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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
DUKE POWER COMPANY, <u>et al.</u>)	Docket Nos. 50-413
)	50-414
(Catawba Nuclear Station,)	
Units 1 and 2))	

APPLICANTS' ANSWER TO PALMETTO ALLIANCE
AND CAROLINA ENVIRONMENTAL STUDY GROUP
MOTION TO COMPEL DISCOVERY FROM APPLICANTS

Duke Power Company, et al. ("Applicants"), pursuant to 10 C.F.R. § 2.730(c), herein submit their response in opposition to Intervenor's Motion to Compel ("Motion"), dated May 31, 1984, but served by deprecit in the mail June 5, 1984.¹

I. Background

Prior to responding to the Intervenor's assertions in their Motion, it is necessary to place their discovery request in the context of the issues actually admitted to this proceeding.

¹ The Motion was to be filed no later than June 1, 1984, pursuant to the Board's direction in the May 21, 1984, conference call of the parties. Applicants' copy was served by mail and bears a June 5, 1984, stamped date. Therefore, the Motion is untimely. Furthermore, a copy of the Motion was not served upon Applicants' counsel in Charlotte. In Applicants' letter of June 18, 1984 to the Board concerning the uncertain status of discovery regarding the diesel generator contention, these points were raised and an extension of time to file this response was requested. This time extension request was for a period of approximately one week after the status of discovery was determined. On June 22, 1984, resumption of discovery on the diesel generators was ordered. Partial Initial Decision, June 22, 1984, n.50, p. 273.

The Board originally admitted one part of a three-part Intervenor-sponsored, late-filed contention on Transamerica Delaval, Inc. (TDI) diesel generators in its Memorandum and Order (Referring Certain Diesel Generator Issues to the Appeal Board), dated February 23, 1984. The contention for which Intervenor originally sought admission was paraphrased by the Board as follows:

The Applicants have not demonstrated a reasonable assurance that the TDI emergency diesel generators at the Catawba Nuclear Station can perform their safety function in service because of:

- (1) inadequate design of the crankshafts;
- (2) deficiencies in quality assurance at TDI;
- (3) operating performance history of TDI generators at other nuclear facilities.

Id. at 4.

The Board only admitted the portion concerning design of the crankshafts. Id. at 6. The Board denied admission of the remaining portions of the Intervenor's contention, but referred those portions to the Appeal Board. The Licensing Board's denial was based upon its weighing of two of the five factors of 10 C.F.R. § 2.714(a) heavily against Intervenor. Delay of the proceeding because TDI QA and operating history could not be litigated over the next few months was one basis for the denial. Furthermore, these issues were deemed to be too complex for Intervenor to make a contribution to the proceeding and hence admission was denied. Id. at 6-9. The Appeal Board subsequently

declined to accept the referred issues. Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), ALAB-768, slip opinion, April 17, 1984. The basis for the Appeal Board's decision to refuse the referral and not to remand the denied contention was premised upon several factors. One such factor was the Appeal Board's policy disfavoring interlocutory review of Licensing Board action on specific contentions. Id., p. 6. Another factor was the Appeal Board's view that no compelling public interest, such as the asserted generic nature of the TDI diesel generator problems, dictated the Appeal Board's involvement in the proceedings. In this instance, the Appeal Board distinguished the TDI diesel generator issue from the radon issue for which a lead case approach was adopted by the Appeal Board. Id. at 7-8. Thus, the only Intervenor's contention which was raised and admitted was the adequacy of the crankshaft design. TDI QA and the operating history of TDI diesels at other facilities were expressly rejected by the Board as contentions to be litigated in this proceeding.

As a result of its duty to keep the Board informed about matters related to the issues in contention, Applicants notified the Board by letter dated February 17, 1984, of certain site-specific problems which had occurred with the Catawba TDI diesel

generators. As a result, the Board admitted its own contention.² The contention was subsequently amended to take into account the Applicants' further reports of site-specific problems:

Whether there is a reasonable assurance that the TDI emergency diesel generators at the Catawba Station can perform their function and provide reliable service because of the problems that have arisen in the course of testing and inspections of the Catawba diesel generators such as the problems reported in the applicants' letter to the Board of February 17, 1984.

