



Control Number: 48439



Item Number: 150

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DeAnn T. Walker
Chairman
Arthur C. D'Andrea
Commissioner
Shelly Botkin
Commissioner
John Paul Urban
Executive Director



Greg Abbott
Governor

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Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Office of Policy & Docket Management

RE: **Open Meeting of January 31, 2020**
PUC Docket No. 48439
SOAH Docket No. 473-18-4100 – *Review of the Rate Case Expenses Incurred in Docket No. 48371*

DATE: January 3, 2020

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Friday, January 31, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Thursday, January 23, 2020.

On June 8, 2018, this docket was severed from *Entergy Texas, Inc.'s Statement of Intent and Application for Authority to Change Rates*, PUC Docket No. 48371; State Office of Administrative Hearings (SOAH) Docket No. 473-18-3733. Subsequently, the docket was returned to the Commission.

If there are no corrections or exceptions, no response is necessary.

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PUC DOCKET NO. 48439
SOAH DOCKET NO. 473-18-4100

REVIEW OF THE RATE CASE	§	PUBLIC UTILITY COMMISSION
EXPENSES INCURRED IN DOCKET	§	
NO. 48371	§	OF TEXAS

PROPOSED ORDER

This Order addresses the request of Entergy Texas, Inc. (ETI) for approval of a rider to recover the rate-case expenses that ETI and Cities¹ incurred in Docket No. 48371² and in the appeals of Docket Nos. 39896³ and 40295.⁴ This Order also addresses recovery for rate-case expenses incurred by ETI and Cities in this docket. ETI filed an unopposed agreement between ETI, Commission Staff, and the Office of Public Utility Counsel (OPUC). Cities and Texas Industrial Energy Consumers (TIEC) did not sign, but also did not oppose, the agreement. As provided in this Order, the Commission approves the rate-case-expense rider tariff attached to the parties' agreement as attachment B and authorizes ETI to recover \$6,392,320 in rate-case expenses through the rider. ETI is not permitted to seek recovery for any additional rate-case expenses incurred by itself or Cities with respect to Docket Nos. 39896, 40295, or 48371 or this docket.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. ETI is a Texas corporation registered with the Texas secretary of state under file number 800911623 and is a wholly owned subsidiary of Entergy Corporation, a Delaware corporation.

¹ Cities of Anahuac, Beaumont, Bridge City, Cleveland, Conroe, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pinehurst, Port Arthur, Port Neches, Roman Forest, Shenandoah, Splendora, Sour Lake, Vidor, and West Orange.

² *Entergy Texas, Inc. 's Statement of Intent and Application for Authority to Change Rates*, Docket No. 48371, Order (Dec. 20, 2018).

³ *Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment*, Docket No. 39896, Order on Rehearing (Nov. 2, 2012).

⁴ *Application of Entergy Texas, Inc. for Rate Case Expenses Pertaining to PUC Docket No. 39896*, Docket No. 40295, Order (May 21, 2013).

2. ETI generates, transmits, distributes, and sells electricity through facilities and equipment that it owns and operates in Texas under certificate of convenience and necessity number 30076.

Requested Recovery and Reimbursement of Rate-Case Expenses

3. On May 15, 2018, ETI filed an application requesting authority to change its base rates in Docket No. 48371. The application included a request for ETI's and Cities' rate-case expenses in that docket as well as for the expenses incurred in the appeals of Docket Nos. 39896 and 40295. ETI requested that the Commission sever the rate-case-expense issues in Docket No. 48371 into a separate docket.
4. In SOAH Order No. 2 filed in Docket No. 48371 on June 8, 2018, the State Office of Administrative Hearings (SOAH) administrative law judges (ALJs) severed all rate-case-expense issues in that docket into this docket.
5. In this docket, ETI sought rate-case expenses related to Docket No. 48371, this docket, and the appeals of Docket Nos. 39896 and 40295. Cities sought rate-case expenses related to Docket No. 48371 and this docket.
6. In this docket, ETI sought to recover \$6,592,665 in rate-case expenses incurred in Docket No. 48371; \$540,984 in rate-case expenses incurred in this docket; and \$200,000 in ETI's expenses for the appeals related to Docket Nos. 39896 and 40295.
7. In this docket, Cities sought reimbursement for \$423,124 in rate-case expenses incurred in Docket No. 48371 and \$60,548 in rate-case expenses incurred in this docket.
8. In this docket, ETI and Cities sought to recover a total of \$7,817,320 in rate-case expenses through August 14, 2019.

