

Alan M. Seltzer
610.372.4761
alan.seltzer@bipc.com

1150 Berkshire Boulevard, Suite 210
Wyomissing, PA 19610-1208
T 610 372 4761
F 610 372 4177
www.buchananingersoll.com

August 13, 2012

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Joey Maluchnik v. Pennsylvania Electric Company
Docket No. C-2011-2245451

Dear Secretary Chiavetta:

On behalf of Pennsylvania Electric Company ("Penelec"), I have enclosed for filing the original and nine (9) copies of the Exceptions of Pennsylvania Electric Company to the Initial Decision served on July 24, 2012 with regard to the above-captioned matter. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,


Alan M. Seltzer
/KA

LML/kra
Enclosure

cc: The Office of Special Assistants (via E-Mail and Hand Delivery w/CD)
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOEY MALUCHNIK

v.

PENNSYLVANIA ELECTRIC COMPANY

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:
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DOCKET NO. C-2011-2245451

EXCEPTIONS OF
PENNSYLVANIA ELECTRIC COMPANY

Alan Michael Seltzer, Esquire
BUCHANAN INGERSOLL & ROONEY PC
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208
(610) 372-4761

Attorney for Pennsylvania Electric Company

Date: August 13, 2012

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. EXCEPTIONS..... 3

 Penelec Exception No. 1 3

 Penelec Exception No. 2. 8

III. CONCLUSION 13

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TABLE OF AUTHORITIES

Cases

Hodak v. Pennsylvania Electric Company, Docket No. C-2011-2274277, 2012 Pa. PUC LEXIS 1074 (June 25, 2012) 6

Kenneth L. Craft v. Pennsylvania Electric Company, 50 Pa. P.U.C. 1 (1976)..... 5

Michael Hineine v. Metropolitan Edison Company and Pennsylvania Power & Light Company, 126 P.U.R. 4th 312 (1990)..... 5

Pennsylvania Electric Company v. Pa. P.U.C., 63 Pa. Cmwlth Ct. 238, 437 A.2d 1067 (1981)... 7

Schear v. PECO Energy Company, Docket No. C-20043139 (Order entered April 21, 2006)..... 5

Thomas Carroll v. PECO Energy Company, Docket No. C-2011-2255585, 2012 Pa. PUC LEXIS 589 (March 14, 2012) 6

Waldron v. Philadelphia Electric Company, 54 Pa. P.U.C. 98 (1980)..... 10, 11

Statutes

52 Pa. Code § 57.19(g) 7

52 Pa. Code § 69.1201(c)..... 8, 10

66 Pa.C.S. § 1501 2, 8

66 Pa.C.S. § 3301 2, 8

I. INTRODUCTION

On July 24, 2012, the Pennsylvania Public Utility Commission (“Commission”) served the Initial Decision (“ID”) of Administrative Law Judge Katrina L. Dunderdale (“ALJ”) in connection with the May 23, 2011 complaint (“Complaint”) filed by Joey Maluchnik (“Complainant” or “Mr. Maluchnik”) against Pennsylvania Electric Company (“Penelec” or the “Company”). In the Complaint, Mr. Maluchnik alleges he received high bills for residential electric service provided by Penelec to his single-family, one story residence located at 185 Sportsman Road, Boswell, Pennsylvania 15331 (“Service Location”). ID at 1; Tr. 10-11 and 17.

While the high electric bill allegations precede 2009, the Complainant and Penelec stipulated prior to the December 5, 2011 initial telephonic hearing that the issue in this case was limited to the allegations of high electric bills from November 2009 to the present. ID at 2.

The initial telephonic hearing was held on December 5, 2011, during which the Complainant and the Company presented testimony and exhibits. ID at 2. Thereafter, the ALJ issued a Second Interim Order reopening the record and requiring Penelec to conduct new tests and issue an additional report on its findings. ID at 2. A second telephonic hearing was held before the ALJ on April 23, 2012, during which the Complainant and the Company provided additional testimony and exhibits. ID at 3.

