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December 10, 2012

***VIA ELECTRONIC FILING***

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

*Re: Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service Docket No. I-2011-2237952*

Dear Secretary Chiavetta:

Pursuant to the Commission's Tentative Order entered November 8, 2012 in the above-referenced proceeding, enclosed herewith for filing are the Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Please contact me if you have any questions regarding this matter.

Very truly yours,

Tori L. Giesler

Tori L. Giesler

dlm
Enclosures

c: Via Electronic Mail:
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|---|---|---|
| **Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service** | : | **Docket No. I-2011-2237952** |

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**COMMENTS OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY**

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## I. INTRODUCTION AND BACKGROUND

On November 8, 2012, the Pennsylvania Public Utility Commission ("Commission") entered a Tentative Order ("Tentative Order") in the above-captioned docket addressing a proposed end state electric default service model developed by the Office of Competitive Market Oversight ("OCMO") after considering stakeholder feedback from the March 21, 2012 *en banc* hearing and technical conferences. The Tentative Order invited stakeholders and other interested parties to submit written comments no later than thirty days from the entry date of the order, or December 10, 2012.

Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively "the Companies") respectively submit the following comments in response to the Tentative Order.

## II. COMMENTS

In its Tentative Order, the Commission proposed an end state default service model ("Default Service Model"), and addressed each of the involved components. The Companies' comments follow the same sequence as provided in the Tentative Order and are addressed individually; however, the Companies do not offer any comments specific to the applicability of the end-state model to small electric distribution companies ("EDCs"), or to the majority of the questions posed by Commissioner Witmer in her statement issued November 8, 2012. The questions posed by Commissioner Witmer appear to seek input from electric generation suppliers ("EGSs"), with the exception of the question addressing EDC and EGS coordination of energy efficiency and conservation ("EE&C") programs, which is addressed within the comments below.

Within the Tentative Order, the Commission outlined the guiding principles that it looked to in the development of its proposed Default Service Model.[1] The Commission notes throughout the Tentative Order that many of its proposals require changes to existing legislation and Commission regulations. While the Companies do not make specific comment below with regard to the need for such a procedure where the Commission has explicitly identified it in association with its various proposals, they agree with the Commission on the need for legislative and regulatory modifications in order to allow for the legal implementation of many of the proposals.

### A. Provision of Default Service

The Commission's proposed end state maintains EDCs' status as default service providers ("DSPs"), while retaining the right to full cost recovery for the costs associated with providing this service.[2] The Commission further indicated that an alternate DSP may be selected

[1] Tentative Order at 8-12.
[2] Tentative Order at 13.

where: 1) an EDC petitions to be relieved of its obligations; 2) an EGS petitions to be assigned the DSP role in an EDC's territory; or 3) the Commission, upon its own motion, proposes that an EDC be relieved of its obligations.[3] The Companies make no comment with regard to the instances in which an alternate DSP would be selected, except to point out that, should an alternate provider be selected, this should be done through a process outside of EDCs' default service proceedings, and the transition should coincide with the implementation of a new default service term. As to the need for cost recovery, the Companies agree with the Commission's conclusion that the DSP must retain the right to cost recovery on a full and current basis, in accordance with 66 Pa.C.S. § 2807(e)(3.9). Therefore, to the extent that the Commission pursues changes to existing legislation and Commission regulations, the basic tenets of full and current cost recovery must be retained unaltered as currently provided in 66 Pa.C.S. § 2807(e)(3.9).

### B. Default Service Product

The Commission has proposed changes to the default service product to be offered in an attempt to create a more closely market-following price-to-compare ("PTC").[4] These changes would establish a quarterly PTC for residential and small commercial and industrial ("C&I") rate classes using quarterly auctions procuring all default service load via tranches of full-requirements, load-following contracts.[5] The auctions for the residential and small C&I rate classes would occur one to two months in advance of the beginning delivery date for the upcoming quarter.[6] For the medium and large C&I rate classes, the Commission proposes that EDCs offer default service based on hourly locational marginal pricing ("LMP"), basing hourly

[3] Tentative Order at 13-14.
[4] Tentative Order at 15.
[5] Tentative Order at 17.
[6] Quarters will synchronize with the PJM Interconnection LLC ("PJM") energy year, which means the quarters will be as follows: June through August, September through November, December through February, and March through May. *Id.*

LMP pricing upon customer load profiles where interval meters are not installed.[7] The medium and large C&I rate classes' hourly LMP product will also be procured via a quarterly auction held one to two months prior to the beginning of each quarter.[8] The Commission recognized in its proposal that, while it envisions a delineation of accounts with demand of 100 kW or greater as being categorized as large C&I, there is no uniform treatment across all EDCs and, for that reason, proposes that EDCs designate a delineation point between small and medium/large C&I based upon their existing rate schedules.[9] Several considerations should be accounted for in the event that such products are adopted.

