

331 Shady Ridge Drive  
Monroeville, Pennsylvania

March 16, 2019

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

*Via Paper Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

RE: **Michele Hriadil and Francis Hriadil v. Duquesne Light Company**  
Docket No. C-2016-2571726

Dear Secretary Chiavetta:

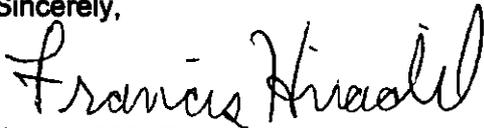
Enclosed please find a copy of Complainants'

Answer to  
Respondent's Reply to  
Complainants' Response to Respondent's Motion in Limine  
to Bar Complainants from Introducing or Relying Upon  
Inadmissible Evidence

A copy of this document has been served upon the Judge Jeffrey Watson, Presiding PA PUC Pittsburgh Administrative Law Judge, and the Respondent's Counsel, Jeremy V Farrell, Esquire, in accordance with Commission regulations.

Please feel free to contact me if you have any questions.

Sincerely,



Francis Hriadil  
Complainant  
(412) 779-3314  
hriadil@attglobal.net

Enclosure

Cc: Judge Jeffrey Watson, Presiding PA PUC Pittsburgh Administrative Law Judge

Cc: Jeremy V Farrell, Esquire, Counsel for Duquesne Light Company

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Michele Hriadil and  
Francis Hriadil,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2571726

**ANSWER TO  
RESPONDENT'S REPLY TO  
RESPONSE TO  
RESPONDENT'S  
MOTION IN LIMINE TO BAR  
COMPLAINANTS FROM  
INTRODUCING OR RELYING UPON  
INADMISSIBLE EVIDENCE**

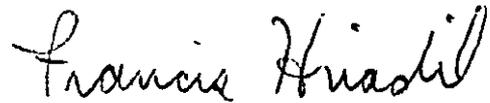
Filed by Michele and Francis Hriadil

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(412) 779-3314  
331 Shady Ridge Drive  
Monroeville, Pennsylvania

**ANSWER TO RESPONDENT'S REPLY TO  
RESPONSE TO RESPONDENT'S  
MOTION IN LIMINE TO BAR COMPLAINANTS  
FROM INTRODUCING OR RELYING UPON INADMISSIBLE EVIDENCE**

TO: THE HONORABLE ALJ JEFFREY A. WATSON

ENCLOSED IS COMPLAINANTS' ANSWER TO RESPONDENT'S REPLY...



Francis Hriadil  
March 16, 2019

BEFORE THE  
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No: C-2016-2571726

**ANSWER TO RESPONDENT'S REPLY TO  
RESPONSE TO RESPONDENT'S  
MOTION IN LIMINE TO BAR COMPLAINANTS  
FROM INTRODUCING OR RELYING UPON INADMISSIBLE EVIDENCE**

TO THE HONORABLE ALJ Jeffrey A. Watson:

1. Complainants'

July 6, 2018 Response to Motion for Summary Judgment,

February 21, 2019 Response to Respondent's Motion in Limine to Bar  
Complainants From Introducing or Relying Upon Inadmissible  
Evidence,

and

all of our other prior document filings, Supporting Documents, and  
Exhibits,

are incorporated here-in by reference as if fully restated.

2. In its March 4, 2019 Reply ..., the Respondent simply makes / restates the arguments it presented in its February 1, 2019 Motion for Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence and its June 4, 2018 Motion for Summary Judgment (which was denied *in toto*). Its Reply ... offers no new or compelling argument in support of its Motion in Limine ....

3. In its Reply ..., the Respondent attempts to argue / re-argue four (4) points:
- (1) The denial of Duquesne Light's Motion for Summary Judgment has no bearing on its Motion in Limine.
  - (2) Records from non-Commission proceedings to which Duquesne Light was not a party must be barred under the plain language of Commission regulations.
  - (3) Articles or documents that do not address Duquesne Light or its smart meter program are irrelevant because they do not make it more or less likely that Duquesne Light has violated the Code, its associated regulations, or the Company's tariff.
  - (4) Articles or documents drafted by individuals who will not testify at the hearing are hearsay and are unreliable because Duquesne Light cannot cross-examine the author and thus cannot test the reliability of the evidence.

Complainants will address each in turn. Complainants will try to keep our responses brief, concise, and to the point.

- (1) The denial of Duquesne Light's Motion for Summary Judgment has no bearing on its Motion in Limine.

4. The Respondent states:

"A motion for summary judgment and a motion in limine are two different things used for two different purposes. The former seeks to dismiss a case on the basis that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law; the latter seeks to exclude certain evidence at the hearing."

