⁰ The Strategic Plan was adopted in D.08-09-040.

¹¹ See Strategic Plan, Section I, p.4.

¹² P.U. Code §381.1(a)(3).

¹³ In the CCA Option of the Joint Workshop Report, the CCAs do state that they will discuss topics in their application including coordination and interaction with IOUs programs, as well as how their proposed programs fit within the Strategic Plan. However, as discussed in Section IV.B *infra*, the CCAs also suggest that the Commission may not have jurisdiction to enforce these statewide and other Strategic Plan objectives through the CCAs' preferred approach.

requirements would apply equally to CCA and other third-party applicants. However, despite the facts that the CCA Option proposes funding EE programs with ratepayer dollars, and even though the CCA Option states that the Commission maintains an obligation to oversee how ratepayer funds are spend on EE programs, the CCA Option does not provide that CCAs will submit to the Commission’s jurisdiction and policies at least insofar as their EE activities with ratepayer funds are concerned. This is a major flaw in the CCA Option as presented. This problem would not exist if the CCA were to apply for EE funding within the IOU’s EE portfolio through the existing third-party and/or LGP programs, which are subject to the Commission’s jurisdiction.

The jurisdictional question is magnified given that the CCA Option does not propose to adopt the Commission standards and policies applied to other third-party applicants, but rather, seeks to dictate the specific evaluation criteria to be applied to its programs—particularly with respect to Commission reporting requirements, Evaluation Measurement and Verification (EM&V) criteria, and cost-effectiveness methodology. Despite the CCAs’ suggestion to the contrary, the following requirements are applicable to all third-party applicants, including CCAs:

- “All audit and reporting requirements established by the Commission pursuant to Section 381 and other statutes shall apply to the parties chosen as administrators under this section.”¹⁴
- “[W]e will apply the same procedures and criteria for review that we apply now to all Third Party applicants for energy efficiency program funding,

¹⁴ California Public Utilities Code § 381.1(b)

including EM&V requirements.”¹⁵

- Evaluation of program application to ensure the program “[a]dvances the public interest in maximizing cost-effective electricity savings and related benefits.”¹⁶

The proposed CCA Option in the Joint Workshop Report references each of these issues, but fails to state that CCAs will comply with the Commission’s requirements and methodologies regarding reporting, cost-effectiveness, and EM&V. Rather, the proposal simply says that the CCAs will discuss these topics in their application, thus implying that the CCA will propose different requirements for these program areas as it deems appropriate. Pursuant to statute and the EE Policy Manual 4.0, and to ensure uniformity, the Commission should review, approve and evaluate the CCAs’ programs using the same criteria it does for other third-party applicants for EE funding.

Even though the CCA Option fails to provide specific details regarding the actual criteria the CCAs propose to apply, some general conflicts with Commission policy are apparent in the approach. For example, the CCAs propose to limit their reporting requirements to only those “energy efficiency activities that have been made public by the CCA.”¹⁷ This is inconsistent with IOUs’ and other third-party public reporting obligations that the CPUC sets forth and the audit procedures that allow access to non-public EE information.

In addition, the Commission has an obligation to ensure that ratepayer-funded EE

15 See D.03-07-043, p.10 (declining to treat CCAs differently than other third-party applicants for administration of cost-effective EE programs); see also Energy Efficiency Policy Manual V 4.0, p. 10.

16 California Public Utilities Code § 381.1(a)(2).

17 Joint Workshop Report, p.6.

programs are cost-effective.¹⁸ Therefore, it should confirm that the measure of a program’s cost-effectiveness will be measured using uniform criteria, as applied to other third-party applicants through the third-party and/or LGP solicitation process. In addition to proposing to develop its own EM&V protocols and basis for determining savings for their programs, the CCAs also suggest that they will be performing both the evaluation and program planning EM&V work themselves.¹⁹ This is inconsistent with the Commission’s treatment of other third-party applicants and the IOUs, whose programs are evaluated pursuant to the Commission’s EM&V requirements and tools, and more importantly, whose programs are currently evaluated by Energy Division and its consultants through impact evaluations as opposed to the implementers themselves.²⁰

Finally, nothing in the statute entitles a CCA or any other third-party applicant to a set portion of funds or even to administer EE programs for that matter as the CCA’s proposal implies. Rather, in D.03-07-043, the Commission set forth a procedure that applied clear statutory criteria to determine whether an application was, in fact, sufficient. Only the “proportional share” speaks of a set calculation, and it is inapplicable to the application procedures at issue here. The “proportional share” simply mandates that if a CCA is not the administrator of EE programs in its territory, that the utility administrator must direct a minimum “proportional share” of EE activities to that territory.²¹

18 *See, e.g.*, Public Utilities Code §§ 381, 381.1.

19 *Id.*

20 The Commission has created a clear separation between those that evaluate and those that do. In part, this is to prevent supposed conflicts of interest typically attributed to the shareholder incentive mechanism (which CCAs have clarified will not apply to them). However, application of uniform EM&V methodologies and processes are also necessary to ensure that energy savings are uniformly measured to support evaluation of the success of meeting California’s ambitious climate change and Strategic Plan goals.

21 D.03-07-043, CoL 5 and 6.

V. CONCLUSION

The existing third-party solicitation process has proven to be a successful means of providing funding to third-parties to implement cost-effective Energy Efficiency programs. It remains adequate to provide the same opportunities to CCA applicants. Given the Commission's oversight authority, the existing third party process is flexible enough to provide the level of Commission oversight in the program selection process as it deems appropriate. However PG&E has already taken steps to recognize concerns and reassure CCAs. Most importantly, though, it has not been established that creation of a completely new process is warranted to address the CCAs' concern about potential IOU bias in program selection, particularly when the new process raises issues that have not been fully identified let alone resolved regarding such critical considerations as statewide coordination and adherence with existing Commission policies as required by statute. Therefore, the Commission should confirm that the existing third-party solicitation is an adequate process for CCA application to administer cost-effective EE programs. The Commission should also confirm that the existing LGP solicitation may also be an appropriate path for CCAs to obtain access to public funds to implement EE programs. In the alternative, the Commission could modify the LGP program as PG&E suggests here.

Respectfully submitted,

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October 29, 2010

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, California 94105.

On October 29, 2010, I served a true copy of:

**COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY TO
JOINT WORKSHOP REPORT: SEPTEMBER 27, 2010 WORKSHOP
ON ENERGY EFFICIENCY AND COMMUNITY CHOICE – R. 09-11-014**

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for R. 09-11-014 with an e-mail address.
- [XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for R. 09-11-014 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 29th day of October, 2010, at San Francisco, California.

/s/

PAMELA J. DAWSON-SMITH

**THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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CPUC DOCKET NO. R0911014

Total number of addressees: 123

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