

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">vs.</p> <p>EVERCOM SYSTEMS, INC.,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-06-40</p>
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ORDER REGARDING MOTION TO COMPEL

(Issued September 28, 2006)

On September 11, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a motion to compel discovery. The Consumer Advocate requested an order compelling Evercom Systems, Inc. (Evercom) to produce discovery in response to Consumer Advocate data request numbers 3, 11, 12, 13, 14, 15, and 16. The Consumer Advocate also requested that Evercom's general objections to the discovery requests be stricken.

Evercom filed a resistance to the motion to compel on September 21, 2006. Based on the representations in Evercom's resistance, it now appears that Evercom has provided responses to data request numbers 3, 11, and 15, and is in the process of providing responses to data request number 16. Evercom resisted the Consumer Advocate's motion to strike Evercom's general objections to the discovery requests.

Therefore, it appears the only remaining data requests in dispute are numbers 12, 13, and 14.¹ This order will only address these three data requests and the request to strike Evercom's general objections to the discovery requests.

Data request number 12

Data request number 12 asks Evercom to state whether it is aware of other consumer complaints to regulatory agencies, on or after January 1, 2005, regarding a collect call billed by or on behalf of Evercom that the consumer denies having accepted. If there are any, the data request asks for specific information regarding the complaints.

Evercom provided information regarding three Iowa complaints and objected to providing any information regarding regulatory complaints in other jurisdictions on the grounds of undue burden and relevance.

The Consumer Advocate argues that information regarding complaints similar to the one at issue in this case is relevant on the issue of penalty. The Consumer Advocate states that, although Evercom first told the customer the charges were legitimate, it admitted on complaint to the Board that the calls were not accepted by the customer and were a result of fraud.

The Consumer Advocate further states that in cases of fraud, the Board has been reluctant to assess a penalty in the absence of evidence the company was playing some role in the fraud or profiting from it, or had some ability to prevent it

¹ If this assumption is incorrect, the parties should be prepared to discuss any remaining disputes at the prehearing conference scheduled for October 3, 2006.

from continuing to victimize customers. It states that in the docketing order in this case, the Board stated further investigation could clarify Evercom's role in billing for fraudulent calls made by inmates, the details of the scheme if any, and the extent to which Evercom could prevent such fraudulent billing in the future.

The Consumer Advocate argues that information regarding similar complaints is potentially relevant because it potentially shows Evercom had prior knowledge of the problem and did not prevent it from recurring. It argues the potential volume of complaints may be powerful evidence of Evercom's state of knowledge. The Consumer Advocate argues the evidence may provide an empirical basis for concluding that, once violations began to surface, Evercom should have made relevant inquiry and learned what it needed to know to stop future unauthorized billings.

The Consumer Advocate argues that the requested discovery is all the more important in this case because Evercom stated it is unable to research its system to provide an answer to the question whether there are other cases in which Evercom determined a call billed by it or on behalf of it was or may have been the result of fraudulent activity by an inmate. The Consumer Advocate argues that Evercom thus denies it access to other files like this one in which Evercom concluded fraud was at work, if they exist.

The Consumer Advocate argues its request is not overbroad because the requested regulatory complaints are limited to those after January 1, 2005, a period

of only one year from the calls in question in this case. The Consumer Advocate argues that, although a longer period of time may be justified, it appears that the inquiry is likely to produce a sufficient amount of information to permit an evaluation of Evercom's prior state of knowledge. The Consumer Advocate argues that Evercom's proposed compromise of limiting the period to the last six months would completely eclipse the period prior to the calls in question and therefore completely deny the Consumer Advocate access to any files that may show Evercom's prior knowledge.

The Consumer Advocate argues that its request is not unduly burdensome. It argues that in determining whether a request is unduly burdensome or expensive, the Board may take into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The Consumer Advocate argues a certain amount of inconvenience adheres in discovery and must be tolerated by the parties.

