

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

- Re: Application of The Connecticut Light and Power Company for a Certificate of Environmental Compatibility and Public Need for the Construction of a 345-kV Electric Transmission Line and the Reconstruction of an Existing 115-kV Electric Transmission Line between its Plumtree Substation in Bethel through the Towns of Redding, Weston, and Wilton, and to Norwalk Substation in Norwalk, Connecticut) Docket 217
- Re: The Connecticut Light and Power Company and The United Illuminating Company Application for a Certificate of Environmental Compatibility and Public Need for the Construction of a New 345-kV Electric Transmission Line and Associated Facilities Between Scovill Rock Switching Station in Middletown and Norwalk Substation in Norwalk, Connecticut Including the Reconstruction of Portions of Existing 115-kV and 345-kV Electric Transmission Lines, the Construction of the Beseck Switching Station in Wallingford, East Devon Substation in Milford, and Singer Substation in Bridgeport, Modifications at Scovill Rock Switching Station and Norwalk Substation and the Reconfiguration of Certain Interconnections) Docket 272
- September 3, 2004

**BRIEF OF THE CONNECTICUT LIGHT AND POWER COMPANY AND THE
UNITED ILLUMINATING COMPANY
CONCERNING REVISION OF THE COUNCIL'S BEST MANAGEMENT PRACTICES,
IN OPPOSITION TO "PROCEDURAL MOTION"
OF THE TOWNS OF DURHAM AND WALLINGFORD**

I. INTRODUCTORY STATEMENT

In their “Procedural Motion” of July 23, 2004 filed in the above captioned dockets, the Towns of Durham and Wallingford (“D-W”) assert that Docket 217 should be reopened and consolidated with the Docket 272 proceeding, so that the Connecticut Siting Council (“Siting Council” or “Council”) can consider the Bethel to Norwalk line anew, at the same time as it considers the Middletown to Norwalk line. One of the “changed conditions” that D-W cites in support of their motion is the passage of Public Act 04-246 (the “Act”), which applies to Docket 272, but not to Docket 217. In particular, D-W asserts: “The Council’s Best Practices must be updated to comply with P.A. 04-246 before using the Best Practices as a basis to make the findings required by the law, in the consolidated proceeding requested herein.” (Procedural Motion, at 11). The Connecticut Light and Power Company and The United Illuminating Company (collectively, the “Applicants”) have previously briefed their objections to the D-W request for reopening and consolidation.¹ However, the Council has asked for a separate response addressing the contention that the Council must revise its Best Management Practices before making any decision in Docket 272.² This brief of the Applicants responds to that request.

¹ “CL&P’s Memorandum in Opposition to ‘Procedural Motion’ of the Towns of Durham and Wallingford,” filed August 20, 2004 in both dockets; letter of Linda L. Randell on behalf of The United Illuminating Company, dated August 25, 2004, objecting to Procedural Motion and incorporating CL&P brief by reference.

² AAG Marconi, Tr. 8/19/04, at 56, 57; Notice of Technical Session, August 23, 2004.

II. FACTS

A. *The Council's Best Management Practices*

The Applicants have previously reviewed the origin and history of the Siting Council's EMF Best Management Practices ("BMP")³. Briefly, the Council developed and adopted its BMP in conjunction with the work of the State's Interagency EMF Task Force, established by the legislature in 1991 to determine the appropriate role of the State in addressing the potential problems associated with electric and magnetic fields.⁴ The Chairman of the Siting Council is a member of this Task Force, which also includes the Commissioner of Public Health, the Commissioner of Environmental Protection, the Commissioner of Economic Development, the Secretary of the Office of Policy and Management, and the Chairperson of the Department of Public Utility Control Authority. A copy of the BMP, as most recently modified as of October 21, 2002, is attached as Exhibit A hereto.

The Council has applied its BMP to every transmission line application on which it has acted since 1993. Since the BMP are general guidelines, they have allowed for flexibility in their use. In particular, the BMP have always been open textured and forward looking. Thus, from the beginning, they have provided that the Council will "administratively notice and recognize completed and ongoing scientific EMF research"; consider "applicable and appropriate new field

³ "Supplemental Testimony of Robert E. Carberry And Kathleen M. Shanley Concerning State Policies With Respect To 60-Hz Electric And Magnetic Fields," May 3, 2003 ("Carberry / Shanley"); "Request for Administrative Notice Concerning State Policies With Respect to 60 Hz Electric and Magnetic Fields," May 3, 2004 ("Req. Admin. Not.").

