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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS
KRISTIN K. MAYES - CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 OCT -5 P 4: 26
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
OCT 5 2010

DOCKETED BY

IN THE MATTER OF THE FORMAL) DOCKET NO. E-04204A-08-0589
COMPLAINT OF MARSHALL MAGRUDER)
FILED WITH THE ARIZONA CORPORATION)
COMMISSION ON DECEMBER 5, 2008.)
**RESPONSE TO
COMPLAINANT'S
MOTION TO DISQUALIFY**

UNS Electric, Inc. ("UNS Electric"), through undersigned counsel, hereby responds to Complainant's Motion to Disqualify. Contrary to the assertions in the Motion, Mr. Gellman's participation in the 2005 proceeding concerning the need for a second transmission line to serve Santa Cruz County was wholly separate and apart from the issues that Mr. Magruder has raised in his complaint. Moreover, Mr. Gellman did not participate in the proceeding that resulted in Decision No. 62011 (November 2, 1999). Given the foregoing, Mr. Magruder's eleventh-hour motion is without merit and should be denied.

Mr. Magruder's motion alludes to Mr. Gellman's participation in the "reopened Decision [62011] (Docket [No.] E-01032A-99-0401) hearings" as the sole basis to disqualify Mr. Gellman. This assertion is without merit, however, as Mr. Gellman did not participate in the proceeding that resulted in Decision No. 62011. Moreover, Mr. Magruder's assertion reflects of misunderstanding of both Decision Nos. 62011 and 67506 (January 20, 2005).

After Decision No. 62011 was issued, the Commission reopened Docket No. E-01032A-99-0401 by issuing Decision No. 67506.¹ Decision No. 67506 was issued because Commission Staff believed that re-opening Docket No. E-01032A-99-0401 "would be revisiting Decision No. 62011's determination that a second transmission line is needed to serve Nogales and Santa Cruz

¹ Attached as Exhibit 1.

1 County, and would simply be updating findings made on the need for a second transmission line
2 and the Gateway Project.”² Further, at that time, the Commissioners expressed an interest in
3 having hearings before an Administrative Law Judge to: (1) develop the status of reliability in
4 Santa Cruz County; and (2) to examine alternatives to a second transmission line.³ Consequently,
5 Decision No. 67506, which ordered the reopening of Docket No. E-01032A-99-0401 and Decision
6 No. 62011, was meant only “to review the status of reliability and need for a second transmission
7 line in Santa Cruz County, pursuant to A.R.S. § 40-252.”⁴ The docket was not reopened to
8 address every element of Decision No. 62011 and it certainly was not reopened to address the
9 issues Mr. Magruder raises in his complaint in this docket.

10 Although Mr. Gellman represented Staff in the 2005 re-opened reliability hearings
11 concerning the second line to Santa Cruz County, those hearings have nothing to do with Mr.
12 Magruder’s claims in this complaint. Decision No. 62011 (with which Mr. Gellman had no
13 involvement) is only tangentially related to this complaint and in no way represents the “conflict”
14 that Mr. Magruder is alleging.⁵ Because Mr. Gellman did not take an active part in investigating
15 or preparing any response on behalf of Staff regarding the issues in Mr. Magruder’s complaint,
16 Mr. Magruder’s motion is an unsubstantiated accusation that must be denied.

17 The Company and Roshka DeWulf & Patten, PLC take Mr. Magruder’s accusation of a
18 conflict seriously. An accusation such as this should not to be undertaken without careful thought
19 and considerable evidence. Mr. Magruder’s motion was not supported by any reasonable theory
20 or argument. Moreover, the timing of his motion – two days before oral argument – smacks of
21 sharp practice, particularly since Mr. Magruder participated in the 2005 proceeding. Mr.
22 Magruder’s motion should be denied.

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² Decision No. 67506 at 5 (quotations omitted).

27 ³ Id.

⁴ Decision No. 67506 at 8.

⁵ Further, Decision No. 62011 had nothing to do with either the student-loan issue or the life support issue.

1 RESPECTFULLY SUBMITTED this 5th day of October 2010.

2 UNS Electric, Inc.

3
4 
5 By _____
6 Michael W. Patten
7 Jason D. Gellman
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9 One Arizona Center
10 400 East Van Buren Street, Suite 800
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12 and

13
14 Philip J. Dion
15 Melody Gilkey
16 UniSource Energy Services
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19 Attorneys for UNS Electric, Inc.

