

Walter S. Foster 1878-1961 Richard B. Foster 1908-1996 Theodore W. Swift 1928-2000 John L. Collins 1926-2001	Scott A. Storey Charles A. Janssen Charles E. Barbieri James B. Jensen, Jr. Scott L. Mandel Michael D. Sanders Sherry A. Stein Brent A. Titus Brian A. Kaser Robert E. McFarland Stephen J. Lowney Patricia A. Calore Jean G. Shtokal Glen A. Schmiede Brian G. Goodenough Matt G. Hrebec Eric E. Doster Stephen J. Rhodes	Melissa J. Jackson Steven H. Lasher Nancy L. Kahn Deanna Swisher Mark J. Burzych Alan G. Gilchrist Thomas R. Meagher Douglas A. Mielock Scott A. Chernich Donald E. Martin Paul J. Millenbach Dirk H. Beckwith Brian J. Renaud Bruce A. Vande Vusse Lynwood P. VandenBosch Lawrence Korolewicz James B. Doezenia Alan T. Rogalski	Francis G. Seyferth Anne M. Seuryneck Richard L. Hillman Andrea J. Hool Steven L. Owen Jennifer Kildea Dewane John P. Nicolucci Francis C. Flood Michael D. Homier Keith A. Castora Randall L. Harbour Rebecca S. Davies Barbara J. Oyer Claire V. Groen Kirsten M. McNelly Emily L. Matthews Benjamin J. Price Ronald D. Richards, Jr.	Joseph E. Kozely Pamela C. Dausman Terrence G. Quinn Jacqueline E. Bayley Dana M. Bennett Radhika P. Drake Todd W. Hoppe Sarah J. Gabis Larry R. Jensen, Jr. Alison R. Lievense Eleanore M. Schroeder Philip E. Hamilton John W. Inhulsen Andrew C. Vredenburg	<i>Of Counsel</i> Lawrence B. Lindemer David VanderHaagen Michael G. Harrison Allan O. Maki Frederick B. Bellamy Gilbert M. Frimet Deborah J. Williamson Peter R. Tolley Robert C. Greene Scott H. Hogan James B. Frakie Mark J. Colon Craig R. Petersen
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Reply To: Lansing

July 19, 2006

via Hand Delivery and Electronic Service

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

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 U-14528

Enclosed for filing please find the **Rebuttal Testimony of James R. Padgett** and a Certificate of Service.

Thank you for your assistance. If you have any questions, please feel free to call.

Very truly yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Mark Burzych

Digitally signed by Mark Burzych
DN: cn=Mark Burzych, c=US, o=Foster
Swift
Date: 2006.07.19 16:14:52 -04'00'

Mark J. Burzych

Enclosures

cc: Roderick Coy/Paul Novak (via electronic and first class mail)
Haran Rashes/Michael Calabrese (via electronic and first class mail)
Kristin M. Smith, MPSC (via electronic and first class mail)
James A. Ault (via electronic and first class mail)
Jon P. Christinidis/Bruce R. Maters/Kevin O'Neill (via electronic and first class mail)

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

REBUTTAL TESTIMONY
OF
JAMES R. PADGETT

THE DETROIT EDISON COMPANY
REBUTTAL TESTIMONY OF JAMES R. PADGETT

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

2 A. James R. Padgett. 2000 Second Avenue, WCB, Detroit, Michigan, 48226.

3

4 **Q. Are you the same James R. Padgett who filed written direct testimony**
5 **in this docket?**

6 A. Yes.

7

8 **Q. What is the purpose of your rebuttal testimony?**

9 A. The purpose of my testimony is to respond to Staff's apparent position that
10 the pole owner should be the remediator of last resort for National Electrical
11 Safety Code ("NESC") violations of third party attachers on poles owned by
12 the pole owner. To a limited extent, my testimony necessarily describes the
13 appropriate public policy that the Michigan Public Service Commission
14 ("Commission") should follow to address the third party attacher NESC
15 problems that occur on Detroit Edison-owned poles, and to attempt to avoid
16 future NESC issues. I also explain that it would be bad public policy to make
17 Detroit Edison responsible and/or liable for the poor installation practices of
18 others. I also respond to some of the statements and allegations made in the
19 testimony of EduNets.

