

WATER RETAIL CODE – MAJOR RETAILERS

Final Decision

November 2012



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The Essential Services Commission of South Australia is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. The Commission's primary objective is the *protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services*. For more information, please visit www.escosa.sa.gov.au.

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GLOSSARY OF TERMS

Act	<i>Water Industry Act 2012</i>
Commission	Essential Services Commission of South Australia
Customer	a person who owns land in relation to which a retail service is provided and includes: <ul style="list-style-type: none"> • where the context requires, a person seeking the provision of a retail service; and • in prescribed circumstances—a person supplied with retail services as a consumer or user of those services (without limiting the application of this definition to owners of land); and • a person of a class declared by the regulations to be customers.
CWMS	Community Wastewater Management System
DCSI	Department for Communities and Social Inclusion
ESC Act	<i>Essential Services Commission Act 2002</i>
Government	Government of South Australia
LGA	Local Government Association
Major Retailer	means a retailer which provides retail services to more than 50,000 connections
Non-residential Customer	a customer other than a residential customer
Residential Customer	a customer who acquires a retail service primarily for domestic use.
Retailer	a water industry entity licensed in accordance with Part 4 of the Act.
Retail Service	has the same meaning as given to the term in the Act and covers a water retail service and/or a sewerage retail service supplied through a reticulated system, including: <ul style="list-style-type: none"> • drinking water retail services; • non-drinking water retail services; and • sewerage retail services.
Sewerage Service	has the same meaning as given to the term in the Act
Water Retail Code – Major Retailers	An industry Code made by the Commission, in accordance with Part 4 of the ESC Act
Water Service	has the same meaning as given to the term in the Act

EXECUTIVE SUMMARY

Under Part 4 of the Essential Services Commission Act 2002, the Commission is empowered to make binding industry codes, establishing behavioural and conduct standards which water retail licensees must comply with in their dealings with customers.

Section 25(2) of the Water Industry Act 2012 requires the Commission to have regard to the scale and nature of operations of water industry entities in determining the appropriate form of regulation, including industry codes, to apply to individual licensees. Consistent with its statutory duty, the Commission has adapted the broad licence categories established by the Treasurer for the purposes of setting licence fees to establish three classes of licensees: Major retailers; Intermediate retailers; and Minor retailers.

The Commission's consumer protection framework, given effect through the use of industry codes, as it applies to the three classes of licensees is summarised below.

Major retailers

This Final Decision summarises the key issues raised by stakeholders in respect of the water industry code to apply to major retailers. The Commission has developed a water industry code, the *Water Retail Code – Major Retailers*, to apply to major retailers (i.e. those licensees with greater than 50,000 connections) from 1 January 2013. While SA Water Corporation (**SA Water**) is currently the only major retailer operating in South Australia, the *Water Retail Code - Major Retailers* is intended to apply to future retailers that enter the market to compete for mass market customers.

The *Water Retail Code - Major Retailers* regulates retailer behaviour when supplying retail services (water and sewerage) to customers. It includes provisions covering the following areas:

- ▲ Standard form customer sale contract – requirement for retailers to submit standard form contracts to the Commission, for approval;
- ▲ Customer Charter – minimum information provision requirements about the respective rights and obligations of retailers, customers and tenants;
- ▲ Enquiry, Complaint and Dispute Resolution procedures – internal procedures for handling customer enquiries, complaints and disputes, which must include escalation to an independent dispute resolution body where the issue cannot be satisfactorily resolved by the retailer, to be submitted to the Commission, for approval;
- ▲ Hardship Programs – requirement for retailers to have an approved residential customer Hardship Policy in place;
- ▲ Retail supply obligations - the quality, safety and reliability of the supply of retail services (under a standard contract), including the requirement for retailers to minimise supply interruptions and provide information to customers on interruptions and develop and administer a compensation scheme for loss or damage suffered by customers;
- ▲ Billing – minimum requirements around billing to ensure that customers receive accurate billing information in a timely manner and that customers' needs are

addressed when billing errors are determined, including requirements around undercharging and overcharging;

- ▲ Payment and Payment Difficulties - minimum requirements for payment terms, payment methods and the requirements for managing temporary payment difficulties experienced by customers;
- ▲ Disconnections and restrictions for non-payment - limitations on the grounds on which water and sewerage services may be restricted or disconnected and obligations on retailers prior to restricting a customer.

