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Elusive Threat

Electric Utilities Brace For Cancer Lawsuits Though Risk Is Unclear

Companies Spend on Cutting
Electromagnetic Fields
As Lawyers Smell Blood

Michael Withey's Data Bank

By BILL RICHARDS

Small Reporters of THE WALL STREET JOURNAL.
SEATTLE — If the electric utility industry had gone looking for trouble, it couldn't have picked a thornier issue than electromagnetic fields, nor a fiercer opponent than Michael Withey.

Mr. Withey, an intense, bushy-haired Seattle attorney, has made a career of representing such underdogs as farm and cannery workers, whistle-blowers and antiwar activists. He caught the utilities' attention nearly three years ago when he pressured Boeing Co. into paying more than \$500,000 to settle a suit filed by a former employee who claimed that his leukemia was caused by exposure to electromagnetic radiation. The lawsuit was one of the first to attempt to link cancer to magnetic fields produced by electric current, known as EMF.

Since then, Mr. Withey has become the leader of a nationwide group of law firms eager to turn EMF into a legal battleground. If they are successful, some industry experts predict, utilities could end up paying out billions in EMF-based claims.

Burden of Proof

Publicly, utility officials have brushed off EMF as a threat. Leonard Sagan, senior medical scientist at the Electric Power Research Institute in Palo Alto, Calif., the industry's research arm, calls EMF concerns "premature." Some utility officials say Mr. Withey and his colleagues are engaged in a cancer scare to drum up business. "I think it is still fair and accurate to say there's no basis for concluding on present science that EMF causes adverse health effects," says Tom Watson, a Washington, D.C., attorney whose firm has represented about 140 utilities in EMF-related cases.

But privately, EMF has sent a jolt through the nation's electric utilities. A survey by the Public Utility Commission of Texas last year found 201 challenges to utility projects around the U.S. in which EMF was an issue. At least three suits have been filed in federal courts claiming that cancers were caused by exposure to utility lines. Last November, researchers from Sweden's prestigious Karolinska Institute reported finding nearly fourfold higher leukemia rates among Swedish children living near power lines. In the much larger U.S. population of children, that would translate into more than 500 cases of child leukemia a year.

Mindful of previous mass-tort assaults such as those launched against asbestos manufacturers nearly two decades ago, utilities are flocking to lawyers like Mr. Watson for advice about EMF. And they are quietly pouring billions of dollars into efforts to cut EMF exposure from their power lines.

"We tend to be frightened by cancer and radiation and children," says Carlos

Alvarez, a Tallahassee, Fla., attorney who has represented Florida utilities in EMF cases. "You tie those emotional words together and it will scare the daylights out of you."

What is notable about the EMF dispute is that so far no scientist has conclusively tied EMF to cancer.



Michael Withey

Several population studies besides Karolinska's, including one funded by the industry research arm at the University of Southern California, have recorded increased leukemia in children living near power lines. There have been numerous scientific reports of elevated levels of leukemia in people who are exposed to high EMF levels on the job, such as power-line repairmen and workers in aluminum smelters. Researchers here in Washington state are also looking into whether EMF exposure may be linked in some way to breast cancer. Most recently, questions have been raised about whether EMF from cellular telephones could be related to brain tumors. (Researchers generally discount that untested notion, since cellular phones emit very low EMF levels and exposure is intermittent.)

'Electrophobia' Diagnosed

Most researchers say it could be a decade or more before the idea of a link between EMF and cancer is either proved or discredited. Some doubt that a connection will be found. Robert Adair, a Yale physicist and an outspoken critic of EMF research to date, calls the utilities' reaction "electrophobia." He says the fields are far too weak to cause damage — that it would take EMF levels 150 times higher than those measured by the Swedish researchers to pose a hazard. "My strongly held view," Dr. Adair says, "is that this is an astonishing waste of money."

Utilities, however, may not have a choice. In the EMF dispute, the lawyers seem to be outrunning the scientists. "All it's going to take is one or two good hits and the sharks will start circling," says Tom Ward, a Baltimore attorney who is suing

Elusive Threat: Though Risk Is Unclear, Utilities Brace for Lawsuits Linking Cancer and Power Lines

Continued From First Page

Northeast Utilities Co. and its Connecticut Light & Power Co. unit over an alleged EMF cancer.

