

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter on the Commission's own motion to investigate pole attachments that violate the National Electrical Safety Code as adopted in R 460.813 on poles owned by the Detroit Edison Company, Ameritech Michigan, and Consumers Energy Company.

MPSC Case No. U-13522

SETTLEMENT AGREEMENT
August 22, 2003

PREAMBLES

Whereas, the Michigan Public Service Commission (the "Commission") initiated this case by order dated September 16, 2002 ("Case No. U-13522"); and

Whereas, the Commission named as respondents, Consumers Energy Company ("Consumers"), SBC-Ameritech Michigan ("SBC") and The Detroit Edison Company ("Edison"); and

Whereas, the Commission allowed the interventions of the Michigan Cable Telecommunications Association ("MCTA") and EduNets; and

Whereas, the Michigan Public Service Commission Staff ("Staff") filed an appearance and filed testimony to address the Commission's allegations contained in its September 16, 2002 Order; and

Whereas, the Commission adopted by Commission rule the National Electrical Safety Code ("NESC"); and

Whereas, Consumers, SBC and Edison represent that with respect to the 462 alleged conditions at variance with the requirements of the NESC in Staff's testimony that are on their respective poles, the conditions have been resolved or are in the process of being resolved; and

Whereas, Consumers, SBC, Edison, MCTA, EduNets and Staff met and negotiated a stipulated settlement of Case No. U-13522, which settlement is represented by this document; and

Whereas, Consumers, SBC, Edison, MCTA, EduNets and Staff submit this settlement agreement for Commission approval.

NOW, Therefore, the parties agree as follows:

AUDIT

The Michigan Public Service Commission Staff ("Staff") has drafted a memorandum relating to certain cooperative arrangements that pole owners and other parties attaching facilities to utility poles should practice, which is attached to this Settlement Agreement as Attachment A.

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 the terms of this Settlement Agreement. 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 Settlement Agreement, 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 wind, ice or loading of any kind.

CORRECTIONS

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, pursuant to the "Audit" provisions above, 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 settlement.

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 Settlement Agreement 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, "REMEDICATION 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. The parties acknowledge and agree that it is not the intent of the pole owners to 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 parties acknowledge and agree that 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 the responsible party is.

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. All parties recognize that implementation of system modifications and training of pole owner personnel to provide such estimates will involve some period of time.

(2) Except for make ready and remediation costs in section d.(ii) (1) above, fees and costs pursuant to the 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. This agreement can be used for remediation of such conditions only if the parties involved agree to it.

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 Settlement Agreement.

1. If the "Enforcement" "Responsible Party" provisions of this Settlement Agreement 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, then 15 days after the Staff recommendation in "Enforcement" "Responsible Party" Section ¶2, unless notified by a party attaching to the poles that the existing condition will be remediated either by acceptance of the Staff recommendation or by some other means of remediation, 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 Settlement Agreement. The pole owner need not commence work to remediate the existing condition until there are sufficient monies in the Fund for such reimbursement.

2. The Pole Remediation Fund (the "Fund") shall be created by Consumers Energy Company, The Detroit Edison Company, and SBC in the amount of \$300,000, through contributions of \$100,000 each, within 45 days of issuance of an order approving this settlement. Staff will support recovery by Consumers Energy Company and The Detroit Edison Company of their contributions to the Fund in each company's next general rate case.

3. It is the intent of the parties that 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 Settlement Agreement. Once the procedures contained in the "Enforcement" "Responsible Party" provisions of this Settlement Agreement 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.

COMPENSATION

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.

ENFORCEMENT

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 settlement agreement, the persons involved shall submit the information to the Michigan Public Service Commission Staff. The Staff will act as a facilitator and recommend in writing a resolution of the dispute.

2. The dispute will be resolved in accordance with the Staff's recommendation, unless a person files a formal application or complaint with the Michigan Public Service Commission within 15 days of the recommendation.

3. 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 Staff may act as a facilitator and recommend a resolution of the dispute.

2. A person who disagrees with the recommendation may file a formal application or complaint with the Michigan Public Service Commission to 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.

MISCELLANEOUS

A. 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.

B. This Settlement Agreement shall have a term of 3 years. Six months prior to the expiration of the Settlement Agreement, the parties shall meet to examine the results of the settlement and determine the future steps, if any, that may be appropriate.

C. This Settlement Agreement will become effective on the date that the Michigan Public Service Commission approves the Settlement Agreement's terms without amendment or modification. Should the Commission alter the Settlement Agreement's terms in any way, this Settlement Agreement becomes null and void.

