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October 20, 2006

Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Via Hand-Delivery

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

Dear Ms. Bayo:

Enclosed for filing in this docket are an original and seven copies of an October 20, 2006 letter to Rosanne Gervasi concerning the above docket.

Please let me know if you have any questions.

Sincerely,

Kathryn G.W. Cowdery

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October 20, 2006

Rosanne Gervasi
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0863

Via hand delivery

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

Dear Ms. Gervasi:

Public Service Commission ("PSC" or "Commission") Staff has identified certain issues in the above-named docket and has requested that I address these issues. The purpose of this letter is to address these issues.

The Notice of Withdrawal Divests the PSC of Jurisdiction over the Application

On June 5, 2006, Gistro, Inc. ("Gistro"), filed its Notice of Withdrawal of Application ("Notice of Withdrawal"), following receipt of the April 4, 2006 Staff Recommendation on the Application, but before the docket went to the PSC agenda conference for decision. Under these relevant facts, Florida case law supports a conclusion of law that Gistro has an absolute right to withdraw its Application. Florida case law and orders of the Commission support Gistro's position that the Notice of Withdrawal divests the PSC of jurisdiction over the Application, and that therefore the appropriate action on that notice would be for the Commission to acknowledge the Notice of Withdrawal and close this docket.

A long line of Florida case law establishes beyond a doubt that the PSC has only those powers and authority granted to it by statute. Any reasonable doubt as to the lawful existence of a particular power sought to be exercised by the PSC must be resolved against the exercise thereof. City of Cape Coral v. GAC Utilities, Inc., 281 So. 2d 493, 494 (Fla. 1973).

The PSC has jurisdiction to review the Application solely by virtue of Gistro filing that Application. It does not otherwise have jurisdiction over Gistro. That is because Gistro is not a "Utility" as defined by Sec. 367.021 (12), Fla. Stat., because Gistro does not provide or propose to provide wastewater service to the public for compensation.

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The PSC routinely receives notices of withdrawal of applications and routinely closes those dockets. It does not continue to assert jurisdiction in those cases.

In In re: Petition by Florida Water Services Corporation, Docket No. 020554-WS, Order No. PSC-04-0070-FOF-WS, issued January 26, 2004, the Commission issued an Order Acknowledging Notice of Dismissal of Petition and Withdrawal of Application and closed the docket. In that docket, the utility had filed a petition for a jurisdiction determination, and in response, Hernando and Pasco Counties each filed petitions for a formal administrative hearing. Following the docket being set for hearing, the utility filed its Notice of Dismissal of Application and Withdrawal of Application. The Commission, citing two Florida Supreme Court cases, stated simply that:

> The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act and cannot revive the original action for any reason. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978).

Accord, Complaint of KMC Telecom III LLC v. Sprint-Florida, Docket No. 050581-TP, Order No. PSC-06-0418-FOF-TP, issued May 18, 2006.

The Commission relied on the same Florida Supreme Court authority in issuing an Order Acknowledging Withdrawal of Petition for Rate Increase and Closing Docket, in In re Ferncrest Utilities, Inc., Docket No. 011073-WS, Order No. PSC-02-1240-FOF-WS, issued September 9, 2002. In addition, the Commission stated:

> We find Ferncrest's voluntary dismissal of its petition for a rate increase divests us of further jurisdiction over this matter. The only additional action we can take is to acknowledge Ferncrest's notice of voluntary dismissal with prejudice [as requested by the utility] and close the docket.

Additional, older PSC authority exists and can be reviewed for support of Gistro's position that the Commission should acknowledge its Notice of Withdrawal and close this docket, but it should be noted that these older cases include reasoning which differs in certain regards somewhat from the Florida Water Services Corporation and Ferncrest cases because they: 1) pre-date changes in the PSC's procedural rules relating to adoption of the model rules of procedure and, 2) predate additional Florida Supreme Court cases. However, the older cases also fully support Gistro's absolute right to withdraw its Application.