For instance, medium C&I customers that do not have an interval meter installed are not well-equipped to manage commodity costs in an hourly LMP default service environment because their metering does not provide the necessary tools to do so. If such customers are billed based on a load profile (as they would be absent an interval meter) and they take action to shed load because of high LMP prices, the customer will not get the benefit of the load shedding strategy because they will be billed based on a load profile. This will likely increase customer dissatisfaction with the product when they realize no load-shedding strategy will relieve them of high LMP prices. Therefore, the Companies propose that for those EDCs where such a pricing methodology will be applied, this concern be addressed through direct customer education supporting the notion that the only way for these customers to avoid the risk associated with this billing approach is for them to shop for an alternate EGS price.

Further, the Companies currently do not have the capability to use customer load profiles to price hourly LMP for medium C&I customers that do not have interval meters, and such functionality would have to be programmed into the Companies' billing system. The Companies

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[7] Tentative Order at 16.
[8] The quarters used will be identical to the quarters for residential and small C&I rate classes. *Id.*
[9] *Id.*

should be given the ability to recover the costs from all customers on a non-bypassable basis through their Default Service Support Riders. Recovery from all customers on this basis is imperative, because over 75% of the Companies customers above 100 kW without interval metering are currently shopping.

The Companies support the Commission's recommendation to permit EDCs to designate a delineation between small C&I and medium and large C&I customers based on the EDCs' existing rate schedules when it is impractical to create default service subclasses. Neither Met-Ed, Penelec nor Penn Power have a delineation at the Commission's prescribed 100 kW level. The delineation these Companies have used is 400 kW, which is the level upon which interval metering is installed and the hourly LMP default service product begins under the Companies' Commission-approved default service plans continuing through May 31, 2015. Although West Penn does have a rate schedule delineated at 100 kW, its requirement for interval metering and the provision of hourly LMP default service doesn't begin until 500 kW under its Commission-approved default service plan continuing through May 31, 2015. Therefore, absent using a delineation of 400 kW for Met-Ed, Penelec and Penn Power and 500 kW for West Penn, the Companies would incur additional costs to create default service subclasses, along with the previously mentioned costs to bill hourly LMP based upon customer load profiles.

### C. Transition Timeline

June 1, 2015 has been proposed as the effective date for the suggested changes to default service, with default service plans for the period beginning on that date to be filed by July 1, 2014, followed by a six-month procedural schedule.[10] Considering that all Pennsylvania EDCs will be operating under default service plans continuing through May 31, 2015, an effective date of June 1, 2015 for changes to default service is a logical timeline for a seamless transition.

[10] Tentative Order at 18.

However, while a six-month procedural schedule will help to expedite the review process, actual Commission approval could extend past six months depending upon the extent to which petitions for reconsideration and/or rehearing may be filed, so the Companies caution against accelerating this review period as compared to the current nine-month procedural term.

### D. Consumer Protections

The Commission's proposed Default Service Model assumes no revisions to consumer protections, although potential future changes to legislation and Commission regulations are not precluded.[11] The Companies support the continuation of existing consumer protections, subject to change from time to time following the appropriate procedural courses. However, it is important to consider that, in some instances (*e.g.*, should supplier consolidated billing be implemented or an alternate DSP selected), the burden for maintaining these customer protections may shift in some regards from the traditional EDC obligor to either the participating EGSs or the alternate DSP. In such an instance, the EDCs should not be held accountable for violation of any of these provisions due to action or omission to the EGS or DSP.

### E. Portability of Benefits for Low-Income Customers

With regard to the portability of benefits for low-income customers, the Commission proposes that all EDCs, if they have not done so already, develop plans that allow their customer assistance program ("CAP") customers to shop with an EGS without restriction no later than January 1, 2015.[12]

Each of the Companies' universal service programs currently permit CAP customers to shop with an EGS under the terms of the Companies' Commission-approved retail tariffs. Further, under the terms of the Companies' Commission-approved universal service programs,

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[11] Tentative Order at 20.
[12] Tentative Order at 23.

