

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY



OFFICE OF THE GENERAL COUNSEL
HAROLD A. MCLEAN
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 1, 2002

Robert B. Burandt, Esquire
Roosa, Sutton, Burandt, et al.
1714 Cape Coral Parkway East
Cape Coral, Florida 33904

Re: Docket No. 020640-SU - Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Dear Mr. Burandt:

This is to advise you that Mr. Fritz Holzberg's application pending in the above-referenced docket remains deficient. Please refer to the attached copy of the deficiency letter to Mr. Holzberg dated July 30, 2002, from Ms. Patti Daniel, Supervisor of Certification (deficiency letter). Other than your letter of October 7, 2002, we have received no response to the deficiency letter on behalf of Mr. Holzberg.

With respect to the merits of your October 7, 2002, letter, please be advised that along with the other identified application deficiencies, proof of land ownership continues to be deficient. As you know, we are in receipt of a copy of a Sheriff's Deed which purports to show that legal title to the wastewater facilities of the Forest Mere and Spring Lake Subdivisions belong to Mr. Rolf Pfaff, and not to Gistro, Inc. In your October 7, 2002, letter, you summarily state that the sale was defective and transferred nothing. Nonetheless, as stated in the deficiency letter, pursuant to Rule 25-30.033(1)(j), Florida Administrative Code, the applicant must provide evidence, in the form of a warranty deed, that the utility owns the land upon which the lift station is located, or a copy of an agreement which provides for the continued long-term use of the land, such as a 99-year lease. Moreover, since it appears that Gistro, Inc. does not own the developed and undeveloped lots, the applicant must provide evidence of a utility easement for access to all collection lines and equipment.

Additionally, in your letter dated October 7, 2002, to Mr. William E. Sundstrom, you state that your client is demanding that all proceeds from any collection within the wastewater collection system be turned over to him immediately. As you are aware, if Mr. Holzberg's application were to be granted, including its request for rates and charges, Gistro, Inc. would at that time become authorized to charge for service and would at the same time become bound by this Commission's

DOCUMENT NUMBER - DATE
12009 NOV -1 28
FPSC - CONTACT@PSC.STATE.FL.US

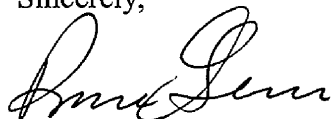
rules. Section 367.081, Florida Statutes, and this Commission's rules require that a utility may only charge rates and charges that have been approved by the Commission. It appears from your statement to Mr. Sundstrom that Gistro, Inc. is holding itself out to be a utility by seeking compensation from Bonita Springs Utilities, Inc. For this reason, by this letter, I am requesting that you or your client advise us, in writing, by November 29, 2002, why staff should not recommend to the Commission that Gistro, Inc. be ordered to show cause as to why it should not be fined by the Commission for an apparent violation of Section 367.081 and this Commission's rules, pursuant to Section 367.161, Florida Statutes.

Finally, if your client wishes to continue to pursue his application for a certificate in order to lawfully provide wastewater collection service, we will need responses to the identified application deficiencies by January 31, 2003. The response should be addressed to Ms. Blanca Bayo, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399, and Docket No. 020640-SU should be referenced on the filing.

If we do not hear from either you or Mr. Holzberg by November 29, 2002, regarding why staff should not recommend that Gistro, Inc. be required to show cause as to why it should not be fined, show cause proceedings against Gistro, Inc. may be initiated. Moreover, if we do not receive a response to the application deficiencies by January 31, 2003, or good cause as to why more time is needed to provide the response, staff will recommend to the Commission that Mr. Holzberg's application should be denied and the docket closed.

If you have any questions about any of the above, please feel free to contact me at (850) 413-6224.

