

Docket: I.18-07-009
Exhibit Number : _____
Commissioner : Rechtschaffen
Admin. Law Judge : Zhang
:
:



**CONSUMER PROTECTION
AND ENFORCEMENT DIVISION
CALIFORNIA PUBLIC UTILITIES COMMISSION**

DIRECT TESTIMONY

OF

VICKY ZHONG

REDACTED

San Francisco, California
July 7, 2020

1 **Q1. Please identify the Utility Enforcement Branch (UEB) staff who will jointly sponsor**
2 **Consumer Protection and Enforcement Division's (CPED) Opening Testimony.**

3 A1. The following UEB staff sponsor CPED's Opening Testimony:
4 Brian Hom
5 Nina Enriquez
6 Vicky Zhong
7

8 **Q2. Are there other individuals that will also provide testimonies to support CPED's**
9 **Opening Testimony?**

10 A2. The following are individuals provide testimony to support CPED's Opening Testimony:
11 Devla Singh – Communications Division (CD)
12 Selena Huang – Communications Division
13 Andrew Finlayson – State Controller's Office (SCO)
14 Chris Prasad – SCO (formerly)
15

16 **Q3. Who will be sponsoring UEB Staff Report and UEB Supplemental Report today?**

17 A3. Brian Hom sponsors the UEB staff Report.
18 Brian Hom and Vicky Zhong co-sponsor UEB's Supplemental Report submitted on
19 June 16, 2020.
20

21 **Q4. Does CPED have further information it would like to include in the Opening**
22 **Testimony?**

23 A.4 Yes, CPED would like to address the following allegations made in the Order Instituting
24 Investigation (I.18-07-009).¹ CPED's Opening Testimony includes additional factual
25 information that will reinforce and support CPED's position on the following:

26 Allegation No.1 - The NIU Coalition failed to provide supporting documentation
27 and information necessary to determine that expenses reimbursed with CASF
28 grant funds were not also reimbursed from the Coalition's other funding sources.

29 Allegation No.2 - The NIU Coalition failed to maintain and produce
30 documentation necessary to verify that all expenses claimed were in fact spent in
31 accordance with program requirements.

32 Allegation No.3 - The NIU Coalition failed to produce documents and provide
33 information to the Commission's Utility Enforcement Branch.

34 Allegation No. 4: The NIU Coalition failed to implement program activities
35 consistent with the terms of their CASF Grant (i.e. provide 40-hour training;

¹ OII, p. 5.

1 deliver training to 790 parents/year; conduct enough workshops at the rate
2 provided).

3 Allegation No.5: The NIU Coalition misled the Commission by failing to inform
4 the Commission of reducing parent training to at or around 20 hours but yet
5 reporting in their annual Work Plans that they had provided 40 hour training
6 programs.

7 Allegation No.6 - The NIU Coalition refused to comply with the Communication
8 Division's demand letter to return CASF funds to the Commission.

9

10 **Q5. Please identify the staff who will provide additional factual information regarding**
11 **the allegations No.1-6 above?**

12 Vicky Zhong, Chris Prasad and Andrew Finlayson will provide additional factual
13 information regarding allegations No.1 and 2.

14 Brian Hom will provide additional factual information regarding allegation No.3. Brian
15 Hom and Vicky Zhong will provide additional factual information regarding allegation
16 No.6.

17 Nina Enriquez, Devla Singh and Selena Huang will provide additional factual
18 information regarding allegations No.4 and 5.

1 **I. QUALIFICATION AND SUMMARY**

2

3 **1. State your name and address.**

4 My name is Vicky Zhong. My address is 505 Van Ness Avenue, San Francisco, California,
5 94102.

6

7 **2. What is your job title?**

8 I am a Senior Investigator and Regulatory Analyst with the Utility Enforcement Branch
9 (UEB) of the Consumer Protection Enforcement Division (CPED). My primary
10 responsibility is to protect California utility consumers from fraud and abuse by ensuring
11 service providers' compliance with consumer protection laws and regulations.

12

13 **3. Can you explain your involvement with CPED's investigation?**

14 I participated in the analysis of Community Union's (CU) purported general ledger (G/L)
15 provided to CPED on May 26, 2020, review of additional revenue reconciliation of
16 Community Union's G/L, review of State Controller Office's (SCO) audit report, and review
17 of data request responses.

18

19 **4. Was the CPED Staff Report and Supplemental Report dated May 1, 2018, and June 16,**
20 **2020, respectively, in this case prepared under your direction and control?**

21 CPED's Staff Report dated May 1, 2018, was not prepared under my direction and control.
22 Sections II B and II C of the Supplemental Report dated June 16, 2020, were prepared under
23 my direction and control.

24

25 **5. Are you sponsoring the CPED Staff Report and Supplemental Report as your**
26 **testimony here today?**

27 I am sponsoring the Supplemental Report sections II B and II C.

28 **6. Do you have further information you would like to include as your testimony?**

29 Yes, I would like to address some mathematical errors made in Supplemental Report Section
30 II B. Corrections are noted in red text below to page 12, paragraph one:

31

32 UEB staff also found **\$366,684,²** in additional revenue³ from CU's G/L [general
33 ledger] provided on May 26, 2020, and supplemental G/Ls for the missing
34 quarters. Of the \$228,960 found in data requests, \$172,630 of the is also included

² CU's additional G/L revenue includes "Revenue Other Funding" for the entire grant period. \$236,559 (Sept 2012-Sept 2014)+\$61,228.5 (Feb-July 2012)+\$25,071 (Oct-Dec 2014)+\$43,825(Jan-Feb 2015)=
\$366,683.5 (Feb 2012-Feb 2015). See CPED Supplemental Report dated June 16, 2020, Exhibit 17.

