



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Investigation 18-07-009

MOTION OF COMMUNITY UNION, INC. TO OPPOSE THE JOINT MOTION IN ORDER INSTITUTING INVESTIGATION 18-07-009 FOR APPROVAL OF SETTLEMENT WITH KOREAN CHURCHES FOR COMMUNITY DEVELOPMENT

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Dated: May 12, 2020

This filing is pursuant to May 4, 2020 Case Management Conference by Administrative Law Judge Zhan

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1. INTRODUCTION:

Pursuant to Rules 11.1(a) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Community Union, Inc. hereby files this Motion to Oppose the Joint Motion In Order Instituting Investigation (OII) 18-07-009 For Approval Of Settlement With Korean Churches For Community Development, wherein Community Union, Inc., a sponsored organization, is alleged to have blocked the Fiscal Agent from performing her duties. We ask ALJ Zhang to not approve the settlement with Korean Churches for Community Development (KCCD), the Fiscal Agent in this contract who has agreed to assume all legal, financial and administrative responsibility. See Exhibit A, Attachment A.

Furthermore, the contract agreement between the Commission and all 5 entities, a.k.a. California’s One Million NIU Coalition cannot be severed into each individual organization named in the contract. The contract clearly delineates roles of the fiscal agent and the sponsored organizations, along with their obligations to the contract; where the fiscal agent (KCCD) assumed financial, legal and administrative responsibility and the sponsored organizations Community Union, Inc. et al would perform their role per the Work Plan in the contract. To have the fiscal agent without the sponsored organizations, or the sponsored organizations without the fiscal agent leaves the contract nonexecutable. The Commission’s intent in identifying a fiscal agent in the contract is clear, see Exhibit A- Attachment A.

Therefore a settlement agreement between KCCD and the Enforcement Division of the California Public Utilities Commission (CPED) renders the Order Instituting Investigation 18-07-009 *de facto* completed as it relates to liability (financial, legal and administrative). However, CPED wishes to press-on with the OII for reasons that are unclear, since financial liability to the sponsored organizations is contractually not available. If CPED wishes to press-on against the sponsored organization, which it is abundantly clear they do, KCCD must be kept in the OII.

Additionally, KCCD says for 43 months they were blocked from being able to execute their fiscal agent responsibilities. This statement by KCCD is incredulous on its face. The role of the fiscal agent in this contract is incredibly important, particularly in the current instance wherein on August 19, 2011 KCCD’s CEO Hyepin Im signed **Attachment A**, incorporated herein as Exhibit “A”. KCCD expressly agreed “to take the lead responsibility and legal authority to represent the California’s One Million NIU (New Internet Users) Coalition –Los Angeles for purposes of sponsoring this application and for administration of all California’s One Million NIU (New Internet Users) Consortia activities.”

Attachment A, paragraph 7 states: “The Fiscal Agent will affirm that the work outlined in the consortium Work Plan will be completed and verification by an Attestation Report prepared by an independent, licensed Certified Public Accountant will be submitted annually to the Communication Division.”

Attachment A paragraph 8 states: “The Sponsored Organization designates Hyepin Im to act as authorizing official...the authorizing official shall have authority to sign disbursement requests.”

For 43 consecutive months KCCD performed the fiscal agent duties described above. Over a period of 12 quarters, KCCD signed a declaration under penalty of perjury that statements and representations submitted in our reimbursement packages to the Commission were true and correct. KCCD invoiced and accepted payment of over \$58,000 to perform stated fiscal agent duties over 43 consecutive months.

We respectfully request ALJ Zhang to not approve the Settlement Agreement between CPED and KCCD for reasons stated above and supported as follows.

2. BACKGROUND ON OII:

1. As a Sponsored Organization, Community Union, Inc. (CU) routinely provided detailed emails and attachments to KCCD (the Fiscal Agent) pertaining to Commission's CASF's funding of California's One Million NIU: including all expenses incurred, progress made against Work Plan with detailed reports, and Reimbursement Requests packages prepared for the Commission's Communication Division.
 - a. See **Exhibit B** below which serves as an example of the detailed emails routinely sent to KCCD's CEO, Ms. Hyepin Im for review and approval. Ms. Im would memorialize her approval of Reimbursement Requests by signing the *Quarterly Report and Payment Request Transmittal Letter and Declaration* **Exhibit C (p. 1 -8)** . These emails requesting Ms. Im's approval and signature were sent throughout the term of the contract. Details relating to invoices, expenses, and Work Plan progress, were submitted as a condition for her approval and signature for the Reimbursement Request package.
 - b. Beginning in early 2012 and continuing into August 2015, KCCD approved Reimbursement Request package details by signing the Quarterly Declaration, see **Exhibit C (p. 1 -8)**. Ms. Im (KCCD) approved of expenses, progress reports, etc. submitted by Community Union. Ms. Im in her Declaration that is incorporated into the Settlement Agreement with CPED and presented for approval to ALJ Zhang, says she was blocked from performing her fiscal agent duties. Her signature on 12 different Declarations over the course of 43 months effectively impeaches her written testimony in this Declaration relative to being blocked from performing fiscal agent duties.
 - c. Regarding money received from the Commission under the contract: KCCD kept money for themselves in the amount equal to what was submitted for reimbursement according to KCCD's payroll records. A quarterly sum representing a percentage of overall payroll expenses for KCCD represented the estimated time spent performing Fiscal Agent duties. See **Exhibit "D"** for examples of payroll records with noted fiscal agent percentages used to submit in Reimbursement Requests.
 - d. The Reimbursement Request sent to the Commission for processing could not be approved without Ms. Im signature on the Quarterly Declaration, to which Ms. Im provided 12 separate occasions, over the course of 43 consecutive months.

3. ARGUMENT

- a. In Attachment A (Exhibit A), the terms Fiscal Agent and Sponsored Organization are defined. Attachment A further defines KCCD as the Fiscal Agent, and Community Union, along with 4 other organizations as the Sponsored Organizations.
 - i. As noted in the Introduction above, KCCD as the Fiscal Agent assumed all responsibility related to fiscal, administrative and legal.
 - ii. Nowhere in California's One Million NIU contract with CPUC is CPED given authority to sever the contract into the individual organizations, superseding the express intent of the Fiscal Agent to assume all responsibility as it relates to legal, administrative and financial matters.
- b. KCCD was paid to perform Fiscal Agent duties:
 - i. KCCD was a paid a quarterly sum representing a percentage of their overall payroll that was estimated time spent performing Fiscal Agent duties. See **Exhibit "D"** for examples of payroll records with noted Fiscal Agent percentages.
 - ii. Upon receipt of the checks from CPUC, KCCD would keep an amount equal to the stated Fiscal Agent percentage detailed on KCCD payroll records submitted as part of the Reimbursement Requests.
- c. SETTLEMENT AGREEMENT BETWEEN CPED AND KCCD
 - i. CPED is given no authority to sever the contract into the individual organizations stated in the contract. As previously stated above, the contract is non-executable without both the Fiscal Agent and the Sponsored Organizations.
 - ii. CPED's lack of defining KCCD as the **Fiscal Agent** in the settlement agreement is conspicuous.
 - iii. CPED has offered no sufficient evidence to contradict the Fiscal Agent has assumed all financial, legal and administrative responsibilities under the contract in question under this OII.
 - iv. It appears that CPED seeks by *de facto* circumstances to end the investigative portion of the OII proceeding by their Motion for Approval of a Settlement Agreement between them and KCCD relating to financial, legal and administrative liability.
 - v. By CPED's own words from their Joint Motion for Approval of the Settlement Agreement between them and KCCD:
 1. **"IN THE PUBLIC'S INTEREST:** CPED and KCCD's settlement is in the public interest because: 1) it will save time and resources in litigating this proceeding; 2) KCCD cooperated with Commission requests for information and provided all information that was available to it; and 3) KCCD continues to perform valuable services for underserved populations in Los Angeles communities."
- d. Community Union, as the Sponsored Organization, at no time controlled the flow of money from the contract under investigation in this OII.
 - i. Community Union submitted invoices to the Fiscal Agent, KCCD, in order to be paid. These invoices were submitted quarterly. The invoices represented work performed by Community Union in the execution of the contract's Work Plan. See **Exhibit "E"** for examples of

Community Union invoices submitted to KCCD.

4. CONCLUSION

- a. Throughout the entire contract period (43 consecutive months), Community Union provided to KCCD a detailed accounting of the expenses incurred, work flow changes and challenges, as well as Work Plan progress in the form of varying detailed reports. At the submission of every quarterly reimbursement request to CPUC, Community Union ensured that KCCD received a complete copy of all records and backup supporting the reimbursement requests.
- b. CPED has no authority to sever the contract into the individual organizations and is precluded from seeking financial remedy from Community Union by the contract. Responsibility relating to legal, financial and administrative liability is assumed by the Fiscal Agent.
- c. The Settlement Agreement, if approved by ALJ Zhang, de facto terminates the Investigation under this OII relating to financial, legal and administrative responsibility.
- d. We respectfully submit to ALJ Zhang this **Motion of Community Union, Inc. to Oppose the Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development** , and ask the Settlement Agreement not be approved for the aforementioned reasons.

Respectfully Submitted,
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