



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 5, 2012

The Honorable Edward J. Markey  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Markey:

On behalf of the U.S. Nuclear Regulatory Commission, I am responding to your letter of October 2, 2012, which follows up on your June 4, 2012, letter seeking information about the agency's safety culture and allegations involving a manager in the agency's Region IV office in Arlington, Texas. You also reiterated your request for an independent investigation into those allegations.

Responses to your specific requests are enclosed. Please note that a number of the documents have not been released to the public and have been marked "not for public disclosure." I respectfully ask that your office honor these markings. If you have any additional questions, please contact me or Rebecca Schmidt, Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

Allison M. Macfarlane

Enclosures:  
As stated

**Responses to Information Requests from Representative Edward J. Markey  
Letter Dated October 2, 2012**

**1. Please provide me with a copy of all emails, correspondence, or other documents that were submitted to the IG by all Commissioners or other NRC staff who referred the Region IV safety culture concerns to the IG so that I may understand the scope of what the IG was asked to do.**

Referrals to the Office of the Inspector General (OIG) become OIG investigatory records. Requests for documents captured in Inspector General investigations should be directed to the NRC's OIG.

**2. I reiterate my request that an independent entity examine the allegations of safety culture problems in Region IV, and in particular examine all allegations related to Mr. Pruett's actions. At minimum, please include as part of the scope of such an examination the question of whether Mr. Pruett's management style and past actions have, either taken separately or collectively, resulted in adverse impacts to each of NRC's nine listed attributes of what constitutes a positive safety culture at Region IV. Does the NRC believe that the safety culture in Region IV is fully consistent with the NRC's open collaborative work environment (OCWE) policy statement? Are all employees able to promptly speak up and share concerns and differing views without fear of negative consequences? Are diverse views, alternative approaches, critical thinking, collaborative problem solving, unbiased evaluations, and honest feedback encouraged, recognized, and valued? Is there a work environment of trust, respect, and open communication that maximizes the potential of all individuals and improves our regulatory decisionmaking? Has it been made clear to all NRC employees in the Region that everyone has a role in safety and that they are all responsible for promoting a strong safety culture and achieving the NRC mission?**

The NRC's Inspector General is examining these issues. This Office was established in 1989 as an independent and objective organization to, among other things, conduct investigations relating to NRC's programs and operations. While the OIG serves under the general supervision of the NRC Chairman, it operates with personnel and contracting and budget authority independent of that of the NRC. At this time, the agency believes the appropriate approach is to let the OIG complete its investigation, at which time NRC management can review the report and determine whether additional investigatory actions are necessary and appropriate.

As reported to you in our response to your June 4, 2012, letter, the agency is not waiting for the results of this investigation to take the opportunity to further improve our culture of encouraging staff to voice their views and to consider a variety of views in carrying out our responsibilities. The NRC's Agency Culture Advisory Group (ACAG) is prepared to review the results of the recently completed OIG triennial Safety Culture and Climate Survey when they become available in November. Approximately 77 percent of NRC staff participated in the survey. ACAG will independently analyze the results and develop an action plan to address identified areas for improvement.

Enclosure

We maintain an active program to promote a positive safety culture throughout the agency, and, as noted above, we recognize that there is always room for improvement, and we expect to undertake additional actions to promote a positive safety culture based on feedback from employees who participated in the most recent OIG survey. In addition, Region IV senior management has been working to reinforce the principles and expectations of the agency's safety culture in Region IV.

**3. Please also include as part of such an examination a request that the independent entity attempt to ascertain whether Mr. Pruett based his alleged assertions that the IG has not substantiated any of the allegations made against him prior to the completion and release of the IG report on communications between the IG office and Mr. Pruett (and otherwise, what the source, if any, of Mr. Pruett's information was).**

The OIG was established statutorily as an entity independent from the NRC. As stated in response to Question 2, the agency believes that the appropriate approach is to allow the OIG to complete its ongoing investigation of the allegations.

