STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of New York State Energy Research and Development Authority Requesting Additional NY-Sun Program Funding and Extension of Program Through 2025	**Case 19-E-0735**
Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard	**Case 03-E-0188**
Proceeding on Motion of the Commission to Consider a Clean Energy Fund	**Case 14-M-0094**

COMMENTS
OF
MULTIPLE INTERVENORS

Dated: February 10, 2020

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PRELIMINARY STATEMENT

Pursuant to the Notice of Proposed Rulemaking published in the December 11, 2019 edition of the New York State Register (I.D. No. PSC-50-19-00006-P), Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial, and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits these Comments in response to the *Petition Requesting Additional NY-Sun Program Funding and Extension of Program Through 2025* ("Petition") filed by the New York State Energy Research and Development Authority ("NYSERDA") on November 25, 2019 in Cases 03-E-0188 and 14-M-0094.[1] For the reasons set forth below, Multiple Intervenors advocates that the Petition be denied, without prejudice, as premature. If not denied as premature, it should be rejected or modified.

In the Petition, NYSERDA seeks authorization from the New York State Public Service Commission ("Commission") for, *inter alia*, $573 million in incremental funding to expand its NY-Sun Program (hereinafter, "NY-Sun" or the "Program"), and to extend the duration of the Program (which currently runs through 2023) through calendar year 2025. NYSERDA claims that such expansion of NY-Sun is necessary to support the statewide goal of deploying 6 gigawatts (GW) of solar photovoltaic ("PV") in New York by 2025 (up from the previous goal of 3 GW of PV by 2023), as set forth in the recently-enacted Climate Leadership and Community Protection Act ("CLCPA").

[1] Cases 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, and 14-M-0094, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund*. Sometime after its filing, the Petition was assigned to Case 19-E-0735, *Petition of New York State Energy Research and Development Authority Requesting Additional NY-Sun Program Funding and Extension of Program Through 2025.*

Multiple Intervenors is not opposed to solar PV generation, or its expanded use if and where economic. By these Comments, Multiple Intervenors is not opposing the CLCPA's goals, or the continued operation of NY-Sun. That noted, Multiple Intervenors does have serious concerns regarding the magnitude and, additionally, the timing, of NYSERDA's request for increased funding from customers for the Program.

As demonstrated herein, the Petition provides only limited details as to how NYSERDA calculated the incremental budget it purportedly needs to achieve the PV-related goals set forth in the CLCPA, or why authorizing such funding – an additional $573 million in customer collections – is necessary, prudent, or justified at this time, particularly given all of the other policy initiatives being implemented by the Commission that customers are forced to fund. Moreover, particularly concerning to Multiple Intervenors is the timing of NYSERDA's request and the Petition itself. NY-Sun already is authorized to run through 2023 and, as demonstrated herein, NYSERDA still has literally hundreds of millions of dollars in unspent, unencumbered Program funds at its disposal, rendering the Petition – or any request for additional customer funds – unnecessary and premature at this time.

Accordingly, Multiple Intervenors hereby advances several positions in response to the Petition. First, the Petition should be denied, without prejudice, as premature. The need for additional customer funding associated with NY-Sun, if and when demonstrated, can and should be addressed at a later time (*e.g.*, closer to when additional funds might be needed, at which time the magnitude of any such need would be far easier to evaluate than it is now).

Second, if, *arguendo*, the Commission is inclined to address the merits of the Petition notwithstanding Multiple Intervenors' arguments to the contrary, the Commission should refrain from approving the Petition in whole or material part given the lack of information and justification advanced for the specific program components and budget amounts referenced therein.

Third, as Multiple Intervenors has advocated repeatedly, but seemingly without effect, the Commission should not evaluate requests for ever-increasing amounts of customer funds in isolation. Rather, NYSERDA's request in the Petition – and other, similar requests – should be evaluated carefully and comprehensively in the context of all of the policy initiatives that customers already are being forced to fund and may be forced to fund in the future. The existence of new statewide energy goals, in and of themselves, do not justify indiscriminate spending of customer funds. Rather, the Commission should be acting to ensure that such energy goals can be achieved as cost-effectively as possible, thereby minimizing unnecessary rate and price impacts on customers. It appears exceedingly difficult – if not impossible – for the Commission to prioritize among possible policies and implementation strategies if every new initiative and request for funding is viewed in isolation and then granted.

