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June 22, 2006

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

Re: In the matter of 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:

Enclosed for filing please find an original and four copies of the Direct Testimony and Exhibits of David E. Schulte on behalf of EduNets in the above-captioned case. Proof of Service upon the Parties of Record is also enclosed. These documents have been filed electronically with the Michigan Public Service Commission's Electronic Case Filing System.

Very truly yours,

CLARK HILL PLC

Roderick S.
Coy

Digitally signed by Roderick S.
Coy
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US, O = Clark Hill PLC
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Enclosures

cc: Parties of Record

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of 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

DIRECT TESTIMONY OF DAVID E. SCHULTE

ON BEHALF OF EDUNETS

Filed June 22, 2006

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

2 A. My name is David E. Schulte. My business address is 1025 N. Shiawassee Street,
3 Corunna, Michigan 48817.

4 Q. By whom are you employed?

5 A. I am employed by the Shiawassee Regional Education Service District (SRES D). I
6 currently serve as the Associate Superintendent for General Education Services. I have
7 been in that role for four years, and at the SRES D for 10 years.

8 Q. Do you hold other positions which are relevant to the matters involved in this case?

9 A. Yes. I also serve as the Chairman of the Technology Committee for the Michigan
10 Association of Intermediate School Superintendents (MAISA) and in that position I come
11 in regular with educational institutions all over the state which are involved in pole
12 attachment issues, as I have been in our own network. I am also President-elect of the
13 Regional Education Media Center Association of Michigan (REMCAM), which also
14 provides me with many opportunities to interact with other educational networks.

15 Q. What is your formal educational background?

16 A. I have a Bachelors degree in Elementary Education and a Masters Degree in Adult and
17 Continuing Education from Michigan State University. I have also completed Additional
18 coursework in Educational Administration.

19 Q. Please briefly describe your work experience.

20 A. I taught elementary and middle school in both general and special education, and have
21 presented at numerous conferences on educational technology related issues. I am
22 currently the Associate Superintendent for General Education Department at the
23 Shiawassee RESD, which includes curriculum, instruction, assessment, career education,

1 and technology. My duties include management of the Shiawassee Interactive
2 Telecommunications Educational System (SITES), one of the very first school owned
3 school fiber networks in the state. I manage pole attachment agreements with numerous
4 utilities, cities, and telecommunication companies.

5 Q. On whose behalf are you testifying in this proceeding?

6 A. I am testifying on behalf of EduNets. EduNets is an ad hoc coalition of school districts,
7 intermediate school districts, educational coalitions and companies providing broadband
8 networking infrastructure to school districts and educational institutions throughout the
9 State of Michigan.

10 Q. Were the exhibits which accompany your testimony prepared by you or under your
11 supervision and direction?

12 A. Yes they were.

13 Q. What is the purpose of your testimony?

14 A. The purpose of my testimony is to provide an overview of the pole attachment problems
15 and issues faced by educational institutions and to propose a reasonable uniform tariff
16 containing the terms and conditions of attachment. Additionally, if it is necessary for
17 there to be an additional pole attachment agreement, which we doubt, I am proposing a
18 simplified standard form of Edison's agreement, which still contains objectionable
19 language, but is an improvement.

20 Q. How much revenue does Detroit Edison collect for pole attachment rentals annually?

21 A. For roughly the last decade Detroit Edison collects approximately \$2.5 million a year for
22 pole rentals, according to Mr. Padgett's discovery response, which I have attached as
23 Exhibit ____ (DES-5).

1 Q. How many attachments are there by schools to Detroit Edison poles?

2 A. According to Mr. Dunlop's discovery response, 18,601. I have attached his response as
3 my Exhibit ____ (DES-6). It would appear that school attachments are less than 3% of
4 Edison's total attachments.

5 Q. How many schools have pole attachment agreements currently with Detroit Edison?

6 A. Approximately 85 educational institutions according to Mr. Dunlop's discovery response
7 which I have attached as my Exhibit ____ (DES-7).

8 Q. How long have educational institutions been attaching fiber optic networks to existing
9 utility poles?

10 A. Educational institutions have been installing fiber optic networks for approximately
11 twenty (20) years.

12 Q. Have there been pole attachment problems and issues over that entire period?

13 A. No. The problems and issues with respect to pole attachments by educational institutions
14 are actually quite new, occurring mostly in just the last five (5) years.

15 Q. What are some of those problems and issues?

16 A. In the last five (5) years educational institutions have encountered extraordinary delays in
17 attempting to attach to utility poles. These unreasonable delays begin at the first contact
18 that is made of an existing utility pole owner and continue all the way through until the
19 end of the process. Some educational institutions have had extraordinary delays in even
20 getting a pole attachment agreement, which has commonly been demanded as a pre-
21 requisite to even being able to apply for pole attachment permits from the utility pole
22 owner to actually begin to attach. Further delay occurs in attempting to get a pre-make
23 ready survey conducted by the utility pole owner, getting reasonable estimates of make

1 ready costs, and then actually getting the make ready performed by the utility pole owner.
2 Another area of problems have been unreasonable and unauthorized fees and charges that
3 are not clearly set out in the existing tariffs as well as charging educational institutions
4 the cost to fix existing problems and code violations as a part of the cost of allowing
5 educational institutions to attach to the utility poles. There are numerous other problems
6 that lead to delays and unnecessary costs as further identified in the proposed tariff and
7 the conditional pole attachment agreement.

8 Q. Have educational institutions outlined succinctly what reforms need to be made to the
9 pole attachment process, what actions need to be taken by the utilities and the Michigan
10 Public Service Commission, in order to accommodate the needs of educational
11 institutions to construct their advanced technology networks?

12 A. Yes, a great deal of time and effort went into drafting proposed House Bill No. 5488,
13 introduced by Representative David Farhat, which is currently in the Michigan
14 Legislature. A hearing has been held in the Senate Technology and Energy Committee
15 where a steady stream of educational institutions came forward and testified about the
16 problems and issues faced when attempting to attach to existing utility poles. House Bill
17 5488 would mandate that the utility pole owners implement many of the very reforms
18 educational institutions have been attempting, unsuccessfully, to get them to adopt for
19 years, and which we have now proposed in EduNets' Uniform Pole Attachment Tariff for
20 Educational Institutions. MAISA and other Educational Institutions have endorsed HB
21 5488, which outlines very clearly the problem areas that need to be addressed. HB 5488
22 is attached as my Exhibit No. ____ (DES-9).

1 Q. Do utility pole owners typically have tariffs on file with the Commission outlining the
2 pole attachment service offered?

3 A. Yes, but in most cases the tariffs have not been revised for more than a decade.
4 Additionally, some of the tariff provisions are just too ambiguous and open-ended,
5 leaving schools vulnerable to the demands of utility pole owners virtually no matter what
6 is demanded. If Educational Institutions do not capitulate to pole owner demands, they
7 are delayed and do not get on the poles.

8 Q. Have you proposed a uniform tariff for educational attachments?

9 A. Yes. EduNets' proposed tariff for educational attachments is Exhibit ____ (DES-1).

10 Q. Have you made any changes in rates in this proposed tariff?

11 A. No. The Commission order commencing this proceeding as well as the Notice of
12 Hearing that has been given to educational institutions and others about this proceeding
13 does not provide for any changes in rates. Consequently, EduNets' tariff simply includes
14 the existing rates. This should not be interpreted as support or agreement that the existing
15 rates are reasonable, since we would actually like to propose some rate reductions in a
16 number of areas, but only that our reading of the Commission's Order and Notice of
17 Hearing in this case is that it is not within the scope of this proceeding as it has been
18 noticed to educational institutions and to the public.

19 Q. Please describe the EduNets' proposed uniform tariff.

20 A. The Uniform Pole Attachment Tariff for Educational Institutions, Exhibit ____ (DES-1)
21 is designed to clarify and simplify many areas of ambiguity compared to existing tariffs.
22 First, it makes clear that educational institutions are eligible for this tariff. Additionally,
23 it refers potential users of the service to a list of guidelines posted on the Commission's

1 website to help accelerate the attachment process for schools. These guidelines to
2 accelerate attachments are actually taken from some of the things which Detroit Edison
3 proposed in this proceeding, but which come off as trying to regulate educational
4 institutions when placed in a tariff, and which otherwise needed some modifications.
5 This list perhaps could be improved upon to help communications and accelerate the
6 attachment process, but when placed in a tariff as Detroit Edison did, it looks like a set of
7 trip wires which could cause an educational institution to be ineligible for the benefits of
8 the new tariff. These guidelines can be found at Exhibit _____ (DES-3).