**4. Using the information contained in the September 19, 2012, letter I received from Region IV staff, please again provide a response as to whether the Commission supports a performance award policy that equates bonuses to enforcement actions that are challenged or overturned by the licensee. If so, how does the Commission justify this view, and if not, what will the Commission do to alter the pay incentives described in the September 19 letter?**

We reaffirm in the strongest possible terms that the NRC does not have, and the Commission does not support, a performance award policy that equates bonuses to enforcement actions that are challenged or overturned by licensees. The Performance Plan measure in question addresses the number of disputed enforcement actions retracted *due to NRC error*. This Plan is intended to promote enforcement decisions by the NRC that are technically and legally sound. It is one of many factors that go into determining the quality of the work produced by an NRC organizational unit, including the quality of management performance. The anonymous letter of September 19, 2012, mischaracterizes the agency's performance plan process and approach to executive compensation. We do not believe we need to alter either of these based on the assertions made in that letter.

**5. Please provide the NRC's proposed response to my May 2012 request for a copy of all documents (including but not limited to emails, phone logs, memos, or letters) in which NRC staff have identified or complained about the management style, acts of retaliation or other personnel complaints associated with Mr. Pruett. For each complaint that was brought to the attention of more senior NRC personnel, please indicate a) whether the alleged action was investigated and if so, please provide a copy of all documents related to any such investigation, b) whether the alleged action was remedied and if so, please provide a copy of all relevant documents, and c) whether any disciplinary actions were taken against Mr. Pruett, and if so, please provide a copy of all relevant documents. I understand that some of these materials may contain private personnel information, and it is not my intention to require the disclosure of such material. My staff has, on numerous occasions, conveyed my willingness to work collaboratively with you to devise an acceptable response to this request that would satisfy all involved. Yet on September 26, your staff informed mine that the NRC is unwilling to provide me with any response whatsoever due to these so-called 'privacy concerns.' Please propose a suitable accommodation.**

Records of complaints received by the Agency against a manager were provided to the OIG for investigation. Requests for these records should be directed to the NRC's OIG for response.

Concerning your specific requests in 5(b) and (c), any records concerning disciplinary action are part of sensitive internal personnel and investigatory files and contain personal privacy information that is explicitly protected by the Privacy Act, 5 U.S.C. § 552a. See NRC Privacy Act Systems of Records Notice, 75 Fed. Reg. 57334 (Sept. 20, 2010) (listing separate records systems for employee disciplinary actions, personnel files, and Inspector General Investigative Records). Under the Privacy Act, these records may not be released by the NRC without the permission of individuals identified in the records, a court order, or a request filed by a Congressional committee/subcommittee chairman, on behalf of the committee. See 5 U.S.C. § 552a(b); see also U.S. Department of Justice, Overview of the Privacy Act 80-81 (2010) (the Privacy Act exception for disclosure to Congress or Congressional committees "does not authorize the disclosure of a Privacy Act-protected record to an individual member of Congress acting on his or her own behalf"); U.S. Department of Justice Office of Legal Counsel, Opinion for the General Counsel, Department of Treasury: "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members" (Dec. 5, 2001) (concluding that "the congressional-disclosure exception to the disclosure prohibition of the Privacy Act generally does not apply to disclosures to committee ranking minority members").

The Freedom of the Information Act also applies to a record request from an individual member of Congress. See U.S. Department of Justice, Guide to the Freedom of Information Act 41-42 (2009) ("individual members of Congress possess the same rights of access [under FOIA] as those guaranteed to any [other] person"). The records of an open investigation or personnel files of an individual are protected from disclosure to the public under exemptions 6 and 7(C) (concerning personal information captured in personnel files and investigatory files). 5 U.S.C. § 552(b)(6)-(7).

Given these statutory constraints, we do not believe that we can reach any further accommodation at this time.

