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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

**ASSIGNED COMMISSIONER'S RULING
AMENDING THE SCOPE OF THE PROCEEDING**

This Ruling expands the scope of the above-captioned proceeding to include additional activities since the filing of the Order Instituting Investigation (OII) 18-07-009 on July 24, 2018. The instant OII is amended and the Commission orders Larry Ortega, President of Community Union, Inc. (Community Union), and Community Union to show cause why they should not be required to 1) pay penalties for incomplete and untimely responses to Consumer Protection and Enforcement Division's (CPED) February 21, 2020 data request; 2) pay penalties for violating Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules); and 3) be subject to such equitable remedies as may be appropriate based on their actions to impede the efficient administration of justice.

1. Background

On July 24, 2018, the Commission issued an OII to determine whether California's One Million New Internet Users Coalition (NIU Coalition) violated any provisions of the California Public Utilities Code,¹ Commission General Orders or resolutions, decisions, or other applicable rules or requirements pertaining to the grant from the California Advanced Services Fund. The members of NIU Coalition were the Asian Pacific Community Fund, Black Business Association, Community Union, Korean Churches for Community Development, and Soledad Enrichment Action – Charter Schools.

Between February 2019 and February 2020, the parties engaged in alternative dispute resolution. As a result of alternative dispute resolution, four out of the five members of the NIU Coalition submitted motions for dismissal and/or a motion for approval of settlement. Community Union is the remaining member of the NIU Coalition who is continuing with litigation.

1.1. Community Union's Behavior Since February 2020

Since the initiation of the instant proceeding Mr. Ortega, President of Community Union, has exhibited uncooperative behaviors that have frequently disrupted the investigation. These behaviors have continued throughout the proceeding and are consistent with the actions described in the OII. Community Union has repeatedly failed to comply with the applicable laws, rules and/or orders in this proceeding as shown below:

- Mr. Ortega, President of Community Union, sent e-mails on June 3, 2020 and June 4, 2020, addressed to CPED with a copy to the Administrative Law Judge (ALJ). These e-mails were not sent to the entire service list.

¹ All references to code sections in this decision are to the California Public Utilities (Pub. Util.) Code unless otherwise specified.

Communications such as these constitute prohibited *ex parte* communications.² Mr. Ortega had already been cautioned earlier in the proceeding to avoid *ex parte* communications.³ Previously, the ALJ filed a Notice of Communications citing three e-mails that were sent on February 28, 2020, March 3, 2020, and March 4, 2020, which Mr. Ortega did not send to the service list.⁴

- Community Union has submitted multiple last minute requests to reschedule status conferences. On Friday, May 1, 2020 at 7:15 p.m., Community Union requested that the Monday, May 4, 2020 conference be rescheduled.⁵ On June 17, 2020, Community Union requested that the June 18, 2020 status conference be rescheduled.
- Community Union has failed to meet deadlines and extensions associated with answering the February 21, 2020 data request by CPED. Community Union cites reasons such as financial constraint, limited capacity, and other challenges related to COVID-19,⁶ even though the 2020 data request is nearly identical to the 2017 data request.⁷
- CPED attempted to expedite and lessen the financial burden of responding to the data request, such as multiple meet and confers, and offers to accept electronic copies.⁸ Mr. Ortega instead suggested sample sets of the documentation.⁹ CPED explained to Mr. Ortega that

² Pub. Util. Code § 1701.2(g). Rule 8.2(b); June 9, 2020 Status Conf. Tr. at 4: 12-26.

³ *Id.*

⁴ Decisionmaker Notice of *Ex Parte* Communication, March 9, 2020.

⁵ E-mail Ruling Denying Community Union's Request to Reschedule May 4, 2020 Case Management Conference, May 4, 2020.

⁶ May 4, 2020 Status Conf. Tr. at 25: 16-25.

⁷ *Id.* at 23: 10-16.

⁸ 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.

