

by not responding to the complaint. In an order dated December 15, 2004, the Board docketed the matter for formal proceedings identified as Docket No. FCU-04-55, and directed Optical to respond to Consumer Advocate's petition on or before January 14, 2005. Optical has not filed any response to the petition.

2. FCU-04-62

On December 3, 2004, Consumer Advocate filed a petition for proceeding to consider a civil penalty for five alleged slamming and cramming violations committed by Optical. That petition arose out of five complaints submitted to the Board on various dates in October 2004 in which customers alleged unauthorized changes in telephone service or unauthorized charges submitted on behalf of Optical for calls the customers claimed they did not make. Optical did not respond to any of the complaints. In each of the complaints, Board staff issued a proposed resolution finding Optical in violation of Board rules by default for failing to respond to the complaints. In an order dated January 10, 2005, the Board docketed the complaints for formal proceedings identified as Docket No. FCU-04-62, and directed Optical to respond to Consumer Advocate's petition on or before February 7, 2005. Optical has not filed any response to the petition.

3. Motion For Default Judgment

In its motion for default judgment, Consumer Advocate states that Optical is in default in both Docket Nos. FCU-04-55 and FCU-04-62 as it has not responded to either petition for proceeding to consider civil penalty. Consumer Advocate states that on January 21, 2005, it mailed Optical a notice of intention to file application for default in Docket No. FCU-04-55, and on February 7, 2005, it mailed Optical a notice

of intention to file application for default in Docket No. FCU-04-62. Consumer Advocate states it has received no response to these notices.

ANALYSIS

Iowa Code § 17A.12(3) (2005) provides that if a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. Iowa Code § 476.103(4)"a" provides that a service provider who violates the section, a rule adopted pursuant to the section, or an order issued pursuant to the section, is subject to a civil penalty of not more than ten thousand dollars per violation, which, after notice and opportunity for hearing, may be levied by the Board.

The Board finds that Optical has failed to respond to inquiries from Board staff in the informal complaint proceedings and to two Board orders directing it to respond to Consumer Advocate's petitions. The Board agrees with Consumer Advocate that Optical is in default in Docket Nos. FCU-04-55 and FCU-04-62. Failure to respond to Board inquiries and orders is a serious violation. The degree to which a party participates in the Board's investigation of informal complaints and responds to Board orders is an important factor in determining the size of the penalty for such violation. Here, Optical has shown a disregard for the process by its complete lack of response. Pursuant to Iowa Code §§ 17A.12(3) and 476.103(4)"a," the Board will grant Consumer Advocate's motion for a default judgment against Optical in the amount of \$10,000 per violation, for a total of \$60,000.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The "Application for Entry of Judgment by Default" filed by the Consumer Advocate Division of the Department of Justice on February 23, 2005, is granted.

2. Judgment by default is granted against Optical Telephone Corp. in Docket Nos. FCU-04-55 and FCU-04-62 in the amount of \$10,000 per violation, for a total of \$60,000.

3. Payment, in the form of a check made payable to the Iowa Utilities Board, should be forwarded to the Executive Secretary of the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069. Payment is due within 35 days of this order. The docket numbers listed on this order shall be listed on the check or in the accompanying correspondence.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 1st day of April, 2005.