



Jon P. Christinidis
(313) 235-7706
christinidisj@dteenergy.com

May 15, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909

Hon. Daniel E. Nickerson, Jr., ALJ
Administrative Law Judge
Michigan Public Service Commission
6545 Mercantile Way
P.O. Box 30221
Lansing, Michigan 48909

Re: In the matter, on the Commission's Own Motion, to commence a contested case proceeding for the adoption by The Detroit Edison Company of a uniform pole attachment tariff for educational telecommunications facilities
MPSC Case No. U-14528

Dear Ms. Kunkle and Judge Nickerson:

Please find enclosed for filing the Revised Testimony and Exhibits of Messrs. Padgett and Dunlop which have been modified to comply with Judge Nickerson's April 13, 2006 ruling excluding certain liability issues in this proceeding (and to correct a limited number of errors and omissions in Detroit Edison's Original February 3, 2006 filing consistent with common Commission practice). Company witness Mr. Ketcik's Original February 3, 2006 Testimony and Exhibits have not been revised and will remain in the Company's case without revision. In summary, to comply with Judge Nickerson's April 13, 2006 ruling, Detroit Edison will offer at hearing (1) the prefiled Revised Testimony of Mr. Padgett, (2) the prefiled Revised Testimony and Exhibits of Mr. Dunlop, and (3) the prefiled Original February 3, 2006 Testimony and Exhibits of Mr. Ketcik.

Ms. Mary Jo Kunkle
Hon. Daniel E. Nickerson, Jr., ALJ
May 15, 2006
Page 2

In addition, the Company is filing an Offer of Proof pursuant to MRE 103 consisting of blacklined versions of the Company's prefiled Original February 3, 2006 Testimony and Exhibits of Messrs. Padgett, Dunlop and Olson (Mr. Olson's Testimony and Exhibit concerning liability, a new insurance proposal, and a recent insurance cost quote has been eliminated in its entirety) showing the revisions the Company has made to comply with Judge Nickerson's April 13, 2006 ruling excluding certain liability issues (and to correct a limited number of errors and omissions in Detroit Edison's Original February 3, 2006 filing consistent with common Commission practice). This blacklined version (consisting of "strikethroughs" and "insertions") of the Company's Original February 3, 2006 evidentiary filing is being offered to show the pole attachment liability concerns and costs that Detroit Edison would have proven absent Judge Nickerson's ruling excluding the evidence.

Please enter this blacklined version of the Company's case into the Commission's official record in this proceeding.

Very truly yours,

Jon P.

Christinidis

Jon P. Christinidis

Digitally signed by Jon P. Christinidis
DN: cn=Jon P. Christinidis, c=US,
o=Legal Department, ou=DTE Energy,
email=christinidisj@dteenergy.com
Date: 2006.05.15 14:42:28 -0400

JPC/kbt

Enclosures

cc: Service List/Parties of Record

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's Own Motion,)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company of)
a uniform pole attachment tariff for educational)
telecommunications facilities.)

Case No. U-14528

QUALIFICATIONS
AND
REVISED DIRECT TESTIMONY
OF
JAMES R. PADGETT

THE DETROIT EDISON COMPANY
QUALIFICATIONS OF JAMES R. PADGETT

Line
No.

1 **Q. Please state your full name and business address.**

2 A. My name is James R. Padgett. My business address is The Detroit Edison
3 Company, 2000 Second Avenue, Detroit, Michigan 48226.

4

5 **Q. What is your present position with The Detroit Edison Company?**

6 A. I am the Director of Regulatory Affairs. This position is responsible for
7 developing and coordinating the Company's regulatory policy with the
8 Michigan Public Service Commission ("MPSC") and the Federal Energy
9 Regulatory Commission ("FERC"). The position, among other things, requires
10 that I follow developments in regulatory commission cases, court cases, and
11 legislation to ensure that the Company's operations conform to applicable
12 statutes, rules, regulations, and other regulatory requirements. In this position,
13 my staff and I have been involved in a number of pole attachment matters,
14 including the present case.

15

16 **Q. Would you please describe your previous experience with The Detroit**
17 **Edison Company?**

18 A. In October 1997, I joined The Detroit Edison Company ("Detroit Edison" or
19 "Edison") as Director Regulatory Compliance with the Regulatory Affairs
20 Department. In this position I was responsible for coordinating compliance
21 activities at both the MPSC and the FERC, and directing various cases before
22 the MPSC. I held this position until I assumed the position of Manager of
23 Regulatory Affairs. In June of 2001, concurrent with the merger with Michigan

Line
No.

1 Consolidated Gas Company, I assumed my current position.

2

3 **Q. What is your formal educational background?**

4 A. In June of 1973, I received a Bachelor of Science Degree in Chemical
5 Engineering from Michigan State University.

6

7 **Q. Would you briefly outline your work experience?**

8 A. After graduation, I was employed by Consumers Power Company in the
9 Chemical Division of their Research and Testing Laboratory. During my
10 employment with Consumers Power, I was responsible for certain projects
11 involving air and water chemistry-related problems in the Company's electrical
12 generating plants. I joined the Staff of the MPSC in December, 1974 as a
13 Public Utilities Engineer and have held positions in the State Energy Office,
14 Business Services Division, and Office of Electric Operations. In January,
15 1983, I assumed the position of Assistant Supervisor of the Engineering
16 Section within the Electric Division of the Public Service Commission. I held
17 that position until February, 1984 when I was appointed Acting Supervisor of
18 the Engineering Section. In October, 1984, I became Supervisor of the
19 Engineering Section, a position I held until October of 1997, when I accepted a
20 position with Detroit Edison.

21

22 While at the Commission, as Supervisor of the Engineering Section, I was
23 responsible for administration of the National Electrical Safety Code ("NESC")

**Line
No.**

1 for the years 1984-1997. Administration of the NESC required that I oversee
2 the Commission's involvement in the rulemaking process regarding the NESC.
3 I was personally involved in the process required to adopt two editions of the
4 NESC.

5
6 **Q. Are you a registered professional engineer in the State of Michigan?**

7 A. Yes, I am.

8
9 **Q. Have you previously testified before the MPSC?**

10 A. Yes. I have testified in numerous proceedings on various subjects including
11 nuclear and fossil plant production, operation and maintenance expense, fuel
12 and purchased and net interchange power expense, fuel handling expense,
13 jurisdictional separations, system availability, pole attachments, central steam
14 heating and industrial steam cost of service and rate design, prudent
15 construction cost, system reliability, extension policies, territorial disputes and
16 various other production, regulatory policy, transmission, and distribution
17 related issues. Listed below is a partial list of my appearances before the
18 MPSC. I testified on behalf of the Staff of the MPSC in the cases listed prior to
19 1998. Thereafter, I testified on behalf of Detroit Edison.

20

21	Year	Company	Case No.	Type
22	1977	Detroit Edison Company	U-4807	Reconciliation
23	1977	Consumers Power Company	U-4840	Reconciliation

Line No.			
1	1979 Consumers Power Company	U-5331	Availability
2	1979 Detroit Edison Company	U-6006	Rate
3	1979 Consumers Power Company	U-5979	Rate
4	1979 Consumers Power Company	U-5979	Re-hearing
5	1980 Detroit Edison Company	U-5502	Availability
6	1980 Consumers Power Company	U-5331	Availability
7	1980 Detroit Edison Company	U-6103	Steam
8	1980 I & M Electric Company	U-6148	Rate
9	1980 Wolverine Electric Coop.	U-6532	Rate
10	1980 Wisconsin P.S. Corp.	U-6212	Rate
11	1980 Michigan Power Company	U-6322	Rate
12	1980 Detroit Edison Company	U-6488	Rate
13	1981 Consumers Power Company	U-5979	Rate Re-opener
14	1980 Northern MI & Wolverine	U-5407	Securities
15	1981 Consumers Power Company	U-5979	Availability
16	1982 Consumers Power Company	U-6923	Rate
17	1982 Detroit Edison Company	U-6488	Availability
18	1982 Consumers Power Company	U-5979	Availability
19	1982 Detroit Edison Company	U-6949	Rate
20	1982 Detroit Edison Company	U-7126	Steam
21	1984 Detroit Edison Company	U-7660	Rate
22	1985 Consumers Power Company	U-7830	Rate
23	1986 Detroit Edison Company	U-8387	Complaint

Line No.			
1	1986 Consumers Power Company	U-8438	Performance Stds.
2	1987 Detroit Edison Company	U-8469	Performance Stds.
3	1988 Consumers Power Company	U-7830	3B Rate
4	1989 Top O' Michigan	U-9268	Act 69 Certificate
5	1990 Consumers Power Company	U-9346	Rate
6	1990 Top O' Michigan	U-9517	Complaint
7	1991 Consumers Power Company	U-9755	Complaint
8	1991 Consumers Power Company	U-9807	Act 69 Certificate
9	1991 Consumers Power Company/	U-9916	Storm Investigation
10	Detroit Edison Company		
11	1992 Cherryland Electric Coop.	U-10108	Territorial Dispute
12	1992 Western Mich. Electric Coop.	U-10115	Territorial Dispute
13	1992 Western Mich. Electric Coop.	U-10116	Territorial Dispute
14	1993 Detroit Edison Company	U-10102	Rate
15	1993 Detroit Edison Company	U-10176	Retail Wheeling
16	Consumers Power Company	U-10143	Retail Wheeling
17	1993 Consumers Power Company	U-10239	Act 69 Certificates
18	U-10240		
19	U-10241		
20	1994 Consumers Power Company	U-10335	Rate
21	1994 Consumers Power Company	U-10562	Act 69 Certificate
22	1994 Consumers Power Company	U-10676	Act 69 Certificate
23	1997 Consumers Power Company/	U-10831	Pole Attach. Rates
24	Detroit Edison Company		
25			
26	1999 Detroit Edison Company	U-11956	True-up

**Line
No.**

1	1999 Detroit Edison Company	U-12134	Code of Conduct
2	2000 Detroit Edison Company	U-12478	Securitization
3	2002 Detroit Edison Company	U-13350	Net Stranded Cost
4	2003 Detroit Edison Company	U-13522	Pole Attachments
5	2004 Detroit Edison Company	U-13808	Rate
6	2005 Detroit Edison Company	U-14170	Pole Attachments
7	2005 Detroit Edison Company	U-14241	Pole Attachments

THE DETROIT EDISON COMPANY
DIRECT TESTIMONY OF JAMES R. PADGETT

Line
No.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to provide an overview of the Detroit Edison
3 Company's filing and to make recommendations regarding pole attachment
4 policy issues connected with Educational Institution telecommunications
5 facilities. Detroit Edison believes that two of the most significant public policy
6 issues associated with Educational Institution pole attachments are (1)
7 appropriate recognition and recovery of the Company's costs to provide pole
8 attachment service, and (2) proper liability coverage for both the Schools and
9 Detroit Edison in light of the risks associated with the School's construction
10 and operation of telecommunications networks on the Company's high voltage
11 pole network. However, for purposes of complying with the ALJ's April 13,
12 2006 ruling the Company has removed its request to address the costs
13 experienced by Detroit Edison with respect to pole attachment liability and the
14 Company will utilize the terms of the pole attachment agreement from Case
15 No. U-14241 (Woodhaven Schools).

16

17 It is important that the Commission approve an educational tariff that balances
18 Detroit Edison's legitimate business concerns, the interests of its customers
19 and the interests of the attaching parties. The costs, risks and rewards must
20 be properly recognized and equitably balanced in order to develop a
21 reasonable and enforceable public policy. The Commission previously rejected
22 subsidization for educational pole attachers, by pole owners and other
23 attachers. In its February 11, 1997 Order in Case Nos. U-10741, U-10816 and

Line
No.

1 U-10831, the Commission concluded: “[T]he Commission is not persuaded by
2 EDUNETS’ argument that Educational Institutions should receive an
3 exemption or more favorable rate treatment than other attaching parties.
4 Although Michigan educational policy favors educational applications of
5 telecommunications technology, it is another thing to say that rates should be
6 altered to the specific benefit of Educational Institutions. Necessarily, this
7 would require subsidy from other attaching parties, ratepayers or the utility.”
8 February 11, 1997 Order, Case Nos. U-10741, et al at pp 31-32.

9

10 Such cost shifting to subsidize third-party attachments is inconsistent with
11 good public policy and sound ratemaking.

12

13 Staff has also recognized that Edison is entitled to a contract to assist in
14 governing the relationship of the parties. “Staff disagrees with EduNets
15 regarding eliminating pole attachment agreements. Some flexibility needs to be
16 allowed for unique situations, shared duties, insurance, emerging technologies,
17 inspection requirements, and other matters not addressed in the tariff.” Staff
18 Report, Case No. U-13522 at p. 15.

19

20

21 **Q. What are some of the more fundamental unresolved policy issues**
22 **regarding pole attachments by Educational Institutions?**

23 A. First, Detroit Edison’s existing “one-size-fits-all” pole attachment tariff is based

**Line
No.**

1 upon Detroit Edison's cost of providing pole attachment service in the early
2 1980's. Pole attachment costs are essentially labor costs, overhead costs and
3 materials such as poles. Also, these 1980's costs were developed at a time
4 when pole attachment was a much less complex matter as there was generally
5 only the local telephone company and (at most) one cable television provider
6 with whom to coordinate. At that time, the local phone company and cable
7 television providers were not engaged in much, if any, competition. As the
8 Commission is acutely aware, that is no longer the case and now, especially in
9 major metropolitan areas such as Detroit, several communication service
10 providers are vying for the limited space on Detroit Edison's poles. The spirit of
11 cooperation among attaching parties has largely disappeared.

12

13 As a result, there can be no reasonable disagreement that these 20+ year-old
14 costs are now out-of-date and too low. Messrs. Dunlop and Ketcik support and
15 justify Detroit Edison's cost of providing pole attachments in the present pole
16 attachment environment, exclusive of the liability costs that Detroit Edison also
17 experiences.

18

19 In addition, the increase in the number of attaching parties, with their variety of
20 competing interests, knowledge, experience and skill levels, adds additional
21 congestion and costs to the maintenance and operation of the Company's high
22 voltage pole network. These new and varied costs should be recognized and
23 addressed in an equitable and legally sufficient manner.. Fundamental fairness

Line
No.

1 requires that the Company not be required to bear uncompensated risk
2 because of pole attachments. The Company offers these alternatives in a spirit
3 of cooperation and compromise and believes that its proposals offer realistic
4 and reasonable-cost solutions that address Educational Institutions' needs and
5 the Company's needs except for the cost of the liability experienced by the
6 Company.

7

8 **Q. Why is Detroit Edison filing a special educational pole attachment tariff?**

9 A. The Commission, in its order dated May 17, 2005 in MPSC Case No. U-
10 14241, stated that "Detroit Edison should participate in MPSC Case No. U-
11 14528 for the purposes of creating a uniform pole attachment tariff for
12 educational telecommunication facilities."

13

14 It would appear that the Commission has initiated this proceeding because it
15 has concluded that non-profit Educational Institutions have unique needs when
16 it comes to attaching their telecommunication networks to Detroit Edison's
17 poles.

18 In that spirit, Detroit Edison, through Mr. Dunlop, has proposed a pole
19 attachment tariff it believes will be beneficial to both the Schools and the
20 Company and is tailored to the way the Company understands Educational
21 Institutions' go about developing telecommunications networks. As a general
22 proposition, Detroit Edison's tariff seeks to (a) obtain as much advanced notice
23 as possible from School Districts so that Detroit Edison can help them

Line
No.

1 effectively plan and implement their telecommunication networks, (b) provide
2 Schools a streamlined and understandable process for working with the
3 Company to accomplish attachment, (c) help ensure that Detroit Edison is
4 compensated for its actual cost of providing pole attachment service to
5 Educational Institutions except with regard to liability costs, and (d) exclude the
6 costs of remediating NESC issues caused by other attaching parties from
7 Educational Institution charges. Mr. Dunlop elaborates on the specifics of the
8 Company's proposal.

9

10 Detroit Edison believes that its "Alternative Pole Attachment Tariff For
11 Educational Telecommunications Facilities" provides a reasonable, equitable
12 and cost-effective alternative process for attaching Educational Institution
13 telecommunication networks that generally satisfies the needs of the Company
14 and the Schools. However, Educational Institutions also will have the option to
15 remain subject to the existing "one-size fits all" pole attachment tariff if they
16 desire.

17

18 **Q. Can you provide a general overview of the Company's filing?**

19 A. Detroit Edison is sponsoring the testimony and exhibits of the following
20 additional witnesses:

21

22 Mr. Daniel J. Dunlop, Supervising Engineer, Joint Use, supports and justifies
23 Detroit Edison's proposed "Alternative Pole Attachment Tariff For Educational

Line
No.

1 Telecommunications Facilities” and proposed form pole attachment agreement
2 which are designed to help minimize future complaints and controversy while
3 facilitating more efficient and cost-effective pole attachment for Schools.

4

5

6

7 Mr. Gary P. Ketcik, Principal Financial Analyst, Distribution Operations,
8 sponsors the calculation of the Company’s proposed Pole Application Fee and
9 proposed Conduit Application Fee which excludes liability costs. As I
10 explained generally above, the costs included in the Company’s current “one-
11 size fits all” pole tariff have not been updated since the early 1980s. The costs
12 in the tariff other than pole and conduit rental have been updated to reflect
13 current costs, except for liability costs.

14

15 **Q. Is Detroit Edison proposing an increase in the pole or conduit rental**
16 **rate?**

17 A. No. Although the current pole and conduit rental rates do not properly
18 compensate the electric ratepayer for the use of the pole, given the
19 Commission’s historic preference for establishing pole rental rates on a
20 statewide basis and in light of the non-profit nature of the Educational
21 Institutions that would qualify for the proposed tariff, Detroit Edison’s proposal
22 does not propose an increase in the ten (10) year-old pole rental rate. This, of
23 course, is a substantial benefit to Educational Institutions.

**Line
No.**

1

2 Detroit Edison is using its best efforts to limit controversy in the pole
3 attachment arena. The Company's goal is to establish an equitable, uniform
4 educational tariff and pole attachment agreement in this proceeding so that it
5 may focus its efforts on moving forward to assist Educational Institutions in
6 building their telecommunications networks as efficiently as possible.

7

8

9 It is my general understanding that one of the most significant drivers of the
10 installation of Educational Institution telecommunications networks is the
11 accompanying ability to bypass traditional telecommunications service
12 providers and save substantial amounts of money in annual telecommunication
13 charges. Detroit Edison certainly does not oppose those cost savings efforts
14 by Educational Institutions. However, the costs imposed on Detroit Edison in
15 achieving those telecommunication savings must also be properly accounted
16 for and recovered by Detroit Edison.

17

18

19 **Q. What is the form pole agreement that the Company is sponsoring in its**
20 **Exhibits?**

21 A. The form pole attachment agreement is included as Exhibit A-2 (DJD-2). This
22 proposed form agreement is the Woodhaven/Brownstown School District
23 agreement essentially approved by the Commission in Case No. U-14241,

Line
No.

1 modified to include the possibility of underground installations.

2 **Q. Will Educational Institutions that have an existing contract with the**
3 **Company be eligible to conform their contracts?**

4 A. As a general proposition, the Company would not oppose those Educational
5 Institutions with prior pole attachment agreements being eligible, upon request,
6 to execute the form agreement proposed by Detroit Edison and take service
7 under the new tariff proposed by Detroit Edison.

8

9 However, Detroit Edison is not proposing that all Educational Institutions be
10 required to switch from Edison's "one-size fits all" Pole Tariff No. 1 to the
11 special Educational Institution tariff.

12

13 **Q. Does this conclude your testimony?**

14 A. Yes.

15

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's Own Motion)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company of)
a uniform pole attachment tariff for educational)
telecommunications facilities)

Case No. U-14528

QUALIFICATIONS
AND
REVISED DIRECT TESTIMONY
OF
DANIEL J. DUNLOP

THE DETROIT EDISON COMPANY
QUALIFICATIONS OF DANIEL J. DUNLOP

Line
No.

1 **Q. Please state your full name and business address.**

2 A. My name is Daniel J. Dunlop. My business address is 2000 Second Avenue,
3 Detroit, Michigan 48226. I am employed by The Detroit Edison Company
4 ("Detroit Edison" or "Edison") as the Supervising Engineer in the Joint Use
5 Department.

6

7 **Q. What is your formal educational background?**

8 A. I received my Bachelor of Science Degree in Mechanical Engineering from
9 Lawrence Institute of Technology in 1987.

10

11 **Q. What is your job experience with Detroit Edison?**

12 A. I joined Detroit Edison in 1978. From 1978 to 1982, I held the position of
13 apprentice lineman. In 1982, I completed my apprenticeship and worked as a
14 Journeyman Lineman until 1985. My primary responsibilities as a lineman
15 included construction and maintenance of Detroit Edison's overhead electric
16 and communication systems. While employed as a Lineman, I attended
17 college at night until I graduated in 1987. From 1985 to 2001, I held various
18 engineering jobs within the Lines Engineering Department of Detroit Edison. I
19 progressed from Engineering Technician through the various levels of
20 Engineer to eventually attain my present position of Supervising Engineer in
21 the Joint Use Department in 2002. My primary duties during the 16 years
22 while in my previous positions in Lines Engineering were the development and
23 standardization of line designs used in the construction of the overhead

Line
No.

1 systems at Detroit Edison. The Lines Engineering department writes and
2 publishes line construction manuals and lineman work procedures that are
3 used by our Engineering and Lines personnel. My duties also included training
4 engineers, technicians, service planners and linemen in the use of these
5 manuals for design and construction of Detroit Edison's overhead lines
6 systems. In November 2002, I assumed my present position of Supervising
7 Engineer - Joint Use. The responsibilities of the Supervising Engineer - Joint
8 Use include overseeing the establishment and maintenance of Pole, Conduit
9 and Trench Use Agreements including without limitation, make ready work and
10 other related work for third party attachments on Detroit Edison poles. I am
11 also responsible for interfaces with other Detroit Edison organizations such as
12 Service Center Operations, Engineering, Mapping, Legal, Regulatory Affairs,
13 Controller's Organization and Credit and Collections that are involved with third
14 party attachers. A major aspect of my responsibilities is working with
15 Engineering and Service Center Operations and others regarding the
16 inspection of Detroit Edison poles to accommodate third party attachers' pole
17 attachments.

18

19 **Q. Are you familiar with the National Electrical Safety Code ("NESC")?**

20 A. Yes. My job duties require me to be an expert on the NESC. Based on my
21 engineering education and daily reference to the NESC for over 18 years, I
22 consider myself an expert on the subject matter of the NESC, including its
23 relevance to pole attachment standards.

Line
No.

1 I have extensive experience in the development of conductor sag/tension
2 tables for overhead conductors. The sag tension data tables are used for the
3 installation of conductors and cables to meet NESC clearance requirements
4 under design conditions. This experience gives me the unique knowledge
5 required to apply the NESC clearance rules as they pertain to the theoretical
6 sags when extreme weather conditions are applied. My experience in lines
7 construction standards for the design and construction of the overhead lines
8 system at Detroit Edison gives me the practical experience in the application of
9 methods used to attain the requirements of the NESC for clearances and pole
10 strength. I was previously on the American Society of Civil Engineers (ASCE)
11 working committee that is working on a Distribution Structure Design Manual.
12 The committee was established in February 2002 to act as the editing body to
13 assist in the writing of a new manual for distribution structures similar to the
14 ASCE Manual #72 for the Design of Steel Transmission Structures. The new
15 manual like that of the other ASCE publications referenced in the NESC, is
16 intended to become the reference in the NESC for distribution structure design
17 when it is completed.

18

19 **Q. Do you serve on any industry committees?**

20 A. Yes, I currently serve as an elected board member on the Michigan Joint Use
21 Notification System (MIJUNS) and the National Joint Utility Notification
22 Systems (NJUNS). NJUNS is an automated e-mail notification system
23 presently used in 21 States for the purpose of enhancing communication

Line
No.

