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

In the Matter of Request by XCEL ENERGY to  
issue Renewable Development Fund Cycle 4  
Requests for Proposals and Petition for Approval  
of a Standard Grant Contract

Docket No. E-002/M-12-1278

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**RESUBMISSION OF INITIAL COMMENTS, PETITION TO INTERVENE, AND  
REQUEST FOR CONTESTED CASE PROCEEDING OF POWERWORKS WIND  
TURBINES LLC**

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PowerWorks Wind Turbines LLC (“**Petitioner**” or “**PowerWorks**”) resubmits its initial comments, attached hereto as Exhibit 1, dated August 20, 2013, and Exhibit 2, dated September 26, 2013, both of which are incorporated herein by this reference (“**Initial Comments**”), in accordance with the State of Minnesota Public Utilities Commission’s (“**Commission**”) August 13, 2013 and September 3, 2013 Notices of Public Comment Periods on Renewable Development Fund (“**RDF**”) Selection Report and Supplements.

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In addition, PowerWorks petitions to intervene as a full party pursuant to Minn. Rule 7829.1400, subp. 2, and requests a contested case proceeding for the reasons described in the attached Initial Comments, pursuant to Minn. Rule 7829.1400, subp. 9.

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As discussed in the attached Initial Comments, PowerWorks submitted a proposal on or before April 1, 2013, in response to Xcel’s RDF Request for Proposals (“**RFP**”). Supposedly using the evaluation from the disinterested third-party expert, Sargent & Lundy (the “**Independent Expert**”), as well as a list of non-exhaustive subjective criteria that Xcel has subsequently provided, Xcel selected and recommended to the Commission one wind project for an Energy Production grant award. PowerWorks was neither selected nor recommended.

1 As articulated in the Initial Comments, PowerWorks contests Xcel's selection and  
2 recommendation on two grounds. First, the Independent Expert objectively scored  
3 PowerWorks's proposal a 173.75, which is significantly higher than the 129.57 score of the  
4 selected wind project. *See Exhibit 1.* Second, PowerWorks's proposal clearly exemplifies all of  
5 the specified subjective criteria that Xcel supposedly used in its holistic review, especially those  
6 criteria that Xcel has subsequently provided in the Supplements to the RDF RFP Selection  
7 Report. *See Exhibit 2.* Because PowerWorks's proposal scored higher than the selected wind  
8 project in the Independent Expert's evaluation and it exemplifies all of the specified subjective  
9 criteria, the fact that PowerWorks's proposal was not selected draws the entire selection process  
10 into question as being arbitrary and unfounded.

11 **A. PETITION TO INTERVENE**

12 Pursuant to Minn. Rule 7829.1400, subp. 2, PowerWorks petitions to intervene as a full  
13 party.

14 **1. The Petitioner**

15 Petitioner, PowerWorks Wind Turbines LLC, is a limited liability company formed under  
16 the laws of the state of Idaho. PowerWorks is in the business of selling wind energy systems.

17 The outcome of this proceeding will directly affect PowerWorks's submitted proposal,  
18 and as a result, PowerWorks. PowerWorks is directly interested in the matter at issue in these  
19 proceedings and no other party can adequately represent PowerWorks's interests.

20 **B. REQUEST FOR A CONTESTED CASE PROCEEDING**

21 Pursuant to Minn. Rule 7829.1400, subp. 9, PowerWorks requests a contested case  
22 proceeding. A full contested case with the ability to obtain discovery is required to provide full  
23 transparency and to determine whether Xcel violated its fiduciary duties in administering the

1 RDF grant(s), whether Xcel followed the criteria provided for by Commission's rulings and  
2 Minnesota law, and whether Xcel allowed improper bias or interests to enter or influence its  
3 decision(s), the decisions of Xcel representatives on the RDF advisory group, or any discussions  
4 regarding the RDF RFP proposals, especially with respect to PowerWorks's proposal. These  
5 material issues cannot be resolved strictly through written comments. As a result, PowerWorks  
6 urges the Commission, in accordance with Minn. Rule 7829.1000, to find that there are  
7 significant and material facts that have not been resolved to the Commission's satisfaction, and  
8 that this resolution can only be achieved through a contested hearing.

