

ORIGINAL

Decision No. 91851 JUN 3 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLARD A. DODGE, JR. and MARIE M. )  
DODGE, husband and wife, )

Complainants, )

vs. )

PACIFIC GAS AND ELECTRIC COMPANY, )  
a corporation, )

Defendant. )

(ECP)  
Case No. 10826  
(Filed January 28, 1980)

Willard A. Dodge, Jr., for Willard A. Dodge, Jr.,  
and Marie M. Dodge, husband and wife,  
complainants.  
John T. Crews, Supervisor of Consumer Affairs,  
for Pacific Gas and Electric Company, defendant.

O P I N I O N

Introduction

On January 28, 1980 Willard A. Dodge, Jr., (Dodge) and Marie M. Dodge, husband and wife, complainants, filed a complaint against Pacific Gas and Electric Company (PG&E), defendant, requesting the Commission to (1) direct PG&E to add the entire usage of gas indicated by the meter serving Account Number CNY 16 24811 to the basic lifeline allowance of gas, otherwise available to the complainants, by reason of such usage being for the operation of a life-support device; (2) release to PG&E from complainants' deposit with the Commission the amount of \$111.28, as payment for gas consumed through January 3, 1980, by the service in question and return to complainants the balance of their funds on deposit with the Commission; and (3) direct PG&E to bill for this service at the lifeline rate commencing January 4, 1980 and continuing so long thereafter as the applicable tariff requirements are met.

The complaint was entertained by the Commission under the Expedited Complaint Procedure provided for in Section 1702.1 of the Public Utilities Code. PG&E filed its answer on February 29, 1980, and public hearing without a reporter was held before Administrative Law Judge Cline on March 17, 1980, at which time the matter was taken under submission.

Discussion

Public Utilities Code Section 739(b) which was enacted in 1978 reads as follows:

"(b) The commission shall also develop a schedule which designates a lifeline volume of gas and a lifeline quantity of electricity necessary to supply the minimum energy needs of customers dependent on life support equipment including, but not limited to, emphysema and pulmonary patients. A customer dependent on life support equipment shall be given a higher energy allocation than the average residential user in accordance with the type of equipment that he or she uses. Consideration shall be given to the energy requirements of the specific type of equipment used and the frequency and duration of its usage.

"'Life support equipment' means that equipment which utilizes mechanical or artificial means to sustain, restore, or supplant a vital function, or mechanical equipment which is relied upon for mobility both within and outside of buildings. 'Life support equipment', as used in this subdivision, includes the following: all types of respirators, iron lungs, hemodialysis machines, suction machines, electric nerve stimulators, pressure pads and pumps, aerosol tents, electrostatic and ultrasonic nebulizers, compressors, IPPB machines, and motorized wheelchairs.

"The schedule shall also include a higher lifeline energy allocation for paraplegic and quadriplegic persons than for the average residential user, in consideration of the increased heating needs of these persons."

Prior to the enactment of the above-quoted Section 739(b) the Commission on April 4, 1978 issued Decision No. 88651 in Case No. 9928. Ordering Paragraphs 6 and 7 of this decision read as follows:

- "6. Within thirty days from the effective date of this order the respondent utilities shall file tariffs which:
- "a. Establish procedures whereby residential customers may certify that a full-time resident of that household regularly requires the use of a life-support device.
  - "b. Upon the above certification, the utility shall estimate the monthly consumption of the particular life-support device, given the usual hours of operation per month, and within 15 days add the incremental estimated monthly usage to the customer's basic lifeline quantity.
- "7. Within sixty days from the date the tariffs ordered in paragraph 6 become effective, the respondents shall notify all residential customers of the availability of lifeline rates for life-support device consumption."

Paragraph 3 of the Special Conditions set forth in PG&E's Schedule No. G-1 pertaining to Residential Natural Gas Service reads as follows:

- "3. Life-Support Devices: A residential customer, who certifies in writing that regular use of a medical life-support device, as defined in Rule No. 1, is essential to maintain the life of a full-time resident of the household, is eligible for a uniform monthly lifeline allowance in addition to those allowances shown in Special Condition 2. The amount of the additional allowance will be determined by the Utility from load and operating time data. The Utility may require certification by a doctor or osteopath licensed to practice medicine in the State of California that a particular device is necessary to sustain the user's life."

The definition of life-support device set forth in PG&E's Rule No. 1, Definitions, reads as follows:

"Life-Support Device: For the purpose of determining a lifeline allowance under the provisions of a rate schedule applicable to residential uses, a life-support device is any medical device requiring Utility-supplied gas for its operation that is regularly required to maintain the life of a person residing in a residential unit. The term does not include therapeutic devices such as pool or tank heater, saunas or hot tubs."

On December 10, 1979 complainants submitted an application to PG&E for lifeline rates for a medical life-support device, i.e. a swimming facility with thermostatic controls heated with gas furnished through a separate meter.