⁴ See, Carberry / Shanley at 8-10; Ex. 6 to Req. Admin. Not. at 1-3 to 1-5; "Applicants' Comments on Public Act 04-246," July 19, 2004, at 6, 7.

management technologies”; and “[r]ecognize the possibility for future standards and consider conditioning approval on retrofitting or elimination of facilities to meet future federal and State standards.” (BMP, Ex. A hereto)

B. The Provisions of P.A. 04-246 Relating to Best Management Practices

In the Act, the General Assembly made significant changes to the Public Utility Environmental Standards Act (“PUESA”), including the adoption of a requirement that overhead portions of an electric transmission line will be “contained within a buffer zone that protects the public health and safety, as determined by the council”⁵; and a presumption that lines of 345-kV and above will be constructed underground where they are adjacent to certain uses of property.⁶ However, as the Applicants have previously submitted, the provisions of this statute “concerning best management practices give the force of law to the Council’s existing practices, but as a practical matter call for no change in their content or application.”⁷

There are three provisions of the Act that relate to BMP. The first directs the Council to do what it already does – adopt and apply BMP.⁸ The second directs the Council to do what it already does pursuant to its BMP – notice scientific and medical research on EMF.⁹ The third requires the Council to find that any overhead portions of an approved electric transmission line

⁵ P.A. 04-246, §3 (amending Conn. Gen. Stat. § 16-50p(a)(4)(C)). The Applicants discuss this provision in “Applicants’ Response to Council’s Interrogatory Concerning ‘Buffer Zone’ Determinations Pursuant to Public Act 04-246,” July 19, 2004 and in their letter brief of August 10, 2004.

⁶ P.A. 04-236, § 7. The Applicants discuss this provision in “Applicants’ Comments on Public Act 04-246,” July 19, 2004, at 8-12 (“P.A. 04-246 General Memo”); and in their letter brief of August 10, 2004.

⁷ P.A. 04-246 General Memo, at 6, 7.

⁸ P.A. 04-246, § 10, amending § 16-50t.

⁹ P.A. 04-246, §8, amending §16-50o. *See*, BMP ¶1, providing that the Council shall “administratively notice and recognize completed and ongoing scientific EMF research.”

are consistent with its BMP.¹⁰ The Act’s description of the provisions that the BMP are to include mirrors the language of the Council’s existing BMP. Section 10 of the Act uses the same words and phrases already contained in the BMP:

(c) The council shall adopt, and revise as the council deems necessary, standards for best management practices for electric and magnetic fields for electric transmission lines. Such standards shall be based on the latest completed and ongoing scientific and medical research on electromagnetic fields and shall require individual, project-specific assessments of electromagnetic fields, taking into consideration design techniques including, but not limited to, compact spacing, optimum phasing of conductors, and applicable and appropriate new field management technologies...

Compare, BMP, Ex. A.

III. DISCUSSION

A. *The Act Does Not Require that the Council Revise Its Best Management Practices Before Ruling on the Docket 272 Application.*

D-W argues that the “intent” of the Act is that the Council update its BMP to reflect new research before it takes any action on a pending application. (Procedural Motion, at 11).

Significantly, D-W points to no language in the Act that requires this result and it cannot do so.

This is because the language of the Act explicitly authorizes the Council to decide whether and

when to revise the current BMP. First, the only specific provisions that the Act requires the

Council to include in its BMP are already there. Second, the Act explicitly states that “the

council shall revise its BMP *“as the council deems necessary...”* *Id.*, §10 (emphasis supplied).

Third, nowhere does the Act say that such a revision must be adopted before the Council acts on

¹⁰ P.A. 04-246, §3, amending § 16-50p(a)(4)(C).

this or on any other application. Surely, if the legislature had meant to provide that the Council must adopt new BMP before acting on an application, it could have said so.

D-W further asserts that because the Act creates an undergrounding presumption and a buffer zone requirement, the BMP must be revised to require undergrounding as a low EMF option and must “explicitly require consideration of buffer zones as a ‘low-EMF design.’” To the contrary, the undergrounding presumption applies of its own force, as a matter of statute, so that it would be superfluous to include it in the BMP. Indeed, since the Act requires a finding of consistency with the BMP only for overhead portions of lines,¹¹ it would be anomalous to imply an intent that those BMP include putting the line underground.

