

NG 98-005

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In the Matter of

IN THE MATTER OF THE PETITION OF
UTILICORP UNITED INC. FOR A
STATEMENT TO THE SECURITIES
AND EXCHANGE COMMISSION
REGARDING INVESTMENT IN A
FOREIGN UTILITY

Public Utilities Commission of the State of South Dakota

MEMORANDA

DATE

5/28 98	Wall and Ricketts
6/8 98	Staff Recommendations
6/11 98	Letter to Securities and Exchange Commission
6/11 98	Ricketts

DOCKET NO.

NG 98-005

RECEIVED

MAY 2 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF A PETITION BY) TC98-
UTILICORP UNITED INC. FOR)
CERTIFICATION TO INVEST IN A) PETITION FOR CERTIFICATION
FOREIGN UTILITY)

UtiliCorp United Inc. ("UtiliCorp") operates a natural gas utility in South Dakota, Peoples Natural Gas Company ("Peoples"). UtiliCorp, acting through a subsidiary, proposes to participate in the bidding process to acquire an interest in one or more natural gas utility properties in the State of Victoria, Australia. Based on the successful privatization of its electric utility properties, the State of Victoria has announced its intention to sell several Australian natural gas utility properties, through five separate bidding proceedings. UtiliCorp requests a letter from the South Dakota Public Utilities Commission ("Commission") addressed to the Securities and Exchange Commission ("SEC") stating that with respect to these potential acquisitions, it:

... has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority.

In support of this Petition, UtiliCorp respectfully represents the following:

I. DESCRIPTION OF PARTIES AND TRANSACTION.

UtiliCorp is a Delaware corporation, in good standing in all respects, with its principal office and place of business at 911 Main Street, Suite 3000, Kansas City, Missouri 64105.

UtiliCorp operates a natural gas utility in South Dakota: Peoples.

UtiliCorp proposes to participate in the bidding processes, which could result in its indirect acquisition of an ownership interest in one or more natural gas properties located in the State of Victoria, Australia.

The government for the Australian State of Victoria (the "Government") is expected to accept bids for the purchase of several natural gas properties. The existing utility operations in Victoria are being unbundled into: three local distribution companies;¹ three retail marketers;² pipeline facilities; and storage facilities. The Government is offering these properties and businesses for sale through five separate bidding processes. In three of the bidding processes, the Government will offer for sale a local distribution company along with a gas marketer.³ A fourth bidding proceeding will be for pipeline facilities. The fifth bidding proceeding will be for storage facilities.

Each bidding proceeding will take place in two stages. Any interested party will first make an incentive bid which amounts to a non-binding monetary offer based upon the contents of an information memorandum ("IM") prepared and released by the Victorian Government. The Victorian Government will choose a number of finalists based on the results of the indicative bid process, at which time the finalists will be given the opportunity to undertake a comprehensive due diligence inquiry. Upon the completion of the due diligence inquiry, each of the finalists will make binding bids from which the Victorian Government will select the successful bidder.

The timetable for making bids is very short. Presently, it is expected that the process of making "indicative" bids will commence on June 12, 1998, and will proceed sequentially through August 1998. Final binding bids, in the event that UtiliCorp's indicative bid is one of those selected by the Victorian Government, are required on July 31, 1998, and will proceed

¹ Kinetik, Ikon and Energy 21.

² Westar, Multinet and Stratus.

³ Westar/Kinetik, Multinet/Ikon and Stratus/Energy 21.

sequentially through November 1998. As a condition to making a final bid, UtiliCorp must have first obtained all necessary regulatory approvals. Therefore, UtiliCorp requests that the Commission issue the requested certification by no later than July 30, 1998.

The practical effect of this sequential bidding process in the space of a very few months is that the schedule for reviewing and bidding for a particular gas business may overlap substantially with the schedule for reviewing and bidding on one or more of the other businesses being sold. Thus, if UtiliCorp is not successful in one of its initial bids, it could be engaged in analyzing and bidding up to five times more or less simultaneously over a period of only six months.

It is UtiliCorp's understanding that the first business to be put up for sale will be comprised of Kinetik Energy ("Kinetik"), a gas retailer and Westar, a gas distributor. Kinetik's service area will cover the northeastern and outer western suburbs of Melbourne, Australia, the principal city of Victoria, and western and north central Victoria. Westar's distribution network serves the western Melbourne suburbs, including a significant proportion of large industry in Victoria and the western county areas. Westar will serve approximately 411,686 industrial, commercial and residential customers and has fixed assets valued at approximately \$591.8 million (N.Z.). Westar will be sold with Kinetik and is sometimes hereinafter collectively referred to as "Kinetik/Westar".