1 between Joint Use companies to facilitate the efficient use of poles, trenches
2 and conduit systems. MIJUNS is the local branch of NJUNS for the State of
3 Michigan and the membership is comprised of Detroit Edison, Consumers
4 Energy, American Electric Power, SBC (AT&T), Verizon, Wide Open West, Tri-
5 County Electric Cooperative, Michigan Electric Cooperative Association,
6 Michigan Cable Telecommunication Association, Charter Communication,
7 Buckeye Communication, and Brighthouse Network.

8

9 **Q. Have you filed testimony before this Commission in any other**
10 **proceedings?**

11 A. Yes. I sponsored testimony and exhibits on behalf of Detroit Edison in the
12 following pole attachment cases:

13 Case No. U-12900/13251 – SBC Ameritech

14 Case No. U-13522 – Commission Show Cause

15 Case No. U-13767 - Lake Orion Community Schools

16 Case No. U-14038 - McLeodUSA Telecommunications Services, Inc.

17 Case No. U-14170 – Allen Park Public Schools

18 Case No. U-14241 – Woodhaven Brownstown School District

19

20

21

22

23

Line
No.

2 A. My testimony has been prepared to support the Company's proposed tariff
3 covering the rates, terms and conditions of attachments to the Company's
4 utility poles, ducts, conduits and rights-of-way by Educational Institutions. My
5 testimony supports the specific form and provisions of the Company's
6 proposed Alternative Pole Attachment Tariff For Educational
7 Telecommunications Facilities (hereinafter the "Tariff" or "School Tariff"). I also
8 discuss the historical context and justification for Edison's proposed tariff.

9

11 A. Exhibit No. A-1 (DJD-1 REVISED) Alternative Pole Attachment Tariff For
12 Educational Telecommunications Facilities

14

17

20

DJD - 5 Revised

Line
No.

- 1 A. Based on several years of experience with individual Educational Institutions
2 and with EduNets, Detroit Edison's proposed changes are:
- 3 • Availability of the Educational Institution tariff is limited to non-profit
4 educational institutions.
 - 5 • Service is subject to the U-13522 Settlement Agreement (or its successor).
 - 6 • Advance notification of Educational Institution telecommunications projects
7 (see Tariff Process for Establishing Attachments) should ensure better
8 communication and facilitate more efficient attachment.
 - 9 • Make ready is consistent with the U-13522 Settlement (or its successor).
 - 10 • Unauthorized attachments that are found will result in the attachment owner
11 being assessed a fee to be paid into the Case No. U-13522 Remediation
12 Fund to help address future pole issues.
 - 13 • Overlashing is not considered an attachment provided that there is no
14 additional hardware attached to the pole, the pole is capable of handling the
15 additional pole loading, and the overlasher acquires new permits.
 - 16 • No inspection costs beyond the initial attachment post inspection for the first
17 5 years (unless, for example, an NESC issue is brought to Detroit Edison's
18 attention).
 - 19 • Educational Institution attachers remain free to address their own rights-of-
20 way and other non-Company authorizations in the manner they see fit
21 provided that they hold Detroit Edison harmless.
 - 22 • Detroit Edison has eliminated the accounts receivable estimate as it applies
23 to the Application Fees.

Line
No.

- 1 • Dispute resolution is in the tariff consistent with the method described in the
2 U-13522 Settlement.

3 These changes, among others, streamline and clarify the pole attachment
4 process for Educational Institutions.

5

6 **Q. Will the Company enter into a contract with an attaching party in addition**
7 **to the proposed rates, terms and conditions contained in the proposed**
8 **tariff?**

9 A. Yes, the Company intends to enter into a pole attachment contract with
10 attaching parties for the use of Company facilities. Exhibit No. A-2 (DJD-2),
11 REVISED the Pole, Conduit and Trench Use Agreement, is the form
12 agreement that the Company intends to execute with each Educational
13 Institution attacher. The form agreement more completely addresses the
14 Company's relationship with Educational Institution Attaching Parties. The
15 Company has incorporated the results of the MPSC order in MPSC Case No.
16 U-14241 (Woodhaven Brownstown School District), with the additional of
17 language for conduit, which was not included in the Woodhaven contract.

18

19 **Q. Is the Company requesting that the Commission approve the form pole**
20 **attachment agreement?**

21 A. Yes. The items in these pole attachment agreements have been fully litigated
22 and the Company desires a form agreement to reduce the number of issues
23 subject to disputes and threatened complaints.

Line
No.

1

2 **Q. What attachers are eligible for the educational telecommunications**
3 **tariff?**

4 A. Eligibility is defined on page 1 of Exhibit A-1 (DJD-1 REVISED), in the
5 Availability section In general, all non-profit Educational Institutions are
6 eligible.

7

8 **Q. What Company work is involved in providing for pole attachments?**

9 A. When an attaching party makes an initial request to place attachments on
10 existing utility poles, the Company and other existing attaching parties along
11 the desired route may have to rearrange, replace, or remove certain of their
12 facilities on the pole, or the Company may have to replace the pole with a
13 longer or stronger pole to provide the required space or strength to hold the
14 additional attaching party.

15 The Non-Refundable Pole Application Fee entitles the Educational Institution
16 to: (a) participate in one joint rideout, (b) application processing, (c) a make
17 ready survey of the poles along the one route identified as the most feasible in
18 the joint rideout, (d) data collection and design necessary for make ready work
19 along the one route identified as the most feasible in the joint rideout, (e) an
20 estimate for the cost of make ready work for the poles along the route
21 identified in the joint rideout as the most feasible, (f) a meeting to discuss final
22 make ready design and costs, (g) an invoice for final make ready costs along
23 the one route identified in the joint rideout as the most feasible, and (h)

Line
No.

1 installation permits for approved poles along the one route identified in the joint
2 rideout as the most feasible and not requiring make ready work.

3
4 The Company may conduct inspections to determine that the attachments of
5 the attaching party are in conformance with Company requirements, that the
6 attachments were made in a satisfactory manner, and to verify that the pole(s)
7 attached to by the attaching party are referenced in the permit application
8 being approved.

9

10 The Company may transfer the attaching party's attachments to expedite the
11 replacement of a pole(s) during maintenance or emergency work. The
12 attachment transfer may be of a permanent or temporary nature depending on
13 the field conditions existing at the time the work was performed.

14

15 **Q. Is any Company work necessary to accommodate an Educational**
16 **Institution's attachments in conduit or duct?**

17 A. Yes, work is required to be performed by the Company to assist the
18 Educational Institution's contractor when it is working in and around the
19 Company's conduit and manholes for any reason, such as installation,
20 maintenance, operating, emergency, splicing etc. The Company work may
21 include instruction, inspection, duct routing, evacuating manholes, and
22 providing certain materials such as tags, hangers and conduit maps.

23

Line
No.

1 The Non-Refundable Conduit Application Fee entitles the Educational
2 Institution to: (a) one investigation of the Company's conduit and field book
3 records to determine availability of Company facilities, (b) one field visit, (c)
4 determination of the Company's current and future requirements for the
5 conduit involved, (d) preparation of one preliminary cost estimate for the
6 Company's work to accommodate the Educational Institution's cable, (e) one
7 written response detailing the results of the Company's conduit investigation,
8 (f) permits (if granted), and (g) one final invoice for the Company's work to
9 accommodate the Educational Institution's cable.

10

11 **Q. What is included in a conduit system investigation?**

12 A. The conduit system investigation may include but is not limited to, an
13 investigation of the Company's conduit and field book records, field visits,
14 determination of the company's current and future requirements, preparing a
15 preliminary cost estimate of the Company's work to accommodate the
16 attaching party, and preparing a written response detailing the results of the
17 conduit system investigation.

18

19 **Q. When is the conduit or duct application fee charged?**

20 A. The application fee is invoiced after the Company receives the written request
21 to investigate the availability of duct between the requested locations. The
22 application must also include a sketch showing the requested locations and
23 proposed general route.

Line
No.

1

2 **Q. Did you investigate the cost of outsourcing these same pole attachment**
3 **activities with other 3rd party providers?**

4 A. Yes. In the past three years, the Company has received cost quotes from
5 several contractors performing this type of work.

6

7 **Q. How did you confirm that Edison's cost of \$55 per Pole Application Fee**
8 **and the \$1,120 for the Conduit Application Fee set forth in the Tariff are**
9 **reasonable costs of providing these services to Educational**
10 **Telecommunications attachers?**

11 A. The \$55 per pole and \$1,120 for conduit charges are comparable to the cost of
12 providing these services through 3rd party contractors and in some instances
13 these prices are conservative in relation to what a 3rd-party contractor would
14 charge.

15 **Q. When is the pole application fee charged to the attacher?**

16 A. We invoice for the attachment fee after the permit applications are received by
17 the Company. The application must also include a sketch showing the
18 requested locations and general route covered by the request.

19

20 **Q. Can you explain why the Company charges attaching parties the**
21 **company's costs to accommodate the attaching party's facilities on**
22 **poles, in ducts, or in trenches?**

23 A. The Company invoices for the make ready work required to accommodate an

Line
No.

1 attaching party on our poles or in our ducts, conduits or trenches because this
2 work is done strictly to accommodate the attaching party and is not required to
3 provide service to the Company's electric customers. Therefore, all costs
4 associated with this work are rightfully charged to the attaching party. The
5 specific Company proposals regarding the requirements of, and charges to, an
6 attaching party are contained in Exhibit No. A-1 (DJD-1 REVISED) the
7 Company's proposed Tariff.

8

9 **Q. Will the Company secure joint rights-of-way for an Educational**
10 **Institution attacher?**

11 A. No. Attachment permits are for attachment to pre-existing Detroit Edison
12 structures with pre-existing Rights of Way for Detroit Edison's facilities. Each
13 attaching party is required by the Tariff and the Agreement to obtain and be
14 responsible for their own Rights of Way and any other required authorizations
15 or permits. In my experience, this is what most Educational Institutions prefer.

16

17 **Q. Do you support the job time estimates shown on Exhibit Nos. A-4 (GPK-**
18 **1) and A-5 (GPK-2)?**

19 A. Yes, these estimates of 35 minutes for pole attachments, 9 hours for Sr. Cable
20 Design Specialist and 4.5 hours for a Manhole Cleaning Crew per manhole
21 have been routinely utilized by the Company and also were verified by
22 sampling jobs and validating the time charged against the projects for
23 performing the office and field work.

Line
No.

1

2 **Q. What is your opinion concerning the terms and conditions you propose**
3 **in the Tariff and form Pole, Conduit, and Trench Use Agreement?**

4 A. I believe that the Company has proposed a just and reasonable program for
5 Educational Institution attachments that fairly respond to the needs of both
6 Educational Institutions and the Company.

7

8 **Q. Does this complete your testimony?**

9 A. Yes.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

I In the matter, on the Commission's Own Motion)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company of)
a uniform pole attachment tariff for educational)
telecommunications facilities)

Case No. U-14528

REVISED EXHIBITS
OF
DANIEL J. DUNLOP

MPSC Case No. U-14528
Witness: Daniel J. Dunlop
Exhibit A-1 (DJD-1) REVISED

The Detroit Edison Company
Alternative Pole Attachment Tariff
For
Educational Telecommunications Facilities

The Detroit Edison Company
Alternative Pole Attachment Tariff
For
Educational Telecommunications Facilities

Availability: Available to any Educational Institution meeting the terms and conditions of this Alternative Pole Attachment Tariff for Educational Telecommunications Facilities for the purpose of attachment pursuant to MCL 460.6g on poles or in conduit owned by The Detroit Edison Company (“Company”) and no others. Educational Institution means a public educational institution or a private non-profit educational institution approved by the Michigan Department of Education to provide a program of primary, secondary, or higher education, a public library, or a non-profit educational association whose primary purpose is education and not the commercial sale or leasing of telecommunications services, information services, internet services, fiber capacity or bandwidth. A non-profit educational association consists of two or more of the following: (i) public educational institutions, (ii) non-profit educational institutions approved by the Michigan Department of Education, (iii) Michigan Board of Education, and (iv) a non-profit association of educational institutions.

Audit, Corrections, Compensation, and Enforcement: All service under this tariff is subject to the provisions of the settlement agreement dated August 22, 2003 in Case No. U-13522 or any successor agreement or order of the Commission. By taking service under this tariff, the Educational Institution agrees to become a party to and be bound by the terms of that settlement or any successor agreement or order for as long as such agreement or order is in effect.

Annual Rental Rate:

Pole Rental Rate: \$ 3.74 per pole per year

The pole rental rate shall be paid for each distinct attachment by an Educational Institution. Overlashing is not considered an attachment, provided that there is no additional hardware attached to the pole and the pole is capable of handling the additional pole loading. The Company shall be notified prior to construction of the proposed overlashing to allow it to assess the structural integrity of the pole relative to the additional load by submitting, and paying for, new requests for permits for each pole to be passed on the overlash route.

Conduit Rental Rate: \$ 3.36 per duct foot per year

The minimum annual pole or conduit rental charge shall be \$60.00 per year per contract.

Application Fees:

Pole Application Fee: \$ 55 per pole, non-refundable.

Conduit Application Fee: \$1,120 for the first manhole and \$525 for each additional manhole, per request, non-refundable.

The Non-Refundable Pole Application Fee entitles the Educational Institution to: (a) participate in one joint rideout, (b) application processing, (c) a make ready survey of the poles along the one route identified as the most feasible in the joint rideout, (d) data collection and design necessary for make ready work along the one route identified as the most feasible in the joint rideout, (e) an estimate for the cost of make ready work for the poles along the route identified in the joint rideout as the most feasible, (f) a meeting to discuss final make ready design and costs, (g) an invoice for final make ready costs along the one route identified in the joint rideout as the most feasible, (h) installation permits for approved poles along the one route identified in the joint rideout as the most feasible and not requiring make ready work.

The Non-Refundable Conduit Application Fee entitles the Educational Institution to: (a) one investigation of the Company's conduit and field book records to determine availability of Company facilities, (b) one field visit, (c) determination of the Company's current and future requirements for the conduit involved, (d) preparation of one preliminary cost estimate for the Company's work to accommodate the Educational Institution's cable, (e) one written response detailing the results of the Company's conduit investigation, (f) permits (if granted), (g) one final invoice for the Company's work to accommodate the Educational Institution's cable.

Power Supply Service: The monthly rate for unmetered electric service to each power supply shall be determined by the applicable electric rate currently on file with the Michigan Public Service Commission (Commission). The total charge for unmetered electric service will be based on the number of flat rate power services existing at the end of the quarter.

Process for Establishing Attachments: Educational Institutions taking service under this tariff shall: 1) inform the Company of its intention to establish a Wide Area Network or similar information/telecommunication project connecting Educational Institution buildings, services or facilities of any kind that will require attachment to Company's poles or location in Company's conduit prior to undertaking the engineering and cost analysis of such a project, 2) inform the Company of the target date for establishing

attachment as soon as is practicable after voter approval of bonds to fund the technology project for which attachment will be sought, or, if the project will not be bond funded, after the decision to build the project is made; 3) inform the Company of the name, address, phone number, cell phone number, electronic mail address and contact person of (a) the Educational Institution's engineering contractor for the project, and (b) the Educational Institution's installation contractor for the project within ten (10) days of selection; 4) prior to submitting permit applications to the Company, inform the Company of the locations to be connected by the proposed attachments, and request that the Company accommodate a joint rideout (to include Company and Proposed Educational Institution attacher or its designated representative). The Company shall (a) provide the Educational Institution with detailed information explaining the process for establishing attachment, and provide an Agreement to be executed, pole attachment permit applications, and any other necessary forms, as soon as practicable after being informed of the project; and (b) accommodate one request for one joint rideout as provided for in "Application Fees" supra. The parties shall use best efforts to schedule the joint rideout no less than twelve months prior to the planned start of construction. The purpose of the joint rideout is to allow the Educational Institution and the Company to physically view possible routes for connection of the proposed locations, and to allow the attaching party to decide the most feasible route with input from the Company regarding conditions existing on the poles involved.

Make Ready Work: After receiving pole attachment permit applications, the Company shall determine the need for make ready work, and perform such work, as follows:

- (1) Any reconstruction, alteration or other work required to accommodate facilities of Educational Institution shall be done by the Company, consistent with the Settlement Agreement dated August 22, 2003 in Case No. U-13522, upon the request of attaching party, and the accounts receivable cost incurred in connection therewith shall be paid by the Educational Institution. Educational Institution shall pay Company within 30 days of receiving an Invoice for Make Ready Work. The Company shall commence Make Ready Work, consistent with the Settlement Agreement dated August 22, 2003 in Case No. U-13522, after receipt of payment from Educational Institution.
- (2) Work to accommodate pole attachments ("make ready work") may include preparation of an invoice for such work (which may be based upon an estimate, to be adjusted after the work is completed) replacement of pole(s), rearrangement, removal, or replacement or transfer of utility or other attaching parties' facilities, and inspections.
- (3) Work required to remediate NESC issues of other attachers existing independent of the Educational Institution's request(s) to attach shall not be considered Make Ready Work, and the expenses incurred in performing such work shall not be billed to the Educational Institution.

Applications: Educational Institutions shall make formal application for authority to attach on application forms provided by the Company. The Company shall make a decision regarding the application, consistent with its tariffs, the Settlement Agreement dated August 22, 2003 in Case No. U-13522, and other applicable law, within ninety (90) days of receiving them. The method and location of installation on poles or in conduit and trenches must first be approved by the Company. In circumstances where there is no additional room on a pole or in a conduit and there are no NESC issues present, the Company shall only be required to make room upon full payment by the Educational Institution of all actual costs to make room.

Inspections: The Company may in its discretion inspect the attached facilities of the Educational Institution. Any inspection provided by the Company is for the purpose of determining compliance with the technical provisions of Company rules and regulations for service and is, in no way, a guarantee of methods or appliances used by the contractor or Educational Institution, or for the safety of the job.

The Educational Institution shall reimburse the Company for the actual cost of such inspection(s), but such charges shall not exceed the cost, on a per pole basis, of new pole attachment applications. Notwithstanding the foregoing, unless there is substantial reason to believe that an inspection is necessary (such as, but not limited to, reliable information suggesting the existence of NESC issues involving Educational Institution attachments), the Company shall not charge the Educational Institution for such inspection: 1) for the first five years immediately following the initial installation (except for any follow-up inspections necessary to complete the installation which shall be charged to and paid by Educational Institution); or 2) more than once every three years after the first five years. However, in the event that a Company inspection discloses one or more unauthorized Educational Institution attachments, the Educational Institution whose attachments are unauthorized shall pay into the “Pole Remediation Fund for Disputed Responsibility” set forth in the Settlement Agreement dated August 22, 2003 in Case No. U-13522, a one-time fee equal to ten (10) times the annual pole rental fees for all poles to which the Educational Institution is attached and that Educational Institution shall no longer be eligible for this tariff.

Labeling: The Educational Institution shall label all cables with the owner’s name(s) in a manner capable of being read from the ground, and consistent with the Company’s specifications or any requirements of the local unit of government.

Pole Attachment Agreement: The Educational Institution and Company shall enter into the form Pole Attachment Agreement. The Company and the Educational Institution may enter into a pole attachment agreement regarding issues not addressed in this tariff, in the Settlement Agreement dated August 22, 2003 in Case No. U-13522 or a successor agreement or order or the Form Pole Attachment Agreement accompanying this tariff provided that the provisions are not inconsistent with this tariff, that Settlement Agreement or its successor or the Form Pole Attachment Agreement. The terms of the Woodhaven Brownstown School District Agreement with the Company, approved by the Commission in Case No. U-14241, shall be the Form Pole Attachment Agreement for

which an Educational Institution is eligible. The terms of this form Pole Attachment Agreement shall not be modified. If the Company and the Educational Institution cannot agree on terms other than those required and approved in the Form Pole Attachment Agreement, each shall submit the proposed additional terms for the Pole Attachment Agreement to the Commission Staff, who will recommend in writing an agreement after discussing the matter with the Company and the Educational Institution. The Company and the Educational Institution shall enter into the Staff's recommended pole attachment agreement, or, if either is dissatisfied, it may file a formal application or complaint with the Commission within 7 days of the Staff's recommendation.

Accounts Receivable Cost

The term "accounts receivable cost" is defined as the sum of the labor cost to remove any existing facilities, plus the labor and material cost to install the new work, with credit for the appropriate salvage value for the material removed. Labor and material costs include Detroit Edison overhead costs.

Billing:

- (1) Annual rental shall be billed quarterly, due in advance on the first day of January, April, July and October, except as specified in A-3.1(7) and A-3.1(8). Quarterly pole rental shall be one quarter of the annual rate and shall be based on the number of existing pole attachments on the first day of the quarter. A late payment charge of 1.5% per month upon the unpaid balance of any bill rendered and outstanding beyond 30 calendar days from the date of physical mailing of the bill will be assessed and paid by Educational Institution.
- (2) Bills for pole reconstruction, alterations, inspections, expenses, rental and other charges shall be paid within thirty (30) days after presentation. If not paid on time, a 1.5% per month late payment fee will be assessed.
- (3) Bills shall include the following charges or costs when applicable:

- Power Supply Service
- Pole and Conduit Rental
- Rearrangement (Reconstruction or alteration)
- Inspection

Specifications:

- (1) Minimum requirements for joint construction shall be in conformity with the then current edition of the National Electrical Safety Code except where modified by authority of the State of Michigan (or any other authority having jurisdiction) and the rules of the Company.
- (2) To facilitate proper construction, detailed specifications and drawings may be included in separate contracts with the Educational Institution.

Other Permits, Consents, Easements, Rights of Way and Approvals

- (1) Educational Institution shall be solely responsible for obtaining all necessary permits, consents, easements, rights of way and approvals, either public or private which may be necessary prior to the beginning of construction and continuing after installation. In addressing the Educational Institution's application, the Company will not consider the existence of the Educational Institution's necessary permits, consents, easements, rights of way and approvals, either public or private (except for private easements or rights of way purchased by the Company for which Educational Institutions shall pay a proportionate share of the cost) which may be necessary prior to the beginning of construction and continuing after installation. However, Educational Institution shall fully and completely indemnify the Company and hold it harmless as against all claims, demands, judgments and orders from any and all persons, courts of law, administrative tribunals, governments or government agencies of any kind relating to Educational Institution's failure to obtain such necessary permits, consents, easements, rights of way or approvals, either public or private and shall immediately take sole responsibility for any and all claims, demands, judgments and orders applying to Educational Institutions' facilities.
- (2) No attachment, placement or installation shall be made by Educational Institution on any pole or poles or in trenches, manholes or conduits of the Company before written permission is received from the Company.
- (3) Attachments to conduit and duct will be limited to space available in existing Company facilities. Attaching parties will be accommodated in order of application date until capacity is approached.
- (4) Supervision by the Company to direct any work involving installation in underground conduits, racking in manholes, and inspections is mandatory. Educational Institution or its contractor shall not enter any manhole or other Company facility without Company Supervision. Any supervision provided by the Company is for the purpose of determining compliance with the technical provisions of Company rules and regulations for service and is, in no way, a guarantee of methods or appliances used by the contractor or Educational Institution, or for the safety of the job.
- (5) All work within the Company's conduits, ducts and manholes shall be performed by licensed electrical contractors and in conformance with the current edition of the National Electric Safety Code, Michigan law, Occupational Safety and Health Act, and the rules and specifications of the Company.

Trenching

- (1) An Educational Institution proposing to place facilities in a utility underground trench shall submit a request to the Company. The request must

be received by the Company prior to the joint utility planning phase which included the joint utility plan for the underground trenching project.