9 **C. CONCLUSION**

10 For the reasons stated above, PowerWorks requests the Commission to grant its petition  
11 to intervene, to order a contested case proceeding, and to stay any further action on any of the  
12 projects submitted in response to Xcel's RDF RFP until completion of the contested case  
13 proceeding.

14  
15 Dated: September 27, 2013

Respectfully submitted,

16 /s/ Michael Koebbe

17 Michael Koebbe  
18 Business Development Manager  
19 PowerWorks Wind Turbines LLC  
20 15850P Jess Ranch Road  
21 Tracy, CA 95377  
22 Phone: 734.497.7908  
23 Email: [mk@powerworks.com](mailto:mk@powerworks.com)

1 Exhibit 1



7 20 August 2013

8 Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
Saint Paul, Minnesota 55101-2147  
sent via e-mail to [PublicComments.PUC@state.mn.us](mailto:PublicComments.PUC@state.mn.us)

9 Attention: Dr. Burl W. Haar, Executive Secretary

10 **Subject: Xcel Energy should have recommended PowerWorks Wind Turbines's project  
as an Energy Production project in its RDF RFP**

11 Dear Dr. Haar,

12 PowerWorks Wind Turbines LLC ("PowerWorks") hereby contests Xcel Energy's ("Xcel") final  
13 Energy Production project recommendations to the Minnesota Public Utilities Commission  
14 ("MPUC"). Using a "holistic approach" with "subjective criteria," which defies rational  
15 explanation and the quantitative measurement and evaluation of the disinterested third-party  
16 expert, Sargent & Lundy (the "Independent Expert"), Xcel improperly rejected PowerWorks's  
17 proposal and recommended a more costly and less productive wind project to the MPUC. If the  
18 MPUC accepts Xcel's recommendation, it will be in violation of the parameters and processes of  
19 the Fourth Funding Cycle Renewable Development Fund ("RDF") Request For Proposals  
20 ("RFP") as well as Minnesota state law. For this reason, the MPUC should reject Xcel's  
21 recommendation, and award PowerWorks the Energy Production grant based on the  
22 Independent Expert's analysis.

23 **The project selected did NOT follow the process approved by the MPUC.** Xcel did not  
follow the approved selection process for two reasons: first, Xcel did not properly utilize the  
objective evaluation of the Independent Expert; second, Xcel is unable to make the results of  
the RDF projects available to the public.

**1. Xcel did not properly utilize the objective evaluation of the Independent Expert.** The  
RFP makes it clear that, when making its recommendations to the MPUC, "Xcel Energy is  
required to utilize an [Independent Expert] to evaluate proposals submitted in response to this  
RFP." Xcel will then consider both the "[Independent Expert's] evaluation as well as the  
recommendations of the RDF advisory group." (See page 13 of Xcel's RFP, 15 February 2013.)

Using quantifiable criteria and data, the Independent Expert scored each of the submitted RFP  
bids on a 230 point scale. This scoring focused on proposal completeness, technical feasibility,  
project technical and financial risk, and benefits to Xcel ratepayers. Although PowerWorks  
received a score of 173.75, by far the highest of any wind project in the Energy Production

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3 class, Xcel recommended a project that received a score of 129.57, which is 44.18 points less than PowerWorks. The difference in these scores is more than 19% of all available points.

4 Rejecting the findings of the Independent Expert, Xcel adopted the RDF advisory group's "holistic approach." (See page 11 of Xcel's Selection Report, 29 July 2013, emphasis added.) While the RDF advisory group supposedly considered "the technical scoring completed by the [Independent Expert]," their review also included "a certain degree of subjective consideration." (See page 11 of Xcel's Selection Report, emphasis added.) Using this "holistic approach" with "subjective considerations," Xcel and the RDF advisory board selected a more costly and less productive wind project, despite the significant score disparity in the Independent Expert's objective study.

