

Decision No. 87192**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own
 Motion into the Adequacy and Reliability
 of the Energy and Fuel Requirements and
 Supply of the Electric Public Utilities
 in the State of California.

Case No. 9581
 (Filed July 3, 1973)

Investigation on the Commission's own
 motion into the natural gas supply and
 requirements of gas public utilities
 in the State of California.

Case No. 9642
 (Filed December 18, 1973)

Investigation on the Commission's own
 motion into the establishing of
 priorities among the types of categories
 of customers of every electrical
 corporation and every gas corporation
 in the State of California and among
 the uses of electricity or gas by such
 customers.

Case No. 9884
 (Filed March 11, 1975)

(See Decisions Nos. 85189 and 86357 for appearances.)

O P I N I O N

On December 2, 1975 the Commission issued Decision No. 85189 adopting an end-use system for the allocation of the state's supply of natural gas thereby replacing the price-priority system.^{1/}

On December 30, 1975 Decision No. 85295 was issued, which ordered that the state's gas utilities shall not provide service

^{1/} There have been a number of other decisions issued dealing with the state's energy problems since opening Cases Nos. 9581, 9642, and 9884. See D.81938 dated 9/25/73; D.82139 dated 11/13/73; D.82881 dated 5/15/74; D.83612 dated 10/16/74; and D.83819 dated 12/10/74.

for new swimming pool heaters after April 1, 1976 without authority of the Commission.

Petitions for rehearing suspending the effective date of Decision No. 85295 were filed by Southern California Gas Company (SoCal) and the Swimming Pool Industry Energy Conservation Task Force (SPEC).^{2/} Subsequent petitions seeking similar relief were filed by Teledyne Laars (Teledyne) and the Whirlpool Therapy Bath Industry (Spa Industry).^{3/}

On January 27, 1976 Decision No. 85399 granted a rehearing and continued the suspension of Decision No. 85295.

Nine days of hearings were held in San Francisco and Los Angeles in March and May 1976 with testimony and evidence from 46 witnesses. The matter was submitted on May 20, 1976 with concurrent briefs to be filed on August 16, 1976. At the request of SPEC the date for filing briefs was extended to August 23, 1976.

In issuing Decision No. 85295 we reviewed that portion of these proceedings dealing with the use of natural gas for swimming pools and concluded that such use must be classified as a luxury and that since conservation of such a valuable resource is vital prompt action must be taken to discourage such uses. We also noted in that decision that all uses that could be classified as a luxury should be prohibited.

The issue to be resolved here is whether the use of natural gas for swimming pool heaters is a luxury use of a valuable natural resource that should be discontinued in order to conserve energy and whether such a prohibition is enforceable, or should an alternative to an outright ban be adopted.

2/ SPEC is a nonprofit, voluntary association of swimming pool builders, subcontractors, manufacturers, retailers, service companies, suppliers, and distributors formed in December 1973.

3/ The members of the Spa Industry consist of Aralong Spas, Inc.; Blue Haven Spas; California Spas; Gerico Fiberglass Products; Home Spa and Patio; Hydro-Spa, Inc.; Leisure Spa, Inc.; Leisure Spa World; Marline Fiberglass, Inc.; Metro Pools; Pool Town; Riviera Industries, Inc.; South Pacific Industries, Inc.; Spa Broker; Sun King Spas; Universal Baths; and Vico.

Position of Parties

Staff

The Commission staff presented two witnesses in support of the prohibition of natural gas swimming pool heaters. Mr. Iraj Farzaneh introduced Exhibit 107, Report on Swimming Pool Heaters, and Mr. R. W. Copeland introduced Exhibit 113, Rate Design Applications - New Connections for Swimming Pool Heaters.

Witness Farzaneh testified that all new swimming pool heaters should be prohibited unless there is proven therapeutic need and proposed that the Commission request permit-issuing agencies in California not to issue permits associated with pool construction if such installations would include gas heaters. ✓

As one alternative to the concept of prohibiting new swimming pool heater connections, Mr. Copeland proposed special summer rates for all residential customers whereby monthly usage in excess of 80 therms in southern California and 90 therms in northern California would be billed at the equivalent cost of fuel oil as a means of conservation. Mr. Copeland reasoned that any residential customer consuming in excess of the 80 or 90 therms must be utilizing a pool heater.

To support the proposed prohibition of natural gas-fired pool heaters, the staff suggests as an alternative that owners use a combination of a solar heating system with a pool cover when the pool is not in use. The staff states that based on a Stanford Research Institute (SRI) study this method is both economical and sufficiently efficient to maintain a comfortable pool temperature during the swimming season.

Staff suggests, however, that a ban on new gas hookups for swimming pools should provide exemption categories for therapeutic purposes and public swimming pools. The recommendations for exemption provisions appear in Appendix A.

The staff states that the contention that a ban on new gas hookups would have a serious effect on the swimming pool industry in California is based on unrealistic assumptions. The staff argues that the proposed ban would be in the public interest notwithstanding the fact that it may be unpopular with a majority of people as the public is not fully aware of the scarcity of natural gas. A ban would assure conservation since natural gas would be used most effectively for purposes for which reasonable alternatives do not exist.

