

Decision 97-12-027 December 3, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's own motion to develop policies and procedures for addressing the potential health effects of electric and magnetic fields of utility facilities.

191-01-012  
(Petition for Modification  
Filed May 12, 1997)

**ORIGINAL**

**OPINION ON MODIFICATION  
OF DECISION 93-11-013**

**Background**

The California Department of Health Services (DHS) filed a petition to modify (petition) Decision (D.) 93-11-013 on May 12, 1997, pursuant to Rule 47 of the Commission's Rules of Practice and Procedure. The petition appeared on the Commission's Daily Calendar of May 14, 1997. DHS, the designated program manager for the Electric and Magnetic Fields (EMF) coordinated education and research program<sup>1</sup> authorized by D.93-11-013 (52 CPUC2d 1 (1993)), seeks an extension of time until December 31, 2000 to complete the EMF program (program) with no additional funding, access to the interest earned on the program funds, and an expansion of EMF nonexperimental (formalized) research activities.

A response to the petition was filed by San Diego Gas & Electric Company (SDG&E) on June 9, 1997. SDG&E does not oppose DHS's request for access to the interest earned on the program funds or to an expansion of formalized research activities. However, it does oppose DHS's request to extend the program until December 31, 2000.

<sup>1</sup> The research program is comprised of separate nonexperimental research and administrative activities.

A reply to SDG&E's response was filed by DHS on July 8, 1997. DHS believes that its time extension request is modest and proportionate to the additional work being performed. Contrary to SDG&E's assertion that it is seeking a three-year extension, DHS contends that it is seeking only a ten-month extension.

Subsequently, on July 22, 1997, SDG&E amended its response to DHS's petition. By its amendment, SDG&E offered new information to support its position that an extension of time is not needed to bring the program to a responsible close. This new evidence consists of a copy of a July 3, 1997 New England Journal of Medicine editorial titled "Power Lines, Cancer, and Fear."

#### **Formalized Research Activities**

Subsequent to the release of its requests for proposal to conduct research activities, the DHS and Stakeholder Advisory Committee (SAC),<sup>2</sup> a public involvement committee established by the DHS as directed by the Commission to have official involvement in the program, began to reconsider the final products of the program. The intended end-product of the program included a research report prepared by each subcontractor, and a final report prepared by the research program manager summarizing the entire research program.

The SAC concluded that written reports would not be sufficient because they were intended to be technical in nature. There were no plans to functionally integrate the research products, to disseminate them in the community, or to express an official pronouncement on the hazard or safety of EMF exposure. The SAC believes that a well-reasoned statement of the results of all of the EMF research, which carries the full weight of a formal DHS determination, should be prepared at the end of the program,

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<sup>2</sup> Representatives from investor-owned and municipal utilities, the Electric Power Research Institute, concerned citizens and environmental organizations, Commission's Office of Ratepayer Advocates, professional and community organizations, utilities' employees and elected officials of cities owning utilities.

instead of the intended scientific opinion of a contractor or program staff. The DHS also intends to develop a final data release policy and provide opportunities for potential users of the research and policy analyses to familiarize themselves with the resulting technical documents.

DHS explains that its final report activities will be carried out by contracted EMF core staff with the assistance of consultants and peer reviewers. This is because risk evaluation requires a critical review and evaluation of all internal and external risk research on EMF, including an updated analysis of the epidemiological data. However, the program staff will be primarily responsible for the work so that it represents the formal opinion of the DHS, and not the conclusions of an individual contractor. The same is true of the policy integration, which some decision makers may choose to regard as a basis for policy making. DHS requests that its modified final work activities be classified as formalized research, and therefore not included in the definition of administrative activities.

The program is precluded from using formalized research funds for administrative activities, and from using administrative funds for formalized research activities. Formalized research activities include the consideration of policy options, clarification of epidemiology studies, analyses of human exposure, and mitigation of engineering research activities. Administrative activities include personnel, operation, science advisor support, peer review, quality assurance and quality control panel, indirect overhead, and state reimbursement for out-of-state travel.

Approval of DHS's request to expand its formalized research activities should not be necessary because the program manager has broad discretion to utilize the funds authorized for a specific category (educational, formalized research, and administrative), to the extent that such funds remain in the specific category. The program manager is also authorized to discontinue or expand formalized research which addresses EMF related to electric utility facilities and power lines to the extent that sufficient funds exist. However, the additional activities which DHS intends to complete may be construed to be a combination of formalized research and

administrative activities, resulting in the unauthorized commingling of formalized research and administrative funds.