9 Q. Please continue describing EduNets' proposed uniform tariff.

10 A. After setting out some important definitions, the proposed uniform tariff discusses rates
11 and fees. As stated earlier, the rates and fees shown are those in Detroit Edison's current
12 tariff. The Commission opened this proceeding, we believe, in order to provide some
13 relief to educational institutions which were encountering delays and skyrocketing costs
14 with respect to trying to attach to poles. Detroit Edison's proposal includes rate
15 increases. First, we do not believe that rate increases were contemplated by the
16 Commission's notice in this proceeding. Second, we do not see how a proposed uniform
17 tariff which attempts to regulate educational institutions on one hand, and actually raises
18 the rates for the educational attachment process on the other hand, is an appropriate
19 response to the Commission's notice in this proceeding. Such an outcome would be a
20 cruel joke. It is as if the Commission opened a proceeding to consider reducing Detroit
21 Edison's rate and Edison's response was to propose a rate increase.

22 Additionally, this section of EduNets' proposed uniform tariff discussing the
23 application and related fees, now contains some deadlines. This has been a major source

1 of delay for educational institutions to secure attachment approvals in the past. Our
2 uniform tariff proposal requires the Company inform the educational institution whether
3 their application has been approved within 45 days. EduNets' uniform tariff also makes
4 clearer what services one is to receive for the application fee, although much of this
5 actually comes from the existing tariff. There is some additional detail and clarification
6 however which was most likely implicit in the existing tariff.

7 Q. Describe some other highlights of EduNets proposed uniform tariff.

8 A. The proposed uniform tariff also makes clear that it is designed to try to enable the
9 attaching party to install its facilities within 120 days from the initial request. Next, the
10 proposed uniform tariff attempts to more clearly define what constitutes "make-ready
11 work" and explicitly states that work required to remediate NESC violations that already
12 exist on the pole are not "make-ready work" that can be charged to an educational
13 institution seeking to attach to the pole. This has been a major source of delay and
14 expense for educational institutions in the recent past.

15 Another area of some controversy has been the inspections that have been made
16 and the cost associated with those. EduNets proposed uniform tariff clarifies this
17 situation and gives educational institutions some cost certainty that there will not be
18 repeated unnecessary and unexpected inspections charged to educational institutions.

19 Q. Does the tariff allow for additional pole attachment and conduit use agreements?

20 A. EduNets continues to believe that having separate agreements, in addition to the tariff,
21 which have to be negotiated, is an unnecessary expense and delay in the attachment
22 process. Nonetheless, if the Commission concludes that it is absolutely necessary to have
23 an additional agreement beyond the tariff in order for attachments to occur, then we have

1 proposed a simpler form of Edison's agreement which is still objectionable, but an
2 improvement.

3 Q. What do you believe should be contained in the pole attachment tariff?

4 A. In a word, everything. Everything that an educational institution would need to know in
5 order to decide whether to utilize the utility pole owner's poles should be in the tariff.
6 All rates, terms, and conditions for attachment should be clearly set out in the tariff so
7 that there would not be any need for additional negotiations, contracts or agreements, or
8 other time-consuming and costly delays. Timeframes should be specified. Nonetheless,
9 we are aware that some existing tariffs allow an additional agreement to be required by
10 the utility pole owner addressing a limited number of issues. In light of that, EduNets
11 proposes a standard form pole attachment agreement which could be utilized for this
12 purpose if the Commission is absolutely convinced that a tariff cannot be devised which
13 contains all rates, terms, and conditions of attachment.

14 Q. Are you aware of any owner of utility poles who does not require a separate pole
15 attachment agreement?

16 A. Yes. SBC, now known as AT&T, has all of the terms and conditions of attaching to their
17 poles in their tariff and they do not require an additional pole attachment agreement.

18 Q. Why do you think all of the rates, terms, and conditions ought to be included in the tariff?

19 A. The time consumed in individually negotiating a pole attachment agreement for each
20 educational institution has been a major source of delay and has been extremely costly to
21 educational institutions attempting to attach to existing utility poles. As the Commission
22 well knows, it has lead to several complaints being filed before this Commission. The
23 *Allen Park Public Schools* case and the *Woodhaven-Brownstone Schools* cases are

1 notable examples, the latter case, of course, is the one which lead the Commission to
2 open this very proceeding. There are far more disputed pole attachment agreements that
3 have not been pursued as complaints.

4 Q. If the Commission decides to allow the use of a separate pole attachment agreement
5 nonetheless, have you proposed an improved standard form agreement?

6 A. Yes. It is attached as Exhibit ____ (DES-2), but understand it still contains objectionable
7 language. I do not believe that the Commission has ever previously approved a whole
8 pole attachment agreement to be utilized by a utility pole owner. Obviously, the
9 Commission did decide certain disputes about particular provisions of a pole attachment
10 agreement in each of the above referenced cases. However, I have been unable to
11 identify any case where the Commission ever approved an entire agreement. Pole
12 attachment agreements are full of unsuitable provisions for schools to be forced to accept,
13 are unreasonably one-sided, and have been the source of unnecessary costs and delays.

14 Q. What types of items are permitted to be covered in a pole attachment agreement under
15 Detroit Edison's existing tariff?

16 A. In Detroit Edison's existing tariff there is a provision which states as follows:

17 (7) The Company reserves the right to make contractual arrangements
18 with the attaching party(s) as to coordination, procedures, construction
19 time frames, specifications and other business conditions."

20 Q. Is there anything wrong with the existing tariff provision?

21 A. Yes, the words "and other business conditions" are too vague and can be used to justify
22 nearly any provision that a utility pole owner would want to include.

23 Q. What does your standard form agreement cover?

24 A. The standard agreement attached as Exhibit ____ (DES-2) is limited to those things
25 mentioned in the Company's existing tariff with the exception of the ambiguous and

1 open-ended “other business conditions”. Specifically, it covers coordination procedures,
2 construction time frames, specifications, insurance and indemnity provisions. Most of
3 the other sections of Detroit Edison’s proposed pole attachment agreement are either
4 already covered in EduNets’ proposed tariff, unnecessary, or only included because you
5 have a separate agreement in the first place, which we continue to believe is unneeded.

6 Q. In Detroit Edison’s proposed tariff they made repeated reference to the Settlement
7 Agreement dated August 22, 2003 in Case No. U-13522, or any successor agreement or
8 order of the Commission. How have you treated that subject?

9 A. EduNets’ proposed tariff does not make specific reference to the Settlement Agreement
10 in Case No. U-13522, but instead incorporates into this tariff important provisions of that
11 Settlement Agreement. For example, it continues the procedure for how identification
12 and remediation of existing NESC violations is to proceed; it continues the concept that
13 the cost causer should pay the cost to remediate violations and it continues the Pole
14 Remediation Fund to accelerate attachments where there is a dispute over responsibility
15 for the violation.

16 Q. Is the Pole Remediation Fund an important tool to accelerate the attachment process for
17 educational institutions when there is a dispute over an existing NESC violation?

18 A. Yes it is. EduNets’ legal counsel is the one who proposed the Pole Remediation Fund in
19 the U-13522 Settlement Agreement. Regrettably, there have been no disbursements
20 made from the fund during the three years this Settlement Agreement has been in place,
21 as acknowledged by Detroit Edison. See Detroit Edison’s Discovery Response EBDE-
22 1.44/44, which I have attached as Exhibit _____ (DES-4). We have revised the
23 procedures for accessing the fund so that it should be used in the future.

1 Q. Have you reviewed Edison's proposed tariff, the proposed agreement, and the testimony
2 of Detroit Edison in this proceeding?

3 A. Yes.

4 Q. Do you think Edison's proposed tariff would be very attractive to educational
5 institutions?

6 A. No. Clearly the proposed tariff is more focused on Detroit Edison raising rates and
7 regulating educational institutions than it is focused on solving the problems that give rise
8 to this case in the first place. This is not particularly surprising given what Detroit
9 Edison's witnesses have described as "two of the most significant public policy issues
10 associated with educational institution pole attachments". Padgett, prefiled p 7, revised.

11 Q. What do you think are some of the most significant public policy issues associated with
12 educational institution pole attachments?

