

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)	
In re:)	Chapter 11
)	
EDISON MISSION ENERGY, <i>et al.</i> , ¹)	Case No. 12-[_____] (____)
)	
Debtors.)	(Joint Administration Requested)
)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that on December 17, 2012, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion to Approve Continued Surety Bond Program* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that the Debtors have requested a hearing on the Motion on Monday, December 17, 2012, at a time to be determined before the Honorable [_____] or any other judge who may be sitting in [**his/her**] place and stead, in Courtroom [___] in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, at which time you may appear if you deem fit.

PLEASE TAKE FURTHER NOTICE that the hearing date and time once determined as well as copies of all documents are available free of charge by visiting the case website maintained by GCG, Inc. proposed notice and claims agent for these chapter 11 cases, available at www.edisonmissionrestructuring.com or by calling (866) 241-6491. You may also obtain copies of any pleadings by visiting the Court’s website at www.ilnb.uscourts.gov in accordance with the procedures and fees set forth therein.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy’s corporate headquarters and the Debtors’ service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

Dated: December 17, 2012

/s/ David R. Seligman, P.C.

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*Proposed Counsel to Debtor Camino Energy Company
and Conflicts Counsel to the other Debtors
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
)	Chapter 11
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EDISON MISSION ENERGY, et al., ¹)	Case No. 12-[_____] (____)
)	
Debtors.)	(Joint Administration Requested)
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DEBTORS’ MOTION TO APPROVE CONTINUED SURETY BOND PROGRAM

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):²

Relief Requested

1. By this Motion, the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”) authorizing but not directing the Debtors to continue and renew, in their sole discretion, their Surety Bond Program (as defined below) on an uninterrupted basis, including the maintenance and posting of collateral in accordance with applicable agreements.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Edison Mission Energy (1807); Camino Energy Company (2601); Chestnut Ridge Energy Company (6590); Edison Mission Energy Fuel Services, LLC (4630); Edison Mission Fuel Resources, Inc. (3014); Edison Mission Fuel Transportation, Inc. (3012); Edison Mission Holdings Co. (6940); Edison Mission Midwest Holdings Co. (6553); Midwest Finance Corp. (9350); Midwest Generation EME, LLC (1760); Midwest Generation, LLC (8558); Midwest Generation Procurement Services, LLC (2634); Midwest Peaker Holdings, Inc. (5282); Mission Energy Westside, Inc. (0657); San Joaquin Energy Company (1346); Southern Sierra Energy Company (6754); and Western Sierra Energy Company (1447). The location of parent Debtor Edison Mission Energy’s corporate headquarters and the Debtors’ service address is: 3 MacArthur Place, Suite 100, Santa Ana, California 92707.

² The facts and circumstances supporting this Motion are set forth in the *Declaration of Maria Rigatti, Senior Vice President and Chief Financial Officer of Edison Mission Energy, in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith.

Jurisdiction

2. The United States Bankruptcy Court for the Northern District of Illinois (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105, 363, 364, and 365 of title 11 of the United States Code (the “Bankruptcy Code”).

Background

5. Edison Mission Energy, together with its Debtor and non-Debtor affiliates, is a leading independent power producing enterprise specializing in developing, operating, and selling energy and capacity from over 40 generating facilities in 12 states and the Republic of Turkey. The Debtors have approximately 950 employees and maintain headquarters in Chicago, Illinois and Santa Ana, California.

6. On the date hereof (the “Petition Date”), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

The Debtors’ Surety Bond Program

7. In the ordinary course of their businesses, the Debtors are required to provide surety bonds to certain third parties to secure the Debtors’ payment or performance of certain

obligations, often to governmental units or other public agencies (the “Surety Bond Program”). These include, without limitation: (a) obligations owed to municipalities; (b) obligations related to environmental regulatory agencies; and (c) obligations relating to obtaining permits or licenses. Often, statutes or ordinances require the Debtors to post surety bonds to secure such obligations. Failure to provide, maintain, or timely replace these surety bonds would prevent the Debtors from undertaking essential functions related to their energy production operations.

