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COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION PUBLIC SERVICE  
COMMISSION

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In the Matter of:

THE 2017 INTEGRATED RESOURCE ) CASE NO.  
PLAN OF BIG RIVERS ELECTRIC ) 2017-00384  
CORPORATION )

**PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR  
CONFIDENTIAL TREATMENT**

1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001 Section 13 and KRS 61.878, to grant confidential treatment to certain information contained in Big Rivers’ responses and/or the attachments to Big Rivers’ responses to Items 5, 14, 15, 20, 21, 25, 29, 30, 39, and 52 of the Commission Staff’s Initial Request for Information (“PSC 1-5,” “PSC 1-14,” “PSC 1-15,” “PSC 1-20,” “PSC 1-21,” “PSC 1-25,” “PSC 1-29,” “PSC 1-30,” “PSC 1-39,” and “PSC 1-52,” respectively); Items 3, 7, 9, 13, and 14 of the Attorney General’s Initial Request for Information (“AG 1-3,” “AG 1-7,” “AG 1-9,” “AG 1-13,” and “AG 1-14,” respectively); Item 8 of Kentucky Industrial Utility Customers, Inc.’s Initial Request for Information (“KIUC 1-8”); and Items 2, 4, 8, 12, 14, 24, 25, 29, 32, and 41 of Ben Taylor and the Sierra Club’s Initial Request for Information (“SC 1-2,” “SC 1-4,” “SC 1-8,” “SC 1-12,” “SC 1-14,” “SC 1-24,” “SC 1-25,” “SC 1-29,” “SC 1-32,” and “SC 1-41,” respectively).

1           2.     The information for which Big Rivers seeks confidential treatment is  
2 hereinafter referred to as the “Confidential Information.” The Confidential  
3 Information consists of SERC audits, the confidential terms of purchased power  
4 agreements; modeling files; confidential studies prepared for Big Rivers, including  
5 studies relating to environmental compliance strategies and decommissioning  
6 strategies, and related projected costs and plans; planned outage schedules and  
7 plans; projections of capital project costs, fuel and other operating and maintenance  
8 costs, rates, and energy and capacity prices; bids and information about sensitive  
9 negotiations; and related information.

10           3.     One (1) copy of the paper pages containing Confidential Information,  
11 with the Confidential Information highlighted with transparent ink, printed on  
12 yellow paper, or otherwise marked “CONFIDENTIAL,” is being filed with this  
13 petition. A copy of those pages, with the Confidential Information redacted, or a  
14 sheet noting that the entirety of the pages have been redacted, is being filed with  
15 the original and each of the ten (10) copies of Big Rivers’ responses to the  
16 information requests filed with this petition. 807 KAR 5:001 Section 13(2)(a)(3).

17           4.     The attachments for Big Rivers’ responses to PSC 1-14, PSC 1-52,  
18 KIUC 1-8, SC 1-8, SC 1-14, SC 1-24, SC 1-25, SC 1-41 are being provided  
19 electronically as requested in those information requests. The attachment to Big  
20 Rivers’ response to KIUC 1-8 is Big Rivers’ long-term financial forecast model and  
21 the attachments to Big Rivers’ response to SC 1-14 are production cost modeling  
22 files. These are key internal strategic planning documents, and as such, the

1 entirety of these files is confidential. The remaining attachments are Excel files,  
2 and the data in those files is inextricably intertwined, and Big Rivers is unable to  
3 redact only some of the information from the electronic spreadsheet file without  
4 making other cells in the spreadsheets unusable or breaking the formulas contained  
5 therein. The accompanying motion for deviation seeks a deviation from the  
6 requirement that Big Rivers file paper confidential and redacted copies of the  
7 electronic files.

8         5. A copy of this petition and a copy of Big Rivers' responses to the  
9 information requests with the Confidential Information redacted have been served  
10 on all parties to this proceeding. 807 KAR 5:001 Section 13(2)(b). A copy of the  
11 Confidential Information has been provided to all parties that have executed a  
12 confidentiality agreement.

