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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: A-00111016 Application of Consolidated Rail Corporation For the abolition of 31 crossings of the Enola Branch, LC: 201323, MP 3.5 to MP 27.0, Sub. No. 1095X, Harrisburg Division, Lancaster County. Further Prehearing Conference.

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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: A-00111016 Application of Consolidated Rail Corporation For the abolition of 31 crossings of the Enola Branch, LC:201323, MP 3.5 to MP 27.0, Sub. No. 1095X, Harrisburg Division, Lancaster County. Further Prehearing Conference.

Stenographic Report of hearing
held in Hearing Room 3,
Harrisburg, Pennsylvania

Wednesday,
June 14, 1995
at 10:25 o'clock a.m.

BEFORE

LOUIS G. COCHERES, ADMINISTRATIVE LAW JUDGE

APPEARANCES:

DAVID C. EATON, ESQUIRE
P.O. Box 840
Harrisburg, Pennsylvania, 17108
Appearing on behalf of Conrail

DAVID A. SALAPA, ESQUIRE
P.O. Box 3265
Harrisburg, Pennsylvania 17105
Appearing on behalf of Pa. PUC Bureau of
Transportation & Safety

1 APPEARANCES (Continued):

- 2 KENNETH ZIELONIS, ESQUIRE
STEVENS & LEE, P.C.
3 Suite 310, 208 North Third Street
Harrisburg, Pennsylvania 17108
4 Appearing on behalf of Lancaster County
- 5 SUSAN J. SMITH, ESQUIRE
SCOTT T. WYLAND, ESQUIRE
6 MALATESTA, HAWKE & MCKEON
P.O. Box 1778
7 Harrisburg, Pennsylvania 17110
Appearing on behalf of Sadsbury, Providence,
8 Martic and Conestoga Townships
- 9 GINA M. D'ALFONSO, ESQUIRE
513 Transportation & Safety Building
10 Harrisburg, Pennsylvania 17120
Appearing on behalf of Commonwealth of PA -
11 Department of Transportation
- 12 FRANK PEIFFER
IVAN K. SILVERHORN
13 204 Cakewoods Drive
Pequea, Pennsylvania 17565
14 Appearing on behalf of Martic Township
- 15 MARTHA R. SMITH, ESQUIRE
9th Floor, RCSOB P.O. Box 8464
16 Harrisburg, Pennsylvania 17105
Appearing on behalf of Commonwealth of PA -
17 DER
- 18 KENELM SHIRK, ESQUIRE
115 South State Street
19 Ephrata, Pennsylvania 17522
Appearing on behalf of Bart Township
- 20 KATHIE SHIRK GONICK, ESQUIRE
21 P.O. Box 1552
Lancaster, Pennsylvania 17608
22 Appearing on behalf of Quarryville Borough and
Authority
- 23 MELVIN E. NEWCOMER
24 P.O. BOX 539
Lancaster, Pennsylvania 17608
25 Appearing on behalf of Providence Township

1 APPEARANCES (Continued):

2 WILLIAM R. KEEN
One Bonnesville Road
3 Downingtown, Pennsylvania 19335
Appearing on behalf of West Salsbury Township

4 JOHN S. HALSTED
5 KATE CONNOR-BARAND
Chester County Courthouse
6 Market Street, Suite 7
West Chester, Pennsylvania 19380
7 Appearing on behalf of Chester County

8 DENNIS MOORE, ESQUIRE
RICHARD COOPER
9 BOB VERHELLE
JAMES McCOLE
10 60 Massachusetts Avenue, N.E.
Washington, D.C. 20002
11 Appearing on behalf of Amtrak

12 JOYCE NETTKE, ESQUIRE
P.O. Box 27
13 Strasburg, Pennsylvania 17579
Appearing on behalf of FAST

14 DOUGLAS BROSSMAN, ESQUIRE
15 LARRY KEATING
P.O. Box 3001
16 Lancaster, Pennsylvania 17604
Appearing on behalf of FAST

17 DANIEL MYLAND
18 300 St. Catherine Street
Quarryville, Pennsylvania 17566
19 Appearing on behalf of Quarryville Borough and
20 Authority

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22 HOLBERT ASSOCIATES
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23 Harrisburg, Pennsylvania 17112

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(717) 540-9669

1 JUDGE COCHERES: Good morning, ladies and gentlemen.
2 As I said earlier, I want to thank you for your patience in
3 getting this conference call started. We're here today for
4 a further prehearing conference in the matter of the
5 Application of Consolidated Rail Corporation at Commission
6 Docket Number A-00111016. Since the last meeting that we
7 had, I know that you folks had at least two settlement
8 conferences, and I appreciate the cooperation that you have
9 shown thusfar.