- (2) An Educational Institution granted permission by the Company to place their facilities in a common utility trench shall pay an equal share of the cost to secure a common right-of-way agreement (permit), to develop the joint trenching construction drawing, and to perform the trenching and other associated trenching work. Payment shall be made directly to the utility or utility contractor, providing the work.
- (3) The Educational Institution shall pay the total cost of any trenching or associated trenching work which may be provided for the Educational Institution's sole use.
- (4) Cost will be the direct labor cost plus Detroit Edison overhead costs required to perform the work, or as billed by a utility contractor directly to the Educational Institution in accordance with the contractor's current contract with the utility.
- (5) The Educational Institution shall be required to pay all charges prior to start of construction.
- (6) The Company reserves the right to make contractual arrangements with the Educational Institution (s) as to coordination, procedures, construction time frames, specifications and other business conditions not specifically addressed in this tariff or the Form Pole Attachment Agreement.

Maintenance of Facilities:

- (1) Educational Institution shall, at its own expense, install and be responsible for its facilities on poles (including guying) and in trenches, conduit or manholes of the Company and shall maintain them in good and safe condition and in a manner suitable to the Company so as not to conflict with use of said poles, trench, conduit or manholes by the Company or other authorized users of said poles, trench, conduit or manholes or interfere with the working use of facilities thereon or therein; or which may from time to time be placed thereon or therein.
- (2) Upon notice from the Company, at any time, Educational Institution shall, at its own expense, relocate or repair its facilities, transfer to substituted poles, conduit or manholes and perform any other work in connection with said facilities that may be required by the Company, except as provided in Paragraph (3) following.
- (3) In cases of emergency, or as otherwise agreed, the Company may arrange to perform any necessary work involving the facilities of Educational Institution as indicated in Paragraph (2) preceding. Educational Institution shall, on demand, reimburse the Company for the expense thereby incurred by Detroit Edison, including Detroit Edison overhead costs.

Termination of Use of Company Facilities:

- (1) Educational Institution may at any time remove its facilities from any pole, poles or conduit of the Company but shall immediately give the Company written notice of such removal or Educational Institution shall remain liable for quarterly rental payments until the Company is notified in writing.
- (2) The Company may, in its sole judgment, remove any poles or duct or conduit not needed for its service requirements; and Educational Institution shall, upon written notification from the Company, remove its attachments from such poles, duct or conduit in a reasonable time frame and consistent with the circumstances involved. The Company and Educational Institution shall work cooperatively to attempt to find a reasonable alternative means to support the Educational Institution's facilities, if available.
- (3) The Company may commence a Complaint at the Commission to require payment of bills in arrearage, damages and removal of Educational Institution facilities from poles, duct or conduit for non-payment of bills provided the bill remains unpaid 6 months after the bill due date and after at least 30 days written notice has been given to the Educational Institution. The bill due date shall be 30 calendar days from the date of physical mailing of the bill.
- (4) The Company may commence a Complaint at the Commission to require payment of bills in arrearage, damages and removal of Educational Institution facilities from poles, duct, conduit or trenches for failure of the Educational Institution to fulfill their contractual obligations for facilities and/or services provided by the Company, or for non-compliance with any rule or tariff established by the Michigan Public Service Commission.

MPSC Case No. U-14528
Witness: Daniel J. Dunlop
Exhibit A-2 (DJD-2) REVISED

Pole, Conduit, and Trench Use Agreement
For
Educational Telecommunications Facilities

POLE ATTACHMENT, CONDUIT, AND TRENCH USE AGREEMENT

BETWEEN

(ATTACHING PARTY PUBLIC SCHOOLS)

AND

THE DETROIT EDISON COMPANY

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>
I	SCOPE OF AGREEMENT
II	ADMINISTRATIVE PRACTICES
III	SPECIFICATIONS
IV	ESTABLISHING AND IDENTIFYING POLE AND CONDUIT USE
V	MAINTENANCE OF FACILITIES
VI	TERMINATION OF POLE, CONDUIT, OR TRENCH USE
VII	CHARGES
VIII	INSPECTIONS
IX	DEFAULT, WAIVER, AND REVIEW
X	PROTECTION AND INDEMNITY
XI	INSURANCE
XII	RIGHTS
XIII	PAYMENT OF BILLS
XIV	TERMS OF AGREEMENT
XV	FORCE MAJEURE
XVI	ENTIRE AGREEMENT
XVII	TITLES
XVIII	SEVERABILITY
XIX	GOVERNING LAW
ATTACHMENT 1	ADMINISTRATIVE PRACTICES
ATTACHMENT 2	PROCESS AND CHARGES FOR JOINT USE "WORK AS A CONTRACTOR"

POLE ATTACHMENT, CONDUIT, AND TRENCH USE AGREEMENT

This Pole Attachment, Conduit, and Trench Use Agreement, hereinafter referred to as "AGREEMENT", made this ____ day of _____, _____ by and between THE DETROIT EDISON COMPANY, a corporation organized and existing under the laws of Michigan, hereinafter referred to as "EDISON," and _____ PUBLIC SCHOOL DISTRICT, an educational institution governed by Section 307 of the Michigan Telecommunications Act, MCL 484.2307, hereinafter referred to as "ATTACHING PARTY," with headquarters at _____, _____, Michigan _____.

WITNESSETH:

WHEREAS, ATTACHING PARTY proposes to attach cables to poles or install cable in conduits and manholes (collectively, "conduit system"), or trenches of EDISON, and EDISON is willing to grant a revocable permit to the extent that it may lawfully so do, for the attachment of said cables to its poles, or installation of such in EDISON's conduit system and trenches, where, in EDISON's judgment, such attachment or installation will not interfere with its own service requirements, including considerations of reliability, operability, and safety.

WHEREAS, ATTACHING PARTY and EDISON agree that the Settlement Agreement approved by the Michigan Public Service Commission ("Commission") on October 7, 2003 in Case No. U-13522 ("Settlement Agreement") shall be applicable to attachments made by ATTACHING PARTY for the Term of the Settlement Agreement or any successor agreement, if any.

WHEREAS, EDISON enters into this Pole Attachment, Conduit, and Trench Use Agreement on these terms and conditions for the reason ATTACHING PARTY is a School District, as defined in the Revised School Code, MCL 380.6, rather than a commercial entity attaching to its poles.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto do agree as follows:

ARTICLE I - SCOPE OF AGREEMENT

- A. EDISON grants to ATTACHING PARTY a revocable permit to attach cable and associated necessary equipment (collectively "cable"), as EDISON may approve, to such poles as EDISON may designate (and no others). EDISON further grants to ATTACHING PARTY a revocable permit to install cables in EDISON's conduit systems or trenches as EDISON may designate (and no others). EDISON must first approve the method and location of installation on poles or in conduit systems and trenches.
- B. EDISON grants ATTACHING PARTY non-exclusive rights for its attachments on poles, or in conduit systems and trenches. EDISON does not imply or guarantee that ATTACHING PARTY will have sole occupancy of a pole, conduit system, or trench.

"School Name and Date"

- C. Prior to attaching or installing cable on poles or in conduit systems or trench, ATTACHING PARTY shall obtain all necessary permits, franchises, consents, or approvals, either public or private, which may be necessary to enable ATTACHING PARTY to attach or install such cable or to carry on its business. Should ATTACHING PARTY fail to obtain such authorizations or should such authorizations be revoked, ATTACHING PARTY shall immediately cease attaching or installing its cable. ATTACHING PARTY, where possible and where required, shall provide EDISON copies of such authorizations, or any written consent from private property owner, or owners, stating the ATTACHING PARTY has permission to ingress or egress and also to construct and operate its facilities over, under, and upon the EDISON owned poles, conduit systems or trench located on said private property.
- D. EDISON may, in its reasonable judgment, remove any poles or conduit systems not needed for its electric service requirements. ATTACHING PARTY shall, upon written notification from EDISON, remove, at its own expense, its cables from such poles or conduit systems within thirty (30) days. EDISON will use its best efforts to provide as much advance notice as possible. EDISON will, at ATTACHING PARTY's expense, cooperate fully in the transfer of ownership of any pole or conduit no longer required by EDISON and/or to relocate ATTACHING PARTY's cable to other poles or conduit systems where reasonably possible.
- E. Notwithstanding anything to the contrary herein, ATTACHING PARTY and EDISON agree that the Settlement Agreement shall be applicable to attachments made by ATTACHING PARTY for the Term of the Settlement Agreement, or any successor agreement, if any. Further, ATTACHING PARTY and EDISON acknowledge that EDISON's MPSC Tariff No. 1 (the "Tariff") imposes upon ATTACHING PARTY and EDISON various duties and obligations, with which ATTACHING PARTY and EDISON shall comply. In the event of a conflict between the Tariff, the Settlement Agreement (or a successor agreement, if any) and this Agreement, the conflict shall be resolved first by the Tariff, second by the Settlement Agreement and third by this Agreement.

ARTICLE II - ADMINISTRATIVE PRACTICES

- A. Specifications, drawings, forms and any practice or procedure essential to the detailed administration and operation of this AGREEMENT are contained in the Administrative Practices - Attachment 1, which is incorporated in and made part of this AGREEMENT. EDISON shall have the right, acting reasonably and with written notice to ATTACHING PARTY, to unilaterally amend or change the Administrative Practices. Such amendments and/or changes shall become a part of this AGREEMENT to the same extent as though originally part of the Administrative Practices. All Administrative Practices shall be applied in a non-discriminatory manner among attaching parties and other entities on EDISON poles and in EDISON conduit systems or trenches.

"School Name and Date"

ARTICLE III - SPECIFICATIONS

- A. The attachment or installation of cable by ATTACHING PARTY shall conform with the then current edition of the National Electrical Safety Code as approved by the Michigan Public Service Commission, including modifications by authority of the Michigan Public Service Commission, the State of Michigan or any other authority having jurisdiction, any applicable work practices including, but not limited to, the Tariff, Department of Labor Occupational Safety and Health Act (OSHA), Michigan Occupational Safety and Health Act (MIOSHA), Michigan Department of Transportation Regulations (DOT), and the requirements contained in the Administrative Practices - Attachment 1. Included within ATTACHING PARTY's duty to conform with the National Electrical Safety Code, ATTACHING PARTY is required to inspect its system, and confirm to EDISON, in writing, that its installations comply with the National Electrical Safety Code, subject to EDISON's verification.
- B. Where ATTACHING PARTY's facilities will be installed in conduit systems, ATTACHING PARTY may use any reasonably available innerduct, as determined by EDISON. If there is no such reasonably available innerduct, ATTACHING PARTY will have EDISON install three (3) innerducts in such duct at ATTACHING PARTY's expense. If the duct will not support three (3) innerducts, ATTACHING PARTY will have Edison install as many innerducts as feasible. All innerducts installed in EDISON's conduit system shall become the property of EDISON, and EDISON shall be free to use such innerducts for any purposes it deems appropriate. ATTACHING PARTY's facilities will be installed by EDISON in one of those innerducts at ATTACHING PARTY's expense. As used in this paragraph, innerduct shall mean high-density, polyethylene ducts, 1-¼ inch in diameter, installed within EDISON's conduit system.

ARTICLE IV ESTABLISHING AND IDENTIFYING POLE AND CONDUIT USE

- A. No attachment, placement, or installation shall be made by ATTACHING PARTY on any pole or in any conduit system of EDISON before written permission (in the form of Exhibit 2 of the Administrative Practices - Attachment 1) is received from EDISON, which permission shall not be unreasonably withheld, delayed or constrained. Such permission shall be denied only for reasons of lack of excess capacity, safety, reliability, or generally applicable engineering reasons including, but not limited to, electrical system, security, and operability, or to facilitate service to electric customers. The procedures and forms to be used in making application and receiving permission for attachment, placements or installations shall be as provided for in the Administrative Practices - Attachment 1. ATTACHING PARTY shall attach or install its cable on poles or in conduit systems of EDISON at its own expense.
- B. ATTACHING PARTY shall be responsible for, and pay in advance, all costs associated with the Make Ready Work on EDISON's poles, as provided for in the Tariff. All Make Ready Work shall conform to EDISON's specifications as outlined in Article III, Paragraph A. Only EDISON or an approved EDISON contractor shall be permitted to perform such work.

“School Name and Date”

As used in this paragraph, Make Ready Work shall mean any alterations or modifications to EDISON's poles or conduit system necessary to permit ATTACHING PARTY to attach or install its cables or equipment.

- C. ATTACHING PARTY shall arrange for EDISON's field representative(s) to be present any time ATTACHING PARTY is performing work, including, without limitation, maintenance work on EDISON's conduit system. Depending on the scope of the work, EDISON, acting reasonably in its sole discretion, may assign more than one field representative to monitor ATTACHING PARTY's work. ATTACHING PARTY shall not perform any work in a conduit system without the field representative(s) being at the work location. The field representative(s) shall have the authority to terminate any work being performed by ATTACHING PARTY should the field representative(s) believe ATTACHING PARTY, in performing such work, is not complying with the terms of this AGREEMENT. Charges for EDISON to be present shall be reimbursed by ATTACHING PARTY. EDISON will not unreasonably delay being present for any work being performed by ATTACHING PARTY or its contractor in EDISON's conduit system as long as ATTACHING PARTY and its contractor abide by the terms of this paragraph C. The cost referred to in this paragraph are as provided for in EDISON's Tariff.
- D. The costs for any rearrangement, relocation or removal of ATTACHING PARTY's cables shall be allocated to EDISON or other entities on the following basis:
1. If the rearrangement, relocation or removal of ATTACHING PARTY's cables is the result of an additional attachment or the modification of an existing attachment sought by an entity other than EDISON or ATTACHING PARTY, the entity requesting the additional or modified attachment shall bear the entire cost of rearrangement, relocation and removal of the ATTACHING PARTY's cables or equipment.
 2. If the rearrangement, relocation or removal of ATTACHING PARTY's cables is the result of an additional non-internal communication (excluding electric) attachment or the modification of an existing non internal communication (excluding electric) attachment sought by EDISON, EDISON shall bear the entire cost of rearrangement, relocation and removal of the ATTACHING PARTY's cables.
 3. If EDISON modifies or alters a pole or conduit system to which ATTACHING PARTY has made an attachment, EDISON shall provide written notification on a monthly basis of the work performed. ATTACHING PARTY will be invoiced for "Work as a Contractor" based on the cost of the work performed as noted in Attachment 2, as amended.
 4. If the rearrangement, addition or modification is requested by ATTACHING PARTY, ATTACHING PARTY shall bear the cost of

"School Name and Date"

such rearrangement, addition or modification. ATTACHING PARTY is free to make agreements with other entities to receive reimbursement of proportionate costs where the other entities are benefiting from the rearrangement, addition or modification.

- E. At each pole or manhole location and at ATTACHING PARTY's expense, cables (including guy wires) shall be identified with a durable, legible weatherproof cable identification tag showing the ATTACHING PARTY's name and a twenty-four (24) hour toll-free telephone number. A sample of such cable identification must be submitted to EDISON for approval prior to installation, and must be color-coded pursuant to the requirements set forth in Attachment 1, Exhibit 7. All power supplies must be identified with a label identifying ATTACHING PARTY's name and 24-hour toll-free telephone number.

ARTICLE V - MAINTENANCE OF FACILITIES

- A. EDISON may, in its sole judgment, replace or relocate any poles or conduit system used by ATTACHING PARTY hereunder to maintain the reliability, operability, and security of its electric and internal communication system or to facilitate service to its electric customers. Notwithstanding Article IV, paragraph C above, EDISON shall be responsible for all costs associated with such replacement or relocation, except ATTACHING PARTY shall be responsible for the reasonable cost of transferring, relocating or moving its cable.
- B. EDISON shall continue to perform the type of tree trimming it typically would perform had ATTACHING PARTY cable not been present on its poles. Any additional tree trimming required for the attachment, installation or maintenance of ATTACHING PARTY's cable shall be performed by ATTACHING PARTY.
- C. In the event ATTACHING PARTY experiences an emergency with its cable in the conduit system, it is necessary that an EDISON representative be at the site before ATTACHING PARTY, or its contractor, enters an EDISON manhole. EDISON will respond to an emergency as arranged between the ATTACHING PARTY and EDISON. ATTACHING PARTY shall pay EDISON's costs for such work.
- D. In the event of an emergency on its poles or its conduit system, EDISON may take whatever action it deems necessary and appropriate under the circumstances, including, but without limitation, the removal of ATTACHING PARTY's cable from its poles or conduit system. ATTACHING PARTY shall pay EDISON's costs for such work. EDISON will make reasonable efforts to notify ATTACHING PARTY prior to taking such action. The failure to provide such notice shall not subject EDISON to liability for any loss of or damage to ATTACHING PARTY.
- E. EDISON reserves to itself, its successors and assigns, the right to maintain its poles and conduit system and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements and responsibilities.

“School Name and Date”

- F. In joint use trenches, with energized electrical facilities, ATTACHING PARTY shall hand expose (no power tools) its facilities to work and/or repair ATTACHING PARTY facilities. Further, when any work is necessary to install, maintain or repair its underground facilities, ATTACHING PARTY shall follow the provision as detailed in Act 53 of Michigan Public Acts of 1974; MCLA 460.701, et seq.; MSA 22.190(1), et seq. All personnel involved in hand exposing facilities shall be trained in possible dangers and have knowledge of the approved methods and safety precautions. Normally, EDISON will not de-energize its facilities during the ATTACHING PARTY hand exposing work. However, digging in any manner shall not be performed around faulted electric power cables until EDISON has verified that it is de-energized and tested. It shall be incumbent upon the ATTACHING PARTY to determine through inquiry and field observation any potential for damage to power facilities before digging and to avoid such damage.

ARTICLE VI TERMINATION OF POLE, CONDUIT, OR TRENCH USE

- A. ATTACHING PARTY may, at any time, remove its facilities from any EDISON pole, conduit system, or trench, but shall immediately give EDISON notice of such removal (in the form of the Administrative Practices - Attachment 1, Exhibits 3 or 5).
- B. Upon notice from EDISON to ATTACHING PARTY pursuant to the section A-9.1(5) of the Tariff, ATTACHING PARTY must either begin to remove all of its cables from the pole, conduit system, or trench involved or notify EDISON of its intent to defend its right to continue occupying the disputed space, by the initiation of legal action or otherwise, within ten (10) business days of such notice. If ATTACHING PARTY defends and obtains an adverse adjudication, or ceases to pursue such defense, ATTACHING PARTY shall provide written notice to EDISON within ten (10) business days of such action and ATTACHING PARTY shall remove all of its cables from the pole, conduit system, or trench involved. If ATTACHING PARTY does not take the necessary action within ten (10) business days of receipt of notice from EDISON or within ten (10) business days of obtaining an adverse adjudication or ceasing to pursue such defense, EDISON may remove the cables and hold ATTACHING PARTY liable for all cost and expense of such removal.
- C. If ATTACHING PARTY shall fail to comply with any of the terms or provisions of this AGREEMENT, EDISON may, at its option, terminate this AGREEMENT or terminate permission for use of any pole or conduit system in accordance with Article XIV, Paragraph A.

ARTICLE VII - CHARGES

- A. The charges to be paid by ATTACHING PARTY to EDISON and the terms of payment for such charges are set forth in the Tariff.

“School Name and Date”

ARTICLE VIII - INSPECTIONS

- A. Pursuant to the Tariff, EDISON reserves the right to inspect each new installation of ATTACHING PARTY and to make periodic inspections of any or all installations of ATTACHING PARTY. Such inspection costs or periodic system audits are to be paid by ATTACHING PARTY. Failure to make such inspections shall not operate to relieve ATTACHING PARTY of any responsibility or obligation or liability assumed under this AGREEMENT.

ARTICLE IX - DEFAULT, WAIVER, AND REVIEW

- A. If ATTACHING PARTY shall fail to comply with any of the terms or provisions of this AGREEMENT, or default in any of its obligations under this AGREEMENT and shall fail within thirty (30) days after written notice from EDISON to correct such default or non-compliance, EDISON may, at its option, terminate this AGREEMENT or terminate permission for use of any pole or conduit system involved in the default or non-compliance. Such termination in no way exempts payment for any pole or conduit system rental prior to the actual removal of all attachments.
- B. Failure of EDISON to enforce or insist upon compliance with any of the terms or provisions of this AGREEMENT shall not constitute a general waiver or relinquishment of any such terms or provisions.

ARTICLE X - PROTECTION AND INDEMNITY

- A. EDISON reserves to itself, its successors and assigns, the right to maintain its poles, conduit system, and trenches and to operate its cables thereon in such manner as will best enable it to fulfill its own service requirements. EDISON shall exercise reasonable precaution to prevent damage to, or interference with the operation of the equipment of ATTACHING PARTY, but EDISON shall not be liable for, and ATTACHING PARTY waives all claims for, any such damage or interference which may arise out of the use of EDISON's poles, conduit system, or trenches hereunder, or operation of its cables thereon, excluding claims based upon EDISON's negligent, reckless or intentional misconduct.
- B. ATTACHING PARTY shall exercise reasonable precautions to prevent damage to facilities of EDISON or of other authorized users of said poles, conduit system, or trenches, and ATTACHING PARTY hereby assumes all responsibility for any and all damage to facilities of EDISON, or other authorized users arising out of, or caused by the erection, maintenance, installation, presence, use or removal of ATTACHING PARTY's cables or equipment. ATTACHING PARTY shall make an immediate report to the particular owner of the facilities affected by the occurrence of any damage and hereby agrees to reimburse such owner for the expenses incurred in making the necessary repairs and replacement.

“School Name and Date”

- C. To the extent provided by law, ATTACHING PARTY covenants and agrees that it shall indemnify and hold EDISON, and all of its agents, employees, officers and affiliates harmless for any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, whether to any person or property or both, arising directly or indirectly out of, or in connection with ATTACHING PARTY's, or any of its contractors' or subcontractors', use of EDISON facilities, including poles, conduit systems, and trenches to which EDISON or any of its agents, employees, officers and affiliates may be subject or put by reason of any act, action, neglect or omission on the part of EDISON or ATTACHING PARTY or any of its contractors or subcontractors or any of their respective officers, agents, employees, and affiliates, excluding claims based on EDISON's reckless or intentional misconduct; said obligation to indemnify and hold EDISON harmless includes, but is not limited to, injuries which occur to employees of ATTACHING PARTY or its contractors and sub-contractors, or injuries to members of the public, or injuries to employees of EDISON. If this Agreement is one subject to the provisions of Michigan Act No. 165, PA 1966, as amended, then ATTACHING PARTY will not be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of EDISON, or any of its officers, agents or employees.
- D. In the event any suit or other proceedings, for any claim, loss, damage, cost, charge, or expense covered by ATTACHING PARTY's foregoing indemnity should be brought against EDISON, or any of its officers, agents, employees, or affiliates, ATTACHING PARTY hereby covenants and agrees to assume the defense thereof and defend the same at ATTACHING PARTY's own expense and to pay any and all costs, charges, attorney's fees, and other expenses, and any and all judgments that may be incurred by, or obtained against EDISON, or any of its officers, agents, employees, or affiliates in such suits or other proceedings. EDISON reserves the right to approve of counsel selected by ATTACHING PARTY to represent the interests of EDISON in any such suit or other proceeding. In the event of any judgment or other lien being placed upon the property of EDISON in such suits or other proceedings, ATTACHING PARTY shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

ARTICLE XI - INSURANCE

- A. ATTACHING PARTY shall, at their own expense, procure, maintain and keep in effect during the term of this AGREEMENT, and any extensions or renewals thereof, a policy of Commercial General Liability Insurance, including contractual liability coverage for the liability assumed herein, in the amount not less than \$10,000,000 in the aggregate annually consisting of primary and excess insurance with respect to each project or contract undertaken with EDISON. Each Insurance Policy is to include EDISON as an additional insured for claims arising directly or indirectly out of this AGREEMENT.
- B. ATTACHING PARTY shall maintain, at its expense, Workers' Compensation coverage as required by the Michigan statute.