The Consumer Advocate argues the burden is on the party resisting disclosure to provide specifics. It argues that Evercom has admitted it keeps track of all regulatory complaints. It argues that, other than stating that regulatory complaints are stored by state agency and federal agency and that an employee would need to manually review files for each state, Evercom offers no specifics of why the requested discovery is unduly burdensome. The Consumer Advocate states that Evercom did not say how many regulatory complaints there are over the requested

time period. The Consumer Advocate argues it is not unusual for companies to have to pull and copy parts of numerous files to provide discovery, and "the 50 or 51 files that Evercom advises would need to be pulled and copied in part in this case are far smaller in number than the 1,700 and 16,000 files that justified a protective order on different facts in *Berg v. Des Moines Gen. Hosp.*, 456 N.W.2d 173, 177 (Iowa 1990) (Berg), cited by Evercom."

The Consumer Advocate argues that there is no reason to believe the request will unduly disrupt or seriously hinder Evercom's normal operations and that Evercom is not the small business it claims to be. The Consumer Advocate argues that according to the Evercom consolidated financial statements, the companies had first quarter 2006 revenues of \$98.8 million and claimed to be the "largest independent provider of inmate telecommunications services to correctional facilities" in the United States and Canada. The Consumer Advocate attached financial and company information regarding Securus Technologies from the Securities and Exchange Commission in support of its motion. Evercom is apparently one of the two principal subsidiaries of Securus Technologies.

The Consumer Advocate argues that, standing alone, the maximum amount in controversy of \$10,000 per violation or \$50,000 total might counsel against an inquiry of moderate intensity. However, the Consumer Advocate argues, the civil penalty is designed for the larger purpose of curtailing and stopping unauthorized billings and alleviating the resulting substantial harm to consumers generally.

The Consumer Advocate argues that Supreme Court rulings stress the need for full discovery responses. It cites cases stating that the law favors full access to relevant information, the burden of showing the request is unreasonable is not easily met where the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to the purpose, and the ability to conduct discovery goes to the heart and soul of the civil justice system.

In its resistance, Evercom states that the Consumer Advocate has served it with 36 data requests to date, and including the subparts to the data requests, has made approximately 150 separate requests for data. Evercom argues that it has spent considerable resources responding to the Consumer Advocate's data requests and has provided the Consumer Advocate with complete responses without objection the vast majority of the time. It argues that it has objected to some of the data requests on the grounds they are overly broad, unduly burdensome, and not reasonably calculated to lead to discoverable evidence, but these objections have been made in good faith and are in no way intended to impede the Consumer Advocate's right to obtain discovery. Evercom argues it has provided the Consumer Advocate with information whenever possible despite the over breadth or burdensome nature.

Evercom argues its objections to data request numbers 12, 13, and 14 are not made with the intent to conceal information or to avoid a minor inconvenience. It argues to respond to the data requests would truly be unduly burdensome. It argues

it has limited financial and personnel resources that cannot bear the time and cost that responding to the data requests would entail. Moreover, it argues, the information sought by the requests is largely irrelevant to this case.

Evercom states it objected to data request number 12 on the grounds of undue burden and relevance, but nonetheless provided the Consumer Advocate with the relevant Iowa complaints from January 2005 to the present. Evercom also cites the *Berg* case for the principle that in determining whether a request is unduly burdensome, the court may consider the needs of the case, the amount in controversy, the limitation on the parties' resources, and the importance of the issues at stake in the litigation. Evercom argues that in *Berg*, the Court found that the request that the hospital manually examine over 1700 patient files was unduly burdensome, and held that "the questionable utility of this information is substantially outweighed by the drastic steps the hospital would have to take in order to comply with the request." *Berg*, at p. 177. Evercom argues that the *Berg* decision is directly on point with the burdensome nature of data request number 12. Evercom argues that it would have to take drastic steps to uncover the requested information and does not have the financial and personnel resources to respond to the request.

Evercom attached the affidavit of the Director of Regulatory and Government Affairs for Securus Technologies, Mr. Curtis Hopfinger, in support of its resistance. Mr. Hopfinger's affidavit states that Evercom is a wholly-owned subsidiary of Securus Technologies and is an operating company that provides inmate telephone systems

to the correctional institution industry. In his affidavit, Mr. Hopfinger states that as part of his duties, his organization is responsible for responding to state or federal regulatory complaints. Evercom states that its records of regulatory complaints are stored "on-site" for approximately six months. These records are stored by state, by month, and by agency (federal or state). They are not organized alphabetically or by complaint type. Evercom further states that records of regulatory complaints older than approximately six months are stored "off-site." It states the "off-site" records were originally organized by year, but occasionally, as files were removed and replaced, they may not have been returned to the proper year. Evercom states that "off-site" regulatory complaint records are not organized by state, alphabetically, or by complaint type.

