

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 19-E-0530 – Proceeding on Motion of the Commission to
Consider Resource Adequacy Matters.

COMMENTS OF INDEPENDENT
POWER PRODUCERS OF NEW YORK, INC.

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Dated: August 21, 2020

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Pursuant to the Secretary’s Notice Soliciting Comments, issued on July 20, 2020 in the above-captioned case,¹ Independent Power Producers of New York, Inc. (“IPPNY”) hereby comments on the economic, policy, and legal implications associated with the existing and potential alternative resource adequacy structures that The Brattle Group (“Brattle”) addressed in its Qualitative Analysis of Resource Adequacy Structures for New York and updated Quantitative Analysis of Resource Adequacy Structures (collectively, the “Brattle Analysis”) that Department of Public Service Staff (“DPS Staff”) filed in this case on May 19, 2020 and July 1, 2020, respectively.²

The Brattle Analysis evaluated five structures to achieve resource adequacy in New York. The first two structures are the New York Independent System Operator, Inc.’s (“NYISO”) installed capacity (“ICAP”) market with the currently effective buyer-side market power mitigation measures (“BSM Measures”) (“Status Quo BSM” or “Option 1”) (subsequently supplemented with Brattle’s assessment of two structural changes to the BSM Measures then

¹ Case 19-E-0530, *Proceeding on Motion of the Commission to Consider Resource Adequacy Matters*, Notice Soliciting Comments (July 20, 2020).

² Case 19-E-0530, *supra*, Qualitative Analysis of Resource Adequacy Structures for New York (May 19, 2020) (“Brattle Qualitative Analysis”); Case 19-E-0530, *supra*, Quantitative Analysis of Resource Adequacy Structures (July 1, 2020) (“Brattle Quantitative Analysis”); *see generally* Case 19-E-0530, *supra*, Notice of Technical Conference (May 15, 2020), at 1 (advising Brattle had been commissioned to complete an analysis from “an economic and policy perspective” evaluating “the merits of existing and potential resource adequacy structures” to be filed in the proceeding by DPS Staff for the purpose of allowing interested stakeholders to “understand the quantitative and qualitative analyses used to compare varying structures.”).

pending before the Federal Energy Regulatory Commission (“FERC”)³) and the ICAP market with expanded BSM Measures which would apply to the whole State (“Expanded BSM” or “Option 2”). The other three structures would replace the NYISO’s ICAP market in different ways. These structures would be operated by the State with the State maintaining full decisional control to avoid FERC’s requirement that resource adequacy in the State be maintained through just and reasonable prices produced by the NYISO’s ICAP market.⁴ As clearly reflected in the characterization of options set forth in the Brattle Analysis, the main purpose of the three alternative State-managed structures (identified as: (1) the Centralized Market for Resource Adequacy Credits (“RACs”) without BSM, (2) Load-Serving Entities (“LSE”) Contracting for RACs, and (3) Co-optimized Capacity and Clean Energy Procurement) (designated as Options 3, 4 and 5, respectively)) is to avoid application of the BSM Measures on *any* resources being added to the system to satisfy the goals of the Climate Act.⁵ The Brattle Analysis claimed that application of the BSM Measures to any of these resources “would inefficiently exclude them

³ When reply comments were due in this proceeding in January, the NYISO had begun the development of two discrete enhancements to its existing BSM Measures. By later in the spring, the NYISO, with feedback from its stakeholder process, completed its development of these two enhancements. First, in response to a FERC order (*New York Independent System Operator, Inc.*, 170 FERC ¶ 61,121 (2020) (“February 2020 Order”), the NYISO proposed a renewable exemption cap that will be calculated using a formula that, *inter alia*, is designed to match regulatory-based entry with regulatory-based exit (“Renewable Exemption Cap”). Docket No. ER16-1404-002, *New York Indep. Sys. Operator, Inc.*, Compliance Filing and Request for Commission Action No Later Than June 8, 2020 (Apr. 7, 2020), at 5. Second, to augment harmonization with State public policy initiatives, the NYISO proposed revisions to the Part A component of the BSM Measures to test Public Policy Resources being added to the system to satisfy the goals of the Climate Leadership and Community Protection Act before other resources in a Class Year (“Part A Filing”). Docket No. ER20-1718-000, *New York Indep. Sys. Operator, Inc.*, Proposed Enhancements to the “Part A Exemption Test” Under the “Buyer-Side” Capacity Market Power Mitigation Measures (Apr. 30, 2020) (“April 30 Filing”), at 2; Climate Leadership and Community Protection Act, 2019 N.Y. Sess. Laws Ch. 106 (McKinney) (“Climate Act”). By order issued July 17, 2020, FERC accepted the first of these changes. See *New York Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,058 (2020) at P 1. A FERC order addressing the second enhancement will be issued in early September.

