

Docket: : I.18-07-009
Exhibit Number : _____
Commissioner : Rechtschaffen
Admin. Law Judge : Zhang
:
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**CONSUMER PROTECTION
AND ENFORCEMENT DIVISION
CALIFORNIA PUBLIC UTILITIES COMMISSION**

**DIRECT TESTIMONY

OF

BRIAN HOM**

San Francisco, California
July 7, 2020

1 **I. QUALIFICATION AND SUMMARY**

2 **1. State your name and address.**

3 My name is Brian Hom. My address is 505 Van Ness Avenue, San Francisco CA 94102.

5 **2. What is your job title?**

6 I am a Public Utilities Regulatory Analyst IV.

8 **3. Can you explain your involvement with CPED's investigation?**

9 I wrote the Staff Report and co-wrote the Supplemental Report.

11 **4. Do you have further information you would like to include as your testimony?**

12 Yes, I would like to address the following allegations made in the Order Instituting
13 Investigation (I.18-07-009). My testimony here will include additional factual
14 information that will reinforce and support CPED's position on the following:

16 3. The NIU Coalition failed to produce certain documents and
17 information to the Commission's Utility Enforcement Branch.

18 6. The NIU Coalition refused to comply with the Communication
19 Division's demand letter to return CASF funds to the Commission.

21 Additionally, Vicky Zhong has provided supplemental information supporting question
22 19 under Allegation no. 6, below.

24 **II. ALLEGATION No.3**

25 **5. What is your current position regarding CPED's allegation No. 3 that the NIU**
26 **Coalition failed to produce documents and provide information to the Commission's**
27 **Consumer Protection and Enforcement Division?**

28 CPED has additional factual information to support and reinforce our allegation No.3.

30 **6. What additional factual information will you present to support and reinforce your**
31 **position?**

32 I will present a chronology of events showing that NIU failed to provide complete
33 responses to multiple CPED issued data requests.

35 **7. When did CPED send its first data request *California's One Million***
36 ***New Internet Users Coalition Data Request 1.0 (Data Request 1.0)?*¹**

37 CPED sent its Data Request 1.0 on July 21, 2017.

¹ OII, Attachment A (CPED Staff Report) Exhibit 20, Data Request 1.0.

8. Where was Data Request 1.0 sent?

CPED sent Data Request 1.0 to Hyepin Im on behalf of KCCD as fiscal agent of NIU. It was mailed to 3550 Wilshire Blvd, Ste 736, Los Angeles CA 90010 and emailed the same document to hyepin@gmail.com.

CPED also sent Data Request 1.0 to Alicia Ortega on behalf of Community Union as the head of NIU. It was mailed to 3626 East 1st Street, Los Angeles, CA 90063 and emailed the same document to aortega@communityunion.org.

9. When was the response to Data Request 1.0 due?

Data Request 1.0 was due on August 4, 2017.

10. What was NIU's response?

KCCD sent responses to the data request timely and cooperated with CPED's investigation in providing the information they could regarding CPED's questions.

Instead of providing responses to Data Request 1.0, CU sent CPED a seemingly unrelated inquiry on July 23, 2017 asking if CPED was responsible for "enforcement of commitments made by a company, made part of a merger agreement." On July 24, 2017, CPED responded and informed CU that staff was unable to determine its role in such a merger without additional information.

After receiving no reply, CPED followed up on July 28, 2017 if CU had any further questions regarding the merger and the status of the data request, since the responses were due in a week and CU had not addressed them in previous emails.² In response, CU instead sent a list of questions related to the investigation and a request for a 60-day blanket extension.³

11. What correspondence between CPED and Community Union took place thereafter?

On August 1, 2017, CPED sent responses to CU's questions and denied the blanket request for extension. CPED offered to grant extensions for specific portions of the data request, as necessary.

On August 4, 2017, CU sent an email challenging CPED's authority to send the data request and indicated that CU would not answer because a formal proceeding had not been opened. CU then provided a link to the audit report and claimed it "sufficiently responded to the request."⁴

² OII, Attachment A (CPED Staff Report) Exhibit 22, Data Request 1.0 Response.

³ OII, Attachment A (CPED Staff Report) Exhibit 22, Data Request 1.0 Response.

⁴ OII, Attachment A (CPED Staff Report) Exhibit 22, Data Request 1.0 Response.

