

[Service Date February 1, 2006]

February 1, 2006

**NOTICE CONCERNING DISCOVERY PRACTICE PURSUANT TO THE  
COMMISSION'S PROCEDURAL RULES**

Re: *Network Essentials, Ltd v. Grant County Public Utility District*  
Docket No. UT-051602<sup>1</sup>

TO ALL PARTIES:

The Commission received from Complainant on January 30, 2006, a document bearing the caption "Objection to Respondent's First Set of Data Requests and request for additional time to respond." The submission is procedurally inappropriate and does not meet the requirements for pleadings or motions under the Commission's procedural rules. The Commission, for the reasons discussed below, will take no action on the submission.

It appears from Complainant's submission that Respondent propounded data requests on January 17, 2006, a discovery practice authorized in this proceeding under the Commission's discovery rules. Complainant's submission states it objects to Respondent's data requests.

Objections to data requests should not be filed with the Commission. Objections to data requests must be presented in writing to the requesting party by the time the response is due. *WAC 480-07-405(6)(a)*. Given that Complainant's submission to the Commission includes neither a certificate of service nor any other indication that it served a copy of its objection on Respondent, it is unclear whether Complainant has followed this procedure. Filing a document with the Commission does not constitute service upon any party. *WAC 480-07-145(4)*. Filings in adjudicative proceedings before the Commission must be served upon all parties and a filing that does not include a valid certificate of service, or its

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<sup>1</sup> Consolidated with *Bigdam.net v. Grant County Public Utility District*, Docket No. UT-051742.

equivalent, is “not complete” under the Commission’s procedural rules. WAC 480-07-145(5).

Complainant asserts the Respondent’s data requests seek documents that are in Respondent’s possession and that the requests are burdensome. Complainant’s argument concerning burden depends in part on Complainant’s circumstances, including its small size and limited financial resources. Complainant states it is without the resources to secure legal representation and filed its complaint “in the expectation that our predicament would be met with some assistance from State authorities.” Complainant states further that if it must undertake the work associated with participating in this proceeding on its own, it will “become bankrupt.” Complainant says it would be necessary to hire staff to respond to this discovery under the Commission’s procedural rules, which would “impose a financial burden upon the Corporation that would not be survivable.” Complainant requests, for these reasons, that “the Respondent’s First Set of Data Requests be set aside and that the Respondent be ordered to submit a Data Request that is not burdensome to the Complainant.”

According to the Complainant’s submission, Respondent’s “Request further demands a response within 10 working days.” Complainant finds this response time “impossible” to meet and asks the Commission to give Complainant thirty days to respond to a “new Data Request.”

Respondent’s “demand” for responses to its data requests within 10 days following service of its data requests on Complainant merely reflects the Commission’s rules on discovery, which provide for a 10 business day response time. WAC 480-07-405(7)(b). This rule also establishes the requirements for parties who assert that they are unable to meet the required response date. There is no indication that Complainant has followed the requirements of WAC 480-07-405(7)(b).

The Commission’s discovery rules also require that “Parties must make good faith efforts to resolve informally all discovery disputes.” WAC 480-07-425(1). We infer from Complainant’s failure to mention any such efforts in its submission that none have been made.

In sum, Complainant should not have filed its objection with the Commission. Having done so, Complainant failed to meet the minimum requirements for filing, including the requirement that the filing include a valid certificate of service, in the form specified in WAC 480-07-150(9), showing service upon all parties as required under WAC 480-07-145(4) and (5). The Commission has no indication that Complainant has met the requirements for interposing objections to data requests or for providing responses later than 10 days following service. The Commission has no indication that the parties have made a good faith effort to resolve their dispute via informal means.

The Commission recognizes the challenges faced by parties who wish to participate in formal adjudicative proceedings without representation by counsel. Indeed, an important purpose of the Commission's procedural rules is to provide all parties detailed guidance to the requirements for participation in an adjudicative proceeding. All parties are expected to become familiar with and conform to the requirements of chapter 480-07 WAC when participating in an adjudicative proceeding. The presiding Administrative Law Judge stated at prehearing, and the Commission reiterated in its prehearing conference order, that parties would be expected to conduct discovery in accordance with the applicable rules, WAC 480-07-400 – 425. Adherence to the procedural rules governing discovery, and all other aspects of adjudicative proceedings before the Commission promotes fairness and protects all parties' due process rights.

**For all of the reasons stated above, the Commission gives notice that it will take no action with respect to Complainant's "Objection to Respondent's First Set of Data Requests and request for additional time to respond," as submitted to the Commission on January 30, 2006.**

**The Commission gives further notice that the parties are required to undertake good faith efforts to work cooperatively together to resolve informally their discovery issues. The parties are required to report on their efforts and progress by letter filed with the Commission no later than February 10, 2006, or by filing an appropriate motion, as provided under the Commission's rules governing discovery.**

As the parties undertake their good faith efforts, they should be mindful that our discovery rules are carefully balanced to protect the rights of both those propounding discovery and those responding to discovery. Thus, while the

Commission's discovery rules include the requirements discussed in this Notice to protect parties that serve data requests, the rules also provide protection for those against whom discovery is sought. The Commission's rules, for example, require that

Parties must not seek discovery that is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, [and] limitations on the parties' resources.

*WAC 480-07-400(4)*. Taking the assertions in Complainant's submission as true for the sake of discussion, it appears that if this discovery dispute was properly before us, the considerations quoted above would be central to our determination of the matter. The Commission encourages both the Respondent and the Complainant to review the discovery rules in WAC 480-07-400 – 425 and have those rules firmly in mind as they pursue good faith efforts to resolve the current dispute. If the parties are unable to resolve their differences via cooperative efforts, their dispute may be properly brought before us by a motion to compel, a motion for protective order, or both.

Sincerely,

DENNIS J. MOSS  
Administrative Law Judge