Sincerely,



Rosanne Gervasi
Senior Attorney

RG/dm

cc: Division of the Commission Clerk and Administrative Services
Division of Economic Regulation (Brady)
William E. Sundstrom, Esquire
Martin S. Friedman, Esquire
Mr. Fritz Holzberg

I:\020640-1.rg

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY



TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

Public Service Commission

July 30, 2002

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

Re: Docket No. 020640-SU, Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Dear Mr. Holzberg:

Staff has preliminarily reviewed the filing in the above referenced docket and found it to be substantially incomplete. Summarized below are the filing requirements which must be completed for the application to be considered filed. Before you incur any additional time and expense, staff wants to ensure you understand the significance of a request to be a public utility and the extent of the information that will be necessary for the establishment of rates and charges.

When considering a request for a new certificate of authorization, the Commission must decide whether issuing a new certificate is in the public interest. While your application indicates that you believe Gistro will be a Class A utility, it appears it will be a Class C utility initially. Pursuant to Section 367.045(5)(a), Florida Statutes, the Commission may deny an application for a certificate of authorization for any new Class C wastewater system if the public can be adequately served by modifying or extending a current wastewater system. This law is designed to reduce the proliferation of small, privately-owned wastewater systems in Florida. Since Bonita Springs Utilities, Inc. (BSU), is providing wastewater treatment service, you will be required to demonstrate the steps taken to determine whether BSU is capable of providing wastewater collection service. (See Deficiency No. 4, below.)

The Commission will also need to know if any customer, utility, or governmental entity objects to the granting of the certificate or to the establishment of rates and charges. To determine this, an application for an original certificate requires that formal notice be given. (See Deficiency No. 2, below.) If a substantially affected person or entity files a timely objection, then a hearing will be set in which you will be required to provide testimony and present witnesses, or other evidence, in support of your request. While the Commission allows individuals to represent themselves at hearing, you may wish to hire legal representation.

DOCUMENT CONTROL
07977 JUL 30 2002

With respect to the 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.

Other matters relating to the filing include the demonstration of sufficient financial resources to provide for long-term viability of the system. To verify this, you will be required to provide copies of your personal financial statements. (See Deficiency No. 3, below.) Also, with respect to prior conversations with staff, it is not clear whether you intend to apply rates and charges uniformly to all customers. It is important for you to understand that you cannot pick and choose which customers are required to pay for service and which are not. In addition, along with the establishment of rates and charges will come a number of regulatory responsibilities. Among these will be the requirement for an annual report and the payment of regulatory assessment fees. Failure to timely fulfill these obligations will result in penalties and interest.

Should you still wish to pursue an original certificate and the establishment of rates and charges, you must correct all deficiencies. Until the deficiencies are corrected, the application is incomplete and staff cannot begin its analysis of your request. The following are the deficiencies which need to be corrected and additional information which needs to be provided in order to process your application.

DEFICIENCIES

1. Territory Description and Territory Map. Pursuant to Rule 25-30.033(1), Florida Administrative Code, an application for original certificate must contain a description of the territory to be served, using township, range and section references. And, pursuant to Rule 25-30.033(n), Florida Administrative Code, the application must also contain one copy of an official county tax assessment map, or other map, with the territory plotted using metes and bounds or quarter sections. Pages 41 through 44 of the application package contain the instructions for the preparation of the territory description and territory map. Note that the territory map must be on a scale similar to 1" = 200' or 1" = 400'.
2. Noticing. Pursuant to Rule 25-30.030, Florida Administrative Code, applications for an original certificate must be noticed at the time the application is filed, or shortly thereafter. The notice must be provided to all customers of the utility and to the list of local utilities and

governments provided by staff. (An updated list of local utilities and governments is enclosed.) The notice must also be published once in a newspaper of general circulation in the vicinity of the utility. Before giving the notice, it is important that it be appropriately styled and contain the territory description referenced in Item 1, above. Page 45 of the application package has an example of a notice. Pages 55 through 57 of the application are the rules describing the procedures for noticing.

3. Financial and Technical Ability. Rule 25-30.033(e), Florida Administrative Code, requires a statement of the applicant's financial and technical ability to provide service.

