

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** March 23, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Economic Regulation (Brady Redemann) <sup>CCR</sup> pb  
Office of the General Counsel (Gervasi) <sup>192</sup>

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

**AGENDA:** 04/04/06 – Regular Agenda – Proposed Agency Action for Issues 2 and 3 -- Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** 04/04/06 – Statutory deadline for ruling on original certificate pursuant to Section 367.031, Florida Statutes.

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\020640.RCM.DOC

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### Case Background

On July 1, 2002, Gistro, Inc. (Gistro or utility) submitted an application for an original certificate and initial rates and charges for a wastewater collection system in Lee County. The application was prepared by J. Fritz Holzberg (applicant) as the sole owner of Gistro. The facilities have existed since 1984, with service provided without compensation. The collection system currently serves approximately 190 residential connections in the Forest Mere and Spring Lakes subdivisions of Bonita Springs, Florida (development), which is also sometimes referred to as Bonita Preserve. At build-out, it is anticipated that there will be a total of 277 connections consisting of single and multi-family homes. Wastewater treatment service, as well as water

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service, is provided by Bonita Springs Utilities, Inc. (BSU), which is exempt from Commission regulation as a nonprofit corporation providing service solely to members who own and control it, pursuant to Section 367.022(7), Florida Statutes. The utility is located in a water use caution area of the South Florida Water Management District.

Pursuant to Section 367.031, Florida Statutes, the Commission must grant or deny an application for certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to Section 120.569, Florida Statutes, or the application will be deemed granted. The applicant's initial application was found to be substantially deficient. The deficiencies were completed on July 26, 2005, when the application was noticed. However, multiple objections to the application were timely filed, including one request for hearing. Based on that objection, the Commission issued Order No. PSC-05-1170-PCO-SU, on November 23, 2005, establishing procedure for a hearing to be held on June 27, 2006. The request for hearing was subsequently withdrawn on December 13, 2005, making that the official filing date of the application, and making March 13, 2006, the statutory deadline for a decision. However, on February 17, 2006, the applicant filed a waiver of the statutory deadline in order to allow staff time to review the cost information recently filed in the docket. Based upon the time frame specified in the applicant's waiver, the statutory deadline is April 4, 2006.

Prior to making a decision to grant or deny the certificate, staff believes it is important for the Commission to be aware of the history of this small collection system. The following represents staff's best understanding of the events.

### **History of Collection System**

As the original developer, the applicant constructed the development's water and wastewater facilities. Upon completion in 1989, the applicant donated the water system to BSU. Because there was no wastewater provider in the area at that time, the applicant established Forest Mere Property Owners Association, Inc. (Owners Association) for purposes of maintaining the wastewater facilities but retained ownership of the facilities as Forest Mere Joint Venture (Forest Mere). After building approximately 100 homes, the applicant lost construction rights due to bank foreclosure, but continued to retain ownership of the wastewater facilities.

The Forest Mere wastewater collection system was connected to BSU's wastewater treatment facilities pursuant to a 1991 Sewer Capacity Presale Agreement (Presale Agreement) between BSU and Forest Mere. The Presale Agreement anticipated that BSU would take over ownership and operation of the internal collection system, but a dispute over the cost of BSU's required upgrades prevented the transfer. Instead, BSU began billing, and continues to bill, the individual property owners directly for wastewater service at the same rate it charges other customers where BSU owns and maintains the collection system.

In 1997, the Florida Department of Environmental Protection (DEP) brought suit against the applicant and the Owners Association for overflow of the collection system, as well as for failure to dismantle the wastewater treatment plant after connection to BSU. When the applicant attempted to collect the cost of lift station repairs through the Owners Association, staff received its first complaint. Because the Owners Association did not appear to qualify for an exemption from regulation, the applicant was warned not to charge for service without Commission

authorization and provided an application and instructions to apply for a certificate. This process was repeated over the intervening years until the application in this docket was ultimately filed in 2002.

