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February 28, 2022

BY E-MAIL orrism@michigan.gov

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Assistant Attorney General
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

**Re: Michigan Agricultural Commodities, Inc. v DTE Energy Company
MPSC Case No. U-20897**

Dear Mr. Orris:

Attached for filing in the above reference matter, please find Michigan Agricultural Commodities, Inc.'s Reply Brief and Proof of Service of same.

Very truly yours,

VARNUM



Aaron M. Phelps

AMP/rlj

Attachment

c: Paula Bacon, Esq.
Carlton Watson, Esq.

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the Complaint of **Michigan**)
Agricultural Commodities, Inc. against **DTE**)
Energy Company concerning violations of its)
Tariff and the Commission's Rules concerning)
Metering and Billing for Electrical Services)
)

Case No. U-20897

REPLY BRIEF

OF

MICHIGAN AGRICULTURAL COMMODITIES, INC.

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I. INTRODUCTION

Michigan Agricultural Commodities, Inc. (“MAC”) produced direct evidence, including metering data and expert testimony, demonstrating that it has been overbilled by DTE Electric Company (“DTE”). As it has for years, DTE continues to ignore the evidence and all common sense. DTE baldly asserts its meters and bills are “correct” and that MAC has somehow caused its own electricity usage to quadruple (but only at one of its seven facilities in Michigan). As set forth below, MAC’s evidence is overwhelming, and its bills must be adjusted.

II. LAW AND ARGUMENT

A. MAC HAS PRODUCED UNREFUTED EVIDENCE DEMONSTRATING THAT DTE’S METERS ARE INACCURATE AND MAC’S ELECTRIC BILLS HAVE NOT BEEN PROPERLY ADJUSTED.

Without any analysis of the evidence produced by MAC, DTE claims that “the preponderance of the evidence does not support that DTE’s meters were inaccurate at any period of time.”¹ Instead, DTE insists on deflecting blame onto MAC by citing speculative and unsupported evidence in its Initial Brief as a defense, rather than refuting the actual evidence that MAC has produced. Such failure to take MAC’s complaints seriously demonstrates DTE’s continued lack of accountability for its incorrect metering and billing issues.

1. **DTE Continues to Ignore the Historical Usage and Facility Comparisons put forth by MAC.**

Pursuant to Section C4.5(C) of DTE’s tariff:

“When the Company is unable to obtain an actual meter reading, **the bill shall be estimated on the basis of past service records**, adjusted, as may be appropriate. Where past service records are not available or suitable for use, such billing shall be based upon whatever other service data are available. Each such account shall be adjusted as necessary each time an actual meter reading is obtained.”

¹ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 5.

Despite this obligation to estimate bills on past service, DTE has decided to ignore the substantial amount of historical and comparative evidence that MAC has provided.

As detailed in the evidentiary record and in MAC’s Initial Brief, MAC prepared multiple comparisons between the electricity usage that DTE claims MAC used and all of the other factors at MAC that have stayed relatively constant. Initially, MAC has shown that, without question, DTE has billed MAC at levels that are completely inconsistent with its *historical usage*. Exhibit MAC-1; Kunisch Direct, 2 TR 36-37. Specifically, DTE claims that for the year 2018-2019, MAC used 4,412,355 kWh – nearly a 400% increase. Exhibit MAC-1. This amount is not only greater than the prior three years combined of electrical energy use at MAC, but it also equates to DTE claiming that MAC has used enough electricity during the 2018-2019 year to run four completely independent Brown City operations² as evident by the following demonstrative image:



The absurdity of such claims is evidenced by DTE’s actual knowledge of MAC’s accounts being inconsistent with its historical use. DTE witness Shajuan Bendolph testified that DTE knew MAC’s “account invoices were high compared to [its] historical usage.” Bendolph Direct, 2 TR 144. Despite this knowledge, DTE has decided to ignore MAC’s historical numbers and has failed to explain or account for such a large increase in electricity bills.