Evercom further states that given its presence in 47 states, a search for the requested complaints would result in hundreds of files that would have to be manually and individually reviewed. It states that in an effort to cooperate on data request number 12, it provided the Consumer Advocate with the relevant Iowa complaints from January 2005 to the present. It states that the process for this one state took over 30 hours. Therefore, it argues, to answer data request number 12 could take over 1,300 hours (i.e. remaining 46 states times 30 hours = 1,380).

Evercom argues that spending this amount of time is well beyond Evercom's personnel resources, would be an extreme financial burden, and would substantially impact Evercom's ability to continue performance of other required work functions. It

argues this process would be far more than the "inconvenience" alleged by the Consumer Advocate. It argues that although it is not known exactly how many files would have to be pulled, it would be far more than the 50 or 51 alleged by the Consumer Advocate.

Evercom argues that its first quarter 2006 revenues of \$98.8 million have no relevance to the limited company resources with the expertise and background needed to gather and prepare a response pertaining to the information requested.

Evercom further argues that the drastic steps and exorbitant costs that responding to data request number 12 would require are grossly disproportionate to the total maximum violation of \$10,000. Evercom argues that considering the alleged overcharge totals \$75, and the amount has been refunded to the customer, it is clear that the hundreds of hours required to respond to data request number 12 is grossly disproportionate to the amount in controversy. It argues that it recognizes the admirable intent of the penalty to deter wrongdoing and protect consumers. However, it argues, the cost of forcing Evercom to respond to data request number 12 would exceed the cost of the penalty, and would result in unduly punishing Evercom before any finding of wrongdoing by the Board.

With regard to relevance, Evercom argues that the information requested would also be of "questionable utility," and cites to *Berg*. It argues that complaints from other states, involving different detention centers, are not relevant to whether Evercom violated any statutes or Board rules by charging Mr. Silver \$75. Evercom

states the Consumer Advocate's motion speaks in terms of "potentialities," stating that the complaints are potentially relevant because they could potentially show prior knowledge of a problem. Evercom argues such potentialities are the very definition of "questionable utility." Evercom argues that the existence of a regulatory complaint in another jurisdiction is not evidence of cramming or any other wrongdoing.

Evercom states that no other federal or state jurisdiction has fined, applied civil penalties, or sanctioned Evercom in any way for cramming. It states that no other jurisdiction has initiated any proceeding to investigate Evercom for cramming. Evercom argues this fact is indicative of Evercom's commitment to complying with regulatory rules and the lack of relevance of these complaint records from other jurisdictions. Evercom argues the relevance of the information is substantially outweighed by the extremely high burden imposed by responding to data request number 12.

Evercom argues the purpose of data request number 12 would be more than adequately fulfilled by Evercom's proposed compromise. It argues it has offered to search the "on-site" files for the additional 46 states and estimates that limiting the request to the approximate six-month timeframe in the "on-site" files will still require at least 15 working days to complete. Evercom argues these records would serve the Consumer Advocate's stated purposes for data request number 12: seeking information of Evercom's prior knowledge, lack of prevention, and profit. It argues there is no reason the "on-site" records for the previous 6-month span would not

serve these purposes. Evercom argues this willingness to manually search six months worth of files for 46 states is evidence of its intent to cooperate with the Consumer Advocate's discovery requests. It argues that delving into the "off-site" records would simply be too burdensome.

Analysis

Data request number 12 asks Evercom to state whether it is aware of other customer complaints to regulatory agencies regarding collect calls the customers denied having accepted that were billed by or on behalf of Evercom. The data request is limited to the period on or after January 1, 2005, approximately one year before the collect calls at issue in this case were billed. (The record is unclear at this stage exactly when Evercom billed the customer for the collect call or calls in this case. The informal complaint states the customer sent a fax in January 2006, so evidently the billing was prior to that.) If there are any other complaints, the data request asks for specific information regarding them. Although Evercom provided information regarding the three Iowa complaints filed during the period, it objected to providing information from other jurisdictions.

