



SUNFLOWER ELECTRIC POWER CORPORATION

202407011623068047
Filed Date: 07/01/2024
State Corporation Commission
of Kansas

July 1, 2024

Lynn M. Retz
Secretary to the Commission
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604

Re: In the Matter of the Joint Application of Sunflower Electric Power Corporation and Prairie Land Cooperative, Inc., for Approval of the City of Herndon Firm Energy, Capacity, and Load Following Agreement.

Dear Ms. Retz:

Pursuant to K.S.A. 66-1220a and K.A.R. 82-1-221a, Sunflower Electric Power Corporation (“Sunflower”) and Prairie Land Electric Cooperative, Inc. (“Prairie Land”) (collectively Sunflower and Prairie Land, the “Joint Applicants”) hereby respectfully request confidential treatment of certain portions of the Herndon Firm Energy, Capacity, and Load Following Agreement (the “Herndon Agreement”) that is contained in Exhibit A of the above referenced application. Those confidential portions of the Agreement have been redacted. Those redacted portions of the Agreement contain confidential commercial information regarding terms for wholesale electric service to a city. Cities are not subject to exclusive retail service territory requirements, and therefore have a choice regarding from whom they purchase power supply. Further, cities are large load centers. As such, competition for the power supply to cities is high. If the requested confidential information is disclosed, Sunflower and its members could be disadvantaged in future negotiations with other potential wholesale rate payers, as well as at a disadvantage when competing with other power suppliers for prospective load. In accordance with this confidentiality request, Joint Applicants are filing a public and confidential version of the Agreement.

Sincerely,

James Brungardt
Manager, Regulatory Relations
Sunflower Electric Power Corporation

Elena Larson
Director of Member Services
Prairie Land Electric Cooperative, Inc.

holds a certificate of convenience and necessity from the Commission to transact business as an electric public utility for the generation, transmission and sale of electric energy for resale. Sunflower has the power to generate, furnish, transmit, and sell electric power and energy at wholesale, and, in general, with the power to do all things necessary, useful and appropriate to accomplish such purposes.

2. In addition to the undersigned, copies of pleadings, documents, and correspondence in this docket should be sent to:

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Corporate Paralegal Supervisor
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P.O. Box 1020
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(785) 623-6630
mseib@sunflower.net

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Kirk Girard
CEO
Prairie Land Electric Cooperative, Inc.
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3. Prairie Land is a member of Sunflower, and is a member-owned, certificated electric public utility with its principal place of business located in Norton, Kansas, providing electric service pursuant to customers pursuant to its respective Commission-approved certificate.

4. The Herndon Agreement involves two components: (i) the sale of firm power, energy, and other related services from Prairie Land to Herndon; and (ii) the purchase of capacity by Sunflower from Herndon.

5. Under K.S.A. 66-104d, certain electric cooperatives may elect to be exempt from the jurisdiction, regulation, supervision and control of the Commission. Prairie Land elected to self-regulate under K.S.A. 66-104d by complying with the requirements under

subsection (c) thereof.² However, under K.S.A. 66-104d(f), a sale of power for resale is still subject to Commission jurisdiction, unless that sale is between a cooperative that does not provide retail electric service and an owner of such cooperative. The latter exception does not apply to Prairie Land under the Herndon Agreement, and therefore the sale of power for resale aspect of the Herndon Agreement is subject to the jurisdiction of the Commission.

6. Sunflower has also elected to self-regulate under K.S.A. 66-104d by complying with the requirements under subsection (c) thereof.³ The aspect of the Herndon Agreement involving the purchase of capacity by Sunflower from Herndon is not subject to the jurisdiction of the Commission pursuant to K.S.A. 66-104d(f).

II. HERNDON AGREEMENT

7. Under the Herndon Agreement, Prairie Land agrees to provide on a firm basis, all power, energy, and other related services to Herndon to meet Herndon's power and energy requirements, and Herndon agrees to take from Prairie Land all power, energy, and other related services to meet its power and energy requirements. Sunflower, Prairie Land, and Herndon will operate their electric systems in an interconnected manner and the parties will be responsible for their own expenses and any required construction associated with operation and maintenance of their electric systems.

8. Prairie Land and Herndon have a current agreement for provision of firm power and energy, with a current term that extends to December 31, 2024. The Herndon

² May 29, 2014 Order Affirming Prairie Land Electric Cooperative, Inc.'s Election to Deregulate under Docket No. 14-PLCE-466-DRC.

³ Order Affirming Sunflower Electric Power Corporation's Electric to Deregulate, Docket No. 10-SEPE-072-DRC (filed September 28, 2009).

Agreement provides power and energy at a rate lower than the existing agreement for firm power and energy. While the Herndon Agreement is conditioned upon regulatory approvals in Section 17.2, Section 3.1 provides that a credit will be provided by Prairie Land to Herndon back to service provided as of June 1, 2024 if regulatory approval is not received until a date later than June 1, 2024. Because the firm power and energy rate in the Herndon Agreement is lower than the existing agreement's rate, and the Herndon Agreement provides that Prairie Land will owe a credit back to Herndon for service provided as of June 1, 2024, Prairie Land has begun billing Herndon at the reduced rate under the Herndon Agreement for usage as of June 1, 2024.

9. Under the Herndon Agreement, Herndon will not enter into any new power supply contract with any other entity for power or energy to serve Herndon, but Herndon may make additions of intermittent renewable resources upon one year's notice to Sunflower so long as the total maximum nameplate capacity rating of such resources does not exceed five percent of Herndon's non-coincidental system peak.

10. The rate for firm energy is described in Article VI and Exhibit D of the Herndon Agreement. Any transmission services required for the delivery of firm power and energy under the Herndon Agreement will be provided in accordance with The Southwest Power Pool Inc.'s ("SPP") Open Access Transmission Tariff ("OATT"). Herndon will reimburse Prairie Land and Sunflower for all transmission charges.

