

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN INVESTIGATION 18-07-009:

This proceeding was filed on July 12, 2018, and is assigned to Commissioner Clifford Rechtschaffen and Administrative Law Judge (ALJ) Zhen Zhang. This is the decision of the Presiding Officer, ALJ Zhang.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:lil

Attachment

ALJ/POD-ZZ1/li1

Decision **PRESIDING OFFICER'S DECISION OF ALJ ZHANG**
(Mailed 8/16/2021)

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

(See Appendix A for a List of Appearances)

**PRESIDING OFFICER'S DECISION
RESOLVING ALL OUTSTANDING ISSUES**

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**PRESIDING OFFICER'S DECISION
RESOLVING ALL OUTSTANDING ISSUES**

Summary

This decision resolves all outstanding issues in this proceeding and finds that the Defendant, Community Union, Inc., failed to implement the California's One Million New Internet Users Coalition program in accordance with the terms of approval granted by the California Public Utilities Commission (Commission) in violation of Decision 11-06-038 and Resolution T-17355; and that Community Union, Inc. acted in contempt and violated Rule 1.1 of the Commission's Rules of Practice and Procedure by demonstrating a reckless disregard for the Commission, the regulatory process, the law, and the truth. This decision also directs the following remedial actions: no later than October 1, 2021, Community Union, Inc. shall return \$162,109 it received unlawfully to the California Advanced Services Fund; effective immediately, Community Union, Inc. is banned from seeking and receiving ratepayer funds from and participating in public purpose programs at the Commission for seven years in lieu of the \$959,500 penalty, due to Community Union, Inc.'s size and estimated annual revenue; and effective immediately, the corporate veil as between Community Union, Inc. and Larry Ortega, President and Chief Executive Officer of Community Union Inc. is pierced, and we deem the two as the same entity; therefore, Larry Ortega is held personally liable for the restitution ordered in this decision, in the amount of \$162,109, and is personally banned from receiving ratepayer funds from and participating in public purpose programs at the Commission for seven years.

This proceeding is closed.

1. Factual Background

1.1. Order Instituting Investigation

On July 12, 2018, the Commission issued the instant Order Instituting Investigation (OII)¹ seeking to determine whether California's One Million New Internet Users Coalition (NIU or Coalition) and its members violated any provisions of the California Public Utilities (Pub. Util.) Code, Commission General Orders (GOs) or resolutions, decisions, or other applicable rules or requirements pertaining to the grant from the California Advanced Services Fund (CASF). As of today, only one member of the Coalition, Community Union, Inc. (Community Union), is active in the proceeding as all others have either been dismissed or excused from the remainder of this proceeding through the settlement adopted in Decision (D.) 20-12-055.

1.2. CASF Framework

Funded by ratepayer money,² the CASF was created to encourage deployment of broadband facilities in unserved and underserved areas of California.³ Senate Bill (SB) 1040 repealed the 2013 sunset of CASF. SB 1040 increased funding for CASF and created two new accounts, one of which was the Rural and Urban Regional Broadband Consortia Grant Account (Consortia Account).⁴ Any references to CASF in this decision refers to the CASF Consortia Account and the relevant Consortia Account rules and requirements. The

¹ 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, Jul. 12, 2018 (hereinafter OII).

² D.07-12-054 at 3.

³ *Id.* at 2.

⁴ D.11-06-038 at 9.

Consortia Account was designed to fund projects to bridge the digital divide, promote broadband deployment, access, and adoption, and fund the cost of broadband deployment activities other than the capital cost of facilities.⁵

In 2011, the Commission adopted procedures and guidelines regarding the Consortia Account's application, evaluation, and selection process.⁶ The required application packet included an action plan, work plan, budget, and consent form. Applicants were required to outline their priorities and explain how they related to a region's needs for broadband deployment, access, and adoption.⁷ The action plan had to include the program strategies, goals, outcomes, and metrics.⁸ The work plan expanded on the action plan and detailed the program's functions and the steps necessary to implement the action plan.⁹

Applicants were required to submit a detailed proposed budget, setting forth the expected costs related to the work plan.¹⁰ Grant recipients were required to report funds from other sources because the Commission had to ensure that CASF grants did not provide duplicate funding.¹¹ Specifically, "[t]he proposed consortium budget must be accompanied by a description of any existing broadband adoption or deployment activities funded by any other state

⁵ *Id.* at 2, 11-12. The statutory goal of the CASF program was revised by Assembly Bill (AB) 1665, which required the Consortia Account to provide funding for infrastructure projects to facilitate broadband deployment services. *See* D.18-10-032.

⁶ D.11-06-038 at 2, 11, 35 (Conclusions of Law (COL) 7, 8) (Ordering Paragraph (OP) 8, 9, 10).

⁷ *Id.* at 23.

⁸ *Id.* at 23 – 24.

⁹ *Id.*

¹⁰ *Id.* at 24.

¹¹ *Id.* at 40 (OP 11).

or federal grants within the same region, together with confirmation showing that the CASF budget does not duplicate any other sources of funding.”¹² As part of the application package, applicants had to submit a signed consent form agreeing to comply with Commission D.11-06-038 and Resolution T-17355.¹³

If the Commission approved an application, then funding would be approved for only the first year of the three-year budget allowance cycle. An applicant’s proposed grant amount was not to exceed the cap of \$150,000 per year and the cap of \$450,000 over three years. To receive Year 2 and Year 3 budget allowances authorized by the resolution, grantees had to submit the work plans for approval by October 1 of each year.¹⁴ If performance fell short of the expectations set forth in the action plan and work plan, the Commission could withhold grant disbursements or suspend or terminate the grant.¹⁵ To monitor the grantees’ satisfactory performance, each grantee had to submit written quarterly progress reports that detailed the activities and achievements accomplished.¹⁶ The grants began on or around March 1, 2012 and the subsequent quarterly reports were due on May 31, August 31, November 30, and February 28.¹⁷

As a condition of receiving the funds, the Commission required grantees to submit to the Commission’s jurisdiction,¹⁸ subject to the Commission’s

¹² *Id.* at 24 – 25.

¹³ *Id.* at 15.

¹⁴ Resolution T-17355 at 10, 14.

¹⁵ D.11-06-038 at 27, 41 – 42 (OP 18, OP 20).

¹⁶ Resolution T-17355 at 10.

¹⁷ *Id.*

¹⁸ D.11-06-038 at 12-13, 36 (COL 9).

“continuing oversight of grant disbursements to ensure that funds are spent on authorized functions that meet set objectives and timelines specified in grantee’s applications.”¹⁹ The Commission explained:

CASF funds are collected from California telecommunications ratepayers and thus ratepayers are entitled to consumer protections ensuring that CASF funds are administered in a responsible and cost-effective manner. We have included appropriate controls in our adopted processes to ensure that the Commission retains oversight and enforcement tools necessary to carry out its responsibilities in administering this program.²⁰

Per the program guidelines, the Commission’s Communications Division (CD) had the authority to initiate any necessary audit, verification, and discovery of Consortium members related to grant funding activities.²¹ Based on site visits, progress reports, supporting invoices, receipts, and compliance with Commission decisions and resolutions, disbursement of funds at any time was subject to the Commission’s discretion.²² CD had the authority to withhold grant payments if the consortium grantees did not comply with any of the CASF rules and requirements.²³

Grantees had to notify the Commission of changes to the action plan, work plan, and budget, by submitting proposals for changes to CD’s Director at least 30 days before the anticipated change, which was subject to approval by either

¹⁹ *Id.* at 2.

²⁰ *Id.* at 13, 33 (Findings of Fact (FOF 5)).

²¹ *Id.* at 28 – 29.

²² *Id.* at 15-16, 41 (OP 17, OP 18).

²³ Resolution T-17355 at 11.

the Director or by a Commission resolution before becoming effective.²⁴ If a grantee failed to complete the project in accordance with the terms of approval granted by the Commission, the grantee was required to reimburse some or all of the CASF grant moneys it had received.²⁵

1.3. The Coalition

On February 21, 2012, the Commission authorized a CASF grant in the amount of \$450,000 to the Coalition for three years: Year 1 (March 1, 2012 – February 28, 2013), Year 2 (March 1, 2013 – February 28, 2014), Year 3 (March 1, 2014 - February 28, 2015), which the Coalition would use to bridge the internet divide for low income communities.²⁶ The Coalition was composed of five organizations in the Los Angeles area: Community Union, plus four other organizations (the Asian Pacific Community Fund, Black Business Association, Korean Churches for Community Development (KCCD), and Soledad Enrichment Action – Charter Schools). KCCD agreed to be the fiscal agent for the Coalition.²⁷ In addition, KCCD, on behalf of the Coalition, submitted a consent form in which “The Consortium ... hereby agrees to comply with all grant terms, conditions, and requirements set forth in Commission Decision 11-06-038 and Commission Resolution T-17355.”²⁸

Larry Ortega (Mr. Ortega), President of Community Union, was the lead organizer of the Coalition and the facilitator of the Coalition’s program.²⁹ This

²⁴ *Id.* at 42 (OP 21).

²⁵ *Id.* at 27, at 41 – 42 (OP 20, 21).

²⁶ Resolution T-17355 at 5, 14; CPED-01 at 1.

²⁷ Resolution T-17355 at 14.

²⁸ CPED-01 Ex. 8.

²⁹ *Id.* at 3, Ex. 6.

decision refers to the Coalition's program as the NIU program, which consisted of seven activities:

- Activity 1 – Create awareness around broadband resources and opportunities available within the greater Los Angeles region.
- Activity 2 – Meet with administrators (school sites, libraries, community-based organizations, community centers, etc.) to inform them about the Coalition and the impact that it will have on their parents and other community members.
- Activity 3 – Meet with parent and community leader(s) to inform them about One Million NIU program and how program participants will learn to use the Internet to access critical on-line resources.
- Activity 4 – Conduct orientation meetings with community colleges, and WIB (Workforce Investment Boards), link the two and begin Train the Trainer program to develop trainers, maximize resources and deliver access and training to under-served communities.
- Activity 5 – Trainers conduct the 40-hour Parent Engagement through Technology sessions from school sites, community-based organizations, and community centers where computer labs are turned into Empowerment Hubs.³⁰
- Activity 6 – Conduct One Million NIU graduation ceremony conducted with parents and other adult community members completing the NIU 40-hour parent training course.
- Activity 7 – Conduct NIU alumni post-course One Million NIU graduate workshops, where parents and community

³⁰ Hereinafter referred to as the "40-hour training course."

members are involved in email exercises and mobilizing on current issues.³¹

The NIU program was implemented in the greater Los Angeles area.

1.4. The Audit and the Investigation

The Commission authorized \$150,000 per year for the Coalition's NIU program. As a consequence of performance deficiencies in Year 1 and Year 2 of the grant period, CD reduced funding for Year 3. During the three-year CASF grant period, the Coalition received \$368,747.³²

Early on, CD identified and discussed with Community Union the performance deficiencies for Year 1, including the failure to enroll 790 students in the 40-hour training course, upon which funding was primarily based.³³ CD approved Year 2 funding with the understanding that Community Union would make up the Year 1 shortfalls in Year 2; however, Community Union did not meet the agreed upon objectives of Year 2.³⁴

During Year 3 of the grant, CD became aware that the 40-hour training course had been reduced to less than 40 hours of in class instruction in Year 1 of the CASF grant without Commission approval.³⁵ In October 2014, CD arranged for a site visit to observe classes and meet with Mr. Ortega.³⁶ According to the class calendar provided, Community Union was scheduled to host a parent training class, but when the CD staff member went to the location, no class was

³¹ CPED-01 Ex.6, Ex. 9.

³² CPED-24.

³³ CPED-01 Ex. 6 at 4.

³⁴ *Id.* at 6.

³⁵ CPED-01 Ex. 13; *see also* CPED-07 Att. 1, Att. 2.

³⁶ CPED-07 at 4.

in session.³⁷ During the same visit, Mr. Ortega agreed to provide supporting documentation detailing how CASF funds had been allocated when the Coalition reduced the parent training curriculum from 40 hours to 20 hours of in class instruction.³⁸ Documents were not provided to CD in October 2014.

Due to inadequate record keeping, failure to meet performance metrics set out in the NIU program's Work Plan, and questionable accuracy of Community Union's reporting, CD engaged the State Controller's Office to conduct an audit of the CASF funds distributed to the Coalition.³⁹ Pending the audit, CD reduced the Year 3 budget.⁴⁰

The State Controller's Office's audit found three main areas of deficiencies: 1) a lack of internal controls with accounting records and source documents to ensure that the program functioned as intended, 2) only approximately 50% of the instructional training was provided, and 3) the lack of complete records prevented the auditors from determining whether CASF reimbursed costs were also charged against other grant funds.⁴¹ The audit concluded the Coalition received \$182,801 in excess of the allowable reimbursable expenses from the CASF Consortia Account.⁴²

On April 18, 2016, CD sent a letter to Community Union and KCCD, the fiscal agent, demanding that they return \$82,381 of the CASF Consortia Account money. On June 14, 2016, KCCD requested an extension to respond to the

³⁷ *Id.* at 5.

³⁸ *Id.* at 5 – 6, Att. 7.

³⁹ CPED-01 at 1, 2.

⁴⁰ *Id.* at 2.

⁴¹ CPED-02 at 1.

⁴² *Id.*

demand letter. CD denied the extension request on or about June 23, 2016.⁴³ Community Union did not respond. No payment was made according to the April 18, 2016 demand letter. Thereafter, CD referred the matter to the Utility Enforcement Branch of the Consumer Protection and Enforcement Division (CPED) for investigation.⁴⁴ On May 1, 2018, CPED completed a staff report based on its own investigation, which the Commission relied upon to issue the OII.

2. Procedural Background

On July 12, 2018, the Commission issued this instant OII and directed the Coalition to show cause as to why it should not be ordered to return the misappropriated money from the CASF Consortia Account and be subject to penalties and or sanctions.⁴⁵ Out of the five members of the Coalition, only Asian Pacific Community Fund and KCCD responded. Community Union did not file a response to the OII.

On November 14, 2018, the assigned Administrative Law Judge (ALJ) held a prehearing conference in Los Angeles. Asian Pacific Community Fund and KCCD attended the prehearing conference. Community Union did not appear. On December 18, 2018, the Commission issued the Assigned Commissioner's Scoping Memo and Ruling.

On February 4, 2019, the proceeding was referred to the Commission's Alternative Dispute Resolution Program and the statutory deadline was extended to afford the parties time to engage in mediation. Subsequently, all members of the Coalition except Community Union filed a series of motions for

⁴³ CPED-01 at 11.

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 2 – 3.

dismissal or approval of settlement due to their limited involvement in the Coalition.⁴⁶

The Commission dismissed the Asian Pacific Community Fund, the Black Business Association, and the Soledad Enrichment Action – Charter Schools based on the parties either having nominal involvement with the NIU program or a showing that the CASF grant was used according to the CASF grant rules and requirements.⁴⁷ The Commission approved KCCD's and CPED's settlement, resolving all issues in this proceeding involving KCCD.⁴⁸

As the only parties continuing with litigation, on March 17, 2020, CPED filed its case management statement and on March 20, 2020, Community Union late-filed its case management statement.

Prior to the evidentiary hearing, the assigned ALJ held multiple conferences:

- A case management conference on May 4, 2020,
- Two status conferences on June 9, 2020 and June 18, 2020, and
- Two law and motion hearings on August 3, 2020 and August 20, 2020.⁴⁹

⁴⁶ Joint Motion for Dismissal of Respondent to Order Instituting Investigation 18-07-009, Apr. 1, 2020; Joint Motion in Order Instituting Investigation 18-07-009 for Approval of Settlement with Korean Churches for Community Development, Apr. 2, 2020; Joint Motion for Dismissal of Respondents to Order Instituting Investigation 18-07-009, May 1, 2020.

⁴⁷ D.20-12-055 at 19 – 20.

⁴⁸ *Id.* at 3, 14, 21.

⁴⁹ Email Ruling Setting May 4, 2020 Case Management Conference, April 4, 2020; Email Ruling Setting June 9, 2020 Status Conference, June 2, 2020; Email Ruling Updating the Schedule, June 30, 2020 (discussing the June 18, 2020 status conference, which occurred without a court reporter, during which the parties addressed the June 16, 2020 supplemental report by the CPED); ALJ's Ruling Confirming Dates, Times, and the Location of the Evidentiary Hearing and Directing Prehearing Filings, Jul. 16, 2020 (setting the August 20, 2020 law and motion hearing);

Footnote continued on next page.

During the pendency of this proceeding, the assigned ALJ granted eight motions for extension of time by Community Union.⁵⁰

On May 5, 2020, the assigned ALJ issued an email ruling updating the schedule with the deadlines agreed to by CPED and Community Union, including due dates for written testimony. This was to further accommodate Community Union and provide additional time for discovery and to serve written testimony.⁵¹ Community Union chose not to serve written testimony according to the May 5, 2020 ruling.

On June 9, 2020, the assigned ALJ held a status conference to address written testimony deadlines. On June 16, 2020, CPED served a supplemental staff report. Following the June 18, 2020 status conference, on June 30, 2020, the assigned ALJ issued a ruling once again providing Community Union additional

Email Ruling Granting Consumer Protection and Enforcement Division's Motion and Setting a Law and Motion Hearing, July 28, 2020; Email Ruling Setting Combined Law and Motion Hearing and Status Conference, August 11, 2020 (setting the August 20, 2020 law and motion hearing).

⁵⁰ Email Ruling Extending Deadline for Case Management Statement from March 17, 2020 to March 19, 2020, March 18, 2020; Email Ruling Granting Community Union's Motion Requesting Extension of Time for Answers to Consumer Protection and Enforcement Division's Data Request, May 18, 2020; Email Ruling Accepting Community Union's Late Opposition to the Joint Motion by Korean Churches for Community Development and Consumer Protection and Enforcement Division for Approval of Settlement and Granting Korean Churches for Community Development's and Consumer Protection and Enforcement Division's Joint Request to File a Reply, May 20, 2020; Law and Motion Hearing Transcript for August 3, 2020 at 30:20 - 35:5; 45:25 - 46:5 (discussing Community Union's late exhibit list and witness list, due on July 27, 2020); Email Ruling Ordering Community Union to Serve New Exhibits and Requiring Additional Information, August 18, 2020; Email Ruling Permitting Community Union, Inc., to Late File Opening Brief and Reply Brief, September 30, 2020; Email Ruling Granting Motion for an Extension of Time to File Reply Comments to Administrative Law Judge's Notice of Intent to Take Judicial Notice, October 14, 2020; Email Ruling Granting Community Union Inc.'s Request to Late-File the Pre-trial Brief and Exceed the Page Limit, October 23, 2020.

⁵¹ Email Ruling Updating the Schedule, May 5, 2020 (setting Community Union's written testimony due on May 19, 2020 and the discovery completion date on June 16, 2020).

time for discovery and an opportunity to serve written testimony.⁵² Community Union again chose not to serve written testimony according to the deadlines it agreed to, memorialized by the June 30, 2020 ruling.

On July 10, 2020, the assigned Commissioner amended the scoping memo to add issues regarding Mr. Ortega and Community Union, specifically to cover the period after the issuance of the July 12, 2018 OII.⁵³ CPED filed comments on this amendment to the OII.⁵⁴ Community Union did not.

On July 23, 2020, CPED filed a motion requesting a law and motion hearing regarding Community Union's discovery requests. On August 3, 2020, the assigned ALJ held a law and motion hearing.