13         6. If and to the extent the Confidential Information becomes generally  
14 available to the public, whether through filings required by other agencies or  
15 otherwise, Big Rivers will notify the Commission in writing. See 807 KAR 5:001  
16 Section 13(10)(b).

17         7. As discussed below, the Confidential Information is entitled to  
18 confidential treatment based upon KRS 61.878(1)(m), 807 KAR 5:001 Section 13(4)  
19 and (9), and/or KRS 61.878(1)(c)(1). See 807 KAR 5:001 Section 13(2)(a)(1).

20         **I. Information Exempted from Public Disclosure by KRS 61.878(1)(m)**

21         8. KRS 61.878(1)(m)(1) protects “[p]ublic records the disclosure of which  
22 would have a reasonable likelihood of threatening the public safety by exposing a

1 vulnerability in preventing protecting against, mitigating, or responding to a  
2 terrorist act. . . .”

3 9. The attachments to Big Rivers’ response to SC 1-2 are the confidential  
4 Executive Summaries of two SERC audits, both of which consist of Critical Energy  
5 Infrastructure Information. Public disclosure of this information could threaten  
6 public safety by providing the public with a tool to analyze the vulnerabilities in Big  
7 Rivers’ transmission system and generating operations. As such, this information  
8 should be granted confidential treatment. The Commission has granted  
9 confidential treatment on these grounds to similar information relating to potential  
10 vulnerability in Big Rivers’ transmission system. *See, e.g., In the Matter of: 2014*  
11 *Integrated Resource Plan of Big Rivers Electric Corporation*, Order, P.S.C. Case No.  
12 2014-00166 (August 26, 2014) (the “2014 IRP Confidentiality Order”).

13 **II. Information Exempted from Public Disclosure by 807 KAR 5:001**  
14 **Section 13(4) and (9)**

15 10. The Confidential Information in Big Rivers’ responses and/or the  
16 attachments to Big Rivers’ responses to PSC 1-5, PSC 1-30, AG 1-14, SC 1-4, and  
17 SC 1-8 consists of information about the confidential terms of purchased power  
18 agreements that Big Rivers has entered into with three entities in Nebraska,  
19 KyMEA, and NextEra. Big Rivers filed each of these agreements with the  
20 Commission, and when doing so, Big Rivers requested confidential treatment of the  
21 confidential terms of the agreement.

22 11. 807 KAR 5:001 Section 13(9) provides:

23 Use of confidential material. (a) A person who files any paper that contains  
24 material that has previously been deemed confidential or for which a request

1 or motion for confidential treatment is pending shall submit one (1) copy of  
2 the paper with the adjudged or alleged confidential material underscored or  
3 highlighted, and ten (10) copies of the paper with those portions redacted;  
4 and

5 1. If the confidential status of the material has been determined  
6 previously, a written notice identifying the person who originally  
7 submitted the material, the date on which a determination on the  
8 materials confidentiality was made and, if applicable, the case number  
9 in which the determination was made; or

10 2. If a request for confidential treatment of the material is pending, a  
11 written notice identifying the person who made the request and the  
12 date on which the request was submitted.

13 12. The Commission granted confidential treatment to the Confidential  
14 Information in the Nebraska contracts by order dated September 10, 2014, in *In the*  
15 *Matter of: Big Rivers Electric Corporation Filing of Wholesale Contracts Pursuant to*  
16 *KRS 278.280 and KAR 5:011 Section 13*, P.S.C. Case No. 2014-00134, and the  
17 Commission should continue to afford confidential treatment to that information for  
18 the reasons stated in that order.

19 13. On June 1, 2018, Big Rivers filed the NextEra contract with the  
20 Commission along with a petition for confidential treatment of the Confidential  
21 Information contained in that agreement. *See* TFS 2016-00584. On August 5, 2016,  
22 Big Rivers filed the KyMEA contract with the Commission in Case No. 2016-00306,  
23 along with a petition for confidential treatment of the Confidential Information  
24 contained in that agreement. Both of these petitions for confidential treatment are  
25 pending.