Financial Ability. While staff appreciates the statement that you have been operating the utility since 1984 without collecting fees, the rule requires verification that the applicant has sufficient financial resources to continue to support the operation of the utility. Since you list yourself as the sole owner of Gistro, Inc., please provide a copy of your most recent personal financial statement. The statement should be accompanied by a pledge to continue to use the assets on behalf of the utility.

Technical Ability. The statement showing technical ability should indicate whether the utility owner(s) are licensed by the Florida Department of Environmental Protection to operate the utility facilities. If not, then the application should indicate what licensed person or entity will be responsible for maintaining utility operations.

4. Need for Service. Rule 25-30.033(e), Florida Administrative Code, requires the applicant to identify any other utilities within the area proposed to be served that could potentially provide service and the steps the applicant took to determine whether other service is available. Your application indicates that the City of Bonita Springs did not have wastewater service when the system was built in 1984. However, the Commission needs to make a determination of need based on the availability of service from other sources now. Please indicate the efforts taken 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 the homeowners can assume operations of the collection system.
5. County Comprehensive Plan. Rule 25-30.033(f), Florida Administrative Code, requires a statement that, to the best of the applicant's knowledge, the provision of service will be consistent with the wastewater section of the local comprehensive plan as approved by the Department of Community Affairs (DCA) at the time the application is filed. Please provide the statement required by this rule.
6. Development. Rule 25-30.033(h), Florida Administrative Code, requires the number of equivalent residential connections (ERCs) proposed to be served by meter size and customer class. And, if the development will be in phases, the rule requires the information to be

separated by phase. Exhibit B(1) indicates that, of the 159 single family and 118 multi-family total projected customers, 60 single family and 44 multi-family customers currently exist. This means it has taken 18 years for the community to reach 38% of build out. On the other hand, page 37 of the application indicates the utility will reach the remaining 62% of its design capacity in 3 years. Such accelerated growth needs justification.

- a. Please explain the reason why build out of the remaining development is anticipated to take only three years.
 - b. It also appears that the collection lines for the 159 single family and 118 multi-family lots have already been constructed. Please confirm whether all collection lines have been installed.
 - c. If all collection lines have not been installed for the 159 single family and 118 multi-family lots, please indicate the number of lots without lines and what entity will be responsible for construction of the lines.
7. Land Ownership. Rule 25-30.033(j), Florida Administrative Code, requires the applicant to provide evidence in the form of a warranty deed, that the utility owns the land upon which the utility facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The application indicates that this provision is not applicable. However, the Commission must ensure that Gistro, Inc. either owns or has a long-term lease or utility easement for the land under the lift station. In addition, since it appears Gistro, Inc. does not own the developed and undeveloped lots, it will be important to provide evidence of an utility easement for access to all collection lines and equipment.
8. Wastewater Tariff. Rule 25-30.033(k), Florida Administrative Code, requires an original and two copies of the utility's proposed tariff which contains all rates, classifications, charges, rules, and regulation, consistent with Chapter 25-9, Florida Administrative Code. A model tariff was provided with the application package for your use in complying with this requirement. Please complete and return a proposed wastewater tariff.
9. System Map. Rule 25-30.033(m), Florida Administrative Code, requires a detailed system map showing the lines and facilities and the territory to be served. The system map must be of sufficient scale and detail to enable correlation with the description of territory indicated in Item 1, above.
10. Corporate Statements. Rule 25-30.033(r), Florida Administrative Code, requires a detailed financial statement (balance sheet and income statement) certified if available, of the financial condition of the corporation that shows all assets and liabilities of every kind and character. The statements must be for the preceding calendar or fiscal year, or for the portion of the previous year in which the utility corporation was in existence. The

statements must be prepared in accordance with Rule 25-30.115, Florida Administrative Code. For this requirement and the following accounting information, a copy of the National Association of Regulatory Utility Commissioners' uniform system of accounts (USOA) for Class C wastewater utilities is enclosed.

