

**BEFORE THE**  
**PUBLIC SERVICE COMMISSION OF WISCONSIN**

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Joint Application of Madison Gas and Electric  
Company and Wisconsin Public Service Corporation  
For Approval to Acquire Ownership Interests in  
Solar Electric Generating Facilities

5-BS-228

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**JEWELL JINKINS INTERVENORS**  
**RESPONSE TO APPLICANTS' MOTION FOR PROTECTIVE ORDER**

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Applicants Wisconsin Public Service Corporation and Madison Gas and Electric Company have jointly filed a Motion for Protective Order to prevent Jewell Jenkins Intervenors from seeking discovery in the above-captioned docket. Their Motion should be denied, and Jewell Jenkins Intervenors should proceed with all the rights, responsibilities and obligations of full party status. In the alternative, the Motion should be granted until the Commission rules on Applicants' Motion for Interlocutory Review, and at that time, if that Motion is denied, then the schedule for this docket should be adjusted back by 30 days to address the wasted time.

**I. JEWELL JINKINS INTERVENORS MUST PARTICIPATE IN ALL THE INTERRELATED DOCKETS.**

The reasons for intervening are broad, our Intervention encompassing three of the five dockets. This 5-BS-228 docket is one in which Applicants plan to acquire an interest in the Badger Hollow solar project. The five dockets running simultaneously, if all permitted, would result in a utility or two owning 50% of the Badger Hollow project. Because the solar project

was applied for by an independent power producer, it is claimed that the IPP is exempt from demonstrating need in the CPCN proceeding (9697-CE-100), and despite three (five) dockets running simultaneously with the utilities' waiting in the wings with their toe on the stage, those utilities are claiming that Intervenor have no right to information in the buy/sell docket and no right to the confidential and CEII information, in essence claiming that the Intervenor have no right or ability to address need for this project in any forum, and particularly in this docket.

Applicants in the five dockets are, intentionally or not, jointly circumventing project need review, which is contrary to the purpose of Wisconsin's regulatory scheme and the Commission's jurisdiction.

As CUB notes in testimony:

Had the two utilities themselves applied for the CPCN, questions such as engineering, economics, need, and alternatives could have been considered alongside the questions of siting, allowing the Commission to appropriately evaluate all of the issues and statutory requirements in a holistic way. Moreover, given the timing of this CPCN proceeding (as well as the proceeding dealing with the Two Creeks solar farm), which is being handled in nearly lock-step with the Acquisition Docket, it is unclear whether questions of engineering (which may bear upon some of the concerns of landowners in the project area, such as safety) will be presented before the Commission in such a way that the Commission has the statutory authority to take any actions it might otherwise have deemed appropriate.

Direct-CUB-Singletary-10, p. 11, l. 8-17.<sup>1</sup> There are "concerns that continued use of the site-and-acquire model being employed with Badger Hollow may undermine a comprehensive or holistic application of the CPCN statutes by the Commission." Jewell Jinkins Intervenor share these concerns, and these concerns voiced by Jewell Jinkins Intervenor at the Prehearing Conference, and again in its response to Applicants' Objection to Intervention Out-of-Time. It became apparent that these dockets were all connected, that they would proceed simultaneously, and that the Intervenor needed to participate in all of them in order to be represented in the big

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<sup>1</sup> ERF # [355364](#), Direct Testimony of Singletary, p. 11, PSC Docket 9697-CE-100.

picture of this project. Applicants' continued actions of objection and motions, delaying this docket, delaying responding to Data Requests, does not help Applicant's cause. Applicants' Motion for a Protective Order should be denied.

## **II. CONFIDENTIALITY AND CRITICAL ENERGY INFRASTRUCTURE INFORMATION (CEII)**

Applicants make much of confidential and CEII information and resist disclosure, claiming there would be significant harm in disclosure, state Applicants' request for information is only tangentially related to the reasons for their intervention, and argue that disclosure would cause great harm. Applicants' do not elucidate the harm they would suffer. In the process of making this argument, Applicants grossly misuse CEII regulation and misstate FERC's role in regulating distribution of CEII information and most importantly, Applicants mischaracterize their information as CEII and frame their resistance to disclosure as a necessary precaution:

Applicants are required to take stringent precautions against disclosure of CEII, which is defined as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that: (1) relates details about the production, generation, transmission, or distribution of energy; (2) could be useful to a person planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act; and (4) gives strategic information beyond the location of the critical infrastructure." 18 CFR §388.113(c)(2).