The Commission is releasing an Explanatory Memorandum alongside the *Water Retail Code - Major Retailers* and this Final Decision to provide detailed plain English descriptions and explanations of the provisions of the code. This Final Decision should be read in conjunction with those documents.

Intermediate retailers

The Commission will be releasing a separate public consultation document on the regulation of water industry entities other than SA Water in December 2012. This document will cover both the pricing principles and the draft water industry code to standardise and formalise the behavioural standards and minimum requirements to be complied with by medium and large retailers (i.e. those licensees with more than 500 connections but less than 50,000 connections).

The majority of the retail services provided by Local Councils fall within this class.

Minor retailers

The Commission will consider the consumer protections to apply to very small and small retailers (i.e. those licensees with less than 500 connections) as part of the consultation process on the draft *Water Retail Code – Intermediate Retailers*.

1. INTRODUCTION

The Essential Services Commission of South Australia (**the Commission**) is the independent economic regulator of a number of industries which provide essential services in South Australia. The Commission is a statutory authority, established under the *Essential Services Commission Act 2002 (ESC Act)* with the primary objective of:

“...protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services”.

The Water Industry Act 2012 (**the Act**) commenced on 1 July 2012. It replaces the Waterworks Act 1932, Water Conservation Act 1936 and Sewerage Act 1929. Many provisions in these Acts applied only to SA Water and its customers. The Act governs all water industry entities providing “retail services” to South Australian customers.

The Act establishes the regulatory framework for the water and sewerage industry covering economic regulation, technical regulation, water planning and customer complaint handling.

The Government of South Australia has appointed the Commission as the independent economic regulator for urban and regional water and sewerage services in South Australia. This role includes industry licensing, consumer protection and retail pricing.

The Act requires the Commission to establish a consumer protection framework, through the use of industry codes made under Part 4 of the ESC Act. Industry codes prescribe detailed rules of conduct and procedure that must be followed by industry participants. The use of industry codes allows for a higher degree of regulatory flexibility, while maintaining appropriate scrutiny, accountability and transparency of process. Industry codes can cover any number of areas within a regulated industry, from consumer protection to technical matters.

This Final Decision summarises the key issues raised by stakeholders in respect of the draft Water Retail Code, released for public consultation in July 2012, as it applies to major retailers. The Commission’s proposed approach to regulation of water industry entities other than SA Water will be set out in a separate consultation document, to be released in December 2012 and for public consultation.

1.1 Consultation process

At the time of releasing the draft Water Retail Code, the Commission had already undertaken extensive public consultation to formulate advice provided to the Treasurer in August 2011 and May 2012 on the appropriate form of price and non-price regulatory regime to apply to the South Australian water industry.¹ That advice covered:

- ▲ the Commission’s approach to industry licensing;
- ▲ the principles on which an industry code would be based;
- ▲ the establishment of services standards;

¹ The Commission’s Advice to the Treasurer is available at the following location <http://www.escosa.sa.gov.au/projects/162/economic-regulation-of-the-south-australian-water-industry.aspx>.

- ▲ the monitoring and reporting on compliance; and
- ▲ the regulation of retail prices.

The Commission released a draft Explanatory Memorandum in August 2011 that set out the principles on which consumer protection industry codes would be based and noted that, subject to comments received, draft codes would be prepared for further public consultation.² The Commission released a draft Water Retail Code on 13 July 2012 for a 6 week public consultation period.

Written submissions³ were received from the following parties:

- ▲ Council on the Ageing South Australia (**COTA SA**);
- ▲ Energy and Water Ombudsman South Australia (**EWOSA**);
- ▲ Local Government Association (**LGA**);
- ▲ North Para Environment Control (**NPEC**) and JJC Operations (**JJC**);
- ▲ Roxby Water;
- ▲ SA Water Corporation (**SA Water**); and
- ▲ South Australian Council of Social Service (**SACOSS**).