MAC also did a comparison between Brown City and its Marlette facility because these two facilities process the same grain, are managed by the same employees, have similar storage

² Kunisch Direct, 2 TR 36-37.

capacity, have similar historical electricity usage, and are also serviced by DTE for electricity usage. Kunisch Direct, 2 TR 39-42. Despite all of these relatively constant factors, DTE would have the Michigan Public Service Commission (the “Commission”) believe that MAC somehow has no idea how to operate a grain drying facility properly and that it would exponentially increase its electricity bills through the “inefficient operation of fans and other ancillary equipment.”³ Such an inference is overwhelmingly unsupported by the fact that not only have Marlette and Brown City handled approximately the same amount of bushels of grain during the same time period,⁴ but the same employees who DTE suggests are the “root cause” of the issues run both facilities, and have done so for years.

Lastly, all of MAC’s other comparative evidence (gas usage, analysis of moisture per bushel removed, and MAC’s ghost meters) is unrefuted by DTE. Accordingly, the Commission has more than a preponderance of the evidence that DTE has violated the Commission’s rules, DTE’s tariff, and Michigan law by overcharging MAC for its electrical usage and failing to take responsibility for its improper billing practices.

2. The Results from the Faith Report are Unrefuted.

The Faith report (and the Schneider ghost meters) clearly show that DTE’s meters have been inaccurate during the relevant time period. DTE’s only response is to attack the specifications of the meters used by Faith Technologies, Inc.: “the DTE meters meet the MPSC and ANSI standards for revenue accuracy while the AEMC PEL 103 meters do not...make it more probable

³ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 9.

⁴ Kunisch Direct, 2 TR 40-41.

that the DTE meters are *more accurate* than the AEMC PEL 103” meters.”⁵ However, Mr. Moldovan’s opinion fails for several reasons.

First, the opinion is irrelevant and without any legal basis. Mr. Moldovan opines that because the AEMC PEL 103 meters do not meet MPSC and ANSI standards for revenue meter accuracy, and DTE’s allegedly do, all of the data provided by Faith “is not comprehensive or verifiable.”⁶ However, Mr. Moldovan fails to explain or conduct any analysis to illustrate how the accuracy differences between the Faith meters and DTE’s meters actually support his conclusion. Instead, Mr. Moldovan and DTE continue to ignore the fact that the Faith report showed that DTE’s meters were incorrectly recording MAC’s energy usage at about 50% higher than the Faith meters. Exhibit MAC-17; Kielma Direct, 2 TR 75.

Instead of speculating, MAC offered testimony of Jim Kielma who *does* explain the impact of the differences between the meters. As Mr. Kielma points out, the maximum error rate of the PEL 103 meters is +/- 1.71% while the DTE meters, if they were within MPSC standards, would be expected to have a +/- 0.5% maximum error rate. Kielma Rebuttal, 2 TR 84. The maximum error rate for the PEL 103 meters is important because even if the PEL 103 meters gave the “most inaccurate reading that [they] could,” the maximum difference one could expect between the meter’s reading and the true energy usage is +/- 1.71%. *Id.* However, Faith found a difference of 50% in registered energy usage between the Faith meters and the DTE meters, which is impossible to explain by just relying upon the difference in error rates among the meters. *Id.* DTE has failed to explain or otherwise address how both meters, which were recording electricity at exactly the same time period, could be off by 50%.

⁵ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 6, quoting opinion testimony from DTE witness Florin Moldovan.

⁶ Moldovan Direct, 2 TR 125; DTE Initial Brief, Case U-20897 (February 7, 2022)p. 6.

Additionally, Mr. Moldovan and DTE continue to assert that they had “insufficient information”⁷ to fully consider the accuracy of Faith’s Meters, which is false. DTE claims that Mr. Moldovan is not in a position to opine on the accuracy of readings from Faith’s meters having never had the opportunity to observe their installation or operation;⁸ however, MAC provided DTE with all of the evidence that Mr. Moldovan was seeking in order to properly opine on the accuracy of the meters.

- DTE argues that they were not given information as to know where the Faith PEL 103 meters were installed.⁹ The Faith Report (Exhibit MAC-17, p. 18) has a detailed diagram of where the meters were installed and MAC’s facility was available for any DTE visitors to come assess the meters, at any time.
- DTE argues that they did not have the information as to how the Faith PEL 103 meters were installed.¹⁰ The Faith Report not only provides a detailed description of how the meters were installed, but MAC witness Mark Mahan also testified as to how the meters were installed, which Mr. Moldovan had access to before providing his testimony. Exhibit MAC-17, p. 6, 18; Mahan Direct, 2 TR 91-92.
- DTE also argues that they did not have information on how the Faith meters were set up, programmed or calibrated. The Faith Report not only provides a detailed description of how the meters were set up, programmed, and calibrated, but MAC witnesses Jim Kielma and Mark Mahan also testified as to how the meters were

⁷ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 6.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

installed and provided the actual certificates of calibration for DTE to review. Exhibit MAC-17, p. 6, 10-16; Mahan Direct, 2 TR 91-92; Kielma Direct, 2 TR 73.

DTE's failure to share the above information with Mr. Moldovan, or Mr. Moldovan's decision to completely ignore such information, should not be construed against MAC.

Lastly, Mr. Moldovan is required to ensure that his expert opinion is (i) based upon sufficient facts or data; (ii) is the product of reliable principles and methods; or (iii) that he has applied such principles and methods reliably to the facts of this case. MRE 702; *see also Amorello v Monsanto Corp*, 186 Mich App 324, 331; 463 NW2d 487, 491 (1990). Because Mr. Moldovan has failed to do any of the above in his direct testimony, his opinion carries no credibility.

3. MAC's Ghost Meters and Data are Unrefuted.

DTE does not dispute the Schneider ghost meter evidence in Exhibit MAC-21. DTE simply says "it's important to note" that the meter data in Exhibit MAC-21 only differs from DTE's meters by "a small percentage."¹¹ However, having a difference in metering and billing only "by a small percentage" is not DTE's obligation under the law. Instead, DTE is obligated to ensure that its meters do not have an "average inaccuracy of more than 2.0%." *See* Mich Admin Code R 460.3309; Mich Admin Code R 460.115(2); Section C6.6(A) of DTE's tariff.

In fact, the differences that DTE claims are only "a small percentage" are consistently over the allowable 2%. As Exhibit MAC-21 shows, DTE has overcharged MAC by as much as 17.86% in one month, and on average is overcharging MAC by a difference of 4.70% for Account 22 and 5.49% for Account 79. Kielma Rebuttal, 2 TR 85. These are not "small differences," especially for MAC who has been consistently overcharged for its electricity for almost four years. Such over

¹¹ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 7.

registration has resulted in at least \$799,857.89 worth of electricity charges that MAC has not used.

B. THE NORTHERN ELECTRICAL TESTING REPORT IS UNRELIABLE.

DTE claims that it undertook a “reasonable investigation” of the potential causes of the higher electricity load MAC was experiencing and that “NET’s conclusions support the accuracy of DTE meters.”¹² However, the NET report suffers from serious faults that cannot support DTE’s exorbitant billing.

First, NET states in its report that “monthly electric billing invoices from May 2018 through February 2020 were reviewed” and “there were no significant discrepancies found.” Exhibit DE-9, p. 7. That is not possible. As DTE knows, MAC went months after May 2018 without ever getting an invoice. Then when invoices were received, they made no sense (e.g., 1 kWh usage on estimated readings). Exhibit DE-10, p. 7. NET does not even mention these absurd discrepancies in its report and simply concludes that all is well.

Second, with respect to the May 2018 to February 2020 time period, NET states that since “meter accuracy was verified on numerous occasions during this period, we can conclude, the recorded/billed energy was a true reflection of energy usage on the MAC site.” Exhibit DE-9, p. 7. On the contrary, “meter accuracy” was not verified by NET at all during “this period.” NET’s own report - on page one - says it “can only address the electrical consumption during the period of May 27 to July 7, 2020.” Exhibit DE-9, p. 4. How does NET go from expressly limiting its analysis to a one-month period, to opining that every bill received by MAC during a 22-month period was accurate?

