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STATE OF FLORIDA



OFFICE OF THE GENERAL COUNSEL
S. CURTIS KISER
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

March 16, 2012

Via Certified Mail, Regular U.S. Mail, and Electronic Mail

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Mr. Fritz Holzberg
Gistro, Inc.
P.O. Box 366-762
Bonita Springs, FL 34136

Re: Docket No. 100453-SU - In re: Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Dear Mr. Holzberg:

The above-referenced application by Gistro, Inc. (Gistro) was filed with the Public Service Commission on December 2, 2010. On January 3, 2011, Commission staff sent you a letter detailing that a number of pages were missing from the required application, and that the information that was provided was substantially incomplete. In the seven pages of its letter, staff detailed the information needed to process your application, citing in each instance the Commission rule requiring that the information be provided. These items include a demonstration of financial and technical ability, a sample tariff, the need for service, a system map, a financial statement, a detailed cost study, projected system cost, projected operating expenses, projected capital structure, a filing fee, proof of land ownership, proof of ownership of the wastewater collection system, water usage information, and newspaper and direct notice to certain government officials and the utility's customers. A copy of staff's January 3, 2011 letter is enclosed for your convenience.

On December 13, 2011, I sent you a letter regarding the outstanding deficiencies in your application, which to date have not been adequately addressed. I asked that you confirm whether you wish to proceed with your application, and if so, that you provide all required information detailed in staff's January 3, 2011 letter by February 20, 2012.

By letter dated February 12, 2012, you asserted that all the information staff needs to proceed with your pending application, filed December 2010 in Docket No. 100453-SU, can be found in your certificate application in Docket No. 020640-SU, filed eight years prior to your application in this docket. You attached to your February 12 response what appears to be a copy of a wastewater permit from the Department of Environmental Regulation that expired September 23, 1992, and two pages from staff's recommendation filed February 1, 2007, in Docket 020640-SU. As you know, the Commission never approved that application nor issued

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Mr. Fritz Holzberg
March 16, 2012
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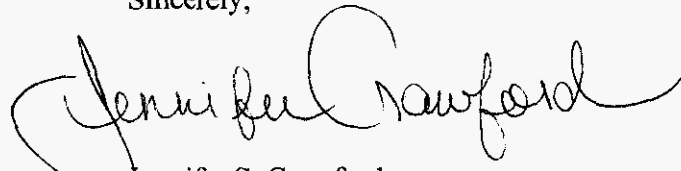
Gistro a certificate of authorization, and by Order No. PSC-07-0297-FOF-SU, the Commission instead accepted your Notice of Withdrawal of that application.¹

At this time, your application remains substantially deficient. It is not sufficient to attempt to support your current application by merely referring to information provided nearly a decade earlier in Docket No. 020640-SU. That information was never approved as sufficient by the Commission; furthermore, it is now substantially out of date. If staff is to proceed with your application, you must provide current, accurate, and complete responses to the requests made by staff in its January 3, 2011 letter. A fundamental expectation of Commission-regulated utilities is that they will comply with the rules, statutes, and orders of the Commission. A current, accurate, and complete application, in compliance with Rule 25-30.033, Florida Administrative Code, is the most basic requirement that must be met in order to obtain a certificate of authorization pursuant to Section 367.045, Florida Statutes.

If you wish to proceed with your application for a certificate, I again request that you provide all required information detailed in staff's January 3, 2011 letter by no later than April 23, 2012. If you do not timely respond to this request, staff intends to bring a recommendation to the earliest available Agenda Conference to recommend that your application be dismissed. Please note that until such time as the Commission issues an order approving your application and granting you a certificate of authorization, you are not authorized to provide service to the public for compensation under Chapter 367, F.S.

Should you have any questions regarding this letter or staff's January 3, 2011 letter, please contact me at (850) 413-6228, or Martha Golden at (850) 413-7015 or James McRoy at (850) 413-6934 for technical questions.

Sincerely,



Jennifer S. Crawford
Attorney Supervisor

JC

Encl.

¹ Order No. PSC-07-0297-FOF-SU, issued April 7, 2007, in Docket No. 020640-SU, In re: Application for certificate to provide wastewater service in Lee County by Gistro, Inc. See also DN 03315-11 in this Docket, letter from legal staff to Mr. Holzberg, dated May 12, 2011.

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MARSHALL WILLIS, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

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Public Service Commission

January 3, 2010

Mr. J. Fritz Holzberg
Gistro, Inc.
P. O. Box 366-762
Bonita Springs, Florida 34136

Re: Docket No. 100453-SU, Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Dear Mr. Holzberg:

The above referenced application has been received and reviewed by my staff. We have determined that your application is substantially incomplete and missing pages 5 through 9 of the required application for original certificate. Please complete the following deficiencies and provide the requested additional information. All items must be completed in order for your application to be processed.