The staff recommends that if a ban is adopted the gas utilities should advise permit-issuing agencies in their service area of the Commission's order, and that those agencies should be requested not to issue any permit for a swimming pool heater without an exemption from the Commission. It is suggested that the Commission send a copy of its decision to the California Department of Housing and Community Development (CDHCD), so that CDHCD may alert all appropriate local agencies that further hookups of natural gas for swimming pool heaters will not be permitted without an exemption granted by the Commission.

The staff's brief states that:

"Under the FPC's final allocation plan, which is expected to be in effect shortly and by which the major gas utilities are projecting their future deliveries in the expectation that the plan will be adopted shortly, allocations of natural gas from the El Paso Natural Gas Company will be a function of a base period which is already in the past, and, hence, established. In the meantime, the FPC has said specifically that it does not intend that its allocation methods shall penalize those states which adopt priority plans to serve their own important needs. Clearly, the FPC, also, is mindful of the need to encourage conservation. To assume that interstate purchasers will be permitted to escalate their requirements by unrestrained increases in consumption for nonessential purposes would be to disregard the Federal Power Commission's express intent."^{4/}

^{4/} The FPC has not, in any decision, referred to the use of natural gas for heating swimming pools as a nonessential use.

Finally the staff argues that a ban is consistent with Decision No. 85189 which established priorities for the allocation of natural gas wherein the residential customer was given the highest priority because of the inability to use alternate fuels. The staff cites Commissioner Ross' concurring opinion in Decision No. 85189 which warned against the assumption that residential use was entitled to the highest priority regardless of how a customer chose to use natural gas.

Staff recommendations for implementing the proposed ban are attached as Appendix B.

SPEC

SPEC presented witnesses and testimony to the effect that swimming and swimming pools are a healthful, beneficial, individual, and family activity; that there would be disastrous economic results to the state if a ban were imposed; that there is no saving of natural gas by such a ban; and that voluntary conservation is the best approach to save natural gas.

SPEC argues that swimming is beneficial for a person's physical and mental well-being and that heated pools increase the use of pools for these purposes. In support of this argument witnesses appearing for SPEC included Dr. James White, Supervisor of Physical Education and Director of Research for the Fitness and Health Behavior Laboratory at the University of California at San Diego; Mr. John Tisdale, Executive Director of the Peninsula YMCA in San Diego; Mrs. Donna Benveniste, a homemaker; Mrs. Kaye Wyler, a swimming instructor and homemaker; Mr. Gonzolo Valencia, Principal of Brownell Intermediate School in Gilroy, California; Mr. John Robinson, Director of Community Relations at Rossmoor Adult Community in Walnut Creek; Dr. Lawrence Taylor, a physician in Covina, California; Mr. Arthur E. Lambert, the water polo coach at Stanford University; and Debra Meyer, an Olympic Games gold medal winner.

SPEC also argues that the imposition of a natural gas heater ban will bring disastrous economic results to the citizens and businesses of California. To support this proposition SPEC presented Mr. James Vas Dias, a senior industrial economist with Stanford Research Institute who sponsored a study on the economic impact of the proposed ban. The SRI report concludes that a ban on new connections of natural gas swimming pool heaters would result in a reduction of the equivalent of 5,100 full time jobs and wages and salaries of \$70,000,000 and a loss in state and local taxes of \$11,000,000. Mr. Vas Dias also stated that many pool builders would go out of business, particularly the smaller builders, causing an increase in concentration in the pool industry with the resultant decrease in competition and higher prices.

Buttressing the conclusions contained in the SRI report was Alvin Weisbrod, president of Anthony Pools (Anthony). Mr. Weisbrod stated that Anthony had made a study to determine the nature and extent of the financial impact which would accrue to Anthony if the ban were implemented. It was concluded that based on 1975 figures, gross profit on sales before taxes and corporate charges would be reduced from \$1,665,000 to \$341,000 and that based on this change it was questionable whether Anthony could continue to operate in California.

Mr. Weisbrod further stated that if the ban became a reality the decreased sales volume would necessitate the closing of Anthony's regional sales and manufacturing operations and moving the manufacturing operation out of state.

Testifying to the same effect were other pool builders including:

Mr. Norman Zimring, president of Aquatic Pools,
Sherman Oaks, California

Mr. Harold Udekoff, president of Swan Pools,
Sherman Oaks, California

Mr. Richard Carlson, president of Master Pools, Inc.,
El Monte, California

Mr. Robert Winship, owner of Palos Verdes Pools,
Palos Verdes, California

Mr. Edward Sotto, general manager of Aquatic Pools,
Orange County, California

Mr. Ellis Call, regional manager for De Mar Baron
Pool Plastering, Dublin, California

Mr. Ken Perry, president of Peribilt Pools,
Carmichael, California

With respect to the argument that there is no saving of natural gas with the imposition of a ban, SPEC argues that the stated purpose of a ban is conservation and efficient use. SPEC takes the position that any gas "saved" by not being used to heat a swimming pool would be used for a lower priority use under the end-use priority decision. Thus gas would not be saved but merely redistributed from a P-1 customer to a lower priority.