Shortly after the due diligence of Kinetik/Westar is under way, the Victorian Government will release the IM for a second retailer/distribution company. UtiliCorp anticipates that the second company will be comprised of Ikon Energy ("Ikon"), a gas retailer, and Multinet, a gas distributor. Ikon's service area will cover the western central and southeastern suburbs of Melbourne. Multinet's gas distribution network serves the densely populated eastern

metropolitan area of Melbourne. Multinet will service approximately 587,217 industrial, commercial and residential customers and has fixed assets valued at approximately \$650.5 million (N.Z.). Multinet will be sold with Ikon and is sometimes hereinafter collectively referred to as "Multinet/Ikon".

At roughly the same time, the IM for the third business to be put up for sale will be released as well. UtiliCorp believes that this business will be comprised of Energy 21, a gas retailer, and Stratus, a gas distributor. Energy 21's service area will cover parts of eastern Melbourne, the Morningstar Peninsula and northern and eastern Victoria. Stratus' distribution network will cover the northern and southeastern suburbs of Melbourne as well as the Morningstar Peninsula. Stratus will serve approximately 419,926 industrial, commercial and residential customers and has fixed assets valued at approximately \$650.5 million (N.Z.). Stratus will be sold with Energy 21 and is sometimes hereinafter collectively referred to as "Stratus/Energy 21".

The Victorian Government's gas privatization efforts will also involve the sale of certain gas transmission and supply businesses, including pipeline and storage operations. Gas Transmission Corporation ("GTC") will own and operate 1,650 km of high pressure transmission pipelines and supporting infrastructure throughout the State of Victoria as well as a liquefied natural gas facility at Dandenong. Underground storage of natural gas in Victoria is likely to be in one or more of four fields owned by Cultus Petroleum in the western part of the state near Paaratte. GTC and others have rights or options to acquire these fields. The IMs for these businesses will be released during the same time frame as the other three above-described retailer/distribution businesses.

UtiliCorp, through a subsidiary or subsidiaries, proposes to participate in the bidding process to acquire a stake in the capital stock of one or more of the three natural gas distribution/retail marketing businesses to be privatized by the Victorian Government through the above-described bidding process (i.e., Kinetik/Westar, Multinet/Ikon and Stratus Energy 21). UtiliCorp will also consider bidding on the described pipeline and storage businesses as a minority investor. The exact manner in which UtiliCorp will participate in a bidding group or consortium is not yet known, but UtiliCorp does not anticipate that its subsidiary's ownership interest will exceed 50% of any particular gas entity or 20% in the gas transmission and supply businesses. It is presently contemplated that UtiliCorp's aggregate investment in the described gas businesses would not exceed the sum of \$500 million (U.S.). It is likely that UtiliCorp would be required to directly or indirectly guarantee the financing of its subsidiary's acquisition of the Australian gas utility entities.

II. REGULATORY APPROVAL REQUESTED.

UtiliCorp will petition the SEC for an order exempting UtiliCorp from the requirement that it register as a holding company under Section 5 of the Public Utility Holding Company Act ("Act") because of its acquisition, through a separate subsidiary, of a foreign utility company. The exemption from registration may be obtained under Section 3(b) of the Act.

UtiliCorp is filing an application with the SEC pursuant to Section 3(b) of the Public Utility Holding Company Act of 1935 ("PUCHA" or the "Act"), 15 U.S.C. § 79(e), for an exemption from the SEC's registration requirements, with respect to its proposed acquisition of an interest in the Australian natural gas properties. This section of the Act provides for a general exemption from the registration requirements of the SEC where:

- (a) the SEC finds application of the Act is not necessary to satisfy the public interest or for the protection of investors;
- (b) the foreign subsidiary derives no material part of its income directly or indirectly, from sources within the United States; and
- (c) neither the foreign subsidiary nor any of its subsidiaries is a public utility company operating in the United States.

In the alternative, UtiliCorp may seek an exemption using the notification provisions under Section 33 of the Act. For either action, it will be necessary for the state public utility regulatory commissions with jurisdiction over UtiliCorp's retail rates, including the South Dakota Public Utilities Commission, to certify to the SEC that "it has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority." See 15 U.S.C. § 79z-5-b(a)(2).

Therefore, in order to obtain an exemption from the SEC, UtiliCorp respectfully requests that a certification consistent with the terms of 15 U.S.C. § 79z-5b(a)(2) be issued. Attached is a proposed certification letter.