10 Prior to my coming into today's conference, I did
11 review my prehearing order and noted that I had promised
12 that we would give some consideration particularly to
13 scheduling. Before I do that, I'm going -- since this is
14 partially by phone and I have several parties on the line,
15 I'm going to go through the list of names that I have, ask
16 you to identify yourselves and for the benefit of the Court
17 Reporter, I'll ask you to give a brief business address as
18 well. The first name on my list -- the first name on my
19 list is Mr. Shirk.

20 MR. SHIRK: Yes, I'm here, 115 South State Street,
21 Ephrata 17522.

22 JUDGE COCHERES: And who do you represent, sir?

23 MR. SHIRK: Bart Township.

24 JUDGE COCHERES: And the next name on my list is Ms.
25 Shirk Gonick.

1 MS. GONICK: Yes, P.O. Box 1552, Lancaster,
2 Pennsylvania 17608-1552, and we represent Quarryville
3 Borough and Authority.

4 JUDGE COCHERES: Mr. Newcomer?

5 MR. NEWCOMER: Yes, Your Honor, Post Office Box 539,
6 Lancaster 17608-0539, and I represent Providence Township in
7 conjunction with Scott Wyland.

8 JUDGE COCHERES: Mr. Keen?

9 MR. KEEN: Yes, Your Honor, One Bonnesville Road,
10 Downingtown, PA 19335, and I represent West Salsbury
11 Township.

12 JUDGE COCHERES: Mr. Halsted?

13 MS. CONNOR-BARAND: I'm here for Mr. Halsted. Oh, no,
14 I'm not. Go ahead.

15 JUDGE COCHERES: If that happened to be Kate
16 Connor-Barand, I have you listed here for Chester County.

17 MS. CONNOR-BARAND: Yes, Market Street, Chester County
18 Courthouse, Suite 7, West Chester, PA 19380.

19 JUDGE COCHERES: And for the benefit of me and my
20 Court Reporter, would you spell your last name for me.

21 MS. CONNOR-BARAND: C-o-n-n-o-r-B-a-r-a-n-d.

22 JUDGE COCHERES: Thank you.

23 MS. CONNOR-BARAND: You're welcome.

24 JUDGE COCHERES: Mr. Moore?

25 MR. MOORE: Yes, Dennis Moore, M-o-o-r-e for Amtrak

1 and our address in Washington D.C. Is it 60 Massachusetts
2 Avenue, N.E. and the zip code is 20001 -- rather 2, sorry.

3 JUDGE COCHERES: Do you want to start that again?

4 MR. MOORE: It's 50 Massachusetts Avenue, N.E.
5 Washington D.C. 20002.

6 JUDGE COCHERES: Ms. Nettke?

7 MS. NETTKE: Yes, Joyce Nettke here representing
8 Friends of the Susquehanna Trail, P.O. Box 27, Strasburg,
9 S-t-r-a-s-b-u-r-g 17579. Also with me are two other
10 attorneys on our legal committee. I'll ask them to give
11 their information.

12 MR. BROSSMAN: Douglas Brossman, B-r-o-s-s-m-a-n, P.O.
13 Box 3001, Lancaster 17604.

14 MR. KEATING: Larry Keating, K-e-a-t-i-n-g, also P.O.
15 Box 3001, Lancaster 17604.

16 JUDGE COCHERES: I believe I have Mr. Myland on the
17 phone.

18 MR. MYLAND: Yes, Daniel Myland representing
19 Quarryville Borough and Quarryville Borough Authority at 300
20 Saint Catherine Street, Quarryville, Pennsylvania 17566.