SPEC states that since there is no saving of natural gas with the imposition of a ban, the education of the public and a public awareness program stressing conservation and more efficient use of natural gas should be followed.

Finally, the SPEC witnesses testified that solar energy is not now a presently available economic alternative to a natural gas heater and that of the present alternatives available, none are feasible because of the prohibitive cost.

Whirlpool Therapy Bath Industry

The Spa Industry presented testimony and evidence to support the proposition that whirlpool baths are primarily utilized for medical and therapeutic purposes and gas to heat spas cannot be classified as a luxury use; that such a ban would cause severe and disastrous economic consequences; that spa baths are designed specifically for and can only utilize gas as the heating source; and that any attempt to regulate the whirlpool therapy bath industry by requiring certain exemptions subject to strict standards will fail.

The Spa Industry stated that a blanket exemption from any ban should be granted for whirlpool baths since it is a commodity distinctly and essentially different from a conventional swimming pool. The basic function and purpose of a spa is therapeutic; it is small, the average size four feet by six feet with a water depth of approximately two and one-half feet and a capacity of approximately 800 gallons, and the bather can only sit in a whirlpool bath for short periods of time because it is heated to approximately 105 degrees.

The Spa Industry asserts that the whirlpool bath is one of the safest and most effective physical therapeutic agents in use today and as such its use is of extreme social value and importance to the citizens of the state and natural gas as a fuel to heat whirlpool baths cannot logically be classified as a luxury or inferior use. They aver that the staff proposal that exemptions for therapeutic spas be handled on an individual basis begs the issue because to obtain an exemption an additional burden and cost is placed on the individual seeking the exemption. In addition the costs of enforcement and subsequent policing by the utility and the Commission would be astronomical.

It is also argued that whirlpool therapy baths as designed, produced, and manufactured specifically require and can only utilize natural gas as their heat source and that solar energy as a heat source is an art still in its infancy and cannot be adopted for whirlpool baths. The same is true of electricity and oil heating systems because of technological problems and concomitant prohibitive costs.

As with other parties participating in the end-use priority phase of Case No. 9642, the Spa Industry states that the natural gas used by whirlpool bath owners for heating is so small that any savings achieved is infinitesimal when measured against the disastrous and severe economic side effects.

Finally, they argue any attempt by the Commission to regulate the whirlpool bath industry by requiring certain exemptions, subject to strict standards, will result in failure because the standards for exemptions are unknown.

Pacific Gas and Electric Company (PG&E)

PG&E opposes any ban on the use of natural gas to heat swimming pools as an unenforceable burden on the utility while imposing substantial costs on other ratepayers and the possibility of creating unsafe conditions.

PG&E argues that such a ban denies the public its freedom of choice and that whenever such a restriction is adopted the public will not support it. As an example, PG&E cites the recent gasoline shortage; when the gasoline lines disappeared public support likewise disappeared. PG&E asserts that the only feasible alternative is a voluntary conservation plan as proposed by parties.

With respect to safety, PG&E believes that a ban would encourage parties to circumvent the proscription by connecting heaters to an existing gas houseline without benefit of a permit or inspection by persons familiar with the stringent requirements attendant on a safe gas installation. Also, such connections would be made without the utility's knowledge since gas houselines are normally hidden from view.

The staff recommended a utilities' billing analysis program to identify large increases in use by residential customers with a followup program to reduce that usage. No study was introduced of the cost of such a program and PG&E states that evidence is lacking that such a program could identify those customers with swimming pools. PG&E points out that there are 2.3 million gas customers on its system. It is estimated that 10 percent of the customers use more than 100 therms so that 230,000 customers would have to be contacted to locate the estimated 70 to 80 thousand pool heaters on the system.

Another example cited as making a ban impractical is that in 1975 there were 46,570 new gas connections which would require a marketing representative contact to determine whether a natural gas-fired pool heater was contemplated. Even if a negative response is received there is no assurance that a heater would not be connected in the future.

PG&E also objects to the staff recommendation of separate metering and higher rates for those found exempt from a ban arguing that if a person is qualified for exemption for medical reasons, he should not have to pay a higher rate since the exemption would have found his use essential.

PG&E stressed that little consideration was given to the administrative burden on the utility and the Commission by those proposing a ban. They cite staff witness Farzaneh's testimony as an illustration of that administrative burden. Mr. Farzaneh stated that it was envisioned that a person seeking an exemption would apply to the utility for a permit. If the utility felt that the customer has a valid case the application would be forwarded to the Commission for approval. An appeal process would be available for denial by either the utility or the Commission. It is contended by PG&E that this process would place an intolerable administrative burden on both the utility and the Commission.

Regarding the staff's separate meter alternative, PG&E argues that a special rate at a higher level than the general service rate would have to be set to cover the cost of the second meter to serve as an incentive to conserve gas. The problem here is whether such a rate would encourage the conservation desired since most people have a sizable investment in their pool and would be willing to pay a higher rate.