In 1999, the applicant attempted to repermit the wastewater treatment plant, after which time he intended to disconnect from BSU and apply for a certificate to charge for wastewater collection and treatment service. This led to separate disputes with the property owners and BSU. In January of 2000, DEP issued a Consent Final Judgment (Judgment) in the 1997 Circuit Court case which held the applicant responsible for constructing and placing the collection systems into service without a certificate of completion by a professional engineer, for five occasions in 1997 when the collection system discharged to the ground, and for failure to properly abandon the wastewater treatment plant after connection to BSU. At approximately the same time, the wastewater treatment plant was dismantled and removed by a successor in the bank foreclosure, resulting in another lawsuit. The applicant then began to require his permission to connect to his wastewater collection lines. When the builders ignored the applicant and only sought BSU's permission to connect, the applicant petitioned the County to stop issuing building permits without his signature, which the County refused to do.

In July 2002, the applicant began disconnecting lots under construction and, in some instances, lots that were occupied from the collection system by capping the lines. Staff subsequently began receiving complaints alleging that the applicant had first demanded payment for connection to his lines and then disconnected service. By letter dated August 16, 2002, staff advised the applicant that Section 367.031, Florida Statutes, prohibited him from providing utility service for compensation until Gistro had received a certificate and approved rates and charges from the Commission. Staff further advised that Commission rules do not allow for disconnection during the pendency of a complaint. In response, the applicant clarified that he had not requested compensation for connection to his collection system, but believed he had the right to disconnect any new service connections that he did not authorize. By letter dated September 24, 2002, staff advised the applicant that he had no authority to disconnect service under Commission rules, and that he needed to cure the application deficiencies in order for staff to process the application. Early in 2003, the applicant informed staff that mediation between the applicant and the builders was in Circuit Court and requested more time to complete the application. The Circuit Court temporarily enjoined the applicant from disconnecting service and the construction of new homes continued. In 2004, the Circuit Court mediation ultimately resulted in a confidential settlement agreement between the applicant and the builders.

In August 2003, staff was made aware that the applicant had published a notice which indicated that, until such time as its franchise request with the Commission was approved and connection fees established, he was not authorized by the Commission to allow any wastewater hook-ups. By letter dated September 24, 2003, staff reminded the applicant that the certificate application remained deficient. Further, by that letter, staff noted that the notice appeared to imply that the Commission had prohibited Gistro from allowing any hookups to the collection system until the application was ruled upon, that the Commission had taken no such action, and that in fact staff had urged the applicant to maintain the status quo by continuing to allow the hookups at no charge until a decision was made regarding the application. Also by that letter, staff required the applicant to complete the application by a date certain, advising that failure to

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do so would result in a staff recommendation to the Commission to deny the application as incomplete. Staff also had a meeting with the applicant in November of 2003, to emphasize the information necessary to establish rates and charges. Shortly thereafter, the applicant hired legal counsel to assist him in completing the application. With this assistance, the application was completed in December 2005.

This recommendation addresses the application for original wastewater certificate and initial rates and charges. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, Florida Statutes.

### Discussion of Issues

**Issue 1:** Should the application for a wastewater certificate be granted?

**Recommendation:** Yes. Gistro, Inc. should be granted Certificate No. 541-S to serve the territory described in Attachment A. The effective date of the certificate should be the date of the Commission vote. Within 45 days after the issuance of a final order granting a certificate, the applicant should be required to file an affidavit attesting that the utility's books and records have been established and will be maintained pursuant to the NARUC uniform system of accounts. The affidavit should also attest that the applicant is aware of his responsibility to timely file annual reports and remit regulatory assessment fees for 2006 and in all future years. (Brady, Redemann, Gervasi)

**Staff Analysis:** As filed and amended, the application is in compliance with the governing statute, Section 367.045, Florida Statutes, and Rule 25-30.033, Florida Administrative Code, and other administrative rules concerning an application for an original certificate and initial rates and charges. Compliance with specific rule requirements is discussed below.

**Notice.** The noticing requirements in Rule 25-30.030, Florida Administrative Code, were completed on July 26, 2005. In response, there were numerous timely objections, including two letters from an entity entitled "Homeowners in the Forest Mere (Bonita Preserve) Association" which cumulatively attached signatures from approximately 45 lot owners. However, only one of the objectors requested a formal hearing, which was subsequently withdrawn on December 13, 2005. The majority of the objections concerned doubts about the applicant's ability to adequately maintain the system and the belief that lot owners were already receiving wastewater collection services from BSU. BSU had filed an earlier objection on July 24, 2002, indicating that it only objected to Gistro seeking a certificate to replace the wastewater treatment services currently being provided by BSU. It did not object to Gistro seeking a certificate to bill residents for the cost of maintaining the collection system. Legal staff responded to all letters of objection by explaining that Gistro was applying for a certificate to continue to provide wastewater collection service and to begin charging for the service. The letter clarified that the application did not contemplate changing the wastewater treatment service provider, which would continue to be BSU. The protestors were asked to respond by a date certain if they wished a formal hearing. As noted, there was only one request for a formal hearing which was subsequently withdrawn.

