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APPL. OF THE CITY OF SAN ANTONIO §  
TO AMEND ITS [CCN] FOR THE §  
SCENIC LOOP 138-KV TRANS. LINE IN §  
BEXAR COUNTY, TX §

STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

**SAVE HUNTRESS LANE AREA ASSOCIATION'S  
RESPONSE TO THE JAUER OBJECTIONS  
TO AND MOTION TO STRIKE CROSS-REBUTTAL TESTIMONY**

Save Huntress Lane Area Association (“SHLAA”), an intervenor, submits this response to the objections by Brad Jauer and BVJ Properties, LLC (“Jauer”) on March 29, 2021. This response is timely.

Jauer’s objections are set forth in italicized text, and the SHLAA response is set forth in bold text. As the responses below show, those objections are without merit and should be overruled, and the associated motion to strike denied.

*Harold Hughes, Page 12, line 4 to page 14, line 9. Not rebuttal testimony, but, instead, an improper attempt to insert supplemental direct testimony into the record.*

**RESPONSE: The testimony of Mr Hughes is in direct response to intervenor direct testimony expressly espousing support for Routes F1, N1, P, Q1, R1, and U1, and the assertions about the transmission facilities allegedly constituting an “attractive nuisance.” See, e.g., the direct testimony of Mr. Paul Rockwood, and direct testimony of Mr. Jacob Villarreal. Mr. Hughes is entitled to respond thereto in cross-rebuttal with the problems he, as an expert witness, thinks those routes share.**

*Harold Hughes, Page 13, line 7 through line 20. Relevance. "Equity" is not a routing criterion.*

**RESPONSE: Mr. Hughes did not cite “equity” as a routing criterion. He instead cited it as a consideration to take into account in the context of weighing the various routing factors including environmental (such as habitat fragmentation), land use, and cost impacts.**

*Grimes et al., Page 2, lines 18 to Page 3, line 4. "In your direct testimony . . . water well locations." Hearsay, speculation, not rebuttal testimony/improper supplemental direct. Any CPS Energy statements to the effect indicated are not in the record, and Cynthia Grimes is not an expert who can rely on hearsay testimony; therefore, they are hearsay. Moreover, any inference from CPS's silence that CPS "does not dispute" is pure speculation. Moreover, this testimony is not cross-rebuttal responding to any testimony from any other witness; therefore, it is improper supplemental direct.*

**RESPONSE: The testimony is non-hearsay. Counsel for CPS Energy confirmed to counsel for SHLAA that CPS Energy reviewed the information and CPS Energy does not dispute the existence of those additional habitable structures and water well locations. That is**

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operative legal conduct regarding the position of CPS Energy, which CPS Energy will address in its rebuttal testimony, in its updated application documents, and in the hearing on the merits. Because of the use of pre-filed testimony in PUC cases, the SHLAA cross-rebuttal is simply a preview of what will be offered into evidence by SHLAA at the hearing on the merits. Once the hearing on the merits occurs, that preview will be “connected up” to the position of CPS Energy as set forth in that hearing.

The testimony is also within an exception to the hearsay rules. CPSE Energy is proposing to route a transmission line using various possible routes through the SHLAA area. Therefore, CPS Energy is a party-opponent to SHLAA. CPS Energy based its routing proposals on the information it reflected in its application as amended, including information on habitable structures and water wells. SHLAA provided the additional habitable structure and water well information to CPS Energy for its review, and legal counsel for CPS Energy as its authorized representative in this case indicated CPS Energy does not dispute the existence of those additional habitable structures and additional water well locations. Tex. R. Evid. 801(e)(2).

The testimony is not speculation. It is not based on mere silence; it is instead based upon the express statement of CPS Energy’s counsel, as described above.

The testimony is proper rebuttal testimony and is not improper supplemental direct. Various intervenors have proposed use of routes through the SHLAA area. Information on habitable structures and water wells are included by CPS Energy in its application regarding prudent avoidance and land use constraints, respectively. The additional information provided in the SHLAA cross-rebuttal testimony addresses the prudent avoidance and land use constraint issues from using routes through the SHLAA area. It has the effect of increasing the number of habitable structures and water wells for the routes proposed to run through the SHLAA area. The update regarding the additional information is therefore responsive to all intervenor testimonies which propose the use of routes through the SHLAA area.