Finally, in evaluating the Petition, as well as other customer-funded policy initiatives, the Commission should reconsider its current policy of collecting funds for programs such as NY-Sun on a purely volumetric, per-kWh surcharge. Such policy is contrary to cost causation principles and highly inequitable to large, high-load-factor customers, which, ironically, are customers that the State should be seeking to attract and retain.

COMMENTS

POINT I

INCREMENTAL FUNDING OF THE NY-SUN PROGRAM IS PREMATURE AT THIS TIME

In the Petition, NYSERDA requests, *inter alia*, \$573 million in incremental funding to support the expanded policy goal of achieving 6 GW of solar PV generation in New

York State by 2025, and to commensurately extend the length of the NY-Sun Program from 2023 to 2025. For the following reasons, the Commission should refrain from authorizing the requested funding.

A. The NY-Sun Budget Currently Has Hundreds of Millions of Dollars in Unspent, Unencumbered Funds

NY-Sun currently has an authorized budget of over $1.2 billion, and is funded through 2023 (*i.e.*, another four years). In its latest quarterly filing on the performance of the Program, NYSERDA reports that approximately $803 million of that amount either has been spent or is encumbered.[2] Importantly, there still are over $415 million in unspent, unencumbered funds available to NYSERDA for the NY-Sun Program over the next four years.

Multiple Intervenors further notes that not all of the currently-encumbered funds ultimately may be spent. Although funds may be "encumbered" for specific projects under NY-Sun's MW Block program, it is not uncommon for projects to be cancelled during their development stages. If projects are never developed, then the Program funds reserved to those projects will not be paid out, and once again will become available for other program participants. NYSERDA acknowledges this possibility explicitly in the Petition, stating that it anticipates "additional funding will become available from projects that are cancelled in the existing MW Block program" and that "certain MW Blocks existing under the current NY-Sun Program may not be fully allocated by 2025."[3] In other words, there may be even more funding available to the NY-Sun Program through 2023 than the $415 million in unspent, unencumbered funds identified by NYSERDA. Given the foregoing, it is unclear whether NYSERDA will in

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2 *See* NYSERDA, *NY-Sun Initiative Quarterly Performance Report to the Public Service Commission – Quarter Ending September 30, 2019* (issued November, 2019), p. 6 ("Q3 2019 Report"), available at https://www.nyserda.ny.gov/-/media/Files/Programs/NYSun/2019-Q3-NY-SUN.pdf.

3 Petition at 10.

fact require additional funding for NY-Sun. Moreover, even if, *arguendo*, such additional funding eventually is needed, it also is unclear when such need actually would arise and the magnitude of additional customer contributions required. Indeed, perhaps the only certainty involved here is that with $400-plus million in unspent and unencumbered funding already authorized, there is no compelling need for any additional customer monies at this particular time.

To be clear, Multiple Intervenors is not challenging the clean energy goals set forth in the CLCPA, which include substantially-increased requirements for solar PV development in New York by 2025. Importantly, however, NYSERDA has not demonstrated a need for incremental funding of $573 million, or any amount, at this time. Multiple Intervenors respectfully questions why NYSERDA should not first be required to spend down its remaining budget to a much-greater extent before any incremental funding (to be collected from captive customers) is authorized. To the extent funding from NY-Sun is needed for 2024-2025 – or possibly before that time – the true funding need is far more easily – and far more accurately – projected closer to the date of actual need, rather than now, years in advance of any need given the $415 million in existing unspent and unencumbered funds.

