



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

FILED
08/11/20
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ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE ANTHONY W.
COLBERT and ADMINISTRATIVE LAW JUDGE ZHEN ZHANG,
co-presiding

)	LAW AND MOTION
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)	Investigation
Violating Terms of Their Grant and)	18-07-009
for Refusing to Return Funds)	
Previously Demanded by the)	
Commission's Division.)	

REPORTER'S TRANSCRIPT
Virtual Proceeding
August 3, 2020
Pages 1 - 56
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Reported by: Doris Huaman, CSR No. 10538
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VIRTUAL PROCEEDING

AUGUST 3, 2020 - 9:26 A.M.

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ADMINISTRATIVE LAW JUDGE ZHANG: Let's go on the record.

The Commission will come to order. I am Administrative Law Judge Zhang and the presiding officer of this proceeding. With us today is also Assistant Chief Judge Colbert.

Judge Colbert, would you like to say any words on the record?

ALJ COLBERT: Thank you, Judge Zhang. Just that I am the assigned assistant chief administrative law judge to this proceeding. I am looking forward to hearing from the parties.

Thank you, Judge Zhang.

ALJ ZHANG: This is the time and place for the law and motion hearing for Investigation 18-07-009, Order Instituting Investigation on the Commission's own motion into 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

1 refusing to return funds previously demanded
2 by the Communications Division of the
3 Commission.

4 The agenda for today is the
5 following:

6 CPED's motion for a law and motion
7 hearing and Community Union's motion to
8 extend the discovery deadline. I will
9 address these motions together. This morning
10 Community Union tendered for filing a
11 response to CPED's motion for law and motions
12 hearing. It has not been accepted as filed,
13 but Community Union will have an opportunity
14 on the record to respond.

15 The second item on the agenda list
16 is exhibits list and the witness list.

17 The third item on the agenda list is
18 regarding the information that might deserve
19 confidential treatment in this case.

20 I have reviewed CPED's motion and
21 Community Union's motion. On July 23rd,
22 2020, CPED filed the motion of Consumer
23 Protection and Enforcement Division
24 requesting a law and motion hearing and
25 shortening the time period to respond.

26 Subsequently, on July 24th, 2020,
27 Community Union tendered for filing a motion
28 to extend the discovery deadline. The motion

1 was accepted as filed on July 27th, 2020.
2 Pursuant to the June 30th, 2020 email ruling
3 updating the schedule, the discovery cutoff
4 date was July 21st. In CPED's motion, CPED
5 discusses discovery dispute involving
6 Community Union's request on May 7th, 2020
7 and July 20th, 2020. Regarding the first
8 discovery request on May 7th, Community Union
9 requested emails by and between Robert
10 Wullenjohn and Commission staff on
11 reimbursement packages sent for quarters 11,
12 12 and 13.

13 Community Union also requested
14 emails by and between Robert Wullenjohn and
15 former deputy executive director Mr. Ryan
16 Dulan to ascertain if they acknowledged
17 receipt of the quarterly reimbursement
18 requests for quarters 11, 12 and 13 from
19 California's One Million New Internet Users
20 Coalition and what instructions were given
21 for handling those submissions.

22 The second discovery request
23 occurred on July 20th, 2020 when Community
24 Union sent two emails to CPED. First
25 Community Union requested emails from
26 Communications Division relating to all
27 business with Community Union beginning
28 October 2nd, 2014 through October 30th, 2015.

1 Community Union also requests Mr.
2 Wullenjohn's personnel file to show that this
3 investigation is motivated by racism. CPED
4 states that it already responded to the May
5 7th, 2020 request. And now the July 20th,
6 2020 request are overly broad, irrelevant and
7 untimely.

8 Mr. Ortega, would you like to be
9 heard regarding the response that you
10 submitted this morning, which would be the
11 response to CPED's motion for a law and
12 motions hearing?

13 MR. ORTEGA: Yes, I would, your Honor.
14 Thank you very much. Larry Ortega for
15 Community Union.

16 I will address the personnel file
17 issue first of Mr. Robert Wullenjohn. I went
18 through some length this weekend in providing
19 the testimony that I believe substantiates
20 our need to access Mr. Wullenjohn's file, not
21 in its entirety but just those instances and
22 where we believe racism and other
23 discrimination and abuse of authority has
24 been -- Mr. Wullenjohn has been written up
25 on. We believe that that information exists
26 and that it shows a pattern of what Mr.
27 Wullenjohn has executed as exacted on our
28 consortia throughout this particular

1 contractual relationship with CPUC. I went
2 through some length -- your Honor, do you --
3 would you like me to read my statement that I
4 submitted for --

5 ALJ ZHANG: No. I prefer you to
6 respond to CPED's motion. You do not have to
7 read the statement. If there is something
8 that you would like to highlight, please do
9 so now.

10 MR. ORTEGA: Yes. We maintain that Mr.
11 Wullenjohn is racist and unprofessional in
12 his remarks and in his actions towards our
13 consortia. We have found evidence that that
14 attitude has been -- that those actions
15 executed by Mr. Wullenjohn have been exacted
16 on other people outside of Community Union,
17 outside of our consortia. So we believe that
18 there is a pattern, two big issues relative
19 to why we believe we are a member of what I
20 have termed, for lack of a better word --
21 this may not be the best word that's
22 available -- but a witch-hunt on our
23 organization despite being the absolute
24 number one consortia that has had media
25 coverage -- that has brought media attention
26 to the hardest of hard-to-reach communities
27 throughout the State of California relative
28 to the legislature's intent for CASF, which

1 was promotional and adoption activities
2 relative to broadband, high-speed internet
3 and some of the advantages thereof. We have
4 brought, to our estimation and to announce
5 that export, more than \$600,000 worth of
6 promotional activity to the CASF brand, which
7 up until this point has went unacknowledged
8 and unreported. And we believe that the crux
9 of that issue is the racism -- the
10 institutional racism that we allege exists
11 within the CPUC that Mr. Wullenjohn is an
12 example of. We believe that his personnel
13 file will show that he has actually exacted
14 that behavior on other individuals as well.

15 The second thing, your Honor, is the
16 inexperience and the lack of expertise that
17 was within the Communications Division
18 relative to digital divide programs, digital
19 divide training programs, digital divide
20 activities, work with other nonprofit
21 organizations within the community, within
22 the State of California that simply did not
23 exist within the Communications Division.
24 And that's relevant, your Honor, in that
25 there are claims that are being made relative
26 to the 40-hour/20-hour change that Community
27 Union had executed on some of its classes.
28 And there is testimony that CPED has provided

1 in their opening statement that has cited
2 that this change was significant. But there
3 is no basis of expertise. There is no
4 curriculum. There is no tenet objectives
5 that have been cited by the Communications
6 Division. So how would they know. Therein
7 lies the evidence that this is, again, part
8 of the witch-hunt. They are just pulling
9 things out of the air, Communications
10 Division, and now CPED, in support of that --
11 of those statements that are not
12 substantiated in any form whatsoever. And
13 they are indicating that these things are
14 significant, and actually, they want money to
15 be paid back. They have blocked the
16 repayment of the final quarters in our
17 attempt to complete the contract, which we
18 maintain have met all of the work plans
19 activities matrix at the end of -- on or
20 before -- at the end of May 2015 and that we
21 have -- we maintain that we have -- we got
22 permission -- implied permission from both
23 Devia Singh as well as the chief
24 communications director Ryan Dulan at the
25 time. Because we submitted when our classes
26 were going to be held, and they were past the
27 time that the contract was set to conclude in
28 February of 2015.

