

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht Chair
Jay Scott Emler
Pat Apple

In the Matter of a General Investigation of)
Atmos Energy to Show Cause Why this)
Commission Should Not Impose Penalties or) Docket No. 14-ATMG-508-SHO
Sanctions for Violation of the Natural Gas)
Pipeline Safety Statutes, Rules, and Regulations)

NOTICE OF FILING OF REPORT AND RECOMMENDATION

Staff hereby files a Report and Recommendation, attached hereto and made a part hereof by reference. The Report and Recommendation provides analysis of Atmos Energy's failure to comply with the Kansas Pipeline Safety Statutes, Rules, and Regulations and makes recommendations.


Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert A. Fox".

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**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Leo Haynos, Chief of Gas Operation and Pipeline Safety 
Jeff McClanahan, Director of Utilities

DATE: April 29, 2014

DATE SUBMITTED TO LEGAL: MAY 2 2014

DATE SUBMITTED TO COMMISSIONERS: _____

DOCKET NUMBER: 14-ATMG-508-SHO

SUBJECT: Recommendation for Atmos Energy to Show Cause why the Commission Should Not Impose Penalties or Sanctions for Violation of the Natural Gas Pipeline Safety Statutes, Rules, and Regulations.

EXECUTIVE SUMMARY:

In the recent Docket 14-ATMG-221-TAR (14-221 Docket), Atmos Energy (Atmos) filed an Application to recover certain capital costs for infrastructure improvements through a Gas Safety and Reliability Surcharge (GSRS). In its Application, Atmos included 17 projects related to replacing aboveground pipe that was located in urban areas (Class 2-3). The Application also included eight projects related to modification of pressure regulator stations to meet pipeline safety code requirements. A description of each project contained in the GSRS filing is found in Attachment 1. In the Report and Recommendation filed in the 14-221 Docket, Staff noted the pipeline safety requirement pertaining to placing all pipelines below ground has been in effect since 1990 while the requirement related to the pressure regulation stations has been in effect since 1970. Because Atmos has known (or should have known) the projects were out of compliance with pipeline safety regulations for the last 24 years, Staff is recommending the Commission require Atmos to show cause as to why the Commission should not impose a \$72,000 civil penalty on Atmos for its failure to comply with pipeline safety regulations in a timely manner. For the above projects, Staff considers each pressure regulator

station that was improperly constructed after 1970 to be a single violation. The recommended penalty calculation for each count is shown on Attachment 2. Staff recommends the Commission consider the 17 projects related to aboveground pipe as a single violation of pipeline safety regulations. Staff's recommended penalty calculation for the aboveground pipe projects is shown in Attachment 3.

BACKGROUND:

Pressure Regulator Stations:

In 1971, Kansas adopted the United States Department of Transportation pipeline safety regulations found in 49 CFR Part 192. Subpart D of this regulation prescribes minimum requirements for the design and installation of pipeline facilities. Within Subpart D are requirements that specify the design configuration of pressure regulator stations controlling the flow and pressure in a gas distribution system.¹ Pressure regulators play a critical role in a gas distribution system by reducing the pressure found on transmission pipelines eventually to the pressure found in appliances. The distribution pressure regulator stations are typically located aboveground within the pipeline right-of-way. Because of their location, the stations are known to be subject to damage from vehicle accidents. In order to allow gas flow to be shut off in such an emergency where the operator is unable to access the station piping, pipeline safety code requires a regulator station to have at least one valve installed upstream at some distance from the station. An example of a pressure regulator station involved in such an accident is shown in Attachment 4. Although the station is not an Atmos facility, it demonstrates the reason for the remote valves.

For the eight pressure regulator stations described in Attachment 1, Staff believes that six were constructed after the construction requirements went into effect in 1970. It is Staff's understanding the upstream valves for the stations in question were within two feet of the pressure regulator which would not meet the requirement to allow an operator to use the valve without accessing the regulator station. Pictures of some of the regulator stations taken from Google Earth maps (Attachment 5) show the proximity of the stations to traffic patterns. It is Staff's belief the assets described in Attachment 1 were constructed by Atmos predecessor companies. Atmos acquired the assets of Union Gas and Greeley Gas through a series of acquisitions dating back to 1990. At the time of purchase or shortly thereafter, Staff contends that Atmos or its predecessor company, United Cities, should have recognized the pressure regulator stations relied upon to protect its customers did not meet pipeline safety regulatory requirements.