20 Original and thirteen copies of the foregoing
21 filed this 5th day of October 2010, with:

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By Mary Ippolito

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EXHIBIT

"1"

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

21
CD

2 COMMISSIONERS

Arizona Corporation Commission

DOCKETED

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

JAN 20 2005

DOCKETED BY	nr
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7 IN THE MATTER OF SERVICE QUALITY
8 ISSUES, ANALYSIS OF TRANSMISSION
9 ALTERNATIVES AND PROPOSED PLAN OF
ACTION IN THE SANTA CRUZ ELECTRIC
DIVISION OF CITIZENS UTILITIES COMPANY.

DOCKET NO. E-01032A-99-0401

DECISION NO. 67506

ORDER

10 Open Meeting
11 January 11 and 12, 2005
12 Phoenix, Arizona

12 **BY THE COMMISSION:**

13 On December 3, 2004, Tucson Electric Power Company ("TEP") and UniSource Energy
14 Services, Inc. ("UES") (collectively, "Joint Applicants") filed a Motion to Extend Time Limitation of
15 Certificate of Environmental Compatibility ("Motion").¹

16 In their Motion, the Joint Applicants ask that the Arizona Corporation Commission
17 ("Commission"):

- 18 1. Extend the time limitation of the CEC, prior to January 15, 2005;
- 19 2. Re-open the record in consolidated Docket Nos. L-00000C-01-0111 and L-00000F-
20 01-0111 for the limited purpose of reviewing alternatives to the approved Preferred
21 Route based upon information that has come to light after the issuance of Decision No.
22 64356²;
- 23 3. Convene a procedural conference to establish the scope, forum and schedule for the
24 proceeding in the re-opened consolidated dockets; and
- 25 4. Waive the requirement in Decision No. 67151 (August 3, 2004) that the Federal
26

27 ¹ The Motion was captioned using the docket number from this matter, as well as the CEC application Docket Nos. L-
00000C-01-0111 and L-00000F-01-0111, however, the dockets have not been consolidated, and separate orders will be
28 issued for each docket.

² See Reporter's Special Open Meeting Transcript of Proceedings at 126.

1 Agency Records of Decision ("RODs") be provided with this Motion.

2 On December 14, 2004, the Commission's Utilities Division Staff ("Staff") filed a Response
3 to the Joint Applicant's Motion.

4 In its Response, Staff requests that the Commission:

- 5 1. Grant an indefinite extension of time for the CEC beyond January 15, 2005, until the
6 conclusion of all proceedings related to Docket Nos. E-01032A-99-0401, L-00000C-
7 01-0111 and L-00000F-01-0111.
- 8 2. Bifurcate Dockets Nos. L-00000C-01-0111 and L-00000F-01-0111 from Docket No.
9 E-01032A-99-0401, and send the former dockets back to the Arizona Power Plant and
10 Transmission Line Siting Committee ("Committee").
- 11 3. For Docket No. E-01032A-99-0401, establish a procedural schedule, including the
12 filing of pre-filed testimony by UES and TEP, and from any intervenors, and a Staff
13 Report.
- 14 4. Grant the request by TEP and UES to waive the requirement that RODs be filed with
15 their motion, so long as the final EIS and any corresponding RODs are filed by them
16 as soon as they are publicly available.

17 BACKGROUND

18 On October 20, 1998, Citizens Utilities Company ("Citizens") filed with the Commission a
19 notice of intent to form a holding company (Docket No. E-01032A-98-0611 et al). During the course
20 of reviewing Citizens' application, the Commission issued Decision No. 61383 (January 29, 1999)
21 which ordered Citizens to file an "Analysis of Alternatives and Plan of Action (Plan) to rectify the
22 service problems in its Santa Cruz Electric Division. . . [t]he Plan should include a cost-benefit
23 analysis of alternatives, the alternative chosen and proposed deadlines for implementation of the
24 alternative chosen." (Decision No. 61383 at 2) In June of 1999, Citizens notified the Commission
25 that the proposed reorganization would not take place, and by Procedural Order issued July 15, 1999,
26 the holding company docket was closed and Docket No. E-0132A-99-0401 (the "Service Quality"
27 docket) was opened to resolve the Commission's concerns regarding Citizens' Santa Cruz Electric
28 Division.