1 So we believe that there needs -- we
2 need to have the right to show that there is
3 a pattern, that our testimony alone, we
4 recognize, may not be enough and that we
5 should have the right to show that, in
6 fact -- that there is this institutional
7 racism that exists within CPUC and that
8 Robert Wullenjohn represents in person that
9 racial -- that institutional racism. And we
10 believe that we have been unfairly chastised
11 in all of our work despite the amazing
12 resources that we have been able to bring to
13 this effort. Unprecedented, to our
14 knowledge, there is no one else, no other
15 consortia that has had the coverage of 30
16 million viewers in hard-to-reach -- the
17 hardest to reach communities in Spanish and
18 Chinese and Korean.

19 And we believe that because of Mr.
20 Wullenjohn's racism he has directed staff
21 that was under his managerial authority to
22 actually seek out wrongdoing rather than
23 working with us in partnership and trying to
24 understand if there was any anomalies that
25 they had incurred relative to their
26 understanding or classes or when classes were
27 taken. Why not work with us in partnership
28 instead of working with us as enemies in

1 terms of trying to find out what was wrong?
2 We believe that if we were a
3 white-led organization, a white-led
4 consortia, that the attitude would have been
5 completely different, but instead, because we
6 are minority led, we believe that we have
7 been guilty before proven -- we have been
8 accused of being guilty before proven
9 innocent when just the opposite should have
10 been taken place. And a person, your Honor,
11 needs to go no further than to see -- the
12 title of the investigation in and of itself
13 has labeled us as why we should not impose
14 penalties and that we have refused to return
15 funds. The investigation has already -- the
16 title of the investigation itself has said we
17 are guilty of these things prior to even
18 finding out what -- what the facts of the
19 case are really about. And the fact that
20 they -- the lack of expertise that the
21 Communications Division has really ties into
22 the -- goes to the industry's -- what we
23 understand to be the industry's narrative --
24 the telecommunications industry's narrative.
25 I'm talking about Verizon, AT&T, Comcast,
26 Charter Communications. They have now
27 fortunately as a -- or unfortunately -- I
28 mean, as a result of COVID-19 and distance

1 learning, the curtain has been pulled back on
2 the lies that the telecommunications giants
3 have been pushing and the narrative that they
4 have been pushing in terms of them not being
5 able to have -- their not being -- they could
6 not provide high-speed internet access in
7 certain areas because the cost was just too
8 high when we have found, your Honor, that
9 reports from Mr. Bruce Kushnick of the
10 Irregulators has shown that the industry has
11 raised prices from 2000, which was 20 bucks a
12 month for landline services, to now it being
13 in excess of \$50 or \$60 a month for landline
14 services. And phone companies have exacted
15 additional fees on consumers here in
16 California because -- on the name of
17 connecting everybody, which, again, going
18 back to COVID-19 and the distance-learning
19 mandate by the governor for students --

20 ALJ ZHANG: Excuse me, Mr. Ortega. You
21 are becoming muffled. And also, could we
22 please stick to the specifics of this
23 proceeding. The internet company's
24 information regarding them raising prices is
25 not directly related to this proceeding. Do
26 you have any further comments before I allow
27 Ms. Baldwin an opportunity to respond?]

28 MR. ORTEGA: Your Honor, I respectfully

1 disagree with your assessment of it not being
2 connected because it is at the crux of this
3 very problem because it is the internet
4 companies themselves that are, as the term
5 goes, tail wagging the dog, that they have
6 captured an agency that is now -- that has
7 people on the inside like a Mr. Robert
8 Wullenjohn and others.

9 I am not just saying that there is
10 institutional racism by myself. These are
11 people who have worked with the CPUC for, you
12 know -- not -- worked for and worked, you
13 know, attended many decades of hearings
14 within the CPUC and they, themselves, would
15 concur that such a thing has transpired and
16 it is connected, your Honor.

17 The CASF grant was awarded and
18 established so that the digital divide could
19 be closed, so that there would be ubiquitous
20 promotion and adoption of high-speed
21 internet, broadband technology. And the fact
22 is --

23 ALJ COLBERT: Mr. Ortega, this is Judge
24 Colbert. As Judge Zhang has indicated, we
25 have a certain amount of time. Your response
26 should be pertinent to the issues in this
27 OII. I think it's appropriate that we hear
28 from Ms. Baldwin.

1 ALJ ZHANG: Thank you, Mr. Ortega.

2 Ms. Baldwin, would you like to
3 respond?

4 MS. BALDWIN: Good morning, your Honor.
5 Vanessa Baldwin with CPED. In regards to
6 Mr. Ortega's claims of seeking Robert
7 Wullenjohn's personnel file, he claims that,
8 you know, this investigation was motivated by
9 racism. We disagree in that this issue is
10 highly irrelevant to this proceeding. We
11 believe his request is a fishing expedition
12 to establish his own case in chief and not
13 related to the scope of issues in the
14 assigned commissioner's scoping memos.

15 In addition, Mr. Ortega raises
16 claims about inexperienced within CD's
17 program, and really his claims are
18 speculation. He hasn't brought forward
19 evidence demonstrating such. And at this
20 point he has made false claims such as he's
21 claiming that CD is pulling things out of the
22 air when, if you look at the program itself
23 and the evaluation and the audit, it ties
24 back to NIU's, or the New Internet Users
25 Coalition's, very own program goals and
26 objectives that they set forward in their
27 work plan and in their action plan.

28 And so Mr. Ortega has raised issues

1 about focusing on Activity 5 regarding the
2 number of hours of training. That is what
3 this program was about, to evaluate the
4 metrics that were provided by the consortias
5 to determine whether they had met those
6 requirements.

7 Moreover, Community Union's request
8 for personnel file, he hasn't provided any
9 legal basis for doing so. Mr. Ortega also
10 has claimed that based on the final quarters,
11 he has not been allowed to be reimbursed for
12 those amounts and that he claims that there
13 was implied permission by one of our staff;
14 however, as we will see during the hearing
15 and as already provided by our witnesses,
16 that is not the case.

17 He has also made claims about the
18 Communications Division not working in
19 partnership when if you look at the record
20 and see that the Communications Division has
21 bent over backwards to work with Community
22 Union and NIU to ensure that their documents
23 are proper and substantiated, are submitted,
24 and that claims are processed.

25 Through the discovery, Community
26 Union should have these communications
27 already in their possession showing this
28 history. We have also provided in response

1 to his July 20th request e-mails on a rolling
2 production as it becomes feasible for us to
3 do so.

4 We still object to his request as
5 being overly broad and asking for information
6 that potentially could have been asked for
7 earlier but was asked for right before the
8 discovery cut-off. And so, you know, we ask
9 your Honor to provide us additional time to
10 at least respond to his requests, though
11 we've already started on that process. We do
12 seek Community Union to narrow the request
13 further, for instance, by names of CD
14 individuals.

