

Original

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ORIGINAL

Decision No. 92577 January 6, 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Leonard J. Grant, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 Southern California Gas Company, )  
 )  
 Defendant. )

Case No. 10860  
(Filed May 5, 1980)

O P I N I O N

Leonard J. Grant (complainant) filed this action against Southern California Gas Company (SoCal) and seeks reduction of his bill as reparation for alleged overbilling by SoCal. The amount at issue totals \$966.93. Hearing was held before Administrative Law Judge James Squeri on November 7, 1980, and the matter is now ready for decision.

Complainant's Showing

Though complainant's formal dispute covers the billing period from November 8, 1979 to April 11, 1980, the matter at issue involves alleged overbilling for the period from November 8, 1979 through January 14, 1980. Simply stated, complainant contends that he could not possibly have consumed 820 therms in the November billing period and 630 therms in the December billing period. He argues that his circumstances indicate an average monthly usage during the period in question of approximately 350 - 400 therms.

In support of his contention, complainant presented the following evidence:

1. Complainant is a bachelor living in a moderately sized home of less than 3,000 square feet;

2. His gas-using appliances are as follows:

1	Water heater, 40 gallons	45,000 Btu	130°
2	Forced air units	80,000 Btu each	
1	Clothes Dryer	25,000 Btu	
1	Pool heater	240,000 Btu,	45°
1	Log lighter	25,000 Btu	
3. The Summerset Swimming Pool Service shut off the gas to the pool heater on October 20, 1980 or thereabouts (Exhibit 1);<sup>1/</sup>
4. Of the two forced air units, one heats the bedrooms at night and is set at 69 - 70 degrees; the other unit serves the living room and is used only during the day except when the weather is exceptionally cold;<sup>2/</sup> and
5. The log lighter is used about one hour per month as an ignition source for wood fires.

Complainant indicated that he infrequently entertains at home. He does use a jacuzzi for treatment of a medical condition. The jacuzzi is warmed by the same heater which supplies the pool. However, complainant testified that serious financial reverses prompted him to review his energy consumption with greater scrutiny. As a result, no gas was used to heat either the pool or the jacuzzi from about October 20, 1979 to March 1980. In March, complainant had a special switch installed which allowed him to heat the jacuzzi independently from the pool.

Given his increasing awareness of the need for energy conservation as required by his financial circumstances and as evidenced by his installation of separate heating units in his home and a

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<sup>1/</sup> Exhibit 1 is a letter dated May 10, 1980 from Bob Borden of Summerset Swimming Pool Service addressed to complainant and verifying that the pool heater had been shut off on or about October 20, 1980.

<sup>2/</sup> Complainant testified that over a year ago he replaced his single air conditioning/heating unit with two separate units for night and day use in order to conserve energy.

special shutoff switch for the jacuzzi, complainant was distressed by the high energy usage reflected in the December and January billing periods. A table of complainant's consumption from October through February shows the following:

<u>1979 - 1980</u>		<u>Amount</u>
October	319	Approximately \$101.00
November	459	Approximately 140.00
December	820	270.96
January	630	236.51
February	369	135.23

In response to the seemingly high usage registered for December and January, complainant contacted SoCal. Several visits were made to complainant's premises by representatives of SoCal. Complainant's water and appliances were checked. On January 4, 1980 SoCal's high-bill investigator determined, among other things, that the pool heater and log lighter were off and that the temperature of the pool water was 45°. During a subsequent visit, the temperature of his pool was determined to be 60° by the estimate of a service representative who placed his finger in the water. Representatives allegedly told complainant that it would be extremely difficult, if not impossible, for him to consume 600 to 800 therms/mo. given his appliances and non-use of the pool heater. However, on the basis of its investigations SoCal determined that no adjustment in complainant's bill was warranted.

Accordingly, Mr. Grant filed a formal complaint with the Commission and tendered \$966.83 to the Commission pending resolution of the matter.

SoCal's Answer

It is SoCal's position that complainant has been properly billed for energy which he has used; no adjustment to his bill is warranted or appropriate.

ALJ/nb \*

In its defense, SoCal presented two witnesses and sponsored six exhibits to demonstrate the following:

1. Checks by SoCal service representatives revealed no gas leaks in equipment or appliances;
2. The meter was removed for testing and proved to be registering well within the acceptable limits of accuracy;
3. If all complainant's appliances, except the pool heater, were running continuously, they would consume 2.5 therms per hour (60 therms/day);
4. No statements were made to complainant by SoCal representatives that the customer could not have used the gas service for which he was billed; and
5. SoCal's service representative found the temperature of the pool water to be above 60°. Since the temperature of unheated test pool water was 50° at the same time, SoCal believes that the pool heater was operated during this period.

Furthermore, SoCal presented a history of complainant's energy consumption from October through February, for the last four years:

	<u>1978-1989</u>	<u>1978-1979</u>	<u>1977-1978</u>	<u>1976-1977</u>
February	597	960	593	942
January	630	866	830	344
December	820	1,032	774	682
November	459	453	417	528
October	319	353	473	432
	<u>2,825</u>	<u>3,664</u>	<u>3,087</u>	<u>3,7</u>

*CORRECTION*

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THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY

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	<u>1979-1980</u>	<u>1978-1979</u>	<u>1977-1978</u>	<u>1976-1977</u>
February	597	960	593	942
January	630	866	830	844
December	820	1,032	774	682
November	459	453	417	528
October	319	353	473	433
	<u>2,825</u>	<u>3,664</u>	<u>3,087</u>	<u>3,429</u>

SoCal presented more specific information respecting complainant's usage during the period in dispute:

<u>Billing Date</u>	<u>Read</u>	<u>Cons.</u>	<u>Days</u>	<u>Daily Av.</u>	<u>Amount</u>
5-12-80	2208	420	31	13.5	\$158.42
4-11-80	1788	446	29	15.4	167.38
3-13-80	1342	419	30	14.0	156.85
2-12-80	0923	369	29	12.7	135.23
1-14-80	0554	45	3	15.0	236.51
(1-11-80 set	0509)	-	-	-	-
1-11-80 rem	4408	96	7	13.7	-
(1--4-80 inv	4312)	363	15	24.2	-
(12-20-79 R/V	3949)	126	9	14.0	-
12-11-79	3823	820	33	24.8	270.96
11--3-79	3003	459	29	15.8	142.79
10-10-79	2544	319	29	11.0	98.55

SoCal contends that while complainant has shown an admirable decrease in consumption, his usage in December and January is consistent with past practice. It is SoCal's position that complainant used the energy in dispute and should be billed for it.

#### Discussion

Though complainant has tendered \$966.93 to the Commission pending resolution of this case, the amount actually in dispute totals \$507.47 for the December and January billing periods. Complainant acknowledges that he owes a significant proportion of the \$507.47 to SoCal. He simply requests a reasonable reduction of the total outstanding to reflect a consumption consistent with months previous and subsequent to December and January. As sincere as complainant's position may be, there is no reasonable ground upon which we can base a claim for an adjustment in his bill.

We are confronted with a classic problem of the burden of proof imposed upon complainant in a complaint proceeding. In such proceedings, it would not be wise or practical policy to require the utility to prove, through whatever devices, that a customer

actually did or did not use the energy registered on his meter. To expect a utility to determine the amount of energy used as well as the manner in which it was used would require an unacceptable intrusion into the lives of its customers.

Instead, we require the complainant to show that he could not possibly have used the amounts of energy in dispute. If a meter is tested and proven to be accurate within acceptable limits, if no gas leaks are discovered in equipment or appliances, and if the customer's potential gas demand exceeds the amounts of energy usage in dispute, a presumption exists that the customer, in one way or another, used the gas as shown on the meter.

SoCal's evidence establishes such a presumption in this case. Its further attempt to explain that complainant's high usage may have been caused by heating his pool must fail on grounds that a serviceman's finger is not an adequate gauge of the true temperature of pool water. However, the presumption of gas usage still remains; and this obstacle is one that complainant cannot overcome.

The evidence of complainant's daily usage during the disputed period bears special scrutiny. From November 8 to December 11, 1979, complainant's daily average usage totaled 24.8 Ccf. From December 11 to December 20, the day on which a SoCal service representative appeared to read and verify the meter in response to complainant's inquiry, daily average consumption dropped to 14.0 Ccf. From December 20 to January 4, the day on which a SoCal representative conducted a high-bill investigation, daily average consumption rose to 24.2 Ccf. From January 4 to January 11, the day on which the meter in question was removed and replaced, daily average usage equaled 13.7 Ccf. Subsequently daily average usage over four months has ranged from 12.7 Ccf to 15.4 Ccf.

Upon the foregoing we can only conclude that the meter in question was functioning properly. For all periods, except



November 8 to December 11 and December 20 to January 4, it registered daily average usage consistent with the customer's previous and subsequent use. There is no reasonable alternative to the contention that the energy registered was actually consumed at complainant's premises.

We cannot make any determination, based upon this record, of how the energy in question was consumed. We do not doubt complainant's sincerity or his sworn testimony that he did not turn on his pool heater. We can share his perplexity, but we cannot share his view that it is impossible to consume the amount of gas indicated on his bill. Many things are possible and complainant has failed to provide us with any reasonable base for concluding that he could not possibly have used the energy in dispute. Accordingly, we will deny the complaint and order the impounded funds distributed to the utility.

Findings of Fact

1. The gas bill in dispute totals \$966.93.
2. Complainant's meter was removed for testing and registered well within the acceptable limits of accuracy.
3. Equipment and appliance checks revealed no gas leaks.
4. Complainant's gas-operated equipment and appliances are capable of using the amounts of energy in dispute.

Conclusions of Law

1. The evidence establishes a presumption that the gas registered on the meter was consumed at complainant's residence.
2. Complainant did not reasonably rebut this presumption and failed his burden of proof.
3. The complaint should be denied.

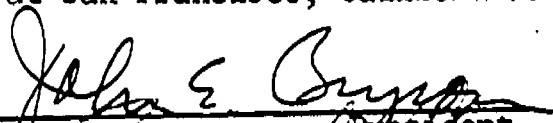
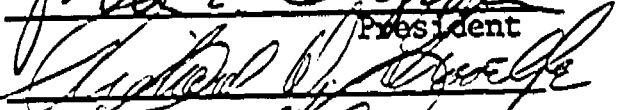
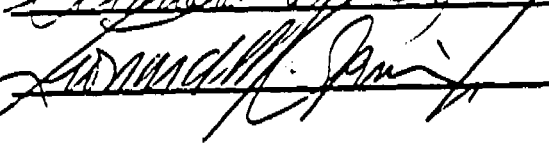
O R D E R

IT IS ORDERED that:

1. The complaint of Leonard J. Grant against the Southern California Gas Company (SoCal), in Case No. 10860, is denied.

2. The \$966.93 impounded with the Commission in Case No. 10860 will be disbursed to SoCal when this order becomes effective. The effective date of this order shall be thirty days after the date hereof.

Dated JAN 6 1981, at San Francisco, California.

  
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President  
  
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Commissioners