11. Joint Applicants submit that the rate for firm power and energy in the Herndon Agreement is the result of arm's-length negotiations between the parties who held equal bargaining strength. The Herndon Agreement is just and reasonable and is necessary to assure continuing, adequate and reliable utility service to Herndon.

WHEREFORE, Joint Applicants pray that the Commission (1) issue an Order approving the Herndon Agreement; and (2) for such other and further relief as the Commission may deem just and proper.

Respectfully submitted,

/s/ Taylor P. Calcara

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**COUNSEL FOR SUNFLOWER
ELECTRIC POWER CORPORATION**

/s/ John F. McClymont

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**COUNSEL FOR PRAIRIE LAND
ELECTRIC COOPERATIVE, INC.**

VERIFICATION

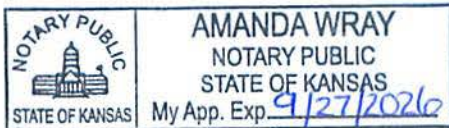
STATE OF KANSAS)
)
COUNTY OF ELLIS) ss:

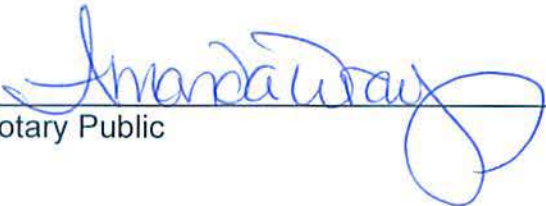
Taylor P. Calcara, of lawful age, being first duly sworn upon his oath, does state:

That he is an attorney for Sunflower Electric Power Corporation; that he has read the above and foregoing Application, and, upon information and belief, states that the matters therein appearing are true and correct.


Taylor P. Calcara

SUBSCRIBED AND SWORN to before me this 27 day of June, 2024.




Notary Public

My Commission expires: 9/27/2026

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF NORTON) **ss:**

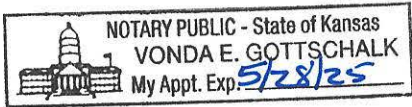
John F. McClymont, of lawful age, being first duly sworn upon his oath, does state:

That he is an attorney for Prairie Land Electric Cooperative, Inc.; that he has read the above and foregoing Application, and, upon information and belief, states that the matters therein appearing are true and correct.



John F. McClymont

SUBSCRIBED AND SWORN to before me this 25 day of June, 2024.





Notary Public

Seal:

My Commission expires: 5/28/2025

Exhibit A

Firm Energy, Capacity, and Load Following Agreement, by and among Prairie Land Electric Cooperative, Inc., Sunflower Electric Power Corporation, and the City of Herndon, Kansas

(Attached)

**CONFIDENTIAL
PURSUANT TO
K.S.A. 66-1220A
AND K.A.R. 82-1-
221A**

FIRM ENERGY, CAPACITY, AND LOAD FOLLOWING AGREEMENT

This FIRM ENERGY, CAPACITY, AND LOAD FOLLOWING AGREEMENT (“Agreement”) is made and entered into this 24 day of June 2024, by and among Prairie Land Electric Cooperative, Inc. (“Prairie Land”), Sunflower Electric Power Corporation, a Kansas corporation (“Sunflower”), and the City of Herndon, Kansas (“City”), each a “Party” and collectively, the “Parties”.

RECITALS

WHEREAS, the Parties hereto are organized and existing under the laws of the State of Kansas;

WHEREAS, Sunflower owns and operates facilities for the generation, transmission, and sale of electric power and energy;

WHEREAS, the City owns and operates facilities for the distribution, and sale of electric power and energy; to serve in contiguous areas in the state of Kansas;

WHEREAS, Prairie Land is a distribution cooperative organized for the purpose of the distribution and sale of electric power and energy to its members and wholesale customers within a certain geographic vicinity; and

WHEREAS, the City is within such geographic vicinity and the facilities of the Parties are so located that they are interconnected;

WHEREAS, the City desires to purchase firm power, energy, and other related services from Prairie Land, and Sunflower desires to purchase capacity from the City; and Prairie Land desires to sell firm power, energy, and other related services to the City;

WHEREAS, Sunflower desires the ability to call on the City’s generating resources, as listed in Exhibit B, for power and energy to serve Sunflower’s Load Responsibility as defined herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto mutually agree as follows:

ARTICLE I DEFINITIONS

1.1 Defined Terms. Unless otherwise defined in this Agreement, initially capitalized terms used herein shall have the following meanings:

“**Accredited Capacity**” shall mean the Accredited Generating Capacity, plus any commitments for firm capacity from electric suppliers under separate contracts now existing or hereinafter created, that is recognized by SPP, NERC, or other responsible entity for purposes of determining compliance with System Capacity Requirement.

“**Accredited Generating Capacity**” shall mean the total capability of electric generating facilities, owned or controlled by the City, if any, that has been tested and accredited per the requirements of the SPP Criteria, and may be used by Sunflower under the provisions of this Agreement. Accredited Generating

Capacity shall not include any generating capacity used by the City as Supplemental Generating Capacity. The total Accredited Generating Capacity for a City will be rounded to the nearest tenth of a megawatt.

“**Agreement**” shall mean this Firm Energy, Capacity, and Load Following Agreement, and the Exhibits and Schedules thereto, as the same may be amended from time to time pursuant hereto.

“**Annual Capacity Purchase Obligation**” is the amount of capacity, rounded to the nearest tenth of a megawatt, included in a City’s Annual Capacity Requirement that is not covered by the City’s Accredited Generating Capacity.

“**Annual Capacity Requirement**” is the amount of capacity, rounded to the nearest tenth of a MW, that the City must cover through Supplemental Generating Capacity or through a capacity purchase.

“**Business Day**” shall mean every day other than a Saturday, Sunday, or any day on which banks in the State of Kansas are permitted or required to remain closed.