8. The issuance of a surety bond shifts the risk of the Debtors’ nonperformance or nonpayment from the Debtors to a surety. Unlike an insurance policy, if a surety incurs a loss on a surety bond, it is entitled to recover the full amount of that loss from the principal. The Debtors are party to three master indemnity agreements that set forth the sureties’ rights to recover from the Debtors (the “Surety Indemnity Agreements”). Pursuant to the Surety Indemnity Agreements, the Debtors agree to indemnify each surety from any loss, cost, or expense which the surety may incur on account of the issuance of any bonds on behalf of the Debtors.

9. As of the Petition Date, the Debtors have approximately \$24 million in outstanding surety bonds, collateralized by approximately \$11 million in cash. The Debtors’ currently outstanding surety bonds secure their performance and obligations in the following general categories and for the following approximate amounts:

Number of Bonds	Nature of Bond	Approximate Aggregate Bond Amount
3	Facility decommissioning and environmental performance	\$12,590,000
37	Roadway repair and related licensing and permit requirements	\$11,400,000
1	Non-resident employer workers’ compensation	\$10,000
Total		\$24,000,000

10. The premiums for the surety bonds are generally determined on an annual basis and are paid by the Debtors when the bonds are issued and annually upon renewal thereafter. In the twelve months preceding the Petition Date, premiums for the Debtors' surety bonds totaled approximately \$400,000. The Debtors' currently outstanding surety bonds were issued by four separate sureties: Argonaut Insurance Company (five surety bonds totaling approximately \$14,950,000); Fidelity and Deposit Company of Maryland (five surety bonds totaling approximately \$360,000); Liberty Mutual Insurance Company (two surety bond totaling approximately \$1,940,000); and SAFECO Insurance Company (twenty-nine surety bonds totaling approximately \$6,750,000) (collectively, the "Sureties"). As of the Petition Date, the Debtors estimate that eight of the Debtors' currently outstanding surety bonds will expire by February 12, 2013. As of the Petition Date, the Debtors do not owe any amounts on account of premiums for the Surety Bond Program.

11. To continue their business operations during the reorganization process, the Debtors must be able to provide financial assurances to local governments, regulatory agencies, and other third parties. And this in turn requires the Debtors to maintain the existing Surety Bond Program, including the existing cash collateral arrangements with the Sureties, and potentially to acquire additional bonding capacity as needed in the ordinary course of their business.

Basis for Relief

I. The Surety Bond Program is in the Ordinary Course of the Debtors' Business.

12. Section 363(c)(1) of the Bankruptcy Code provides that a chapter 11 debtor in possession "may enter into transactions . . . [or] may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1).

13. The Bankruptcy Code does not define the “ordinary course of business.” In re Commercial Mortg. and Fin. Co., 414 B.R. 389, 393 (Bankr. N.D. Ill. 2009). Courts in this district apply the “reasonable expectations” test to determine whether a specific transaction is in the ordinary course of business. Id. (citing In re Garofalo’s Finer Foods, Inc., 186 B.R. 414, 424 (Bankr. N.D. Ill. 1995)). Under the reasonable expectations test, the court must analyze a debtor’s prepetition conduct as a means to inform and develop expectations of its postpetition conduct while considering the changing circumstances inherent in a debtor’s efforts to operate its business under chapter 11. Id. The test seeks to discern “any significant alterations” in a debtor’s prepetition and postpetition activities. Id. at 393–94. A fundamental characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. Id. at 394.

14. Here, the Debtors seek only to continue their existing Surety Bond Program. The Debtors intend to honor their obligations and perform under the Surety Indemnity Agreements in the ordinary course of business postpetition in the same manner they have operated historically. This includes maintaining existing surety bonds, renewing bonds as they expire and paying applicable premiums, maintaining collateral deposits, and posting additional collateral as required from time to time under the Surety Indemnity Agreements. Therefore, participation in the Surety Bond Program after the Petition Date is in the ordinary course of business and, pursuant to section 363(c)(1), does not require notice and a hearing.