In addition to the written submissions received, the Commission met with potential licensees, held meetings with SA Water, formed a working group with the LGA, held regional workshops with representatives from the majority of Local Councils across the state, addressed Local Government CEOs and were hosted on a tour of the facilities provided by the Outback Communities Authority (**OCA**). The consultation documents were also considered by the Commission's Consumer Advisory Committee at its meeting in mid-August 2012.

The Commission has been assisted by the submissions it has received through this review process. The Commission has carefully considered the issues raised by stakeholders through the consultation period and, where relevant, incorporated the suggestions into its final *Water Retail Code - Major Retailers*. An Explanatory Memorandum has been prepared as a plain English description of the provisions of the *Water Retail Code - Major Retailers*. Both documents are being released alongside this Final Decision.

While the Commission has not adopted all positions put in submissions, all submissions have been helpful in allowing the Commission to consider each of the relevant issues under consideration and to understanding the competing viewpoints held.

The Commission has given consideration to and acknowledged all arguments and submissions in this review process. Where appropriate, the Commission has, either by direct quotation or by reference to themes or arguments, mentioned certain arguments and submissions in the text to assist stakeholders to understand the positions it has reached; however, a failure to reference an argument or submission does not mean that the Commission has not taken that argument or submission into account in its deliberations.

² A Copy of the Explanatory Memorandum is available at the following location
<http://www.escosa.sa.gov.au/library/111110-WaterConsumerProtectionFrameworkExplanatoryMemo.pdf>.

³ Copies of the submissions received are available on the Commissions website at the following location
<http://www.escosa.sa.gov.au/projects/183/water-retail-code.aspx#stage-list=1>.

2. KEY ISSUES RAISED IN SUBMISSIONS

2.1 Establishing classes of retailers

Section 25(2) of the Water Industry Act 2012 requires the Commission to have regard to the scale and nature of operations of water industry entities in determining the appropriate form of regulation to apply to individual licensees.

To give effect to the application of industry codes to water industry entities of various sizes, the Commission had previously proposed to develop a single Water Retail Code, with the relevant obligations for smaller retailers included as a schedule or schedules to individual licences. Concerns with this approach were raised by both the LGA and EWOSA, with each suggesting that such a model would be difficult to administer. Supporting this view, the Commission notes that the Western Australian Government is currently undertaking regulatory reform to move away from the approach to regulation of its water licensees previously proposed by the Commission towards a single consumer protection code model.⁴

The Commission accepts the concerns raised with its proposed model for implementing a tiered consumer protection approach through licences. However, the statutory requirement to have regard to the scale and nature of licensees' operations makes a single industry code model inappropriate (at this point of market development). To provide greater regulatory certainty on the consumer protection obligations applicable to various classes of licensees and their customers, the Commission has adapted the broad licence categories established by the Treasurer (for the purposes of setting licence fees⁵) to establish three classes of licensees: Major Retailers; Intermediate Retailers; and Minor Retailers.

TABLE 2.1: REGULATORY CLASSES

REGULATORY CLASS	LICENCE CATEGORY	TOTAL CONNECTIONS	PRICE REGULATION	CONSUMER PROTECTION
Minor	Very Small	Less than 100	Pricing principles for licensees and possibly exemptees ⁶ (required by Pricing Order)	Modified <i>Water Retail Code - Intermediate Retailers</i> and modified reporting framework
	Small	101 to 500		
Intermediate	Medium	501 to 5,000	Pricing principles for licensees and possibly exemptees (required by Pricing Order)	<i>Water Retail Code - Intermediate Retailers</i> and modified reporting framework
	Large	5,001 to 50,000		
Major	Major	Greater than 50,000	Full revenue determination for SA Water (required by Pricing Order)	Full <i>Water Retail Code - Major Retailers</i> and reporting framework

⁴ Refer <http://www.water.wa.gov.au/About+us/Water+services+customer+code/default.aspx>.

⁵ The Treasurer's advice on water licence fees is available on the Commission's website in the following location <http://www.escosa.sa.gov.au/library/120831-WaterLicenceApplicationFeeandAnnualLicenceFee-Treasurer.pdf>.

⁶ Note that an exemption need not be from the application of the Act entirely, it could be that a discrete section which does not go to consumer protection or pricing matters is granted. In such cases it may be appropriate to place consumer protection and price regulation obligations on the exemptee.

