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1 MURREY'S DISPOSAL COMPANY, INC.; WASTE
2 CONNECTIONS OF WASHINGTON, INC.; ISLAND DISPOSAL, INC.;
3 LYNNWOOD DISPOSAL, d/b/a ALLIED WASTE OF LYNNWOOD;
4 EASTSIDE DISPOSAL, d/b/a ALLIED WASTE OF BELLEVUE, by
5 DAVID W. WILEY (via bridge line), Attorney at Law,
6 Williams Kastner, 601 Union Street, Suite 4100,
7 Seattle, Washington 98101; telephone, (206) 628-6600.

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.HE TG-072226, VOL. III 12/5/2008

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

2 JUDGE TOREM: This is a status conference in
3 Docket No. TG-072226. This is the matter of Glacier
4 Recycle, Hungry Buzzard Recovery, and T&T Recovery.
5 Today is the 5th of December, 2008. It's now a little
6 after 12:30 in the afternoon, and we have a status
7 conference to discuss whether the case is ready to
8 settle, soon to be ready to settle, or needs to be set
9 for hearing. So very quickly, we'll do as we did back
10 on November 18th take short form appearances. For
11 Commission staff?

12 MR. THOMPSON: Jonathan Thompson for
13 Commission staff.

14 JUDGE TOREM: Jonathan Thompson and I are the
15 only ones here in the room in Olympia. Those on the
16 phone include, I understand, Dave Wiley?

17 MR. WILEY: Yes, Your Honor. I represent a
18 number of intervenors.

19 JUDGE TOREM: Mr. Sells?

20 MR. SELLS: James Sells representing
21 intervenor WRRRA.

22 JUDGE TOREM: Ms. McNeill?

23 MS. MCNEILL: Polly McNeill representing
24 Waste Management of Washington, Inc.

25 JUDGE TOREM: Mr. Anderson?

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1 MR. ANDERSON: Don Anderson representing the
2 respondents.

3 JUDGE TOREM: Where we left off, I think, was
4 on November 18th, there was a promise to exchange a
5 second settlement offer forwarded from Commission staff
6 with concurrence of the intervenors to your clients,
7 Mr. Anderson. That was to occur no later than the
8 Friday before Thanksgiving, November 21st, and that you
9 were going to counter or respond to that by yesterday
10 December 4th, and then we would have a decision point
11 as to what would occur today. So Mr. Thompson, you
12 alluded to that before we went on the record that you
13 have that information.

14 MR. THOMPSON: Right, and we have exchanged
15 those settlement proposals and counter-proposals, and I
16 guess the long and short of it is that we don't have an
17 agreement, and as a result of that, I have a proposal,
18 and I think Mr. Anderson may join me in this; that the
19 best thing to do at this point, rather than set up the
20 remaining dates for further testimony and hearings on
21 this matter because the issues that remain are likely
22 to be addressed in the parallel rule-making that is
23 going on on this subject, we are proposing that the
24 Commission suspend the procedural schedule in this
25 matter while that rule-making takes place, and the

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1 reason for that, just to expand on it a little bit, I
2 think the remaining issues in the case are really
3 whether it is permissible for a company that purports
4 to be a transporter of recyclables to haul materials to
5 a mixed recyclable materials, I'll say, to a sorting
6 facility and then remove some percentage of garbage
7 from that, whether that is permissible. If so, how
8 much residual is permissible and what happens if they
9 exceed that, those kinds of questions, and I think
10 those are the same issues that the Commission has set
11 out for itself to address in that rule-making, the
12 docket number of which I don't have at the top of my
13 tongue.

14 So we certainly could proceed to hearing in
15 this case, but the decision would have limited
16 short-term significance since it's likely to be
17 overtaken by whatever the result of the rule-making is
18 in any case.