*Grimes et al. Page 3, line 25 to page 4, line 9. "Has TPWD addressed . . . Route DD. Improper supplemental direct. This testimony is not cross-rebuttal responding to any testimony from any other witness; therefore, it is improper supplemental direct. As indicated on page 3, line 27, TPWD's position to which this testimony was responding is in a Feb 18th letter, submitted over a month ago. It could have been addressed in direct testimony but was not.*

**RESPONSE:** The testimony is proper rebuttal testimony and is not improper supplemental direct. The intervenor direct testimony was due February 17, 2021, but due to

Winter Storm Uri the deadlines were relaxed, and SHLAA filed its direct testimony on February 19, 2021. The TPWD letter is dated Feb. 18, 2021, but it was not made available to the parties until CPS Energy included it in its February 23, 2021 supplemental discovery response, available at [http://interchange.puc.texas.gov/Documents/51023\\_578\\_1112434.PDF](http://interchange.puc.texas.gov/Documents/51023_578_1112434.PDF) and more generally when TPWD filed it directly in the docket on March 1, 2021, available at <http://interchange.puc.texas.gov/search/documents/?controlNumber=51023&itemNumber=598>. Therefore, said TPWD letter could not have been addressed in SHLAA's direct testimony.

The testimony is also in response to the direct testimony of NISD and the Barrera interests. NISD opposes use of Segments 41 and 35, and the Barrera interests oppose the use of Segment 35. The TPWD letter of February 18, 2021, recommends use of amended application Route DD, instead of original application Route AA (the amended application variant of which is Route AA1). Route DD uses Segments 41 and 35. The SHLAA cross-rebuttal testimony is therefore responsive to the NISD and Barrera interests direct testimonies, by indicating that SHLAA does not support use of Route DD since it uses Segments 41 and 35 instead of Segment 42a.

*Grimes et al., Page 4, the entire answer to question "Which intervenors oppose selection of routes Z1 and AA1?"*<sup>2</sup> *Mischaracterization of testimony. Misleading. There is no testimony regarding what a "key" segment is." Multiple intervenors testified against Route Z1 or any route utilizing Toutant Beaugard.*

**RESPONSE:** Although Jauer asserts that the statements are a mischaracterization of testimony and misleading, Jauer simply wants to argue with the SHLAA witnesses about their factual understanding of the other intervenor's direct testimony (including the factual assertions and other information proffered in the intervenor direct pre-filed testimony). Jauer's disagreement with them does not itself constitute proof that there is any mischaracterized or misleading testimony. Jauer may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Jauer's disagreement with it, the appropriate weight.

Moreover, contrary to the assertion that there is "no testimony" regarding what is a "key" segment, the SHLAA testimony specifically identifies in the answer to the question the "key" segments, by segment name: Segment 42a, Segment 36, and Segment 54.

In addition, the point of the testimony is to make clear exactly which intervenor properties are along Route AA1 and Z1 and the positions of those intervenors, as opposed to other intervenors who may espouse opposition to Route AA1 and Z1, but whose properties

would not be crossed by those proposed routes and would not have a habitable structure within 300 feet of the centerline of those proposed routes. Jauer does not state that Jauer has authority to speak for any other intervenors or property owners who are not intervenors in this case, and therefore the objection amounts to nothing more than argumentative disagreement about the SHLAA testimony.

*Grimes et al., Page 5, lines 17-18 "CPS Energy has not ... not the case." Speculation.*

**RESPONSE:** The testimony concerns the Anaqua Springs HOA assertion in its testimony that there is another residence which CPS Energy had not identified within 300 feet of Segment 38. Because, as the testimony indicates, CPS Energy had not indicated it agrees with that Anaqua Springs HOA testimony, the SHLAA testimony specifically avoided engaging in speculation: it simply said that until CPS Energy formally indicates there is a residence, the SHLAA witnesses would not assume that the subject residence is within 300 feet of Segment 38. So the testimony is the opposite of speculation, by making it clear why it would not engage in speculation.