“**Capacity Balance**” is Sunflower’s Firm Capacity (MW) as reported on its RAW less Sunflower’s Resource Adequacy Requirement (MW) as reported on its RAW. The Capacity Balance shall be rounded to the nearest tenth of a megawatt.

“**Capacity Balance Projection**” is a projection of Sunflower’s annual Capacity Balance for the years ranging from two years after the projection is provided (i.e. the Target Year) to six years after the projection is provided (e.g., a Capacity Balance Projection provided in 2025 would include annual Capacity Balance totals for 2027, 2028, 2029, 2030 and 2031).

“**Capacity Credit**” is defined in Section 5.1.

“**Capacity Coverage Obligation**” is the amount of capacity, rounded to the nearest tenth of a MW, that CP1 must cover if Sunflower’s Capacity Balance, reported as described in Section 7.7, drops below zero. The Capacity Coverage Obligation shall be the lesser of the inverse of Sunflower’s Capacity Balance or CP1’s Maximum Capacity Obligation.

“**CP1**” shall mean Capacity Pool #1, the group of cities with similar contract terms listed in Exhibit A, as amended from time to time.

“**Charges**” shall mean all amounts owed by a Party for power and energy, or other services or commodities for an applicable period less any credits, refunds, or offsets provided for in this Agreement.

“**Commencement Date**” shall be 0001 hours on June 1, 2024, or the date that this Agreement is approved by the Kansas Corporation Commission, whichever is later.

“**Contract Annual Peak Load**” shall be the Total Annual Peak Load of a City less any Federal Power allocations (as described in Section 6.2). The Contract Annual Peak Load of a City shall be rounded to the nearest tenth of a megawatt.

For a group of Cities, the Contract Annual Peak Load shall be the sum of the Contract Annual Peak Load of each individual City in the group.

“**Contract Year**” shall mean the twelve-month time period starting at 0001 hours on January 1 of each year and ending at 2400 hours on December 31 of the same year; provided, however, the first Contract Year shall begin on the Commencement Date and shall end at 2400 hours on December 31, 2025.

“**Defaulting Party**” is defined in Section 12.1.

“**Event of Default**” is defined in Section 12.1.

“**Federal Power**” is the power and energy provided by Western Area Power Administration, Southwest Power Administration, or any other federal power providers.

“**Firm Energy**” shall mean energy generated by Sunflower generating resources or obtained from market resources available to Sunflower (at Sunflower’s sole discretion) that is provided to Prairie Land, and then delivered to the City on a firm basis. [REDACTED]

“**Good Utility Practice**” is defined in the SPP OATT, as may be amended from time to time.

“**Indemnified Party**” is defined in Section 13.1.

“**Indemnifying Party**” is defined in Section 13.1.

“**Interconnection Point(s)**” is defined in Section 4.1.

“**KMEA**” is defined in Section 6.2.

“**kWh**” shall mean kilowatt hour.

“**Load Following Services**” shall mean the services associated with providing energy in an amount equal to the difference between the City’s hourly energy requirements and the City’s generation, if any, as allowed under Section 6.1, and scheduled energy amounts.

“**Load Ratio Share**” shall mean the percentage calculated by taking the Contract Annual Peak Load of a given city divided by the Contract Annual Peak Load of CP1.

“**Load Responsibility**” shall mean Sunflower’s Native Load requirements and other existing firm power commitments.

“**Maximum Capacity Obligation**” is the Contract Annual Peak Load plus the associated SPP Planning Reserve Margin Requirement (MW). For a group of Cities, the Maximum Capacity Obligation shall be the sum of the Maximum Capacity Obligations of each individual City in the group. After the initial Capacity

Coverage Obligation, the CP1 Maximum Capacity Obligation for subsequent Capacity Coverage Obligations will be reduced by the total capacity covered from the previous Capacity Coverage Obligations. The Maximum Capacity Obligation shall be rounded to the nearest tenth of a megawatt.

“Native Load” shall mean all power and energy required to be served by Sunflower to its members under the member’s wholesale power agreements to meet the member’s retail load.

“NERC” is the North American Electric Reliability Corporation.

“OATT” is defined in Section 2.2.

“Person” means any individual, partnership, joint venture, corporation, trust, limited liability company, unincorporated organization, tribunal, governmental entity, department or agency or other entity or association.

“RAW” shall mean “Resource Adequacy Workbook” and is defined in Attachment AA of the SPP OATT, as may be amended from time to time.

“RTO” is the Regional Transmission Organization.

“SPP” shall mean the Southwest Power Pool, Inc., or the successor thereto, also referred to as the Regional Transmission Organization, which shall be the transmission provider for services provided hereunder.

“SPP Planning Reserve Margin Requirement” is defined in the SPP OATT, as may be amended from time to time.

“Supplemental Generating Capacity” shall be capacity associated with generation resources owned by the City that has been tested per the accreditation requirements of the SPP Criteria in order to meet all or part of a City’s Annual Capacity Requirement. Supplemental Generating Capacity shall not include any generating capacity used by the City as Accredited Generating Capacity. Supplemental Generating Capacity for a City shall be rounded to the nearest tenth of a MW.

“System Capacity Requirement” shall be the Accredited Capacity that is required to be maintained per the SPP criteria, as such requirements may be amended from time to time.

“Target Year” shall mean the year that is two years after the year in which a Capacity Balance Projection is submitted (e.g. a Capacity Balance Projection provided in the fall of 2021 would include a Target Year of 2023.)

“Total Annual Peak Load” for a given year shall be the total hourly load of a City during the hour that is coincident with the annual Sunflower peak load. Total Annual Peak Load shall be rounded to the nearest tenth of a megawatt.

“Uncontrollable Forces” is defined in Section 12.1.

