

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1489, UM 1528, UCR 121, UCR 122, UCR 123, UCR 133, UCR 135

4 In the Matters of

5 JUDY BEDSOLE AND FISH MILL LODGES
6 WATER SYSTEM,

7 Application for Abandonment of Utility and
8 Other Above-Referenced Dockets Relating to the
9 Operation and Maintenance of the Fish Mill
Lodges Water System.

STAFF'S RESPONSE TO PETITION FOR
REHEARING, RECONSIDERATION,
AND CLARIFICATION

10 **I. Introduction**

11 On January 5, 2016, Judy Bedsole and Fish Mill Lodges Water Systems (Petitioners)
12 filed a Petition for Rehearing, Reconsideration, and Clarification (Petition). Within the Petition
13 itself, Petitioners request clarification of Order No. 15-364. However, near the end of the
14 Petition, Petitioners state that if its requested clarifications are not adopted that the matters be
15 "reopened."¹ Petitioners further state they reserve the right to brief these matters or request
16 rehearing.²

17 Oregon Revised Statute ORS 756.561(1) provides that a party may request rehearing or
18 reconsideration within 60 days of the service of an order and that the Public Utility Commission
19 of Oregon (Commission) may grant such a petition if sufficient reasons exist. Oregon
20 Administrative Rule (OAR) 860-001-0720 outlines the requirements for an application for
21 rehearing or reconsideration and the reasons for which an application may be granted. The
22 Petition does not comply with the Commission's rule.

23 The Petition does not argue that the Commission's order is unclear and, therefore, should
24 be clarified. Rather, the Petition in essence argues that the Commission lacks subject matter
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26 ¹ See Petition at 4, lines 16-20.

² See Id. at lines 21-22.

1 jurisdiction and that all of its previous orders should be rescinded or modified. Petitioners argue
2 that if its requested “clarifications” are not made, extensive hearings and “other actions” will
3 result.³

4 The Petitioners’ objective appears to be to renege on a Commission-approved,
5 voluntarily-negotiated, fully-signed Stipulation from almost four years ago.⁴ The Commission
6 should reject Petitioners ploy to use the reconsideration and rehearing process for Order No. 15-
7 364 as an attempt to a challenge to a previous final order, Order No. 12-027, for which the right
8 to appeal has long since expired.

9 II. Discussion

10 1. The Petition requests “clarification” of matters that were not decided in Order 15-364.

11 The Petition makes three allegations. First, the Petition alleges that Order No. 15-364
12 “raises serious issues of law by adopting the signed or partially signed stipulations referenced in
13 the Order . . . without considering their legal ramifications.”⁵ Frankly, it is difficult to surmise
14 what this allegation even means. For example, what are the adopted signed or partially signed
15 stipulations in the Order? In fact, Order No. 15-364 does not adopt any stipulation, much less a
16 partially signed stipulation. Order No. 15-364 does reference a fully signed stipulation that was
17 approved in Order No. 12-027, almost four years ago. However, simply referencing a past
18 order– for which the time to request rehearing or reconsideration and the right to appeal has
19 expired – cannot “restart the clock” and allow Petitioners an opportunity to challenge a
20 Commission order from almost four years ago that adopted a stipulation they voluntarily
21 negotiated and signed. Likewise, the “legal ramifications” – for which the Petitioner provides no
22 specifics – would have been considered in Order No. 12-027, the Order that actually adopted the
23 signed stipulation of all the parties, including the Petitioners.

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25 ³ See Petition at 4, lines 7-8.

26 ⁴ See Order No. 12-027 (January 30, 2012).

⁵ See Petition at 1, lines 18-21.