Although the only issue in this case was the Complainant’s allegation of high electric bills from November 2009 to the present – in accordance with the stipulation between the Complainant and the Company submitted to the ALJ prior to the start of the initial December 5, 2011 hearing – the ID addresses this proceeding in two parts: (i) alleged overcharges for electric service by Penelec (ID at 15); and (ii) alleged unreasonable customer service by Penelec (ID at 17).

The ID expressly and properly found that the Complainant failed to sustain his burden of proof that Penelec over charged him for electric service it provided to the Service Location from 2009 to the present:

Complainant's complaint that he is overcharged for electric service must fail for one simple reason – he did not show how Penelec overcharged him.

The evidence also included Respondent's [Penelec's] credible testimony that it pulled and tested two meters in use at the service address, twice conducted a telephonic survey of potential electricity draws, and issued bills consistent with the consumption recorded on the electric meters.

ID at 15.

After dismissing the Complaint on the high bill issue, the ID nevertheless addresses whether the Company provided unreasonable service by not conducting a detailed electric investigation of the Service Location, "behind the Company's electric meter," to determine what might have been the cause of what the Complainant characterized as high electric bills. ID at 17. Then, after improperly concluding that Penelec violated Section 1501 of the Public Utility Code ("Code"), 66 Pa.C.S. § 1501, by "failing to conduct a high bill investigation..." the ID imposes on Penelec a \$1,000 civil penalty under Code Section 3301, 66 Pa.C.S. § 3301 for this alleged unreasonable customer service. ID at 22 (Ordering Paragraph No. 2).

Penelec respectfully excepts to any and all findings in the ID relating to alleged unreasonable customer service and the imposition of any civil penalty in connection therewith.

II. EXCEPTIONS

Penelec Exception No. 1: Penelec excepts to the ID's Conclusion of Law that "Complainant met his burden of proof of unreasonable customer service concerning Respondent's [Penelec's] high bill investigation." (ID at 22; Conclusion of Law No. 4).

This proceeding raises the important question of what constitutes a reasonable investigation by a public utility in response to a customer's complaint that he/she is experiencing "high" electric bills. In this case, the ID undeniably found, based on the Company's credible testimony that it:

- Removed and tested two electric meters in use at the Service Location;
- Twice conducted a telephonic survey with the Complainant of potential electric usage at the Service Location, leading to the issuance of a Customer Bill Analysis; and
- Issued electric service bills consistent with the consumption recorded on the accurately functioning electric meters. ID at 15.

But, according to the ID, Penelec's high bill investigation was not enough. Despite the specific findings about what Penelec did in response to the Complainant's high bill allegations, the ID concludes that "...Respondent [Penelec] refused to investigate each time." ID at 17. The evidence and finding specifically cited by the ALJ on page 15 of the ID (and restated above in bullet form), flatly contradicts that assertion.

The gravamen of the ID's concerns about the Penelec high bill investigation is that the Company did not visit the Service Location. ID at 20. Yet, the ID also acknowledges that "[v]isting every service address when a consumer calls to complain about a high bill might be onerous." ID at 21. While the Company does not typically visit a customer's residence as part of its high bill investigations, it does conduct a detailed analysis of electric appliances and usage

in the residence and gathers all of the relevant information in a “Customer Bill Analysis.” The ALJ’s own Finding of Fact No. 9 in the ID describes the Customer Bill Analysis and the detailed information the Company obtains in support of its investigation of high bill complaints:

On November 17, 2009, Respondent [Penelec] asked Complainant a series of questions over the telephone about the electrical appliances and devices at the service address. Respondent [Penelec] inquired about missed potential for billed usage, square footage of the residence, the number of residents, the heating system in use, the time of the year, the appliances in use and any other electrically-operated equipment. Based on his responses, Penelec created a Customer Billing Analysis in which Respondent [Penelec] estimated Complainant’s *potential* for electricity consumption if the electrical devices were used continuously.

ID at 5, Finding Of Fact No. 9.