15 ALJ ZHANG: Ms. Baldwin, regarding the
16 current production of documents, is that
17 something that is ongoing right now as you
18 are in attendance here?

19 MS. BALDWIN: Your Honor, Vanessa
20 Baldwin with CPED. That is correct. We have
21 already provided a production of e-mails just
22 yesterday to Mr. Ortega as well as on
23 July 24th.

24 ALJ ZHANG: Okay. Thank you. Do you
25 have any other comments before I move on?

26 MS. BALDWIN: No, your Honor. Thank
27 you.

28 ALJ ZHANG: Let's go to Community

1 Union's filing on July 24th when Community
2 Union submitted a motion to extend the
3 discovery deadline. The discovery deadline
4 is July 21st and Community Union states in
5 its motion that it needs more time for
6 discovery because of financial hardship and
7 because it is representing itself.

8 Community Union also, again, raises
9 the allegations of racism and a communication
10 with Commissioner Rechtschaffen in 2016 when
11 the Commissioner was still at the governor's
12 office.

13 Mr. Ortega, would you like to add
14 anything to your motion from July 24th?

15 MR. ORTEGA: Actually, your Honor, I
16 would seek permission to finish my response
17 before I was -- finish my initial statement
18 before I was cut off by Judge Colbert.

19 ALJ ZHANG: Mr. Ortega, we decided that
20 your additional comments were not relevant to
21 the scope of the issue so we must move on to
22 your motion from July 24th.

23 MR. ORTEGA: Your Honor, if I just may
24 be heard for 20 seconds on that to show the
25 connection.

26 ALJ ZHANG: No. Mr. Ortega, you will
27 have other opportunities to file briefs and
28 make arguments later on. Today we are

1 holding a law and motion hearing so that we
2 can address the motions that you have filed.
3 You don't want to miss the opportunity to
4 address your July 24th motion. If you do not
5 have anything to say, I will move on to
6 Ms. Baldwin's comments regarding that motion.

7 MR. ORTEGA: I do, your Honor, in that
8 the e-mails that --

9 ALJ ZHANG: Okay --

10 MR. ORTEGA: -- in that the e-mails
11 that Ms. Baldwin says that she has produced,
12 none have been between CD staff. We do not
13 have -- unable to ascertain a record of what
14 communication the e-mail were going on by and
15 between CD staff and we believe that that's
16 relevant as part of this case and part of
17 substantiating the motion to which I have --

18 THE REPORTER: Sir, you're cutting out.
19 This is the court reporter. Excuse me, sir.
20 I need you to go back a little bit.

21 MR. ORTEGA: Where did you lose me at?

22 THE REPORTER: I think you said, "part
23 of substantiating the motion to which I
24 have" --

25 MR. ORTEGA: Okay. How about if I just
26 start with the e-mails have been provided by
27 CPED? Did you get that part.

28 THE REPORTER: Yes, sir.

1 MR. ORTEGA: The e-mails that have been
2 produced by CPED have not shown a record of
3 the communications that were going on between
4 CD staff. We believe that to be relevant to
5 our case to substantiate that this is a witch
6 hunt, that there were other things going on,
7 we found, from the e-mail that was disclosed
8 by another consortium member, Mr. Steve Bloom
9 of the Central Coast Broadband Consortia, him
10 and the manager, director of the
11 Communications Division, and Mr. John Baker
12 had vehemently -- and this is just one
13 e-mail. We have not ascertained the other.

14 But it seems that they were jokingly
15 clowning about a communication that I had
16 written about how our treatment in this
17 endeavor at the -- as the sole minority-led
18 consortia, they were between themselves,
19 Mr. Baker and Mr. Steve Bloom, the leader of
20 the Gold Coast Consortia, were writing
21 exclamations like WTF, which we know what
22 that stands for, and were joking amongst each
23 other.

24 So there's something -- there is a
25 pattern that we believe that we should have
26 access to ascertaining what that pattern was
27 in terms of the treatment of the work that we
28 had done and the information that we have

1 provided. We still do not have any e-mails
2 relative to the processing of the final
3 quarters, quarters the 11th, 12th and 13th of
4 the work that we have provided.

5 As it relates to Commissioner
6 Clifford -- and I cannot pronounce his last
7 name -- Commissioner R, Commissioner Clifford
8 R, we believe that it is a conflict of
9 interest because we disclosed actually our
10 entire game to the Commissioner when he was
11 still at the governor's office. We believe
12 that he should recuse himself from this
13 matter and for those reasons.

14 It is indicative of his last order
15 that he issued adding a bias -- I should say
16 it's indicative of bias for the prejudice
17 that he issued a finding on the ALJ's order
18 to compel on discovery. He added another
19 charge, if you will, to the investigation
20 without really hearing the facts as they
21 exist in terms of the financial hardship and
22 in terms of the pro se representation that we
23 are --

24 THE REPORTER: You're cutting out, sir.
25 Please keep your voice up. "In terms of the
26 pro se representation that we are" -- you cut
27 out after that.

28 MR. ORTEGA: That Commissioner Clifford

1 R, did not, we believe, did not take into
2 consideration those challenges that we were
3 undergoing.]

4 And for that reason, we believe it
5 relevant to show the additional information
6 that we have regarding the 3,000-plus
7 applications of clients served. We have a
8 number of trainers' invoices that correlate
9 to the courses, time that were invested in
10 completing activities 1 through 7, and we
11 would like the opportunity to include that
12 into the record so that it could show the
13 work has been completed.

14 We would like to provide, which to
15 this point has not been provided, the in
16 excess of \$600,000 worth of in-kind
17 contribution that are -- were not included as
18 part of the original general ledger that was
19 provided to the auditor during the time of
20 the audit because we did not understand how
21 to handle that particular reporting of the
22 in-kind contribution regarding management and
23 media as well as the facility that were
24 provided as in-kind contribution that would
25 take us well above the 39 percent, 61 percent
26 cut of the budget that was approved by the
27 CASF staff, and we believe that that
28 information should be included as part of the

1 record in the evidentiary hearing and not --

2 ALJ ZHANG: Mr. Ortega. Excuse me.
3 You are moving on to the next agenda item
4 where we will talk about the witnesses and
5 the exhibits. I appreciate you letting me
6 know that you intend to submit these
7 documents, but let's stick to the motion that
8 you filed on July 24th where you spoke of Mr.
9 Wullenjohn's file and Commissioner
10 Rechtschaffen's communications and also
11 financial hardship to yourself. I think you
12 have elaborated on those things. And I'd
13 like to give an opportunity to Ms. Baldwin so
14 that she can also contribute to the record.
15 But we will go back to the issue of witnesses
16 and your exhibits.