**Service Territory and System Maps.** The applicant has provided adequate service territory and system maps. Staff has verified that the maps accurately represent the territory described in Attachment A.

**Land Ownership.** Rule 25-30.033(1)(j), Florida Administrative Code, requires evidence in the form of a warranty deed that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. In this case, no treatment facilities are involved. The utility collects wastewater within the development and delivers it by a master lift station to BSU's force mains. Also, during the pendency of the application, staff received information which purported to

dispute that the applicant owned the utility facilities. In response, the applicant provided an Attorney's Title Affidavit.

**Books and Records, Annual Reports, and Regulatory Assessment Fees.** Staff has explained to the applicant the need to maintain the utility's books and records according to the National Association of Regulatory Utility Commissioners (NARUC) uniform system of accounts, as well as the need to keep the utility books and records separate from non-utility books and records. Staff has also explained the requirements, pursuant to Rules 25-30.110 and 25-30.120, Florida Administrative Code, for the applicant to timely file annual reports and remit regulatory assessment fees (RAFs). In response, the applicant has indicated his intention to hire a firm familiar with regulatory accounting to establish his initial books and records and prepare his annual regulatory filings. To ensure that the books and records are properly established, staff recommends that, within 45 days after the issuance of a final order approving the utility's certificate, the applicant be required to file an affidavit attesting that the utility's books and records have been established and will be maintained pursuant to the NARUC uniform system of accounts. The affidavit should also attest that the applicant is aware of his responsibility to timely file annual reports and remit RAFs for 2006 and in all future years.

**Public Interest.** Rule 25-30.033(1)(e), Florida Administrative Code, requires that the utility provide a statement showing its financial and technical ability to provide service. While the applicant provided a financial statement showing modest assets, staff believes that evidence of financial ability has been demonstrated by the applicant's maintenance of the collection system without compensation for nearly twenty years. The DEP does not require a licensed operator for wastewater collection systems. However, the utility has two lift stations which need to be monitored and maintained. One of the lift stations is the master lift station which pumps all the development's flows into BSU's force mains. The applicant has indicated that he monitors both lift stations on a nearly daily basis and has a monthly maintenance contract for the master lift station. Although staff has been made aware of numerous malfunctions in the utility's collection system in the past, staff has confirmed with DEP that the utility's collection system is currently in compliance with its rules and regulations. Staff therefore believes that the applicant meets the threshold requirements for a showing of financial and technical ability.

However, as detailed in the Case Background, there is a long history of animosity and litigation between the applicant, the customers, and the water and wastewater treatment provider. Moreover, staff is concerned about the applicant's ability to fully understand and consistently comply with governing statutes and rules, as well as the applicant's occasional lack of regulatory constraint. Prior to filing this recommendation, staff conducted a telephone interview with the applicant. While the applicant was respectful and courteous throughout the interview, staff was not convinced that the applicant understands his pending regulatory responsibilities. After the telephone interview, the applicant indicated his intention to hire a firm familiar with regulatory accounting to establish his initial books and records and prepare his annual regulatory filings. In addition, the applicant's legal counsel has advised that she has counseled the applicant concerning all of the requirements of the Commission.

Staff is also concerned with the applicant's unrealistic expectation of financial compensation from the collection system and minimal understanding of the basis for rates and

charges. In his original application filed in July of 2002, the applicant provided a list of \$2,447,279 in sanitary sewer costs which represented the investment he believed he was entitled to recoup. Among the listed costs was \$240,000 for the wastewater treatment plant that had been dismantled and removed, \$380,000 for land which appears to have been lost in foreclosure, \$200,000 in historical operating and maintenance (O&M) expenses, \$110,000 resulting from construction flooding incidents, and \$1,008,000 in interest which appears to include a period of time after bank foreclosure.

Although the applicant may have incurred these costs, the list demonstrates the applicant's lack of understanding regarding the basis upon which his rates and charges would be established. In the November 2003 meeting with the applicant noted in the Case Background, staff urged the applicant to seek advice on cost-based rates and charges from a firm familiar with regulatory accounting. Since March 2004, the applicant has had legal representation which resulted in a completed application and meaningful cost information. However, the extent to which the applicant understands the regulatory process is still not clear to staff.