³ Additional revenue found in the G/L totaled **\$366,683.5** and \$172,630 can be vouch to data request payments.

1 in the G/L. As such, UEB staff identifies a total of \$423,013.5,⁴ not disclosed to
2 the SCO auditors during the audit.

3 Additionally, I would like to address the following allegations made in the Order Instituting
4 Investigation (I.18-07-009) as taken from the UEB Staff Report. My testimony will include
5 additional factual information that will reinforce and support CPED's position on the
6 following:

7 Allegation 1: The One Million New Internet User's (NIU) Coalition failed to
8 provide supporting documentation and information necessary to determine that
9 expenses reimbursed with CASF Grant funds were not also reimbursed from the
10 Coalition's other funding sources.

11 Allegation 2: The NIU Coalition failed to maintain and produce documentation
12 necessary to verify that all expenses claimed were in fact spent in accordance with
13 program requirements.

14 II. ALLEGATION No.1

15 1. What is your current position regarding CPED's allegation No.1 that the NIU Coalition 16 failed to provide support and information necessary to determine that expenses 17 reimbursed with CASF Grant funds were not also reimbursed from the Coalition's 18 other funding sources?

19 I support CPED's allegation No. 1. Despite additional opportunities and ample time to do so,
20 CU did not provide CPED with the documentation necessary to conduct a complete analysis
21 in order to determine whether NIU's expenses reimbursed with CASF Grant funds were also
22 not reimbursed by NIU's other funding sources.

23 To date, CU has yet to provide complete and full responses or documents as required by the
24 Administrative Law Judge's (ALJ) motion to compel.⁵ CU's incomplete and/or partial data
25 responses limit the usefulness of the provided documentation. For example, in response to
26 Questions (Q) number 1, 9, and 10 of CPED's data request dated February 21, 2020,⁶ CU
27 provided two documents titled "One Million NIU Activities, Roles, Hours

⁴ Total additional revenue includes all data request revenues and non-CASF G/L revenues (Revenue Other Funding) net of duplicated revenue matched between the two sources. \$423,013.5=\$228,960+\$366,683.5 -\$172,630 (duplicate of DR revenue and non-CASF G/L revenue). See Table 2 for all data request revenue traceable to the G/L.

⁵ ALJ Zhang Email Ruling Granting CPED's Motion to Compel Responses to Data Requests dated June 22, 2020.

⁶ Attachment 4, Motion to Compel, Attachment L, Data Request to Larry Ortega and Community Union Inc. dated February 21, 2020:

Q1: identify the address of all facilities used for CASF activities.

Q9: list of all facilities including the last known point of contact.

Q10: list of courses in carrying out CASF activities, including description of course, date, time and location.

1 RELATIONSHIPS SUMMARY”⁷ and “One Million NIU - No. 1 Office, rooms CASF
2 Activities.”⁸ Per CU’s response, the worksheets are supposed to provide information on the
3 class name, class date, class location, and class trainer for CASF Grant-related activities
4 during the grant period. Of the 78⁹ class sites provided, only 21 sites contained both class
5 trainer and class date. The start date for all 21 classes falls between September to October
6 2014. If complete, the class trainer, class dates, class location can be traced to trainer
7 invoices or MOUs to provide insights on how CU allocated trainer expenses for the duration
8 of the CASF Grant. Even though the 21 class sites contained pertinent information such as
9 class trainer, class location, and class date, CPED still cannot verify the allocation of trainer
10 expense because coincidentally, CU did not provide any Memorandum of Understandings
11 (MOU) containing class details for September to October 2014. CU’s incomplete responses
12 to CPED’s data requests significantly limit the usefulness of the information provided and
13 prevent CPED from ascertaining whether it was appropriate for NIU to charge expenses to
14 the CASF grant as opposed to NIU’s other funding sources.

15 The SCO auditors had experienced similar challenges in understanding CU’s CASF expense
16 allocation. SCO concluded, “that there was a lack of complete records; thus, we could not
17 determine if the grant-funded expenses were also charged against other funds.”¹⁰
18 Additionally, “Mr. Ortega stated that there was no cost codes associated with the time he
19 spent in relation to NIU, nor a specific time allocation method.”¹¹ Without a specific time
20 allocation method, SCO also cannot determine the appropriate labor cost to be allocated to
21 CASF Grant funds.

22 The lack of a proper expense allocation method paired with the lack of supporting
23 documentation made it infeasible for SCO and CPED to analyze and verify the extent of
24 expenses CU should have charged to only the CASF Grant, and determine whether and how
25 much of CASF expenses were also reimbursed by NIU’s other funding sources.

26 **2. What additional factual information will you present to support and reinforce your**
27 **position?**

28 I will present additional factual information related to the Disputed Facts established by the
29 ALJ at the May 4, 2020,¹² Case Management Conference. Specifically, by responding to the
30 following Disputed Facts, I will show that CU failed to provide support and information

⁷ Attachment 1, One Million NIU Activities, Roles, Hours, Relationship Summary.

⁸ Attachment 2, CASF class sites.

⁹ Attachment 1, One Million NIU Activities, Roles, Hours, Relationship Summary contains a list of 78 class locations, 3 locations, Bethune Middle School, Inglewood Parent Center, and Cypress Center are listed twice; therefore, there are a total of 75 unique class sites.

