

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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
	)	

QUALIFICATIONS, DIRECT TESTIMONY AND EXHIBITS OF

PETER J. DERKOS

MICHIGAN PUBLIC SERVICE COMMISSION

June 29, 2006

PETER J. DERKOS
CASE NUMBER U-14528
PART I

1 Q. State your name, address, and present position.

2 A. Peter J. Derkos. My business address is 6545 Mercantile Way, Lansing,
3 Michigan. I am a Public Utilities Engineer in the Safety and Reliability Section of
4 the Michigan Public Service Commission's Operations and Wholesale Marketing
5 Division.

6 Q. Have you held other positions within the Public Service Commission?

7 A. Yes. I joined the MPSC in September of 1983 as a Tariff Analyst in the Rate
8 Design and Research Unit of the MPSC's Electric Division. I transferred to the
9 Engineering Section of the Electric Division in May of 1990. I transferred to the
10 Safety Section of the Energy Operations Division as part of a reorganization. The
11 current section and division name came as part of further reorganization.

12 Q. Have you earned an academic degree qualifying you for your position?

13 A. Yes. I earned a Bachelor of Science Degree in Mechanical Engineering from
14 Michigan Technological University in November of 1981. I completed courses
15 that covered power generation and electricity in pursuit of this degree.

16 Q. What additional training have you received while employed at the MPSC?

17 A. I have completed several training courses, workshops and seminars given by
18 academic institutions, private consulting firms, utility organizations, and utilities.
19 This includes the National Association of Regulatory Utility Commissioners
20 Annual Regulatory Studies Program, New Dimensions In Pricing Electricity,
21 International Reliability Availability Maintainability Conference for the Electric
22 Power Industry, Power Quality in Michigan, University of Wisconsin Stray
23 Voltage Investigators Training Course, National Utility Stray Voltage

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1 Symposium, The Development and Application of the National Electrical Safety

2 Code (DANESC), and miscellaneous other conferences, seminars and classes.

3 Q. What is your current area of responsibility?

4 A. I have responsibility with inquiries and complaints that involve pole attachment,

5 safety, the NESC, service quality, reliability standards, territorial disputes, line

6 extension issues, operating rules and regulatory compliance.

7 Q. Have you prepared testimony or testified before this Commission?

8 A. Yes. I have provided a list on the following page.

9

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1	<u>Case Number</u>	<u>Company</u>	<u>Subject/Type</u>
2	U-8051	Thumb Electric Cooperative -	1985 PSCR Plan
3	U-7973	Oceana Electric Cooperative -	TIER Mech. Implementation
4	U-8011	O & A Electric Cooperative -	TIER Mech. Implementation
5	U-6652	Ontonagon County REA -	TIER Mech. Implementation
6	U-8478	Cherryland REA -	TIER Mech. Implementation
7	U-8936	Alpena Power Company -	Rate Case
8	U-9172-R	Consumers Power -	PSCR Reconciliation
9	U-9432-R	Consumers Power -	PSCR Reconciliation
10	U-9732-R	Consumers Power -	PSCR Reconciliation
11	U-10094	Upper Peninsula Power -	Rate Case
12	U-9960-R	Consumers Power -	PSCR Reconciliation
13	U-10335	Consumers Power -	Rate Case
14	U-10155-R	Consumers Power -	PSCR Reconciliation
15	U-10445-R	Consumers Power -	PSCR Reconciliation
16	U-11019	MBM Pasch Farms against Consumers Power-Complaint	
17	U-10710-R	Consumers Power -	PSCR Reconciliation
18	U-11853	Kurtz Steel against Detroit Edison-	Complaint
19	U-12900/U-13251	Ameritech Michigan & Detroit Edison Safety, service	
20	U-13522	Detroit Edison, Consumers Energy, Ameritech Michigan	
21		Commission's own motion on NESC violations	
22	U-14193	Indiana Michigan against Midwest	Rule R 460.3411
23	U-14409	Indiana Michigan against Midwest	Rule R 460.3411

DIRECT TESTIMONY OF PETER J. DERKOS
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PART II

1 Q. What is the purpose of your testimony?

2 A. I will discuss the relationship of other cases, present Staff's position on individual
3 items presented in Detroit Edison's revised testimony and exhibits and
4 incorporate the items into a tariff and pole attachment agreement that Staff finds
5 just and reasonable. The documents will be presented as exhibits.