In Re General Peat Resources, L.P., Docket No. 920977-EQ, Order No. PSC-94-0310-FOF-EQ, issued March 17, 1994, the Commission issued an Order Acknowledging Dismissal. There, General Peat filed a petition for contract approval which was denied by Proposed Agency Action Order. General Peat timely filed a petition for hearing, the matter was set for hearing, and General Peat filed a notice of dismissal of its protest and of the petition for contract approval just four days before the hearing. The Order Acknowledging Dismissal contains a very thorough

discussion of the then-current law, which includes the still applicable Florida Supreme Court cases Fears v. Lunsford and Randle-Eastern Ambulance Service. Other cases cited in Re General Peat are Humana of Florida, Inc. v. DHRS, 500 So. 2d 186 (Fla. 1st DCA 1986), rev. denied, 506 So. 2d 1041 (Fla. 1987)(Florida Supreme Court denied review of the decision of the First District Court of Appeal which held that a state agency lost its "review jurisdiction" of an applicant's petition for a certificate of need when the applicant withdrew that application) and Orange County v. Debra Inc., 451 So. 2d 868 (Fla. 1st DCA 1984)(The court held that the withdrawal of a petition for a rule divested the Florida Land & Water Adjudicatory Commission of further jurisdiction to proceed). The Commission in Re General Peat concluded:

> Applying the case law discussed above to the facts before us, we find that General Peat's voluntary dismissal of its original petition divests the Commission of further jurisdiction over this matter. . . . The only additional action we can take is to acknowledge General Peat's dismissal and close the docket.

See also City of North Port, Fla. v. Consolidated Minerals, 645 So. 2d 485 (Fla. 2nd DCA 1994) rev. denied, 651 So. 2d 1193 (Fla. 1995), reiterating that in a permitting process, the jurisdiction of an agency is activated when the permit application is filed and is only lost by the agency when the permit is issued or denied or when the permit applicant withdraws its application prior to completion of the fact-finding process. The "fact-finding process" refers to the Chapter 120, Fla. Stat., hearing process. In Gistro's docket, there has not even been a proposed agency action order issued, much less a formal hearing process. See also In re Brookgreen Apartments, Docket No. 960009-WS, Order No. PSC-96-1483-FOF-WS, issued December 4, 1996 (PSC issued Order Acknowledging Notice of Voluntary Withdrawal of an application for exemption, citing Fears v. Lunsford and Randle-Eastern, and noting that it had not taken any action on the application).

Bonita Springs Utilities, Inc. ("BSU"), an interested party in this docket, and whose interest will be described later in this letter, provided Staff with the case Dept. of Professional Reg. v. Marrero, 536 So. 2d 1094 (Fla. 1st DCA 1988). Marrero is not on point to the question of when a notice of voluntary withdrawal of a petition must be acknowledged. Instead, Marrero squarely addressed the issue of exhaustion of administrative remedies, which is not the issue before the PSC in the Gistro docket. In Marrero, a physician who had applied to the State Board of Medicine (the "Board") informed the Board by letter, shortly before the agenda meeting before the Board, that he would not be attending the agenda meeting and was withdrawing his application. The Board did not remove the matter from the agenda and voted to deny the application, but retained jurisdiction to consider the application at its next meeting, when the denial would become final unless Dr. Marrero then chose to appear in person. Rather than appear, Dr Marrero instead filed a complaint in circuit court seeking to enjoin the Board from taking further action on his application. The Board moved to dismiss the complaint for failure to exhaust administrative remedies. The circuit court denied the motion and entered an order permanently enjoining the Board from taking any action on the application. The Board appealed to the District Court of Appeal ("DCA"). The DCA reversed the circuit court order on the basis of Dr. Marrero's failure to exhaust administrative remedies. The question before the Court was not whether under the circumstances the Board was correct or incorrect in hearing the complaint.

In fact, the Court specifically stated: "Whether the above authorities persuasively support the Board's position that it possesses the implied power to take the action proposed [to deny withdrawal of the application], we refuse to say at this juncture." Id. at 1097 – 98. Marrero does not in any manner negate the result dictated by the relevant court and PSC authority cited herein: The appropriate action by the PSC would be to acknowledge Gistro's notice of withdrawal of its application and close this docket.

The PSC has no basis for asserting jurisdiction over Gistro

The PSC does not have any basis for asserting jurisdiction over Gistro. In order to assert jurisdiction over Gistro, Gistro must be found to be providing service to the public for compensation. Secs. 367.011(2) and 367.021(12), Florida Statutes. Gistro has not, is not, and will not be providing service to the public for compensation.