**6. Please provide NRC's timetable for providing me with my May 2012 request for copies of all documents (including but not limited to emails, letters, telephone logs, and memos) to or from Commissioners, Commissioner staff, and senior NRC officials (including but not limited to Bill Borchardt, Marty Virgilio and Elmo Collins) that are in any way related to the decision to assign a "red" safety finding to the Fort Calhoun Station or to subject the Fort Calhoun Station to more aggressive oversight. While I have received responses from Commissioners Apostolakis, Ostendorff, Svinicki and Magwood, I have yet to receive a submission from former-Chairman Jaczko or any of the relevant senior NRC staff. According to the September 19 letter I received from Region IV staff, "Congressional requests of this nature typically generate a "Green Ticket" from the EDO [Executive Director for Operations, Bill Borchardt]. This administrative tracking mechanism would be forwarded to all potentially affected NRC staff in order to conduct the requisite records search. However, to date, no such request has been forwarded to RIV staff for documents related to this matter which brings into question the veracity of the NRC's response." This failure to undertake a search for responsive documents, if true, is completely unacceptable. I ask that you additionally include, as part of this request, any and all documents (including but not limited to emails, letters, telephone logs, and memos) to, from or about Mr. Pruett that are also related in any way to the decision to assign a "red" safety finding to the Fort Calhoun Station or to subject the Fort Calhoun Station to more aggressive oversight.**

Documents from the files of Commissioners Apostolakis, Magwood, Ostendorff, and Svinicki responsive to your earlier request were previously provided to your office. If any documents from the files of former Chairman Jaczko are located, they will be forwarded to you.

The following "senior NRC officials" were asked to provide documents in response to this request:

Bill Borchardt, Executive Director for Operations  
Michael Johnson, Deputy Executive Director for Reactors and Preparedness Programs  
Michael Weber, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs  
Darren Ash, Deputy Executive Director for Corporate Management  
Eric Leeds, Director of the Office of Nuclear Reactor Regulation  
Elmo Collins, Regional Administrator, Region IV  
Art Howell, Deputy Regional Administrator, Region IV  
Kriss Kennedy, Director, Division of Reactor Projects, Region IV  
Anton Vogel, Director, Division of Nuclear Materials Safety

All relevant documents from their files are included as part of the Attachment.

**7. Does the NRC believe that the safety culture of the Nuclear Regulatory Commission itself should conform with the principles outlined in its Final Safety Culture Statement? If so, what specifically is the NRC planning to do to ensure that this is the case in Region IV? If not, please explain why the NRC would not wish the Final Safety Culture Statement to be applicable to the activities of its own staff? Does the Commission believe that the only measure of whether there is a strong safety culture or an open and collaborative work environment at the NRC to be the definitive disposition of whistleblower retaliation complaints?**

Yes, the NRC believes that the NRC's safety culture should conform to the tenets of the Safety Culture Policy Statement (SCPS). In SECY-11-0005, "The Proposed Final Safety Culture Policy Statement," dated January 5, 2011, the staff recommended to the Commission that the agency evaluate its internal safety culture activities and initiatives to ensure consistency with the underlying tenets expressed in the SCPS, and the Commission approved this recommendation. To accomplish this, the Agency Culture Advisory Group (ACAG) reached consensus on a recommended definition of safety culture, which aligns with the definition in the SCPS, and the ACAG is completing formulation of its view on the integration of safety culture within the agency's organization culture and related programs and initiatives. A number of these proposed activities are currently under final review by senior agency leadership. Subsequent steps include review of the safety culture traits, as discussed in the SCPS, for applicability within the agency, and incorporation of safety culture into agency training programs, as appropriate.

The NRC, including Region IV, is actively engaged in activities that are intended to create an environment where employees feel respected, their contributions are valued, and their voices are heard. This includes training classes offered to management and staff in an effort to raise awareness of their mutual responsibility for raising concerns and providing tools to assist in raising concerns. There continues to be an emphasis placed on continuous learning, personal accountability, and leadership through organizational development initiatives, such as coaching and team building, which help leaders become aware of their strengths and challenges. The soon-to-be-released results of the April 2012 Office of Personnel Management-sponsored Federal Employee Viewpoint Survey and the September 2012 Office of the Inspector General's

Safety Culture and Climate Survey will help inform additional NRC-wide activities to improve the organization.