Pursuant to Section 367.045(5)(a), Florida Statutes, the Commission may deny a certificate of authorization, if it determines that doing so is in the public interest. Should the Commission decide to deny the applicant's request for a certificate, this issue should become a proposed agency action issue to allow the applicant the opportunity to request a hearing. If a final post-hearing order denying the certificate is issued, staff believes that the applicant would have three choices: (1) continue to operate the collection system without compensation; (2) transfer the system to BSU, the Owners Association, or some other entity, possibly for compensation; or (3) abandon the system upon giving proper notice pursuant to Section 367.165, Florida Statutes, in which case a receiver would be appointed by the Circuit Court.

Even though staff believes that regulation of this utility may prove to be difficult, the applicant is the only entity which has indicated a current willingness to maintain the collection system. The Owners Association has not pursued an acquisition and attempts to negotiate a solution with BSU have failed. Moreover, staff is concerned that the collection system may become neglected if the applicant were to continue to operate it without compensation. Pursuant to Section 367.011(2), Florida Statutes, the Commission has exclusive jurisdiction over each utility with respect to its authority, service, and rates. By providing the service to the public for compensation, Gistro will meet the definition of a utility pursuant to Section 367.021(12), Florida Statutes. As such, the applicant will have both the resources to maintain the system and the responsibility, under penalty of law, for adhering to Commission-prescribed rules and regulations. Finally, there will be a forum for complaint resolution between the utility and its customers. Staff believes this is the situation embodied in the legislative intent of Chapter 367, Florida Statutes, that regulation of utilities is in the public interest.

Staff therefore recommends that Gistro, Inc. be granted Certificate No. 541-S to serve the territory described in Attachment A. The effective date of the certificate should be the date of the Commission vote. Within 45 days after the issuance of a final order granting a certificate, the applicant should be required to file an affidavit attesting that the utility's books and records have been established and will be maintained pursuant to the NARUC uniform system of

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accounts. The affidavit should also attest that the applicant is aware of his responsibility to timely file annual reports and remit regulatory assessment fees for 2006 and in all future years.



**Issue 2:** If the Commission grants the utility a certificate of authorization, what is the appropriate initial wastewater service rate?

**Recommendation:** A quarterly wastewater service rate of \$19.18 per residential connection should be approved. Within 10 days from the date of the Commission vote, the applicant should file a proposed notice of its Commission-approved wastewater service rate for staff's review. The notice should specifically indicate that the rate is a proposed agency action and specify the time-frame and manner by which any person whose substantial interests are affected by the proposed action may file a petition for a formal proceeding. Within 10 days of staff approval, the applicant should provide the notice to all existing connections and owners of unconnected lots in its service territory, pursuant to Rule 25-30.4345, Florida Administrative Code. Within 10 days after the notice is given, the applicant should file a statement confirming that the notice has been given. Within 15 days from the date of the Commission vote, the applicant should file a revised tariff reflecting the Commission-approved wastewater service rate. The tariff should become effective on or after the stamped approval date, pursuant to Rule 25-30.475, Florida Administrative Code. The applicant should be required to charge the approved rate until authorized to change by the Commission in a subsequent proceeding. A return on equity of 8.88% plus or minus 100 basis points should be approved. (Brady, Redemann)

**Staff Analysis:** As noted in Issue 1, the applicant originally requested recovery of approximately \$2.5 million in plant and operating expenses. Upon obtaining legal counsel, the applicant asked that rate base not be established due to lack of original source documentation. Instead, the applicant requested a rate of \$28.88 per month per connection based on \$66,000 in expenses and a \$30,000 return on investment. The utility's proposed and staff's recommended revenue requirement, service rate, and service availability charge are discussed below.