Discovery procedures applicable in civil actions are available to the parties in contested cases before the Board. Iowa Code § 17A.13 (2005). "The rules providing for discovery and inspection shall be liberally construed and shall be enforced to provide the parties with access to all relevant facts. Discovery shall be conducted in good faith, and responses to discovery requests, however made, shall fairly address

and meet the substance of the request." Iowa R. Civ. P. 1.501(2). "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." Iowa R. Civ. P. 1.503(1). "As this rule makes clear, a party is entitled to discover any information that is not privileged and that is relevant to the subject matter of the lawsuit. [citation omitted.] Relevancy to the subject matter of the lawsuit is broader than relevancy to the precise issues in the pleadings because the rule allows discovery of inadmissible information as long as it leads to the discovery of admissible evidence." Mediacom Iowa, LLC, v. City of Spencer, 682 N.W.2d 62, 66 (Iowa 2004).

The undersigned finds the Consumer Advocate's arguments regarding relevance to be more persuasive than those of Evercom. The requested information may be relevant to the issue of whether a penalty should be assessed because it relates to whether Evercom had prior knowledge of similar complaints, whether a problem existed or continues to exist, the extent of any such problem, and whether Evercom should have taken steps to prevent the problem's reoccurrence (if one existed) prior to Mr. Silver's complaint. The undersigned agrees with the Consumer Advocate that the requested information is particularly needed, because according to Evercom, it is unable to research its system to determine whether there are other similar cases in which Evercom determined that a call billed by it was the result of fraudulent activity by an inmate. The period of time from January 1, 2005, to the

present appears to be reasonably calculated to produce information that may be relevant to Evercom's prior knowledge as related to this complaint.

Some of Evercom's arguments regarding relevance relate more to the weight to be given the evidence if it is introduced rather than to whether the information is discoverable. In issuing this order, the undersigned makes no findings whatsoever regarding the appropriate weight to be given to any such evidence if it is introduced. However, for the purpose of whether to grant the motion to compel, the information requested in data request number 12 could be relevant to this case within the meaning of the applicable rules of civil procedure regarding discovery.

Evercom argues that providing the information would be unduly burdensome and expensive, and offered a compromise of providing the information from "on-site" files, which would cover the period for approximately the past six months. The undersigned appreciates Evercom's proposed compromise. However, the Consumer Advocate is correct that this proposed compromise would not cover the period prior to Mr. Silver's complaint, and therefore would not serve all of the Consumer Advocate's needs for the information, since it would not address the prior knowledge issue.

It is not clear from the Consumer Advocate's motion who from Evercom provided the figure of 50 or 51 files that would need to be searched or the context in which the number was provided. Therefore, considering Evercom's resistance, it is unclear whether this figure is accurate and it will not be used as the basis of

considering whether the request is unduly burdensome. The undersigned will accept Evercom's statement that hundreds of files may need to be searched to obtain the requested complaints for the purpose of evaluating burdensomeness.

Based on the fact it took Evercom over 30 hours to find the relevant Iowa complaints, Evercom estimates that to answer data request 12 could take 1,380 hours, based on a calculation of the remaining 46 states times 30 hours. This calculation is based on Evercom's statement that it would have to manually and individually examine the files.

Evercom does not explain why it took over 30 hours to search its Iowa complaint files to find the three relevant Iowa complaints. Evercom also estimated that if the data request were limited to the last approximately six months of "on-site" records, the search would require at least 15 working days to complete. Evercom does not explain how it arrived at this estimate. Therefore, the undersigned is not persuaded that Evercom's estimate it could take 1,380 hours to answer data request number 12 is accurate. However, the undersigned appreciates that Evercom staff will have to spend some significant amount of time to retrieve the information requested by the Consumer Advocate since it apparently has a significant number of complaint files that will have to be searched.

It appears from the limited financial and company information regarding Evercom and its related companies included with the Consumer Advocate's motion that Evercom is a company of sufficient size that it could devote additional personnel

to complying with the Consumer Advocate's request for information. Therefore, the undersigned is not persuaded that there is only one employee who can search Evercom's complaint files and provide the requested information.