19 JUDGE TOREM: Mr. Anderson, what is your view
20 on that proposal from Commission staff?

21 MR. ANDERSON: We concur in the proposal, and
22 we would ask, I guess, that if you agreed to enter an
23 order suspending that that language be included
24 essentially adopting that as the rationale. I think
25 settlement discussions were fruitful but maybe not in

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1 the context of terminating this but seeing where the
2 industry is going to go, and we think it's best
3 addressed in the rule-making process.

4 JUDGE TOREM: Mr. Wiley, Mr. Sells,
5 Mr. McNeill, as intervenors in the case, what are your
6 clients' positions?

7 MR. WILEY: Yes, Your Honor. We are
8 concerned with this proposal, and I'll just briefly
9 tell you why. We think that a suspension to an
10 indefinite time on a rule-making is a concern not only
11 under the Commission's procedural rules but under the
12 past history of rule-making.

13 Your Honor, for those of us who have been
14 involved in solid waste rule-making at the Commission
15 over the last decade or two, from a chronological
16 standpoint, they can be a bit of a black hole, and let
17 me give you an example. The last substantive
18 rule-making in the solid waste area, which was
19 TG-99061, the original preproposal of intent went out
20 on March 3rd, 1999. The final rules were adopted April
21 2nd, 2001, so we are talking about a period of over two
22 years.

23 In addition, this case stems from disputes,
24 staff letters, etcetera, that hark back to
25 approximately March 2006, if not before, from what I

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1 could find, and we've got a complaint and show-cause
2 order that was filed on December 28th, 2007, almost a
3 year ago, and an order on partial summary adjudication
4 from June 13th, 2008.

5 While I understand that some of the issues
6 may be addressed in the rule-making, we haven't seen
7 any of Staff's proposed rules on changes to 480-70, so
8 we are speaking without any kind of knowledge about
9 whether they are going to be in complete privity or
10 not, and we also believe, at least my clients, and I'll
11 let the other two intervenor counsel speak for theirs,
12 that if in your wisdom you decide to suspend and refer
13 that your interim ruling on the partial summary
14 adjudication should be the law of the case until
15 changed or otherwise overturned by the Commission's
16 rule, and that's one of the conditions that we would
17 like to see imposed if there is any indefinite
18 continuance for a rule-making.

19 I for one have never been involved in a
20 Commission adjudication that suspended for a
21 rule-making, so we are in some uncharted area. I
22 acknowledge there are some common issues, but I'm not
23 sure we are on complete privity to resolution of the
24 issues raised in the Complaint.

25 JUDGE TOREM: Thank you, Mr. Wiley.

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1 Ms. McNeill?

2 MS. MCNEILL: Well, Judge Torem, I guess I
3 have couple of concerns about it as well. I don't
4 object to the concept of having these issues resolved
5 in rule-making in a more general fashion, but I am
6 concerned about the elimination of the controls that I
7 think are required by law and which are subject to
8 dispute in the settlement, and in particular, I am
9 concerned about the point that Mr. Wiley made. I
10 believe your interim order ruling that delivery of
11 materials to Weyerhauser for industrial landfill
12 stabilizer is a solid waste disposal, and I would be
13 opposed to any elimination of the requirement for the
14 Respondents to continue to abide by that order.

15 I also believe that one of the obligations of
16 existing law is that the Respondent should not be
17 collecting from generators unless they have affirmative
18 evidence that there is a solid waste container or
19 system in place, and that's very important to me. I
20 also think that's existing law and should be a
21 requirement, and then thirdly, as Your Honor knows, I
22 actually don't think that the rules allow us to just
23 continue this for an indefinite time under WAC
24 480-07-385, subsection 4, requiring continuances only
25 be granted only to a specified date.

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1 JUDGE TOREM: You and I have had this
2 conversation in another case, and the solution there, I
3 think, is what Mr. Thompson is suggesting, that we
4 would suspend the procedural schedule as the solution
5 here as we did in the other matter pending whatever it
6 is, and your other matter was a Superior Court appeal.
7 In this case, it would be a rule-making, so I think
8 that would be --

9 MS. MCNEILL: I think that can be worked
10 around. I do mention it because it's fresh on my mind
11 right now. My substantive concerns are, I think, more
12 relevant.

