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1                                   BEFORE THE WASHINGTON  
2                                   UTILITIES AND TRANSPORTATION COMMISSION

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3                                   ) )  
4                                   )Docket UT-051742  
5                                   )Volume I  
6                                   )Pages 1-15  
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10                                  A pre-hearing conference in the  
11                                  above-entitled matter was held at 3:06 p.m. on  
12                                  Thursday, January 5, 2006, at 1300 South Evergreen  
13                                  Park Drive, S.W., Olympia, Washington, before  
14                                  Administrative Law Judge DENNIS MOSS.

16                                  The parties present were as follows:

17                                  BIGDAM.NET, by Alan Cain, Owner, 531  
18                                  Grand Coulee Avenue East, P.O. Box 571, Grand Coulee,  
19                                  Washington 99133.

20                                  GRANT COUNTY P.U.D. 2, by Michael  
21                                  Smith, Attorney at Law, Law Offices of Ray Foianini,  
22                                  120 First Avenue, N.W., P.O. Box 908, Ephrata,  
23                                  Washington 98823.

24                                  COMMISSION STAFF, by Sally Johnston,  
25                                  Senior Assistant Attorney General, 1400 S.W.  
Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,  
Washington 98504-0128.

Barbara L. Nelson, CCR

Court Reporter

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1                   JUDGE MOSS:  Let's be on the record.  Mr.  
2  Cain, I believe you're here to represent BigDam, and  
3  you've been here -- you were here for our prior  
4  pre-hearing conference involving the somewhat related  
5  case involving Network Essentials' complaint against  
6  Grant County P.U.D., so I'm not going to repeat  
7  everything I said at the outset of that proceeding.  
8  Ms. Johnston is familiar with me and knows my name,  
9  at least, so I won't go through that process, either.

10                   We are convened this afternoon in the matter  
11  styled BigDam.net v. Grant County Public Utility  
12  District Number 2, Docket Number UT-051472.  It's a  
13  complaint proceeding brought by BigDam.net.

14                   And our first order of business will be to  
15  take appearances, so let's begin with you, Mr. Cain.  
16  You know the drill, I think.

17                   MR. CAIN:  My name is Alan Cain, it's  
18  C-a-i-n.  I'm the owner of BigDam.net, Internet  
19  provider, Grand Coulee, Washington.  My street  
20  address is 571 -- whoops, excuse me, 531 Grand Coulee  
21  Avenue East, and my post office box is 571.  My  
22  telephone number is 509-633-0493; my fax number is  
23  509-633-0497; my e-mail is admin@bigdam.net, and I  
24  think that's it.

25                   JUDGE MOSS:  Okay.  It's a-d-m-i-n --

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1 MR. CAIN: A-d-m-i-n, that's correct, Your  
2 Honor.

3 JUDGE MOSS: -- @BigDam.net. Let's see.  
4 All right. I thought I had your fax down, but I  
5 don't. Could you repeat that, please?

6 MR. CAIN: It's 509-633-0497.

7 JUDGE MOSS: Thank you. All right. Mr.  
8 Smith, just a short form will do, your name, so  
9 forth.

10 MR. SMITH: Michael W. Smith, Law Offices of  
11 Ray Foianini, representing Grant County P.U.D.

12 JUDGE MOSS: Thank you very much. Ms.  
13 Johnston.

14 MS. JOHNSTON: Sally G. Johnston, Senior  
15 Assistant Attorney General, appearing on behalf of  
16 Commission Staff. My street address is 1400 South  
17 Evergreen Park Drive, S.W., Olympia, Washington  
18 98504. My fax number is area code 360-586-5522; my  
19 direct line is area code 360-664-1193; and my e-mail  
20 address is sjohnston@wutc.wa.gov.

21 JUDGE MOSS: Thank you. Do we have anybody  
22 present on the teleconference bridge line who wishes  
23 to enter an appearance? Apparently we do not. Ms.  
24 Anderl previously indicated that she would not be  
25 listening in on this proceeding, which follows on the

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1 heels of our pre-hearing conference in the Network  
2 Essentials against Grant County P.U.D. matter in  
3 Docket Number UT-051602.

4           During our pre-hearing conference in the  
5 proceeding I just gave the caption for, we had some  
6 discussion about the prospect of consolidating this  
7 proceeding with that one for purposes of proceeding  
8 in an efficient way.

