

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the California's One Million New Internet Users Coalition's Misuse of California Advanced Services Fund Grant Funds; and Order to Show Cause Why the Commission Should Not Impose Penalties and/or Other Remedies for Violating Terms of Their Grant and for Refusing to Return Funds Previously Demanded by the Commission's Division.

Investigation 18-07-009

**MOTION OF CONSUMER PROTECTION AND ENFORCEMENT
DIVISION REQUESTING A LAW AND MOTION HEARING &
SHORTENING THE TIME PERIOD TO RESPOND**

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July 22, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION
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I. INTRODUCTION

Pursuant to California Public Utilities Commission Rule of Practice and Procedure Rule 11.1, the Consumer Protection and Enforcement Division (CPED) respectfully moves to request that Administrative Law Judge (ALJ) Zhang set a law and motion hearing to address certain discovery requests submitted by Community Union Inc. (CU) on July 20, 2020, at 3:30 p.m. and 4:35 p.m.¹ CPED requests that the law and motion hearing be set on or around August 6 or August 7 so that any discovery disputes can be addressed and resolved expeditiously.

II. PROCEDURAL HISTORY

On May 7, 2020, after being instructed by ALJ Zhang to provide a dedicated email to CPED describing and explaining its discovery requests (as opposed to requests made verbally or requests embedded in status request filings),² CU sent an email to CPED

¹ Attachment 1, Emails from Larry Ortega to CPED Counsel dated July 20, 2020 at 3:30pm and 4:35pm.

² May 4, 2020 Status Conference Transcript, p. 22, lns. 15:25.

containing, in part, several requests for the production of email communications from CPED. Specifically, CU requested “emails by and between Robert Wullenjohn and Communications Division’s staff on Reimbursement packages sent for Quarters 11, 12, and 13” and “emails by and between Robert Wullenjohn and former Deputy Executive Director, Mr. Ryan Dulin to ascertain if they acknowledged receipt of quarterly reimbursement requests for quarters 11, 12, and 13 from California’s One Million NIU and what instructions were given for handling of these requests.”³ CPED responded to CU’s discovery requests in May and June 2020. On July 20, 2020, CU sent an email that now attempts to claim that it had previously requested for Communication Division’s (CD) emails “beginning October 2, 2014 through October 30, 2015 from Communications Division relating to all business with California’s One Million NIU.”⁴

CPED previously explained during the June 18, 2020 status conference that CU’s initial request on May 7, 2020 for email communications was specific and limited and in no way requested all of CD’s emails.⁵ ALJ Zhang also explained to CU at the June 18, 2020 status conference that CU was required to put together a document specifically identifying all of CU’s discovery requests rather than relying on piecemeal requests through phone conversations or requests embedded in emails.⁶

To date, CU has not provided the document containing all its discovery requests as directed by the ALJ. In a phone conversation between Mr. Ortega and CPED’s attorney on July 8, 2020, CU tried to claim yet again that it had asked for all of CD’s emails.⁷ However, CPED’s attorney explained that such a request was overly broad and should be narrowed, for instance to a period of time, a certain issue, and a particular CD staff person.⁸ CPED also reminded CU that at the June 18, 2020 status conference, ALJ Zhang had asked CU to put together a document specifically detailing all of CU’s

³ Attachment 2, Email from Community Union to I.18-07-009 Service List dated May 7, 2020.

⁴ Attachment 1, Email from Community Union to I.18-07-009 Service List dated July 20, 2020.

⁵ Attachment 4, Declaration of Vanessa Baldwin.

⁶ Attachment 4, Declaration of Vanessa Baldwin.

⁷ Attachment 4, Declaration of Vanessa Baldwin.

⁸ Attachment 4, Declaration of Vanessa Baldwin.

discovery requests.² No such document was forthcoming. Then, on July 20, 2020, Community Union sent an email claiming that it had requested emails from CPED “beginning October 2, 2014 through October 30, 2015 from Communications Division relating to all business with California’s One Million NIU.” Community Union also requested on July 20, 2020 “Mr. Wullenjohn’s personnel file.”¹⁰

III. DISCUSSION

Rule 10.1 of the Commission’s Rules of Practice and Procedure limits discovery to matters “relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.”