20

21 **Q. How is your rebuttal testimony organized?**

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1 A. My rebuttal is concentrated in four major areas. They are the rebuttal of 1)
2 Staff's and EduNets' assertions that rates and fees cannot or should not be
3 changed to reflect Detroit Edison's current costs in the instant case 2) Staff's
4 and EduNets' recommendations regarding absolute timelines; 3) Staff's
5 apparent recommendation in their tariff that Detroit Edison is the responsible
6 party of last resort for remediation of 3rd parties' NESC issues that hold up
7 the Schools' Wide Area Network ("WAN") projects; and 4) the generalized
8 accusations of EduNets regarding the pole attachment conduct of pole
9 owners.

10

11 **Q. What is your general view of Staff's and EduNets' tariff proposals?**

12 A. Detroit Edison, EduNets and the Staff apparently share the same general
13 goals regarding pole attachments. All three parties desire a safe, reliable
14 electric system and poles that are big and strong enough to accommodate
15 all attachers. Where we differ is how best to accomplish these goals. I
16 believe that some of Staff's and EduNets' recommendations would be
17 counterproductive to their intended goals.

18

19 **Q. What is the basic flaw in both EduNets' and Staff's proposals?**

20 A. The basic flaw is that their tariff proposals do not provide incentives to the
21 telecommunication parties that are currently hindering Schools' attachment
22 projects.

23

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1 Further, EduNets' and the Staff's tariff proposals impose additional
2 obligations, and related costs, on the Company. At the same time that
3 Detroit Edison is being criticized regarding its costs of providing electric
4 service, these additional obligations are another example of costs being
5 imposed on the Company that lead to high electric rates.

6
7 **Q. Do you agree with EduNets' and Staff's position that Detroit Edison is**
8 **improperly asking for rate changes in this proceeding?**

9 A. No. The case is designed to create a pole attachment tariff. The
10 Commission order commencing this proceeding and the Notice of Hearing
11 do not prohibit a change in rates, fees, or charges. Additionally, although I
12 am not an attorney, this is a tariff case, which in my experience means that
13 all rates, terms and conditions are eligible for adjustment. It is an
14 unreasonable and one-sided position that only the selective terms and
15 conditions that benefit the attachers are at issue in this case, while the rates
16 for such services cannot be set to cover the costs of providing the services.

17
18 Mr. Derkos recognizes at pages 2 and 8 of his direct testimony that a tariff
19 includes rates, and that it is appropriate for a tariff to recognize costs. He
20 further states at page 4 of his direct testimony, however, that Detroit Edison
21 should seek any fee increase in a "rate" case. He does not cite any basis for
22 bifurcating this case so that only non-rate terms and conditions are
23 considered now, and the related costs and rates are left to another time and
24 an uncertain outcome. Such case splitting would waste resources on

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1 duplicative proceedings, and violate Detroit Edison's rights to recover its
2 costs of providing service.

3

4 Mr. Derkos also suggests at page 11 of his direct testimony that Edison
5 should seek cost recovery in its next general rate case. This suggestion is
6 inappropriate because an electric rate case sets rates for electric service.
7 Other than recognizing the pole attachment rental as a miscellaneous
8 revenue credit, in my 30 years of experience at both the MPSC and at
9 Detroit Edison, I am not aware of any pole attachment matters being heard
10 in a main electric rate case. The pole attachment tariff is not even included
11 in the "Rate Book for Electric Service".

12

13 I will also note that Detroit Edison's requested Application Fee of \$55 per
14 pole was predicated on the Commission's approval of the Company's
15 proposed tariff.

16

17 **Q. Do you agree with Mr. Schulte's statement on page 13 of his direct**
18 **testimony; "We happen to believe that Edison's fees and charges are**
19 **excessive, but since this case was not noticed as a rate reduction case**
20 **we did not think it appropriately within the scope of the case to**
21 **propose rate reductions?"**

22 **A.** No. To the contrary, Detroit Edison clearly demonstrated in its direct case
23 that the current pole attachment fees and charges are significantly below the
24 Company's costs. Mr. Dunlop and Mr. Ketcik's testimony and exhibits clearly

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1 support an upward revision in the Application Fees. Also, as pointed out in
2 Mr. Dunlop's testimony, Detroit Edison's existing Pole Application fees and
3 charges are a bargain compared to what outside contractors charge to do
4 the same work.