Applicant Motion, p. 2. Applicants commit a glaring omission by failing to reveal the scope of

18 CFR §388.13:

(a)Scope. This section governs the procedures for submitting, designating, handling, sharing, and disseminating Critical Energy/Electric Infrastructure Information (CEII) submitted to or generated by the Commission.

18 CFR §388.113(a). This misrepresentation of information as "CEII" is what this writer was referring to at the Prehearing Conference when referring to misusing the CEII categorization.

See Docket 5-BS-228 Tr. 1-39, p. 32, l. 19 – p. 33, l. 18.

FERC's 18 CFR §388.113(g)(5) is inapplicable in this situation, as this is not a request to FERC. Further, if it were a FERC proceeding, analogous to this PSC Docket, that request would be governed by the paragraph directly above Applicant's citation, where Intervenor simply execute a protective agreement and receive the requested information:

(4) Any person who is a participant in a proceeding or has filed a motion to intervene or notice of intervention in a proceeding may make a written request to the filer for a copy of the complete CEII version of the document without following the procedures outlined in paragraph (g)(5) of this section. The request must include an executed copy of the applicable protective agreement and a statement of the person's right to party or participant status or a copy of the person's motion to intervene or notice of intervention. Any person may file an objection to the proposed form of protective agreement. A filer, or any other person, may file an objection to disclosure, generally or to a particular person or persons who have sought intervention. If no objection to disclosure is filed, the filer must provide a copy of the complete, non-public document to the requesting person within five business days after receipt of the written request that is accompanied by an executed copy of the protective agreement. If an objection to disclosure is filed, the filer shall not provide the non-public document to the person or class of persons identified in the objection until ordered by the Commission or a decisional authority.

18 CFR §388.113(g)(4).

If Applicant's misstatements and misrepresentations of CEII regulation and FERC procedure aren't enough, consider that the Applicants also misrepresent the Intervenor Data Requests, claiming Jewell Jenkins Intervenor has requested they create narrative reports when there was no such request to create any report. That is obvious from a glance at the Data Request – a simple request for narrative reports.<sup>2</sup> If there was a question, Applicants need only ask. They did not.

Jewell Jenkins Intervenor's request for a Confidentiality Agreement and release of the documents is for release not to the Jenkins Jewell Intervenor principals but to their attorney, one

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<sup>2</sup> Attached as Exhibit A is the Data Request at issue. The Data Request was specifically to not include PROMOD modeling but to include narrative reports. If there are none, there are none. There was no request to "create."

with 23 years' experience in utility regulatory dockets and who is familiar with the responsibilities and handling of confidential and CEII information. Because of this writer's experience, CEII designation was raised at the Prehearing Conference, with the ALJ noting at the time:

But I know that – so I would say as long as you have a confidentiality agreement and you meet the standards of that agreement and the – then information can be shared.

Docket 5-SB-228, Tr. 1-39, p. 34, l. 3-6; see also CEII discussion, Id., p. 32-38. At the November Prehearing Conference, Mr. Jackson stated, “I am not aware that there is any CEII confidential information... in this docket.” Id, p. 34, l. 10-17. However, there are CEII designated filings.<sup>3</sup>

The information Applicants are seeking to protect is filed with the Wisconsin Public Service Commission, not FERC, and while perhaps confidential, filing information labeled as “CEII” with the Wisconsin Public Service Commission does not mean that information is appropriately designated CEII, which is a designation for FERC filed information only.

It gets worse. Applicants state in their Motion:

Because of its sensitivity, persons seeking CEII information must follow special procedures and be verified by Federal Energy Regulatory Commission staff not to pose a security risk. 18 CFR §388.11(g)(5). To the applicants' knowledge, the Jewell/Jinkins Intervenors' attorney does not have this certification.