CU’s request for emails in its 3:30 p.m. July 20, 2020 request¹¹ is overly broad. In an attempt to resolve discovery disputes, CPED’s counsel initiated a call with CU on July 8, 2020. CU explained that it sought all emails from CD relating to NIU, not just emails between Robert Wullenjohn and CD staff regarding reimbursement packages for certain quarters or emails between Robert Wullenjohn and Ryan Dulin relating to the quarterly reimbursement reports for certain quarters. CPED’s counsel requested that CU narrow its broad request and reminded CU that at the last status conference, ALJ Zhang asked CU to put together a document specifying its discovery requests¹² rather than presenting requests informally, piecemealed, or embedded in other emails. CU agreed to put in writing its specific request later that week.¹³ At the time, CU offered no specific time period limiting the discovery request for all of CD’s emails.

Without having received any prior discovery request in writing, CPED was surprised to see that in CU’s July 14th email motion to ALJ Zhang requesting an

² Attachment 4, Declaration of Vanessa Baldwin.

¹⁰ Attachment 1, Email from Community Union to I.18-07-009 Service List dated July 20, 2020.

¹¹ Attachment 1, Email from Community Union to I.18-07-009 Service List dated July 20, 2020.

¹² Attachment 4, Declaration of Vanessa Baldwin.

¹³ Attachment 4, Declaration of Vanessa Baldwin.

extension of time to submit Community Union’s rebuttal testimony, CU embedded its claim that it informed CPED that it sought “everything that had to do with California’s One Million NIU from October 2014 through June 30, 2015.”¹⁴ No such specific dates were provided to CPED.

CU’s July 20, 2020 email revealed for the first time that CU now seeks emails “beginning October 2, 2014 through October 30, 2015 from Communications Division relating to all business with California’s One Million NIU.”¹⁵ CU’s email now expands the timeframe for its discovery request by four months.

CPED intends to timely respond to CU’s latest discovery requests and seeks clarification that the request is for emails relevant to the disputed facts and issues scoped in this proceeding. CPED believes a law and motion hearing is needed to clarify and narrow this discovery request.

Additionally, CU’s request made at 4:35 p.m. on July 20, 2020 for “Mr. Wullenjohn’s personnel file”¹⁶ is not relevant to the issues scoped in this proceeding. CU’s request is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding and is outside the scope of discovery set forth in Rule 10.1 of the Commission’s Rules of Practice and Procedure. Furthermore, even if such a request was considered relevant, the release of personal information is prohibited by California law.¹⁷ CPED requests a law and motion hearing to discuss its concerns related to the intrusiveness of such a request and the likelihood that the information will lead to the discovery of admissible evidence.

Given the difficulty CPED has faced trying to resolve discovery issues with CU,¹⁸ and in consideration that CU filed its discovery requests a day before the discovery

¹⁴ Attachment 3, Motion for Extension of Time July 14th Deadline Community Union Response, dated July 14, 2020.

¹⁵ Attachment 1, Email from Community Union to I.18-07-009 Service List dated July 20, 2020.

¹⁶ Attachment 1, Email from Community Union to I.18-07-009 Service List dated July 20, 2020.

¹⁷ See, Cal. Code Sec. 1798.24 prohibits the disclosure of any personal information unless it is authorized in Cal. Code Sec. 1798.24.

¹⁸ Email Ruling Granting CPED’s Motion to Compel Responses to Data Requests, dated June 22, 2020.

cut-off, CPED believes a law and motion hearing will more efficiently and immediately resolve the discovery issues before hearings in late August.

Considering the relatively short time period before hearings, CPED also requests to shorten the time for parties to respond to this Motion to six days or July 29, 2020.

IV. CONCLUSION

For the reasons set forth in this Motion, CPED respectfully requests that the ALJ grant CPED's request to set a law and motion hearing to resolve CU's July 20, 2020 discovery requests and to shorten the time period for responses to this Motion.

Respectfully submitted,

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July 23, 2020

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**RULING GRANTING CPED'S MOTION & SHORTENING THE TIME TO
RESPOND & SETTING LAW AND MOTION HEARING
[PROPOSED] ORDER**

In accordance with its Rules of Practice and Procedure, the California Public Utilities Commission (Commission) and having considered the Consumer Protection and Enforcement Division's (CPED) July 23, 2020 Motion Requesting a Law and Motion Hearing filed in the above captioned proceeding.

And, GOOD CAUSE APPEARING THEREFOR, the Motion of the Consumer Protection and Enforcement Division is GRANTED. Responses to the Motion shall be due on [July 29, 2020] and a telephonic Law and Motion hearing will be held on [August 6, 2020 or August 7, 2020].

IT IS SO ORDERED.

Dated: _____

Administrative Law Judge

ATTACHMENTS