21 JUDGE COCHERES: Now, briefly, I should indicate for
22 the record that Ms. Pulmoski from Lancaster County was on
23 the line with us. She had attended the previous prehearing.
24 She yielded her place in line to counsel for Lancaster
25 County who's Mr. Zielonis who is with us here today in the

1 Courtroom. Now, is there anyone on the telephone lines that
2 I missed?

3 MR. MOORE: Yes, Your Honor, this is Dennis Moore and
4 there are three people with me on the conference call who
5 are not counsel but who may participate in the call or
6 advise me through the proceeding and they are Richard
7 Cooper, C-o-o-p-e-r, Bob Verhelle, V-e-r-h-e-l-l-e and James
8 McCole, M-c-C-o-l-e.

9 JUDGE COCHERES: All right. Well, I want to thank you
10 very much. And I do want you folks on the telephone to
11 realize that every time you speak up, I'm going to have to
12 insist that you give us your name so we know the name of the
13 speaker for our benefit as well as the Court Reporter's.

14 MS. GONICK: Your Honor, this is Kathie Shirk Gonick,
15 Mr. Myland is the Borough Manager, excuse me, for
16 Quarryville Borough.

17 JUDGE COCHERES: Yes, he had told us that earlier when
18 we were off the record and I certainly appreciate that. All
19 right. First I think I'm going to deal with Ms. Nettke and
20 ask her what success she was able to have with the various
21 settlement conferences that she went to because I'm sure she
22 went to almost all of them.

23 MS. NETTKE: Yes, Your Honor. With regard to the
24 various crossings on the line, I think I can state that we
25 made some progress in every Township. We had at the last

1 conference given a proposal to the Townships that we're
2 working on. That proposal would consist of FAST providing a
3 sum of money which would be put into a trust fund to protect
4 a secondary party who would agree to pay secondary
5 maintenance of structures on the line. We're still working
6 on the details of that.

7 We hired trust counsel from Lancaster, Dan Herr, who
8 has been working with us on what a trust document of that
9 nature ought to contain. The way we're looking at setting
10 it up is that we would put its own money into either a
11 foundation or a bank. There has been considerable
12 discussion also with a local foundation which is a credible
13 organization and has been in Lancaster County since 1924.
14 They have worked with a lot of non-profit projects. They
15 have gotten back to us and said they are very strongly
16 interested in working with us on this. Their attorney is
17 looking into it right now as to how we would structure it to
18 satisfy everyone. But it looks extremely promising.

19 There is another option that we just begun to look
20 into which is the possibility that we might be able to buy
21 insurance to protect a secondary party in the event a bridge
22 had to be taken down. If I can explain it as I understand
23 it, we would buy a special policy which would be like a
24 specialty policy. We -- I'm not sure what the premiums
25 would be. We'd have to find that out. We only just looked

1 into this. That's another possible option. We haven't
2 gotten the chance to go to the Township with that yet
3 because we just finished finding out that it might be
4 feasible and it might be something we can do.

5 In terms of the conversations with the Townships,
6 we've talked to all the Township counsel. We're at slightly
7 different points on different areas on different bridges and
8 with the different Townships. But later on when we go
9 bridge by bridge, we can let you know that there are some
10 that are agreed on. There are some that are agreed on as
11 far as the bridge remaining. But we're not yet sure who
12 might want to take secondary responsibility.

13 To be up front, Your Honor, I'd have to say that we
14 don't have any signed stipulations or any signed agreements
15 at this point. I feel we made a lot of progress. This is
16 so complicated. What I'm asking for today early on on
17 behalf of FAST is that since we are making progress and
18 we've begun to explore all of these, we really need more
19 time to do this. We're hoping that you will see fit to
20 perhaps schedule another pretrial at some point after a
21 couple of months rather than go precipitously into hearings
22 when we have really a good chance of working things out we
23 feel.

24 There are some tough sticking points. There are some
25 bridges where we don't have agreements. We're not sure what

1 all the parties are going to say, but we're going to be
2 asking for more time.

3 JUDGE COCHERES: All right. I appreciate your
4 position and I think perhaps I want to hear from a few other
5 parties before making any sort of decision. It seems to me
6 that the Applicant here should have some say in this. Mr.
7 Eaton, have you participated in these settlement
8 conferences?