On August 17, 2020, CPED served and filed its pre-trial brief. On August 18, 2020, Community Union late served its pre-trial brief along with a general claim that the material should be given confidential treatment. On October 16, 2020, Community Union filed a motion requesting to late-file the pre-trial brief and exceed the page limit. On October 23, 2020, the assigned ALJ issued a ruling granting permission to Community Union to late file the pre-trial brief.⁵⁵ Per Rule 11.6, the assigned ALJ instructed Community Union to include in the introduction that the ALJ granted the extension on October 23, 2020. In the same ruling, the ALJ stated that Community Union's request for confidential

⁵² Email Ruling Updating the Schedule, June 30, 2020 (setting Community Union's written testimony due on July 14, 2020 and the discovery completion date on July 21, 2020).

⁵³ See Section 3.2.

⁵⁴ CPED's Comments on Scoping Ruling, July 14, 2020.

⁵⁵ Email Ruling Granting Community Union Inc's Request to Late-File the Pre-Trial Brief and Exceed Page Limit, October 23, 2020, at 2.

treatment was not based on facts or law and could not be considered nor granted.⁵⁶ Community Union did not re-serve or file its pre-trial brief thereafter.

On August 20, 2020, the assigned ALJ held a second law and motion hearing to address any items that could be resolved before the evidentiary hearing.

The evidentiary hearing was held on Monday, August 24 through and including Thursday, August 27, 2020.⁵⁷ On September 10, 2020, CPED filed its opening brief. On September 14, 2020, Community Union late-filed its opening brief. On September 24, 2020, CPED filed its reply brief. On September 28, 2020, Community Union late-filed its reply brief.

On September 25, 2020, the assigned ALJ issued a ruling noticing her intent to take official notice of records from the California Secretary of State, the Office of the Attorney General, and the Internal Revenue Service. CPED filed responsive comments on October 2, 2020. On October 9, 2020, Community Union requested an extension to file reply comments. Despite receiving the extension, Community Union did not re-tender the document for permissive late-filing per Rule 11.6.

⁵⁶ *Id* at 3.

⁵⁷ At the evidentiary hearing, Mr. Ortega sponsored all of Community Union's exhibits. Community Union attempted to submit a comprehensive exhibit packet multiple times. To accommodate Community Union's changes, the packet used at the evidentiary hearing was the packet submitted on August 26, 2020, immediately prior to Community Union's case in chief. However, for some of the exhibits in the August 26, 2020 packet, only the cover sheets were provided but the exhibits themselves were missing. Evidentiary Hearing Transcript, August 27, 2020 548:9 – 548:13, 689:11 – 689:19, 693:27 – 694:12. In general, there was no foundation for the exhibits. *See* Evidentiary Hearing Transcript Aug. 26, 2020, 523:13 – 523:18, 525:13 – 525:27, 529:28 – 530:9; 536:17 – 536:22. If the exhibits were admitted, they could be given little weight.

On October 20, 2020, Community Union filed a motion to disqualify Commissioner Clifford Rechtschaffen for cause and requested a new evidentiary hearing. CPED responded on November 13, 2020. On March 12, 2021, the Commission mailed the draft Resolution in accordance with Pub. Util. Code § 311(g), which denied Community Union's Motion. No comments or reply comments were received. On April 15, 2021, the Commission approved Resolution L-609 denying Community Union's motion.

During the entire proceeding, Mr. Ortega acted as Community Union's representative. At the evidentiary hearing, Mr. Ortega testified on behalf of Community Union and acted as Community Union's counsel by stating objections, performing all cross examinations, and calling of Community Union's witnesses.

3. Community Union and Outstanding Issues in the Scope of the Proceeding

The outstanding issues and the scope of this proceeding are summarized below.

3.1. 2018 Scoping Memo

The July 12, 2018 OII and the December 18, 2018 Assigned Commissioner's Scoping Memo and Ruling (2018 Scoping Memo) set forth the issues in this proceeding as against the five members of the Coalition. Since all issues concerning the other four members of the Coalition were resolved by D.20-12-055, the only remaining issues relate to Community Union. The remaining issues are:

- Whether Community Union must return approximately \$197,764⁵⁸ including interest back to the Commission;
- Whether Community Union must pay penalties and/or other remedies for failing to comply with the terms of the CASF grant;
- Whether Community Union must pay penalties and/or other remedies for failing to comply with CD's demand letter directing the Coalition to return CASF grant funds previously disbursed;
- Whether Community Union must pay penalties for refusing to respond to the July 21, 2017 data request from the Utility Enforcement Branch of the CPED;
- Whether Community Union must pay penalties for violating Rule 1.1; and
- Whether Community Union should be subject to other equitable remedies against entities and officers of the members of the Coalition.⁵⁹

3.2. 2020 Scoping Memo Amendment

On July 10, 2020, the Assigned Commissioner amended the 2018 Scoping Memo (2020 Scoping Memo Amendment) to focus on post-2018 conduct and activities which degraded the regulatory process, hindered the efficient administration of justice, and attempted to mislead the Commission. The 2020 Scoping Memo Amendment added the following issues which are outstanding:

- Whether Mr. Ortega and Community Union violated D.11-06-038 and Pub. Util. Code §§ 2111, 2112 and 2113 by

⁵⁸ OII at Attachment A, Staff Report at 10. The May 1, 2018 CPED Staff Report assessed \$197,764 of overpayment of CASF funds above allowable cost and \$46,621 in overpayment from unsupported administrative costs. The \$46,621 in overpayment from unsupported administrative costs was resolved with D.20-12-055, approving the settlement between KCCD, the fiscal agent, and CPED. The amount unlawfully retained by Community Union, Inc. was updated at the evidentiary hearing with CPED-24.

⁵⁹ OII at 25; Assigned Commissioner's Scoping Memo and Ruling, December 18, 2018 at 3 - 5.

providing incomplete and untimely responses to CPED's data request dated February 21, 2020;

- Whether Mr. Ortega and Community Union violated Rule 1.1;
- Whether Mr. Ortega and Community Union acted in contempt of the Commission in violation of Pub. Util. Code § 2113;
- Whether Mr. Ortega and Community Union are liable for penalties pursuant to Pub. Util. Code §§ 2108, 2111, and 2112; and
- Whether Mr. Ortega and Community Union are subject to equitable remedies based on the violation of D.11-06-038, and their actions to impede the efficient administration of justice.⁶⁰

3.3. The Fiscal Agent Agreement and Community Union's Contractual Duties and Liabilities

In review of the scope of this proceeding, we address a threshold issue repeatedly argued by Community Union concerning the Fiscal Agent Agreement. Community Union asserted that this proceeding should not continue without KCCD, the fiscal agent of the Coalition. Community Union asserted that the Commission has a direct contract with KCCD, not Community Union.⁶¹ Community Union argued that it was a "subcontractor" of the CASF grant.⁶² Accordingly, Community Union argued that it could not be liable or responsible to the Commission, because based on the Fiscal Agent Agreement, KCCD "assume[d] all responsibility regarding administrative, financial and

⁶⁰ Assigned Commissioner's Ruling Amending the Scope of the Proceeding, July 10, 2020, at 2 – 3.

⁶¹ Community Union Opening Brief, September 14, 2020, at 2 – 4.

⁶² CPED-02 Att. 1, Issue 10.

legal” activities⁶³ and “[a]ny and all penalties CPED wishes to assess on the NIU Coalition should be assessed on KCCD....”⁶⁴

Community Union objected to the proposed settlement between KCCD and CPED for the same reasons.⁶⁵ On May 4, 2020, the assigned ALJ rejected Community Union’s argument.⁶⁶ D.20-12-055 rejected the argument when approving KCCD and CPED’s settlement.

During the evidentiary hearing, Community Union attempted to offer testimony regarding the Fiscal Agent Agreement and KCCD’s responsibilities.⁶⁷ The ALJ sustained CPED’s objections to such testimony.⁶⁸ In its opening brief and reply brief, Community Union reiterated the same argument, claiming that the assigned ALJ violated its due process rights when it was not given the opportunity to define Community Union’s responsibility in relation with that of KCCD.⁶⁹

Upon revisiting the prior rejections, we find that the record of this proceeding does not support Community Union’s argument. Contrary to Community Union’s assertions, the Fiscal Agent Agreement does not state nor

⁶³ Community Union, Inc.’s Response to Administrative Law Judge’s ruling Requesting Case Management Statements, March 20, 2020, at 2; Community Union Opening Brief, September 14, 2020, at 2 – 4; Community Union Reply Brief, September 25, 2020, at 5.

⁶⁴ Community Union Reply Brief, September 25, 2020, at 13.

⁶⁵ 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, May 12, 2020, at 3, Exhibit A.

⁶⁶ Case Management Transcript, May 4, 2020, 7:19 – 7:26, 8:7 – 8:12, 16:8 – 16:13.

⁶⁷ Evidentiary Hearing, August 27, 2020, 569:11-571:16, 572:3-5, 654:25 – 655:27.

⁶⁸ *Id.*

⁶⁹ Community Union Opening Brief, September 14, 2020, at 2 – 4; Community Union Reply Brief, September 28, 2020, at 5, 7, 10.

support claims that KCCD “assumes all responsibility regarding administrative, financial and legal”⁷⁰ activities. In relevant parts, the Fiscal Agent Agreement states:

1. The Fiscal Agent hereby agrees to sponsor the Project and to assume administrative, programmatic, financial and legal responsibility for the purposes of the requirement of funding organizations. The Sponsored Organization agrees to implement and operate[] the Project, in accordance with the terms of this agreement and with any requirements imposed by the Communications Division.
2. The Fiscal Agent will take lead responsibility and legal authority to represent the Consortium for purposes of sponsoring the application, and for administration of Consortium activities, including receipt and disbursement of Consortium grant funds.⁷¹

The Fiscal Agent Agreement describes certain responsibilities of KCCD, but does not expressly provide for KCCD’s assumption of 100% of the responsibilities and liabilities of the other Coalition members. Interpreting the Fiscal Agent Agreement to mean that “in no way can financial or legal responsibility extend to Community Union as this obligation was assumed by the Fiscal Agent”⁷² would allow Community Union to benefit from ratepayer money without any accountability or consequences. Even if the Fiscal Agent Agreement expressly shifts 100% of the liability to one of the five members of the

⁷⁰ Community Union, Inc.’s Response to Administrative Law Judge’s Ruling Requesting Case Management Statements, March 20, 2020, at 2. Community Union, Inc.’s Reply Brief, September 25, 2020 at 5 (stating “Attachment A p.1 and 2 of the contract by and between KCCD and the Commission showed KCCD agreed to assume all financial, legal and administrative responsibility”).

⁷¹ CPED-01 Ex. 7, Attachment A at 1.

⁷² Community Union Case Management Statement, March 20, 2020, at 4.

Coalition, such an agreement would be contrary to public policy, unlawful, and unenforceable.

Moreover, Community Union was not just a member of the Coalition, but the main actor, organizer, and facilitator of the NIU program.⁷³ The Coalition did business under the name of Community Union and claims made to the Commission identified Community Union conducting the Coalition's activities.⁷⁴ It is worth noting that Community Union received 80% of the CASF money paid to the Coalition, the very funds this proceeding seeks to recover today.⁷⁵

Based on the foregoing, Community Union's argument and reliance on the Fiscal Agent Agreement as a shield from liability in this OII lacks merit and is once again rejected. In addition, since all issues relating to the other four members of the Coalition were properly resolved by D.20-12-055, this decision now turns to the resolution of outstanding issues relating to Community Union, as the sole remaining respondent in this OII.

4. Burden of Proof

In this OII, CPED has the burden of establishing by a preponderance of the evidence that Community Union has committed the alleged violations and CPED is entitled to the relief it requests. The preponderance of the evidence means that when evidence is weighed with that opposed to it, the evidence has more convincing force and the greater probability of truth.⁷⁶ The respondent has the

⁷³ The Action Plan portion of the Coalition's CASF grant application package describes the inception of the California One Million New Internet Users Coalition in 2009 by Larry Ortega and Community Union (CPED-01 Ex. 6 at 3).

⁷⁴ *Id.*

⁷⁵ OII at 26; CPED - 02; CPED - 24 (detailing the amounts paid to Community Union).

⁷⁶ Evidence Code § 115; Witkin, Calif. Evidence, 4th Edition, Vol. 1, 184.

burden of proof as to each fact the existence or nonexistence of which is essential to the defense that he is asserting.⁷⁷

5. Discussion Summary and Overview

What follows are the summaries of the conclusions concerning the outstanding issues from the 2018 Scoping Memo and the 2020 Scoping Memo Amendment. Section 6, *infra*, of this decision discusses the underlying violations and findings resolving all outstanding issues identified in the 2018 Scoping Memo and Section 7, *infra*, does the same for the 2020 Scoping Memo Amendment.

⁷⁷ *Utility Consumers' Action Network v. SBC Communications, Inc. dba SBC Pacific Bell Telephone Company*, 2008 Cal. PUC Lexis 302 *9, citing Evidence Code § 500 and *City of Brentwood v. Central Valley Regional Water Quality Control Bd.*, 123 Cal App. 4th 714, 725 (1st Dist. 2004).

Table 1
Summary of Community Union's Violations of
D.11-06-038 and Resolution T-17355

ISSUES IDENTIFIED IN THE 2018 SCOPING MEMO	(\$ Penalty)	Restitution
<ul style="list-style-type: none"> • Violation 1: Community Union Changed the NIU Program Without Commission Approval • Violation 2: Community Union Failed to Meet Performance Metrics of the NIU Program • Violation 3: Community Union Failed to Maintain Records and Documentation to Substantiate its Expenses • Violation 4: Community Union Failed to Produce Immediately Records and Documentation • Violation 5: Community Union failed to Provide Documentation and Detailed Information for Non-CASF Funding Sources • Violation 6: Community Failed to Exclude From CASF Reimbursement Claims Expenses Covered by non-CASF Funding Sources • Violation 7: Community Union Used the CASF Consortia Account to Cover Expenses or Items that Were Not Authorized or Allowable • Violation 8: Community Union Failed to Comply With the Communications Division's April 18, 2016 Demand Letter • Violation 9: Community Union Failed to Respond to CPED's July 21, 2017 Data Request 	None	\$162,109

For violations of D.11-06-038 and Resolution T-17355 (Violations 1 through 9), identified above, no penalty is assessed; instead, Community Union is ordered to pay restitution by returning \$162,109 to CASF.

Table 2
Summary of Community Union's Acts or Contempt,
Rule 1.1 Violations and Corresponding Penalties

ISSUES IDENTIFIED IN THE 2018 SCOPING MEMO	(\$ Penalty)
<ul style="list-style-type: none"> Violation 10: Community Union Refused to Comply with the Communications Division's April 18, 2016 Demand Letter to Return CASF Funds 	<ul style="list-style-type: none"> \$1,000 for Contempt
<ul style="list-style-type: none"> Violation 11: Community Union Refused to Answer the July 21, 2017 Data Request in Contempt 	<ul style="list-style-type: none"> 1,000 for Contempt
<ul style="list-style-type: none"> Violation 12: Community Union Refused to Answer the July 21, 2017 Data Request in Violation of Rule 1.1 	<ul style="list-style-type: none"> \$465,500 for continuing Rule 1.1 violation (931 days at \$500 per day)
<ul style="list-style-type: none"> Violation 13: Community Union Failed to Inform the Communications Division of Changes to the 40-hour Training Course 	<ul style="list-style-type: none"> \$353,500 for continuing Rule 1.1 violation (707 days at \$500 per day)
<ul style="list-style-type: none"> Violation 14: Community Union Misrepresented the Schedule of Classes When the Communications Division Staff Member Attempted to Conduct a Site Visit in October 2014 	<ul style="list-style-type: none"> \$4,500 for continuing Rule 1.1 violation (9 days at \$500 per day)
ISSUES IDENTIFIED IN THE 2020 SCOPING MEMO AMENDMENT	
<ul style="list-style-type: none"> Violation 15: Community Union Failed to Provide Timely and Complete Responses to the February 21, 2020 Data Request in Contempt 	<ul style="list-style-type: none"> \$1,000 for Contempt
<ul style="list-style-type: none"> Violation 16: Community Union Failed to Provide Timely and Complete Responses to the February 21, 2020 Data Request in Violation of Rule 1.1 	<ul style="list-style-type: none"> \$85,500 for continuing Rule 1.1 violation (171 days at \$500 per day)
<ul style="list-style-type: none"> Violation 17: Community Union Failed to Update the Commission as to Changes in its Tax Status and Provide Relevant Tax Records 	<ul style="list-style-type: none"> \$46,500 for continuing Rule 1.1 violation (93 days at \$500 per day)

<ul style="list-style-type: none"> • Violation 18: Community Union Engaged in Harassment and Disrespectful and Unprofessional Behavior During the Evidentiary Hearing 	<ul style="list-style-type: none"> • \$1,000 for Rule 1.1 violation
TOTAL PENALTY ASSESSED	\$959,500

For violations 10 through 18, a total penalty of \$959,500 is assessed. In view of Community Union's limited size in operation and limited financial resources, in lieu of the \$959,500 penalty, Community Union is banned from receiving ratepayer funds from the Commission and precluded from participating in public purpose programs administered by the Commission for seven years.

Lastly, the facts here warrant piercing the corporate veil of Community Union. Evidence in this proceeding shows Mr. Ortega, Community Union's President and Chief Executive Officer, and Community Union, the corporate entity, are one in the same entity. Therefore, Mr. Ortega shall be personally responsible for the restitution of \$162,109. Mr. Ortega shall be personally banned from receiving public purpose programs money from the Commission and from participating in public purpose programs administered by the Commission for seven years.

6. Community Union's Pre-2018 Actions and Violations Associated with the 2018 Scoping Memo

6.1. Community Union's Pre-2018 Actions in Violation of D.11-06-038 and Resolution T-17355

6.1.1. Violation 1: Community Union Changed the NIU Program without Commission Approval

Upon approval of the CASF grant application, Community Union had a duty to implement the NIU program as set forth in its Proposed Broadband

Project Description,⁷⁸ Action Plan,⁷⁹ and Work Plan,⁸⁰ subject to the requirements of D.11-06-038 and Resolution T-17355.⁸¹ The Commission required that substantive changes to the terms of the Commission approved program be communicated to CD and approved prior to implementation.⁸²

We find that the key component of the NIU program is Activity 5 (providing 790 parents annually with a 40-hour training course).⁸³ Although the NIU program was composed of a total of seven activities, Community Union highlighted the 40-hour training course as the showcase characteristic of the NIU program in the Action Plan and the Work Plan.⁸⁴ Additionally, the 40-hour training course was the key step necessary to help program participants facilitate actual access to online resources.⁸⁵ In 2012, within the first two quarters of Year 1 of the CASF grant, Community Union reduced the 40-hour training to 20 hours of in-class sessions with homework assignments.⁸⁶ Community Union did not notify CD of the change prior to it occurring in 2012.⁸⁷

By April 2014, CD informed Community Union that that the reported number of hours of in-class training did not meet the requirements of the

⁷⁸ CPED-01 Ex. 3.

⁷⁹ *Id.* at Ex. 6.

⁸⁰ *Id.* at Ex. 9.

⁸¹ Resolution T-17355 at 5; CPED-01 Ex. 7 at 2 paragraph 1, Ex. 8.

⁸² D.11-06-038 at 42 (OP 21) (emphasis added).

⁸³ CPED-01 Ex. 3, Proposed Broadband Project Description.