a. Requested Recovery and Reimbursement of Rate-Case Expenses from Docket No. 48371 and This Docket

9. In the direct testimonies of Stephen F. Morris and Richard E. Lain filed on January 18, 2019, ETI requested rate-case expenses incurred in Docket No. 48371 and this docket through January 4, 2019 in the amount of \$6,609,164.
10. In the supplemental direct testimony and exhibits of Mr. Morris filed on March 1, 2019, ETI provided invoices in support of ETI's fees and expenses incurred in Docket No. 48371

and this docket for the period of January 5, 2019 through February 8, 2019. Through Mr. Morris's supplemental direct testimony, ETI requested \$74,477 in additional rate-case expenses.

11. In the revised supplemental direct testimony, errata, and exhibits of Stephen F. Morris filed on March 28, 2019, ETI segregated out the fees and expenses incurred by ETI in Docket No. 48371 for the period of January 5, 2019 through February 8, 2019, which totaled \$28,362, and removed the portions of the supplemental direct testimony that included expenses not incurred in Docket No. 48371.
12. In the rebuttal testimony of Mr. Morris filed on May 23, 2019, ETI subtracted the following amounts from its request for rate-case expenses incurred in this docket and Docket No. 48371: \$413 to account for a time entry related to legislative advocacy; \$4,200 related to miscellaneous expenses; \$1,208 related to miscellaneous travel expenses; and \$4,545 related to skylining expenses.
13. In the rebuttal testimony of Barbara P. Heard filed on May 23, 2019, ETI reduced its request for rate-case expenses incurred in this docket and Docket No. 48371 by \$41,596 related to services provided to ETI by Entergy Services, LLC in Docket No. 48371.
14. In the direct testimony of attorney Norman J. Gordon filed on January 25, 2019, Cities requested reimbursement for rate-case expenses incurred in Docket No. 48371 through November 2018 in the amount of \$422,804.
15. In the declaration of Molly Mayhall Vandervoort filed on October 29, 2019, Cities requested a total of \$60,867 in rate-case expenses incurred in this docket from August 2018 through August 2019.
16. In the settlement testimony of Stephen F. Morris, ETI requested additional rate-case expenses incurred by itself and Cities in Docket No. 48371 and this docket between January 5, 2019 and August 14, 2019 in the amount of \$626,456. That amount is composed of \$437,339 in ETI's external expenses, \$128,570 in ETI's internal expenses, and \$60,547 in Cities' expenses.

b. Requested Recovery of Rate-Case Expenses from Appeals of Docket Nos. 39896 and 40295

17. In ETI's base-rate case in Docket No. 41791,⁵ the Commission approved an agreement between the parties that in a future proceeding ETI could request rate-case expenses related to the appeals of Docket Nos. 39896 and 40295, in addition to the recovery ETI sought in Docket No. 41791, up to a cumulative total of \$200,000.
18. In the direct testimonies of Stephen F. Morris and Richard E. Lain filed on January 18, 2019, ETI requested to recover rate-case expenses from Docket Nos. 39896 and 40295 in this docket in the amount of \$200,000 based on incurred expenses of \$206,421 through May 2017.

Notice

19. In SOAH Order No. 1 filed in this docket on June 8, 2018, the SOAH ALJs found ETI's notice in Docket No. 48371 sufficient.
20. In conclusion of law 5 of the order filed on December 20, 2018 in Docket No. 48371, the Commission found that ETI had provided adequate notice of its application in that docket in compliance with PURA⁶ § 36.103 and 16 Texas Administrative Code (TAC) § 22.51(a).