Evaluation of whether the motion to compel is unduly burdensome must include a balancing of the interests of both parties, including the needs of the Consumer Advocate for the information, the amount in controversy, the limitations on Evercom's resources to be able to comply with the data request, and the importance of the issues at stake in the case. *See Berg* at 177. The Iowa Supreme Court has stated that parties must tolerate a certain amount of inconvenience involving discovery. *Id.*

Considering these factors, the limited information in the record in this case so far, and the relatively limited period of time stated in the data request, the undersigned finds the Consumer Advocate's arguments that data request number 12 is not unduly burdensome or expensive to be the more persuasive. Therefore, Evercom must provide the answers to data request number 12 to the Consumer Advocate. The parties must work together and be prepared to discuss the appropriate period of time for Evercom to provide this discovery at the prehearing conference.

Pursuant to Iowa R. Civ. P. 1.504, the undersigned will place one limitation on the requirement that Evercom produce the requested information. Evercom states that records of regulatory complaints older than approximately six months are stored

"off-site" and were originally organized by year only. It further states that occasionally files that were removed and replaced may not have been returned to the proper year. In searching these "off-site" records, Evercom may limit its search to the files that are currently in the 2005 and 2006-year locations, and does not have to search other years for files that may have been misfiled. When it provides the answers to data request number 12, Evercom must provide the Consumer Advocate with an estimate of the number of files it believes may have been misfiled and provide the basis for the estimate.

Data request number 13.

Data request number 13 asks Evercom to state whether there are other instances in which it has, on or after January 1, 2005, issued a credit or refund to a consumer for a collect call billed by or on behalf of Evercom. If there are such credits or refunds, the data request asks Evercom to provide the originating number and location of the call, the terminating number of the call, the date of the call, the amount of charge for the call, the date of credit or refund, and the amount of the credit or refund.

Evercom objected to this data request on the grounds of undue burden and relevance.

The Consumer Advocate argues the requested information is relevant because it potentially shows the extent to which Evercom is profiting from the injury being done to consumers. It cites to the decision in *Federal Trade Comm'n. v. Verity*

Intern., Ltd., 335 F. Supp. 2d 479 (S.D.N.Y. 2000), *affirmed in relevant part*, 443 F.2d 48 (2d. Cir. 2006) (Verity), in which the court found that the defendants profited from the placing of unauthorized charges on telephone bills because many consumers pay the bills regardless of whether they used or authorized the services for various reasons. The Consumer Advocate argues that therefore, a particular volume of credits and refunds will often suggest a higher volume of unauthorized charges. It argues that the requested information can therefore show a profit from the fraud on Evercom's part. The Consumer Advocate argues that the Board has identified profit from fraud as one of the basis for assessing a civil penalty.

The Consumer Advocate argues that Evercom's argument on undue burden focuses entirely on the complaints. The Consumer Advocate argues that data request number 13 is not focused on complaints, but is focused on credits and refunds. It argues that Evercom should have financial or other non-complaint records showing the volume of credits and refunds, and it should not be burdensome to provide the information from those records. The Consumer Advocate states it will work with Evercom to retrieve the information in a way that minimizes any burden.

Evercom argues data request number 13 would be unduly burdensome for many of the same reasons given with respect to the answer to data request number 12. It argues it does not keep records of credits or refunds in the manner requested by the Consumer Advocate. It states that consumer credits are recorded on the individual customer account and are not tracked by "reason code" for the credit or

refund. Evercom states that the records of credits and refunds are very extensive because of the many reasons credits and refunds are issued, including refunds of overpayments or unused portions of prepaid accounts. Evercom argues there are numerous reasons customers may receive credits or refunds that are not associated with credits for collect calls for which the customer claims no knowledge. Evercom argues that obtaining the specific credit and refund records requested in data request number 13 would require a manual review of each and every credit issued since January 2005 to determine the reason for the credit. It argues this could be hundreds of credits or refunds requiring a manual search.

Evercom argues that under *Berg*, manually reviewing this many files would clearly be unduly burdensome. It argues the manual review is well beyond Evercom's personnel resources, an extreme financial burden, and would substantially impact Evercom's ability to continue performance of other required work functions.