7 Because Xcel's process employed a "holistic approach" with "subjective considerations," which apparently trumped all of the Independent Expert's objective and quantifiable data and findings combined, it's clear that Xcel did not follow the MPUC approved process — therefore, as a result, the MPUC should not approve Xcel's recommendation. However, even if the MPUC accepts the process followed by Xcel, the MPUC should reject Xcel's recommendation and select PowerWorks's project for the grant award because it embodies each of the "unique and less quantifiable" considerations provided by Xcel. (See page 11 of Xcel's Selection Report.)

10 **2. Xcel is unable to make the results of the RDF projects available to the public.** The RDF guidelines specify that "results of RDF projects must be made available to the public." (See page 1 of Xcel's RFP.) Only through this requirement can Xcel be directly held accountable to the public for the recommendation it makes to the MPUC.

12 Clearly, making results publicly available implies providing to the public the name(s) of the recommended project(s). However, to give this requirement any significance, Xcel must also explain how and why a particular project was recommended over the other projects.

13 Through its objective evaluation, which was based on the framework and criteria outlined in the RFP, the Independent Expert systematically scored each of the proposals. While this methodology could be independently verified, it also had the designed benefit of informing the public how and why certain proposals were more in line with the parameters of the RDF than others. Xcel approved this methodology when Xcel selected Sargent & Lundy as the Independent Expert through its extensive RFP and interview process.

16 However, Xcel limited the findings of the Independent Expert's report. While Xcel acknowledged that the Independent Expert's technical review "was sound and helpful," Xcel seems to have rejected the objective report of the Independent Expert and adopted the RDF advisory board's "holistic approach" and "subjective consideration" of a non-exhaustive list of "less quantifiable aspects of the proposals." (See page 11 of Xcel's Selection Report.) With its reasoning shrouded in this ambiguity, Xcel then made its recommendation to the MPUC, despite the fact that the recommended project received 44.18 less points than PowerWorks in the Independent Expert's evaluation. While Xcel did highlight some of the subjective merits of the selected wind Energy Production project, it failed to explain how or why those highlighted merits overcame the deficit that was objectively calculated in the Independent Expert's study. (See page 20 of Xcel's Selection Report.)

20 Without explaining how the recommended project overcame its deficit, it cannot be determined whether or not Xcel followed the approved process with respect to this public notice

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3 requirement. This failure effectively diminished any semblance of objectivity in this RFP to  
insignificance and deprived the public of any purposeful notice.

4 Even if the MPUC determines that Xcel followed its approved process and used the  
5 Independent Expert properly, then Xcel must justify why it selected an Independent Expert that  
6 created a methodology with which Xcel fundamentally disagreed. Furthermore, Xcel must  
7 justify why it fundamentally disagreed with the Independent Expert's methodology. If the MPUC  
8 finds this explanation unnecessary, then the MPUC should not require Minnesota ratepayers to  
9 pay for such a purposeless Independent Expert.

10 **3. The process followed by Xcel was NOT appropriate.** Regardless of whether or not Xcel  
11 followed the MPUC approved process, the process Xcel used was inappropriate on other  
12 grounds. While the exclusion of all subjectivity from the RFP evaluation process is likely  
13 unfeasible, it was inappropriate for Xcel to attach such significance to the "subjective  
14 considerations" analyzed through the RDF advisory board's "holistic approach."

15 Given that these "subjective considerations," which apparently were given more weight than all  
16 of the Independent Expert's quantifiable data and findings combined, were not announced prior  
17 to the RFP submission deadline, the parties who bid into the RFP were not notified of the actual  
18 criteria against which their projects would be evaluated. As a result of this lack of notice,  
19 bidding parties, like PowerWorks, weren't able to highlight those aspects of their project in their  
20 proposals, which potentially rendered the entire RFP selection process arbitrary.

