

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Investigation 18-07-009

COMMUNITY UNION, INC.'S MOTION TO AMEND THE ORDER INSTITUTING INVESTIGATION (OII) 18-07-009 TO INCLUDE AN ORDER TO SHOW CAUSE WHY THE COMMISSION SHOULD NOT REIMBURSE COMMUNITY UNION, INC. THROUGH PAYMENT TO KOREAN CHURCHES FOR COMMUNITY DEVELOPMENT FOR SERVICES RENDERED IN Y3Q3 AND Y3Q4 AS SUBMITTED IN THEIR REIMBURSEMENT REQUESTS

Pursuant to Rule 11.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC), Community Union, Inc. respectfully makes a *Motion to Amend the Order Instituting Investigation I18-07-009 to Include an Order to Show Cause Why The Commission should not Reimburse Community Union, Inc. through Payment to Korean Churches for Community Development for Services Rendered in Y3Q3 and Y3Q4 as Submitted in their Reimbursement Requests* (Motion).

I. INTRODUCTION

In light of new evidence obtained by Community Union (CU) on August 11, 2020, through the Discovery process of this Order Instituting Investigation (OII), it appears that the California Public Utilities Commission (Commission) through its Consumer Protection and Enforcement Division and its Communications Division (CD) have engaged in multiple instances of obstruction to this investigation, breach of contractual obligations and knowingly misusing rate payer funds in pursuit of an action against California's One Million NIU Coalition

(NIU).

II. DISCUSSION: CPUC SHOULD REIMBURSE FOR Y3Q3 AND Y3Q4

Communications Division (CD) is in breach of the contract by and between CPUC and NIU by not processing and/or destroying Reimbursement Requests for Y3Q3 and Y3Q4 and its supporting documentation submitted by California's One Million New Internet Users (NIU). It also appears that said Reimbursement Requests for Y3Q3 and Y3Q4 were purposefully left out of Consumer Protection and Enforcement Division's (CPED) Exhibits, see I1807009 (Confidential) CPED Exhibits.pdf Submitted August 3, 2020 in preparation of Evidentiary hearing August 24th – 27th. In the 2,506 page document submitted by CPED as their Exhibit for the upcoming Evidentiary Hearing are the Y3Q3 and Y3Q4 documents are missing. Whether on purpose or by accidental omission, CPED attempts to skew the record in apparent collusion with CD to hide and/or obstruct the investigation as to the Disputed Facts Subject to Cross Examination #4: **Did the Audit Report correctly include all allowable expenses in Quarters 11, 12 and 13?**

At no time was CD relieved of their contractual obligation to process NIU's Reimbursement Requests for Y3Q3 and Y3Q4. The action of CD not processing Reimbursement Requests and mysteriously losing key sign-in sheets in support of Reimbursement Requests is tantamount to obstruction. These 2 Reimbursement Requests packages proved the satisfactory completion of the contract and number of clients served. The contract by and between CPUC and NIU is clear in that CD will process the Coalition's Reimbursement Requests, which include quarterly progress reports relating to each of the Activities outlined in the Work Plan. Both for the purposes of obtaining status on metrics (goals of the Work Plan) as well as reconciling any contract discrepancies relating to value, dollars (due and paid), CD had/has the obligation of processing said Reimbursement Requests. Even if CD ultimately determined they were not going to pay the Reimbursement Requests, the value of the information relating to the Work Plan is critical to this Investigation. ALJ Zhang during the May 4, 2020 Hearing was clear in outlining the Disputed Facts relating to the Work Plan.

Teresa Cortes was a consultant to CU whom we would like to add to the witness list with ALJ Zhang's permission. Ms. Cortes prepared and mailed, by regular mail, hundreds of pages of sign-ins to CD in support of the Reimbursement Requests submitted for Y3Q3 and Y3Q4. Ms.

Cortes will testify to the facts alleged herein regarding the sign-in sheets. Ms. Cortes will share how the last three quarters submitted for reimbursement included a process wherein she sent by regular mail the original sign-in sheets representing NIU participants' attendance to the in-class hours of Activity V of the Work Plan.

III. BACKGROUND AS TO THE TIMING OF THE AUDIT:

The SCO descended onto CU's office in March 2015, in East Los Angeles to perform the audit. During this same time, CU was highly engaged in meeting and exceeding all of the goals outlined in the Work Plan. CU was in the middle of launching and managing 21 sites; engaged in performing 147 different Activities per the Work Plan; with a skeleton administrative crew of 4 including myself, and a financial gas tank running on fumes. See Exhibit 2 for list of 21 sites managed during time of audit. CU's skeleton crew were counting on the Commission to honor its obligation of paying for services rendered under the CASF contract.

What the SCO cites in their Audit as "CU not having documentation" or KCCD's (the fiscal agent in this matter) claim of "CU's unwillingness to provide the documentation" related more to the lack of disposable resources CU had available to dedicate and validate the integrity of the information we submitted. It is more than reasonable that Community Union be allowed to perform the necessary steps to confirm the integrity of the information it intended to provide to the Auditor – **which CU inevitably did provide**. CU was delayed due to our contractual commitment under CASF to meet and exceed all the metrics(defined goals) in the Work Plan. In the Reimbursement Requests submitted for Y3Q3 and Y3Q4 we substantiated all goals of the Work Plan were met or exceeded.