⁴ See, e.g., Brattle Qualitative Analysis at 13–14.

⁵ Of note, the newly approved Renewable Exemption Cap is designed to exempt a subset of Public Policy Resources capped at the level that limits the risk that such exemption will significantly impact market prices in accordance with FERC’s February 2020 Order. See February 2020 Order at PP 48–51.

from the capacity market . . . inducing excess customer costs from unnecessarily high capacity prices [and] inflating the costs of clean energy contracts.”⁶ The Brattle Analysis estimated that, by 2030, relative to the Centralized Market for RACs without the BSM structure (Option 3), customer costs would increase by \$0.4–0.9 billion/year under the Status Quo BSM (Option 1) and by \$1.3–2.8 billion/year under Expanded BSM (Option 2).⁷

As discussed further below, the Brattle Analysis is flawed in several material respects. First, it proceeds from the underlying assumption that all five identified options will effectively maintain resource adequacy. However, fundamentally, the BSM Measures are part of a comprehensive structure designed to ensure market prices remain just and reasonable (*i.e.*, they are not artificially suppressed), and thus, will maintain resource adequacy over the long run without over-compensating or under-compensating generators.⁸ By eliminating the BSM Measures in Options 3, 4 and 5, market pricing will not be sufficient to retain needed existing facilities on the system. As established below, reliability must run (“RMR”) contracts will be required to maintain these facilities. Brattle fails to account for these market disruptions.

Second, because its assumptions are erroneous, its estimated BSM consumer cost impacts are overstated. Moreover, even assuming Brattle is correct that the BSM Measures may impose some costs on consumers in the short run by mitigating the price suppressive impact of uneconomic entry,⁹ Brattle’s estimates of consumer cost increases are misleading and essentially meaningless because they are made relative to the Centralized Market for RACs without BSM,

⁶ Brattle Qualitative Analysis at 5.

⁷ Brattle Quantitative Analysis at 4.

⁸ See *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 (2008) at P 1; February 2020 Order at P 48.

⁹ It has long been established that while artificial price suppression may appear beneficial to consumers in the short run, it is not sustainable and forces consumers to incur higher costs in the long run. See *New York Independent System Operator, Inc.*, 118 FERC ¶ 61,182 (2007) at P 17.

which Brattle incorrectly assumed would essentially be equivalent to the NYISO's existing ICAP market without BSM.¹⁰ Brattle asserted that this construct would provide market continuity because it relies on a centralized structure similar to the NYISO's ICAP market.¹¹ Yet, as demonstrated in more detail below, Brattle inexplicably made no attempt to assess the significant legal issues that will be implicated and the resulting costs to consumers and harm to reliability if the New York State Public Service Commission ("Commission") attempted to unilaterally remove resources and load from the NYISO's ICAP market to avoid application of the BSM Measures.

Separate and apart from the litigation that would ensue and the resultant uncertainty it would bring at the very time New York is seeking large capital investments to revamp the composition of its electric system from private investors that are sensitive to such uncertainty, Brattle also did not provide any consideration of what are likely to be very significant costs with respect to the LSE Contracting for RACs (Option 4) and Co-optimized Capacity and Clean Energy Procurement (Option 5) structures, stating that estimates of the costs caused under these structures "were beyond project scope."¹²

As the rolling blackouts that are impacting millions of people in California this week due to the State of California's failure to assure resource adequacy as it transitions to a renewable electric system demonstrate, such transition must be managed meticulously and prudently.¹³ In its grant of authority to the Commission to suspend the obligations under its program to meet the

¹⁰ See Brattle Quantitative Analysis at 2.

¹¹ Brattle Qualitative Analysis at 3.

¹² *Id.*

¹³ See Jeff St. John, *California's Shift From Natural Gas to Solar is Playing a Role in Rolling Blackouts*, Greentech Media (Aug. 17, 2020), <https://www.greentechmedia.com/articles/read/how-californias-shift-from-natural-gas-to-solar-is-playing-a-role-in-rolling-blackouts>.

Climate Act’s renewable mandates if the program impedes the provision of safe and adequate electric service, the Climate Act affirmed that reliability is paramount.¹⁴ It will be critical to continue to carefully review the wholesale market structure on an ongoing basis and identify necessary changes as the grid transitions to a carbon-free electric system by 2040 to ensure resource adequacy is maintained at all times. Given the aggressive renewable resource levels and accelerated time frame for their development mandated by the Climate Act, adequate investment signals must be sent now if the State is to meet its Climate Act requirements. However, the Commission cannot reasonably rely on the flawed Brattle Analysis and its associated assumed-but-unsubstantiated cost savings as any basis to justify an attempt to replace the NYISO’s existing installed capacity market structure with any of the State-managed constructs for which there is incomplete information and cannot adequately or accurately be considered and analyzed.

As IPPNY advocated in its comments submitted in this case last November, the Commission should instead terminate this case and direct DPS Staff to continue working through the NYISO’s stakeholder process to develop and implement market design changes that harmonize the State’s public policy initiatives with competitive markets.¹⁵ As reflected by the two stakeholder-approved projects intended to enhance the BSM Measures for Public Policy Resources—the Renewable Exemption Cap and Part A Filing, discussed herein—development of market changes utilizing the NYISO stakeholder process can produce carefully analyzed and far more reasoned results.

¹⁴ See Climate Act § 4 (adding a new section to the Public Service Law (§ 66-p)).

¹⁵ Case 19-E-0530, *supra*, Comments of Independent Power Producers of New York, Inc. (Nov. 8, 2019) (“IPPNY Comments”), at 10.

I. THE BRATTLE ANALYSIS HAS NOT BEEN ADEQUATELY VETTED AND IS FLAWED.

In contrast to the far more fulsome stakeholder process that is applied at the NYISO, the Brattle Analysis has only been discussed in one technical conference. While parties were invited to submit written questions in advance of the technical conference and IPPNY availed itself of that opportunity to seek to understand, *inter alia*, the underlying data and assumptions used by Brattle to conduct its study, its questions were not answered.¹⁶ In a further attempt to obtain information and provide transparency, IPPNY has filed its questions in this proceeding.¹⁷ They remain unanswered.

Based on the limited information provided to date, IPPNY has been able to uncover that, due to the flaws and omissions described below, the Brattle Analysis understated the megawatts (“MW”) of new Public Policy Resources that are likely to be exempt from offer floor mitigation under the BSM Measures in 2030. Its estimates of customer cost increases of \$0.4–0.9 billion/year under Status Quo BSM and \$1.3–2.8 billion/year under Expanded BSM are, therefore, significantly overstated.

First, the Brattle Analysis understated the level of Public Policy Resources MWs that may receive exemptions under the Renewable Exemption Cap recently accepted by FERC. In its

¹⁶ Because the questions submitted to DPS Staff in advance of the technical conference were not posted, IPPNY cannot know: (i) how many other parties also had questions; (ii) the scope, nature and extent of those questions; or (iii) whether any party’s questions were answered or also remain outstanding. Likewise, because a separate link was used to submit questions during the meeting, IPPNY cannot know the nature and scope of these questions or whether they were answered. Thus, the process for vetting the Brattle Analysis was itself flawed.

¹⁷ See Case 19-E-0530, *supra*, Questions Regarding the Brattle Group Analyses of Resource Adequacy Structures (Aug. 5, 2020).