Parties

21. In SOAH Order No. 1 filed in this docket on June 8, 2018, the SOAH ALJs made all parties to Docket No. 48371 parties to this docket.
22. In SOAH Order No. 2 filed on January 24, 2019, based on the joint procedural schedule filed on January 18, 2019, the SOAH ALJ struck the Department of Energy, E.I. du Pont de Nemours and Company, and Walmart, Inc. as parties to this proceeding. None of them sought reinstatement as parties.
23. In SOAH Order No. 5 filed on March 8, 2019, the SOAH ALJs struck Lela M. Sharpe as a party to this proceeding based on her statement that she did not intend to participate.
24. The remaining parties to this proceeding are ETI, Cities, OPUC, TIEC, and Commission Staff.

⁵ *Application of Entergy Texas, Inc. for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 41791, Order (May 16, 2014).

⁶ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.1016.

Proceeding at SOAH

25. In SOAH Order No. 1 filed on June 8, 2018, the SOAH ALJs abated this proceeding until the Commission filed a final order in Docket No. 48371.
26. In SOAH Order No. 2 filed on January 24, 2019, a SOAH ALJ unabated this proceeding and set a hearing on the merits for 9:00 a.m. on June 24, 2019 at SOAH's hearing facility in Austin, Texas.
27. In SOAH Order No. 6 filed on March 21, 2019, the SOAH ALJs struck all portions of Stephen F. Morris's supplemental direct testimony that include expenses not incurred in Docket No. 48371.
28. In SOAH Order No. 8 filed on May 15, 2019, a SOAH ALJ denied ETI's motions to strike portions of the direct testimonies of Commission Staff's witnesses Ruth Stark and Brian T. Murphy.
29. In SOAH Order No. 9 filed on May 31, 2019, ETI's motion to recuse a SOAH ALJ from this proceeding was granted by the co-assigned ALJ. The co-assigned SOAH ALJ assumed sole assignment of the case and affirmed that SOAH Order No. 8 regarding discovery, which had been signed solely by the recused judge, remained in effect. The SOAH ALJ also cancelled the hearing on the merits based on a scheduling conflict, pending rescheduling.
30. In SOAH Order No. 10 filed on June 10, 2019, the SOAH ALJ reset the hearing on the merits for 9:00 a.m. on September 16, 2019 at SOAH's hearing facility in Austin, Texas.
31. In SOAH Order No. 12 filed on September 3, 2019, the SOAH ALJs abated the procedural schedule to facilitate settlement and cancelled the hearing on the merits set for September 16, 2019.
32. On October 29, 2019, ETI filed an unopposed agreement signed by ETI, Commission Staff, and OPUC. Cities and TIEC did not sign, but also did not oppose, the agreement.
33. In SOAH Order No. 14 filed on October 31, 2019, the SOAH ALJs dismissed the case from SOAH's docket and remanded the proceeding to the Commission.