A letter dated December 4, 1979 from Forbes H. Norris, Jr., M.D. was attached to the application as a certification by a doctor that the heated swimming facility is necessary to sustain Mrs. Dodge's life. This letter which is a part of Exhibit 2 reads as follows:

"Re: MARIE DODGE

"To Whom It May Concern:

"This is to certify that I ordered for this patient a heated swimming facility for home treatment as an essential part of my care in this case of amyotrophic lateral sclerosis, sometimes referred to as 'Lou Gehrig's Disease' or ALS.

"I have prescribed specific routines of muscle exercise to be performed by Marie in a heated pool every day. It is essential that the pool temperature be at least 92° F. If this is not done she will probably lose rapidly her remaining motor capability and die. The prescription is for therapeutic exercise in this heated pool at least twice and preferably three times daily.

"This must be clearly regarded as a life-support measure, not as physical therapy in the usual sense. An analogy would be the case of a person who requires breathing assistance from an 'iron lung' part of each day, in order to breathe unaided the remaining time. Please let me know if you need more details."

Nevertheless by letter dated December 18, 1979 from William L. Seavy, manager of the Novato area, PG&E returned the application to complainant Willard A. Dodge. The letter which is also a part of Exhibit 2 in part reads as follows:

"This will acknowledge receipt of your declaration of eligibility for lifeline rates in connection with your heated swimming facility.

"I regret to say that the separately-metered gas service supplying your pool heater exclusively does not qualify for a lifeline allowance. As stated in the special conditions of the enclosed Schedule No. G-1, lifeline rates are applicable only to specified end uses for residential usage none of which include swimming pool heating."

Dodge then referred the matter to the Consumer Affairs Branch of the Commission. On January 16, 1980, Dodge was advised by Bruce Kennedy that the Consumer Affairs Branch had been unable to resolve the informal complaint because in PG&E's view a swimming pool is not a medical device required to maintain life.

Dodge testified that his wife has known she has had amyotrophic lateral sclerosis (ALS) since March of 1979. The first doctor who treated her said that her life expectancy was a matter of only a few months and advised her not to use up the remaining strength which she had.

On the advice of a long-time family physician in Los Angeles, Dodge took his wife to Dr. Norris, a neurologist who specializes in the treatment of ALS. Dr. Norris prescribed regular exercises in a heated pool, and pursuant to this advice Dodge obtained a pool in which his wife could take the prescribed therapeutic exercises. Dr. Norris said that if Mrs. Dodge goes to bed and doesn't take the prescribed exercises that her respiratory muscles will become progressively weaker and that she will soon die. There is no known cure for ALS, but the proper exercises provide a remission and may extend Mrs. Dodge's life for several years.

Dodge testified that the pool, heater, and filter cost \$1,500 plus an additional \$500 for installation in a special room which was added to his home at a cost of \$30,000. The pool is circular, 18 feet in diameter, and uniformly 4 feet in depth. The water temperature is maintained at 94° Fahrenheit. When the pool is not in use, a thermal blanket which cost \$150 covers the pool to minimize the cost of heating it and the loss of chlorine. The gas used to heat the pool is separately metered. Through March 3, 1980 Dodge had been billed \$352.35 by PG&E for gas used to heat the pool. At the lifeline rate the amount of the bill would have been \$223.39, leaving a balance of \$128.96 in dispute as of March 3, 1980.

As further evidence that the swimming pool is a medical device regularly required to maintain Mrs. Dodge's life, late-filed Exhibit 10, which is a letter by Dr. Norris and four other doctors from the Institute of Neurological Sciences in San Francisco published in Mayo Clinic Proceedings, August 1978, Volume 53, page 544, was submitted in evidence by Dodge on April 2, 1980 without objection by PG&E. This letter in part reads as follows:

"Amyotrophic Lateral Sclerosis

"The paper by Drs. Sinaki and Mulder in the March 1978 issue of the Proceedings (pp 173-178) contains so many good thoughts that one hesitates to raise criticisms, but a number of points should be made.

"We disagree that patients with amyotrophic lateral sclerosis should not be prescribed programs of active exercise over and above whatever normal activities are possible. Some 800 cases ago, we encountered several patients who had made astounding recoveries from amyotrophic lateral sclerosis during no particular treatment program except vigorous daily exercises. At the same time, we became aware that the most advanced, pathetic cases referred to us were those patients who had been inactive, often through the advice of a physician. Subsequent experience with prescription and active encouragement of vigorous daily exercise programs has appeared beneficial in most cases, though obviously not a cure. Indeed, this approach has sometimes been discouraging for both the patient and the therapist; yet our clinical experience continues to indicate its value.

"There is probably no specific exercise program; patients who have responded have utilized widely differing exercises, ranging from weight-lifting to calisthenics to swimming. Any prescribed program must be adapted realistically to current disabilities and then further adjusted in follow-ups, depending on any clinical changes. For most patients with amyotrophic lateral sclerosis, pool exercises can be commended because of the anti-gravity effect of flotation and the psychologic gain of being able to stand up and walk, even when leg-trunk paralysis is far advanced. An additional advantage of shallow-pool gait therapy is the safety factor should there be a tendency to fall."