¹² DTE Initial Brief, Case U-20897 (February 7, 2022) p. 8.

Additionally, paragraph 8 of the Scope of Work required NET to “perform an analysis of electric and gas bills from May 2018 to the present time” (i.e. July 2020). Exhibit DE-1. NET never did this analysis, and in fact, never even requested to obtain the gas invoices from MAC to account for all of MAC’s energy use during this time period. Kunisch Rebuttal, 2 TR 62. How can one take seriously DTE’s argument and NET’s conclusion that the “bills rendered by DTE were a true reflection of MAC’s electric energy usage”¹³ when NET did not even perform such an analysis under the scope of work?

Moreover, one of the meters that NET inspected was not even the same meter installed in May 2018. Multiple meter changes for Account 22 have occurred, including in November 2019 when one meter blew off the wall and was destroyed. Exhibit DE-5; Kunisch Direct, 2 TR 30. These are objective facts. The bills MAC received exist and they are, on their face, inaccurate. The meters that NET inspected for Account 22 were not the same ones DTE installed in 2018. NET seems to be unaware of these facts, or if it was, totally failed to account for them in its report.

The unreliability with the NET report continues with the Addendum of Ernest Hickson. Exhibit DE-9, p. 11-12. In the Addendum, Mr. Hickson identified a possible “problem in the communication link between the Thumb and Downtown Detroit” and concluded that “there were inconsistencies in the posted final meter readings” on both Accounts. Exhibit DE-9, p. 12. Because of these inconsistencies, Mr. Hickson asked DTE for permission to perform “a Primary Injection test to verify the integrity of the communication link” and DTE refused. *Id.* Such a Primary Injection test would have been beneficial for both MAC and DTE in determining the issues with DTE’s meters, but instead DTE prohibited Mr. Hickson from performing such a test and continued

¹³ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 8.

to ignore the complaints and issues with MAC's meters at Brown City. Kunisch Rebuttal, 2 TR 62.

The unreliability does not stop there. Apparently DTE was not happy with Mr. Hickson's conclusion, and after receiving the report DTE called Mr. Hickson and had a discussion, following which Mr. Hickson quickly changed his tune, concluding "the accuracy of the DECO meters has been verified." Exhibit DE-9, p. 13. Mr. Hickson is a professional engineer. He should be reaching his conclusions based on facts and data. If a conversation is enough to get him to change his engineering analysis, then one should have little confidence in the rest of his work. How can Mr. Hickson go from having a professional opinion that a primary injection test is necessary, given all of his expertise, to concluding that it is totally unnecessary and, in fact, everything is accurate, based on nothing more than a conversation with the account manager who is paying him?

Note: DTE admits that there were "suspected cellular connectivity issues in the Thumb area of Michigan" during the first year of the conversion to the new SAP / Customer 360 billing system and that MAC's bills were absolutely affected by these issues.¹⁴ It cannot be a coincidence that two years later, in 2020, when MAC was still facing billing issues that Ernest Hickson reported that there were "connectivity issues between the Thumb and Detroit." Exhibit DE-9, p. 12. DTE clearly knew these issues were continuing with MAC's accounts, and when NET reported that such issues were continuing, DTE called Mr. Hickson who then changed his conclusion after a single conversation.

Lastly, a theme throughout NET's report (and DTE's arguments) is to cast blame on MAC by referencing "operational procedure problems."¹⁵ NET, and DTE, begin with the proposition

¹⁴ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 10.