“School Name and Date”

- C. ATTACHING PARTY shall maintain at its expense Automobile Liability Coverage up to a limit of not less than \$1,000,000 combined single limit with respect to bodily injury and property damage arising from the ownership, operation or use of an automobile.
- D. ATTACHING PARTY shall at the time of acceptance of this AGREEMENT, submit to EDISON, a Certificate of Commercial General Liability Insurance evidencing such insurance coverage and endorsement of EDISON as an additional insured as provided for herein and evidence of renewals thereof. Such certificates shall state that no material change or cancellation can be effected without thirty (30) days prior written notice to EDISON. Certificates evidencing renewals of these coverages shall be delivered to EDISON no later than thirty (30) days prior to the effective date of such renewal.
- E. It is expressly understood that the obtaining of the insurance as is herein provided, shall in no way limit or release ATTACHING PARTY's liability under the indemnity provisions as provided herein.
- F. The insurance provided by ATTACHING PARTY and its contractors and subcontractors shall be primary to, and not contributing with, any applicable insurance or self insurance maintained by EDISON.
- G. It is understood that the requirements set forth in this article are subject to revision by mutual consent and negotiation every three years after the execution of this AGREEMENT, with effect from the anniversary of such execution. Such revisions, however, will not require insurance coverage in excess of \$30,000,000 in the aggregate annually with respect to this Agreement.
- H. EDISON does not in any way represent that the insurance specified herein, whether with respect to scope or coverage or limits, is adequate or sufficient to protect the interests of ATTACHING PARTY.

ARTICLE XII - RIGHTS

- A. Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by EDISON, by contract or otherwise, to others not parties to this AGREEMENT, to use any pole, conduit system, or trenches covered by this AGREEMENT and EDISON shall have the right to continue and extend such rights or privileges. The privileges herein granted shall at all times be subject to such contracts and arrangements.
- B. Subject to ATTACHING PARTY's right to sell excess capacity in its network pursuant to Section 307 of the Michigan Telecommunications Act, MCL 484.2307, et seq., ATTACHING PARTY shall not assign, sublease or otherwise transfer, in whole or in part, the privileges granted without the prior consent in writing of EDISON, which consent shall not be unreasonably withheld. ATTACHING PARTY shall not permit any other party's cables, facilities or equipment on EDISON poles, conduit systems, or trenches, or attached to

“School Name and Date”

ATTACHING PARTY's cables, without EDISON's consent in writing. Nothing in this Agreement, express or implied, is intended to confer any rights or benefits on any third parties.

- C. If ATTACHING PARTY changes its name, but without an assignment of its rights under this AGREEMENT, then ATTACHING PARTY must send prior written notice to EDISON of its new name and address so that EDISON can change its records accordingly.
- D. Subject to the provisions of Paragraph B hereof, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

ARTICLE XIII - PAYMENT OF BILLS

- A. Undisputed bills for pole reconstruction, alterations, inspections, expenses, rental and other charges under this AGREEMENT shall be paid within thirty (30) days after receipt by ATTACHING PARTY at the above referenced address. There will be a one and one-half percent (1½%) per month late fee for each month the amount of the invoice remains unpaid. Nonpayment of bills shall constitute default of this AGREEMENT.
- B. If ATTACHING PARTY disputes any bill or any portion thereof, the following shall apply:
 - 1. Alternative to Litigation. Except as otherwise specifically provided for in this Agreement, the parties desire to resolve billing and payment disputes arising out of this Agreement without court litigation. Accordingly, the parties agree to use the following Dispute Resolution procedure with respect to any billing dispute arising out of or relating to this Agreement or its breach.
 - 2. Commencing Dispute Resolution. Dispute Resolution shall commence upon the sending from one party to the other of written notice of the dispute. No party may pursue any claim unless such written notice has first been given to the other party.
 - 3. Informal Resolution of Disputes. When such written notice has been given, as required by this Article, each party, within ten (10) business days of receipt of such notice, will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve the dispute. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Records of discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production, if appropriately marked to so indicate, and will not be admissible in any formal dispute resolution process arising out of the dispute (i.e., arbitration, administrative complaint, or court action) without the prior written concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise

“School Name and Date”

admissible, may be admitted in evidence in the arbitration, lawsuit, or other proceeding.

4. Formal Dispute Resolution. If the parties are unable to resolve the dispute within forty (40) days after the parties' appointment of designated representatives through the informal procedure described in this Article, then either party may seek relief under any applicable law, rule or proceeding.
5. When a billing dispute is resolved in favor of ATTACHING PARTY the following will occur within thirty (30) days:
 - a. Interest at a rate of one and one-half percent (1½%) per month will be paid by EDISON on any amounts paid in excess of the amount found to be due according to the Dispute Resolution.
 - b. Any payments made in excess of the amount found to be due according to the Dispute Resolution will be reimbursed by EDISON.
6. When a billing dispute is resolved in favor of EDISON, the following will occur within thirty (30) days:
 - a. Interest at a rate of one and one-half percent (1½%) per month will be paid by ATTACHING PARTY on any amount not paid that was found to be due according to the Dispute Resolution.
 - b. Any amounts not paid but found to be due according to the Dispute Resolution will be paid to the billing party.

ARTICLE XIV - TERMS OF AGREEMENT

- A. This AGREEMENT shall become effective on the day and year first above written; and if not terminated in accordance with the provisions of Article IX, shall continue in effect for a term of fifteen (15) years from said date.
- B. Not later than one hundred eighty (180) days following termination of the AGREEMENT in accordance with any of its terms, ATTACHING PARTY, after receiving notice of intent to terminate, shall remove its cables and equipment from all poles, conduit systems, or trenches of EDISON. If not so removed, EDISON shall have the right to remove them at the cost and expense of ATTACHING PARTY and without any liability therefore, and ATTACHING PARTY agrees to pay the reasonable cost thereof within ten (10) days after it has received an invoice from EDISON.

ARTICLE XV- FORCE MAJEURE

“School Name and Date”

- A. Neither party will be held liable for any delay or failure in performance of any provision of this AGREEMENT, other than any delay or failure to pay any sum of money due hereunder, and no party shall be in default under this AGREEMENT, if such delay or failure results from a Force Majeure event. A Force Majeure event means an event caused by strike or other labor problem; act of a third party; embargo; epidemic; accident; act of God; fire, flood, adverse weather conditions, or other major environmental disturbance; material shortage or unavailability; lack of transportation; act of military authority; government ordinance, law, rule, regulation, or restrictions; inability to obtain necessary license, permit, or right; war or civil disorder, or other event of similar or dissimilar nature, provided that such causes are beyond the reasonable control and without the willful act, fault, failure, or negligence of the party whose performance is affected by the Force Majeure event continues to make reasonable efforts to perform its obligations under this Agreement.

XVI - ENTIRE AGREEMENT

- A. This AGREEMENT along with any exhibits or attachments thereto constitutes the entire AGREEMENT between the parties and may not be modified except in writing.

XVII - TITLES

- A. The article headings in this AGREEMENT are for convenience only and shall not be considered a part of or used in the interpretation of this AGREEMENT.

XVIII - SEVERABILITY

- A. Should any provision(s) of this AGREEMENT be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and the illegal or invalid provision(s) shall be deemed not to be part of this AGREEMENT.

XIX - GOVERNING LAW

- A. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Michigan.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

THE DETROIT EDISON COMPANY

BY: _____

Its: Vice President

“School Name and Date”

Date: _____

ATTACHING PARTY

BY: _____

Its: _____

Date: _____

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's Own Motion,)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company of)
a uniform pole attachment tariff for educational)
telecommunications facilities.)

Case No. U-14528

QUALIFICATIONS
AND
REVISED DIRECT TESTIMONY
OF
JAMES R. PADGETT

|

THE DETROIT EDISON COMPANY
QUALIFICATIONS OF JAMES R. PADGETT

Line
No.

1 **Q. Please state your full name and business address.**

2 A. My name is James R. Padgett. My business address is The Detroit Edison
3 Company, 2000 Second Avenue, Detroit, Michigan 48226.

4

5 **Q. What is your present position with The Detroit Edison Company?**

6 A. I am the Director of Regulatory Affairs. This position is responsible for
7 developing and coordinating the Company's regulatory policy with the
8 Michigan Public Service Commission ("MPSC") and the Federal Energy
9 Regulatory Commission ("FERC"). The position, among other things, requires
10 that I follow developments in regulatory commission cases, court cases, and
11 legislation to ensure that the Company's operations conform to applicable
12 statutes, rules, regulations, and other regulatory requirements. In this position,
13 my staff and I have been involved in a number of pole attachment matters,
14 including the present case.

15

16 **Q. Would you please describe your previous experience with The Detroit**
17 **Edison Company?**

18 A. In October 1997, I joined The Detroit Edison Company ("Detroit Edison" or
19 "Edison") as Director Regulatory Compliance with the Regulatory Affairs
20 Department. In this position I was responsible for coordinating compliance
21 activities at both the MPSC and the FERC, and directing various cases before
22 the MPSC. I held this position until I assumed the position of Manager of
23 Regulatory Affairs. In June of 2001, concurrent with the merger with Michigan

Line
No.

1 Consolidated Gas Company, I assumed my current position.

2

3 **Q. What is your formal educational background?**

4 A. In June of 1973, I received a Bachelor of Science Degree in Chemical
5 Engineering from Michigan State University.

6

7 **Q. Would you briefly outline your work experience?**

8 A. After graduation, I was employed by Consumers Power Company in the
9 Chemical Division of their Research and Testing Laboratory. During my
10 employment with Consumers Power, I was responsible for certain projects
11 involving air and water chemistry-related problems in the Company's electrical
12 generating plants. I joined the Staff of the MPSC in December, 1974 as a
13 Public Utilities Engineer and have held positions in the State Energy Office,
14 Business Services Division, and Office of Electric Operations. In January,
15 1983, I assumed the position of Assistant Supervisor of the Engineering
16 Section within the Electric Division of the Public Service Commission. I held
17 that position until February, 1984 when I was appointed Acting Supervisor of
18 the Engineering Section. In October, 1984, I became Supervisor of the
19 Engineering Section, a position I held until October of 1997, when I accepted a
20 position with Detroit Edison.

21

22 While at the Commission, as Supervisor of the Engineering Section, I was
23 responsible for administration of the National Electrical Safety Code ("NESC")

Line
No.

1 for the years 1984-1997. Administration of the NESC required that I oversee
2 the Commission's involvement in the rulemaking process regarding the NESC.
3 I was personally involved in the process required to adopt two editions of the
4 NESC.

5
6 **Q. Are you a registered professional engineer in the State of Michigan?**

7 A. Yes, I am.

8
9 **Q. Have you previously testified before the MPSC?**

10 A. Yes. I have testified in numerous proceedings on various subjects including
11 nuclear and fossil plant production, operation and maintenance expense, fuel
12 and purchased and net interchange power expense, fuel handling expense,
13 jurisdictional separations, system availability, pole attachments, central steam
14 heating and industrial steam cost of service and rate design, prudent
15 construction cost, system reliability, extension policies, territorial disputes and
16 various other production, regulatory policy, transmission, and distribution
17 related issues. Listed below is a partial list of my appearances before the
18 MPSC. I testified on behalf of the Staff of the MPSC in the cases listed prior to
19 1998. Thereafter, I testified on behalf of Detroit Edison.

20

21	Year	Company	Case No.	Type
22	1977	Detroit Edison Company	U-4807	Reconciliation
23	1977	Consumers Power Company	U-4840	Reconciliation

Line No.			
1	1979 Consumers Power Company	U-5331	Availability
2	1979 Detroit Edison Company	U-6006	Rate
3	1979 Consumers Power Company	U-5979	Rate
4	1979 Consumers Power Company	U-5979	Re-hearing
5	1980 Detroit Edison Company	U-5502	Availability
6	1980 Consumers Power Company	U-5331	Availability
7	1980 Detroit Edison Company	U-6103	Steam
8	1980 I & M Electric Company	U-6148	Rate
9	1980 Wolverine Electric Coop.	U-6532	Rate
10	1980 Wisconsin P.S. Corp.	U-6212	Rate
11	1980 Michigan Power Company	U-6322	Rate
12	1980 Detroit Edison Company	U-6488	Rate
13	1981 Consumers Power Company	U-5979	Rate Re-opener
14	1980 Northern MI & Wolverine	U-5407	Securities
15	1981 Consumers Power Company	U-5979	Availability
16	1982 Consumers Power Company	U-6923	Rate
17	1982 Detroit Edison Company	U-6488	Availability
18	1982 Consumers Power Company	U-5979	Availability
19	1982 Detroit Edison Company	U-6949	Rate
20	1982 Detroit Edison Company	U-7126	Steam
21	1984 Detroit Edison Company	U-7660	Rate
22	1985 Consumers Power Company	U-7830	Rate
23	1986 Detroit Edison Company	U-8387	Complaint

Line No.			
1	1986 Consumers Power Company	U-8438	Performance Stds.
2	1987 Detroit Edison Company	U-8469	Performance Stds.
3	1988 Consumers Power Company	U-7830	3B Rate
4	1989 Top O' Michigan	U-9268	Act 69 Certificate
5	1990 Consumers Power Company	U-9346	Rate
6	1990 Top O' Michigan	U-9517	Complaint
7	1991 Consumers Power Company	U-9755	Complaint
8	1991 Consumers Power Company	U-9807	Act 69 Certificate
9	1991 Consumers Power Company/	U-9916	Storm Investigation
10	Detroit Edison Company		
11	1992 Cherryland Electric Coop.	U-10108	Territorial Dispute
12	1992 Western Mich. Electric Coop.	U-10115	Territorial Dispute
13	1992 Western Mich. Electric Coop.	U-10116	Territorial Dispute
14	1993 Detroit Edison Company	U-10102	Rate
15	1993 Detroit Edison Company	U-10176	Retail Wheeling
16	Consumers Power Company	U-10143	Retail Wheeling
17	1993 Consumers Power Company	U-10239	Act 69 Certificates
18	U-10240		
19	U-10241		
20	1994 Consumers Power Company	U-10335	Rate
21	1994 Consumers Power Company	U-10562	Act 69 Certificate
22	1994 Consumers Power Company	U-10676	Act 69 Certificate
23	1997 Consumers Power Company/	U-10831	Pole Attach. Rates
24	Detroit Edison Company		
25			
26	1999 Detroit Edison Company	U-11956	True-up

**Line
No.**

1	1999 Detroit Edison Company	U-12134	Code of Conduct
2	2000 Detroit Edison Company	U-12478	Securitization
3	2002 Detroit Edison Company	U-13350	Net Stranded Cost
4	2003 Detroit Edison Company	U-13522	Pole Attachments
5	2004 Detroit Edison Company	U-13808	Rate
6	2005 Detroit Edison Company	U-14170	Pole Attachments
7	2005 Detroit Edison Company	U-14241	Pole Attachments

THE DETROIT EDISON COMPANY
DIRECT TESTIMONY OF JAMES R. PADGETT

Line
No.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to provide an overview of the Detroit Edison
3 Company's filing and to make recommendations regarding pole attachment
4 policy issues connected with Educational Institution telecommunications
5 facilities. Detroit Edison believes that two of the most significant public policy
6 issues associated with Educational Institution pole attachments are (1)
7 appropriate recognition and recovery of the Company's costs to provide pole
8 attachment service, and (2) proper liability coverage for both the Schools and
9 Detroit Edison in light of the risks associated with the School's construction
10 and operation of telecommunications networks on the Company's high voltage
11 pole network. However, for purposes of complying with the ALJ's April 13,
12 2006 ruling the Company has removed its request to address the costs
13 experienced by Detroit Edison with respect to pole attachment liability and the
14 Company will utilize the terms of the pole attachment agreement from Case
15 No. U-14241 (Woodhaven Schools).

16
17 It is important that the Commission approve an educational tariff that balances
18 Detroit Edison's legitimate business concerns, the interests of its customers
19 and the interests of the attaching parties. The costs, risks and rewards must
20 be properly recognized and equitably balanced in order to develop a
21 reasonable and enforceable public policy. ~~As explained more fully in the~~
22 ~~testimony of Detroit Edison witness Roger Olson, the August 1, 2005~~
23 ~~Woodhaven Schools Order in Case No. U-14241 essentially shifted the costs~~

Line
No.

1 ~~of liability claims from Educational Institutions to Detroit Edison and its electric~~
2 ~~ratepayers.~~ The Commission previously rejected ~~this type of~~ subsidization for
3 educational pole attachers, by pole owners and other attachers. In its
4 February 11, 1997 Order in Case Nos. U-10741, U-10816 and U-10831, the
5 Commission concluded: “[T]he Commission is not persuaded by EDUNETS’
6 argument that ~~e~~Educational ~~i~~nstitutions should receive an exemption or more
7 favorable rate treatment than other attaching parties. Although Michigan
8 educational policy favors educational applications of telecommunications
9 technology, it is another thing to say that rates should be altered to the specific
10 benefit of ~~E~~educational ~~i~~nstitutions. Necessarily, this would require subsidy
11 from other attaching parties, ratepayers or the utility.” February 11, 1997
12 Order, Case Nos. U-10741, et al at pp 31-32.

13
14 ~~Just as the Commission rejected EDUNETS’ attempts to procure a subsidy in~~
15 ~~pole attachment rental rates, the Commission should similarly correct the~~
16 ~~indemnification language that would have the same effect.~~ Such cost shifting
17 to subsidize third-party attachments is inconsistent with good public policy and
18 sound ratemaking.

19
20 Staff has also recognized that Edison is entitled to a contract to assist in
21 governing the relationship of the parties. “Staff disagrees with EduNets
22 regarding eliminating pole attachment agreements. Some flexibility needs to be
23 allowed for unique situations, shared duties, insurance, emerging technologies,

Line
No.

1 inspection requirements, and other matters not addressed in the tariff.” Staff
2 Report, Case No. U-13522 at p. 15.

3

4

5 **Q. What are some of the more fundamental unresolved policy issues**
6 **regarding pole attachments by Educational Institutions?**

7 A. First, Detroit Edison's existing “one-size-fits-all” pole attachment tariff is based
8 upon Detroit Edison's cost of providing pole attachment service in the early
9 1980's. Pole attachment costs are essentially labor costs, overhead costs and
10 materials such as poles. Also, these 1980's costs were developed at a time
11 when pole attachment was a much less complex matter as there was generally
12 only the local telephone company and (at most) one cable television provider
13 with whom to coordinate. At that time, the local phone company and cable
14 television providers were not engaged in much, if any, competition. As the
15 Commission is acutely aware, that is no longer the case and now, especially in
16 major metropolitan areas such as Detroit, several communication service
17 providers are vying for the limited space on Detroit Edison's poles. The spirit of
18 cooperation among attaching parties has largely disappeared.

19

20 As a result, there can be no reasonable disagreement that these 20+ year-old
21 costs are now out-of-date and too low. Messrs. Dunlop and, Ketcik and Olson
22 support and justify Detroit Edison's cost of providing pole attachments in the
23 present pole attachment environment, exclusive of the liability costs that

Line
No.

1 Detroit Edison also experiences.-

2

3 In addition, the increase in the number of attaching parties, with their variety of
4 competing interests, knowledge, experience and skill levels, adds additional
5 congestion and risks—costs to the maintenance and operation of the
6 Company's high voltage pole network. These new and varied risks—costs
7 should be recognized and addressed in an equitable and legally sufficient
8 manner. so that all attaching parties are properly covered for the risks
9 associated with operation and maintenance of the Company's dynamic pole
10 network. Fundamental fairness requires that the Company not be required to
11 bear uncompensated risk because of pole attachments. Mr. Olson, the
12 Company's insurance and risk management expert explains and justifies two
13 alternative proposals being proposed by Detroit Edison to manage the
14 Company's and Educational Institution's pole attachment liability. The
15 Company offers these alternatives solutions in a spirit of cooperation and
16 compromise and believes that its proposals offer realistic and reasonable-cost
17 solutions that address both Educational Institutions' needs and the Company's
18 needs except for the cost of the liability experienced by the Company.

19

20 **Q. Why is Detroit Edison filing a special educational pole attachment tariff?**

21 A. The Commission, in its order dated May 17, 2005 in MPSC Case No. U-
22 14241, stated that "Detroit Edison should participate in MPSC Case No. U-

Line
No.

1 14528 for the purposes of creating a uniform pole attachment tariff for
2 educational telecommunication facilities.”

3
4 It would appear that the Commission has initiated this proceeding because it
5 has concluded that non-profit Educational Institutions have unique needs when
6 it comes to attaching their telecommunication networks to Detroit Edison’s
7 poles.

8 In that spirit, Detroit Edison, through Mr. Dunlop, has proposed a pole
9 attachment tariff it believes will be beneficial to both the Schools and the
10 Company and is tailored to the way the Company understands Educational
11 Institutions’ go about developing telecommunications networks. As a general
12 proposition, Detroit Edison’s tariff seeks to (a) obtain as much advanced notice
13 as possible from School Districts so that Detroit Edison can help them
14 effectively plan and implement their telecommunication networks, ~~(b) help~~
15 ~~ensure that both Schools and Detroit Edison are properly covered at the lowest~~
16 ~~cost against the liability associated with attachment to a high voltage pole~~
17 ~~network;~~ (eb) provide Schools a streamlined and understandable process for
18 working with the Company to accomplish attachment, (dc) help ensure that
19 Detroit Edison is compensated for its actual cost of providing pole attachment
20 service to Educational Institutions except with regard to liability costs, and (ed)
21 exclude the costs of remediating NESC issues caused by other attaching
22 parties from Educational Institution charges. ~~Messrs~~Mr. Dunlop ~~and Olson~~
23 ~~elaborate~~s on the specifics of the Company’s proposal.

24

Line
No.

1 Detroit Edison believes that its "Alternative Pole Attachment Tariff For
2 Educational Telecommunications Facilities" provides a reasonable, equitable
3 and cost-effective alternative process for attaching Educational Institution
4 telecommunication networks that generally satisfies the needs of ~~both~~ the
5 Company and the Schools. However, Educational Institutions also will have the
6 option to remain subject to the existing "one-size fits all" pole attachment tariff
7 if they desire.

8
9 **Q. Can you provide a general overview of the Company's filing?**

10 A. Detroit Edison is sponsoring the testimony and exhibits of the following
11 additional witnesses:

12
13 Mr. Daniel J. Dunlop, Supervising Engineer, Joint Use, supports and justifies
14 Detroit Edison's proposed "Alternative Pole Attachment Tariff For Educational
15 Telecommunications Facilities" and proposed form pole attachment agreement
16 which are designed to help minimize future complaints and controversy while
17 facilitating more efficient and cost-effective pole attachment for Schools.

18
19 ~~Mr. Roger D. Olson, Manager, Corporate Insurance, provides an overview of~~
20 ~~Detroit Edison's proposed joint insurance and liability coverage for The Detroit~~
21 ~~Edison Company and Educational Institutions as well as the liability problems~~
22 ~~caused by the Commission's Case No. U-14241 Woodhaven Schools Order~~
23 ~~dated August 1, 2005. The Company appreciates that the indemnification and~~

Line
No.

~~insurance issues are difficult to understand. Mr. Olson explains the need for carefully worded and legally effective indemnification and insurance language and why apparently minor changes to such language can result in no meaningful indemnity or insurance coverage being provided. As explained by Mr. Olson, Detroit Edison's insurance "pooling" proposal is expected to lower the cost of appropriate insurance coverage.~~

Mr. Gary P. Ketcik, Principal Financial Analyst, Distribution Operations, sponsors the calculation of the Company's proposed Pole Application Fee and proposed Conduit Application Fee which excludes liability costs. As I explained generally above, the costs included in the Company's current "one-size fits all" pole tariff have not been updated since the early 1980s. The costs in the tariff other than pole and conduit rental have been updated to reflect current costs, except for liability costs.