5

6 **Q. EduNets has changed Detroit Edison's proposed language regarding**
7 **the resale provisions in the Availability section of Detroit Edison's**
8 **proposed tariff. How do you respond?**

9 A. Detroit Edison's and Staff's tariffs proposed appropriate limits on the
10 eligibility for this special attachment tariff.

11

12 Pages 2 and 3 of Mr. Derkos' direct testimony reflect Staff's general
13 agreement with Detroit Edison that the requirements imposed on Detroit
14 Edison in Staff's proposed Pole Attachment, Conduit and Trench Tariff for
15 Educational Institutions in this proceeding are intended to apply only to
16 Educational Institutions as defined in Staff's proposed tariff and only
17 because of the limited resources, and unique nature, of the non-profit
18 educational services provided by Educational Institutions as defined in
19 Staff's proposed tariff.

20

21 **Q. EduNets included portions of the U-13522 Settlement Agreement in**
22 **their proposed tariff. What is Detroit Edison's position on the Case No.**
23 **U-13522 Settlement Agreement?**

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1 A. Detroit Edison believes the Settlement Agreement should be extended. This
2 experiment needs more time to work and be examined. It is premature to
3 conclude that the Settlement Agreement is a long-term viable solution.
4 Furthermore, it would be unjust and unreasonable to implement a
5 mechanism that provides for a remediation fund without the rates or other
6 means to maintain the fund.

7

8 **Q. Both Staff's and EduNets' proposed tariffs suggest time deadlines for**
9 **Detroit Edison to conduct make ready work and issue a permit. What is**
10 **your understanding of, and the differences between, the two tariffs**
11 **regarding deadlines?**

12 A. EduNets proposes very short deadlines regardless of the size of the School
13 attachment project, and without apparent exceptions. In addition to
14 apparently wanting to impose strict liability on Detroit Edison regardless of
15 circumstances, EduNets also apparently wants to avoid any responsibility by
16 Schools. Plainly, circumstances can make tremendous differences in the
17 length of the attachment process, and Schools should not be able to use a
18 tariff if they do not comply with its requirements. Staff appropriately
19 recognizes these concepts. It is my understanding that the deadlines in
20 Staff's proposed tariff apply only if the School attaching party complies with
21 the "Process for Establishing Attachments" set forth in Staff's proposed "Pole
22 Attachment, Conduit and Trench Tariff for Educational Institutions", which
23 requires schools to provide advance notice of their intent to attach.

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Q. What is the main problem with the absolute time deadlines proposed by EduNets?

17

18

A. The problem is that performance deadlines are inconsistent with reality in the field, since Detroit Edison cannot control the behaviors and responses of the pole occupants in the telecommunications zone of the pole. Detroit Edison should not have to spend funds to remediate issues with other parties' equipment in the telecommunications zone. Detroit Edison most certainly should not be required to do so without just compensation in rates. As I will further explain later in my testimony, to control other occupants on its poles,

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1 Detroit Edison needs the assistance of the Commission. It would be unfair
2 to place deadlines in the tariff and hold Detroit Edison accountable for pole
3 occupants that Edison does not control, and equipment that Edison does not
4 own.

5

6 **Q. Please explain what you mean by the telecommunications zone of a**
7 **pole?**

8 A. There are three basic zones in the space above the minimum ground
9 clearance on a pole. The top of the pole is the electrical zone. Below that is a
10 40 inch neutral zone that separates communications attachments from
11 electrical lines. The bottom part of the attachment space is a
12 telecommunications zone that is typically, depending on the size of the pole,
13 around 4 - 5 feet. On Detroit Edison's poles, there are an average of 4
14 attachments in the telecommunications zone; though some poles have more
15 attachments. In Southeast Michigan, the telecommunications zone on many
16 of the poles is full. This is a problem for Schools who tend to be the last
17 attachers on the poles, and who continue to want to attach to full poles.