⁸⁴ *Id.* at Ex. 3, Ex. 6, Ex. 9.

⁸⁵ *Id.* at Ex. 12, Ex. 15.

⁸⁶ *Id.* at Ex. 15.

⁸⁷ *Id.* at Ex. 13, Ex. 15.

40-hour training course described in the Commission approved Action Plan and Work Plan.⁸⁸ This led CD to reduce grant funding for Year 3.⁸⁹

CD determined that in August 2014 that Community Union unilaterally changed the design of its previously approved 40-hour training course without Commission approval.⁹⁰ In December 2014, CD notified Community Union that providing the 40-hour training course was considered a “core activity” of the NIU program.⁹¹ Subsequently, the audit by the State Controller’s Office confirmed that about 20 hours of in-class training occurred for the 40-hour training course.⁹²

Community Union did not dispute that the 40-hour training course was reduced without Commission approval.⁹³ Instead, Community Union asserted that the NIU program never promised all 40 hours be composed of in class training, but that some of the hours could be moved to homework while still achieving the objectives of the CASF grant.⁹⁴ Community Union presented one witness who testified that there were homework assignments.⁹⁵ Community Union argued that CD did not have the expertise to determine whether the

⁸⁸ CPED-07 Att. 1; CPED-08 at 5; *see* CPED-20.

⁸⁹ CPED-01 Ex. 12; CPED-07 at 2.

⁹⁰ CPED-01 Ex. 12, Ex. 13, Ex. 14, Ex. 15; CPED-07 at 2; CPED-20.

⁹¹ CPED-01 Ex. 15.

⁹² CPED-02 at 5.

⁹³ CPED-07 Att. 2; *see* CPED-04, Attachment 3 (State Controller’s Office interview with Mr. Ortega, noting that Mr. Ortega states that the program changed from 40 hours to 20 hours, but he did a poor job of updating the CPUC).

⁹⁴ Community Union Opening Brief, September 14, 2020, at 11 – 12, 14; Community Union Reply Brief, September 28, 2020, at 8 – 9.

⁹⁵ Evidentiary Hearing Transcript, August 26, 2020, 448:23.

change was “substantive,”⁹⁶ therefore, the change was not a “substantive” program change and did not require Commission approval.⁹⁷

D.11-06-038 states:

Any changes to the substantive terms and conditions underlying Commission approval of the Consortium grant, (e.g. changes to Action Plan, Work Plan, budget or designated Fiscal Agent, etc.) must be communicated to the Communications Division Director at least 30 days before the anticipated change, and may be subject to approval by either the Director or by Commission resolution before becoming effective.⁹⁸

In short, any changes to the Action Plan, Work Plan, and budget were substantive changes. Community Union agreed to comply with all the grant requirements, including notifying the Commission of changes to the Action Plan and Work Plan.⁹⁹ Having assigned homework to students does not mitigate Community Union’s duty to notify CD of program changes and secure approval before implementation. As discussed in more detail in Section 6.1.2, *infra*, Community Union requested two changes to Activity 7 that were evaluated by CD. This shows Community Union knew the process for requesting approval for program changes and it should have followed the same process for Activity 5.

CPED has established by a preponderance of the evidence that Community Union changed Activity 5 by reducing the 40-hour training course to less than 40 hours of in-class instruction without notice to the Commission or

⁹⁶ Community Union Opening Brief, September 14, 2020, at 7 – 8.

⁹⁷ Community Union Reply Brief, September 28, 2020, at 9.

⁹⁸ D.11-06-038 at 42 (OP 21).

⁹⁹ *Id.* at 36 (COL 9), 42 (OP 21).

securing Commission approval prior to implementing the change. Community Union's witness testimony and argument failed to rebut CPED's showing.

6.1.2. Violation 2: Community Union Failed to Meet Performance Metrics

In Year 1 of the grant (March 1, 2012 to and including February 28, 2013), Community Union failed to meet performance metrics. During Year 1, Community Union was behind in completing two activities out of seven. By Year 2, Community Union was behind in four activities.

As discussed in the previous section, Activity 5 involved conducting the 40-hour training course at school sites and community centers.¹⁰⁰ The annual target of parents to complete the 40-hour training course was 790.¹⁰¹ In Year 1, Community Union achieved 85% completion rate for Activity 5.¹⁰²

Activity 7 had a goal of at least 65% of the graduates of the 40-hour training course participating in the post-graduation workshops, which entailed activities such as email exercises.¹⁰³ The initial approved Work Plan in January 2012 targeted 65% of the 790 NIU graduates, which equaled 514 graduates, to enter post-graduate workshops.¹⁰⁴ At the end of Year 1, Community Union achieved a 19% completion rate for Activity 7.¹⁰⁵ CD approved Community Union's request to modify Activity 7 from 514 graduates to 514 modules.¹⁰⁶ This

¹⁰⁰ Resolution T-17355 at 5.

¹⁰¹ CPED-01 Ex. 3 at 1, Ex. 6 at 5.

¹⁰² CPED-01 Ex. 10 at 2; CPED-06 at 5. Although CPED-01 Ex. 10, the letter, is dated January 14, 2013, the date should have been January 14, 2014.

¹⁰³ CPED-01 Ex. 10 at 2; CPED-06 at 5.

¹⁰⁴ CPED-01 Ex. 10 at 2.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

means the measurement would no longer be based on the number of parents in post-graduation training, but the number of training modules completed by parents.¹⁰⁷

CD approved Community Union's budget for Year 2 with the understanding that the shortfalls in Activity 5 and Activity 7 from Year 1 would be made up in Year 2.¹⁰⁸ In order to help Community Union catch up on its goals in Year 2, CD allowed Community Union to modify Activity 7 again, to reduce the goal for modules completed from 514 to 250 in Year 2.¹⁰⁹

During Year 2 of the CASF grant (March 1, 2013 through and including February 28, 2014) Community Union failed to meet its performance requirements again.¹¹⁰ By July 2013, after a call with Mr. Ortega, CD contemplated withholding payment as a result of Community Union's failure to meet performance goals.¹¹¹ By the end of Quarter 3, Year 2 (September 1, 2013 to and including November 30, 2013), Community Union had only achieved a 49% completion rate for Activity 5 and a 36% completion rate for Activity 7.¹¹² Community Union failed to meet performance goals for Activity 2 and Activity 3 as well. For Activity 2, which involved community organization administrators entering into memorandums of understanding to establish empowerment hubs, Community Union achieved a 58% completion rate.¹¹³ For Activity 3, which

¹⁰⁷ *Id.*

¹⁰⁸ CPED-01 Ex. 10 at 3.

¹⁰⁹ *Id.*; CPED-07 at 2 – 3.

¹¹⁰ CPED-01 Ex. 10 at 2 – 3; CPED-08 Att. 4.

¹¹¹ CPED-01 Ex. 10 at 3.

¹¹² *Id.*; CPED-07 at 2 – 3; CPED-08 Att. 4.

¹¹³ CPED-01 Ex. 10 at 2 – 3; CPED-06 at 6; CPED-08 Att. 4.

involved parents appearing at orientation meetings at empowerment hubs and applying for the 40-hour training course, Community Union achieved a 58% completion rate.¹¹⁴

Although the due date was October 1, 2013, on December 3, 2013, two months late, the Coalition submitted its Work Plan for the final and third year of the grant.¹¹⁵ CD notified Community Union that its \$150,000 budget for Year 3 was reduced due to Community Union's failure to meet the performance requirements.¹¹⁶ Despite repeated requests by Community Union, CD did not restore the Year 3 budget to \$150,000.¹¹⁷

In its defense, Community Union asserted that performance of the NIU program should not be assessed solely on any of the individual activities, especially Activity 5, as it is only one of the seven activities of the contract.¹¹⁸ Community Union argued it met performance metrics in the other activities and the goals of the Work Plan.¹¹⁹ In response to criticism of its performance, Community Union presented witnesses who testified that the NIU program had significant and positive impacts on the community.¹²⁰

¹¹⁴ *Id.*

¹¹⁵ Resolution T-17355 at 10; CPED-06 at 4.

¹¹⁶ CPED-01 Ex. 10 at 3.

¹¹⁷ CPED-01 Ex. 12, Ex. 15; CPED-07 at 2 – 3.

¹¹⁸ Community Union Opening Brief, Sep. 14, 2020, at 7.

¹¹⁹ *Id.* at 8, Community Union Reply Brief, Sept. 25, 2020, at 6, 7. Community Union exhibit pre-marked and identified as CU-30 (discussing Activities 1, 2, and 3), could not be admitted because Community Union failed to establish the foundation or mention it in its direct testimony. Evidentiary Hearing Transcript, Aug. 27, 2020, 684:22 – 685:27. *See* fn. 57.

¹²⁰ Community Union Opening Brief, Sep. 14, 2020, at 11 – 12; Evidentiary Hearing Transcript, Aug. 26, 2020, 447:24 – 448:2, 466:20 – 468:5; 489:5 – 490:17, 491:5 – 491:14, 507:2 – 507:6.

Community Union did not rebut CPED's showing of Community Union's deficient performance in at least two out of the seven activities in Year 1 and four out of the seven activities in Year 2.¹²¹ Meeting performance metrics for some of the activities does not address or excuse Community Union's lack of performance in the four activities discussed in this section. Receiving CASF grant money is contingent upon completing all seven activities in the Action Plan and Work Plan.¹²² In addition, testimony that Community Union had a positive impact does not go to the question of compliance with the NIU program Action Plan, Work Plan, or budget.

CPED has established by a preponderance of the evidence that Community Union failed to meet the NIU program performance metrics for all seven activities.

6.1.3. Violation 3: Community Union Failed to Maintain Records and Documentation to Substantiate its Expenses

Pursuant to the CASF grant, Community Union was required to maintain records, documents, and any other evidence sufficient to validate expenditures covered by grant reimbursements, in compliance with generally accepted accounting practices.¹²³ Generally accepted accounting practices provide a

¹²¹ The failure to offer 40 hours of in class instruction for Activity 5 calls into question whether Community Union performed Activity 6, graduating a promised number of students per year. Given that the 40-hour training course was reduced to less than 40 hours of in class instruction, the number of parents graduated since Year 1 of the grant likely did not complete 40 hours of in class training.

¹²² D.11-06-038 at 41 – 42 (OP 20); Resolution T-17355 at 11.

¹²³ D.11-06-038 at 29; Resolution T-17355 at 1 (approving the grants pursuant to D.11-06-038). "Generally accepted accounting practices" is the term used in D.11-06-038 and by CPED briefs. (D.11-06-038 at 29, CPED Opening Brief at 11). "Generally accepted accounting practices" encompasses "generally accepted accounting principles" and "generally-accepted accounting

Footnote continued on next page.

common set of accounting principles, standards, and procedures to ensure that financial information is consistent and comparable. In order to comply with these practices, detailed records of invoices and receipts must be collected and maintained.¹²⁴

In response to the audit by the State Controller's Office, Community Union did not produce any books or records that were kept according to generally accepted accounting practices.¹²⁵ Community Union produced a "general ledger" spreadsheet similar to a check register.¹²⁶ The "general ledger" suffered from at least three deficiencies which made it an unreliable document to assess Community Union's financial condition.¹²⁷ First, like a check register, the "general ledger" only showed one side of the transaction, a debit or credit, but not both.¹²⁸ Revenues and expenses were not recorded when earned or incurred, but recorded when received and when cash was paid, in violation of generally accepted accounting principles.¹²⁹ The "general ledger" did not show a consistent expense allocation method to accurately reflect the expenses covered by different funding sources.¹³⁰ There were no cost codes or a time allocation method for the time spent on tasks associated with the NIU program.¹³¹

procedures" described in the record. CPED-01 at 23, CPED-04 at 12. All three terms will be used in this decision according to the sources in the record.

¹²⁴ D.11-06-038 at 17; Resolution T-17355 at 10.

¹²⁵ Evidentiary Hearing Transcript, August 25, 2020, 201:13 – 201:27; CPED-09 at 11.

¹²⁶ CPED-04 at 13; CPED-09 at 4.

¹²⁷ CPED-04 at 14.

¹²⁸ Evidentiary Hearing Transcript, Aug. 25, 2020, 202:9 – 202:27.

¹²⁹ CPED-04 at 12 – 13.

¹³⁰ *Id.* at 16.

¹³¹ *Id.* at 5.

Second, the revenue and costs could not be matched to the time period in which CASF grant expenses and transactions occurred.¹³² Matching revenue and expense to the period in which the transactions occurred was required to determine whether expenses were spent in accordance to the CASF grant, and during the CASF grant period.¹³³ Third, the “general ledger” did not allow tracing of any transactions to any source documents.¹³⁴ The “general ledger” document failed to provide essential information of Community Union’s financial operations.¹³⁵

Source documents provided by Community Union suffered from a variety of inaccuracies and defects. Source documents were either missing, incomplete or contained errors.¹³⁶ For example, \$34,630 were paid to 13 individuals who were not identified in the invoices to the Commission, but for whom the grant funds were charged.¹³⁷ Time cards were not signed by the individual employees or trainers and it was unclear whether the time cards were prepared at the time the activities took place.¹³⁸ Reimbursement requests did not match the cancelled checks provided by Community Union. Community Union provided to the State Controller’s Office canceled checks totaling \$431,875, which allegedly represented what was billable under the CASF grant.¹³⁹ The actual invoices

¹³² Evidentiary Hearing Transcript, August 25, 2020, 201:13 – 201:28, 202:1 – 202:8.

¹³³ CPED-04 at 13.

¹³⁴ Evidentiary Hearing Transcript, August 25, 2020, 203:1 – 203:20; CPED-09 at 12.

¹³⁵ CPED-09 at 11.

¹³⁶ CPED-04 at 15.

¹³⁷ CPED-02 at 10, Att. 1 (response to comment 36).

¹³⁸ *Id.* at 12; CPED-04 at 16 – 17.

¹³⁹ CPED-09 at 3.

submitted to CD totaled \$310,050, indicating funding from non-CASF sources.¹⁴⁰ However, Community Union failed to provide complete records of non-CASF sources so that it was impossible to understand the overall financial condition of Community Union. Additionally, most of the canceled checks were for partial payments of trainer invoices that did not match the time period of the invoices.¹⁴¹

Also indicative of the failure to maintain appropriate records and documentation, there was not a separate bank account for the CASF grant.¹⁴² CASF grant money was commingled with other Community Union funding sources and the personal activities of Mr. Ortega.¹⁴³

Community Union argued that it provided to the fiscal agent, KCCD, all backup documentation relative to the expenses.¹⁴⁴ As discussed in Section 3.3, *supra*, KCCD cannot shield Community Union from liability. The authority to make operational and budget decisions were concentrated solely with Mr. Ortega, meaning that Mr. Ortega possessed records that were not available to KCCD.¹⁴⁵

Community Union presented testimony at the evidentiary hearing that for a tiny organization it was unobtainable, unnecessary and inefficient to have the traditional separation of duties and roles.¹⁴⁶ Community Union's only witness with an accounting background and audit experience testified that financial

¹⁴⁰ CPED-02 at 3; CPED-04 at 7 – 8; CPED-04 Att. 7 at 1; CPED-09 at 3.

¹⁴¹ CPED-04 Att. 7 at 1.

¹⁴² CPED-04 at 13; *see* CPED-06, Att. 1 at 7.

¹⁴³ CPED-04 at 10 – 11.

¹⁴⁴ Community Union Reply Brief, September 28, 2020, at 5, 10.

¹⁴⁵ CPED-02 at 11, CPED-09 Att. 7.

¹⁴⁶ Evidentiary Hearing Transcript, Aug. 27, 2020, 578:10 – 579:18.

information can be reliable “as long as there is source records to support information that’s being presented and reported,”¹⁴⁷ emphasizing the importance of verification with source documents. However, that witness did not verify the reliability of Community Union’s time sheets and invoices,¹⁴⁸ did not prepare accounting documents for Community Union,¹⁴⁹ was not paid for his review of Community Union documents,¹⁵⁰ and did not audit Community Union’s finances.¹⁵¹ Community Union’s presentation did not show that it maintained records and any other evidence that reliably justified the expenditures reimbursed by the CASF Consortia Account.

CPED has established by a preponderance of the evidence that Community Union did not maintain records and documentation as required by D.11-06-038 and Resolution T-17355.¹⁵² Community Union failed to rebut CPED’s showing.

6.1.4. Violation 4: Community Union Failed to Produce Immediately Records and Documentation to Substantiate its Expenses

In violation of the CASF grant requirements,¹⁵³ Community Union failed to immediately produce records and documentation to substantiate its expenses during the audit. When the State Controller’s Office initiated the audit in February 2015, it made numerous requests for documents such as accounting

¹⁴⁷ *Id.* at 578:11 – 578:24.

¹⁴⁸ *Id.* at 591:28 – 592:27.

¹⁴⁹ *Id.* at 594:2 – 594:16.

¹⁵⁰ *Id.* at 594:17 – 594:20.

¹⁵¹ *Id.* at 588:20 – 588:22.

¹⁵² D.11-06-038 at 17; Resolution T-17355 at 10.

¹⁵³ D.11-06-038 at 29; Resolution T-17355 at 1 (approving the grants pursuant to D.11-06-038); CPED-09 at 1 – 2.

policies and procedures, general ledgers, expenditure reports, bank statements, cancelled checks, time records, and vendor invoices.¹⁵⁴ During the audit, Community Union stated that accounting records, vendor invoices and time records existed, estimated to be thousands of pages, but the documents were not readily available because they were in storage.¹⁵⁵ The State Controller's Office offered Mr. Ortega numerous opportunities to deliver the documents during the audit and offered to look through the documents to alleviate the burden on Community Union to make copies, but Community Union did not make the documents available to the State Controller's Office.¹⁵⁶ Most accounting records and source documents were made available to the State Controller's Office after the exit interview and issuance of the draft audit report.¹⁵⁷

Due to the delay in disclosure of the records and the records from Community Union being unreliable and incomplete, the State Controller's Office had to use alternative auditing procedures. For example, the State Controller's Office interviewed a sample of trainers and parent students to determine Community Union's work and expenses.¹⁵⁸ The delays caused by Community Union increased the length of the audit, which increased the cost of the audit by \$25,000.¹⁵⁹

In addition to the expenses covered by CASF, which should have been 39% of the total program expenses, the State Controller's Office requested

¹⁵⁴ CPED-09 at 1 – 2.

¹⁵⁵ *Id.* at 2, Att. 5.

¹⁵⁶ CPED-02 Att. 1, Comment 26; CPED-04 Att. 3.

¹⁵⁷ CPED-02 at 15.

¹⁵⁸ CPED-09 Att. 5, Att. 7, Att. 9, Att. 10, Att. 11, Att. 12.

¹⁵⁹ Evidentiary Hearing Transcript, August 24, 2020, 72:22 – 73:4.

documentation of other funding to verify that the other funding covered 61% of the NIU program expenses. The State Controller's Office attempted to verify that the CASF grant reimbursed costs that were not charged against other funds.¹⁶⁰ During the audit, Community Union did not provide bank statements and account records for other funding charges/sources.¹⁶¹ Community Union asserted that the CASF Consortia Account was the sole source of income and the main reason for Community Union's business.¹⁶² Further detailed in Section 6.1.9, *infra*, two years after the audit, Community Union again failed to provide accounting records or documents to CPED during its investigation.¹⁶³

CPED has proved by a preponderance of the evidence that Community Union violated CASF grant requirements by failing to immediately produce records and documentation substantiating its expenses.

6.1.5. Violation 5: Community Union Failed to Provide Sufficient Documentation and Detailed Information for Non-CASF Funding

Community Union's proposed budgets for the three years of the grant, segregated by the CASF grant versus non-CASF sources, are as follows:¹⁶⁴

	CASF Grant	Non CASF Funds	TOTAL
Year 1	150,000	236,653	386,653
Year 2	150,000	236,653	386,653
Year 3	150,000	236,653	386,653
TOTAL	450,000	709,959	1,159,959
Percent of Total Budget	39%	61%	100%

¹⁶⁰ CPED-02 at 20, CPED-09 at 4.

¹⁶¹ CPED-02 at 21; CPED-09 at 3.

¹⁶² CPED-04 Att. 7; CPED-09 at 3.

¹⁶³ CPED-01 at 17.

¹⁶⁴ CPED-01 Att. 27; CPED-02 at 21, Att. 5.

During the audit, Community Union did not provide documentation of its other funding sources, so the audit could not determine how costs were allocated to the different funding sources. Based on the “general ledger” Community Union provided after the conclusion of the audit, the State Controller’s Office identified approximately half a million dollars in funding by entities such as AT&T and school districts.¹⁶⁵ However, the lack of accounting records and cost allocation plans and/or methods prevented the State Controller’s Office from determining if the costs were appropriately charged to the funding sources according to the 39 and 61 percentages.¹⁶⁶

For the evidentiary hearing, Community Union provided a summary chart of its revenue and expenses on August 18, 2020.¹⁶⁷ The summary chart was purportedly based on bank statements with total revenue and expenses, including non-CASF sources.¹⁶⁸ Mr. Ortega did not testify as to any source documents substantiating the summary chart such as receipts and invoices,¹⁶⁹ and Community Union presented no testimony from an accountant employed by Community Union.¹⁷⁰ Without source documents and accounting records, the

¹⁶⁵ CPED-02 at 24.

¹⁶⁶ CPED-09 at 3 – 4.

¹⁶⁷ CPED-26; Evidentiary Hearing Transcript, August 27, 2020, 674:8 – 674:21. Community Union first presented the August 18, 2020 summary chart in its pre-trial brief, but the pre-trial brief is not in the evidentiary record. Although the assigned ALJ granted Community Union permission to late file the pre-trial brief, Community Union failed to tender the document for late filing pursuant to Rule 11.6. *See* fn. 55 and associated text. Nevertheless, the summary chart (CPED-26) was entered into the record at the request of both parties. Evidentiary Hearing Transcript August 25, 2020, 347:16 – 347:17, 356:12 – 356:16, 360:27; Evidentiary Hearing Transcript, August 26, 2020, 524:25 – 525:4.

¹⁶⁸ Evidentiary Hearing Transcript, Aug. 27, 2020, 674:8 – 674:21.

¹⁶⁹ *Id.* at 673:8 – 674:21.

¹⁷⁰ Evidentiary Hearing Transcript, Aug. 27, 2020, 594:2 – 594:16. *See* fn. 148 through fn. 151 and associated text.

chart is unreliable and can be given little weight to show expenses were charged according to the 39 and 61 percentages.

CPED has proved by a preponderance of the evidence that Community Union violated CASF grant requirements by failing to provide sufficient documentation and detailed information for the non-CASF funding.

6.1.6. Violation 6: Community Union Failed to Exclude from CASF Reimbursement Claims Expenses Covered by Non-CASF Sources

D.11-06-038 and Resolution T-17355 required Community Union to exclude from reimbursement claims “for activities or programs within the consortia region that are separately funded from any other sources in order to ensure that California Advanced Service Fund (CASF) grants do not duplicate funding from any other sources.”¹⁷¹

CPED presented facts showing that Community Union received funding for identical activities as those funded by the CASF grant during the grant period. For example,

- Anaheim Elementary School District paid Community Union \$32,320 for parent computer classes; and
- Pomona Unified School District paid Community Union \$44,170 for implementing the Parent Engagement Through Technology Program.

Similarly, during the grant period, El Rancho Unified School District, one of the non-CASF funding sources, paid for parent computer training.¹⁷²

Community Union submitted for reimbursement to the CASF grant 100% of the

¹⁷¹ D.11-06-038 at 40 (OP 11); Resolution T-17355 at 14 (OP 4).

¹⁷² CPED-04 at 8; *see* CPED-03 Ex. 17.

trainer's expenses without allocating a portion of the expense as charged to El Rancho Unified School District.¹⁷³

Contracts with other organizations during the grant period show overlapping charges for the same activity.¹⁷⁴ For example, a contract between Community Union and Huntington Beach Unified High School District for the 2013 to 2014 school year states that Community Union would conduct the Parent Engagement through Technology program at the rate of \$90 per parent.¹⁷⁵ Yet, Community Union's Action Plan set the cost of the Parent Engagement through Technology program at \$190 per parent, to be covered by the CASF grant in full.¹⁷⁶ Community Union should have produced records to show how payments from other sources, such as the Huntington Beach Unified High School District, accounted for a portion of the \$190 cost covered by the CASF grant.

Community Union offered the testimony of an employee who compiled documents for reimbursement packages submitted to the CASF grant. The employee testified that she never submitted the same invoice that had been submitted for reimbursement to the CASF grant to any other partners.¹⁷⁷ Even if the same invoice was not submitted to multiple funders, the testimony does not show Community Union excluded from reimbursement claims to the Commission activities separately funded by other sources.

As discussed in Section 6.1.3, *supra*, Community Union had no accounting instruments in place to indicate how expenses were charged to different funding

¹⁷³ *Id.*

¹⁷⁴ CPED-01 at 22 – 23, Ex. 30, Ex. 31.

¹⁷⁵ CPED-01 at 22, Ex. 30.

¹⁷⁶ CPED-01 at 23, Ex. 6, Ex. 10, Ex. 30.

¹⁷⁷ Evidentiary Hearing Transcript, Aug. 26, 2020, 466:11 – 466:16.

sources. As such, it was more likely than not that duplicate funding occurred. In violation of the CASF grant requirement to expressly exclude costs for activities that were separately funded by other sources,¹⁷⁸ Community Union claimed reimbursements in excess of what should have been covered by the CASF grant.

CPED has proved by a preponderance of the evidence that Community Union did not expressly exclude from reimbursement requests to the Commission expenses covered by non-CASF funding sources. Community Union failed to rebut CPED's showing.

6.1.7. Violation 7: The CASF Consortia Account Covered Expenses or Items that were not Authorized or Allowable

We find that Community Union's expenses were unauthorized and not allowable in two ways. First, essential to ensuring that funds were spent in a cost-effective and responsible manner consistent with program goals, CASF funds were not supposed to be duplicative of other funding.¹⁷⁹ CASF grant recipients must "perform in good faith."¹⁸⁰ Prior sections of this decision detail how Community Union failed to maintain records according to CASF Consortia Account requirements and how Community Union failed to allocate expenses between the CASF Consortia Account and non-CASF sources based on the 39 and 61 percentages described in its budget.¹⁸¹ Allocating 100% of the cost to the CASF Consortia Account when the cost was already paid for by another source would violate the prohibition against duplicative cost recovery.

¹⁷⁸ D.11-06-038 at 40 (OP 11).

¹⁷⁹ *Id.* at 36 (COL 10), at 40 (OP 11).

¹⁸⁰ *Id.* at 27.

¹⁸¹ Sections 6.1.3, 6.1.5, 6.1.6.

Second, Community Union did not open a separate account for the CASF grant money and commingled the money in an account that Mr. Ortega used for personal activities.¹⁸² While some items may not have been reimbursed by the CASF grant, many items were not allowable or authorized.¹⁸³ Due to the lack of detailed descriptions or associated invoices and receipts for services rendered, \$36,570 should not have been covered by CASF, including \$30,000 in expenses titled such as "\$1,200 for fundraising," "\$1,000 for supplies," "\$2,200 for travel," and "\$1,500 paid to Larry Ortega."¹⁸⁴

CPED has proved by a preponderance of the evidence that the CASF Consortia Account covered Community Union expenses or items that were not allowable or authorized.

6.1.8. Violation 8: Community Union Failed to Comply with the Communications Division's April 18, 2016 Demand Letter

When a consortium grantee does not comply with CASF grant requirements, CD has the authority to withhold grant payments.¹⁸⁵ Furthermore, if a consortium grantee "fails to complete the project, in accordance with the terms of approval granted to the Commission, the recipient will be required to reimburse some or all of the CASF Consortia Grant Account moneys that it has received."¹⁸⁶

After numerous conversations with Community Union regarding the failure to achieve Work Plan targets and the unapproved changes to the Work

¹⁸² CPED Opening Brief, September 10, 2020, at 39 – 40; CPED-04 at 10 – 11, 13; CPED-06 Att. 1.

¹⁸³ CPED-04 at 10 – 11.

¹⁸⁴ CPED Opening Brief, September 10, 2020, at 39 – 40.

¹⁸⁵ Resolution T-17355 at 11.

¹⁸⁶ *Id.* at 14 (OP 4); D.11-06-038 at 41 – 42 (OP 20).

Plan, CD requested the State Controller's Office to conduct a third-party audit.¹⁸⁷ CD informed Community Union that the Year 3 budget would be adjusted pending a positive outcome of the audit.¹⁸⁸ Instead of positive findings that would reinstate Community Union's funding, the Audit Report confirmed previous findings by CD:

- Community Union lacked internal control safeguards to ensure that the program functioned as intended and costs were not adequately supported, authorized, approved, recorded or claimed,¹⁸⁹
- Community Union reduced the number of in-class parent training hours, changing the agreed upon hours without Commission approval,¹⁹⁰ and
- Community Union did not provide complete documents to determine whether the CASF reimbursed costs had been charged against non-CASF funds.¹⁹¹

Based on the Audit Report, the Commission issued a demand letter to KCCCD, the fiscal agent, and Community Union which explained that withholding funding for Year 3 was justified and directed the return of \$82,281 by July 18, 2016.¹⁹² On June 14, 2016, KCCCD requested an extension to respond to the demand letter. CD denied the extension request on or about June 23, 2016.¹⁹³ Community Union did not respond to the demand letter or make payment by July 18, 2016.

¹⁸⁷ CPED-01 at 6 – 8, Ex. 10, Ex. 12, Ex. 15.

¹⁸⁸ CPED-01 Ex. 15.

¹⁸⁹ CPED-02 at 11 – 13.

¹⁹⁰ *Id.* at 19.

¹⁹¹ *Id.* at 21.

¹⁹² CPED-01 at 10 – 11, Ex. 18 at 3 – 4; CPED-05 at 7; CPED-06 at 7.

¹⁹³ CPED-01 at 11; CPED-01 Ex. 19; CPED-06 at 7.

There is no dispute that CD received no communication from Community Union acknowledging or answering the demand letter. To date, Community Union has not returned any portion of the money as ordered by the April 18, 2016 demand letter. CPED has proved by a preponderance of the evidence that Community Union has refused to comply with a Commission demand.

6.1.9. Violation 9: Community Union Failed to Respond to the July 21, 2017 Data Request

Pursuant to the terms of the CASF grant, Commission staff had the authority to initiate audits, or engage in any discovery necessary to determine whether grant funds were spent in accordance with the grant requirements.¹⁹⁴ Community Union agreed, recognized and acknowledged that, it would comply with the terms, conditions, and requirements of the grant and submit to the jurisdiction of the Commission with regard to disbursement and administration of the grant.¹⁹⁵ Submission to the Commission's jurisdiction included fully responding to data requests in a timely manner.

After Community Union failed to respond with payment to CD's demand letter in 2016, the Utilities Enforcement Branch of the CPED sent a data request to Community Union on July 21, 2017.¹⁹⁶ The July 21, 2017 data request required Community Union to produce financial documents such as tax returns and supporting documentation of revenue and expenses during the CASF grant period. Via email on August 4, 2017, Community Union submitted a link to the

¹⁹⁴ *Id.* at 29; Resolution T-17355 at 1; CPED-09 at 1 – 2.

¹⁹⁵ D.11-06-038 at 13, 36 (COL 9).

¹⁹⁶ CPED-01 at 11, Ex. 20.

Audit Report in response to CPED's data request.¹⁹⁷ In the email, Community Union asserted that the data request was beyond the authority of CPED.¹⁹⁸ Community Union did not answer the data request or provide any of the required documentation.

CPED has met its burden of proof that Community Union failed to respond to the July 17, 2017 data request.

6.2. Community Union's Pre-2018 Acts of Contempt and Violations of Rule 1.1

This section addresses Community Union's acts of contempt and Rule 1.1 violations associated with the 2018 Scoping Memo. Community Union's post 2018 actions will be addressed in Section 7, *infra*, of this decision.

In reviewing acts of contempt, Pub. Util. Code § 2113 states:

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by a court of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

Due to the quasi-criminal nature of a finding of contempt, the Commission requires the heightened evidentiary findings of:

- The person's conduct must have been willful in the sense that the conduct was inexcusable; or
- That the person accused of the contempt had an indifferent disregard of the duty to comply; and

¹⁹⁷ CPED-01 Ex. 21.

¹⁹⁸ *Id.*

- Proof must be established beyond a reasonable doubt.¹⁹⁹

A finding of contempt does not bar the finding of a Rule 1.1 violation.

Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules) states:

Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission or its Administrative Law Judges; and never to mislead the Commission or staff by an artifice or false statement of fact or law.

The burden of proof for establishing a Rule 1.1 violation is not as stringent as the burden of proof for establishing contempt. A person subject to the Commission's jurisdiction can violate Rule 1.1 without the Commission having to find that the person intended to disobey a Commission rule, order, or decision. A Rule 1.1 violation occurs when there has been a "lack of candor, withholding of information or failure to correct information or respond fully to data requests."²⁰⁰ A lack of candor includes non-disclosure of information that was requested by the Commission and non-disclosure due to carelessness, ignorance, or mistake.²⁰¹ The party claiming the violation must establish the facts by a preponderance of the evidence.²⁰² Subsequently, the burden of proof is on

¹⁹⁹ D.94-11-018, 57 CPUC2d 176, 190, 205, *citing Little v. Superior Court of Los Angeles County* (1968) 260 Cal.App.2d 311, 317; *In re Burns* (1958) 161 Cal.App.2d 137, 141-142. *See Ross v. Superior Court of Sacramento County* (1977) 19 Cal.3d 899, 913.

²⁰⁰ D.13-12-053 at 21.

²⁰¹ *See* D.01-08-019; D.13-12-053 at 21; D.19-12-041 at 9 - 10.

²⁰² 49 CPUC2d at 190, *citing* D.90-07-029 at 3 - 4.

the respondent to show that the violation based on the record evidence is invalid.²⁰³

6.2.1. Violations 10, 11 and 12

Violations 10 (Community Union Acted in Contempt by Refusing to Comply with the April 18, 2016 Demand Letter), 11 (Community Union Acted in Contempt by Refusing to Answer the July 21, 2017 Data Request) and 12 (Community Union Failed to Answer to the July 21, 2017 Data Request in Violation of Rule 1.1) are reviewed together in this section.

Violation 10: Community Union Acted in Contempt by Refusing to Comply with the Communications Division's April 18, 2016 Demand Letter

CPED requested that Community Union be found in contempt for failure to comply with the April 18, 2016 demand letter.²⁰⁴ As discussed in Section 6.1.8, *supra*, Community Union did not acknowledge or respond to CD's demand. This conduct was inexcusable as it exhibited an indifference to the Commission's authority. Likewise, Community Union exhibited an indifferent disregard of its duty to comply by the absence of any acknowledgement of the demand letter. CPED has established beyond a reasonable doubt that Community Union acted in contempt by failing to respond to CD's April 18, 2016 demand letter.

Pub. Util. Code § 2113, which states that a finding of contempt "is punishable by the Commission for contempt in the same manner and to the same extent as contempt is punished by a court of record." In superior court, the minimum monetary civil penalty for a single act of contempt is \$1,000.²⁰⁵

²⁰³ D.19-12-041 at 13.

²⁰⁴ CPED Opening Brief at 26, 53.

²⁰⁵ Code of Civil Proc. § 1218(a).

Therefore, by acting in contempt by failing to respond, in effect a refusal to comply with the demand for a return of a portion of the CASF grant, this decision assesses a \$1,000 penalty.

**Violation 11:
Community Union Acted in Contempt by Refusing to
Answer the July 21, 2017 Data Request**

As discussed in Section 6.1.9, *supra*, there is no dispute that Community Union failed to respond to the July 21, 2017 data request with the required records and documentation.²⁰⁶ Community Union expressed an indifferent disregard for its duty to comply by emailing to CPED a link to the Audit Report as a response. Community Union's email was willful in that it was inexcusable because Community Union made no effort to answer the data request questions or produce any documents. CPED has established beyond a reasonable doubt a finding of contempt. This decision assesses a \$1,000 penalty.

Pub. Util. Code § 2113 does not bar any other remedies. In the section below, we will address the failure to answer the July 21, 2017 data request as a violation of Rule 1.1 and assess a penalty for the continuing violation.

²⁰⁶ CPED-01 at 11, Ex. 21.

**Violation 12:
Community Union Failed to Answer the
July 21, 2017 Data Request in Violation of Rule 1.1**

Here, Community Union's withholding of relevant information since August 2017 is part of Community Union's failure to respond to CPED's July 21, 2017 data request. Community Union's complete response to the July 2017 data request was due on August 4, 2017.²⁰⁷

As found in Violation 11, Community Union acted with contempt when it refused to answer the July 21, 2017 data request. Based on the same facts, Community Union actively choose to be unresponsive, emailing CPED a link to the Audit Report, and gave no other reason other than objecting to CPED's jurisdiction.²⁰⁸ Community Union's objection was not based in law and was contradicted by the clear requirement that a grant recipient must submit to the Commission's jurisdiction and provide information immediately upon request.²⁰⁹ By withholding information and misleading the Commission with an artifice or false statement of law by arguing unsound legal defenses, Community Union violated Rule 1.1. It is appropriate for the Commission to assess fines for the Rule 1.1 violation, as discussed below.

Penalties pursuant to Pub. Util. Code § 2111 and § 2108 are warranted for a Rule 1.1 violation. Pub. Util. Code § 2111 states:

²⁰⁷ CPED-01 Ex. 20, Ex. 21.

²⁰⁸ CPED-01 Ex. 21.

²⁰⁹ D.11-06-038 at 29, 36 (COL 9).

Every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with, or procures, aids or abets any violation of any provision of the California Constitution relating to public utilities or of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in the violation or noncompliance, in a case in which a penalty has not otherwise been provided for the corporation or person, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

Pub. Util. Code § 2108 states:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

Here, it is beyond dispute that Community Union failed to answer CPED's July 21, 2017 data request by August 4, 2017. That failure violated Rule 1.1, which triggered the Commission's authority to issue fines and penalties.

CPED recommends a penalty of \$5,000 for the act of withholding information and failing to provide complete and full responses to CPED's July 21, 2017 data request.²¹⁰ We treat the failure to answer the July 21, 2017 data request as a continuing violation with the daily rate of \$500 from August 4, 2017, the due date of the data request, until February 21, 2020, when CPED propounded a second nearly identical data request. Community Union was out of compliance for 931 days.²¹¹ The total penalty should be \$465,500.

²¹⁰ CPED Opening Brief, September 10, 2020, at 44.

²¹¹ 931 days multiplied by \$500 equals \$465,500.

6.2.2. Violation 13: Community Union Failed to Disclose Changes to the 40-hour Training Course

Sections 6.1.1 and 6.1.2, *supra*, of this decision details Community Union's lack of candor and transparency regarding the 40-hour training course, where Community Union significantly reduced the in-class instruction from 40 hours to approximately 20 hours.²¹² Regardless of whether the non-disclosure was due to carelessness or mistake, Community Union violated Rule 1.1 by failing to disclose to CD that it changed the NIU program without Commission approval. This Rule 1.1 violation triggered the Commission's authority to issue penalties pursuant to Pub. Util. Code §§ 2111 and 2108.

Prior to August 8, 2014, it was not clear whether Community Union's reduction of in-class instruction was simply an inability to meet program performance metrics. After receiving the August 8, 2014 letter from the Coalition's fiscal agent, it was clear to CD that the reduction of in-class instruction was due to Community Union deliberately changing the NIU program design.²¹³ For the purposes of calculating the penalty, Community Union's continuing responsibility to notify the Commission began when it made the change in the first two quarters of Year 1 of the CASF grant. Community Union was in non-compliance for 707 days, from the last day of the second quarter in Year 1 of the grant, August 31, 2012, to when the change was disclosed, on August 8, 2014.²¹⁴ The total penalty should be \$353,500.²¹⁵

²¹² CPED-02 at 5.

²¹³ CPED-01 Ex. 15.

²¹⁴ CPED-01 Ex. 13.

²¹⁵ 707 days multiplied by \$500 per day equals \$353,500.

CPED argued that Community Union continued to mislead the Commission well into Year 3 (March 1, 2014 – February 28, 2015) by submitting work plans and quarterly reports with the 40-hour training course description unchanged.²¹⁶ The record shows that by August 8, 2014, CD was no longer misled as it was informed by the fiscal agent’s letter; therefore, the end date of the violation is appropriately set on August 8, 2014.

**6.2.3. Violation 14: Community Union
Misrepresented the Schedule of Classes
When the Communications Division Staff
Member Attempted to Conduct a Site Visit in
October 2014**

CPED alleged that Community Union misled CD by providing a schedule of classes on October 6, 2014 that had not been coordinated and finalized.²¹⁷ According to the schedule, CD visited two classes on October 15, 2014, one at 8:15 a.m. and another at 2:00 p.m.²¹⁸ The morning class was not in session.²¹⁹ CD also visited a class and attempted to attend a graduation in March 2015.²²⁰ Community Union stated that its schedule was “a living breathing document in that it works to accommodate the students schedules for the purpose of maximizing class size, number of students served....”²²¹

As noted in Section 6.2, *supra*, Community Union can violate Rule 1.1 without intent to disobey a Commission rule, order, or decision. A lack of

²¹⁶ CPED-07 at 8; CPED-01, Ex. 5.

²¹⁷ CPED Opening Brief, September 10, 2020, at 32; CPED-07 at 5; Evidentiary Hearing Transcript August 24, 2020, 81:14 – 81:27, 82:10 – 82:25, 83:23 – 84:24.

²¹⁸ CPED-07 at 5; Att. 7.

²¹⁹ *Id.*

²²⁰ CPED-07 at 4 – 5.

²²¹ Community Union Opening Brief, September 14, 2020, at 7.

candor includes withholding of information, failing to correct misinformation, and non-disclosure due to carelessness, ignorance, or mistake.²²² Site visits were one of the ways that CD could ensure that the NIU program was implemented in good faith and in accordance with the terms of approval granted by the Commission.²²³ Community Union had a duty to update CD so that CD could evaluate Community Union's program implementation. Community Union's testimony that the schedule is "a living breathing document" only goes to show that Community Union should have updated CD accordingly, in conjunction with the schedule changes. It is undisputed that Community Union did not update CD as to the correct schedule. CPED has established by a preponderance of the evidence that Community Union violated Rule 1.1 by misrepresenting the schedule of classes because it failed to correct misinformation due to carelessness, ignorance or mistake.

The violation of Rule 1.1 triggered the Commission's authority to issue penalties pursuant to Pub. Util. Code §§ 2111 and 2108. CPED recommended a penalty of \$5,000 for the act of misleading CD in violation of Rule 1.1.²²⁴ We treat the failure to update CD with the final and correct schedule as a continuing violation with the daily rate of \$500. Community Union's responsibility was triggered on October 6, 2014, when it provided the schedule to CD, and lasted until CD's visit on October 15, 2014. Community Union was out of compliance for nine days and the total penalty should be \$4,500.²²⁵

²²² D.19-12-041 at 9 - 10.

²²³ *Id.* at 15, 27.

²²⁴ CPED Opening Brief, September 10, 2020, at 44.

²²⁵ Nine days multiplied by \$500 per day equals \$4,500.

6.3. Remaining 2018 Scoping Memo Issues

This section addresses CPED's three remaining arguments associated with the 2018 Scoping Memo. First, CPED requested that Community Union be held in contempt for refusing to submit to the Commission's jurisdiction and engaging in conduct and behavior that violated Rule 1.1. Because the acts which fall under these two general categories are addressed individually, it is unnecessary to assess a penalty for the overarching categories.²²⁶ CPED's request is denied.

Second, CPED argued that Community Union violated Rule 1.1 by misrepresenting its performance results with inflated numbers for Activity 5 (40-hour training course) and Activity 6 (graduation ceremony) in Year 1.²²⁷ CPED asserted that in Year 1, Quarter 4, Community Union reported that it completed the 40-hour training course for 395 students.²²⁸ Yet, CPED noted that the records from Mr. Ortega's assistant indicated that only 248 students completed the course.²²⁹ Additionally, in Year 1, Quarter 4, CPED asserted Community Union reported that 22 graduation ceremonies were held,²³⁰ but around the same period only 12 classes took place.²³¹ CPED argued that it was unlikely 22 graduation ceremonies took place when only 12 classes were held around the same time period.²³²

²²⁶ See Sections 6.2.1 and 7.1 on the contempt violations. See Sections 6.2.1 through 6.2.3 and Sections 7.2 through 7.4 on Rule 1.1 violations.

²²⁷ CPED Opening Brief, September 10, 2020, at 31 – 32.

²²⁸ Evidentiary Hearing Transcript, August 27, 2020, 631:11 – 631:15.

²²⁹ *Id.* at 625:22 – 626:1; 630:22 – 631:15.

²³⁰ *Id.* at 626:2 – 626:16; 631:17 – 631:21.

²³¹ *Id.* at 632:2 – 632:10.

²³² *Id.* at 632:19 – 633:11.

CPED's testimony relied on emails and spreadsheets from Mr. Ortega's assistant.²³³ The set of emails and spreadsheets, although identified as CU-03, were not admitted into the record.²³⁴ Therefore, the testimony was not validated by documents in the record. We find there is inadequate evidence in the record to prove that Community Union in fact inflated numbers for Activity 5 and 6 during Year 1. Nevertheless, CPED's testimony showed there was an overall lack of reliable and complete records from Community Union.

Third, CPED argued that Community Union misled CD and the State Controller's Office by making false statements that the audit was delayed. CPED submitted emails exchanged between CD employees to prove that Mr. Ortega told the State Controller's Office that "he spoke with the managers at the CPUC and that the CPUC approved his request to delay the audit till March."²³⁵

While Mr. Ortega's uncooperative behavior and his delay tactics during the audit are well documented,²³⁶ the evidence for this specific incident is inadequate. CPED presented emails which described conversations with Mr. Ortega, but the emails were not authored by Mr. Ortega. The main authors of the email exchange were not offered for cross examination at the evidentiary hearing. CPED failed to prove by a preponderance of the evidence that Community Union violated Rule 1.1 with statements to delay the audit.

²³³ *Id.*

²³⁴ CU-03 pre-marked as "Emails Supporting Unreimbursed Management and Planning Activities - Kelly Hidalgo Emails" was not admitted into the record because the pre-marked exhibit only provided the cover page. The August 26, 2020 exhibit packet included only the cover pages for CU-02, CU-03, and CU-04 but not the exhibits themselves; therefore, they were not admitted. Evidentiary Hearing Transcript, August 26, 2020, 533:4 - 522:19; Evidentiary Hearing Transcript, August 27, 2020, 689:11 - 689:16; *see* fn. 57.

²³⁵ CPED Opening Brief, September 10, 2020, at 29; CPED-15.

²³⁶ *See* CPED-03; CPED-04 Att. 3; CPED-09 Att. 5, Att. 7.

7. Community Union’s Post-2018 Actions and Violations Associated with the 2020 Scoping Memo Amendment

7.1. Violation 15: Community Union Acted in Contempt by Failing to Answer the February 21, 2020 Data Request Completely and in a Timely Manner

CPED alleged that Community Union should be held in contempt for failing to answer the February 21, 2020 data request completely and in a timely manner.²³⁷

As discussed in detail in Section 6.2, *supra*, any corporation or person which fails to comply with any part of a Commission order, direction or requirement is in contempt and can be fined \$1,000 for each act of contempt.²³⁸ A finding of contempt requires proof to be established beyond a reasonable doubt.²³⁹ A finding of contempt “does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.”²⁴⁰

The record shows Community Union was uncooperative and delayed in responding to the February 21, 2020 data request, which was originally due on March 6, 2020.²⁴¹ CPED detailed its struggles with obtaining information from Community Union in the March 25, 2020 motion to compel.²⁴² CPED’s testimony

²³⁷ CPED Opening Brief, September 10, 2020, at 53; CPED-05 at 4 – 6.

²³⁸ Pub. Util. Code § 2113; CA Code of Civil Procedure § 1219(a).

²³⁹ D.94-11-018, 57 CPUC2d 176, 190, 205, *citing Little v. Superior Court of Los Angeles County* (1968) 260 Cal.App.2d 311, 317; *In re Burns* (1958) 161 Cal.App.2d 137, 141-142. *See Ross v. Superior Court of Sacramento County* (1977) 19 Cal.3d 899, 913.

²⁴⁰ Pub. Util. Code § 2113.

²⁴¹ Motion of the Consumer Protection and Enforcement Division Compelling Responses to Data Requests from Larry Ortega and Community Union Inc. and Shortening Time for Response, March 25, 2020, at 6 - 7.

²⁴² *Id.*

set forth its attempts to work with Mr. Ortega and Community Union, including calls, emails, and extensions.²⁴³ At the May 4, 2020 Case Management Conference, Community Union agreed to answer the data request questions by May 15, 2020 and the parties would meet via WebEx to determine how to review the relevant documents during the Coronavirus pandemic when social distancing was required and travel was limited.²⁴⁴ On May 15, 2020, Community Union requested an extension to submit answers to CPED.²⁴⁵ The assigned ALJ extended the deadline until May 19, 2020,²⁴⁶ but CPED did not receive answers to the data request questions on that date.²⁴⁷ In May and June of 2020, Community Union provided select documents, continuing to delay and object to providing complete records.²⁴⁸ On June 22, 2020, the assigned ALJ ordered Community Union to provide complete responses by June 26, 2020.²⁴⁹ Community Union did not comply. As of June 29, 2020, Questions 1 through 18 of the February 21, 2020 data request had incomplete answers, nonresponsive answers, or no answers due to objections.²⁵⁰

²⁴³ CPED-05 at 3 – 6, Att. 10 (providing a summary of Community Union’s data request responses).

²⁴⁴ Case Management Hearing Transcript, May 4, 2020, 43:6 – 43:25, 76:19 – 76:25.

²⁴⁵ Community Union, Inc.’s Motion for Extension of Time to Respond to the May 15, 2020 ALJ Zhang’s Deadline Set to Answer CPED’s Data Request, May 15, 2020.

²⁴⁶ Email Ruling Granting Community Union’s Motion Request Extension of Time for Answers to Consumer Protection and Enforcement Division’s Data Request, May 18, 2020.

²⁴⁷ CPED-05 at 4.

²⁴⁸ *Id.* at 4 – 5.

²⁴⁹ Email Ruling Granting Consumer Protection and Enforcement Division’s Motion to Compel Responses to Data Requests, June 22, 2020.

²⁵⁰ CPED-05 at 6.

Community Union's delay in responding to the data request was willful and inexcusable. Even after the assigned ALJ's order to respond completely, Community Union failed to comply. CPED has established beyond a reasonable doubt that Community Union had an indifferent disregard of the duty to comply. As a result, Community Union is in contempt for failing to answer completely and in a timely manner the February 21, 2020 data request. A \$1,000 penalty is appropriate.²⁵¹

The Commission is not limited to the \$1,000 penalty as Pub. Util. Code § 2113 states that the remedy allowed "does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition there." In the next section we discuss Rule 1.1 violations, including how the refusal to provide complete and timely responses to the February 21, 2020 violated Rule 1.1 and triggered penalties.

7.2. Violation 16: Community Union Failed to Answer the February 21, 2020 Data Request Completely and In a Timely Manner in Violation of Rule 1.1

As discussed in Section 6.2, *supra*, Rule 1.1 requires any person who transacts business with the Commission to comply with the laws of the State. The burden of proof for a Rule 1.1 violation is by a preponderance of the evidence, which is less stringent than the burden of proof for contempt.

Detailed in Section 7.1, *supra*, Community Union did not respond completely or in a timely manner to the February 21, 2020 data request. Community Union had a duty to provide the Commission with information related to the NIU program.²⁵² Community Union actively evaded and

²⁵¹ CA Code of Civil Procedure § 1219(a).

²⁵² D.19-12-041 at 9 – 10.

ultimately refused CPED access to Community Union's records. CPED has established by a preponderance of the evidence that Community Union violated Rule 1.1 by withholding relevant information and by failing to answer the data request completely.

Community Union's Rule 1.1 violation triggered the penalties pursuant to Pub. Util. Code §§ 2111 and 2108. Identical to the penalties assessed with Community Union's failure to respond to the July 21, 2017 data request, the penalties are calculated at \$500 per day, with each day's continuing violation a separate and distinct offense subject to a separate penalty.²⁵³ Community Union's responsibility was triggered on March 6, 2020, the due date of the data request. This decision sets the end date of the violation on August 24, 2020, the first day of the evidentiary hearing, which was the last opportunity for Community Union to provide information that CPED might have used at the evidentiary hearing. Community Union was out of compliance for 171 days. The total penalty should be \$85,500.²⁵⁴

7.3. Violation 17: Community Union Failed to Update the Commission Regarding Changes to its Tax Status and Provide Relevant Tax Records in Violation of Rule 1.1

CPED argued that a penalty was appropriate because "Mr. Ortega and Community Union misrepresented that Community Union had filed its taxes."²⁵⁵ The issue is not whether Community Union filed its taxes. The Commission is not responsible for prosecuting the failure to file state and federal taxes. The issue is whether Community Union violated Rule 1.1 by failing to inform the

²⁵³ Pub. Util. Code § 2108.

²⁵⁴ 171 days multiplied by \$500 per day equals \$85,500.

²⁵⁵ CPED Opening Brief at 44.

Commission changes in its tax status and providing relevant tax records. Because the intent to deceive is unnecessary, the Commission can find a Rule 1.1 violation if there is “a lack of candor, withholding of information, or failure to correct information or respond to data requests.”²⁵⁶ The party claiming the violation must establish that fact by a preponderance of the evidence.²⁵⁷

CASF grant recipients are required to reflect the activities of the CASF grant on their state and federal government tax returns and financial reports.²⁵⁸ Question 2 of CPED’s July 21, 2017 data request asked for copies of federal and state tax returns for 2012 through 2015, the period of the CASF grant.²⁵⁹ Likewise, Question 5 of CPED’s February 21, 2020 data request asked for copies of federal and state tax returns for 2012 through 2015.²⁶⁰ On May 26, 2020, Mr. Ortega communicated to CPED that the tax records were lost.²⁶¹ On June 26, 2020, Mr. Ortega claimed again that the tax records were lost but would produce them by July 10, 2020.²⁶² No tax records were produced on July 10, 2020.²⁶³

At the August 2020 evidentiary hearing, Mr. Ortega stated Community Union was “delinquent in a lot of the tax filing.”²⁶⁴ CPED asked Mr. Ortega

²⁵⁶ D.09-04-009 at 32, Cal.App. LEXIS 512 (2015).

²⁵⁷ 49 CPEC2d at 190, *citing* D.90-07-029 at 3 – 4.

²⁵⁸ CPED-01 Ex. 7 at 2 (Paragraph number 10).

²⁵⁹ CPED-01 Ex. 20 at 3 (Question 2).

²⁶⁰ Motion of the Consumer Protection and Enforcement Division Compelling Responses to Data Requests from Larry Ortega and Community Union Inc. and Shortening Time for Response; Proposed Order, March 25, 2020 at Att. L (Question 5).

²⁶¹ CPED-05 Att. 5, Att. 10 (Notes associated with Question 5).

²⁶² CPED-05 Att. 10 (Notes associated with Question 5).

²⁶³ *Id.*

²⁶⁴ Evidentiary Hearing Transcript, August 26, 2020 at 405:18 – 406:7.

whether he had filed taxes for income he received from the CASF grant, Mr. Ortega stated: “I do not know.”²⁶⁵ Although Community Union asserted it was a “small non-profit,”²⁶⁶ in financial hardship, Community Union did not make tax records available at any time during this proceeding. Furthermore, Community Union’s annual revenue assertions are unsupported by tax filings.

On September 25, 2020, the assigned ALJ gave notice of intent to take official notice of public records from the California Secretary of State, the Department of Justice, and the Internal Revenue Service, pre-marked as CPED-05 Att. 11, CPED-05 Att. 12, and CPED-05 Att. 13 respectively.²⁶⁷ The California Secretary of State record on Community Union showed that the organization was registered in 1993 and amended in 2004.²⁶⁸ Records of the Department of Justice, Office of the Attorney General, showed that Community Union had a delinquent registry status as a public benefit organization because the registration expired on November 10, 2003.²⁶⁹ The Internal Revenue Service tax exempt organization record showed that on November 15, 2012, the Internal Revenue Service automatically revoked the federal exempt 501(c)(3) status of

²⁶⁵ Evidentiary Hearing Transcript, August 27, 2020, 680:22 - 680:28.

²⁶⁶ Case Management Conference, May 4, 2020, 78:13 – 78:17; CPED-23 (Stating in response to Question 16 “Community Union is a very small non-profit organization. Members working with Community Union during the period of the grant were hired as consultants,” and response to Question 17 “Community Union is a very small non-profit organization. No officers were paid.”); Community Union, Inc.’s Motion for an Extension of Time for Discovery Cut-Off, June 16, 2020, at 2 (stating “we are under extreme financial challenges.”); Evidentiary Hearing Transcript, August 26, 2020, 406:3; Community Union Reply Brief, September 28, 2020 at 6 (stating Community Union is a “small nonprofit from East L.A.”).

²⁶⁷ Administrative Law Judge’s Ruling Giving Notice of Intent to Take Judicial Notice and Request for Comments, September 28, 2020.

²⁶⁸ CPED-05 Att. 11.

²⁶⁹ CPED-05 Att. 12.

Community Union for not filing a Form 990 series return or notice for three consecutive years.²⁷⁰

Given the Commission's legitimate interest in the financial state of CASF grant recipients and with the exercise of its compliance oversight by requesting financial records, Community Union had a duty to keep the Commission appraised of changes to its tax status and provide relevant tax records. Initially, Community Union misled the Commission by failing to produce tax records in response to CPED's data requests, with claims that the records were lost. Subsequently, Community Union testified under oath that it was delinquent in tax filings, and yet it did not know whether Community Union filed its taxes. Community Union's behavior and testimony show a continuing effort to evade CPED's data requests and a lack of candor to the Commission. Even though Community Union had the ability to discover and verify the facts, it did not. The Assigned ALJ takes official notice of the public records from the California Secretary of State, the Department of Justice, and the Internal Revenue Service, which are examples of records Community Union could have used to update the Commission.

By a preponderance of the evidence, the record shows that Community Union exhibited a lack of candor, withheld information, and failed to submit correct or updated records to the Commission in violation of Rule 1.1. This Rule 1.1 violation triggered penalties pursuant to Pub. Util. Code §§ 2111 and 2108.

²⁷⁰ CPED-05 Att. 13.

Penalties are calculated at a minimum of \$500 or a maximum of \$50,000 for each offense.²⁷¹ For a continuing violation, every violation each day is a separate and distinct offense, subject to a separate penalty.²⁷² Community Union's lack of candor and duty to update the Commission occurred as early as 2017, when it should have responded to CPED's July 21, 2017 data request. However, to simplify the penalty calculation, we find Community Union violated Rule 1.1 for 93 days, from May 26, 2020, when Mr. Ortega communicated to CPED that the tax records were lost,²⁷³ until August 27, 2020, when Mr. Ortega testified regarding Community Union's tax records.²⁷⁴ This decision assesses a penalty of \$46,500 at \$500 per day.

7.4. Violation 18: Community Union Engaged in Harassment and Disrespectful and Unprofessional Behavior at the Evidentiary Hearing

CPED alleged that Community Union engaged in harassment and disrespectful and unprofessional behavior at the evidentiary hearing.²⁷⁵ Rule 1.1 requires any person at a hearing to "maintain the respect due to the Commission, members of the Commission and its ALJs; and never to mislead the Commission or its staff by any artifice or false statement of fact or law." The party claiming the violation must establish the fact by a preponderance of the evidence.²⁷⁶

²⁷¹ Pub. Util. Code, § 2111.

²⁷² Pub. Util. Code, § 2108.

²⁷³ CPED-05 Att. 5, Att. 10 (Notes associated with Question 5).

²⁷⁴ Evidentiary Hearing Transcript, August 27, 2020, 680:22 - 680:28. 93 days multiplied by \$500 per day equals \$46,500.

²⁷⁵ CPED Opening Brief at 32, 44.

²⁷⁶ D.09-04-009 at 32.

During the evidentiary hearing, when the assigned ALJ was evaluating Community Union's exhibits for admission, there appeared to be a Community Union exhibit that was identical to a CPED exhibit.²⁷⁷ The assigned ALJ ordered the parties to compare the exhibits off the record, while taking a five minute break.²⁷⁸ Upon returning to the evidentiary hearing, which was held remotely via Webex, the assigned ALJ witnessed Mr. Ortega of Community Union harassing the CPED attorney, stating loudly "Why are you objecting to this? Why can't you just let everything in?"²⁷⁹ The assigned ALJ admonished Mr. Ortega.²⁸⁰

Mr. Ortega's behavior violated Rule 1.1 for three reasons. First, in violation of maintaining the respect due to the Commission and the court room, Mr. Ortega attempted to bully the opposing counsel into agreeing to admit evidence without the threshold requirements of establishing the legal foundation and relevance. Secondly, Mr. Ortega attempted to influence the opposing counsel contrary to the California Bar Rules of Professional Conduct, which states an attorney must advocate for the client with competence and diligence.²⁸¹ To "just let everything in" is contrary to that defined professional responsibility. Thirdly, this is one of many examples where Mr. Ortega was disrespectful and unprofessional with regards to the Commission and its process, unrelated to arguing a set of facts or applicable law, beyond what could be characterized as aggressive advocacy. Community Union's delay tactics and uncooperative

²⁷⁷ Evidentiary Hearing Transcript, August 27, 2020, 548:26 – 551:15.

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 551:17 – 551:26.

²⁸⁰ *Id.* at 551:25 – 552:25.

²⁸¹ California Bar Rules of Professional Conduct, November 1, 2018, Rule 1.1, Rule 1.3.

behavior impeding the Commission's oversight of Community Union and the NIU program are well documented.²⁸² The behavior continued after the initiation of the OII, when Community Union failed to answer the OII or appear at the prehearing conference. Even after being warned that repeated late filings were unacceptable,²⁸³ and after the 2020 Scoping Memo Amendment detailing Community Union's uncooperative behaviors that disrupted the Commission's process,²⁸⁴ Community Union requested unwarranted extensions. On October 14, 2020, the assigned ALJ granted Community Union's request for an extension to file reply comments.²⁸⁵ On October 23, 2020, the assigned ALJ granted Community Union's request to late-file its pre-trial brief and exceed the page limit.²⁸⁶ In both instances, Community Union did not re-tender the documents for permissive late filing. Community Union's behavior at the evidentiary hearing was offensive and unprofessional, the severity of which was compounded by prior acts that damaged the regulatory process.

By a preponderance of the evidence, the record shows that Community Union engaged in harassment and disrespectful and unprofessional behavior at the evidentiary hearing.

²⁸² See Section 6 and Section 7.

²⁸³ Email Ruling Granting Community Union's Motion Requesting Extension of Time for Answers to Consumer Protection and Enforcement Division's Data Request, May 18, 2020 (stating "Community Union has filed last minute extensions for multiple deadlines in this proceeding. This is not acceptable. Community Union, like all parties in this proceeding before the Commission, is expected to comply with the proceeding schedule and deadlines.")

²⁸⁴ Assigned Commissioner's Ruling Amending the Scope of the Proceeding, July 10, 2020, at 2 – 5.

²⁸⁵ Email Ruling Granting Motion for an Extension of Time to File Reply Comments to Administrative Law Judge's Notice of Intent to Take Judicial Notice, October 14, 2020.

²⁸⁶ Email Ruling Granting Community Union Inc.'s Request to Late-File the Pre-Trial Brief and Exceed Page Limit, October 23, 2020.

The Rule 1.1 violation triggered penalties pursuant to Pub. Util. Code §§ 2111 and 2108. The Commission has imposed penalties for bad faith behavior and advancing frivolous legal arguments.²⁸⁷ Here, it is necessary to impose a penalty to send a signal that Community Union's persistent disrespect for the Commission will not be tolerated or condoned. A penalty of \$1,000 is appropriate.²⁸⁸

7.5. Remaining 2020 Scoping Memo Issues

CPED argued that Community Union violated Rule 1.1 by engaging in prohibited *ex parte* communications.²⁸⁹ Rule 1.1 requires any person who "enters an appearance at a hearing, or transacts business with the Commission ... to comply with the laws of this State" "Ex parte" communications "concern any issues in a formal proceeding, other than procedural matters,"²⁹⁰ including written communications that take place between an interested person and a decisionmaker which do not occur "in a public hearing, workshop, or other public forum, that has been noticed to the official service list or on the record of the proceeding."²⁹¹ Communications related to procedural matters with any decision makers besides the assigned ALJ are prohibited.²⁹²

²⁸⁷ D.15-04-024 at 91, 352 (FOF 23 and FOF 25), 358 (COL 21); D.16-01-014 at 67, 158; *see* D.98-03-073 at 219, 224 - 227 (stating that the assigned ALJ has power to impose sanctions under the California Code of Civil Procedures for discovery violations, including bad faith actions or tactics, as necessary and appropriate in the proceeding); D.19-08-040 at 12 - 15 (affirming the factual finding of bad faith behavior held in D.16-01-014).

²⁸⁸ *See and contrast* D.90-06-061 (reducing the fine to \$1,000 because the respondent made efforts to be in compliance after the complaint was filed).

²⁸⁹ CPED Opening Brief at 32, 44.

²⁹⁰ Rule 8.1(b)(1).

²⁹¹ Rule 8.1(b).

²⁹² Rule 8.1 and Rule 8.2; Pub. Util. Code § 1701.2(g).

On June 3, 2020 and June 5, 2020, Mr. Ortega of Community Union emailed CPED's attorney, copying the assigned ALJ. The emails were mainly procedural in nature. At the June 6, 2020 status conference, the assigned ALJ warned Mr. Ortega that copying the ALJ without the entire service list is improper and make violations of the *ex parte* rules more likely.²⁹³ Mr. Ortega stated that he understood his failure and apologized.²⁹⁴ No other *ex parte* incidents occurred. Because the communications were mainly procedural, Community Union did not violate the *ex parte* rules prohibiting substantive communications and Rule 1.1.

The Scoping Memo Amendment asked whether Community Union violated Pub. Util. Code § 2112.²⁹⁵ For a person or an employee of a corporation who "fails to comply with any order, decision, rule, direction, demand, or requirement of the commission," "in a case in which a penalty has not otherwise been provided for such a person," § 2112 permits a fine not exceeding \$1,000, or imprisonment not exceeding one year, or both.²⁹⁶ This decision has already assessed the penalties as appropriate for the associated violating acts; therefore, imposing additional penalties pursuant to § 2112 is unnecessary.

8. Remedial Actions

8.1. Restitution

If a CASF grant recipient "fails to complete the project, in accordance with the terms of approval granted by the Commission, the recipient will be required to reimburse some or all of the CASF Consortia Grant Account moneys that it has

²⁹³ Status Conference Transcript, June 6, 2020, 4:12 – 5:7.

²⁹⁴ *Id.* at 5:8 – 5:15.

²⁹⁵ Assigned Commissioner's Ruling Amending the Scope of the Proceeding, July 10, 2020.

²⁹⁶ Pub. Util. Code § 2112.

received....”²⁹⁷ As discussed in Sections 6.1.1 through 6.1.7, *supra*, CPED has proved by a preponderance of the evidence that Community Union did not perform according to the NIU program Action Plan, Work Plan, and budget as promised. Upon breach of the terms of the contract, Community Union must return funds due to noncompliance. Discussed in more detail below, this decision orders Community Union to return \$162,109 to CASF.

CPED argued that Community Union should return between \$61,438 to \$247,000 in CASF grant money.²⁹⁸ CPED calculated \$61,438 based on the August 18, 2020 summary chart by Community Union with purported revenues and expenses.²⁹⁹ The August 18, 2020 summary chart was sponsored by Mr. Ortega, but he failed to qualify himself as an expert in accounting, presented no information on his education, experience, or background related to accounting.³⁰⁰ The summary chart lacked supporting accounting records and source documents³⁰¹ and no reasons were given as to why the chart was not available at the time of the audit. The summary chart was unreliable, consequently, the calculations based on the summary chart were unreliable as well.

At the evidentiary hearing, the witness for the State Controller’s Office opined that Community Union received \$247,000 more than what it was entitled to in CASF funds. The witness based his calculation on the total program

²⁹⁷ D.11-06-038 at 41 – 42 (OP 20); Resolution T-17355 at 14 (OP 4).

²⁹⁸ CPED Opening Brief, September 10, 2020, at 36 – 38.

²⁹⁹ CPED-26. *See* fn. 167 and associated text.

³⁰⁰ Evidentiary Hearing Transcript, August 26, 2020, 524:25 – 525:4, August 27, 2020, 545:7 – 545:11. *See* fn. 57.

³⁰¹ Evidentiary Hearing Transcript, August 26, 2020, 546:22 – 547:22; 673:8 – 674:21.

expenses of \$438,419³⁰² and non-CASF money received by Community Union identified in the August 18, 2020 summary chart.³⁰³ Again, because the summary chart was unreliable, the calculation of \$247,000 based on the summary chart was unreliable as well.

More reliable is the independent investigation of the State Controller's Office, the Audit Report, the CPED Staff Report, and the record, which support a finding that Community Union must return \$162,109. The table below explains the calculation:³⁰⁴

³⁰² *Id.*, 606:21 – 606:23.

³⁰³ *Id.*, 607:9 – 607:12.

³⁰⁴ CPED-24 Ex. 2.

Audited (Allowable) Program Costs	\$438,419
Less Amount Retained by Fiscal Agent, Korean Churches for Community Development	(\$58,450)
Adjusted Allowable Program Costs for Community Union	\$379,969
CASF Allocated Allowable Program Cost at 39%	\$148,188
CASF Payments	\$368,747
Less Allocated Allowable Program Cost at 39%	(\$148,188)
Excess Community Union Received from CASF	\$220,559
Less the Amount Retained by the Fiscal Agent, Korean Churches for Community Development	(\$58,450)
Total CASF Overpayment to Community Union	\$162,109

The Audit Report concluded that allowable program costs were \$438,419.³⁰⁵ After subtracting the expenses claimed by the fiscal agent, the allowable cost for Community Union was \$379,969.³⁰⁶ According to the budget submitted by Community Union, 39% of the program cost should be covered by the CASF grant, totaling \$148,188, while 61% should be covered by other funding sources.³⁰⁷ The total CASF grant reimbursement was \$368,747.³⁰⁸ The Coalition received \$220,559 in excess of what should have been covered by the CASF grant, which equals the total CASF grant reimbursement (\$368,747) less the 39% that should be covered by the CASF grant (\$148,188).³⁰⁹ The amount Community

³⁰⁵ CPED-02 at 10, 20.

³⁰⁶ CPED-24 Ex. 2.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

Union must return equals the excess of what should have been covered by the CASF grant (\$220,559), reduced by the amount retained by the fiscal agent (\$58,450).³¹⁰ Community Union must return \$162,109.³¹¹

In its defense, Community Union claimed that the Audit Report findings did not include all the allowable expenses. In Community Union's view, the Audit Report was unreliable because the State Controller's Office discounted Activities 1, 2, and 3 and that it incorrectly used 10 out of the 13 quarters of expenses incurred. Community Union argued the State Controller's Office was wrong to use estimated numbers.³¹² Lastly, Community Union argued that the Commission owes Community Union payments for legitimate work pursuant the CASF grant.³¹³ Community Union's arguments are unsupported by the record.

First, as explained in Section 6.1.2, *supra*, Community Union must meet the performance metrics of all seven activities of the NIU program. By Year 2, it was behind in four out of the seven activities. Contrary to Community Union's argument, meeting performance metrics for Activities 1, 2, and 3 do not mitigate the failure to meet performance metrics for all seven activities. Also, Community Union's argument that Activities 1, 2, and 3 should be valued differently has no factual basis. Community Union's pre-marked exhibit CU-01 purportedly showed examples of Community Union's work, but CU-01 could not be admitted because it was missing from the exhibit packet and Community Union

³¹⁰ CPED-24 Ex. 1.

³¹¹ CPED-24 Ex. 2.

³¹² ; Community Union Case Management Statement, March 20, 2020, at 2; Community Union Opening Brief, September 14, 2020, at 8 - 11.

³¹³ *Id.* at 6.

failed to establish a foundation for the exhibit or refer to it during its direct or cross examination.³¹⁴ Community Union's argument also failed to rebut the calculation of the \$162,109 it must return in restitution because it failed to address the 39 and 61 percentages for cost allocation.

Community Union's argument that the Audit Report should have included expenses for quarters 11, 12, and 13 is unsupported by the record.³¹⁵ Community Union included in its pre-marked exhibits the reimbursement packages for Quarter 11 (September 1, 2014 through November 30, 2014) and Quarter 12 (December 1, 2014 through February 28, 2015), which was the last half year of the CASF grant.³¹⁶ However, Community Union's direct testimony did not establish the foundation for the exhibit and the exhibit was not admitted.³¹⁷ Based on CD's assessment of Community Union's performance and pending the results of the audit, CD did not fund the last half year of the CASF grant.³¹⁸ Community Union failed to establish facts to show it was entitled to payment for Quarter 11 and Quarter 12. Because the audit's goal was to analyze the funded period of the CASF grant,³¹⁹ the State Controller's Office excluded appropriately

³¹⁴ Evidentiary Hearing Transcript August 26, 2020, 518:14 – 523:20 (evaluating CU-01, pre-marked and identified as “CU, INC. Samples of Student Attendance Databases Ranging from Y1Q1-Y3Q4”). CU-01 was missing from the August 26, 2020 exhibits packet. *See* fn. 57.

³¹⁵ *Id.*

³¹⁶ Evidentiary Hearing Transcript August 27, 2020, 683:19 – 684:11 (evaluating exhibit pre-marked as CU-29 “Y3Q3 and Y3Q4 complete Reimbursements Request”). *See* fn. 57.

³¹⁷ *Id.*

³¹⁸ CPED-01 Ex. 10, Ex. 12, Ex.15; CPED-04 at 14; CPED-07 at 4; Evidentiary Hearing Transcript, August 24, 2020, 60:11 – 61:2, 61:26 – 62:5.

³¹⁹ CPED-02 Att. 1 (Issue 2, Comment by State Controller's Office stating that “claims for the last two quarters; September 1, 2014 through March 1, 2015, were not included in the audit scope, as these claims have neither been accepted nor paid by the CPUC”).

the claims for the last half year of the grant.³²⁰ Likewise, Quarter 13 was excluded appropriately from the audit because Quarter 13 occurred after February 28, 2015, when the grant funding period ended.³²¹

Second, Community Union's argument that the Audit Report incorrectly used estimates when it could have used actual numbers is unsupported by the record. Community Union argued that the Audit Report was based on a sample set of .006% of the 40-hour training course.³²² As this decision explains in Section 6.1.3, *supra*, Community Union failed to maintain records according to generally accepted accounting principles and failed to immediately produce the records during the audit. Even with the records produced after the audit, the material was incomplete and contained errors.³²³ The State Controller's Office was forced to use estimated numbers because actual historical numbers from Community Union were either unreliable or unavailable.³²⁴ For example, the time cards made available to the State Controller's Office had the incorrect trainer name on the signature line or no signatures, the same invoice number was used for multiple trainers, the time cards did not match the invoiced hours, and some of the time cards were duplicates.³²⁵ The State Controller's Office

³²⁰ CPED-02 at 3, 8, Att. 1, Issue 1, Issue 2 (Comment by State Controller's Office stating that "claims for the last two quarters; September 1, 2014 through March 1, 2015, were not included in the audit scope, as these claims have neither been accepted nor paid by the CPUC"), Issue 41.

³²¹ CPED-04, *see* CPED Opening Brief, Sep. 10, 2020, at 37, 39 (removing Quarter 13, March 2015 to May 2015, from calculations because the CASF grant period ended on February 28, 2015).

³²² Community Union Reply Brief, September 28, 2020, at 4.

³²³ Evidentiary Hearing Transcript, Aug. 25, 2020, 211:13 - 211:19; CPED-04 at 15, 17; CPED-09 at 4.

³²⁴ CPED-04 at 15.

³²⁵ CPED-02 at 12, CPED-04 at 15; CPED-09 at 7.

supported its samples and findings with detailed notes and analysis of the audit methods and results.³²⁶

Lastly, we reject Community Union's argument that the Commission owed Community Union between \$1,355 to \$220,003 in CASF reimbursements.³²⁷ The calculations of \$600,000 worth of publicity Community Union achieved on behalf of the NIU program³²⁸ and the proposal to allocate 81% of the expenses to the CASF grant and remaining 19% to other sources,³²⁹ are unsupported by facts, documentation, or testimony.³³⁰

The record shows by a preponderance of the evidence that Community Union must return \$162,109 to due to noncompliance with the CASF grant and the failure to implement the NIU program in accordance with the terms of approval granted by the Commission. CPED requested that Community Union return CASF funds with interest, yet the record does not support this requirement or explain why it is necessary.

