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1 P R O C E E D I N G S

2 JUDGE MACE: Let's be on the record in the
3 application of Pennco Transportation, Inc., for an
4 Extension of Authority under Certificate Number C-01054
5 for a Certificate of Public Convenience and Necessity in
6 Furnishing Passenger and Express Service. This is
7 Docket Number TC-041340, and it is consolidated with the
8 application of Heckman Motors, Inc. d/b/a Olympic Bus
9 Lines for Extension of Authority under Certificate
10 Number C-992 for a Certificate of Public Convenience and
11 Necessity in Furnishing Passenger and Express Service.
12 This is Docket Number TC-041593.

13 Today's date is June 24th, 2005, and we are
14 convened at the offices of the Washington Utilities and
15 Transportation Commission in Olympia, Washington. My
16 name is Theodora Mace, I'm the Administrative Law Judge
17 for this case.

18 I would like to take the oral appearances of
19 counsel now or of the parties, and I will begin with
20 counsel who is here in the hearing room.

21 Mr. Thompson, would you go ahead, please.

22 MR. THOMPSON: Yeah, I'm Jonathan Thompson,
23 Assistant Attorney General representing the Commission
24 Staff.

25 JUDGE MACE: Thank you.

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1 Is there anyone on the conference bridge now
2 who wants to enter an appearance? Mr. Heckman, I
3 believe you're on the conference bridge.

4 MR. HECKMAN: Yes, Jack Heckman with Olympic
5 Bus Lines.

6 JUDGE MACE: Let me ask if Mr. Harris is on
7 the line of Pennco, is there anyone on behalf of Pennco
8 on the conference bridge line?

9 I hear no response. I have been advised that
10 we have not heard anything from Mr. Harris about whether
11 he intends to appear today either in person or on the
12 conference bridge, and it is past our usual time for
13 convening. I think I'm going to go ahead at this point
14 and begin the proceeding, and if Mr. Harris makes no
15 appearance by the time we're done with Staff's
16 presentation, then I'll see whether it's appropriate to
17 wait at that point for any particular reason just in the
18 event that Mr. Harris might have something he wants to
19 put on the record today.

20 So my understanding of the purpose of this
21 proceeding is that we have reopened the record pursuant
22 to Staff's motion to reopen the record in order to have
23 Staff present evidence regarding the status of Pennco's
24 current operations in the state of Washington. Is there
25 any other item that we need to address today besides

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1 that?

2 All right, Mr. Thompson.

3 MR. THOMPSON: Okay, I guess what we'll do, I
4 had submitted three different documents for possible
5 admission in the record. The first was titled an open
6 letter to Olympic Peninsula residents, which was
7 forwarded to Carole Washburn, Secretary of the
8 Commission, on or about May 10th, 2005.

9 JUDGE MACE: Was this what was attached as
10 Exhibit A to your motion?

11 MR. THOMPSON: Exhibit A, correct.

12 And then Exhibit B is a Peninsula Daily News
13 story from Tuesday, May 10th, 2005, with the headline,
14 Door to Door Airporter Service from North Olympic
15 Peninsula to Shut Down.

16 And the third item was a newspaper article
17 from the Port Townsend and Jefferson County Leader with
18 the headline, Pennco Transportation Closing.

19 And I had certified myself in my declaration
20 that I submitted with that motion to the accuracy of
21 those documents, so I guess at this point I would just
22 move for admission of those documents.

23 JUDGE MACE: Well, let me just clarify. You
24 say you certified to the accuracy of the documents, have
25 you certified that they are accurate copies of articles

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1 and the letter, is that --

2 MR. THOMPSON: I guess that's what I mean,
3 yeah, that they're true copies of what they purport to
4 be. One of them, the letter, is on file with the
5 Commission.

6 JUDGE MACE: Yes, correct.

7 And are you seeking to have your declaration
8 admitted as an exhibit as well or not?

9 MR. THOMPSON: Well, I don't know that it
10 would need to be an exhibit, but I think it's, just to
11 establish foundation for the exhibits, it should
12 probably be part of the record.

