

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)	
THE DETROIT EDISON COMPANY against)	
AMERITECH MICHIGAN regarding the)	Case No. U-12900
attachment of communications equipment and)	
facilities to electric poles.)	
_____)	
)	
In the matter of the complaint of)	
AMERITECH MICHIGAN against)	Case No. U-13251
THE DETROIT EDISON COMPANY.)	
_____)	

At the September 16, 2002 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER GRANTING WITHDRAWAL

On April 5, 2001, The Detroit Edison Company (Detroit Edison) filed a complaint against Ameritech Michigan in Case No. U-12900 alleging, among other things, that Ameritech Michigan had attached its wires and other facilities to Detroit Edison's electric utility poles in violation of provisions of the National Electrical Safety Code (NESC) that the Commission adopted by reference in R 460.813.

Contemporaneous with the above described complaint, Ameritech Michigan filed a civil complaint in the Oakland County Circuit Court alleging that Detroit Edison had refused to supply power to Ameritech Michigan's new communication facilities. The complaint set forth three

theories of recovery, one of which involved the violation of Detroit Edison's tariffs by its refusal to supply power. In an order entered October 26, 2001, the Circuit Court granted partial summary disposition on, among other things, the claim that Detroit Edison had violated its tariffs. The Court ruled that it should defer that issue to the Commission as a matter of primary jurisdiction. It also expressed concern over certain safety issues raised in the complaint and ordered Ameritech Michigan to file a complaint with the Commission.

On January 8, 2002, Ameritech Michigan filed a complaint against Detroit Edison, which was docketed as Case No. U-13251. That complaint alleged, among other things, that Detroit Edison had itself violated the NESC.

Thereafter, Ameritech Michigan filed a motion to consolidate the two complaints. That motion was granted by the Commission in its February 25, 2002 order in these cases. In that order, the Commission expressed its concern that neither party had demonstrated a commitment to resolve the proceedings expeditiously. It noted that the alleged NESC violations had safety implications, and directed the parties to proceed toward an expedited resolution.

By letters dated May 30, 2002, Ameritech Michigan and Detroit Edison advised the Commission that each party desired to withdraw their respective complaints, because all of the issues forming the basis of the complaints had been resolved, and a settlement agreement had been reached by the parties.

On June 13, 2002, the Commission Staff (Staff) filed a response to the companies' requests to withdraw their complaints. In that response, the Staff argues that the significant safety issues raised in this case are not appropriately addressed in the parties' settlement agreement underlying the request for withdrawal. In the Staff's view, the settlement agreement is so vague as to be illusory concerning the prompt resolution of documented safety issues. The Staff asserts that the

settlement agreement falls short of the Staff's proposed remedial plan. Therefore, the Staff requests that the Commission dismiss the complaints contingent on the parties' fully implementing the remedial plan proposed by the Staff through the testimony of William Celio, Director of the Commission's Electric Division.

Detroit Edison and Ameritech Michigan each filed a response to the Staff's objections on July 3 and 5, 2002, respectively. These companies argue that the settlement agreement is as specific as it can reasonably be with respect to the time and process necessary to address the issues. They point to the Commission's general preference for resolving conflicts without the need for using scarce resources on a contested case. They insist that the settlement is a reasonable resolution of the issues presented and urge the Commission to approve the withdrawal of the complaints and dismiss these cases. They assert that granting the Staff's request to impose its remedy would not assist in quick resolution of safety issues and would violate due process.

After reviewing the parties' arguments, the Commission concludes that it should grant the request of Detroit Edison and Ameritech Michigan to withdraw their respective complaints. However, the Commission remains concerned about violations of the NESC, which may pose risks to the public and interfere with expeditious broadband deployment. Therefore, the Commission is commencing an investigation into the alleged NESC violations in today's order in Case No. U-13522.

Finally, the Commission notes that Detroit Edison and Ameritech Michigan have filed petitions for leave to appeal various rulings by the administrative law judge. Those petitions are now moot and should be denied.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; 1991 PA 179, as amended, MCL 484.2101 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. The requests of Detroit Edison and Ameritech Michigan to withdraw their respective complaints should be granted, and the cases should be dismissed without prejudice.
- c. The petitions for leave to appeal should be denied as moot.

THEREFORE, IT IS ORDERED that:

- A. The complaint of The Detroit Edison Company in Case No. U-12900 and the complaint of Ameritech Michigan in Case No. U-13251 are dismissed without prejudice.
- B. The petitions for leave to appeal are denied as moot.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of September 16, 2002.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-12900

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_____)

Case No. U-13251

Suggested Minute:

“Adopt and issue order dated September 16, 2002 permitting The Detroit Edison Company and Ameritech Michigan to withdraw their respective complaints and dismissing these cases, without prejudice, as set forth in the order.”