Mr. Holzberg, President of Gistro, through various business entities, is the original developer of the Spring Lakes subdivision, sometimes referred to as the Forest Mere subdivision (the "Subdivision"). As currently planned, the Subdivision will have approximately 273 wastewater connections at build-out. In order to develop this Subdivision, Mr. Holzberg was required to construct a wastewater collection system (the "System") and wastewater treatment plant because there was no other provider available at that time. In approximately 1984, Mr. Holzberg constructed the System and a wastewater treatment plant.

In January 1991, Mr. Holzberg, as authorized representative of Forest Mere Joint Venture, the owner of the System, entered into a Sewer Capacity Presale Agreement (the "Agreement") with Bonita Springs Water System, Inc. ("BSWS"), whereby BSWS agreed to connect certain existing and future customers to its wastewater system. (It is the undersigned's understanding that BSWS changed its name to Bonita Springs Utilities, Inc. ("BSU"), sometime between 1991 and 1997). One paragraph of the Agreement provided that: "At Service Company's option, Customer shall convey to Service Company the on-site collection system serving the Property prior to the commencement of service from Sewer System."

Mr. Holzberg believed that as a result of the Agreement, BSU would take over operation of the wastewater collection system. In fact, what occurred was that BSU opted not to take over operation of the System. Notwithstanding the fact that BSU does not own the collection system, BSU does not bill Gistro as a bulk service customer, but instead bills each resident directly as a customer. Mr. Holzberg, as President of Gistro, has and continues to maintain and operate the System for no compensation from BSU's wastewater customers. It is relevant to note that in February, 2005, Mr. Holzberg filed a four count complaint against BSU in circuit court in Lee County for declaratory relief, trespass, unjust enrichment, and implied contract, and seeking equitable relief, monetary damages, costs and attorney's fees. This case is still pending.

A problem arose in that the Lee County practice was and continues to be to issue building permits to builders in the Subdivision once the builders provide the County with a service availability letter from BSU. Neither BSU nor the County historically notified builders that Forest Mere Joint Venture or its successor developer Gistro owns the System and that permission

from Gistro is necessary before the builders can connect to the System. (It is the undersigned's understanding that BSU in 2006 did notify at least one of its potential customers that Gistro had a "claim" to ownership of the System).

In 2002, First Home Builders of Florida ("FHB"), a developer/builder in the Subdivision, connected to the System without Mr. Holzberg's permission. Mr. Holzberg disconnected the lines. FHB filed suit against Gistro in circuit court. First Home Builder of Florida et. al. v. Gistro etc., Twentieth Judicial Circuit Court, Lee County, Case No. 02-11718CA. PSC Staff was advised and aware of the dispute between these two parties prior to suit being filed and during the course of the litigation ending in settlement. The nature of the relief sought by FHB in its four count complaint was for:

1) temporary and permanent injunction from Gistro interfering with FHB's customers/ lot owners connecting to the System and from Gistro communicating with FHB's customers/ lot owners with claims of ownership of the System,

2) declaratory relief for interpretation of Declaration of Covenants, Restrictions, Easements, Charges and Liens for Forest Mere, that Gistro has no ownership interest in the System and no legal right to prevent connection to the System, and

3) tortious interference with a business relationship, seeking damages in excess of $15,000 and trial by jury.

FHB's complaint specifically recognized that no connection fees could be charged by Gistro because Gistro was not regulated by the PSC and did not have a certificate. Gistro has always maintained that position as well during the course of this lawsuit.

Gistro filed a counterclaim and third party complaint. The nature of the relief sought by Gistro in its two count complaint was for:

1) declaratory judgment as authorized by Sec. 786.011, Fla. Stat.: "as to the extent of the Defendants/Counter-Third Party Plaintiff's interest in certain sewer lines and the Plaintiffs'/Counter-Defendants' and Third party Defendants' ability to tie into those sewer lines" and,

2) monetary damages in excess of $15,000 for trespass.

Gistro did not seek connection fees from FHB, and recognized that the PSC had jurisdiction over setting rates and charges. Gistro and FHB ultimately entered into a confidential Settlement Agreement ("Settlement Agreement") in First Home Builders in early 2003. The Settlement Agreement is confidential and by its terms may not be disclosed to any third parties except under subpoena or court order.

It is to the nature of relief sought that a court looks in resolving whether the PSC or the circuit court has jurisdiction over a dispute. E.g. Florida Power & Light Company v. Albert

Litter Studios, Inc., 896 So. 2d 891 (Fla. 3rd DCA 2005). The nature of the relief sought by the parties was not a determination of whether FHB had to pay Gistro to connect. The nature of the relief sought was for a determination as to whether Gistro owned the System, and whether FHB had a right to connect pursuant to the Declaration of Covenants, for rulings on the tort claims of tortious interference with a business relationship and trespass, requests for compensatory and punitive damages, costs and attorneys fees, and a request for trial by jury. The Florida Supreme Court has ruled that primary jurisdiction in a tort action does not rest with the PSC and: "the PSC does not have any authority to award money damages." See Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, Inc., 291 So. 2d 199, 201 (Fla. 1974). In the Southern Bell v. Mobile America Corp case, the Florida Supreme Court affirmed the First District Court of Appeals and held that the circuit court rather than the PSC had jurisdiction of a claim against a telephone company for money damages for alleged negligent failure to comply with its statutory duty to provide efficient telephone service. The PSC has no authority to decide tort claims, assess monetary damages or interpret a declaration of covenants, and therefore does not have jurisdiction to decide any of the issues raised in First Home Builders.

Likewise, the Courts in Florida have established that the PSC has no authority to decide cases where the plaintiff seeks money damages and involving interpretation of contracts where the issue is not rates, charges or quality of service provided by a utility to the public for compensation. Thus, the PSC has no jurisdiction over the issues in First Home Builders.

In Winter Springs Development Corporation v. Florida Power Corporation, 402 So. 2d 1225 (Fla. 1981), subdivision developers sued an electric utility, seeking money damages for breach of contract wherein the utility agreed to install underground service at no cost. Damages sought were for recovery of damages as to the underground service that the utility allegedly should have installed prior to the action of the PSC authorizing the utility to charge a rate. The Florida Supreme Court stated: "Therefore, where, as here, a plaintiff seeks money damages for breach of contract which an administrative body is not empowered to award, the administrative remedy is not considered adequate. . ." and: "Since the Public Service Commission is not authorized to award money damages, Winter Springs was not bound to seek an administrative remedy for the dispute and thus the doctrine of exhaustion of administrative remedies has no application in this case." Id. at 1228.

In Sandpiper Homeowners Association, Inc. v. Lake Yale Corp, 667 So. 2d 921 (5th DCA 1996), a park owner reduced the park lot rent by the alleged cost of providing water and sewer service, and the utility began separately charging inverted rates approved by PSC. The homeowner's association ("HOA") brought suit in circuit court, alleging breach of lot rental agreement and breach of settlement agreement between parties, and seeking declaratory judgment and declaratory relief, arguing, inter alia, that the court should enter a temporary injunction prohibiting Lake Yale from charging the new rates. The circuit court denied this request, and the HOA did not appeal this intermediate ruling. The HOA did appeal to the Fifth District Court of Appeal, arguing that if the circuit court were permitted to adjust the rental amount to overcome the inverted rate structure, it would essentially be skirting the PSC's authority to create an incentive to conserve water. The Fifth DCA held that the rental costs are not authority, services, or rates under chapter 367 and therefore the circuit court and not PSC has

jurisdiction over the action. The fact that the HOA had argued for a temporary injunction against the new rates being charged did not convince the DCA that the PSC had jurisdiction over the case because the HOA did not appeal the circuit court's adverse ruling.

The First DCA ruled similarly in Peck Plaza Cond. v. Div. of Fla. Land Sales, 371 So. 2d 152 (Fla. 1st DCA 1979). The Court held that the Division of Florida Land Sales had no authority to interpret and then to enforce its interpretation of the provisions of a condominium contract: "It is to the judiciary that the citizenry turns when their rights under a document are unclear and they desire an interpretation thereof." Id. at 154.

The Fourth DCA in Point Management, Inc. v. Department of Business Regulation, 449 So. 2d 306 (Fla. 4th DCA 1984), reversed an order of the Department of Business Regulation ("DBR"), relying on Peck Plaza. The background of that case is that several years before DBR entered its order, the condominium associations and the developer were involved in three separate circuit court lawsuits concerning various aspects of the condominium development. In that litigation, the circuit court approved a general settlement agreement wherein the parties compromised on the three separate cases. Several documents were attached to the settlement agreement, including an agreement for deed and an amendment to the condominium declarations. Following the circuit court's approval of the settlement agreement, an administrative proceeding occurred before DBR, wherein DBR construed and interpreted all of the documents attached to the settlement agreement. The associations appealed, arguing, inter alia, that DBR exceeded its jurisdiction because it interpreted various contracts between the parties. The DCA agreed, stating that in doing so, DBR:

> exceeded its jurisdiction as announced in Peck Plaza Condominium v. Division of Land Sales and Condominiums, supra. The rationale of the Peck case is that courts rather than administrative bodies construe contracts. A settlement agreement between parties to litigation is in fact a contract. The case is even stronger than the Peck situation because here we deal with a contractual settlement between separate parties in separate litigation which settlement has already been approved by the Circuit Court.

Id. at 307.

Winter Springs Development, Sandpiper Homeowners Association, Peck Plaza, and Point Management all support the conclusion that the Circuit Court, and not the PSC, properly exercised jurisdiction over the causes of action in First Home Builders, wherein the parties sought declaratory relief through interpretation of, inter alia, the Declaration of Covenants. The PSC did not obtain regulatory jurisdiction over Gistro due to its entering into the Settlement Agreement in 2003 because the Settlement Agreement was in settlement of all claims in a judicial lawsuit, the issues of which are jurisdictional to the court, not to the PSC.

In addition to the primary point that the PSC does not have authority to exercise jurisdiction over Gistro because it accepted a money damages settlement in a tort case, it should be noted that it is well established in Florida that settlements of lawsuits are highly favored and

will be enforced whenever possible. See in general Robbie v. City of Miami, 469 So. 2d 1384 (Fla. 1985).

This point was emphasized by the Florida Supreme Court in relation to an administrative agency's action concerning a settlement agreement in Abramson v. Florida Psychological Ass'n, 634 So. 2d 610 (Fla. 1994). In Abramson, certain petitioners filed suit in federal court against the Florida Department of Professional Regulation ("DBPR") and others, contending that chapter 490, Fla. Stat., regulating the practice of psychology, was, inter alia, unconstitutional. DBPR settled the case with two of the petitioners by allowing these petitioners to be licensed in a manner different than set forth in the statute. A lawsuit was filed by the Florida Psychological Association challenging the settlement. The circuit court rejected the settlement agreement on the basis that the state had no authority to waive the statutory requirements. The DCA affirmed the trial court's order, holding that the subject agencies were required to construe the statutes they administered on the presumption that such statutes were valid. The contention that equity should be applied to allow enforcement of the agreement was denied on the premise that a party may not seek to enforce an illegal contract. Limiting its decision to the facts before it, the Florida Supreme Court upheld the settlement, noting that the settlement did not jeopardize the health or welfare of the citizens of Florida, stating that:

> Any such deviation from legislative intent which may have resulted from the settlement was minimal. To refuse to uphold the settlement under these circumstances would have the effect of discouraging third parties from every trying to settle their controversies with the governmental agencies of Florida. We cannot see how the public interest was jeopardized by this settlement, and under principles of fundamental fairness, we believe that it should be upheld.

Id. at 612. Although the facts of Abramson are not on point with the instant case, Abramson emphasizes that settlements are highly favored by the Courts, and should be honored when possible.

There has been raised a question as to whether PSC jurisdiction would depend on whether the Settlement Agreement has been approved by the circuit court or not. The PSC's jurisdiction depends on whether the contested issues between the parties fall within the authority granted by the Legislature. The nature of the relief requested in First Home Builders is not within the jurisdiction of the PSC to resolve.

In circuit court litigation, generally, parties who have entered into a settlement agreement may 1) present their settlement agreement to the trial court for approval prior to final judgment or dismissal of the action, or 2) voluntarily dismiss the action without an order of the court as provided for in Florida Rule of Civil Procedure 1.420. See, e.g., Paulucci v. General Dynamics Corporation, 842 So. 2d 797, 802 (Fla. 2003). In both situations the settlement agreement is a contract enforceable by the courts, either through the court's continuing jurisdiction or by initiation of a new lawsuit, depending on whether the parties have taken action for the court to retain jurisdiction or not. The First Home Builders Settlement Agreement is a fully enforceable contract.

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The PSC itself recognizes that its jurisdiction over a matter must be conferred by the legislature. In Re Complaint of KMC Telecom, Dkt 050581-TP, Order No. PSC-05-1122-PCO-TP, issued November 7, 2005, KMC filed a complaint to the PSC against Sprint for, inter alia, failure to pay intrastate access charges pursuant to interconnection agreement. Count IV of the complaint included a claim that Sprint violated a Settlement Agreement that KMC entered into with Sprint in May 2002, an agreement that was never filed with or approved by the Commission, nor was it required to be. Sprint argued that the PSC lacked subject matter jurisdiction over KMC's claims against Sprint relating to the Settlement Agreement and that therefore, Count IV of KMC's Complaint should be dismissed. KMC argued, inter alia, that the Settlement Agreement goes to a financial agreement to settle a dispute between the parties which goes to the heart of the interconnection relationship between KMC and Sprint – the rates, terms and conditions of reciprocal compensation for the exchange of local traffic, and therefore the claim should not be dismissed. The PSC found that it did not have authority to determine whether the Settlement Agreement was violated or not, stating:

> Count IV of the Complaint seeks a finding that Sprint-FL violated a confidential Settlement Agreement with KMC. This Commission has recognized that it has no general authority to enforce contracts, and that a settlement agreement is in essence a contract. ...
>
> In this case, KMC attempts to tie the allegations in Count IV to the parties' interconnection agreements by alluding to the intent and ultimate goal of the Settlement Agreement. KMC's argument is without merit. Regardless of the intent or effect, the Settlement Agreement remains a separate contract, not enforceable by this Commission....However, this Commission is not the appropriate forum to enforce this Settlement Agreement that was neither filed nor approved by us. [emphasis added]

05 FPSC 11:179,182. In First Home Builders, two parties settled their lawsuit, the claims and issues over which the PSC had no jurisdiction. It would be incorrect to try to interpret the Settlement Agreement as being something other than settlement of those claims, issues, and requests for relief. As stated in KMC Telecom, allusions to intent of the parties, in this case, allegations that a monetary settlement is "really" connection fee payment, are without merit. The PSC had no jurisdiction over the claims, issues or relief sought in First Home Builders and has no authority to interpret the Settlement Agreement to be something different than a settlement of those claims and issues.

The PSC has no jurisdiction over the sale of stock of nonjurisdictional systems

There are approximately 50 undeveloped units/ lots within the Subdivision. PSC Staff has indicated an interest in knowing whether Gistro intends to provide service to these undeveloped parcels, and, if so, whether Gistro would take any action which would put it under the regulatory jurisdiction of the PSC. Gistro does not intend to take any action which would put it under the regulatory jurisdiction of the PSC. Gistro is not a "utility" as defined in Sec. 367.021(12) because it does not provide or propose to provide wastewater service to the public for compensation. Gistro is interested in selling its wastewater collection system. Gistro knows

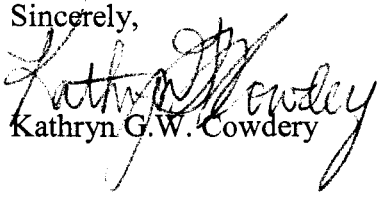
of no party interested in buying the entire System. Gistro is willing to bring in additional shareholders as owners of the System, but has not done so at this time.

If Gistro were to sell its entire system for cash, the PSC would not have jurisdiction over that transaction. If Gistro were to sell shares of the corporation to a third party, the PSC would not have jurisdiction over that transaction. That third party would become a shareholder of the corporation and would obtain an ownership interest in the corporation. If the wastewater system were to be sold, all shareholders would receive a proportionate share of the proceeds of the sale. The fact that Gistro would have gone from having one shareholder to having two shareholders would not bring it under PSC jurisdiction because it still would not be providing or proposing to provide wastewater service to the public for compensation.

Gistro is the owner of a privately owned wastewater collection system. No one has the right to connect to the System without permission of Gistro. However, any shareholders/ owners of the System would have the right to make connections to the System pursuant to the shareholders agreement and by-laws of the corporation. So long as the corporation does not provide service to the public for compensation, the System is not a utility as defined by statute and is not subject to the PSC's jurisdiction.

Please let me know if you have any questions.

Sincerely,



Kathryn G.W. Cowdery

cc: Patti Daniel (via hand delivery)
Pat Brady (via hand delivery)
Robert Burandt, Esq.
Daren Shippy, Esq., Bonita Springs Utilities (via hand delivery)

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