17 MR. ORTEGA: Your Honor, if I may, just
18 one last point on expertise within the
19 Communications Division and how it has been
20 reflected in Robert Wullenjohn's own
21 commentary. And I think that I should be
22 allowed to -- this is part of supporting my
23 motion to continue discovery in that the
24 expertise is not there, that -- that Mr.
25 Wullenjohn is pedaling the narrative of the
26 telecommunications industry. And I have --
27 and it's part of the reply that I submitted
28 this morning, but it's relevant to the motion

1 that was filed for time extension on
2 discovery in that these things, in terms of
3 the telecommunications industry raising
4 prices on landlines, is not taken into any of
5 the words that Mr. Wullenjohn is purposely
6 speaking about.

7 ALJ ZHANG: Mr. Ortega, what you stated
8 about the overall condition of the
9 communications industry is already on the
10 record. We must move on. I am going to give
11 Ms. Baldwin an opportunity to speak.

12 Ms. Baldwin, do you have any
13 comments regarding Community Union's July
14 24th motion?

15 MS. BALDWIN: Yes, your Honor. Vanessa
16 Baldwin with CPED.

17 In regards to Community Union's
18 financial hardship and pro se status, CPED
19 has been more than generous through the
20 discovery process to afford Community Union
21 the opportunity to seek the discovery it
22 needs and to also provide responsive
23 documents to CPED's discovery request. You
24 know, throughout -- I think Community Union
25 has raised -- they, you know, do not have the
26 time or resources to make copies of documents
27 responsive to CPED's request. And CPED has
28 attempted to set up alternative means so that

1 we could obtain the necessary documents.
2 We've tried several times through months, and
3 to date, we have not received complete
4 responses to CPED's data request. We've
5 also, you know, entertained Community Union's
6 rate files discovery request in the last
7 round where the discovery cutoff had passed,
8 yet Community Union had asked for additional
9 documents and we have sent those documents
10 over to Community Union per his request.

11 So we have attempted many times to
12 work cooperatively to provide the information
13 that Community Union has requested as well as
14 to be as flexible and accommodating as
15 possible for Community Union to provide us
16 the information we are requesting.

17 In regards to Community Union's
18 statement about not having emails between CD
19 staff, we do not believe that is true. He
20 does have emails between CD staff, and also,
21 emails were provided yesterday. And, again,
22 I reiterate that we are doing our best to
23 provide communications he's requested on a
24 timely basis given the time of when Community
25 Union filed the request, which is the day
26 before the deadline of discovery.

27 Community Union also raised in its
28 motion seeking CPED to enter into an

1 agreement for confidentiality and to the
2 extent that we believe it's inappropriate and
3 that the Commission has held that it isn't
4 appropriate to require staff to enter into
5 those kinds of agreements, so we object to
6 Community Union's request for CPED to enter
7 into such an agreement.

8 And at this time, we will not be
9 addressing Community Union's more substantive
10 claims. I believe he, Community Union, is
11 asking to include additional information into
12 the record, but at this time, we will not
13 address that given that Community Union's
14 motion was limited to his claims on the basis
15 for the extension of time of discovery. But
16 in all, we do object to Community Union's
17 motion for an extension of discovery for the
18 reasons stated. We do not believe drawing on
19 the time for discovery will be an efficient
20 use of this proceedings's time especially
21 when we've had the opportunity to do so for
22 not just the entire time period of this
23 proceeding but prior to that when this
24 investigation began by CPED.

25 And so Community Union has had ample
26 opportunity to request this information from
27 the Commission's Communication Division. And
28 so at this point, we see no justification for

1 an extension of time.

2 Thank you, your Honor.

3 ALJ ZHANG: Thank you, Ms. Baldwin.

4 Mr. Ortega, regarding your issue
5 with Commissioner Rechtschaffen, our Rules of
6 Practice and Procedure No. 9.5 describes the
7 motion for disqualification of Commissioner
8 for cause. I will wait for a formal item
9 from you that is consistent with our Rules of
10 Practice and Procedure and specifically Rule
11 9.5. Regarding --

12 ALJ COLBERT: Excuse me, Judge Zhang.

13 ALJ ZHANG: Yes.

14 ALJ COLBERT: Mr. Ortega, do you have
15 access to our Rules of Practice and
16 Procedure?

17 ALJ ZHANG: We cannot hear you, Mr. --

18 ALJ COLBERT: We cannot hear you, Mr.
19 Ortega.

20 MR. ORTEGA: I do, your Honor. I do
21 have access to those rules.

22 ALJ COLBERT: Thank you.

23 Thank you, Judge Zhang.

24 MR. ORTEGA: I would ask is there
25 supplemental information to those, because
26 they seem to be limited. It's really
27 comprehensive?

28 ALJ COLBERT: We can't provide legal

1 advice. I just wanted to make sure that you
2 had access to them. If you didn't, they are
3 available on our website.

4 Thank you, Judge Zhang.

5 ALJ ZHANG: Moving on to address the
6 discovery request of May 7th and May -- and
7 July 20th by Community Union. We note that
8 Community Union actively participated in
9 status conferences held on May 4th, June 9th
10 and June 19th. We discussed discovery
11 requests and discovery issues during all
12 three status conferences.

13 Community Union's request have two
14 problems: Relevance and timeliness. First
15 the request must be reasonably calculated to
16 lead to admissible evidence, and this is
17 required by the Rules of Practice and
18 Procedure No. 10.1. Community Union seeks
19 information that is overly broad and not
20 relevant to the issues of this proceeding.

21 In this proceeding, the Order
22 Instituting Investigation stated very clearly
23 that this case is regarding the amount of
24 \$450,000 that Community Union was supposed to
25 receive from the California Advanced Services
26 Fund in return for activities stated in the
27 work plan from March 1st, 2012 through
28 February 28, 2015. This means discovery

1 request must be related to the activities
2 that occurred between March 1st, 2012 through
3 February 28th of 2015, and if not, there has
4 to be a good reason as to how the discovery
5 requests are related to the grant. The State
6 Controllers Office conducted an audit which
7 determined that after an extensive review of
8 Community Union's records, California
9 Advanced Services Fund grant overpaid the NIU
10 Coalition of approximately \$244,385.

11 The audit found that there was lack
12 of documentation to support the expenses
13 already reimbursed by the Commission from
14 grant funds. There was a lack of
15 documentation to show that the expenses
16 claimed were spent in accordance with program
17 requirements, and there was lack of
18 performance in accordance with the work plan.
19 The discovery request has to be related to
20 issues in this proceeding that are set forth
21 in the scoping memos. There's two scoping
22 memos. One on December 18, 2018 and a second
23 assigned Commissioner's ruling that amends
24 the scoping memo on July 10th, 2020. For
25 example, the discovery request has to be
26 related to questions that include did
27 Community Union violate Commission decisions,
28 orders and regulations by failing to

1 implement the work plan completely?

2 From the State Controllers Office
3 audit, the audit reviewed the first 10
4 quarters of the program: March 1st, 2012
5 through August 31st, 2014. The Commission
6 withheld funding for the remaining quarters
7 pending results from the audit. This means
8 there were problems identified in the audit,
9 and that's why subsequent payments were not
10 made.

11 CPED noted in its July 23rd, 2020
12 motion that it has been working with
13 Community Union to produce relevant
14 information requested on May 7th, and today
15 CPED has said it's been working to respond to
16 Community Union's July discovery request even
17 though it was submitted one day before the
18 discovery cutoff date.

