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MAIL DATE
12/3/96

Decision 96-11-065

November 26, 1996

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Sierra Pacific Power Company to
Authorize a Return on Equity for
Calendar Year 1994 Pursuant to
Attrition Rate Adjustment Mechanism.

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) Application 93-05-008
) (Filed May 11, 1993)
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)

And Related Matters.

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) Application 93-05-009
) Application 93-05-011
) Application 93-05-012
) Application 93-05-013
) Application 93-05-020
) Application 93-05-021
)
)

ORDER DENYING REHEARING OF DECISION 94-10-036

In D.94-10-036, we awarded compensation to TURN and UCAN for their substantial contribution to D.93-12-022, a decision which established the 1994 cost of capital and capital structure for California's investor-owned energy utilities. TURN and UCAN were jointly awarded \$89,337. This award reflected a \$6169 reduction based on TURN's failure to meet its burden of justifying an hourly rate of \$210 for one of its consultants who participated in the proceeding underlying D.93-12-022. As explained by D.94-10-036, TURN failed to establish under Section 1806 of the Public Utilities Code that the claimed rate, which was substantially higher than that claimed by TURN previously for any expert witness, was comparable to market rates paid to persons of similar training and experience for similar services. We therefore downwardly adjusted the rate to equal that charged by another expert witness in the proceeding with comparable training and experience who provided similar services.

TURN thereafter sought rehearing of D.94-10-036 on two grounds. First, TURN argues that the rate paid to its consultant was by definition a market rate, and hence TURN has met its burden under Section 1806. Alternatively, TURN argues that the burden of meeting the standard of Section 1806 -- that the rate paid was comparable to market rates paid to persons of similar training and experience who offer similar services -- is on the Commission or the utilities if the rate claimed by TURN is challenged. TURN argues that placing the burden on the intervenor constitutes a new interpretation of Section 1806, and that TURN should be given another opportunity to carry its burden.

Neither of TURN's argument has merit. TURN's application for rehearing itself identifies expert witness rates that are substantially below the rate it paid to the consultant whose fee is at issue. Other than TURN's attempt to characterize these lower rates as significantly discounted rates, there is no showing that such rates are not market-based. TURN's argument that Section 1806 shifts the burden of proof to the utility or this Commission to demonstrate that TURN's claimed rate is comparable to that paid to persons of comparable training and experience who offer similar services is not supported by the terms of that section or other sections governing the award of intervenor fees. Section 1804 in particular makes clear that the intervenor has the burden of establishing its eligibility to obtain intervenor fees, and demonstrating a substantial contribution to the Commission proceeding. Nothing in Section 1806 indicates that this burden shifts to the utility or the Commission when the intervenor's showing justifying the reasonableness of the fee charged is judged by the Commission to be inadequate. The Commission's interpretation of Section 1806 which leaves the burden of proof with the intervenor is consistent with Section 1804's burden of proof assignment discussed above. This is not a new interpretation of Section

1806. TURN had ample opportunity to justify the fees charged by its consultant, and does not merit another bite at the apple.

For all the foregoing reasons, TURN's application for rehearing should be denied because it fails to raise legal error.

Therefore, IT IS HEREBY ORDERED that rehearing of D.94-10-036 is denied.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

President Henry M. Duque, being necessarily absent, did not participate.