

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="text-align:center">v.</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 STAYING UTILITIES BOARD DIRECT ASSESSMENT

(Issued November 2, 2007)

On October 1, 2007, Evercom Systems, Inc. (Evercom), filed with the Utilities Board (Board) an objection to the direct assessments of the Board and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) in this matter. The objection was filed pursuant to Iowa Code § 476.10, which authorizes the Board to assess the costs of a proceeding to the parties to the proceeding and also permits carriers subject to such assessments to object to the charges. Evercom objects that the charges for this proceeding are excessive, unreasonable, and unlawful; in the alternative, and as a minimum requested form of relief, Evercom asks that the assessments associated with this proceeding be stayed until the outcome of the underlying case is known.

On October 9, 2007, Consumer Advocate filed a response to Evercom's objection. Consumer Advocate argues the assessment is reasonable, not excessive,

and lawful and the objection should therefore be overruled. Consumer Advocate does not directly respond to the alternative request for a stay of the assessment, although Consumer Advocate points out that the Board has previously ruled that the most appropriate course of action for agency cost recovery in most contested cases before the agency is direct assessment to the cost-causing party, billing the matter as it proceeds, with adjustments at the end if necessary, as contemplated by § 476.10, which specifically authorizes the Board to make direct assessments from time to time during the course of a proceeding.

On October 31, 2007, Evercom filed a reply in support of its objection to direct assessments, making additional and expanded arguments in support of its objection.

In this case, the Board will at this time grant Evercom the minimum relief it has requested, that is, the Board will stay its assessment until the final agency decision in this docket is issued.¹ When that happens, the Board will consider the most appropriate means of recovering the Board and Consumer Advocate expenses associated with this matter. The Board agrees with Consumer Advocate that in most

¹ At this time, it appears the Board can only stay assessment of the Board's expenses. The extent of the Board's jurisdiction over Consumer Advocate's assessment is not entirely clear. Iowa Code § 476.10 provides in one part that the Board shall assess Consumer Advocate's "certified expenses incurred and directly chargeable" and provides that the Board and Consumer Advocate are to make separate decisions about whether to charge their expenses to intervenors in good faith. These provisions could be read to imply that Consumer Advocate has authority to decide its own assessments. However, later in § 476.10, the statute provides that a person receiving an assessment may file a written objection to the assessment, which the Board must set for hearing. This part of the statute appears to treat the Board and Consumer Advocate charges as a single assessment that the Board can review and revise as necessary or appropriate, indicating the Board has jurisdiction over Consumer Advocate's direct assessments when an objection is filed. The Board is not deciding the precise extent of its jurisdiction in this order; instead, the Board will stay the assessment of the Board charges until there is a final agency decision on the merits and will assume Consumer Advocate will take similar action with respect to its charges. If Consumer Advocate does not do so, it appears the Board has a statutory obligation to set the argument for hearing (§ 476.10 provides that upon receipt of an objection, the Board "shall" set the matter for hearing).

contested cases it is most appropriate to assess the government costs to the cost-causing party during the course of the proceeding, but in this case the Board will exercise its discretion and delay assessment. If at the conclusion of the agency proceedings in this matter the charges are still directly assessed to Evercom, Evercom will have the option of filing a new objection at that time if it believes the charges are excessive, unreasonable, erroneous, unlawful, or invalid.

Finally, the Board notes that this order is being issued pursuant to 199 IAC 7.1(8), which provides that in situations where a majority of the Board is not available to sign and issue an order, authority is delegated to a single Board member for that purpose. At the present time, there is a vacancy on the Board and one of the two persons sitting on the Board is recused from this matter. Accordingly, this order is being issued by a single Board member. The order is subject to review by the Board upon its own motion or upon motion by any party or interested person.

IT IS THEREFORE ORDERED:

The Board charges on the August 20, 2007, bill sent by the Board to Evercom Systems, Inc., that are associated with this docket are stayed pending final Board action in the matter.

UTILITIES BOARD

/s/ John R. Norris _____

ATTEST:

/s/ Judi K. Cooper _____
Executive Secretary

Dated at Des Moines, Iowa, this 2nd day of November, 2007.