The above notwithstanding, Multiple Intervenors recognizes that NYSERDA may need to accelerate its spending in the NY-Sun Program to achieve the CLCPA's goal of 6 GW of solar PV in New York State by 2025, which may necessitate a review of the program's budget sooner than its previously-scheduled exhaustion at the end of 2023. Given these circumstances, Multiple Intervenors believes it would reasonable for the Commission to revisit NYSERDA's request for additional NY-Sun Program funding once the existing program budget has been spent down to below a specified threshold. As noted above, based on the Q3 2019 Report, NYSERDA currently has over $400 million dollars remaining of its existing budget.[4] As such, a reasonable threshold to revisit NYSERDA's instant request for incremental funding would be if and when NYSERDA spends its NY-Sun Program budget down below $100 million.[5]

B. Many of the Proposed NY-Sun Offerings in the Petition Require Further Details and Justification

In the Petition, NYSERDA provides a breakdown of how it intends to spend the proposed, incremental $573 million in NY-Sun funding through 2025, including updates to existing program offerings, and new initiatives. As explained below, many of these proposed offerings lack adequate details or justification. The Petition also does not make clear how NYSERDA calculated the incremental budgets necessary to implement each such new or improved offering. Given these shortcomings, the Commission should require NYSERDA to provide additional information on these program offerings before authorizing any additional funding for NY-Sun.

Initially, NYSERDA has proposed that $290 million of the $573 million in requested incremental funding be used to supplement the existing NY-Sun MW Block incentive program framework, to support 1,800 MW of new solar capacity. This $290 million would include approximately $199 million to be allocated to the existing Upstate Commercial/Industrial MW Block incentives, and $48 million toward Upstate residential incentives.[6] Notably, NYSERDA also proposes that $44 million of the $290 million funding amount be available as "unallocated incentive funds to supplement MW Block incentives as may be required by

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4 *See* NYSERDA Q3 2019 Report.

5 For instance, if, hypothetically, the amount of unspent and unencumbered funding for NY-Sun were to fall below $100 million sometime in 2022, the Commission would be far better positioned at that time to evaluate the amount of incremental funding needed through 2025 than it is at this time, when over $400 million in previously-authorized customer collections are unspent and unencumbered.

6 Petition at 9.

changing policy, economic, and technological conditions over time."[7] It is unclear why NYSERDA requires this "floating" fund to supplement the various MW Blocks, particularly when NYSERDA itself acknowledges that its current Operating Plan already includes mechanisms that allow it to adjust incentive levels and budgets between the MW Blocks, as needed, to optimize the NY-Sun Program as a whole.[8] In other words, NYSERDA already possesses the ability and flexibility to "accommodate changing policy, economic, and technological conditions over time" in the Program. Accordingly, there does not appear to be any readily-identifiable need for the requested $44 million, and, therefore, at a minimum it should be trimmed from any incremental funding granted to NYSERDA notwithstanding Multiple Intervenors' objections thereto.

Second, NYSERDA proposes that $111 million of the requested $573 million would be used to provide a "Community Adder" incentive for community solar projects in utility service territories that have exhausted their Value of Distributed Energy Resources Community Credit tranches. The Petition is unclear as to what portion of this $111 million would be incrementally collected from customers, and what portion would be funded from currently-uncommitted NY-Sun funds. For example, the Petition states that the $111 million figure includes a request currently pending before the Commission to reallocate $35 million of currently-uncommitted NY-Sun funds to support a Community Adder in the New York State Electric and Gas Corporation service territory. It is unclear, however, if the $111 million request also includes (or would be incremental to) the $43.4 million in previously-collected, uncommitted ratepayer funds that NYSERDA has been authorized to spend for a Community

7 *Id.*

8 *Id.* at 9-10; *see also* Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, NY-Sun 2018-2024 Operating Plan (filed June 6, 2019).

Adder incentive in the Central Hudson Gas and Electric Corporation and Orange & Rockland Utilities, Inc. service territories.[9]

More broadly, the inclusion in the Petition of requests to repurpose some existing, uncommitted NY-Sun funds raises questions about the exact source(s) of funding for the various proposals therein. At a minimum, the Commission should direct NYSERDA to provide a clearer breakdown of exactly how each component of its requested $573 million will be funded, whether through already-collected customer funds or additional surcharges. Obviously, previously-authorized collections should be exhausted before customers are forced to fund incremental collections.