Aboveground Pipelines in Urban Areas:

Prior to pipeline safety regulations becoming effective in 1970, many pipelines were constructed by simply stringing the pipeline over the top of the ground and connecting customers. There is a significant amount of pipeline constructed in this manner in rural Kansas that is still in service. Aboveground pipelines in Kansas are generally found in

¹ 49 CFR Part 192.181(b): Each regulator station controlling the flow or pressure of gas in a distribution system must have a valve installed on the inlet piping at a distance from the regulator station sufficient to permit the operation of the valve during an emergency that might preclude access to the station.

areas where excavation would involve cutting through layers of rock near the surface which would make excavation an expensive proposition. Federal pipeline safety code does not prohibit the installation of steel pipelines aboveground provided they are protected from outside forces. However, in 1988, the Commission adopted regulations requiring *all* pipelines constructed after May 1, 1989 to be placed underground. In addition, the Commission adopted regulations that required *any* aboveground pipeline main or transmission line, regardless of the date of construction, to be placed underground by 1995 if it was located in an urban area. The purpose of the Kansas regulation being more stringent than the federal regulation is to clarify how pipelines are to be protected from outside forces. The Kansas changes recognized the safety risks are lower in unpopulated areas and only required pipelines in relatively dense populated areas to be placed underground in order to avoid damage from outside forces, such as vehicles and mowers which have a history of damaging these types of pipelines. An example of an Atmos aboveground gas main in a Class 2 location is provided in Attachment 6.² As in the case of the pressure regulator stations discussed earlier, Atmos acquired a significant amount of aboveground pipeline when it acquired the assets of Union Gas and Greeley Gas Company. In 1993, United Cities Gas (an Atmos predecessor company) applied for a waiver³ from this regulation to extend the compliance deadline until 1999 to bury or replace the aboveground pipelines identified in the Docket. United Cities stated in that Docket that all aboveground pipe in its system would be replaced in that time period. Regarding the schedule for replacing the piping, the Commission's final Order stated,

"Any departure from this schedule without Commission approval will be considered significant deliberate non-compliance of the pipeline safety regulations".

In its response to Staff's most recent notice of probable noncompliance regarding this matter (See Attachment 6), Atmos states the piping at issue in the United Cities Docket was replaced as ordered. In 2007, 2008, and 2010, Staff issued notices of probable noncompliance to Atmos regarding sections of aboveground pipe identified during routine inspections. In all cases, Atmos assured Staff the section of piping of concern would be replaced or buried. However, as evident from the recent GSRS filings, there remain several miles of aboveground piping in Class 2 and Class 3 locations.⁴ It appears to Staff that much of the piping later replaced under GSRS tariffs was originally operated by Union Gas and United Cities. Attachment 7 provides Staff's estimate of a timeline of events regarding aboveground piping for Atmos companies.

ANALYSIS:

Pressure Regulator Stations:

As part of the discovery process in this matter, Staff requested copies of the original installation records for the 11 pressure regulator stations listed in the 14-221 Docket. Atmos was able to provide original installation records for six of the stations in question.

² Photograph taken by Staff during a routine pipeline safety inspection in 2008.

³ Docket No. 189,146-U or 94-UNCG-158-MIS

⁴ Class 2 location is defined as having between 10 and 46 buildings along a given mile of pipeline; a Class 3 location is defined as having more than 46 buildings along a given mile of pipeline.

Based on the date of installation, Staff believes five of the six were constructed by Union Gas and one was constructed by United Cities. By researching its records, Atmos has confirmed that six stations were constructed without regard to pipeline safety regulation 49 CFR Part 192.181(b), as adopted by K.A.R. 82-11-4, which was in effect at the time of construction. Atmos indicates there may be many more regulator stations throughout Kansas that do not meet the requirement.

