



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

03/20/20
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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

COMMUNITY UNION, INC.'S RESPONSE TO THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING CASE MANAGEMENT STATEMENTS

This filing is pursuant to the March 18th email ruling by Administrative Law Judge Zhang.

IDENTIFY THE PARTIES REMAINING POST ADR

1. Community Union, Inc.
2. Larry Ortega is President of Community Union, Inc., a California non-profit corporation. All actions and transactions conducted by Mr. Ortega under the subject matter contract between KCCD and CPUC, and the subsequent Order Instituting Investigation (OII) were done on behalf of Community Union, Inc. As such, Mr. Ortega is protected by the laws of the state of California to not be held personally liable, and therefore should not be party to this litigation. All matters brought against Mr. Ortega personally should be dismissed pursuant to CORP § 5047.5 of the California Business and Professions Code.
3. CPUC

DISCOVERY ISSUES:

1. Community Union will seek both written and verbal testimony from the following witnesses as a matter of ascertaining their understanding of the contract language relative to the separation of responsibilities by and between the Fiscal Agent, Korean Churches for Community Development and the Sponsored Organizations: Black Business Association, Community Union, Inc., Asian

Pacific Community Fund and Soledad Enrichment Action. To date we have asked CPED and Communications Division to provide a clear picture as to their interpretation of the contract as it relates to liability extending to the Sponsored Organizations. To date they have refused to provide an explanation how their interpretation is not contrary to the contract which states in Attachment A that the Fiscal Agent “assumes all responsibility regarding administrative, financial and legal” as it relates to this contract and the subsequent Order Instituting Investigation. Collectively upon hearing the named witnesses’ testimony below we hope to align each of these witnesses’ testimony and show how it is in contradiction to the contract. See Witness List cites in the paragraph below.

2. The Auditor throughout its entire Audit Report, refers to the term/title NIU Coalition without naming the Fiscal Agent or the Sponsored Organizations. This erroneously implies NIU Coalition is an entity. No such entity exist or is named in the contract. Community Union asked in their formal response to the Audit that the Auditors correct this error as it served to confuse the issue, and asked the Auditor to name the party to whom they were referring (the Fiscal Agent or the Sponsored Organizations). The Auditor has refused. Community Union requests the Auditor’s testimony to clarify whom are they referring when they use NIU Coalition. We believe this error of fact made by the Auditor substantially contributes to the confusion relative to who is the Fiscal Agent and should ultimately be liable to the relief the OII seeks to determine.
3. Community Union’s accounting records and expenses presented to the Auditor during the Audit represented only part of the expenses incurred during the delivery of the contract’s Activities as outlined in the Work Plan. The contract specifically states there are five organizations, a Fiscal Agent and 4 Sponsored Organizations. It is our contention the Auditor made in error in the Audit Report by excluding the Fiscal Agent’s (KCCD) and the Other Sponsored Organizations expenses as well as Community Union’s expenses for quarters 11, 12 and 13, in reporting “allowable” expenses. We seek the Auditor’s testimony to articulate why the other agencies’ expenses were not included in their estimates reported in the Audit. To date they have refused to clarify.
4. We believe CPED is using the confusion created by the Audit Report in erroneously omitting key factual information as to who is the Fiscal Agent. They have furthered this confusion by failing to correct the error in using NIU Coalition as a title to whom no entity belongs. By purposefully or erroneously failing to correct this mistake they blur the lines clearly drawn-out in the contract as to who is the Fiscal Agent and who are the Sponsored Organizations. It is incumbent on CPED to clarify who they mean when using the term NIU Coalition prior to moving forward in litigating this matter. Community Union is requesting CPED to clarify who is the Fiscal Agent, and who are the Sponsored Organizations. If they intend to mean NIU Coalition is a Sponsored Organization, specifically Community Union, they are then precluded from pursuing legal, financial and administrative relief and/or penalties against Community Union per the terms of the contract. Liability related to administrative, financial and legal has been assumed by the Fiscal Agent. To date CPED has refused to clarify.
5. It is our understanding that the Auditor’s Audit Report is the source of confusing who is the Fiscal Agent and who are the Sponsored Organizations. References were made in the Audit Report on pages 1, 5, and 12 where the Auditors used the title “NIU Coalition” in their