26 14. 807 KAR 5:001 Section 13(4) provides, "Pending action by the  
27 [C]ommission on a motion for confidential treatment or by its executive director on

1 a request for confidential treatment, the material specifically identified shall be  
2 accorded confidential treatment.” As such, the Confidential Information relating to  
3 the NextEra and KyMEA should be afforded confidential treatment while the  
4 petitions are pending and thereafter for the reasons stated in those petitions.

5 **III. Information Exempted from Public Disclosure by KRS 61.878(1)(c)(1)**

6 15. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an  
7 agency or required by an agency to be disclosed to it, generally recognized as  
8 confidential or proprietary, which if openly disclosed would permit an unfair  
9 commercial advantage to competitors of the entity that disclosed the records.”

10 Section A below explains that Big Rivers operates in competitive environments in  
11 the wholesale power market and in the credit market. Section B below shows that  
12 the Confidential Information is generally recognized as confidential or proprietary.  
13 Section C below demonstrates that public disclosure of the Confidential Information  
14 would permit an unfair commercial advantage to Big Rivers’ competitors.

15 **A. Big Rivers Faces Actual Competition.**

16 16. As a generation and transmission cooperative, Big Rivers competes in  
17 the wholesale power market. This includes not only the short-term bilateral energy  
18 market, the day-ahead and real time energy and ancillary services markets, and the  
19 capacity market to which Big Rivers has access by virtue of its membership in  
20 Midcontinent Independent System Operator, Inc. (“MISO”), but also forward  
21 bilateral long-term agreements and wholesale agreements with utilities and  
22 industrial customers. Big Rivers’ ability to successfully compete in the market is  
23 dependent upon a combination of its ability to: (i) obtain the maximum price for the

1 power it sells, and (ii) keep its cost of production as low as possible. Fundamentally,  
2 if Big Rivers' cost of producing a unit of power increases, its ability to sell that unit  
3 in competition with other utilities is adversely affected.

4 17. Big Rivers also competes for reasonably priced credit in the credit  
5 markets, and its ability to compete is directly impacted by its financial results.  
6 Lower revenues and any events that adversely affect Big Rivers' margins will  
7 adversely affect its financial results and potentially impact the price it pays for  
8 credit. A competitor armed with Big Rivers' proprietary and confidential  
9 information will be able to increase Big Rivers' costs or decrease Big Rivers'  
10 revenues, which could in turn affect Big Rivers' apparent creditworthiness. A  
11 utility the size of Big Rivers that operates generation and transmission facilities  
12 will always have periodic cash and borrowing requirements for both anticipated and  
13 unanticipated needs. Big Rivers expects to be in the credit markets on a regular  
14 basis in the future, and it is imperative that Big Rivers improve and maintain its  
15 credit profile.

16 18. Accordingly, Big Rivers has competitors in both the power and capital  
17 markets, and its Confidential Information should be protected to prevent the  
18 imposition of an unfair competitive advantage.

19 **B. The Confidential Information is Generally Recognized as**  
20 **Confidential or Proprietary**

21 19. The Confidential Information for which Big Rivers seeks confidential  
22 treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or  
23 proprietary under Kentucky law.

1           20.    The attachments to Big Rivers' responses to PSC 1-15 (consumer  
2 survey), PSC 1-21 (study of environmental compliance strategies and costs), PSC 1-  
3 25 (study of decommissioning strategies and costs), KIUC 1-8 (long-term financial  
4 forecast model), and SC 1-14 (production cost modeling) are key internal strategic  
5 planning documents. The Commission has consistently recognized that such  
6 internal strategic planning information and related materials are entitled to  
7 confidential treatment, as these documents typically relate to the company's  
8 economic status and business strategies.