In all cases, Staff contends Atmos or its predecessor companies should have been aware of the pipeline safety requirements to have installed valves at a location that was remote from the pressure regulation station. Furthermore, pipeline safety code requires Atmos to inspect pressure regulator stations at least once per year.⁵ Atmos is also required to establish and follow procedures to identify and address unusual operating conditions during its inspections.⁶ Although records for these facilities may have become lost or confused through the process of two mergers, Atmos retains the responsibility of assuring its facilities operate in compliance with pipeline safety regulations. In fact, Atmos asserted in its merger application with United Cities that, "...the transaction will allow the existing high quality of service, especially in the areas of public safety, provided to United Cities customers to be maintained and improved."⁷ Although the improperly constructed regulator stations appear to be a legacy of the operations of former companies, it is Staff's opinion that Atmos's failure to recognize this error does not meet the ongoing regulatory requirement to inspect facilities for unusual operating conditions. By delaying the correction of this violation of pipeline safety regulations until the relatively recent enactment of the GSRS statutes in 2006, Staff contends Atmos received some financial benefit by using the GSRS surcharge mechanism and avoiding the regulatory lag typically associated with public utility capital investments. Based on this analysis, Staff recommends the Commission impose a penalty of \$6,000 for each regulator station determined to be constructed in violation of pipeline safety regulations. The rationale for the proposed penalty is itemized in Attachment 2.

Aboveground Pipelines in Urban Areas:

As noted earlier, the Atmos acquisitions of United Cities and Greeley Gas Kansas assets resulted in Atmos taking over the operation of aboveground piping in many urban areas across Kansas. Although Atmos and its predecessor companies were aware of the requirement to place all gas mains located in urban areas below ground after 1989, Atmos continued to operate aboveground pipelines with minimal effort to address the violation of Kansas regulations. In its most recent response to Staff's Notice of Probable Noncompliance in this matter, Atmos states that it realized the original list of projects contained in the United Cities waiver request⁸ did not contain all of the aboveground piping in the system. Once that fact was recognized, Atmos began a replacement program to replace the piping and filing for GSRS recovery of the projects.

Considering Atmos is required to patrol and leak survey its mains on a regular basis, Staff contends the existence of aboveground pipe was readily apparent to Atmos. Although Atmos states a replacement program is now underway, Staff believes Atmos has not

⁵ 49 C.F.R. Part 192.739 as adopted by K.A.R. 82-11-4

⁶ 49 C.F.R. Part 192.613 as adopted by K.A.R. 82-11-4

⁷ Para. 19 Joint Application Docket 97-ATMG-081-MER

⁸ 94-UNCG-158-MIS

acted in good faith to comply with this regulation over the last 24 years with approximately 17% (4.5 miles) of the identified pipe remaining to be buried as of 2014. Staff notes the United Cities waiver request asked for a time extension to address all of the aboveground pipe in its system. The request stated the desire to avoid rate shock to customers as one of the reasons for the request.⁹ Ironically, Atmos has delayed replacement of aboveground piping until the cost of replacement could be recovered directly from the customers through a surcharge. Over the last three GSRS tariffs filed by Atmos, the applications have included 51 projects for replacing aboveground piping in Class 2-3 locations. The projects replaced 21 miles of piping for a total cost of \$3.07 million.

As in the case of the pressure regulator stations, Staff contends the delay in replacing the aboveground pipelines until the relatively recent enactment of the GSRS statutes in 2006 has provided Atmos a financial benefit by avoiding the regulatory lag typically associated with public utility capital investments. Based on the above analysis, Staff recommends the Commission impose a penalty of \$12,000 for failing to comply with K.A.R. 82-11-4(g)(6) in a timely manner. The rationale for the proposed penalty is itemized in Attachment 3.

RECOMMENDATION:

Staff recommends the Commission require Atmos to show cause why it should not be assessed a penalty in the amount of \$72,000 for failure to comply with Kansas pipeline safety regulations. The proposed penalty amount is calculated as \$6,000 for each of 6 pressure regulator stations that were not installed according to pipeline safety standards. The remaining \$36,000 penalty amount is proposed for Atmos's failing to place all pipelines in Class 2-3 locations below ground by 1999.