13 JUDGE MACE: It would be in the record
14 actually if you submitted it with your motion I believe.

15 MR. THOMPSON: Okay.

16 JUDGE MACE: I mean it's there.

17 What I would propose to do is to mark these
18 items as exhibit numbers in this proceeding, and I
19 believe that our next exhibit number is number 24, and I
20 would mark Exhibit A which was the May 9th letter to
21 Carole Washburn as Exhibit 24, I would mark the May 10th
22 article that you have included in Exhibit B as Exhibit
23 25, and I would mark the May 11th article as Exhibit 26.
24 Is that acceptable?

25 MR. THOMPSON: Yes.

0206

1 waiting five minutes just in case Mr. Harris should show
2 up?

3 MR. HECKMAN: No, that would be fine.

4 JUDGE MACE: All right, we'll wait until
5 quarter to 10:00, and then we'll resume on the record at
6 that point and go ahead with the rest of the proceeding.

7 (Recess taken.)

8 JUDGE MACE: Let me ask again whether
9 Mr. Harris or anyone from Pennco has come on the
10 conference bridge?

11 I hear no response, and let me indicate that
12 neither Mr. Harris nor anyone from Pennco has shown up
13 in the hearing room.

14 Let me ask now, Mr. Heckman, if you have any
15 objections to the admission of the proposed exhibits
16 that Staff has presented, Exhibit 24, the letter to
17 Carole Washburn from Kevin Harris, Exhibit A to the
18 motion, Exhibit 25, the May 10th newspaper article, and
19 Exhibit 26, the May 11th newspaper article, is there any
20 objection to the receipt of those exhibits in evidence?

21 MR. HECKMAN: No objection.

22 JUDGE MACE: All right, I will admit them.

23 The thing Mr. Thompson asked for next is to
24 have Ms. Allen appear and give some testimony; is that
25 correct, Mr. Thompson?

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1 MR. THOMPSON: Yes.

2 JUDGE MACE: I think you can just stay there.

3

4 Whereupon,

5 BONNIE ALLEN,

6 having been first duly sworn, was called as a witness

7 herein and was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q. Ms. Allen, could you please state your full
12 name for the record.

13 A. My name is Bonnie L. Allen, A-L-L-E-N.

14 Q. And what is your job with the Commission?

15 A. I'm a Regulatory Analyst III in our
16 transportation and water division.

17 Q. Okay. And what are your responsibilities
18 with regard to auto transportation companies?

19 A. I am the senior transportation staff. I work
20 on policy issues, I troubleshoot, I'm kind of the lead
21 on any transportation issues that involve our other
22 operating divisions.

23 Q. Okay. And can you give a sense of, oh, just
24 the length of your experience with the regulation of
25 auto transportation companies?

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1 A. I started in the Utilities and Transportation
2 Commission's permit section working on insurance files
3 in August of 1976. I was in that section for two years,
4 and then I went to our enforcement section. I worked in
5 our tariff and policy research section. I was the
6 information consultant for transportation automating our
7 transportation systems and documenting our processes. I
8 was the supervisor of our permit section. I was the
9 transportation program coordinator for compliance and
10 policy program issues. And then I moved to our
11 transportation and water section to be kind of the
12 senior policy staff level person for transportation
13 issues, including auto transportation companies.

14 Q. Could you please just generally explain what
15 the requirements are regarding proof of insurance for
16 auto transportation companies?

17 A. Auto transportation companies are required to
18 maintain a uniform public liability and property damage
19 liability certificate of insurance on file at all times
20 covering their operations.

21 Q. Is there another requirement? For example,
22 is there any other legal requirement that those carriers
23 have insurance other than the WUTC's requirement, do you
24 know, aren't they exempted from --

25 A. Oh, right, I think it's Title 46 that

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1 requires every driver of a motor vehicle to maintain
2 proof of insurance on the vehicle. Any company, any
3 common carrier that's subject to Commission certificate
4 requirements is not required to maintain that proof of
5 insurance because they maintain proof of insurance with
6 the Commission.