To alleviate any perception that the additional work may result in the commingling of formalized research and administrative funds, consistent with our intent to not micromanage how the program should be conducted, and cognizant that there is no opposition to the classification of DHS's additional work activities as a component of formalized research, DHS's request to classify the additional work identified in this order as formalized research should be approved.

### **Funding**

DHS does not envision that supplemental funding will be needed to accomplish the expanded work activity. Initially, it proposed funding the expanded work activity from formalized research reserve funds on an as-needed basis, with unused funds being returned to the contributing utilities on a pro-rata basis at completion of the program. However, given the substantial amount of interest earned on the program funds,<sup>3</sup> DHS finds no need to tap the program reserve funds. Because the order authorizing the program does not discuss the use of interest, DHS seeks authority to use the interest earned to complete its formalized research integration and dissemination stage.

Interest earned from the program was not expected to be a material amount. Although not addressed in the EMF order, it was expected that the utilities' quarterly assessment over a four-year time period would be based on a program budget. However, as shown in Exhibit 5 to the petition,<sup>4</sup> this did not occur. The program received \$3.6 million in assessments during 1994 to 1996 while it spent only \$0.8 million during the same period, leaving \$2.9 million in unused funds to earn interest. The

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<sup>3</sup> The accrued interest on program funds to date is approximately \$227,000. This amount is expected to increase to \$308,225 by the time the project is completed, based on a 4% interest rate.

<sup>4</sup> A projected cash flow of commingled educational, research, and administrative project fund receipts, earned interest, and expenditures.

exhibit also shows that the program is projected to receive all assessments over four years while payments are projected to be made over seven years.

Irrespective of how much interest is earned on program funds, it is reasonable to expect that the use of earned interest would follow the program requirement that funds not be commingled. That is, interest earned on funds earmarked for formalized research should be used for research activities, and interest earned on funds earmarked for administrative purposes should be used for administrative activities.

However, there is no opposition to DHS's request to commingle interest earned on unused educational or administrative funds with the interest earned on formalized research funds, and the request does not require the utilities to contribute additional funds. Consistent with our mandate in the EMF order for the program manager to work within a fixed budget and our desire not to micromanage the program, DHS should be authorized to commingle interest earned on unused educational, administrative and formalized research funds for its expanded formalized research activities.

#### **Time Extension**

The EMF order authorizes a maximum four-year program consisting of separate but coordinated educational, formalized research, and administration activities. The program manager's position was extended one year beyond the four-year program so that relevant research results may be brought to a close.

Now, DHS seeks a ten-month extension so that it may complete the program by December 31, 2000. This time extension is sought because DHS is unable to initiate a final written report or provide opportunities for potential users to familiarize themselves with the final report until the main research phase is concluded on February 28, 1999. DHS needs the additional time to evaluate, integrate, disseminate the research results, and prepare a final report for the Commission.

SDG&E objects to DHS's time extension request because DHS did not explain or justify its delay in starting the program upon the Commission's approval in 1993.

However, SDG&E does not object to a one-year extension of the program to December 31, 1998.

DHS does not concur with SDG&E's belief that the effective date of D.93-11-013 is the operative starting date of the program. DHS needed time to establish a fiscal infrastructure before advertising for staff positions and establishing a comprehensive group of stakeholders. DHS considers the time between the hiring of a fiscal manager on March 1, 1994 and the hiring of the Research Director on February 1, 1995, the last hired employee, to be start-up time not included as a component of the four-year research program time line. Because all formalized research projects will be completed by the first quarter of 1999, four years subsequent to the hiring of a Research Director, DHS concludes that it has satisfied the four-year program requirement. Even though the program manager's position is authorized to exist one year beyond the educational, formalized research and administrative activities, DHS seeks an additional ten months to bring the program to a close.

SDG&E believes that DHS can save several months by requesting progress reports and findings from its contractors so that DHS can begin its final report instead of waiting for the main phase of formalized research to be completed. This proposal is based on SDG&E's understanding of a similar process followed by scientists who complete risk assessments and prepare reports under the United States Congressional mandate for the National EMF-RAPID program. Under such a process, scientific management incorporates developing information into preliminary frameworks suitable for the preparation of risk assessments and regulatory alternatives and provides for revisions upon the availability of new or final information.

SDG&E believes that DHS can save additional months by replacing DHS's Requests for Proposal process to develop nonstandard risk-assessment guidelines with generally accepted health risk assessment methodology in assessing the possible risk associated with EMF exposure.