Third, NYSERDA proposes to use $19 million for "added incentives for projects that meet certain criteria and achieve other State policies and objectives."[10] Like above, the scope of this funding request is not specified clearly in the Petition. That is, while NYSERDA cites to added incentives for projects on brownfield or landfill sites, and projects utilizing a parking or rooftop canopy design, as examples of such possible uses of this money, the Petition lacks further details on exactly how the $19 million would be allocated among such incentive programs. The Petition also states, only in a vague manner, that "NYSERDA will continue to explore and consider other incentive-based strategies, adopting when appropriate, in order to ensure that an expanded NY-Sun program is both responsive to evolving market conditions and addresses other State policy priorities."[11] Thus, there does not appear to be any readily-identifiable need for the requested $19 million, and, therefore, at a minimum, it, too, should be trimmed from any incremental funding granted to NYSERDA in response to the Petition.

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9 *See* Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Order Regarding Value Stack Compensation (issued April 18, 2019), at 28-29.

10 Petition at 12.

11 *Id.*

Fourth, NYSERDA proposes $135 million of funding for a Framework for Solar Energy Equity initiative ("Equity Initiative") to expand NY-Sun Program activities for disadvantaged communities (including low-to-moderate income ["LMI"] customers).[12] Strikingly, NYSERDA currently has an allotted budget of $13 million aimed at fostering LMI participation in solar – *of which $8.6 million (or 66%) remains uncommitted as of September 30, 2019*.[13] In other words, NYSERDA only has been able to spend a little over $4 million, or about one-third, of its current budget on LMI customer initiatives. Consequently, it is questionable whether expanding LMI-related funding tenfold, to $135 million, is justified at this time. To be clear, Multiple Intervenors is not opposing here reasonable efforts to include LMI customers in NY-Sun. Rather, the concern is focused solely on NYSERDA's request for $135 million in new funding for such purpose – to be recovered from all customers – notwithstanding the fact that, to date, $8.6 million out of an original $13 million LMI set-aside still exists and has yet to be utilized.

Given the foregoing, Multiple Intervenors recommends that the Commission decline to authorize NYSERDA's proposal for $573 million in incremental NY-Sun funding at this time. Instead, the Commission should wait until the current end date for the NY-Sun Program (*i.e.*, 2023) draws nearer, in order to better ascertain whether and/or how much in additional funding actually is needed to support the solar PV goals of the CLCPA. In the alternative, the Commission should wait to act on NYSERDA's request for incremental funding until such time that the agency has spent down its remaining NY-Sun budget to beyond a specific threshold (*e.g.*, $100 million), as recommended herein. Finally, the Commission should direct NYSERDA to provide additional details and information on its proposed program offerings

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12 *Id.* at 13-14.

13 *Id.* at 13.

(including program-specific budgets), prior to authorizing additional NY-Sun Program spending as requested in the Petition.

POINT II

THE NEED FOR ADDITIONAL FUNDING FOR NY-SUN MUST BE EVALUATED IN THE CONTEXT OF OTHER POLICY INITIATIVES ALREADY BEING FUNDED BY CUSTOMERS

In effectuating State policies, it is critical that the Commission review proposals dependent upon customer funds thoughtfully and carefully, and avoid burdening customers with excessive costs. As noted in Point I, *supra*, inasmuch as there currently is more than $415 million in available, unspent and uncommitted funds in the NY-Sun budget, there is no compelling reason to increase said budget by another $573 million at this time, especially when major components of the request lack detailed justification. Even if, *arguendo*, the Commission determines that increased funding of NY-Sun is or will be justified, it nevertheless should not evaluate such funding need in isolation, but, rather, in the context of the collective costs and impacts of other policy initiatives that have large and recurring cost impacts on customers.