Finally, D-W asserts that the BMP must be revised to incorporate the “buffer zone” requirement of the new legislation. (Procedural Motion at 11). Like the undergrounding presumption, the buffer zone requirement applies of its own force, as a matter of statute, and does not require the aid of any BMP. Moreover, the legislature specifically did not require the Council to adopt *any* buffer zone regulations of any kind. As the Applicants explain in their Buffer Zone Memo, the statutory provision relating to buffer zones requires a finding of fact in a specific case, not the adoption of regulations or standards of general application.¹²

D-W seems to assume that, unless a particular low EMF design or a particular exposure metric is required by the current version of BMP, the Council cannot consider it in this Docket. That is not so. The BMP are not rigid and exclusive, and they support the use of new

¹¹ Section 3 of the Act amends Conn. Gen. Stat. 15-60p(a)(4)(C) to require the Council to find “that the overhead portions, if any, of the facility...are consistent with...the council’s best management practices for electric and magnetic fields for electric transmission lines...”

¹² Buffer Zone Memo, at 4-6.

information and new technologies in a certification proceeding. They “are intended to recognize the latest information as well as effective technologies and management techniques on a project-specific basis.” *Id.* To that end, the BMP provide for consideration in a docket of any “appropriate new field management technologies” and “project-specific exposure limits.” *Id.* Accordingly, there is nothing in the Act, and nothing in the BMP, that require a general revision of the BMP before a specific field reduction strategy is implemented in a certification proceeding; or before this or any other application is ruled upon. Moreover, consideration of revisions to standards of general application with a focus on a particular project, and within the time constraints of an application proceeding, would be neither efficient nor conducive to a thoughtful and thorough consideration of all the issues that the Council should address in such a standard-setting proceeding.

B. The Council May Nevertheless Wish to Initiate a Standard-Setting Proceeding, at an Appropriate Time, to Reassess Its Best Management Practices.

Although the Council is not required to revise its Best Management Practices in conjunction with Docket 272, it may nevertheless wish to institute a proceeding for the specific purpose of reassessing them in light of recent research and policy recommendations, some of which have been discussed in Docket 272. Since the Act has now provided express statutory authorization for BMP under Conn. Gen. Stat. §15-50t,¹³ the Council may retain consultants to assist it in this task and assess the costs thereof (as well as other administrative expenses) pursuant to Conn. Gen. Stat. § 16-50v(g). Thus, the Council would be able to seek assistance

¹³ P.A. 04-246, §3.

from independent, highly qualified epidemiologists and other health scientists, electric system experts, and public policy consultants. Moreover, the Council could undertake its assessment in consultation with the State's EMF Interagency Task Force, which is still designated by statute as the body that is to "study electric and magnetic fields" and "determine the appropriate role of the state in addressing the potential problems associated with electric and magnetic fields."¹⁴ Just as the Council developed its initial BMP in consultation with this Task Force, it would be appropriate for the Council to consult the other members of the Task Force in considering any major revision of the standards. Thus, the Council would have the benefit of the views of not just the Commissioner of Public Health, but also those of the Commissioner of Environmental Protection, the Commissioner of Economic Development, the Secretary of the Office of Policy and Management, and the Chairperson of the Department of Public Utility Control, all of whom have a stake in any major revision of BMP policies.

In declining to rush to judgment on an overall revision of its BMP in the context of a pending transmission line proceeding, and instead opening a general standard-setting docket, the Council would be following the recent example of the California Public Utilities Commission ("CPUC"). Like the Council, the CPUC first adopted EMF reduction policies in 1993.¹⁵ Those policies:

required the utilities to undertake no-cost EMF mitigation measures and implement low-cost mitigation measures to the extent approved as part of a project's certification process. "Low-cost" was defined to be within the range of 4% of the total project cost but the Commission specified that this 4% benchmark

¹⁴ P.A. 91-217; P.A. 92-169.