19 Lastly, there is nothing in
20 Community Union's motion that explains why it
21 requests all business communications --
22 excuse me. This is a quote from Community
23 Union's July 20th, 2020 email request to
24 CPED. It requests emails from Communications
25 Division relating to all business and
26 Community Union -- with Community Union
27 beginning October 2nd, 2014 through October
28 30th, 2015. There's no explanation as to why

1 this time period is relevant. There's no
2 explanation as to why all communications
3 between Communications Division and Community
4 Union is relevant. We have discussed in
5 prior status conferences that discovery
6 requests must be specific to the issues.

7 Similarly, regarding Mr.
8 Wullenjohn's personnel file, Community Union
9 does not explain how this information would
10 help answer questions related to whether
11 Community Union failed to maintain records
12 and documentation to substantiate their
13 expenses. It doesn't help answer the
14 question of did Community Union fail to show
15 expenses reimbursed by the California
16 Advanced Services Fund grant were not
17 reimbursed by other funding sources.

18 Discovery requests must be related
19 to these questions that are in the scoping
20 memo. Again, Mr. Wullenjohn's personnel file
21 does not provide information on the questions
22 that are in the scope of this proceeding.
23 Furthermore, Community Union's motion and
24 request for additional discovery is untimely.
25 This is the day -- we are at, I think, maybe
26 three weeks before the beginning of trial.
27 Submitting a discovery request the day before
28 the deadline for discovery is unprofessional,

1 and CPED has worked with Community Union to
2 provide this information. Community Union
3 knew that there is a discovery cutoff date in
4 this proceeding. On May 4th, I held a status
5 conference where the parties agreed to a
6 schedule, and then that schedule was changed.
7 And in June, we held another status
8 conference where we agreed to the changed
9 schedule. Community Union knew from both of
10 these events that the discovery deadline was
11 at a specific date and agreed to that date.

12 Since the extension of discovery in
13 June, Community Union has had more than a
14 month and a half. However, Community Union
15 submitted a new and extremely broad request
16 the day before the discovery cutoff date.
17 This is untimely. Discovery is closed as of
18 July 21, 2020. Community Union's motion to
19 extend the discovery cutoff date is denied.

20 We will now move on to the second
21 item on the agenda, which has to do with the
22 exhibit list and the witness list. Community
23 Union stated today that there are items that
24 it would like to submit into the record. The
25 June 30th, 2020 schedule gave a deadline as
26 to when Community Union should serve its
27 exhibit list and witness list. The deadline
28 was July 27th, 2020. CPED submitted its

1 exhibit list and its witness list. Community
2 Union has not. The master packet of exhibits
3 is due today. Already I warned Community
4 Union that if Mr. Ortega does not provide the
5 opposing side with adequate notice of his
6 exhibits and witnesses, they may be excluded
7 from the proceeding. In June, we discussed
8 the exhibit list and the witness list in
9 detail. Now we are several weeks from the
10 evidentiary hearing. There is no exhibit
11 list or witness list from Community Union,
12 which means that Community Union would use
13 what is provided by CPED at the evidentiary
14 hearing.

15 Mr. Ortega, would you like to be
16 heard?

17 MR. ORTEGA: Yes, your Honor. I
18 definitely would. Thank you. Larry Ortega
19 for Community Union.

20 You know, there is certain facts
21 that have not been addressed, with all due
22 respect, your Honor, and that is the data
23 breach that was submitted by Ms. Baldwin from
24 CPED and the troubling challenges that we
25 have had regarding confidentiality. And
26 we --

27 ALJ ZHANG: Excuse me, Mr. Ortega.
28 Confidential requests will be addressed in

1 item 3 of the agenda. You will have an
2 opportunity to discuss the problems that
3 you've had with confidentiality in the next
4 agenda item. This time I would like to hear
5 from you regarding your exhibit list and your
6 witness list.

7 MR. ORTEGA: Your Honor, I'm confused.
8 I'm not able to actually articulate responses
9 to your questions as it relates to witnesses
10 and data and information without speaking to
11 the data breach. The confidentiality of the
12 clients, although on your agenda for the next
13 item, is extremely relevant to -- I mean, I
14 have not been able to provide the information
15 because of the concern of the data breach.
16 Because --

17 ALJ ZHANG: Mr. Ortega, did you have a
18 chance to review CPED's witness list and
19 exhibit list that they served to the service
20 list on July 27th?

21 MR. ORTEGA: I did, your Honor.

22 ALJ ZHANG: Did you see that the
23 descriptions of the items does not have to
24 contain any confidential information? It's
25 just a list.

26 MR. ORTEGA: Perhaps I'm not
27 understanding, your Honor, and I apologize
28 for that.

1 ALJ COLBERT: Mr. Ortega, do you have a
2 list of individuals you would like to call as
3 witnesses?

4 Do you have a list of documents that
5 you would like to be presented as exhibits
6 for the hearing? Yes or no?

7 MR. ORTEGA: I do, your Honor. I do.
8 I do, your Honor --

9 (Cross-talk.)

10 ALJ COLBERT: -- do you -- are you --
11 do you have knowledge and possession of the
12 list of potential witnesses and potential
13 exhibits at this time?

14 MR. ORTEGA: Well, regarding the
15 confidentiality aspect --

16 ALJ COLBERT: Do you have a list of the
17 names of individuals at this time you would
18 like to call as witnesses?

19 MR. ORTEGA: Your Honor, I am trying to
20 answer your question.

21 ALJ COLBERT: My question is clear.
22 Please answer it.

23 MR. ORTEGA: I need to preface it with
24 the following statement of the data breach
25 and the confidentiality concerns, your Honor,
26 with all due respect.

27 ALJ COLBERT: With all due respect, it
28 is a simple question that Judge Zhang has

1 asked and now I am asking. Do you have a
2 list of individuals, just names, not their
3 social security numbers, not any other
4 information that is consistent with the
5 information that has been provided by CPED?

6 Do you have that list now?

7 MR. ORTEGA: Your Honor, if I may
8 respond as follows: The data breach has
9 caused concerns for the individuals that I
10 had attempted or was attempting to bring
11 forward on this matter. As such, I have
12 attempted to reconcile that information with
13 these individuals. I have not done that
14 yet -- the process of completing that, but
15 the data breach and the confidentiality is
16 significant. And individuals are concerned
17 about that issue. And until I can reconcile
18 and resolve those issues with those
19 individuals, I am not able to bring forward
20 that list because I will not -- I cannot
21 ascertain whether or not the clients that
22 I -- Jane Does 1 through 10 are willing to
23 come forward due to varying issues that I am
24 not -- and I don't want to disclose at this
25 point in time, but at this juncture, the data
26 breach has significantly impacted my due
27 process ability here, your Honor.

28 ALJ ZHANG: Mr. Ortega, the deadline

1 for submitting the witness list and exhibit
2 list was July 27th, 2020. The packet of
3 exhibits is due today, August 3rd. You
4 mentioned that there are documents you would
5 like to be part of the record.