6 Q. What are these other cases and how are they related?

7 A. Case Number U-13522 is in the matter of the Commission's own motion
8 investigating pole attachments that violate the National Electrical Safety Code. It
9 relates to this case because the resultant settlement agreement is referred to
10 several times in Detroit Edison's proposed tariff and pole attachment agreement.
11 Case Number U-14445 is in the matter of the Commission's own motion to
12 monitor Detroit Edison's treatment of new pole attachment applications for
13 educational telecommunication facilities. This case orders specific things, which
14 affect the overall pole attachment process. It also orders Staff to take future
15 action. Case Number U-14241 is in the matter of the complaint of Woodhaven
16 Brownstown School District against Detroit Edison regarding pole attachment
17 terms and conditions. It relates to this case not only because it originated the
18 instant case but because it made ruling on specific just and reasonable terms and
19 conditions.

20 Q. What are the major differences between this case and Case No. U-14241?

21 A. First, U-14241 was specific to Woodhaven Brownstown where this case is for
22 application to any eligible school district. Second, this case is in regard to a
23 different set of documents.

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PART II

1 Q. This case is in regard to a tariff. Why do you refer to a set of documents?

2 A. The tariff is only one of the relevant documents. It sets out the availability and
3 rates. A pole attachment agreement works with the tariff in establishing a number
4 of business arrangements and requirements. The third document is the
5 Administrative Practices and Construction Specifications.

6 Q. Why do you refer to the set of documents being different?

7 A. The three documents should set out all the different details for interaction between
8 the utility and the attaching party regarding attachment to the utility's poles.
9 These documents are at different levels of detail and bring forth certain items
10 from one document into the other. When you change one of the documents it may
11 have an impact on the others. This case involves development of a tariff which is
12 one of the documents. Its development makes it necessary to make changes to the
13 other documents in the set. In the Woodhaven Brownstown case, the standard
14 tariff is applied with a revised pole attachment agreement. In this case, an optional
15 tariff is created to be used with an appropriate pole attachment agreement. The
16 other difference is the inclusion of conduit.

17 Q. Do you have any position or recommendation regarding the tariff proposed by
18 Detroit Edison?

19 A. I will discuss each of the items in the tariff proposed in Mr. Dunlop's revised
20 exhibit. The Availability language is important because this tariff is limited to a
21 specific type of customer. Some caution is warranted here because of the specific
22 definition of an "educational institution" in the Michigan Telecommunication Act.
23 Accepting the definition from MCL 484.2102 as written may cause some

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ambiguity in regard to the availability of the subject tariff to “telecommunication providers”. I believe the Commission’s intent was in addressing schools and school districts unique from other attaching parties. I have acknowledged this in my exhibit to avoid any ambiguity.

The Audit, Corrections, Compensation, and Enforcement language makes reference to the settlement in Case U-13522. The settlement agreement is nearly expired and there is no certainty that it will be extended. Detroit Edison’s proposed language acknowledges a successor agreement or Commission order. This does not go far enough to bridge any gap between such actions or address the potential that the settlement agreement may end. I recommend that the tariff add as a default that language from the settlement agreement that protects an Educational Institution attaching party from code correction expenses that are caused by some other party. This is also relevant to Make Ready.

The Annual Rental Rate is the generic rate and is not proposed to change. The additional language here addresses overlashng. I find it important to include such language based on review of other pole attachment disputes.

The Application Fee language lists both what the charge is and what it includes. This is more specific than the existing pole attachment tariff that would have left such detail to the pole attachment agreement.

Q. Do you support Mr. Dunlop’s proposed pole application fee?

A. No, not at this time. Mr. Dunlop provided a discovery response in regard to the fee amount. The services provided for the fee are more important. Basically the fee should provide compensation for all administrative, engineering, and related

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1 activities. My concern is that Mr. Dunlop's proposal may be an increase of a fee. I
2 realize that an alternative tariff would allow an eligible attaching party to choose
3 the standard tariff, which has an application fee of \$80 plus \$13 per pole for each
4 pole more than six in quantity. The standard language however does not delineate
5 what services are provided for this fee. If the standard application fee is intended
6 to provide for the same services listed in the alternative tariff application fee then
7 it is an increase and it is more appropriate for Detroit Edison to seek such increase
8 in a rate case. While Mr. Dunlop has provided some interrogative that suggests
9 this fee may not provide full recovery of related expenses, staff believes that any
10 increase is addressed in rate case filing by Detroit Edison.