CPED replied asking CU to confirm that they were “refusing to respond on the grounds that [CPED] lacks jurisdiction to make this request and because a formal proceeding has not been opened[.]” CU did not reply to CPED’s inquiry.

On August 23, 2017, CPED’s attorney, Vanessa Baldwin sent *Notice of Violation to California’s One Million New Internet Users Coalition (NIU) for Failing to Provide Information and Responses to Data Request 1.0*.

Subsequent to the Notice, CPED filed an Order Instituting an Investigation (OIL.18-07-009) and CPED and CU proceeded to conduct settlement negotiations via the Commission’s Alternate Dispute Resolution. On February 14, 2020, mediation concluded and CPED was unable to achieve settlement with NIU.

12. When did CPED send its second Data Request *Re: California’s One Million NIU California Advanced Services Fund (CASF) Grant (Data Request 2.0)*?⁵

After mediation and once litigation resumed CPED issued a nearly identical data request as Data Request 1.0 to Community Union, Data Request *Re: California’s One Million NIU California Advanced Services Fund (CASF) Grant* on February 21, 2020 with a deadline of March 6, 2020.

13. What was CU’s response to Data Request 2.0?

CU sent an email to the ALJ on February 28, 2020 claiming that the data request was “premature, out of order per your most recent email to the group” and ultimately refused to provide a response to the request.

CU further challenged CPED’s authority to make the request in 2017 and 2020.⁶

CPED responded to CU’s email on March 6, 2020 clarifying that “CPED’s ability to commence discovery is not dictated by this proceeding’s timeline or the need for a formal case management statement” and indicating that full and complete responses were due on March 6 and providing an extension to March 13, 2020.⁷

CU responded to CPED in an email on March 7, 2020 that “we do not have the February 21, 2020 data request.”⁸

⁵ Vicky Zhong’s Testimony dated July 7, 2020, Attachment 4, Motion to Compel, Attachment L, Data Request 2.0.

⁶ Vicky Zhong’s Testimony dated July 7, 2020, Attachment 4 Motion to Compel, Attachment E, email from Mr. Ortega to ALJ dated March 5, 2020.

⁷ Vicky Zhong’s Testimony dated July 7, 2020, Attachment 4, Attachment F, email from CPED’s attorney to Mr. Ortega dated March 6, 2020.

⁸ Vicky Zhong’s Testimony dated July 7, 2020, Attachment 4, Attachment C, email from Mr. Ortega to CPED’s attorney, dated March 7, 2020.

1 **14. What did CPED do after CU failed to provide complete response to**
2 **Data Request 2.0?**

3 Despite CPED granting CU's request for extension until March 13, 2020, no response
4 was received on that date. As such, CPED filed *Motion of the Consumer Protection and*
5 *Enforcement Division Compelling Responses to Data Requests from Larry Ortega and*
6 *Community Union Inc. and Shortening Time for Response* on March 25, 2020.

7
8 **15. What was provided as a result of CPED's *Motion of the Consumer***
9 ***Protection and Enforcement Division Compelling Responses to Data***
10 ***Requests from Larry Ortega and Community Union Inc. and Shortening***
11 ***Time for Response* being filed?**

12 During the May 4, 2020 Case Management Conference, CU agreed to answer the
13 questions in the data request with detailed descriptions of the responsive documents by
14 May 15, 2020.⁹ ALJ Zhang granted the motion in part, ordering CU to submit answers to
15 the questions by May 15, 2020 and ordered the parties to meet via WebEx to determine
16 the documents responsive to the data requests and how to make the documents available
17 to CPED.

18
19 On May 15, 2020 CU filed *Community Union, Inc.'s Motion for Extension of Time to*
20 *Respond to the May 15, 2020 ALJ Zhang's Deadline Set to Answer CPED's Data*
21 *Request*. The motion requested an extension to respond by May 18, 2020.¹⁰

22
23 On May 18, 2020, ALJ Zhang granted Community Union's Motion for Extension to May
24 19, 2020, 5:00 p.m.¹¹

25
26 No response was provided by CU on or before May 19, 2020, 5:00 p.m.

27
28 CPED scheduled a WebEx call with CU on May 21, 2020. During the call CPED
29 discussed each data request question at length and inquired what records CU possessed
30 which may be responsive to the data request and determined how CU could provide
31 responses to satisfy the request. During the call, CU provided records partially responsive
32 to Data Request questions 1-5 and agreed to provide the remaining records and responses
33 by May 22, 2020. CU noted that with question number 10 however, only a partial
34 response could be provided by May 22, 2020 and a complete response would be provided
35 by May 29, 2020.¹²

⁹ May 4, 2020 Status Conference Transcript p. 76.

