

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

February 24, 2010

Filing Center
Public Utility Commission of Oregon
550 Capitol St NE – Suite 215
Salem OR 97301

Re: UM 1452/AR 538;
*In the Matters of Public Utility Commission of Oregon Investigation into Pilot Programs
to demonstrate the use and effectiveness of Volumetric Incentive Rates for Solar
Photovoltaic Energy Systems*

Dear Filing Center:

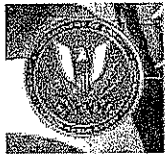
Enclosed for filing please find Attachments 1, 2, and 3 to Staff's Final Comments in Docket Nos. AR 538 and UM 1452. These attachments should have been included with Staff's Final Comments filed in Docket Nos. AR 538 and UM 1452 Final on February 12, 2010, but were inadvertently omitted when the Final Comments were filed.

Thank you for your attention.

Very truly yours,

Stephanie S. Andrus
Assistant Attorney General
Of counsel for Staff of Public
Utility Commission of Oregon

Enc.
c. AR538/UM 1452 Service List



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 Market-Based Rates (including Power Marketers)

Market-Based Rates (including Power Marketers)

January 21, 2010 - Item E-1:
 FERC proposes greater certainty for investment in utilities News Release| NOPR PDF

efile your comments by March 29, 2010

The Commission grants market-based rate authorization for wholesale sales of electric energy, capacity and ancillary services by public utility sellers that can demonstrate that they and their affiliates lack or have adequately mitigated horizontal and vertical market power. As a condition of market-based rate authority the Commission requires, among other things, certain restrictions governing the relationship between a market-regulated power sales affiliate and its franchised public utility affiliate with captive customers. Discussed herein are the following three most common types of filings made regarding electric market-based rate authority:

- Initial market-based rate applications
- Change in status reporting requirement filings
- Updated market power analyses

The Final Rule on Market-Based Rates (including Power Marketers) For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By

Contacts Information

Technical

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Legal

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Market-Based Rates (including Power Marketers)

- » Overview
- » How to Get Authorization
- » Request a Docket Number
- » Triennial
- » Tariff
- » Other Type Filings
- » Companies with Market-Based Rate Authority
- » Commission Orders Decided at Open Meetings

Major Commission Orders

- » Order No. 697-C PDF
- » Order No. 697-B PDF
- » Order on Rehearing and Clarification PDF
- » Order No. 697-A PDF
- » Order No. 697 PDF
- » Order No. 652-A PDF
- » Order No. 652 PDF
- » ER04-730-000 PDF
- » ER91-243-000 PDF

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Public Utilities (Order No. 697 [PDF](#)), effective September 18, 2007, offers greater detail regarding the Commission's policies applicable to electric market-based rate authorization. The Commission has also affirmed and clarified its market-based rate policy in Order No. 697-A [PDF](#).

Updated: January 27, 2010

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Industries >> **Electric** >> **General Information** >> Market-Based Rates (including Power Marketers)

How to Get Authorization

Request a Docket Number
You **must** request a docket number prior to submitting your application.

Once you receive a docket number from the Commission you must file your market-based rate application within 72 hours. In that submission you are required to include the email response from the Commission granting you a docket number as the first page of the submittal.

Failure to submit your application within 72 hours of the email response will result in the docket number being cancelled and unusable for submission.

An applicant obtains market-based rate authorization by order of the Commission. To obtain market-based rate authorization, an applicant must make a filing under Section 205 of the Federal Power Act.

In an application for electric market-based rate authorization, in accordance with 18 CFR Part 35, Subpart H and Order No. 697, an applicant must demonstrate that:

- It and its affiliates satisfy the Commission's standards for the grant of market-based rate authority regarding horizontal

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Sample Application

- » Sample Initial Application: Affiliated Generator Owner **026**

Related Topics ★

- [Standard Screen Format - Pivotal](#)
- [Supplier and Market Share Analysis **026**](#)
- [Asset Appendix **026**](#)
- [Blank Stack Analysis **026**](#)

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market power;

- It and its affiliates satisfy the Commission's standards for the grant of market-based rate authority regarding vertical market power; and
- Its tariff contains those provisions the Commission requires.