9 MR. EATON: I have participated in each of the two
10 conferences that have been held and in some additional
11 consultations.

12 JUDGE COCHERES: Please understand I'm not
13 particularly interested in hearing much more of the details
14 of the settlement conference. I really do believe that
15 those should be pretty much off the record. But I am
16 interested in your evaluation of the progress and your
17 concern for the progress of this application.

18 MR. EATON: There has been I would say some measurable
19 progress with respect to the municipalities thusfar. There
20 has been a pretty general agreement between Conrail and FAST
21 as to the direction that both would like to see this take.

22 There has not yet been determined the amount of money
23 that will have to be made available, nor the source of that
24 money in order to support FAST's future progress and in
25 order to support the guarantee of future removal of bridges

1 that are permitted to stay on an interim basis. I do feel
2 that there has been progress in that direction and that
3 additional time would be useful in allowing us to work that
4 out the full distance if that is possible. I would think by
5 some time in the early fall we would know definitely whether
6 something is possible or whether we simply still can't come
7 to an agreement and have to go to hearing and be determined
8 by a third party.

9 JUDGE COCHERES: Mr. Salapa, what do you think?

10 MR. SALAPA: Well, having only been to the two
11 settlement conferences, I don't know what has taken place
12 outside of those, I don't know that there are any agreements
13 on any of the structures. I think there are some possible
14 compromises, but I don't know that there are any agreements
15 on any of them that are concrete at this point.

16 I don't know whether it's useful to have another
17 prehearing conference or not. I mean, I don't know what is
18 taking place between Conrail and the various Townships and
19 FAST and the various Townships so I don't know. Other than
20 what I heard, there did not seem to be anything concrete
21 that came out of either prehearing conferences. As I
22 believe Ms. Nettke and Mr. Eaton have stated there was some
23 possibly broad proposals put on the table. But where they
24 have gone and where they are at this point, I don't know.

25 JUDGE COCHERES: Is there anyone else either on the

1 telephone line or in the Courtroom with me that wishes to be
2 heard on these subjects?

3 MR. WYLAND: Yes, Your Honor.

4 JUDGE COCHERES: Mr. Wyland?

5 MR. WYLAND: Thank you. As you know, Your Honor, I
6 represent four of the townships that are involved here
7 Sadsbury, Providence, Conestoga and Martic Townships. I
8 wanted to correct perhaps an impression left by Ms. Nettke
9 and agree with the characterization of Mr. Salapa that while
10 FAST has presented some proposals, the townships at least
11 that we represent have come to no agreements on any of the
12 crossing with the parties.

13 These proposals that Ms. Nettke spoke about were
14 proposals put forth by FAST. And I want to make clear they
15 have not been accepted by the Townships.

16 JUDGE COCHERES: Well, counselor, I think Ms. Nettke
17 did make it clear that there were no agreements. She
18 presented it a little more positive like then you are but
19 she did also make it clear that there are no agreements.

20 MR. WYLAND: Okay. I just want to make that clear. I
21 didn't want to leave the impression that there were some
22 sort of agreements informal or otherwise with the Townships.

23 MR. NEWCOMER: Scott, you're fading on us. Could you
24 get a little closer to the phone please.

25 MR. SHIRK: Yeah, we can't hear him.

1 JUDGE COCHERES: That will be a problem. And it is a
2 problem that is involved in the fact that Mr. Wyland was in
3 a conversational tone of voice was actually dropping his
4 voice towards the end of the sentence. But essentially, he
5 made it perfectly clear on behalf of his clients that there
6 was no actual agreement to the proposals outlined by Ms.
7 Nettke. And I don't think that there was any embellishment
8 necessary beyond that point. All right. Is there anyone
9 else who wishes to speak on that particular subject? Mr.
10 Zielonis?