Different forms of regulation will apply to each class. The Commission's consumer protection framework, as it applies to the three classes of licensee, is summarised below.

2.1.1 Major retailers

The Commission has developed a water industry code, the Water Retail Code - Major Retailers, to apply to major retailers from 1 January 2013. While SA Water Corporation (**SA Water**) is currently the only major retailer operating in South Australia, the *Water Retail Code - Major Retailers* is also intended to apply to future retailers that enter the market to compete for mass market customers.

The *Water Retail Code - Major Retailers* is the principal consumer protection document setting out the behavioural standards and minimum requirements to be complied with by major retailers when dealing with their customers. It also details major retailers' requirements in respect of consumers of retail services in tenancy arrangements that do not have a direct contractual/financial relationship with a major retailer who are, nevertheless, granted limited consumer protections through the regulations under the Water Industry Act 2012.

This Final Decision summarises the key issues raised by stakeholders in respect of the water industry code to apply to major retailers. Further and detailed information on the terms of the *Water Retail Code - Major Retailers* is contained in the Explanatory Memorandum.

2.1.2 Intermediate retailers

Around 60% of the State's population is supplied with sewerage services by SA Water, with the rest of the population served by a range of smaller service providers. While the total number of water service providers is not known, Local Councils serve a significant portion of the State's population through Community Waste Management Systems (**CWMS**).⁷

The Commission will be releasing a separate consultation document on the regulation of intermediate class water industry entities in December 2012. This document will cover both the Draft Determination on the Pricing Principles and Price Monitoring Framework and the consultation draft *Water Retail Code - Intermediate Retailers*, to apply to medium and large retailers from 1 July 2013.

2.1.3 Minor retailers

There are a number of very small and small licensees that currently provide retail services to customers. While the regulatory model for Minor Retailers will have regard to the scale and scope of small operators, the Commission intends to apply a core set of consumer protection obligations to all retailers. The Commission will consider how particular provisions of the draft *Water Retail Code - Intermediate Retailers* should apply to Minor Retailers as part of its consultation process in December 2012.

⁷ Calculated from Local Government Association (LGA) CWMS data, available <http://www.lga.sa.gov.au/site/page.cfm?u=1117>.

2.2 Level playing field

SA Water reiterated its concern that the Commission establish a regulatory environment in which all water industry entities are subject to the same rules, regardless of location or size, as a fundamental underpinning for a competitive market. In support of this position, SA Water raised concerns that building discriminatory differences into the regulatory framework would stifle competition and innovation and place an undue burden on its customers to pay for higher levels of regulation, which would, in turn, lead its customers to transfer to its competitors who were not bound by the same rules:

...SA Water presumes the option available to SA Water customers to counteract this discrimination would be to change service provider in favour of one of the smaller service providers to whom the Commission has afforded light-handed regulation.⁸

At the same time, SA Water confirmed that it understood and accepted that a number of the protections proposed for smaller entities may be appropriate and in the best interests of consumers.

While, as a general principle, the rules of conduct should be equally applicable to all market participants where individual customers have a choice of retailers in a competitive market, the current market for water and sewerage services is better characterised as constituted by multiple regionally-based operations with little to no competition.

The important distinction, acknowledged by SA Water itself, is that the Commission must ensure a level playing field for all entities *providing substantially the same service in the same market* as a fundamental underpinning of a competitive market; regardless of the size or scope of the entity. This is entirely consistent with the Commission's approach to regulation of the energy industry.⁹

Recognising the potential for a competitor to SA Water to emerge in the future, the *Water Retail Code – Major Retailers* is intended to apply to new entrant retailers in direct competition for individual customers currently served by SA Water.

2.3 Development of a separate residential customer water code

SACOSS reiterated its preference for a separate residential drinking water retail code to signal to potential retailers the additional obligations attached to the provision of such a service:

SACOSS notes our disappointment that ESCOSA has failed to accept the need for a separate code for residential customers. However, given the significance of the ESCOSA decision to establish a single Water Industry Code, SACOSS proposes that ESCOSA commit to conducting a consumer impact review of the Water Retail Code two years

⁸ SA Water submission, p. 3.