Under the staff proposal a three-tier rate structure would be established: a lifeline rate, the present rate for consumption, and a new block rate for use beyond

the present average consumption. PG&E states that the staff first established a "normal" consumption range. For summer usage in northern California an upper limit of 90 therms per month was set. The staff witness stated that approximately 85 percent of all summer bills fall within either the lifeline or the average residential consumption range. PG&E asserts that with 2.3 million residential customers, some 345,000 customers would be paying rates to heat swimming pools while there are only 70-80 thousand pools on the PG&E system.

Finally, PG&E argues that any saving of natural gas by the residential customer would only make such gas available to a lower priority user. A ban also raises the possible loss of gas from interstate sources based on the El Paso curtailment plan in RP 72-6.

As an alternative to the proposed ban, PG&E proposed that a combination of the applicable portions of the intensified conservation programs of the California utilities be expanded into a statewide effort with other participants. A statewide task force could be formed whose purpose would be to:

- "(1) maximize public awareness of the need to conserve,
 - (2) review and comment on tests of alternative pool heating and conservation techniques, (3) evaluate the effectiveness of programs which have been implemented, and (4) recommend such further actions as may be required to effect the desired reduction in the use of gas and electricity for swimming pool heating."
- (Exhibit 117, p. 4.)

PG&E stresses that since their proposal for conservation is directed to existing as well as new pools, the potential for large volume reductions in gas use is greater than would be realized by a prohibition of new heaters.

SoCal Gas

SoCal is opposed to a ban on the specific end-use of new pool heating as unenforceable and inappropriate and that the staff's three-tier rate design is undesirable because it promotes the use of gas by commercial and industrial customers while penalizing

residential customers who do not have pools. Should the Commission determine that specific regulation of new pool heaters is necessary and appropriate to achieve conservation, SoCal believes its rate design presentation is the most practical alternative available.

In support of its position, SoCal argues that the most formidable of the enforcement obstacles to the proposal is the Commission's lack of authority to require compliance by other permit-issuing agencies. As conceded by staff witness Farzaneh, it could be possible to install pool heaters in some counties and cities but not others.

Another enforcement problem relates to the lack of jurisdiction of the Commission over the Municipal Gas Department of the city of Long Beach and other municipally owned distribution systems. Another is the possibility that a customer could circumvent a ban by installing a heater by himself. In addition, even if a utility were to suspect a customer of operating an illicit pool heater, the utility could legally do no more than inquire at the front door and honor the response received.

With respect to staff's three-tier rate structure, SoCal presents the same argument as PG&E. On cross-examination, the staff witness agreed there are approximately 500,000 residential customers on the SoCal system using 80 or more therms per month. With only 250,000 residential pools the staff's proposal would, in effect, penalize 250,000 customers to induce pool owners to conserve gas.

SoCal also argues that a three-tier rate design would translate into lower rates for virtually all commercial and industrial customers since excess revenues would be collected from the residential class and that such a reduction would be a departure from the staff's stated goal to achieve a uniform commodity rate for all classes of customers.

Lastly SoCal states that in response to a staff data request a possible tariff sheet was filed setting forth a rate design

which would induce conservation without denying the customer the freedom of choice to determine his own energy requirements.

Teledyne Laars

Teledyne is a manufacturer of natural gas swimming pool heaters. It submits that Decision No. 85295 should be vacated and the Commission should continue only voluntary conservation programs. Teledyne also urges further investigation and study into voluntary conservation programs in order for the Commission to determine the priorities of specific uses of natural gas for residential purposes in relation to all other uses in the end-use priority system as adopted in Decision No. 85189.

In addition to the arguments made by other parties to the proceeding, Teledyne argued that the Commission failed to show after hearing that heating swimming pools with natural gas as a fuel did not have a high social value relating to public benefit and public need as required by Sections 2771-2776 of the Public Utilities Code.

Discussion

In Decision No. 85295, we stated that conservation of a valuable natural resource is so vital that action, however unpopular, must be taken to discourage luxury and wasteful uses of natural gas. While Decision No. 85295 was restricted to new swimming pool heaters, we stated that all uses that could be classified as a luxury should be prohibited. The purpose of a proscription is not to penalize, but to encourage the efficient use of what is proving to be a rapidly diminishing natural resource.

With the exception of the staff, the other participants all urge that the Commission adopt as an alternative to the prohibition as contained in Decision No. 85295 the intensification of voluntary conservation programs. They argue that voluntary conservation programs of the three major utilities are working. The SPEC

witnesses proposed that a stub-out should be installed in the plumbing of all new pools so that these systems will be in a position to utilize solar heating systems.

It was stressed in the hearing that an important feature of a voluntary program is that freedom of choice is retained without a governmental agency review, thereby removing some of the more vociferous objections to the proposed ban. We agree.