13 JUDGE TOREM: Let me hear from Mr. Sells and
14 then I can address what I've heard the mutual concern
15 as to the effect of the ruling on summary judgment.
16 Mr. Sells?

17 MR. SELLS: If Your Honor please, I agree
18 with virtually everything that Ms. McNeill and
19 Mr. Wiley said, but I'm stuck on a couple of things.
20 One is any kind of an indefinite continuance. It seems
21 to me that if one of our goals here is to get a rule in
22 place as expeditiously as possible with as much
23 information that maybe rather than an indefinite
24 suspension here, this thing ought to be set for hearing
25 maybe in late summer or something like that, which

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1 would not only give us a date to work against but would
2 allow the Staff who is working on the rule and those of
3 us commenting on the rule to have something to work
4 against as well.

5 I agree it doesn't make a great deal of sense
6 to have a whole bunch of expensive hearings for
7 everyone and then have a rule come along that may or
8 may not agree with that. WRRRA's agreements would be
9 any sort of suspension or major continuance though is
10 strictly based upon the Respondents following Your
11 Honor's order regarding Weyerhaeuser. We think that
12 was one of the, if not the primary issue in the case.
13 The Respondents have indicated that they are not
14 hauling to Weyerhaeuser, and if they indicate that on
15 the record, that's good enough, that's fine, but we
16 think that should be in place.

17 As far as the boxes, the solid waste
18 containers on-site, construction sites, as far as we
19 are concerned, Senate Bill 788, did go on, and there
20 has to be a solid waste container on any site that has
21 a recycling container, and it's up to the Respondents
22 to advise people of that, and it's up to their folks to
23 call the local garbage company and get the proper size
24 containers. We don't expect Respondents to -- stop and
25 we don't expect them to say what the appropriate size

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1 container is. They should not be serving any site that
2 does not have a solid waste container on site.

3 JUDGE TOREM: Mr. Anderson, did you want to
4 respond to any of the concerns of the intervenors?

5 MR. ANDERSON: I think one is really easy.
6 With respect to Weyerhaeuser, my clients aren't hauling
7 there and don't intend to. So having as was, I think,
8 suggested in the first of the objections that the order
9 be the law of the case pending some dismissal or change
10 is not a problem because they are complying now and
11 intend to continue to comply.

12 JUDGE TOREM: That makes the first one
13 elementary. I wasn't sure there was a basis for my
14 order to stop being effective even if we suspended the
15 procedural schedule. Mr. Wiley, was there some trick
16 of administrative law that I haven't learned yet?

17 MR. WILEY: There is a procedural argument
18 that has been raised that unless and until an
19 interlocutory order is appealed as a part of the larger
20 proceeding that that ruling is somehow suspended. I
21 don't necessarily agree with that analysis, but I want
22 it very clear if your decision is to suspend because of
23 the rule-making that your order, Order No. 6, is
24 effective until overruled by the Commission, either in
25 a case adjudication or the ruling, because people in

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1 summary judgment situations sometimes hold that in
2 abeyance until the overall case is appealed, and I
3 think it's effective until overturned. I think we all
4 appear to agree, but we want that codified in any order
5 coming out of you.

6 JUDGE TOREM: So if I understand the
7 intervenors' concern on that point, they simply want a
8 reiteration that Order 06 remains in effect.

9 MR. WILEY: Correct.

10 JUDGE TOREM: My signing such a thing, it's
11 the legal way of saying "ditto."

12 MS. MCNEILL: Yes.

13 MR. WILEY: Yes.

14 JUDGE TOREM: I can give you the ditto. I
15 see what, Mr. Wiley, is of any concern; although
16 Mr. Anderson has made appropriate reservations on the
17 record that his clients are not and not intending to
18 haul to Weyerhaeuser, the order is on a motion for
19 summary determination, the cross-motions.