Mr. Watson, the lawyer who defends power companies, says his EMF work for utilities has tripled in five years (he says he hasn't lost a case yet). The case load could grow still more, he says, as the first round of EMF cases makes its way through the courts. Should utilities start losing, he notes, "You'll see a very substantial increase in litigation — and that could be an understatement."

Law Before Science

That possibility makes many utility executives nervous. "This is a double-edged sword," says Michael Main, EMF risk manager for Puget Sound Power & Light Co. Mr. Main concedes that Puget Power, based in Bellevue, Wash., would be legally and ethically remiss if it ignored scientific evidence of an EMF hazard. "But if you spend a lot of money and there's no problem," he says, "the shareholders take it in the neck and you have the utility commission to answer to."

By some estimates utilities are now spending more than \$1 billion a year on EMF, up from practically nothing just five years ago. Hawaiian Electric Industries Inc., for example, laid out nearly \$5 million to reroute and reconfigure power lines after the issue arose. "We want to avoid lawsuits," says Francis Hirakami, the utility's senior electrical engineer.

Puget Power fields as many as 10 calls a week from customers anxious about EMF. Voters in Whatcom County, Wash., rejected the company's proposed 230,000-volt transmission line two years ago after EMF became an issue. For good measure, they restricted future power-line construction to existing industrial corridors, a move that Puget Power says could add \$10 million to the cost of building a new line.

Other utilities are burying lines, widening rights-of-way and even offering to buy up homes along power-line routes to ease public anxiety.

So far, most EMF spending by utilities has gone toward rerouting or reconfiguring wiring on new lines. Some are also practicing "prudent avoidance" — a catch-all industry term for inexpensive alternatives that can range from providing home measurements of EMF to counseling on how to arrange appliances to lower exposures. "There are lots of things you can do before you start moving power lines around," says Gilbert Omeron, who heads the University of Washington's school of public health and serves as chairman of the industry research arm's EMF advisory council.

Such measures are relatively cheap compared with the expense of curbing EMF exposure for the entire 642,000-mile web of overhead transmission lines crisscrossing the country. (Transmission lines carry power cross-country at high voltage, generating the most intense sustained EMF levels — and controversy.)

Costlier Than Asbestos?

Burying existing power lines, experts say, could cost up to 20 times more than hanging them from pylons. The expense of making significant cuts in EMF exposure for the nation's transmission grid could end up dwarfing the asbestos payouts. For instance, when officials at Pennsylvania Power & Light Co. studied the cost of curbing EMF from the utility's 3,700-mile system of overhead lines recently, they came up with a \$600 million price tag. "With all this scientific uncertainty about EMF, who's going to pay for that?" wonders Bernard Bujnowski, EMF issue manager for the Allentown, Pa., utility.

Keith Florig, a researcher at Resources for the Future, a think tank in Washington, D.C., predicts that the cost of curbing EMF exposure from both new and existing transmission lines could eventually run as high as \$10 billion annually. Such spending, Mr. Florig estimated in a study published last July in the *Journal of Science*, would boost the cost of electricity by several percentage points.

Critics like Mr. Withey say the spending is overdue. "The utilities took the wrong turn on this issue 10 years ago when they decided to hunker down and say the evidence doesn't warrant serious mitigation," he says. Now, "they have to bite the bullet and pay what's necessary."

The power-line issue has become something of a crusade for the 46-year-old attorney. Mr. Withey even called in experts to sweep his Seattle home two years ago to see if dangerous electromagnetic fields were lurking within (they weren't). Last year, when the Edison Electric Institute, a utility trade group, invited him to address its annual convention in Washington, D.C., Mr. Withey's message was blunt: "Do the right thing and clean up EMF levels now or you'll end up paying a lot in negligence lawsuits later."

Mr. Withey and his colleagues in the nascent EMF bar insist they aren't out to redo the asbestos onslaught, which flooded courts with more than 200,000 lawsuits. "We want to change corporate conduct," he says, "not litigate lawsuits."

But some lawyers clearly smell blood in the EMF issue. Two years ago, Mr. Withey helped organize nine law firms around the U.S. into a group calling itself the Electromagnetic Radiation Case Evaluation Team. The lawyers have built a computerized data bank on EMF and screen potential cases.