The Respondent made its arguments purporting the irrelevance and inadmissibility of the Complainants' evidentiary documentation provided in Discovery, and verified per 52 Pa. Code S 1.36, in its June 4, 2018 Motion for Summary Judgment. In its February 1, 2019 Motion in Limine ..., the Respondent makes the exact same arguments again purporting the irrelevance and inadmissibility of the Complainants' evidentiary documentation provided in Discovery, and verified per 52 Pa. Code S 1.36. In both Motions, the Respondent makes the exact same arguments to disregard / discard / narrow this evidentiary documentation toward the same end. It is immaterial whether this argument is entitled Motion for Summary Judgment or Motion in Limine .... The motion that was made in the substance of Respondent's Motion

for Summary Judgment was more than just a request for summary judgment. **The substance of that motion was two-fold: to either dismiss or narrow (emphasis added) the Complainants' Formal Complaint and evidentiary documentation.**

5. In Section V. Conclusion of its Motion for Summary Judgment, the Respondent specifically motions for the following:

“... Accordingly, Duquesne Light’s Motion for Summary Judgment should be granted and the Formal Complaint dismissed in its entirety with prejudice.

Alternatively, if the Motion for Summary Judgment is not granted in full, Duquesne Light respectfully requests that the Presiding Administrative Law Judge grant the Company’s Motion for Summary Judgment and dismiss all parts of Complainants’ claims found to be legally deficient so that **the hearing is appropriately narrowed** to only to the cognizable, disputed issues (of which Duquesne Light submits there are none, making dismissal in full appropriate).” (pages 21, 22). **(emphasis added)**

So, though not listed in the title of the document, in addition to requesting a summary judgment in its favor, the Respondent extensively argued and specifically requested that Your Honor disregard / discard / narrow the Complainants’ Formal Complaint and evidentiary documentation provided in Discovery, and verified per 52 Pa. Code S 1.36.

6. You Honor denied both requests / motions in Respondent’s Motion for Summary Judgment in toto in Your November 30, 2018 Interim Order Denying Motion for Summary Judgment Filed by Duquesne Light Company. The Respondent’s February 1, 2019 Motion in Limine ... is nothing other than a second attempt to narrow the Complainants’ Formal Complaint and evidentiary documentation, making the exact same arguments again about irrelevancy, inadmissibility, and hearsay. Complainants aver that the Respondent’s arguments have already been made and denied, and to allow the Respondent to revisit these arguments through a second “Same Motion Intent by Another Name” is unfair and prejudicial against the Complainants.

**(2) Records from non-Commission proceedings to which Duquesne Light was not a party must be barred under the plain language of Commission regulations.**

7. Again, the Respondent is revisiting the irrelevancy, inadmissibility, and hearsay arguments it made in its June 4, 2018 Motion for Summary Judgment (which included its added request to disregard / discard / narrow the Complainants' Formal Complainant and evidentiary documentation), which was denied *in toto*.

8. As stated in Complainants' February 21, 2019 Response to Respondent's Motion in Limine ..., the specific written and video evidentiary documentation from non-Commission proceedings that the Respondent refers to, that were provided by the Complainants in Discovery and verified per 52 Pa. Code S 1.36, consist of public governmental records. They have either been accepted into evidence in prior judicial court cases, public hearings, etc. by various commissions (including the PA PUC), legislatures, and or congressional committees, etc. or fall within the admissibility guidelines established by:

Title 66, Part I. Pa. Public Utility Code

66 Pa. Chapter 3, Subchapter B. Investigations and Hearings

66 Pa. C.S. § 332 (b) - Admissibility of evidence

66 Pa. C.S. § 332 (c) - Submission of evidence

Federal Rules of Evidence: 801-03, 901

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

Rule 901. Requirement of Authentication or Identification

52 Pa. Chapter 5, Subsection E., Evidence and Witnesses

Section § 5.401 - Admissibility of evidence

Section § 5.406 - Public documents.

Section § 5.407 - Records of other proceedings.

1 Pa. Code § 35.167 - Records in Other Proceedings

and, Pa. Code Title 225 - Rules of Evidence.

They have all been fully reviewed, sourced, vetted, and referenced, and provide a body of foundational facts providing corroboration to testimony to be provided by Complainants' expert witnesses.