9           Mr. Cain, I know you were present for that  
10 discussion, and my sense was that you were nodding  
11 affirmatively during the course of that discussion.  
12 Would you please let me know if you have any  
13 objection to that?

14           MR. CAIN: That's correct, Your Honor. I  
15 have no particular objection to that. I did read the  
16 RCWs about judgments at the end of it, and it is  
17 severable, I understand that to be the case, so I see  
18 no problem.

19           JUDGE MOSS: Sure, yes. We maintain our  
20 flexibility, so -- Ms. Johnston, I don't think you  
21 were present for that discussion, but Mr. Trautman  
22 may have briefed you on the fact that I have  
23 expressed an inclination toward consolidation. So I  
24 would like to know if you have any objection to that?

25           MS. JOHNSTON: No, I actually was going to

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1 suggest the same thing, and I was listening in on the  
2 bridge line. Thank you.

3 JUDGE MOSS: Oh, okay. Thank you. I  
4 appreciate you doing that. So I think, then, I can  
5 safely say now that I will include in my pre-hearing  
6 orders in this proceeding and the prior one  
7 consolidation, and we will of course maintain the  
8 necessary degree of flexibility. If one case should  
9 come to quick resolution, it will not hold things up  
10 in that event.

11 Now, in terms of our process, I do -- I did  
12 get a sense, at least, from reading the papers that  
13 have been filed thus far that this -- perhaps there  
14 are few or no material issues of fact in dispute in  
15 this case. Is that a reasonable --

16 MR. CAIN: I believe that's correct, Your  
17 Honor.

18 MR. SMITH: I believe so.

19 JUDGE MOSS: Mr. Smith, you also agree with  
20 that. In that situation, it may well be appropriate  
21 for us to go ahead and set a date if you want. We  
22 can set a date for summary determination motions as  
23 with respect to this dispute. We could make that --  
24 I don't know how it would work for you, Mr. Smith.  
25 You would probably be the one who would be most

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1   burdened by the suggestion I'm about to make, which  
2   is that we could do that coincidentally, if you will,  
3   with the other briefing.

4                Would that work for you or should we set a  
5   separate date, you think, or do you think it's a bad  
6   idea to set a date at all? I don't want to pre-judge  
7   our procedures.

8                MR. SMITH: My understanding would be then  
9   that I would file my motion for summary determination  
10  on the 28th, Mr. Cain would file about two weeks  
11  after that and we'd have a hearing. That would -- I  
12  think that's fine, unless, in terms of -- do we want  
13  to get an order related to the briefing on the scope  
14  of review? I don't know if we would also have that  
15  element that we would need to resolve for this.

16               JUDGE MOSS: Do we have the same sorts of  
17  legal issues that would need to be resolved? Is  
18  there a dispute regarding the Commission's  
19  jurisdictions in this one?

20               MR. CAIN: Well, I would leave it to Mr.  
21  Smith to be particular about his side on that, but it  
22  does appear that they kind of cast some doubt on the  
23  notion that the WUTC should actually be involved in  
24  rate-setting at this level. Is that correct?

25               MR. SMITH: To the degree I think that if

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1 you're -- my understanding from the complaint, I  
2 stated the issues in the brief that I -- or the issue  
3 proposal I filed of what I understood the issues to  
4 be, which was the first straightforward issue on the  
5 rate schedule, but then the next issue was, you know,  
6 what's the relief in this case, basically. You know,  
7 is it an order from the UTC? I think you've just  
8 mentioned, you know, should the -- is the issue one  
9 of the UTC reviewing rates or -- I don't know if we  
10 have -- we might have a dispute there that would be  
11 germane to the briefing that we're filing on the  
12 28th.

13 JUDGE MOSS: Well, let me see if I can bring  
14 a little focus to the matter. I take it, from what  
15 I've read thus far, that Grant County's position  
16 would be that the extent of the Commission's  
17 jurisdiction under the statutes before us is to make  
18 a finding, and to not then -- as we normally, in a  
19 normal rate-setting situation within the jurisdiction  
20 that we've been exercising for some hundred years  
21 now, when we find that rates are unjust,  
22 unreasonable, unduly discriminatory, what have you,  
23 then we, by statute, go the next step and establish  
24 rates that do meet those criteria, those standards,  
25 and I think I understand Grant County's position to

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1 be that we don't have that second step available to  
2 us by virtue of the statute that we're -- at issue  
3 here. You're nodding affirmance to that, Mr. Smith.