Testimony

34. On January 18, 2019, ETI filed the direct testimonies and exhibits of attorney Stephen F. Morris and Richard E. Lain, ETI's manager of regulatory affairs, in support of ETI's rate-case expenses incurred in connection with Docket No. 48371 through January 4, 2019 as well as those in connection with this docket and the appeals of Docket Nos. 39896 and 40295.
35. On January 25, 2019, Cities' witness Norman J. Gordon filed direct testimony and exhibits to support Cities' requested rate-case expenses.
36. On March 1, 2019, ETI filed the supplemental direct testimony of Stephen F. Morris in support of rate-case expenses incurred in connection with Docket No. 48371 and this docket and recorded by ETI between January 5, 2019 and February 8, 2019.
37. On March 28, 2019, ETI filed the revised supplemental testimony, errata, and exhibits of Stephen F. Morris in support of the rate-case expenses incurred in connection with only Docket No. 48371 and recorded by ETI between January 5, 2019 and February 8, 2019. ETI filed Mr. Morris's revised supplemental direct testimony in response to SOAH Order No. 6 filed on March 21, 2019, which had ordered ETI to remove all portions of Mr. Morris's supplemental direct testimony that included expenses not incurred in Docket No. 48371.
38. On April 8, 2019, OPUC filed the direct testimony of Carol Szerszen. Dr. Szerszen recommended a total disallowance of \$3,231,823. Specifically, Dr. Szerszen recommended disallowing the following amounts: \$5,882 related to skylining expenses; \$64,310 related to weather normalization; \$72,680 related to incentive compensation; \$396,084 related to policy issues discussed by ETI witness Jess Totten; \$235,933 related to general task code expenses; \$125,000 related to Deloitte and Touche LLP's expenses; \$7,665 related to ScottMadden, Inc.'s expenses; \$4,785 related to Miller and Chevalier's expenses; \$26,501 related to KFG, Inc.'s expenses; \$2,288,782 related to ETI's internal labor expenses; and \$4,200 related to ETI's internal travel expenses.
39. On April 15, 2019, Commission Staff filed the direct testimony of Brian T. Murphy. Mr. Murphy recommended disallowing amounts of ETI's requested rate-case expenses incurred in Docket No. 48371 that were associated with a requested rider to pass through

changes and revenues approved by the Federal Energy Regulatory Commission (FERC). According to Mr. Murphy, the request for that rider had no reasonable basis in law, policy, or fact and were not warranted by any reasonable argument for the extension, modification, or reversal of Commission precedent. Mr. Murphy recommended disallowing \$56,966 of ETI's requested rate-case expenses if the Commission adopted Ruth Stark's recommended disallowances related to internal rate-case expenses and the legal expenses charged by Eversheds Sutherland (US) LLP. Mr. Murphy recommended disallowing \$167,508 if the Commission did adopt the disallowances recommended by Ms. Stark. Mr. Murphy also recommended changes to ETI's proposed billing units and the mechanics of its proposed rider.

40. On April 15, 2019, Commission Staff also filed the direct testimony of Ruth Stark. Ms. Stark recommended disallowing \$4,170,069 of ETI's requested rate-case expenses for Docket No. 48371. Specifically, Ms. Stark recommended disallowing the following amounts: \$1,576,821 related to high hourly legal billing rates and excessive hours spent on Docket No. 48371; \$6,811 related to redacted expenses; \$125,000 related to Deloitte & Touche expenses; \$1,208 related to travel expenses; \$1,938 related to transcript expenses; \$148,382 related to a post-test-year adjustment issue; \$148,382 related to the Spindletop gas storage facility issue; and \$2,161,526 related to internal payroll expenses.
41. On April 23, 2019, OPUC filed the supplemental direct testimony of Carol Szerszen that amended her recommended disallowance to a total of \$3,236,126. Specifically, Dr. Szerszen increased her recommended disallowances related to general task codes for the following categories: administrative and general, non-discovery pleadings and motions, overall case administration, and overall case strategy.
42. On April 23, 2019, TIEC filed a motion for leave to file a late statement of position because it had not filed a statement of position by the deadline of April 8, 2019.
43. In SOAH Order No. 7 filed on April 26, 2019, the SOAH ALJ granted TIEC's unopposed motion to file a statement of position.
44. On April 29, 2019, TIEC filed a statement of position supporting the disallowances proposed in the direct testimonies of OPUC and Commission Staff related to the following issues: the requested FERC rider, post-test-year adjustments, a return on retired generation

assets, the Spindletop gas storage facility issue, skylining expenses, and ETI's internal rate-case expenses.