⁹ Docket 94-UNCG-158-MIS: Letter from United Cities Gas Company to Glenn Smith dated September 9, 1993

ATTACHMENT 1

Pressure Regulator Stations Locations

| | Location | Date of Installation |
|---|---|----------------------|
| 1 | 126 th and Riverview, Bonner Springs | September 1989 |
| 2 | 2 nd and Walnut, Bonner Springs | January 1994 |
| 3 | Morse and Neconi, Bonner Springs | May 1974 |
| 4 | College and Westgate, Overland Park | July 1981 |
| 5 | College and Oakmont, Overland Park | October 1977 |
| 6 | College and Westgate, east, Overland Park | September 1974 |
| 7 | Sheidley and Pine, Bonner Springs | Prior to 1958 |
| 8 | 2 nd and Neconi, Bonner Springs | Prior to 1958 |

ATTACHMENT 2

Penalty Calculation for Failure to construct Pressure Regulator Stations in Accordance with 49 CFR Part 192.181(b) as adopted by K.A.R. 82-11-4

Penalty Categories

| | Base penalty | Yes/No | Calculated Base Penalty | Explanation (if applicable) |
|---|--------------|--------|-------------------------|-----------------------------|
| Procedure was inadequate | \$100.00 | | \$0.00 | |
| Failure to implement/perform requirement | \$500.00 | yes | \$500.00 | |
| Failure to maintain a record supporting the requirement | \$250.00 | | \$0.00 | |
| Failure to be properly qualified to perform requirement | \$250.00 | | \$0.00 | |
| | | | \$500.00 | Total Base Penalty |

Aggravating Circumstances

| Description | Multiplier | Yes/No | Calculated Multiplier | Explanation (if applicable) |
|---|------------|--------|-----------------------|---|
| <i>Select ONLY the most serious of the three circumstances below</i> | | | | |
| Violation caused a reportable incident | 5 | | 1 | |
| Violation caused injury | 6 | | 1 | |
| Violation caused fatality | 10 | | 1 | |
| Property damage > \$500,000 | 5 | | 1 | |
| Violation occurred in class 3 location | 2 | yes | 2 | 192.181(b) requires regulator station to have a valve installed on the inlet piping at a distance from the regulator station sufficient to permit the operation of the valve during an emergency that might preclude access to the station. 11 regulator stations with improper spacing on valves. All built after code went into effect. |
| Violation occurred in class 4 location | 3 | | 1 | |
| Affected a facility where customers have limited mobility (difficult to evacuate) | 4 | | 1 | |
| Repeat violation within past 5 years | 2 | | 1 | |
| PIR greater than 20 feet OR pressure greater than 100 psi | 2 | | 1 | |
| Economic benefit gained from the violation | 3 | yes | 3 | Delaying costs of installation for almost 40 years in some cases; Recovering costs of installation through GSRS rather than performing work prior to GSRS enactment. |
| No response to PNC | 2 | | 1 | |
| Violation caused disruption of service | 2 | | 1 | |
| Violation caused mass service outage (>100 customers) | 3 | | 1 | |
| Violation not promptly corrected | 2 | yes | 2 | Available records indicate regulator stations constructed in: 1989; 1994; 1974; 1977; 1974. |
| No measures taken to prevent recurrence | 2 | | 1 | |
| Operator uncooperative in resolution of the violation | 5 | | 1 | |
| Gross negligence/willful or wanton conduct | 10 | | 1 | |
| | | | 12 | Aggravating Multiplier |
| | | | \$6,000.00 | Total Aggravated Penalty |

Mitigating Circumstances

| Operator Resources (Dist.) | Multiplier | Yes/No | Calculated Multiplier | Explanation (if applicable) |
|---------------------------------------|------------|--------|-----------------------|----------------------------------|
| meters < 250 | 0.25 | | 1 | |
| 250 < meters < 1000 | 0.5 | | 1 | |
| 1000 < meters < 10,000 | 0.75 | | 1 | |
| meters > 10,000 | 1 | | 1 | |
| Operator Resources (Trans.) | | | | |
| throughput < 75 MMCF/YR | 0.25 | | 1 | |
| 75 MMCF/YR < throughput < 150 MMCF/YR | 0.5 | | 1 | |
| throughput > 150 MMCF/YR | 1 | | 1 | |
| | | | 1 | Mitigating Multiplier |
| | | | \$6,000.00 | Final Recommended Penalty Amount |