### **Rate Base**

#### **Utility-Plant-In-Service (UPIS)**

Staff determined the approximate original cost of the collection lines to be \$247,122, based on system maps and engineering cost estimates for similarly sized and aged facilities. In addition, the application contained a filing fee of \$750 pursuant to Rule 25-30.020, Florida Administrative Code, and an estimate of \$1,500 to establish the utility's books and records pursuant to the NARUC uniform system of accounts. Staff believes these costs are reasonable and should be included in UPIS. Also, the applicant provided invoices for approximately \$21,000 in legal costs incurred from March 2004 through December 2005. Staff reviewed the invoices and determined that approximately one-third represent costs specifically related to establishing the utility and filing for a certificate. The remainder of the costs appear to represent time spent educating the applicant regarding the regulatory process which, although important, are not costs which should be borne by the ratepayers. Therefore, staff recommends that \$7,000 in legal costs are reasonable and should be included in rate base. The applicant provided documentation of plant replacements in the amount of \$4,400 for receiving wells and \$6,355 for pumping stations. Staff has reviewed the documentation and believes the costs are reasonable and should be included in UPIS. Therefore, staff recommends that UPIS as of December 31, 2005, is \$267,127.

### Accumulated Depreciation

Staff calculated accumulated depreciation balances using the guidelines for average service lives as set forth in Rule 25-30.140, Florida Administrative Code. Based on those calculations, staff recommends that accumulated depreciation as of December 31, 2005, is \$150,563.

### Contributions in Aid of Construction (CIAC)

The applicant did not provide evidence to show that the cost of the collection system was not written off to costs of goods sold on the developer's tax returns despite numerous requests for copies of the developer's tax returns. Therefore, staff recommends that the estimated original cost of the lines of \$247,127 be imputed as CIAC, pursuant to Rule 25-30.570, Florida Administrative Code.

### Amortization of CIAC

Based on the guidelines for average service lives as set forth in Rule 25-30.140, Florida Administrative Code, staff recommends that amortization of CIAC is \$149,403, as of December 31, 2005.

### Rate Base Summary

Staff recommends that rate base as of December 31, 2005, is \$18,845. Staff's calculation of rate base and recommended account balances for UPIS and accumulated depreciation are shown on Schedule 1. The schedule of rate base is for informational purposes and is not intended to formally establish rate base. This is consistent with Commission practice in original certificate applications.

### **Return on Investment**

The applicant requested a \$30,000 return on investment, but provided no basis for the request. The applicant has stated that the utility has no debt. Therefore, pursuant to the Commission's most recent leverage graph formula,<sup>1</sup> the utility should be allowed to earn an 8.88% return on equity. Based on staff's recommended rate base of \$18,845, a return on equity of \$1,673 should be included in the utility's revenue requirement for setting initial rates. Further staff recommends that the Commission set Gistro's authorized return on equity at 8.88% with a range of plus or minus 100 basis points.

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<sup>1</sup> Order No. PSC-05-0680-PAA-WS, issued June 20, 2005, in Docket No. 050006-WS, In Re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.

## **Revenue Requirement**

### Operating and Maintenance Expense

A comparison of the applicant's proposed and staff's recommended revenue, O&M expenses, and return on investment is shown on Schedule 2. The utility's proposed revenue requirement of \$96,000 is based on proposed O&M expenses of \$66,000 and a proposed return on investment of \$30,000.

**Salary and Wages—Officer (703):** The applicant requested \$18,000 per year in salary and wages based on an estimate of approximately 15 hours per week spent administering and managing the utility. Since the applicant's O&M expense includes contract services for accounting, maintenance, and billing, staff recommends that the applicant's salary be based on 20 hours per month at \$25.00 per hour for checking the lift stations, responding to customers, coordinating consultant work (accounting, maintenance, billing), and generally running the company. Therefore, staff recommends that the appropriate amount for salary and wages is \$6,000.

**Purchased Power (715):** The applicant requested \$2,000 for purchased power. Staff recommends \$1,600 for purchased power based on the utility's average monthly kilowatt hours for both lift stations at estimated 2006 electric rates.

**Material and Supplies (720):** The applicant requested an annual amount of \$15,000 to maintain the lines and lift stations. Because the lift stations have recently been substantially replaced, staff recommends that \$2,500 is a reasonable amount for material and supplies.

**Contract Services—Professional (731).** The applicant provided an annual estimate of \$4,912 for billing, bookkeeping, and annual regulatory filings. The applicant's estimated billing cost of \$1,662 was based on \$1.50 per bill per quarter for 277 connections. The estimated annual cost of \$2,000 for bookkeeping and \$1,250 for annual regulatory filings were provided by the accounting firm the applicant intends to hire for these purposes. Staff believes that all these costs are reasonable and recommends that \$4,912 be approved for professional contract services.

**Contract Services—Other (736).** The applicant requested \$4,000 for contract services to maintain the master lift station. Staff recommends \$2,280 be allowed based on the applicant's contract service costs of \$190 per month.

**Miscellaneous Expenses (775).** The applicant originally requested \$20,000 for office work and supplies which included the cost of billing and \$7,000 in unspecified costs. Subsequently, the applicant provided a specific amount of \$4,912 for professional contract services, as described above. Staff assumes that the applicant intends for the remaining \$22,088 in office work and supplies to be considered miscellaneous expenses. However, the applicant did not provide a basis for the additional costs. Absent cost justification, staff believes that \$500 is a reasonable amount for miscellaneous expenses.

### Depreciation Expense

Staff recommends that a depreciation expense of \$7,780 be included in revenue requirement. The amount is calculated based on the guideline depreciation rates in Rule 25-30.140, Florida Administrative Code.

### Amortization Expense

Staff recommends that an amortization expense of (\$6,949) be included the revenue requirement to reflect the amortization of CIAC based on the guideline rates in Rule 25-30.140, Florida Administrative Code.

### Taxes Other Than Income

Staff recommends that an amount of \$955 for taxes other than income be included in the utility's revenue requirement. This amount is based on estimated annual RAFs of 4.5% on staff's proposed revenue requirement of \$21,251.

### Revenue Requirement Summary

As described above, staff's recommended revenue requirement of \$21,251 is based on operating and maintenance expenses, depreciation expenses, amortization expense, and taxes other than income. A comparison of the utility's proposed and staff's recommended revenue requirement is shown on Schedule 2.

### **Wastewater Service Rate**

The applicant requested a wastewater service rate of \$86.64 per quarter (\$28.88 per month) per connection. The applicant's rate was based on an annual revenue requirement of \$96,000 and 277 connections. Based on an annual revenue requirement of \$21,251, staff recommends that a rate of \$19.18 per quarter (\$6.39 per month) be approved. The customers will also be paying BSU for wastewater treatment service at the same rate it charges other customers where BSU owns and maintains the collection system.

### **Service Availability Charge**

The applicant has requested that a service availability charge not be established and staff concurs. Pursuant to the guidelines in Rule 25-30.580, Florida Administrative Code, the minimum amount of CIAC should not be less than the percentage of facilities and plant represented by the wastewater collection system. In the case of this utility, the wastewater collection system represents \$257,877 out of total UPIS of \$267,127, or 96.5%. Therefore, the minimum guideline amount of CIAC has been met and no service availability charge should be established.

### **Conclusion**

Staff recommends that a quarterly wastewater service rate of \$19.18 per residential connection should be approved. Within 10 days from the date of the Commission vote, the

applicant should file a proposed notice of its Commission-approved wastewater service rate for staff's review. The notice should specifically indicate that the rate is a proposed agency action and specify the time-frame and manner by which any person whose substantial interests are affected by the proposed action may file a petition for a formal proceeding. Within 10 days of staff approval, the applicant should provide the notice to all existing connections and owners of unconnected lots in its service territory, pursuant to Rule 25-30.4345, Florida Administrative Code. Within 10 days after the notice is given, the applicant should file a statement confirming that the notice has been given. Within 15 days from the date of the Commission vote, the applicant should file a revised tariff reflecting the Commission-approved wastewater service rate. The tariff should become effective on or after the stamped approval date, pursuant to Rule 25-30.475, Florida Administrative Code. The applicant should be required to charge the approved rate until authorized to change by the Commission in a subsequent proceeding. A return on equity of 8.88% plus or minus 100 basis points should be approved.

**Issue 3:** If the Commission grants the utility a certificate of authorization, what are the appropriate miscellaneous service charges?