20 It's not including anything about a cease and
21 desist because I don't believe that was requested in
22 the relief sought in those orders, and it wasn't an
23 initial or final order of the Commission, so as long as
24 we have the word of counsel that the ceasing and
25 desisting is already occurring?

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1 MR. WILEY: Yes, and won't change.

2 MR. ANDERSON: And won't change; that is,
3 pending some change in this proceeding rule or
4 subsequent order.

5 JUDGE TOREM: The only other item that
6 concerns me about continuing the case is the
7 Commission's new attention to making sure that
8 complaints, and in this case, I was looking. It is an
9 order instituting a special proceeding. It's a
10 classification measure. It's not a complaint. So in a
11 way, this is an enforcement measure, but it's not quite
12 what other items have been that have drawn the
13 commissioners' attention as to when we take a complaint
14 and allow it to sit out for a long time hoping for a
15 mutual resolution.

16 We've had another case recently where that
17 caused some hubbub here amongst our staff in
18 administrative law division, the consumer protection
19 division and others, and I certainly don't want to put
20 more fuel on the fire that recently died down in that
21 case by having this case go to what would essentially
22 be an indefinite term of waiting, and Mr. Wiley, I
23 agree with you. The rule-making itself was something
24 that's been discussed at the same time that this order
25 instituting the special proceeding first came back up

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1 almost a year ago.

2 Mr. Thompson, can you tell me what you know
3 about the rule-making docket and its current promises
4 for a schedule?

5 MR. THOMPSON: Yes. Let me confer with
6 Mr. Eckhart.

7 JUDGE TOREM: Why don't we just have
8 Mr. Eckhart state his name and title, and if he knows
9 this is a rule-making under him, just tell us directly.

10 MR. ECKHART: This is Gene Eckhart, and I'm
11 the assistant director of water and transportation for
12 regulatory services division. The rule-making
13 schedule, I don't have that in front of me. The status
14 is that we've held some stakeholder meetings and
15 discussed internally with Staff. Staff expects that we
16 will be issuing a proposed draft rule soon in the next
17 week or so, next week or two for comments, and based on
18 comments likely hold another stakeholder meeting.

19 The intent at the time we issued the
20 rule-making was to complete that rule-making within one
21 year, which I believe we issued our CR-101 in March or
22 April, and I'm fairly certain we will not complete the
23 rule-making by March or April, but I believe the
24 current time schedule is to complete the rule-making in
25 2009 at the latest, by the end of 2009.

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1 JUDGE TOREM: With that schedule in mind...

2 Mr. Thompson, you have something to add?

3 MR. THOMPSON: Just on the general question
4 of whether it's permissible to allow a suspension or
5 indefinite continuance, I recognize that the rule
6 states that with regard to continuances, but I think
7 this is a little unique in this is not a private
8 complaint. It's two proceedings initiated by the
9 Commission itself to try to bring clarity to the same
10 sorts of issues, and the Commission has that discretion
11 to either define policy case by case or through
12 rule-making, and at this point, it looks like the more
13 efficient means of doing that and the one that's the
14 better venue in terms of being more inclusive of
15 interested parties is the rule-making, so that's our
16 rationale for proposing what we are.

17 JUDGE TOREM: I just want to make sure that
18 the intervenors concur with the idea that with Order 06
19 remaining in place that while they want to see the
20 final resolution as to whether the respondent companies
21 in this case should be classified to require a
22 G-certificate for their operations, they concur with
23 what Mr. Thompson said that that matter might best be
24 addressed in a rule-making rather than risk me reaching
25 one conclusion and the rule-making reach another or

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1 simply reach the same conclusion but at double or
2 triple the expense of simply having Mr. Anderson
3 represent his client's needs and you represent your
4 various client's needs and interests in the rule-making
5 forum. Mr. Wiley, are you okay with going that road?