6 That means, according to the
7 instructions given to you and CPED, you have
8 to submit these packets of documents today so
9 that CPED has notice of what you are going to
10 use during the hearing. Without notice,
11 CPED's due process rights would be violated
12 if they do not know what you are going to
13 provide on the date of the hearing. You are
14 aware that is the deadline today. And if
15 there are no documents provided by you, you
16 may use documents that's provided by CPED.]

17 We will now move on to the third
18 agenda item which relates to request for
19 confidential treatment. Mr. Ortega has noted
20 on several different occasions that he
21 believes there is information that deserves
22 confidential treatment.

23 CPED, I believe, has notified
24 Mr. Ortega that there are certain procedural
25 requirements in making a request for
26 confidential treatment. On July 15, 2020, I
27 e-mailed the parties questions about
28 confidential information. On July 16, 2020,

1 CPED and Community Union responded.

2 According to CPED, the confidential
3 material that Community Union seeks
4 confidential treatment for includes Community
5 Union's general ledger, financial records,
6 quarterly reimbursement packages, client
7 address, e-mail, and phone numbers, Community
8 Union's bank statements, names and payment
9 information of consultants, and persons
10 enrolling in our courses who submitted their
11 personal information, which includes name,
12 address, phone number, e-mail, number of
13 children they have, and schools they
14 attended.

15 CPED added that information of
16 Community Union trainers and Community Union
17 clients should be confidential. CPED agreed
18 certain personal information such as names,
19 personal phone numbers, personal addresses,
20 and Social Security numbers are confidential.

21 Regarding what Mr. Ortega states is
22 a data breach, it involves the staff report
23 attachments from the Order Instituting
24 Investigation. I believe CPED has informed
25 Mr. Ortega that it's working on redacting
26 their documents. CPED also stated that it
27 will notify individuals whose personal
28 information was in the staff report.

1 I cannot tell from Community Union's
2 claims what exactly it requests to be
3 determined as confidential. According to the
4 Commission's General Order 66(d), general
5 claims of confidentiality are inadequate.
6 There has to be identification of specific
7 words or phrases with specific legal
8 justifications for that claim.

9 Also, a public and a redacted copy
10 of the documents must accompany the claims so
11 that we can determine how to treat the
12 material. If the claim for confidential
13 treatment is granted, then the redacted copy
14 would be made public.

15 General claims regarding financial
16 records, Community Union's general ledger,
17 Community Union's bank statements, and
18 reimbursement packages are not confidential
19 if they involve expenditures of the grant.
20 The grant is made up of public money. When
21 Community Union received the money, it was
22 aware that it has to comply with specific
23 Commission decisions and requirements if the
24 Commission wanted to determine how the money
25 was spent.

26 I have scheduled a pretrial motion
27 for August 20th and pretrial motions may
28 address confidential claims. The pretrials

1 are due August 10th, as I already set forth
2 in the schedule; responses are due
3 August 14th. And then on August 20th, we
4 will have a law and motion hearing to discuss
5 the motions. It is important that we try to
6 resolve these issues now so that the time at
7 trial will be used to examine witnesses.

8 In closing, I will afford each of
9 you the opportunity to address any issues
10 that I did not mention. You may also ask
11 questions as well.

12 Mr. Ortega, do you have any
13 questions or other matters you would like to
14 address?

15 MR. ORTEGA: I do, your Honor. I have
16 several. I'll start with the data breach,
17 which has not been covered in our discussions
18 this morning. That is the 34 student
19 databases that were provided as part of our
20 discovery submission in response to CPED's
21 request. That information contained clients
22 that we served, phone numbers, addresses,
23 ethnicities, income levels, children's names,
24 the schools that they attended, when they
25 attended those schools. We believe that that
26 information is also a data breach.

27 But, according to my communication
28 exchange with Ms. Baldwin, that information

1 has not been redacted, that information has
2 not been recalled or noticed, as far as what
3 was published, this information, and that
4 concerns me greatly.

5 It also goes to the challenges that
6 I am facing now with these individuals that I
7 have contacted, spoken to, relative to this
8 data breach. That information has still not
9 been redacted. We believe that it should,
10 that a person -- that client information
11 relative to their address and phone number
12 should not be disclosed, their children's
13 names should not be disclosed either. So,
14 that's the number one concern that we had.

15 The issue of the relevance to the
16 information that has been requested and the
17 continuous, ongoing, what we would term as
18 fallacious sight of the audit being pure and
19 without blemish is not something that we
20 believe is being fairly discussed here to
21 begin with. We believe that the information
22 that we had sought, your Honor, from
23 Mr. Wullenjohn's personnel file is part of
24 the ongoing --

25 ALJ ZHANG: Mr. Ortega, I already
26 ruled. You may not agree with my ruling but
27 I ruled, so please move on.

28 MR. ORTEGA: Well, your Honor, I am

1 trying to get at how do we -- how do we --
2 how is our due process being allowed to take
3 place if we cannot ascertain information that
4 will breach -- that will serve to impeach,
5 rather, the very evidence that's being cited
6 and held against us? I don't know how we get
7 there, how that -- how that is going to be
8 reconciled.

9 ALJ ZHANG: The evidence in the record
10 right now is the Order Instituting
11 Investigation and the staff report and the
12 questions within scope. You answer the
13 questions within scope, you provide facts and
14 materials to the questions within scope. Do
15 you have any other comments or questions?

16 MR. ORTEGA: Yes. I just want to leave
17 this out there that California Code 1798.24,
18 subsection 0 allows for us to access
19 Mr. Wullenjohn's information. Ms. Baldwin
20 indicated that there was no legal precedent.
21 We recited the code itself that --

22 ALJ ZHANG: What section are you
23 referring to?

24 MR. ORTEGA: 1798.24, subsection 0, as
25 in olive.

26 ALJ COLBERT: For the record --

27 ALJ ZHANG: What part of the code? I
28 am referring to the Public Utilities Code and

1 there is no 1798.

2 ALJ COLBERT: What is the code section
3 that you're referring to, Mr. Ortega, and can
4 you summarize what you believe the code
5 section says?

6 MR. ORTEGA: Yes. I've attempted to do
7 so in my declaration that was submitted this
8 morning, your Honor, wherein I state that the
9 misrepresentation of facts as presented by
10 CD's office as led by Mr. Wullenjohn we
11 believe is the chief proponent of this
12 misrepresentation, which goes to, because we
13 are being cheated out of money, \$80,000, goes
14 to fraud.

15 We would allege that these actions,
16 these misrepresentations of fact, can be
17 interpreted as fraud because we are being
18 cheated out of money. And therein lies the
19 reason why we believe that 1798.24,
20 subsection O, as in olive, applies and allows
21 us to have access to that information. And
22 what I'm finding here, your Honor --

23 ALJ COLBERT: I'm sorry, Mr. Ortega.
24 Mr. Ortega, just a second. I think Judge
25 Zhang asked the question, I'm asking the
26 question, you're giving a code section number
27 but you're not saying what code it's coming
28 from.

1 MR. ORTEGA: I'm sorry, could you
2 repeat that. You broke up a little bit.

3 ALJ COLBERT: You have given a code.
4 You've said "code." You've provided a
5 section number and a subsection number, but
6 at least I didn't hear it and I don't believe
7 Judge Zhang heard either, what code is it you
8 are referring to? What government code are
9 you referring to?

10 MR. ORTEGA: Oh, I apologize. Just one
11 moment. Let me find it. Ms. Baldwin in her
12 pleading papers requesting a law and motion
13 hearing on page four had a footnote, number
14 17, that cited California code, section
15 1798.24. And she had concluded or used it as
16 a statement of prohibition or in support of
17 prohibition of disclosure of personnel
18 information.

19 We found in that same California
20 code, section 1798.24(o) that, in fact, if
21 there is a crime, which in this case we would
22 allege fraud due to the misrepresentation and
23 the denial of our money for services rendered
24 to the CPUC, applies and we should be allowed
25 access to that information.

26 Did that answer your question, your
27 Honor?

28 ALJ COLBERT: No. It still doesn't --

1 Ms. Baldwin, do you know what code
2 section is -- is this the Public Utilities
3 Code? Ms. Baldwin?

4 ALJ ZHANG: I see a reference in
5 Mr. Ortega's material and it's the California
6 Code, but I would still need to look it up.

7 Mr. Ortega, your argument regarding
8 that code is in the record and we must move
9 on today. Do you have any additional items?

10 MR. ORTEGA: Yeah, just as a point of
11 order and explanation and understanding of
12 the proceeding and Assistant Chief Colbert's
13 presence at today's hearing. Is there a
14 reason why he is here today?

15 ALJ COLBERT: Mr. Ortega, as Assistant
16 Chief Administrative Law Judge, I oversee all
17 adjudicatory proceedings at the Commission,
18 including this OII. So, when a proceeding is
19 assigned, there is an assigned judge, who is
20 Judge Zhang; there is an assigned
21 Commissioner, who is Commissioner
22 Rechtschaffen; and there is an assigned
23 assistant chief judge, who is me.

24 ALJ ZHANG: We will move on to
25 Ms. Baldwin.

26 Ms. Baldwin, do you have any
27 questions or issues you would like to raise
28 before we conclude?

1 MS. BALDWIN: Yes, your Honor, Vanessa
2 Baldwin with CPED. I did want to respond to
3 Mr. Ortega's statement in regards to
4 information he's claiming that is not
5 redacted and that apparently contains names
6 that he believes should not be included.

7 I'm unclear regarding what Community
8 Union is referring to. I believe he is
9 referring to CPED's opening testimony and
10 some of the attachments within the opening
11 testimony. We had notified those who
12 received those attachments on the service
13 list once we realized it contained personal
14 information and redacted that information.

15 So, we notified everyone to destroy
16 and delete those e-mails and documents and we
17 subsequently provided a redacted version
18 later that day. We also confirmed with, I
19 believe, one of -- the only person on the
20 service list who isn't a party to the
21 proceeding that that information was
22 destroyed and deleted.

23 In regards to Mr. Ortega's claiming
24 of the California Civil Code, we had raised
25 in CPED's motion objecting to the disclosure
26 of Mr. Wullenjohn's personnel file that
27 according to the California Civil Code,
28 Section 1798.24, an agency is prohibited from

1 disclosing personal information and there is
2 no exception that applies.

3 Mr. Ortega is claiming that
4 subsection O applies as an exception to that
5 general rule; however, that subsection O
6 applies to law enforcement or regulatory
7 agencies. Community Union is not, to my
8 understanding, a law enforcement or
9 regulatory agency. It is a nonprofit. And
10 so, unless there is some legal basis for
11 doing so and/or a potential subpoena or court
12 order, the Commission is prohibited from
13 disclosing the personnel files of
14 Mr. Wullenjohn.

15 I do want to ask more of a
16 procedural question of your Honor in regards
17 to the witness list for Community Union.
18 Community Union has not provided its list of
19 witnesses, as you noted, and we seek to
20 figure out if Community Union has until today
21 to provide that list of witnesses. It's
22 important for us to understand if there will
23 be any additional witnesses so that we can
24 adequately prepare for hearing.

25 ALJ ZHANG: The time for providing
26 witness lists and the exhibit list has
27 passed. Community Union did not provide
28 them. If at any time Community Union has a

1 witness list that it would like to provide,
2 it could motion for the Court to accept it,
3 but I am not willing to extend anymore
4 deadlines. We have to proceed with the
5 hearing.

6 If CPED is looking for assurance
7 that Mr. Ortega will provide certain people
8 at specific times, you will have to discuss
9 that with Mr. Ortega. If it is not clear
10 certain witnesses will appear at specific
11 times, then we will have to discuss whether
12 we need to subpoena them. But at this time I
13 don't have anything before me that indicates
14 who Community Union will bring on the dates
15 for the evidentiary hearing.

16 Does this answer your question,
17 Ms. Baldwin?

18 MS. BALDWIN: Yes, your Honor. Thank
19 you. We have attempted to seek names of the
20 witnesses or at least to confirm but have not
21 heard back, so we will stay tuned.

22 In regards to the master exhibits
23 that are due today, since there hasn't been
24 an immediate ruling regarding
25 confidentiality, CPED does seek to clarify
26 the version of master exhibits that we submit
27 today. Should we be filing that as all
28 confidential or should we serve a public

1 version, which right now we've only redacted
2 the personal information and the CPED's
3 supplemental report, which was already filed
4 as confidential?

5 So, we can submit that version or
6 would you prefer us to submit our entire
7 master exhibit as confidential?

8 ALJ ZHANG: Right now if you have a
9 redacted version, I would provide that to
10 just me. Regarding the confidential
11 materials, Mr. Ortega has the burden to
12 indicate what specific information he
13 believes should be redacted.

14 To the extent that CPED agrees
15 personal information is redacted, it sounds
16 like you already redacted that material, but
17 I would like to keep that information not
18 served to the service list until Mr. Ortega
19 has had an opportunity to assert his claims
20 of confidentiality.

21 So, with the master packet due
22 today, please serve the confidential version
23 to me and we will determine a public version
24 when Mr. Ortega submits his requirements as
25 to what his claims are for confidential
26 information. This must be decided on
27 August 20th, which is when we have our next
28 law and motion hearing.

1 Ms. Baldwin, does this schedule make
2 sense to you?

3 MS. BALDWIN: Yes, your Honor. Thank
4 you.

5 ALJ ZHANG: Mr. Ortega, if there is no
6 motion with explanations as to why you
7 believe specific things are confidential,
8 then I will decide what will be made public.

9 Ms. Baldwin.

10 MS. BALDWIN: Thank you, your Honor. I
11 do have additional questions. Regarding the
12 CPED's direct testimony during the hearing,
13 we do respectfully request that the witnesses
14 be given an opportunity to summarize their
15 entire testimony on all the issues scoped and
16 not just the issues in the assigned
17 Commissioner's latest scoping memo if that's
18 possible. This will help to tell a more
19 complete story if they're given the
20 opportunity to summarize the testimony on all
21 scoped issues.

22 ALJ ZHANG: Yes, that's fine. I did
23 not intend for the evidentiary hearing to be
24 limited to the issues scoped in the July
25 amended scoped ruling.