“Prairie Land” shall mean Prairie Land Electric Cooperative, Inc., a distribution cooperative, with its principal offices located near Norton, Kansas, and a member of Sunflower.

Agreement on the Commencement Date shall effect termination of the existing Agreement between the Parties related to this subject matter entered into December 18, 2013, and that this Agreement constitutes the entire agreement of the Parties and supersedes other prior agreements and understandings, both written and oral, between the parties concerning the subject matter of this Agreement. If the Commencement Date of this agreement is after June 1, 2024, the financial terms of this Agreement will be retroactive to service beginning on June 1, 2024. Any billing for service provided between June 1, 2024 and the Commencement Date that is not reflective of the financial terms of this Agreement will be corrected in billing subsequent to the Commencement Date via a credit applied to the City's bill in the amount of the difference between the actual billing and the billing that would have been applied per the terms of this Agreement.

- 3.2 Termination.** No termination of this Agreement shall release any of the Parties from their obligations to pay for any Charges incurred prior to the effective date of such termination or any sale or exchange of power and energy made pursuant to this Agreement, or any legally binding arrangements related thereto, until the satisfaction and discharge of such obligations or as otherwise mutually agreed by the Parties hereto.

ARTICLE IV INTERCONNECTIONS

- 4.1 Interconnection Point(s).** The “Interconnection Point(s)” between Sunflower and the City shall be the point(s) at which the Prairie Land facilities connect to the City-owned facilities that are in place upon execution of this Agreement, as depicted in **Exhibit C**, or at such other mutually agreeable points of interconnect as provided for in Section 4.2. Sunflower and Prairie Land shall not be responsible for demand or energy losses on any facilities beyond the Interconnection Point(s). The City shall be responsible for its own expenses, and for any required construction, associated with operation and maintenance of its electric system up to and including the Interconnection Point(s). Sunflower or Prairie Land shall be responsible for its own expenses, and for any required construction, associated with operation and maintenance of its electric system up to the Interconnection Point(s). The City may contract with Sunflower, Prairie Land or others to perform such construction, operation and maintenance of the interconnection facilities under a separate agreement.
- 4.2 Additional or Expanded Interconnection Point(s).** Additional or expanded Interconnection Point(s) may be established by mutual written agreement of the Parties hereto. However, no Party shall have the obligation to create new, or expand the current Interconnection Point(s). Any additional or expanded Interconnection Point(s) shall be constructed and maintained by the City at its sole expense. **Exhibit C** shall be amended to reflect the additional or expanded Interconnection Point(s).
- 4.3 System Area Control.** Upon the Commencement Date, the City's load will become part of Sunflower's firm load responsibility. The City's Accredited

Capacity, if any, will become part of Sunflower's capacity total for purposes of meeting its System Capacity Responsibility, and Sunflower shall provide the City's ancillary services.

- 4.4 Operations and Communications Procedures.** The City, Prairie Land, and Sunflower shall develop operations and communications procedures to ensure that interactions between the Parties are adequate to support billing procedures and Interconnection Point(s). Such procedures will include provisions for interruptions by Sunflower or Prairie Land in the event of emergency conditions affecting Sunflower or Prairie Land. The Parties shall schedule operating meetings as required to discuss the operations and communications procedures and any other issues that pertain to generation, operations, and/or communications between the Parties during the term of the Agreement.

**ARTICLE V
MUNICIPAL RESOURCES**

5.1

[REDACTED]

5.2

[REDACTED]

- 5.3 Capability and Operational Testing of Accredited Generating Capacity and Supplemental Generating Capacity.** The City shall cause all of its Accredited Generating Capacity and Supplemental Generating Capacity to be tested in accordance with SPP criteria and report the results to Sunflower as soon after completion as possible. Exhibit B shall be revised to conform to the results of such tests. The City must notify Sunflower in advance of such tests, and Sunflower, at its option, may witness the testing. The City shall furnish personnel, fuel, and equipment as necessary to operate the Accredited Generating Capacity and Supplemental Generating Capacity of the City for the annual testing at the City's expense. Sunflower may at its option require additional tests at its expense, and the City shall cooperate with Sunflower in performing such tests.

- 5.4 Failure of the City's Accredited Generating Capacity or Supplemental Generating Capacity.** Should all or any portion of the City's Accredited

Generating Capacity or Supplemental Generating Capacity not be available, the City shall use Good Utility Practice to return such capacity back to available status. If any portion of the total Accredited Generating Capacity as set forth in Exhibit B is not or will not be available for a period exceeding 90 consecutive days, Exhibit B shall be updated to deduct the unavailable Accredited Generating Capacity, and the Capacity Credit shall retroactively be adjusted based on such reduced Accredited Generating Capacity from the date it became unavailable as indicated in the revised Exhibit B. Similarly, any Supplemental Generating Capacity that is not available for a period exceeding 90 consecutive days will be deducted from the City's Supplemental Generating Capacity total, and the City's Annual Capacity Purchase Obligation will retroactively be adjusted accordingly.

- 5.5 Availability of Accredited Generating Capacity and Supplemental Generating Capacity.** The City agrees not to take any portion of the Accredited Generating Capacity or Supplemental Generating Capacity out of service for planned maintenance for a period greater than 24 hours except upon providing prior notice to Sunflower, and receipt of Sunflower's approval, which approval shall not be unreasonably withheld.
- 5.6 Addition or Deletion of Accredited Generating Capacity.** The City may make additions to their Accredited Generating Capacity or Supplemental Generating Capacity with one year's written notice to Sunflower. Any such additions must meet the requirements of the SPP OATT. Sunflower will allow additions if it believes the additions will not harm or impair Sunflower, Prairie Land, or each of their respective systems and equipment economically or operationally. Sunflower's approval shall not be unreasonably withheld. Any additions of Accredited Generating Capacity shall be included in the Capacity Credit upon SPP accreditation. The City may make planned deletions or reductions of Accredited Generating Capacity which shall reduce the City's Capacity Credit on the January 1st after such actual capacity reduction or deletion. Additions and deletions of Supplemental Generating Capacity will be handled per the requirements in Section 7.
- 5.7 Addition of Intermittent Resources.** The City may make additions of intermittent renewable resources, owned by the City, including wind, solar, and other renewable resources with one year's prior written notice to Sunflower. The total maximum nameplate capacity rating of such intermittent renewable resources cannot exceed five percent of the City's non-coincidental system peak. All power and energy produced from such resources shall be used by the City and its customers. Any renewable attributes, such as renewable energy credits, associated with such generation shall be retained by the City. Any Accredited Generating Capacity that may be attributed to such resource shall be for the benefit of Sunflower.
- 5.8 Power Supply Contracts from Other Sources.** The City shall not enter into any new power supply contract with any other entity for power or energy to serve the City or its customers during the term of this contract.