The NRC has numerous ways to determine the strength of NRC's safety culture. The NRC's assessment of how well we meet our strategic plan and its safety and security goals are, at a high level, measures of how robust our safety culture is. Our processes and programs, such as the Reactor Oversight Process (ROP) and the allegations program, are designed to ensure a safety-first focus by incorporating assessment and timeliness measures. Our training programs are designed with criteria to ensure employees have the skills needed to do their jobs as they relate to public health and safety. Further, the results of the Federal Employee Viewpoint Survey and the Safety Culture and Climate Survey, will, in part, measure employee perceptions, identify trends, and show changes in the various tenets of the agency's safety culture.

The NRC also supports employees engaging in the non-concurrence process and the differing views program, and fully evaluates and promptly addresses safety concerns raised through these programs. The number of staff using these programs is another measure of our safety culture. The NRC supports an open door policy and an open, collaborative work environment where employees are encouraged to promptly raise concerns and differing views without fear of reprisal, and the agency expects all employees to exhibit behaviors in accordance with its values. Finally, my letter to you dated July 23, 2012, discussed the "Comprehensive Plan for Agencywide Review of Safety Culture" developed by ACAG and consisting of ongoing and planned initiatives that will be used to strengthen and sustain the NRC's organizational and safety culture. These activities include following up on the survey results and developing action plans for office-specific initiatives.

Attachment: As stated

Rihm, Roger

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**From:** Howell, Art  
**Sent:** Thursday, June 21, 2012 11:07 AM  
**To:** Rihm, Roger  
**Subject:** FW: FCS Breaker Fire Communications Timeline.docx  
**Attachments:** FCS Breaker Fire Communications Timeline.docx

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**From:** Vegel, Anton  
**Sent:** Thursday, March 08, 2012 11:28 AM  
**To:** Blount, Tom; Kennedy, Kriss; Pruett, Troy; Clark, Jeff  
**Cc:** Collins, Elmo; Howell, Art; Graves, Samuel  
**Subject:** FW: FCS Breaker Fire Communications Timeline.docx

FYI!

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**From:** Graves, Samuel  
**Sent:** Thursday, March 08, 2012 11:23 AM  
**To:** Vegel, Anton; Miller, Geoffrey  
**Subject:** FCS Breaker Fire Communications Timeline.docx

Gentlemen,

Attached is the timeline for actions to debrief interested stakeholders on the status of the FCS inspection of the 1B4A breaker fire. I will brief DRP BC, FCS Resident staff, and regional SLO shortly.

Any questions, please let me know.

Sam

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# FCS Breaker Fire Communications Timeline

## Thursday, March 08, 2012

- 8:00 – Conference Call with FCS on SDP (Complete)
- 3:30 – Brief Regional Administrator on FCS status (Time Tentative)

## Friday, March 09, 2012

- TBD – Brief regional PAO on FCS issues to date. Provide Draft Report.
- Brief:
  - Jenny Wiel (OCA)
  - Office of Public Affairs (V. Dricks)
  - EDO Coordinator
  - DRP Branch Chief and FCS Resident Inspector Staff
  - 0350 Panel Chair, Troy Pruett (Tony)
  - Regional State Liaison Officer (B. Maier)

## Monday, March 12, 2012

- Issue Report (Morning, before 10:00)
- 1000 – issue EDO Daily Note
- Provide copy to Resident Inspectors and D. Bannister (FCS)

Contact: Geoff Miller  
817-200-4137

Sam Graves  
817-200-1102

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Rihm, Roger

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**From:** Howell, Art  
**Sent:** Thursday, June 21, 2012 11:08 AM  
**To:** Rihm, Roger  
**Subject:** FW: Fort Calhoun Preliminary Red Response