Quantitative Analysis estimating consumer cost impacts in 2030, Brattle assumed that only 550 UCAP MW of new renewable resources would obtain BSM exemptions.¹⁸

However, as recently approved by FERC, the level of exemptions available to new renewable generation pursuant to the Renewable Exemption Cap is calculated principally based on the UCAP MW of generator retirements caused by direct regulatory action (“Incremental Regulatory Retirements”).¹⁹ One such direct regulatory action is the Department of Environmental Conservation’s (“DEC”) NO_x Limits Rule for Simple Cycle and Regenerative Combustion Turbines (“Peaker Rule”), which the NYISO indicated will impact approximately 3,300 MW of fossil peaking facilities in the lower Hudson Valley, New York City and Long Island by 2025.²⁰ Based on the NYISO’s summary of compliance plans that owners of peaking facilities provided to the NYISO this past spring, 533 MW of facilities in Zone J on an ICAP basis will be out of service in 2025.²¹ An additional 852 MW of peaking units will be operating on a seasonal basis to comply with the Peaker Rule.²² Eastern Generation, LLC, which owns the 852 MW of peaking units, has proposed to retire the Gowanus and Narrows units as part of its Gowanus repowering proposal.²³ Because the repowered project will be smaller than the existing units, at least the capacity of the Narrows units—352 MW on an ICAP basis—will also be added

¹⁸ Quantitative Analysis at 3.

¹⁹ See *New York Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,058 (2020) at P 50.

²⁰ *2020 RNA Reliability Needs Assessment – Comprehensive System Planning Process – Draft Report*, NYISO (Aug. 20, 2020), at 13, https://www.nyiso.com/documents/20142/14682221/2020RNA_Report_Draft.docx/a850157a-356a-5d4f-e4fe-d06fed46990e.

²¹ *2020 RNA Preliminary (“1st Pass”) Reliability Needs*, NYISO (June 19, 2020) (“NYISO 2020 RNA Preliminary 1st Pass”), at 20, https://www.nyiso.com/documents/20142/13200831/02%202020RNA_1stPassRN.pdf/8a0de336-bd24-1260-dc4b-5df58cdb049f.

²² *Id.*

²³ Case 18-F-0758, *Gowanus Repowering Project*, Preliminary Scoping Statement (May 14, 2019), at 2-3–2-4.

to the net amount of Peaker Rule-driven retirements that will become available under the formula used to calculate the Renewable Exemption Cap.

The retirement of these facilities will provide a commensurate level of renewable exemptions on an Unforced Capacity (“UCAP”) basis. UCAP is the measure by which ICAP suppliers are rated to quantify the extent of their contribution to satisfy New York State Reliability Council requirements, and, therefore, once adjusted for historic availability, is the determining factor in setting the amount of capacity a supplier is eligible to sell. Converting the at least 885 MW of retiring units on an ICAP basis to a UCAP basis will produce an equivalent UCAP value that is significantly higher than Brattle’s estimate of 550 UCAP MW. Even assuming a relatively high average forced outage rate for the retiring units, the amount of UCAP released under the Renewable Exemption Cap should be approximately twice as high as the UCAP exemptions assumed by the Brattle Analysis.

Brattle’s 550 UCAP MW of renewable exemptions is also understated because Brattle did not consider the potential for additional retirements of emitting resources that will likely occur in response to new carbon emissions limitations that DEC will be implementing in the near future. The Climate Act requires that DEC adopt greenhouse gas emissions regulations to achieve an 85% reduction in such emissions by 2050.²⁴ Like DEC’s Peaker Rule, its greenhouse gas emissions regulations, if they target specific resource characteristics such as unit emission rates, will likely cause Incremental Regulatory Retirements that will create headroom for new entry of Public Policy Resources to receive renewable exemptions.

²⁴ Climate Act § 2 (adding new sections to the Environmental Conservation Law which provide that 1) the DEC shall establish a statewide greenhouse gas emissions limit at 15% of 1990 statewide greenhouse gas emissions (Section 75-0107(1)(b)) and 2) the DEC will promulgate rules to ensure compliance with those limits no later than July 17, 2023 (Section 75-0109(1)).