Applicant Motion, p, 2-3. In these past 9-11 days on which CEII was founded, and of frequent domestic terrorist attacks and fear-mongering, Applicants' raising the specter of Jewell Jinkins Intervenors attorney as a potential “security risk” goes too far – it's offensive. And for Applicants' edification, FERC has indeed found that Overland is a “legitimate requester” and

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<sup>3</sup> See 3 CEII filings months before Prehearing Conference: ERF #[345803](#), [JK-2.02 CONFIDENTIAL - CEII CD - Blue Form #27602 \(REDACTED COPY\)](#) filed 7/3/2018; ERF #346523, [JK-3.01 CONFIDENTIAL CD- CEII Blue form #27619 \(REDACTED COPY\)](#) filed 7/17/2018; ERF [3349288](#), [JK-04.03 CONFIDENTIAL Sup 1 - blue form 27620 - 1 CD - CEII \(REDACTED COPY\)](#)

recipient of FERC CEII information. Attached as Exhibit B is a letter from FERC stating, on request for CEII information, that:

By letter dated April 11, 2017, the Commission issued a finding that you are a legitimate requester with a need for the information. In accordance with 18 C.F.R. §388.112(e), the enclosed DVD contains the information requested and is released to you subject to the non-disclosure agreement executed by you concerning this matter.

Affidavit of Overland, Exhibit B. Attached also is the executed FERC Critical Energy/Electric Infrastructure Information General Non-Disclosure Agreement. Affidavit of Overland, Exhibit C – FERC CEII NDA.

Not only has Overland been declared a “legitimate requester,” and has executed a CEII NDA with FERC and received information, but FERC staff clearly stated FERC CEII policy:

Per our discussion I clarified that the Federal Energy Regulatory Commission’s (FERC) regulations regarding Critical Energy Infrastructure Information (CEII) are only applicable to CEII material that is in FERC’s possession.

The author of CEII material is authorized to make an independent determination regarding the release or review of their own CEII material. No interaction or approval is required from FERC regarding this matter.

Ex. D, FERC – Johnson email, 3/15/2017.

Again, the requested information is not in FERC’s possession. It is information in Applicants’ possession and on file at the Wisconsin Public Service Commission.

The Applicants have chosen to file this Motion and withhold the requested Confidentiality/Non-Disclosure Agreement and resist disclosure of the information , which is a delay of administrative process, a process that Applicants were bent on rushing through when discussing schedule at the Prehearing Conference. Continued delay may well result in an Intervenor Motion and request for extension of time due to that Applicant delay. Time spent with these Motions is time not spent on the docket. Applicants do make a legitimate request for a

pause while the Motion for Interlocutory Review is pending, but the legitimacy of that request is dependent on the legitimacy of that Motion. That will be addressed in a separate filing.

For the above reasons, Jewell Jenkins Intervenors respectfully request that the Applicants' Motion for Protective Order be denied and that they be ordered to provide the confidentiality agreement and the information requested.

Dated this 15h day of December, 2018.



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Carol A. Overland      MN Lic. 254617  
Attorney for Jewell Jenkins Intervenors  
Legalelectric/Overland Law Office  
1110 West Avenue  
Red Wing, MN 55066  
(612) 227-8638  
overland@legalelectric.org

**BEFORE THE**  
**PUBLIC SERVICE COMMISSION OF WISCONSIN**

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Joint Application of Madison Gas and Electric  
Company and Wisconsin Public Service Corporation  
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5-BS-228

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**JEWELL JINKINS INTERVENORS**  
**AFFIDAVIT OF CAROL A. OVERLAND**

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STATE OF MINNESOTA     )  
                                          ) ss.  
COUNTY OF GOODHUE     )

I, Carol A. Overland, upon affirmation, state and depose as follows:

1. I am an attorney licensed in good standing in the State of Minnesota, Lic. No. 254617.
2. I am representing Jewell Jenkins Intervenors in the above-captioned docket and in two other related dockets (9697-CE-100 and 9697-CE-101), administrative proceedings before the Wisconsin Public Service Commission.
3. Applicants in the above-captioned docket have filed a Motion for Protective Order, dated December 12, 2018.
4. Attached as Exhibit A is a true and correct copy of Data Requests #105 to Applicants WPS and MGE, referred to in their Motion, generally, and specifically in footnote 1, p. 2 and footnote 2, p. 3.
5. Attached as Exhibit B is a true and correct copy of a letter dated April 16, 2017, from Leonard M. Tao, Director of FERC's Office of External Affairs, with enclosed CEII information, noting a "finding that you are a legitimate requester with a need for the information."
6. Attached as Exhibit C is a true and correct copy of a Critical Energy/Electric Infrastructure Information General Non-Disclosure Agreement, requesting the MISO Transmission Map (MISO Annual Form 715 submittal), which would provide both

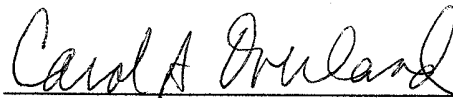


information and open the door to attendance at the MISO meetings in St. Paul, access to which MISO was improperly prohibiting me from attending.

7. Attached as Exhibit D is a pdf of an email from Toyia Johnson, FOIA Public Liaison, Office of External Affairs, FERC, explaining FERC regulations and policy regarding CEII, stating that "No interaction or approval is required from FERC regarding this matter. If any reader has questions about FERC's CEII regulations and police, her contact information and that of FERC's CEII legal counsel is shown.

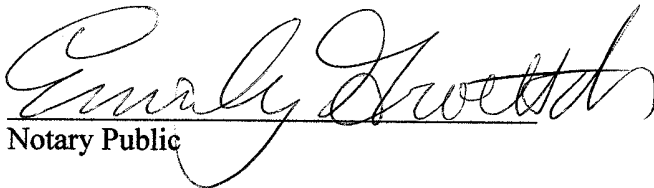
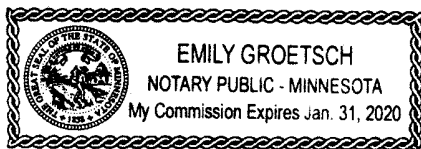
Further your affiant sayeth naught.

Dated: December 15, 2018



Carol A. Overland MN Lic. No. 254617  
Legalelectric  
1110 West Avenue  
Red Wing, MN 55066  
(612) 227-8638  
overland@legalelectric.org

Signed and sworn to before me this  
15<sup>th</sup> day of December, 2018

  
Notary Public

**LEGALECTRIC**  
1110 WEST AVENUE  
RED WING, MN 55066  
(612) 227-8638  
OVERLAND@LEGALECTRIC.ORG

**Badger Hollow Solar Project - Data Request #1-5 to Applicants WPS and MGE**

PSC Docket Number: 5-BS-228

Request Date: December 6, 2018

Requested From: Bradley Jackson and Joe Wilson, for WPSC; and Bryan Kleinmaier, for MGE

Party Requesting Information: Carol A. Overland for Jewell Jinkins Intervenors

*If you feel your responses are trade secret or privileged, please indicate this on your response.*

Request No.	Solar Project CA
1	<b>Please provide Confidentiality Agreement for release of information to Carol A. Overland (only), attorney for Jewell Jinkins Intervenors, ASAP (Jewell Jinkins Intervenors shall not receive confidential information.).</b>
2.	Please provide confidential copy of Solar Project CA – Appendix A – WPS Need and Tech Selection <a href="#">PSC REF#: 343711</a> (Confidential)
3.	Please provide confidential copy of Appendix B – MGE Electric Supply Needs and Analysis Report <a href="#">PSC REF#: 343702</a> (Confidential)
4.	Please provide confidential copy of Solar Project CA – Appendix C – Summary of Financial Analysis <a href="#">PSC REF#: 343614</a> (Confidential)
5.	Please provide all other confidential and CEII documents shown in ERF record for this docket (5-BS-228), including responses to others' Data Requests, with the exception of PROMOD modeling or other modeling, but including <u>narrative reports</u> regarding PROMOD or other modeling. (Jewell Jinkins Intervenors have no interest in getting into licensing issues and have no ability to utilize PROMOD data!)