¹⁰ OII Attachment B, SCO Audit Report, p. 24.

¹¹ Attachment 3, SCO interview notes with Larry Ortega.

¹² ALJ Zhen Zhang, presiding status conference for investigation I.18-07-009 on May 4, 2020.

1 necessary to determine that expenses reimbursed with CASF Grant funds were not also
2 reimbursed from the Coalition’s other funding sources:

3 Disputed Fact No.2 - What other revenues or funds did Respondent, Community
4 Union, collect and/or receive from sources other than the CASF Grant

5 Disputed Fact No. 3- Did Respondent collect or seek to collect duplicate funding
6 and use the same expenses charged to the CASF Grant

7
8 **3. What additional factual information do you have regarding Disputed Fact No.2?**

9 I summarize below the additional factual information regarding Disputed Fact No.2 - What
10 other revenues or funds did Respondent, Community Union, collect and/or receive from
11 sources other than the CASF Grant:

12 CU received \$228,960 in additional revenue based on the results of CPED’s data requests
13 submitted to school districts and utilities.¹³ Some school districts provided an MOU while
14 others only provided fragments of invoices or payment records.

15 The spreadsheet CU titled “general ledger” (G/L) also disclosed that \$366,684¹⁴ was received
16 during the grant period from sources other than the CASF Grant.

17 The following explains the types of information provided by some of the school districts that
18 provided funding to CU for the same activities funded by the CASF Grant:

19 **Anaheim Elementary School District Payment Record**

20 During the grant period, Anaheim Elementary School District paid CU \$32,320¹⁵
21 for “Parent Education Workshop-Computer Classes.” Parent technology classes
22 are Activity 5 in CU’s work plan.

23 **Huntington Beach Union High School District (HBUHSD)**

24 During the grant period, HBUHSD paid CU \$10,620¹⁶ for the following activities.
25 The corresponding CASF activity for each task is noted in parenthesis.

- 26 • Promotion of class success with local leaders and media (NIU Activity 1)
- 27 • Outreach and recruitment of parents (NIU Activity 3)
- 28 • Follow-up phone calls to parents (NIU Activity 3)
- 29 • Recruitment, training and management of trainers using the Parent
30 Engagement through Technology (PE+T) system (NIU Activity 5)
- 31 • All classes and class schedule (NIU Activity 5)

¹³ CPED Supplemental Report dated June 16, 2020, p. 11.

¹⁴ See Qualification and Summary No. 6.

¹⁵ CPED Supplemental Report dated June 16, 2020, Exhibit 1, Anaheim Elementary Responses.

¹⁶ CPED Supplemental Report dated June 16, 2020, Exhibit 6, Huntington Beach USD Responses.

- 1 • And provide supplies (NIU Activity 5)
- 2 • Delivery of PE+T (NIU Activity 5)
- 3 • Graduation ceremony, announcements, invitations, and day of event (NIU
- 4 Activity 6)

5 **Pomona USD MOU**

6 During the grant period, Pomona USD paid CU \$44,170¹⁷ for implementing the
7 Parent Engagement through Technology program, which provides technology
8 training to parents. Parent technology training is Activity 5 in CU’s work plan.

9 **West Covina USD’s System Record**

10 During the grant period, Pomona USD paid CU \$12,300¹⁸ for CASF activities.

11 On West Covina USD’s Requisition Snapshot for Fiscal year 2014/15, West
12 Covina USD CU \$1,800 to provide parent technology classes totaling 20
13 instructional hours at Hollencrest Middle School, for the 2014-2015 school year.
14 ¹⁹ Parent technology class is Activity 5 in CU’s work plan.

15 As stated earlier, CPED also found \$366,684 in additional revenue recorded in CU’s
16 G/L as “Revenue other Funding.”

17 **CU Admitted to Additional Revenue Covering 61% of Program Expenses**

18 In CU’s response to DR#7 in “Updated Responses to CPED Data Requests,”²⁰ CU claimed
19 its expense allocation between CASF and other funding sources as follows:

20 The MOU’s served to meet the 61% obligation to the CASF budget
21 commitment. CASF only covered 39%. It was incumbent on Community
22 Union and other Consortia members to find and supplement, take care of, the
23 61% commitment.

24 This is consistent with NIU’s Action Plan and Budget submitted to the Commission’s
25 Communication Division (CD) showing that approximately 39% of Consortia program
26 expenses were anticipated by NIU to be charged against the CASF Grant and 61% to be
27 charged against other funds.²¹

28 **CU did not Disclose Additional Revenues to SCO Auditors During the Audit**

29 SCO’s auditors discovered canceled checks totaling \$121,825 over invoiced²² that were not
30 previously revealed by Mr. Ortega in CU’s G/L. Canceled checks are indications of
31 additional revenues, and despite having been previously asked for all additional revenues,

¹⁷ CPED Supplemental Report dated June 16, 2020, p. 9.

¹⁸ *Id.*

¹⁹ CPED Supplemental Report dated June 16, 2020, Exhibit 12, West Covina Responses.

²⁰ Attachment 6, Updated Responses to CPED Data Requests, p. 2.

²¹ OII Attachment A, CPED’s Staff Report, Exhibit 6 (Action Plan and Budget).

²² Attachment 7, SCO WP 3D-1 - Test of Payroll Expenses.