The ID ultimately finds that Penelec provided unreasonable service to the Complainant because it did not offer to visit the Service Location so the Company could: (i) perform a ground test at the residence: or (ii) “enter the residence in order to check any of the electrical appliances or outlets in the Sportsman house [Service Location] for the existence of a malfunction or excessive use that might explain the high bills.” ID at 9, Finding of Fact No. 29.

Penelec does not go inside a customer’s home to conduct foreign load checks, ground checks and the like, since these things relate to the customer’s internal equipment and wiring that are completely outside of the Company’s electric distribution system. Tr. 53-54. By insisting that Penelec has a legal obligation to investigate high bill complaints by conducting on-site visits and checking for electrical defects “behind the meter” (*e.g.*, within a customer’s residence), the ID is redefining a utility’s “service” obligation. While the definition of utility “service” under Code Section 102 is broad, it has never been interpreted to *require* a utility to conduct investigations of a customer’s internal wiring and equipment as mandated by the ID.

Importantly, the ID provides no legal support whatsoever for any utility service obligation extending behind the meter as directed by the ID.

The ID's imposition of a service obligation on Penelec to conduct an internal review of the Complainant's home as part of a high bill investigation is inconsistent with Pennsylvania law. As the Commission recognized as early as the mid 1970's:

Traditionally, utilities, the Commission, and the Courts have recognized that the ownership and maintenance responsibility of an electric utility ends at the point of delivery to the customer. The point of delivery being the customer's meter. From that point on, the customer owns and assumes the responsibility for the maintenance and security of the internal wiring.

Kenneth L. Craft v. Pennsylvania Electric Company, 50 Pa. P.U.C. 1 (1976); *Michael Hineine v. Metropolitan Edison Company and Pennsylvania Power & Light Company*, 126 P.U.R. 4th 312 (1990).

The Commission's decision in *Craft, supra*, is particularly relevant and controlling here. In *Craft*, the complainant alleged that the public utility failed to properly investigate, determine and correct the cause of alleged excessive consumption of electric service at the complainant's premises. In dismissing the complaint, the Commission stated:

It is apparent from the foregoing that respondent [utility] has reasonably investigated the subject matter of the complaint and, in so doing, has found complainant's power consumption to be congruent with his connected electrical load. Inasmuch as respondent's ownership and maintenance responsibilities end at the point of delivery, it is complainant's sole responsibility for maintaining the internal circuitry and controlling his consumption of electrical energy.

Craft, supra.

Similarly, in *Schear v. PECO Energy Company*, Docket No. C-20043139 (Order entered April 21, 2006), the Commission held that a neutral wire (i.e., a line that controls and stabilizes

voltage) is separate from a utility's aerial neutral wire, and that the utility is not responsible for a customer's neutral. See also, *Thomas Carroll v. PECO Energy Company*, Docket No. C-2011-2255585, 2012 Pa. PUC LEXIS 589 (March 14, 2012).

The ID is difficult to reconcile with a recent Initial Decision issued by the ALJ in *Mary Hodak v. Pennsylvania Electric Company*, Docket No. C-2011-2274277, 2012 Pa. PUC LEXIS 1074 (June 25, 2012), which appears to have reached a completely different result with respect to a customer's responsibility over its internal electrical equipment and wiring. In *Hodak*, the ALJ stated:

The final outcome in this proceeding could have been different if the Hodaks had provided testimony from at least one of the five electricians who visited the residence in the last two years. A certified electrician should have checked each electrical appliance and draw in the residence to ensure, after replacing the household wiring, no electrical item plugged in or using electricity was shoring or causing the stray voltage.

Starting inside the residence, the electrician should have inspected and checked the proper functioning of the internal electrical draws. ...If all internal electric draws function properly upon inspection, then the electrician should have tested the outside of the residence for stray voltage, starting at the meter socket and moving outward. Most notably, an electrician should check and test the integrity of the underground service line.

Hodak, supra.