**ARTICLE VI
FIRM ENERGY**

6.1

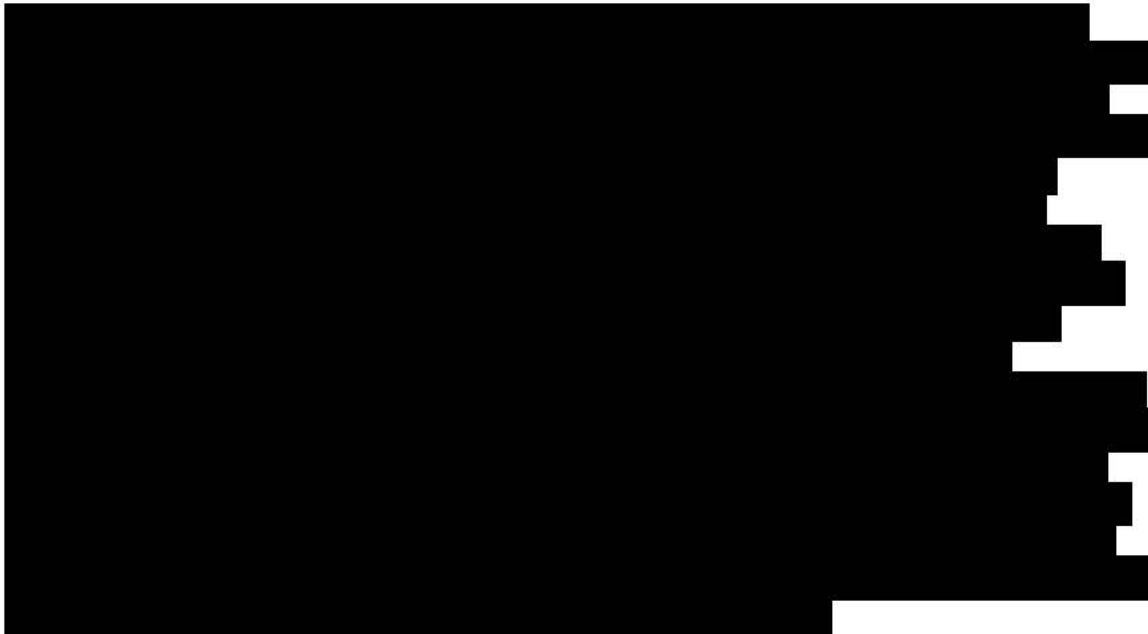
[REDACTED]

6.2

[REDACTED]

6.3

[REDACTED]



ARTICLE VII CAPACITY

- 7.1 **Capacity Responsibility.** In addition to the stated charges for Firm Energy, the City will be responsible, through either a capacity purchase or provision of Supplemental Generating Capacity, for incremental capacity required to cover an amount up to but not exceeding the City's Maximum Capacity Obligation once a Capacity Coverage Obligation is triggered. If the City opts to cover its Annual Capacity Requirement through a capacity purchase, Sunflower will be responsible for the actual purchasing of capacity and the City will be responsible for their allocated portion of the financial commitment associated with the purchase.
- 7.2 **Capacity Responsibility Trigger.** The City's obligation to cover incremental capacity will be triggered by Sunflower's Capacity Balance dropping below zero in the Target Year of any Capacity Balance Projection provided during the Contract Term as further described in Section 7.7. As soon as Sunflower's Capacity Balance drops below zero in a Target Year, the City will be subject to an obligation to meet its Annual Capacity Requirement for the remainder of the Contract Term.
- 7.3 **Capacity Pool.** To spread costs and minimize exposure associated with a capacity obligation among other wholesale customers with a similar contract structure, the City will be included as a member of Capacity Pool #1 (CP1).
- 7.4 **Capacity Requirements.** If Sunflower's Capacity Balance remains greater than or equal to zero in the reporting described in Section 7.7, CP1's Capacity Coverage Obligation will be zero. If Sunflower's Capacity Balance is less than zero, CP1's Capacity Coverage Obligation will be the inverse of Sunflower's

Capacity Balance but not more than CP1's Maximum Capacity Obligation. The City's Annual Capacity Requirement (i.e. the City's portion of the total CP1 Capacity Coverage Obligation) will be the city's Load Ratio Share of the CP1 Capacity Coverage Obligation.

7.5 Options for Meeting Capacity Requirements. Once an Annual Capacity Requirement is triggered, the City will have the option of meeting its obligation through Supplemental Generating Capacity or through a capacity purchase. Supplemental Generating Capacity used to cover an Annual Capacity Requirement must be tested and reported to Sunflower no later than September 30th of the year prior to the Annual Capacity Requirement obligation. Any Supplemental Generating Capacity used to meet an Annual Capacity Requirement obligation will not be eligible for a Capacity Credit. Any portion of a City's Annual Capacity Requirement not covered by Supplemental Generating Capacity will be subject to an Annual Capacity Purchase Obligation. Sunflower will aggregate the Annual Capacity Purchase Obligations of each member of CP1 and procure such capacity for the remainder of the Contract Term.