Q. Is Detroit Edison proposing an increase in the pole or conduit rental rate?

A. No. Although the current pole and conduit rental rates do not properly compensate the electric ratepayer for the use of the pole, given the Commission's historic preference for establishing pole rental rates on a statewide basis and in light of the non-profit nature of the Educational Institutions that would qualify for the proposed tariff, Detroit Edison's proposal does not propose an increase in the ten (10) year-old pole rental rate. This, of

Line
No.

1 course, is a substantial benefit to Educational Institutions.

2

3 Detroit Edison is using its best efforts to limit controversy in the pole
4 attachment arena. The Company's goal is to establish an equitable, uniform
5 educational tariff and pole attachment agreement in this proceeding so that it
6 may focus its efforts on moving forward to assist Educational Institutions in
7 building their telecommunications networks as efficiently as possible.

8

9 ~~Q.—Can you discuss the reasons for Detroit Edison's insurance proposal?~~

10 ~~A.—Detroit Edison does not agree with the modifications made to the Allen Park~~
11 ~~Public Schools pole attachment agreement, as they relate to indemnification~~
12 ~~and insurance, that were required by the Commission in its August 1, 2005~~
13 ~~Order in the Woodhaven School Case. Detroit Edison believes that the~~
14 ~~Woodhaven Case results in Edison being burdened with uncompensated~~
15 ~~liability for the Educational Institutions' attachments to its high-voltage pole~~
16 ~~network. Since contractual indemnification seemed to be a point of impasse,~~
17 ~~the Company evaluated other means of addressing the liability issue.~~

18

19 ~~—In the spirit of compromise, and after discussions between Edison's in-house~~
20 ~~insurance expert and outside insurance carriers, who suggested that~~
21 ~~Educational Institutions may be insufficiently protected from the risks~~
22 ~~associated with pole attachments, the Company concluded that the lowest cost~~
23 ~~alternative would be an insurance pooling arrangement covering the insurance~~

Line
No.

~~needs of both the Educational Institutions and the Company. The Case No. U-14241 Woodhaven School Case would then be acceptable to Detroit Edison. The details of these matters are explained by Mr. Olson.~~

Q. ~~Who will pay for the insurance coverage the Company is proposing?~~

~~A. Detroit Edison believes that 70% of the premium amounts should be borne by Michigan Educational Institutions taking pole attachment service under the Alternative Pole Attachment Tariff for their educational telecommunications facilities and, in recognition of the Schools non-profit status, and the overall benefit of education to the State, 30% will be charged to Detroit Edison and recovered as a reasonable and prudent distribution cost in the Company's next general rate case. Detroit Edison believes that, given all of the competing interests, this compromise is reasonable and equitable. After all, under Detroit Edison's proposal, Schools would continue to pay ten (10) year-old pole rental rates, receive special accommodation for their pole attachment projects and head-off a potentially expensive latent liability for their telecommunications networks at a reasonable "group" price.~~

It is ~~also~~ my general understanding that one of the most significant drivers of the installation of Educational Institution telecommunications networks is the accompanying ability to bypass traditional telecommunications service providers and save substantial amounts of money in annual telecommunication charges. Detroit Edison certainly does not oppose those cost savings efforts by Educational Institutions. However, the costs imposed on Detroit Edison in

Line
No.

1 achieving those telecommunication savings must also be properly accounted
2 for and recovered by Detroit Edison.

3

4 ~~Q. What is the alternative to the Company's joint insurance proposal?~~

5 ~~Q. What is the form pole agreement that the Company is sponsoring in its~~
6 ~~Exhibits?~~

7 A. The ~~Commission could approve the insurance and indemnity language~~
8 ~~included in the~~ form pole attachment agreement is included as Exhibit A-2
9 (DJD-2). This proposed form agreement is the ~~Allen Park Public~~
10 ~~Schools~~Woodhaven/Brownstown School District agreement ~~already~~ essentially
11 approved by the Commission in Case No. U-~~14170~~14241, modified to include
12 the possibility of underground installations. ~~Under the insurance and indemnity~~
13 ~~provisions of this agreement, Educational Institutions' would properly cover~~
14 ~~Detroit Edison's liability concerns and could choose to address any additional~~
15 ~~liability concerns they may have as they see fit. Were the Commission to~~
16 ~~approve Exhibit A-2 as a required form agreement, the Company's insurance~~
17 ~~pool proposal would be unnecessary and the Schools avoid the charge for~~
18 ~~insurance established in the tariff. Again, Mr. Olson explains the details of~~
19 ~~these liability coverage alternatives.~~

20

21 **Q. Will Educational Institutions that have an existing contract with the**
22 **Company be eligible to conform their contracts?**

23 A. As a general proposition, ~~if the Commission chooses Detroit Edison's~~

Line
No.

1 ~~insurance pool proposal~~, the Company would not oppose those Educational
2 Institutions with prior pole attachment agreements being eligible, upon request,
3 to execute the form agreement proposed by Detroit Edison and take service
4 under the new tariff proposed by Detroit Edison.

5

6 ~~Furthermore~~However, Detroit Edison is not proposing that all Eeducational
7 institutions be required to switch from Edison's "one-size fits all" Pole Tariff
8 No. 1 to the special Educational Institution tariff. ~~However, if the Commission~~
9 ~~chooses the Company's insurance pool proposal, each School's portion of the~~
10 ~~insurance cost would be lower if more Educational Institutions are enrolled in~~
11 ~~the shared insurance program.~~

12

13 **Q. Does this conclude your testimony?**

14 A. Yes.

15

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's Own Motion)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company of)
a uniform pole attachment tariff for educational)
telecommunications facilities)

Case No. U-14528

QUALIFICATIONS
AND
REVISED DIRECT TESTIMONY
OF
DANIEL J. DUNLOP

|

THE DETROIT EDISON COMPANY
QUALIFICATIONS OF DANIEL J. DUNLOP

Line
No.

1 **Q. Please state your full name and business address.**

2 A. My name is Daniel J. Dunlop. My business address is 2000 Second Avenue,
3 Detroit, Michigan 48226. I am employed by The Detroit Edison Company
4 ("Detroit Edison" or "Edison") as the Supervising Engineer in the Joint Use
5 Department.

6

7 **Q. What is your formal educational background?**

8 A. I received my Bachelor of Science Degree in Mechanical Engineering from
9 Lawrence Institute of Technology in 1987.

10

11 **Q. What is your job experience with Detroit Edison?**

12 A. I joined Detroit Edison in 1978. From 1978 to 1982, I held the position of
13 apprentice lineman. In 1982, I completed my apprenticeship and worked as a
14 Journeyman Lineman until 1985. My primary responsibilities as a lineman
15 included construction and maintenance of Detroit Edison's overhead electric
16 and communication systems. While employed as a Lineman, I attended
17 college at night until I graduated in 1987. From 1985 to 2001, I held various
18 engineering jobs within the Lines Engineering Department of Detroit Edison. I
19 progressed from Engineering Technician through the various levels of
20 Engineer to eventually attain my present position of Supervising Engineer in
21 the Joint Use Department in 2002. My primary duties during the 16 years
22 while in my previous positions in Lines Engineering were the development and
23 standardization of line designs used in the construction of the overhead

Line
No.

1 systems at Detroit Edison. The Lines Engineering department writes and
2 publishes line construction manuals and lineman work procedures that are
3 used by our Engineering and Lines personnel. My duties also included training
4 engineers, technicians, service planners and linemen in the use of these
5 manuals for design and construction of Detroit Edison's overhead lines
6 systems. In November 2002, I assumed my present position of Supervising
7 Engineer - Joint Use. The responsibilities of the Supervising Engineer - Joint
8 Use include overseeing the establishment and maintenance of Pole, Conduit
9 and Trench Use Agreements including without limitation, make ready work and
10 other related work for third party attachments on Detroit Edison poles. I am
11 also responsible for interfaces with other Detroit Edison organizations such as
12 Service Center Operations, Engineering, Mapping, Legal, Regulatory Affairs,
13 Controller's Organization and Credit and Collections that are involved with third
14 party attachers. A major aspect of my responsibilities is working with
15 Engineering and Service Center Operations and others regarding the
16 inspection of Detroit Edison poles to accommodate third party attachers' pole
17 attachments.

18

19 **Q. Are you familiar with the National Electrical Safety Code ("NESC")?**

20 A. Yes. My job duties require me to be an expert on the NESC. Based on my
21 engineering education and daily reference to the NESC for over 18 years, I
22 consider myself an expert on the subject matter of the NESC, including its
23 relevance to pole attachment standards.

Line
No.

1 I have extensive experience in the development of conductor sag/tension
2 tables for overhead conductors. The sag tension data tables are used for the
3 installation of conductors and cables to meet NESC clearance requirements
4 under design conditions. This experience gives me the unique knowledge
5 required to apply the NESC clearance rules as they pertain to the theoretical
6 sags when extreme weather conditions are applied. My experience in lines
7 construction standards for the design and construction of the overhead lines
8 system at Detroit Edison gives me the practical experience in the application of
9 methods used to attain the requirements of the NESC for clearances and pole
10 strength. I was previously on the American Society of Civil Engineers (ASCE)
11 working committee that is working on a Distribution Structure Design Manual.
12 The committee was established in February 2002 to act as the editing body to
13 assist in the writing of a new manual for distribution structures similar to the
14 ASCE Manual #72 for the Design of Steel Transmission Structures. The new
15 manual like that of the other ASCE publications referenced in the NESC, is
16 intended to become the reference in the NESC for distribution structure design
17 when it is completed.

18

19 **Q. Do you serve on any industry committees?**

20 A. Yes, I currently serve as an elected board member on the Michigan Joint Use
21 Notification System (MIJUNS) and the National Joint Utility Notification
22 Systems (NJUNS). NJUNS is an automated e-mail notification system
23 presently used in 21 States for the purpose of enhancing communication

Line
No.

1 between Joint Use companies to facilitate the efficient use of poles, trenches
2 and conduit systems. MIJUNS is the local branch of NJUNS for the State of
3 Michigan and the membership is comprised of Detroit Edison, Consumers
4 Energy, American Electric Power, SBC (AT&T), Verizon, Wide Open West, Tri-
5 County Electric Cooperative, Michigan Electric Cooperative Association,
6 Michigan Cable Telecommunication Association, Charter Communication,
7 Buckeye Communication, and Brighthouse Network.

8
9 **Q. Have you filed testimony before this Commission in any other**
10 **proceedings?**

11 A. Yes. I sponsored testimony and exhibits on behalf of Detroit Edison in the
12 following pole attachment cases:

13 Case No. U-12900/13251 – SBC Ameritech

14 Case No. U-13522 – Commission Show Cause

15 Case No. U-13767 - Lake Orion Community Schools

16 Case No. U-14038 - McLeodUSA Telecommunications Services, Inc.

17 Case No. U-14170 – Allen Park Public Schools

18 Case No. U-14241 – Woodhaven Brownstown School District

Line
No.

2 A. My testimony has been prepared to support the Company's proposed tariff
3 covering the rates, terms and conditions of attachments to the Company's
4 utility poles, ducts, conduits and rights-of-way by Educational Institutions. My
5 testimony supports the specific form and provisions of the Company's
6 proposed Alternative Pole Attachment Tariff For Educational
7 Telecommunications Facilities (hereinafter the "Tariff" or "School Tariff"). I also
8 discuss the historical context and justification for Edison's proposed tariff.

9

11 A. ~~-Exhibit No. A-1 (DJD-1)~~DJD-1 REVISED Alternative Pole Attachment Tariff
12 For Educational Telecommunications Facilities

14

15 I also, support the job time estimates used by Mr. Ketcik on Exhibit Nos. A-4,
16 (GPK-1) and A-5, (GPK-2)

17

19 A. Yes, they were.

20

DJD - 5 Revised

Line
No.

- 1 A. Based on several years of experience with individual Educational Institutions
2 and with EduNets, Detroit Edison's proposed changes are:
- 3 • Availability of the Educational Institution tariff is limited to non-profit
4 educational institutions.
 - 5 • Service is subject to the U-13522 Settlement Agreement (or its successor).
 - 6 ~~Detroit Edison's insurance pooling proposal should ensure proper liability~~
7 ~~coverage for all, which will be discussed by Mr. Olson.~~
 - 8 • Advance notification of Educational Institution telecommunications projects
9 (see Tariff Process for Establishing Attachments) should ensure better
10 communication and facilitate more efficient attachment.
 - 11 • Make ready is consistent with the U-13522 Settlement (or its successor).
 - 12 • Unauthorized attachments that are found will result in the attachment owner
13 being assessed a fee to be paid into the Case No. U-13522 Remediation
14 Fund to help address future pole issues.
 - 15 • Overlashing is not considered an attachment provided that there is no
16 additional hardware attached to the pole, the pole is capable of handling the
17 additional pole loading, and the overlasher acquires new permits.
 - 18 • No inspection costs beyond the initial attachment post inspection for the first
19 5 years (unless, for example, an NESC issue is brought to Detroit Edison's
20 attention).
 - 21 • Educational Institution attachers remain free to address their own rights-of-
22 way and other non-Company authorizations in the manner they see fit
23 provided that they hold Detroit Edison harmless.

Line
No.

1 • Detroit Edison has eliminated the accounts receivable estimate as it applies
2 to the Application Fees.

3 • Dispute resolution is in the tariff consistent with the method described in the
4 U-13522 Settlement.

5 These changes, among others, streamline and clarify the pole attachment
6 process for Educational Institutions.

7

8 **Q. Will the Company enter into a contract with an attaching party in addition**
9 **to the proposed rates, terms and conditions contained in the proposed**
10 **tariff?**

11 A. Yes, the Company intends to enter into a pole attachment contract with
12 attaching parties for the use of Company facilities. Exhibit No. A-2 (DJD-2),
13 [REVISED](#) the Pole, Conduit and Trench Use Agreement, is the form
14 agreement that the Company intends to execute with each Educational
15 Institution attacher. The form agreement more completely addresses the
16 Company's relationship with Educational Institution Attaching Parties. The
17 Company has incorporated the results of the MPSC order in MPSC Case No.
18 U-~~14107-14241~~ (~~Allen Park Public Schools~~[Woodhaven Brownstown School](#)
19 [District](#)), with the additional of language for conduit, which was not included in
20 the ~~Allen Park~~[Woodhaven](#) contract.

21

22 **Q. Is the Company requesting that the Commission approve the form pole**
23 **attachment agreement?**

Line
No.

1 A. Yes. ~~As discussed by Mr. Olson and Mr. Padgett, the Company is requesting~~
2 ~~that the Commission either accept the Exhibit No. A-2 (DJD-2) form agreement~~
3 ~~shown or, in the alternative approve the Company's insurance policy proposal.~~
4 ~~If the Commission doesn't reconsider the indemnification language and if the~~
5 ~~Commission approves the insurance proposal described by Mr. Olson, the~~
6 ~~Company can accept the Woodhaven pole attachment agreement approved by~~
7 ~~the Commission in Case No. U-14241.~~ The items in these pole attachment
8 agreements have been fully litigated and the Company desires a form
9 agreement to reduce the number of issues subject to disputes and threatened
10 complaints.

11

12 **Q. What attachers are eligible for the educational telecommunications**
13 **tariff?**

14 A. Eligibility is defined on page 1 of Exhibit A-1 (~~DJD-1~~DJD-1 REVISED), in the
15 Availability section. In general, all non-profit Educational Institutions are
16 eligible.

17

18 **Q. What Company work is involved in providing for pole attachments?**

19 A. When an attaching party makes an initial request to place attachments on
20 existing utility poles, the Company and other existing attaching parties along
21 the desired route may have to rearrange, replace, or remove certain of their
22 facilities on the pole, or the Company may have to replace the pole with a
23 longer or stronger pole to provide the required space or strength to hold the

Line
No.

1 additional attaching party.

2 The Non-Refundable Pole Application Fee entitles the Educational Institution
3 to: (a) participate in one joint rideout, (b) application processing, (c) a make
4 ready survey of the poles along the one route identified as the most feasible in
5 the joint rideout, (d) data collection and design necessary for make ready work
6 along the one route identified as the most feasible in the joint rideout, (e) an
7 estimate for the cost of make ready work for the poles along the route
8 identified in the joint rideout as the most feasible, (f) a meeting to discuss final
9 make ready design and costs, (g) an invoice for final make ready costs along
10 the one route identified in the joint rideout as the most feasible, and (h)
11 installation permits for approved poles along the one route identified in the joint
12 rideout as the most feasible and not requiring make ready work.

13
14 The Company may conduct inspections to determine that the attachments of
15 the attaching party are in conformance with Company requirements, that the
16 attachments were made in a satisfactory manner, and to verify that the pole(s)
17 attached to by the attaching party are referenced in the permit application
18 being approved.

19
20 The Company may transfer the attaching party's attachments to expedite the
21 replacement of a pole(s) during maintenance or emergency work. The
22 attachment transfer may be of a permanent or temporary nature depending on
23 the field conditions existing at the time the work was performed.

24

Line
No.

1 Q. Is any Company work necessary to accommodate an Educational
2 Institution's attachments in conduit or duct?

3 A. Yes, work is required to be performed by the Company to assist the
4 Educational Institution's contractor when it is working in and around the
5 Company's conduit and manholes for any reason, such as installation,
6 maintenance, operating, emergency, splicing etc. The Company work may
7 include instruction, inspection, duct routing, evacuating manholes, and
8 providing certain materials such as tags, hangers and conduit maps.

9

10 The Non-Refundable Conduit Application Fee entitles the Educational
11 Institution to: (a) one investigation of the Company's conduit and field book
12 records to determine availability of Company facilities, (b) one field visit, (c)
13 determination of the Company's current and future requirements for the
14 conduit involved, (d) preparation of one preliminary cost estimate for the
15 Company's work to accommodate the Educational Institution's cable, (e) one
16 written response detailing the results of the Company's conduit investigation,
17 (f) permits (if granted), and (g) one final invoice for the Company's work to
18 accommodate the Educational Institution's cable.

19

20 Q. What is included in a conduit system investigation?

21 A. The conduit system investigation may include but is not limited to, an
22 investigation of the Company's conduit and field book records, field visits,
23 determination of the company's current and future requirements, preparing a

Line
No.

1 preliminary cost estimate of the Company's work to accommodate the
2 attaching party, and preparing a written response detailing the results of the
3 conduit system investigation.

4

5 **Q. When is the conduit or duct application fee charged?**

6 A. The application fee is invoiced after the Company receives the written request
7 to investigate the availability of duct between the requested locations. The
8 application must also include a sketch showing the requested locations and
9 proposed general route.

10

11 **Q. Did you investigate the cost of outsourcing these same pole attachment**
12 **~~and conduit~~ activities with other 3rd party providers?**

13 A. Yes. In the past three years, the Company has received cost quotes from
14 several contractors performing this type of work.

15

16 **Q. How did you confirm that Edison's cost of \$55 per Pole Application Fee**
17 **and the \$1,120 for the Conduit Application Fee set forth in the Tariff are**
18 **reasonable costs of providing these services to Educational**
19 **Telecommunications attachers?**

20 A. The \$55 per pole and \$1,120 for conduit charges are comparable to the cost of
21 providing these services through 3rd party contractors and in some instances
22 these prices are conservative in relation to what a 3rd-party contractor would
23 charge.

Line
No.

1 **Q. When is the pole application fee charged to the attacher?**

2 A. We invoice for the attachment fee after the permit applications are received by
3 the Company. The application must also include a sketch showing the
4 requested locations and general route covered by the request.

5

6 **Q. Can you explain why the Company charges attaching parties the
7 company's costs to accommodate the attaching party's facilities on
8 poles, in ducts, or in trenches?**

9 A. The Company invoices for the make ready work required to accommodate an
10 attaching party on our poles or in our ducts, conduits or trenches because this
11 work is done strictly to accommodate the attaching party and is not required to
12 provide service to the Company's electric customers. Therefore, all costs
13 associated with this work are rightfully charged to the attaching party. The
14 specific Company proposals regarding the requirements of, and charges to, an
15 attaching party are contained in Exhibit No. A-1 (~~DJD-1~~DJD-1 REVISED) the
16 Company's proposed Tariff.

17

18 **Q. Will the Company secure joint rights-of-way for an Educational
19 Institution attacher?**

20 A. No. Attachment permits are for attachment to pre-existing Detroit Edison
21 structures with pre-existing Rights of Way for Detroit Edison's facilities. Each
22 attaching party is required by the Tariff and the Agreement to obtain and be
23 responsible for their own Rights of Way and any other required authorizations

Line
No.

1 or permits. In my experience, this is what most Educational Institutions prefer.

2

3 **Q. Do you support the job time estimates shown on Exhibit Nos. A-4 (GPK-**
4 **1) and A-5 (GPK-2)?**

5 A. Yes, these estimates of 35 minutes for pole attachments, 9 hours for Sr. Cable
6 Design Specialist and 4.5 hours for a Manhole Cleaning Crew per manhole
7 have been routinely utilized by the Company and also were verified by
8 sampling jobs and validating the time charged against the projects for
9 performing the office and field work.

10

11 **Q. What is your opinion concerning the terms and conditions you propose**
12 **in the Tariff and form Pole, Conduit, and Trench Use Agreement?**

13 A. I believe that the Company has proposed a just and reasonable program for
14 Educational Institution attachments that fairly respond to the needs of both
15 Educational Institutions and the Company.

16

17 **Q. Does this complete your testimony?**

18 A. Yes.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

I In the matter, on the Commission's Own Motion)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company of)
a uniform pole attachment tariff for educational)
telecommunications facilities)

Case No. U-14528

REVISED EXHIBITS

OF

DANIEL J. DUNLOP

|

MPSC Case No. U-14528
Witness: Daniel J. Dunlop
Exhibit A-1 (DJD-1) REVISED

The Detroit Edison Company
Alternative Pole Attachment Tariff
For
Educational Telecommunications Facilities

The Detroit Edison Company
Alternative Pole Attachment Tariff
For
Educational Telecommunications Facilities

Availability: Available to any Educational Institution meeting the terms and conditions of this Alternative Pole Attachment Tariff for Educational Telecommunications Facilities for the purpose of attachment pursuant to MCL 460.6g on poles or in conduit owned by The Detroit Edison Company (“Company”) and no others. Educational Institution means a public educational institution or a private non-profit educational institution approved by the Michigan Department of Education to provide a program of primary, secondary, or higher education, a public library, or a non-profit educational association whose primary purpose is education and not the commercial sale or leasing of telecommunications services, information services, internet services, fiber capacity or bandwidth. A non-profit educational association consists of two or more of the following: (i) public educational institutions, (ii) non-profit educational institutions approved by the Michigan Department of Education, (iii) Michigan Board of Education, and (iv) a non-profit association of educational institutions.

Audit, Corrections, Compensation, and Enforcement: All service under this tariff is subject to the provisions of the settlement agreement dated August 22, 2003 in Case No. U-13522 or any successor agreement or order of the Commission. By taking service under this tariff, the Educational Institution agrees to become a party to and be bound by the terms of that settlement or any successor agreement or order for as long as such agreement or order is in effect.

Annual Rental Rate:

Pole Rental Rate: \$ 3.74 per pole per year

The pole rental rate shall be paid for each distinct attachment by an Educational Institution. Overlashing is not considered an attachment, provided that there is no additional hardware attached to the pole and the pole is capable of handling the additional pole loading. The Company shall be notified prior to construction of the proposed overlashing to allow it to assess the structural integrity of the pole relative to the additional load by submitting, and paying for, new requests for permits for each pole to be passed on the overlash route.

Conduit Rental Rate: \$ 3.36 per duct foot per year

The minimum annual pole or conduit rental charge shall be \$60.00 per year per contract.