1 Mr. Ortega made claims to SCO multiples times that CASF Grant is its sole source of income
2 and the main reason for conducting business.²³ Contrary to Mr. Ortega’s statement to the
3 SCO auditors, the CASF Grant is not NIU’s sole source of income. Rather, based on
4 CPED’s investigation, CU received additional revenues from multiple sources and failed to
5 disclose them to the SCO auditors during the audit.
6

7 CU’s purported G/L now disclosed it received “Revenue Other Funding” totaling \$366,684.
8 CU received revenue from school districts, investor-owned utilities, and other Consortia
9 members²⁴ in addition to the CASF Grant. While CPED confirmed \$228,960 in additional
10 revenue from school districts and investor-owned utilities,²⁵ CPED cannot confirm the exact
11 amount of additional revenue without all of the supporting documentation requested for by
12 CPED in data request numbers 1, 3, 6, 7, 8, 9, 10, 13, 14, 15.²⁶
13

14 **4. What additional factual information do you have regarding Disputed Fact No.3?**

15 The following is additional factual information regarding Disputed Fact No. 3- Did
16 Respondent collect or seek to collect duplicate funding and use the same expenses charged to
17 the CASF Grant:
18

19 CPED found evidence of CU collecting funds from the CASF Grant for activities
20 already funded by other sources. NIU’s trainer expense associated with activities
21 conducted at El Rancho Unified School District (ERUSD) that gave NIU funding was
22 also charged to the CASF Grant.

23 CU trainer invoices show work performed for ERUSD and CASF but do not show
24 allocation between the two funding sources. For example, one trainer invoice
25 contained the statement: “(CASF/ERUSD) hrs of work for services rendered to
26 Community Union, Inc from 06/01/12 through 06/15/12...\$240.00”²⁷ The trainer’s
27 invoice clearly stated part of the service rendered was for ERUSD; however, the
28 invoiced amount of \$240 was charged to the CASF Grant. There are other examples
29 of invoices that were prepared correctly and properly separates CASF-ERUSD
30 expenses from CASF expense²⁸. Based on the observation above, CU did not
31 separate ERUSD trainer expenses from CASF expense.

32 Since CD also paid CU for services provided to ERUSD; these activities were funded
33 by ERUSD and should not be charged to the CASF Grant.

²³ *Id.*

²⁴ Attachment 6, Updated Responses to CPED Data Requests, p. 2.

²⁵ CPED Supplemental Report dated June 16, 2020, p. 8.

²⁶ Attachment 4, Motion to Compel, Attachment L, Data Request to Larry Ortega and Community Union Inc. dated February 21, 2020.

²⁷ Attachment 8, Y1Q2 Invoice No. 10 for ██████████ Gutierrez.

²⁸ Attachment 9, Y1Q2 Invoice No. 10 for ██████████ Galvan Jr.

1 NIU claimed and was reimbursed \$368,747²⁹ for costs incurred for the first 10 quarters, from
2 March 1, 2012, through August 31, 2014.³⁰ Of the total amount of CASF Grant funded to
3 NIU, CU received \$275,433,³¹ net of payments to Korean Churches for Community
4 Development (KCCD). Based on CU's response to CPED's data request #7, dated June 26,
5 2020, 61% of NIU's additional revenue should cover its program expenses. If CD's
6 \$275,433 total reimbursement to CU accounted for 39% of NIU's program expenses, then
7 the total program cost of implementing the NIU's program should be approximately
8 \$706,238³². However, CU's G/L disclosed only \$574,159 in total expenses during the first
9 10 quarters.³³ Therefore, CU likely submitted and was reimbursed for program expenses by
10 the CASF Grant that was also paid for by NIU's other funding sources.

11
12 **5. What is your conclusion based on the additional factual information relating to**
13 **Disputed Facts No.2 and No.3 and Allegation No. 1?**

14 Yes, I support allegation 1 because NIU has yet to provide the necessary documentation for
15 CPED to evaluate all expenses reimbursed with CASF Grant funds.

16
17 Disputed Fact No. 2-CU received additional revenue from school districts, investor-owned
18 utilities, and other Consortia members in addition to the CASF Grant. CPED confirmed
19 \$228,960 in additional revenue from school districts and investor-owned utilities through
20 independent data requests. CU's purported G/L also shows "Revenue Other Funding"
21 totaling \$366,684, thus supporting the fact CU received additional revenue. Disputed Fact
22 No. 3- CPED cannot confirm the exact amount of additional revenue without all of the
23 supporting documentation requested for by CPED. However, CPED found evidence that
24 ERUSD trainer expense appears to be double charged to the CASF Grant; ERUSD training
25 activities were funded by ERUSD and should not be charged to the CASF Grant.

26 **III. ALLEGATION No. 2**

27 **6. What is your current position regarding CPED's allegation No.2 the NIU Coalition**
28 **failed to maintain and produce the documentation necessary to verify that all expenses**
29 **claimed were in fact spent in accordance with program requirements?**

²⁹ OII, Attachment A, CPED Staff Report, p. 10. SCO's audit showed a total payment of \$353,784 because SCO did not receive one check of \$14,963 issued for start-up cost. Total paid to the Coalition totaled \$368,747. NIU staff report.

³⁰ OII Attachment B, SCO Audit Report, p. 1.

³¹ Figure obtained from CU's G/L. CPED Supplemental Report dated June 16, 2020, Exhibits 17 & 18. Figure is the sum of Feb-July 2012, KCCD-CASF Funding (\$11,993) and Sept 2012-Sept 2014, KCCD-CASF Funding (\$263,449.79), totaling \$275,443.