26 MS. BALDWIN: Thank you for the
27 clarification, your Honor. In regards to the
28 pretrial brief, CPED wanted to request

1 clarification in terms of the content and
2 what your Honor expects, particularly given
3 that Community Union will be presenting its
4 reply testimony at the hearing. We wanted to
5 make sure we provided a pretrial brief to
6 your expectations.

7 Without having written testimony
8 right now, there wouldn't be an analysis we
9 could provide other than our statement of the
10 case.

11 ALJ ZHANG: I think you use what you
12 have. Because Community Union has not
13 submitted its rebuttal testimony, then we
14 will address that at the evidentiary hearing.
15 What you will write in the pretrial motion is
16 what the CPED testimony is so far regarding
17 the issues that have been scoped in the two
18 scoping memos.

19 MS. BALDWIN: Thank you, your Honor.

20 ALJ COLBERT: Ms. Baldwin, Community
21 Union is not required to provide written
22 testimony. They can do oral testimony at the
23 hearing, so I'm not clear on what your
24 question is.

25 ALJ ZHANG: Judge Colbert, I ordered
26 the parties to submit pretrial motions so
27 that their statements of the case was clearly
28 set out before me before the evidentiary

1 hearing begins.

2 I believe CPED was expecting
3 Community Union to submit something in
4 writing so that it would be part of the
5 pretrial briefs, but because Community Union
6 did not submit anything, the pretrial brief
7 format is now different than what was
8 expected before.

9 So, we will have to hear from
10 Community Union on the date of the hearings.
11 The pretrial briefs would likely include very
12 little from Community Union since it has not
13 submitted anything into the record regarding
14 its testimony.

15 Does that answer your question,
16 Judge Colbert?

17 ALJ COLBERT: I guess I just want to be
18 clear. The expectation is that Community
19 Union can respond at the hearing and give
20 testimony. But the issue as I see it for
21 Mr. Ortega right now is, besides his
22 testimony, as he is Community Union -- and
23 I'm correct in saying that there have been no
24 other witnesses provided on behalf of
25 Community Union; is that correct, Judge
26 Zhang?

27 ALJ ZHANG: That's correct.

28 ALJ COLBERT: So, Mr. Ortega, the

1 discussion we're having right now is that
2 you've talked about process. It's important
3 that you have the opportunity to be heard at
4 the evidentiary hearing and to present
5 Community Union's side of the story. So, you
6 are not precluded from testifying or
7 providing information.

8 But to reiterate what Judge Zhang
9 has said and her current ruling and to my
10 question earlier is that to your benefit, if
11 you want witnesses, you need to provide the
12 witness list. Those cannot be done at the
13 last minute.]

14 You can testify and be your own
15 witness at the day of the hearing, but the
16 witness list, if you have them, need to be
17 provided to CPED. So I encourage you to
18 think about that.

19 ALJ ZHANG: Ms. Baldwin, do you have
20 any other questions or comments?

21 MS. BALDWIN: Yes, your Honor. I was
22 hoping if there's a way to clarify, on the
23 day of hearing -- or for all four days, in
24 terms of process, I believe it would be
25 CPED's presenting first its case in chief,
26 you know, followed by Mr. Ortega -- or
27 Community Union, if they wanted to,
28 cross-examine each of our witnesses, they

1 could do so at that time. At what point in
2 time does Community Union put on their
3 opening testimony? Is it at the close of our
4 opening? And do CPED's witnesses go on after
5 Community Union's opening testimony or reply
6 testimony so that we have an ability to
7 respond to Community Union's opening and
8 reply testimony? I was hoping, your Honor,
9 if you could clarify, that would be very
10 helpful.

11 ALJ ZHANG: There might be times when
12 you will have to recall certain witnesses
13 depending on when Community Union presents
14 its case in chief. So what I see is CPED
15 will present its case in chief, and then
16 Community Union will present its case in
17 chief. That means during CPED's case in
18 chief there will be cross-examination of
19 CPED's witnesses but also redirect, recross.
20 And when CPED rests, that is when Community
21 Union will put on its case in chief and its
22 direct testimony. And CPED will have the
23 opportunity to cross. And then there will be
24 redirect and recross and, if necessary,
25 additional cross. It's difficult right now
26 to determine which witnesses will be on. I
27 have reviewed CPED's witness list, and
28 looking at that schedule, it looks as if

1 Community Union probably would not have its
2 case in chief presentation until the second
3 day or later in the second day.

4 Have I answered your question, Ms.
5 Baldwin?

6 MS. BALDWIN: Understood, your Honor.
7 Thank you.

8 ALJ ZHANG: Judge Colbert, do you have
9 any comments before we conclude?

10 ALJ COLBERT: Thank you, Judge Zhang.
11 I guess I would just like to reiterate for
12 the parties and Mr. Ortega, this proceeding,
13 as Judge Zhang has indicated, is focused on
14 the scope, which was set forth in the OII and
15 the subsequent revisions of the scoping memo.
16 The bottom line is that Community Union has
17 received funds from California ratepayers and
18 has been asked to indicate how those funds
19 were spent. So other ancillary information
20 is not the focus. The basic focus is
21 Community Union receives funds, and the
22 question is were those funds used in the
23 manner as they were requested and set forth
24 in the work plan. So hopefully we can focus
25 on that.

26 And that is the only -- that is the
27 only concern of the Commission is to make
28 sure that ratepayer and California funds are

1 used in the manner that they were requested
2 and are consistent with the requirements of
3 the CASF program.

4 Thank you, Judge Zhang.

5 ALJ ZHANG: Thank you, Judge Colbert.

6 For a transcript of today's hearing,
7 please email reporting@cpuc.ca.gov. Thank
8 you for your participation today. We are
9 adjourned.

10 We are off the record.

11 (Off the record.)

12 (Whereupon, at the hour of 11:02 a.m.,
13 the Commission then adjourned.)]

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING
I, ANDREA L. ROSS, CERTIFIED SHORTHAND REPORTER
NO. 7896, IN AND FOR THE STATE OF CALIFORNIA, DO
HEREBY CERTIFY THAT THE PAGES OF THIS TRANSCRIPT
PREPARED BY ME COMPRISE A FULL, TRUE, AND CORRECT
TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD IN
THIS MATTER ON AUGUST 3, 2020.

I FURTHER CERTIFY THAT I HAVE NO INTEREST IN THE
EVENTS OF THE MATTER OR THE OUTCOME OF THE PROCEEDING.

EXECUTED THIS AUGUST 06, 2020.



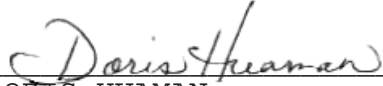
ANDREA L. ROSS
CSR NO. 7896

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING
I, DORIS HUAMAN, CERTIFIED SHORTHAND REPORTER
NO. 10538, IN AND FOR THE STATE OF CALIFORNIA, DO
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THIS MATTER ON AUGUST 3, 2020.

I FURTHER CERTIFY THAT I HAVE NO INTEREST IN THE
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EXECUTED THIS AUGUST 06, 2020.



DORIS HUAMAN
CSR NO. 10538

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