6 MR. WILEY: I'm glad you posed it that way,
7 Your Honor, because I think one of my concerns, and
8 it's yet to be resolved. I'm glad to hear from Gene
9 that we are going to see some proposed rules in the
10 next couple of weeks.

11 My concern right now in terms of an
12 indefinite suspension for the rule-making is we don't
13 know that the proposed rules, either the WAC
14 480-70-016, all of the important issues are going to be
15 included in the rule-making that will, in fact, pertain
16 to the issues that need to be resolved in this
17 proceeding. I assume they will be, but I think, Your
18 Honor, if you are going to grant the Staff's and
19 Respondent's motion, I think you should reserve an
20 opportunity for us to come back to you once those draft
21 rules are out to say, Hey, there is not complete
22 privity. This issue might not be resolved. What are
23 we going to do with this suspended proceeding if the
24 rule changes aren't going to address this issue?

25 It sounds like we are going to have a

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1 comprehensive proposal, but there is always room for
2 interpretation when definitional rules are proposed for
3 changing. I would be remiss if I didn't try to seek to
4 protect that in this proceeding.

5 JUDGE TOREM: Having done that protecting,
6 are you okay with waiting to see how the rule-making
7 goes, and perhaps what Ms. McNeill is already
8 anticipating what I'm going to tell you requires
9 another status report or conference, as the case may
10 be. It may be better to get a joint letter saying we
11 are satisfied with where we are on CR-101 and the next
12 stakeholder meeting being sufficient to advance the
13 mutual interest between this docket and the rule-making
14 docket, and therefore, the parties don't require a
15 status conference again like this, because if I issue
16 another notice, you've already as of October 23rd
17 suspended the procedural schedule and then set up this
18 status conference and the prior one on November 18th.

19 If I'm going to grant this, I think we would
20 issue another notice requiring an interim status
21 report, probably, it sounds like four or five months
22 from now, unless the parties on their own accord
23 request a status conference to adopt a new procedural
24 schedule before the date I pick. Mr. Wiley, are you
25 okay with that?

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1 MR. WILEY: That latter point about allowing
2 the intervenors or any party to request another status
3 conference I think would be advisable.

4 JUDGE TOREM: I think that you always have
5 that independent power to make the request. This would
6 be an explicit way of saying, if anybody gets too
7 impatient with the rule-making procedure or feels that
8 what's come out in the draft rules would not address
9 what we need to finish in this case, bring it on your
10 own accord to my attention, or as a group preferably,
11 agree that it needs to press on separately, and we
12 would pick up the ball earlier at that point.

13 Ms. McNeill, with all that discussion, are
14 you okay with what Mr. Thompson has suggested about
15 waiting for the rule-making to take its course before
16 we incur further litigation expense in this docket?

17 MS. MCNEILL: Yes, I am. I actually do think
18 that it would be unfair to require everybody, including
19 the Respondents, to spend a great deal of money and
20 effort on this when the rule-making presents an
21 opportunity for us to debate the issues that we've been
22 debating amongst ourselves in a public matter and get a
23 resolution from the Commission, so I'm okay with that.

24 JUDGE TOREM: Mr. Sells?

25 MR. SELLS: It sounds fine to me with the

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1 caveat that at some point, nobody should be surprised
2 if one of the intervenors comes in with a motion to set
3 this matter for hearing for a variety of reasons, and I
4 certainly want the record to reflect that we are not
5 giving up the possibility of that happening depending
6 upon the speed of the rule and the content of the rule.

7 JUDGE TOREM: That's what I had wanted to
8 address today, and I think the parties have answered
9 the questions I had. We have distinguished that this
10 is not a complaint proceeding but an institution of a
11 special proceeding to classify the respondent company,
12 and to me it gives me permission to take this
13 procedural latitude further and put this on the back
14 burner, because the practice has already ceased and
15 desisted.