⁹ Energy retailers operating in the National Electricity Market and licensed by the Commission are all subject to the same market rules, whether they have 1 or 100,000 customers, as they are in direct competition with one another in the same market. However, there are a number of smaller regionally specific vertically integrated electricity entities that are not connected to the National Electricity Market and that do not enjoy the benefits of competition. The Commission acknowledges this through its framework and such entities are subject to a more light-handed form of regulation.

from commencement, with the objectives of the review being to determine whether the implementation of the Water Retail Code has resulted in best practice retailer behaviour when supplying retail services (water and sewerage) to customers or whether or not it has adversely affected customer health and safety.¹⁰

While the suggestion of a separate residential water code has not been adopted, the Commission has acknowledged SACOSS' primary concern by clarifying where additional obligations apply in respect of residential customers. As is the case in energy regulation, the water consumer protection framework requires retailers to provide greater payment flexibility and assistance to residential customers than is required for non-residential customers. This includes the requirement for retailers to assess residential customers for participation in their Hardship Programs on multiple occasions to ensure that residential customers do not have their water services restricted due to an inability to pay alone.

The Commission has also revised the requirement for retailers to communicate the key protections, rights and obligations to customers in plain English through Customer Charters. Where the Commission forms the view that the information provided in a retailer's Customer Charter needs amendment, it will require that retailer to undertake a review and replace the relevant sections of its Customer Charter.

On the issue of ensuring best practice retailer behaviour, the Commission has reviewed the provisions of its proposed water industry code against the provisions of the National Energy Customer Framework to identify areas for greater consistency in the delivery of essential utility retail services to customers. The Commission will continue to keep the *Water Retail Code – Major Retailers* under review once it has been implemented, as has been its approach to the regulation of other essential service utilities.

2.4 Extension of consumer protections to tenants

COTA¹¹ and EWOSA¹² suggested that the Commission needed to clarify the application of the water industry code to tenants without a direct financial/contractual relationship with a retailer. SA Water raised concerns that the Commission had extended the protections afforded to tenants too far¹³ and that there would be significant costs associated with updating its billing and customer management system to fulfil the tenant information provision obligations included in the draft Water Retail Code.

While there is a clear government policy intention to limit application of consumer protections to customers with a direct legal relationship with retailers, the final *Water Retail Code – Major Retailers* clarifies the limited requirements on retailers in this regard by highlighting the various information provision requirements that have been extended to tenants brought within the definition of customer through the regulations under the Water Industry Act 2012. The Explanatory Memorandum provides additional guidance to retailers on the manner in which the minimal protections afforded to tenants can be satisfied.

¹⁰ SACOSS submission, p. 2.

¹¹ COTA submission, pp. 3-7.

¹² EWOSA submission.

¹³ SA Water submission, pp. 4-5.

On the issue of the claims made by SA Water about the significant costs associated with implementation of the tenant information obligations placed on retailers, the Commission provides the following clarification.

SA Water's concern was based on a misinterpretation that the draft Water Retail Code would require SA Water to send bills to tenants rather than property owners and that SA Water would need to build a new billing system as a result. The tenant information obligations require no changes in SA Water's customer invoicing arrangements. Rather, the code provisions in question simply required that the owner of a rented property not unreasonably withhold authority for a retailer (such as SA Water) to provide water consumption data to a tenant for the period that the tenant has occupied the property.

The intent of this requirement is retained in the final *Water Retail Code – Major Retailers*, with tenants provided with a basic consumer right to confirm the claimed usage is correct from data already kept by SA Water (refer clause 18.11). This basic protection for tenants was not available prior to the introduction of the Commission's consumer protection regime.

Through further consultation with SA Water, it has become apparent that there are other limitations with SA Water's current its billing and customer management system. For example, while the draft Water Retail Code proposed to require retailers to prioritise the payment of government charges and levies collected by retailers on behalf of the government, SA Water's billing system cannot accommodate this requirement. The requirements have therefore been removed at this stage; however, the Commission remains of the view that such provisions are relevant and will monitor this matter closely during 2013.

SA Water has also advised the Commission that it cannot issue "smart bills" containing comparative usage data to all residential customers, as the particular billing system used to generate bills in that format is at capacity.

Commission has therefore allowed appropriate flexibility in the final *Water Retail Code – Major Retailers*, to reflect the limitations of SA Water's current customer information management and billing system, rather than causing SA Water to upgrade its system at this time.