18

19 **Q. Do Staff and EduNets propose any viable way for Detroit Edison to**
20 **control the behavior of 3rd party attachers?**

21 A. Neither Staff nor EduNets proposes a real solution. Instead, Staff broadly
22 proposes that Detroit Edison remediate, or take administrative steps to
23 facilitate remediation of, the poles so that the Schools can attach within the
24 time frames set forth in their proposed tariff. It would remain up to Detroit

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Edison to attempt to collect the costs of this remediation, without a Commission-approved rate or cost-recovery mechanism. Staff appears to recognize the obligations of, and difficult problems with, third-party attachers, but does not offer any specific explanation of how Edison might overcome the existing problems, let alone the additional issues raised by the Staff's proposal.

From a practical standpoint, the Staff has not explained how Detroit Edison can avoid violating the proposed deadlines contained in Staff's proposed "Pole Attachment, Conduit and Trench Tariff for Educational Institutions" when a party or parties attached to Detroit Edison's poles, or installed in Edison's conduits or trenches, does not cooperate or accept responsibility for preexisting NESC issues. Further, Staff does not explain how the Company, without embarking on litigation (which is likely to be lengthy and expensive, without a certain outcome), might obtain recovery of its costs associated with remediating preexisting NESC issues involving a party or parties attached to Detroit Edison's poles, or installed in Edison's conduits or trenches, that do not cooperate or accept responsibility for preexisting NESC issues.

If Detroit Edison has absolute deadlines, then it will need cooperation from 3rd party attachers and from the School's contractor. One way that Detroit Edison would obtain cooperation from 3rd party attachers is if the Commission orders 3rd party attachers to address their attachments that do not comply with the NESC. The current behaviors of inattention and delay

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1 on the part of attaching parties will not change without the threat of real
2 consequences to an attaching party and its customers. Detroit Edison
3 believes that the Commission should affirmatively state that it will compel
4 attacher compliance through its orders when presented with prima facie
5 evidence that an attacher's equipment requires remediation.

6

7 **Q. What is the source of the delays that Schools have experienced?**

8 A. There are two major hurdles facing the Schools. Neither hurdle is the fault of
9 the Company or the Schools. 1) In Southeast Michigan, in many instances
10 the poles are full. 2) Some existing attachers in the telecommunications
11 zone have attached without complying with the NESC, so the poles have
12 pre-existing remediation needs.

13

14 **Q. If 3rd party attachers are the source of the delay, why does EduNets
15 appear to blame Detroit Edison?**

16 A. There is no sound basis to blame Detroit Edison, but Detroit Edison appears
17 to be an easy target because it is highly regulated, and it owns the majority
18 of the poles to which 3rd parties desire to attach in Southeast Michigan.
19 Further, there appears to be some identity of interests among Schools, fiber
20 installers, and telecommunication companies.

21

22 I want to emphasize that I do not perceive that the MPSC Staff is blaming
23 Detroit Edison, and that I appreciate the Staff's efforts in attempting to
24 address the problem, which is reflected in a 2002 Staff investigation in Case

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1 No. U-13522. Staff found that the vast majority of the NESC issues were in
2 the telecommunications zone of the pole - in other words, not Detroit
3 Edison's fault. Crowding by all of the attachers in the telecommunications
4 zone continues, however, because AT&T used to have this zone to itself;
5 then cable TV came along; now the Schools. The poles were not designed
6 for this number of attachers. Basically, the electrical zone of the pole has
7 remained unchanged. The overcrowding is caused exclusively by the
8 telecommunication attachers, so the problem must be solved primarily by
9 and through by telecommunication attachers.