DHS disagrees with SDG&E's time-saving proposals. DHS already intends to begin working on the report framework prior to receipt of all the results, and its risk assessment guidelines are intended to obtain comments on whether there is any reason

to deviate from or to supplement its risk assessment project. However, completion of its report requires the assessment of uncompleted research results from other research programs, such as the National EMF-RAPID program, and from its own prospective study of miscarriage. The report process also involves formal reviews and revisions which may take several months from the date the program staff submits conclusions, and includes workshops to present policy analyses to a cross-section of typical citizens for input to evaluate and implement the program's products.

The time issue is not new. As argued by SDG&E, we previously rejected DHS's request to fund the program manager position two years beyond the conclusion of formalized research. At that time, DHS was willing to take on the program manager responsibility only if there was funding of a six-year program manager position. Although we concluded that the funding of a program manager position two years beyond completion of program activities was excessive and not in the ratepayers' clear interest, we recognized that there is a need for a limited amount of additional time to bring the program to a close. Hence, we authorized the funding of a five-year program manager position.

If we accept DHS's contention that the hiring of personnel is a start-up cost, not a part of the program, then, for consistency, we must also conclude that winding-down costs are not a part of the program. In addition, such costs cannot be reimbursed because funding has not been provided for either start-up or winding-down costs incurred outside of the maximum four-year program. However, the hiring of employees is an allowable personnel component of the administrative activities which should have been coordinated with the educational and formalized research activities of the maximum four-year program.

We established the coordinated education, formalized research and administrative activities to exist for a maximum of four years, pursuant to Ordering Paragraph 15 of D.93-11-013. The period for this program should have begun on December 2, 1993, the effective date of our order authorizing the program.

Even if the expansion of formalized research activities is abandoned, DHS cannot conclude the program by December 1998 simply because the research projects are not

scheduled to be completed until February 1999. Hence, an extension of time to complete the program is necessary.

Although DHS represents that the formalized research activities will be completed by February 1999, there is no assurance that nonprogram research results, such as from the National EMF-RAPID program, being relied on by DHS for assessment and inclusion in its final program report will be completed and available absent a subsequent extension of time. The program manager should exercise discretion to assure timely completion of the final program report.

Given that the research activities are being extended to March 1, 1999 consideration should also be given to extending the date that the final report is due from the program manager. Prior to receipt of the petition, program closure and final report was the program manager's responsibility. Hence, the program manager's position was extended an additional year beyond the maximum four-year program. Now, the program manager will use the assistance of core staff, consultants and peer reviewers to evaluate, integrate, and disseminate research results to bring the program to a close and to prepare a final report. However, with additional help DHS seeks an additional ten months, totaling twenty-two months, to prepare and issue a final report which was to be completed by one person.

This is a program scheduled to end by December 1998 with the issuance of a final report on short-term formalized research activities to have been completed by December 1997, now extended to March 1, 1999. Approval of the additional ten months will extend this short-term program to December 2000, approximately seven years subsequent to approval. We are not convinced that an additional ten months is needed to prepare a final report (now with the assistance of core staff, consultants and peer reviewers) or in the ratepayers' best interest. The additional ten-month request should not be approved. A final report on the program should be issued by March 1, 2000. However, the program manager should be able to utilize unapplied funds from formalized research, administrative, and interest activities to retain additional staff to assist in the preparation of a final report.



Although we chose to not micromanage this program and gave the program manager broad discretion in managing this program, we are concerned as to whether some controls should now be required. This concern results from the collection of program funds well before such funds are needed, the substantial amount of earned interest, the need to commingle interest earned from unused educational and administrative funds, expected payment of a maximum four-year program over seven years, and payment of start-up activities excluded from the four-year program time line.

To alleviate our concern, we will request the Commission's Energy Division to conduct a check on the of the financial program administrator activities to determine whether operating in accordance with the parameters set forth in our orders and whether it is appropriate to implement collection and payment activities at this time. Upon a positive determination, the Energy Division should prepare a Resolution for the consideration of establishing appropriate procedures. Upon a negative finding, the Energy Division need not undertake any further action.

#### **Findings of Fact**

1. DHS filed a petition to modify D.93-11-013 on May 12, 1997 for authority to extend the program until December 31, 2000 with no additional funding, access to the interest earned on the program funds, and an expansion of EMF formalized research activities.
2. SDG&E filed a June 9, 1997 response to the petition.
3. DHS filed a July 8, 1997 reply to SDG&E's response.
4. SDG&E filed a July 22, 1997 amended response to DHS's petition.
5. DHS seeks to include additional work activities in the program's formalized research activities.
6. The program is precluded from using formalized research funds for administrative activities, and from using administrative funds for formalized research activities.