Given the small size of CU's operation, where many of us wore multiple hats, it should not have been surprising to the Auditor that we would be delayed in providing detailed information. Yet there was *shock and awe* being communicated to CD by the SCO relating to documentation not being provided. The SCO led CD to believe during the course of this \$100,000 Audit, that CU was not providing documentation. A more accurate account would have been to say CU was merely delayed in providing the documentation. Given Ms. Singh "urgent approval" request to Mr. Wullenjohn, it can be inferred that SCO would not review the documentation NIU provided without a contract extension. See Exhibit 3, email between the SCO and CD dated 6/8/2015.

Furthermore, CPUC had already frozen Reimbursement for Y3Q3 - an amount equal to \$37,500 - that CU was highly dependent on receiving - but did not. As such, the action by CPUC to not pay the Y3Q3 Reimbursement Request added another layer of high-impact challenges to our ability to respond in a timely manner to the SCO's requests.

The Commission by not paying Y3Q3 Reimbursement Request, used a classic "cold war" strategy in financially choking-off its opponent. Wherein the auditor/Commission cite as a wrong, CU's inability to deliver – which was caused by the Commission's non-payment of the Reimbursement Request in the first place.

Despite CU's financial challenges and the weight and strain the Audit put on our resources, CU was still able to complete the contract, meeting and exceeding all goals set forth in the Work Plan. CU respectfully requests ALJ Zhang to issue an order to show cause why CD should not complete the processing of NIU's Y3Q3 and Y3Q4 Reimbursement Requests and prepare payment, and update performance metrics relating to the Work Plan. If ALJ Zhang finds that CU met and exceeded all goals, then we respectfully request ALJ Zhang order CD to pay NIU, and order Korean Churches for Community Development to pay CU for invoices submitted on Y3Q3 and Y3Q4 work.

VI. COMMISSION ACTING IN BEST INTEREST OF RATE PAYERS - QUESTIONED

Based on CU's review of the emails provided by CPED in response to our Discovery requests of emails by and between the SCO (State Controller's Office) and CD; it appears that Ms. Devla Singh of the CD was duped by Mr. Chris Prasad from the SCO into believing SCO was uncovering hundreds of thousands of dollars in accounting inconsistencies. The email exchanges by and between Ms. Singh and Mr. Prasad revealed cost to the rate payers for the Audit were of no concern.

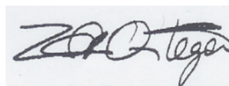
Ms. Devla Singh in an email to Mr. Robert Wullenjohn wrote "**we might as well have paid NIU out the rest of their [CASF] funding and not do this audit [on NIU] because it is ending up costing us [CD] more.**" See Exhibit 4 email from Ms. Singh to Mr. Wullenjohn. Upon review of CPED's production of responses to CU's data requests, we found a copy of an agreement that shows the Commission entered into for \$100,000 to complete the audit of NIU.

See Exhibit 5, State of California Standard Agreement Amendment, Agreement Number 14 IA5001. The Commission has clearly vacated its integrity relative to acting in the best interests of the rate payers, in large part, by this agreement for \$100,000 with SCO. The Commission's proposed Settlement Agreement with the fiscal agent in this matter, Korean Churches for Community Development (KCCD), is \$15,000. See Exhibit 6 Settlement Agreement by and between KCCD and CPUC. KCCD is the sole entity who has assumed all financial responsibility in this matter per Attachment A of the CASF contract with CPUC, see Exhibit 7 and 7A. Initially the Commission had sought \$82,381 to be returned by NIU. Even if the Commission had collected the \$82,381 and the \$15,000 from KCCD's Settlement Agreement, the break-even point on behalf of the rate payers would not have been met, against the expense of the Audit alone. But the Audit is not the only expense in this matter. When adding the time Commission staff (CD and CPED) spent in ADR, this OII and its adjudicatory proceeding, a conservative estimate could be projected to be in the hundreds of thousands of dollars. Such a high cost to the rate payers for so little return, sends positions held by the Commission, CPED specifically, in this proceeding relating to rate payers' best interest - right out the window.

Knowing what we now know about the high cost of the Audit, \$100,000, it is no surprise that Mr. Wullenjohn would embrace the Audit report in the halls of CPUC after a meeting he and I attended, saying, "I have everything I need right in this report." The Commission no longer has standing in their contention of working in the best interest of the rate payers in this matter.

For the foregoing reasons, Community Union respectfully request ALJ Zhang amend Order Instituting Investigation I18-07-009 to Include an Order to Show Cause Why The Commission should not Reimburse Community Union, Inc. through Payment to Korean Churches for Community Development for Services Rendered in Y3Q3 and Y3Q4 as Submitted in their Reimbursement Requests.

Respectfully submitted,



By: Larry Ortega
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Dated: August 13, 2020

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