7 Q. Can you explain generally what took place
8 with regard to Pennco's proof of insurance?

9 A. Pennco's insurance filing with the Commission
10 -- let me step one back. The insurance filing that the
11 Commission maintains is received from the insurance
12 company, it's not from an agent, so Pennco's insurance
13 filing was canceled by the insurance company. To cancel
14 insurance filing, the company has to send a particular
15 form, and it's to the Commission on a 30 day notice.

16

17 E X A M I N A T I O N

18 BY JUDGE MACE:

19 Q. Let me just back up for a minute. You said
20 the Commission receives the insurance filing from the
21 insurance company, not from an agent, and you mean an
22 insurance agent?

23 A. Insurance agent, right.

24 Q. Okay.

25 A. The filing we receive is directly from the

0210

1 company.

2 JUDGE MACE: All right.

3 MR. THOMPSON: Maybe it would help clarify
4 things at this point if I were to distribute a possible
5 exhibit here.

6 JUDGE MACE: Mr. Heckman, I just want you to
7 know since you can't see what's happening that
8 Mr. Thompson has provided us a copy of what appears to
9 be a Commission document that pertains to Pennco's
10 insurance, and I will ask Mr. Thompson to make sure that
11 you receive copies of all the exhibits that he presents
12 today in the hearing room.

13 MR. HECKMAN: Thank you.

14 JUDGE MACE: And do you want to have this
15 marked as an exhibit?

16 MR. THOMPSON: Let's go ahead and do that.

17 JUDGE MACE: This will be Exhibit Number 27.

18

19 D I R E C T E X A M I N A T I O N

20 BY MR. THOMPSON:

21 Q. Okay, Ms. Allen, could you explain what these
22 documents are, what this document is I guess. It's part
23 of one mailing, isn't it?

24 A. Well, not really one mailing. What we have
25 here is the Form E, which is the uniform motor carrier

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1 bodily injury and property damage liability certificate
2 of insurance, and then we have a copy of the cancelation
3 notice from the insurance company.

4 JUDGE MACE: And when you say Form E, I don't
5 see Form E.

6 THE WITNESS: It's the one that's on the --

7 MR. THOMPSON: It's in very small type.

8 THE WITNESS: At the very top of the page.

9 JUDGE MACE: I see it now, okay.

10 A. So that's the actual insurance filing that
11 the Commission received.

12 And the next document, it's on a landscape,
13 is the copy of the cancellation notice of that filing
14 that the Commission received. So they're different
15 forms. And you can't see this at the top, it's
16 generally called the Form K is the cancellation.

17

18 E X A M I N A T I O N

19 BY JUDGE MACE:

20 Q. And so the insurance, the Form E was filed on
21 July 12th or is dated July 12th, 2004, and I see a
22 received date of July 15, 2004, and then the
23 cancellation is, hm, the cancellation seems to, oh, I
24 see, the cancellation was received March 22nd, 2005, by
25 the Commission and apparently is to be effective April

0212

1 23rd, 2005; is that correct?

2 A. Yes, their cancellation notices are required
3 to include a 30 day notice to the agency, and that's
4 what this one does.

5 Q. Okay, thank you.

6 A. So the cancellation of this filing was
7 effective on April 23rd, and then the last document
8 that's part of this exhibit is the notice that our
9 licensing staff sends to the company when we receive a
10 notice that their insurance is being canceled.

11 Q. And this was dated March 22nd, 2005?

12 A. Right, the same date as the cancellation was
13 received.

14 JUDGE MACE: Okay.

15

16 D I R E C T E X A M I N A T I O N

17 BY MR. THOMPSON:

18 Q. Is this a copy of the document that was sent
19 to Pennco?

20 A. Yes.

21 Q. Okay.

22 A. This is a copy from the records center file.
23 The document we send, we call it a cite letter because
24 we're informing the company that their insurance is
25 pending cancellation and advising them that they need to

0213

1 get a new filing in.