These requests are continuing, and if new or additional information is discovered, please supplement responses as soon as possible. Electronic format preferred, via email or CD/flash drive.

Response by: \_\_\_\_\_

List sources of information: \_\_\_\_\_

Title: \_\_\_\_\_

Federal Energy Regulatory Commission  
Washington, DC 20426

APR 18 2017

Letter of Release,  
Re: CEII No. CE17-058

**VIA CERTIFIED MAIL**

Carol Overland  
Legalelectric—Overland Law Office  
1110 West Avenue  
Red Wing, MN 55066  
[overland@legalelectric.org](mailto:overland@legalelectric.org)

Dear Ms. Overland:

This is in response to the March 15, 2017 request you submitted for certain information under the Federal Energy Regulatory Commission's (Commission or FERC) Critical Energy Infrastructure Information (CEII) regulations at 18 C.F.R. § 388.113(d)(4) (2016). Specifically, you requested the FERC Form No. 715, *Annual Transmission Plan and Evaluation Report*, submitted by the Midcontinent Independent System Operator, Inc. (MISO), of the North American Electric Reliability Corporation.

By letter dated April 11, 2017, the Commission issued a finding that you are a legitimate requester with a need for the information. In accordance with 18 C.F.R. § 388.112(e), the enclosed DVD contains the information requested and is released to you subject to the non-disclosure agreement executed by you concerning this matter.

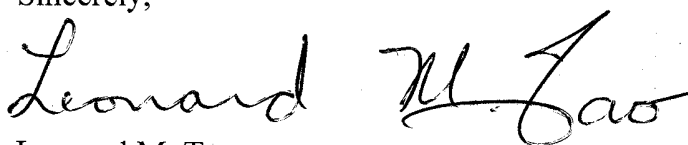
As provided by 18 C.F.R. § 388.113(d)(4)(iv) of the Commission's regulations, you may appeal this determination pursuant to 18 C.F.R. § 388.110. Any appeal from this determination must be filed within 45 days of the date of this letter. The appeal must be in writing, addressed to David L. Morenoff, General Counsel, Federal Energy Regulatory

CEII No. CE17-058

- 2 -

Commission, 888 First Street, NE, Washington, DC 20426. Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

Sincerely,

A handwritten signature in cursive script that reads "Leonard M. Tao". The signature is written in dark ink and is positioned above the printed name and title.

Leonard M. Tao  
Director  
Office of External Affairs

Enclosures (1)

# **CRITICAL ENERGY/ ELECTRIC INFRASTRUCTURE INFORMATION**

## **GENERAL NON-DISCLOSURE AGREEMENT**

1. These provisions govern the use of Critical Energy / Electric Infrastructure Information (CEII) provided to an individual who files a request for access to CEII pursuant to 18 C.F.R. § 388.113.
2. Definitions - For purposes of these provisions:
  - a. The term "CEII Coordinator" refers to the Federal Energy Regulatory Commission (Commission) official designated as the CEII Coordinator, with delegated authority under 18 C.F.R. § 375.313 to make determinations with respect to requests for CEII and make determinations as to whether particular information fits within the definition of CEII.
  - b. The terms "non-disclosure agreement" and "NDA" mean this agreement by which requesters certify their understanding that access to CEII is provided pursuant to the terms and restrictions of these provisions, and that such requesters have read the provisions and agree to be bound by them.
  - c. The term "Recipient" means someone who is approved to receive CEII in accordance with the provisions of 18 C.F.R. § 388.113.
3. A Recipient may only discuss CEII with another authorized Recipient of the identical CEII. A Recipient may check with the CEII Coordinator to determine whether another individual is an authorized Recipient of the identical CEII.
4. If any Recipient submits information to the Commission that includes CEII obtained under these provisions, the portions of the filing containing CEII must be submitted in accordance with 18 C.F.R. § 388.113(d)(1).
5. A Recipient of CEII may use CEII as foundation for advice provided to others, but may not disclose CEII to another individual unless that individual is an authorized Recipient of the identical CEII.
6. A Recipient may only use CEII for the purpose for which it was requested and must not use CEII for an illegal or illegitimate purpose.