For example, customers already are funding, *inter alia*, the following programs related to the Commission's broader Reforming the Energy Vision ("REV") initiative – some of which currently are being re-examined by the Commission and may potentially be expanded in the future:

- The broader Clean Energy Fund ("CEF"), of which the NY-Sun Program is a part. The CEF already requires customers to pay over $5 billion in utility surcharges to fund customer-sited renewable projects, energy efficiency programs, and market transformation programs, as well as capitalization of the New York Green Bank.

- Tier 1 of the Clean Energy Standard ("CES"), which requires customers, through load-serving entities ("LSEs"), to procure increasing amounts of Renewable Energy Credits ("RECs") to provide many billions of dollars in out-of-market compensation to new renewable projects.[14]
- Tier 2 of the CES, which requires customers, through utilities, to provide out-of-market compensation to existing renewable facilities demonstrating financial need, including facilities that already have received millions of dollars in out-of-market payments from customers under the Renewable Portfolio Standard.[15]
- Tier 3 of the CES, which requires customers, through LSEs, to procure Zero-Emission Credits to provide many billions of dollars in out-of-market compensation to a corporation owning selected nuclear facilities.
- Utility-administered energy efficiency programs of increasing magnitude that are dependent upon hundreds of millions of dollars in customer collections annually, and which the Commission has greatly expanded in recent years.[16]

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[14] The Commission recently approved a modification of the Tier 1 REC program to allow developers to submit bids for NYSERDA REC contracts using an "indexed REC" methodology that ties REC payments to fluctuating wholesale market prices. This essentially allows a developer to "lock in" its cost to develop a clean energy facility, and shifts market price risk from developers to customers. *See* Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Modifying Tier 1 Renewable Procurements (issued January 16, 2020).

[15] NYSERDA recently filed a Petition with the Commission to overhaul the payment structure of the Tier 2 program, which could inject additional uncertainties into the program, and result in significant increased costs to customers. *See* Case 15-E-0302, supra, Petition Regarding Clean Energy Standard – Competitive Tier 2 Program for Baseline Renewable Generation (filed January 27, 2020). Indeed, inasmuch as the New York State Cost Recovery Fee ("CRF") recently was 1.18% and NYSERDA is forecasting CRF expense of almost $2.4 million over three years related to its Tier 2 proposal (*see id.* at 9), it appears that the cost of this latest proposal to customers would be approximately $200 million.

[16] The Commission recently authorized the New York utilities to spend nearly $2 billion of customer funds on additional energy efficiency investments through 2025. *See* Case 18-M-0084, *In the Matter of a Comprehensive Energy Efficiency Initiative*, Order Authorizing

- Utility-administered heat pump programs that are dependent upon hundreds of millions of dollars in incremental collections from electric customers.[17]
- The offshore wind initiative, which will require customers, through LSEs, to procure Offshore Wind RECs to provide at least hundreds of millions of dollars in annual, out-of-market compensation to offshore wind projects.
- The VDER tariffs, which require non-participating customers to pay out-of-market compensation to customers with qualifying distributed energy resource projects.
- Earnings Adjustment Mechanisms in individual utility rate cases, which require customers to pay utility shareholders millions of dollars in incentive payments, above and beyond the cost to provide safe and reliable electric and/or gas service, for achieving certain outcomes for which the utility's management may or may not have been directly responsible.

In addition to the foregoing, customers are being called upon to support numerous utility investments related to REV, including but not limited to: (a) large-scale roll-outs of advanced metering infrastructure; (b) information systems and other investments purportedly necessary to help fulfill utility functions as distributed system platform providers; (c) capital, operating costs and incentives associated with non-wires alternatives and non-pipeline alternatives; (d) REV pilot programs costing many millions of dollars apiece; (e) hundred of millions of dollars on energy storage projects; and, potentially, (f) hundreds of millions of dollars in new incentives related to electric vehicle charging stations and related infrastructure. Finally, customers may be required to pay higher – potentially much-higher – wholesale electricity prices

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Utility Energy Efficiency and Building Electrification Portfolios Through 2025 (issued January 16, 2020). Said Order approved incremental efficiency-related collections of $892,782,600 from electric customers and $552,881,879 from gas customers through 2025. *Id.*, Appendix A at 1-3.