The most likely alternatives to natural gas pool heaters are (1) light fuel oil heaters, (2) liquefied petroleum gas heaters, (3) electric heaters, and (4) solar heaters. Except for solar, alternate fuels at present are more costly than natural gas. LPG and fuel oil cost approximately 30 to 40 cents per therm, plus the requirement of a storage tank on the premises, and electricity 75 cents per therm, as compared to approximately 16 cents per therm for natural gas. Should there be a ban, the use of these alternate fuels would produce no net energy conservation. In addition, solar heating to date is not as efficient and is considered by many, including those solar manufacturers who testified, to be only a supplemental energy source. Since a switch to any alternate source of energy other than solar would not result in an overall energy savings or conservation, we do not believe it incumbent on us to encourage pool owners to switch to alternate fuels. We do, however, want to encourage the use of solar energy.

The staff proposal would ban natural gas heaters for new residential and commercial customers. The utilities estimate that in 1974, 1.42 percent of total gas deliveries and 2.92 percent of deliveries to firm customers were utilized to heat swimming pools. By contrast, the staff estimates for 1974 that 2.25 percent of total deliveries and 4.59 percent of firm deliveries were utilized to heat swimming pools. The residential and commercial customers used approximately 55 percent of the total gas consumed in heating swimming pools. Banning residential and commercial service would

have resulted in a total saving of 1.23 percent of the total 1974 California deliveries or 2.22 percent of the 1974 firm deliveries based on the staff's estimates. It should be emphasized that these figures are for all pools - existing and newly constructed.

Some of the problems associated with the adoption of a ban are: First, the prohibition would be prospective and therefore might be considered discriminatory to those residential customers wishing to install a pool heater. Second there are approximately 200 permit-issuing agencies whose cooperation would be necessary to enforce such a program. Conceivably some cities and counties would not cooperate. Third, customers could circumvent the ban by installing their own heaters. In addition to creating safety problems, it would be most difficult for the utility to identify the new pool usage on the basis of a volumetric bill analysis because of the many variables. Finally, any ban imposed must be universal in application. This would require cooperation of municipally owned distribution systems such as the city of Long Beach and the city of Palo Alto.

We note that while recommending a ban, the staff recommendations for implementation are incomplete and require the utilities to formulate procedures.^{5/}

From the evidence submitted at the hearing, it is fair to conclude that the imposition of a ban would have a devastating economic impact on the swimming pool construction industry and related service industries.

According to the SRI study:

"In 1975 (according to swimming pool industry sources), there were 382,000 swimming pools in California. SRI's best estimate is that 85% to 90% of these pools are for residential use (a pool built for private use by not more than 2 families and their guests). The next 7% to 9% is for apartments and condominiums. Hotels and motels represent another 2% to 3%; the remaining percentage includes community, neighborhood, school, and other uses.

^{5/} See Appendix B.

"Swimming pools are more numerous in Southern than in Northern California. About 70% to 75% of all pools in California are in the counties south of, and including, Kings, Tulare and Inyo counties. In 1974, there were 5.2 pools (of all types) per every 100 households in California. There is a slightly higher concentration of pools in Southern California than in Northern California; 5.9 pools versus 4.1 pools per 100 households. This higher concentration can be attributed mainly to a longer swimming season in the southern region and to greater selling efforts there.

"Since 1959, the number of pools built in California averaged 18,500 pools per year. Figure 1 shows this trend where the cumulative number of pools installed in California is shown for the period 1959 to 1975. The straight line indicates a nearly constant installation rate of between 17,000 to 21,000 pools per year.

"Since 1970, about 60% to 75% of all pools built in California were built in Southern California. There has been a steady increase in the percentage of pools built in Northern California. In 1970, 25% of the pools were built in the North; by 1975 the percentage had increased to 40%. The number of pools in Southern California is closer to saturation levels so the percentage growth rate is slightly lower than for the Northern region."

The SRI study also shows that between 85 percent and 90 percent of new pools have heaters. The rapidly growing trend to include a spa with the swimming pool indicates that most newly constructed pools would have heaters. Even assuming that the SRI study upon which this conclusion is made was based on questionable assumptions, the fact remains that the reduction of jobs and loss of state and local taxes are undisputed.

In addition to the staff's proposal for an outright ban and the other parties' desire to continue voluntary conservation programs, both PG&E and SoCal made alternative proposals for the Commission's consideration.

PG&E's proposal for creation of a statewide task force, as pointed out above, requires further study and should be incorporated in long-range energy conservation.

In response to a staff request, SoCal filed on April 28, 1976 a proposed rate schedule for swimming pool heater service. In its brief SoCal proposed that this rate design be considered as an alternative. This rate is comprised of three components:

- (1) A monthly customer charge,
- (2) A commodity rate, and
- (3) A reconnection charge.

The monthly charge could be developed on a cost-of-service basis, the commodity component set at 25 percent above the system average gas service commodity rate to inhibit usage, and the reconnection charge set at a figure high enough to deter repeated requests for opening and closing service. These rates contemplate separate metering to be rendered upon appropriate application to the utility for swimming pool heater service.