45. On April 30, 2019, OPUC filed an errata to the supplemental direct testimony of Carol Szerszen that revised her recommended disallowance to a total of \$3,244,964 based on correcting the keywords used to identify recommended disallowances.
46. On May 23, 2019, ETI filed the rebuttal testimonies of Richard E. Lain, Barbara P. Heard, Thomas K. Anson, and Stephen F. Morris. Mr. Lain addressed Brian Murphy's recommendations regarding allocation and rate-design issues and acceded to most of them. Ms. Heard addressed Commission Staff's challenges to ETI's affiliate payroll and payroll-related costs as well as OPUC's challenges to ETI's internal payroll costs. Mr. Anson addressed Commission Staff's challenges to the hourly rates and hours billed by Eversheds Sutherland (US) LLP. Mr. Morris addressed all other issues raised by OPUC and Commission Staff.
47. On June 14, 2019, Cities filed revisions to the direct testimony of Norman J. Gordon. The revisions did not change the substance of Mr. Gordon's direct testimony but updated Mr. Gordon's contact information.
48. On October 29, 2019, ETI filed the testimony of Stephen F. Morris in support of the agreement. Attached to the testimony was documentation to support rate-case expenses that were incurred in Docket No. 48371 and this docket and were recorded between January 5, 2019 and August 14, 2019.
49. On October 29, 2019, Cities filed the declaration of attorney Molly Mayhall Vandervoort regarding the reasonableness of Cities' rate-case expenses through August 2019.
50. On October 29, 2019, Commission Staff filed the testimony of Darryl Tietjen in support of the agreement.

Evidentiary Record

51. In SOAH Order No. 14 filed on October 31, 2019, the SOAH ALJ admitted the following evidence into the record of this proceeding:
 - a. the direct testimonies and exhibits of ETI's witnesses Stephen F. Morris and Richard E. Lain, filed on January 18, 2019;

- b. the direct testimony and exhibits of Cities' witness Norman J. Gordon, filed on January 25, 2019;
- c. the revised supplemental testimony, errata, and exhibits of ETI's witness Stephen F. Morris, filed on March 28, 2019;
- d. the direct testimony and exhibits of OPUC's witness Carol Szerszen, filed on April 8, 2019;
- e. the direct testimonies and exhibits of Commission Staff's witnesses Brian T. Murphy and Ruth Stark, filed on April 15, 2019;
- f. the supplemental direct testimony of OPUC's witness Carol Szerszen, filed on April 23, 2019;
- g. the rebuttal testimonies and exhibits of ETI's witnesses Stephen F. Morris, Richard E. Lain, Barbara P. Heard, and Thomas K. Anson, filed on May 23, 2019;
- h. the revisions to the direct testimony of Cities' witness Norman J. Gordon, filed on June 14, 2019;
- i. the unopposed agreement, filed on October 29, 2019;
- j. the testimony and exhibits of ETI's witness Stephen F. Morris in support of the parties' agreement, filed on October 29, 2019;
- k. the declaration of Molly Mayhall Vandervoort regarding the reasonableness of Cities' rate-case expenses through August 2019, filed on October 29, 2019; and
- l. the testimony and exhibits of Commission Staff's witness Darryl Tietjen in support of the parties' agreement, filed on October 29, 2019.

Agreement

- 52. The signatories agreed to address rate-case expenses requested for this docket as part of the settlement of this docket in addition to rate-case expenses requested for Docket No. 48371 and the appeals of Docket Nos. 39896 and 40295.
- 53. The signatories agreed for ETI to recover \$6,392,320 in rate-case expenses. The signatories specifically agreed that Cities' total requested rate-case expenses of \$483,672 were included in the amount and that the rest represented a black-box settlement.

54. The signatories agreed that the agreed amount resolves all outstanding rate-case expenses for ETI and Cities with respect to Docket Nos. 39896, 40295, and 48371 and this docket.
55. The parties agreed for ETI to recover the agreed amount of rate-case expenses through a new rate-case expense rider titled RCE-4, which is attached to the parties' agreement as attachment B.
56. Under the agreement, rider RCE-4 is effective beginning with the first billing cycle after the date of this Order. The rate-case expenses will be amortized over a three-year period, but ETI will cease collecting rate-case expenses before the end of that period if full recovery occurs sooner.
57. ETI agreed not to seek to recover additional rate-case expenses incurred by itself or Cities with respect to Docket Nos. 39896, 40295, and 48371 and this docket.