Furthermore, Evercom argues, such a manual review would likely not produce information relevant to this case. It argues that the fact a customer received a credit for a collect call in no way is evidence of cramming or any other wrongdoing by Evercom. It argues there are many reasons, including overpayment and prepayment by customers, for which credits and refunds are issued. It argues the Consumer Advocate's claim that "a particular volume of credits and refunds will often suggest a higher volume of unauthorized charges" is simply false. Evercom argues that whether a refund or credit was granted pursuant to a complaint would be in the

complaint files that would be provided under Evercom's proposed compromise to data request number 12. It argues that any relevance of these credits and refunds would be more than adequately served by providing the relevant complaint files for the past six months.

Analysis

For the purposes of discovery, the undersigned finds that the Consumer Advocate's arguments regarding relevance are the more persuasive and the requested information may lead to the discovery of relevant evidence. Evercom's arguments relate more to the weight to be given such evidence if it is introduced, rather than whether the information is discoverable. In issuing this order, the undersigned makes no findings whatsoever regarding the appropriate weight to be given to any such evidence if it is introduced.

With regard to whether the data request is unduly burdensome, the Consumer Advocate argues that data request number 13 is not focused on complaints, but is focused on credits and refunds. It argues that Evercom should have financial or other non-complaint records showing the volume of credits and refunds, and it should not be burdensome to provide the information from those records. The Consumer Advocate states it will work with Evercom to retrieve the information in a way that minimizes any burden.

Data request number 13 as written, including its subparts, requires Evercom to provide credit or refund information regarding individual customer collect calls. If the

Consumer Advocate would be satisfied with the non-complaint-specific financial records it states on page nine of its motion to compel, this should relieve Evercom of the requirement to search individual customer records, and Evercom must provide the information to the Consumer Advocate. In addition, Evercom states that information regarding credits and refunds would be in the complaint files that would be provided under its proposed compromise to data request number 12. Therefore, since Evercom must provide the information requested by data request number 12, it should not be unduly burdensome to provide the additional information regarding any credits or refunds contained in those files.

Therefore, the parties must work together to clarify exactly what information the Consumer Advocate is currently requesting with respect to data request number 13. If the Consumer Advocate continues to request the information regarding refunds or credits for individual customer collect calls, Evercom must provide the information to the extent it can be discerned from the individual customer complaint files it must search in responding to data request number 12.

As in the ruling regarding data request number 12, the undersigned will place one limitation on the requirement that Evercom produce the information. In searching its "off-site" records, Evercom may limit its search to the files that are currently in the 2005 and 2006-year locations, and does not have to search other years for files that may have been misfiled.

Data request number 14.

Data request number 14 asks Evercom to state whether there are other instances in which Evercom has determined that a call billed by or on behalf of Evercom was or may have been the result of fraudulent activity by an inmate. If it has, the data request asks for the originating number and location of the call, the terminating number of the call, the date of the call, and the amount of charge for the call.

Evercom objected to the data request on the basis of undue burden and relevance.

The Consumer Advocate states that Evercom's initial response to the data request stated that Evercom was determining the steps necessary to provide the information. The Consumer Advocate also states that Evercom's initial response stated that one of the Iowa complaints involved fraudulent activity by an inmate. The Consumer Advocate states that Evercom's revised response stated that "[o]nce fraud is suspected, an investigation is conducted." The Consumer Advocate further stated that Evercom's revised response stated "the results of the investigations may not be noted on individual consumer accounts" so "Evercom cannot ... provide an answer to this request."

The Consumer Advocate states it has asked Evercom whether it has investigatory files on cases in which Evercom has determined or suspected a call or calls billed by or on behalf of Evercom was or may have been the result of fraudulent

activity by an inmate, and if so, to produce the files. The Consumer Advocate argues the evidence is relevant on Evercom's state of knowledge and the need for remedial action. The Consumer Advocate argues if the files exist, it will not be an undue burden to produce them.

Evercom states that any information with respect to fraudulent activity would be contained in the same files requested in data request number 12. Evercom argues that, as described above, the process for retrieving these files would be unduly burdensome. It further argues that any relevance to the information requested in data request number 14 would be adequately served by Evercom's proposed compromise.