21 Further, Xcel is unwilling to provide an exhaustive list of "the unique and less quantifiable  
22 aspects of the proposals" that were supposedly used in the RDF advisory board's "holistic  
23 approach" that guided their recommendation. (See page 11 of Xcel's Selection Report.) This  
lack of certainty or clarity seriously draws the legitimacy and appropriateness of Xcel's decision  
making process into question.

Given these weaknesses, the MPUC should not accept the decision making process Xcel  
followed. However, even if the MPUC accepts the process followed by Xcel, PowerWorks's  
proposal still should have been the recommended project for it demonstrates each of the  
"unique and less quantifiable" considerations that Xcel has been able to provide no less than the  
wind Energy Production project that was recommended.

**4. Xcel's recommendation is NOT in accordance with Minnesota Statute, Section  
116C.779.** This statute mandates the types of expenditures for which RDF funds may be used.  
Most relevantly, these are: "(1) to increase the market penetration within the state of renewable  
electric energy resources at reasonable costs; ...and (4) to develop near-commercial...  
renewable electric projects..." (emphasis added).

**4.1 Reasonable costs.** The Independent Expert found that PowerWorks submitted a project  
with a very reasonable cost, as reflected in its "Total Resource Cost \$/kWh" category, and  
awarded it a perfect score of 60. At \$0.09/kWh, PowerWorks was able to significantly underbid  
the recommended wind Energy Production project by \$0.18/kWh. To give some perspective,  
the only other wind Energy Production project that received a perfect score of 60 from the  
Independent Expert bid \$0.13/kWh. In other words, PowerWorks was able to underbid a  
project with a perfect "Total Resource Cost \$/kWh" score by \$0.04/kWh. Similarly, with 13.33,  
PowerWorks scored significantly higher in the Independent Expert's "Potential Benefits to

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Minnesota and Ratepayers" category than the recommended wind Energy Production project, Bergey Windpower Co.'s Minnesota Clustered Small Wind Project (EP4-24), which scored 9.17.

However, Xcel not only disregarded PowerWorks for the grant award, it didn't even recommend PowerWorks for the Tier I or Tier II Reserve Projects. In so doing, Xcel ensured higher costs and fewer benefits for its ratepayers. For this reason alone, Xcel owes the public and PowerWorks an explanation as to how it made its decision.

**4.2 Development of renewable energy projects and near-commercial renewable electric projects.** As for the statutory requirements that the RDF attract and develop near-commercial renewable electric projects, Xcel's recommendation will likely have the opposite effect if accepted by the MPUC.

If Xcel is able to reject the objective and quantifiable data and findings of the Independent Expert that it selected through an RFP process simply for a "holistic approach" with "subjective considerations" of vague factors, then Xcel and the MPUC will not only lose credibility, but legitimate renewable energy developers will be less likely to go through the hurdles of submitting RFP bids in the future.

In conclusion, MPUC should reject Xcel's recommendation and award the RDF grant to PowerWorks.

Sincerely,

PowerWorks Wind Turbines LLC



Bob Eggers  
Legal Counsel

cc: Mr. Mark Ritter, RDF Grant Administrator, Xcel Energy

1 Exhibit 2



6 26 September 2013

7 Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
8 Saint Paul, Minnesota 55101-2147  
sent via e-mail to [PublicComments.PUC@state.mn.us](mailto:PublicComments.PUC@state.mn.us)

9 Attention: Dr. Burl Haar, Executive Secretary

10 **Subject: Xcel Energy should have recommended PowerWorks Wind Turbines' project  
as an Energy Production project in its RDF RFP**

11 Dear Dr. Haar,

12 PowerWorks Wind Turbines LLC ("PowerWorks") hereby supplements its comment letter  
dated August 20, 2013 (the "August Letter"), so as to address specifically Xcel Energy's  
13 ("Xcel") comments/justifications made in both Xcel's Selection Report-First Supplement dated  
August 9, 2013 (the "First Supplement") and Xcel's Selection Report-Second Supplement  
dated September 13, 2013 (the "Second Supplement") for its final Energy Production project  
14 recommendations to the Minnesota Public Utilities Commission ("MNPUC"). Both the First  
Supplement and the Second Supplement (collectively, the "Supplements") were issued in  
response to the public comments provided in relation to bids submitted for Xcel's Fourth  
Funding Cycle Renewable Development Fund ("RDF") Request For Proposals ("RFP").