III. EFFECT ON PEOPLES AND RATEPAYERS.

The proposed maximum interest in the Australian natural gas properties and the maximum possible loan guaranty are too small to jeopardize the financial health of UtiliCorp. UtiliCorp's maximum indirect participation in the purchase price and loan guarantee would not exceed U. S. \$500 million, and the loan obligation would shrink as the loan is paid.

To put the proposed transaction in perspective, for the 12 months ending December 31, 1997, UtiliCorp had sales revenues of \$8,926.3 million and assets of \$5,113.5 million. The

expected maximum purchase price, therefore, equals less than ten percent (10%) of UtiliCorp's assets.

UtiliCorp's 1997 capital structure, in millions, is:

	Amount	Percent
Short term debt	113.8	3.9%
Long-term debt	1,508.2	52.3%
Preference Stock	100.0	3.5%
Common Equity	<u>1,163.6</u>	<u>40.3%</u>
	2,885.6	100.0%

Even if it became necessary for UtiliCorp to honor the maximum possible loan guaranty, the effect on UtiliCorp would not threaten its financial strength. Attached are two pro forma balance sheets. One of the balance sheets uses the assumption that the loan guarantee would be financed using 100 percent debt. The other balance sheet assumes that the loan guarantee would be financed using 60 percent debt and 40 percent new equity.

UtiliCorp is a very diversified company with many ventures that are properly financed largely through debt (e.g. gas acquisition enterprises). As such, UtiliCorp's capital structure is not comparable to a company that only provides natural gas service. In recognition of that fact, UtiliCorp assigns Peoples its own capital structure, which is set to recognize its needs as a gas utility. That assigned capital structure will not change as a result of the proposed acquisitions or if UtiliCorp is required to honor its loan guaranty.

UtiliCorp is primarily engaged in the operation of energy delivery networks and the energy merchant business. In the United States, it serves 365,500 electric distribution customers in four states: Missouri, Kansas, Colorado and West Virginia. It has 828,100 natural gas distribution customers in nine states: Missouri, Kansas, Colorado, Nebraska, Iowa, Michigan, Minnesota, West Virginia and South Dakota. It is in the Energy Merchant Business through Aquila Energy, a wholly-owned subsidiary, that markets and trades wholesale natural gas and

electricity; Aquila Gas Pipeline Corporation, that gathers, transports, processes and markets natural gas; and it operates seventeen independent coal-and gas-fired electric generating plants.

UtiliCorp's international business interests are similarly in energy delivery networks and the energy merchant business. In Canada, West Kootenay Power serves \$4,000 electric distribution customers in south-central British Columbia, and Aquila Energy markets to customers in six provinces. In Australia, a UtiliCorp affiliate (49.9% UtiliCorp interest) serves 533,000 electric distribution customers in Melbourne. In New Zealand, UtiliCorp affiliates (30-40% UtiliCorp interest) serve 276,000 electric distribution customers in Auckland and Hamilton. In the United Kingdom, a UtiliCorp affiliate (100% UtiliCorp interest) serves 96,000 gas-marketing customers, and a UtiliCorp affiliate is involved in a gas marketing joint venture (25% UtiliCorp interest).

Each of UtiliCorp's business interests is located in a very stable country with a strong economy. By having interests in these different companies, UtiliCorp is able to diversify its business risks while retaining UtiliCorp's focus on the service areas where it has the greatest expertise. Consequently, the Commission should view these investments as benefiting UtiliCorp's overall financial stability and strength.

The total UtiliCorp investment stated in terms of identifiable assets, as of December, 1997 is:

In millions		
Identifiable Assets:		
United States	\$4,205.6	82.2%
Canada (a)	376.4	7.4
Australia	270.3	5.3
New Zealand	160.7	3.1
United Kingdom	100.5	2.0
Total	\$5,113.5	100.0%

(a) Canadian sales, earnings available for common shares and identifiable assets include, Aquila Energy's Canadian operations and various small Canadian gas marketing companies.

No South Dakota property will be encumbered as a result of this transaction. Peoples customers will see no change in their utility service as a result of either the acquisition of the Australian natural gas properties or the loan guaranty, and the customers will continue to be served effectively and efficiently.

The Commission's authority under SDCL Ch. 49-34A is fully adequate to protect South Dakota ratepayer interests with respect to the proposed acquisition and the loan guaranty.

IV. CONCLUSION.

It is reasonable for the Commission to issue an Order for the requested certification because the Commission has the authority and resources to protect ratepayers subject to its jurisdiction and because it unquestionably intends to exercise that authority.

(a) No South Dakota property would be encumbered as a result of the acquisition.

(b) The effect on UtiliCorp's capital structure would be very minor and the acquisitions are too small to jeopardize its financial health.