¹⁰ Attachment 1, *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* filed on May 15, 2020.

¹¹ Attachment 2, *E-mail Ruling Granting Community Union's Motion Requesting Extension of Time for Answers to Consumer Protection and Enforcement Division's Data Request* filed on May 18, 2020.

¹² Attachment 3 May 22 2020 Update on Procedural Items from Vanessa Baldwin to Zhen Zhang.

1 CU provided only partial responses on May 22, 2020 to Data Request questions 8, 9 and
2 10. No other records were provided by the May 22, 2020 deadline.¹³

3
4 On May 26, 2020, CU submitted a set of written responses addressing all questions that
5 are only partially responsive to the data request.¹⁴

6
7 On June 16, 2020, CU filed a motion for extension, in which CU claimed to have
8 “located a majority of the MOU’s (Memorandum of Understandings) associated to the
9 Other Funding contributions made to the contract and is now in the process of properly
10 scanning, labeling and ordering per CPED’s request during our most recent Status
11 Conference.”¹⁵

12
13 On June 16, 2020, CU submitted five documents, each containing an MOU or the
14 signature page of an MOU. Although CU did not indicate these documents as responsive
15 to any of the data request questions, CPED has considered these records as a partial
16 response to question 7 from the Data Request.

17
18 In CU’s Motion for Extension filed on June 16, 2020, CU claimed to be “in the process
19 of requesting from Network Solutions, the email hosting company at the time, the
20 possibility of recovering those [deleted] emails and making them available to CPED.” To
21 date no deleted emails have been received.¹⁶

22
23 On June 16, 2020, CU sent CPED an email claiming there were 1,000 emails in their
24 possession responsive to Data Request question number 12. CU requested CPED to
25 narrow the search parameters. CPED instructed CU to provide all of the 1,000 responsive
26 emails rather than sorting them out. CPED did not get any response until June 26, 2020
27 (see June 26 discussion below).¹⁷

28
29 On June 17, 2020, CU submitted a set of documents to CPED in response to Data
30 Request question number 12.¹⁸ The documents are similar to the supporting
31 documentation for CU’s payment requests for Year 2 and Year 3. These records are not
32 responsive to the CPED’s Request, which asked:

33
34 “Provide all written and electronic correspondence involving respondents and/or
35 Korean Churches for Community Development (KCCD) including but not limited
36 to the following:

¹³ Attachment 4 May 22, 2020 Data Request Response.

¹⁴ Attachment 5 52620 Data Request Response.

¹⁵ Attachment 6 Motion filed by Community Union, Inc. on June 16, 2020.

¹⁶ Attachment 6 Motion filed by Community Union, Inc. on June 16, 2020.

¹⁷ Attachment 7 email from Larry Ortega to Vanessa Baldwin, dated June 16, 2020.

¹⁸ Attachment 8 email from Larry Ortega to Brian Hom and Rudy Sastra, dated June 17, 2020.

- 1 a. Provide all electronic mail and information about electronic mail (including
2 message contents, header information and logs of electronic mail system
3 usage) containing information related to the funds received from the
4 California Advanced Services Fund (CASF) program and NIU's related
5 efforts toward encouraging the deployment of broadband.
- 6 b. Provide all word processing and file fragments containing information
7 about any of the subjects identified in request 12(a), above.
- 8 c. Provide copies of all electronic data files and file fragments created or used
9 by electronic spreadsheet programs, where such data files contain
10 information about any of the subjects identified in request 12(a), above."

11 Furthermore, if these documents provided by CU were attachments to emails, the actual
12 emails should be included to complete its response.

13
14 During a status conference on June 18, 2020, CPED indicated to the ALJ that the CU
15 Data Request responses remained incomplete and requested for the ALJ's reconsideration
16 of CPED's Motion to Compel.

17
18 On June 22, 2020, ALJ Zhang granted *Motion of the Consumer Protection and*
19 *Enforcement Division Compelling Responses to Data Requests from Larry Ortega and*
20 *Community Union Inc. and Shortening Time for Response* and ordered CU to provide
21 complete responses by June 26, 2020.¹⁹

22
23 In CU's June 26, 2020 data request response, CU objected to providing all 1,000 emails
24 "as being too broad, and has no way of sorting, labeling and providing specificity to what
25 each of the emails requested would relate to in this investigation."