It is difficult to imagine how the same ALJ could appear to understand the legal responsibilities of customers and utilities relative to internal customer equipment and wiring in one case, *Hodak*, and depart from the applicable legal standards in this one. Nonetheless, the ID has seriously and inexplicably departed from Pennsylvania law in finding that Penelec provided

unreasonable service by failing to conduct an investigation of the Complainant's Service Location equipment and wiring in resolving the alleged high bill dispute.

The ID's finding that Penelec provided unreasonable service by failing to visit and conduct tests of the Complainant's equipment and wiring at the Service Location is also inconsistent with the Company's duly filed and Commission-approved retail electric tariff¹ that provides, in Rule 23, that "[t]he Customer, by accepting service from the Company, assumes responsibility for the safety and adequacy of the wiring and equipment installed by the Customer." *Tariff Electric Pa. P.U.C. No 80, Supplement No. 21, effective January 1, 2011*. It is simply not Penelec's legal obligation, in addressing a customer high bill complaint or otherwise, to enter beyond the termination point of its system and conduct any work on the customer/Complainant's premises.

Other provisions of Penelec's retail tariff reinforce and confirm the lawful separation between the Company's electric system and customer's facilities. For example, the term "Point of Delivery" in Penelec's retail tariff is defined as "[t]he location at which the Company service connection terminates and the Customer's wiring and installation begins." *Tariff Electric Pa. P.U.C. No 80, Supplement No. 21, effective January 1, 2011, at 21 (Rule 2)*. The Company's retail electric tariff makes clear that there is a distinct separation between the end of the Company's electric system and a customer's equipment and wiring, a distinction that is completely ignored by the ID.²

¹ A utility tariff that has been approved by the Commission has the force of law and is binding on both the utility and the utility's customers. *Pennsylvania Electric Company v. Pa. P.U.C.*, 63 Pa. Cmwlth Ct. 238, 437 A.2d 1067 (1981).

² Even the Commission's regulations recognize the distinction between a utility's system and the customer's installation: "Wiring and equipment on the premises of the customer shall be installed to conform with the rules and standards established by the public utility. The customer shall provide poles, wires and other construction necessary to bring *the terminus of the customer's installation to a location where it may be connected to a line extension by means of a service line.*" 52 Pa. Code § 57.19(g) (*emphasis added*).

The ID also seriously misconstrues the evidence of record and its own findings related to the scope of Penelec's high bill investigation when it asserts that "[t]he only factor Respondent [Penelec] considers in a high bill investigation is the actual meter reading." ID at 15. This conclusion not only contradicts Finding of Fact No. 9 (ID at 5), which describes far more than a meter reading, but Penelec's substantial evidence of what it did do to investigate the Complainant's allegations. Tr. 41-47, 61-64; Penelec Ex. 4.

The ID committed serious legal error by finding that Penelec provided unreasonable customer service by not conducting an on-site inspection and testing of the Complainant's wiring and equipment at the Service Location "behind the meter."

Penelec Exception No. 2: Penelec excepts to the ID's Ordering Paragraph that "Pennsylvania Electric Company shall pay a civil penalty of One Thousand Dollars (\$1,000) for the violation of 66 Pa.C.S. § 1501 by failing to conduct a high bill investigation, as provided for in the Public Utility Code, 66 Pa.C.S. § 3301..." (ID at 22, Ordering Paragraph No. 2).

Code Section 3301 allows the Commission to impose civil penalties for, among other things, "violations" of the Code. The ID imposes \$1,000 penalty on Penelec for violating Code Section 1501 (Character of Service and Facilities) by "failing to conduct a high bill investigation." ID at 22, Ordering Paragraph No. 2. Thus, without a "violation" of the Code, no civil penalty can be imposed under Code Section 3301.

As described in and demonstrated by Exception No. 1 above, Penelec did not provide unreasonable customer service or violate Code Section 1501 in its handling of the high bill complaint lodged by the Complainant in this proceeding. To the extent necessary, Penelec incorporates herein the entirety of Exception No. 1.