Analysis

The information requested in data request number 14 is relevant for discovery purposes within the meaning of the Iowa rules of civil procedure. Since Evercom states that any information with respect to fraudulent activity would be contained in the same files requested in data request number 12, it should not be unduly burdensome for Evercom to provide the information requested in data request number 14 by searching the same files. Therefore, Evercom must provide the information requested in data request number 14 to the Consumer Advocate.

As in the rulings regarding data request numbers 12 and 13, the undersigned will place one limitation on the requirement that Evercom produce the information. In searching its "off-site" records, Evercom may limit its search to the files that are

currently in the 2005 and 2006-year locations, and does not have to search other years for files that may have been misfiled.

General Objections

The Consumer Advocate argues that all of Evercom's discovery responses are laden with attached general boilerplate objections. The Consumer Advocate argues the objections are labeled "general objections," apply to each and every data request, and make no attempt to explain how they relate to any specific request. The Consumer Advocate states such general boilerplate objections are not useful and demonstrate an obstructionist attitude toward discovery. The Consumer Advocate argues the Board should not tolerate these types of objections because they disrespect the judicial process and thwart discovery's purpose of providing both parties with information essential to the proper litigation of all relevant facts, to eliminate surprise, and to promote settlement. The Consumer Advocate argues the general objections should be stricken, without prejudice to Evercom's ability to assert any specific objection to any specific data request. The Consumer Advocate attached a document from Evercom entitled "General Objections" to its motion. The document contains a list of nine separately stated objections.

Evercom argues the general objections do not disrespect the judicial process and do not thwart discovery's purpose as asserted by the Consumer Advocate. Evercom argues it has provided the Consumer Advocate with the vast majority of the data requested by the Consumer Advocate. It argues that when Evercom has had

an objection to a data request, the objection is noted specifically in response to the request. Evercom argues it has fully cooperated with the discovery rules of the Board and has never used objections without a specific reason. Therefore, it argues, the general objections should not be stricken.

Analysis

The general objections contain such general statements as "Evercom objects to each and every request, as well as to each definition and instruction, to the extent it seeks to impose requirements or obligations on Evercom beyond, in addition to, or different from those imposed by Iowa law or Iowa Utilities Board (IUB) rules and procedures," and "Evercom objects to each and every request to the extent it seeks documents or information beyond Evercom's knowledge, possession, custody, or control." The ninth general objection appears to be an attempted reservation of right, although the undersigned notes that part of it may be contrary to the requirement of Iowa R. Civ. P. 1.503(4) to supplement responses.

The undersigned finds that the listed general objections do not provide any persuasive reason for Evercom to not provide answers to data requests. The undersigned does not consider them to be reasons that must be addressed by the Consumer Advocate or the undersigned in responding to Evercom's objections. They appear to be generalized statements that do not relate to any particular data request, although Evercom claims they apply to all data requests.

While they may be annoying to opposing counsel, the undersigned does not view the general objections as harmful to the Consumer Advocate or harmful to this contested case process. Therefore, the undersigned will decline to order the objections stricken from the record.

IT IS THEREFORE ORDERED:

1. The Consumer Advocate's motion to compel with regard to data request number 12 is granted. Evercom must provide the answers to data request number 12 to the Consumer Advocate. The parties must work together and be prepared to discuss the appropriate period of time for Evercom to provide this discovery at the prehearing conference on October 3, 2006. As explained in the body of this order, in searching its "off-site" records, Evercom may limit its search to the files that are currently in the 2005 and 2006-year locations, and does not have to search other years for files that may have been misfiled. When it provides the answers to data request number 12, Evercom must provide the Consumer Advocate with an estimate of the number of files it believes may have been misfiled and provide the basis for the estimate.

2. The Consumer Advocate's motion to compel with respect to data request number 13 is granted to the extent discussed in the body of this order. The parties must work together to further define the request as discussed in the body of this order and Evercom must provide the requested information as discussed in the body of this order.

3. The Consumer Advocate's motion to compel with respect to data request number 14 is granted. Evercom must provide the requested information as discussed in the body of this order.

4. The Consumer Advocate's motion to strike Evercom's general objections is denied as discussed in the body of this order.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 28th day of September, 2006