15 In the First Supplement, Xcel claimed that it rejected PowerWorks's proposal because it utilized  
"refurbished turbines" with questionable "service and reliability". In the Second Supplement,  
16 Xcel claimed that it rejected PowerWorks's "refurbished turbines" because they did "not  
promot[e] the utilization of new technologies". In making these assertions, Xcel has indicated  
that it not only overlooked those aspects of the project that exemplify these "subjective criteria,"  
17 but also that it defied the rational explanation and the quantitative measurement and evaluation  
of the disinterested third-party expert, Sargent & Lundy (the "Independent Expert"), the latter  
of which PowerWorks acknowledges was only one component of the selection process.

18 Because PowerWorks's proposal clearly exemplifies both the objective criteria of the  
Independent Expert and the specified subjective criteria upon which Xcel supposedly based its  
19 decision, the MNPUC should reject Xcel's recommendation and award PowerWorks the Energy  
Production grant. As further stated in the August Letter, if the MNPUC accepts Xcel's  
20 recommendation, thereby rejecting PowerWorks's proposal, it will be in violation of the  
parameters and processes of the RDF RFP, as well as Minnesota state law.



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3 **1. Xcel's characterization of the PowerWorks 100 kW wind turbine as a "refurbished turbine" is inaccurate.** Supposedly using the same definition of "refurbished," Xcel rejected PowerWorks's proposal, which included 100 kW wind turbines, and recommended Bergey Windpower Co.'s ("Bergey") proposal, which included 10 kW turbines. However, not unlike the PowerWorks 100 kW turbine, the Bergey 10 kW turbine line was introduced 30 years ago, has been installed at over 1,800 sites around the world, and likely has received numerous enhancements. (See <http://bergey.com/products/wind-turbines/10kw-bergey-excel>.) Therefore, if Xcel actually rejected PowerWorks's turbine for being "refurbished," then it should have also rejected Bergey's turbine for the same reason. On the other hand, since Bergey's turbine wasn't rejected for being "refurbished," then PowerWorks's turbine also should not be rejected. Because Xcel used this mischaracterization in its recommendation, the MNPUC should reject Xcel's recommendation.

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8 **2. Xcel's dismissal of "refurbished turbines" for "not promoting the utilization of new technologies" does not comport with applicable law.** Even if Xcel properly characterized the PowerWorks 100 kW turbine as "refurbished," it was still improper for Xcel to reject PowerWorks's proposal as a matter of law. While the question of what constitutes "new" wind turbines has not been directly addressed or defined in Minnesota, applicable laws support the notion that, in order for refurbished property to qualify as "new" or freshly/originally manufactured, property need not be entirely unused. Under the Internal Revenue Code ("IRC") § 45 and Revenue Ruling 94-31, the federal government has declared that:

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11 *"A facility would also qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property)."*

12 Thus, pursuant to IRC § 45, a wind turbine with used parts still qualifies as "originally placed in service" (or as PowerWorks interprets this phrase, "new") if the fair market value ("FMV") of the used or refurbished parts is less than or equal to 20 percent of the facility's total FMV. PowerWorks's interpretation of "originally placed in service" as "new" is consistent with the Code of Federal Regulations ("CFR"). (See 40 C.F.R. § 1033.640(d).) Under the CFR, a locomotive is considered to be "freshly manufactured" as of the most recent manufacturing date so long as no more than 25 percent of the value of such locomotive is derived from used parts. Hence, locomotives are considered "new" even though they may contain up to 25 percent used parts, and will obtain all of the same rights and privileges as other "new" locomotives. Analogously, a wind turbine will qualify as "freshly manufactured" and should be afforded all the same rights and privileges as other "new" wind turbines if it contains less than 25 percent of used parts.