9. In particular, PA Code Section § 5.406, Public Documents, permits the admission of these public documents, and specifically states:

52 Pa. Chapter 5, Subchapter E. Evidence and Witnesses; Section § 5.406 Public Documents

- (a) A report, decision, opinion or other document or part thereof, need not be produced or marked for identification, but **may be offered in evidence as a public document by specifying the document or part thereof** and where it may be found, if the document is one of the following:
- (1) A report or other document on file with the Commission.
  - (2) **An official report, decision, opinion, published scientific or economic statistical data or similar public document which is issued by a governmental department, agency, committee, commission or similar entity which is shown by the offeror to be reasonably available to the public.**

**(emphasis added)**

10. Further, there is no evidentiary requirement that the the Respondent had to be a party to any of these proceedings.

- (3) Articles or documents that do not address Duquesne Light or its smart meter program are irrelevant because they do not make it more or less likely that Duquesne Light has violated the Code, its associated regulations, or the Company's tariff.

11. Again, the Respondent is revisiting the irrelevancy, inadmissibility, and hearsay arguments it made in its June 4, 2018 Motion for Summary Judgment (which included its added request to disregard / discard / narrow the Complainants' Formal Complainant and evidentiary documentation), which was denied *in toto*.

12. The Respondent asserts this contention again in its February 1, 2019 Motion for Limine to Bar Complainants From Introducing or Relying Upon Inadmissable Evidence and again in its March 4, 2019 Reply to Response to Respondent's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissable Evidence.

13. The Complainants addressed this assertion in our February 21, 2019 Response to Respondent's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence (See paragraphs 8. - 19., pages 6 - 10), as well as in our July 6, 2018 Response to Motion for Summary Judgment. For brevity's sake, Complainants will not repeat our arguments here, and refer Your Honor to those documents. It will suffice to state here that the Respondent has not made its case for this assertion, whereas the Complainants have more than made our case for the relevancy and admissibility of our evidentiary documentation, and the commonality of the Respondent's Smart Meter in its Smart Mesh, which is fundamentally the same as devices and systems used elsewhere. The Respondent has never provided any evidence substantiating in any way that its Smart Meter in its Smart Mesh is patently unique or exclusive in how it is being constructed and operated, and has provided documentation that it has structured its SK9AMI7 Smart Meter deployment in the same manner as EDCs elsewhere.

14. The body of evidence which supports Complainants' Formal Complaint, and the testimony of its expert witnesses, make the facts to be presented more, not less, probable than would be the case without that evidence. And, those facts are relevant, admissible, and of primary consequence in determining the truth of the matter, and a fair and just outcome for the Complainants. Furthermore, this body of evidence does not violate the United States and PA Constitutions, ..., or other rules prescribed by their Supreme Courts, and the Commission.

15. Also, in its reply, the Respondent blatantly makes the statement:

"Complainants have been given ample opportunity to seek discovery into Duquesne Light's practices and programs, and the evidence they rely upon at the hearing should be restricted to those issues."

Yet the Respondent is fully aware that it refused to provide full and complete answers to a significant portion of Complainants' Interrogatories. Complainants agreed to successive extensions requested by the Respondent to provide the Respondent with all of the time it required to answer the Complainants Discovery Requests. The Discovery interrogatories

submitted by the Complainants were reasonable, not unduly burdensome, and relevant to our complaint. It took a great deal of time for the Complainants to go through the Respondent's confusing responses to fully understand what was provided and not provided. Many responses by the Respondent were not presented in a clear, straightforward manner. There were omissions and requests that were not answered. Complainants found a not insignificant number of deficiencies requiring correction, clarification, and/or resolution. None of this was ever completely resolved to the satisfaction of the Complainants. This defeated the purpose that the Discovery process was intended to serve, prevented the Complainants' from obtaining specific information that could be only obtained from the Respondent, and, as such, harmed the Complainants' effort to prepare its case.

16. To now grant Respondent's Motion in Limine... to summarily dismiss Complainants' relevant and admissible evidentiary documentation would further, and likely irreparably, harm the Complainants' effort to meet its burden of proof.

(4) Articles or documents drafted by individuals who will not testify at the hearing are hearsay and are unreliable because Duquesne Light cannot cross-examine the author and thus cannot test the reliability of the evidence.

17. Again, the Respondent is revisiting the hearsay arguments it made in its June 4, 2018 Motion for Summary Judgment (which included its added request to disregard / discard / narrow the Complainants' Formal Complainant and evidentiary documentation), that Your Honor denied *in toto*.

18. The Complainants addressed this issue in our February 21, 2019 Response to Respondent's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence (See paragraphs 26. - 32., pages 14 - 16), as well as in our July 6, 2018 Response to Motion for Summary Judgment, making reference to the admissibility guidelines established in both Federal and PA Codes (see Section 8., page 5 herein).