7.6 Capacity Procurement. Sunflower will make every effort to procure capacity that has similar energy hedging characteristics to a typical municipal generation resource (i.e capacity with a low price but minimal energy hedge value). Once capacity is procured, the purchase price will be locked in for the remainder of the Contract Term. The quantity of capacity assigned to the City at the purchase price will also be locked in unless, in any given year, the City's Contract Annual Peak Load increases by more than 1 MW or the sum of the City's Accredited Generating Capacity and Supplemental Generating Capacity decreases by more than 1 MW. If either of these events occur, the quantity of capacity assigned to the City at the purchase price will increase by the amount of the deviation(s). If additional capacity is required in subsequent years to cover additional purchase obligations, Sunflower will make additional purchases and layer in the costs accordingly. Adjustments to capacity quantity assignments due to deviations of greater than 1 MW in load or capacity will only be applied to the most recent capacity purchase.

7.7 Sunflower Capacity Balance Projection. Sunflower shall provide a Capacity Balance Projection prior to November 1 of each year that includes the Capacity Balance Projection for the Target Year and five subsequent years. The Capacity Balance projected for the Target Year in the Capacity Balance Projection will be the official number for determining if there is a CP1 Capacity Coverage Obligation and quantifying any such obligation. The projections for the other years in the projection can be used for planning purposes. For clarity and avoidance of doubt, once a Capacity Coverage Obligation is triggered, that obligation will become effective on January 1 of the Target Year, and the obligation will be quantified based on the totals included in the Capacity Balance

Projection for the Target Year. All responsibilities associated with Capacity Coverage Obligations will remain in effect through the remaining term of the Contract. The total of all Capacity Coverage Obligations could increase up to the full CP1 Maximum Capacity Obligation, but it can't decrease from one year to the next.

ARTICLE VIII TRANSMISSION

8.1 Transmission Service. Transmission service will be provided to the City per the terms of the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (OATT), and any applicable local access tariff.

8.2 Transmission Charges. Transmission charges assessed to the City shall be the sum of the individual monthly charges (i) for local access service, if any, and (ii) assessed to Sunflower by SPP under the SPP OATT, as modified by SPP from time to time:

Schedule 1-Scheduling, System Control and Dispatch Service

Schedule 1a-Tariff Administration Service

Schedule 9-Network Integration Transmission Service

Schedule 11-Base Plan Zonal Charge

Schedule 11-Base Plan Region-wide Charge

Schedule 12-FERC Assessment Charge

Miscellaneous Transmission Charge-SPP Charges Sunflower has paid on behalf of the City which have not been otherwise recovered

ARTICLE IX ELECTRICAL EQUIPMENT

9.1 Dispatching. All transactions occurring under this Agreement relating to power flows between the Parties shall be coordinated between the City and Sunflower's system operations center located in Garden City, Kansas or SPP.

9.2 Power Factor. The City agrees to maintain unity power factor as nearly as practicable. The metered demand at each delivery point will be adjusted for power factor at the time of coincident demand for power factor lower than 90%. Such adjustment shall be made by increasing the metered demand at each delivery point by 1% for each 1% which the power factor at time of coincident demand is less than 90%. In the event that Sunflower requests the City to change its power factor to optimize system transmission voltage characteristics resulting in a power factor less than 90% then said demand at each delivery point effected by such request will not be adjusted for power factor demand correction during period of request.

- 9.3** **Losses**. The City shall be responsible for the payment of energy losses associated with each transaction. The Parties understand and agree that metering facilities owned by Sunflower that are installed on interconnection facilities, for ease of measurement or economic reasons, shall be corrected to account for losses over or on the interconnection facilities such that the power and energy metered and billed reflects the amount provided at the Interconnection Point(s).

ARTICLE X
MEASUREMENT OF ELECTRIC POWER AND ENERGY

- 10.1** **Metering Equipment**. The necessary billing metering equipment, as reasonably determined by Prairie Land or Sunflower, for carrying out the purposes of this Agreement shall be installed, owned and maintained by Prairie Land or Sunflower. Nothing shall preclude the City, at its own expense, from installing and maintaining additional metering equipment for the purpose of comparisons with Prairie Land's or Sunflower's readings. The City shall own maintain separate meters for each generating unit it owns, if any, as allowed under Section 5.1. These meters shall be at the expense of the City and shall substantially conform to the requirements of the SPP.
- 10.2** **Calibration and Testing**. Each Party shall test and calibrate its meters at regular intervals not to exceed one year. Each Party shall, upon reasonable notice from the other, make more frequent tests; provided, that if any such special meter test discloses the meter to be registering within acceptable limits of accuracy (two percent above or below comparisons with calibrated standards), then the requesting Party shall bear the expense of the test. At the time of such test, the meter shall either be corrected to register accurately, or replaced. However, if, at the time of testing, the meter shall be found to be inaccurate by more than two percent, then an adjustment shall be made for a maximum period of 30 days prior to the date of the test, or to the period during which such inaccuracy may be determined by known incident of equipment failure to have existed, which ever period is shorter. If any metering equipment at any time fails to register, or if registration thereof is so erratic as to be meaningless, the electric power and energy delivered shall be determined from the best available data.
- 10.3** **Additional Records**. In addition to meter records as envisioned by this Section, the Parties shall retain for the time period as identified in the Party's approved retention policy such log sheets and other records as may be needed to afford a clear history of the various movements of power and energy into and out of the systems of the Parties in the transactions under this Agreement and in transactions of any Party hereto under any related alternate energy supply agreements, and to effect such differentiation as may be needed in connection with settlements relating to such transactions. The originals of all such meter records, log sheets and other records shall be open to inspection upon proper notice by each Party's representatives during normal business hours.