11 Q. What is the next tariff item?

12 A. Power Supply Service. It is reasonable to charge for the energy consumed by the
13 attaching party's power supplies. There are two other charges in regard to power
14 supplies that should be addressed here or in the pole attachment agreement. The
15 first of these is to first determine if the power supply is a separate pole attachment
16 for application of the annual rental rate. The second is in regard to the location of
17 the power supply on the pole.

18 Q. What do you recommend in regard to these other two charges?

19 A. First, I believe it would keep the Pole Attachment Agreement simpler if these
20 items were both addressed in the tariff. Second, in U-13148, involving cable
21 companies attaching to Consumers Energy poles, the two items went hand in
22 hand. The utility would not charge for power supplies as a separate attachment as
23 long as the power supplies did not block another attaching party from making an

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1 attachment to such pole. The Annual Rental Rate language in Detroit Edison's
2 proposed tariff refers to additional hardware attached to the pole. To avoid
3 ambiguity, power supplies should be addressed in regard to being such additional
4 hardware. The tariff language in this case should be clear as to if power supplies
5 are an additional annual charge and power supplies use of useable space. I have
6 acknowledged this in my exhibit.

7 Q. Do you have any comments on Process for Establishing Attachments?

8 A. Yes. It is reasonable for a tariff to delineate specific customer obligations to
9 supplement the utility's obligation so there is a more uniform application of the
10 tariff and hopefully eliminate disputes involving respective party's obligations.

11 Q. Do you have any comments on Make Ready Work?

12 A. Yes. Detroit Edison's proposed tariff language makes reference to the U-13522
13 settlement agreement. I recommend that some language be added as back up for
14 the possibility that the settlement agreement will expire on October 6, 2006. In
15 Case U-14445 the Commission ordered something that may answer this concern.
16 "The Detroit Edison Company shall make every effort to ensure that make ready
17 cost estimates relate to actual costs and do not include costs to remedy existing
18 pole violations." I have acknowledged this in my exhibit. I also believe it is
19 reasonable to delineate a timeframe for issuance of a permit that recognizes a
20 response and payment from the attaching party and the magnitude of the project.
21 Detroit Edison should be given no more than 120 days from application date to
22 issue permit provided the attaching party remit make ready cost payment within

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1 30 days of estimate from Detroit Edison. The time frame should be 270 days for
2 projects involving 300 or more poles.

3 Q. Do you have anything to say regarding Applications?

4 A. Yes. Again Detroit Edison's proposed tariff makes reference to U-13522
5 settlement agreement. This is the appropriate section to also refer to U-14445
6 where the Commission ordered Detroit Edison to make a decision on pole
7 attachment applications within 90 days of the submission of a pole attachment
8 application. I believe it would be best to avoid any ambiguity regarding the
9 application timeframe. I have acknowledged this in my exhibit.

10 Q. How do the two timeframes you just recommended relate to each other?

11 A. They both start with the date of permit application. I believe the Commission
12 means that a make ready estimate is provided to the applicant when it said
13 "should be ordered to make a decision on pole attachment applications". This is a
14 step before a permit is issued. The additional time is for the next steps that could
15 include remedying existing violations and receipt of any make ready payment.

16 Q. What is the difference between "remedying" and "make ready"?

17 A. "Remedying" is the correction of a non-compliant existing attachment. "Make
18 ready" is making or increasing the available room for a new attachment to avoid
19 causing a code violation where one did not exist. The settlement agreement in U-
20 13522 recognized the potential for both of these situations to occur on same pole
21 and for the new and existing attaching parties to negotiate a mutual fix.

22 Q. What do you have to say about Inspections?

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1 A. I have two concerns on Inspections. First I would like to point out that Detroit
2 Edison's proposed tariff language makes reference to the settlement agreement in
3 U-13522. Language needs to be added to address the potential that the agreement
4 will expire. The other concern is on the need for future inspection. It is necessary
5 to inspect attachments for code compliance, unauthorized attachments, and
6 adherence to construction specification. These inspections should be completed
7 by qualified person from time to time. The Attaching Party should be allowed to
8 conduct such inspection as an option as long as they provide the Utility proof of
9 the inspector's qualification, inspection findings, and completed within a tariff
10 specified time frame such as three years.