³² Total obtained from sum of CU's G/L, CPED Supplemental Report dated June 16, 2020, Exhibits 17 & 18. 39% of \$706,238=\$275,433, total amount reimbursed by CD to CU for CASF expenses.

³³ Figures obtained from CU's G/Ls total expenses. CPED Supplemental Report dated June 16, 2020, Exhibits 17 & 18. \$96,477.59 (Feb-Jul 2012) + \$477,681.89 (Sept 2012-Sept 2014) = \$574,159.48.

1 CPED has additional factual information to support and reinforce its position of allegation
2 No.2.

3
4 CPED’s response to allegation No. 1 highlighted several of CU’s program requirement
5 violations. First, CU’s failure to provide the documents requested for in CPED’s data request
6 prevented CPED from determining the full extent of CU’s non-compliance with program
7 requirements. Second, there’s evidence of CU charging the CASF Grant for activities
8 already funded by other funding sources.

9
10 CU’s G/L included questionable expenses in the “Other CASF Related Expenses” category.
11 These expenses may not have been reimbursed by the Commission; however, they should be
12 excluded from the total allowable CASF expense for the purpose of determining
13 overpayment. A sample of disallowed “Other CASF Related Expenses” is listed as follows.
14

Date	Description	Amount
04/16/2013	Yard House (sports bar)	\$202.59
07/16/2013	Quad Wine	5.35
07/23/2013	L A Fitness	99.00
08/02/2013	Eye Exam	403.20
08/12/2013	LENS Crafter	412.50
08/27/2013	M. Seraji (Dentist)	2,428.00
09/04/2013	Franchise Tax Board	270.00
10/21/2013	Glendale Diagnostic Imaging Network	400.00
02/24/2014	Eye Exam	149.95
04/04/2014	Southwest Voter Education Project	200.00
05/19/2014	Eye Exam	120.50
08/26/2014	M. Seraji, DDS	1,500.00
08/28/2014	M Seraji D	1,234.00
09/24/2014	Netflix	8.99
09/25/2014	Eye Exam	120.50
09/30/2014	Macy	108.99
Total		\$7,663.57

15
16 CU also provided lodging invoices that are not compliant with CASF Grant requirements, in
17 its response to data request #6.³⁴ Per the CASF Administrative Manual, Consortia grantees
18 are subject to the same travel reimbursement rules as California State employees.³⁵ CU

³⁴ Attachment 4, Motion to Compel, Attachment L, Data Request to Larry Ortega and Community Union Inc. dated February 21, 2020.

³⁵ Selena Huang Testimony dated July 7, 2020, Attachment 1, California Advanced Services Fund Rural and Urban Regional Broadband Consortia Grant Program, version 2 (Sept 2012), p. 10.

1 provided two lodging invoices³⁶ that violate the California State Business and Travel Policy,
2 which states, “Employee may not claim lodging, meal, or incidental expenses within 50 miles
3 of his/her home or headquarters.” CU’s lodging expenses are not allowable under CASF
4 Grant terms because the lodging location is within 50 miles of the traveler’s address.³⁷ The
5 distance between Mr. Ortega’s stated address and the two hotels are 31 and 15 miles apart.
6

7 Additionally, I discovered that CU has a history of failing to provide documentation to
8 authorities and exhibits a pattern of refusing and failing to provide sufficient documentation
9 to substantiate expenses claimed. For instance, on April 14, 2010, the County of Los
10 Angeles Department of Auditor-Controller (LADAC) issued a contract review of a
11 community services block grant (CSBG) from the Department of Public Social Services.³⁸ In
12 relation to LADAC’s review of expenditures and procurement process, LADAC noted the
13 following issues with CU’s documentation:
14

- 15 • CU did not provide documentation to support how the expense was used
16 within the scope of the CSBG;
- 17 • The mileage logs CU submitted to document their expenditures were
18 incomplete and did not adequately indicate the purpose of each trip; and
- 19 • CU billed \$54 for office supply purchases that appear unreasonable and
20 unnecessary (eg. \$140 for a Waterman pen) and lacked documentation
21 justifying how the supplies were used for the CSBG program.

22 The SCO had also made numerous attempts to obtain relevant documents during the audit.
23 As noted in CPED’s March 25, 2020 motion to compel,³⁹ SCO had attempted to obtain
24 documentation through the initial visit, phone conferences, and emails. Mr. Ortega “insists
25 that accounting records and vendor prepared invoices and source documents, such as time
26 records are maintained but not readily available” and “are located in several storages away
27 from the office” and consisted of “thousands of pages of documents.”⁴⁰ SCO never received
28 complete accounting records and source documents to verify CU’s CASF Grant-related
29 services and activities.
30

31 Yet again, CU refuses to provide access to NIU’s full and complete records, including the “5
32 large boxes” that CU alleges to contain responsive information. In light of the facts above, I
33 support CPED’s allegation 2.

³⁶ Attachment 11, NIU’s lodging invoices and google maps.

³⁷ <http://hrmanual.calhr.ca.gov/Home/ManualItem/1/2201>.

³⁸ Attachment 10, Community Union, Inc. Contract Review- A Department of Public Social Services Community Services Block Grant Program Provider.

³⁹ Attachment 4, Motion of the Consumer Protection and Enforcement Division Compelling Responses to Data Request from Larry Ortega and Community Union Inc. and Shortening Time for Response, dated March 25, 2020 (Motion to Compel).

⁴⁰ Attachment 4, Motion to Compel, Attachment J, Email from Chris Prasad to Andy Finlayson dated May 11, 2015.