An application should include the following elements:

- A transmittal letter explaining the filing and listing the documents submitted with the filing.
- Contact information for the filing entity (including phone number).
- The names and addresses of those on whom the filing has been served.
- A description of the kinds of services to be offered under the market-based rate tariff.
- A description of the applicant's business activities.
- A description of the affiliates of the applicant and their business activities. If the applicant has no affiliates, the application should contain such a statement. Affiliates include upstream owners and are defined in Order No. 697-A.
- Representations of how the applicant satisfies the Commission's concerns with regard to horizontal market power (including standard screens consistent with those that appear as Appendix A to Subpart H).
- Representations of how the applicant satisfies the Commission's

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concerns with regard to vertical market power, consistent with 18 C.F.R. § 35.37(d) and (e).

- Any requests for waivers or authorizations.
- FERC Electric Tariff, Original Volume No. 1 that is in compliance with Order No. 614 and includes the required provisions in compliance with Order No. 697, and Order No. 697-A.
- An appendix which includes all generation and transmission assets, and natural gas intrastate pipelines and gas storage facilities owned or controlled by applicant and its affiliates, by balancing authority area, a sample of which appears as Appendix B to Subpart H. This appendix is required even if the applicant and its affiliates do not own any assets.

Market-based rate tariffs shall be tendered for filing with the Commission and posted not less than 60 days nor more than 120 days prior to the date on which the tariff will become effective.

Note: Some Qualifying Facilities may be exempt from section 205 of the Federal Power Act. For more information read Order No. 671

Updated: April 17, 2009

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Sample Initial Application: Affiliated Generator Owner

This example assumes that the filing entity owns a generator and is affiliated with a transmission-owning utility. This example includes the following elements:

- Cover letter
- Petition for acceptance of initial rate filing
- Asset Appendix
- FERC Electric Tariff, Original Volume No. 1

<EXAMPLE OF COVER LETTER>

(current date)

Federal Energy Regulatory Commission
Office of the Secretary
888 First St., NE
Washington, D.C. 20426

Re: XYZ Small Gen, Inc.
Docket No. ER08-_____-000

Enclosed for filing are an original and six copies of the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, submitted by XYZ Small Gen, Inc. (XYZ). XYZ hereby requests acceptance of FERC Electric Tariff, Original Volume No. 1, under which it will engage in wholesale sales of electric energy, capacity, and ancillary services at market-based rates, the grant of certain blanket approvals, and waiver of certain Commission regulations.

Sincerely,

Cynthia F. Kilowatt
Vice President
XYZ Small Gen, Inc.
Suite 9000
1111 Half Street, N.W.
Washington, D.C. 20426-0000

Ph: (202) XXX-XXXX

Enclosure

EXAMPLE OF PETITION FOR ACCEPTANCE OF INITIAL RATE FILING

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

XYZ Small Gen, Inc.

Docket No. ER08-____-000

**PETITION FOR ACCEPTANCE OF INITIAL TARIFF,
WAIVERS AND BLANKET AUTHORITY**

Pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), Rules 205 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 C.F.R. § 385.205 (2007) and 18 C.F.R. § 385.207 (2007), and Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2007), XYZ Small Gen, Inc. (XYZ) hereby submits for filing FERC Electric Tariff, Original Volume No. 1, under which XYZ will engage in sales of wholesale electric energy, capacity, and ancillary services.

I. COMMUNICATIONS

All communications and service related to this application should be directed to the following:

Cynthia F. Kilowatt
Vice President
XYZ Small Gen, Inc.
Suite 9000
1111 Half Street, N.W.
Washington, D.C. 20426-0000

Ph: (202) XXX-XXXX

II. DESCRIPTION OF APPLICANT

XYZ is a Delaware corporation with its principal place of business in Washington, D.C. XYZ is a wholly-owned subsidiary of ZYX Manufacturing Corporation. ZYX is primarily engaged in the manufacture of farm equipment. ZYX is owned by two managing members, Julie A. Webbers and Bill X. West.

ZYX Manufacturing Corporation also owns ABC Transmission Co. (ABC). Other affiliates of XYZ are engaged in the production and distribution of building supplies. Neither of the two managing members nor the vice president, Cynthia F. Kilowatt is engaged in any other business in the energy industry. Additionally, none sit on the board of any other energy companies and none hold interests in any other energy related companies.

XYZ owns a 511 MW combined cycle generator located in the ABC balancing authority, which is located in the Northwest region as identified in Appendix D of Order No. 697-A. ABC's transmission includes an approximately fifty-five mile, 500 kV line in the ABC balancing authority. ABC does not own any generation.