(c) Peoples has been assigned its own capital structure which would be unaffected by any changes in the UtiliCorp capital structure.

(d) The Commission has sufficient authority under SDCL Ch. 49-34A to protect the interests of South Dakota ratepayers.

Therefore, UtiliCorp respectfully requests that this Commission issue an Order certifying that it has the authority and resources to protect South Dakota ratepayers and that it intends to exercise its authority.

Dated: May 21, 1998

Respectfully submitted,

MOSS & BARNETT
A Professional Association



Michael J. Bradley
4800 Norwest Center
90 S Seventh Street
Minneapolis, Minnesota 55402
Telephone: 612-347-0337

Attorneys on behalf of UtiliCorp United Inc.

[State Regulatory Commission Letterhead]

[Date]

Securities and Exchange Commission
450 Fifth Street NW
Washington, DC 20549

Dear Commission Members:

The South Dakota Public Utilities Commission has been advised that UtiliCorp United Inc. ("UtiliCorp"), through a subsidiary or other entity in which UtiliCorp holds an ownership interest, has or may obtain an interest in gas facilities in Australia. This letter is submitted in connection with UtiliCorp's request for an exemption from registration under Section 3(b) or by notification under Section 33 of the Public Utility Holding Company Act of 1935, as amended (the "Act").

The South Dakota Public Utilities Commission hereby certifies that it has the authority and resources to protect ratepayers subject to its jurisdiction with respect to investments in Australian natural gas properties and facilities up to \$500 million.

The South Dakota Public Utilities Commission has jurisdiction over the retail gas rates of Peoples Natural Gas Company, which is a public utility company as such term is defined in the Act. Peoples Natural Gas Company is a Division of UtiliCorp.

Sincerely

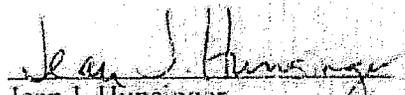
Certificate of Service

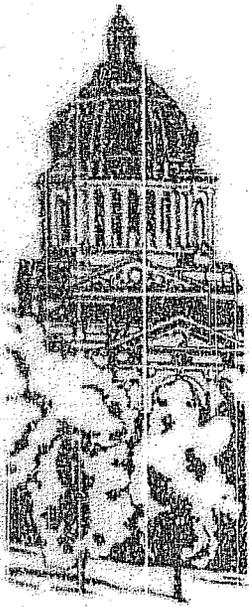
I hereby certify that an original and eleven copies of the above and foregoing Petition for Certification by UtiliCorp United Inc. were sent via Federal Express on the 21st day of May, 1998, to the following:

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy was sent by Federal Express to the following:

Rolayne Wiest
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol
Pierre, South Dakota 57501


Jean J. Hunsinger



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 8, 1998

Mr. Michael J. Bradley
Attorney at Law
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Minneapolis, MN 55402-4129

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Jim Burg
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Laska Schornfelder
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Jeffrey P. Larsen
Terry Norum
Gregory A. Rislov
Tarauni Stangelle
Steven M. Wegman
Rolayne Ailli Wiest

Re: In the Matter of the Petition by UtiliCorp United Inc
for Certification to Invest in a Foreign Utility
South Dakota PUC Docket NG98-005

Dear Mike:

Enclosed you will find a copy of a letter addressed to the Securities and Exchange Commission with reference to the above captioned matter.

Also enclosed is Staff Recommendations. This is intended as service upon you by facsimile and by mail.

I intend to present these documents to the Commissioners prior to our June 11 meeting for their consideration at that meeting.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF)
UTILICORP UNITED INC. FOR A STATEMENT)
TO THE SECURITIES AND EXCHANGE)
COMMISSION REGARDING INVESTMENT IN A)
FOREIGN UTILITY)

STAFF
RECOMMENDATIONS
NG98-005

Commission Staff recommends granting a letter of certification with the following conditions:

1. This certification is limited to the proposed UtiliCorp foreign utility company investments in the filing with a maximum amount to be spent thereon being five hundred million United States dollars.

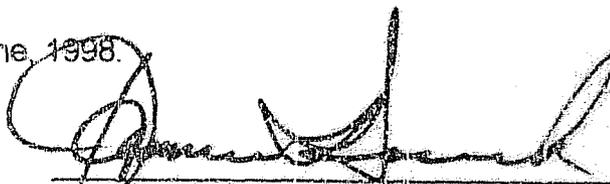
2. In the event UtiliCorp acquires interests in foreign utility companies and the sum total of these acquisitions exceed the amount of five hundred million United States dollars upon which this certification is premised, UtiliCorp shall provide advance notification to the South Dakota Public Utilities Commission of its intent to acquire those interests in foreign utility companies and it shall obtain separate certification for any such additional investment.