2.5 *Additional protections for customers in vulnerable situations*

The Commission has largely adopted the proposed amendments that focused on the proactive provision of information to customers about various government concessions, rebates or grants by clarifying and consolidating the consumer information obligations (including where there is a positive obligation on retailers to provide information to customers and tenants) in Part A of the final *Water Retail Code – Major Retailers*.

The Commission has also made various amendments to clarify retailers' requirements in assisting customers that may be experiencing financial hardship to ensure that residential customers are afforded multiple opportunities to identify themselves and arrange for more flexibility in payment of their bills. The Commission has clarified the obligations on retailers to assess residential customers' eligibility for residential customer Hardship Programs on multiple occasions; prohibited disconnection of water services to customers for non-payment, prohibited restriction of water services to customers where the retailer is pursuing

debt recovery action and required retailers to waive reconnection fees for residential customers that should have been identified as eligible for participation in a retailers residential customer Hardship Policy.

In addition to submissions regarding the proactive provision of information to customers more generally, COTA also suggested that, in developing policies, practices and procedures to respond to unplanned interruptions, retailers should also be required to identify vulnerable customer groups (specifically citing frail older people living in their own homes as an example) who may require additional assistance to temporarily leave their homes.

The Commission acknowledges that this sub-set (and perhaps other sub-sets of customers in vulnerable situations) may require additional assistance to respond to unplanned interruptions to water services. However, the Commission's role to impose regulation in this regard is limited. This is a social policy matter better addressed through targeted government assistance programs.

2.6 Residential Customer Hardship Policies

Section 37 of the Water Industry Act 2012 requires the Minister to develop and publish a Residential Customer Hardship Policy for water retailers to comply with. The Residential Customer Hardship Policy must set out:

- ▲ the processes to identify residential customers experiencing payment difficulties due to hardship (including identification by both the retailer and the customer); and
- ▲ the range of processes or programs that a retailer should use to assist hardship customers.

The Water Industry Act 2012 requires that all retailers adopt the Minister's Residential Customer Hardship Policy, or, with the approval of the Commission, adopt a modified Customer Hardship Policy.

The Department for Communities and Social Inclusion (**DCSI**) is currently undertaking targeted consultation on the draft Customer Hardship Policy it has developed. DCSI has indicated its intention that, once finalised, its Residential Customer Hardship Policy can be adopted by all retailers as a complete and final document (through insertion of the retailer's trading name) rather than requiring individual retailers to develop their own policies based on interpretation of a government policy document. Further, DCSI has indicated its expectation that all retailers adopt its Residential Customer Hardship Policy, unless the Commission approves the Residential Customer Hardship Policy in an amended form.

Having regard to the provisions of the Water Industry Act 2012, the Commission has interpreted its functions and obligations in this area to be consistent with its broader requirements to develop obligations for individual retailers based on a consideration of the retailer's scale and nature of operations.

The final *Water Retail Code – Major Retailers* reflects the Commission's role in approving and reviewing retailers' Residential Customer Hardship Policies (refer clause 9). It also clarifies the requirement for retailers to publish their approved Residential Customer Hardship Policy on their website, and ensure that customers are generally aware of its Residential Customers Hardship Policy.

3. NEXT STEPS

The *Water Retail Code – Major Retailers* will take effect from 1 January 2013. The *Water Retail Code – Major Retailers* contains various provisions that require retailers to seek the Commission’s approval for policies and procedures. As a minimum, major retailers will be required to submit the following instruments to the Commission for approval:

- ▲ Standard form customer contract/s;
- ▲ Enquiries, complaint and dispute resolution procedures; and
- ▲ Residential Customer Hardship Policy.

The Commission will assess and approve these documents for each major retailer, as required.

The Commission will release a separate public consultation document outlining its Draft Pricing Principles and consultation draft *Water Retail Code – Intermediate Retailers* in December 2012, for a further period of public consultation. The Final Pricing Principles and final *Water Retail Code – Intermediate Retailers* will take effect from 1 July 2013.

The Commission will consider how particular provisions of the draft *Water Retail Code – Intermediate Retailers* should apply to Minor Retailers as part of its consultation process in December 2012.



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