II. Continuing the Surety Bond Program is a Sound Exercise of Business Judgment.

15. Although the Debtors believe continuing the Surety Bond Program is permitted in the ordinary course of business, the Debtors further believe performance under the Surety

Indemnity Agreements is a sound exercise of the Debtors' business judgment and supported pursuant to section 363(b) of the Bankruptcy Code.

16. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor in possession "after notice and a hearing, may use, . . . other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). A debtor may use, sell, or lease property of the estate where a sound business purpose justifies such actions. Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (noting that the criteria for approval of a transaction under section 363(b) is whether the debtor has "an articulated business justification"); see also Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to debtor's conduct"). Specifically, once a debtor articulates a valid business justification for a particular form of relief, the court reviews the debtor's request under the business judgment rule. See Commercial Mortg. and Fin. Co., 414 B.R. at 394 (noting that a debtor in possession "has the discretionary authority to exercise his business judgment in operating the debtor's business similar to the discretionary authority to exercise business judgment given to an officer or director of a corporation").

17. The business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company. See In re Abbott Labs. Derivative S'holders Litig., 325 F.3d 795, 807 (7th Cir. 2003). Consequently, a debtor's business decision "should be approved by the court unless it is shown to be 'so manifestly unreasonable that it could not be based upon sound business judgment, but only on bad faith, whim, or caprice.'"

In re Aerovox, Inc., 269 B.R. 74, 80 (Bankr. D. Mass. 2001) (quoting In re Logical Software, Inc., 66 B.R. 683, 686 (Bankr. D. Mass. 1986) (citations omitted)).

18. To the extent that the Debtors' participation in the Surety Bond Program is deemed to fall outside the ordinary course of business, the Court should authorize but not direct the Debtors to continue the Surety Bond Program pursuant to section 363(b)(1) of the Bankruptcy Code. This includes the maintenance of existing bonds, replacement of bonds as they expire and payment of applicable premiums, maintaining collateral deposits, and posting additional collateral from time to time as required under the Surety Indemnity Agreements. The Debtors have determined, in their sound business judgment, that the Surety Bond Program is a reasonable and effective method by which the Debtors are able to satisfy certain financial assurances that third parties require of the Debtors. Further, in many instances surety bonds are by statute, contract, or regulation.

19. Continuing the Surety Bond Program is necessary in order to maintain the Debtors' current terms and existing relationships with their Sureties. Based on the Debtors' current circumstances, it is not likely that the Debtors will be able to renew, or obtain replacement of, existing bonds on terms more favorable than those offered by the Sureties. Moreover, the process of establishing a new surety bond program would be highly burdensome to the Debtors, and it is doubtful that the Debtors could replace all of the surety bonds in time to avoid defaults or other consequences of the applicable obligations.

20. The Debtors' failure to provide, maintain, or to timely replace their surety bonds could jeopardize the Debtors' ability to conduct their operations. Based on the foregoing, the Debtors' participation in the Surety Bond Program, including making premium payments or providing additional collateral, as well as the Debtors' continued performance under the Surety

Indemnity Agreements, should be authorized under section 363(b) of the Bankruptcy Code to the extent such participation is deemed outside the ordinary course of the Debtors' business.

III. Continuing the Surety Bond Program May Be Authorized Under Section 364(c).

21. To the extent the Surety Bond Program and the provision of cash collateral thereunder are deemed an extension of secured credit, the Debtors request authority but not direction under section 364(c) of the Bankruptcy Code to participate in the Surety Bond Program. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)* 789 F.2d 1085, 1088 (4th Cir. 1986). Given the Debtors' current financial circumstances, the Debtors do not believe that they can obtain financial accommodations comparable to those offered by the Sureties on an unsecured basis or administrative expense basis.