11. Projected Costs and Operating Expenses. Rule 25-30.033(u), Florida Administrative Code, requires a schedule showing projected cost of the system by USOA account numbers. Rule 25-30.033(v), Florida Administrative Code, requires a schedule showing projected operating expenses of the system by USOA account numbers when 80% of the design capacity is being used. While the application does contain some cost and operating expense information, it is not in the required USOA format. In addition, the information provided includes wastewater treatment plant costs and cumulative expenses. Again, rates will be established based on the cost of plant used to serve customers and projected annual operating expenses at 80% build out.
 - a. Please provide the required schedules for cost and operating expenses by the USOA system of accounts. Schedules 1B (pages 15 and 16) and 3B (pages 23 and 24) of the application have been provided for this purpose.
 - b. In addition, since the lines appear to have been constructed, it will be necessary to provide verification of the original or replacement cost. Please provide documentation of the installation costs in the form of invoices, cancelled checks, and tax returns. Since rates will be established based on plant being used to serve customers, if a major item (such as a lift station) has been replaced, the documentation should be for the item which is being used.
12. Capital Structure. Rules 25-30.033(w), Florida Administrative Code, requires a schedule showing projected capital structure. While the application indicates the utility does not have any debt, it is necessary to identify by USOA account numbers any assets, capital, and liabilities. Schedule 2 (pages 18 and 19) of the application has been provided for this purpose.

ADDITIONAL INFORMATION

13. Water Usage Information. It will be necessary to have water consumption information to establish wastewater collection usage rates.
 - a. Please indicate what entity provides water service in the area proposed to be serve.
 - b. For purposes of charging monthly wastewater usage rates based on actual water usage, please indicate the steps you have taken to obtain monthly metered water

usage information from the water service provider for the lots in the area proposed to be served.

14. Wastewater Treatment Facilities. The application indicates that the wastewater plant has been "turned off" since 1992. Further, the application states that, while BSU is only treating wastewater, it is "collecting all the fees illegal." From these statements, It is not clear whether the wastewater plant was turned off in 1992 due to the interconnection with BSU or some other cause.
 - a. Please indicate when, and under what circumstances, Gistro, Inc., or its predecessor corporation, connected with BSU for the treatment of wastewater. Please provide a copy of supporting documentation related to the BSU's interconnection such as an interconnection agreement.
 - b. Please indicate the circumstances under which Gistro, Inc., or its predecessor corporation, turned off its wastewater plant in 1992. If it was due to any court action, please provide a copy of the final court order.
 - c. The statement that BSU is illegally collecting fees is a serious allegation which must be justified. Please describe in detail the alleged illegal actions by BSU and the extent to which you have attempted to remedy these actions in civil court.
 - d. Please provide the Florida Department of Environmental Protection (FDEP) construction permit number for the collection lines and date the facilities were approved for use.
 - e. Page 5 of the application indicates the applicant began providing service in 1994. This year appears to be an error. Please verify the year in which wastewater service was first provided.
15. Audit. Once you have corrected all deficiencies indicated above, staff may request an audit of the utility's books and records and 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.

Please file an original and two copies of the information and documents requested above, and one copy of the maps, directly with:

The Director, Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Attention: Docket No. 020640-SU

J. Fritz Holzberg
Page 7
July 30, 2002

Should you have any questions about the information requested, including the information on the significance of the filing, please contact Ms. Patricia Brady at (850) 413-6686, pbrady@psc.state.fl.us or Ms. Rosanne Gervasi at (850) 413-6224, rgervasi@psc.state.fl.us.

Sincerely,



Patti Daniel
Supervisor of Certification

PD:pb

Enclosures: (2)

cc: Martin S. Friedman, Esquire
Division of Economic Regulation (Brady, Redemann)
Office of the General Counsel (Gervasi)
Division of the Commission Clerk and Administrative Services (Docket)