

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">vs.</p> <p>ZWW-ISP,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-05-59</p>
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**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT AND
ORDERING PAYMENT OF DEFAULT JUDGMENT**

(Issued December 22, 2005)

PROCEDURAL HISTORY

On November 29, 2005, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a motion to enter judgment by default against ZWW-ISP.

On September 6, 2005, Consumer Advocate filed with the Board a petition for proceeding to consider a civil penalty for an alleged cramming violation committed by ZWW-ISP. That petition arose out of an informal complaint in which a customer complained that telephone bills for her business included unauthorized charges submitted on behalf of ZWW-ISP. ZWW-ISP did not respond to the complaint. On August 29, 2005, Board staff issued a proposed resolution finding ZWW-ISP in

violation of Board rules by default. Staff directed ZWW-ISP to fully credit the account and refrain from any collection activity relating to the disputed charges. In an order issued on October 17, 2005, the Board docketed Consumer Advocate's petition for formal proceeding, identified as Docket No. FCU-05-59, and directed ZWW-ISP to respond to Consumer Advocate's petition within 30 days. ZWW-ISP has not filed a response to the petition.

In its motion for default judgment, Consumer Advocate states that ZWW-ISP is in default in Docket No. FCU-05-59 as it has not responded to the petition for proceeding to consider civil penalty. Consumer Advocate states that on November 17, 2005, it mailed ZWW-ISP a notice of intention to file application for default in Docket No. FCU-05-59. Consumer Advocate states it has received no response to this notice. Consumer Advocate seeks judgment by default against ZWW-ISP for a civil monetary penalty in an amount the Board deems appropriate, up to and including \$10,000 per violation, the maximum amount authorized by law.

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 ZWW-ISP has failed to respond to inquiries from Board staff in the informal complaint proceedings and to a Board order directing it to respond to Consumer Advocate's petition. The Board agrees with Consumer Advocate that ZWW-ISP is in default in Docket No. FCU-05-59. 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, ZWW-ISP 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 ZWW-ISP in the amount of \$10,000.

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 November 29, 2005, is granted.
2. Judgment by default is granted against ZWW-ISP in Docket No. FCU-05-59 in the amount of \$10,000.

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 number 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/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 22nd day of December, 2005.