13 A. First would be the lack of sufficient cooperation from utility pole owners. Educational
14 institutions for years have been mandated to perform services and functions which
15 required that we have advanced technology networks that we can only get by installing
16 our own facilities, usually on existing electric utility poles. It is the public policy of this
17 state that students interface with advanced technology in preparation for careers in the
18 twenty-first century. There has been a whole generation of students who have been
19 deprived of this essential education while utility pole owners have been delaying the
20 installation of fiber optic networks by schools. Utility pole owners are allowed to be in
21 the public's rights-of-way because the functions they are performing were found to be
22 necessary for the public's convenience and necessity. That is why utility poles are
23 allowed in the public right-of-way. Educational institutions similarly serve the public's

1 convenience and necessity and need advance technology networks. However instead of
2 recognizing the equally important role that educational institutions play in serving the
3 public, too often utility pole owners have treated educational institution pole attachments
4 as nuisances and intruders on the utility pole owners' private property. That mindset and
5 orientation must change if this problem is going to be solved.

6 Second, long-term delays in schools being able to secure reasonable pole
7 attachment agreements, or securing reasonable make-ready estimates, or securing
8 reasonable time frames for make-ready to be performed, or securing reasonable time
9 frames to actually attach are all very significant public policy issues which have damaged
10 students and educational institutions in their effort to fulfill their mission.

11 Third, the skyrocketing costs being quoted by utility pole owners for attachments
12 is also a very significant public policy issue. We have gone in just a few years from a
13 situation where make-ready costs for a project were a minor item in an advance
14 technology program budget, perhaps \$10,000 to \$20,000, to multi-million dollar
15 estimates of make-ready costs which dwarf the cost of the entire network itself. Someone
16 should investigate why and how the costs of make-ready in just a few years have gone
17 from a minor item to threatening the very viability of some educational institutions even
18 having an advanced technology network.

19 Q. Much of Edison's testimony is devoted to its argument that its rates are out of date and
20 too low. How do you respond to that?

21 A. Certainly Edison knows how to properly file a case for a rate increase if it can justify one,
22 but it has not done so here. It did not commence a rate increase case in this matter, nor
23 did the Commission. Edison should not be allowed to turn this case (which was not

1 started as a rate case) into just another rate increase opportunity for Edison. We believe
2 the Commission commenced this proceeding to address the pole attachment issues and
3 problems faced by educational institutions, and that is what we have focused on. We
4 happen to believe that Edison's fees and charges are excessive, but since this case was
5 not noticed as a rate reduction case we did not think it appropriate within the scope of
6 the case to propose rate reductions.

7 Q. If the Commission concludes, notwithstanding EduNets' position, to continue to allow
8 separate pole attachment agreements and to approve a standard form agreement in this
9 proceeding, should educational institutions that already have existing pole attachment
10 agreements be allowed to conform their agreements to the new standard form?

11 A. Generally yes they should be given that option. It is my understanding from reviewing
12 Mr. Padgett's testimony that Edison does not oppose this concept. Padgett prefiled p 17,
13 revised. However, depending upon what standard form agreement is approved, if any, by
14 the Commission it may or may not be in the educational institution's interest to enter into
15 the new agreement. While the old agreements generally are extremely one-sided and
16 onerous, Edison's proposed form agreement could be a lot more expensive because of
17 Edison's escalating insurance demands and other features. Consequently, I think anyone
18 with an existing agreement should be permitted the option to take a new standard form
19 agreement, if there is one, but it should be at their option.

20 Q. Are there any features of Edison's proposals that are beneficial to schools?

21 A. Yes, there are a few. Edison's decision to honor the provisions of the Settlement
22 Agreement in U-13522 is a positive step. Finally recognizing that overloading is not an
23 additional attachment is a positive step. Limiting new inspection costs for the first five

1 years is helpful. On balance, however, in proportion to the rest of Edison's proposal,
2 which contains many features that are a disadvantage for schools and more for Edison's
3 benefit, this is a pretty modest list of improvements, which is more than offset by
4 Edison's demand for higher fees and proposed regulation of educational institutions'
5 activities.

6 Q. Are there any features of Edison's proposals that are particularly hostile to educational
7 institutions?

8 A. One that stands out as incredibly insensitive and ill-considered is with respect to Edison's
9 proposal for dealing with so-called "unauthorized educational institution attachments".
10 Edison proposes that if an inspection reveals any such so-called "unauthorized"
11 attachments that the educational institution be required to pay a penalty "equal to ten (10)
12 times the annual pole rental fees for all poles to which the educational institution is
13 attached and that educational institution shall no longer be eligible for this tariff." This
14 unseemly proposal is far harsher than the existing tariff. Educational institutions, who
15 are severely budget restricted and each year called upon to do more and more for
16 educating our children with less and less resources, are treated like deadbeats or
17 criminals. One might think such an incredibly thoughtless proposal would be made only
18 if there had been significant recent problems with unauthorized educational institution
19 attachments. However, as admitted by Edison's Mr. Dunlop in his discovery response,
20 "No unauthorized educational attachments have been identified in the past two years
21 resulting from Edison's inspections." I have attached this response as Exhibit ____
22 (DES-8). Educational institutions acknowledge that mistakes can happen, and
23 contractors might actually make a mistake and occasionally attach to the wrong pole.

1 Consequently, in EduNets' proposed uniform tariff we have continued the existing tariff
2 provision which subjects the unauthorized attachment to three years retroactive billing for
3 pole rentals, but only if the attachment was actually made by the educational institution
4 or its representative, and not by the utility itself (such as by inserting a new pole mid-
5 span unbeknownst to the educational institution and attaching the educational
6 institution's cable to the pole) or a third party attacher who moves the educational
7 institution's attachment without its knowledge or consent. This proposal kind of
8 epitomizes Detroit Edison's unfriendly treatment of educational institution attachments.

9 Q. Does that complete your testimony at this time?

10 A. It does.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the Commission's own motion)
to commence a contested case proceeding for)
the adoption by The Detroit Edison Company)
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Case No. U-14528

EXHIBITS OF DAVID E. SCHULTE

ON BEHALF OF EDUNETS

Filed June 22, 2006

UNIFORM POLE ATTACHMENT TARIFF
FOR
EDUCATIONAL INSTITUTIONS

A-1.1 Availability

The rates, terms and conditions of the service addressed in this tariff are available to educational institutions as defined in §102 of the Michigan Telecommunications Act, MCL 484.2102, or in any successor statute. In addition, there is a list of Guidelines to Accelerate Attachments on the Commission's website at www.michigan.gov/MPSC/_____.

A-1.2 Definitions

- (1) "The Company" means The Detroit Edison Company, a Michigan corporation, a public utility engaged in the generation, purchase, transmission, distribution, and sale of electric energy in a 7,600 square mile service area in Southeastern Michigan, and which owns and maintains utility poles, ducts, conduits and manholes upon which space may be available for rental to an "attaching party."
- (2) "Attaching Party" and "Attachment" mean those terms as defined at MCL 460.6g or any successor statute, and under this tariff is an educational institution. Under this tariff, a pole attachment overlashed upon another attachment or looped back upon itself, where there is attachment to a pole at only a single point, does not constitute a separate attachment for the purpose of calculating annual rental charges.
- (3) "Agreement" means the Standard Form Pole Attachment and Conduit Use Agreement setting forth a limited number of matters not explicitly set forth herein, in a form approved by the MPSC.
- (4) "Educational institution" means a school or educational consortium as defined in MCL 484.2102, or any successor statute, and in this tariff is also an attaching party.
- (5) "MPSC" means the Michigan Public Service Commission or any successor agency.

A-1.3 Rate Schedules

All general terms and conditions and rates and charges are subject to the approval of the MPSC. The general terms and conditions and rates and charges may be revised, amended, supplemented or otherwise changed from time to time only as authorized by the MPSC, and such changes, when effective, shall have the same force as present general terms and conditions and rates and charges. No rates or charges may be assessed or collected by the Company in connection with the services addressed herein unless they are explicitly approved by the MPSC and set forth herein.

A-2.1 Annual Pole Rental Rate

The annual rental rate per pole shall be \$3.74. This rate shall remain in effect until further order of the Commission.

A-2.2 Annual Conduit Rental Rate

The annual rental rate per duct foot shall be \$3.36. This rate shall remain in effect until further order of the Commission.

A-2.3 Applications and Fees

- (1) Educational institutions shall apply to the Company for a permit to attach on forms provided by the Company. The Company shall inform the Educational Institution whether its application has been approved within 45 days.
- (2) A non refundable application fee may be charged by the Company to any party requesting permission to make attachment(s) to a utility pole(s). The purpose of the application fee is to recover the Company's expense to conduct the make ready survey required to determine the feasibility of the requested attachment(s). The make ready survey shall be completed and submitted to the attaching party within 45 days of the application.

The application fee shall be \$80 for the first six poles to which attachment is sought, and \$13 for each additional pole. The application fee is due at the time application is made.