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16 This rationale as to what constitutes "new" has found support in the US Court of Appeals for the Eighth Circuit. (See *Ruan Financial Corp. v. US*, 976 F.2d 452, 455 [8th Cir. 1992] which defined remanufactured tractors as originally "manufactured" where the tractors entered the remanufacturing process as "scrap" or as property in a nonusable condition.) This rationale is supported by outside jurisdictions as well. (See *Fugate v. AAA Machinery & Equipment Co.*, 593 F. Supp. 392 [D.C. Tenn., 1984] which found that, for the purposes of products liability, a piece of machinery that is substantially rebuilt or reconditioned becomes a "new" product.)

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19 Therefore, pursuant to applicable law, a wind turbine that incorporates used parts should still be considered a "new" turbine, so long as the FMV of those used parts does not exceed 20 percent of the total FMV of the turbine.

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3 PowerWorks's proposal included 10 PowerWorks 100 kW wind turbines. Upon request,  
4 PowerWorks can demonstrate that its new 100 kW wind turbine, complete with numerous  
5 technological improvements, qualifies as a new technology under applicable law because the  
6 FMV of the used parts (i.e., their scrap value) is far less than 20 percent of the turbine's FMV.  
7 These technological improvements include, but are not limited to: the Automated Control  
8 System, which starts, stops, monitors, and modifies certain wind turbine parameters to increase  
9 efficiency; upgraded double-row 8-point radial yaw bearings for optimal turbine rotation; and a  
10 vacuum impregnation method based blade pitch system, among other improvements. (See  
11 pages 12-15 of the Xcel Energy RDF Proposal submitted by PowerWorks to Xcel on April 1,  
12 2013 for a more exhaustive list and thorough discussion of the technological improvements.)

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14 As a result, the PowerWorks 100 kW wind turbine should be deemed a "new" turbine under  
15 applicable law. As a "new" turbine, it would undeniably promote the utilization of new  
16 technologies. Therefore, even if the PowerWorks 100 kW wind turbine is "refurbished," Xcel  
17 improperly found that PowerWorks's proposal didn't promote the utilization of new technologies.  
18 Because Xcel based its recommendation on the premise that "refurbished" turbines couldn't  
19 promote the utilization of new technologies, the MNPUC should reject Xcel's recommendation.

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21 **3. The PowerWorks 100 kW wind turbine has proven reliability.** PowerWorks's current fleet  
22 of 100 kW wind turbines consistently has an operating availability of approximately 97% to 98%.  
23 If requested, PowerWorks can demonstrate its 100 kW wind turbine's high operating availability  
from historic operating records.

Despite this, Xcel improperly suggested that the PowerWorks 100 kW turbine was unreliable.  
Given the turbine's high operating availability, this suggestion is simply false. Because Xcel  
based its recommendation on this falsehood, the MNPUC should reject Xcel's recommendation.

In addition to those reasons stated in the August Letter, the MNPUC should reject Xcel's  
recommendation and its subsequent rationales provided in the Supplements, namely that the  
PowerWorks 100 kW wind turbine is neither new nor reliable. Furthermore, because of the high  
score PowerWorks earned in the Independent Expert's objective evaluation and the fact that the  
PowerWorks 100 kW wind turbines both meet what applicable law define as "new" and are  
demonstrably reliable, the MNPUC should award the RDF grant to PowerWorks.

Please contact us if you have any questions.

Sincerely,

PowerWorks Wind Turbines LLC



Bob Eggers  
Legal Counsel

1 Certificate of Service

2 I hereby certify the attached *Initial Comments, Petition to Intervene, and Request for a*  
3 *Contested Case Proceeding* of PowerWorks Wind Turbines LLC has been served this day,  
4 September 27, 2013, in accordance with the directions provided by the Minnesota Public  
5 Utilities Commission.

6 /s/ Michael Koebbe

7 Michael Koebbe  
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