XYZ also respectfully requests authorization to sell the ancillary services the Commission has authorized utilities with market-based rate authority to sell in the markets administrated by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator (NYISO), ISO New England, Inc. (ISO-NE), and California Independent System Operator Corporation (CAISO).¹ In accordance with the Commission's requirements, XYZ has listed in its tariff the applicable provisions including specific ancillary services it may sell in such markets.²

III. REQUEST FOR BLANKET AUTHORIZATION TO SELL ELECTRICITY AT MARKET-BASED RATES

¹ *Atlantic City Electric Co.*, 86 FERC ¶ 61,248 (1999); *PJM Interconnection, L.L.C.*, 91 FERC ¶ 61,021(2002) (granting market-based rate authorization for specified ancillary services in the PJM market); *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999) (granting market-based rate authorization for specified ancillary services in markets administered by the NYISO); *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001) (granting market-based rate authorization for specified ancillary services in markets administered by the ISO-NE); *AES Redondo Beach, L.L.C.*, 83 FERC ¶ 61,358, *order on reh'g*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208, *order on reh'g*, 88 FERC ¶ 61,096 (1999), *order on reh'g and clarification* 90 FERC ¶ 61,036 (granting market-based rate authorization for specified ancillary services in markets administered by the California ISO).

² *See, e.g., Minergy Neenah L.L.C.*, 88 FERC ¶ 61,102 at 61,242 (1999).

XYZ requests authorization to sell electric energy, capacity, and ancillary services at market-based rates pursuant to the attached FERC Electric Tariff, Original Volume No. 1. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power. The Commission has also codified affiliate restrictions in its regulations which must be satisfied on an ongoing basis.

A. Horizontal Market Power

In Order No. 697 the Commission codified two indicative screens for assessing horizontal market power and stated that there is a rebuttable presumption of market power if a seller fails either.

(Note that there are several ways an applicant can address the Commission's horizontal market power concerns. Applicants may utilize one or more of the following approaches.

The Commission's horizontal market power screens are described in Order No. 697 and Order No. 697-A. Appendix A to 18 CFR Part 35, Subpart H provides a standard format for reporting horizontal market power screen results. Applicants should submit all work papers associated with performing the screens.

Applicants may submit streamlined applications. For example, if an applicant's entire capacity is committed under long-term contract (one year or more) and that applicant's affiliates do not own generation, then neither the applicant nor its affiliate have any uncommitted capacity. Based on this, the applicant passes both the Commission's generation market power screens. An applicant can use simplifying assumptions when conducting the screens as long as it provides sufficient support for its assumptions. Another example is an applicant can rely on a recent market power analysis accepted by the Commission. In this instance, the applicant can adopt the analysis as its own and provide the pivotal supplier and market shares for its, along with its affiliates, generation.

An entity that files screens must provide all relevant work papers supporting those screens as required in Order No. 697. Those work papers should be clear and support the statements in the filing.)

B. Vertical Market Power

XYZ's affiliate ABC owns transmission facilities in the ABC balancing authority area. ABC has a Commission-approved open access transmission tariff (OATT) on file.³ Additionally, XYZ does not own or control, and is affiliated with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; or sources of coal supplies and the transportation of coal supplies such as barges and rail cars. Neither XYZ nor any of its affiliates has erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market. Accordingly, XYZ satisfies the Commission's standards with regard to vertical market power.

IV. SELLER CATEGORY

XYZ owns generation totaling 511 MW in the Northwest region and is affiliated with an entity that owns transmission facilities in the same region. Pursuant to the definition of category 1 and 2 sellers in 18 CFR 35.36(a), XYZ submits that it is a category 2 seller.

(note that if an applicant owns or controls 500 MW or less of generation in aggregate per region; does not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); is not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; is not affiliated with a franchised public utility in the same region as the seller's generation assets; and does not raise other vertical market power issues, the applicant may argue that it is a Category 1 seller. As the Commission stated in Order No. 697, after the Commission finds a seller is Category 1 it will not be required to file regularly scheduled updated market power analyses.)

V. REQUEST FOR WAIVERS AND ADDITIONAL BLANKET AUTHORITY

XYZ requests waivers from the following Commission regulations, which have been granted to other sellers:

- 1) Subparts B and C of Part 35, regarding the filing of rate schedules, except sections 35.12(a), 35.13(b), 35.15, and 35.16;

³ Cite to OATT acceptance.

- 2) Part 41, regarding accounts, records, and memoranda;
- 3) Part 101, regarding the uniform system of accounts; and
- 4) Part 141, regarding statements and reports.

XYZ requests blanket approval under Part 34 of the Commission's regulations of future issuances regarding securities and assumptions of liabilities, subject to objection by an interested party.