**From:** Miller, Geoffrey  
**Sent:** Monday, March 19, 2012 3:25 PM  
**To:** Vogel, Anton; Biount, Tom  
**Cc:** Kennedy, Kriss; Pruett, Troy; Clark, Jeff; Collins, Elmo; Graves, Samuel; Gepford, Heather; Deese, Rick; Howell, Art; Kirkland, John; Wingeback, Jacob  
**Subject:** Fort Calhoun Preliminary Red Response

Tony/Tom,

I spoke with Corey Cameron at Fort Calhoun (acting for Susan Baughn this week) about Fort Calhoun's requested 14-day extension for their written response to the Preliminary Red finding. I told him the extension was granted, and I requested that the station document in their 10-day written response letter (requested by the Choice Letter) that they had declined a Regulatory Conference and would provide a written response by April 25, noting that they had requested and received a 14-day extension via telecom with me on March 19. I explained that by doing so, the revised due date would be appropriately reflected on the public docket. He said he understood and would ensure their letter contained this information. I also emphasized that a written response to the finding would not provide the same opportunity for clarifying questions and back-and-forth information exchange that a reg conference would, and so would not be the preferred mechanism for disputing a violation or its significance from an efficiency standpoint (though allowed per the Choice Letter). He said he understood this as well. Please let me know if you have questions or would like additional information.

Thank you,

Geoff

NOT FOR PUBLIC DISCLOSURE

Rihm, Roger

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**From:** Howell, Art  
**Sent:** Thursday, June 21, 2012 11:08 AM  
**To:** Rihm, Roger  
**Subject:** FW: Fort Calhoun Choice Letter  
**Attachments:** LIC-12-0030.pdf

**From:** Veigel, Anton  
**Sent:** Thursday, March 22, 2012 4:21 PM  
**To:** Howell, Art; Gepford, Heather; Kellar, Ray  
**Subject:** Fw: Fort Calhoun Choice Letter

FYI!  
Thank you for your support!  
Tony V

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**From:** Miller, Geoffrey  
**To:** Veigel, Anton  
**Cc:** Graves, Samuel; Blount, Tom; Loveless, David; Clark, Jeff; Pruett, Troy; Kennedy, Kriss; Collins, Eimo  
**Sent:** Thu Mar 22 16:29:23 2012  
**Subject:** Fw: Fort Calhoun Choice Letter

Tony,

We received the letter from FCS accepting the Red finding. EB2 will begin processing the final significance letter.

Geoff

Sent from NRC Blackberry

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**From:** COOPER, MIKE <[mcooper@oppd.com](mailto:mcooper@oppd.com)>  
**To:** Miller, Geoffrey  
**Cc:** BAUGHN, SUSAN E <[sbaughn@oppd.com](mailto:sbaughn@oppd.com)>; CAMERON, COREY A <[ccameron@oppd.com](mailto:ccameron@oppd.com)>; GOODELL, JOHN R <[jgoodell@oppd.com](mailto:jgoodell@oppd.com)>  
**Sent:** Thu Mar 22 16:22:04 2012  
**Subject:** Fort Calhoun Choice Letter

Geoff

Attached is the FCS response to the 1B4A Fire Red Finding choice letter.

Should you have questions or comments, please let me know.

Mike Cooper  
402-533-7248

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Omaha Public Power District

444 South 16<sup>th</sup> Street Mall  
Omaha, NE 68102-2247

March 22, 2012  
LIC-12-0030

U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555

References: 1. Docket No. 50-285  
2. Letter from NRC (A. Vogel) to OPPD (D. J. Bannister), "NRC Inspection Report 05000285/2011014; Finding of Preliminary High Safety Significance, Fort Calhoun Station," dated March 12, 2012 (NRC-12-0022) (EA 12-023)

Subject: Response to Special Inspection Report

The Omaha Public Power District (OPPD) received three apparent violations that are being considered for escalated enforcement in Reference 2. Reference 2 also provided the following options to address the apparent violations:

1. Submit in writing OPPD's position on the findings to the Nuclear Regulatory Commission (NRC) within 30 days, or
2. Attend a Regulatory Conference, or
3. Decline a Regulatory Conference or decline to submit a written response with the OPPD position on the findings.