Moreover, the rationale employed by the ID in its evaluation of the factors and standards for determining civil penalty amounts under 52 Pa. Code § 69.1201(c) is seriously flawed and should be rejected. First, the ID asserts in support of its civil penalty analysis that "[r]espondent

[Penelec] saw no need to inquire about the number of occupants, if there was a change in the number of occupants or if the premises was vacated for any length of time.” ID at 17. This conclusion is again completely inconsistent with the ALJ’s adoption of Finding of Fact No. 9:

On November 17, 2009, Respondent [Penelec] asked Complainant a series of questions over the telephone about the electrical appliances and devices at the service address. Respondent [Penelec] inquired about missed potential for billed usage, square footage of the residence, *the number of residents*, the heating system in use, *the time of the year*, *the appliances in use and any other electrically-operated equipment*. Based on his responses, Penelec created a Customer Billing Analysis in which Respondent [Penelec] estimated Complainant’s *potential* for electricity consumption if the electrical devices were used continuously.

ID at 5, Finding of Fact No. 9 (emphasis added).

A fair reading of that finding, along with the record evidence, confirms that Penelec’s high bill investigation considered the number and change/or of residents in the Service Location, among other factors.

The ID supports the civil penalty in part based upon its assertion that “[t]he evidence presented in this proceeding revealed Penelec’s persistent refusal to investigate Complainant’s allegations concerning high bills. ID at 18. The flaw in the ID’s logic is that it erroneously equates an “investigation” with an on-site visit to the Service Location to evaluate the Complainant’s equipment and wiring, neither of which – as demonstrated in Exception No. 1 – is the legal responsibility of a public utility like Penelec. The facts of record demonstrate the components of the Company’s investigation of the Complainant’s high bill issues including, among other things, determining if the meter was operating within the Commission’s prescribed accuracy standards, testing and replacing the meter when appropriate, and evaluating if the Service Location had the potential to use the energy that was being recorded by the meter and

being billed to the Complainant. That effort was in fact an “investigation,” albeit not the one demanded by the ALJ in the ID.

The ID’s purported rationale in support of a civil penalty reaches its nadir when it suggests that “[i]f Penelec had investigated on-site sooner, Mr. Maluchnik would have had an opportunity over the last two years to obtain his own contractor to assist him in determining the heat loss factor of the premises, how much insulation is needed, where the insulation is needed and how to best use the electric heating system when vacant from the residence in cold weather months.” ID at 19. The ID fails to recognize that the Complainant was free at any time to retain an electrician or other contractor to review the internal wiring and electric equipment at the Service Location and advise him of any conditions that might have contributed to the Complainant’s alleged high bills. The Complainant did not need an on-site visit by the Company to investigate the internal electric operations of his own property that are “behind the electric meter” in order to evaluate the overall electric consumption at the Service Location.

In finding that Penelec’s conduct was “intentional” for purposes of applying one of the civil penalty criterion in 52 Pa. Code § 69.1201(c), the ID suggests that the Company “knowingly refused to investigate adequately or reasonably” in light of Penelec’s awareness “of the Commission’s decisions in this type of proceeding...” ID at 20. While not completely clear as to the “Commission’s decisions” the ALJ had in mind, it is reasonable to presume that the ID was referring to the seminal Commission case on customer high bill cases, *Waldron v. Philadelphia Electric Company*, 54 Pa. P.U.C. 98 (1980) and its progeny referenced earlier on pages 13-14 of the ID.

Reliance on *Waldron* or any of its progeny is misplaced and not supportive of any intentional conduct by Penelec. The ID never acknowledges that *Waldron* and its progeny arose

from a factual situation involving a single high and inexplicable customer bill not, as in this case, a complaint predicated on numerous and sustained alleged high bills. One need only review the quotes from the cases by the ALJ in the ID at pages 13-14 to see the repeated references to “a high bill dispute,” “the disputed bill,” and “the disputed monthly bill,” all of which confirm that the essence of these cases is a single bill that is high, unexplained and outside of the established pattern of usage. That is *not* the issue in this case and, therefore, neither *Waldron* nor its progeny are relevant/applicable to this case, let alone controlling.