2 Q. Okay. So could you just continue with sort
3 of the time line of what occurred with Pennco?

4 A. Sure. In this situation, the Staff advised
5 the company they needed to get their insurance in before
6 the 23rd cancellation date, or their certificate would
7 be subject to suspension. Insurance was not received,
8 and the Commission Staff prepared an order that is
9 signed by Carole Washburn to suspend the certificate.
10 The order is issued 10 days prior to the insurance
11 cancellation date again to give the company an
12 opportunity to come through with an insurance filing
13 before the date that their filing expires.

14 JUDGE MACE: And for Mr. Heckman's benefit,
15 let me say for the record that counsel has provided me a
16 copy of that order just referred to by Ms. Allen. The
17 order service date shows April 14th, 2005.

18 And, Mr. Thompson, do you seek to have this
19 marked as an exhibit?

20 MR. THOMPSON: We could do that, it's your
21 preference, Your Honor. I think we could also just take
22 notice.

23 JUDGE MACE: Let's have it marked as an
24 exhibit since we're doing that, and that way we have a
25 chain of exhibits that demonstrate your points, so this

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1 will be Exhibit 28.

2 Go ahead.

3 A. So the order is issued generally it's 10 days
4 prior to the cancellation effective date. It advises
5 the company that their certificate will be suspended on
6 that date if they don't receive insurance prior to the
7 effective date. And in this situation, Staff did not
8 receive insurance from Pennco prior to April 23rd, and
9 the certificate was in fact suspended.

10

11 E X A M I N A T I O N

12 BY JUDGE MACE:

13 Q. And I note that the order says that the
14 certificate suspension is a period of 30 days from the
15 date of the effective date of the order; is that
16 correct?

17 A. Yes.

18 JUDGE MACE: Thank you.

19 Go ahead.

20

21 D I R E C T E X A M I N A T I O N

22 BY MR. THOMPSON:

23 Q. Well, just to clarify, what happens if proof
24 of insurance is not received within those 30 days?

25 A. Well, at the end of the 30 days, the file

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1 would be referred to the administrative law division for
2 a hearing for cancellation. Technically once the
3 company has no valid insurance, they can't operate, and
4 it's my understanding we could pursue cancellation at
5 that point. Historically, at least as long as I have
6 been here, we have issued a suspending order to allow
7 the company like a grace period 30 days prior to
8 actually proceeding with a hearing to cancel.

9 Q. Okay.

10 A. So they can't operate during that 30 days
11 because there is no insurance on file, but the
12 certificate itself is not -- the Staff at that level or
13 the Commission is not pursuing cancellation of the
14 certificate.

15 Q. And the order provides that the carrier is to
16 cease all operations?

17 A. Yes.

18 Q. Okay, go ahead.

19 A. In this situation we did receive insurance
20 from Pennco's agent, which is slightly different. Did
21 we get it? Well, we did receive a certificate of
22 insurance. It wasn't a Form E, but it was an agent's
23 certificate giving us the information that a certificate
24 would be forthcoming. Based on the insurance agent's
25 certificate, we -- Staff accepts an insurance agent's

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1 certificate as a temporary filing until the actual Form
2 E can come in, like a promise of a Form E, but we only
3 accept it on a temporary basis to allow them time to get
4 their actual filing in. In this case, we did receive a
5 certificate from the agent, and the order lifting
6 suspension was issued on receipt of that insurance.
7 That was on May 4th.

8 JUDGE MACE: And I have before me a copy of
9 the order lifting suspension dated May 4th, and I have
10 marked that Exhibit 29.

11 A. And as of the effective date of that lifting
12 order, the company was advised that they were free to
13 resume operations.

14 Q. And is it your understanding that they did
15 resume operations?

16 A. It was my understanding they did not.

17 Q. Okay.

18 A. At that time.

19 Q. Did you have any conversations with
20 Mr. Harris about the company's decision not to resume
21 operations?

22 A. I did have a conversation with Mr. Harris.
23 The purpose of the conversation wasn't necessarily to
24 talk about his decision to discontinue, it was -- it had
25 to do with another matter and a press release and some

0217

1 questions he had. But in the course of that discussion,
2 I did advise him that he should be aware of the
3 requirement to notify the Commission and ask permission
4 to discontinue service if that's what he was intending
5 to do.