1 On October 27, 1998, the City of Nogales, Arizona, filed a Complaint against Citizens
2 concerning electrical outages in Nogales, Arizona (Docket No. E-01032B-98-0621). In its
3 Complaint, the City of Nogales alleged that numerous electric outages caused by Citizens' failure to
4 adequately maintain its transmission lines and back-up generation capacity had resulted in economic
5 damages to Nogales and its residents and endangered the community's welfare. The City of Nogales
6 and Citizens entered into a Settlement Agreement, and in Decision No. 61793 (June 29, 1999), the
7 Commission dismissed the Complaint and ordered that Citizens provide a planned service date and
8 cost-benefit analysis for system components of a second transmission line in the Plan of Action to be
9 filed in compliance with Decision No. 61383.

10 In August 1999, the Commission's Utilities Division Staff and Citizens filed a Settlement
11 Agreement regarding Citizens' Plan of Action, in the Service Quality Docket. The Settlement
12 Agreement, which was approved by the Commission in Decision No. 62011 (November 2, 1999),
13 committed Citizens to a Plan of Action which included a requirement that Citizens build a second
14 transmission line to serve its customers in Santa Cruz County by December 31, 2003; established a
15 schedule for obtaining a Certificate of Environmental Compatibility ("CEC") and penalties if the
16 schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second
17 transmission line; preserved Staff's right to challenge any capital expenditure associated with
18 constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures
19 should be postponed until a filing is made to recover costs.

20 On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC. In Decision No.
21 64356 (January 15, 2002), the Commission granted the CEC to construct the proposed Gateway 345
22 kV and 115kV Transmission Project ("Gateway Project" or "Project") for the preferred western
23 route, which had been granted by the Committee. The Gateway Project incorporated the second
24 transmission line required by Decision No. 62011. Need for the Gateway Project was established in
25 that docket.

26 On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-Service
27 Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the Service
28 Quality Docket. The Joint Applicants stated that additional time was necessary to obtain the required

1 approvals from federal agencies. On October 10, 2003, TEP and UniSource Electric, Inc. ("UNS
2 Electric") filed a supplement.³ The supplement proposed to provide short-term relief until the second
3 transmission line was constructed and became operational. In Decision No. 66615 (December 10,
4 2003), the Commission waived the penalty provided for in the Settlement Agreement approved in
5 Decision No. 62011, until June 1, 2004; ordered TEP and UNS Electric to submit an updated "Outage
6 Response Plan"; and ordered Staff to file a Report on the sufficiency of the updated Outage Response
7 Plan.

8 On February 9, 2004, TEP and UniSource Energy Services, Inc. ("UES") filed their updated
9 Outage Response Plan and on March 11 and May 27, 2004, Staff filed its Staff Reports regarding the
10 sufficiency of the updated Outage Response Plan.

11 On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an "Application to
12 Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for
13 Consideration The Fulfillment of Decision No. 62011".

14 On July 28, 2004, the Commission held a Special Open Meeting in Tucson, Arizona to review
15 the status of compliance with Decision No. 62011 and the requested waiver of penalties. During the
16 Special Open Meeting, the Commissioners discussed whether intervening circumstances, the passage
17 of time, and what may be inconsistent results reached by the Committee and the Department of
18 Agriculture Forest Service necessitate the re-opening of the record in the Line Siting dockets. The
19 Commissioners directed TEP and UES to reopen the docket in Decision No. 64356 granting the
20 CEC.⁴ Further, the Commissioners discussed the issues of reliability and need for a second
21 transmission line, and indicated that these issues were appropriate for a hearing before a Commission
22 Administrative Law Judge. The Commissioners expressed an interest in having this issue handled on
23 a faster track, and invited parties to file pleadings in the event that they thought there were alternative
24 ideas relating to the reliability issue in Santa Cruz County.⁵ No such pleadings have been filed since
25 the Special Open Meeting.

26
27 ³ Citizens sold its assets to UniSource Energy Corporation ("UNS") which formed UniSource Energy Services, Inc.
(UES"). UNS is also the parent holding company for TEP. Citizens' CEC was transferred to UES.

28 ⁴ Transcript at 53, 54, 55

⁵ Transcript at 54

1 On August 3, 2004, the Commission issued Decision No. 67151 which waived the penalty
2 provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject to
3 numerous conditions contained in the order.