¹⁵ Draft Order Instituting Rulemaking, Rulemaking 04-07-, Public Utilities Commission of the State of California, July 8, 2004 ("CPUC Rulemaking Order"), Exhibit B hereto, at 1-2.

is not an absolute cap. The Commission found that for a mitigation measure to be implemented, it should achieve some noticeable reduction in EMF, but declined to adopt a specific goal for EMF reduction, pending further scientific evidence.¹⁶

As in this Docket, participants in recent California transmission line siting proceedings have “expressed great concern regarding potential health effects from EMF exposure,” and have express[ed] special concerns about exposures to schools, day care centers, and residences.”¹⁷

Such concerns are largely based on the report of a panel of California Department of Health Services scientists, which has also been cited by intervenors in this docket. With respect to this report, the Rulemaking Order notes:

While direct causation has not yet been proven, several studies since the last Commission decision in 1993 have found correlations that prompt additional public concern. In 2002, pursuant to I.91-01-012, DHS released its final report reviewing scientific studies on the health effects of EMF. The panel of DHS scientists found that EMF exposure can cause some degree of increased risk of childhood leukemia, adult brain cancer, Lou Gehrig’s Disease, and miscarriage. The findings are controversial, and there is no consensus on their implications. Even the three scientists of the DHS panel differed in their opinions concerning the connection of EMFs with other diseases...¹⁸

Accordingly, in recent transmission line siting proceedings, such participants contested the adequacy of EMF evaluations; proposed routes to “reduce or eliminate new exposures in populated areas”; and objected to the utility’s application of the 4% rule.¹⁹ While the CPUC declined to consider a revision of its EMF mitigation policies in the context of any of these individual certification proceedings, it concluded that “without a common framework of guidelines which would be the result of more up-to-date EMF rules, this pattern is repeated in

¹⁶ Id., at 2 (internal citations omitted).

¹⁷ Id., at 4.

¹⁸ Id., at 2.

¹⁹ Id., at 4.

each proceeding, adding delay and expense to each individual application to build a new transmission project.”²⁰ Therefore, the CPUC has determined to open a rulemaking docket to consider:

1. The implications, if any, of the DHS research findings, the findings of other relevant scientific studies and the merits of pursuing further focused utility-funded research.
2. The results of the Commission’s current “low and no cost” mitigation policy and the need for modifications.
3. The appropriate treatment of EMF issues pursuant to [the California Environmental Quality Act] and the Commission’s broader environmental responsibilities.²¹

A copy of this CPUC rulemaking order is attached to this memorandum as Exhibit B.

IV. CONCLUSION

If, like the CPUC, the Council determines that general reassessment of its BMP would simplify future transmission line proceedings, the Council should, like that commission, undertake such a reassessment in the context of a general standard-setting proceeding. In such a proceeding, the Council would not be bound by the time constraints applicable to individual application proceedings; and it would be able to bring to bear, in a deliberate manner, the resources of appropriate expert consultants and the Interagency Task Force.

The Council is not statutorily required to assume the burden of undertaking a general revision of its BMP in the context of this Docket; nor would the absence of such a revision in any way constrain the Council from adopting any EMF reduction measures in Docket 272 that it finds are warranted by the evidence, applicable statutory provisions, and the Council’s current

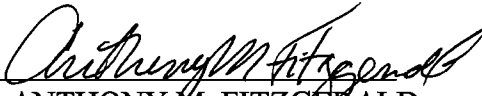
²⁰ Id.

²¹ Id., at 6.


Best Management Practices, pursuant to which it is already considering a wide range of field reduction strategies. Some of these strategies are specifically mentioned in the current BMP, and others (such as split phasing) are not specifically mentioned, but are included in the BMP's more general criteria.

APPLICANTS,

THE CONNECTICUT LIGHT AND
POWER COMPANY,

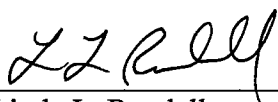
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CERTIFICATION

This is to certify that on this 3rd day of September, 2004, the original and twenty (20) copies of the foregoing was hand-delivered to the Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051, and one (1) copy was mailed, postage prepaid, on this 3rd day of September, 2004, to all other known parties and intervenors. Additionally, an electronic copy of the foregoing was provided to the Connecticut Siting Council and all other known parties and intervenors on September 3, 2004.



Linda L. Randell

**Connecticut Siting Council
Publications****Electric and Magnetic Field Best Management Practices
February 11, 1993**

Although scientific knowledge does not at this time permit firm judgments about possible health effects of 60 hertz electric and magnetic field (EMF) exposures from electric generation, substation and transmission facilities, the Connecticut Siting Council has adopted a cautious approach to the issue by adopting the following Best Management Practices. These practices are intended to recognize the latest information as well as effective technologies and management techniques on a project-specific basis to protect the public and maximize the efficiency of the electric generation, transformation, and transmission industry.

1. Administratively notice and recognize completed and ongoing scientific EMF research.
2. Require individual project-specific assessments of EMF.
3. Require detailed project-specific assessments of need and non-structural alternatives.
4. Require EMF assessments for project alternatives.
5. Require EMF assessments to consider exposure levels and durations with respect to existing and planned land uses.
6. Require baseline, preconstruction measurements of EMF during siting of new facilities.
7. Require post-construction measurement of EMF to extrapolate values for normal, peak, and maximum allowable continuous operating levels.
8. Require adoption and use of a uniform measurement protocol.
9. Solicit specific comments from the DEP, DPUC, and DOHS regarding EMF exposure during siting of new facilities.
10. Require consideration of low-EMF designs during the siting and construction of new facilities, including use of:
 - a. Compact spacing;
 - b. Optimum phasing of conductors;
 - c. and Applicable and appropriate new field management technologies.
11. Consider project-specific exposure limits for EMF.
12. Recognize the possibility for future standards and consider conditioning approval on retrofitting or elimination of facilities to meet future federal and State standards.

All council proceedings are conducted at publicly noticed meetings and hearings offering full opportunity for participation and due process as afforded by federal and State law.

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Agenda ID # 3699
 Quasi-Legislative
 Item 60 07/08/2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to update the Commission's policies and procedures related to electromagnetic fields emanating from regulated utility facilities

FILED
 PUBLIC UTILITIES COMMISSION
 July 8, 2004
 SAN FRANCISCO, CALIFORNIA
 RULEMAKING 04-07-

ORDER INSTITUTING RULEMAKING

I. Summary

We open this rulemaking to re-examine the Commission's policies and rules related to electromagnetic fields emanating from utility facilities. The Commission's current policies and procedures in this area predate research findings recently submitted to the Commission by the California Department of Health Services as well as a decision of the California Supreme Court, SDG&E v. Covalt, 13 Cal 4th 893, (1996), concerning the extent of the Commission's jurisdiction related to electromagnetic field issues. This proceeding will reconsider the Commission's policies and procedures in light of these events and in light of the utilities' experiences in implementing existing policy.

II. Background

In 1991 the Commission opened an investigation (I.91-01-012) in response to concerns raised by members of the public and the California State Legislature related to the possible health effects of electromagnetic fields (EMFs) emanating from existing and planned utility facilities. The concerns were prompted by inconclusive international research results, some of which suggested a significant statistical relationship between EMF exposure and various illnesses and others which failed to establish a causal link between EMF exposure and disease.

In 1993, in Decision (D.) 93-11-013, the Commission found that while the evidence of direct harm from EMF was not conclusive, there was sufficient evidence that an EMF health hazard existed. (D.93-11-013 p.3.) The Commission adopted several EMF policies and programs to address the public concern and

scientific uncertainty. The Commission required the utilities to undertake no-cost EMF mitigation measures and implement low-cost mitigation measures to the extent approved as part of a project's certification process. "Low-cost" was defined to be within the range of 4% of the total project cost but the Commission specified that this 4% benchmark is not an absolute cap. (D.93-11-013 p.13.) The Commission found that for a mitigation measure to be implemented, it should achieve some noticeable reduction in EMF, but declined to adopt a specific goal for EMF reduction, pending further scientific evidence. (D.93-11-013 p.15.) Workshops were held and utilities developed EMF design guidelines for new transmission facilities. The Commission also adopted several EMF measurement, education, and research programs and chose the California Department of Health Services (DHS) to manage the education and research programs. The Commission declined to establish a measurement of EMF exposure that would be harmful to public health until there was a firm scientific basis for adopting any particular standard. (D.93-11-013 p.11.)