4 MR. SMITH: I believe so, yes.

5 JUDGE MOSS: All right. And your position,  
6 Mr. Cain, would be that we do have such jurisdiction?  
7 That's a question.

8 MR. CAIN: That is a question. I would  
9 assume that you do.

10 JUDGE MOSS: Okay. Now, there's some  
11 similarity, at least, if not identity of issues there  
12 with what we will be briefing on the 28th in the  
13 other proceeding. That's one of the issues there,  
14 too, in terms of -- that is to say, the remedy.

15 So again, I'm back to the point of whether  
16 it would be more efficient and appropriate for the  
17 Respondent in both cases to take that all up at one  
18 time or whether you want to have a separate date for  
19 your motion for summary determination that would  
20 argue that same point.

21 MR. SMITH: I think it would, from my point  
22 of view, be more efficient to deal with it all  
23 initially in that first briefing due the 28th, and  
24 then turn to the summary determination issue for Mr.  
25 Cain's primary issue.



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1           JUDGE MOSS:  Would you contemplate, then, a  
2  separate filing or just one filing?  You could do a  
3  filing in the consolidated dockets, just one, instead  
4  of doing two.

5           MR. SMITH:  Right.  Yeah, I would do one  
6  filing on the 28th covering that issue in relation to  
7  Network Essentials as well as BigDam.net, then we  
8  could then move for an issue on summary determination  
9  regarding whether or not our rate schedule is unduly  
10 discriminatory.

11          JUDGE MOSS:  Okay.  And you contemplate -- I  
12 suppose it's a matter of civil practice that a motion  
13 for summary determination then would be answered in  
14 civil practice?

15          MR. SMITH:  Correct, right.  I would submit  
16 my brief and then Mr. Cain would have a chance to  
17 respond to that.

18          JUDGE MOSS:  Yes, and that is the standard  
19 practice in civil practice that I'm familiar with, as  
20 well.  Sometimes in our proceedings, we have  
21 simultaneous -- we have cross motions for summary  
22 determination, so that's another option.

23          I'll put it to you, Mr. Cain, whether you  
24 would prefer to file a motion for summary  
25 determination at the same time the other briefs are

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1 filed or whether you'd just like to wait for a couple  
2 of weeks. That apparently is agreeable to you, Mr.  
3 Smith?

4 MR. SMITH: That's fine.

5 MR. CAIN: I'd like to wait and respond.

6 JUDGE MOSS: Reply, okay. Well, we can do  
7 it that way. Those are useful processes that the  
8 civil courts have developed over a long period of  
9 time. I suppose there's no harm in following them  
10 here.

11 MR. CAIN: Well, I'm not a lawyer. I'll  
12 take your advice.

13 JUDGE MOSS: Well, that's not advice; it's  
14 just an observation.

15 MR. SMITH: It might be more helpful for a  
16 pro se to, you know, to see my briefing, as well, so  
17 he can respond to something, rather than --

18 JUDGE MOSS: Of course you do know, Mr.  
19 Cain, that you have the option of obtaining counsel  
20 and being represented by counsel, so -- just to make  
21 sure that you are aware of that.

22 MR. CAIN: Yes, Your Honor.

23 JUDGE MOSS: Yes, you are, okay. All right.  
24 Since you listened in, Ms. Johnston, you know that I  
25 previously indicated that it would be helpful to me

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1 to have Staff's view, and it seems that I'm going to  
2 get it in one fashion or another in connection with  
3 the other case. So to the extent there's a somewhat  
4 nuanced issue here with respect to the BigDam case,  
5 I'm sure whoever does that, you or Mr. Trautman, will  
6 pick up that point, as well.

7 MS. JOHNSTON: Yes.

8 JUDGE MOSS: All right. Very good. Well,  
9 this one can be very simple, then. I think we just  
10 need to set a date. I would also want to -- I also  
11 want to set a date for you all to have some  
12 settlement talks before we get to this point, but  
13 we've got the February 28th date for the motion, if  
14 you will, and the initial argument there for Grant  
15 County. What do you think, about two weeks, Mr.  
16 Cain, to respond?

17 MR. CAIN: I think that's reasonable time,  
18 Your Honor.

19 JUDGE MOSS: Allright. So let's call it  
20 March 14th. I'll include those dates as the  
21 procedural dates. Now, of course, if things change,  
22 let me know, and we'll do whatever we need to do in  
23 terms of modifying our process.