4 DISCUSSION

5 In Staff's Response to the Motion, Staff states that this docket was established in 1999 to
6 specifically address reliability-related matters concerning the Santa Cruz electric division. Staff
7 believes that re-opening this docket would be revisiting Decision No. 62011's determination that a
8 second transmission line is needed to serve Nogales and Santa Cruz County, and would "simply be
9 updating findings made on the need for a second transmission line and the Gateway Project." During
10 the course of the Special Open Meeting, there was discussion of a plan by Marshall Magruder to use
11 a 46 kV alternative, and the Commissioners expressed interest in having the reliability issue set
12 before an Administrative Law Judge to "develop the status of reliability in Santa Cruz County and to
13 look at alternatives including but not limited to the Marshall (Magruder) Plan." ⁶ Although the
14 Commission invited parties to file pleadings in the event that they thought there were alternative
15 plans/ideas relating to the reliability issue in Santa Cruz County, no such pleadings have been filed
16 since the Special Open Meeting.⁷ No party has objected to re-opening the docket.

17 Accordingly, we will re-open the record in Decision No. 62011 to allow interested parties to
18 present evidence on the status of reliability in Santa Cruz County and on the need for a second
19 transmission line.⁸ We will direct the Hearing Division to issue a Procedural Order establishing dates
20 for filing of prefiled testimony and a Staff Report, and other procedural deadlines. The record in this
21 matter will likely be helpful to the Committee's consideration of the re-opened CEC dockets.

22 * * * * *

23 Having considered the entire record herein and being fully advised in the premises, the
24 Commission finds, concludes, and orders that:

25 _____
26 ⁶ Transcript at 53
27 ⁷ A letter docketed August 3, 2004 suggested that the Commission "divorce the 345 kV option from the 62011 mandated
28 second line."
⁸ Even though no party or person responded to our invitation, we believe that it will be helpful to get an update from Staff
and an analysis of the plan proposed by Mr. Magruder.

FINDINGS OF FACT

1
2 1. In Decision No. 62011 (November 2, 1999), the Commission approved a Settlement
3 Agreement between Staff and Citizens which committed Citizens to a Plan of Action which included
4 a requirement that Citizens build a second transmission line to serve its customers in Santa Cruz
5 County by December 31, 2003; established a schedule for obtaining a CEC and penalties if the
6 schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second
7 transmission line; preserved Staff's right to challenge any capital expenditure associated with
8 constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures
9 should be postponed until a filing is made to recover costs.

10 2. On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC.

11 3. In Decision No. 64356 (January 15, 2002), the Commission granted the CEC to
12 construct the proposed Gateway 345 kV and 115kV Transmission Project for the preferred western
13 route, which had been granted by the Arizona Power Plant and Transmission Line Siting Committee.
14 The Gateway Project incorporated the second transmission line required by Decision No. 62011.

15 4. On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-
16 Service Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the
17 Service Quality Docket.

18 5. On October 10, 2003, TEP and UNS Electric filed a supplement.

19 6. In Decision No. 66615 (December 10, 2003), the Commission waived the penalty
20 provided for in the Settlement Agreement approved in Decision No. 62011, until June 1, 2004;
21 ordered TEP and UNS Electric to submit an updated "Outage Response Plan"; and ordered Staff to
22 file a Report on the sufficiency of the updated Outage Response Plan.

23 7. On February 9, 2004, TEP and UES filed their updated Outage Response Plan and on
24 March 11 and May 27, 2004, Staff filed its Staff Reports regarding the sufficiency of the updated
25 Outage Response Plan.

26 8. On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an Application to
27 Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for
28 Consideration The Fulfillment of Decision No. 62011.

1 9. On July 28, 2004, the Commission held a Special Open Meeting in Tucson, Arizona to
2 review the status of compliance with Decision No. 62011 and the requested waiver of penalties.

3 10. During the course of the Special Open Meeting, there was discussion of a plan by
4 Marshall Magruder to use a 46 kV alternative, and the Commissioners expressed interest in having
5 the reliability issue set before an Administrative Law Judge to "develop the status of reliability in
6 Santa Cruz County and to look at alternatives including but not limited to the Marshall (Magruder)
7 Plan."

8 11. On August 3, 2004, the Commission issued Decision No. 67151 which waived the
9 penalty provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject
10 to numerous conditions contained in the order.

11 12. On December 3, 2004, the Joint Applicants filed a Motion to Extend Time Limitation
12 of Certificate of Environmental Compatibility.

