

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

|                             |   |                       |
|-----------------------------|---|-----------------------|
| NETWORK ESSENTIALS, LTD.,   | ) |                       |
|                             | ) | DOCKET NO. UT-051602  |
| Complainant,                | ) |                       |
|                             | ) |                       |
| v.                          | ) | ORDER NO. 01          |
|                             | ) |                       |
| GRANT COUNTY PUBLIC UTILITY | ) |                       |
| DISTRICT 2,                 | ) | PREHEARING CONFERENCE |
|                             | ) | ORDER                 |
| Respondent.                 | ) |                       |
| .....                       | ) |                       |
| <br>                        |   |                       |
| BIGDAM.NET,                 | ) |                       |
|                             | ) | DOCKET NO. UT-051742  |
| Complainant,                | ) |                       |
|                             | ) |                       |
| v.                          | ) | ORDER NO. 01          |
|                             | ) |                       |
| GRANT COUNTY PUBLIC UTILITY | ) |                       |
| DISTRICT NO. 2,             | ) | PREHEARING CONFERENCE |
|                             | ) | ORDER                 |
| Respondent.                 | ) |                       |
| .....                       | ) |                       |

1 **PROCEEDINGS; CONSOLIDATION:** On October 20, 2005, Network Essentials, Ltd. (Network Essentials) filed with the Commission a formal Complaint against the Grant County Public Utility District 2 (Grant County PUD). The Complaint asks the Washington Utilities and Transportation Commission (Commission) to review Grant County PUD’s rate policies pertaining to wholesale telecommunications services. Grant County PUD filed

an Answer to the Complaint on November 10, 2005. The Commission conducted a prehearing conference on January 5, 2006, before Administrative Law Judge Dennis J. Moss.

2 On November 14, 2005, bigdam.net (Bigdam) filed with the Commission a formal Complaint against the Grant County Public Utility District No. 2 (Grant County PUD). The Complaint asks the Washington Utilities and Transportation Commission (Commission) to review Grant County PUD's rate policies pertaining to wholesale telecommunications services. Grant County PUD filed an Answer to the Complaint on December 5, 2005. The Commission conducted a prehearing conference on January 5, 2006, before Administrative Law Judge Dennis J. Moss.

3 The pleadings and discussions during the two prehearing conferences on January 5, 2006, demonstrate that these dockets involve common issues of law under sections within chapter 54.16 RCW that are within the Commission's jurisdiction pursuant to RCW 80.01.110. The Commission determines that consolidation of these dockets for purposes of hearing will promote efficient resolution of these issues, and efficient use of the parties' and the Commission's resources.

4 **PARTY REPRESENTATIVES:** Craig R. Jungers, President, Network Essentials, Moses Lake, Washington, represents his company as Complainant in Docket No. UT-051602. Alan Cain, owner of bigdam.net, Grand Coulee, Washington, represents his company as Complainant in Docket No. UT-051742. Michael W. Smith, Foianini Law Offices, Ephrata, Washington, represents Grant County PUD in both proceedings. Gregory Trautman, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff") in Docket No. UT-051602. Sally G. Johnston,

Assistant Attorney General, Olympia, Washington, represents Commission Staff in Docket No. UT-051742.<sup>1</sup>

5 **PETITIONS TO INTERVENE:** There were no petitions to intervene in either docket.

6 **DISCOVERY:** The parties will conduct discovery pursuant to the Commission's discovery rules, WAC 480-07-400–425. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.

7 **ISSUES; PREHEARING BRIEFS; MOTIONS FOR SUMMARY**

**DETERMINATION:** These dockets present issues concerning the scope and application of RCW 54.16.340, which provides that persons or entities requesting wholesale telecommunications services from a public utility district may petition the Commission under the procedures in RCW 80.04.110 (1) – (3) if they believe the district's rates, terms and conditions are unduly or unreasonably discriminatory or preferential. RCW 54.16.340 states that:

In determining whether a district is providing discriminatory or preferential rates, terms, and conditions, the commission may consider such matters as service quality, cost of service, technical feasibility of connection points on the district's facilities, time of response to service requests, system capacity, and other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice and hearing, determines that a public utility district's rates, terms, and

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<sup>1</sup> In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance.

- 8 In documents captioned "Prehearing Conference Issues Proposal," filed in each docket, Grant County PUD contends that the Complaints filed by Network Essentials and Bigdam raise issues that are not within the compass of RCW 54.16.340, and request relief that the Commission is not empowered to provide. The parties agreed with the undersigned Administrative Law Judge at prehearing that the most efficient way to proceed in light of the dispute concerning the extent of the Commission's power and obligations under the statute is to set an early date for prehearing briefs in which they may argue their respective positions on the legal issues.
- 9 In addition, the parties agreed that it is appropriate to establish dates for filing Motions for Summary Determination and Responses to any such motions, consistent with the requirements of WAC 480-07-380.
- 10 Finally, the parties agreed that after the Commission enters orders on the briefs and any Motions for Summary Determination, it should conduct further prehearing proceedings to determine what, if any, additional process is required, and to establish a schedule for such process.
- 11 The Commission adopts the process outlined above in the interests of efficiency and optimal use of the parties' and the Commission's resources.
- 12 **ALTERNATE DISPUTE RESOLUTION:** The Commission supports the informal settlement of matters before it. The parties in these proceedings have scheduled settlement conferences and requested the services of a settlement judge to assist them during settlement negotiations. The Commission will assign

a settlement judge within five days of the date of this Order. The settlement judge will contact the parties to discuss process and scheduling.