~~Annual Educational Institution Insurance Fee or Regulatory Asset:~~

~~Each Educational Institution making attachment pursuant to this tariff shall pay a fee to the Company for the purpose of purchasing insurance coverage for the Educational Institution and The Detroit Edison Company against all liability associated with Educational Institution's pole attachments. The Company shall annually obtain such an insurance quote from a reputable and financially stable insurance provider in the business of providing such insurance and assess fees to Educational Institutions making attachment pursuant to this tariff based upon the total annual cost of the insurance coverage prorated by the number of poles attached by each of the Educational Institutions making attachment pursuant to this tariff. Any judgments and settlements (made at the Company's sole judgment and discretion) not covered by the insurance coverage contemplated by this provision, for any reason, are deemed just, reasonable and in the public interest and shall be recovered as a regulatory asset in the Company's next general rate case.~~

Application Fees:

Pole Application Fee: \$ 55 per pole, non-refundable.

Conduit Application Fee: \$1,120 for the first manhole and \$525 for each additional manhole, per request, non-refundable.

The Non-Refundable Pole Application Fee entitles the Educational Institution to: (a) participate in one joint rideout, (b) application processing, (c) a make ready survey of the poles along the one route identified as the most feasible in the joint rideout, (d) data collection and design necessary for make ready work along the one route identified as the most feasible in the joint rideout, (e) an estimate for the cost of make ready work for the poles along the route identified in the joint rideout as the most feasible, (f) a meeting to discuss final make ready design and costs, (g) an invoice for final make ready costs along the one route identified in the joint rideout as the most feasible, (h) installation permits for approved poles along the one route identified in the joint rideout as the most feasible and not requiring make ready work.

The Non-Refundable Conduit Application Fee entitles the Educational Institution to: (a) one investigation of the Company's conduit and field book records to determine availability of Company facilities, (b) one field visit, (c) determination of the Company's current and future requirements for the conduit involved, (d) preparation of one preliminary cost estimate for the Company's work to accommodate the Educational Institution's cable, (e) one written response detailing the results of the Company's

conduit investigation, (f) permits (if granted), (g) one final invoice for the Company's work to accommodate the Educational Institution's cable.

Power Supply Service: The monthly rate for unmetered electric service to each power supply shall be determined by the applicable electric rate currently on file with the Michigan Public Service Commission (Commission). The total charge for unmetered electric service will be based on the number of flat rate power services existing at the end of the quarter.

Process for Establishing Attachments: Educational Institutions taking service under this tariff shall: 1) inform the Company of its intention to establish a Wide Area Network or similar information/telecommunication project connecting Educational Institution buildings, services or facilities of any kind that will require attachment to Company's poles or location in Company's conduit prior to undertaking the engineering and cost analysis of such a project, 2) inform the Company of the target date for establishing attachment as soon as is practicable after voter approval of bonds to fund the technology project for which attachment will be sought, or, if the project will not be bond funded, after the decision to build the project is made; 3) inform the Company of the name, address, phone number, cell phone number, electronic mail address and contact person of (a) the Educational Institution's engineering contractor for the project, and (b) the Educational Institution's installation contractor for the project within ten (10) days of selection; 4) prior to submitting permit applications to the Company, inform the Company of the locations to be connected by the proposed attachments, and request that the Company accommodate a joint rideout (to include Company and Proposed Educational Institution attacher or its designated representative). The Company shall (a) provide the Educational Institution with detailed information explaining the process for establishing attachment, and provide an Agreement to be executed, pole attachment permit applications, and any other necessary forms, as soon as practicable after being informed of the project; and (b) accommodate one request for one joint rideout as provided for in "Application Fees" supra. The parties shall use best efforts to schedule the joint rideout no less than twelve months prior to the planned start of construction. The purpose of the joint rideout is to allow the Educational Institution and the Company to physically view possible routes for connection of the proposed locations, and to allow the attaching party to decide the most feasible route with input from the Company regarding conditions existing on the poles involved.

Make Ready Work: After receiving pole attachment permit applications, the Company shall determine the need for make ready work, and perform such work, as follows:

- (1) Any reconstruction, alteration or other work required to accommodate facilities of Educational Institution shall be done by the Company, consistent with the Settlement Agreement dated August 22, 2003 in Case No. U-13522, upon the request of attaching party, and the accounts receivable cost incurred in connection therewith shall be paid by the Educational Institution. Educational Institution shall pay Company within

30 days of receiving an Invoice for Make Ready Work. The Company shall commence Make Ready Work, consistent with the Settlement Agreement dated August 22, 2003 in Case No. U-13522, after receipt of payment from Educational Institution.

- (2) Work to accommodate pole attachments (“make ready work”) may include preparation of an invoice for such work (which may be based upon an estimate, to be adjusted after the work is completed) replacement of pole(s), rearrangement, removal, or replacement or transfer of utility or other attaching parties’ facilities, and inspections.
- (3) Work required to remediate NESC issues of other attachers existing independent of the Educational Institution’s request(s) to attach shall not be considered Make Ready Work, and the expenses incurred in performing such work shall not be billed to the Educational Institution.

Applications: Educational Institutions shall make formal application for authority to attach on application forms provided by the Company. The Company shall make a decision regarding the application, consistent with its tariffs, the Settlement Agreement dated August 22, 2003 in Case No. U-13522, and other applicable law, within ninety (90) days of receiving them. The method and location of installation on poles or in conduit and trenches must first be approved by the Company. In circumstances where there is no additional room on a pole or in a conduit and there are no NESC issues present, the Company shall only be required to make room upon full payment by the Educational Institution of all actual costs to make room.

Inspections: The Company may in its discretion inspect the attached facilities of the Educational Institution. Any inspection provided by the Company is for the purpose of determining compliance with the technical provisions of Company rules and regulations for service and is, in no way, a guarantee of methods or appliances used by the contractor or Educational Institution, or for the safety of the job.

The Educational Institution shall reimburse the Company for the actual cost of such inspection(s), but such charges shall not exceed the cost, on a per pole basis, of new pole attachment applications. Notwithstanding the foregoing, unless there is substantial reason to believe that an inspection is necessary (such as, but not limited to, reliable information suggesting the existence of NESC issues involving Educational Institution attachments), the Company shall not charge the Educational Institution for such inspection: 1) for the first five years immediately following the initial installation (except for any follow-up inspections necessary to complete the installation which shall be charged to and paid by Educational Institution); or 2) more than once every three years after the first five years. However, in the event that a Company inspection discloses one or more unauthorized Educational Institution attachments, the Educational Institution whose attachments are unauthorized shall pay into the “Pole Remediation Fund for Disputed Responsibility” set forth in the Settlement Agreement dated August 22, 2003 in Case No. U-13522, a one-time fee equal to ten (10) times the annual pole rental fees for

all poles to which the Educational Institution is attached and that Educational Institution shall no longer be eligible for this tariff.

Labeling: The Educational Institution shall label all cables with the owner's name(s) in a manner capable of being read from the ground, and consistent with the Company's specifications or any requirements of the local unit of government.

Pole Attachment Agreement: The Educational Institution and Company shall enter into the form Pole Attachment Agreement. The Company and the Educational Institution may enter into a pole attachment agreement regarding issues not addressed in this tariff, in the Settlement Agreement dated August 22, 2003 in Case No. U-13522 or a successor agreement or order or the Form Pole Attachment Agreement accompanying this tariff provided that the provisions are not inconsistent with this tariff, that Settlement Agreement or its successor or the Form Pole Attachment Agreement. The terms of the ~~Allen Park Public Schools~~Woodhaven Brownstown School District Agreement with the Company, approved by the Commission in Case No. U-~~1417014241~~, ~~as modified on issues of liability to be consistent with the section titled "Annual Educational Institution Insurance Fee or Regulatory Asset" supra,~~ shall be the Form Pole Attachment Agreement for which an Educational Institution is eligible. The terms of this form Pole Attachment Agreement shall not be modified. If the Company and the Educational Institution cannot agree on terms other than those required and approved in the Form Pole Attachment Agreement, each shall submit the proposed additional terms for the Pole Attachment Agreement to the Commission Staff, who will recommend in writing an agreement after discussing the matter with the Company and the Educational Institution. The Company and the Educational Institution shall enter into the Staff's recommended pole attachment agreement, or, if either is dissatisfied, it may file a formal application or complaint with the Commission within 7 days of the Staff's recommendation.

Accounts Receivable Cost

The term "accounts receivable cost" is defined as the sum of the labor cost to remove any existing facilities, plus the labor and material cost to install the new work, with credit for the appropriate salvage value for the material removed. Labor and material costs include Detroit Edison overhead costs.

Billing:

- (1) Annual rental shall be billed quarterly, due in advance on the first day of January, April, July and October, except as specified in A-3.1(7) and A-3.1(8). Quarterly pole rental shall be one quarter of the annual rate and shall be based on the number of existing pole attachments on the first day of the quarter. A late payment charge of 1.5% per month upon the unpaid balance of any bill rendered and outstanding beyond 30 calendar days from the date of physical mailing of the bill will be assessed and paid by Educational Institution.

- (2) Bills for pole reconstruction, alterations, inspections, expenses, rental and other charges shall be paid within thirty (30) days after presentation. If not paid on time, a 1.5% per month late payment fee will be assessed.
- (3) Bills shall include the following charges or costs when applicable:

- Power Supply Service
- Pole and Conduit Rental
- Rearrangement (Reconstruction or alteration)
- Inspection

Specifications:

- (1) Minimum requirements for joint construction shall be in conformity with the then current edition of the National Electrical Safety Code except where modified by authority of the State of Michigan (or any other authority having jurisdiction) and the rules of the Company.
- (2) To facilitate proper construction, detailed specifications and drawings may be included in separate contracts with the Educational Institution.

Other Permits, Consents, Easements, Rights of Way and Approvals

- (1) Educational Institution shall be solely responsible for obtaining all necessary permits, consents, easements, rights of way and approvals, either public or private which may be necessary prior to the beginning of construction and continuing after installation. In addressing the Educational Institution's application, the Company will not consider the existence of the Educational Institution's necessary permits, consents, easements, rights of way and approvals, either public or private (except for private easements or rights of way purchased by the Company for which Educational Institutions shall pay a proportionate share of the cost) which may be necessary prior to the beginning of construction and continuing after installation. However, Educational Institution shall fully and completely indemnify the Company and hold it harmless as against all claims, demands, judgments and orders from any and all persons, courts of law, administrative tribunals, governments or government agencies of any kind relating to Educational Institution's failure to obtain such necessary permits, consents, easements, rights of way or approvals, either public or private and shall immediately take sole responsibility for any and all claims, demands, judgments and orders applying to Educational Institutions' facilities.
- (2) No attachment, placement or installation shall be made by Educational Institution on any pole or poles or in trenches, manholes or conduits of the Company before written permission is received from the Company.
- (3) Attachments to conduit and duct will be limited to space available in existing Company facilities. Attaching parties will be accommodated in order of application date until capacity is approached.

- (4) Supervision by the Company to direct any work involving installation in underground conduits, racking in manholes, and inspections is mandatory. Educational Institution or its contractor shall not enter any manhole or other Company facility without Company Supervision. Any supervision provided by the Company is for the purpose of determining compliance with the technical provisions of Company rules and regulations for service and is, in no way, a guarantee of methods or appliances used by the contractor or Educational Institution, or for the safety of the job.
- (5) All work within the Company's conduits, ducts and manholes shall be performed by licensed electrical contractors and in conformance with the current edition of the National Electric Safety Code, Michigan law, Occupational Safety and Health Act, and the rules and specifications of the Company.

Trenching

- (1) An Educational Institution proposing to place facilities in a utility underground trench shall submit a request to the Company. The request must be received by the Company prior to the joint utility planning phase which included the joint utility plan for the underground trenching project.
- (2) An Educational Institution granted permission by the Company to place their facilities in a common utility trench shall pay an equal share of the cost to secure a common right-of-way agreement (permit), to develop the joint trenching construction drawing, and to perform the trenching and other associated trenching work. Payment shall be made directly to the utility or utility contractor, providing the work.
- (3) The Educational Institution shall pay the total cost of any trenching or associated trenching work which may be provided for the Educational Institution's sole use.
- (4) Cost will be the direct labor cost plus Detroit Edison overhead costs required to perform the work, or as billed by a utility contractor directly to the Educational Institution in accordance with the contractor's current contract with the utility.
- (5) The Educational Institution shall be required to pay all charges prior to start of construction.
- (6) The Company reserves the right to make contractual arrangements with the Educational Institution (s) as to coordination, procedures, construction time frames, specifications and other business conditions not specifically addressed in this tariff or the Form Pole Attachment Agreement.

Maintenance of Facilities:

- (1) Educational Institution shall, at its own expense, install and be responsible for its facilities on poles (including guying) and in trenches, conduit or manholes of the Company and shall maintain them in good and safe condition and in a

manner suitable to the Company so as not to conflict with use of said poles, trench, conduit or manholes by the Company or other authorized users of said poles, trench, conduit or manholes or interfere with the working use of facilities thereon or therein; or which may from time to time be placed thereon or therein.

- (2) Upon notice from the Company, at any time, Educational Institution shall, at its own expense, relocate or repair its facilities, transfer to substituted poles, conduit or manholes and perform any other work in connection with said facilities that may be required by the Company, except as provided in Paragraph (3) following.
- (3) In cases of emergency, or as otherwise agreed, the Company may arrange to perform any necessary work involving the facilities of Educational Institution as indicated in Paragraph (2) preceding. Educational Institution shall, on demand, reimburse the Company for the expense thereby incurred by Detroit Edison, including Detroit Edison overhead costs.

Termination of Use of Company Facilities:

- (1) Educational Institution may at any time remove its facilities from any pole, poles or conduit of the Company but shall immediately give the Company written notice of such removal or Educational Institution shall remain liable for quarterly rental payments until the Company is notified in writing.
- (2) The Company may, in its sole judgment, remove any poles or duct or conduit not needed for its service requirements; and Educational Institution shall, upon written notification from the Company, remove its attachments from such poles, duct or conduit in a reasonable time frame and consistent with the circumstances involved. The Company and Educational Institution shall work cooperatively to attempt to find a reasonable alternative means to support the Educational Institution's facilities, if available.
- (3) The Company may commence a Complaint at the Commission to require payment of bills in arrearage, damages and removal of Educational Institution facilities from poles, duct or conduit for non-payment of bills provided the bill remains unpaid 6 months after the bill due date and after at least 30 days written notice has been given to the Educational Institution. The bill due date shall be 30 calendar days from the date of physical mailing of the bill.
- (4) The Company may commence a Complaint at the Commission to require payment of bills in arrearage, damages and removal of Educational Institution facilities from poles, duct, conduit or trenches for failure of the Educational Institution to fulfill their contractual obligations for facilities and/or services provided by the Company, or for non-compliance with any rule or tariff established by the Michigan Public Service Commission.

MPSC Case No. U-14528
Witness: Daniel J. Dunlop
Exhibit A-2 (DJD-2) REVISED

Pole, Conduit, and Trench Use Agreement
For
Educational Telecommunications Facilities

MPSC Case No. U-14528
Witness: Daniel J. Dunlop
Exhibit A-2 (DJD-2) REVISED

Pole, Conduit, and Trench Use Agreement
For
Educational Telecommunications Facilities

POLE ATTACHMENT, CONDUIT, AND TRENCH USE AGREEMENT

BETWEEN

(ATTACHING PARTY PUBLIC SCHOOLS)

AND

THE DETROIT EDISON COMPANY

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>
I	SCOPE OF AGREEMENT
II	ADMINISTRATIVE PRACTICES
III	SPECIFICATIONS
IV	ESTABLISHING AND IDENTIFYING POLE <u>AND CONDUIT</u> USE
V	MAINTENANCE OF FACILITIES
VI	TERMINATION OF POLE, <u>CONDUIT</u> , OR TRENCH USE
VII	CHARGES
VIII	INSPECTIONS
IX	DEFAULT, WAIVER, AND REVIEW
X	PROTECTION AND INDEMNITY
XI	INSURANCE
XII	RIGHTS
XIII	PAYMENT OF BILLS
XIV	TERMS OF AGREEMENT
XV	FORCE MAJEURE
XVI	ENTIRE AGREEMENT
XVII	TITLES
XVIII	SEVERABILITY
XIX	GOVERNING LAW
ATTACHMENT 1	ADMINISTRATIVE PRACTICES
ATTACHMENT 2	<u>PROCESS AND CHARGES FOR JOINT USE "WORK AS A CONTRACTOR"</u>
<u>"School Name and Date"</u>	2

POLE ATTACHMENT, CONDUIT, AND TRENCH USE AGREEMENT

This Pole Attachment, Conduit, and Trench Use Agreement, hereinafter referred to as "AGREEMENT", made this ____ day of _____, _____ by and between THE DETROIT EDISON COMPANY, a corporation organized and existing under the laws of Michigan, hereinafter referred to as "EDISON," and _____ PUBLIC SCHOOL DISTRICT, an educational institution governed by Section 307 of the Michigan Telecommunications Act, MCL 484.2307, hereinafter referred to as "ATTACHING PARTY," with headquarters at _____, _____, Michigan

WITNESSETH:

WHEREAS, ATTACHING PARTY proposes to attach cables to poles or install cables in ~~duets~~, conduits and manholes (collectively, "conduit system"), or trenches of EDISON, and EDISON is willing to grant a revocable permit to the extent that it may lawfully so do, for the attachment of said cables to its poles, or installation of such in ~~EDISON's~~ EDISON's conduit system and trenches, where, in ~~EDISON's~~ EDISON's judgment, such attachment or installation will not interfere with its own service requirements, including considerations of reliability, operability, and safety.

WHEREAS, ATTACHING PARTY and EDISON agree that the Settlement Agreement approved by the Michigan Public Service Commission ("~~Commission~~") on ~~October~~ October 7, 2003 in Case No. U-13522 ("~~Settlement Agreement~~") shall be applicable to attachments made by ATTACHING PARTY for the ~~term~~ Term of the Settlement Agreement or any successor agreement, if any.

WHEREAS, EDISON enters into this Pole Attachment, Conduit, and Trench Use Agreement on these terms and conditions for the reason ATTACHING PARTY is a School District, as defined in the Revised School Code, MCL 380.6, rather than a commercial entity attaching to its poles.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto do agree as follows:

ARTICLE I - SCOPE OF AGREEMENT

- A. EDISON grants to ATTACHING PARTY a revocable permit to attach cable and associated necessary equipment (collectively "cable"), as EDISON may approve, to such poles as EDISON may designate (and no others). EDISON further grants to ATTACHING PARTY a

revocable permit to install cables in EDISON's conduit systems or trenches as EDISON may designate (and no others). EDISON must first approve the method and location of installation on poles or in conduit systems and trenches.

B. EDISON grants ATTACHING PARTY non-exclusive rights for its attachments on poles, or in conduit or in systems and trenches. EDISON does not imply or guarantee that ATTACHING PARTY will have sole occupancy of a pole, conduit systems, or trench.

C. Prior to attaching or installing cable on poles, or in conduit systems or trench, ATTACHING PARTY shall obtain all necessary permits, franchises, consents, or approvals, either public or private, which may be necessary to enable ATTACHING PARTY to attach or install such cable or to carry on its business. Should ATTACHING PARTY fail to obtain such authorizations or should such authorizations be revoked, ATTACHING PARTY shall immediately cease attaching or installing its cable. ATTACHING PARTY, where possible and where required, shall provide EDISON copies of such authorizations, or any written consent from private property owner, or owners, stating the ATTACHING PARTY has permission to ingress or egress and also to construct and operate its facilities over, under, and upon the EDISON owned poles or, conduit systems or trench located on said private property.

D. ~~D.~~ EDISON may, in its reasonable judgment, remove any poles or conduit systems not needed for its electric service requirements. ATTACHING PARTY shall, upon written notification from EDISON, remove, at its own expense, its cables from such poles or conduit systems within thirty (30) days. EDISON will use its best efforts to provide as much advance notice as possible. EDISON will, at ATTACHING PARTY's expense, cooperate fully in the transfer of ownership of any pole or conduit no longer required by EDISON and/or to relocate ATTACHING PARTY's cable to other poles or conduit systems where reasonably possible.

E. Notwithstanding anything to the contrary herein, ATTACHING PARTY and EDISON agree that the Settlement Agreement shall be applicable to attachments made by ATTACHING PARTY for the Term of the Settlement Agreement, or any successor agreement, if any. Further, ATTACHING PARTY and EDISON acknowledge that ~~EDISON's~~ EDISON's MPSC Tariff No. 1 (the "Tariff") imposes upon ATTACHING PARTY and EDISON various duties and obligations, with which ATTACHING PARTY and EDISON shall comply. In the event of a conflict between the Tariff, the Settlement Agreement (or a successor agreement, if any) and this Agreement, the conflict shall be resolved first by the Tariff, second by the Settlement Agreement and third by this Agreement.

ARTICLE II - ADMINISTRATIVE PRACTICES

- A. Specifications, drawings, forms and any practice or procedure essential to the detailed administration and operation of this AGREEMENT are contained in the Administrative Practices - Attachment 1, which is incorporated in and made part of this AGREEMENT. EDISON shall have the right, acting reasonably and with written notice to ATTACHING PARTY, to unilaterally amend or change the Administrative Practices. Such amendments and/or changes shall become a part of this AGREEMENT to the same extent as though originally part of the Administrative Practices. All Administrative Practices shall be applied in a non-discriminatory manner among attaching parties and other entities on EDISON poles and in EDISON conduit ~~systems~~systems or -trenches.

ARTICLE III - SPECIFICATIONS

- A. The attachment or installation of cable by ATTACHING PARTY shall conform with the then current edition of the National Electrical Safety Code as approved by the Michigan Public Service Commission, including modifications by authority of the Michigan Public Service Commission, the State of Michigan or any other authority having jurisdiction, any applicable work practices including, but not limited to, the Tariff, the Department of Labor Occupational Safety and Health Act (OSHA), Michigan Occupational Safety and Health Act (MIOSHA), Michigan Department of Transportation Regulations (DOT), and the requirements contained in the Administrative Practices - Attachment 1. Included within ATTACHING PARTY's duty to conform with the National ~~Electric~~Electrical Safety Code, ATTACHING PARTY is required to inspect its system, and confirm to EDISON, in writing, that its installations comply with the National ~~Electric~~Electrical Safety Code, subject to EDISON's verification.
- B. ~~B.~~ Where ATTACHING PARTY's PARTY's facilities will be installed in conduit systems, ATTACHING PARTY may use any reasonably available innerduct, as determined by EDISON. If there is no such reasonably available innerduct, ATTACHING PARTY will have EDISON install ~~sufficient~~three (3) innerducts ~~for~~ ATTACHING PARTY's ~~needs in such duct~~ PARTY's expense. If the duct will not support ~~such number of~~three (3) innerducts, ATTACHING PARTY will have ~~EDISON~~Edison install as many innerducts as feasible. All innerducts installed in ~~EDISON's~~EDISON's conduit system shall become the property of EDISON, and EDISON shall be free to use ~~additional capacity in such~~ innerducts for any purposes it deems appropriate. ATTACHING PARTY's PARTY's facilities will be installed by

EDISON in one of those innerducts at ATTACHING PARTY's ~~PARTY's~~ expense. As used in this paragraph, innerduct shall mean high-density, polyethylene ducts, 1 $\frac{1}{4}$ - $\frac{1}{4}$ inch in diameter, installed within ~~EDISON's~~ EDISON's conduit system.