VI. EFFECTIVE DATE

XYZ requests that the tariff be effective (insert proposed effective date).

VII. QUARTERLY FILINGS

XYZ will submit electric quarterly reports in accordance with the requirements of Order No. 2001.

VII. CONCLUSION

WHEREFORE, XYZ Small Gen, Inc. requests that the Commission issue an order accepting FERC Electric Tariff, Original Volume No. 1 and granting the waivers and authorizations requested in this Petition.

Respectfully submitted,

XYZ Small Gen, Inc.

(insert current date) By: _____

Cynthia F. Kilowatt
Vice President
XYZ Small Gen, Inc.
Suite 9000
1111 Half Street, N.W.
Washington, D.C. 20000-1111
Ph: (202) XXX-XXXX

Asset Appendix

Listing the filing entity and all its energy affiliates and their associated assets. (Both sections of this appendix are required even if the applicant does not own any assets.)

Market-Based Rate Authority and Generation Assets

Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name	Owned By	Controlled By	Date Control Transferred	Location		In-service Date	Nameplate and/or Seasonal Rating
						Balancing Authority Area	Geographic Region (per Appendix D)		
XYZ Small Gen, Inc.	ER08-____-000	XYZ Gen 1	XYZ Small Gen, Inc.	XYZ Small Gen, Inc.	NA*	ABC Transmission Co. Balancing Authority	Northwest	10/12/2007	511 MW (nameplate)

* Not Applicable

Electric Transmission Assets and/or Natural Gas Intrastate Pipelines and/or Gas Storage Facilities

Filing Entity and its Energy Affiliates	Asset Name and Use	Owned By	Controlled By	Date Control Transferred	Location		Size
					Balancing Authority Area	Geographic Region (per Appendix D)	
ABC Transmission Co.	Nowhere Line. Connects XYZ Gen 1 to CAISO	ABC Transmission Co.	ABC Transmission Co.	NA*	ABC Transmission Co. Balancing Authority	Northwest	Approximately fifty-five mile, 500 kV line

* Not Applicable

< EXAMPLE OF TARIFF, note that while this example may apply to most entities, it may not cover all situations.>

1) Availability

XYZ Small Gen, Inc. (Seller) makes electric energy, capacity, and ancillary services available under this tariff to any purchaser, except as prohibited below.

2) Rates

All sales shall be made at rates established by agreement between the purchaser and Seller.

3) Seller Category

Seller is a Category 2 seller, as defined in 18 CFR 35.36(a).

4) Compliance with Commission Regulations

Seller shall comply with the provisions of 18 CFR Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning seller's market-based rate authority, including orders in which the Commission authorizes seller to engage in affiliate sales under this tariff or otherwise restricts or limits the seller's market-based rate authority. Failure to comply with the applicable provisions of 18 CFR Part 35, Subpart H, and with any orders of the Commission concerning seller's market-based rate authority, will constitute a violation of this tariff.

5) Limitations and Exemptions Regarding Market-Based Rate Authority

Seller has received waiver of: Subparts B and C of Part 35, except for sections 35.12(a), 35.13(b), 35.15 and 35.16; Part 41, Part 101, and Part 141; and received blanket approval under Part 34. (*XYZ Small Gen, Inc.*, 199 FERC 61,2X3 (2008))

(Note that the Commission has developed a way for new applicant to receive a docket number prior to filing. That docket number can be inserted in place of the full citation above if you are a new applicant.)

6) Ancillary Services

PJM: Seller offers regulation and frequency response service, energy imbalance service, and operating reserve service (which includes spinning, 10-minute, and 30-minute reserves) for sale into the market administered by PJM Interconnection, L.L.C. ("PJM") and, where the PJM Open Access Transmission Tariff permits, the

self-supply of these services to purchasers for a bilateral sale that is used to satisfy the ancillary services requirements of the PJM Office of Interconnection.

New York: Seller offers regulation and frequency response service, and operating reserve service (which include 10-minute non-synchronous, 30-minute operating reserves, 10-minute spinning reserves, and 10-minute non-spinning reserves) for sale to purchasers in the market administered by the New York Independent System Operator, Inc.

New England: Seller offers regulation and frequency response service (automatic generator control), operating reserve service (which includes 10-minute spinning reserve, 10-minute non-spinning reserve, and 30-minute operating reserve service) to purchasers within the markets administered by the ISO New England, Inc.

California: Seller offers regulation service, spinning reserve service, and non-spinning reserve service to the California Independent System Operator Corporation ("CAISO") and to others that are self-supplying ancillary services to the CAISO.