1 Second, the Petition alleges that “by adoption of the stipulations as part of the [Order No.
2 15-364], the Order is void abinitio [sic] in that the Commission does not have subject matter
3 jurisdiction over [sic] to cancel or create water rights or real property deeded easements and
4 property rights generally, and misapplied its own rules in determining that Petitioners are or
5 should have been regulated as a ‘public utility’ . . .”⁶ Again, there is only one stipulation and it
6 was adopted almost four years ago in Order No. 12-027, not in Order 15-364. Petitioners’
7 assertion that Order No. 15-364 is void *ab initio* is perplexing because even assuming, *in*
8 *arguendo*, that Order No. 15-364 is void, Petitioners would no longer be released from the
9 Commission’s jurisdiction.⁷ The Petition purports to request relief from Order No. 15-364, but it
10 appears that Petitioners only use that request as a subterfuge to argue that they should not be
11 bound to a Commission-approved stipulation that they voluntarily agreed to and signed, while
12 represented by counsel, for which the time to appeal has long since expired.

13 Third, the Petition alleges that Order No. 15-364 “incorporates” conditions, which appear
14 to be inaccurate descriptions of the conditions included in the stipulation approved in Order No.
15 12-027, and the Commission has no jurisdiction to “cancel a water system and replace it with
16 another without due process and assuring that no one is left unable to obtain necessary water.”⁸
17 Ironically, this docket – UM 1489 – was begun based upon Petitioners application to abandon
18 water service to its customers.⁹

19 At the time of Petitioners’ application to abandon water service to its exclusive service
20 territory, the customers were receiving inadequate and unsafe service and remained under a
21 boiled water notice.¹⁰ During the pendency of the application to abandon water service to its
22 customers, the Public Utility Commission of Oregon Staff (Staff) and the Drinking Water

23 ⁶ See Petition at 1, line 22 through 2, line 3.

24 ⁷ See Order No. 15-364.

25 ⁸ See Petition at 2, line 19 through 3, line 3.

26 ⁹ See Docket No. 1489 *Application of Fish Mill Lodges Water System for an Order Authorizing
Abandonment of Water Service* (July 12, 2010).

¹⁰ See Docket No. UM 1489, Staff/100; Miller/18, lines 17-18.

1 Program had concerns and had proposed or actually taken civil enforcement actions regarding
2 the adequacy and safety of the water and Petitioners' unwillingness or inability to cure the
3 problems.¹¹ Also during the pendency of the application to abandon service, Fish Mill Lodges
4 and RV Park drilled a new well so that only its three residential customers were still served by
5 the water system.¹²

6 There is utterly no support in the record for Petitioners' allegation that the process in UM
7 1489 did not provide due process. At the time of Staff's testimony on the application to abandon
8 service, Fish Mills Lodges and RV Park had acquired its own source of water from a new well,
9 had demonstrated an unwillingness or inability to provide safe and adequate service, and
10 explicitly and repeatedly stated that it did not want to serve its three residential customers. Once
11 Staff filed testimony in opposition to the abandonment of the water system, Petitioners' attorney
12 withdrew and a new attorney was retained.¹³ That attorney began new settlement negotiations
13 that resulted in the stipulation adopted in Order 12-027, which was signed and notarized by Staff,
14 the three residential customers, Judy Bedsole, as an individual and as a sole proprietor of Fish
15 Mill Lodges Water System, Judy Bedsole, as trustee of the Bedsole family trust, and her sons
16 Shawn Bedsole and Charles Bedsole.

17 2. The Petition does not request rehearing and rehearing should not be granted.

18 The Petition is titled a request for rehearing, reconsideration, and clarification. While the
19 Petition does not cite to, or comply with, OAR 860-001-0720, it also fails to make any
20 allegations that there has been new evidence that is essential to the decision and that was
21 unavailable and not reasonably discoverable before issuance of the order¹⁴ or that there has been
22 an error of fact that is essential to the decision.¹⁵ Because the Petition does not make allegations

23 ¹¹ See Id., Staff/100; Miller/20 line 8 through Miller/22, line 1; Staff/101; Miller/8-14 *see also*
24 Staff/300; Miller/10-11.

25 ¹² See Id., Staff/100; Miller/18, lines 8-16; Staff/101; Miller/1; *see also* Staff/300, Miller/10-11.

26 ¹³ See Id., Staff/300; Miller/10, lines 6-9.

¹⁴ See OAR 860-001-0720(3)(a).

¹⁵ See OAR 860-001-0720(3)(c).