Commission Determinations

58. It is appropriate in this docket to address rate-case expenses for this docket as well as for Docket No. 48371 and the appeals of Docket Nos. 39896 and 40295.
59. It is appropriate for ETI to recover \$6,392,320 in rate-case expenses in this docket.
60. The agreement's mechanisms to recover the approved rate-case expenses are appropriate.
61. The agreed amount of rate-case expenses does not include fees paid to, tasks performed by, or time spent on a task by an attorney or other professional that was either extreme or excessive.
62. The agreed amount of rate-case expenses does not include expenses incurred for lodging, meals and beverages, transportation, or other services or materials that were either extreme or excessive.
63. The agreed amount of rate-case expenses does not contain any amounts for duplication of services or testimony.
64. The agreed amount of rate-case expenses is not disproportionate, excessive, or unwarranted in relation to the nature and scope of the proceedings for which ETI and Cities are seeking recovery.
65. The rate-case expenses approved by this Order are reasonable.

Informal Disposition

66. More than 15 days have passed since completion of the notice provided in this proceeding.
67. No hearing is necessary.
68. The decision is not adverse to any party in this proceeding.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. ETI is a public utility as that term is defined in PURA § 11.004(1) and an electric utility as that term is defined in PURA § 31.002(6).
2. The Commission has jurisdiction over this matter under PURA §§ 14.001, 32.001, 33.023, 36.001, 36.003, 36.051, 36.061, and 36.062.
3. ETI provided adequate notice of this proceeding through the notice it provided in Docket No. 48371.
4. SOAH exercised jurisdiction over this docket in accordance with PURA § 14.053 and Texas Government Code § 2003.049.
5. The Commission processed the application in accordance with the requirements of PURA, the Administrative Procedure Act,⁷ and Commission rules.
6. Under PURA § 36.006, utilities seeking recovery, or municipalities seeking reimbursement, of rate-case expenses have the burden to prove the reasonableness of those expenses by a preponderance of the evidence to include those amounts in customers' rates.
7. ETI met the requirements of 16 TAC § 25.245 with respect to the rate-case expenses approved in this docket.
8. The rate-case expenses approved in this docket reflect the reasonable cost of participating in the ratemaking proceedings in which they occurred in accordance with PURA §§ 33.023(b) and 36.061(b)(2).
9. The agreed rates approved in this Order are just and reasonable under PURA § 36.003(a).

⁷ Tex. Gov't Code §§ 2001.001–.902.

10. The rates approved in this Order are not unreasonably preferential, prejudicial, or discriminatory but are sufficient, equitable, and consistent in application to each class of customer under PURA § 36.003(b).
11. The proceeding meets the requirements for informal disposition under 16 TAC § 22.35.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission authorizes ETI to implement a rate-case-expense rider to the extent provided in this Order.
2. The Commission authorizes ETI to recover \$6,392,320 in rate-case expenses through the rider.
3. The Commission approves the rate-case-expense rider tariff attached to the parties' agreement as attachment B, effective beginning with the first billing cycle after the date of this Order.
4. ETI must cease collecting rate-case expenses through rider RCE-4 upon full recovery of the total authorized amount of rate-case expenses.
5. ETI must allocate the amount of rate-case expenses approved in this Order between classes according to the allocated amounts by class that are listed in the tariff attached to the agreement as attachment B.
6. Within ten days of the date of this Order, ETI must provide a clean copy of rider RCE-4, as approved by this Order, to central records to be marked *Approved* and filed in the Commission's tariff book.
7. ETI must not seek to recover additional rate-case expenses incurred by itself or Cities with respect to Docket Nos. 39896, 40295, or 48371 or this docket.
8. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.

9. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

Signed at Austin, Texas the _____ day of January 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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