19. The Respondent is well aware that, unlike the Respondent, the Complainants are of limited means and resources, and can in no way afford to pay the costs and expenses that would be required to have every independent expert participate in support of their published and public expert views and authoritative reports, analyses, and documents. If it is the view of the Commission that this is necessary, then no complainant can ever possibly receive a fair hearing before the Commission.

20. Additionally, the Complainants wish to note the following specific and applicable exceptions that further justify the admissibility of our evidentiary documentation.

Pa. Code Title 225 - Rules of Evidence allows:

VIII. Hearsay

803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness.

803(4). Statement Made for Medical Diagnosis or Treatment.

803(6). Records of a Regularly Conducted Activity.

803(8). Public Records.

803(16). Statements in Ancient Documents.

21. And on the issue of reliability and authenticity:

Pa. Code Title 225 - Rules of Evidence provides:

IX. Authentication and Identification

901. Authenticating or Identifying Evidence.

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

902. Evidence That is Self-Authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(5) Official Publications. A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) Newspapers and Periodicals. Printed material purporting to be a newspaper or periodical.

Each and every piece of evidentiary documentation supplied by the Complainants has been in the possession of the Respondent for months. The Respondent has not provided any evidence at all impugning the origin, identity, authenticity, or authorship of even one of those documents.

22. The Complainants re-iterate that all of our evidentiary documentation provided to the Respondent have been fully reviewed, sourced, vetted, and referenced, and have been verified per 52 Pa. Code S 1.36. They have either been accepted into evidence in prior judicial court cases, public hearings, etc. by various commissions (including the PA PUC), legislatures, and or congressional committees, etc. or fall within the admissibility guidelines established by both Federal and PA Codes.

23. Finally, in assembling and preparing its evidentiary documentation the Complainants carefully reviewed the rules of evidence in an Administrative hearing before the Commission, and the Commission's officially stated position. As an overview, and beyond what the Complainants have already presented and argued, the Commission has clearly stated the guidelines and requirements that it applies to evidence - what is acceptable / relevant / admissible, and what may be received by the Commission - as follows:

**“As a Commonwealth agency, the Commission is governed by the Commonwealth’s Administrative Agency Law, 2 Pa. C.S. § 101, et seq. Section 505 of the Administrative Agency Law, 2 Pa. C.S. § 505, specifies that a Commonwealth agency is not bound by technical rules of evidence at an agency hearing. Specifically, 2 Pa. C.S. § 505, provides: ‘Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received. ...’ Thus, if the evidence is relevant to the issues before the agency and of reasonable probative value, the agency may receive it. 2 Pa.C.S. § 505. Evidence is relevant if it tends to establish facts in issue. *LeRoi v. Pa.State Civil Service Commission*, 382 A.2d 1260(Pa. Cmwlth.1978).“**  
Reference: (Commission Opinion and Order, C-2015-2474602, *C. Frompovich v. PECO Energy Company*, May 3, 2018)

**(emphasis added)**

Furthermore,

**“Under the relaxed evidentiary standards applicable to administrative proceedings, see 2 Pa. C.S. § 505, it is well-settled that simple hearsay evidence, which otherwise would be inadmissible at a trial, generally may be received into evidence and considered during an administrative proceeding. *D’Alessandro v Pennsylvania State Police*, 937 A.2d 404, 411, 594 Pa. 500, 512 (2007) ‘Alessandro).”**

Reference: (Commission Opinion and Order, C-2015-2474602, *C. Frompovich v. PECO Energy Company*, May 3, 2018)

**(emphasis added)**

These statements cannot be any more clearly stated. They are unambiguous and definitive.

24. The Commission has always had the stated policy that hearsay evidence will be given its natural probative effect and may support a finding of an agency “if it is corroborated by competent evidence in the record.”

#### Summary and Conclusion

25. As already explained in Complainants’ response to Respondent’s Motion for Summary Judgment, the Supreme Court of Pennsylvania Committee on Rules of Evidence has published that “the admissibility of evidence is conditioned upon the proof of foundational facts,” which the Complainants’ evidentiary documentation, along with its expert witnesses, provides.

26. The testimony of Complainants’ expert witnesses, along with the correlative and corroborative body of evidence the Complainants’ intend to submit into evidence, which have been fully and properly served to the Respondent in Discovery, possess substantial probative value and serve as a sound legal foundation for a finding of fact.