24 All right. Ms. Johnston, am I missing  
25 anything or are we about ready to close this one up?

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1 MS. JOHNSTON: I don't believe you're  
2 missing anything, Your Honor.

3 JUDGE MOSS: Thank you. Do either you two  
4 have anything further you'd like to raise to me  
5 before I make some closing remarks?

6 MR. SMITH: A clarifying question.

7 JUDGE MOSS: Yes.

8 MR. SMITH: Did you set a date for a  
9 settlement negotiation?

10 JUDGE MOSS: Ah, thank you very much. I did  
11 miss that. We set February 7th and 8th in the other  
12 case. What would work well here, considering your  
13 other obligations? Since we're still looking at that  
14 February 28th date, so I'd like it to be either  
15 perhaps the week before or the week after, or even  
16 the same week.

17 MR. CAIN: Later that week would be fine  
18 with me, Your Honor.

19 JUDGE MOSS: Well, let's see. The 7th and  
20 8th is Tuesday, Wednesday. Would you prefer to do it  
21 later that week, Mr. Smith, or slip it over to the  
22 following week?

23 MR. SMITH: I think it would be safer for me  
24 to do it the 14th and 15th.

25 JUDGE MOSS: All right. Will that work for

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1 you, Mr. Cain?

2 MR. CAIN: That's February 14th and 15th?

3 JUDGE MOSS: Yes.

4 MR. CAIN: That would be fine.

5 JUDGE MOSS: Now, the parties in the Network  
6 Essentials case asked me to follow up on the  
7 possibility of assignment of a settlement judge. Is  
8 that something you all would like to have in this  
9 proceeding, as well?

10 MR. CAIN: That would be fine, Your Honor.  
11 Thank you.

12 JUDGE MOSS: I think that can be helpful in  
13 circumstances such as this. So I'll talk to Judge  
14 Wallis about that this afternoon if he's available,  
15 or tomorrow, if he's not available today, and we'll  
16 get word back to you very promptly on that question.

17 All right. On paper filings, we need the  
18 original and four copies for purposes of our internal  
19 distribution. Make your filings to or through the  
20 Commission's secretary by mail or hand delivery to  
21 the secretary at our mailing address or at the  
22 Records Center downstairs in this building.

23 We do ask that you include an electronic  
24 version of your filings of significance, either as an  
25 e-mail attachment directed to the Records Center or

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1 in the form of a three and a half-inch diskette,  
2 properly labeled and so forth. We do have guidelines  
3 in our procedural rules for how to file all this  
4 stuff, so if you take a look at those, that will be  
5 good. Again, if you don't have a copy, you can stop  
6 by the Records Center on your way out today and  
7 they'll provide you with a copy.

8 I will enter a pre-hearing conference order,  
9 I think that's probably going to be early next week,  
10 rather than tomorrow. It seems to me I have some  
11 other business I have to attend to tomorrow. And we  
12 may have further pre-hearing conferences if needed.

13 Again, you can contact me on procedural  
14 matters by telephone or e-mail, but you must limit  
15 yourself to procedural matters. Is there anything  
16 further?

17 MR. SMITH: Did you establish a date for my  
18 filing of the summary determination motion?

19 JUDGE MOSS: Oh, I thought you were going to  
20 do that on the 28th, as well?

21 MR. SMITH: Okay.

22 JUDGE MOSS: That was my understanding, but  
23 I --

24 MR. SMITH: But it will be a separate --

25 JUDGE MOSS: It can be a separate piece of

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1 paper, if you wish.

2 MR. SMITH: Yeah, I'll probably do two.

3 JUDGE MOSS: Yeah, it might be helpful to do  
4 it that way. That's probably a good idea. Now,  
5 you'll want to caption the -- what we've been calling  
6 the brief in both dockets, but your motion for  
7 summary determination can be captioned just in the  
8 one, although they will be consolidated for purposes  
9 of proceeding.

10 Okay. Anything else? All right. I thank  
11 you all for being here today and look forward to  
12 working with you to bring this case to resolution.

13 MR. SMITH: Thank you, Your Honor.

14 MR. CAIN: Thank you, Your Honor.

15 MS. JOHNSTON: Thank You.

16 (Proceedings adjourned at 3:23 p.m.)

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