Second, the Brattle Analysis disregards the significant level of exemptions that Public Policy Resources may obtain under the NYISO's Part A Filing pending before FERC. Generally, a resource can receive an exemption from BSM under the Part A Exemption Test if its entry would not raise the capacity surplus to more than 5 to 6 percent of the capacity requirement. On April 30, 2020, the NYISO filed proposed tariff revisions in the Part A Filing that would place Public Policy Resources ahead of non-Public Policy Resources in evaluations under the Part A Exemption Test rather than continuing to order resources based on a purely economic evaluation of their costs alone.²⁵ This ensures that Public Policy Resources, rather than emitting resources, will have priority to receive the Part A exemptions and therefore enter the market exempt from BSM when retirements of existing resources reduce the capacity surplus below the Part A levels. The NYISO stated in the Part A Filing that its proposed Part A enhancements are a NYISO-specific approach to recognizing the impact of New York's policy choices.²⁶ As resources retire in Mitigated Capacity Zones, even if they are not Incremental Regulatory Retirements that would increase the level of the Renewable Exemption Cap, Public Policy Resources will be able to replace them free from mitigation. Brattle provided no basis for its 400 UCAP MW sensitivity of Public Policy Resources exemptions. It likely understates the level of Public Policy Resources exemptions that will be available under the combined Renewable Exemption and Part A Exemption.

Third, Brattle recognizes that the NYISO's proposal to internalize the cost of carbon emissions in wholesale energy prices (the "carbon adder") will reduce the number of Public Policy Resources that would be subject to mitigation. Yet Brattle makes no attempt to quantify the level

²⁵ April 30 Filing at 2.

²⁶ *Id.* at 1.

of Public Policy Resources that would not be subject to offer floor mitigation under the BSM Measures were the NYISO's program to be implemented. As IPPNY demonstrated in the IPPNY Comments, the carbon adder can help the State meet its clean energy goals faster, more efficiently and more cost effectively while reducing emissions and maintaining grid reliability.²⁷ The carbon adder much more effectively addresses the State's policies by significantly reducing, if not eliminating, the need for out-of-market subsidies to incent the development of most Public Policy Resources. Because the value of their services would be embedded in pricing and out of market subsidies would no longer be required, Public Policy Resources would either clear the BSM examinations or be eligible to secure Competitive Entry Exemptions.

Brattle's conclusion in this regard is supported by a comprehensive analysis that was conducted to assess the impacts of the carbon pricing program on the NYISO's markets. Specifically, in its analysis of the benefits and costs of the NYISO's proposed carbon adder following the State's enactment of the Climate Act, the Analysis Group established that implementation of the NYISO's carbon pricing program could "provide a number of benefits, including support for New York policy makers' goals to reduce carbon emissions as quickly and as economically as possible."²⁸ This result inures because the energy market, for the first time, would be placing value on carbon-free and lower carbon operations, a result that squares with the Climate Act and the State's ongoing public policy initiatives. To that end, the Analysis Group highlighted the interrelationship between the carbon pricing program and the NYISO's BSM Measures. Because the program would effectively price the value of carbon in the markets, the Analysis Group found some carbon-free resource options would be economic. The State could proceed with its initiatives, and

²⁷ IPPNY Comments at 14–15.

²⁸ Susan F. Tierney & Paul J. Hibbard, *Clean Energy in New York State: The Role and Economic Impacts of a Carbon Price in NYISO's Wholesale Electricity Markets*, Analysis Group (Oct. 3, 2019) ("Analysis Group Report"), at 59, <https://www.nyiso.com/documents/20142/2244202/Analysis-Group-NYISO-Carbon-Pricing-Report.pdf/81ba0cb4-fb8e-ec86-9590-cd8894815231?t=1570098686835>.

the market would select the most effective renewable resources without the need for contracts or additional changes to the current BSM structure. Thus, IPPNY again reiterates its longstanding request for the Commission to formally endorse the NYISO's carbon adder proposal in this proceeding to harmonize State public policy with the competitive markets while, at the same time, keeping the necessary protections afforded by the BSM Measures fully intact.

Finally, the Brattle Analysis simply estimated the costs of BSM relative to the NYISO's ICAP market without BSM. It did not assess the significant costs to consumers and harm to reliability that may occur if the Commission attempted to unilaterally remove resources and load from the NYISO's installed capacity market subject to FERC jurisdiction to avoid the application of the BSM Measures.

The market prices that will result without the BSM Measures will not be sufficient to maintain existing facilities needed for resource adequacy. RMR contracts will be required. State-backed Public Policy Resources under a State-directed "market" model will simply beget more subsidized resources. Reliability will be risked as fewer and fewer resources can be financed to enter the market on a merchant basis. Brattle inexplicably made no attempt to quantify these impacts and costs.