CAP benefits are entirely portable and cannot be diminished if a customer switches to an EGS. Therefore, the Companies are already in compliance with the Commission's proposal to allow CAP customers to shop with an EGS without restriction on or before January 1, 2105. However, it should be clarified that CAP customers that shop with an EGS should receive the total result of their action, regardless of the magnitude of their EGS rate in comparison to the default service rate. That is, the customer should get the benefit or detriment of the difference between the PTC and the EGS price they receive. A comparison of the EGS rate to the default service rate at any one point in time does not take into consideration the value a CAP customer may place on a known, fixed-price EGS contract that may extend for several years as compared to a default service rate that changes quarterly and may be subject to greater volatility. Further, a comparison of an EGS rate to the default service rate does not take into consideration other value-added products and services that may be offered by the EGS. Additionally, the Commission's Intermediate Work Plan issued March 2, 2012 in this docket defined "subject to harm" as being a loss of benefits. Since the Companies' CAP benefits are entirely portable, customers are not at a risk of losing their benefits if they elect to shop with an EGS.

### F. Supplier Consolidated Billing

Supplier Consolidated Billing ("SCB") is generally defined as a billing option under which the EGS bills the retail customer for its EGS charges and the EDC's charges. In the Tentative Order, the Commission provided an abbreviated list of recognized issues associated with SCB and acknowledged that SCB presents several technical and legal questions.[13] Nonetheless, the Commission has indicated its belief that SCB should be made available as a billing option, at the discretion of EGSs.

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[13] Tentative Order at 25-27.

As a general matter, the complexity that would be involved in the EDCs' implementation of SCB is vast, in light of the regulatory responsibilities imposed on EDCs, as well as the Commission's previously stated goal to maintain, or enhance, the current level of consumer protections.[14] This significant complexity will be accompanied by significant implementation costs. When the EDCs initially examined SCB over a decade ago, this billing option was never implemented in large part due to lack of EGS interest. From an EDC perspective, the same concern exists today. Given the implementation of EDC purchase of receivable ("POR") programs, which are tied to EDC consolidated billing, it would seem that from an economic perspective, EGSs would have even less interest in SCB than they did over a decade ago.

In addition, there are three specific issues that must be addressed, if the Commission and General Assembly are to consider mandating EDCs to implement SCB. First, EDCs must not only be given sufficient time to change their customer information systems to implement SCB, which could be significant, but also full and current recovery of the costs associated with the implementation of the necessary modifications to their customer information systems through a non-bypassable rider. Second, important customer protections related to the information that must be provided on the consolidated bill associated with EDC billing information must be addressed. The EGS should be obligated to provide the customer transparency as to the EDC charges, as well as include all of the information required of the EDC on the consolidated bill. Finally, SCB should not result in an increase in unrecovered EDC uncollectible expense, which means appropriate protections for EDCs and their customers should be established. This can be accomplished through increasing credit requirements for any EGS implementing SCB, as well as the implementation of legislative changes providing full cost recovery by EDCs for funds unrecovered from a defaulted EGS. An increase in credit requirements would protect EDCs and

[14] Tentative Order at 20.

their customers from the increased risk stemming from SCB in the event of an EGS default or bankruptcy. Similarly, the enactment of legislative protections allowing for an EDC to file an uncollectible rider under its retail tariff would ensure full cost recovery in the event the increased EGS credit requirements are insufficient to allow the EDC to fully recover the monies owed to it by any EGS utilizing SCB.

### G. Accelerated Switching

Aside from the reference to the final interim guidelines to shorten the current ten-day confirmation period to five days and the initiation of a rulemaking which is being addressed in a separate proceeding,[15] the Commission has invited comments to "seamless moves" and "day-one switching." "Seamless moves" involve transferring a customer's choice of EGS when the customer moves within the same EDC territory, without requiring the customer receive default service for at least one billing period. "Day-one switching" is the ability of a customer to begin service with an EGS on day one of a new EDC service, without requiring the customer receive default service for at least one billing period.

As the Commission correctly notes, "seamless moves" and "day-one switching" are related issues. At the present time, the Companies can not provide either "seamless moves" or "day-one switching" because the programming and costs involved with such options still need to be defined and addressed prior to implementation. As such, to the extent that the Commission directs that "seamless moves" or "day-one switching" be implemented as an outcome of this proceeding, the Companies request that implementation be required no earlier than June 1, 2015, coincident with the transition timeline of the Default Service Model. This implementation period would hopefully grant the Companies sufficient time to perform all programming tasks

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[15] See *Final Order, Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442 (Order entered October 24, 2012).

associated with such an implementation. The Commission must also provide EDCs full cost recovery under a non-bypassable reconcilable rider such as the Companies' Default Service Support Riders.