*Grimes et al. Page 7, line 29 to page 8, line 2. "As noted earlier ... those other homeowners." Speculation, hearsay. The number of interventions is not in any way determinative of the impact on landowners.*

**RESPONSE:** The testimony is not speculation. It is based direct on facts in the direct testimony of the other intervenors: only one Scenic Hills subdivision homeowner fronting Toutant Beauregard Road intervened, and Mr. Cichowski has not asserted authority to speak for anyone else.

The testimony is not hearsay. Nowhere does it reference some out-of-court statement. Instead, it is based on what is (and is not) in Mr. Cichowski's direct testimony and on the operative conduct (and lack thereof) of residents in Scenic Hills subdivision homeowner fronting Toutant Beauregard Road.

Jauer asserts that the number of interventions is not determinative of the impact on landowners. This mischaracterizes the SHLAA testimony, because it never said that. The SHLAA testimony instead says that the claim by Mr. Cichowski (President of Anaqua Springs HOA, which is trying to keep the transmission line from crossing in front of the subdivision's entrance) of concern for the rest of the Scenic Hills subdivision homeowners fronting Toutant Beauregard Road who did not intervene is belied by his lack of any representative capacity to speak for them as well as by the actual behavior (non-intervention) of those other Scenic Hills

subdivision homeowners fronting Toutant Beauregard Road. As with the SHLAA testimony regarding the one Scenic Hills subdivision homeowner fronting Toutant Beauregard Road who did intervene, Mr. Herrera, the SHLAA testimony describes how Route Z1 would in that area parallel Toutant Beauregard Road and how Mr. Herrera's home is within 300 feet of the centerline of that proposed route. The SHLAA testimony never speculates as to why the rest of the Scenic Hills subdivision homeowners fronting Toutant Beauregard Road did not intervene, only the unequivocal fact that they did not intervene regarding a proposed route paralleling Toutant Beauregard Road. While lack of intervention may not be "determinative" of the impact on landowners, it is relevant to the impact on landowners.

Jauer simply wants to argue with the SHLAA witnesses about their criticism of Mr. Cichowski's position. Jauer may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Jauer's disagreement with it, the appropriate weight.

*Grimes et al., Page 9, line 3, "and . . . substation." Hearsay. Ms. Grimes cannot testify about the position of another individual.*

**RESPONSE:** The statement is not hearsay. The landowners with the family residence and horse stable business on the tract that backs up to Substation Site 6 are members of SHLAA. SHLAA opposes the use of Substation Site 6 and line segments which utilize that substation. Hence, the landowners with the family residence and horse stable business on the tract that backs up to Substation Site 6, by their operative conduct of membership in SHLAA, oppose the use of Substation Site 6 and line segments which utilize that substation. In addition, Ms. Grimes has been to this property several times and observed the business and its location in relationship to the proposed Substation Site 6, and Jauer may explore the specific SHLAA testimony on cross examination regarding what Ms. Grimes saw during her visits thereto.

*Grimes et al., Page 12, second full paragraph, starting with "Cynthia Grimes:" Hearsay.*

**RESPONSE:** The testimony is not hearsay. The SHLAA cross-rebuttal testimony is based on the witnesses' personal knowledge and experience (as stated on its p. 2). The objected-to-paragraph starts with a recounting of the fact stated in the SHLAA direct testimony about a number of SHLAA members who send their children to McAndrew Elementary School. That SHLAA direct testimony was not subject to any prior evidentiary objection. The objected-to-paragraph then states that there are a number of SHLAA members who home-school their children. It does not say anything regarding out-of-court statements,

and simply responds with facts in response to an Anaqua Springs HOA resident's testimony about EMF concerns for schoolchildren. The SHLAA cross-rebuttal testimony then makes the factual observation that a transmission line routed away from the elementary school and instead through the SHLAA area would not eliminate the EMF concern with regard to school age children.

*Grimes et al., Page 18, second full paragraph from "However ...below." Assumes facts not in evidence. Mischaracterizes the evidence. Hearsay.*

**RESPONSE:** The testimony does not assume facts not in evidence. It references the portion later in the SHLAA cross-rebuttal testimony regarding the Barrera interests. In that later SHLAA testimony, the Barrera interests' direct testimony is described, which indicates which segments they oppose, and therefore which ones (like Segments 42a and 36, part of Route Z1) that they do not oppose. Therefore, the SHLAA cross-rebuttal testimony is based directly upon what the Barrera interests say in their testimony, which will be offered into evidence in the hearing on the merits.