7. Administrative activities include personnel, operation, science advisor support, peer review, quality assurance and quality control panel, indirect overhead, and state reimbursement for out-of-state travel.

8. The program manager is authorized to discontinue or expand formalized research activities as deemed necessary.

9. The additional formalized research activities may be construed to be a combination of formalized research and administrative activities.

10. There is no opposition to the classification of DHS's additional work activities as a component of formalized research.

11. DHS does not envision that supplemental funding will be needed to accomplish the expanded formalized research activities.

12. DHS seeks authority to use interest earned on program funds to complete its additional formalized research activities.

13. Interest earned from the program was not expected to be a material amount.

14. All program assessments are projected to be collected over four years while payments are projected to be made over seven years.

15. There is no opposition to the commingling of interest earned on educational or administrative funds with the interest earned on research funds.

16. The EMF order authorizes a maximum four-year program consisting of separate but coordinated educational, formalized research, and administration activities.

17. The program manager's position was extended one year beyond the four-year program so that relevant research results may be brought to a close.

18. DHS seeks a ten-month extension so that it may complete the program by December 31, 2000.

19. SDG&E objects to the extension request.

20. DHS considers the time between the hiring of a fiscal manager on March 1, 1994 and the hiring of the Research Director on February 1, 1995, the last hired employee, to be start-up time not included as a component of the four-year research program time line.

21. Completion of the final program report requires the assessment of uncompleted research results from other research programs, such as the National EMF-RAPID program, and from the program's own prospective study of miscarriage.

22. We previously rejected a request from DHS to fund the program manager position two years beyond the conclusion of formalized research.

23. If we accept DHS's contention that the hiring of personnel is a start-up cost, not part of the program, then, for consistency, we must also conclude that winding-down costs are not part of the program.

24. Start-up costs not part of the four-year program cannot be reimbursable because funding has not been provided for activities outside of the coordinated program.

25. The hiring of employees is an allowable personnel component of administrative activities which should have been coordinated with the educational and formalized research activities of the maximum four-year program.

26. The period for this program should have begun on December 2, 1993, the effective date of the order authorizing the program.

27. Formalized research projects are not scheduled to be completed until February 1999.

28. There is no assurance that nonprogram research results being relied on by DHS for assessment and inclusion in its final program report will be completed and available absent a subsequent extension of time.

29. The program manager intends to use the assistance of core staff, consultants and peer reviewers to evaluate, integrate, and disseminate research results to bring the program to a close and to prepare a final report.

30. Approval of the additional ten months will extend the close of this program to December 2000, approximately seven years subsequent to approval.

#### **Conclusions of Law**

1. DHS's additional work identified in this order should be classified as formalized research.

2. DHS should be authorized to commingle interest earned on educational, administrative and formalized research funds for its expanded formalized research activities.

3. The program manager should exercise discretion to ensure that the research projects are completed timely.

4. The additional ten-month request should not be approved. A final report on the program should be issued by March 1, 2000.

5. The program manager should be able to utilize accumulated interest and unapplied funds from formalized research and administrative activities to retain additional staff to assist in the preparation of a final report.

6. A check on the activities of the financial program administrator should be made to determine whether it is appropriate to implement collection and payment controls at this time.

## O R D E R

### IT IS ORDERED that:

1. Decision (D.) 93-11-013 shall be modified to the extent provided in the following Ordering Paragraphs.

2. The additional formalized research activities discussed in the body of this order shall be classified as formalized research.

3. Interest earned on program's educational, formalized research, and administrative funds may be used to fund the additional formalized research activities approved in Ordering Paragraph 2.

4. The Electric and Magnetic Fields program approved in D.93-11-013 shall end no later than March 1, 1999. A final report on the program shall be submitted by the program manager to each Commissioner and to the Commission's Energy Division Director no later than March 1, 2000. The program manager may use accumulated and interest unapplied funds from the formalized research and administrative activities to retain staff to assist in the preparation of a final report. Any remaining program funds

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shall be refunded to the program participants based on their respecting financial contribution to the program.

5. The Commission's Energy Division shall conduct a check on the activities of the financial program administrator to determine whether it is appropriate to implement collection and payment controls at this time. Upon a positive determination, the Energy Division should prepare a Resolution for the consideration of establishing appropriate procedures. Upon a negative finding, the Energy Division need not undertake any further action.

6. The Executive Director shall serve a copy of this order on the Commission's Energy Division.

7. Investigation 91-01-012 is closed.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

P. GREGORY CONLON  
President

JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
RICHARD A. BILAS  
Commissioners