

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AIR LIQUIDE LARGE INDUSTRIES U.S. LP	)	
	)	CASE NO.
COMPLAINANT	)	2012-00351
V.	)	
	)	
KENTUCKY POWER COMPANY	)	
	)	
DEFENDANT	)	

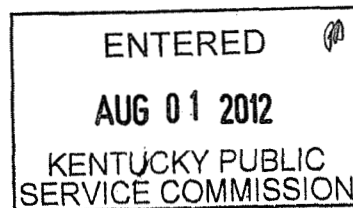
ORDER TO SATISFY OR ANSWER

Kentucky Power Company ("Kentucky Power") is hereby notified that it has been named as defendant in a formal complaint filed on July 20, 2012, a copy of which is attached hereto.

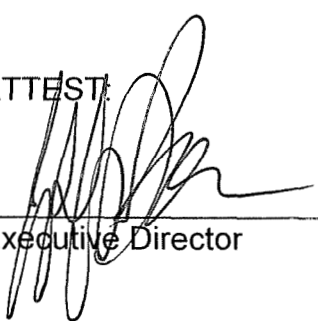
Pursuant to 807 KAR 5:001, Section 12, Kentucky Power is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within ten days of the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

AIR LIQUIDE LARGE INDUSTRIES U.S. LP

Complainant

v.

KENTUCKY POWER COMPANY

Defendant

Case No. 2012-00351

RECEIVED

JUL 20 2012

PUBLIC SERVICE  
COMMISSION

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COMPLAINT AND PETITION

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INTRODUCTION

Pursuant to KRS 278.260, KRS 278.270, KRS 278.040, KRS 278.030 and 807 KAR 5:001 Section 12, Air Liquide Large Industries U.S. LP (“Air Liquide” or “Complainant”) submits this Complaint against Kentucky Power Company (“Kentucky Power” or “Defendant”) to the Kentucky Public Service Commission (“Commission”). Air Liquide petitions the Commission for an order requiring Kentucky Power to allow Air Liquide’s Ashland, Kentucky facility to immediately being taking service under Kentucky Power’s existing Tariff RTP. In support thereof, Air Liquide state as follows:

BASES FOR THE COMMISSION’S JURISDICTION

1. The Kentucky Public Service Commission has jurisdiction and venue to hear this complaint under KRS 278.040, KRS 278.060 and 807 KAR 5:001 Section 12.

## PARTIES

2. That the Complainant is a Delaware limited partnership, an indirectly, wholly owned subsidiary of American Air Liquide Holdings, Inc whose address is as follows:  
  
2700 Post Oak Blvd; Suite 1800  
Houston, TX 77056
3. Counsel for Complainant is:  
  
Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Jody M. Kyler, Esq.  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513.421.2255 Fax: 513.421.2764  
[MKurtz@BKLawfirm.com](mailto:MKurtz@BKLawfirm.com)  
[KBoehm@BKLawfirm.com](mailto:KBoehm@BKLawfirm.com)  
[JKyler@BKLawfirm.com](mailto:JKyler@BKLawfirm.com)
4. That the Defendant is a public utility and retail electric supplier as defined in KRS 278.010 incorporated in the Commonwealth of Kentucky and whose address is as follows:  
  
101A Enterprise Drive  
P.O. 5190  
Frankfort, Kentucky 40602-5190.
5. Counsel for Defendant is:  
  
Mark R. Overstreet  
STITES & HARBISON PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, Kentucky 40602-0634  
Ph: 502.223.3477  
[MOVERSTREET@stites.com](mailto:MOVERSTREET@stites.com)
6. Kentucky Power is an electric utility organized as a corporation under the laws of the Commonwealth of Kentucky in 1919. Kentucky Power is engaged in the generation, purchase, transmission, distribution and sale of electric power. Kentucky Power serves approximately 173,000 customers in the following 20 counties of eastern Kentucky: Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike and Rowan. Kentucky

Power also supplies electric power at wholesale to other utilities and municipalities in Kentucky for resale.