The testimony does not mischaracterizes the evidence. It references the portion later in the SHLAA cross-rebuttal testimony regarding the Barrera interests. In that later SHLAA testimony, the Barrera interests' direct testimony is described, which indicates which segments they oppose, and therefore which ones (like Segments 42a and 36, part of Route Z1) that they do not oppose. Therefore, the SHLAA cross-rebuttal testimony is based directly upon what the Barrera interests say in their testimony. The Barrera interests have not objected that the SHLAA cross rebuttal testimony mischaracterizes their testimony, and a comparison of the SHLAA cross rebuttal testimony and the Barrera interests testimony will show that the latter was precisely and accurately described.

The testimony does not constitute hearsay. It references the portion later in the SHLAA cross-rebuttal testimony regarding the Barrera interests. In that later SHLAA testimony, the Barrera interests' direct testimony is described, which indicates which segments they oppose, and therefore which ones (like Segments 42a and 36, part of Route Z1) that they do not oppose. Therefore, the SHLAA cross-rebuttal testimony is based directly upon what the Barrera interests say in their testimony. Therefore, the SHLAA cross-rebuttal testimony is based directly upon what the Barrera interests say in their testimony, which will be offered into evidence in the hearing on the merits.

*Grimes et al., Page 18, second full paragraph, last sentence. Legal conclusion.*

**RESPONSE:** The sentence states that, unlike the Barrera interests who are the landowners on which the particular historic district Mr. Buntz identified is located, the Rose Palace, located far away from Segment 36, does not have authority to object to routing a line along Segment 36 based on someone else's historic property aspect. That is not a legal conclusion. It is a factual observation: Mr. Buntz's direct testimony states it is on behalf of Rose Palace and its affiliated ranch; nothing in his direct testimony indicates he has authority to speak for anyone else, much less for the Barrera interests. In addition, Rose Palace's intervention in this case was made solely on its own behalf (including its affiliated ranch), not on anyone else's.

*Grimes et al., Page 22, last three lines through page 23. Hearsay. Improper expert opinion testimony.*

**RESPONSE:** The testimony is not hearsay. It is not an out-of-court statement by another person, it is instead the factual testimony solely of Ms. Grimes regarding what she observed when she used Google Earth.

The testimony is not improper expert opinion testimony. Google Earth is a publicly available software for use by the general public. One need not be an expert to utilize it. One need not be an expert to report on what it shows when utilized. The factual information it shows can also be easily replicated, as Ms. Grimes' answer indicates.

*Grimes et al., Page 25, entire answer to question: "The NISD testimony expresses EMF concerns from having a transmission in proximity to the school. How do you respond?" Hearsay.*

**RESPONSE:** The testimony is not hearsay. The SHLAA cross-rebuttal testimony is based on the witnesses' personal knowledge and experience (as stated on its p. 2). The objected-to-paragraph starts with a recounting of the fact stated in the SHLAA direct testimony about a number of SHLAA members who send their children to McAndrew Elementary School. That SHLAA direct testimony was not subject to any prior evidentiary objection. The objected-to-paragraph then recounts the earlier SHLAA cross-rebuttal testimony on page 12 which states that there are a number of SHLAA members who home-school their children. It does not say anything regarding out-of-court statements, and simply responds with facts in response to NISD testimony about EMF concerns for schoolchildren. The SHLAA cross-rebuttal testimony then makes the factual observation that a route using Segment 42a behind the school minimizes such EMF concerns, as well as avoids the EMF



**concerns for SHLAA members with home-schooled children in proximity to more southern routes.**

*Grimes et al., Page 25, last answer from "In short ... accordingly." Mischaracterizes the evidence. NISD has taken no position with respect to any "constituents." NISD's position is that it does not want the lines in proximity to its school..*