While direct causation has not yet been proven, several studies since the last Commission decision in 1993 have found correlations that prompt additional public concern. In 2002, pursuant to I.91-01-012, DHS released its final report reviewing scientific studies on the health effects of EMF. The panel of DHS scientists found that EMF exposure can cause some degree of increased risk of childhood leukemia, adult brain cancer, Lou Gehrig's Disease, and miscarriage. The findings are controversial, and there is no consensus on their implications. Even the three scientists of the DHS panel differed in their opinions concerning the connection of EMFs with other diseases. One scientist was "prone to believe" and two were "close to the dividing line between believing and not believing" that EMFs cause some degree of increased risk for adult leukemia. All three were undecided about the role of EMFs and the risk of suicide. All were inclined to believe that EMF exposure does not cause an increased risk of breast cancer, heart disease, Alzheimer's Disease, or depression. They strongly believed that EMFs do not increase the risk of birth defects or lower birth weight, and that EMFs are not universal carcinogens.

Many of those concerned about EMF exposure pursued their concerns in the courts during the time the Commission was waiting for the conclusion of the DHS study. In one instance, where residents sought damages from the San Diego Gas & Electric Company (SDG&E) for EMF exposure from an existing transmission line, SDG&E took the issue of EMF jurisdiction to the California Supreme Court. That court issued a decision in SDG&E v. Covalt, 13 Cal 4th 893, (1996), ruling that by issuing D.93-11-013 and establishing interim EMF policies, the Commission has claimed exclusive jurisdiction over issues related to EMF exposure while its investigation into the health effects of EMFs continued. The Supreme Court held that, "the Commission has broad authority to determine whether the service or equipment of any public utility poses any danger to the health or safety of the public, and if so, to prescribe corrective measures and order them into effect." (13 Cal 4th 893, 923 (1996)).

In denying relief to the plaintiffs in this case, the Supreme Court prescribed the limits of judicial authority over the issue of EMF. After considering Cal. Pub. Util. Code § 1759, which limits court review of Commission decisions to the Supreme Court; and the decision in Waters v. Pacific Telephone Co., 14 Cal. Rptr. 753 (1974), barring an award for damages that would hinder or frustrate the Commission's regulatory policies; the Supreme Court decided that any action it took regarding EMFs would impermissibly interfere with the pending actions by the Commission on EMF. The Court found that the Commission has broad authority to determine whether the service or equipment of any public utility poses any danger to the health and safety of the public and to prescribe and order corrective measures. (13 Cal 4th 893, 924 (1996)). The Court's interpretation of the Commission's authority to require every public utility to construct, maintain and operate its facilities and equipment in a manner that safeguards the health and safety of its employees, customers, and the public, includes the Commission's duty to regulate EMFs. (13 Cal 4th 893, 923 (1996)). The Court also points to the Legislative directive (Stats. 1988, ch. 1551, §2 subd. (d)) for the Commission and DHS to investigate the health risks associated with EMF and report the results. (13 Cal 4th 893, 926 (1996)).

Similarly in Orloff v. Pacific Bell, 31 Cal. 4th 1132, (2003), the court has deferred to Commission regulatory authority. The Supreme Court ruled that when civil litigation is pending against public utilities if disclosure in the civil suit would impede an investigation being conducted by the PUC, “the district attorneys are required to await disclosure pending further action by the PUC.” (31 Cal. 4th 1132, 1151 (2003)). This deference did not in itself bar civil actions generally. The court found that such actions actually complement PUC efforts since the PUC is limited to violations of the Public Utilities Code and the remedies available under that code. (31 Cal. 4th 1132, 1153 (2003)).

Public concern about EMFs and the activities utilities should undertake in response to those concerns, continues unabated. In numerous transmission siting proceedings, for instance, such as the recent matter involving the Jefferson-Martin project (A.02-09-043) and the Mission-Miguel project (A.02-07-022) some parties expressed great concern regarding potential health effects from EMF exposure. Intervenor often contest the adequacy of a draft Environmental Impact Report that fails to consider EMFs and propose routes that reduce or eliminate new exposures in populated areas. Participants express special concerns about exposures to schools, day care centers, and residences. Intervenor also often object to the way that the utility applies the 4% rule in establishing its EMF exposure mitigation strategy. Without a common framework of guidelines which would be the result of more up-to-date EMF rules, this pattern is repeated in each proceeding, adding delay and expense to each individual application to build a new transmission project.

III. Preliminary Scoping Memo

In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for resolving the proceeding. Principally, this rulemaking is the forum for review of existing EMF policy and the adoption of new rules, as appropriate. Although EMF issues continue to be raised by parties in various individual transmission line proceedings, the Commission has yet to respond to the most recent DHS findings or the Supreme Court decision by clarifying the nature and limits of Commission activity in this area. In addition, the Commission has yet to examine the implications of the “no or low cost”

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mitigation policy that has now been in effect for more than a decade. We open this rulemaking to analyze these issues on a statewide basis.