ATTACHMENT 3

Penalty Calculation for Failure to Place Distribution Mains Underground In Class 2-3 Locations in Accordance with K.A.R. 82-11-4(g)(6)

| <u>Penalty Categories</u> | | | | |
|---|----------------------------|----------------------|---------------------------------------|---|
| | <u>Base penalty</u> | <u>Yes/No</u> | <u>Calculated Base Penalty</u> | <u>Explanation (if applicable)</u> |
| Procedure was inadequate | \$100.00 | | \$0.00 | |
| Failure to implement/performance requirement | \$500.00 | yes | \$500.00 | K.A.R. 82-11-4(g)(6) and Commission Order 94-UNCG-158-MIS |
| Failure to maintain a record supporting the requirement | \$250.00 | | \$0.00 | |
| Failure to be properly qualified to perform requirement | \$250.00 | | \$0.00 | |
| | | | \$500.00 | Total Base Penalty |
| <u>Aggravating Circumstances</u> | | | | |
| <u>Description</u> | <u>Multiplier</u> | <u>Yes/No</u> | <u>Calculated Multiplier</u> | <u>Explanation (if applicable)</u> |
| <i>Select ONLY the most serious of the three circumstances below</i> | | | | |
| Violation caused a reportable incident | 5 | | 1 | |
| Violation caused injury | 6 | | 1 | |
| Violation caused fatality | 10 | | 1 | |
| Property damage > \$500,000 | 5 | | 1 | |
| Violation occurred in class 3 location | 2 | yes | 2 | Increased safety risk to public found in Class 3 locations. |
| Violation occurred in class 4 location | 3 | | 1 | |
| Affected a facility where customers have limited mobility (difficult to evacuate) | 4 | | 1 | |
| Repeat violation within past 5 years | 2 | yes | 2 | Atmos was cited by pipeline safety staff for violations related to aboveground piping in 2007, 2008, and twice in 2009. |
| PIR greater than 20 feet OR pressure greater than 100 psi | 2 | | 1 | |
| Economic benefit gained from the violation | 3 | yes | 3 | Delaying costs of pipe replacement or burying existing pipe since rule became effective in 1989. Recovering costs of installation through GSRS rather than performing work prior to GSRS enactment. |
| No response to PNC | 2 | | 1 | |
| Violation caused disruption of service | 2 | | 1 | |
| Violation caused mass service outage (>100 customers) | 3 | | 1 | |
| Violation not promptly corrected | 2 | yes | 2 | Aboveground pipelines in class 2-3 areas are obvious. Rule went into effect in 1989. Majority of pipe was installed as aboveground pipe; Docket 189,146-U allowed United Cities until the end of 1997 to replace all Class 3 pipe. |
| No measures taken to prevent recurrence | 2 | | 1 | |
| Operator uncooperative in resolution of the violation | 5 | | 1 | |
| Gross negligence/willful or wanton conduct | 3 | yes | 3 | Docket 189,146-U states, "any departure from this schedule without commission approval will be considered significant deliberate non-compliance of the pipeline safety regulations". However, mergers with previous companies mitigate Atmos's complicity in this regard. Multiplier reduced from 10 to 3 in this case. |
| | | | 72 | Aggravating Multiplier |
| | | | \$36,000.00 | Total Aggravated Penalty |
| <u>Mitigating Circumstances</u> | | | | |
| <u>Operator Resources (Dist.)</u> | <u>Multiplier</u> | <u>Yes/No</u> | <u>Calculated Multiplier</u> | <u>Explanation (if applicable)</u> |
| meters < 250 | 0.25 | | 1 | |
| 250 < meters < 1000 | 0.5 | | 1 | |
| 1000 < meters < 10,000 | 0.75 | | 1 | |
| meters > 10,000 | 1 | yes | 1 | Atmos has over 100,000 customers in Kansas |
| <u>Operator Resources (Trans.)</u> | | | | |
| throughput < 75 MMCF/YR | 0.25 | | 1 | |
| 75 MMCF/YR < throughput < 150 MMCF/YR | 0.5 | | 1 | |
| throughput > 150 MMCF/YR | 1 | | 1 | |
| | | | 1 | Mitigating Multiplier |
| | | | \$36,000.00 | Final Recommended Penalty Amount |