1 related to new evidence or factual errors, there is no reason to rehear. The Petition does state that
2 “Petitioners reserve the right to brief these matters or request rehearing,”¹⁶ but Petitioners cannot
3 reserve a right they do not have by simply saying they have such a right. Both ORS 756.561(1)
4 and OAR 860-001-0720 require a request for rehearing to be made within 60 days and
5 Petitioners cannot unilaterally extend the time period by stating that they reserve the right to
6 request rehearing at an unspecified date, but a date certain to be after the 60-day deadline.

7 3. The Petition does not request reconsideration and reconsideration should not be
8 granted.

9 The Petition is titled a request for rehearing, reconsideration, and clarification. While the
10 Petition does not cite to, or comply with, OAR 860-001-0720, the Petition also does not use the
11 term reconsideration other than in the title – much less offer the specific grounds for
12 reconsideration or the specific issues to be reconsidered. To the extent that the Commission
13 considers Petitioner’s request to “clarify Order 15-364” as a request to reconsider whether or not
14 the Commission “misapplied its own rules in determining that Petitioners are or should have
15 been regulated as a ‘public utility’,”¹⁷ the Commission should deny Petitioners’ request because
16 the Commission has correctly applied its laws in regulating Petitioners as a public utility.

17 In order to avoid the stipulation, Petitioners now seem to argue that the Commission has
18 always “misapplied” its laws and, therefore, they have the ability to renege on the stipulation
19 they negotiated, agreed to, and signed. In its testimony on Petitioners’ application to abandon
20 water service, Staff provided a summary of Petitioners regulatory history.¹⁸ ORS 757.061 allows
21 a water utility that serves fewer than 500 customers to request rate regulation and “rate
22 regulation” means regulation under [Chapter 757], except for regulation under ORS 757.105 to
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24 ¹⁶ See Petition at 4, line 21-22.

25 ¹⁷ See Id. at 2, lines 1-3. Ironically, the Petitioners seem to argue that the Commission never
26 should have determined that they were a public utility, but seek “clarification” of the Order that
releases them from the Commission’s regulatory jurisdiction. See Order 15-364, ordering
paragraph 7.

¹⁸ See Staff/100; Miller/6-7; Staff/101; Miller/2-3.

1 757.110. In Order No. 07-391, the Commission granted Petitioners' request to be rate regulated.
2 Petitioners not only have voluntarily submitted to Commission jurisdiction, they requested
3 Commission jurisdiction as allowed by statute. As findings of fact, the Commission found that
4 Petitioners had been and were a public utility subject to ORS 757.005 and ORS 757.061 and
5 subject to service regulation. The Commission further found that upon issuance of the order and
6 based upon Petitioner's request to be rate regulated, Petitioners were a regulated utility subject to
7 both service and rate regulation. The right to appeal the Commission's factual findings in Order
8 No. 07-391 passed more than eight years ago. ORS 757.480(5) and OAR 860-036-0708 require
9 Commission approval to abandon a water utility. Petitioners are a public utility that is regulated
10 for service and rates and any attempt to abandon its water service must be – and was – approved
11 by the Commission.

12 The Petition states that “Petitioners were not an association, did not offer water service to
13 the public directly or indirectly, and were not formed as a utility, and had no intent by this
14 arrangement to be anything other than a private agreement.”¹⁹ Petitioners then attempt to explain
15 how the “private agreement” only benefited “lots” to share in water rights that belong “solely to
16 Petitioners” and predate “circumstances described herein.”²⁰ The Petitioners’ “intent” is
17 irrelevant (and inconsistent with their own request for regulation) because the Petitioners have
18 been found to be a public utility subject to service and rate regulation. Petitioners cannot now
19 challenge that factual finding more than eight years later. Petitioners’ further description of the
20 “private agreement” is perplexing because Petitioners can self-term it whatever they want but the
21 law considers them a public utility subject to service and rate regulation.

22 To the extent that the Commission considers Petitioners’ request to “clarify Order 15-
23 364” as a request to reconsider whether or not the Commission had subject matter jurisdiction
24 “to cancel or create water rights or real property deeded easements and property rights
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26 ¹⁹ See Petition at 2, lines 8-12.