11 MR. ZIELONIS: This is Ken Zielonis on behalf of the
12 County of Lancaster. Your Honor, I believe in the last
13 prehearing conference held in this case --

14 JUDGE COCHERES: Speak up, Mr. Zielonis.

15 MR. ZIELONIS: Some of the matters that were discussed
16 at the previous settlement conferences concern the County's
17 position on taking a -- acting as secondary guarantor for
18 liability on the line. The County has determined it will
19 not act as the secondary guarantor of liability for the
20 line. In my opinion, Your Honor, in terms of a prehearing
21 or hearing, I would suggest that hearings be scheduled
22 because there is nothing like a hearing to move the parties
23 closer to stipulation and settlement.

24 JUDGE COCHERES: Yes, Judges have learned that early
25 in their careers. Is there anyone else that wishes to be

1 heard on that issue?

2 MR. KEATING: Your Honor, this is Larry Keating. We
3 understand the County's position, but it's worth
4 understanding that the -- two thirds of the County
5 Commissioners will not be there in January and the position
6 very well could change. We, of course, don't know that.
7 But there -- so it seems all the more precipitous that we
8 would rush ahead at this point when the County's position is
9 very influential as to the result here.

10 JUDGE COCHERES: Well, Mr. Keating, you do not have
11 the benefit of having been to the first prehearing
12 conference where I explained that this application has been
13 somewhat leisurely before the Commission and we were going
14 to go a little faster before me. And I don't think we're
15 going to wait until the November elections before scheduling
16 hearings. I understand that elections are pending, and I'm
17 glad that you know that at least one of your County
18 Commissioners will be back. But at least at this point I'm
19 not willing to wait for the outcome. Are there any other
20 comments?

21 (No response.)

22 JUDGE COCHERES: All right. I'm just going to leave
23 that issue aside for a moment. I will come back to it. And
24 I want to move onto Mr. Eaton who in the interim has amended
25 his application and was investigating the need to add other

1 utilities. And he did provide a brief off-the-record report
2 while we were waiting for these connections to be made. I
3 think, Mr. Eaton, these things should be on the record.

4 MR. EATON: A corrected notice of hearing adding
5 Chester County and West Salsbury Township was filed about
6 May 5th. We since learned at the last settlement conference
7 of three additional utilities which may have an interest in
8 one or more of the crossings that are involved in this
9 application. They are Suburban Cable Company of Lancaster,
10 Quarryville Water Authority and Coatesville Water Authority.

11 Now, I understand Quarryville Water Authority is being
12 represented on the record today by Ms. Gonick. The others
13 have probably not yet received notice of this meeting and
14 for that, I bear responsibility. However, they have been
15 notified by telephone yesterday that they were being added
16 as parties to the proceeding.

17 JUDGE COCHERES: Thank you, Mr. Eaton. I am concerned
18 that these parties should have a full procedural right to
19 participate. And with that in mind, I think it is necessary
20 for you to serve the application on all three of them and
21 for us to make sure that they have been properly served
22 before we can proceed further.

23 MR. EATON: Excuse me, I didn't go far enough.

24 JUDGE COCHERES: All right.

25 MR. EATON: Service was made upon those three parties

1 by mail yesterday with copies of the original application as
2 amended.

3 JUDGE COCHERES: And I would hope that you have filed
4 certificates of service with the Commission.

5 MR. EATON: A copy of the application and certificates
6 were mailed to the Commission last evening.

7 JUDGE COCHERES: Fine. Good. This is a rather
8 complex proceeding just by the nature of the number of
9 crossings. And I certainly want to make sure we have
10 everybody on board before we finally go to hearing here.
11 That brings me to the third item on my agenda which is the
12 scheduling of hearing dates.

13 And I'm going to follow Ms. Nettke's suggestion and
14 Mr. Eaton's suggestion that hearings be continued a little
15 longer because I think that the parties should have the
16 opportunity to participate in comprehensive settlement
17 discussions and because I want to make sure that the three
18 parties just mentioned by Mr. Eaton are procedurally on
19 board before we go further.

20 I might also add Mr. Eaton did not discuss Amtrak
21 which has been added procedurally as a party and which he
22 did by service of the application. And I know I received
23 copies in my office. And they are, in fact, part of this
24 conference call today. And certainly in the settlement
25 discussions, I am most concerned because as the parties made

1 me aware during -- on the record last time, Amtrak has
2 substantial facilities that still are in the right-of-way of
3 the line that is proposed for abandonment.