Third-party ancillary services: Seller offers Regulation Service, Energy Imbalance Service, Spinning Reserves, and Supplemental Reserves. Sales will not include the following: (1) sales to an RTO or an ISO, i.e., where that entity has no ability to self-supply ancillary services but instead depends on third parties; (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier; and (3) sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers.

Standard Screen Format
(Data provided for Illustrative Purposes only)

Part I -- Pivotal Supplier Analysis

Row	Generation	MW	Reference
Seller and Affiliate Capacity			
A	Installed Capacity	19,500	Workpaper
B	Long-Term Firm Purchases	500	Workpaper
C	Long-Term Firm Sales	-1,000	Workpaper
D	Imported Power	0	Workpaper
Non-Affiliate Capacity			
E	Installed Capacity	8,000	Workpaper
F	Long-Term Firm Purchases	500	Workpaper
G	Long-Term Firm Sales	-2,500	Workpaper
H	Imported Power	3,500	Workpaper
I	Balancing Authority Area Reserve Requirement	-2,160	Workpaper
J	Amount of Line I Attributable to Seller, if any	-2,160	Workpaper
K	Total Uncommitted Supply (SUM A,B,C,D,E,F,G,H,I,M)	9,840	
Load			
L	Balancing Authority Area Annual Peak Load	18,000	Workpaper
M	Average Daily Peak Native Load in Peak Month	-16,500	Workpaper
N	Amount of Line M Attributable to Seller, if any	-16,500	Workpaper
O	Wholesale Load (SUM L,M)	1,500	
P	Net Uncommitted Supply (K-O)	8,340	
Q	Seller's Uncommitted Capacity (SUM A,B,C,D,J,N)	340	
Result of Pivotal Supplier Screen (Pass if Line Q < Line P) (Fail if Line Q > Line P)			PASS

Part II – Market Share Analysis
 (Data provided for illustrative purposes only)

Row		Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)	Reference
Seller and Affiliate Capacity						
A	Installed Capacity	19,500	19,500	19,500	19,500	Workpaper
B	Long-Term Firm Purchases	500	500	500	500	Workpaper
C	Long-Term Firm Sales	-1,000	-1,000	-1,000	-1,000	Workpaper
D	Seasonal Average Planned Outages	-4,000	-3,000	-800	-3,500	Workpaper
E	Imported Power	0	0	0	0	Workpaper
Capacity Deductions						
F	Average Peak Native Load in the Season	-11,500	-10,000	-12,500	-11,500	Workpaper
G	Amount of Line F Attributable to Seller, if any	-11,500	-10,000	-12,500	-11,500	Workpaper
H	Amount of Line F Attributable to Others, if any	0	0	0	0	Workpaper
I	Balancing Authority Area Reserve Requirement	-1,500	-1,320	-1,560	-1,500	Workpaper
J	Amount of Line I Attributable to Seller, if any	-1,500	-1,320	-1,560	-1,500	Workpaper
K	Amount of Line I Attributable to Others, if any	0	0	0	0	Workpaper
Non-Affiliate Capacity						
L	Installed Capacity	8,000	8,000	8,000	8,000	Workpaper
M	Long-Term Firm Purchases	500	500	500	500	Workpaper
N	Long-Term Firm Sales	-2,500	-2,500	-2,500	-2,500	Workpaper
O	Local Seasonal Average Planned Outages	-800	-200	-300	-400	Workpaper
P	Uncommitted Capacity Imports	5,000	4,500	3,500	4,000	Workpaper
Supply Calculation						
Q	Total Competing Supply (SUM L,M,N,O,P,H,K)	10,200	10,300	9,200	9,600	
R	Seller's Uncommitted Capacity (SUM A,B,C,D,E,G,J)	2,000	4,680	4,140	2,500	
S	Total Seasonal Uncommitted Capacity (SUM Q,R)	12,200	14,980	13,340	12,100	
T	Seller's Market Share (R/S)	16.39%	31.24%	31.03%	20.66%	
	Results (Pass if < 20%)	PASS	FAIL	FAIL	FAIL	
	(Fail if ≥ 20)					

1 **CERTIFICATE OF SERVICE**

2 I certify that on February 24, 2010, I served the foregoing Attachments upon the parties
3 in this proceeding by electronic mail and by sending a true, exact and full copy by regular mail,
4 postage prepaid, or by hand-delivery/shuttle, to the parties accepting paper service.

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18 OREGON CITY OR 97045
19 danweldon@bctonline.com

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