²⁰ See Id., lines 12-18.

1 generally,²¹ the Commission should deny Petitioners' request because the Commission did not
2 cancel or create water rights or real property rights. The Petition boldly states that the
3 Commission does not have authority to cancel or create water rights or real property rights, but
4 the Petition does not provide an explanation or argument that the Commission did cancel or
5 create water rights or real property rights. In fact, the Commission did not cancel or create water
6 rights nor did it create or cancel property rights.

7 The failure of the Petitioners to explain or make any arguments to support their assertion
8 that the Commission canceled or created water or real property rights makes it difficult to
9 speculate on the basis of Petitioners' allegation. Based upon the lack of support for its
10 allegations, Staff's supposition is that Petitioners actually challenge their own decision to
11 abandon the water system consistent with a stipulation that they negotiated and signed. It
12 appears that Petitioners are attempting to use Order No. 15-364 to undo or collaterally attack
13 their own past voluntary decisions and unilaterally renegotiate a stipulation more favorable to
14 them than the one they negotiated and agreed to in 2012.

15 The parties entered into a stipulation that resolved all issues related to Petitioner's
16 application to abandon service to their three residential customers, as well as all pending
17 complaints between Petitioners and its customers.²² The stipulation provides that Petitioners
18 agree to transfer the defined water system and necessary water rights to an entity, which is
19 initially operated by a regent, so that the three residential customers have the ability to maintain
20 water service after Petitioners' abandonment of their duty to provide safe and adequate service to
21 their customers at reasonable rates.²³

22 Specifically related to water rights, the stipulation provides that the trust²⁴ claims the
23 entire interest in the Water Right currently sourced from the Spring.²⁵ The stipulation then

24 ²¹ See Petition at 1, line 23 through 2 at line 1.

25 ²² See Order No. 12-027 at 2; Order No. 12-027, Appendix A (the, stipulation) at 1.

26 ²³ See Order No. 12-027 at 2-3.

²⁴ Judy Bedsole is the trustee of the Bedsole Family Trust. See Order No. 12-027, Appendix A at 1.

1 provides that Petitioners agree to execute and deliver “to the Commission all documents
2 sufficient to convey, transfer, release, quit claim, and assign “as-is” to the customer intervenors.
3 that proportionate interest in the Water Right that is associated with or appurtenant [to the
4 Varenas and Durland] property.”²⁶ The stipulation also provides a process by which the Lucas
5 property can obtain a limited license and permit to obtain water for domestic use from Oregon’s
6 Natural Water Resources Department and that Petitioners will not protest, object or interfere with
7 such a request as well as providing that Petitioners will provide a deed sufficient to convey a
8 portion of the Trust’s remaining Water Right to Customer Intervenor, Bonnie Lucas.²⁷

9 On February 29, 2012, Petitioners’ attorney submitted the documents as proscribed in the
10 stipulation, including documents to convey water rights to Customer Intervenor.²⁸ Simply put,
11 the Commission did not cancel or create any water rights. Instead, Petitioners voluntarily
12 conveyed water rights to the Customer Intervenor, which allowed those customers to continue
13 to receive water service after Petitioners were granted the ability to abandon service to those
14 same customers.

15 Likewise, the Commission did not cancel or create “real property deeded easements and
16 property rights generally.”²⁹ In the stipulation, in exchange for permission to abandon providing
17 service to its customers as well as other consideration, the Petitioners agreed to convey and
18 assign the water system as defined in the stipulation, which includes the property, facilities, and
19 easements and rights of way necessary for an entity to provide water service to the three
20 Customer Intervenor.³⁰

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²⁵ See Order No. 12-027, Appendix A at 6, lines 8-13.

23 ²⁶ See Id. at 6, lines 14-26.

24 ²⁷ See Id. at 20, line 3 through 22, line 7; see also Id. at 7, line 26 through 9, line 22.

25 ²⁸ See Docket No. 1489, Petitioners’ Submittal of Documents Pursuant to Order No. 12-027,
filed February 29, 2012.

26 ²⁹ See Petition at 1, line 25 through 2, line 1.