- statement of “records and source documents not being made available”. Do the Auditors mean the Fiscal Agent, or do they mean the Sponsored Organizations when referring to NIU Coalition?
6. Community Union’s observations throughout the period of the Audit found Mr. Andy Finlayson and Mr. Chris Prasad to be very distracted and rushed throughout the entire time of the Audit. Mr. Prasad and Mr. Finlayson missed key data, misrepresented in their Audit that documents were not provided and never addressed performance issues with the contract, or if the completion of the contract had been achieved. Community Union has thus far not been able to ascertain from the Auditors, the Communications Division or CPED if they recognize the contract to have been completed. Community Union seeks to ascertain if all Activities (1-7) per the Work Plan have been satisfied?
 7. Community Union has presented reports including video links showing the success of our promotional efforts which served to meet and exceed the completion of objectives stated in Activity 6 of the Work Plan. Collectively the work of the 5 organizations (California’s One Million NIU) provided for nearly 28 million viewers seeing the benefits of broadband adoption. These viewers were mostly in the hardest of hard to reach communities, low-income, non-English-speaking. Despite this tremendous success in meeting and exceeding the goals delineated in Activity 6 from the Work Plan, CPED has refused to recognize this point of fact. Community Union has been unsuccessful thus far in having CPED clarify whether they recognize the contract as being completed. Community Union is asking CPED to clarify has the contract been completed.
 8. Community Union would like to ascertain if the Auditors, in the Audit process, made an erroneous interpretation of the work and performance in Activity 5 of the Work Plan. The Auditors represented in the Audit Report that Activity 5 of the Work Plan “40-hours of Training” was the entirety of the contract and that all funding from the CPUC was to perform Activity 5 of the Work Plan. Several glaring pieces of evidence contradict this interpretation and were presented to the Auditors during the Audit. To the best of our knowledge the Auditors never looked at performance of the contract during the Audit. We seek to ascertain what data was used by the Auditors to determine the number of hours of in-class training was executed for each of the 144 courses offered in completing Activity 5. Mr. Prasad, the Auditor, told Community Union that the Audit was “not a performance audit, it was a financial audit.”
 9. We seek to ascertain from KCCD and have Communications Division confirm or deny whether paragraph 7 of page 2 in Attachment A of the contract was executed and if so, are they able to produce a copy of said Attestation. In Attachment A, KCCD – the fiscal Agent - guaranteed that they would “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 Communications Division.” To date all communication has ceased by and between KCCD and Community Union as well as the Communications Division.
 10. We seek to ascertain from the Auditor’s why estimates were used when actual bank statements, consultant invoices, calendars, G/L’s etc., were provided. Financial records were presented to the Auditors from both Community Union, the Sponsored Organization and KCCD, the Fiscal

- Agent. See page 7, 20 and 21 of the Audit report for excerpts highlighted showing the Auditors state “they are using estimates”, and acknowledge estimating is “not a perfect methodology”.
11. Community Union seeks to ascertain from CPED and the Auditor why only 10 of the 13 months of expenses incurred to complete all of the Activities described in the Work Plan were used in determining liability. We would seek to ascertain from CPED and the Auditors their rationale for excluding expenses incurred in quarters 11, 12 and 13 which were used to complete the terms of the contract.
 12. Community Union seeks to ascertain all emails from March 1, 2015 to June 30, 2015 re: California’s One Million NIU contract. Specifically emails by and between Robert Wullenjohn and Communications Division’s staff, and emails by and between Robert Wullenjohn and former Deputy Executive Director, Mr. Ryan Dulin to ascertain if they acknowledged receipt of quarterly reimbursement requests for quarters 11, 12 and 13 from California’s One Million NIU.
 13. Community Union seeks to ascertain all emails from Communications Division to and from Auditors Andrew Finlayson and Chris Prasad (State Controller’s Office) re: California’s One Million NIU contract. Mr. Prasad told Larry Ortega, President of Community Union, that the 40-hour Training misinformation came from Communications Division, implying their Audit did not discover this information.