May 21 conference call of the Board and Parties, Tr. 12,634.

A discovery schedule was established for Intervenor's contention and the Board contention. Interrogatories were to be served on opposing parties and the Staff by March 12 for the Intervenor's contention and March 19 for the Board contention. Applicants timely filed their Intervenor's contention interrogatories on March 12. Intervenor requested an extension of the filing date. The Board ultimately granted the extension until March 19. March 14, 1984, Conference Call of the Board and Parties, Tr. 12,620. Thereupon, Intervenor filed two sets of interrogatories (one joint PA/CESG set and one CESG set) on March

² The contention, as originally admitted, read:

Whether there is a reasonable assurance that the TDI emergency diesel generators at the Catawba Station can perform their function and provide reliable service because of the problems reported in the Applicants' letter to the Board of February 17, 1984.

Memoiandum and Order (Admitting a Board Contention Concerning Certain Diesel Generator Problems) at 2, dated February 27, 1984.

18 and 19, respectively, purportedly addressing both the Intervenor and Board contentions. Applicants timely filed their second set of interrogatories on the Board contention on March 19.

An examination of Intervenor's interrogatories revealed that Intervenor's had deliberately disregarded the Board's denial of admission of the TDI QA and operating history portions of their contention. A number of Intervenor's interrogatories sought information relevant only to contentions which the Board had dismissed or to subjects beyond the scope of the admitted contentions. It was in response to this attempt that Applicants predicated their objections.

On April 2, 1984, Applicants filed complete responses to those interrogatories directed to the admitted contentions.³ As noted, Applicants objected only to those interrogatories which were directed to unadmitted contentions or sought information clearly beyond the scope of the admitted contentions.

Intervenor's filed their answers to Applicants' interrogatories on the Board contention on April 1, 1984. On April 2, 1984, as a result of a condition imposed by the Board in admitting the Intervenor's contention, Intervenor's were required

³ "Applicants' Response to 'Palmetto Alliance and Carolina Environmental Study Group's Interrogatories and Requests to Produce Documents on Diesel Generator Contention to Applicants and NRC Staff' and 'CESG's Interrogatories to Duke Power Regarding Emergency Diesel Contentions Admitted by Atomic Safety and Licensing Board,'" April 2, 1984 (hereinafter "Applicant's April 2 response").

to provide the name(s) of an expert(s) on diesel generators and expected matters to which such expert(s) would testify. As a result of Intervenor's default on this condition, the Board dismissed the Intervenor's contention on the adequacy of crankshaft design. Order, April 13, 1984, pp. 1-2.⁴

In the intervening time between the initial round of discovery and the filing of this response, several important events have occurred. The Board denied admission of a modified three-part Intervenor-sponsored contention on diesel generators. May 21, 1984 conference call, Tr. 12,633. The Commission, by Order dated June 8, 1984, reviewed and dismissed the Board's sua sponte contention. The Board then entertained three motions by Intervenor to have a diesel generator contention readmitted. The first motion sought admission of the original three-part contention, two portions of which the Board had previously denied admission and for which the Board dismissed the admitted portion due to default by Intervenor. The second motion sought admission of the previously denied modified three-part Intervenor's contention on diesel generator. The third motion sought admission of the identical contention adopted by the Board, but dismissed by the Commission. June 21, 1984 Conference Call of the Board and Parties, Tr. 12,665-67. The Board denied

⁴ Because the Board has dismissed the crankshaft design contention, Applicants will not discuss it further.

the first and second motions and granted the third, thereby readmitting the Catawba site-specific contention. Partial Initial Decision, slip opinion, p. 272, n.50.

The sole remaining contention to which Applicants must provide updated responses is the Board contention on site-specific diesel generator problems at Catawba. Applicants have prepared and filed such an update.⁵ Applicants, based upon their knowledge, have provided complete and fully responsive answers to interrogatories within the scope of the contention.⁶ Focusing specifically on Intervenor's Motion to Compel, it is clear that Intervenor continues the pattern of behavior they have followed in this adjudication since its inception, that is, to continually and flagrantly disregard the Board's orders with respect to what has been admitted and what has been denied admission. The purpose of this Answer is to address Intervenor's continuing attempts to circumvent the Board's rulings and seek discovery outside of the scope of the contention.

⁵ "Applicants' Supplemental Response to 'Palmetto Alliance and Carolina Environmental Study Group's Interrogatories and Requests to Produce Documents on Diesel Generators Contentions to Applicants and NRC Staff' and 'CESG's Interrogatories to Duke Power Regarding Emergency Diesel Contentions Admitted by Atomic Safety and Licensing Board'", June 25, 1984 (hereinafter "Applicants' June 25 Supplemental Response").

⁶ Applicants note that Intervenor appears to place much weight on the extent of the Staff's response, in that the Staff objected to only four (PA/CESG nos. 22-25) interrogatories. Intervenor overlooks the fact that the Staff has available to it greater and more wide-ranging information than do Applicants; e.g., information with respect to all diesel generators at all facilities in the nation.

II. Argument

Applicants note that Intervenor, in their Motion to Compel, have failed to heed the requirements of the regulations and the Board's prior rulings on discovery. As the Board has stated previously:

Palmetto's motion to compel is required under the rule to set forth detailed bases for Board action, including "arguments in support of the motion." 10 C.F.R. § 2.740(f). This means that we will only grant relief against a party resisting further discovery when the movant gives particularized and persuasive reasons for it. Generalized claims that answers are "evasive" or that objections are "unsubstantial" will not suffice. Examples will not suffice. The movant must address each interrogatory, including consideration of the objection to it, point by tedious point.

Memorandum and Order (Ruling on Various Discovery Disputes), December 22, 1982, at p. 20 (emphasis added).

Intervenor, in their blanket attempt to have objections overruled and responses compelled on a number of interrogatories, have ignored the regulations and the Board's prior ruling.

Applicants continue to assert the objections asserted in their April 2 response and preserved in their supplemental response filed June 25, 1984. Applicants demonstrate herein that Intervenor are continuing to seek to expand the scope of the admitted contention in their interrogatories, rather than to seek discovery relevant to the admitted contention.

A. Intervenor's Interrogatories PA/CESG
13, 14, 15, 16, 17, 18, 20, 21, 22,
23, 24, 25, 36, 41, 42, 50, 52 and
CESG 12 and 18 are Beyond the Scope of
the Contention

Intervenors urge the Board to overrule Applicants' objections to any interrogatories founded upon the asserted irrelevance of operational history and TDI quality assurance related evidence. Specifically, Intervenors state:

Intervenors submit that the Applicants, the TDI Owners Group, the NRC Staff as well as Intervenors ourselves rely upon the operating experience of other TDI diesels (of identical and similar design) as well as available data regarding the inspection, testing, and surveillance of TDI diesels at all pertinent stages from design through procurement, manufacture, installation and actual operation. In short, all parties acknowledge the probative value of the operational history and quality assurance evidence as predictive of the reasonable assurance that the Catawba emergency diesel generators will, or will not, perform reliably in service.

Intervenors' Motion, p. 4.

The Board has expressly denied admission of operational history and TDI QA, not once, but three times. As mentioned earlier, the Board denied admission of the TDI operating history and TDI QA portions of Intervenors' proffered contention. February 23, 1984, Memorandum and Order, supra. The Appeal Board subsequently chose not to accept a referral of those contentions. ALAB-768, supra. Thereafter, Intervenors next sought to have

admitted a new and/or modified diesel generator contention which also addressed operational history and QA. The Board denied admission of the modified contention on two occasions. ⁷

Notwithstanding this history of Board denials, Intervenor seek to raise operational history and QA through the discovery process. Intervenor continue to demonstrate a flagrant disregard for the Board's orders admitting and limiting the contention on TDI diesel generators. It is this continuing practice to which Applicants object.

Intervenor seek to overcome the clear bar of discussion of topics which have been excluded by the Board by asserting that Applicants have acknowledged that the Board observed "that litigation of this contention may involve us in proof of diesel operating histories from other nuclear plants with diesels of the same design." Feb. 27, 1984, Memorandum and Order, supra, at 3. Intervenor's citation of a passage from the Board's Order which Applicants cited at p. 3 of their April 2, 1984, response is taken out of context. Immediately following the cited language, Applicants stated:

Thus it is clear that, at most, the Board's own contention, and the discovery permitted thereunder, may involve some aspects

⁷ The first denial occurred in the May 21, 1984 conference call, supra. In a June 21, 1984, conference call, in addition to moving the admission of what was the Board's sua sponte contention, as their own contention, Intervenor moved the Board to reconsider yet again, both its original ruling denying admission of TDI QA and operational history issues and its ruling of May 21 which denied admission of these issues plus others. The Board denied these two motions. Partial Initial Decision, p. 272, n.50.

(identified in Applicants' letter of February 17) of diesel operating history at other nuclear plants with diesel engines of the same designs and to that extent may legitimately be said to involve aspects of the generic contention. It does not, however, involve any aspect of the generic issue of TDI QA, and thus discovery is not permitted on that issue, nor does it give license for unrestricted inquiry into matters beyond site-specific issues at Catawba.

Applicants' April 2, 1984 response, at p. 3.

At most, Applicants have acknowledged that the specific component failures at Catawba may be similar to experiences at other plants. This is not, however, an acknowledgement that refutes Applicants' statement, cited by Intervenors, that "there is no warrant for discovery on the generic issues of either TDI quality assurance or the operational history of TDI diesel engines in marine applications or at sites other than Catawba." Intervenors' Motion at 3. The rationale is clear, this Board is interested in the Catawba diesel generators; Applicants' program is designed to reveal any problems at Catawba. Whether TDI diesel generator related problems occurred at other plants is irrelevant to Catawba and this contention.

Therefore, for the reasons stated, Applicants' objections to PA/CESG interrogatories 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 36, 41, 42, 50, 52 and CESG interrogatories 12 and 18 (for which blanket overruling is sought) should be sustained.

B. Intervenors' Request for Overruling
of Objections and Compelling Answers
on Specific Interrogatories Should
be Denied

In addition to the blanket attempt to have objections overruled for interrogatories which Applicants assert are outside the scope of the admitted contention, Intervenors also seek to have objections overruled and answers compelled on specific interrogatories. Applicants respond to Intervenors' assertions interrogatory-by-interrogatory.

Response to Interrogatory 19

This interrogatory seeks information on surveillance and inspection of non-TDI components in the Catawba diesel generators. Applicants, in their response, stated that all parts of the Catawba diesel generators which are the subject of the admitted contention were manufactured by TDI with two exceptions. In the Motion to Compel, Intervenors appear to concede that this interrogatory seeks information on the generator portion of the machine, rather than the engine portion. As stated by Applicants in their April 2 response at 3, the generator is separate from the engine. Applicants continue to object to providing a response to this interrogatory as such response relates to the generator. Applicants hereby incorporate by reference the objection in Applicants' April 2 response at p. 21. The problems of the type addressed in Applicants' letter to the Board which engendered the admitted contention dealt solely with the engine. Furthermore, surveillance and inspection records are within the

ambit of the QA contention for which admission has been repeatedly denied. Intervenor's reference to Board Notification 84-097 (which deals with the files found in the generator portion of two machines) is yet another attempt to bootstrap an extraneous element into the contention. The Board notifications and other documents focus on a number of issues related to TDI diesels. The contention here is narrowly focused and limited to matters of the type raised in Applicants' letters to the Board and is not expanded by reference in Board notifications. Therefore, Applicants' objection should be sustained.

Responses to Interrogatories 22-25

These interrogatories seek information on the files found in the generator portion of the Catawba diesel generators. Applicants continue to object to providing answers to these interrogatories. Applicants hereby incorporate by reference the objection in Applicants' April 2 response at pp. 22-23. The interrogatories deal with the generator portion of the diesel generator, which is not in issue in the contention which has been admitted. Moreover, none of the diesel generator contentions which Intervenor has raised and the Board has ruled on (whether admitted or not) have raised the issue of files in the generators. As this Board is well aware, Intervenor has known of these files for months and could have submitted a contention focusing on them. They did not and should not now be allowed to

bootstrap an extraneous element into the proceeding. Intervenors provide no new basis for the relevance of these interrogatories, and Applicants' objection should, therefore, be sustained.

Response to Interrogatory 27

This interrogatory seeks information on all manufacturers of emergency diesel generators for use in nuclear power plants. Applicants hereby incorporate by reference the objection in their April 2 response at p. 24. Intervenors again attempt to expand the contention by discovery requests concerning diesel generator manufacturers other than TDI. The issue is the adequacy of the Catawba TDI diesel generator. The issue is not a comparison with other machines. Intervenors make no argument as to the relevancy of this interrogatory in the light of the admitted contention, which is specifically limited to the TDI diesels at Catawba. Furthermore, Intervenors' assertion that "[Applicants'] lack of knowledge may itself be material" is unwarranted and irrelevant. Such assertion assumes a duty which is not incumbent upon Applicants. Therefore, for the reasons stated, Applicants' objection should be sustained.

Response to Interrogatory 28

This interrogatory is a continuation of interrogatory 27 and seeks operational experience data on all diesel generators used in nuclear power plant application. Applicants hereby incorporate by reference the objection in their April 2 response at p. 25. Intervenors again seek to have Applicants conduct a

survey for them on matters beyond the scope of the admitted contention.⁸ The issue is not a comparative one (TDI diesels versus those of another manufacturer); rather the issue is the adequacy of the Catawba diesels.⁹ Therefore, Applicants' objection should be sustained.

Response to Interrogatory 30

This interrogatory seeks information on actual operation of nuclear power plant diesel generators under emergency conditions. Applicants hereby incorporate by reference the objection in their April 2 response at p. 26. Intervenor seek to have Applicants perform a survey of matters beyond the scope of the admitted contention. The issue before the Board is the adequacy of the Catawba diesels to perform their intended function. The reference in Intervenor's Motion to the answer "provid[ing] a foundation for evaluating the significance of the limitations on the operating capability of the Catawba diesel generator" is specious. The standards which these machines must meet are set out in applicable NRC regulatory documents; limitations, if any,

⁸ Applicants are not required to conduct surveys for Intervenor. "While a party must furnish in his answer to interrogatories whatever information is available to it, ordinarily it will not be required 'to make research and compilation of data not readily known to him.'" Boston Edison Company, et al. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 584 (1975) (footnote omitted).

⁹ Applicants would also note that to the extent the interrogatory seeks information filed with the NRC (such as LERs) on diesel generators other than those at Catawba, such will be in the NRC's public document room.

on operation of these machines can be determined solely on the basis of reference to those documents. Therefore, Applicants' objection should be sustained.

Response to Interrogatory 31

This interrogatory seeks information on diesel generator replacement options under consideration by the NRC, the Owner's Group or its members, and Applicants. Applicants hereby incorporate by reference the objection in their April 2 response at pp. 27-28. Applicants have answered this question to the best of their knowledge as it applies to Applicants. Applicants are under no duty to survey the industry and provide an answer to Intervenor. (See footnote 8, supra.) Furthermore, again Intervenor seek to go beyond the admitted contention, the site-specific problems at Catawba. Therefore, Applicants' objection should be sustained.¹⁰

¹⁰ In their arguments on interrogatories 31-33, Motion pages 7-8, Intervenor have sought to expand the admitted contention by seeking discovery premised upon an asserted need to fashion appropriate relief (e.g., "remedies and license conditions which might be available to Intervenor as well" (Motion, p. 7)). As Applicants have repeatedly pointed out, the issue in this proceeding is the adequacy of the Catawba diesel generators, not options for replacement. This is not a comparative process. Rather, it involves a demonstration of reasonable assurance that the Catawba diesel generators will perform their intended function. The public health and safety will thereby be protected.