³⁰ See Order No. 12-027, Appendix A at 5, lines 6-16; see also Id. at 6, line 14 through 7, line 25

1 The Commission did not cancel or create property rights. Rather, the Petitioners'
2 voluntarily agreed to convey and assign the defined water system in exchange for other
3 consideration— and did assign and convey it almost four years ago. The Petitioners' untimely
4 attempt to inappropriately challenge its own past decisions should be denied.

5 3. The Commission should deny the request for clarification.

6 The Petitioners claim to seek clarification of Order 15-364, but really are seeking
7 unilateral renegotiation of an all-party, voluntarily-negotiated, and Commission approved
8 stipulation. The stipulation speaks for itself and is not in need of clarification.

9 First, Petitioners seek clarification “[t]hat nothing in this **docket or the related dockets**
10 is intended to remove, limit, modify, impair, or reduce Petitioners’ ability to use and maintain the
11 water right granted by the Water Resources Board with respect to their own properties (emphasis
12 supplied).”³¹ Here again, Petitioners are inappropriately attempting to use the 60-day timeframe
13 to rehear or reconsider Order No. 15-364 as a means to “clarify” previous actions in this and
14 related dockets, which go back years. Without any citation to Order No. 15-364 (or this docket
15 or the related dockets), it is difficult to discern the clarification sought. Nonetheless, the
16 stipulation specifically details that the Petitioners claim the entire interest in the spring’s water
17 right, but that they agree to convey proportionate interests in that water right to the Customer
18 Intervenors.³² Petitioners do not seem to request clarification of Order No. 15-364, but rather
19 that the stipulation’s terms, approved almost four years ago, should not be enforced.

20 Second, Petitioners seek clarification that “the new ‘Summit Water Services’ provider be
21 required to allow Petitioners to take services from Summit either for use of the delivery system
22 and infrastructure to deliver Petitioners’ own water to its *non-contiguous* property for delivery of
23 water from Summit resources to serve Petitioners’ properties.”³³ Again, there is no need for
24 clarification because the stipulation is unambiguous on the rights and obligations of Petitioners

25 ³¹ See Petition at 3, lines 9-15.

26 ³² See generally Order No. 12-027, Appendix A at 6-9; Id. at 20-22.

³³ See Petition at 3, lines 15-21.

1 related to use of the water system. For example, the stipulation provides that Petitioners can
2 request water through Valve No. 1.³⁴ The stipulation also provides that Petitioners can request
3 water through Valve No. 2,³⁵ which they have successfully done. On June 20, 2014, Fish Mills
4 Lodges and RV Resort began to receive water service from Valve No. 2³⁶ consistent with the
5 stipulation's terms of use.³⁷

6 Third, Petitioners seek clarification that they "are not obligated to pay for the use of
7 Summit services any more than its equal share of the costs" and if "it ceases to use Summit, it
8 shall have no further economic obligations."³⁸ There is no need to clarify because the stipulation
9 is unambiguous in its terms of use, including calculation and payment of costs.³⁹ The
10 Petitioners' blatant attempt to use a motion for clarification as a means avoid the conditions of
11 the stipulation should be rejected.

12 Fourth, the Petitioners seek clarification that "the Commission shall retain sufficient
13 jurisdiction over Summit Water Association to assure that Petitioners can continue to use its
14 services." Petitioners claim "[t]his is particularly important since, as stated of page 5 of 15 in
15 appendix A [referring to the appendix to Order 15-364], there is a presumption that once the
16 water system is transferred to Summit, the Commission will no longer have jurisdiction."⁴⁰ The
17 stipulation provides unambiguous, detailed terms and conditions related to Petitioners' rights and
18 obligations related to use of the water system and also provides that "[a]ny claims, issues, or
19 disputes that may arise out of the interpretation or performance of this Stipulation if the
20 Commission lacks jurisdiction under applicable law will be resolved in the Lane County Circuit
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22 ³⁴ See Order No. 12-027, Appendix A at 10-11.

23 ³⁵ See Id. at 11-13.

24 ³⁶ See Order No. 15-364, Appendix A at 4.