Attachment 4
Example of Vehicular Damage to a Pressure Regulator Station



2nd and Neconi, Bonner Springs



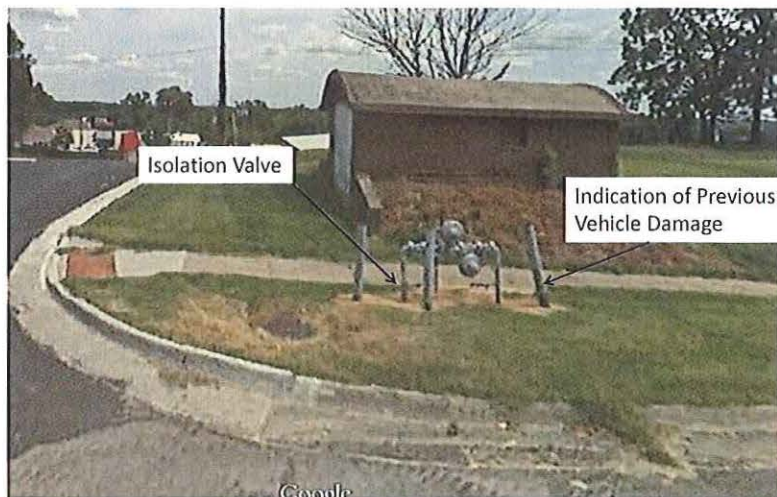
College and Westgate, Overland Park



College and Westgate(east) Overland Park



2nd and Walnut Bonner Springs



Morse and Neconi, Bonner Springs



126th and Riverview, Bonner Springs



Attachment 6
Example of Atmos Above Ground Main
in a Class 2 Location



ATTACHMENT 7

Timeline Associated with Atmos Aboveground Pipelines

Union Gas System

| | |
|---------------|---|
| 1928- | Union Gas system operates as a public utility in Eastern Kansas |
| 1988 | Commission adopts regulation requiring most aboveground piping in Class 2, 3, and 4 locations to be placed underground by 1995. |
| 1990 | United Cities Gas acquires Union Gas system, Docket 90-UNCG-092-COC |
| October 1993 | Commission orders United Cities to replace all aboveground pipelines in Class 2 and Class 3 locations by December 1999, Docket 94-UNCG-158-MIS |
| 1994 | Atmos merges with Greeley Gas and acquires Kansas properties in the vicinity of Herrington Kansas, Docket 94-ATMG-011-MER |
| 1993 | Atmos merges with United Cities Gas, Docket 97-ATMG-081-MER |
| December 1999 | All aboveground pipelines in the United Cities system to be removed in accordance with Docket 94-UNCG-158-MIS |
| 2005 | Pipeline safety staff issues notice of probable noncompliance to Atmos related to aboveground piping in Edwardsville |
| 2006 | Kansas Legislature enacted the Gas System Reliability Surcharge Act (GSRS) |
| 2008 | Pipeline safety staff issues notice of probable noncompliance to Atmos related to aboveground piping in Cottonwood Falls |
| 2009 | Pipeline safety staff issues notice of probable noncompliance to Atmos related to aboveground piping in Neodesha and two separate instances in Coffeyville. |
| December 2009 | Atmos GSRS filing approved recovery of \$181,000 for replacement of 2.7 miles of aboveground pipelines in 15 projects |
| July 2010 | Atmos agrees to not make additional GSRS filings until after next rate case, Docket 10-ATMG-495-RTS |
| August 2012 | Atmos receives approval for new rates, Docket 12-ATMG-564-RTS |
| January 2013 | Atmos GSRS filing approved recovery of \$1.2 million for replacement of 8.7 miles of aboveground pipelines in 19 projects |
| January 2014 | Atmos GSRS filing approved recovery of \$1.7 million for replacement of 9.7 miles of aboveground pipelines in 17 projects |

CERTIFICATE OF SERVICE


14-ATMG-508-SHO

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Report and Recommendation was served by electronic service and a hard copy placed in the United States mail, postage prepaid, on this 5th day of May, 2014, to the following:

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