11 Q. Should an attachment that is part of a particular pole attachment project on a pole
12 that was added after the completion of that pole attachment project be counted as
13 an unauthorized attachment?

14 A. It is not reasonable for Detroit Edison to make an attachment of an attaching
15 party's facilities on a pole added to an existing pole attachment project and then
16 count it as unauthorized. It is reasonable to count it however as an additional
17 attachment for annual rental rate and if the attaching party is notified.

18 Q. Is it reasonable to include a Labeling requirement?

19 A. Yes it is. Labeling cables make it more efficient to contact the attachment owner
20 for any reason including the attachment processes of subsequent parties.

21 Q. Is it reasonable to have a Pole Attachment Agreement?

22 A. Yes it is. This is the second of the three documents I referred to earlier. Such
23 agreement sets the next level of detail of the interactivity between the utility and

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1 the attaching party. It details certain terms and conditions relating to business
2 practices. It is reasonable to have a Commission approved pole attachment
3 agreement so an attaching party does not have to negotiate for one. They would
4 also know that the Commission has determined that it is just and reasonable.

5 Q. Has Detroit Edison proposed a just and reasonable Pole Attachment Agreement?

6 A. The Commission ordered a number of changes to a Pole Attachment Agreement
7 in the Woodhaven Brownstown Case U-14241. I believe Detroit Edison proposed
8 the pole attachment agreement from that case with the Commission ordered
9 changes. I do not believe Case U-14241 was based on Woodhaven Brownstown
10 having unique needs. It was based on having just and reasonable pole attachment
11 terms and conditions. The resultant agreement is therefore just and reasonable for
12 all eligible attaching parties.

13 Q. Do you have any comment on Accounts Receivable Costs?

14 A. Yes. Recognition of cost is appropriate for tariff. If a specific number is not
15 delineated the tariff should at least say "actual costs including overheads". This
16 tariff language should include the purpose behind remove and reinstall. It should
17 also specify that the referenced existing facilities are those of the particular
18 attaching party. I have not however included any language on this in my exhibit.

19 Q. What do you recommend on Billing?

20 A. The reconstruction reference should be more specific as well as for the inspection
21 reference. The Inspection when done as inspection alone, especially not as part of
22 initial installation, should be less than the Pole Application Fee as less services
23 are provided unless an unauthorized attachment or a NESC violation is found.

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1 Q. What are you recommending on Specifications?

2 A. First, Staff strongly recommends that any and all pole attachments made by any
3 party be made in compliance with the NESC. I recommend leaving such reference
4 in place for emphasis. Second, I believe the Specification language is referring to
5 Administrative Practices and Construction Specifications. I recommend that an
6 example set be attached to the Pole Attachment Agreement. This is the third of
7 the documents comprising the interaction between the utility and the attaching
8 party.

9 Q. What are your concerns about Permits, Consents, Easements, Rights of Way and
10 Approvals?

11 A. There is indemnification language in this part of the tariff but it is in regard to
12 getting permissions from other parties and I don't believe it is affected by ruling
13 in U-14241. This section refers to the NESC. While the MPSC adopts the NESC
14 it does not include Part 4. I believe the language here is more focused on Part 4 of
15 the NESC. It is reasonable however to delineate these additional attaching party's
16 obligation as it goes toward the safety aspect of the Commission's mission.

17 Q. Is there potential for dispute on Trenching?

18 A. Part 6 of this section reserves Detroit Edison's right to make contractual
19 arrangements. I mention this because the latest round of complaints have been in
20 regard to a Pole Attachment Agreement that comes out of Detroit Edison's
21 reserving their right to a contractual arrangement. I am not recommending
22 anything in this regard.

23 Q. Do you have any opinion regarding Maintenance of Facilities?

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1 A. I expect all parties to maintain their facilities and find it reasonable to agree in
2 advance on how to address emergencies so it is just and reasonable to address this
3 issue in a tariff.