PRINCIPAL FACTUAL DISPUTES TO BE LITIGATED AT EVIDENTIARY HEARING

1. CPED has conducted its investigation and inquiries with Community Union, Inc. with the assumption that Community Union was the fiscal agent. We are not. Korean Churches for Community Development (KCCD) is the Fiscal Agent, see Attachment A incorporated into the contract and attached herein.
2. Community Union does have the obligation of providing all accounting records to CPED, and did so. However in no way can financial or legal responsibility extend to Community Union as this obligation was assumed by the Fiscal Agent, see Attachment A of the contract. Attachment A, page 2, paragraph 1 reads: “The Fiscal Agent hereby agrees to sponsor the Project and to **assume administrative, programmatic, financial and legal responsibility** [emphasis added] for the purposes of the requirements of funding organizations. Attachment A is signed by Ms. Hyepin Im, CEO of KCCD and is incorporated into the contract.
3. Community Union is the *Sponsored Organization* for whom KCCD – as the Fiscal Agent – assumed “administrative, programmatic, financial and legal responsibility for the purposes of the requirements of funding organizations”, pursuant to Attachment A. Given this point of fact how does liability in any way extend to Community Union?
4. Attachment H (core to the funded proposal) of California’s One Million NIU contract with CPUC, states in it’s opening paragraph “California’s One Million NIU is a seven (7) step process made up of conferences to **create awareness and** [emphasis added] training...”. CPED has ignored this point of fact, and/or has refused to acknowledge each of the seven Activities in the Work Plan. CPED and the Auditor’s Report has erroneously presumed the

entirety of the contract was limited to Activity 5 of the Work Plan which was to provide training.

5. Mr. Ortega is President of Community Union, Inc., a California corporation, and is protected by the State of California as President of a California corporation, to not be held personally liable in this matter. A third party was not defrauded. How does CPED intend to extend liability to Mr. Ortega personally when he is protected by California state law?
6. Was California's One Million NIU contract with CPUC executed to completion? Were all the objectives in Activities 1 -7 listed in the Work Plan met or exceeded?
7. The Audit Report is laden with contradictions regarding whether or not documents were provided by Community Union. There are emails supporting documents requested from Community Union were provided.
8. How does CPED intend to negate paragraph 7 of page 2 in Attachment A of the contract where KCCD guaranteed that they would "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 Communications Division." This point of fact removes Community Union from liability or culpability relative to mismanagement of records
9. Community Union also presented information on student databases, sign-in sheets, applications of students enrolling in courses, that represented the completion of Activity 5. We also presented to the Auditors calendars indicating meetings and promotional activities representing the completion of Activities 1 and 2.
10. Community Union has emails sent to the Auditors included G/L, Profit/Loss Statement and Balance Sheet information for Community Union. These emails also included courtesy copies to KCCD, the Fiscal Agent.

WITNESSES TO BE SERVED, BUT NOT CONFIRMED FOR CROSS EXMINATION AT EVIDENTIARY HEARING

- 1. Robert Wullenjohn, Manager, Communications Division, CPUC**
- 2. Ryan Dulin, former Acting Deputy Director, CPUC**
- 3. Andrew Finlayson, State Controller's Office**
- 4. Chris Prasad, State Controller's Office**
- 5. Brian Hom, UEB, CPUC**
- 6. Jeannette Lo, UEB, CPUC**
- 7. Hyepin Im, CEO, Korean Churches for Community Development**
- 8. Neri Rivas, formerly with Community Union, Inc.**
- 9. Debra Janes, formerly with Community Union, Inc.**
- 10. Ron Vera, Attorney at Law,**
- 11. Nathan Arias, Executive Director, Soledad Enrichment Action**
- 12. Jane Does #1 – 10, graduating students (parents) from the One Million NIU training courses**

COMMENT ON THE SCHEDULE FOR THE PROCEEDING AS SET FORTH IN THE ORDER REQUESTING CASE MANAGEMENT STATEMENTS

We are fine with the dates as set by the ALJ, but respectfully request these dates be moved out 30 days due to the current Covid-19 concerns regarding personal contact and public gatherings.

Respectfully Submitted,
/s/ LARRY ORTEGA

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President

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