26
27 CU provided amended responses on June 26 and 29, 2020.²⁰ As of CU's June 29
28 responses:

- 29
- 30 • CU answered questions 11, 16 and 17 by claiming that it did not have
 - 31 responsive documents.
 - 32 • CU has objected to answering questions 10, 12, 13 and 14.
 - 33 • Questions 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, and 18 remain incomplete and/or
 - 34 nonresponsive.
- 35

¹⁹ Attachment 9 June 22, 2020 Ruling Granting CPED's Motion to Compel.

²⁰ Attachment 10, *CU Data Request Responses* was prepared by CPED staff detailing the submissions responsive to Data Request 2.0.

1 **III. ALLEGATION No.6**

2 **16. What is your current position regarding CPED’s allegation No. 6 that NIU**
3 **refused to comply with the Communication Division’s (CD) demand letter to**
4 **return CASF funds to the Commission?**

5 Following the audit, CD sent a letter dated April 18, 2016 to the President/CEO of CU
6 and KCCD as fiscal agent stating:

7 “CD will make no further payments to NIU...CD further directs NIU to return
8 \$82,381, which is comprised of \$46,621 for insufficiently documented
9 Consortia Program costs and \$35,760 for training hours claimed in reports but
10 not provided by the Consortium. The reimbursement by CD should be
11 received no later than July 18, 2016.”²¹

12 To date, despite almost three years of investigation and including mediation,
13 CU has continued to be non-compliant to Commission staff directives and
14 refused to return any of the misappropriated CASF funds. As such, in
15 affirmation of CPED’s request made in the Staff Report, CPED request that
16 the Commission consider imposing penalties pursuant to Public Utilities (PU)
17 Code §§ 2108 and 2111 and other remedies against CU.

18
19 **17. What facts support penalties in this proceeding?**

20 Penalties should be imposed against CU in this proceeding based on the following facts:

- 21 • CU failed to maintain adequate financial records to properly support its claims
22 for program reimbursements.
- 23 • CU failed to maintain proper internal control safeguards to ensure that the
24 program functioned as intended and that the accounting records and source
25 documents properly substantiated program-related activities and costs.
- 26 • CU decreased their instructional hours by approximately 50% without
27 Commission approval.
- 28 • To date CU has never provided complete records of their operations despite
29 numerous requests from CD, SCO and UEB. This has prevented the
30 Commission from verifying the validity of their expenses and ensuring that
31 NIU was not double charging its expenses.
- 32 • CU has evaded UEB’s data request and has not cooperated with the
33 investigation.

34

²¹ OII, Attachment A (CPED Staff Report), Exhibit 18, 20160418 KCCD and NIU Demand Letter SCO Audit.

1 **18. Which facts indicate that Respondents should be barred from receiving future funds**
2 **from Commission public purpose programs**

3 Staff believes that Respondent should be barred from receiving funds from future
4 Commission public purpose programs based on the following:

- 5 • CU failed to maintain proper internal control safeguards to ensure that the
6 program functioned as intended and that the accounting records and source
7 documents properly substantiated program-related activities and costs
- 8 • CU decreased their instructional hours by approximately 50% without
9 Commission approval.
- 10 • To date CU has never provided complete records of their operations despite
11 numerous requests from CD, SCO and UEB. This has prevented the
12 Commission from authenticating the validity of their expenses and ensuring
13 that NIU was not double charging its expenses.
- 14 • CU has evaded UEB's data request and has not cooperated with the
15 investigation.

16 **19. What additional facts indicate that Respondents should be barred from receiving**
17 **future funds from Commission public purpose programs**

18 CU repeatedly failed to regulatory reporting requirements and met performance metrics;
19 thus, proving unfit to manage a public purpose program.

20
21 Based on my independent research, CU is legally registered with the California Secretary
22 of State as a "Domestic Nonprofit" entity;²² thus, it is subject to nonprofit entity filing
23 requirements. However, CU failed to fulfill the non-profit regulatory filing requirements
24 as required by the Department of Justice (DOJ), Office of the Attorney General, and the
25 Internal Revenue Service (IRS). The DOJ's "Registrant Details" shows CU's registry
26 status as delinquent, and CU has not completed its filing requirements and renew with the
27 DOJ since November 10, 2003.²³ Similarly, CU is on IRS's "Auto-Revocation List" for
28 failing to file a Form 990-series return for three consecutive years.²⁴ CU is no longer
29 eligible for IRS non-profit tax exemption as of November 15, 2012.