¹⁵ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 9.

that manually operating two fans “is an operational procedure problem” (it is not) and then jump to the conclusion that “this could, certainly, account for the large electric bills” (it cannot). Bank Direct, 2 TR 110; Hickson Direct, 2 TR 137. No one from DTE, nor NET, did any technical analysis whatsoever that would have allowed DTE or NET to even suggest MAC’s manual operation of the fans is the “problem.” Kunisch Rebuttal, 2 TR 62, 64. DTE and Ernest Hickson have made no effort to quantify the amount of electricity used by these fans over any period of time, nor have they made any effort to determine the seasonal use of MAC’s fans. *Id.* DTE argues that “the load produced by the fans was observable and measurable by NET”¹⁶ but DTE fails to actually explain or point the Commission as to where NET evaluated such “observable and measurable” data. In fact, absent from NET’s report is the requirement, stated in the scope of work, to run all equipment on site for four hours, for two days, to provide NET a comparison factor to properly assess how much electricity is used when running the fans continuously. Exhibit DE-1; Exhibit DE-9; Kunisch Rebuttal, 2 TR 62.

DTE also claims that Mr. Kunisch’s testimony regarding manually overriding the automatic controllers is irrelevant because it is just Mr. Kunisch’s belief that such a process saves MAC energy usage.¹⁷ But Mr. Kunisch does not just *believe* that manually operating the grain dryers saves MAC energy, it undisputedly does save MAC electrical energy. Mr. Kunisch explains that the use of such manual controls actually saves MAC electrical usage because without overriding the automatic controls under certain ambient conditions, the “automatic controllers constantly engage in a start and stop sequence due to the variable temperature, wet bulb humidity, and climate of where the Brown City facility is [geographically] located.” Kunisch Rebuttal, 2 TR

¹⁶ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 9.

¹⁷ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 8-9.

54-55. DTE’s conclusion that such evidence is irrelevant is factually incorrect because DTE has made such evidence necessary for MAC to include in the record due to DTE’s speculative and conclusory statements regarding what the “root cause” of MAC’s problems are without any credible evidence to support such statements. Not only has DTE based its arguments upon experts who have no experience, knowledge, or expertise in grain handling equipment – but such experts have failed to actually investigate or perform any assessment of how MAC’s operations impact its electrical usage (even though NET was required to). In contrast, MAC witness Charles Kunisch is an expert in grain drying operations for the last 35 years. Kunisch Direct, 2 TR 26. Thus, DTE’s insistence on deflecting blame onto MAC by raising unsupported allegations as a defense rather than investigating and refuting the evidence that MAC has come forward with demonstrates DTE’s lack of accountability for its incorrect metering and billing issues.

C. DTE’S SPECULATION ABOUT THE CAUSE OF MAC’S PROBLEMS IS UNSUPPORTED BY THE EVIDENCE.

DTE, unjustifiably, claims that “[t]he root cause of MAC’s higher power consumption was likely the new grain-drying equipment that the customer installed on August 20, 2018 and the inefficient operation of fans and other ancillary equipment at the Brown City Facility.”¹⁸ MAC has explained to DTE that this is not possible numerous times, and yet, DTE continues to ignore the undisputable evidence and raise speculative and irrelevant allegations that are not supported by any evidence.

Initially, DTE has the date of installation of MAC’s new dryer completely wrong and, thus, its correlation equals causation argument fails. As explained numerous times before, the new grain dryer for MAC’s Brown City facility was built in September 2018, but its installation was delayed

¹⁸ DTE Initial Brief, Case U-20897 (February 7, 2022) p. 9.

until on or after October 20, 2018 due to DTE's delay in installing the necessary transformers. Kunisch Direct, 2 TR 38; Kunisch Rebuttal, 2 TR 49-50. MAC's new grain drying equipment was not operational until after October 20, 2018 – not August 20, 2018. Kunisch Rebuttal, 2 TR 49-50. This fact is undisputable because DTE submitted with its own Direct Testimony e-mails from **October 12, 2018** where Chuck Kunisch of MAC e-mailed Trevor Lauer of DTE explaining that MAC was “currently installing a new grain dryer” but its installation was being delayed because of “deadlines given [by DTE] for the installation” of new transformers and equipment needed to operate the dryer had been missed repeatedly. Exhibit DE-4, p. 2-3. Indeed, as of October 15, 2018, the equipment needed to be installed by DTE was still on DTE's own service trucks. Kunisch Rebuttal, 2 TR 50; Exhibit MAC-22. Thus, MAC's new grain dryer that DTE asserts was the “root cause” was not installed until after MAC began experiencing a significant increase of electricity in September 2018. Kunisch Direct, 2 TR 42.¹⁹

Second, DTE's causation argument fails to comport with logic. How can the installation of *one* new grain dryer, which functionally replaced an older and less efficient dryer, result in a four-fold increase in electricity usage for an entire facility that operates several grain drying conveyors and bins in a year? It cannot. Indeed, MAC is a grain handler meaning its energy consumption is directly tied to the amount of grain it moves through its systems. The more grain MAC handles, the more energy it uses. The undisputed data put forth by MAC as illustrated above, and repeatedly in the record, shows that despite MAC's Brown City facility handling 2 million bushels less in the year of 2018/2019, when compared with 2017/2018, DTE still billed MAC three times as much electricity in 2018/2019 than it did in 2017/2018. Kunisch Direct, 2 TR 37-38.

¹⁹ See also Exhibit MAC-13, p. 275 (showing that from September 5, 2018, until September 20, 2018, the meters failed to show any usage and that when readings began again on September 20, the usage jumped significantly).

Lastly, DTE’s causation argument cannot be taken seriously because gas, not electricity, is the primary fuel for MAC’s new grain dryer. Kunisch Direct, 2 TR 38. As explained to DTE multiple times already, MAC’s natural gas usage has remained constant throughout this entire period. Kunisch Direct, 2 TR 43-44. DTE’s theory – that MAC’s addition of a new gas dryer is responsible for a 400% increase in electricity use, but no corresponding increase in natural gas use — is ludicrous, unsupported by the evidence, and is indicative of how DTE continues to ignore and take seriously MAC’s claims.

D. THE INITIAL BRIEF OF THE MPSC STAFF SHOULD NOT BE RELIED UPON.

On February 7, 2022 the MPSC Staff filed its initial brief in this matter, which was largely a recitation of the facts and the evidentiary record. The MPSC Staff identifies in its initial brief the relevant rules, summarizes both parties’ direct testimony and MAC’s rebuttal testimony, and then offers a generalized conclusion that “it appears that over time the billing errors were resolved, and MAC was made whole for those errors.”²⁰

However, the MPSC Staff did not address or analyze any of the evidence put forth by MAC, including the Faith Report,²¹ the Schneider ghost meters,²² or any other of the corroborative evidence brought forth by MAC, such as its historical usage and energy comparisons. The MPSC Staff also did not evaluate or explain how any of the rules cited in MAC’s complaint were not violated based upon the record. It did not offer any explanation (much less evidence) regarding how MAC’s usage jumped 400% over night. Accordingly, the MPSC’s initial brief should not be given any credibility in adjudicating MAC’s claims.

²⁰ MPSC Staff Initial Brief, Case U-20897 (February 7, 2022) p. 14. (emphasis added).

²¹ Exhibit MAC-17.

²² Exhibit MAC-21.

III. CONCLUSION

MAC has met its burden of proof. All of the evidence that MAC has come forward with, which is undisputed by DTE, demonstrate that DTE has violated the Commission's rules, DTE's tariff, and Michigan law by overcharging MAC for its electrical usage and failing to take responsibility for its improper billing practices. The impact of such violations has resulted in DTE overbilling MAC by at least \$799,857.89. Thus, MAC respectfully requests that this Commission grant the relief that MAC requested in its Initial Brief.

Respectfully submitted,

Varnum LLP

Dated: February 28, 2022

By: *s/ Aaron M. Phelps*

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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Agricultural Commodities, Inc. against **DTE**)
Energy Company concerning violations of its) Case No. U-20897
Tariff and the Commission's Rules concerning)
Metering and Billing for Electrical Services)

PROOF OF SERVICE

Jodi Johnson, being first duly sworn, deposes and says that on February 28, 2022, she served the *Reply Brief of Michigan Agricultural Commodities, Inc.* and a copy of this Proof of Service via email upon:

Michigan Public Service Commission Staff
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