27. The body of evidence intended for submission by the Complainants, and served to the Respondent in Discovery, is relevant and material to the matter at hand. It is correlative and corroborative within itself. And, it is correlative and corroborative with and substantiates the testimony to be provided in support of and on behalf of the Complainants at our Hearing. Taken

together with the planned testimony, it presents the preponderance of evidence that Your Honor has stated is required. It provides substantial probative value. It “represents” a danger of “unfair prejudice” only if the foundational facts and the truth also “represent” a danger of “unfair prejudice.” It brings all of the pertinent issues into sharp focus when considering Codes and regulations such as 66 Pa.C.S. § 1501 and 52 Pa. Code § 57.194, etc. And, it does not represent a waste of time on the part of the Commonwealth of Pennsylvania and the PA PUC, who exist to serve the people.

28. In conclusion, the Complainants re-iterate that the body of evidentiary documentation to be submitted by the Complainants, simply listed but not detailed by the Respondent, consists of:

- evidentiary documentation specific to the Itron/Centron OpenWay SK9AMI7 Smart Meter being utilized by Duquense Light Company in its Smart Mesh.
- evidentiary documentation germane to all Smart Meters operating in a Smart Mesh, and with which the Duquesne Light Company shares a high degree of commonality.
- evidentiary documentation from Francis Hriadil’s doctor, Dr. Martin Gallagher, indicating his medical recommendation that Francis Hriadil has clinical conditions which will be exacerbated, at a minimum, by continuous long term exposure to the Smart Meter emissions.
- evidentiary expert reports by Complainants expert witnesses
- evidentiary public documents and records from recognized experts (along with their curriculum vitae), agencies, institutions, etc., both government and private.
- evidentiary peer-reviewed scientific studies and reports.
- evidentiary testimony and exhibits already accepted into evidence in other proceedings before the PA PUC, etc.

Complainants aver, and stand ready to justify, each and every evidentiary document to be submitted into evidence, which has been submitted to the Respondent as part of Discovery, that it and they are admissible, relevant, and material to the Complainants’ Formal Complaint, and the matters at hand.

29. The testimonies to be provided by the Complainants and their independent expert witnesses, in conjunction with the evidentiary documentation Complainants intend

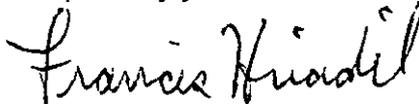
to place into evidence, will definitively establish that this is a matter of direct and detrimental physical and personal consequence to the Complainants, and a matter that is in the public interest, and will definitively provide the preponderance of evidence that You Honor has stated is required.

WHEREFORE, in light of these circumstances, Complainants aver that our evidentiary documentation is relevant and admissible, that the Respondent's claims and arguments to dismiss or narrow the Complainants' Formal Complaint and our evidentiary documentation are without merit, and have already been argued to large degree in Respondent's Motion for Summary Judgment (which also argued to disregard / discard / narrow our evidentiary documentation and our complainant) and been denied.

Complainants Michele Hriadil and Francis Hriadil therefore respectfully request that the Respondent's Motion in Limine to Bar Complainants From Introducing or Relying Upon Inadmissible Evidence be denied.

Complainant's response and Certificate of Service have been filed with the Commission's Secretary, in accordance with Commission Regulations.

Respectfully yours,



Francis Hriadil  
(412) 779-3314  
331 Shady Ridge Drive  
Monroeville, Pennsylvania  
March 16, 2019

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Michele Hriadil and  
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Complainant,

vs.

No: C-2016-2571726

DUQUESNE LIGHT COMPANY,

Respondent.

**CERTIFICATE OF SERVICE**

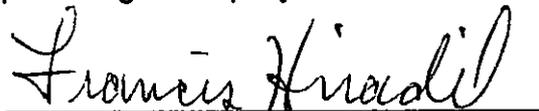
I hereby certify that I have this day served a true copy of Complainants' Answer to Respondent's Reply to Complainants' Response to Respondent's Motion in Limine to Bar Complainants from Introducing or Relying Upon Inadmissible Evidence upon the participants listed below in accordance with the requirements of 52 PA. Code § 1.54 (relating to service by a participant):

*Via Paper Filing*  
Judge Jeffrey Watson  
PA PUC Pittsburgh Administrative Law Judge Office  
301 Fifth Ave, Suite 220  
Piatt Place  
Pittsburgh, PA 15222

*Via Paper Filing*  
Jeremy V Farrell, Esquire  
Paul S Miller, Esquire  
1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-5619 (Fax)

Counsel for Respondent, Duquesne Light Company

Dated this 16<sup>th</sup> day of March, 2019



Michele and Francis Hriadil  
331 Shady Ridge Drive  
Monroeville, Pennsylvania  
(412) 779-3314  
hriadil@attglobal.net

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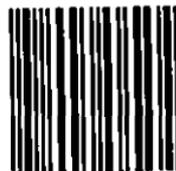
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Rosemary Chiavetta, Secretary  
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