This plan retains the customers' freedom of choice to determine their own energy requirements since they would not be denied service for pool heater use altogether, but would pay a higher rate. Moreover, it does not impose high rates on many customers who do not have swimming pools in order to induce new pool owners to conserve natural gas. Further, such an approach would not involve the assistance of other state and local agencies or the voluntary compliance of publicly owned gas utilities not subject to the Commission's jurisdiction. Finally, this alternative would enhance conservation.

The spa industry ably demonstrated the difference between a therapeutic spa and a swimming pool. We accept the fact that spas are generally installed for therapeutic purposes.

Based on the record herein, we are of the opinion that a ban on new connections of gas swimming pool heaters is not in the public interest at this time. The administrative problems and

the cost to both the utilities and the Commission to enforce a ban far outweigh any public benefits. ✓

The staff's alternative three-tier or multi-tier proposal calls for a special summer rate for all residential customers using in excess of 80 therms per month. We have previously established lifeline quantities of natural gas for basic residential use which includes cooking and water heating for washing and bathing. In the lifeline structure, four climatic zones for winter space heating allowances have been set ranging from 55 to 140 therms per month. Hearings are in progress to consider space heating allowances in certain areas during other months of the year and for other categories of customers.

We believe the application of a multi-tier rate structure can be applied in conjunction with lifeline rates, thereby encouraging conservation. Such rate design in this instance has the advantage of similar treatment of all nonlifeline or nonessential uses as well as residential swimming pool heating systems. We will expect the staff to develop and introduce such a rate design for swimming pools and other nonessential residential uses in pending gas rate offset cases.

With respect to nonresidential swimming pools, we believe a rate designed to encourage conservation should be developed. Accordingly, we will expect the utilities to file reports and tariff proposals for special rates for municipal, school, and commercial swimming pools and for other recreational uses.

We recognize that, in relation to multi-tier and special swimming pool rates, there may be some economic effect of such a departure from traditional rate design. We expect the utilities to extensively advertise this potential effect by way of bill inserts. Such advertising should stress the charges that the utility is

required to make for swimming pool and other recreational uses as well as the advantage in using solar heating systems, pool covers, and other conservation devices.

Findings

1. The total supply of natural gas available to California has become increasingly inadequate in recent years.
2. Natural gas is a valuable natural resource that should not be wasted.
3. Alternatives to the use of natural gas for energy requirements should be encouraged.
4. A whirlpool therapy bath (spa) is distinguishable from a swimming pool.
5. The proposed ban is for new connections of natural gas swimming pool heaters.
6. The proposed ban would require an exemption approved by the Commission before gas utilities could provide natural gas service to heat residential swimming pools.
7. A ban, as proposed, would require the cooperation and assistance of over 200 other state and local agencies.
8. The Commission is without authority to require publicly owned gas utilities to ban new connections for swimming pool heaters.
9. Solar systems to heat swimming pools are presently available. Further development and installation of solar systems to heat swimming pools should be encouraged. New swimming pool construction plumbing should provide for a solar heating system.
10. Utility and industry voluntary conservation programs should be expanded.

11. A multi-tier rate design to encourage conservation is a viable alternative to an outright ban on swimming pool heaters.

12. A multi-tier rate design can be applied in conjunction with lifeline rates.

13. A multi-tier rate design has the advantage of treating all residential customers equally.

14. Multi-tier rates should be introduced by the staff in pending gas offset cases.

15. Separate special rate schedules should be designed for municipal, school, and commercial swimming pools, and other recreational uses.

16. The utilities should file reports and tariff proposals for special rates for municipal, school, and commercial swimming pools, and other recreational uses.

17. Respondent utilities should advertise and inform consumers through bill inserts their rates and charges and their anticipated level of rates for swimming pool and other nonlifeline gas uses, as well as the use of solar heating systems, pool covers, and other conservation devices. Respondent utilities should also inform consumers that they should expect substantially higher rates in the near future for natural gas used for pool heating.

18. Respondent utilities should advertise and inform customers through bill inserts that in the near future it may be necessary to discontinue the use of natural gas for the purpose of heating all swimming pools.

Conclusions

1. A prohibition against new connections of natural gas swimming pool heaters and therapeutic spas should not be instituted at this time.

2. Decision No. 85295 should be rescinded.

3. Multi-tier rates should be adopted as a conservation tool for use in conjunction with lifeline rates.

4. Utilities should effectively inform consumers of utility charges and anticipated level of rates for swimming pool and other nonlifeline uses.

5. Utilities should vigorously promote the use of solar swimming pool heating systems, pool covers, and other conservation devices.

6. Utilities should effectively inform customers that in the near future it may be necessary to discontinue the use of natural gas for the purpose of heating all swimming pools.

O R D E R

IT IS ORDERED that:

1. Decision No. 85295 is rescinded.

2. Respondent gas utilities shall file within sixty days after the effective date of this order proposed separate special rates designed for municipal, school, and commercial swimming pools, and other recreational uses of natural gas.

3. Multi-tier rates and/or special rates for swimming pools and other residential uses shall be introduced in pending or future gas rate offset cases.

4. Utilities shall effectively inform consumers of their rates and charges and their anticipated level of rates and charges for swimming pool and other nonlifeline uses, as well as the use of solar heating systems, pool covers, and other conservation devices.