A description of the rule requirement is provided in each deficiency listed below for your reference. Also, please refer to the original certificate application package on the Commission's Web site for rules and examples to help you complete some of the required items. The application package is available at <http://www.floridapsc.com/utilities/waterwastewater/applicationpkg/origapp.pdf>

Deficiencies

1. Financial and Technical Ability. Rule 25-30.033(1)(e), Florida Administrative Code (F.A.C.), requires the application to contain a statement showing the financial and technical ability of the applicant to provide service, and the need for service in the proposed area. The statement shall identify any other utilities within the area proposed to be served that could potentially provide service, and the steps the applicant took to ascertain whether such other service is available. Please provide the following information:
 - (a) Financial Ability. Although the application indicates you have operated and maintained the collection system since 1984, the Commission is required to verify that the applicant has sufficient financial resources to continue to support the operation of the utility in the future. Since you list yourself as the sole owner of Gistro, Inc., please provide a copy of your most recent personal financial statement.

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The statement should be accompanied by a pledge to continue to use the assets on behalf of the utility.

- (b) **Technical Ability.** Although the application indicates that you have operated the system since 1984, the statement does not contain sufficient detail to meet this rule requirement. Please provide a statement of Gistro, Inc.'s technical ability to continue operating and maintaining the collection system, including specific information about the utility owner's or operator's license from the Florida Department of Environmental Protection to operate the utility facilities.
 - (c) **Need for Service.** Prior to granting a new certificate, the Commission must determine whether there are any existing utilities that could provide that service. Please provide a statement describing the steps Gistro, Inc. took to determine whether any entities are currently able to assume operation of the collection lines. Specifically, indicate whether steps were taken to determine if the City of Bonita Springs, BSU, or a homeowners association can assume operation and maintenance of the collection system.
2. **Comprehensive Plan.** Rule 25-30.033(1)(f), F.A.C., requires the application to contain a statement that to the best of the applicant's knowledge, the provision of service will be consistent with the water and wastewater sections of the local comprehensive plan as approved by the Department of Community Affairs at the time the application is filed, or, if not consistent, a statement demonstrating why granting the certificate of authorization would be in the public interest. Please provide the required information.
3. **Equivalent Residential Connections.** Rule 25-30.033(1)(h), F.A.C., requires the application to provide the number of equivalent residential connections (ERCs) proposed to be served, by meter size and customer class. If development will be in phases, separate this information by phase. The ERC, water meter size, and customer class information is necessary to calculate wastewater rates and to determine the appropriate filing fee. Exhibit B(1) of your application indicates that the system is serving all 141 single family homes and 49 of the 118 multi-family units projected to be served at buildout. Please provide the following information:
 - (a) When will the other 69 multi-family units be constructed and connected to the collection system?
 - (b) Have the collection lines already been built to serve the additional 69 multi-family units? If yes, when where they constructed? If no, when will they be constructed?
 - (c) Do all 141 single family homes have a 5/8" x 3/4" water meter? If no, please provide a schedule of the number of ERCs for the 141 homes broken down by meter size.
 - (d) Do all 49 of the current multi-family units have individual 5/8" x 3/4" water meters? If no, please provide a schedule of the number of ERCs for the 49 multi-family units broken down by meter size.
 - (e) Will the 69 projected multi-family units have individual 5/8" by 3/4" meters? If no, please provide a schedule of the number of ERCs for the 69 projected multi-family units broken down by meter size.

4. **Tariff.** Rule 25-30.033(1)(k), F.A.C., requires the application to contain one original and two copies of a sample tariff, containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, F.A.C. The wastewater model tariff, with instructions for completing the tariff, is available on the Commission's Web site at: <http://www.floridapsc.com/utilities/waterwastewater/applicationpkg/index.aspx>. Please provide an original and two copies of Gistro, Inc.'s proposed wastewater tariff, including all proposed rates, classifications, charges, rules, and regulations.
 5. **Territory Description.** Rule 25-30.033(1)(l), F.A.C., requires the application to contain a description of the territory to be served, using township, range and section references as specified in subsection 25-30.030(2), F.A.C. Although a territory description was included in the application, portions of the copy are illegible. Please provide a clear copy of the proposed territory description.
 6. **System Map.** Rule 25-30.033(1)(m), F.A.C., requires the application to contain one copy of a detailed system map showing the proposed lines, treatment facilities and the territory proposed to be served. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served. Please provide the required map.
 7. **System Capacity.** Rule 25-30.033(1)(o), F.A.C., requires the application to contain a statement regarding the separate capacities of the proposed lines and treatment facilities in terms of ERCs and gallons per day. If development will be in phases, separate this information by phase. Please provide the following information:
 - (a) Please provide the capacity in terms of ERCs and gallons per day for the existing collection system.
 - (b) Please provide the capacity in terms of ERCs and gallons per day for any additional lines that will be constructed to serve future customers.
 - (c) Has Gistro, Inc. contacted BSU to determine if BSU has available wastewater treatment capacity to serve the additional 69 multi-family units that will be added in the future? If yes, please provide documentation to support that BSU either has or will have the necessary capacity to serve the additional customers. If no, please explain why Gistro, Inc. has not contacted BSU to make this determination, and when Gistro, Inc. will request this information from BSU.
 8. **Financial Statements.** Rule 25-30.033(1)(r), F.A.C., requires the application to contain a detailed financial statement (balance sheet and income statement), certified if available, of the financial condition of the applicant, that shows all assets and liabilities of every kind and character. The income statement shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the source and application of funds shall also be provided. Please provide the required financial statements for Gistro, Inc.
 9. **Funding.** Rule 25-30.033(1)(s), F.A.C., requires the application to contain a list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This
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requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility. Please provide the required information.

For Items 10 through 13

When correcting the deficiencies listed in Items 11 through 14 below, please be aware of the following information. With respect to establishment of rates and charges, if you are granted a certificate of authorization, you will be allowed to recover prudent, annual operating costs. However, you will not be allowed to recover expenses incurred in prior years. In addition to recovering annual operating costs, you will also be allowed an opportunity to earn a fair return on your investment. However, you must be able to provide documentation, such as actual invoices, cancelled checks, and tax returns, to verify the amounts you have invested in the system and will only be allowed to earn a return on those assets that are currently being used to serve customers. Also, the cost of collection lines written off to the cost of goods sold on your tax returns when the lots were sold cannot be recovered through rates. In order to verify whether any lines have previously been written off, you will be required to produce copies of all tax returns for the utility from inception through the most recent tax return.

For example, many of the costs shown on the list of Forest Mere Subdivision Sanitary Sewer Costs included in your application are related to the wastewater treatment plant which is no longer in service. Those costs will not be considered by the Commission in determining your investment and potential rates. Also, due to the age of the collection system, many of the components have already exceeded their service life for depreciation purposes, and will thus have no value in determining your investment for ratesetting purposes. Please refer to Rule 25-30.140, F.A.C., to determine the average service lives and depreciation rates for the collection system components.

In addition, Rule 25-30.570, F.A.C., regarding Imputation of Contributions-in-Aid-of-Construction (CIAC), states:

If the amount of CIAC has not been recorded on the utility's books and the utility does not submit competent substantial evidence as to the amount of CIAC, the amount of CIAC shall be imputed to be the amount of plant costs charged to the cost of land sales for tax purposes if available, or the proportion of the cost of the facilities and plant attributable to the water transmission and distribution system and the sewage collection system.

Since the only plant that will be considered in your application is the collection system, this means that the entire value of the collection system will be imputed as CIAC if you do not submit competent substantial evidence that Gistro, Inc. currently owns the collection system and has not previously written off any of those costs on its income tax returns. Consequently, there will be no plant investment upon which Gistro, Inc. may earn a return on investment for ratemaking purposes, and only prudent, annual operating expenses going forward will be considered by the Commission when establishing rates. In consideration of this information, you may elect to exclude certain information (such as wastewater treatment plant items) from your answers to Items 10 through 13 below that you now understand will not be used by the Commission to establish rates for Gistro, Inc.

10. **Cost Study.** Rule 25-30.033(1)(t), F.A.C., requires the application to contain a cost study including customer growth projections supporting the proposed rates, charges and service availability charges. A sample cost study, and assistance in preparing initial rates and charges, are available from the Division of Economic Regulation. The list of Forest Mere Subdivision Sanitary Sewer Costs provided in the application does not include sufficient detail for this purpose. Please provide the required cost study, including the uniform system of accounts (USOA) account numbers, installation date, average service life for depreciation, and depreciation rate for each component. Also, please provide all available supporting documentation that verifies these costs, such as copies of invoices, cancelled checks, and all tax returns for the utility from inception through the most recent tax return.
11. **Projected System Cost.** Rule 25-30.033(1)(u), F.A.C., requires the application to contain a schedule showing the projected cost of the proposed system(s) by USOA account numbers pursuant to Rule 25-30.115, F.A.C., and the related capacity of each system in ERCs and gallons per day. Since the collection system is already constructed, please provide the current collection system capacity in terms of ERCs and gallons per day. In addition, if Gistro, Inc. will be expanding the collection system to serve the additional 69 multi-family units, please provide the projected cost information for the expansion and related additional capacity in terms of ERCs and gallons per day.
12. **Projected Operating Expenses.** Rule 25-30.033(1)(v), F.A.C., requires the application to contain a schedule showing the projected operating expenses of the proposed system by USOA account numbers, when 80 percent of the designed capacity of the system is being utilized. Please provide the required schedule.
13. **Projected Capital Structure.** Rule 25-30.033(1)(w), F.A.C., requires the application to contain a schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80 percent of the design capacity of the system. Please provide a schedule showing any projected financing that may be needed if additional collection lines will be built to serve the 69 future multi-family units.
14. **Noticing.** Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, F.A.C., require that the utility provide notice of the application to certain government officials and utilities, the utility's customers, and for publication in a local newspaper. In addition, the applicant must provide affidavits that the required notices were sent. The notice must be appropriately styled and contain the correct legal territory description. Please refer to the original application packet available on the Commission's Web site for a sample notice. You may request that staff review your draft notice prior to mailing. Please complete the following:
 - (a) Notice of the application to staff's list of governing bodies, utilities, and other government officials (see attached list). After completing this noticing requirement, please provide to the Commission a copy of the notice that was sent, a list of the entities that were noticed (you may provide a copy of the Commission list that you used), and a notarized affidavit that the notices were sent, including the date the notices were sent.

- (b) Notice of the application to all of Gistro, Inc.'s customers. After providing the required notice to the customers, please provide to the Commission a copy of the notice sent to customers and a notarized affidavit that the notice of actual application was given in accordance with Rule 25-30.030, F.A.C., by regular mail or personal delivery to each customer of the system.
 - (c) Notice of the application in a newspaper of general circulation in the utility's service territory. Immediately upon completion of publication of the notice, please provide to the Commission an affidavit that the notice of actual application was published once in a newspaper of general circulation in the territory in accordance with Rule 25-30.030, F.A.C. Please include a copy of the proof of publication from the newspaper with the affidavit.
15. **Filing Fee.** Rule 25-30.020(2)(a), F.A.C., requires that all applicants for an original certificate pay a filing fee. Based upon the information in your application at this time, it appears that the collection system capacity is no more than 500 ERCs, therefore, your filing fee is \$750. However, if staff determines upon further review of your filing that the collection system capacity exceeds 500 ERCs, you will be required to pay an additional amount.

Additional Information

1. **Types of Customers.** Rule 25-30.033(1)(i), F.A.C., requires the application to contain a description of the types of customers anticipated, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, commercial, etc. Please describe in more detail the types of multi-family units currently being served and projected to be served in the future (e.g., duplexes, quadruplexes, townhomes, apartment complexes, etc.).
2. **Land Ownership.** Rule 25-30.033(1)(j), F.A.C., requires the applicant to provide evidence, in the form of a warranty deed, that the utility owns the land upon which the utility treatment facilities are or will be located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative. The applicant may submit a contract for the purchase and sale of land with an unexecuted copy of the warranty deed, provided the applicant files an executed and recorded copy of the deed, or an executed copy of the lease, within 30 days after the order granting the certificate. Please provide the following:
 - (a) Evidence that Gistro, Inc. either owns or has a long-term lease or utility easement for the land under the lift stations.
 - (b) Evidence that Gistro, Inc. has a utility easement for access to all collection lines and equipment for maintenance purposes.
3. **Ownership of Wastewater Collection System.** Commission staff are aware that Gistro, Inc. was involved in a prior foreclosure. Please provide documentation to support that Gistro, Inc. did not lose ownership of the wastewater collection system in the foreclosure proceedings.

Mr. J. Fritz Holzberg

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January 3, 2010

4. **Water Usage Information.** It will be necessary to have water consumption information to establish wastewater collection rates. Please indicate the steps you have taken to obtain monthly metered water usage information from BSU, the water service provider for the customers in Gistro, Inc.'s proposed service territory.
5. **Audit.** Once you have corrected all deficiencies indicated above, staff may request an audit of the utility's books and records and perform an engineering inspection of the utility facilities. To facilitate an audit inspection, please indicate where the utility books and records are located and the name and phone number of the contact person.

The **original and four copies** of the response to the information requested in this letter should be filed with the Commission on or before **February 3, 2011**. When filing the response, please be sure to refer to the docket number and to direct the response to:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Should you have any questions concerning the information in this letter, please contact Jennifer Crawford at (850) 413-6228 for legal questions, or my staff members, Martha Golden at (850) 413-7015 or Tom Walden at (850) 413-6950 for technical questions.

Sincerely,



Patti Daniel
Public Utilities Supervisor
Bureau of Certification, Economics & Tariffs

pd/mg

Attachment

cc: Division of Economic Regulation (Golden, Walden)
Office of the General Counsel (Crawford)
Office of Commission Clerk