**RESPONSE:** Although Jauer asserts that the statement mischaracterizes the evidence, nothing is further from the truth. Mr. Villarreal on behalf of NISD specifically testified (see p. 10, ll.1-2 of his direct testimony) that NISD “opposes the routes that would use Segments 33, 34, 35, 41, and 42a or any route that utilizes those segments.” While NISD did not identify a particular route it supports, by definition its opposition to the segments it identified results in its non-opposition to the segments and resulting routes that it did not identify. The other segments and resulting routes include those which would run through the SHLAA area. As the witnesses accurately described in the testimony quoted above, the NISD position “could result in the placement of high-voltage transmission lines on or along SHLAA member properties.” As a result, NISD has taken a position contrary to the position of SHLAA which has school district constituents among its members. The NISD position is also consistent with the position of other intervenors such as Jauer and Anaqua Springs HOA, who are actively seeking to have a route selected which would run through the SHLAA area rather than a route such as Route Z1 which would run along the front entrance to the Anaqua Springs subdivision. Therefore, the statement does not mischaracterize the evidence, since it is based directly on what the NISD witness actually stated in his direct testimony regarding the NISD position, and then makes a factual observation regarding the impact of that NISD position on the SHLAA members.

Moreover, the accuracy of the statements regarding the NISD position and the disappointment felt by the SHLAA members who are school district constituents regarding the NISD position has been borne out by the fact that NISD was lobbied by Anaqua Springs HOA’s President to intervene in the case and oppose what was then Route Z, the variant of which is now Route Z1. This is shown by Anaqua Springs HOA’s Response to CPS Energy’s 1<sup>st</sup> RFI No. 1-9 and the 21 pages attached to that response, which is available at <https://interchange.puc.texas.gov/Search/Documents?ControlNumber=51023&ItemNumber=656>, and for which official notice is requested for purposes of ruling on these objections. The segments which the NISD witness identifies in his testimony as those which NISD opposes include segments that are part of Route Z1. Therefore, the SHLAA testimony was correct

when it expressed disappointment that the NISD would take sides in the dispute in this case between different school district constituents, and that taking of sides has been confirmed by the discovery in this case.

*Grimes et al., Page 31, paragraph that starts with "In addition . . . school." Hearsay .*

**RESPONSE:** The testimony is not hearsay. The SHLAA cross-rebuttal testimony is based on the witnesses' personal knowledge and experience (as stated on its p. 2). The objected-to-paragraph starts with a recounting of the fact stated in the SHLAA direct testimony about a number of SHLAA members who send their children to McAndrew Elementary School. That SHLAA direct testimony was not subject to any prior evidentiary objection. The objected-to-paragraph then recounts the earlier SHLAA cross-rebuttal testimony on page 12 which states that there a number of SHLAA members who home-school their children. It does not say anything regarding out-of-court statements, and simply responds with facts in response to the testimony of Ms. Sykes and Ms. Arbuckle about EMF concerns for schoolchildren. The SHLAA cross-rebuttal testimony then makes the factual observation that a route using Segment 42a in the far back of the school area essentially eliminates the EMF concern about the school.

*Grimes et al., Page 33, entire answer to the question: "Mr. Herrera supports use of Route R1 due to what he says is its relatively shorter length compared to the other routes he supports, How do you respond?" Mischaracterizes Mr. Herrera's testimony.*

**RESPONSE:** Mr. Herrera's testimony is accurately reflected in the question. The import of his question was that length should be given weight in deciding on a route. The SHLAA cross-rebuttal testimony then factually recounted route length and costs as set forth in the CPS Energy application as amended for the route he prefers, Route R1, and the routes SHLAA recommends, Routes Z1 and AA1, and makes a factual observation regarding those relative lengths compared to the cost differences. Therefore, there is no mischaracterization of Mr. Herrera's testimony in the answer, there is instead a response to Mr. Herrera's testimony regarding the weight to give to lengths and costs of routes.

Although Jauer asserts that the answer is a mischaracterization of Mr. Herrera's testimony, Jauer simply wants to argue with the SHLAA witnesses about their factual understanding of the situation about the weight to give to lengths and costs of routes. Jauer's disagreement with them does not itself constitute proof that there is any mischaracterized testimony. Jauer may explore the specific SHLAA testimony on cross examination and the

Administrative Law Judges will be able to give the SHLAA testimony, as well as Jauer's disagreement with it, the appropriate weight.