5. Utilities shall effectively inform customers that in the near future it may be necessary to discontinue the use of natural gas for the purpose of heating all swimming pools.

6. Utilities shall vigorously promote the use of solar swimming pool heating systems, pool covers, and other conservation devices.

C.9581 et al. kw ***

7. Respondent gas utilities shall file within ninety days after the effective date of this order reports detailing the steps taken to implement this order and the steps taken to reduce the dependency on natural gas as a fuel for heating swimming pools.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12th day of APRIL, 1977.

*I will file a concurring
and dissenting opinion
William Synovus, Jr.*

Commissioner

Robert R. Turner
President
Veronica L. Sturgeon
Thomas J. Ryan
Richard D. Givens
Commissioners

APPENDIX A
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Staff Recommendations for Exemption

1. Definitions. Herein, a swimming pool will be considered to be a pool of water useful for swimming purposes. A therapeutic pool will be considered to be a pool used for therapeutic purposes. A swimming pool heater will be considered to be an appliance designed for the heating of nonpotable water stored at atmospheric conditions in swimming pools, therapeutic pools, and similar applications.
2. A ban on new swimming pools is not recommended. Staff's recommendation is that a ban be adopted on new gas hook-ups for swimming pool heaters. However, if such a ban is adopted, staff recommends that a ban on connections of new electric heaters also should be considered, inasmuch as the use of electricity for that purpose would be unwise and wasteful.
3. Staff is not recommending in this proceeding that the use of existing pool heaters be discontinued, although the Commission has intimated in Decision No. 85295 (December 30, 1975, mimeo. p. 4), that such a proposition may be considered in the future.
4. Staff is not recommending a ban on hookups for the replacement of existing pool heaters for existing pools.
5. An exemption should be permitted for new public pools, YMCA, YWCA, school, and college pools, or for new heaters for existing pools of those types, in cases where solar heating cannot reasonably provide adequate heat.
6. An exemption may be warranted in the case of a residential customer who provides a medical statement from a state licensed physician that a heated pool is necessary for therapeutic reasons. However, staff has not advocated that an exemption should be granted to every party who produces such a statement. In fact, consultation with a professional medical association might be appropriate, so that the Commission's order could specify certain ailments which might justify the granting of an exemption.

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7. Therapeutic spas may be exempted from a swimming pool ban provided that these have a capacity of less than 800 gallons and are less than 3 feet in depth. In order to qualify for an exemption, a spa should not be attached to a swimming pool, neither should it have a common heater with a swimming pool. These criteria modify those suggested in Exhibit 108; however, the Commission could reasonably determine that a spa should be required to be both separate from, and heated separately from a swimming pool, to accomplish the purposes of a ban on swimming pool heaters.
8. Staff made no recommendation relative to spas other than therapeutic spas.
9. An exemption category applicable to new commercial swimming pools or swimming pools annexed to multiple dwellings or residential communities is not advocated, as being inconsistent with the purposes of a ban. Pools within these categories that would be open to the public might qualify under the exemption as a public pool.
10. The Commission should consider whether an exemption should be permitted for heated pools for multiple dwellings or other private pools that are presently under construction. Staff does not consider that a category of exemptions should be adopted for such pools.
11. In all cases, the applicant for exemption should be required to state what steps he is taking towards conservation of gas for heating the pool. His statement should include but not be limited to, the customer's intention to (a) cover the pool overnight with a pool cover, (b) not heat the pool to more than 78 degrees when heating by natural gas, and (c) investigate the possibilities of heating with a solar heater or supplementing the gas heater with solar.

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12. The Conservation Team recommends that separate gas metering and a new special incremental gas rate for the heating of swimming pools should be applied in cases where the Commission grants an exemption to the ban, as an additional incentive to conserve natural gas. This could be accomplished either by the installation of separate meters for swimming pool heaters, or by charging higher rates for residential customers who consume more than some specified quantity of gas, for example, 80 therms per month.

For those customers granted an exemption from the swimming pool ban, the staff's Conservation Team recommends that higher rates be charged. To accomplish this it is suggested that all residential customers using in excess of 80 therms per month be assessed a higher rate or that separate meters be installed on pool heaters with a separate rate applied.

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Recommendations on Implementation of a Ban

The following recommendations are submitted to the Commission for inclusion in its decision in this matter:

1. Within 20 days after the date of the Commission's order, gas utilities within California should advise building permit-issuing agencies in their service areas of the Commission's order. These agencies should be requested not to issue any permit for a swimming pool heater without an exemption from the California Public Utilities Commission.

Staff suggests further that the Commission should send a copy of its order to the California Department of Housing and Community Development (CDHCD), so that CDHCD may advise all appropriate local agencies that further hookups of natural gas for swimming pool heaters will not be permitted without an exemption granted by the Public Utilities Commission.

Staff also suggests that the Commission should send a copy of its order in this proceeding to the California Department of Real Estate, so that it may be aware of the terms of the order.