Test Case in San Diego

While the group itself doesn't file lawsuits, members have already sued utilities in Connecticut, Georgia and California, charging that their power lines caused cancer. Mr. Withey sued San Diego Gas & Electric Co. last year, alleging that its power lines are responsible for kidney cancer in a four-year-old girl. The case, which is expected to come to trial later this year in federal court in San Diego, is seen by many as the first major court test of utilities' EMF liability.

Mr. Withey calls the San Diego case "a slam dunk" and predicts it will trigger an avalanche of claims. Some of his potential opponents agree. "You don't need scientific proof to go to court, although you

might to win" says Jesse Dillon, a staff attorney who sits on Pennsylvania Power & Light's EMF study group.

Already, utilities are hearing from homeowners who live near power lines and are bristling over plunging property values. Mr. Ward says he was contacted recently by a Philadelphia man whose house registered such high EMF levels from nearby power lines he moved out. He says he is considering suing the utility on the ground that its power lines have made it impossible for his client to enjoy his property.

Pylons in the Yard

In Bellingham, Wash., Guillermo Powell sits in his living room looking out at a pair of huge pylons carrying Puget Power's transmission lines through his backyard. Mr. Powell says he has given up trying to sell his cedar-shaded, four-bedroom house, even though he is asking \$15,000 less than the appraised value.

About 50 potential buyers turned away because of the power lines, he says. "People would come up the drive, see the lines in the backyard and tell the realtor to put it into reverse," says Mr. Powell, himself a real-estate agent. "I had no idea people were so scared of this stuff."

Mr. Powell's solution: "Puget Power should bury those lines," he says. And if that doesn't happen, "then the house isn't worth anything and Puget Power should buy it so we can go somewhere else."

Puget Power isn't buying that idea, but it has come up with a novel solution of its own. The utility is preparing to ask Washington's Utilities Transportation Commission, which regulates the state's power lines, to let it bill customers for EMF abatement. Under the proposal, an area like Whatcom County that wants to cut EMF exposure by burying or reconfiguring wires would be given a rate "menu" containing extra charges for the work.

A Right or a Luxury?

Puget Power's plan would be the first attempt to tie the cost of EMF abatement directly to the customers raising health concerns. Utility officials say the rate add-ons would be warranted because EMF is an unproven hazard and because abatement measures are a luxury, like burying lines for aesthetic reasons. "Our responsi-

bility is to put in the overhead lines," says William Finnegan, Puget Power's vice president for engineering. "If people want underground lines to reduce EMF, they ought to pay for it."

But state regulators are likely to raise questions about a utility's right to limit costly EMF abatement measures just to well-to-do customers. "This is a very contentious, very difficult area," says Richard Casad, one of the Washington regulatory panel's three commissioners. "It would seem grossly unfair to leave those without resources unprotected."

Moreover, utility regulators in Washington, as in most states, are used to focusing on more cut-and-dried issues like setting rates and aren't anxious to become safety arbiters. "We go on the assumption utility managers get paid big bucks to make those judgment calls and operate in a prudent manner," says Kenneth Elgin, assistant director for energy for Washington's regulatory agency.

Karl Rabago, one of Texas's three utility commissioners, calls the EMF issue "a major dilemma" for regulators. "It's a question of what do you do in the face of scientific uncertainty," says Mr. Rabago, a former law professor at the University of Houston.

Mr. Rabago favors spending to reduce EMF exposure even though the cancer link is unproved. The EMF issue, he says, has brought out "the dark side" of the utility industry's conservative approach to planning. "We don't deal with risk until it's absolutely certain," he says.

Catch-22

But attorneys like Mr. Watson say such mitigation spending itself carries a potential liability risk for utilities. He often counsels his utility clients to move cautiously on EMF abatement to avoid admitting there is a risk from magnetic fields.

"I tell them to be careful about making an unwarranted admission and to make a good record on what they are doing and why," the lawyer says. In light of scientific uncertainty over EMF, utilities must be able to answer questions from potential litigators like Mr. Withey, he says. "You have to be able to explain why you put the power line here rather than there. We tell them to think through these decisions very carefully."

lg2