And, to the extent *Waldron* and the other cited cases are applicable, they are not relevant to Penelec’s conduct of the high bill investigation. Those cases address the various ways in which a high bill complainant can establish a prima facie case, not what the utility is required to do in an investigation of such a complaint. The ALJ repeatedly notes in the discussion of *Waldron* and the related cases that a complainant can show, and the Commission can consider, more than that the disputed bill was abnormally high and the ratepayer’s pattern of usage had not changed. The ID observes that the Commission can also consider “any other relevant facts or circumstances that come to light during the proceeding. ID at 14. Penelec does not dispute this finding. The essential point, however, is that these cases do not address – let alone impose – any requirement upon the utility to conduct an on-site investigation of a complainant’s household wiring and equipment in connection with a high bill complaint. Those cases do not support the ID’s rationale for finding the Penelec acted “intentionally” for purposes of imposing a civil penalty.

Certain of the criteria relating to the civil penalty analysis in the ID are inapplicable since Penelec was not legally required to conduct an on-site investigation of the Service Location as shown in Exception No. 1. For example, the ID’s suggestion that Penelec did not promptly

respond to the Complaint “by altering its internal processes or changing its policies to reflect service address visits” (ID at 20), is inapposite in this case. Indeed, there is nothing for Penelec to change.

With respect to consideration of Penelec’s compliance history, the ID concludes that Penelec’s “refusal” to visit a service address as part of a high bill investigation “is not a relatively isolated incident...” However, there is not a single shred of evidence in this proceeding to support such a conclusion, which is completely speculative and not a valid basis on which to predicate any amount of civil penalty.

In ultimately assessing the \$1,000 civil penalty, the ID notes that “at some point over the last six years, Penelec should have visited the service address to assist Complainant in resolving this problem.” ID at 21. What the ID fails to address or acknowledge is: (i) whether, and to what extent, Penelec had a legal obligation to assist the Complainant via a visit to the Service Location to address wiring and equipment on the customer’s side of the meter; (ii) why and how a site visit was the only method by which the Complainant’s “problem” could be resolved; and (iii) why the Complainant could not have addressed any issues relating to electric consumption within the Service Location through his own electricians or other consultants/contractors, either in tandem with or independent of Penelec. Had these issues been addressed accurately and consistent with Pennsylvania law, the ID would not have found that Penelec provided unreasonable customer service, violated Code Section 1501, or should be charged a civil penalty.

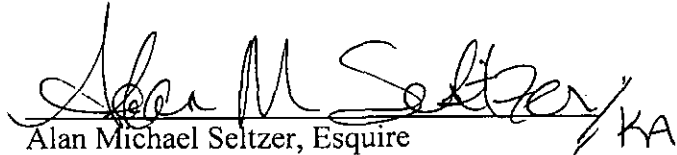
Not only is the logic in support of the civil penalty in the ID flawed, placing the burden on Penelec to conduct a site visit in customer high bill complaints could be a potentially costly and resource intensive exercise and one that is not supported or required by Pennsylvania law.

Since Penelec did not violate Code Section 1501 or otherwise render unreasonable customer service in this matter, there is no legal basis for imposing a civil fine of any amount.

III. CONCLUSION

There is no basis in law or fact supporting a finding that Penelec provided unreasonable customer service, violated Code Section 1501, or should be charged a civil penalty for any conduct in connection with the Complaint. The ID misapplies Pennsylvania law and must be reversed on these specific issues.

Respectfully submitted,



Alan Michael Seltzer, Esquire
BUCHANAN INGERSOLL & ROONEY PC
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208

Attorney for Pennsylvania Electric Company

Dated: August 13, 2012

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BEFORE THE
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JOEY MALUCHNIK

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Docket No. C-2011-2245451

CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First Class Mail

Joey Maluchnik
185 Sportsmans Road
Boswell, PA 15530

Joey Maluchnik
P.O. Box 413
Jennerstown, PA 15547

Dated this 13th day of August, 2012.


Alan M. Seltzer, Esq. FA

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