3. UtiliCorp will not encumber any South Dakota property because of these foreign investments.

4. Neither UtiliCorp nor any of its current or future subsidiaries or affiliates will ever seek to recover, either directly or indirectly, from South Dakota ratepayers through any regulated utility rates of any costs, expenses or losses of any nature whatsoever which may result from this or any other investment in foreign utility companies.

5. This certification is conditioned on and subject to being removed or withdrawn at any time by the Commission as to any future foreign utility company investments if the Commission deems such action is warranted.

Dated this 8th day of June, 1998.

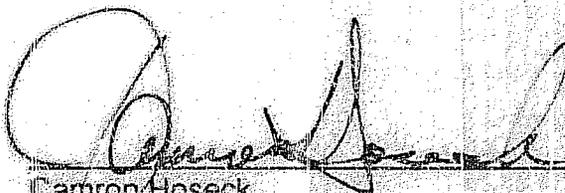


Cameron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
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Pierre, SD 57501
Telephone (605) 773-3201

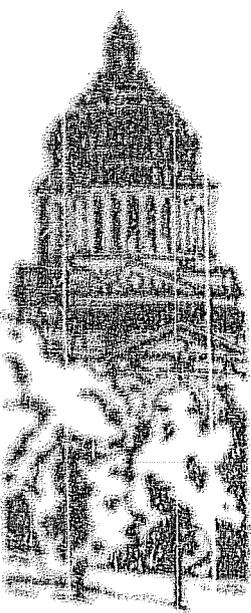
CERTIFICATE OF SERVICE

I hereby certify that a copy of Staff Recommendations was served on the following by facsimile and by mailing the same to him by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 8th day of June, 1999.

Michael J. Bradley
Attorney at Law
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129



Carron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 11, 1998

Securities and Exchange Commission
450 Fifth Street N.W.
Washington, DC 20549

Re: UtiliCorp United Inc.
Docket NG98-005

Dear Commission Members:

The South Dakota Public Utilities Commission has been advised that UtiliCorp United Inc. ("UtiliCorp"), through a subsidiary or other entity in which UtiliCorp holds an ownership interest, has or may obtain an interest in gas facilities in Australia. This letter is submitted in connection with UtiliCorp's request for an exemption from registration under Section 3(b) or by notification under Section 33 of the Public Utility Holding Company Act of 1935, as amended (the "Act").

The South Dakota Public Utilities Commission hereby certifies that, pursuant to SDCL Chapter 49-34A, it has the authority and resources to protect ratepayers subject to its jurisdiction and it intends to exercise that authority with respect to investments in Australian natural gas properties and facilities up to \$500 million, United States dollars.

The South Dakota Public Utilities Commission has jurisdiction over the retail gas rates of Peoples Natural Gas Company, which is a public utility company as such term is defined in the Act. Peoples Natural Gas Company is a Division of UtiliCorp. This certification is further expressly conditioned on and is subject to being revised or withdrawn on a going forward basis by this Commission as to any future foreign utility company investments if the Commission deems such action is warranted.

Sincerely,

James A. Burg
Chairman

Pam Nelson
Commissioner

Laska Schoenfelder
Commissioner

cc: Mr. Robert Wason
Securities and Exchange Commission
Office of Public Utility Regulation
Division of Investment Management
450 Fifth Street N.W.
Washington, DC 20549

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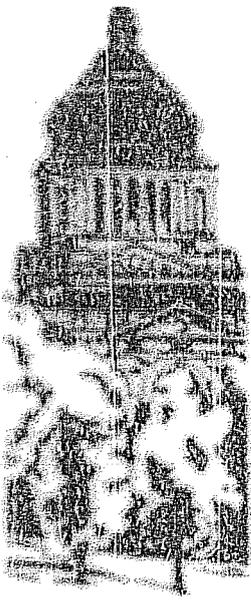
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South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 12, 1998

Mr. Michael J. Bradley
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4850 Norwest Center
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Minneapolis, MN 55402-4129

Re: In the Matter of the Petition by UtiliCorp United Inc.
for Certification to Invest in a Foreign Utility
South Dakota PUC Docket NG98-005

Dear Mike:

Enclosed you will find a copy of the letter written to the Securities and Exchange Commission in the above mentioned docket for your records. A copy was also mailed to Robert Wason of the Securities and Exchange Commission.

If there is anything further that I can do for you, please don't hesitate to let me know.

Very truly yours,

Camron Hoseck
Staff Attorney

CH.dk
Enc.

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