ARTICLE IV ESTABLISHING AND IDENTIFYING POLE AND CONDUIT USE

- A. ~~A.~~ No attachment, placement, or installation shall be made by ATTACHING PARTY on any pole or in any conduit system of EDISON before written permission (in the form of Exhibit 2 or 4 of the Administrative Practices - Attachment 1) is received from EDISON, which permission shall not be unreasonably withheld, delayed or constrained. Such permission shall be denied only for reasons of lack of excess capacity, safety, reliability, or generally applicable engineering reasons including, but not limited to, electrical system, security, and operability, or to facilitate service to electric customers. The procedures and forms to be used in making application and receiving permission for attachment, placements or installations shall be as provided for in the Administrative Practices - Attachment 1. ATTACHING PARTY shall attach or install its cable on poles or in conduit systems systems of EDISON at its own expense.
- B. ATTACHING PARTY shall be responsible for, and pay in advance, all costs associated with the Make Ready Work on EDISON's poles ~~or conduit system~~, as provided for in the Tariff. All Make Ready Work shall conform to ~~EDISON's~~ EDISON's specifications as outlined in Article III, Paragraph A. Only EDISON or an approved EDISON contractor shall be permitted to perform such work. As used in this paragraph, Make Ready Work shall mean any alterations or modifications to EDISON's poles or conduit system necessary to permit ATTACHING PARTY to attach or install its cables or equipment.
- C. ATTACHING PARTY shall arrange for EDISON's field representative(s) to be present any time ATTACHING PARTY is performing work, including, without limitation, maintenance work on EDISON's conduit system. Depending on the scope of the work, EDISON, acting reasonably in its sole discretion, may assign more than one field representative to monitor ATTACHING PARTY's work. ATTACHING PARTY shall not perform any work in a conduit system without the field representative(s) being at the work location. The field representative(s) shall have the authority to terminate any work being performed by ATTACHING PARTY should the field representative(s) believe ATTACHING PARTY, in performing such work, is not complying with the terms of this AGREEMENT. Charges for EDISON to be present shall be reimbursed by ATTACHING PARTY. EDISON will not unreasonably delay being present for any work being performed by ATTACHING PARTY or its contractor in EDISON's conduit system as long as ATTACHING PARTY and its contractor abide by the terms of this paragraph C. The cost referred to in this paragraph are as provided for in EDISON's Tariff.

D. The costs for any rearrangement, relocation or removal of ATTACHING PARTY's cables shall be allocated to EDISON or other entities on the following basis:

1. If the rearrangement, relocation or removal of ATTACHING PARTY's cables is the result of an additional attachment or the modification of an existing attachment sought by an entity other than EDISON or ATTACHING PARTY, the entity requesting the additional or modified attachment shall bear the entire cost of rearrangement, relocation and removal of the ATTACHING PARTY's cables or equipment.
2. If the rearrangement, relocation or removal of ATTACHING PARTY's cables is the result of an additional non-internal communication (excluding electric) attachment or the modification of an existing non-internal communication (excluding electric) attachment sought by EDISON, EDISON shall bear the entire cost of rearrangement, relocation and removal of the ATTACHING PARTY's cables.
3. ~~3.~~—If EDISON modifies or alters a pole, or conduit system, to which ATTACHING PARTY has made an attachment, EDISON shall provide written notification on a monthly basis of the work performed. ATTACHING PARTY will be invoiced for "Work as a Contractor" based on the cost of the work performed as noted in Attachment 2, as amended.
4. If the rearrangement, addition or modification is requested by ATTACHING PARTY, ATTACHING PARTY shall bear the cost of such rearrangement, addition or modification. ATTACHING PARTY is free to make agreements with other entities to receive reimbursement of proportionate costs where the other entities are benefiting from the rearrangement, addition or modification.

~~DE.~~ At each pole or manhole location and at ATTACHING PARTY'S ~~PARTY'S~~ expense, cables (including guy wires) shall be identified with a durable, legible weatherproof cable identification tag showing the ATTACHING PARTY'S ~~PARTY'S~~ name and a twenty-four (24) hour toll-free telephone number. A sample of such cable identification must be submitted to EDISON for approval prior to installation, and must be color-coded pursuant to the requirements set forth in Attachment 1, Exhibit 7. All power supplies must be identified with a label identifying ATTACHING PARTY's name and 24-hour toll-free telephone number.

ARTICLE V - MAINTENANCE OF FACILITIES

- A. EDISON may, in its sole judgment, replace or relocate any poles or conduit system -used by ATTACHING PARTY hereunder to maintain the reliability, operability, and security of its electric and internal communication system or to facilitate service to its electric customers. Notwithstanding Article IV, paragraph C above, EDISON shall be responsible for all costs associated with such replacement or relocation, except ATTACHING PARTY shall be responsible for the reasonable cost of transferring, relocating or moving its cable.
- B. EDISON shall continue to perform the type of tree trimming it typically would perform had ATTACHING PARTY cable not been present on its poles. Any additional tree trimming required for the attachment, installation or maintenance of ATTACHING PARTY's cable shall be performed by ATTACHING PARTY.
- C. In the event ATTACHING PARTY experiences an emergency with its cable in the conduit system, it is necessary that an EDISON representative be at the site before ATTACHING PARTY, or its contractor, enters an EDISON manhole. EDISON will respond to an emergency as arranged between the ATTACHING PARTY and EDISON. ATTACHING PARTY shall pay ~~EDISON's~~EDISON's costs for such work.
- D. In the event of an emergency on its poles or its conduit system, EDISON may take whatever action it deems necessary and appropriate under the circumstances, including, but without limitation, the removal of ATTACHING PARTY's~~PARTY's~~ cable from its poles or conduit system. ATTACHING PARTY shall pay ~~EDISON's~~EDISON's costs for such work. EDISON will make reasonable efforts to notify ATTACHING PARTY prior to taking such action. The failure to provide such notice shall not subject EDISON to liability for any loss of or damage to ATTACHING PARTY.
- E. EDISON reserves to itself, its successors and assigns, the right to maintain its poles and conduit system and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements and responsibilities.
- F. In joint use trenches, with energized electrical facilities, ATTACHING PARTY shall hand expose (no power tools) its facilities to work and/or repair ATTACHING PARTY facilities. Further, when any work is necessary to install, maintain or repair its underground facilities, ATTACHING PARTY shall follow the provision as detailed in Act 53 of Michigan Public Acts of 1974; MCLA 460.701, et seq.; MSA 22.190(1), et seq. All personnel involved in hand exposing facilities shall be trained in possible dangers and have knowledge of the approved methods and safety precautions. Normally, EDISON will not de-energize its facilities during the ATTACHING PARTY hand exposing work. However, digging in any

manner shall not be performed around faulted electric power cables until EDISON has verified that it is de-energized and tested. It shall be incumbent upon the ATTACHING PARTY to determine through inquiry and field observation any potential for damage to power facilities before digging and to avoid such damage.

ARTICLE VI TERMINATION OF POLE, CONDUIT, OR TRENCH USE

- A. ATTACHING PARTY may, at any time, remove its facilities from any EDISON pole, conduit system, or trench, but shall immediately give EDISON notice of such removal (in the form of the Administrative Practices - Attachment 1, Exhibits 3 or 5).
- B. Upon notice from EDISON to ATTACHING PARTY pursuant to ~~Section~~ the section A-9.1(5) of the Tariff, ATTACHING PARTY must either begin to remove all of its cables from the pole, conduit system, or trench involved or notify EDISON of its intent to defend its right to continue occupying the disputed space, by the initiation of legal action or otherwise, within ten (10) business days of such notice. If ATTACHING PARTY defends and obtains an adverse adjudication, or ceases to pursue such defense, ATTACHING PARTY shall provide written notice to EDISON within ten (10) business days of such action and ATTACHING PARTY shall remove all of its cables from the pole, conduit system, or trench involved; If ATTACHING PARTY does not take the necessary action within ten (10) business days of receipt of notice from EDISON or within ten (10) business days of obtaining an adverse adjudication or ceasing to pursue such defense, EDISON may remove the cables and hold ATTACHING PARTY liable for all cost and expense of such removal.
- C. If ATTACHING PARTY shall fail to comply with any of the terms or provisions of this AGREEMENT, EDISON may, at its option, terminate this AGREEMENT or terminate permission for use of any pole or conduit system in accordance with Article XIV, Paragraph A.

ARTICLE VII - CHARGES

- A. The charges to be paid by ATTACHING PARTY to EDISON and the terms of payment for such charges are set forth in the Tariff.

ARTICLE VIII - INSPECTIONS

- A. Pursuant to the Tariff, EDISON reserves the right to inspect each new installation of ATTACHING PARTY and to make periodic inspections of any or all installations of

ATTACHING PARTY. Such inspection costs or periodic system audits are to be paid by ATTACHING PARTY. Failure to make such inspections shall not operate to relieve ATTACHING PARTY of any responsibility or obligation or liability assumed under this AGREEMENT.

ARTICLE IX - DEFAULT, WAIVER, AND REVIEW

- A. If ATTACHING PARTY shall fail to comply with any of the terms or provisions of this AGREEMENT, or default in any of its obligations under this AGREEMENT and shall fail within thirty (30) days after written notice from EDISON to correct such default or non-compliance, EDISON may, at its option, terminate this AGREEMENT or terminate permission for use of any pole or conduit system involved in the default or non-compliance. Such termination in no way exempts payment for any pole or conduit system rental prior to the actual removal of all attachments.
- B. Failure of EDISON to enforce or insist upon compliance with any of the terms or provisions of this AGREEMENT shall not constitute a general waiver or relinquishment of any such terms or provisions.

ARTICLE X - PROTECTION AND INDEMNITY

- A. EDISON reserves to itself, its successors and assigns, the right to maintain its poles, conduit system, and trenches and to operate its cables thereon in such manner as will best enable it to fulfill its own service requirements. EDISON shall exercise reasonable precaution to prevent damage to, or interference with the operation of the equipment of ATTACHING PARTY, but EDISON shall not be liable for, and ATTACHING PARTY waives all claims for, any such damage or interference which may arise out of the use of EDISON's poles or conduit system, or trenches hereunder, or operation of its cables thereon ~~resulting from events such as, without limitation, weather conditions or the restoration of damage caused thereby, storms or storm restoration, emergencies or emergency restoration, or the performance by EDISON of its routine maintenance programs (, excluding EDISON's claims based upon EDISON's negligent, reckless or intentional misconduct).~~
- B. ATTACHING PARTY shall exercise reasonable precautions to prevent damage to facilities of EDISON or of other authorized users of said poles, conduit system, or trenches, and ATTACHING PARTY hereby assumes all responsibility for any and all damage to facilities of EDISON, or other authorized users arising out of, or caused by the erection, maintenance, installation, presence, use or removal of ATTACHING PARTY's cables or equipment. ATTACHING PARTY shall make an immediate report to the particular owner of the

facilities affected by the occurrence of any damage and hereby agrees to reimburse such owner for the expenses incurred in making the necessary repairs and replacement.

- C. To the extent provided by law, ATTACHING PARTY covenants and agrees that it shall indemnify and hold EDISON, and all of its agents, employees, officers and affiliates harmless for any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, whether to any person or property or both, arising directly or indirectly out of, or in connection with ATTACHING PARTY's, or any of its contractors' or subcontractors', use of EDISON facilities, including poles, conduit systems, and trenches to which EDISON or any of its agents, employees, officers and affiliates may be subject or put by reason of any act, action, neglect or omission on the part of EDISON or ATTACHING PARTY or any of its contractors or subcontractors or any of their respective officers, agents, employees, and affiliates ~~(, excluding EDISON's claims based on EDISON's reckless or intentional and reckless misconduct)~~; said obligation to indemnify and hold EDISON harmless includes, but is not limited to, injuries which occur to employees of ATTACHING PARTY or its contractors and sub-contractors, or injuries to members of the public, or injuries to employees of EDISON. If this Agreement is one subject to the provisions of Michigan Act No. 165, PA 1966, as amended, then ATTACHING PARTY will not be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of EDISON, or any of its officers, agents or employees.
- D. In the event any suit or other proceedings, for any claim, loss, damage, cost, charge, or expense covered by ATTACHING PARTY's foregoing indemnity should be brought against EDISON, or any of its officers, agents, employees, or affiliates, ATTACHING PARTY hereby covenants and agrees to assume the defense thereof and defend the same at ATTACHING PARTY's own expense and to pay any and all costs, charges, attorney's fees, and other expenses, and any and all judgments that may be incurred by, or obtained against EDISON, or any of its officers, agents, employees, or affiliates in such suits or other proceedings. EDISON reserves the right to approve of counsel selected by ATTACHING PARTY to represent the interests of EDISON in any such suit or other proceeding. In the event of any judgment or other lien being placed upon the property of EDISON in such suits or other proceedings, ATTACHING PARTY shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

ARTICLE XI - INSURANCE

- A. ATTACHING PARTY shall, at their own expense, procure, maintain and keep in effect during the term of this AGREEMENT, and any extensions or renewals thereof, a policy of Commercial General Liability Insurance, including contractual liability coverage for the liability assumed herein, in the amount not less than \$10,000,000 in the aggregate annually

consisting of primary and excess insurance with respect to each project or contract undertaken with EDISON. Each Insurance Policy is to include EDISON as an additional insured for claims arising directly or indirectly out of this AGREEMENT.

- B. ATTACHING PARTY shall maintain, at its expense, Workers' Compensation coverage as required by the Michigan statute.
- C. ATTACHING PARTY shall maintain at its expense Automobile Liability Coverage up to a limit of not less than \$1,000,000 combined single limit with respect to bodily injury and property damage arising from the ownership, operation or use of an automobile.
- D. ATTACHING PARTY shall at the time of acceptance of this AGREEMENT, submit to EDISON, a Certificate of Commercial General Liability Insurance evidencing such insurance coverage and endorsement of EDISON as an additional insured as provided for herein and evidence of renewals thereof. Such certificates shall state that no material change or cancellation can be effected without thirty (30) days prior written notice to EDISON. Certificates evidencing renewals of these coverages ~~for claims arising directly or indirectly out of this Agreement~~ shall be delivered to EDISON no later than thirty (30) days prior to the effective date of such renewal.
- E. It is expressly understood that the obtaining of the insurance as is herein provided, shall in no way limit or release ATTACHING PARTY's liability under the indemnity provisions as provided herein.
- F. The insurance provided by ATTACHING PARTY and its contractors and subcontractors ~~for claims arising directly or indirectly out of this Agreement~~ shall be primary to, and not contributing with, any applicable insurance or self insurance maintained by EDISON.
- G. It is understood that the requirements set forth in this article are subject to revision by mutual consent and negotiation every three years after the execution of this AGREEMENT, with effect from the anniversary of such execution. Such revisions, however, will not require insurance coverage in excess of \$30,000,000 in the aggregate annually with respect to this Agreement.
- H. EDISON does not in any way represent that the insurance specified herein, whether with respect to scope or coverage or limits, is adequate or sufficient to protect the interests of ATTACHING PARTY.

ARTICLE XII - RIGHTS

- A. Nothing herein contained shall be construed as affecting the rights or privileges previously conferred by EDISON, by contract or otherwise, to others not parties to this AGREEMENT, to use any pole, conduit system, or trenches covered by this AGREEMENT and EDISON shall have the right to continue and extend such rights or privileges. The privileges herein granted shall at all times be subject to such contracts and arrangements.
- B. Subject to ATTACHING PARTY's right to sell excess capacity in its network pursuant to Section 307 of the Michigan Telecommunications Act, MCL 484.2307, et seq., ATTACHING PARTY shall not assign, sublease or otherwise transfer, in whole or in part, the privileges granted without the prior consent in writing of EDISON, which consent shall not be unreasonably withheld. ATTACHING PARTY shall not permit any other party's cables, facilities or equipment on EDISON poles, conduit systems, or trenches, or attached to ATTACHING PARTY's cables, without EDISON's consent in writing. Nothing in this Agreement, express or implied, is intended to confer any rights or benefits on any third parties.
- C. If ATTACHING PARTY changes its name, but without an assignment of its rights under this AGREEMENT, then ATTACHING PARTY must send prior written notice to EDISON of its new name and address so that EDISON can change its records accordingly.
- D. Subject to the provisions of Paragraph B hereof, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

ARTICLE XIII - PAYMENT OF BILLS

- A. Undisputed bills for pole reconstruction, alterations, inspections, expenses, rental and other charges under this AGREEMENT shall be paid within thirty (30) days after receipt by ATTACHING PARTY at the above-referenced address.- There will be a one and one-half percent (1½%) per month late fee for each month the amount of the invoice remains unpaid. Nonpayment of bills shall constitute default of this AGREEMENT.
- B. If ATTACHING PARTY disputes any bill or any portion thereof, the following shall apply:
 - 1. Alternative to Litigation. Except as otherwise specifically provided for in this Agreement, the parties desire to resolve billing and payment disputes arising out of this Agreement without court litigation. Accordingly, the parties agree to use the following Dispute Resolution procedure with respect to any billing dispute arising out of or relating to this Agreement or its breach.

2. Commencing Dispute Resolution. Dispute Resolution shall commence upon the sending from one party to the other of written notice of the dispute. No party may pursue any claim unless such written notice has first been given to the other party.
3. Informal Resolution of Disputes. When such written notice has been given, as required by this Article, each party, within ten (10) business days of receipt of such notice, will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve the dispute. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures, such as mediation, to assist in the negotiations. Records of discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production, if appropriately marked to so indicate, and will not be admissible in any formal dispute resolution process arising out of the dispute (i.e., arbitration, administrative complaint, or court action) without the prior written concurrence of both parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration, lawsuit, or other proceeding.
4. Formal Dispute Resolution. If the parties are unable to resolve the dispute within forty (40) days after the ~~parties'~~ parties' appointment of designated representatives through the informal procedure described in this Article, then either party may seek relief under any applicable law, rule or proceeding.
5. When a billing dispute is resolved in favor of ATTACHING PARTY the following will occur within thirty (30) days:
 - a. Interest at a rate of one and one-half percent (1½%) per month will be paid by EDISON on any amounts paid in excess of the amount found to be due according to the Dispute Resolution.
 - b. Any payments made in excess of the amount found to be due according to the Dispute Resolution will be reimbursed by EDISON.
6. When a billing dispute is resolved in favor of EDISON, the following will occur within thirty (30) days:
 - a. Interest at a rate of one and one-half percent (1½%) per month will be paid by ATTACHING PARTY on any amount not paid that was found to be due according to the Dispute Resolution.

- b. Any amounts not paid but found to be due according to the Dispute Resolution will be paid to the billing party.

ARTICLE XIV - TERMS OF AGREEMENT

- A. This AGREEMENT shall become effective on the day and year first above written; and if not terminated in accordance with the provisions of Article IX, shall continue in effect for a term of fifteen (15) years from said date.
- B. Not later than one hundred eighty (180) days following termination of the AGREEMENT in accordance with any of its terms, ATTACHING PARTY, after receiving notice of intent to terminate, shall remove its cables and equipment from all poles, conduit systems, or trenches of EDISON. If not so removed, EDISON shall have the right to remove them at the cost and expense of ATTACHING PARTY and without any liability therefore, and ATTACHING PARTY agrees to pay the reasonable cost thereof within ten (10) days after it has received an invoice from EDISON.

ARTICLE XV- FORCE MAJEURE

- A. A.—Neither party will be held liable for any delay or failure in performance of any provision of this AGREEMENT, other than any delay or failure to pay any sum of money due hereunder, and no party shall be in default under this AGREEMENT, if such delay or failure results from a Force Majeure event. A Force Majeure event means an event caused by strike or other labor problem; act of a third party; embargo; epidemic; accident; act of God; fire, flood, adverse weather conditions, or other major environmental disturbance; material shortage or unavailability; lack of transportation; act of military authority; government ordinance, law, rule, regulation, or restrictions; inability to obtain necessary license, permit, or right; war or civil disorder, or other event of similar or dissimilar nature, provided that such causes are beyond the reasonable control and without the willful act, fault, failure, or negligence of the party whose performance is affected by the Force Majeure event continues to make reasonable efforts to perform its obligations under this Agreement.

XVI -- ENTIRE AGREEMENT

- A. This AGREEMENT along with any exhibits or attachments thereto constitutes the entire AGREEMENT between the parties and may not be modified except in writing.

XVII - TITLES

- A. The article headings in this AGREEMENT are for convenience only and shall not be considered a part of or used in the interpretation of this AGREEMENT.

XVIII - SEVERABILITY

- A. Should any provision(s) of this AGREEMENT be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and the illegal or invalid provision(s) shall be deemed not to be part of this AGREEMENT.

XIX - GOVERNING LAW

- A. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Michigan.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

THE DETROIT EDISON COMPANY

BY _____

BY: _____

Its: _____ Vice

President

Date: _____

ATTACHING PARTY

BY _____:

Its: _____

Date: _____

/home/dp/agreements/poleagreement-blank.wpd

“School Name and Date”

~~STATE OF MICHIGAN~~
~~BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION~~

~~In the matter, on the Commission's Own Motion,)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company of) Case No. U-14528
a uniform pole attachment tariff for educational)
telecommunications facilities.)~~

~~QUALIFICATIONS~~
~~AND~~
~~DIRECT TESTIMONY~~
~~OF~~
~~ROGER D. OLSON~~

THE DETROIT EDISON COMPANY
QUALIFICATIONS OF ROGER D. OLSON

Line
No.

1 ~~Q. Please state your name and address.~~

2 ~~A. My name is Roger D. Olson. My business address is The Detroit Edison~~
3 ~~Company, 2000 Second Avenue, Detroit, Michigan 48226.~~

4
5 ~~Q. Please describe your educational background.~~

6 ~~A. I received my Bachelor of Science Degree in Civil Engineering from Michigan~~
7 ~~Technological University in 1975.~~

8
9 ~~Q. Please describe your professional experience.~~

10 ~~A. After graduation I was employed by Kemper Insurance as a fire protection~~
11 ~~engineer in their Highly Protected Risk Division. I was responsible for ensuring~~
12 ~~that the insured companies met the fire protection standards of Kemper~~
13 ~~Insurance.~~

14
15 ~~Q. Please review your employment history with Detroit Edison.~~

16 ~~A. I joined Detroit Edison in 1981 as a fire protection engineer with responsibility~~
17 ~~for fire protection plans and systems at all Company fossil power plants and~~
18 ~~various other locations.~~

19
20 ~~In 1983, I assumed the position of fire protection system engineer at Fermi 2.~~
21 ~~My responsibilities were for all aspects of the Fire Protection Program. In 1988~~
22 ~~I assumed the position of Administrator Corporate Insurance. I was~~
23 ~~responsible for the everyday operation and renewal of insurance programs. In~~
24 ~~1995, I was appointed Director of Corporate Insurance. At the time of DTE~~

Line
No.

1 ~~Energy's merger with MCN Energy, the combined companies chose to reverse~~
2 ~~DTE Energy's existing Director/Manager convention and, as a result, my~~
3 ~~present title is Manager of Corporate Insurance. My duties have, in essence,~~
4 ~~remained unchanged since 1995.~~

5

6 ~~Q. Are you a registered engineer?~~

7 ~~A. I am a Registered Professional Engineer in the State of Michigan.~~

8

9 ~~Q. Do you have any professional licenses or affiliations?~~

10 ~~A. I have received the Associate in Risk Management designation from the~~
11 ~~Insurance Institute of America.~~

12

13 ~~Q. What are your duties and responsibilities in your current position?~~

14 ~~A. As Manager of Corporate Insurance I am responsible for securing all property~~
15 ~~and casualty insurance carried by the DTE Energy family of companies.~~

THE DETROIT EDISON COMPANY
DIRECT TESTIMONY OF ROGER D. OLSON

Line
No.