### H. Provision of Metering Services

The Commission believes that the EDCs are the more logical providers of metering services and thus propose that all metering services be retained with the EDCs.[16] The Companies agree with the Commission's determination regarding metering services and note that, similar to SCB, EDCs initially examined competitive metering over a decade ago but never implemented such a change, in large part due to a lack of EGS interest.

### I. Provision of Energy Efficiency and Conservation Programs

The Commission has proposed that EDCs continue to provide EE&C programs, while encouraging EGSs to provide supplemental EE&C services to customers in an effort to facilitate reduced consumption and allow for a diverse array of products and offerings.[17] Further, Commissioner Witmer, in her statement issued November 8, 2012, questioned how EDCs see any such EGS-sponsored services coordinating with existing Act 129 EE&C program obligations.[18]

The Companies do not object to an EGS offering EE&C programs and services as a general concept. However, under the current construct, it should be recognized that EGS EE&C offerings would likely restrict an EDC's ability to meet its statutory goals and could lead to unfair penalties. The statute, as currently written, imposes a large financial penalty to EDCs for failure to achieve the required energy and demand reductions. An EGS that is not exposed to the

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[16] Tentative Order at 32.
[17] Tentative Order at 34.
[18] Act 129 of 2008, among other things, amended the Public Utility Code, 66 Pa.C.S. § 101 *et seq.*, to require the Commission to develop and adopt an EE&C program.

same financial penalty should not be permitted to implement programs or offerings that compete with EDCs for EE&C products and services. Further, significant Commission oversight is imposed on EDC-provided EE&C products and services in order to maintain cost-effective programs. Such oversight is not imposed on EGSs, which have the ability to subsidize the cost of EE&C products and services through the generation charge offered to customers. One way to help mitigate this problem would be to bundle EDC-provided EE&C rebates into EGS product offerings so as to support the EDC in achieving the required energy and demand reductions. EGS-provided EE&C products and services should utilize, to the extent possible, EDC-provided EE&C products and services. However, to most successfully and fairly accomplish the Commission's goal of encouraging a diverse array of products and offerings, the existing financial penalties against EDCs for failure to achieve required energy and demand reductions should be removed from current statutory language.

### J. Existing Long-Term Contracts

The Commission has proposed that any existing EDC contract entered into for procurement of Alternative Energy Portfolio Standards ("AEPS") credits or other similar energy contracts, such as those associated with the Public Utility Regulatory Policies Act ("PURPA"), should be held harmless.[19] As such, the Commission proposes that on a case-by-case basis, the EDC may propose the means for recovery of costs incurred from such contracts, including but not limited to the inclusion of incurred costs in the PTC, the inclusion of incurred costs in a non-bypassable surcharge, or the voluntary assignment to EGS(s).[20]

The Companies believe that all costs incurred by an EDC that result from long-term contracts for AEPS credits and other similar energy contracts, such as those entered into under

[19] Tentative Order at 35-36.
[20] *Id.*

PURPA, that have been secured through a Commission-approved process must be recovered through a non-bypassable rider. In the case of AEPS credits acquired through long-term contracts, the credits should be provided to default service providers and EGSs on a load share basis. This method, which has been followed by Met-Ed, Penelec and Penn Power in the acquisition of solar AEPS credits, assures competitive neutrality as well as full cost recovery by the EDC. No other approach assures both without assuming the continuation of significant volumes of default service load provided by the EDC. Likewise, similar energy contracts (such as those entered into under PURPA) should be sold into the wholesale market, with the proceeds of such sales to be used as an offset to the costs of the energy so procured being recovered through the non-bypassable riders. This approach is the only approach to EDC long term energy contracts that meets the test of both assuring competitive neutrality and providing full EDC cost recovery.

### K. Future Long-Term Alternative Energy Credits Contracts

The Commission requests comments as to whether an EDC (or an alternative DSP approved by the Commission) should file a procurement plan for Tier I, Tier II and Solar alternative energy credits ("AECs") with the Commission. The Commission further requests comment as to whether the AECs should be fulfilled by an EDC (regardless of whether it has a default service obligation) or the entity providing default service, as well as contract duration.

The obligation to provide AECs should continue to be placed on the load serving entity, whether an EGS or a wholesale supplier of energy to the DSP. If an EDC acquires additional long-term alternative energy credits, the credits so acquired should be contractually provided at no cost to EGSs (through the supplier tariff) and wholesale suppliers to the DSP (via contract) on a load share basis, with the costs to be recovered from all customers through a non-bypassable rider.