9           21.    The Confidential Information in Big Rivers' responses to and/or the  
10 attachments to Big Rivers' responses to PSC 1-14, PSC 1-20, PSC 1-21, PSC 1-25,  
11 PSC 1-29, PSC 1-39, PSC 1-52, AG 1-3, AG 1-7, KIUC 1-8, SC 1-12, SC 1-14, SC 1-  
12 25, SC 1-29, SC 1-32, and SC 1-41 consist of Big Rivers' projections of coal, natural  
13 gas, and other fuel and O&M costs; projections of capital project costs; projections of  
14 rates and market revenues (which reveal projected market prices); and other cost  
15 and prices projections, all of which provides insight into Big Rivers' cost of  
16 producing power; the prices at which Big Rivers is willing to buy or sell power, fuel,  
17 and other items; and the amounts Big Rivers is willing to pay for capital projects.  
18 The information is also indicative of the market conditions Big Rivers expects to  
19 encounter and its ability to compete with competitors.

20           22.    Information such as this which bears upon a company's detailed inner  
21 workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v.*  
22 *Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does



1 not take a degree in finance to recognize that such information concerning the inner  
2 workings of a corporation is ‘generally recognized as confidential or proprietary’);  
3 *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318,  
4 319 (Ky. 1995) (unfair commercial advantage arises simply from “the ability to  
5 ascertain the economic status of the entities without the hurdles systemically  
6 associated with the acquisition of such information about privately owned  
7 organizations”). Additionally, the Commission has previously granted confidential  
8 treatment to similar information. *See, e.g.*, 2014 IRP Confidentiality Order  
9 (granting confidential treatment to fuel cost projections, power price projections,  
10 projected environmental compliance-related capital and O&M costs, NPV results of  
11 production cost model runs, and rate projections); *In the Matter of: Big Rivers*  
12 *Electric Corporation Filing of Wholesale Contract Pursuant to KRS 278.180 and*  
13 *KAR 5:011 Section 13*, Order, P.S.C. Case No. 2014-00134 (September 30, 2014)  
14 (granting confidential treatment to projected energy and capacity prices; *id.*, Order  
15 (October 9, 2014) (granting confidential treatment to financial forecast, projections  
16 of capital expenditures, projects of revenues and expenses from off-system sale, and  
17 commercial negotiations); *id.*, Order (November 21, 2014) (granting confidential  
18 treatment to forecasted rates, revenues, and costs).

19 23. As noted above, the Confidential Information in Big Rivers’ responses  
20 to PSC 1-5, PSC 1-30, AG 1-14, SC 1-4, and SC 1-8 consists of information about the  
21 negotiated, confidential terms of certain special contracts. KRS 278.160 specifically

1 recognizes that terms of a special contract are not required to be publicly disclosed if  
2 such terms are entitled to protection under KRS 61.878(1)(c)(1). KRS 278.160(3).

3         24. Finally, the Confidential Information in Big Rivers' responses and/or  
4 the responses to Big Rivers' responses to AG 1-9, AG 1-13, and SC 1-24 consists of  
5 the activities and timing of planned outages; sensitive information relating to  
6 negotiations over environmental compliance activities, and bids Big Rivers received  
7 for certain projects. This information would provide contracts contractors and  
8 suppliers insight into the projects Big Rivers has planned and the prices Big Rivers  
9 is willing to pay for such projects. The Commission has previously granted  
10 confidential treatment to similar information. *See, e.g.,* 2014 IRP Confidentiality  
11 Order (granting confidential treatment to projected environmental compliance-  
12 related costs); Letter, P.S.C. Administrative Case No. 387 (July 20, 2010) (granting  
13 confidential treatment to a list of future scheduled outages that Big Rivers filed as  
14 part of the supplement to its annual report); *In the Matter of: Application of Big*  
15 *Rivers Electric Corporation for a General Adjustment in Rates*, Order, P.S.C. Case  
16 No. 2012-00535 (April 25, 2013) (granting confidential treatment to a list of future  
17 construction projects).

18         25. The Confidential Information is not publicly available, is not  
19 disseminated within Big Rivers except to those employees and professionals with a  
20 legitimate business need to know and act upon the information, and is not  
21 disseminated to others without a legitimate need to know and act upon the  
22 information.

1           26.     Accordingly, the information for which Big Rivers seeks confidential  
2 treatment is recognized as confidential or proprietary under Kentucky law and is  
3 entitled to confidential protection as further discussed below.