16 It's not like another case some of you are
17 aware of where a private party, the practice has ceased
18 and desisted, and the case was initially rendered moot
19 has now landed on my desk awaiting a Superior Court
20 action, so it's not as though there has to be a penalty
21 imposed or not imposed. It's a classification issue
22 and then what goes on from there.

23 With the ruling ahead on the summary judgment
24 motions back in the summertime and Order 06 remaining
25 in effect legally, and apparently, despite the

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1 administrative arguments that might be made about its
2 effectiveness, it is in effect in practice, so I will
3 restate that in the notice I send out.

4 I think given what Mr. Eckhart has told us
5 about the pacing of the ruling-making that if it's now
6 going to be December when it's published, and we assume
7 that may slip to January because I know how rule-making
8 can be at the holiday time, or anything at the holiday
9 time, commenting period will probably last until mid
10 February or later, or a stakeholder meeting would arise
11 in February. Mr. Eckhart, is that reasonable?

12 MR. ECKHART: I contemplate at least a 30-
13 day comment period with a stakeholder meeting scheduled
14 shortly thereafter, so early 2009, February is likely
15 for a stakeholder meeting.

16 JUDGE TOREM: So I would want to give you all
17 about two or three weeks after what I guess would be
18 the stakeholder meeting in late February to early March
19 and require a status report the first week or so of
20 April and set things out. Just issue a notice is what
21 I propose to do. Not an order, but a notice that gives
22 notice that Order 06 remains in effect as we discussed.
23 Give notice that with the other docket which I'll
24 specify in the notice. I have that docket number, that
25 the rule-making is going to be allowed to proceed

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1 unless and until one of the intervenors makes a
2 separate motion to restart this case and reset it that
3 we will wait for the rule-making, and then I'll have a
4 joint status report, or if there is individual ones,
5 that's fine as well, all due by a date in early April.
6 Mr. Thompson, will that satisfy what the Commission
7 staff's proposal was originally 25 minutes ago?

8 MR. THOMPSON: Yes, I think it will, and I
9 think it's important to reflect in the order that the
10 reason for doing so is that the rule-making, at least
11 at this stage, appears likely to address the issues
12 that remain in this case.

13 JUDGE TOREM: I will make note of that and
14 summarize it in my notice. There will be a couple of
15 paragraphs explaining why we are extending the
16 suspension of the procedural schedule out to a status
17 report. That will tell us what happens, essentially
18 may resolve this case, the rule-making, depending on
19 what happens there. Mr. Anderson, are you okay with
20 all that?

21 MR. ANDERSON: Yes.

22 JUDGE TOREM: Mr. Wiley?

23 MR. WILEY: Sounds acceptable, Your Honor,
24 particularly reserving the right, as Mr. Sells
25 suggested, to get back on a schedule if we are

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1 dissatisfied at progress either substantively or
2 chronologically.

3 JUDGE TOREM: Mr. Sells, did he get you right
4 on that too?

5 MR. SELLS: I don't know what the last two
6 words meant, but I think I agree.

7 JUDGE TOREM: Ms. McNeill?

8 MS. MCNEILL: I do know what the last two
9 words meant, and I do agree.

10 JUDGE TOREM: I will hopefully capture all of
11 this in a short notice that goes out in the next couple
12 of days and sets a date for you all in early April to
13 file a joint status report or individual reports
14 stating where you think the case needs to go. You can
15 specify in those status reports if you think that a
16 further extension and another suggested date for a
17 status report is appropriate, or whether we should get
18 together with a status conference and set the matter
19 for hearing, or if you think that at that point it's
20 worth invoking a mediator to work out the remaining
21 issues in the case, whatever the procedural options
22 might be, we will remain creative. Anything else for
23 the record today?

24 MR. THOMPSON: No.

25 JUDGE TOREM: Hearing none, we are adjourned.

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1 It is a little bit after one o'clock.

2 (Status conference adjourned at 1:05 p.m.)

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