[17] *Id.*, Appendix C (authorizing $454,318,200 in spending on heat pump programs).

due to a carbon pricing initiative that currently is under consideration in the stakeholder process of the New York Independent System Operator, Inc. Many of the above initiatives have price tags in the hundreds of millions or billions of dollars on an individual basis, and the aggregated cost obviously is much higher.

Given all of these policy-related programs, it is critical that the Commission, in evaluating any new or expanded initiative (whether it be one to promote solar PV growth, or otherwise), the projected costs thereof must <u>not</u> be evaluated solely in isolation, but also in the context of all of the other costs being imposed on customers currently and in the future. Frustratingly, it often appears that single expense items in utility rate cases costing in the tens of thousands of dollars – while legitimate topics of inquiry – receive much-greater cost-related scrutiny than new policy initiatives costing in the hundreds of millions of dollars or more.

In analyzing the Petition, the Commission should focus, first and foremost, on the best economic interests of customers. Multiple Intervenors is very concerned that, if costs continue to be imposed on customers, the aggregate rate and price impacts of the Commission's collective initiatives will cause energy-intensive businesses to increasingly shift production, capital and jobs to other states and countries. The ability of customers to fund expensive policy initiative after expensive policy initiative, even where well-intentioned, is becoming increasingly limited to non-existent at this point.

<u>POINT III</u>

THE COMMISSION SHOULD RE-EVALUATE THE PROPRIETY OF COLLECTING COSTS ASSOCIATED WITH NY-SUN AND OTHER INITIATIVES FROM CUSTOMERS ON A VOLUMETRIC BASIS

Related to its concern in Point II, *supra*, regarding the magnitude of costs associated with the Commission's various policy initiatives, Multiple Intervenors also notes that many of them (including the NY-Sun Program, and the larger CEF program encompassing it) continue to be recovered from customers on a volumetric, per-kWh basis. Requiring NY-Sun costs to be recovered from customers on such basis is inconsistent with basic principles of cost causation, insofar as the NY-Sun Program's goals (*e.g.*, to spur solar PV development in New York State, and to reduce soft costs associated with developing the technology) are not incurred on a per-kWh basis, nor is such basis reflective of the customer classes receiving the bulk of NY-Sun incentives. Moreover, the environmental and other benefits targeted by efforts to increase solar generation are not realized by customers based on per-kWh consumption.

Further, recovering costs associated with the NY-Sun Program and the CEF from customers on a purely volumetric basis places a disproportionate amount of the customer funding burden on large, high-load-factor customers, who also happen to be among the State's most energy-intensive and price-sensitive businesses.[18] Indeed, many large commercial and industrial customers currently pay surcharges and other costs to support State policy well in excess of what such customers otherwise pay toward the cost of traditional electric delivery service. It is imperative that the Commission re-examine its cost recovery methodology process to properly

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[18] Ironically, many of these energy-intensive customers also rank among the most energy-efficient customers in the State, and are critical to supporting the Commission's policies related to energy efficiency and statewide load factor. To the extent the State continues to lose its manufacturing and industrial base, such activities likely would be relocated to regions with less-stringent environmental regulations than New York, thereby frustrating the very goals sought to be achieved.

reflect how CEF and NY-Sun Program costs are incurred, and the program benefits realized, and adopt an equitable and more-appropriate cost recovery mechanism that does not unduly burden specific customer classes.

For the foregoing reasons, Multiple Intervenors urges that the Commission, in reviewing the Petition, to also take the opportunity to re-examine the propriety of recovering costs associated with the NY-Sun and the CEF (and other similar policy initiatives) from customers strictly on a volumetric, per-kWh basis.

CONCLUSION

For the foregoing reasons, Multiple Intervenors urges the Commission to adopt the recommendations set forth in these Comments.

Dated: February 10, 2020
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Respectfully submitted,

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