4 Q. Do you have any opinion regarding Termination of Use of Company Facilities?

5 A. It is just and reasonable to address this issue in a tariff. Mr. Dunlop included just
6 and reasonable terms in his proposed tariff.

7 Q. What should be included in the tariff?

8 A. In addition to the recommendations I have made so far, I believe some of the
9 terms of the Pole Attachment Agreement should be brought forth into the Tariff
10 leaving only the business issues in the agreement. I am sponsoring Exhibit S-1
11 (PJD-1) and S-2 (PJD-2). I am not sponsoring an exhibit with the Administrative
12 Practices and Construction Specifications but recommend that an example be
13 attached to the Pole Attachment Agreement.

14 Q. Should an eligible attaching party be able to choose between Pole Attachment
15 Agreements?

16 A. Yes, but only if matches the tariff they choose. Again it is the combination of the
17 Tariff, the Pole Attachment Agreement, and the Administrative Practices and
18 Construction Specifications that delineate the interaction of a pole attachment
19 project. By bringing some of the items into the other and allowing any
20 combination there may be gaps or duplication that lead to a dispute. To avoid that
21 if an eligible attaching party elects to take the Alternative Tariff it shall be in
22 conjunction with the matching Pole Attachment Agreement. If that party elected

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1 to take the existing tariff it shall be in conjunction with the Pole Attachment
2 Agreement as ordered in the Woodhaven Brownstown case.

3 Q. Should an existing eligible attaching party be allowed to switch to the new tariff?

4 A. Yes. They should have that choice.

5 Q. What are you recommending for the potential that the Settlement Agreement in
6 U-13522 expire?

7 A. The most important issue is that all attaching parties comply and continue to
8 comply with the NESC. The other important issue is that an attaching party is not
9 held responsible for remediation of another party's non-compliance. Detroit
10 Edison has set aside \$100,000 for a pole remediation fund. In establishing that
11 fund, there was recognition of a general rate case. This fund, the application fee,
12 and all other fees can be addressed in such case.

13 Q. What do you have to say further regarding U-14445?

14 A. The Commission ordered Detroit Edison to file reports on its pole attachment
15 process. I believe it would be appropriate to require such future reports to detail
16 what new attaching parties elect the new tariff, which ones elect the existing
17 tariff, and which existing parties elect to switch to the new tariff.

18 Q. Does this complete your direct testimony?

19 A. Yes it does.

20

Case Number: U-14528
Witness: Peter J. Derkos
Exhibit: S-1 (PJD-1)
Date: June 29, 2006

THE DETROIT EDISON COMPANY
POLE ATTACHMENT, CONDUIT AND TRENCH TARIFF
FOR
EDUCATIONAL INSTITUTIONS

The Detroit Edison Company

Pole Attachment Tariff

For

Educational Telecommunications Facilities

Availability

Available to any Educational Institution meeting the terms and conditions of this Alternative Pole Attachment Tariff for Educational Telecommunications Facilities for the purpose of attachment pursuant to MCL 460.6g on poles or in conduit owned by The Detroit Edison Company (Company) and no others.

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. Power Supplies are not an additional attachment for purposes of calculating annual rental charges if they are located in an un-useable space on the pole.
- (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 public educational institution or a private non-profit educational institution approved by the Michigan Department of Education to provide a program of primary, secondary, or higher education, a public library, or a non-profit educational association whose primary purpose is education and not the commercial sale or leasing of telecommunications services, information services, internet services, fiber capacity or bandwidth (Educational Institution). A non-profit educational association consists of two or more of the following: (i) public educational institutions, (ii) non-profit educational institutions approved by

the Michigan Department of Education, (iii) Michigan Board of Education, and (iv) a non-profit association of educational institutions.

(5) Un-useable space is that part of a pole where a pole to pole attachment cannot be located without causing the pole to pole attachment to be at variance with the National Electrical Safety Code.

(6) MPSC means the Michigan Public Service Commission or any successor agency.

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 allowed for herein this tariff.

Annual Pole Rental Rate

The annual attachment rate per pole shall be \$3.74. This rate shall remain in effect until further order of the Commission. Overlashing is not considered an attachment, provided that there is no additional hardware attached to the pole and the pole is capable of handling the additional pole loading. The Company shall be notified prior to construction of the proposed overlashing to allow it to assess the structural integrity of the pole relative to the additional load by submitting, and paying for, new requests for permits for each pole to be passed on the overlash route.