ARTICLE XI PAYMENT

- 11.1 Payment of Bills.** All bills for Charges, if any, pursuant to this Agreement shall be rendered monthly by Prairie Land or Sunflower to the City normally not later than twenty days after the end of the period to which such bills are applicable. Unless otherwise agreed upon, such billing periods shall be from 0001 hours of the first day of the month to 2400 hours of the last day of the month. Bills shall be due and payable within fifteen days from the date such bills are received, and payment shall be made when due and without deduction. When a bill becomes delinquent; a late payment charge in an amount equal to two percent (2%) of the delinquent amount owed for current utility service will be added to the City's bill, and any collection efforts by Prairie Land or Sunflower shall be initiated.
- 11.2 Disputed Bills.** In the event that the City desires to dispute all or any part of the billings pursuant to this Agreement, the City shall pay the full amount of the Charges when due and give notification to Prairie Land in writing within 90 days from the date the billing is rendered, stating the grounds on which the Charges are disputed and the amount in dispute. The City will not be entitled to any adjustment on account of any disputed Charges which are not, within the time and in the manner herein specified, brought in writing to the attention of the Party billing such Charges. If any dispute results in a refund, interest on the refunded amount shall be added to the refund from the date payment was received until the date refund was made, at the rate of one percent per month or fraction thereof.

ARTICLE XII DEFAULT

- 12.1 Events of Default.** For purposes of this Agreement, an "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:
- 12.1.1.** A Party's failure to pay, when due, any Charges or the failure of either Party to make, when due, any other payment to the other Party required pursuant to this Agreement, if such failure is not remedied within ten business days after written notice is received by the Defaulting Party;
 - 12.1.2.** The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure constitutes a separate Event of Default) if such failure is not remedied within twenty business days after written notice is received by the Defaulting Party;
 - 12.1.3.** Such Party (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any

substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

ARTICLE XIII INDEMNITY

13.1 Third Party Indemnification. Except as provided for in Section 13.2, each Party (an “Indemnifying Party”) shall indemnify, hold harmless and defend the other Party (the “Indemnified Party”) and its directors, officers, agents, employees, successors and assigns from and against any and all third party claims or actions, threatened or filed, whether groundless or false, and the resulting losses, liabilities, damages, expenses, reasonable attorney’s fees and court costs, whether incurred by settlement or otherwise to the extent arising out of or by reason of the Indemnifying Party’s gross negligence or willful misconduct or breach of its obligations under this Agreement.

13.1.1 Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Section 13 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and reasonably satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party or there is a conflict of interest precluding representation of both by the same counsel, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless the applicable liability insurer is willing to pay such costs.

13.1.2 If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement.

13.1.3 Any amount owing to an Indemnified Party will be the amount of the Indemnified Party’s actual loss net of any insurance proceeds received by the Indemnified Party, which proceeds the Indemnified Party shall use commercially reasonable efforts to obtain.

13.2 Limitation on Liability. To the fullest extent permitted by applicable laws and SPP requirements, and notwithstanding other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, any claims arising out of tort,

contract, strict liability and/or operation of law, or resulting from performance or nonperformance of this Agreement. This limitation on damages shall not apply with respect to claims brought by third parties for which the Indemnified Party is entitled to indemnification under this Agreement.

ARTICLE XIV UNCONTROLLABLE FORCES

14.1 Uncontrollable Forces. No Party to this Agreement shall be considered to be in default in performance of any obligation hereunder, other than the obligation to make payments as provided in this Agreement, if failure of performance shall be due to Uncontrollable Forces; the term “Uncontrollable Forces” shall mean any cause beyond the control of the Party affected, including, but not limited to, an act of God, flood, earthquake, storm, fire, lightning, outbreak, epidemic, pandemic, war, riot, civil disturbance, labor disturbance, sabotage, restraint by court order or public authority, including court or regulatory orders, injunctions and restraint by governmental agencies with proper jurisdiction prohibiting or failing to approve acts necessary to perform hereunder or permitting any such act only subject to unreasonable conditions, and failure of equipment or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. No Party hereto, however, shall be relieved of liability for failure of performance if such failure be due to causes which it fails to remove or remedy with reasonable dispatch. Nothing contained herein, however, shall be construed to require any Party to prevent or settle a strike or labor negotiations against its will, or shall be construed to relieve a Party of duty to pay.

ARTICLE XV WAIVERS

15.1 Waivers. Any waiver at any time by any Party hereto of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other default or matter. Any delay short of the statutory period of limitation in asserting or enforcing any right shall not be deemed a waiver of such right.

ARTICLE XVI SUCCESSIONS AND ASSIGNS

16.1 Permitted Assignments. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto. No permitted sale, assignment, transfer or other disposition shall release or discharge any Party from its obligations under this Agreement.

16.2 Other Assignments. Except for an assignment by Sunflower due to sale or merger of the company or substantially all of its assets, or as provided in Section 16.1, no Party may assign its interest in the Agreement in whole or in part without the prior written consent of the other Parties. Such consent shall not be unreasonably withheld.

**ARTICLE XVII
MISCELLANEOUS**

- 17.1 Beneficial Use.** The provisions of this Agreement shall not and do not create any rights in favor of the City, or any person, corporation, or association not a party to this Agreement and the obligations herein assumed are solely for the use and benefit of the Parties to this Agreement.
- 17.2 Approvals.** This Agreement is conditioned upon the approval and authorization of any commission, governing board or regulatory body whose approval may be required by law, and the governing boards or councils of Prairie Land, Sunflower and the City.
- 17.3 Ingress and Egress.** Each Party grants to the other Party rights of ingress and egress over their respective properties as may be reasonably arranged and required to enable performance of this Agreement, subject to prior notification and compliance with the owning Party's applicable requirements for safety and security.
- 17.4 Notices.** All notices, payments, and communications required to be given hereunder shall be deemed to have been given if mailed or electronic delivery to the other Party, postage prepaid, as follows:

a. If to **City**
City Clerk
City of Herndon, Kansas

With a copy to:

b. If to **Sunflower**
Sunflower Electric Power Corporation
Attn: Manager, Power Contracts
2075 W. St. John St.
Garden City, KS 67846
Email: eschmidt@sunflower.net

With a copy to:
Sunflower Electric Power Corporation
Attn: Legal Department
301 W. 13th Street
P.O. Box 1020
Hays, KS 67601
Email: legal@sunflower.net

c. If to **Prairie Land**
Prairie Land Electric Cooperative
Attn: CEO
14935 US-36
Norton, KS 67654
Email: kgirard@prairielandelectric.com

The forgoing destinations of the name and address, to which notice and communications are to be directed, may be changed from time to time by written notice given by any Party to the others.