25 ³⁷ See Order No. 12-207, Appendix A at 13-18.

26 ³⁸ See Petition at 3, lines 21-24.

³⁹ See Order No. 12-027, Appendix A at 13-18.

⁴⁰ See Petition at 4, lines 1-6.

1 Court.”⁴¹ Petitioners’ request for clarification should be denied because the stipulation speaks
2 for itself.

3 Finally, although not included as a request for clarification, the Petition’s last paragraph
4 makes several incorrect and unsupported statements. First, the Petition states that “Petitioners
5 were not invited to be members of the association and without an identified right to be served,
6 cannot count on the ability to continue to be served in the future potentially leaving them entirely
7 unable to have the majority of their property unable to have water for their properties at all.”⁴²
8 Petitioners offer no support for this claim and there is no support in the record for such a claim.
9 In fact, the stipulation that Petitioners negotiated and signed specifically uses the term “water
10 user,” which is defined in the stipulation as “any non-customer person or entity, such as the
11 Trust, that in any manner receives or uses water from the Spring or the Water System.”⁴³ In turn,
12 the stipulation is very clear and specific about the rights and obligation of defined water users on
13 the water system.⁴⁴

14 Second, the Petition states that “[i]f the clarifications sre [sic] not adopted, Petitioners ask
15 that these matters be reopened so that any stipulation is actually accepted by all.”⁴⁵ In fact, the
16 stipulation was accepted by all parties and each signature was notarized.⁴⁶ Furthermore,
17 Petitioners were represented by counsel who negotiated the stipulation and the stipulation that
18 Petitioners signed and notarized provides that “[a]ll Parties have had the opportunity to seek the
19 assistance of legal counsel in their review of this Stipulation and by their signatures below
20 confirm that they understand the legal significance of the terms and conditions contained

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23 ⁴¹ Order No. 12-027, Appendix A at 29, lines 3-6.

24 ⁴² See Petition at 4, lines 12-16.

25 ⁴³ See Order No. 12-027, Appendix A at 3, lines 10-19.

26 ⁴⁴ See generally Id., Appendix A at 10-20.

⁴⁵ See Petition at 4, lines 15-18.

⁴⁶ See Order No. 12-027, Appendix A at 31-42.

1 herein.”⁴⁷ The implication that Petitioners were somehow forced to sign a stipulation that they
2 negotiated is patently false.

3 4. The Petitioner should not be allowed additional briefing.

4 Petitioners first request the right to brief these issues more fully,⁴⁸ then “reserve the right
5 to brief these matters.”⁴⁹ The Commission’s rules are unequivocal that replies to a response to a
6 motion for rehearing or reconsideration are not permitted unless requested by the Administrative
7 Law Judge.⁵⁰

8 The Petitioners have no right to further brief these matters. In addition, it would be
9 inequitable in this situation to request additional briefing from Petitioners. The Petition did not
10 cite to the Commission’s statutes, rules, or the administrative record. Nor did the Petition cite to
11 legal support for its broad assertions. With such a Petition, allowing them additional briefing to
12 presumably give them an opportunity to add to their assertions while also effectively extending
13 the requirement that a party file a petition within 60-days would be procedurally unfair to the
14 other parties.

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⁴⁷ See Id., Appendix A at 30, lines 21-25.

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⁴⁸ See Petition at 1, line 16.

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⁴⁹ See Id. at 4, lines 20-22.

⁵⁰ See OAR 860-001-0720(4)

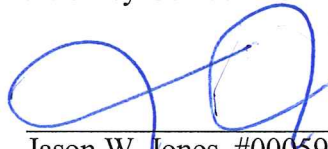
1 **III. Conclusion**

2 For the foregoing reasons, Staff respectfully requests that the Commission deny the
3 Petition and not request additional briefing from the Petitioners.

4 DATED this 20th day of January, 2016.

5 Respectfully submitted,

6 ELLEN F. ROSENBLUM
7 Attorney General

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9 _____
10 Jason W. Jones, #000594
11 Assistant Attorney General
12 Of Attorneys for Staff of the Public Utility
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