Initials: CAO  
Date: 3/15/2017

7. All CEII shall be maintained by the Recipient in a secure place in a manner that would prevent unauthorized access. Access to those materials shall be limited to other authorized Recipients of the identical material. Recipients may make copies of CEII, but such copies become CEII and are subject to these same restrictions. Recipients may make notes of CEII, which shall be treated as CEII, if they contain CEII.
8. CEII provided pursuant to the agreement is not subject to release under either the Freedom of Information Act or other Sunshine Laws.
9. Recipients must return CEII to the CEII Coordinator or destroy CEII within fifteen days of a written request by the CEII Coordinator to do so, except that CEII notes may be retained in accordance with Paragraph 7, above. Within such time period, each Recipient, if requested to do so, shall also submit to the CEII Coordinator an affidavit stating that, to the best of his or her knowledge, all CEII has been returned or destroyed and that CEII notes have either been returned, destroyed or are being maintained by Recipient in accordance with Paragraph 7.
10. The Recipient is obligated to protect the CEII, even after designation period has lapsed, until the CEII Coordinator determines the information should no longer be designated as CEII under 18 C.F.R. § 388.113(e)(2), or a court of competent jurisdiction finds that the information does not qualify as CEII.
11. The recipient must promptly notify the Commission if any conditions, such as a change in employment, have occurred.
12. The Commission may audit the Recipient's compliance with this non-disclosure agreement.
13. The Recipient is required to promptly report all unauthorized disclosures of CEII to the Commission.
14. Violation of this non-disclosure agreement may result in criminal or civil sanctions against the Recipient.

Initials: CHO  
Date: 3/15/2017

15. I hereby certify my understanding that access to CEII is provided to me pursuant to the terms and restrictions of the above provisions, that I have been given a copy of and have read the provisions, and that I agree to be bound by them. I understand that the contents of the CEII, any notes or other memoranda, or any other form of information that copies or discloses CEII shall not be disclosed to anyone other than another person who has been granted access to these same materials by the Commission. I acknowledge that a violation of this agreement may result in criminal or civil sanctions, including the suspension of my ability to appear before the Commission pursuant to 18 C.F.R. § 385.2102.

16. I am requesting the MISO Transmission Map (MISO Annual Form 715 submittal).

By: Carol A Overland  
Signature

Print Name: Carol A. Overland

Title: Attorney

Representing: Self - legal advice

Date: 3/15/2017

On 3/15/2017 3:37 PM, FOIA-CEII wrote:

Hi Carol

It was very nice talking to you today. Per our discussion I clarified that the Federal Energy Regulatory Commission's (FERC) regulations regarding Critical Energy Infrastructure Information (CEII) are only applicable to CEII material that is in FERC's possession.

The author of CEII material is authorized to make an independent determination regarding the release or review of their own CEII material. No interaction or approval is required from FERC regarding this matter.

If you have additional questions or need further assistance, please contact the FOIA/CEII service center at [foia-ceii@ferc.gov](mailto:foia-ceii@ferc.gov) / (202) 502-6088 or CEII legal counsel, Kathryn Allen [\(202\) 502-8585](tel:(202)502-8585) or via email at [Kathryn.Allen@ferc.gov](mailto:Kathryn.Allen@ferc.gov).

Sincerely,

*Toyia Johnson*

Toyia Johnson

[Federal Energy Regulatory Commission](#)

Office of External Affairs

FOIA Public Liaison

Phone: [\(202\) 502-8389](tel:(202)502-8389) / Toll Free: [1-866-208-3372](tel:1-866-208-3372)

Email: [foia-ceii@ferc.gov](mailto:foia-ceii@ferc.gov)

**Online FOIA & CEII request forms:** <http://www.ferc.gov/legal/ceii-foia.asp>

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