Finally, staff recommends that a copy of the Commission's order be sent to the governing bodies of those municipalities served by a publicly owned gas utility, for example, Long Beach and Palo Alto, to inform them of the terms of the order. Such municipalities should be expected to adopt similar standards in the interests of conserving natural gas for their essential uses.

2. The utilities should be ordered not to provide hookup service to a heater for a new swimming pool, or for an existing swimming pool except as a replacement heater, without authority of the Commission.

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3. The utilities should be required to advise applicants for new gas or electric service of the Commission's ban on new hookups for swimming pool heaters as set forth above. Section IV herein also is relevant.
4. The utilities should be required to advise all existing customers of the Commission's ban on new hookups for swimming pool heaters by means of bill inserts. Data on conservation measures to reduce energy use for existing pools should be provided.
5. No exemptions to the ban should be granted except in those situations, and upon the conditions described in Section III, paragraphs 1 to 12 inclusive, above.

As the staff witness proposed, the utility should scrutinize an application upon receipt and forward the same to the Commission if it appears that one of the exemption categories would apply. The Commission would determine whether to grant an exemption. A party dissatisfied with the utility's evaluation should be advised to appeal to the Commission. Appeals could be processed by advice letter. The witness pointed out that procedures for adequate implementation should be worked out by the Commission in conjunction with the utilities.

6. The utilities should be required to file a billing analysis program which would identify large increases in usage by residential customers, and a follow-up program for reducing such usage.

The staff witness pointed out, for example, that consumption is likely to be high if the customer has a heated swimming pool, whereas the number of gas air conditioners, another high consumption item, is not believed to be large. Inasmuch as unseasonal weather would affect consumption by most residential customers in approximately the same manner, it should be possible to identify some swimming pool usage in an expeditious manner. It was the witness' understanding that the utilities either have, or are working to have, a billing analysis program for other purposes, and it was clear from the record that at least some consumption in excess of 200 therms per month has already been segregated by the utilities.

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7. In the event that a utility detects a violation of the Commission's order, the staff recommended that a warning should be issued stating the nature of the violation and that the customer would be allowed 30 days in which to initiate appropriate changes or be subject to disconnection. Further, if the violation were not corrected in 30 days, service to the customer might be disconnected.

Staff submits that if the utility was required to observe reasonable standards to ensure that the customer did, in fact, have notice that his service was in jeopardy, then, if the violation continued, the Commission would be justified in authorizing a cut-off of service in order to enforce its ban on such use.

Staff suggests that the utilities be required to incorporate provisions into their tariffs, similar to those that they now have relative to safety, to implement the above recommendation so that after taking proper precautionary measures to inform the customer that he is in violation of the ban the utility would be empowered to cut off service to that customer.

The Commission might consider adoption of a rule that usage beyond a certain level would be considered a potential violation of the rules governing residential service, so that after adequate notice procedures, the burden would be upon the customer to show that gas was not, in fact, being used in violation of the Commission's ban on new swimming pool hookups. There is, of course, a clear question of safety which arises when large quantities of natural gas are being consumed, and particularly if the customer has not been in the habit of using gas in large amounts. Then as a safety measure, it might be appropriate to include provisions in the tariffs allowing the utilities to cut off service, again, after taking adequate steps to inform the customer.

While the foregoing proposals concerning implementation are not complete, the utilities should be able to formulate reasonable procedures along the lines discussed. The Commission staff would be available for consultation.

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The Commission should reject claims by the utilities that they could not implement or enforce a ban. As long as bans are operative in other states, it is not reasonable to claim that a ban could not be carried out in California.

8. The gas utilities should be required to file a program for enforcing the ban on new gas hookups within a specified period of time.
9. Staff recommends that in view of the protracted nature of these proceedings a ban should be imposed at the earliest possible time, and points out that, in general, the parties have been aware at least since January 1976, that a ban was contemplated by the Commission.

COMMISSIONER WILLIAM SYMONS, JR., Concurring in Part and
Dissenting in Part


I concur that a selective ban of new heaters is unwise public policy and Decision No. 85295 should be rescinded.

I dissent from adopting new policy without an adequate record to justify it -- namely that we shall be going over to triple-tier pricing in residential billing.

All indications are that this will compound the problems created by our earlier departure from cost-of-service pricing. The majority first moved into social policy pricing when it lurched into lifeline rates. The heavy burden of that decision continues to mount as the cost of the giant lifeline subsidy program increases. This burden is borne by business, industry and agriculture and their increased rates contribute to the anti-business climate of this state. Also, lifeline has not produced the conservation it was heralded to bring about. This could have been predicted because those benefitting from lifeline's price-freezing effect had no reason to conserve because it was not costing them a penny more.

Now, we are about to launch into a second experiment in social policy pricing. Here the approach is penalty pricing with cost-of-service again overlooked. The state effectively begins to limit individual freedoms when it inaugurates such a departure. Today the state looks with disfavor at citizens with swimming pools; no one can predict who it will disfavor tomorrow.

San Francisco, California
April 12, 1977


WILLIAM SYMONS, JR.
Commissioner