The make ready survey shall include all of the following, as necessary: field observation of each pole to which attachment is sought in a joint ride out with the applicant or its representative; clearance measurements, loading calculations and the collection of other information that may be necessary to determine the feasibility of attachment; preparing a preliminary cost estimate for the Company's make ready work; advising other occupants of the pole(s); preparing a written response detailing the results of the make ready survey; preparing and issuing an invoice for make ready work to be done by the Company; and issuing a permit.

The pole application fee may be waived if the requesting party, in the sole judgment of the Company, has the expertise to complete the make ready survey.

- (3) A non refundable application fee may be charged by the Company to any party requesting permission to make attachment(s) to a utility conduit or duct(s). The purpose of the application fee is to recover the Company's expense to conduct the investigation required to determine the availability of Company owned conduit and duct between requested locations.

The application fee is due at the time application is made. The application fee shall be \$625 per request.

The conduit system investigation may include, but it not limited to, an investigation of the Company's conduit and field book records, field visits, determination of the Company's current and future requirements, preparing a preliminary cost estimate for the Company's work to accommodate the attaching party, preparing a written response detailing the results of the conduit system investigation, and issuing a permit.

A-3.1 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 (8).
- (2) Bills for pole reconstruction, alterations, inspections, expenses, rental and other charges shall be paid within thirty (30) days of presentation, unless disputed.
- (3) Bills shall include only the following charges or costs, in conformity with the rates, terms, and conditions therefor specified herein, when applicable:

Power Supply Service
Pole and/or Conduit Rental
Make ready work
Inspections
Other charges explicitly approved in this tariff

- (4) 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.
- (5) Poles found attached without permission shall be subject to three years retroactive billing and so noted on the formal permit if the attachment was made by the educational institution or its representative and not by the utility itself or a third party.
- (6) Quarterly conduit/duct rental shall be one quarter of the annual rate and shall be based on the number of duct feet occupied on the first day of the quarter.

- (7) Attaching parties whose annual rental charges, when calculated in accordance with this tariff, are \$60 or less per contract are required to pay a minimum annual rental charge of \$60. Initial annual minimum rental charges shall be due in advance concurrent with the permit validation date. Thereafter, annual minimum rental charges shall be billed annually, due on the first day of April.
- (8) Attaching parties not subject to annual minimum rental charges, but whose annual rental is \$1000 or less shall be billed annually, due in advance of the first day of April.

A-4.1 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.
- (2) To facilitate proper construction, detailed specifications and drawings may be included in a separate contract with the attaching party.

A-5.1 Establishing Attachment to Poles, Duct, Conduit and Trenches: General Conditions:

- (1) This tariff is designed to enable an attaching party the opportunity to install facilities within 120 days from initial request.
- (2) The Company shall grant to an attaching party a revocable permit to attach cables and facilities for power supplies of such weight as the Company may approve to such poles as the Company may approve. The Company shall grant to an attaching party a revocable permit to install similar cables in the Company's conduit system or trenches as the Company may designate. The method and location of installation on poles or in conduit and trenches must first be approved by the Company.
- (3) The Company shall grant or lawfully deny requests for place attachment on poles or in conduit and trenches within 45 days of receiving such requests. If a pole is not in compliance with the National Electrical Safety Code due to conditions unrelated to the attaching party's application, such non-compliance shall not be considered the basis for lawful denial of a request to attach.
- (4) No attachment, placement or installation shall be made by attaching party on any pole or poles or in trenches, manholes or conduits of the Company before written permission is received from the Company.

- (5) Attachments to conduit and duct will be limited to space available in existing Company facilities. Attaching parties will be accommodated in order of application dates until capacity is approached.
- (6) An Educational Institution may sell excess capacity that is available over its attached facilities, consistent with MCL 484.2307 or any successor statute, and it may not be restrained by the utility pole owner in any manner.

A-5.2 Work to Accommodate Attachments to Poles, Duct, or Conduit

- (1) Any reconstruction, alteration or other work required to accommodate facilities or attaching party shall be done within 60 days by the Company upon the request of attaching party, and the reasonable expense incurred in connection therewith shall be paid by attaching party.
- (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 not related to the Educational Institution’s request 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.
- (4) Work to accommodate attachments to conduit or duct and manholes may include instruction, inspection, duct routing, evacuating manholes and certain materials including tags, hangers and conduit maps.
- (5) Attaching party shall reimburse any other authorized user of said poles, trench, conduit, duct or manholes for any expense incurred by said user in transferring, rearranging, or replacing its facilities or other added work to accommodate use by attaching party.
- (6) Satisfactory arrangements must be made with each other occupant by attaching party for any necessary rearrangement of their facilities to accommodate the attaching party’s attachments.

A-5.2 Work Performed by Attaching Party(s) in Company Conduit

- (1) Supervision by the Company to direct any work including installation in conduits, racking in manholes, and inspections is mandatory. Attaching party or his contractor shall not enter any manhole or other Company facility without Company Supervision.

- (2) 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 Electrical Safety Code, Michigan law, and the Occupational Safety and Health Act, and the rules and specifications of the Company.

A-5.4 Trenching

- (1) An attaching party 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 includes the joint utility plan for the underground trenching project.
- (2) An attaching party 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 attaching party shall be the total cost of any trenching or associated trenching work which may be provided for the attaching party's sole use.
- (4) Cost will be the labor cost plus overheads required to perform the work, or as billed by a utility contractor directly to the attaching party in accordance with the contractor's current contract with the utility.
- (5) The attaching party shall be required to pay all charges prior to start of the construction.
- (6) The Company may, if necessary, make contractual arrangements with the attaching party(s) limited to coordination, procedures, construction time frames, and specifications.

A-6.1 Rights-of-Way

- (1) Educational Institutions shall be responsible for obtaining all necessary permits, consents, easements, rights-of-way and approvals to construct and maintain facilities on the poles.
- (2) At the request of attaching party(s), the Company may agree to attempt to secure common rights-of-way from a private property owner or developer for all attaching parties when proposing to install new utility pole(s) or common utility trench(es). Should the private property owner or developer refuse to grant common rights-of-way to the Company and attaching party(s), it is then the sole responsibility of the attaching party(s) to secure their own rights-of-way.

- (3) Attaching party for which a common right-of-way has been secured by the Company, shall pay the Company an equal share of the cost to secure the common right-of-way.
- (4) The Company reserves the right to enter into a separate contractual arrangement with any party granted permission to make attachments in Company owned corridors. Such contract shall include provision for payment to the Company for use of the Company right-of-way in addition to any other application, rental, make-ready or other approved charges.

A-7.1 Inspections

- (1) The Company may inspect each new installation of attaching party and thereafter may make periodic inspections, as conditions may warrant.
- (2) Attaching party may be required to reimburse the Company for the actual cost of such inspections, but, the cost to be reimbursed shall not exceed the fees that would be applicable if attaching party were applying to install the inspected facilities for the first time. Notwithstanding the foregoing, unless there is substantial reason to believe an inspection is necessary (such as, but not limited to, reliable information suggesting the existence of NESC issues involving Educational Institutions attachments) the Company shall not charge the Educational Institution for such inspection: (1) for the first five years immediately following the initial installation; or (2) more than once every three years after the initial five years.
- (3) Attaching party shall be provided a detailed written report of each inspection performed by the Company or its agent, and given a copy of all information collected by or on behalf of the company.
- (4) Attaching Party shall not be charged the full cost of inspection if the inspection is also examining the Company's electrical attachments. In such case costs shall be fairly and reasonable apportioned.
- (5) If any party attaching facilities to utility poles discovers an NESC condition involving its attachments, correction of such NESC condition at variance with the requirements of the NESC shall be pursuant to this tariff. If any party encounters any ground clearance NESC conditions at variance with the requirements of the NESC or neutral zone NESC conditions at variance with the requirements of the NESC involving the attachments of any other party attaching facilities to poles, the discovering party will make a good faith effort to provide notice to the pole owner and the owner of the attachments at variance with the requirements of the NESC consistent with the "Corrections" provisions of this tariff, so long as the attachment clearly identifies the owner of the attachment. All parties' observation of other parties' attachments shall be limited to ground clearance and neutral zone measurements as provided herein. All parties attaching attachments to utility poles will make a good faith effort to report to the owner of the attachments and

the pole owner any NESC ground clearance issues if the lowest hanging attachment is less than that required by Table 232-1 of the NESC. All parties attaching attachments to utility poles will make a good faith effort to report to the owner of the attachments and the pole owner any NESC neutral zone clearance issues if the attachment is inconsistent with Table 235-5 of the NESC. All parties shall observe attachments in their "as found" condition on the date of the observation without adjustment for find, ice or loading of any kind.

A-8.1 Pole and Conduit Use Agreements (if any)

- (1) If necessary the Company may require an attaching party under this tariff to enter the MPSC's approved standard form agreement, and which form Agreement is attached hereto.
- (2) The Company shall, within six months of the approval of this tariff, offer, to all existing attaching parties eligible for service under this tariff, to replace (or eliminate) any existing agreements with such parties with the Standard Form Agreement.
- (3) Under no circumstances may any terms of attachment under this tariff, or otherwise, be confidential.

A-9.1 Termination of the Use of Company Facilities

- (1) Attaching party may at any time remove its facilities from any pole, poles or conduit of the Company but shall immediately give the Company notice of such removal.
- (2) Removal of facilities, and the termination of the attaching party's right to occupy space on pole(s) or in conduit shall be consistent with the Standard Form Agreement.
- (3) Where the Company no longer needs poles or conduit used by attaching party, the Company and the attaching party shall work cooperatively to attempt to find a reasonable alternative means to support the attaching party's facilities.

A-10 Labeling of Attachments

The Educational Institution shall label all cables with the owner's name in a manner consistent with the Company's specification unless they conflict with local government requirements, in which case the latter shall be followed.

A-11 Maintenance of Attachments

- (1) Educational Institution shall, at its own expense, install and be responsible for its facilities on poles and in trenches, conduit or manholes of the Company and shall maintain them in good and safe condition 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 reasonable notice from the Company, an Educational Institution may be asked to 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 request, reimburse the Company for the expense thereby incurred by the Company, including overhead costs.

A-12 Corrections to Non-Compliant Attachments

A. REMEDIATION WITHOUT NEW ATTACHMENT PERMIT APPLICATION

The following is a process for the remediation of attachment conditions which are inconsistent with the clearance and neutral zone requirements set forth in the NESC which do not cause an imminent public safety hazard:

- (1) If a pole owner identifies or is advised that an attachment to its utility poles is inconsistent with the clearance and neutral zone requirements set forth in the NESC, the pole owner shall as soon as reasonably possible provide notice by fax or email, if available, or by first class mail, to the owner of the allegedly offending attachment and the person who the pole owner believes, based on its records, if any, to have caused the condition. At a minimum, the notice shall include the location of the pole and the nature of the alleged condition that is inconsistent with the NESC. The notification and all subsequent actions resulting from such notification will be consistent with other applicable provisions of this tariff.
- (2) The owner of the attachment and the person who the pole owner believes, based upon its records, if any, to have caused the condition shall be provided 30 days from the date of notice to investigate the allegation and respond to the pole owner. If the owner of the attachment or the person who the pole owner believes, based upon its records, if any, to have caused the condition is at fault, the responsible party shall remedy the alleged condition. Unless the remedy involves remedial work or co-ordination with other parties is required, the alleged condition should be remedied in 60 days of the date of notice. Within those 60 days, notice should be provided to the pole owner that the condition has been remedied or notice of the reason that the condition has not been remedied such as the need for remedial work or co-ordination with other parties. If the owner of the attachment and the person who the pole owner believes, based upon its records, if any, to have caused the condition denies fault within the first 30 days of the notice from the pole

owner and provides additional information, if available, to the pole owner to allege fault on another party attaching to the poles of the pole owner, the pole owner shall provide notice to the new party of the allegedly offending attachment. The newly notified party shall be provided 30 days from the date of notice to investigate the allegation and respond to the pole owner. The newly notified party shall also have the same period of time to remedy the condition if it is at fault for the alleged condition. If the owner of the attachment denies fault within the first 30 days of the notice from the pole owner and the pole owner has no additional information as to who is at fault, the pole owner shall provide notice to all owners of attachments on the pole, who shall each be given 30 days to admit or deny fault. If there is a disagreement as to which person has caused the condition, the pole owner and the persons involved will attempt to resolve the dispute to their mutual satisfaction. If a dispute arises as to fault, the Enforcement section of this tariff governs.

- (3) Where the owner of the attachment is responsible for the cost of the remedial work to remedy a condition for one of its attachments but that remedial work requires work to be performed by the pole owner, the owner of the attachment shall receive a good faith estimate of the cost for the necessary remedial work to be performed by the pole owner. After receipt of the good faith estimate, the owner of the attachment shall be given a reasonable opportunity not to exceed 30 days to either agree to pay the charges for the remedial work or agree to remove its attachment from the pole. An owner of the attachment who agrees to pay the charges does not waive its rights to challenge or dispute whether the charges for the remedial work are just and reasonable. A pole owner may perform the remedial work and impose on the owner of the attachment reasonable actual charges for the remedial work only if it has first offered a good faith estimate and provides a reasonable opportunity to allow the owner of the attachment to remove its attachment.

B. REMEDIATION WITH NEW ATTACHMENT PERMIT APPLICATION

The following is a process for the remediation of attachment conditions which are inconsistent with the requirements set forth in the NESC which do not cause an imminent public safety hazard and where a person is seeking to attach to the pole. With respect to clearance and neutral zone conditions at variance with the requirements of the NESC, the procedures in Section A, above, "REMEDIATION WITHOUT NEW ATTACHMENT PERMIT APPLICATION" shall also be followed.

- (1) At the time the pole owner receives a permit application, the pole owner shall upon request use its best efforts to notify the applicant within 5 business days of the approximate time in the future that the pole owner will be able to address the applicant's application. Each party proposing to attach to the poles of a pole owner shall use its best efforts to prioritize its attachment permit requests in the order of importance so that the pole owner knows the poles that are a priority to the proposed attacher. Pole owners shall not charge any fee, including advance fees, except such as are pursuant to its tariffs.

- (2) Pole owners shall not assess any charges to remediate existing conditions on the poles at variance with the requirements of the NESC to a new and unrelated party seeking to attach to the poles of the pole owner. The responsible party should pay all costs associated with remediating the existing conditions that are at variance with the requirements of the NESC, unless otherwise agreed. Unless the pole owner is alleged to be the responsible party, it is not the obligation of the pole owner to determine who is the responsible party.
- (3) A person seeking to place a new attachment on a pole shall be responsible for the actual cost of the make-ready work necessary to accommodate its new attachment. An estimate of make ready work provided by a pole owner shall indicate whether it includes the costs for all work necessary with regard to all existing attachments or only work related to the pole owner's facilities. The following situations may arise:
- a. Conforming Pole Capable of Additional Attachment
 - (i) No remediation issues arise.
 - (ii) Fees and costs pursuant to the tariff shall apply.
 - b. Conforming Pole Not Capable of Additional Attachment
 - (i) No remediation issues arise.
 - (ii) The proposed attacher will be required to pay the actual make-ready costs to accommodate the new attachment.
 - (iii) Fees and costs pursuant to the tariff shall apply.
 - c. Non-Conforming Pole Capable of Additional Attachment
 - (i) All remediation costs shall be paid by the party which has caused the condition at variance with the requirements of the NESC, and not the proposed attacher.
 - (ii) The proposed attacher will be required to pay the actual make-ready costs to accommodate the new attachment.
 - (iii) Fees and costs pursuant to the tariff shall apply.
 - d. Non-Conforming Pole Not Capable of Additional Attachment
 - (i) Existing violation that may be remedied without a pole change out.
 - (1) All remediation costs shall be paid by the party which has caused the condition at variance with the requirements of the NESC. The party causing the condition at variance with the requirements of the NESC shall pay only for the lowest cost method of remediation consistent with good safety, reliability, engineering and construction practices.
 - (2) The proposed attacher will be required to pay the actual make-ready costs to accommodate the new attachment.

- (3) Fees and costs pursuant to the tariff shall apply,
- (ii) Existing violation that may be remedied only through a pole change out.

(1) The proposed attacher and the party (or parties) that caused the condition at variance with the requirements of the NESC shall be given good faith estimates of (a) the remediation cost associated with curing the condition at variance with the NESC; (b) the make ready cost if the condition at variance with the NESC is remedied; (c) the make ready cost if the party (or parties) choose to leave the pole; and (d) the combined cost of remediation and make ready if all parties choose to remain on the pole and the proposed attacher attaches its attachment. Thereafter, the parties shall have 30 days to negotiate a mutually acceptable division of the cost in item (d) above. If they are unable to do so, then, by the end of the 30 day period, the party (or parties) that caused the condition at variance with the requirements of the NESC shall indicate whether it will pay the cost in item (a) above or remove its attachment(s) and the proposed attacher will indicate whether it will pay the cost in item (b) or (c), as applicable.

- (2) Fees and costs pursuant to this tariff shall apply.

C. NON APPLICABILITY OF POLE LOADING

This "Corrections" section does not apply to the remediation of conditions related to column loading, overturning moment and other loading conditions.

D. POLE REMEDIATION FUND FOR DISPUTED RESPONSIBILITY

The following will apply if there is an existing permit application that cannot be processed because there is an existing condition on a pole or poles to which the applicant wishes to attach that is/are inconsistent with the requirements of the NESC and the party alleged to have caused the condition and any other party are invoking the "Enforcement" "Responsible Party" provisions of this tariff.

1. If the "Enforcement" "Responsible Party" provisions of this tariff is invoked to determine who is the responsible party or parties for the cost of remediation of an existing condition on a pole or poles inconsistent with the requirements of the NESC, unless notified by a party attaching to the poles that the existing condition will be remediated, the pole owner shall commence the work necessary to remediate the existing condition and will be reimbursed for its costs to remediate the existing condition from the Pole Remediation Fund consistent with the estimate provided in accordance with the "Corrections" provision of this tariff. The pole owner need not commence work to remediate the existing condition unless there are sufficient monies in the Fund for such reimbursement.

2. The Pole Remediation Fund (the "Fund") shall be created by The Detroit Edison Company in the amount of \$100,000, through contributions of \$100,000, within 45 days of issuance of an order approving this tariff.

3. When a pole owner commences remediation of any existing condition on a pole or poles that is at variance with the NESC except for conditions relating to those set forth in C above, and remediates that condition as provided in paragraph D.1. supra, the pole owner shall

be reimbursed all of its expenses and costs to remediate that condition from the Fund consistent with the estimate provided in accordance the "Corrections" provision of this tariff. Once the procedures contained in the "Enforcement" "Responsible Party" provisions of this tariff have been completed, the party or parties determined to be responsible shall reimburse the Fund for the entire cost of the remediation within 30 days of the determination.

A-13 Remediation Costs

(1) All reasonable actual costs, including reasonable actual charges for remedial work, incurred in remedying a condition at variance with the requirements of the NESC shall be paid by the party who caused the non-compliant condition on the pole(s).

(2) All actual charges for make-ready and remedial work imposed by a pole owner shall be just and reasonable. Invoices and notification of remediation cost estimates will be made by letter accompanied by a map, sketch or print indicating any locations of required remediation.

(3) All parties reserve their respective rights to recover their costs from the party causing the condition at variance with the requirements of the NESC.

A-14 Enforcement of Disputed Remediation Costs

Responsible Party

(1) If a dispute arises as to fault in the "Corrections" Section and no agreement is reached within 30 days of the date of the last notification to a party attaching to the pole owner's poles under the "Corrections" Section of this tariff, the persons involved shall submit the information to the Michigan Public Service Commission Staff.

(2) In resolving a dispute, there will be a presumption that the issuance of a permit was based upon the pole owner's favorable determination of the feasibility and safety of the requested pole attachment(s).

Other Disputes

(1) In addition to existing legal rights and remedies relating to enforcement and dispute resolution, if persons are unable to resolve any dispute between them, the Michigan Public Service Commission will resolve the dispute.

Conditions That Are Inconsistent With the Requirements of the NESC

(1) The pole owner can be made aware of conditions that may be inconsistent with the requirements set forth in the NESC by anyone, including without limitation, the owner of an attachment, contractor, customer, or Commission Staff.

(2) Pole owners, owners of attachments or other interested persons may consult with the Commission Staff regarding questions concerning the requirements of the NESC.

(3) A pole owner or owner of an attachment may file an application or complaint with the Michigan Public Service Commission regarding any condition that is inconsistent with the requirements of the NESC.

(4) The Michigan Public Service Commission may, on its own motion, initiate a proceeding regarding any condition that is inconsistent with the requirements of the NESC.

A-15 Miscellaneous

(1) Each party attaching facilities to utility poles shall be responsible for the safe and reliable installation of its attachments while complying with the requirements of the NESC.

(2) This settlement agreement does not diminish any party's legal rights to challenge the enforceability or interpretation of any provision in the tariffs or pole attachment agreements.

(3) Since pole attachments are a tariffed service, except for municipalities and other utilities, pole owners shall not require any confidentiality provisions or agreements with respect to pole attachments.

MPSC Case No. U-14528
Witness: David E. Schulte
Exhibit _____ (DES-2)

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

POLE, CONDUIT AND TRENCH USE AGREEMENT
BETWEEN
(ATTACHING PARTY PUBLIC SCHOOLS)
AND
THE DETROIT EDISON COMPANY

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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 _____, an educational institution governed by Section 307 of the Michigan Telecommunications Act, MCL 484.2307 and 460.6g, hereinafter referred to as "ATTACHING PARTY," with headquarters at _____, Michigan.

WITNESSETH:

WHEREAS, ATTACHING PARTY proposes to attach cables to poles or install cables 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 tariff approved by the Michigan Public Service Commission ("Commission") on _____ in Case No. U-14528 shall govern attachments made by ATTACHING PARTY.

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.

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. Subject to the applicable tariff, 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 or in trenches. EDISON does not imply or guarantee that ATTACHING PARTY will have sole occupancy of a pole, conduit systems, or trench.

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 advance written notice to ATTACHING PARTY, to 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.

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 system, 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 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, 1¼-inch in diameter, installed within EDISON's conduit system.

ARTICLE IV -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 (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.
- C. To the extent permitted 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 V -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 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 VI-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.

ARTICLE VII- FORCE MAJEURE

- 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.

ARTICLE VIII -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.

ARTICLE IX -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.

ARTICLE X -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.

ARTICLE XI -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: _____

Date: _____

ATTACHING PARTY

Its: _____

Date: _____

GUIDELINES TO HELP ACCELERATE ATTACHMENTS

Educational Institutions seeking to attach to utility poles should attempt to 1) inform the Company of its intention to establish a Wide Area Network or similar information/telecommunications 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 if possible; 2) inform the Company of the target date for establishing attachments 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 contract person of (a) the Educational Institution's engineering contractor for the project, and (b) the Educational Institution's installation contractor for the project; 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 may 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.

MPSC Case No.:	<u>U-14528</u>
Respondent:	<u>K.L.O'Neill</u>
Requestor:	<u>EduNets</u>
Question No.:	<u>EDDE-1.44/44</u>
Page:	<u>1 of 1</u>

Question: On page 4 of Edison's Witness Mr. Dunlop's proposed Exhibit No. A-1 (D.J. DUNLOP-1), reference is made to the "Pole Remediation Fund for Disputed Responsibility" set forth in the Settlement Agreement dated August 22, 2003 in Case No. U-13522." With respect to that Fund, please provide:

1. A report and an accounting of who and what has been paid into such fund since its inception in October or November 2003.
2. A report and an accounting of all payments made from such fund since its inception in October 2003, including to whom such payments were made and for what purpose the payment was made.

Answer:

1. One-time \$100,000.00 payments were made by Consumers Energy, SBC, and Detroit Edison.
2. No disbursements have been made from the fund.

MPSC Case No.: U-14528
Respondent: J.R. Padgett
Requestor: EduNets
Question No.: EDDE-1.3/3
Page: 1 of 1

Question: Since its adoption in the early 1980's, identify, on an annual basis, the amount of revenue collected by Detroit Edison under its pole attachment tariff.

Answer: The following Table lists the amount of actual pole rental revenue collected under Detroit Edison's pole tariff for the years 1985 through 2005. When electric rates are set by the Commission, pole rental is a revenue credit, ensuring that the electric customers who pay for ownership and operation of the pole system are the beneficiaries of the rental income.

1985	\$2,606,695	1995	\$2,428,915
1986	\$1,643,825	1996	\$2,463,589
1987	\$1,854,020	1997	\$2,080,199
1988	\$1,985,815	1998	\$2,040,486
1989	\$2,171,421	1999	\$2,161,671
1990	\$2,327,295	2000	\$2,162,346
1991	\$2,355,889	2001	\$2,517,862
1992	\$2,380,646	2002	\$2,514,851
1993	\$2,396,846	2003	\$2,513,669
1994	\$2,414,999	2004	\$2,541,496
		2005	\$2,761,561

MPSC Case No.:	<u>U-14528</u>
Respondent:	<u>D. J. Dunlop</u>
Requestor:	<u>EduNets</u>
Question No.:	<u>EDDE-1.4/4</u>
Page:	<u>1 of 1</u>

Question: Provide an estimate of the approximate number of pole attachments which payers of the pole attachment tariff received from Detroit Edison a) when the company first charged its current pole attachment tariff in the early 1980s; and b) in the most recent year for which Detroit Edison has available data.

Answer: After a reasonable review and to the best of my knowledge and belief the current number of attachments under the Detroit Edison pole attachment tariff are approximately 672,508 for CATV and 18,601 for Schools. A rough estimate of the number of attachments under the tariff in the early 1980's is 330,000 for CATV and zero for Schools.

MPSC Case No.: U-14528
Respondent: D.J. Dunlop
Requestor: EduNets
Question No.: EDDE-1.10/10
Page: 1 of 1

Question: On pages 7 and 8 of his prefiled direct testimony, Edison's Witness Mr. Dunlop states that Edison is asking the Commission to accept Edison's proposed form agreement (Proposed Exhibit A-2 (D.J. DUNLOP-2)). Please identify those non-profit educational institutions (as that term is used in Proposed Exhibit A-2 and Mr. Dunlop's testimony) with which Edison currently has pole attachment agreements?

Answer:

Allen Park Public Schools	Hazel Park Schools	Roseville Community Schools
Almont Schools	Huron Schools	Saline Area Schools
Anchor Bay School District	Huron Valley Schools	Sandusky Community Schools
Ann Arbor Schools	Kingsbury School	Sanilac Intermediate School
Avondale School	Lake Orion Community Schools	District
Baker College	Lake Shore Schools	South Lake Schools
Berkley School District	Lakeville Community Schools	South Lyon Community Schools
Bloomfield Hills School District	Lamphere Schools	South Redford Schools
Brandon School District	L'Anse Creuse Schools	Southfield Public Schools
Brighton Area Schools	Lapeer County Intermediate	Southgate Community Schools
Center Line Public Schools	Schools	St Clair County Intermediate
Chippewa Valley Schools	Livonia Public Schools	Schools
Clarenceville Schools	Merit	Summit Academy
Clarkston Community Schools	Milan Area Schools	Troy School District
Clawson School District	Monroe County Intermediate	Tuscola Intermediate School
Clinton Community Schools	Schools	District
Clintondale Community Schools	Monroe Public Schools	University Of Michigan
Croswell-Lexington Schools	Mt Clemens Comm Schools	Utica Community Schools
Dearborn Heights School District	New Haven Comm. Schools	Van Dyke Public Schools
Dearborn Schools	Northville Public Schools	Walled Lake Consolidated School
Dexter Schools	Novi Community School District	District
East Detroit Schools	Old Redford Academy	Warren Consolidated Schools
Eastern Michigan University	Oxford Schools	Warren Woods Public Schools
Ecorse Public Schools	Pierre Toussaint Academy Corp	Wayne-Westland Community
Farmington Public Schools	C/O Leona Group	Schools
Ferndale School District	Pickney High School	Whitmore Lake Schools
Fitzgerald Public Schools	Reese Public Schools	Williamston Community Schools
Fraser Public Schools	River Rouge Public Schools	Willow Run Community Schools
Gibraltar Schools	Rochester Community Schools	Woodhaven Brownstown School
Grosse Ile Township Schools	Romeo Community Schools	District
Hamtramck Schools	Romulus Community Schools	Ypsilanti Public Schools
Hartland Consolidated Schools		

MPSC Case No.:	<u>U-14528</u>
Respondent:	<u>D.J. Dunlop/Legal</u>
Requestor:	<u>EduNets</u>
Question No.:	<u>EDDE-1.18/18</u>
Page:	<u>1 of 1</u>

Question: On page 4 of Edison's Witness Mr. Dunlop's proposed Exhibit No. A-1 (D.J. DUNLOP-1), reference is made to "unauthorized educational institution attachments." Please identify each and every "unauthorized educational institution attachments" disclosed through an Edison inspection during the past two years.

1. For each "unauthorized educational institution attachments" please list whether or not it was on a utility pole installed by Edison subsequent to the initial installation of the educational institution attachments and when such utility pole, if applicable, was installed.

Answer: Detroit Edison objects to the request to "identify each and every unauthorized educational institution attachments disclosed through an Edison inspection during the past two years (along with subrequest No. 1)" as the answer is not relevant to a prospectively applicable tariff proceeding. Without waiving and subject to the above objection, no unauthorized educational attachments have been identified in the past two years resulting from Edison's inspections.

HOUSE BILL No. 5488

December 7, 2005, Introduced by Rep. Farhat and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending section 6g (MCL 460.6g), as added by 1980 PA 470.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6g. (1) As used in this section:

2 (a) "Attaching party" means any person, firm, corporation,
3 partnership, or cooperatively organized association, other than ~~a~~
4 **AN ELECTRIC** utility or a municipality, which seeks to construct
5 attachments upon, along, under, or across public ways or private
6 rights of way. **AN ATTACHING PARTY DOES INCLUDE A SCHOOL OR**
7 **EDUCATIONAL INSTITUTION AND AN ENTITY ENTITLED TO POLE ATTACHMENT**
8 **UNDER 47 USC 224.**

9 (b) "Attachment" means any wire, cable, facility, or apparatus
10 for the transmission of writing, signs, signals, pictures, sounds,
11 or other forms of intelligence or for the transmission of
12 electricity for light, heat, or power, installed by an attaching
13 party upon any pole or in any duct or conduit owned or controlled,
14 in whole or in part, by 1 or more utilities.

15 (c) "Commission" means the Michigan public service commission
16 created in section 1.

17 (D) **"MAKE READY COSTS" MEANS THE ACTUAL ADDITIONAL DIRECT COST**
18 **OF ATTACHING A PARTY'S FACILITIES TO THE UTILITY'S POLE OR FACILITY**
19 **AND DOES NOT INCLUDE ANY COSTS TO REMEDIATE PREEXISTING VIOLATIONS**
20 **OF APPLICABLE CODES OR REGULATIONS.**

21 (E) **"SCHOOL" OR "EDUCATIONAL INSTITUTION" MEANS THAT TERM AS**
22 **DEFINED IN SECTION 102 OF THE MICHIGAN TELECOMMUNICATIONS ACT, 1991**
23 **PA 179, MCL 484.2102.**

24 (F) ~~—(d)—~~ "Utility" means any public utility subject to the
25 regulation and control of the commission that owns or controls **AN**
26 **EXTENSIVE CONTIGUOUS NETWORK OF POLES**, or shares ownership or
27 control of **AN EXTENSIVE CONTIGUOUS NETWORK OF poles, ducts, or**

1 conduits used or useful, in whole or in part, for supporting or
2 enclosing wires, cables, or other facilities or apparatus for the
3 transmission of writing, signs, signals, pictures, sounds, or other
4 forms of intelligence, or for the transmission of electricity for
5 light, heat, or power.

6 (2) The commission shall regulate the rates, terms, and
7 conditions of attachments by attaching parties. The commission, in
8 regulating the rates, terms, and conditions of attachments by
9 attaching parties, shall ~~not~~ require a hearing when approving the
10 rates, terms, and conditions ~~unless~~ **WHEN** the attaching party or
11 utility petitions the commission for a hearing. The commission
12 shall ensure that the rates, terms, and conditions are just and
13 reasonable and shall consider the interests of the attaching
14 parties' customers **OR USERS, IF ANY**, as well as the utility and its
15 customers. **THE COMMISSION SHALL HAVE JURISDICTION AND AUTHORITY TO**
16 **FULLY ENFORCE THIS SECTION AND TO IMPOSE THE REMEDIES, FINES, AND**
17 **PENALTIES PROVIDED FOR IN SECTION 10C OF THIS ACT FOR A VIOLATION**
18 **OF THIS SECTION.**

19 (3) A UTILITY POLE OWNER SHALL ENSURE ALL OF THE FOLLOWING:

20 (A) THAT SCHOOLS, EDUCATIONAL INSTITUTIONS, AND OTHER
21 ATTACHING PARTIES ARE ABLE TO PROMPTLY ATTACH TELECOMMUNICATIONS
22 AND TECHNOLOGY FACILITIES TO UTILITY POLES AND FACILITIES AT JUST
23 AND REASONABLE RATES, TERMS, AND CONDITIONS WITHIN 120 DAYS OF AN
24 INITIAL REQUEST TO ATTACH.

25 (B) THAT ALL ATTACHMENT FEES, CHARGES, MAKE READY COSTS, BY
26 WHATEVER DESCRIPTION, PRACTICES, AND PROCEDURES ARE SPECIFICALLY
27 PROVIDED FOR IN ITS TARIFFS ON FILE WITH AND APPROVED BY THE

1 COMMISSION.

2 (C) THAT THE UTILITY COOPERATES WITH SCHOOLS, EDUCATIONAL
3 INSTITUTIONS, AND OTHER ATTACHING PARTIES AND DOES NOT DELAY ANY
4 ATTACHING FROM PROMPTLY ATTACHING TO THE UTILITY'S POLES OR
5 FACILITIES WITHIN THE TIME PERIOD REQUIRED UNDER SUBDIVISION (A).