D. This Settlement Agreement does not affect the parties' responsibilities and obligations under the relevant pole owner tariffs, joint use or lawful pole attachment agreements. 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.

E. 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.

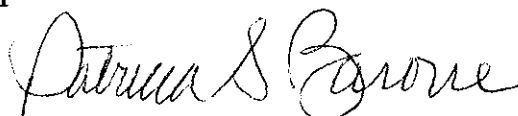
F. There are a number of aspects to the current disputes relating to pole attachments. This agreement does not fully resolve all issues and is a result of compromise in order to avoid continuing the proceeding. Parties are free to seek resolution of issues affecting pole attachments. No party shall be prejudiced by this agreement or have this agreement or its compromises cited against them. The agreement shall not be admissible in any proceeding except to implement or enforce it or to demonstrate compliance with it.

G. In response to the concerns raised by EduNets, the Staff will initiate a study, to be completed within 120 days of the Commission Order approving this settlement agreement, of tariff provisions relating to make ready fees, their implementation, and pole attachment agreements and forms, if any. This study will be delivered to the Commission and the parties to this proceeding and will be posted on the Commission's internet site. The study will detail

existing concerns relating to the subject matter and will note any recommendations for improvement or changes relating to the subject matter. All parties will be afforded an opportunity to provide input into this study.

MICHIGAN PUBLIC SERVICE COMMISSION
STAFF

Dated: Sept. 17, 2003

By: 
Patricia S. Barone (P29560)
Assistant Attorney General

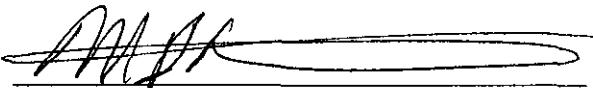
CONSUMERS ENERGY COMPANY

Dated: Sept 15, 2003

By: 
Raymond E. McQuillan (P24100)

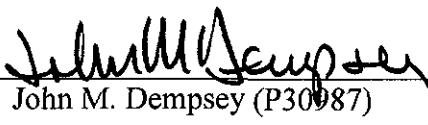
MICHIGAN CABLE TELECOMMUNICATIONS
ASSOCIATION

Dated: Sept 5, 2003

By: 
Michael S. Ashton (P40474)

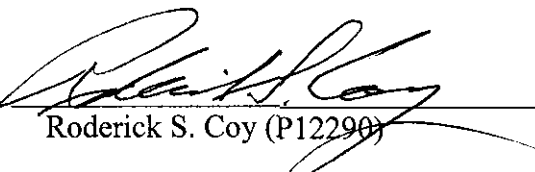
AMERITECH MICHIGAN

Dated: Sept. 4, 2003

By: 
John M. Dempsey (P30087)

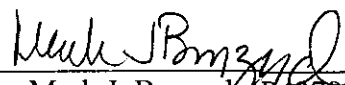
EDUNETS

Dated: Sept 11, 2003

By: 
Roderick S. Coy (P12290)

THE DETROIT EDISON COMPANY

Dated: September 2, 2003

By: 
Mark J. Burzycki (P43793)

ATTACHMENT A

TO: Pole Owners and Attaching Parties

FROM: PSC Staff (Kitts or Celio)

SUBJECT: Case No. U-13522

The parties in Public Service Commission Case No. U-13522 entered into a settlement agreement that resolved the issues in that proceeding. During the settlement discussions, the parties agreed that there were certain cooperative arrangements that pole owners and attaching parties should practice, but there was agreement that these should not be included in the settlement in order to avoid creating new obligations or liabilities. Instead, the parties agreed that the Commission Staff would prepare a memorandum outlining the Staff's perception regarding good cooperative practices. This is that memorandum.

In the Staff's opinion, pole owners and attaching parties (collectively participants) should continue regular inspections of their facilities, including any inspections required to comply with Commission orders in Cases Nos. U-9916, U-10908, U-12270, or other relevant proceedings. Participants should note any conditions at variance with the requirements of the National Electrical Safety Code (NESC). If the participant notes such a condition involving its own facilities, corrections should be made pursuant to the provisions of the Commission order in Case No. U-13522. If the participant notes a condition at variance with the requirements of the NESC that does not involve its facilities, it should notify the pole owner and may also choose to notify the attaching party (if known). Thereafter, corrections should be made consistent with the provisions of the Commission order in Case No. U-13522. This informal process is applicable only to situations that do not involve an immediate public safety hazard.

If you have questions regarding the inspection or correction of pole attachments, please contact Peter Derkos of the Commission's Energy Operations Division at (517)241-6080.