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.

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 90 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 90 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: 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.

Power Supply Service

The monthly rate for unmetered electric service to each power supply shall be determined by the applicable electric rate currently on file with the Michigan Public Service Commission (Commission). The total charge for unmetered electric service will be based on the number of flat rate power services existing at the end of the quarter. Power Supplies are to be located in un-useable space whenever possible.

Process for Establishing Attachments

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

of bonds to fund the technology project for which attachment will be sought, or, if the project will not be bond funded, after the decision to build the project is made; 3) inform the Company of the name, address, phone number, cell phone number, electronic mail address and contact person of (a) the Educational Institution's engineering contractor for the project, and (b) the Educational Institution's installation contractor for the project within ten (10) days of selection; 4) prior to submitting permit applications to the Company, inform the Company of the locations to be connected by the proposed attachments, and request that the Company accommodate a joint rideout (to include Company and Proposed Educational Institution attacher or its designated representative). The Company shall (a) provide the Educational Institution with detailed information explaining the process for establishing attachment, and provide an Agreement to be executed, pole attachment permit applications, and any other necessary forms, as soon as practicable after being informed of the project; and (b) accommodate one request for one joint rideout as provided for in "Application Fees" supra. The parties shall schedule the joint rideout no more than 30 days after application date. 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.

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 therefore specified herein, when applicable:
 - Power Supply Service (energy use)
 - 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.

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.

Establishing Attachment to Poles, Duct, Conduit and Trenches

- (1) This tariff is designed to enable an attaching party the opportunity to install facilities within 120 days from submittal of such application when the application includes less than 300 poles and 180 days from submitting such application when the application includes 300 or more poles if the attaching party satisfies the notification provisions in the “Process for Establishing Attachments” section.
- (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 90 days of receiving such application. 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.

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 90 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, inspections, and other related tasks.
- (3) Work required to remediate NESC issues of other attachers not related to the Educational Institution's application 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. Remediation is the responsibility of the Company.
- (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, and other related tasks.
- (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.

Work Performed by Attaching Party(s) in Company Conduit

The Company may permit installation work in its conduits to be undertaken by qualified contractors hired by the attaching party subject to (1) and (2).

- (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.

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 pay 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 and material 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.

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/or 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.

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.

Pole and Conduit Use Agreements

- (1) The Educational Institution and Company shall enter into the Educational Institution Pole, Conduit and Trench Agreement, which 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 and choosing to take service under this tariff, to replace any existing agreements with such parties with the Educational Institution Pole, Conduit and Trench Agreement.

- (3) Under no circumstances may any terms of attachment under this tariff, or otherwise, be confidential.

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 determines that it 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.
- (4) The Company may commence a Complaint at the Commission to require payment of bills in arrearage, damages and removal of Educational Institution facilities from poles, duct or conduit for non-payment of bills provided the bill remains unpaid 6 months after the bill due date and after at least 30 days written notice has been given to the Educational Institution. The bill due date shall be 30 calendar days from the date of physical mailing of the bill.
- (5) The Company may commence a Complaint at the Commission to require payment of bills in arrearage, damages and removal of Educational Institution facilities from poles, duct, conduit or trenches for failure of the Educational Institution to fulfill their contractual obligations for facilities and/or services provided by the Company, or for non-compliance with any rule or tariff established by the Michigan Public Service Commission.

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.

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, at its expense, 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.

Case Number: U-14528
Witness: Peter J. Derkos
Exhibit: S-2 (PJD-2)
Date: June 29, 2006

EDUCATIONAL INSTITUTION
POLE, CONDUIT AND TRENCH USE AGREEMENT
BETWEEN
(ELIGIBLE PARTY PUBLIC SCHOOLS)
AND
DETROIT EDISON

EDUCATIONAL INSTITUTION
POLE, CONDUIT AND TRENCH USE AGREEMENT
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EDUCATIONAL INSTITUTION 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") 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 I1 -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 nondiscriminatory manner among attaching parties and other entities on EDISON poles and in EDISON conduit systems or trenches.

ARTICLE I11 -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, 1 %-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

Its:

Date:

ATTACHING PARTY

Its:

Date: