

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

NETWORK ESSENTIALS, LTD.,	)	
	)	
Complainant,	)	DOCKET NO. UT-051602
	)	(consolidated)
v.	)	
	)	
GRANT COUNTY PUBLIC	)	
UTILITY DISTRICT 2,	)	
	)	
Respondent.	)	
.....	)	
BIGDAM.NET,	)	DOCKET NO. UT-051742
	)	(consolidated)
Complainant,	)	
	)	ORDER 04
v.	)	
	)	INITIAL ORDER GRANTING
GRANT COUNTY PUBLIC	)	REQUESTS FOR LEAVE TO
UTILITY DISTRICT NO. 2,	)	WITHDRAW AND DISMISSING
	)	COMPLAINTS
Respondent.	)	
.....	)	

**MEMORANDUM**

1 **PROCEEDINGS:** Docket No. UT-051602 is a formal Complaint filed by Network Essentials, Ltd. (Network Essentials) against Grant County Public Utility District No. 2 (Grant County PUD), and Docket No. UT-051742 is a formal Complaint filed by bigdam.net (Bigdam) against Grant County PUD. Both Complaints ask the Commission to review Grant County PUD’s rate policies pertaining to wholesale telecommunications services pursuant to RCW 54.16.340, which became effective during 2000.

- 2 The Commission entered Order 01—Prehearing Conference Order on January 10, 2006, and consolidated these dockets for hearing. The procedural schedule provided an early date for prehearing briefs concerning the scope of the Commission’s jurisdiction. Following two continuances granted at the parties’ request, Grant County PUD and the Commission’s regulatory staff filed prehearing briefs on May 1, 2006.
- 3 The Commission entered its Order 03, Scope of Commission Jurisdiction under RCW 54.16 on June 8, 2006. The Commission determined in Order 03 that it has authority to investigate and determine whether Grant County PUD’s wholesale communications rates are unduly discriminatory or preferential, and to enter an order, enforceable via judicial action, requiring Grant County PUD to take remedial action.
- 4 The Commission also determined that it does not have authority to fix Grant County PUD’s wholesale telecommunications rates or to otherwise engage in economic regulation of such rates, to order retroactive adjustment of the PUD’s wholesale telecommunications rates, or to determine whether certain Grant County PUD expenditures are an impermissible gift of public funds.
- 5 The Commission’s Order 03 was “interlocutory” as that term is defined in WAC 480-07-810. No party petitioned for review.
- 6 **MOTIONS TO DISMISS WITHOUT PREJUDICE:** Network Essentials and Bigdam (jointly referred to here as Complainants) each filed a Motion to Dismiss Without Prejudice on June 14, 2006. The Commission considers these motions, which are identical in form and substance, as requests for leave to withdraw and for dismissal of the subject Complaints. The motions state that Grant County PUD will soon release a new Rate Schedule 100 and, pending that issuance “it would not be productive to move this particular case further.” The Complainants request dismissal without prejudice to protect their rights to file complaints in the future, if deemed necessary considering the new rate schedule or for other reasons.

7 Neither Grant County PUD nor Staff answered the Complainants' motions.

8 **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, 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. Ray A. Foianini, of the same firm, entered an appearance. Gregory Trautman, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff.<sup>1</sup>

9 **COMMISSION DETERMINATION:** The Commission determines the Complainants have established good cause and should be granted leave to withdraw their respective Complaints without prejudice. These proceedings accordingly should be dismissed and the respective dockets closed.

### **ORDER**

10 The Commission orders that Network Essentials and Bigdam each are granted leave to withdraw their respective Complaints.

---

<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*.

- 11 The Commission orders further that these proceedings are dismissed without prejudice.

DATED at Olympia, Washington, and effective July 12, 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS  
Administrative Law Judge

## NOTICE TO PARTIES

This is an Initial order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlines below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and six (6) copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250