6 Q. Okay. And just for the record, is there a
7 rule that requires that an auto transportation company
8 obtain permission from the Commission before
9 discontinuing service?

10 A. Yes, WAC 480-30-060, and I believe it's
11 Paragraph 9, 8 and 9 discusses discontinuance of
12 service.

13 Q. And has Pennco sought the Commission's
14 permission to discontinue service?

15 A. Not that I'm aware of.

16 Q. When are regulatory fees and annual reports
17 due for auto transportation companies?

18 A. May 1st of each calendar year every
19 certificated carrier is required to file a report of its
20 prior year's activities and pay its regulatory fees for
21 the forthcoming year.

22 Q. Okay. And has Pennco Transportation filed an
23 annual report or paid its regulatory fees as of May 1st?

24 A. No, their 2004 annual report has not been
25 received, their 2005 regulatory fees have not been filed

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1 or paid.

2 JUDGE MACE: I'm sorry, it's the 2004 report?

3 THE WITNESS: And the 2005 fees. The fees
4 are going -- it's a going forward fee based on the prior
5 year's activity.

6 JUDGE MACE: Thank you.

7 MR. THOMPSON: Okay, I think that's all the
8 questions then that I have for Ms. Allen.

9 JUDGE MACE: Mr. Heckman, do you have any
10 questions to ask Ms. Allen?

11 MR. HECKMAN: No, I do not.

12

13 E X A M I N A T I O N

14 BY JUDGE MACE:

15 Q. Some of the materials that I read in the
16 motion that Staff filed indicated something to the
17 effect that Mr. Harris had attempted to provide
18 transportation for his customers by contacting some
19 other carrier. And, Ms. Allen, I'm wondering if you're
20 familiar with that and can just enlighten the Commission
21 a little bit about what the facts were about that?

22 A. Sure.

23 Q. If you know them.

24 A. Sure. We had a, well, I was involved in a
25 telephone conference call with Mr. Harris regarding that

0219

1 issue and a few other issues during that period of time
2 while the certificate, Pennco's certificate, was
3 suspended. Mr. Harris was continuing to -- was
4 continuing to accept passengers for his airporter and
5 Seattle Transportation Service, and he was booking those
6 passengers through a charter company that he also was,
7 if not the owner of, he was the majority shareholder in.
8 It was his belief that the charter company had
9 insurance, and because of that he could use the charter
10 company to provide his airporter service. And we,
11 Staff, in that telephone discussion advised him that a
12 charter carrier did not have authority to provide a door
13 to door airporter service and that he could not use a
14 charter company to provide his regulated service because
15 he had no authority to provide the regulated service
16 while his certificate was suspended.

17 Q. Okay.

18 A. I don't believe he agreed with that, but he
19 -- eventually he did agree that he would cease operating
20 through that charter carrier until he was able to either
21 get another opinion or get his insurance in line.

22 And in the course of that conversation, I did
23 get his insurance agent's name, and we spoke to his
24 insurance agent, I spoke to his agent, I believe it was
25 that afternoon, and we got insurance within the next

0220

1 day. So it was just a matter of, we hadn't heard from
2 anyone, it was just a matter of getting in touch with
3 his agent to try to get something filed.

4 JUDGE MACE: Okay, thank you.

5 Mr. Thompson, anything else?

6 MR. THOMPSON: Well, if Your Honor would
7 like, I could just say a few words about what Staff
8 believes the significance of this additional evidence
9 is.

10 JUDGE MACE: Yes, I had hoped that you would,
11 but first I wanted to ask whether there are any
12 objections to the admission of the proposed Exhibits 27,
13 28, and 29?

14 Hearing no objection, I will admit those
15 exhibits.

16 Yes, I would appreciate it, counsel, if you
17 would take some time to discuss what you think is the
18 impact of this information on a potential Commission
19 decision in this case.