10

11 **Q. How do you respond to the suggestion that Detroit Edison should**
12 **enforce its tariffs and pole attachment agreements?**

13 A. Telecommunications, cable TV and other third party attachers must be
14 responsible for the equipment they own. The simplistic assertion that Detroit
15 Edison can "enforce" its pole attachment tariffs or agreements ignores
16 reality. The legal process is not an efficient or very effective means to
17 address attachment problems, as is evidenced by Detroit Edison's five years
18 of still ongoing litigation with Ameritech. Further, if Detroit Edison were to
19 remove attachments, or deny electricity to a third party attacher, then Detroit
20 Edison would invite litigation from the third party attacher and its customers.
21 Detroit Edison would likely be sued if Detroit Edison were to remove
22 problematic equipment that affects phone service and, for example, an
23 emergency 911 call is not completed as a result, or, entire communities do

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1 not have cable television or internet service. Furthermore, it seems unlikely
2 that this is the public policy that the MPSC wishes to pursue. The reality is
3 that Detroit Edison has little ability, as a practical matter, to force third party
4 attachers to comply with the NESC.

5

6 Moreover, if the Commission really wants Detroit Edison to deny or
7 discontinue service, or take other self-help measures against third party
8 attachers, then the Commission should explain how it will insulate Detroit
9 Edison from liability for such action and how it will handle the resulting
10 complaints that will inevitably be filed at the MPSC.

11

12 Edison should not be left to chase third party attachers through the courts to
13 get them to fix their own equipment and compensate Detroit Edison for the
14 costs they caused Detroit Edison to incur. The outcome of such pole owner
15 efforts are seldom a complete success. Even apart from ultimate financial
16 recovery, the result is inequitable and contrary to public policy, since
17 improper conduct continues and the wrong party (Detroit Edison) is forced to
18 deal with the consequences, which is likely to escalate third party NESC
19 problems. The heart of the problem is improper attachments made by third
20 party attachers. The only way to properly incentivize third party attachers to
21 fix existing issues and not create new issues is to order them to remediate
22 their own equipment, or otherwise use the MPSC's authority to impose
23 negative consequences for NESC violations that outweigh the third party

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1 attachers' economic incentives to create problems and ignore their existing
2 attachment issues.

3

4 Detroit Edison cannot be the exclusive or most effective enforcement
5 mechanism to ensure compliance with the NESC. Detroit Edison faces
6 significant obstacles in attempting to "enforce" the terms and conditions of
7 third party attachments through the courts. "Enforcement," however, is a
8 function of the Commission as a governmental entity and should be applied
9 against the actual violators. Detroit Edison is a private company that has only
10 a limited ability to pursue third parties and must do so through lengthy and
11 expensive legal proceedings. The Company needs the Commission's help
12 to address non-compliant third party attachers.

13

14 Furthermore, Detroit Edison simply cannot cost-effectively maintain reliable
15 electric service, address others' NESC issues and chase the offending third
16 party attachers. Detroit Edison does not have, nor has the Commission or
17 Staff proposed to provide, the resources to address the attachment issues of
18 the telecommunications, cable TV and Internet industries. Detroit Edison
19 does not have unlimited resources to pursue uncooperative third party
20 attachers. Further, there is no assurance of cost collection if Detroit Edison
21 fixes the equipment of a defunct telecommunications service provider (to the
22 limited extent Detroit Edison is even able to address the technical
23 requirements of telecommunications and cable TV equipment) or a

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1 telecommunications service provider whose assets were sold to subsequent
2 parties without the assumption of liabilities. Detroit Edison's rates do not
3 cover the necessary funding for remediation of cable, telecommunications,
4 or internet equipment.

5

6 In sum, the concept of making Detroit Edison responsible for the improper
7 conduct of third party attachers is not tenable. Detroit Edison cannot
8 reasonably be made to account for the misdeeds of others, nor do any State
9 mandates to that effect exist. Detroit Edison is in the business of delivering
10 electric power to retail customers and cannot be made to subsidize the
11 business enterprises of others. All third party attachers must bear the costs
12 and responsibilities for the problems affecting the equipment they own.

13

14 **Q. Are you suggesting that Detroit Edison will not cooperate regarding**
15 **issues affecting its own pole network?**

16 A. No, not at all. Detroit Edison created a safe and reliable pole network for its
17 electrical facilities and is committed to maintaining that network by
18 overcoming the problems imposed by improper third party attachments.

19

20 **Q. Staff's proposed Pole Attachment, Conduit and Trench Tariff for**
21 **Educational Institutions Work to Accommodate Attachments to Poles,**
22 **Duct, or Conduit Paragraph (3), provides "Remediation is the**
23 **responsibility of the Company." What are some of the problems with**

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1 Staff's proposal in this regard?

2 A. This sentence causes Detroit Edison great concern, for the reasons
3 indicated above. Further, Staff provides no discussion on how the Company
4 will be compensated when it incurs expenses to remediate. In most cases, it
5 is not practical to determine or prove, in a court of law, which party or parties
6 are responsible for the NESC issue. In these cases, Detroit Edison
7 customers or shareholders would pay the bill; a bill for an issue that does not
8 concern the electric zone of the pole.

9
10 I want to be clear that my rebuttal assumes that the Staff's position is that
11 Detroit Edison must be the NESC remediator of last resort for those Schools,
12 and only those Schools, that are requesting to attach under the tariff and
13 pole attachment agreement being developed specifically for educational
14 institutions in this case. In their response to discovery, Staff agreed that *all*
15 parties attaching to Detroit Edison's poles have an obligation to attach,
16 operate and maintain their own respective equipment in conformance with
17 the NESC. Staff further agreed that each attaching party should be
18 responsible for its own facilities. Detroit Edison understands that the Staff's
19 concern is that if 3rd party attachers refuse to remediate their NESC issues,
20 School WAN projects will be delayed. However, neither Staff nor EduNets
21 propose a practical means to address the fundamental problem, which is
22 attacher behavior.

23
24 Although I am not an attorney and don't propose to offer a legal opinion, the
25 responsibility for NESC compliance is plainly on the attaching party – which

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1 only makes sense. Detroit Edison's existing pole tariff A-4.1(1) states:

2 "Minimum requirements for joint construction shall be in
3 conformity with the then current edition of the National
4 Electrical Safety Code except where modified by authority of
5 the State of Michigan or any other authority having jurisdiction
6 and the rules of the Company."
7

8 Detroit Edison's existing pole tariff A-7.1(1) states:
9

10 "Attaching party shall, at its own expense, install and be
11 responsible for its facilities on poles (including guying) and in
12 trenches, conduit or manholes of the Company and shall
13 maintain them in good and safe condition and in a manner
14 suitable to the Company so as not to conflict with use of said
15 poles, trench, conduit or manholes by the Company or other
16 authorized users of said poles, trench, conduit or manholes or
17 interfere with the working use of facilities thereon or therein; or
18 which may from time to time be placed thereon or therein."
19

20
21 Each party attaching to Detroit Edison's poles has an independent obligation
22 to attach in conformance with the NESC. MCL 460.6g delegates to the
23 Commission the authority to regulate the terms and conditions of
24 attachments by attaching parties. Among other things, the Commission
25 promulgated Rule 813 as a standard of good practice that all attachments on
26 utility poles should be in compliance with the NESC. Section 6g applies to
27 all "attaching parties" as they are defined. In properly promulgating Rule 813
28 as part of the terms and conditions with which all attaching parties must
29 comply, the Commission has required all third party attachers to follow its
30 standard of good practice. Rule 813 applies to telecommunications
31 providers as well pursuant to Telecom Rule 41, MAC R 484.541.
32

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1 Therefore, there is abundant reason to conclude that all third party attachers,
2 which include telecommunications carriers, cable providers, and other types
3 of attaching parties, have an independent State-mandated obligation to
4 attach to Detroit Edison-owned poles consistent with the NESC. The
5 Commission can and should enforce this obligation against the 3rd party
6 attachers to which it applies. It is unnecessary and ineffective to attempt to
7 delegate to Detroit Edison the duty to enforce rules or State mandates
8 regarding attachments. That is a governmental function that can and should
9 be performed by the Commission. Detroit Edison cannot be held liable for
10 the poorly-installed equipment of third party attachers, especially when
11 Detroit Edison has no meaningful choice regarding whether these third
12 parties attach to its poles.

13

14 **Q. Are there other potential indirect consequences of Staff's proposal?**

15 A. The Staff apparently has not considered how concessions that Detroit
16 Edison is forced to make for Schools "because they are special or unique"
17 will affect its other obligations. Nothing is free, so to the extent one interest
18 obtains a benefit, another interest has to carry a corresponding burden.
19 Financial subsidies are an obvious example, but the same concept applies to
20 other scarce resources, such as labor. Thus, to the extent that School
21 projects are prioritized, other installation or maintenance activities will be
22 affected.

23

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1 **Q. How do you view Staff's proposal overall?**

2 A. It appears that Staff is suggesting that Detroit Edison police the pole
3 network. If Detroit Edison is to become the policeman, it needs the
4 Commission's support. Detroit Edison is willing to play its part, consistent
5 with its role as a pole owner. However, it does not make sense for Detroit
6 Edison to constantly be on the defensive at the Commission when Detroit
7 Edison's attachments comply with the NESC, the Company has made good
8 faith attempts to enforce the safety codes on its equipment, and it has made
9 many good faith attempts to assist Schools with their WAN projects.

10

11 In addition to notifying 3rd party attachers about their NESC issues during the
12 Company's permit process, Detroit Edison will notify 3rd party attachers when
13 Detroit Edison becomes aware of NESC issues either through inspections or
14 whenever issues become known to the Company. If the Commission also
15 orders 3rd party attachers to remediate their equipment, then we will be able
16 to move the WAN projects of Educational Institutions along more quickly
17 than is now possible.

18

19 **Q. Do you have a recommendation as to how the remediation costs of**
20 **NESC violations on Detroit Edison owned poles should be allocated?**

21

22 A. Yes. The only method of allocating the responsibility and costs of
23 remediation that makes sense based upon Detroit Edison's experience
24 generally, is to make the owner of the attachments in violation responsible to
25 remediate and pay for the entire cost of the remediation. If there is more

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1 than one party with attachments in violation, then those parties should share
2 the cost of the remediation. The “violator pays” proposal is superior to any
3 other remediation plan because the attachment violation has a greater
4 likelihood of getting fixed in a timely manner, since the parties will not waste
5 time and resources arguing about who should pay. Implementing a “violator
6 pays” remediation plan also creates incentives for all attaching parties to (1)
7 attach in compliance with the NESC; and (2) routinely inspect their own
8 facilities to ensure that their attachments remain in compliance with the
9 NESC. Another benefit is that State wide, the costs will be spread across all
10 parties attaching to the poles, rather than concentrating the costs on any one
11 category of pole user. Based upon Detroit Edison’s experience, the only
12 workable solution to addressing the remediation of NESC issues is having
13 the owner of the violating facilities be responsible for and pay for the cost of
14 remediation.

15

16 **Q. What is your response to the statement in Mr. Schulte’s testimony that**
17 **the Schools’ problem is the lack of cooperation by pole owners?**

18 A. Mr. Schulte makes broad accusations against pole owners generally, and
19 appears to have little or no personal knowledge regarding Detroit Edison. As
20 discussed elsewhere, it is Detroit Edison that is not getting cooperation from
21 the existing 3rd party attachers in the telecommunications zone of the poles.
22 It is also not Detroit Edison's fault that the poles are crowded. Detroit Edison
23 is an innocent bystander with respect to pole disputes, but does have an

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1 interest in the safety and reliability of its pole system.

2

3 As a Company that is not a telecommunications provider, Detroit Edison has
4 unsuccessfully attempted to referee disputes within the telecommunications
5 zone so that Schools may attach as quickly as possible. Detroit Edison has
6 attempted to utilize the terms of its tariff and contracts; however, it has
7 become exceedingly clear that the Commission needs to exercise its
8 authority over attachment practices and help drive proper attachment
9 behavior.

10

11 Detroit Edison has also voluntarily sought to facilitate and motivate proper,
12 orderly, and more rapid attachment practices, since it instituted a pole
13 permitting system. Now Detroit Edison, along with Consumers Energy, has
14 implemented the National Joint Utility Notification Systems (NJUNS) to
15 document and formalize Detroit Edison's notification process associated with
16 identifying and correcting pre-existing code issues, which should also help
17 the Schools.

18

19 **Q. Do you have any comments on the tone of Mr. Schulte's pre-filed direct**
20 **testimony?**

21 A. EduNets' inflammatory rhetoric is disheartening to Detroit Edison, and does
22 not provide a sound basis for action by the Commission. Most of EduNets'
23 assertions appear to be directed at past disagreements among Schools and
24 pole owners. It is unclear whether many of Mr. Schulte's assertions are

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1 meant to apply to Detroit Edison, and Detroit Edison does not speak for
2 other pole owners.

3

4 I want to stress that Detroit Edison has no problem with the Schools or what
5 they are trying to accomplish by building their WANs. However, I strongly
6 disagree with EduNets' mischaracterizations of Detroit Edison's interests and
7 conduct. Detroit Edison has no interest or incentive to harm or slow the
8 attachments of Schools. Detroit Edison did not cause the problems in the
9 telecommunications zone, and is not a competitor in the telecommunications
10 zone. There are problems in the telecommunications zone because of
11 telecommunications and cable attachers.

12

13 **Q. Can you give an example of EduNets' misstating or overstating its**
14 **position?**

15 A. Yes. Mr. Schulte states on page 2 of his direct testimony that "problems and
16 issues with respect to pole attachments by educational institutions are
17 actually quite new, occurring mostly in just the last five (5) years." He goes
18 on to inconsistently claim, however, that "[t]here has been a whole
19 generation of students who have been deprived of this essential education
20 while utility pole owners have been delaying the installation of fiber optic
21 networks by Schools." Plainly, five years is not a generation. Further, any
22 "delay" of a project is far less than five years, and is caused by the poles
23 being full of telecommunications attachments, which is not Detroit Edison's

**Line
No.**

1 fault. Detroit Edison has a long history of supporting the communities it
2 serves, including schools. EduNets' views are not objective or balanced.

3

4 **Q. How do you respond to EduNets' contention that Detroit Edison's**
5 **proposal "contains many features that are a disadvantage for Schools**
6 **and more for Edison's benefit...and proposed regulation of educational**
7 **institutions' activities"?**

8 A. There is nothing associated with school pole attachments that inures to
9 Detroit Edison's benefit. Rent and fees are low and do not begin to
10 compensate electric ratepayers and the shareholders for the services
11 provided and the liability assumed. It should be noted that any rental
12 revenue received by Detroit Edison is credited to electric ratepayers in the
13 Company's electric cost of service.

14

15 This case should result in a reasonable voluntary tariff - not a Detroit Edison-
16 subsidized attachment and maintenance program. The rates, terms and
17 conditions of the tariff must be fair to Detroit Edison, as a private company,
18 supplying access to its equipment. The tariff must provide just recovery of
19 the costs that it creates. EduNets' apparent proposal that Schools should
20 have no responsibility under the tariff lacks merit. Schools should be made
21 to comply with the limited and reasonable requirements in the Company's
22 proposed tariff in order to enjoy its special benefits.

23

24 **Q. Do you have a comment on Mr. Schulte's statement on page 2 of his**

**Line
No.**

1 **direct testimony that Detroit Edison collects approximately \$2.5 million**
2 **a year for pole rentals?**

3 A. Yes. I just want to clarify for the record that the \$2.5 million represents total
4 revenue from all attaching parties under the regulated tariff rate of \$3.74 per
5 pole per year. Pole rental from Educational Institutions amounts to
6 approximately \$70,000 annually.

7
8 **Q. Does this conclude your rebuttal testimony?**

9 A. Yes.

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24

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	)	MPSC Case No. U-14528
a uniform pole attachment tariff for educational	)	
telecommunications facilities	)	
_____	)	

CERTIFICATE OF SERVICE

Mark J. Burzych, being duly sworn, deposes and says that he is an employee of Foster, Swift, Collins & Smith, P.C., and that on July 19, 2006, copies of **Rebuttal Testimony of James R. Padgett** and this Certificate of Service were served upon:

See Attached Service List

Service was accomplished via electronic mail and also by depositing same in the United States mail bearing postage fully prepaid.

Mark Burzych _____ Mark J. Burzych	Digitally signed by Mark Burzych DN: cn=Mark Burzych, c=US, o=Foster Swift Date: 2006.07.19 16:14:24 -04'00'
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