*Grimes et al., Page 34, entire answer to last question on the page. Improper expert testimony.*

**RESPONSE:** The testimony is not improper expert testimony. The objected-to-answer is simply a recounting of the facts about the visibility shielding effect that Substation Site 7 provides, as stated in the SHLAA direct testimony and CPS Energy descriptions, and the recounting of the direct testimony about the position of SHLAA members located by Substation Site 7 still supporting Routes Z1 and AA1. That SHLAA direct testimony, including the CPS Energy descriptions contained therein, was not subject to any prior evidentiary objection. The objected-to-answer in the SHLAA cross rebuttal testimony also makes the factual observation that Mr. Herrera is not considering the visibility shielding effect that Substation Site 7 provides, as stated in the SHLAA direct testimony and CPS Energy descriptions. That observation is based upon his own testimony, in which he did not at all address Substation Site 7 visibility matters.

*Grimes et al., Page 37-38, answer to the community values question. Mischaracterizes the evidence.*

**RESPONSE:** The objection is conclusory because it does not explain how the answer allegedly mischaracterizes the evidence. Therefore, it is not a valid objection.

In addition, the objected-to-answer recounts the SHLAA direct testimony regarding community values (for which there was no prior evidentiary objection), makes the factual observation that the SHLAA witnesses did not learn of any unique community values (other than possibly the primates sanctuary which is not on Routes Z1 or AA1), and makes the factual observation that the SHLAA witnesses did not see anything causing SHLAA to change its position (other than favoring Route Z1 over Routes AA1 and AA2 because of Route Z1 going along the northern border rather than through the middle of High Country Ranch). A comparison of the other intervenor testimony to the objected-to-answer will reveal no mischaracterization.

Although Jauer asserts that the answer is a mischaracterization of evidence, Jauer simply wants to argue with the SHLAA witnesses about their factual understanding of the situation regarding community values. Jauer may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Jauer's disagreement with it, the appropriate weight.

*Grimes et al., Page 38, entire answer to first question under developer right of way donations. Hearsay and Speculation .*

**RESPONSE:** The testimony concerns the actions of an Anaqua Springs HOA resident seeking consent of the Canyons developer of a possible route modification in a portion of Canyons (which is part of SHLAA). By definition, the only purpose for doing so is with regard to the litigation position of the parties on the issues in this case, and in support of the position of Anaqua Springs HOA in this docket.

The testimony is non-hearsay. The action of the Anaqua Springs HOA resident is operative conduct regarding the position of the Anaqua Springs HOA.

The testimony is not inadmissible hearsay. To the extent that the action of the Anaqua Springs HOA resident is a statement, it is regarding the position of the Anaqua Springs HOA, and thus is a statement by an opposing party and is provided by SHLAA against Anaqua Springs HOA. In addition, the door was opened to any such testimony by the opposition of those supporting Anaqua Springs HOA to the developer right of way donations.

The testimony is not speculation. It states the fact that the Canyons developer did not agree to do what the Anaqua Springs subdivision person asked, and makes the factual observation that because the Canyons developer did not agree to do what the Anaqua Springs subdivision person asked the requested modification would be detrimental to the Canyons developer and thus to Canyons itself.

Although Jauer asserts that the answer is speculation, Jauer simply wants to argue with the SHLAA witnesses about their factual understanding of the situation regarding the inconsistent conduct by those supporting Anaqua Springs HOA and what a resident of Anaqua Springs HOA attempted to do. Jauer may explore the specific SHLAA testimony on cross examination and the Administrative Law Judges will be able to give the SHLAA testimony, as well as Jauer's disagreement with it, the appropriate weight.

WHEREFORE, PREMISES CONSIDERED, it is respectively requested that the Jauer objections to SHLAA's cross-rebuttal testimony be overruled, and the associated motion to strike denied.

Respectfully submitted,

By: /s/ Thomas K Anson

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**ATTORNEYS FOR SHLAA**

Certificate of Service: I certify I served the foregoing under SOAH Order No. 3 on Apr. 5, 2021.

/s/ Thomas K Anson  
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