7. Air Liquide is the world leader in gases for industry, health and the environment, and is present in 80 countries with 46,200 employees worldwide. In the US, Air Liquide employs nearly 5,000 people who support the more than 200 domestic locations including more than 130 industrial gas plants and 2,000 miles of pipeline. Oxygen, nitrogen, hydrogen and rare gases have been at the core of Air Liquide's activities since its creation in 1902. In Kentucky, Air Liquide has three large air separation unit facilities, two in Ghent and the facility in Ashland for which the supply of power is the subject matter of this Complaint.

#### **BACKGROUND**

8. On June 1, 2012, Defendant filed an Application to withdraw its experimental Tariff RTP at the Commission in Case No. 2012-00226.
9. On June 7, 2012, Kentucky Industrial Utility Customers, Inc. ("KIUC"), on behalf of Complainant and other Kentucky Power customers, filed a Response and Motion to Dismiss in opposition to Defendant's Application to withdraw experimental Tariff RTP in Case No. 2012-00226.
10. On June 11, 2012, Defendant filed a separate Application in Case No. 2012-00245 for approval of its Experimental Real-Time Pricing Rider ("Rider RTP"), contingent upon the Commission granting Defendant's June 1, 2012 Application to withdraw its existing Tariff RTP.
11. On June 19, 2012, Air Liquide contacted Defendant by e-mail requesting that Air Liquide's Ashland, Kentucky facility begin taking service under existing Tariff RTP. Air Liquide's June 19, 2012 e-mail is attached as "Exhibit A."
12. On June 21, 2012, Defendant contacted Air Liquide by e-mail and stated that existing tariff RTP was no longer available for additional customers. Defendant added that "[t]he experimental tariff has reached the limit of 10 customer participants." Defendant's June 21, 2012 e-mail is attached as "Exhibit B."

13. On June 21, 2012, the Commission entered an Order finding that an investigation will be necessary to determine the reasonableness of Defendant's proposed Rider RTP and that such investigation should be conducted in Case No. 2012-00226 concurrently with the investigation of Defendant's request to withdraw its existing Tariff RTP. The Commission also suspended the effective date of the proposed rates in Rider RTP for five months and stated that it "*will take under advisement the issue of the reasonableness of prohibiting any customers from taking service under Tariff RTP after July 1, 2012.*"
14. On June 22, 2012, KIUC filed a Motion for Clarification in Case No. 2012-00226 asking the Commission to confirm that customers who gave notice of their desire to take service under existing Tariff RTP prior to July 1, 2012 would be permitted to do so during the Commission's investigation.
15. June 22, 2012, Defendant filed a Response to KIUC's Motion for Clarification, requesting that the Commission deny KIUC's Motion for Clarification and suspend Tariff RTP after July 1, 2012 during the pendency of Case No. 2012-00226.
16. On June 28, 2012, the Commission entered an Order finding that Defendant's existing Tariff RTP has not been suspended and remains in full force and effect. The Commission also stated that if any customer believes that it is eligible for service under Tariff RTP, or under any other tariff, and its request for that service has been denied, that customer has recourse by filing a complaint under KRS 278.260.
17. On June 28, 2012, Air Liquide contacted Defendant by e-mail requesting to take service under existing Tariff RTP effective July 1, 2012. Air Liquide's June 28, 2012 e-mail and Addendum are attached as "Exhibit C."
18. On June 29, 2012, Defendant contacted Air Liquide by e-mail and stated that Defendant cannot honor Air Liquide's request for service under existing Tariff RTP beginning July 1, 2012. Defendant further stated that "Tariff RTP, which is an experimental tariff, is limited to ten customers. As used in Tariff RTP each billing account represents a customer. Requests for service under Tariff RTP were processed in the order

received. There are ten customers who requested service under Tariff RTP prior to Air Liquide.” Defendant’s June 29, 2012 e-mail is attached as “Exhibit D.”