- 17.5 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Kansas.
- 17.6 Applicable Taxes.** If, at any time, there shall be levied upon any Party hereto a direct tax, charge in lieu of taxes, or other assessment applicable to services rendered by such Party under this Agreement based upon kilowatt or kWh or the amount of a bill rendered, the Charges as set forth herein shall be increased by the amount of such taxes, assessments or Charges paid by such Party on account of such sales or bills rendered.
- 17.7 Captions.** Captions of the various Sections herein are intended for convenience of reference only and shall not define or limit any of the terms or provisions hereof.
- 17.8 Amendments.** Neither this Agreement nor any part hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought.
- 17.9 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which shall together constitute one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have signed this Agreement by their duly authorized representatives as of the date first stated above.

[SIGNATURE PAGE TO FOLLOW]

Sunflower – City of Herndon
Firm Energy, Capacity, and Load Following Agreement

City of Herndon, Kansas


Signature

La Verne Frick
Printed Name

Mayor
Title

6/24/2024
Date

Sunflower Electric Power Corporation


Signature

Stephen Epperson
Printed Name

President and CEO
Title

June 25, 2024
Date

Prairie Land Electric Cooperative, Inc.


Signature

Kirk Girard
Printed Name

CEO
Title

6/24/24
Date

EXHIBIT A

Capacity Pool #1

City of St. Francis, KS

City of Hill City, KS

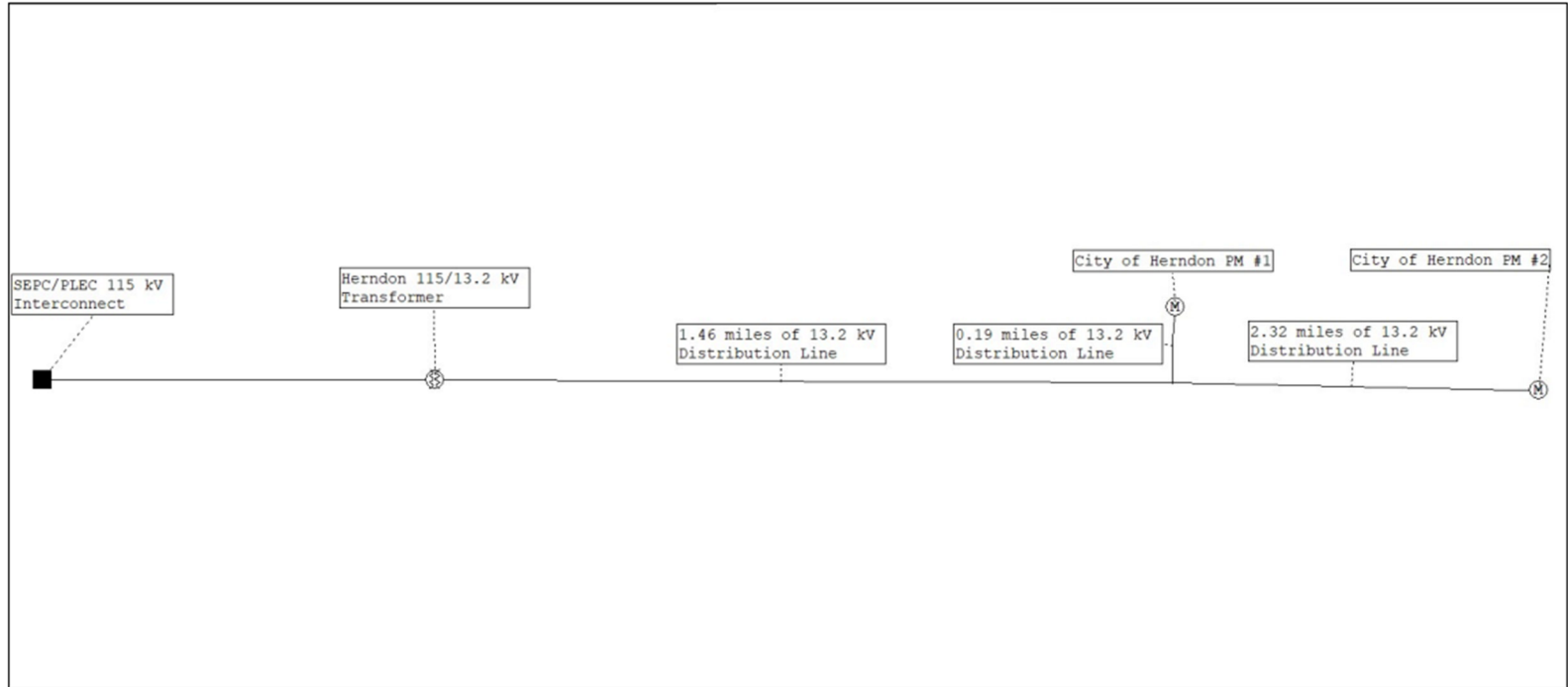
City of Norton, KS

City of Herndon, KS

EXHIBIT B
Accredited Generating Capacity

No Accredited Capacity

EXHIBIT C
Interconnection Points



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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