At the same time, Brattle acknowledged that implementation of its proposed resource adequacy constructs and the costs thereof will be driven by legal considerations, yet it did not evaluate these considerations or quantify these costs.²⁹ As IPPNY demonstrated in the IPPNY Comments, the Commission is preempted by the Federal Power Act from unilaterally asserting a resource adequacy role.³⁰ If the Commission attempted to remove resources and load from the

²⁹ See Qualitative Analysis at 27.

³⁰ IPPNY Comments at 17–24.

NYISO's ICAP market unilaterally, ensuing litigation could take years to resolve with extensive related litigation costs and would lead to substantial market uncertainty.

This uncertainty created by the Commission's action will, in turn, significantly hamper the development of the very resources the State seeks to attract to meet its public policy goals. Developers of new resources and owners of existing needed resources will, at a minimum, face higher risk premiums for, and, in some cases, may be unable to secure, the necessary capital to finance their projects. This will raise costs to consumers while at the same time potentially harming reliability and undermining the State's efforts to satisfy the Climate Act mandates.

Indeed, as IPPNY demonstrated in the IPPNY Comments, the Commission's resource adequacy proceeding itself is causing significant uncertainty in the market and likely already has increased the cost of financing energy projects.³¹ The uncertainty the initiation of this resource adequacy proceeding has engendered comes at a critical time for the wholesale markets in New York as a whole and, particularly, in New York City. At the time that initial comments were due in this proceeding last fall, the Peaker Rule compliance plans were not yet due. With the information the NYISO has provided in its Reliability Needs Assessment reliability planning study efforts, it is now indisputable that dispatchable resources are needed to maintain resource adequacy in the short term for these facilities to be permitted to be retired. The NYISO and local transmission owners have issued studies demonstrating transmission security and resource adequacy violations that will begin in 2023 and show significant, growing reliability needs by 2030.³² As reflected in the

³¹ IPPNY Comments at 6.

³² *2020 RNA Base Case Updates*, NYISO (July 23, 2020), https://www.nyiso.com/documents/20142/14027657/04%20RNA_2ndPassAssumptions.pdf/99ed227a-7208-8cf8-5eb3-891f324ca354; NYISO 2020 RNA Preliminary 1st Pass; *See CRP: Peaker Scenario – Assessing DEC's NOX Limits (Draft) Ruling for Simple Cycle and Regenerative Combustion Turbines*, Consol. Edison Co. of N.Y., Inc. (Mar. 19, 2019), https://www.nyiso.com/documents/20142/5552484/2018CRP_Con_Edison_Slides.pdf/ee821d59-a957-d051-1070-02275773e07b; *CRP: Peaker Scenario – Assessing DEC's NOX Limits (Draft) Ruling for Simple Cycle and Regenerative Combustion Turbines*, PSEG Long Island (Mar. 3, 2019),

transmission owner studies, these needs require resources with energy durations of at least 14 hours, and thus, these system needs cannot be effectively met by energy storage resources alone. Thus, near-term investments in fossil generation must be made to ensure reliability for the foreseeable future.

<https://www.nyiso.com/documents/20142/5552484/LIPA-Simple%20Cycle%20Retirement%20Assessment%2003-2019.pdf/31d43e9f-d9f7-476f-605f-df31ef7d7674>.

II. CONCLUSION

The Brattle Analysis is flawed and requires substantial review and revision. In light of the viable alternatives already being pursued in the NYISO stakeholder process, it would thus be premature for the Commission to attempt to replace the NYISO's ICAP market with a State-managed construct based on the findings of the Brattle Analysis. As IPPNY advocated in the IPPNY Comments, the Commission should direct DPS Staff to work through the NYISO's stakeholder process to comprehensively and expeditiously complete development and implementation of the various market design changes, including the carbon pricing proposal, that will most reliably, efficiently and cost effectively maintain system reliability over the ensuing 20-year period while New York transitions to a carbon-free electric market and that will harmonize the State's public policy initiatives with the NYISO's competitive electricity markets for the benefit of consumers in New York State.

Respectfully submitted,

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