19. It is Complainant’s understanding that, on July 1, 2012, four corporations began taking service under Defendant’s existing Tariff RTP– AK Steel Corporation, Inc. (“AK Steel”), Air Products & Chemicals, Inc. (“Air Products”), EQT Corporation (“EQT”), and Catlettsburg Refining LLC, a subsidiary of Marathon Petroleum LP (“Marathon”). AK Steel, Air Products, and Marathon each currently have one billing account taking service under existing Tariff RTP. EQT Corporation currently has seven billing accounts taking service under Tariff RTP.
20. Defendant did not allow Air Liquide’s Ashland, Kentucky facility to take service under Tariff RTP effective July 1, 2012.

#### **BASES FOR AIR LIQUIDE’S CLAIMS**

21. Defendant’s existing Tariff RTP provides “[t]his experimental tariff will be limited to a maximum of 10 customers.”
22. 807 KAR 5:006, Section 1(2), addressing the Commission’s general rules, defines a “customer” as “any person, firm, corporation or body politic applying for or receiving service from any utility.”
23. KRS 278.010 provides that “‘corporation’ includes private, quasipublic, and public corporations, and all boards, agencies, and instrumentalities thereof, associations, joint-stock companies, and business trusts.”
24. Nowhere in 807 KAR 5:006, Section 1(2) is the term “customer” defined as a single billing account. Instead, consistent with the Commission’s rules and regulations, the term “customer” encompasses an entire corporation, regardless of whether the corporation has either one single billing account or multiple billing accounts.
25. Defendant’s tariffs also distinguish between a “customer” and a billing account. For example, Defendant’s Tariff Sheet No. 2-1 (Terms & Conditions of Service) provides “[w]hen the Customer desires delivery of energy at more than one point, a separate agreement may be required for each

*separate point of delivery. Service delivered at each point of delivery will be billed separately under the applicable tariff.”*

26. Defendant’s Tariff Sheet No. 7-2 (Small General Service) provides “[e]ach separate service delivery point shall be considered a contract location and shall be separately billed under the service contract. In the event one Customer has several accounts for like service, the Company may meter one account to determine the appropriate kilowatt-house usage applicable for each of the accounts.”
27. Defendant’s Tariff Sheet 2-4 (Terms & Conditions of Service) provides “[a]ny one delayed payment charge billed against the Customer for non-payment of bill or any one forfeited discount applied against the Customer for non-payment of bill may be remitted, provided the Customer’s previous accounts are paid in full and provided no delayed payment charge or forfeited discount has been remitted under this clause during the preceding 6 months.”
28. Defendant’s Tariff Sheet 2-4 (Terms & Conditions of Service) provides “[t]he tariffs of the Company are net if the account of the Customer is paid within the time limit specified in the tariff applicable to the Customer’s service.”
29. Defendant’s Tariff Sheet No. 30-3, for existing Tariff RTP itself, provides “[t]his tariff is due and payable in full on or before the due date stated on the bill. On all accounts not so paid, an additional Charge of 5% of the unpaid balance will be made.” This language or similar language is repeated in Defendant’s other tariff sheets.
30. Dictionaries also define a “customer” as a single person or an entire organization purchasing a service. For example, Merriam-Webster defines “customer” as “one that purchases a commodity or service.” Oxford Dictionaries Online defines “customer” as “a person or organization that buys goods or services

*from a store or business.” And Cambridge Dictionaries Online defines “customer” as “a person who buys goods or a service.”<sup>1</sup>*

31. Defendant’s interpretation of the term “*customer*” in Tariff RTP as referring to one single billing account is incorrect and inconsistent with the Commission’s rules and regulations as well as the usage of the term “*customer*” within Defendant’s tariffs and in various dictionaries.
32. Because AK Steel, Air Products, Marathon, and EQT each represent one corporation and, consequently, one “*customer*” under the Commission’s rules and regulations, it is Complainant’s understanding that only four eligible “*customers*” had requested to take service under Defendant’s existing Tariff RTP when Air Liquide requested to take service under Tariff RTP. Therefore, the 10 customer maximum limit under existing Tariff RTP had not been reached when Air Liquide requested to take service under Tariff RTP.
33. Because the 10 customer maximum limit under Defendant’s existing Tariff RTP had not been reached when Air Liquide requested to take service under Tariff RTP, and because Air Liquide was otherwise eligible to take service under the terms of Tariff RTP, Air Liquide was entitled to take service under Tariff RTP prior to and as of July 1, 2012.
34. Defendant’s denial of Air Liquide’s right to take service under Defendant’s existing Tariff RTP prior to and as of July 1, 2012 through the pendency of the Commission’s review in Case No. 2012-00226 is unreasonable and unlawful in violation of the Commission’s June 28, 2012 Order in Case No. 2012-00226 and the terms of existing Tariff RTP.

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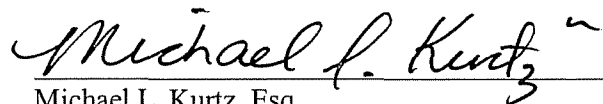
<sup>1</sup> Merriam-Webster definition available at <http://www.merriam-webster.com/dictionary/customer?show=0&t=1342547104>; Oxford Dictionaries Online definition available at [http://oxforddictionaries.com/definition/american\\_english/customer?region=us&q=customer](http://oxforddictionaries.com/definition/american_english/customer?region=us&q=customer); Cambridge Dictionaries Online definition available at <http://dictionary.cambridge.org/dictionary/american-english/customer?q=customer>.



**REQUESTED RELIEF**

**WHEREFORE**, Air Liquide petitions the Commission for an order requiring Kentucky Power to allow Air Liquide's Ashland, Kentucky facility to immediately begin taking service under existing Tariff RTP. Because the nature of the dispute in this case is purely legal, Air Liquide does not believe a hearing will be necessary to resolve this matter. Air Liquide does request that the Commission issue an expedited ruling on this matter since each day that this case proceeds unresolved may result in lost savings to Air Liquide that it would otherwise have received if Defendant permitted Air Liquide to take service under existing Tariff RTP as required by law.

Respectfully submitted,



Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody M. Kyler, Esq.

BOEHM, KURTZ & LOWRY

36 East Seventh Street, Suite 1510

Cincinnati, Ohio 45202

Ph: 513.421.2255 fax: 513.421.2764

[MKurtz@BKLawfirm.com](mailto:MKurtz@BKLawfirm.com)

[KBoehm@BKLawfirm.com](mailto:KBoehm@BKLawfirm.com)

[JKyler@BKLawfirm.com](mailto:JKyler@BKLawfirm.com)

**ATTORNEYS FOR AIR LIQUIDE LARGE  
INDUSTRIES U.S. LP**

**July 19, 2012**

# **Exhibit A**

## EXHIBIT A

"Johnson, Ron" <[Ron.Johnson@airliquide.com](mailto:Ron.Johnson@airliquide.com)>

06/19/2012 12:09 PM

To "James (Bud) Clark ([jcclark1@aep.com](mailto:jcclark1@aep.com))" <[jcclark1@aep.com](mailto:jcclark1@aep.com)>

cc "Smith, Bill(Houston)" <[Bill.Smith@Airliquide.com](mailto:Bill.Smith@Airliquide.com)>, "Johnson, Ron" <[Ron.Johnson@airliquide.com](mailto:Ron.Johnson@airliquide.com)>

Subject Air Liquide Request

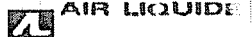
Mr. Clark:

Air Liquide's Ashland Kentucky facility is currently on the C.I.P. -T.O.D tariff rate for electricity with Kentucky Power. We would like to move it from this rate to the tariff RTP rate.

Please forward me the Addendum we need to begin this process.

Thank you and please let me know if you have any questions.

**Ron B. Johnson**  
Energy Manager



2700 Post Oak Blvd, Suite 1800  
Houston, Tx 77056

**713-402-2147 office**

713-320-6696 cell

713-803-5541 fax

[ron.johnson@airliquide.com](mailto:ron.johnson@airliquide.com)

# **Exhibit B**

## EXHIBIT B

**From:** [jcclark1@aep.com](mailto:jcclark1@aep.com) [<mailto:jcclark1@aep.com>]  
**Sent:** Thursday, June 21, 2012 6:08 PM  
**To:** Johnson, Ron  
**Cc:** Smith, Bill(Houston)  
**Subject:** Re: Air Liquide Request

Ron,

As we discussed this morning, the current tariff RTP is not longer available for additional customers. The experimental tariff has reached the limit of 10 customer participants. As requested, I have attached a copy of the addendum for this tariff, but have marked it as "DRAFT-NOT FOR EXECUTION".

If you have any further questions, please let me know.

James (Bud) Clark  
National Account Manager  
American Electric Power  
4421 W. Loop 281 Longview, TX 75604-5926  
PH: (903) 234-7319 FX: (903) 234-7269  
[www.aepnationalaccounts.com](http://www.aepnationalaccounts.com)

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**DRAFT - NOT FOR EXECUTION**  
**ADDENDUM**  
**EXPERIMENTAL REAL-TIME PRICING**

This ADDENDUM, dated \_\_\_\_\_, 2012, supplements the electric service CONTRACT dated \_\_\_\_\_, by and between KENTUCKY POWER COMPANY, hereafter called the Company, and \_\_\_\_\_, hereafter called the Customer, and sometimes collectively referred to as the "Parties", providing for service under the Company's Tariff R.T.P. (Experimental Real-Time Pricing Tariff)..

**W I T N E S S E T H:**

**WHEREAS**, the Customer is an existing customer of the Company that owns facilities at its \_\_\_\_\_, located near \_\_\_\_\_; and

**WHEREAS**, the Customer has requested service under the Company's Tariff R.T.P. for the facilities at \_\_\_\_\_, located near \_\_\_\_\_.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants contained herein, and subject to the terms and conditions herein, the Parties agree as follows:

The Customer represents and agrees that it owns the facilities at \_\_\_\_\_, located near \_\_\_\_\_, that it meets the criteria to qualify for Tariff R.T.P., as approved by and on file with the Kentucky Public Service Commission ("Commission"), and that it has the ability to monitor and respond to real-time prices in the wholesale electricity market. A copy of the Company's current Tariff R.T.P. (Experimental Real-Time Pricing Service) is attached hereto and incorporated herein.

The Company agrees to provide service for the Customer's \_\_\_\_\_, located near \_\_\_\_\_, as that service is defined in the Company's Tariff R.T.P. and the Customer agrees to pay for such service, in accordance with, at the rates specified in, and subject to the terms and conditions of service applicable, as specified in the Company's then current Tariff R.T.P. and the Company's Terms and Conditions of Service, or any successor thereto approved by and on file with the Commission.

DRAFT - NOT FOR EXECUTION

This Addendum covers the provision of service for the Customer's facility, for which the Contract Capacity subject to Tariff C.I.P.-T.O.D. (Commercial and Industrial Power - Time-of-Day) designated by the Customer is set at \_\_\_\_\_ kW. Usage in excess of that Contract Capacity subject to Tariff C.I.P.-T.O.D. shall be billed under Tariff R.T.P. It is understood and agreed the Total Contract Capacity, which is defined as the Contract Capacity subject to Tariff C.I.P.-T.O.D. plus the Contract Capacity subject to Tariff R.T.P., shall not exceed \_\_\_\_\_ kW.

The term of this Addendum shall commence at 12:01 a.m. EDT on \_\_\_\_\_ and expire at 11:59 p.m EDT on \_\_\_\_\_. Upon expiration of this Addendum, all terms and conditions of the Contract that were modified by this Addendum shall revert to their existence and meaning prior to having been so modified.

Except as modified by this Addendum, the provisions of the Contract shall continue in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Experimental Real-Time Pricing Addendum to be duly executed the day and year first above written.

Kentucky Power Company  
By: \_\_\_\_\_  
\_\_\_\_\_  
Title: Manager  
Date: \_\_\_\_\_

(Customer Name)  
By: \_\_\_\_\_  
\_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Account Number:

# **Exhibit C**



## EXHIBIT C

"Johnson, Ron" <[Ron.Johnson@airliquide.com](mailto:Ron.Johnson@airliquide.com)>

06/28/2012 05 44 PM

To "ggpauley@aep.com" <[ggpauley@aep.com](mailto:ggpauley@aep.com)>

cc "James (Bud) Clark ([jcclark1@aep.com](mailto:jcclark1@aep.com))" <[jcclark1@aep.com](mailto:jcclark1@aep.com)>, "[moverstreet@stites.com](mailto:moverstreet@stites.com)" <[moverstreet@stites.com](mailto:moverstreet@stites.com)>, "[rkwohnhas@aep.com](mailto:rkwohnhas@aep.com)" <[rkwohnhas@aep.com](mailto:rkwohnhas@aep.com)>, "Smith, Bill(Houston)" <[Bill.Smith@Airliquide.com](mailto:Bill.Smith@Airliquide.com)>, "Valcarcel, Lynn" <[Lynn.Valcarcel@Airliquide.com](mailto:Lynn.Valcarcel@Airliquide.com)>, "Johnson, Ron" <[Ron.Johnson@airliquide.com](mailto:Ron.Johnson@airliquide.com)>

Subject: Tariff-RTP Air Liquide Addendum

Dear Mr. Pauley.

Please find attached, Air Liquide's addendum requesting service under Kentucky Power Tariff RTP, designating 4.6mw of our load on tariff CIP-TOD and the remainder of our load on Tariff RTP for service beginning July 1, 2012. I am advised by counsel that by Order entered June 28, 2012 in Case No. 2012-00226 the KPSC confirmed that the existing Tariff RTP has not been suspending and remains in full force and effect. Under the existing Tariff RTP, the capacity price is to reflect the currently effective PJM RPM price of \$16/mw-day for the 2012/2013 Planning Year.

Therefore, as confirmed by the KPSC Order, we have a legal entitlement to take service under the lawful Tariff RTP effective July 1, 2012 and expect Kentucky Power to comply with the KPSC's Order.

Please confirm that you will honor our July 1, 2012 request.

### **Ron B. Johnson**

**Energy Manager**

<[ATT00002.jpg](#)>

2700 Post Oak Blvd; Suite 1800

Houston, Tx 77056

**713-402-2147 office**

713-320-6696 cell

713-803-5541 fax

[ron.johnson@airliquide.com](mailto:ron.johnson@airliquide.com)

[attachment "Air Liquide 06-28-12 Tariff RTP Addendum (partially executed).pdf" deleted by Ranie K Wohnhas/OR3/AEPIN]

# **Exhibit D**

## EXHIBIT D

**From:** [rkwohnhas@aep.com](mailto:rkwohnhas@aep.com) [mailto:[rkwohnhas@aep.com](mailto:rkwohnhas@aep.com)]  
**Sent:** Friday, June 29, 2012 03:02 PM  
**To:** Johnson, Ron  
**Cc:** [ggpauley@aep.com](mailto:ggpauley@aep.com) <[ggpauley@aep.com](mailto:ggpauley@aep.com)>  
**Subject:** Re: Tariff-RTP Air Liquide Addendum

Mr. Johnson,

I am responding on behalf of Mr. Pauley to your email below. Kentucky Power regrets it can not honor Air Liquide Large Industrial US LP's request for service under Tariff RTP beginning July 1, 2012. Tariff RTP, which is an experimental tariff, is limited to ten customers. As used in Tariff RTP each billing account represents a customer. Requests for service under Tariff RTP were processed in the order received. There are ten customers who requested service under Tariff RTP prior to Air Liquide.

Ranie K. Wohnhas  
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Kentucky Power  
Audinet 605-7004  
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Honorable Michael L Kurtz  
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