The Commission's 2011 AEPS Annual Report shows that the competitive market is adequately providing for the necessary AECs to meet the requirements set by the legislature. In fact, the Report indicates that,

> "Pennsylvania EDCs are permitted to obtain AECs from within the entire PJM Interconnection, LLC (regional transmission organization) area. If we consider the entire renewable portfolio standard (RPS) demand and supply from all PJM states rather than just the PA-only market, adequate supply exists for Tier I and Tier II through 2015. Solar supply in the PJM market is also adequate through 2015, assuming that 25 percent of the projects in the PJM construction queues are actually built, which has historically been the case."[21]

Further, page 11 of the Report notes that,

> "[w]hen comparing the number of credits created to the estimated number of credits needed in 2021, Table 6 shows that more Tier II credits were created in each of the years from 2005 through 2011 than will be needed in 2021. Based on past results, it is anticipated that Tier II credits will continue to be over-subscribed and there will likely be more of these credits created in any given year than are needed to meet the annual requirements to and including the 2021 reporting year."[22]

Table 6 in the Report also indicates that the Tier 1 credits created in 2011 were greater than 95% of the estimated 2021 requirement for Tier 1 credits. Met-Ed, Penelec, and Penn Power, under plans approved by the Commission, will have contracts in place before December 2013 to procure 346,000 solar RECs, an amount adequate to supply 40% of the Solar RECs estimated to be required for the service area load of those Companies through 2021.

The Commission asserts that the EDC or DSP's procurement of AEPs requirements would facilitate successful capacity build out and thereby ensure AEPS percentage goals are

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[21] Pennsylvania Public Utility Commission 2011 Annual Report, Annual Energy Portfolio Standards Act of 2004, p. ii.
[22] *Id.* at 11.

reached.[23] However, the Commission's own 2011 AEPS Annual Report supports the notion that the obligation of EGSs and default service suppliers to provide AECs to meet the AEPS requirements can be met through capacity that is either currently available or in the process of being built. As such, after the expiration of the upcoming default service plans on May 31, 2015, there will no longer be a need for EDCs to procure contracts on a long-term basis in order to support development, or to file a separate procurement plan for AECs in support of such procurements, since the existing construct is performing as expected. Should circumstances change, the Companies propose that this issue be revisited at that time, with the party recommending the purchase of additional long-term AEC contracts bearing the burden of proof that, absent long-term EDC procurements, there will be inadequate AECs to meet the mandates of Pennsylvania's AEPS legislation.

### L. Statewide Consumer Education Campaign

The Commission has proposed a statewide consumer education campaign to launch by June 2014, primarily targeted to residential and small commercial customers, and estimated to cost approximately $5 million a year for at least three years.[24] The funding of the consumer education campaign is proposed to be a "fair share" approach, whereby EGSs will generally be responsible for the percentage of costs equivalent to the percentage of non-shopping customers, with the remainder to be recovered from residential and small commercial customers.

The "fair share" approach involves nuances such as the frequency with which the shopping percentage allocator is updated, as well as whether EGSs currently participating in the Pennsylvania market will subsidize EGS participation that occurs after the cost collection is completed. Therefore, the Commission should consider the collection of all consumer education

[23] Tentative Order at 37.
[24] Tentative Order at 37-38.

costs from customers as the cleanest and easiest to administer in order to avoid the complexities associated with determining how, what and when to charge EGSs for funding. This also provides consistency with how consumer education costs regarding the benefits of electric shopping have traditionally been funded in Pennsylvania. Regardless of the ultimate Commission decision, EDCs must be entitled to full and timely cost recovery for any consumer education costs they incur, with collection through existing consumer education riders or other mechanisms as deemed appropriate by the Commission.

### M. Regulatory Costs and Assessments

The Commission believes a more appropriate approach to funding Commission costs associated with the provision of electric service would be to: 1) charge an annual EGS licensing fee; and 2) permit EDCs to recover regulatory expenses associated with electric industry assessments through an automatic surcharge mechanism such as that which is available for the recovery of taxes.[25] The Companies agree with the Commission's recommendations to permit EDCs to fully and more fairly recover assessment costs resulting from the expenses incurred by the Commission to regulate the electric industry. The Companies take no position as to the level of fees to be assessed to EGSs or the mechanism through which they should be applied.

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[25] Tentative Order at 40-42.

## III. CONCLUSION

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company appreciate the opportunity to provide comments on the Tentative Order, and request that the Commission consider these comments in its development of a Final Order in this matter.

Respectfully submitted,

Dated: December 10, 2012

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**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---|
| **Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan** | : | **Docket No. I-2011-2237952** |

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by first class mail and electronic mail, as follows:

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Dated: December 10, 2012

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