20 MR. THOMPSON: Okay. As we stated in the
21 financial fitness portion of our post hearing brief,
22 there is authority, and I believe it's called the
23 Evergreen Trails case which you will find in our brief,
24 that when an applicant has, and I'm more or less quoting
25 here:

0221

1 When an applicant has significant
2 unexplained operating losses, past
3 operations have not been shown to be
4 profitable, and there is no evidence of
5 a plan to correct the carrier's
6 financial situation and no evidence of
7 another source of financial support for
8 the business, the applicant has not made
9 a prima facie showing of financial
10 fitness.

11 I think all of those factors are in play here
12 with regard to Pennco. Mr. Harris didn't submit a
13 balance sheet with his application, so we really have no
14 evidence and we didn't before regarding Pennco's assets
15 and liabilities. All we have is the income statement
16 that shows a loss of somewhere in excess of \$340,000
17 over a year's time. Mr. Harris earlier testified that
18 he personally financed that loss, yet we really have no
19 evidence whether Mr. Harris has the wherewithal to
20 continue to finance those losses, and in fact his
21 statements in the newspaper articles in particular seem
22 to indicate that he is unwilling to continue to do so.

23 The discontinuance of Pennco's door to door
24 service is very relevant to the issue of financial
25 fitness for two reasons. One is the Commission

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1 precedent that I already mentioned where profitability
2 of the existing business is a consideration. The second
3 thing is that Mr. Harris really has relied in this case
4 on the theory that he could finance new operations
5 without any additional cost by using the vehicles that
6 he already was using as part of his existing door to
7 door operations and his existing employees and
8 facilities for that business. Without that business
9 continuing, there really is no remaining theory from
10 Mr. Harris as to how he would propose to finance the new
11 authority he seeks. The most general statement that the
12 Commission usually puts forth in its orders about the
13 question of financial fitness is that its examination of
14 an applicant's financial fitness must be commensurate
15 with the responsibilities of the public service that the
16 firm seeks to provide, the risks of public failure, and
17 the firm's financial history. And the most recent cite
18 you will find on that is in a case called CWA
19 Incorporated, and that's listed in the brief.

20 I have touched on the financial history
21 issue, but I think it also bears emphasizing that the
22 responsibilities and the risk of failure in this case
23 are relatively high for a scheduled auto transportation
24 service. Because what Mr. Harris is proposing is a
25 scheduled service that connects public transit and a

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1 ferry service, so it would really become an integrated
2 part of a public transportation service on which, you
3 know, assuming the Commission determines that there is a
4 need, people would come to rely on. I think it's just a
5 matter of common sense that for those kinds of services,
6 people do come to heavily rely on them and even make
7 home purchasing decisions based on the existence of
8 those kinds of services. So just bearing that in mind,
9 I guess Staff would submit that the Commission should be
10 cautious in granting authority when the evidence of
11 regulatory fitness for the applicant is clouded at best,
12 and financial fitness evidence is all to the negative,
13 and really I think the risk of public failure of this
14 kind of a service would be considerable.

15 JUDGE MACE: All right, thank you.

16 Mr. Heckman, do you have anything that you
17 wanted to comment on with regard to the issues, the
18 legal issues presented by this evidence?

19 MR. HECKMAN: No.

20 JUDGE MACE: All right, let me ask one more
21 time, is there anyone from Pennco on the conference
22 bridge line?

23 I hear no response, and let me reflect for
24 the record that Mr. Harris or anyone from Pennco, no one
25 from that company has shown up today during the course

0224

1 of the hearing.

2 Is there anything else that we need to
3 address at this time?

4 Very well. Counsel, let me just go over my
5 notes here. It seems to me you had an agenda item that
6 talked about me taking notice of some documents, or have
7 we admitted those as exhibits?

8 MR. THOMPSON: I think we have admitted --
9 everything that I either wanted to refer to or have as
10 an exhibit has been admitted as an exhibit.

11 JUDGE MACE: Thank you.

12 All right, I think that that concludes the
13 matter then, and the record is closed, thank you.

14 (Hearing adjourned at 10:15 a.m.)

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