- 13 **PROCEDURAL SCHEDULE:** The Commission establishes the procedural schedule that is attached to this Order as Appendix B, which is incorporated into the body of this Order by this reference.
- 14 **FILING; COPIES OF MATERIALS:** Parties must submit the original and four copies of all documents filed. All paper copies of filed documents must be mailed to the Commission Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission's Records Center at the agency's physical address. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.
- 15 Paper copies of filed materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and must be three-hole punched to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 16 An electronic copy of all filings is required. Electronic copies may be provided by e-mail delivery to <[records@wutc.wa.gov](mailto:records@wutc.wa.gov)>. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s).
- 17 The Commission prefers that parties furnish electronic copies of all filings that do not include confidential information and unredacted versions of documents that do include confidential information in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. **Electronic documents that are redacted versions that mask confidential information should be filed exclusively in "read-only" .pdf**

**format.** Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).

18 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

DATED at Olympia, Washington, and effective this 10th day of January, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS

Administrative Law Judge

APPENDIX A

| PARTIES' REPRESENTATIVES                                     |   |              |              |  |
|--|---|--------------|--------------|--|
| DOCKET NOS. UT-051602 and UT-051742                          |   |              |              |  |
|  | REPRESENTATIVE  | PHONE        | FACSIMILE    | E-MAIL   |
| <b>Network Essentials</b><br>(Docket No. UT-051602)          | Craig R. Jungers<br>President, Network Essentials<br>326 S. Cedar Street<br>Moses Lake, WA 98837                                    | 509-764-5007 |              | <a href="mailto:Craig@NetworkEssentials.net">Craig@NetworkEssentials.net</a> |
| <b>bigdam.net</b><br>(Docket No. UT-051742)                  | Alan Cain<br>Owner, bigdam.net<br>P.O. Box 571<br>531 Grand Coulee Avenue<br>East<br>Grand Coulee, WA 99133                         | 509-633-0493 | 509-633-0497 | <a href="mailto:admin@bigdam.net">admin@bigdam.net</a>                       |
| <b>Grant County PUD</b>                                      | Michael W. Smith<br>Foianini Law Offices<br>P.O. Box 908<br>120 First Avenue NW<br>Ephrata, WA 98823                                | 509-754-3591 | 509-754-5076 | <a href="mailto:MSmith1@GCPUD.org">MSmith1@GCPUD.org</a>                     |
| <b>Commission Regulatory Staff</b><br>(Docket No. UT-051602) | Gregory J. Trautman<br>Assistant Attorney General<br>1400 S. Evergreen Park Drive<br>SW<br>P.O. Box 40128<br>Olympia, WA 98504-0128 | 360-664-1187 | 360-586-5522 | <a href="mailto:gtrautma@wutc.wa.gov">gtrautma@wutc.wa.gov</a>               |
| <b>Commission Regulatory Staff</b><br>(Docket No. UT-051742) | Sally G. Johnston<br>Assistant Attorney General<br>1400 S. Evergreen Park Drive<br>SW<br>P.O. Box 40128<br>Olympia, WA 98504-0128   | 360-664-1193 | 360-586-5522 | <a href="mailto:sjohnsto@wutc.wa.gov">sjohnsto@wutc.wa.gov</a>               |

**APPENDIX B**  
**PROCEDURAL SCHEDULE**

| <b>EVENT</b>  | <b>DATE</b>            |
|---|------------------------|
| Complaint Filed in Docket No. UT-051602               | October 20, 2005       |
| Complaint Filed in Docket No. UT-051742               | November 14, 2005      |
| Answer Filed in Docket No. UT-051602                  | November 10, 2005      |
| Answer Filed in Docket No. UT-051742                  | December 5, 2005       |
| First Prehearing Conference                           | January 5, 2006        |
| Settlement Conference<br>(Docket No. UT-051602)       | February 7 - 8, 2006   |
| Settlement Conference<br>(Docket No. UT-051742)       | February 14 - 15, 2006 |
| Prehearing Briefs on Legal Issues<br>(all parties)    | February 28, 2006      |
| Motion(s) for Summary Determination                   | February 28, 2006      |
| Response(s) to Motion(s) for Summary<br>Determination | March 14, 2006         |
| Second Prehearing Conference                          | To Be Determined       |