1 **7. What additional factual information will you present to support and reinforce your**
2 **position?**

3 I will present additional factual information related to the Disputed Facts established by the
4 ALJ on May 4, 2020, at the Case Management Conference. Specifically, by responding to
5 the following Disputed Facts, I will show that CU failed to provide support and information
6 necessary to determine that expenses reimbursed with CASF Grant funds were not also
7 reimbursed by the other funding sources:

8 Disputed Fact No.1 - Did Respondent record all of its revenues and expenses in a
9 general ledger under the generally-accepted accounting procedures (GAAP).

10 Disputed Fact No. 4- Did the audit report correctly include all allowable expenses
11 for Q11, 12, 13.

12 Disputed Fact No. 5- Did the audit report correctly use 10 out of 13 months of
13 expenses incurred.

14 Disputed Fact No. 6- Did the audit report estimate numbers when it could have
15 used actual numbers.

16 Disputed Fact No. 12- Do the invoices submitted to the Communications Division
17 support the reimbursements.

18 Disputed Fact No. 13- Do the timecards produced by Mr. Ortega to the State
19 Controller's Office indicate that the described activities took place.

20
21 **8. What additional factual information do you have regarding Disputed Fact No.1?**

22 The following is additional factual information regarding Disputed Fact No. 1: Did
23 Respondent record all of its revenues and expenses in a general ledger under the generally-
24 accepted accounting procedures (GAAP):
25

26 CPUC Decision (D.)11-06-038 requires each grantee to maintain records and
27 documents to substantiate expenditures covered by the grant, according to
28 GAAP.⁴¹ As SCO pointed out, CU's G/L and accounting records were not
29 provided during the course of the audit. The purported G/L was provided years
30 after SCO's draft audit report was issued. In addition, SCO found the claimed
31 G/L was compiled using a check register from CU's bank statements.⁴² Such G/L
32 structure does not meet GAAP requirements as discussed below.
33

34 GAAP requires accrual basis accounting, which requires revenues and expenses
35 to be recorded when earned or incurred. CU's accounting records suggest cash
36 accounting, as it shows revenues recorded when cash is received, and expenses
37 recorded when cash is paid. Cash accounting is not an acceptable GAAP

⁴¹ CPUC D.11-06-038, section 8. Oversight of Consortia Activities Subsequent to Grant Approval states, in part: Each Consortia grantee shall maintain books, records, documents, and other evidence sufficient to substantiate expenditures covered by the grant, according to generally accepted accounting practices.

⁴² SCO Testimony dated July 7, 2020, p. 5.

1 accounting method; therefore, CU did not comply with the program’s requirement
2 to maintain its records to substantiate its expenses reimbursed with CASF Grant
3 funds in accordance with GAAP accounting.
4

5 CU’s failure to follow GAAP’s accrual accounting and the use of cash accounting
6 hampered CPED’s effort in determining the proper revenue and expense
7 allocation. For instance, CD’s payment letter dated September 28, 2012,⁴³ states
8 that CD has paid NIU \$38,177 for June-August 2012 services rendered. In CU’s
9 G/L, the transaction is recorded as \$34,577⁴⁴ revenue earned on November 14,
10 2012. Cash accounting records all revenue as earned on the day cash is received,
11 November 14, 2012, for this example, as opposed to the period when revenue is
12 earned, June-August 2012. Matching revenue and expense to the period in which
13 the transaction occurred is a key factor to determine whether expenses incurred
14 were spent in accordance with the Commission’s requirements; and it is also the
15 main revenue and expense recognition principle under GAAP.
16

17 CU’s G/L appears to have been prepared using a check register from CU’s bank
18 statements. In addition to CU’s deficient revenue and expense recognition, CU’s
19 check register-based G/L may be inaccurate due to CU’s poor internal controls
20 and record-keeping. The CASF Administrative Manual⁴⁵ strongly recommends
21 grantees “establish a bank account solely for CASF deposits and expenditures to
22 avoid co-mingling of other funding sources which will complicate accounting in
23 the consortia program.” However, CU does not have a separate bank account for
24 CASF deposits and expenditures⁴⁶ and lacks the internal controls to maintain
25 proper record keeping; therefore, CU’s check register-based G/L is not valid
26 under GAAP accounting and likely resulted in inaccuracies For example, in CU’s
27 G/L for months January-February 2015, CU recorded loan interest expense of
28 \$11,504 and the transaction description stated “Pulled cash to protect cash flow,
29 some money used to pay consultants, balance would be deposited back into accts,
30 see subsequent deposits” on January 9, 2015. This transaction illustrates the gross
31 inaccuracy of using a check register-based G/L as the primary source of
32 accounting records.
33

34 First, the transaction is misclassified as an expense as opposed to a mere cash
35 transfer. Second, the transaction double-counted the actual expense incurred.
36 Third, the transaction does not have a matching offsetting entry in the correct
37 accounting period. Under GAAP, the expense should be recognized when the

⁴³ Devla Singh Testimony dated July 7, 2020, (Attachment 6, Y1Q2 CD Payment Letter, Subject: Payment of \$38,176.93 for California’s 1 Million NIU Broadband Consortium).

⁴⁴ CPED Supplemental Report dated June 16, 2020, Exhibit 18, Transaction dated 11/14/2012. The difference of \$3,6000 between CD payment and CU’s payment receipt is payment to KCCD for services rendered.

⁴⁵ Selena Huang Testimony dated July 7, 2020, Attachment 1, California Advanced Services Fund Rural and Urban Regional Broadband Consortia Grant Program, version 2 (Sept 2012), p. 7.