Mr. Geoffrey Miller, Chief Engineering Branch 2, Division of Reactor Safety was notified that OPPD has elected option 3. OPPD declines to attend a Regulatory Conference or submit a written response with the OPPD position on the findings. OPPD accepts the Red Finding as described in Reference 2.

Should you have questions or comments, please contact Ms. Susan Baughn at 402-533-7215.

Sincerely,

D. J. Bannister  
Site Vice President and CNO

DJB/rmc

c: E. E. Collins, Jr., NRC Regional Administrator, Region IV  
G. B. Miller, NRC Region IV  
L. E. Wilkins, NRC Project Manager  
J. C. Kirkland, NRC Senior Resident Inspector

Rihm, Roger

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From: Pruett, Troy  
Sent: Friday, February 10, 2012 9:32 AM  
To: Vogel, Anton; Kennedy, Kriss  
Subject: FCS Breaker Risk

I've given the SDP result considerable thought and have concluded I cannot support issuance of a preliminary red. I believe the appropriate language for a choice letter is greater than green. I also believe there is too much speculative information in the analysis associated with the seismic contribution, the use of multiple fire scenarios, and the operation of TDAFW. I would prefer to listen to the licensee's view on these issues prior to communicating any "red" result (preliminary or final) to the public.

One other item for consideration: I think the SERP for this case is 2/16. Given the commission meeting on 2/22, I think issuance of public information that communicates a "preliminary red" (if that is your decision) should occur on or after 2/23.

Troy

NOT FOR PUBLIC DISCLOSURE

Rihm, Roger

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**From:** Vegel, Anton  
**Sent:** Friday, February 10, 2012 11:39 AM  
**To:** Pruett, Troy  
**Cc:** Kennedy, Kriss; Blount, Tom  
**Subject:** RE: FCS Breaker Risk

Troy  
Sounds like we need more dialogue on this and how we package this issue. I am sure we can reach consensus on the best approach. Currently the SERP is scheduled for 2/23  
Thanks!  
Tony V.

**From:** Pruett, Troy  
**Sent:** Friday, February 10, 2012 8:32 AM  
**To:** Vegel, Anton; Kennedy, Kriss  
**Subject:** FCS Breaker Risk

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Rihm, Roger

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**From:** Pruett, Troy  
**Sent:** Friday, February 10, 2012 2:23 PM  
**To:** Veigel, Anton  
**Cc:** Kennedy, Kriss; Blount, Tom  
**Subject:** RE: FCS Breaker Risk

Thanks for the updated SERP date. Having it after the 2/22 meeting is a plus.

WRT the red. I am at odds with the seismic assumption. I understand the analysts' views. I just don't agree with the logic. I simply do not accept the premise that a racked in breaker will vibrate sufficiently during the short duration of a seismic event to create a high resistance condition leading to a switchgear fire. I certainly do not accept the risk from such a sequence of events being greater than the combined risk of the internal risk assessment.

The remaining two assumptions are also disturbing. Again I understand how the analysts arrived at their conclusion. I simply find the assumptions overly speculative. I do not fully accept the time window or occurrence of a second fire. This also represents a large increase in the final determination.

Lastly I think disregarding the use of TDAFW is inappropriate. If the licensee has indication of steam generator parameters (which I'm told they do), and operators know how to operate manual valves (which they do), then I do not understand the removal of some level of credit for this function. Especially since we have allowed operator recovery actions for much more difficult tasks in the past.

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**From:** Veigel, Anton  
**Sent:** Friday, February 10, 2012 10:39 AM  
**To:** Pruett, Troy  
**Cc:** Kennedy, Kriss; Blount, Tom  
**Subject:** RE: FCS Breaker Risk

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