4 MR. MOORE: That's correct, Your Honor. This is
5 Dennis Moore from Amtrak.

6 JUDGE COCHERES: And I want you to know, Mr. Moore,
7 that we are very concerned about the safety of the public
8 around those facilities at the various crossings. And it is
9 a subject that I am going to be most concerned about in any
10 settlement or continued hearing in this matter.

11 At least at this point I think the best thing to do
12 would be for me to schedule another prehearing conference.
13 And we can do it in this format, I hope it's a little more
14 efficient in terms of getting people hooked up. But on the
15 other hand, I think it's more successful if we do it this
16 way. And I think we'd be best to do that off the record in
17 a moment.

18 The other subject that I want to discuss is whether
19 the parties perceive a need for me to schedule other
20 settlement conferences. I have no problem doing that on the
21 one hand. On the other hand, I think that this is the kind
22 of case that the parties can, in fact, meet on their own in
23 small subgroups by municipality probably and by utility and
24 make progress. And I certainly don't want to be responsible
25 at this point for setting up 15 different settlement

1 conferences just to make sure they all happen. I have
2 enough confidence that you can do that. So I want to
3 discuss both of those subjects off the record, and we'll do
4 that right now.

5 (Discussion off the record.)

6 JUDGE COCHERES: During our off the record discussion,
7 the parties were able to persuade me that they needed most
8 of the summer to consummate their settlement negotiations.
9 August 29th has been identified as a prehearing conference
10 date. At which time the sole purpose of that conference
11 will be to schedule hearings.

12 I might add that consistent with comments we made
13 about the availability of mediation for this case, any
14 request to submit this case to alternate dispute resolution
15 must be received before that prehearing conference. If the
16 parties reach an impasse that they believe would be best
17 served through the use of mediation, I don't want to know at
18 the conference, and I don't want to know the day before.

19 As far as I'm concerned, the sole purpose of the
20 August 29th prehearing conference will be to set hearing
21 dates. So I would expect all of the parties to attend and
22 bring their calendars with them or more favorably to inform
23 me that we have a total or partial settlement. And I see
24 nothing wrong with having a partial settlement. And it can
25 be by crossing, it can be by utility, it can be by

1 municipality. I don't care how we're going to do it.

2 I would also tell you that I think the suggestion made
3 by Mr. Salapa I believe at the last prehearing conference
4 that we schedule two days of hearings is a good one. I
5 believe it was Providence Township that has a significant
6 number of crossings within their municipal boundaries. That
7 would be one day. And everybody else would be on the other
8 day. And in any event, those days will be back-to-back, and
9 I expect you to have your calendars available for that
10 purpose. Does anyone have any question or further comment?

11 MR. SHIRK: Your Honor, this is Ken Shirk, Bart
12 Township. I just recall that when we did the Lamparter
13 Crossing, it took two days just for that one crossing. And
14 I'm just concerned that two days isn't going to be enough
15 trial time.

16 JUDGE COCHERES: Well, I was reassured at the
17 prehearing conference we held earlier that two days would be
18 enough time with the caveat that we might need an additional
19 day. I'm certainly amenable to that, but I -- and for that
20 matter, we can schedule three days in a row. I have no
21 problem with that. That's often done. And we can cancel
22 the third day if we need to or go from there. I will have
23 some flexibility on those days. Is there anyone else who
24 wishes to make a comment?

25 MR. EATON: What hour? Ten?

1 JUDGE COCHERES: Yes, usual prehearing conferences
2 held at 10:00. I will also ask that the scheduling staff
3 continue the current format and have telephone conference
4 available for those people who are not in the Harrisburg
5 area. To that end, I want to thank you all for your
6 cooperation. I do think that the comments I heard about the
7 settlements are encouraging. And I do wish you very good
8 luck in putting together a package that can resolve this
9 case amicably. Thank you all for coming. With that, I'm
10 going to try to sever the telephone connection.

11 (Whereupon, at 11:13 a.m., the hearing adjourned.)

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1 I hereby certify that the proceedings and evidence
2 are contained fully and accurately in the notes taken by me
3 during the hearing of the within cause, and that this is a
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