⁴⁶ Figure obtained from CU’s G/L. CPED Supplemental Report dated June 16, 2020, Exhibits 17 & 18.

1 consultant service is performed, but CU's accounting method recognized the
2 expense when the consultant is first paid, then again when CU withdrew to
3 maintain its cash reserve. In CU's accounting method, the "loan interest expense"
4 is recorded during the grant period, and the error is compounded by the lack of
5 offsetting accounting entries, "loan interest revenue," in the correct accounting
6 period. Since the CASF Grant ends on February 28, 2015; and partial offsetting
7 entries are recorded in March and April 2015, the CASF Grant will never recover
8 the "loan interest expense", since offsetting "loan interest revenue" occurred after
9 the grant period.

10
11 CU did not record its revenues and expenses in a general ledger in accordance
12 with GAAP; thus, violating the CASF program requirements. Furthermore, the
13 check register-based G/L provided by CU likely reflects inaccuracies and serves
14 as an unreliable source of information on NIU's total financial condition.

15
16 **9. What additional factual information do you have regarding Disputed Fact No.4?**

17 The following is additional factual information regarding Disputed Fact No. 4: Did the
18 audit report correctly include all allowable expenses for Q11, 12, 13:

19 It was not necessary to include expenses for Quarters 11 (Y3Q3), 12 (Y3Q4), and
20 13 (Y4). Therefore, SCO did not examine expenses for these quarters. The
21 purpose of the audit was to determine whether CASF program funds *that NIU*
22 *received* were spent in accordance with program requirements. During the audit,
23 CD put a hold on further payments to NIU, including for Y3Q3 (Q11) and Y3Q4
24 (Q12). Since CU never received program reimbursements for Q11 and Q12, these
25 two quarters were not included in the audit scope. Additionally, Y4Q1 (Q13) is
26 not within the grant period authorized for NIU,⁴⁷ therefore, it is also outside of the
27 audit scope.

28 **10. What additional factual information do you have regarding Disputed Fact No.5?**

29 The following is additional factual information regarding Disputed Fact No. 5: Did the audit
30 report correctly use 10 out of 13 months of expenses incurred:

31 The audit report used 10 out of 13 quarters of expenses incurred and not 10 out of
32 13 months stated in Disputed Fact No. 5. It is correct to use 10 out of 13 quarters
33 of expenses in the audit report because the scope of the audit is to determine
34 whether NIU spent program funds in accordance with program requirements.
35 Since CD only issued payments for 10 quarters, only 10 quarters of expenses were
36 audited.

37

⁴⁷ T-17355 states, Project Start Date: Contingent upon Commission approval of funding, CD will coordinate start dates with each consortium grantee. The estimated start date is March 1, 2012. Year 2 and 3 Budget Renewal: To receive Year 2 and Year 3 funding of the budget allowance authorized by this resolution, grantees shall submit work plans for approval by October 1 of each year.

1 **11. What additional factual information do you have regarding Disputed Fact No.6?**

2 The following is additional factual information regarding Disputed Fact No. 6: Did the audit
3 report estimate numbers when it could have used actual numbers:

4 The SCO auditors did use estimated numbers to determine the amount overpaid to NIU
5 because the SCO auditors did not receive complete and reliable evidence to determine
6 whether CU's claimed expenses spent complied with the program requirements.⁴⁸

7 CU did not provide its G/L and select bank statements to the SCO auditors until after the
8 audit fieldwork was completed.⁴⁹ Additionally, the following issues presented challenges for
9 SCO to rely on CU's expense records.

- 10 • CU's main accounting record was a G/L that is not prepared in compliance
11 with GAAP; therefore, revenues and expenses cannot be matched to the
12 correct period without reconciliation with complete supporting
13 documentation. At the minimum, additional supporting documentation should
14 include complete bank statements, purchase orders, receipts, documentation
15 justifying the purchases, and expense allocation method to various funding
16 sources.
- 17 • CU's operation lacks internal control; therefore, documents are either missing,
18 incomplete, contained errors. Due to CU's poor internal controls, SCO
19 auditors cannot rely on documentation provided. For example, SCO had to
20 independently survey trainers and students to determine whether classes took
21 place because CU did not provide SCO with sign-in sheets or timecards
22 signed by the students and trainers.
- 23 • CU did not provide full and complete documentation for SCO auditors to
24 evaluate all program expenses. Had CU provided complete accounting
25 records, the cost allocation for NIU's services could have been established via
26 historical data and not an estimation method.⁵⁰

27 Due to the issues noted above, SCO was not able to use historical data in its audit report.

28
29 **12. What additional factual information do you have regarding Disputed Fact No.12?**

30 The following is additional factual information regarding Disputed Fact No. 12: Do the invoices
31 submitted to the Communications Division support the reimbursements:

32 As illustrated in No. 4, at least some of the invoices submitted to CD do not
33 support the reimbursements. Invoices paid included activities that were funded by
34 other grants. Despite issues with CU's invoices and NIU's failure to meet all of its

⁴⁸ SCO Testimony dated July 7, 2020, p. 5.

⁴⁹ OII Attachment B, SCO Audit Report, p. 12.

⁵⁰ SCO Testimony dated July 7, 2020, p. 5.

1 performance metrics, CD continued to fund NIU’s activities with the expressed
2 expectation that CD can require CU to refund any overpayment.⁵¹

3 Since CU received additional funding for CASF activities, CU needs to establish
4 a consistent expense allocation methodology to accurately allocate expenditures
5 to each funding source. As a result, CU had received funding from the CASF
6 Grant for activities unrelated to CASF or already funded by other funding
7 sources.