In addition to requiring Community Union to make restitution, CPED requested fines pursuant to Pub. Util. Code §§ 2111 and 2108 for Community Union's failure to implement the NIU program.³³¹ The Commission chooses not

³²⁶ CPED-09 Att. 9, Att. 10, Att. 11, Att. 12.

³²⁷ Community Union Opening Brief, September 14, 2020, at 9 – 10.

³²⁸ Community Union Reply Brief, September 28, 2020, at 3.

³²⁹ Community Union Opening Brief, September 14, 2020, at 9 – 10.

³³⁰ CU-06, pre-marked and identified by Community Union as "Larry Ortega's Meetings and Events Calendar, 3yrs CASF Related" could not be admitted because it was missing from the August 26, 2020 exhibits packet. Evidentiary Hearing Transcript Aug. 26, 2020, 525:5 – 526:24; *see* fn. 57.

³³¹ CPED Opening Brief, September 10, 2020, at 17, 21, 26 (seeking fines for acts such as the failure to maintain records, failure to provide information on non-CASF sources, and failure to substantiate its expenses).

to assess a separate penalty for Community Union's violations of D.11-06-038 and Resolution T-17355, as shown in Table 1, Section 5, *supra*. Discussed in more detail below, imposing an additional penalty is excessive given Community Union's small organizational size and estimated annual revenue.

8.2. Reasonableness of Penalty and D.98-12-075 Analysis

Table 2, Section 5, *supra*, shows the total penalty as \$959,500, composed of the \$3,000 for contempt violations and the \$956,500 for Rule 1.1 violations. Rule 1.1 penalties assessed pursuant to Pub. Util. Code §§ 2111 and 2108 are subject to the analysis set forth in D.98-12-075, which includes adjusting the penalty to ensure that it is adequate for deterrence without being excessive based on the entity's financial resources.³³²

When setting penalties, the Commission considers two general factors: 1) the severity of the offense, and 2) the conduct of the respondent.³³³ Additionally, the Commission considers the financial resources of the respondent, comparison to prior Commission decisions, and the totality of the circumstances.³³⁴ Discussing each criterion individually below, this decision concludes that it is reasonable to ban Community Union from receiving ratepayer funds from and participating in public purpose programs at the Commission in lieu of the \$959,500 penalty.

8.2.1. Severity of Offense

In the first criterion, the Commission determines the severity of the offense, in which the Commission considers physical harm, economic harm,

³³² D.98-12-075, 84 CPUC2d 155, 184 (1998).

³³³ *Id.* at 182 (1998).

³³⁴ *Id.* at 182 – 85 (1998).

harm to the regulatory process, and the number and scope of the violations. Economic harm includes the unlawful benefits gained by the respondent.

The economic harm is detailed in Section 9.1, *infra*, where this decision discusses the \$162,109 Community Union has unlawfully retained from the CASF grant. As for harm to the regulatory process, compliance violations are accorded a high level of severity because compliance is “absolutely necessary for the proper functioning of the regulatory process.”³³⁵ Here, Community Union refused to cooperate when the Commission exercised its oversight authority, including misrepresenting the class schedule and refusing to answer data requests. Community Union harmed the regulatory process by withholding information, failing to correct misinformation, and consequently misleading the Commission. Community Union’s obstructive behavior frustrated the Commission’s ability to review relevant information in order to assess Community Union’s compliance with the CASF grant. The facts of this proceeding exemplifies why compliance is absolutely necessary in order for the Commission to function properly.

Lastly, the severity of the offense is exacerbated by the number and scope of the violations. “A single violation is less severe than multiple offenses.”³³⁶ Here, this decision finds that Community Union violated Rule 1.1 multiple times and sometimes continuing in nature, including the failure to inform the Commission it changed the NIU program without Commission permission and misleading the Commission regarding its tax status. In both situations, Community Union had an ongoing duty to inform the Commission of the

³³⁵ *Id.* 182 – 83, 188 (1998); *see* Resolution ALJ-277.

³³⁶ D.98-12-075, 84 CPUC2d 155, 182.

program changes and to update the Commission with accurate information regarding its tax status. Similarly, Community Union failed to comply with the Commission's data requests, leading to continuing Rule 1.1 violations.

8.2.2. Conduct of the Respondent

In the second criterion, the Commission evaluates the conduct of the respondent by evaluating the following factors: the respondent's actions to prevent a violation, the respondent's actions to detect a violation, and the respondent's actions to disclose and rectify a violation.³³⁷

In this proceeding, Community Union failed to prevent violations and correct misinformation. For example, Community Union could have disclosed to the Commission the change to the 40-hour training course in Year 1 of the CASF grant, as soon as the change occurred, but Community Union did not. Community Union delayed and avoided answering requests from the State Auditor's Office for financial and accounting records. Community Union deliberately refused to answer the 2017 data request and never provided complete answers to the 2020 data request. Similarly, Community Union failed to update the Commission as to changes to its tax status and provide readily available relevant records. Community Union's conduct shows that even though it had the ability to comply with CASF grant requirements, it declined to do so and actively avoided doing so.

8.2.3. Financial Resources of the Respondent

The third criterion examines the financial resources of the respondent because the size of the fine should reflect the respondent's resources. When assessing the financial resources of the respondent, the Commission considers

³³⁷ *Id.* at 183.

the need for deterrence in the context of constitutional limitations on excessive fines.³³⁸ Due to Community Union's disregard for the Commission's authority, the regulatory process and the law, the numerous violations, a fine is necessary for deterrence. However, only an estimate of Community Union's revenue is available since Community Union never provided complete financial records.³³⁹

As discussed in Section 3.3, *supra*, Community Union received 80% of the CASF grant money provided to the Coalition. The Coalition received a total of \$368,747 and Community Union received \$295,334 of that total.³⁴⁰ Because Community Union was not forthcoming with records, CPED had to data request the five major investor-owned utilities that might have provided funding to Community Union³⁴¹ and schools Community Union identified as partners.³⁴² The data request responses showed that Community Union received approximately \$423,013 that was not disclosed to the State Controller's Office during the audit.³⁴³ This is similar to the Audit Report finding that Community Union had approximately half a million in cash proceeds in addition to the CASF grant.³⁴⁴ Based on the Audit Report and CPED's investigation, Community Union had an estimated total revenue of between \$718,347 and \$795,443 during the three-year CASF grant period.³⁴⁵ Assuming that Community Union's

³³⁸ D.98-12-075, 84 CPUC2d 155, 184 (1998).

³³⁹ See Section 7.3 (discussing the lack of complete information on revenue and expenses).

³⁴⁰ CPED-24 Ex. 2.

³⁴¹ CPEP-03 at 2.

³⁴² *Id.* at 2 – 3.

³⁴³ CPED-03 at 7, corrected by CPED-04 at 3 – 4.

³⁴⁴ CPED-02 at 24.

³⁴⁵ The minimum revenue for three years is the amount Community Union received from the CASF grant (\$295,334) plus (\$423,013), the amount determined by the CPED investigation,

Footnote continued on next page.

revenue over the three-year grant period was \$795,443, Community Union's estimated annual revenue was \$265,147.

Community Union's modest estimated annual revenue cannot cover the penalty assessed. Given that Community Union must make restitution in the amount of \$162,109, it is reasonable to ban Community Union from participating in and receiving ratepayer money from Commission programs in lieu of the penalty. The ban is discussed in detail in Section 8.3, *infra*.

8.2.4. Comparison With Prior Commission Decisions

The fourth criterion examines the Commission's precedent with reasonably comparable factual circumstances, and explains any substantial difference in outcome.³⁴⁶ Even though this case is unique in that it involves an extensive list of violations by a small organization, the cases below are relevant as comparisons to Community Union because they involve continuing violations that caused harm to the regulatory process.

- D.04-09-062, Conclusion of Law 4, stated that a violation of law existed for the period of January 1, 2000 to April 30, 2002 (849 days) and the utility should pay a penalty of \$10,000 per day, or \$8,490,000.
- D.02-10-059 at 43, fn. 43, stated that the utility is liable for a fine of \$500 to \$20,000 for every violation of the Pub. Util. Code or a Commission decision.

In addition, the Commission has imposed penalties based on failures to disclose data.

which equaled \$718,347. The maximum is the amount Community received from the CASF grant (\$295,334) plus (\$500,000), the amount estimated by the State Controller's Office, which equaled \$795,344. See CPED-02, CPED-03, CPED-24.

³⁴⁶ D.98-12-075, 84 CPUC2d at 184.

- D.01-08-019 found Sprint in violation of Rule 1.1 due to omissions in response to a data request and failure to bring the nondisclosure to the Commission's attention.
- D.15-04-008 imposed a penalty of \$15,000 for 58 data points that the California American Water Company failed to disclose.

Here, Community Union withheld information in numerous ways, including the failure to inform the Commission of changes to the NIU program, the failure to update the Commission as to the class schedule, and the failure to respond to data requests. The similarity between the behavior in the cases described above and the behavior of Community Union shows that a penalty is appropriate to deter future violations. Yet, due to Community Union's small size and limited financial resources it is reasonable to impose a ban in lieu of the penalty.

8.2.5. Totality of the Circumstances

The last criterion examines the totality of the circumstances in furtherance of the public interest. When assessing the unique facts of each case, the Commission examines the degree of wrongdoing and evaluates the harm from the perspective of the public interest.³⁴⁷

Community Union's actions prevented the Commission from exercising its basic function of compliance oversight. As exemplified by the numerous violations, Community Union refused to be transparent with regards to its finances and the NIU program implementation. It is in the public interest that any entity receiving a grant funded by ratepayers immediately make complete disclosures. Community Union, as the main decision maker and implementer of

³⁴⁷ D.98-12-075, 84 CPUC2d at 184.

the NIU program, with complete power over access to the records, failed to cooperate with CD, the State Controller's Office, and CPED.

During the three-year grant period and during the entirety of this proceeding, Community Union and Mr. Ortega exhibited a pattern of abuse and violations of the Commission's regulatory process and its procedural orders. Community Union, Inc. and Mr. Ortega exhibited a disregard for the law and the truth. In consideration of the totality of the circumstances, Community Union's degree of wrongdoing requires a penalty.

Nevertheless, Community Union's estimated annual revenue compared to the size of the penalty is a mitigating factor. The total \$959,500 penalty is excessive when compared to the estimated annual revenue of \$265,147. Another mitigating factor is the \$162,109 Community Union must pay in restitution. Because \$162,109 is already over half of the estimated annual revenue of \$265,147, it is reasonable to impose a ban in lieu of the total \$959,500 penalty. The ban is discussed in detail in the following section.

8.3. Ban from Receiving Funds from the Commission for Seven Years

CPED argued that Community Union should be banned from serving, managing, leading, assisting, benefitting or receiving public service funds for at least the next seven years.³⁴⁸ CPED argued that the ban is appropriate for the following reasons:

- Community Union failed to implement the NIU program according to the requirements of the CASF grant,
- Community Union failed to maintain the proper accounting records,

³⁴⁸ CPED Opening Brief, Sep. 10, 2020, at 32.

- Community Union failed to show expenses paid for by the CASF grant were not also paid by non-CASF sources,
- Community Union refused to respond to data requests,
- Community Union abused the discovery process, and
- Community Union tried to impede the efficient administration of justice.³⁴⁹

Pub. Util. Code § 701 states “The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” Here, Community Union agreed to be subject to the Commission’s jurisdiction upon approval of the NIU program grant application.³⁵⁰

This decision details Community Union’s numerous violations, beginning with changing the NIU program without Commission permission.³⁵¹ Community Union failed to maintain the appropriate accounting records and source documents to substantiate the reimbursements it received from the CASF grant.³⁵² Community Union failed to provide documentation of non-CASF resources, requiring CPED to expend time and resources to investigate other organizations when the information should have been readily available from Community Union.³⁵³ In addition to the failures related to the CASF grant,

³⁴⁹ *Id.* at 32 – 35.

³⁵⁰ D.11-06-038 at 36 (COL 9).

³⁵¹ *See* Section 6.1.1.

³⁵² *See* Section 6.1.3.

³⁵³ *See* Sections 6.1.5, 6.1.6, 8.1.

Community Union refused to cooperate with the State Controller's Office and CPED.³⁵⁴

The record shows Community Union is unfit to receive grant money funded by ratepayers because it cannot meet the formal accounting and documentation requirements, the performance requirements, and the necessary level of candor and respect for the law and truth.

The Commission has imposed other remedies to deter violations other than monetary penalties.³⁵⁵ The record supports CPED's request to ban Community Union for seven years. Due to the egregiousness of Community Union's conduct, it is prohibited from serving, managing, leading, assisting, benefitting or receiving public service funds from the Commission's grant programs for seven years.

8.4. Mr. Ortega's Personal Responsibility

CPED argued that the Commission should pierce the corporate veil pursuant to the alter ego doctrine and hold Mr. Ortega personally liable in addition to Community Union.³⁵⁶

To determine whether to pierce the corporate veil, the Commission evaluates the particular facts of the situation and examines: 1) whether there is a unity of interest and ownership such that the separate personalities of the corporation and the controlling individuals no longer exist; and 2) if an

³⁵⁴ See Sections 6.1.1 through 6.1.9, 6.2.1, 6.2.2, and Sections 7.1 through 7.4.

³⁵⁵ See D.02-05-028 (placing the respondent on a three-year probation and imposing a fine of \$19,000); D.16-01-014 (suspending respondent's license to operate); D.03-19-079 (denying permit to operate due to falsifying records and imposing a fine of \$10,200); D.96-04-004 (placing charter party carrier on probation for 18 months and imposing a fine of \$10,200).

³⁵⁶ CPED Opening Brief, September 10, 2020, at 48 – 50.

inequitable result will follow.³⁵⁷ The Commission examines a variety of factors, including the commingling of funds and other assets, the unauthorized diversion of corporate funds or assets to other than corporate uses, the treatment by an individual of the assets of the corporation as his own, failure to maintain minutes or adequate corporate records, use of a corporation as a mere shell, and the disregard of legal formalities, and the failure to maintain arm's length relationships among related entities.³⁵⁸

In the situation of Mr. Ortega and Community Union, there is a unity of interest and ownership such that the separate personalities of the corporation and the controlling individual do not exist. During the program implementation, the subsequent audit by the State Controller's Office, and the investigation by CPED, it became clear that Mr. Ortega had complete control over the management and business decisions of Community Union and the NIU program.³⁵⁹ It is nearly impossible to discuss Community Union without describing Mr. Ortega's actions.³⁶⁰ Mr. Ortega was involved in every aspect of the NIU program, including program design and implementation, preparing the Action Plan and Work Plan, and approving time cards, invoices, and records submitted to the Commission.³⁶¹ There was no other executive, employee, or accountant with the same degree of control over or knowledge of Community Union's operations.

³⁵⁷ *Automotriz etc. De California v. Resnick* (1957) 47 Cal. 2d 792, 796.

³⁵⁸ *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal. App. 2d 825, 838 – 840; D.14-08-033.

³⁵⁹ See Sections 3.3, 6.1.1, 6.1.2, 6.1.5, 6.1.6, 6.1.7.

³⁶⁰ See Sections 6.1.4, 6.1.9, 6.2.1, 7.1, 7.2.

³⁶¹ See Sections 1.3, 3.3, 6.1.3, 6.1.6, 8.1.

Community Union initially identified three witnesses who worked at Community Union.³⁶² Community Union did not produce tax records validating the employment period of the three employees. According to Mr. Ortega, there were no W-2s for employees because those working during the grant period were hired as consultants.³⁶³ One Community Union employee testified that she negotiated partnerships with community-based organizations and school districts³⁶⁴ and was responsible for collecting and organizing data for the reimbursement packages to the Commission.³⁶⁵ Despite the employee's involvement, the Memorandums of Understanding with numerous school districts and community organizations were signed by Mr. Ortega.³⁶⁶ The employee did not testify that she prepared or approved any documents.³⁶⁷ Community Union's presentation at the evidentiary hearing failed to refute the evidence in the record of Mr. Ortega's ultimate control over Community Union.

Furthermore, CPED proved by a preponderance of the evidence that there was no separation between the finances of Mr. Ortega and Community Union. Mr. Ortega and Community Union used the same bank account where deposits were made from the CASF grant and from which Mr. Ortega paid personal expenses.³⁶⁸ Mr. Ortega withdrew from the account money to pay for personal

³⁶² Community Union's Proposed Witness and Exhibit List, Aug. 10, 2020, Ex. 2.

³⁶³ CPED-23 (Response to Question 16).

³⁶⁴ Evidentiary Hearing Transcript, August 26, 2020, at 464:10 – 464:17.

³⁶⁵ *Id.* at 464:18 – 464:26, 465 – 466:10.

³⁶⁶ CPED-01, Ex. 31.

³⁶⁷ Evidentiary Hearing Transcript, August 471:22 – 472:10.

³⁶⁸ *See* Section 6.1.7.

medical services, a gym membership, and alcohol.³⁶⁹ Despite stating at the evidentiary hearing that sometimes he worked 60 – 70 hours a week for the NIU program,³⁷⁰ prior to the evidentiary hearing Mr. Ortega also stated “Community Union is a very small non-profit organization. No officers were paid” and no W-2s were available.³⁷¹ As the only officer of Community Union, Mr. Ortega treated the assets of the corporation as his own, disregarded corporate formalities, and failed to keep accounting records and establish internal controls, all of which leads to the conclusion that it is more likely than not that Mr. Ortega used CASF grant funds for personal expenses.³⁷²

At the evidentiary hearing, Mr. Ortega testified as the manager of overall operations of Community Union.³⁷³ Mr. Ortega testified as to the finances of Community Union.³⁷⁴ However, Mr. Ortega never established the foundation of his testimony, offered no resume, educational background, or experience with accounting, finances, and business administration.³⁷⁵ Community Union’s witnesses described Community Union as a “small” or “tiny” organization, further supporting Mr. Ortega’s ultimate control over all decisions and

³⁶⁹ CPED-04 at 10, 13.

³⁷⁰ Evidentiary Hearing Transcript, August 26, 2020, 408:14 – 409:3.

³⁷¹ CPED-23 (Response to Question 17).

³⁷² Section 6.1.3 details Community Union’s failure to maintain necessary corporate records such as source documentation and accounting records.

³⁷³ Community Union’s Proposed Witness and Exhibit List, August 10, 2020, Ex. 2.

³⁷⁴ Evidentiary Hearing Transcript August 26, 2020, 409:4 – 409:10.

³⁷⁵ See fn. 57.

operations in the organization.³⁷⁶ In short, there was no arm's length relationship between Community Union and Mr. Ortega as they were one in the same entity.

Secondly, inequity would result if Mr. Ortega escaped personal liability in this proceeding. Mr. Ortega either directed or was personally involved in all of the activities that resulted in the failure to implement the NIU program according to the terms approved by the Commission, the acts of contempt, and the Rule 1.1 violations. Because the finances of Community Union were commingled with Mr. Ortega's finances, it is impossible to determine the resources of Community Union without evaluating Mr. Ortega's personal resources. It would be inequitable if Mr. Ortega's assets were unreachable to satisfy this decision, allowing Mr. Ortega to benefit personally from the CASF grant without any liability.

CPED has proved by a preponderance of the evidence that the separate personalities of Community Union and Mr. Ortega do not exist, and that piercing the corporate veil is necessary in equity to recover ratepayer money. It is equitable for Mr. Ortega to be liable personally for the CASF grant violations and the consequences.