⁹ June 9, 2020 Status Conf. Tr. at 17: 8-12.

presenting samples does not satisfy the data request and samples do not give a complete picture of what funding Community Union used for its activities.¹⁰

- At the May 4, 2020 status conference, Community Union was ordered to submit a written response to all of the questions stated in the February 21, 2020 data request by May 15, 2020.¹¹ Community Union failed to meet the May 15, 2020 deadline.¹² The deadline was extended to May 19, 2020.¹³
- On June 15, 2020, Community Union requested that the discovery cut off date be extended to June 19, 2020.¹⁴ In the request, Community Union states that it had located additional materials responsive to CPED's data request and will make them available to CPED by June 16, 2020.¹⁵
- On June 18, 2020, the assigned ALJ held a status conference to discuss CPED's supplemental report and an updated schedule. CPED informed the ALJ that the responses to the data request remained incomplete.¹⁶
- Mr. Ortega and Community Union has yet to render a complete answer to CPED's data request.¹⁷ By failing to adequately respond to the data request, Mr. Ortega and Community Union are misleading the Commission by withholding relevant information.

¹⁰ June 9, 2020 Status Conf. Tr. at 23: 3-9.

¹¹ May 4, 2020 Status Conf. Tr. at 39: 24-26.

¹² Motion for an Extension of Time to Respond to the May 15, 2020 Deadline set to Answer CPED's Data Request, May 15, 2020.

¹³ E-mail Ruling Granting Community Union's Motion Requesting Extension of Time for Answers to Consumer Protection and Enforcement Division's Data Request, May 18, 2020.

¹⁴ Motion for an Extension to Discovery Cut-Off, June 16, 2020.

¹⁵ *Id.*

¹⁶ E-mail Ruling Granting Consumer Protection and Enforcement Division's Motion to Compel Responses to Data Requests, June 22, 2020.

¹⁷ *Id.*

Mr. Ortega and Community Union have disregarded deadlines, requests, and Commission rules. The statutory deadline for this investigation has already been extended; therefore, the parties must cooperate professionally and respectfully to adhere to the deadlines. A party acting in ways that degrade the judicial process or in ways that attempt to mislead the Commission violates Commission rules and prevents resolution of the investigation. Mr. Ortega and Community Union have continually engaged in uncooperative behavior throughout the proceeding, hindering efficient administration of justice.

2. Issues

In addition to the issues set forth in the December 18, 2018 scoping memo and ruling, this proceeding will consider the following issues:

1. Did Larry Ortega and Community Union violate Decision (D.) 11-06-038 and Pub. Util. Code §§ 2111, 2112 and 2113 by providing incomplete and untimely responses to CPED's data request dated February 21, 2020?
2. Did Larry Ortega and Community Union violate Rule 1.1?
3. Are Larry Ortega and Community Union in contempt of the Commission, in violation of Pub. Util. Code § 2113?
4. Are Larry Ortega and Community Union liable for penalties pursuant to Pub. Util. Code §§ 2108, 2111 and 2112?
5. Are Larry Ortega and Community Union subject to equitable remedies based on their violation of D.11-06-038, Pub. Util. Code § 281(f)(7), and their actions to impede the efficient administration of justice?

3. Need for an Evidentiary Hearing

The five additional issues presented in this Ruling involve contested material issues of fact. The July 24, 2018 OII preliminarily determined that evidentiary hearings are necessary. This Ruling determines that evidentiary hearings are necessary as well. One additional day of hearings will give the

parties an opportunity to address the additional issues. We also strongly encourage Mr. Ortega and Community Union to resume settlement discussions with CPED.

4. Schedule

The assigned ALJ held a status conference on June 18, 2020 to discuss CPED's June 16, 2020 supplemental report and the schedule. Due to the new information in the supplemental report, the assigned ALJ postponed the evidentiary hearing scheduled for June 24, 2020, June 25, 2020, and June 26, 2020. On June 30, 2020, the assigned ALJ issued an e-mail ruling updating the schedule. The evidentiary hearing will be held on Monday, August 24, 2020, through Thursday, August 27, 2020.

5. Comments on the Ruling Amending Scope of the Proceeding

Comments on this Ruling amending the scope of the proceeding are due five days from the date of this Ruling. Reply comments are due 10 days from the date of this Ruling.

6. Category of Proceeding/*Ex Parte* Restrictions

This proceeding remains an adjudicatory proceeding. Accordingly, *ex parte* communications are prohibited pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

7. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TYY), or send an e-mail to public.advisor@cpuc.ca.gov.

8. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

9. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner. Zhen Zhang is the assigned ALJ and presiding officer for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is amended as described above.
2. The schedule of this proceeding is amended as described above.
3. Evidentiary hearings are needed.
4. The presiding officer is Administrative Law Judge Zhen Zhang.
5. The category of the proceeding is adjudicatory.

Dated July 10, 2020, San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN
Clifford Rechtschaffen
Assigned Commissioner