30
31 CU has repeatedly failed to meet performance metrics as discussed in CPED's Testimony
32 for Disputed Facts No. 7, 8, 9, 10.²⁵ Additionally, the California Emerging Technology
33 Fund (CETF) also terminated funding to NIU prematurely for failing to meet
34 performance metrics.^{26 27}

²² Attachment 11, California Secretary of State, Busines Search-Entity Detail.

²³ Attachment 12, DOJ, Office of the Attorney General, Registrant Details.

²⁴ Attachment 13, IRS Tax Exempt Organization Search.

²⁵ Nina Enriquez Testimony dated July 7, 2020, Disputed Fact No.7, 8, 9, 10.

²⁶ Attachment 14, NIU CETF Grant Application.

²⁷ Attachment 15, CETF Grant Cancellation Letter.

1 Finally, CU had shown to be difficult to work with and not forthcoming with regulators.
2 Los Angeles County Auditor-Controller (LAAC), SCO, and CPED all had difficulty
3 obtaining documentation from CU. For SCO and CPED, the details of difficulties in
4 obtaining documentation can be found in the CPED's motion to compel²⁸ and Vicky
5 Zhong's testimony.²⁹ LAAC documented similar experiences in their report dated April
6 14, 2010.³⁰ The report states in part:

7
8 CU's response contained a number of inaccurate comments or comments that
9 did not relate to the findings noted in our report. Specifically, CU indicated
10 that we did not visit their office ore request documentation to support program
11 expenditures...

12 In January 2009, we (LAAC) notified CU of our planned review. DPSS also
13 notified CU's Director (Larry Ortega) of the review. However, the CU
14 Director continually delayed the start of our review until July 20, 2009. At our
15 entrance conference with CU and DPSS (Department of Public Social
16 Services) on July 20, 2009, we requested the Agency (CU) provide
17 documentation to support program expenditures. The CU Director indicated
18 The CU Director indicated the Agency provided DPSS with the required
19 documentation and that CU did not have any additional documentation to
20 provide.

21 We subsequently performed an independent review using the documentation
22 CU previously provided to DPSS. Throughout the review, we allowed CU
23 numerous opportunities to provide additional documentation or explanations
24 that would resolve the exceptions we noted. However, CU did not provide the
25 required documentation.

26 DPSS management agreed with our findings and recommendations and noted
27 that CU's non-compliance with the County contract and internal control
28 weaknesses were very serious.

29 CU had repeatedly failed to meet regulatory filing requirements and program
30 performance. Therefore, CU is unfit to perform as a public purpose program implementor
31 and should be barred from public purpose program participation.

32
33 **20. Currently, what is Respondent's, Community Union's, financial position?**

34 CU has not been forthcoming with their financial position. CU has repeatedly claimed
35 financial hardship. However, CU has yet to provide any evidence supporting this claim.

²⁸ Vicky Zhong Testimony dated July 7, 2020, Attachment 4, Motion of the Consumer Protection and Enforcement Division Compelling Responses to Data Request.

²⁹ Vicky Zhong Testimony dated July 7, 2020, p.2.

³⁰ Vicky Zhong Testimony dated July 7, 2020, Attachment 10, Community Union, Inc. Contract Review- A Department of Public Social Services Community Services Block Grant Program Provider, Review of Report, p. 3.

CPED's primary focus has been to obtain evidence of CU's financial position during the grant period. However, even those questions have not yet been fully answered.

21. What is Respondent's total revenue, including other grant sources currently?

CU has not been forthcoming with their financial information. CU has repeatedly claimed financial hardship. However, CU has yet to provide any evidence supporting this claim.

CPED's primary focus has been to obtain evidence of CU's financial position during the grant period. However, even those questions have not yet been fully answered.

22. What is Respondent's total expenses currently

CU has not been forthcoming with their financial information. CU has repeatedly claimed financial hardship. However, CU has yet to provide any evidence supporting this claim.

CPED's primary focus has been to obtain evidence of CU's financial position during the grant period. However, even those questions have not yet been fully answered.