4     **C.     Public Disclosure of the Confidential Information Would Permit an**  
5           **Unfair Commercial Advantage to Big Rivers' Competitors.**

6           27.     Public disclosure of the Confidential Information would permit an  
7 unfair commercial advantage to Big Rivers' competitors. As discussed above, Big  
8 Rivers faces actual competition in the wholesale power market and in the credit  
9 market. It is likely that Big Rivers would suffer competitive injury if that  
10 Confidential Information was publicly disclosed.

11          28.     The Confidential Information includes material such as Big Rivers'  
12 projections of fuel and power prices, capital project costs, energy and capacity sales  
13 and revenues, and other information revealing Big Rivers' costs of producing power.  
14 If that information is publicly disclosed, market participants would have insight  
15 into the prices at which Big Rivers is willing to buy and sell fuel and power, and the  
16 amount Big Rivers is willing to pay for capital projects, and those market  
17 participants could manipulate the bidding process when selling to or buying from  
18 Big Rivers, increasing Big Rivers' costs or reducing its revenues. Increased costs  
19 would impair Big Rivers' ability to generate power at competitive rates and thus to  
20 compete in the wholesale power markets. Furthermore, any competitive pressure  
21 that adversely affects Big Rivers' revenue and margins could make the company  
22 appear less creditworthy and thus impair its ability to compete in the credit  
23 markets. These effects were recognized in P.S.C. Case No. 2003-00054, in which the

1 Commission granted confidential treatment to bids submitted to Union Light, Heat  
2 & Power (“ULH&P”). ULH&P argued, and the Commission implicitly accepted,  
3 that if the bids it received were publicly disclosed, contractors on future work could  
4 use the bids as a benchmark, which would likely lead to the submission of higher  
5 bids. *In the Matter of: Application of the Union Light, Heat and Power Company for*  
6 *Confidential Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003); *see*  
7 *also In the Matter of: An Examination of the Application of the Fuel Adjustment*  
8 *Clause of East Kentucky Power Cooperative, Inc. from May 1, 2007 through October*  
9 *31, 2007*, Letter, P.S.C. Case No. 2007-00523 (February 27, 2008). The Commission  
10 also implicitly accepted ULH&P’s further argument that the higher bids would  
11 lessen ULH&P’s ability to compete with other gas suppliers. *In the Matter of:*  
12 *Application of the Union Light, Heat and Power Company for Confidential*  
13 *Treatment*, Order, P.S.C. Case No. 2003-00054 (August 4, 2003).

14         29. Similarly, the Commission recently granted confidential treatment to  
15 pricing information provided by Cumberland Valley Electric, Inc. (“Cumberland  
16 Valley”) in P.S.C. Case No. 2018-00056. *In the Matter of: Application of*  
17 *Cumberland Valley Electric, Inc. for Commission Approval for a Certificate of Public*  
18 *Convenience and Necessity to Install an Advanced Metering Infrastructure (AMI)*  
19 *System Pursuant to KRS 807 KAR 5:001 and KRS 278.020*, Order, P.S.C. Case No.  
20 2018-00056 (May 9, 2018). In that case, the Commission recognized “that the  
21 specific cost information may be used to the financial detriment of Cumberland  
22 Valley and its ratepayers by allowing potential future vendors to bid just under the

1 cost of its current vendor, which, in turn, would place Cumberland Valley at a  
2 competitive disadvantage.” *Id.*

3 30. The same competitive harm that the Commission recognized in P.S.C.  
4 Case Nos. 2003-00054 and 2018-00056 would befall Big Rivers if the Confidential  
5 Information in this case were publicly disclosed.

6 31. Public disclosure of the Confidential Information would provide  
7 potential purchasers of fuel, power, or other items from Big Rivers; potential sellers  
8 of fuel, power, or other items to Big Rivers; potential contractors on capital projects;  
9 and other providers competing against Big Rivers for purchases or sales of fuel,  
10 power, or other items with insight into the prices and the terms under which Big  
11 Rivers is willing to buy and sell. These market participants could use this  
12 information as a benchmark, leading to higher costs, lower revenues, or less  
13 favorable terms to Big Rivers, hurting Big Rivers’ ability to compete in the  
14 wholesale power and credit markets.

15 32. Public disclosure of the confidential terms of special contracts and  
16 third party bids would also cause competitive harm to Big Rivers. In P.S.C. Case  
17 No. 2003-00054, the Commission additionally implicitly accepted ULH&P’s  
18 argument that the bidding contractors would not want their bid information  
19 publicly disclosed, and that disclosure would reduce the contractor pool available to  
20 ULH&P, which would drive up ULH&P’s costs, hurting its ability to compete with  
21 other gas suppliers. *In the Matter of: Application of the Union Light, Heat and*  
22 *Power Company for Confidential Treatment*, Order, P.S.C. Case No. 2003-00054

1 (August 4, 2003). Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the  
2 Kentucky Supreme Court found that without protection for confidential information  
3 provided to a public agency, “companies would be reluctant to apply for investment  
4 tax credits for fear the confidentiality of financial information would be  
5 compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766,  
6 769 (Ky. 1995).

7 33. In Big Rivers’ case, Big Rivers is currently in negotiations with  
8 potential counterparties for purchase power agreements, as well as fuel suppliers,  
9 and expects to engage in negotiations with other counterparties in the future. If  
10 confidential treatment of the confidential terms of the special contracts or bids is  
11 denied, potential counterparties would know that the confidential terms of their  
12 contracts could be publicly disclosed, which could reveal information to their  
13 competitors about their competitiveness. Because many companies would be  
14 reluctant to have such information disclosed, public disclosure of the Confidential  
15 Information would likely reduce the pool of counterparties willing to negotiate with  
16 Big Rivers, reducing Big Rivers’ ability to sell power and impairing its ability to  
17 compete in the wholesale power and credit markets.

18 34. Accordingly, the public disclosure of the information that Big Rivers  
19 seeks to protect pursuant to KRS 61.878(1)(c)(1) would provide Big Rivers’  
20 competitors with an unfair commercial advantage.

21

1 **IV. Time Period**

2 35. Pursuant to 807 KAR 5:001 Section 13(2)(a)(2), Big Rivers requests  
3 that the Confidential Information be afforded confidential treatment for the time  
4 periods explained below.

5 36. Big Rivers requests that the Confidential Information in the  
6 attachments to Big Rivers' response to SC 1-2, which is protected by KRS  
7 61.878(1)(m), remain confidential indefinitely because the information consists of  
8 Critical Energy Infrastructure Information.

9 37. Big Rivers requests that the Confidential Information in its responses  
10 and/or the attachments to its responses to PSC 1-5, PSC 1-30, AG 1-14, SC 1-4, SC  
11 1-8, and SC 1-24 remain confidential indefinitely because that Confidential  
12 Information consists of the confidential terms of special contracts or bids from third  
13 parties, and the competitive harm resulting from public disclosure of that  
14 information is not time dependent for the reasons stated above.

15 38. Big Rivers requests that all other Confidential Information protected  
16 by KRS 61.878 (1)(c)(1), except for the confidential special contract terms and bids,  
17 remain confidential for a period of five (5) years from the date of this petition, which  
18 should allow sufficient time for the projected data to become historical and  
19 sufficiently outdated that it could not be used to determine similar confidential  
20 information at that time or to competitively disadvantage Big Rivers.

21 **V. Conclusion**

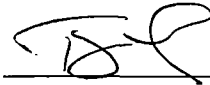
22 39. Based on the foregoing, the Confidential Information is entitled to  
23 confidential treatment pursuant to 807 KAR 5:001 Section 13 and KRS 61.878. If

1 the Commission disagrees that Big Rivers' Confidential Information is entitled to  
2 confidential treatment, due process requires the Commission to hold an evidentiary  
3 hearing. *See Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642  
4 S.W.2d 591 (Ky. App. 1982).

5 WHEREFORE, Big Rivers respectfully requests that the Commission grant  
6 this petition and classify and treat as confidential the Confidential Information.

7 On this the 20<sup>th</sup> day of July, 2018.

8 Respectfully submitted,  
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