In support of its contention that the swimming pool is a therapeutic device not required to maintain the life of Mrs. Dodge PG&E submitted in evidence Exhibit 9 which is a letter dated March 11, 1980 from R. Clayton Parson, M.D., of San Francisco, to Mr. Crews, supervisor, Consumer Affairs, PG&E, which reads as follows:

"I write in response to our conversation and your inquiry concerning the relationship between amyotrophic lateral sclerosis and the relative need for benefits to be derived from daily exercises performed in a heated pool.

"ALS is a degenerative neurological disorder which affects the nervous system at all levels. The cause is not known. It is characterized by progressive deterioration with life expectancy being variable but, on the average, survival is generally for less than five years after the onset of symptoms. The medical profession tries various things to make these unfortunate people more comfortable but no therapy has been found which is thought to prolong the life of these patients. The main thrust is to keep them as active as possible and to treat intercurrent infections but the typical situation is that the patient eventually succumbs to pneumonia.

"Daily exercise in a pool heated to at least 92° would be an excellent form of physical therapy. However, you have asked whether or not this would sustain the life of a patient with ALS and I can only respond by saying that I know of no evidence to support this theory. I wish that it were so."

We are confronted by conflicting medical opinions. At issue is whether the pool in question will prolong and sustain human life. Assuming the life of Mrs. Dodge would or could be prolonged by exercises in the pool, it is a life-support device. Given the evidence presented, we rely on the opinion of Mrs. Dodge's personal physician and the supporting medical opinions because those opinions have not been discredited; and given the stakes we find it reasonable and humanitarian to give credence to the medical opinion of those who believe use of the pool may prolong life.

We are convinced from the evidence in this proceeding that the swimming pool is a medical device regularly required to maintain Mrs. Dodge's life. By taking exercises prescribed by Dr. Norris, Mrs. Dodge has already extended her life expectancy beyond a year from the date she first discovered she had ALS. As the gas used to heat the pool is separately metered, it is unnecessary for PG&E to determine the additional lifeline allowance required to heat the pool. PG&E will be ordered to bill the charges incurred on the meter serving Account Number CNY 16 24811 at the lifeline rate. Of the amounts which Dodge has on deposit with the Commission, the sum of \$223.39 will be ordered paid to PG&E for service furnished to complainants through March 3, 1980, and the balance on hand will be ordered refunded to complainants. PG&E will be ordered to bill complainants at the lifeline rate for service rendered through Meter Number CNY 16 24811 as long as the gas furnished through this meter is used to heat the pool being used by Mrs. Dodge to take the exercises prescribed by her doctor in his treatment of her ALS. ✓



Findings of Fact

1. Complainant Marie M. Dodge suffers from ALS.
2. Mrs. Dodge's life expectancy is estimated by her family physician to be short, and he advised her to conserve her remaining strength.
3. Dr. Norris, a neurologist specializing in the treatment of ALS, prescribed regular therapeutic exercises in a heated pool in order to exercise her respiratory muscles as a means of prolonging her life.
4. The Dodges have requested that the swimming pool used by Mrs. Dodge be determined to be a "life support device", thus qualifying the Dodges for the additional natural gas used for operation of the pool to be added to their basic lifeline quantity for determining their natural gas rate and charge.
5. The medical testimony is in agreement that daily exercise in a heated pool is an excellent form of therapy for an ALS patient.
6. On balance, the heated swimming pool may sustain and support Mrs. Dodge's motor capability and her ability to breath, and thus will tend to restore and sustain a vital function by mechanical means.

Conclusions of Law

1. The heated swimming pool used by Mrs. Dodge is a life-support device within the meaning of Public Utilities Code Section 739(b).
2. Mrs. Dodge regularly requires the use of a life-support device.
3. The relief requested in Case No. 10826 should be granted.

O R D E R

IT IS ORDERED that:

1. Out of complainants' funds on deposit with this Commission the Executive Director is ordered to disburse the sum of \$223.39 to Pacific Gas and Electric Company (PG&E) for gas furnished to Willard A. Dodge, Jr. and Marie M. Dodge (complainants) by PG&E through March 3, 1980, and to disburse the balance of any such funds on deposit with the Commission to complainants.

2. PG&E shall bill complainants at the lifeline rate for gas furnished to them through Meter Number CMX 16 24811 subsequent to March 3, 1980, and so long thereafter as applicable tariffs are met through the use of said gas by complainants to heat complainants' pool for the purpose of being used by Mrs. Dodge to take exercises which are prescribed by her doctor in his treatment of her amyotrophic lateral sclerosis, or until further order of the Commission.

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

Dated JUN 3 1980, at San Francisco, California.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

John E. Byron  
President

William L. Stanger

Robert D. Howell

Samuel M. Davis  
Commissioners