9. Other Issues

Community Union asserted that it stayed in the litigation process because Neri Rivas, Suzuki Figueroa, Debbie Janes, and Tere Coretes are allegedly owed \$10,000.³⁷⁷ Community Union did not present any evidence regarding each

³⁷⁶ Evidentiary Hearing Transcript August 26, 2020, 406:2 – 406:3; Evidentiary Hearing Transcript, August 27, 2020, 578:10 – 579:18.

³⁷⁷ Community Union Reply Brief, September 28, 2020, at 13.

person's contribution to the NIU program, including descriptions of each person's position, time cards, and invoices.³⁷⁸

Community Union claimed that the investigation and prosecution was in retaliation against Mr. Ortega's advocacy regarding the failure to provide internet connectivity to low-income Californians during the telecommunications mergers.³⁷⁹ Mr. Ortega's attempts to distract from the issue of this proceeding do not change the fact that Community Union was prosecuted for failing to maintain complete and accurate accounting records, failing to implement the NIU program, and for unlawfully retaining CASF money. Community Union failed to present any evidence to support the claim that the prosecution was related to Mr. Ortega's public comments on telecommunications mergers.

Community Union argued that the investigation was motivated by racism.³⁸⁰ Community Union requested the personnel file of a prior employee of CD to discover evidence of racism.³⁸¹ Community Union offered no facts to show Community Union was connected in any way to the employee's personnel records, as such, Community Union's discovery request was denied. Community Union's speculations have no basis in fact or law.

³⁷⁸ Community Union's witnesses were Larry Ortega, Magdalena Duran, Alicia Clark, Rachelle Arzmendi, Monica Contreras, and Robert Sera. Evidentiary Hearing Transcript, August 26, 2020, 372 - 402, 444 - 449, 463 - 468, 484 - 491, 504 - 510; Evidentiary Hearing Transcript, August 27, 2020, 566 - 588. No witness testified as to the \$10,000 owed to Neri Rivas, Suzuki Figueroa, Debbie Janes, and Tere Coretes.

³⁷⁹ Community Union Reply Brief, September 28, 2020, at 3 - 4.

³⁸⁰ Community Union Opening Brief, September 14, 2020, at 5; Community Union Reply Brief, September 28, 2020, at 13.

³⁸¹ Law and Motion Hearing Transcript, August 3, 2020, 6 - 7.

10. Administrative Matters

In this proceeding, the assigned ALJ has issued rulings in response to the various motions filed by the parties. This decision affirms all rulings issued in this proceeding. Those motions and requests not expressly ruled on are deemed denied.

This matter was submitted on October 2, 2020, when CPED filed opening comments on the assigned ALJ's intent to take official notice of government records.³⁸² Community Union was given permission to late-file reply comments with the filing date of October 12, 2020.³⁸³ Community Union did not re-tender its comments for permissive late filing according to Rule 11.6.

11. Assignment of the Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Zhen Zhang is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The California Advanced Services Fund Consortia Account grant was designed to fund projects to bridge the digital divide, promote broadband deployment, access, and adoption, and fund the cost of broadband deployment activities other than the capital cost of facilities

2. In 2011, the Commission adopted procedures and guidelines regarding the California Advanced Services Fund Consortia Account grant's application, evaluation, and selection process.

³⁸² Consumer Protection and Enforcement Division's Opening Comments on Administrative Law Judge's Ruling Giving Notice of Intent to Take Judicial Notice and Request for Comments, October 2, 2020.

³⁸³ Email Ruling Granting Motion for an Extension of Time to File Reply Comments to Administrative Law Judge's Notice of Intent to Take Judicial Notice, October 14, 2020.

3. The required California Advanced Services Fund Consortia Account grant application packet included an action plan, work plan, budget, and consent form.

4. Applicants were required to submit a detailed proposed budget, stating the expected costs related to the work plan. Grant recipients were required to report funds from other sources because the Commission had to ensure that the California Advanced Services Fund Consortia Account grants did not provide duplicate funding.

5. As a condition of receiving the funds, the Commission required grantees to submit to the Commission's jurisdiction, subject to the Commission's "continuing oversight of grant disbursements to ensure that funds are spent on authorized functions that meet set objectives and timelines specified in grantee's applications."

6. On February 21, 2012, the Commission authorized a California Advanced Services Fund Consortia Account grant in the amount of \$450,000 to the California's One Million New Internet Users Coalition for three years: Year 1 (March 1, 2012 – February 28, 2013), Year 2 (March 1, 2013 – February 28, 2014), Year 3 (March 1, 2014 - February 28, 2015), which the Coalition would use to bridge the internet divide for low income communities.

7. The California's One Million New Internet Users Coalition was composed of five organizations in the Los Angeles area: Community Union, Inc. plus four other organizations (the Asian Pacific Community Fund, Black Business Association, Korean Churches for Community Development, and Soledad Enrichment Action – Charter Schools). Korean Churches for Community Development agreed to be the fiscal agent for the Coalition.

8. During the California Advanced Services Fund Consortia Account grant and through the course of this proceeding, Community Union, Inc. and

Larry Ortega exhibited a pattern of abuse and violations of the Commission's regulatory process and its procedural orders.

9. Community Union, Inc. has failed to offer credible legal or factual support for the claim that all liability was assumed by Korean Churches for Community Union via the Fiscal Agent Agreement.

10. During the first two years of California Advanced Services Fund Consortia Account grant, Community Union, Inc. did not meet the performance metric of having 790 attendees in the 40-hour training course annually as required by the Action Plan and Work Plan.

11. Community Union, Inc. did not implement the 40-hour training course with 40 hours of in-class instruction as required by the Action Plan and Work Plan.

12. Community Union, Inc. did not notify the Communications Division at least 30 days before reducing the 40 hours of in class instruction as required by the Commission adopted grant procedures and guidelines.

13. Community Union, Inc. unilaterally changed the 40-hour training course design without first securing Commission approval.

14. During the first year of California Advanced Services Fund Consortia Account grant, Community Union, Inc. did not meet the performance metric of conducting 514 post graduate modules as required by the Action Plan and Work Plan.

15. During the second year of the California Advanced Services Fund Consortia Account grant, Community Union, Inc. did not meet the performance metric for the required number of community organization administrators entering into memorandums of understanding to establish empowerment hubs as required by the Commission adopted grant procedures and guidelines.

16. During the second year of the California Advanced Services Fund Consortia Account grant, Community Union, Inc. did not meet the performance metric for the required number of parents appearing at orientation meetings at empowerment hubs and applying for the 40-hour training course.

17. During the three-year period of the California Advanced Services Fund Consortia Account grant, Community Union, Inc. did not meet the performance requirements of all seven activities of the Work Plan.

18. Community Union, Inc. submitted to the California State Controller's Office a document similar to a check register, called "general ledger," which did not record all revenues and expenses under generally acceptable accounting practices.

19. Community Union, Inc. failed to immediately provide records and documentation in response to demands by the California State Controller's Office.

20. Community Union, Inc. is not entitled to payment for any of its expenses from the California Advanced Services Fund Consortia Account after the first ten quarters of the grant.

21. The November 2015 Audit Report by the California State Controller's Office correctly excluded expenses for Quarter 11 (September 1, 2014 - November 30, 2014) and Quarter 12 (December 1, 2014 - February 28, 2015) because those expenses were neither processed nor paid.

22. Community Union failed to establish facts to show it was entitled to payment for Quarter 11 and Quarter 12.

23. Expenses for Quarter 13 (post-February 28, 2015) were correctly excluded from the November 2015 Audit Report as they were outside of the California Advanced Services Consortia Account grant period.

24. The California State Controller's Office appropriately used estimated numbers because accurate and complete historical records were not provided by Community Union, Inc.

25. Community Union, Inc. retained \$295,344 from the California Advanced Services Fund Consortia Account grant.

26. Community Union, Inc. did not substantiate the reimbursements paid by the California Advanced Services Fund Consortia Account grant in the amount of \$295,344.

27. Community Union, Inc. proposed for the California's One Million New Internet User Coalition program funding in the amount of 39% from the California Advanced Services Fund Consortia Account and 61% from other sources, which the Commission approved.

28. Community Union, Inc. did not produce records showing the allocation of expenses to the California's One Million New Internet User Coalition program based on the 39 and 61 percentages.

29. Community Union, Inc. failed to provide to the California State Controller's Office and to the Consumer Protection and Enforcement Division the accounting records for all funding sources.

30. Community Union, Inc. failed to expressly exclude any costs for activities or programs within the California Advanced Services Fund Consortia Account region that were separately funded by non-California Advanced Services Fund sources.

31. Community Union, Inc. used the California Advanced Services Fund Consortia Account grant for expenses or items that were not authorized or allowable pursuant to the California Advanced Services Fund Consortia Account grant.

32. Community Union, Inc. failed to respond to and comply with the April 18, 2016 demand letter issued by the Communications Division.

33. Community Union, Inc.'s failure to respond to and comply with the April 18, 2016 demand letter was willful, inexcusable, and exhibited an indifference to the Commission's authority.

34. The adjusted allowable program cost for Community Union, Inc. is \$379,969.

35. The allocated allowable program cost for Community Union, Inc. is \$148,188 (39% of \$379,969).

36. The total California Advanced Services Fund reimbursements equal \$368,747.

37. The California Advanced Services Fund Consortia Account paid \$220,559 in excess of what it should have paid (\$368,747 (California Advanced Services Fund Consortia Account reimbursements) minus \$148,188 (allowable program cost for Community Union, Inc.)).

38. The California Advanced Services Fund Consortia Account paid Community Union, Inc. \$162,109 in excess of what it should have paid (\$220,559 (total California Advanced Services Fund Consortia Account overpayment) minus \$58,450 (money retained by Korean Churches for Community Development)).

39. Community Union, Inc.'s claim that the Commission owes it between \$1,355 to \$220,003 is unsupported by the record.

40. Community Union, Inc. failed to respond to the July 21, 2017 data request by the Consumer Protection and Enforcement Division, as ordered by the assigned ALJ's June 22, 2020 ruling granting Consumer Protection and Enforcement Division's motion to compel responses to data requests.

41. Community Union, Inc.'s failure to respond to the July 21, 2017 data request was willful, inexcusable, and exhibited an indifference to the Commission's authority.

42. As required by the Commission-adopted California Advanced Services Fund Consortia Account grant procedures and guidelines, Community Union, Inc. had a duty to update the Commission regarding the schedule of classes.

43. Community Union, Inc. misled the Commission and failed to correct misrepresentations related to the schedule of classes when the Communications Division staff member attempted to conduct site visits in October 2014.

44. Community Union had a duty to keep the Commission appraised of changes to its tax status and provide relevant tax records.

45. Community Union failed to update the Commission regarding changes to its tax status.

46. Community Union failed to provide tax records as required by the Commission.

47. Community Union Inc. failed to respond completely and in a timely manner to the February 21, 2020 data request by the Consumer Protection and Enforcement Division, as ordered by the assigned ALJ's June 22, 2020 ruling granting Consumer Protection Enforcement Division's motion to compel responses to data requests.

48. Community Union Inc.'s failure to respond completely to the February 21, 2020 data request was willful, inexcusable, and exhibited an indifference to the Commission's authority.

49. Community Union, Inc. engaged in harassment and unprofessional and disrespectful behavior during the evidentiary hearing.

50. Larry Ortega had complete control over the management and business decisions of Community Union, Inc.

51. Larry Ortega had complete control over the operational and budget decisions related to the implementation of the California's One Million New Internet Users Coalition program.

52. Community Union, Inc. and Larry Ortega received 80% of the California Advanced Services Fund Consortia Account grant reimbursements.

53. Community Union, Inc., the business entity, and Larry Ortega the person, do not exist as separate entities.

54. There was no separation between the finances of Larry Ortega and Community Union, Inc.

55. Money from the California Advanced Services Fund Consortia Account grant was not held in its own individual account by Community Union, Inc.

56. Community Union, Inc. is a small organization, with Larry Ortega as its main employee.

57. During the three-year California Advanced Services Fund Consortia Account grant period, Community Union's estimated annual revenue was \$265,147.

58. Community Union is unfit to receive grant money funded by ratepayers because it cannot meet the formal accounting and documentation requirements, the performance requirements, and the necessary level of candor and respect for the law and truth.

Conclusions of Law

1. The Fiscal Agent Agreement does not shield Community Union, Inc. from responsibilities and liabilities associated with the California Advanced Services Fund Consortia Account grant.

2. Community Union, Inc. demonstrated a reckless disregard for the Commission, the regulatory process, the law, and the truth.
3. Community Union, Inc. violated D.11-06-038 and Resolution T-17355 by failing to comply with terms of the California Advanced Services Fund Consortia Account grant.
4. Community Union, Inc. violated D.11-06-038 and Resolution T-17355 by failing to implement the California's One Million New Internet Users Coalition program described in its Action Plan and Work Plan in accordance with the terms of approval granted by the Commission.
5. Community Union, Inc. failed to maintain and produce records and documentation according to the requirements of D.11-06-038 and Resolution T-17355.
6. Community Union, Inc. violated D.11-06-038 and Resolution T-17355 by failing to produce sufficient documentation and detailed information of their non-California Advanced Services Fund sources.
7. Community Union, Inc. violated D.11-06-038 and Resolution T-17355 by failing to expressly exclude expenses covered by non-California Advanced Services Fund sources from reimbursement requests to the Commission.
8. Community Union, Inc. violated D.11-06-038 and Resolution T-17355 by collecting reimbursements from the California Advanced Services Fund Consortia Account grant covered by other funding sources.
9. In accordance with D.11-06-038 and Resolution T-17355, the Communications Division appropriately withheld funding for Quarter 11 and Quarter 12 due to the failure of Community Union, Inc. to meet performance metrics and the failure to implement the program in accordance with the terms of approval granted by the Commission.

10. Community Union, Inc. should refund to the Commission \$162,109 it retains unlawfully from the California Advanced Services Fund Consortia Account grant.

11. Based on a preponderance of the evidence, Community Union, Inc. violated Rule 1.1 by misrepresenting the schedule of classes and by failing to update the schedule, when the Communications Division staff member attempted to conduct a site visit in October 2014.

12. A penalty of \$4,500 should be assessed against Community Union, Inc. for violating Rule 1.1 for nine days by misrepresenting the schedule of classes and by failing to update the schedule.

13. Based on a preponderance of the evidence, the record shows that Community Union, Inc. violated Rule 1.1 by failing to disclose changes to the 40-hour training course.

14. A penalty of \$353,500 should be assessed against Community Union, Inc. for violating Rule 1.1 for 707 days by failing to inform the Communications Division of changes to the 40-hour training course.

15. It has been proven beyond a reasonable doubt, Community Union, Inc. acted in contempt by disobeying the Communications Division's April 18, 2016 demand letter for the return of a portion of the California Advanced Services Fund Consortia Account grant.

16. A penalty of \$1,000 should be assessed against Community Union, Inc. for contempt due to its act of refusing to comply with the Communications Division's April 18, 2016 demand letter.

17. It has been proven beyond a reasonable doubt, Community Union, Inc. acted in contempt by failing to respond to the July 21, 2017 data request by the Consumer Protection and Enforcement Division.

18. A penalty of \$1,000 should be assessed against Community Union, Inc. for contempt due to its failure to respond to the Communications Division's July 21, 2017 data request.

19. It has been proven by a preponderance of the evidence, Community Union, Inc. violated Rule 1.1 by failing to respond to the July 21, 2017 data request.

20. A penalty of \$465,500 should be assessed against Community Union, Inc. for violating Rule 1.1 for 931 days by refusing to respond to the July 21, 2017 data request.

21. It has been proven beyond a reasonable doubt, Community Union, Inc. acted in contempt by failing to respond to the February 21, 2020 data request.

22. A penalty of \$1,000 should be assessed against Community Union, Inc. for contempt due to its failure to respond completely and in a timely manner to the February 21, 2020 data request.

23. By a preponderance of the evidence, the record shows that Community Union, Inc. violated Rule 1.1 by failing to respond completely and in a timely manner to the February 21, 2020 data request.

24. A penalty of \$85,500 should be assessed against Community Union, Inc. for violating Rule 1.1 for 171 days by failing to provide timely and complete responses to the Communications Division's February 21, 2020 data request.

25. By a preponderance of the evidence, the record shows that Community Union violated Rule 1.1 by failing to inform the Commission of changes to its tax status and failing to provide relevant tax records.

26. A penalty of \$46,500 should be assessed against Community Union, Inc. for violating Rule 1.1 for 93 days by failing to inform the Commission of changes to its tax status and failing to provide relevant tax records.

27. By a preponderance of the evidence, the record shows that Community Union, Inc. violated Rule 1.1 by engaging in harassment and disrespectful and unprofessional behavior at the evidentiary hearing.

28. A penalty of \$1,000 should be assessed against Community Union, Inc. for violating Rule 1.1 by engaging in harassment and disrespectful and unprofessional behavior at the evidentiary hearing.

29. Community Union should make restitution to the California Advanced Services Fund Consortia Account in the amount of \$162,109.

30. Pursuant to analysis of the factors set forth in Decision 98-12-075, the total penalty of \$959,500 is reasonable due to the number of violations and severity of the offenses; however, due to mitigating factors the penalty should be adjusted to ensure it is adequate for deterrence without being excessive.

31. Based on Community Union Inc.'s small organizational size, its estimated annual revenue of \$265,147, and the \$162,109 it must return to the California Advanced Services Fund, it is reasonable to impose a ban in lieu of the \$959,500 penalty.

32. In lieu of the \$959,500 penalty for contempt violations and Rule 1.1 violations, Community Union, Inc. should be banned from receiving ratepayer funds from the Commission and should be precluded from serving, managing, leading, assisting, benefitting, or participating in any public purpose programs administered by the Commission for seven years.

33. The ban of Community Union, Inc. from receiving ratepayer funds from the Commission and from serving, managing, leading, assisting, benefitting, or participating in any public purpose programs administered by the Commission for seven years is reasonable, in the public interest, and should be approved

given Community Union, Inc.'s numerous violations, many of which span over years, and the high level of severity.

34. By a preponderance of the evidence, the record shows that Community Union, Inc., the business entity, and Larry Ortega, the person, do not exist as separate entities.

35. By a preponderance of the evidence, the record shows that inequity would result if Larry Ortega was not held personally responsible for the referenced violations of/by Community Union, Inc.

36. Pursuant to the alter ego doctrine, the Commission should pierce the corporate veil and hold Larry Ortega personally liable for the violations, the return of the California Advanced Services Fund money, and the ban.

O R D E R

IT IS ORDERED that:

1. No later than October 1, 2021, Community Union, Inc. and Larry Ortega shall return to the Commission \$162,109 of the California Advanced Services Fund Consortia Account grant it received unlawfully, by check or money order payable to the California Public Utilities Commission, mailed or delivered to the California Public Utilities Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Community Union, Inc. and Larry Ortega shall write on the face of the check or money order "For deposit to the California Advanced Services Consortia Fund Account pursuant to Decision _____."

2. In lieu of the \$959,500 total penalty for contempt violations and violations of and Rule 1.1 of the Commission's Rules of Practice and Procedure, Community Union, Inc. and Larry Ortega are banned from receiving ratepayer funds from the Commission and are precluded from serving, managing, leading, assisting, benefitting, or participating in any public purpose programs

administered by the Commission for seven years, starting on the date of this decision.

3. Any requests and motions, not expressly granted or otherwise ruled on, are denied.

4. Investigation 18-07-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Appearances

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(End of Appendix A)