6 (D) THAT THE UTILITY PROVIDES RELIABLE MAKE READY COST
7 ESTIMATES WITHIN 45 DAYS FROM THE DATE AN ATTACHING PARTY MAKES AN
8 APPLICATION FOR ATTACHMENT, AND THAT ONCE THE MAKE READY COST
9 ESTIMATES HAVE BEEN PROVIDED, NO GREATER AMOUNT MAY BE CHARGED TO A
10 SCHOOL OR EDUCATIONAL INSTITUTION EVEN FOR SUBSEQUENTLY ARISING
11 MAKE READY ISSUES OR POLE MODIFICATIONS FOR AT LEAST 5 YEARS,
12 UNLESS THE CHANGES WERE PLANNED AT THE TIME OF THE SCHOOL'S OR
13 EDUCATIONAL INSTITUTION'S ATTACHMENT APPLICATION AND FULLY
14 DISCLOSED TO THE SCHOOL OR EDUCATIONAL INSTITUTION BEFORE THE
15 ATTACHMENT WAS MADE.

16 (E) THAT THE UTILITY PERFORMS ALL NECESSARY MAKE READY WORK
17 WITHIN 60 DAYS FROM THE DATE THE ATTACHING PARTY APPLICANT APPROVES
18 THE MAKE READY COST ESTIMATE.

19 (F) THAT THE UTILITY CONTINUOUSLY MAINTAINS ALL POLES AND
20 FACILITIES, AS REQUIRED BY LAW, RULE, OR SAFETY REGULATIONS, SO AS
21 TO FACILITATE PROMPT ATTACHMENTS AS PROVIDED UNDER THIS SECTION.

22 (G) THAT THE UTILITY DOES NOT REQUIRE ATTACHING PARTIES TO
23 ENTER INTO SEPARATE POLE ATTACHMENT AGREEMENTS.

24 (H) THAT THE UTILITY DOES NOT ATTEMPT TO SHIFT LIABILITY OR
25 RESPONSIBILITY, OR SECURE INDEMNIFICATION FOR ITS NEGLIGENT,
26 RECKLESS, OR INTENTIONAL MISCONDUCT FROM THE ATTACHING PARTY.

27 (I) THAT THE UTILITY DOES NOT REQUIRE OR MAINTAIN ANY SECRET

1 OR CONFIDENTIAL AGREEMENTS OR ARRANGEMENTS REGARDING POLE
2 ATTACHMENTS, NOR MAINTAIN ANY POLE ATTACHMENT AGREEMENTS OR
3 ARRANGEMENTS THAT ARE NOT IN CONFORMANCE WITH THIS SECTION.

4 (J) THAT THE UTILITY DOES NOT CHARGE ANY FURTHER FEES OR
5 CHARGES, OTHER THAN POLE RENTAL FEES, TO AN ATTACHING PARTY AFTER
6 ITS ATTACHMENTS HAVE BEEN MADE FOR SUBSEQUENT CONSTRUCTION, POLE
7 CHANGES, OR MODIFICATIONS UNLESS THE ATTACHING PARTY WAS GIVEN
8 SPECIFIC NOTICE OF THE ADDITIONAL CHARGES BEFORE PLACING ITS
9 ATTACHMENTS, A NEW PARTY SEEKS TO ATTACH TO THE POLE, OR THE
10 SUBSEQUENT CHARGES ARE REASONABLY ALLOCATED AMONG ALL USERS OF THE
11 POLE, INCLUDING THE UTILITY ITSELF, BASED UPON THE PROPORTIONAL USE
12 OF THE POLE, AND THE ATTACHING PARTY HAS BEEN GIVEN A REASONABLE
13 OPPORTUNITY TO LEAVE THE POLE RATHER THAN PAY THE SUBSEQUENT
14 CHARGES.

15 (4) THE COMMISSION SHALL REQUIRE A HEARING WHEN APPROVING OR
16 CHANGING THE RATES, TERMS, AND CONDITIONS OF ATTACHING TO UTILITY
17 POLES AND FACILITIES. UPON ITS OWN MOTION OR A PETITION OR
18 COMPLAINT OF AN INTERESTED PARTY, THE COMMISSION SHALL REQUIRE A
19 HEARING TO REVIEW ANY ATTACHMENT RATE, TERM, OR CONDITION, OR ANY
20 PROVISION IN A CONTRACT RELATED TO POLE ATTACHMENTS, OR ANY
21 PRACTICE OR CONDUCT OF A UTILITY POLE OWNER. THE UTILITY SHALL HAVE
22 THE BURDEN OF PROVING ANY EXISTING OR PROPOSED CONTRACT PROVISION,
23 RATE, TERM, OR CONDITION OF ATTACHMENT IS JUST, REASONABLE, AND IN
24 THE PUBLIC INTEREST.

25 (5) THE COMMISSION SHALL ENSURE THAT ALL ATTACHMENT RATES,
26 FEES, MAKE READY COSTS, TERMS, CONDITIONS, PRACTICES, AND
27 PROCEDURES ARE JUST AND REASONABLE AND IN THE PUBLIC INTEREST.

1 (6) A RATE, FEE, COST, OR CHARGE TO A SCHOOL, EDUCATIONAL
2 INSTITUTION, OR OTHER ATTACHING PARTY IS NOT JUST AND REASONABLE IF
3 IT IS MORE THAN THE DIRECT ACTUAL COST RELATED TO THE ATTACHING
4 PARTY'S ATTACHMENT TO THE UTILITY'S POLE OR FACILITY.

5 (7) ~~—(3)—~~ An attaching party shall obtain any necessary
6 authorization before occupying public ways or private rights of way
7 with its attachment.

8 (8) ~~—(4)—~~ Procedures under this section shall be those
9 applicable to any utility whose rates charged its customers are
10 regulated by the commission, including the right to appeal a final
11 decision of the commission to the courts.

12 (9) A UTILITY THAT IMPOSES OR ATTEMPTS TO IMPOSE A RATE, TERM,
13 OR CONDITION INCONSISTENT WITH THIS SECTION, OR INCONSISTENT WITH A
14 COMMISSION ORDER ISSUED UNDER THIS SECTION, OR WHICH BY ACTION,
15 FAILURE TO ACT, OR DELAY, VIOLATES THIS SECTION, OR AN ORDER OF THE
16 COMMISSION ISSUED UNDER THIS SECTION, SHALL BE SUBJECT TO ALL
17 REMEDIES, FINES, AND PENALTIES SET FORTH IN SECTION 10C. IN
18 ADDITION, THE COMMISSION SHALL STRICTLY ENFORCE THIS SECTION TO
19 ENSURE THAT SCHOOLS AND EDUCATIONAL INSTITUTIONS ARE MADE
20 COMPLETELY WHOLE FOR ALL COSTS IF THEY INCUR ANY COSTS TO ENFORCE
21 THIS SECTION.

22 (10) WITHIN 12 MONTHS OF THE EFFECTIVE DATE OF THE AMENDATORY
23 ACT THAT ADDED THIS SUBSECTION, UTILITY POLE OWNERS SHALL REVIEW
24 THEIR POLE ATTACHMENT ARRANGEMENTS AND CONFORM ALL ARRANGEMENTS TO
25 COMPLY WITH THIS SECTION.

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**
(e-file)

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Mary E. Turney, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on **June 22, 2006**, a copy of the **Direct Testimony and Exhibits of David E. Schultz on behalf of EduNets** in the above-captioned proceeding was served upon:

SEE ATTACHED SERVICE LIST

Service was accomplished by depositing same in a regular United States Post Service mail depository, enclosed in envelopes bearing first-class postage, fully prepaid and properly addressed, and via electronic mail.

Mary E. Turney Digitally signed by Mary E. Turney
DN: CN = Mary E. Turney, C =
US, O = Clark Hill
Date: 2006.06.22 13:59:07 -04'00'

Mary E. Turney

Subscribed and sworn to before me
this 22nd day of June, 2006.

Patricia A. Tooker Digitally signed by Patricia A. Tooker
DN: CN = Patricia A. Tooker, C = US,
O = Clark Hill PLC
Date: 2006.06.22 13:59:59 -04'00'

Patricia A. Tooker
Notary Public, State of Michigan, County of Eaton
Acting in Ingham County, Michigan
My Commission Expires: April 5, 2011

MPSC CASE NO. U-14528
SERVICE LIST
Page 1 of 1

Administrative Law Judge

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Michigan Public Service Commission
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