The issues that we will explore in this docket include the following:

1. The implications, if any, of the DHS research findings, the findings of other relevant scientific studies and the merits of pursuing further focused utility-funded research.
2. The results of the Commission's current "low and no cost" mitigation policy and the need for modifications.
3. The appropriate treatment of EMF issues pursuant to CEQA and the Commission's broader environmental responsibilities.
4. Through this rulemaking the Commission intends to regulate EMF issues encompassing the issues outlined above.

IV. Category of Proceeding

The Commission's Rules of Practice and Procedure require that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing.¹ As a preliminary matter, we determine that this proceeding is quasi-legislative.

As provided in Rule 6(c)(2), any person who objects to the preliminary categorization of this rulemaking as "quasi-legislative" or to the preliminary hearing determination, shall state its objections in its PHC Statement. After the PHC in this matter, the assigned Commissioner will issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 6.4.

¹ Rule 6(c)(2).

V. Schedule

The preliminary schedule shall be determined by a ruling of the assigned commissioner. This schedule will be discussed at, and further refined following the first PHC as scheduled by the Assigned Commissioner and Administrative Law Judge.

VI. Parties and Service List

The Executive Director shall serve this order on all parties to I.91-01-012, A.02-07-022 (Mission-Miguel), A.02-09-043 (Jefferson Martin), A.03-03-043 (Mission-Viejo), A.01-03-036 (Valley Rainbow) and A.99-11-025 (Tri-Valley). At the first PHC, the Administrative Law Judge will identify parties to the proceeding, and will thereafter issue a new service list. Pacific Gas and Electric Company, Southern California Edison Company, and SDG&E are respondents. Other regulated electric companies with service in California are encouraged to participate as well.

VII. Ex Parte Communications

This quasi-legislative proceeding is subject to Pub. Util. Code § 1701.4. No restrictions on ex parte communications apply.

O R D E R

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted to re-examine the Commission’s policies and rules related to electromagnetic fields (EMFs) emanating from electric utility facilities and to evaluate what changes, if any, to the Commission’s current policies and rules should be undertaken in response to the DHS study results.
2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company are respondents.
3. The Executive Director shall cause a copy of this order to be immediately served on all respondents and on the service list in I.91-01-012.
4. Individuals and organizations that have an electronic mail address shall provide that address to the Commission’s Process Office at process_office@cpuc.ca.gov or (415) 703-2021, without delay. Provide the

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proceeding number, your name and organization, party status (i.e., appearance, state service or information only) and electronic mail address. Individuals and organizations that wish to be removed from the service list should also contact the Process Office with this request.

5. We preliminarily determine that this is a quasi-legislative proceeding and that evidentiary hearings will be required. Parties shall file and serve comments or objections on the categorization of this proceeding and need for hearings within ten days of the effective date of this decision. These comments or objections shall be served on the service list in I.91-01-012.

This order is effective today.

R. _____ LYN/edf/epg

APPENDIX A

ELECTRONIC SERVICE PROTOCOLS

Party Status in Commission Proceedings

These electronic service protocols are applicable to all “appearances.” In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains “party” status. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Service of Documents by Electronic Mail

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category as well since electronic service minimizes the financial burden that broader service might otherwise entail.

Notice of Availability

If a document, including attachments, exceeds 75 pages, parties may serve a Notice of Availability in lieu of all or part of the document, in accordance with Rule 2.3(c) of the Commission’s Rules of Practice and Procedure.

Filing of Documents

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission’s Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned ALJ.

Electronic Service Standards

As an aid to review of documents served electronically, appearances should follow these procedures:

Merge into a single electronic file the entire document to be served (e.g. title page, table of contents, text, attachments, service list).

Attach the document file to an electronic note.

In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.

Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats)

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

Obtaining Up-to-Date Electronic Mail Addresses

The current service lists for active proceedings are available on the Commission's web page, www.cpuc.ca.gov. To obtain an up-to-date service list of e-mail addresses:

- Choose "Proceedings" then "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding.
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

Pagination Discrepancies in Documents Served Electronically

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

R. _____ LYN/edf/epg

(END OF APPENDIX A)