1 ~~Q.—What is the purpose of your testimony?~~

2 ~~A.—The purpose of my testimony is to provide an overview of the Company's pole~~
3 ~~attachment liability coverage proposal which recommends acquisition of joint~~
4 ~~general liability insurance coverage for Educational Institutions ("Michigan~~
5 ~~Educational Telecommunications Facilities", "Schools" or "School Districts") and~~
6 ~~The Detroit Edison Company, or in the alternative, adoption of the indemnity and~~
7 ~~insurance provisions set forth in the pole attachment agreement between the~~
8 ~~Allen Park Public Schools and The Detroit Edison Company which was~~
9 ~~essentially approved by the Commission in MPSC Case No. U-14170.~~

10

11 ~~Q.—Which Exhibits are you sponsoring?~~

12 ~~A.—I am sponsoring Exhibit A-3 (RDO-1), Detroit Edison's Proposed Joint General~~
13 ~~Liability Coverage.~~

14 ~~_____~~

15 ~~Q.—Can you describe Detroit Edison's proposal for joint insurance coverage?~~

16 ~~A.—Exhibit A-3 (RDO-1) contains a detailed insurance proposal of joint general~~
17 ~~liability coverage for The Detroit Edison Company and the Michigan Educational~~
18 ~~Institutions taking pole attachment service under the Alternative Pole Attachment~~
19 ~~Tariff for Educational Telecommunications Facilities.~~

20

21 ~~Q.—Why have joint insurance coverage?~~

22 ~~A.—The proposal would be mutually beneficial to both The Detroit Edison Company and~~
23 ~~Educational Institutions. It provides a predictable source of defense and indemnity~~
24 ~~coverage for bodily injury and property damage liability claims for a type of liability~~

Line
No.

1 ~~to which Michigan Educational Institutions are increasingly (and perhaps~~
2 ~~unknowingly) exposing themselves through attachment of telecommunications~~
3 ~~facilities to the Company's high voltage pole network. Detroit Edison and its~~
4 ~~electric customers would benefit because this new stream of non-profit pole~~
5 ~~attachers would not, effectively, be a source of additional unprotected liability.~~
6 ~~This is especially important to the Company because, as I understand it, pole~~
7 ~~attachment is a service provided to the public by Detroit Edison at its cost.~~

8
9 **~~Q.—How would the joint coverage be beneficial to School Districts?~~**

10 **~~A.—With the joint coverage proposed, the School Districts would be able to contain~~**
11 ~~their costs rather than see their costs for insurance premiums escalate across the~~
12 ~~board should a loss occur. To my knowledge, school-owned telecommunication~~
13 ~~facilities are a relatively new phenomena and I expect that their present liability~~
14 ~~insurance carriers may not be completely familiar with the unique and significant~~
15 ~~liability exposure related to high voltage pole networks. It is not hard to imagine~~
16 ~~School insurance carriers' response to the first unfortunate serious injury or~~
17 ~~fatality in which School telecommunications facilities are somehow arguably~~
18 ~~involved. Obviously, Detroit Edison and its insurance carriers have a solid~~
19 ~~appreciation for this liability and the Company and its insurers are uniquely~~
20 ~~situated to synergize and coordinate proper liability coverage for Detroit Edison~~
21 ~~and Educational Institutions. Also, in the event of loss, the policy would pay~~
22 ~~injured parties and property owners on behalf of Schools and Detroit Edison. This~~
23 ~~would reduce the incentive for litigation between Educational Institutions and~~
24 ~~Detroit Edison and increase the likelihood of prompt resolution. In DTE's~~

Line
No.

~~experience, prompt and fair resolution of serious injury cases can be a critical factor in avoiding unreasonably large judgments. It is commonly understood that such judgments can be more frequent in large metropolitan areas, which describes much of Detroit Edison's service territory.~~

Q. — What coverage is contained in the proposal?

~~A. — It is the purpose of this proposal to include coverage for claims arising from personal injury, bodily injury, death, or property damage associated with the Michigan Educational Telecommunications Facilities' attachments to Detroit Edison's facilities. It would protect the School Districts and Detroit Edison during installation and operation of the equipment. The coverage will protect Detroit Edison, the involved School Districts, and their employees against claims by third parties, including contractors and sub-contractors.~~

Q. — How did you structure the initial proposed insurance coverage?

~~A. — After discussing the proposed coverage with various insurers, an initial quotation for a one year commercial general liability insurance policy was proposed by Axis Surplus Insurance Company, insuring Detroit Edison as the named insured and the involved Michigan School Districts as "Additional Named Insureds". Detroit Edison is responsible for payment of the premium, the reporting of losses and the payment of any deductible. Educational Institutions would avoid the majority of the administrative responsibility for this program. The coverage is broken into two components — a primary liability policy and an excess liability policy.~~

Line
No.

1 ~~Q. What is the primary liability insurance coverage?~~

2 ~~A. The proposal provides a primary liability policy with limits of \$1,000,000 for~~
3 ~~each occurrence and a \$2,000,000 general aggregate. Defense costs are in~~
4 ~~addition to policy limits. A deductible of \$10,000 for each occurrence applies.~~

5 ~~— This primary limit structure was suggested by the carrier as a mechanism to~~
6 ~~achieve cost savings. When combined with an excess policy, Educational~~
7 ~~Institutions and Detroit Edison have achieved the maximum liability limits for~~
8 ~~the lowest possible premium.~~

9

10 ~~Q. Does the proposal also include excess liability coverage?~~

11 ~~A. Yes. The proposal includes the annual purchase of an excess liability policy~~
12 ~~with limits of liability in the amount of \$9,000,000 for each occurrence and in~~
13 ~~the aggregate.~~

14

15 ~~Q. What is the estimated premium for the joint insurance coverage?~~

16 ~~A. The premium for the primary liability coverage is quoted at \$128,125.00~~
17 ~~including taxes. The premium for excess liability coverage is quoted at~~
18 ~~\$112,750.00 including taxes. The grand total of both coverages amounts to~~
19 ~~\$240,875.00 which is approximately \$13.38 per year per pole attachment,~~
20 ~~based on 18,000 poles. I am told that at present Detroit Edison has~~
21 ~~approximately 100 pole attachment agreements with Michigan Schools. Thus,~~
22 ~~the more Schools that participate, the lower the per School cost of the~~
23 ~~insurance program. The primary policy is a rateable policy (\$6.95 per pole~~
24 ~~attachment). The number of pole attachments will be audited by insurers at the~~

Line
No.

1 ~~end of each policy period, and the premium will be adjusted up or down~~
2 ~~accordingly. The excess policy is not rateable. This amount excludes TRIA~~
3 ~~coverage under the Terrorism Risk Insurance Extension Act of 2005. TRIA~~
4 ~~Coverage is available for an approximately \$15,000 additional premium.~~
5 ~~Coverage would apply to both primary and excess policies.~~

6

7 ~~Please note that these quotes are valid for a defined time period and would~~
8 ~~need to be reconfirmed before effecting coverage.~~

9

10 **~~Q.What is the problem with the Woodhaven Schools Agreement?~~**

11 ~~A. The introduction of the phrase "negligent, reckless or intentional misconduct" in~~
12 ~~Article X, "Protection and Indemnity" of the Woodhaven Schools Pole~~
13 ~~Attachment Agreement creates ambiguity. This ambiguity could potentially~~
14 ~~render the entire indemnification provision meaningless. Edison did not have~~
15 ~~these concerns about earlier agreements because this language was not~~
16 ~~present. For example, the Allen Park Pole Attachment Agreement uses the~~
17 ~~phrase "intentional and reckless misconduct." Although this wording is also~~
18 ~~problematic, Edison is comfortable enough with it that were the Commission to~~
19 ~~accept this language, then Edison would withdraw the proposal for joint~~
20 ~~insurance.~~

21

22 **~~Q. Can you elaborate on the specifics of the problems you see with the~~**
23 **~~wording in the Woodhaven Schools Agreement?~~**

24 ~~A. Yes. In paragraph A of the Woodhaven Schools agreement, the attaching~~

Line
No.

1 ~~party waives all claims..."excluding claims based upon Edison's negligent,~~
2 ~~reckless or intentional misconduct." Since any "conduct" could be described~~
3 ~~by the attaching party or a plaintiff as being negligent, the effect of this~~
4 ~~language essentially makes the waiver provision a nullity and meaningless.~~

5

6 ~~— In the Allen Park contract, the attaching party waives all claims..."excluding~~
7 ~~Edison's intentional misconduct." This provision in the Allen Park contract is~~
8 ~~not problematic since the attaching party or the plaintiff in any hypothetical~~
9 ~~case would have a very difficult time proving intentional misconduct and it is~~
10 ~~not the business of Detroit Edison to intentionally damage an attaching party's~~
11 ~~equipment.~~

12

13 ~~— The second problem with the Woodhaven Schools contract language is to~~
14 ~~compare the language in paragraph A, "excluding claims based upon Edison's~~
15 ~~negligent, reckless or intentional misconduct," with the indemnity provided by~~
16 ~~the attaching party in paragraph C, "excluding claims based on Edison's~~
17 ~~reckless or intentional misconduct." Edison has a concern that the parties to~~
18 ~~the contract, the plaintiff or the court in a future hypothetical case will claim that~~
19 ~~there is an ambiguity in what is meant in paragraph C because of the language~~
20 ~~in paragraph A, and the parties meant to include the term "negligent" in~~
21 ~~paragraph C, also. If this conclusion was reached, then the indemnity~~
22 ~~provision would be meaningless. In addition, if this argument were presented~~
23 ~~to a jury in a catastrophic case, there could be a disastrous outcome for Detroit~~
24 ~~Edison, the attaching party, or both, to the advantage of the hypothetical~~

Line
No.

1 ~~plaintiff because the language could be construed to justify the jury's verdict.~~

2

3 ~~— Detroit Edison does not have these concerns in the contracts offered to the~~
4 ~~School Districts previously, or to other attaching parties, since neither~~
5 ~~paragraph A nor paragraph C had the exceptions mentioned above, excluding~~
6 ~~claims based upon Edison's negligent, reckless or intentional misconduct. In~~
7 ~~those previous contracts, Detroit Edison was, as I understand it, able to obtain~~
8 ~~a decision by the court, without submitting it to the jury, that the contract was~~
9 ~~clear and not ambiguous. This saved Detroit Edison and the affected~~
10 ~~indemnitor a lot of time and money in defense in the form of costs and attorney~~
11 ~~fees. The goal is to have an insurer provide a defense for the attaching party~~
12 ~~and Detroit Edison collectively rather than invite unnecessary litigation~~
13 ~~between the attaching party (and its insurer) against Detroit Edison, which can~~
14 ~~be very costly.~~

15

16 ~~— In paragraph C of the Allen Park contract, the attaching party's provision to~~
17 ~~indemnify excluding Edison's intentional and reckless misconduct is not as~~
18 ~~problematic, again, because of the unlikelihood of the attaching party or the~~
19 ~~plaintiff proving the high standard of intentional and reckless misconduct.~~

20

21 ~~**Q. How are contractors or subcontractors handled? Are contractors or**~~
22 ~~**subcontractors required to maintain their own insurance?**~~

23 ~~**A. Detroit Edison's insurance proposal requires that all contractors and**~~
24 ~~**subcontractors hired by the School Districts maintain commercial general**~~

Line
No.

~~liability insurance. The coverage must be maintained in full force and effect for the duration of the contract. If an inadvertent error is made and a loss attributable to an uninsured contractor occurs, coverage for the Districts and Edison is not voided. There is an additional premium charge as described below.~~

~~**Q. What are the requirements of insurance coverage for contractors and subcontractors?**~~

~~A. Their limits of liability insurance must not be less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. The contractors' insurer must add the School Districts and Detroit Edison as additional insureds. A waiver of subrogation in favor of the additional insureds must be endorsed by the contractor's insurer. In this way, Educational Institutions and Detroit Edison will be held harmless/indemnified by the contractor for the work and the contractor's general liability policy will provide contractual liability coverage for such indemnification.~~

~~—— The contractors' general liability carrier is required to have a Best's rating not lower than A-. The School District should have little difficulty demanding these contractual provisions from their contractors. The requirements stipulated above are very typical of requirements for general contractors, and should not impose an unfair burden on the contractors.~~

Line
No.

1 ~~Q. Whose responsibility will it be to ensure contractors and sub-contractors~~
2 ~~obtain the required insurance?~~

3 ~~A. It will be the School Districts' responsibility to obtain a certificate of insurance~~
4 ~~evidencing coverage in compliance with the above requirements.~~

5

6 ~~Q. Is there an incentive for Schools to require the specified insurance of~~
7 ~~contractors and sub-contractors?~~

8 ~~A. Yes. If a claim is made against an insured under this policy and it is~~
9 ~~determined that a contractor's negligence caused a loss there will be an~~
10 ~~additional premium charge of \$25.00 per \$1,000 of contract value if such~~
11 ~~contractor's insurance did not meet insurance requirements for contractors~~
12 ~~previously described. The reason for the contractor insurance requirements is~~
13 ~~to lower insurance costs for Educational Institutions. Also, it should be noted~~
14 ~~that failure to enforce the contractor requirement does not void coverage.~~

15

16 ~~Q. Does this complete your testimony?~~

17 ~~A. Yes.~~

18

~~STATE OF MICHIGAN~~
~~BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION~~

~~In the matter, on the Commission's Own Motion,)~~
~~to commence a contested case proceeding for)~~
~~the adoption by The Detroit Edison Company of)~~ Case No. U-14528
~~a uniform pole attachment tariff for educational)~~
~~telecommunications facilities.)~~

~~EXHIBITS~~
~~OF~~
~~ROGER D. OLSON~~

MPSC Case No. U-14528
Witness: Roger D. Olson
Exhibit A-3 (RDO-1)

The Detroit Edison Company
Joint General Liability Coverage For
Educational Telecommunications Facilities



JARDINE LLOYD THOMPSON LLC

December 15, 2005

Mr. Roger D. Olson
Manager, Corporate Insurance
DTE Energy Company
2000 2nd Ave.
Detroit, MI 48226

RE: Pole Attachment Liability Program

PRIMARY LIABILITY

First Named Insured: _____ Detroit Edison Company
_____ 2000 2nd Avenue
_____ Detroit, MI 48226

Additional Named Insureds: _____ Michigan School Districts covered by terms and conditions
_____ of policies described herein

Carrier: _____ Axis Surplus Insurance Company (Rated A XV by AM
_____ Best)

Coverage: _____ ISO CGL occurrence from CG00 01 10 01

Business description: _____ 91585 designated operations (Rating Class Code)

Limitation of Coverage to Specific Project or Work:

The existence, installation and maintenance of communication equipment including cables that are the subject of Permits issued by the Michigan Public Service Commission to specified Michigan School Districts and connected to utility poles owned by Detroit Edison Company.

Insurance Requirements for Contractors of Additional Insureds (school districts):

All contractors engaged by additional insureds (school districts) for the Project / work described herein are required by policy conditions to provide evidence of Commercial General Liability Insurance with the following minimum requirements:

1. Coverage must be provided by a Carrier rated A or above by A.M. Best company.

- ~~2. Coverage must be maintained in full force and effect for the duration of the policy. The policy evidenced may not be cancelled for any reason without a minimum of 30 days notice to both additional insureds (School District and Detroit Edison Company).~~
- ~~3. Limits of liability insurance must not be less than:
\$1,000,000 each occurrence
\$2,000,000 General Aggregate
\$1,000,000 Products Completed Operations Aggregate
\$ 50,000 Fire damage Legal Liability~~
- ~~4. School District and Detroit Edison Company must be added as additional insureds~~
- ~~5. A waiver of subrogation against the additional insureds (School district and Detroit Edison) must be a part of the policy.~~
- ~~6. School District and Detroit Edison shall be held harmless / indemnified by contractor for the work.~~

Limits of Liability:

_____ \$1,000,000 Each Occurrence
_____ \$2,000,000 General Aggregate
_____ \$1,000,000 Products Aggregate
_____ \$50,000 Fire Damage Liability
_____ Defense Cost: Outside the limit of liability

Deductible: _____ 10,000 _____ Each Occurrence (Including Allocated Loss Adjustment Expense)

Term: _____ Annual

Rate: \$6.95 per pole attachment based on 18,000 attachments

Premium is minimum and deposit adjustable at audit (additional premium only)

No flat cancellations

50% minimum earned premium

Exclusions and Endorsements:

Coverage Change Endorsement — (X Lead, X Mold/Fungus, X Asbestos, X Terrorism, X Patent/Trademark Infringement, X EFIS, X Medical Payments, X Breach of Contract, X Leased & Temporary Workers, X Employment Related Practices, X Cross Suits, X Known Injury or Damage, X Nuclear, X Silica/Silicosis, X Transmissible Spongiform Encephalitis (TSE))

Exclusion — Punitive Damages

Exclusion — Wrap ups

Exclusion — subsidence

Exclusion — personal and advertising injury

Exclusion — Professional — Engineers and Architects

Exclusion — any Residential work.

Deductible Endorsement — including Allocated Loss Adjustment Expense.

CGL Declarations

CGL Common Policy Conditions

50% Minimum Earned Premium Endorsement Composite Rate Endorsement

~~Plus those exclusions found in the policy form~~

~~If a claim is made against an insured under this policy and it is subsequently determined that a subcontractor's insurance does not comply with the **Insurance Requirements for contractors of Additional Insureds (School Districts)**, there will be an additional premium charge of \$25.00 per \$1,000 of contract value for covered work for the additional insured.~~

Premium: _____ \$125,000.00 (Excludes TRIA)

State Tax: _____ \$2,500.00

Other Tax: _____ \$625.00

Total: _____ \$128,125.00

Notice Regarding Potential Expiration of the Terrorism Risk Insurance Act of 2002

~~The Terrorism Risk Insurance Act of 2002 [TRIA 2002] is scheduled to expire on December 31, 2005. If Congress does not take action to extend TRIA, the ACT will expire and three things will occur:~~

- ~~1. Federal reinsurance for "certified acts of terrorism" ceases~~
- ~~2. the definition of "certified acts of terrorism" becomes null and void~~
- ~~3. Insurers will no longer be required to offer terrorism coverage by federal law.~~

~~Essentially, insurance carries are now issuing Terrorism disclosure forms and coverage parts that will only provide TRIA coverage until 12-31-05, unless TRIA is renewed by Congress, even though the coverage provided by this policy will expire at a later date. If the Act is not renewed by Congress and if TRIA coverage is purchased as a part of this policy, TRIA coverage will cease as of 12-31-05. Various carriers are handling premium charges differently for this potential situation, so you are encouraged to go over the new disclosure forms and coverage parts very carefully with your Insured and to contact your broker if you have any questions about how this, or any, carrier is handling this situation.~~

Options: _____ TRIA is available for \$5,100 additional premium plus taxes

~~EXCESS LIABILITY~~

First Named Insured: ~~_____ Detroit Edison Company~~

Additional Named Insureds: ~~_____ per underlying policy~~

Carrier: ~~_____ Axis Surplus Insurance Company
(rated A XV by A.M. Best)~~

Coverage: ~~_____ Excess Liability~~

Limits of Liability: ~~_____ \$9,000,000 occurrence/aggregate (where applicable)
_____ In excess of the scheduled underlying~~

Term: ~~_____ Annual~~

Rate: ~~_____ Flat~~

~~Premium is minimum and deposit~~

~~Schedule of Underlying:~~

~~General Liability~~

~~Carrier: Axis Surplus Insurance Company~~

~~Policy Form: Occurrence~~

~~\$1,000,000 Each Occurrence~~

~~\$2,000,000 General Aggregate~~

~~\$1,000,000 Products/Comp Ops Aggregate~~

~~Defense Expenses—in addition to limits~~

~~No other underlying coverages or underlying policies will be scheduled.~~

~~All underlying carriers must have a minimum rating of A—VII or better.~~

~~Exclusions within our policy form include but are not limited to:~~

~~Asbestos~~

~~Cyber Liability~~

~~Fungi or Bacteria~~

~~Pollution~~

~~War or Terrorism~~

~~Nuclear Energy~~

Additional Terms & Conditions:

Exclusions:

~~UM/UIM/Auto No Fault & Similar Laws~~

~~Cross Suits~~

~~Residential~~

~~Infringement of Copyright, Patent, Trade Secrets or Trademark~~

~~Professional Liability~~

~~Punitive or Exemplary Damages~~

~~Silica~~

~~Lead~~

~~Employment Related Practices~~

~~Total Pollution~~

~~Prior Known or Reported Losses~~

~~Wrap—Ups~~

~~EFIS~~

~~Subsidence~~

~~Violation of Statutes that Govern E-Mails, Fax, or Phone Calls~~

~~Plus those exclusions in the policy form and follow form all exclusions on the primary~~

Endorsements:

~~Basis of Premium Endorsement~~

~~Contractors (XLE-5000-01-03)~~

~~Minimum Earned Premium~~

~~Service of Suit~~

Premium: _____ \$110,000.00 (excludes TRIA)

State Tax: _____ \$2,200.00

Stamping Fee: _____

Other Tax: _____ \$550.00

Total: _____ \$112,750.00

~~Terms & Conditions:~~ ~~No Flat Cancellations~~
~~50% Minimum Earned Premium at inception~~
~~Premium is minimum and deposit~~
~~This insurance is subject to the terms, conditions,~~
~~Limitations of the policy in current use by the Insurance Company~~
~~and endorsement(s) required by the Underwriter.~~
~~Coverage no broader than underlying.~~

Best Regards,



~~John P. Cornelius~~
~~Senior Vice President~~
~~Corporate Risks~~

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's Own Motion,)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company of)
a uniform pole attachment tariff for educational)
telecommunications facilities.) Case No. U-14528

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

KIMBERLY KRASNODEMSKI, being duly sworn, deposes and says that on the 15th day of May, 2006, she served a copy of Revised Testimony and Exhibits of James R. Padgett and Daniel J. Dunlop and blacklined versions of prefiled Original February 3, 2006 Testimony and Exhibits of James R. Padgett, Roger D. Olson and Daniel J. Dunlop filed on behalf of The Detroit Edison Company, along with Proof of Service upon the parties listed on the attached service list by depositing same in the United States mail bearing postage fully prepaid and by electronic mail.

Kimberly A.
Krasnodemski

Digitally signed by Kimberly A. Krasnodemski
DN: cn=Kimberly A. Krasnodemski, c=US,
o=Detroit Edison and MichCon,
ou=Regulatory Affairs,
email=krasnodemski@dteenergy.com
Date: 2006.05.15 14:37:16 -0400

KIMBERLY KRASNODEMSKI

Subscribed and sworn to before
me this 15th day of May, 2006.

Estella R.
Branson

Digitally signed by Estella R. Branson
DN: cn=Estella R. Branson, c=US,
o=Regulatory Affairs, ou=Detroit Edison/
MichCon, email=bransone@dteenergy.com
Date: 2006.05.15 14:39:57 -0400

Notary Public

MICHIGAN PUBLIC SERVICE COMMISSION
Case No. U-14528
Service List
March 27, 2006

ADMINISTRATIVE LAW JUDGE

Hon. Daniel H. Nickerson, ALJ
Michigan Public Service Commission
6545 Mercantile Way
PO Box 30221
Lansing, MI 48911
Phone: 517.241.6060
Fax: 517.241.6061
e-mail: denicke@michigan.gov

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

Thomas E. McClear
Public Service Division
6545 Mercantile Way
Suite 15
Lansing, MI 48911
Phone: 517.241.6680
Fax: 517.241.6678
e-mail: mccleart@michigan.gov

EDUNETS

Roderick S. Coy
Paul F. Novak
Haran C. Rashes
Michael Calabrese
Clark Hill
212 East Grand River Avenue
Lansing, MI 48906
Phone: 517.318.3011
Fax: 517.318.3099
e-mail: rcoy@clarkhill.com
e-mail: hrashes@clarkhill.com
e-mail: pnovak@clarkhill.com

**MICHIGAN GAS & ELECTRIC
ASSOCIATION**

James A. Ault, Esq.
110 W. Michigan Avenue, Suite 1000B
Lansing, MI 48933
Phone: (517) 484-7730
Fax: (517) 484-5020
E-mail: jaault@voyager.net

THE DETROIT EDISON COMPANY

Jon P. Christinidis, Esq.
Bruce R. Maters, Esq.
2000 2nd Avenue
688 WCB
Detroit, MI 48226
Phone: 313.235.7706
Fax: 313.235.8500
e-mail: matersb@dteenergy.com
e-mail: christinidisj@dteenergy.com
e-mail: mpscfilings@dteenergy.com