Response to Interrogatory 32

This interrogatory seeks information on Shoreham diesel generator replacement options. Furthermore, it appears to be directed to the Staff. Applicants hereby incorporate by reference the objection in their April 2 response at p. 28. The issue in this proceeding is the site-specific problems with the TDI diesels at Catawba, not events at another plant, Shoreham, which is not in issue before this Board. Therefore, for the reasons stated in Applicants' objection, the objection should be sustained.

Response to Interrogatory 33

This interrogatory seeks information on all 10 C.F.R. Part 21 reports on diesel generators. Applicants hereby incorporate by reference the objection in their April 2 response at pp. 28-29. Intervenor again attempt to expand the contention by bringing in issues related to non-TDI diesels. Applicants have been responsive to the extent the interrogatory is relevant to the admitted contention. Applicants are under no duty to conduct a survey for Intervenor on non-TDI machines. (See footnote 8, supra.) Therefore, Applicants' objection should be sustained.

Response to Interrogatory 35A

This interrogatory seeks information on the Catawba long-term maintenance and testing program for emergency diesel generators. Applicants hereby incorporate by reference the objection in their April 2 response at p. 31. Applicants in

their original response and in their June 1, 1984, inspection report have provided a full and complete response to this interrogatory with respect to the testing and inspection program for the Catawba diesels. Because Catawba long-term maintenance and testing is not within the contention, Applicants' objection to providing additional information should be sustained.

Response to Interrogatory 39

This interrogatory seeks information on Applicants' position with respect to fuel load and low power operation prior to full qualification of the Catawba diesel generators. Applicants hereby incorporate by reference the objection in their April 2 response at p. 33. Intervenors call for a legal conclusion unrelated to the facts. This was one of the bases for Applicants' objection. Applicants' objection should be sustained on that grounds. Applicants note that the issue is mooted with respect to a fuel load license. Memorandum and Order (Authorizing Issuance of a License to Load Fuel and Conduct Certain Precritical Testing), May 30, 1984. Moreover, Applicants would note that if further authorization--such as authorization to operate at power levels up to 5%--is sought from this Board, Applicants will file the appropriate motion with this Board which will provide Applicants' views on the matter. Intervenors will have an opportunity to respond to that motion.

Response to Interrogatory 44A

This interrogatory seeks information on competing bids for the diesel generators. Applicants hereby incorporate by reference the objection in their April 2 response at p. 36. Intervenor's asserted grounds (alternative designs and Applicants' knowledge and thoroughness in selection of TDI) for overruling Applicants' objection clearly indicates that the interrogatory is beyond the scope of the admitted contention. Alternative designs have nothing to do with the issue before this Board, or with the site-specific problems with the Catawba diesels. Similarly, "Applicants' knowledge and thoroughness in the selection of the TDI machines" is unrelated to the admitted contention. Therefore, Applicants' objection should be sustained.

Response to Interrogatory 51

This interrogatory seeks information on Applicants' loss of voltage experience at McGuire and Oconee. Applicants hereby incorporate by reference the objection in their April 2 response at pp. 40-41. Intervenor's assertion that Applicants' Oconee and McGuire loss of voltage experience is applicable to Catawba seeks to expand the scope of the contention. Intervenor asserts that they "seek further information with respect to the existence of circumstances in which the TDI diesels would likely be called into service" and therefore information with respect to "loss of voltage" incidents at Oconee and McGuire are relevant. However,

Applicants would note that such circumstances are described in NRC's regulatory documents--e.g., loss of offsite power--and thus such information is irrelevant. Applicants have provided the information requested by this interrogatory to the extent it is relevant, and therefore, Applicants' objection should be sustained. (See Applicants' April 2 response, p. 40, n.**/ and p. 61.)

III. Conclusion

In light of the foregoing, Applicants urge that the Board issue an order denying Intervenor's Motion to Compel.

Respectfully submitted,

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June 28, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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DUKE POWER COMPANY, <u>et al.</u>)	Docket Nos. 50-413
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Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer To Palmetto Alliance and Carolina Environmental Study Group Motion to Compel Discovery From Applicants" in the above captioned matter have been served upon the following by deposit in the United States mail this 28th day of June, 1984.

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