8 Absent a view of CU’s complete business operations, accounting records,
9 additional revenues, and revenue/expense allocation method, it is infeasible for
10 CPED to determine whether submitted invoices support the reimbursements.

11 The SCO auditors faced similar challenges when determining the appropriateness
12 of NIU’s reimbursed expenses. SCO noted time and effort for the CASF program
13 were substantiated from surveying past students and trainers; however, CU failed
14 to provide sufficient documentation to verify whether costs were charged
15 appropriately and not charged against other grants. SCO took additional steps to
16 estimate NIU’s allowable cost based on information on hand. Due to the lack of
17 information, SCO estimated NIU’s allowable reimbursement by using NIU’s
18 annual budget and allowable program costs.⁵²

19 **13. What additional factual information do you have regarding Disputed Fact No.13?**

20 The following are additional factual information regarding Disputed Fact No. 13: Do
21 the timecards produced by Mr. Ortega to the State Controller’s Office indicate that the described
22 activities took place:

23 CU did not provide student sign-in sheets containing actual signatures of class
24 attendees to the SCO auditors for attendance verification. Instead, CU provided
25 spreadsheets containing attendance records.⁵³ Due to CU’s poor internal controls
26 and the lack of reliable documentation,⁵⁴ SCO auditors performed an independent
27 review and reached out to a sample of students for confirmation and concluded
28 training activities did take place;⁵⁵ however, SCO cannot attest to the exact
29 training hours for all courses. Additionally, SCO auditors reconciled trainer
30 timecards with the CASF trainer invoice. The test revealed the issues listed below.

- 31
- Incorrect trainer name on timecard’s signature line

⁵¹ Devla Singh Testimony dated July 7, 2020, Attachment 6, Y1Q2 CD Payment Letter, Subject: Payment of \$38,176.93 for California’s 1 Million NIU Broadband Consortium stipulates: all payments are subject to audit and other verification for compliance with CPUC orders and directives. If, at any later date, portions of the payment are found to be out of compliance, CD will inform you, by letter, of the status of any adjustments. If this happens, Korean Churches for Community Development will be responsible for refunding the disallowed amount along with appropriate interest.

⁵² SCO Testimony dated July 7, 2020, p. 5.

⁵³ Attachment 5, SCO WP 4C-1 - Analysis of Labor Costs – NIU.

⁵⁴ OII Attachment B, SCO Audit Report, p. 11.

⁵⁵ SCO Testimony dated July 7, 2020, Analysis of Trainers, Attachment 10.

- 1 • There is a pattern of the same invoice numbers being used for multiple trainers
- 2 • Same comments were noted on different timesheets
- 3 • Discrepancies exist between timecards and invoiced hours
- 4 • Some timesheets were duplicated
- 5 • Missing timecards

6 The SCO also stated documentation submitted lacked signatures and evidence of
7 when they were prepared or submitted. The pattern of the discrepancies on the
8 timecards suggests the timecards were not prepared by the trainers. SCO provided
9 a list of documentation typically required for verifying salaries and wages. For
10 details please refer to SCO's testimony.⁵⁶

11 **14. What is your conclusion based on the additional factual information relating to**
12 **Disputed Facts No.1, No.4, No. 5, No. 6, No. 12, No. 13, and Allegation No. 1?**

13 CU failed to maintain and produce the documentation necessary to verify that its expenses
14 complied with CASF program requirements for the reasons listed below.

15 Yes, I support allegation 2 because NIU has yet to provide the necessary
16 documentation in response to CPED's data requests. Absent a view of CU's complete
17 business operations, accounting records, additional revenues, and revenue/expense
18 allocation method, it is infeasible for CPED to determine whether submitted invoices
19 support the reimbursements.

20
21 Disputed Fact No.1 - No, CU did not record all revenues and expenses in a G/L under
22 GAAP. The purported G/L do not follow GAAP revenue and expense recognition
23 methods and principles. The check register-based G/L provided by CU likely reflects
24 inaccuracies and serves as an unreliable source of information on NIU's total
25 financial condition.

26
27 Disputed Fact No. 4, 5- The audit report did correctly use 10 out of 13 quarters of
28 expense and excluded Q11, 12, 13 expenses from its audit scope. As discussed
29 previously, the purpose of the audit was to determine whether CASF program funds
30 *that NIU received* were spent in accordance with program requirements. Since NIU
31 received CASF Grant funds only in the first 10 quarters, the audit scope should be
32 reduced to quarters 1 to 10.

33
34 Disputed Fact No. 6- No, SCO auditors did not receive the necessary documentation
35 to determine NIU's CASF expenses in the first 10 quarters. SCO must rely on
36 estimated figures due to the lack of documentation. Additionally, CU's documents
37 did not apply a consistent expense allocation method; therefore, CPED cannot verify
38 the appropriate share of CASF expenses. CPED also noted least some of the invoices
39 submitted to CD do not support the reimbursements.

40
⁵⁶ SCO Testimony dated July 7, 2020, p. 6.

1 Disputed Fact No. 13- The submitted timecards lacked signatures and evidence of
2 when they were prepared or submitted. The pattern of the discrepancies on the
3 timecards suggests the timecards were not prepared by the trainers. Additionally, CU
4 did not provide student sign-in sheets containing actual signatures of class attendees
5 to the SCO auditors for attendance verification. SCO can attest to the existence of
6 some classes, but not all.