13 13. In their Motion, the Joint Applicants ask that the Commission: 1) extend the time
14 limitation of the CEC, prior to January 15, 2005; 2) re-open the record in consolidated Docket Nos.
15 L-00000C-01-0111 and L-00000F-01-0111 for the limited purpose of reviewing alternatives to the
16 approved Preferred Route based upon information that has come to light after the issuance of
17 Decision No. 64356; 3) convene a procedural conference to establish the scope, forum and schedule
18 for the proceeding in the re-opened consolidated dockets; and 4) waive the requirement in Decision
19 No. 67151 (August 3, 2004) that the Federal Agency Records of Decision be provided with the
20 Motion.

21 14. On December 14, 2004, Staff filed a Response to the Joint Applicants' Motion
22 requesting that the Commission: 1) grant an indefinite extension of time for the CEC beyond January
23 15, 2005, until the conclusion of all proceedings related to Docket Nos. E-01032A-99-0401, L-
24 00000C-01-0111 and L-00000F-01-0111; 2) Bifurcate Dockets Nos. L-00000C-01-0111 and L-
25 00000F-01-0111 from Docket No. E-01032A-99-0401, and send the former dockets back to the
26 Committee; 3) for Docket No. E-01032A-99-0401, establish a procedural schedule, including the
27 filing of pre-filed testimony by UES and TEP, and from any intervenors, and a Staff Report; 4) grant
28 the request by TEP and UES to waive the requirement that RODs be filed with their motion, so long

1 as the final EIS and any corresponding RODs are filed by them as soon as they are publicly available.

2 15. Although the Commission invited parties to file pleadings in the event that they
3 thought there were alternative plans or ideas relating to the reliability issue in Santa Cruz County, no
4 such pleadings have been filed since the Special Open Meeting.

5 16. No party has objected to re-opening the docket.

6 17. The record in Decision No. 62011 should be re-opened to allow interested parties to
7 present evidence on the status of reliability in Santa Cruz County and on the need for a second
8 transmission line.

9 18. We believe that an analysis of the plan proposed by Mr. Magruder and an update from
10 Staff on the issues of reliability and need are appropriate.

11 19. We will direct the Hearing Division to issue a Procedural Order establishing dates for
12 filing of prefiled testimony/Staff Report, hearing, and other procedural matters.

13 **CONCLUSIONS OF LAW**

14 1. TEP and UNS Electric are public service corporations within the meaning of Article
15 XV, Section 2 of the Arizona Constitution.

16 2. The Commission has jurisdiction over TEP and UNS Electric and over the subject
17 matter of this docket.

18 3. There is good cause to re-open Docket No. E-01032A-99-0401 and Decision No.
19 62011 to review the status of reliability and need for a second transmission line in Santa Cruz
20 County, pursuant to A.R.S. § 40-252.

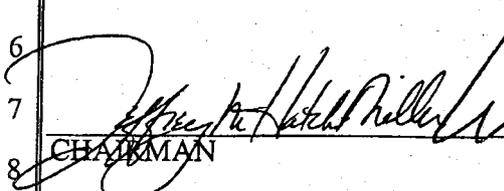
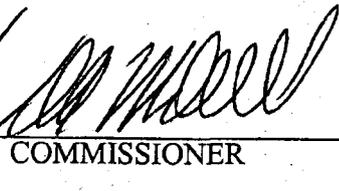
21 **ORDER**

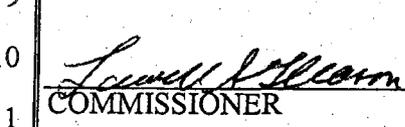
22 IT IS THEREFORE ORDERED that Docket No. E-01032A-99-0401 and Decision No. 62011
23 are re-opened to review the status of reliability and need for a second transmission line in Santa Cruz
24 County, pursuant to A.R.S. § 40-252.

1 IT IS FURTHER ORDERED that the Hearing Division shall issue a Procedural Order
2 establishing dates for filing of prefiled testimony/Staff Report, hearing, and other procedural matters.

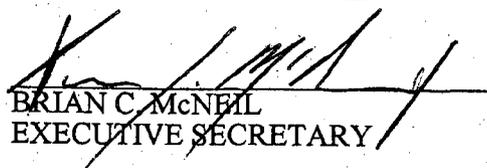
3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN COMMISSIONER COMMISSIONER

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11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 20th day of Jan., 2005.

17 
BRIAN C. McNEIL
EXECUTIVE SECRETARY

18 DISSENT _____

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20 DISSENT _____

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1 SERVICE LIST FOR:

TUCSON ELECTRIC POWER COMPANY et al.

2 DOCKET NOS.:

L-00000C-01-0111, L-00000F-01-0111 and E-01032A-99-0401

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