Satisfaction of Bankruptcy Rule 6004(a) and Waiver of Bankruptcy Rule 6004(h)

22. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

23. The Debtors have provided notice of this Motion to: (a) the Office of the U.S. Trustee for the Northern District of Illinois; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims; (c) the indenture trustee for the Debtors' senior unsecured notes; (d) counsel to the ad hoc committee of certain holders of the Debtors'

senior unsecured notes; (e) the indenture trustee for the lessor notes related to the Debtors' Powerton generating station in Pekin, Illinois, and units 7 and 8 of the Debtors' Joliet, Illinois, generating station and the pass-through trustee for the related pass-through certificates; (f) counsel to the ad hoc committee of certain holders of pass-through certificates related to the Debtors' Powerton and Joliet generating stations; (g) the owner trusts and the equity investors for the Debtors' Powerton and Joliet generating stations (and their respective counsel, if known); (h) the lender under Debtor Edison Mission Energy's letter-of-credit facility (i) the state attorneys general for states in which the Debtors conduct business; (j) United States Attorney for the Northern District of Illinois; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; and (m) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business. In light of the nature of the relief requested herein, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

24. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: December 17, 2012

/s/ David R. Seligman, P.C.

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*Proposed Counsel to Debtor Camino Energy Company
and Conflicts Counsel to the other Debtors
and Debtors in Possession*

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:)	BK No.: 12-49219
EDISON MISSION ENERGY, et al.,)	
)	Chapter: 11
)	
)	
)	
Debtor(s))	

ORDER APPROVING DEBTORS' TO CONTINUE SURETY BOND PROGRAM

Upon the motion (the "Motion") of the above captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") authorizing but not directing the Debtors to continue the Surety Bond Program, including the maintenance and posting of collateral as may be required in accordance with the Surety Indemnity Agreements, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.
2. The Debtors are authorized but not directed to maintain their Surety Bond Program without interruption, including, but not limited to, the maintenance of cash collateral, and to perform under the Surety Indemnity Agreements.
3. The Debtors are authorized but not directed to pay all obligations relating to the Surety Bond Program, including, but not limited to the payment of premiums.
4. The Debtors are authorized but not directed to renew or obtain new surety bonds or execute other agreements in connection with their Surety Bond Program and to provide cash collateral in connection therewith.
5. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is directed to receive, process, honor, and pay any and all checks, drafts, wire transfers, and automated clearing house transfers issued, whether before or after the Petition Date, for payment of

obligations described in the Motion to the extent that sufficient funds are on deposit in such amounts.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition wire transfer requests, in replacement of any checks or wire transfer requests in respect of payments of prepetition obligations described in the Motion that are dishonored or rejected.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules of the United States Bankruptcy Court for the Northern District of Illinois are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. All postpetition payments from a Debtor to another Debtor are hereby accorded superpriority administrative expense status and shall have priority over any administrative claims that arise under section 503(b) of the Bankruptcy Code in accordance with the Court's order approving continued use of the Debtors' cash management system.

11. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

12. The Debtors are authorized but not directed to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

13. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

James H.M. Sprayregen, P.C.

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and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)
) Chapter 11
)
EDISON MISSION ENERGY, et al.,¹) Case No. 12-[_____] (____)
)
)
Debtors.) (Joint Administration Requested)
)

CERTIFICATE OF SERVICE

I, David R. Seligman, P.C., an attorney, certify that on the date hereof, I caused to be served by GCG, Inc. (the proposed notice and claims agent for these chapter 11 cases) on behalf of the above-captioned debtors and debtors in possession, in the manner and to the parties set forth on the attached service lists, a true and correct copy of the foregoing pleading.

Dated: December 17, 2012

/s/ David R. Seligman, P.C.

David R. Seligman, P.C.

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C/O WILMINGTON TRUST COMPANY
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ATTN COMMISSIONER OR LEGAL COUNSEL
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KENTUCKY DEPT FOR NATURAL RESOURCES
ATTN COMMISSIONER OR LEGAL COUNSEL
#2 HUDSON HOLLOW
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KENTUCKY ENVIRONMENTAL QUALITY COMMISSION
ATTN EXECUTIVE DIRECTOR OR LEGAL COUNSEL
58 WILKINSON BLVD
FRANKFORT KY 40601

KERN RIVER GAS TRANSMISSION COMPANY
ATTN KRISTIN GILLETTE
2755 EAST COTTONWOOD PARKWAY
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LAFARGE NORTH AMERICA
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LIBERTY MUTUAL INSURANCE COMPANY
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ATTN RICHARD D. SIDKOFF, ESQ.
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HELENA MT 59620

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