**Recommendation:** The Commission's standard miscellaneous wastewater services charges, as described in staff's analysis, should be approved. In addition, a \$5.00 late payment charge is reasonable and should be approved. These charges should become effective on or after the stamped approval date, pursuant to Rule 25-30.475, Florida Administrative Code, and should be included in the notice described in Issue 2. (Brady)

**Staff Analysis:** The applicant has requested the Commission's standard miscellaneous wastewater service charges of \$15.00 for initial connection; \$15.00 for normal reconnection; actual cost for violation reconnection; and \$10.00 for premise visit in lieu of disconnection. Since the utility does not provide water service, the cost for violation reconnection will include the cost to dig up and cap the line and then reverse the process upon verification of payment. As such, the applicant has indicated that he only intends to disconnect service for extreme cases of non-payment. Instead, the applicant has requested that the Commission approve a \$5.00 late payment charge to discourage delinquent payment. Staff believes this request is reasonable and the amount is consistent with recent Commission decisions.<sup>2</sup>

Based on the above, staff recommends that the Commission's standard miscellaneous wastewater service charges and a \$5.00 late payment charge are reasonable and should be approved. These charges should become effective on or after the stamped approval date, pursuant to Rule 25-30.475, Florida Administrative Code, and should be included in the notice described in Issue 2.

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<sup>2</sup> Order No. PSC-06-0170A-PAA-WS, issued March 9, 2006, in Docket No. 050281-WS, In Re: Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

**Issue 4:** Should the approved proposed agency action rates be implemented on a temporary basis, subject to refund with interest, in the event of a protest filed by a party other than the utility?

**Recommendation:** Yes. In the event of a protest filed by a party other than the utility, the utility should be authorized to implement the approved proposed agency action rates on a temporary basis, subject to refund, pending the final outcome of this proceeding. Should the final rates be lower than the temporary rates, the applicant should be required to refund the difference, with interest, pursuant to Rule 25-30.360, Florida Administrative Code. Prior to the implementation of any temporary rates, the utility should be required to provide evidence of security as described in staff's analysis. In addition, after the temporary rates are in effect, pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should file monthly reports no later than the 20th of each month indicating the monthly and total amount of money that was subject to refund at the end of the preceding month until the final order is issued. The monthly reports should also indicate the status of the security being used to guarantee repayment of any potential refund. (Brady, Gervasi)

**Staff Analysis:** This recommendation proposes an initial wastewater service rate of \$19.18 per quarter and miscellaneous service charges. A timely protest might delay the implementation of rates, resulting in an unrecoverable loss of revenue to the utility. Therefore, in the event of a protest filed by a party other than the utility, staff recommends that the Commission authorize the utility to implement the approved proposed agency action rates on a temporary basis, pending the final outcome of this proceeding. If the final rates are lower than the temporary rates, the applicant should be required to refund the difference, with interest, pursuant to Rule 25-30.360, Florida Administrative Code.

In staff-assisted rate cases, Section 367.0814(7), Florida Statutes, authorizes the Commission to provide for the collection of temporary rates, subject to refund with interest, in the event of a protest or an appeal by a party other than the utility. In file and suspend rate cases processed under the proposed agency action procedure, if a protest is filed by a party other than the utility, Section 367.081(8), Florida Statutes, authorizes the utility to place the requested rates into effect under bond, escrow, or corporate undertaking subject to refund, upon notice to the Commission and upon filing the appropriate tariffs. The Commission has recognized in those types of cases that a protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility. Staff believes that the same logic applies here. Although Section 367.045, Florida Statutes, does not expressly provide for such a vehicle, the Commission has found in other certification cases that Section 367.011(3), Florida Statutes, provides the Commission the implicit authority to approve temporary rates, subject to refund<sup>3</sup> Furthermore, Section 367.081(2)(a), Florida Statutes, provides that the Commission, either upon request or upon its own motion, shall fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

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<sup>3</sup> See, e.g., Order No. PSC-95-0624-FOF-WU, issued May 22, 1995, in Docket No. 930892-WU, In Re: Application for amendment of Certificate No. 488-W in Marion County by Venture Associates Utilities Corp.

Prior to the implementation of any temporary rates, the applicant should be required to provide evidence of security in the form of a bond or letter of credit in amount of \$24,000. Staff would note that it is not recommending an escrow account as a security option. This option requires Commission approval to withdraw funds from the escrow account. Since the funds in the escrow account would represent all of the utility's rates, the escrow account option would require Commission approval for the utility to use any funds. Staff believes this would create an undue regulatory burden on both the utility and the Commission.

If the utility chooses a bond as security, the bond should be renewed annually until terminated. If the utility chooses a letter of credit as security, the letter of credit should be irrevocable for the period it is in effect. The bond should contain wording that it should only be terminated, or the letter of credit should contain the wording it should only be revoked, upon subsequent order of the Commission addressing any refund requirements.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Irrespective of the form of security chosen by the utility, an account of all monies received in rates should be maintained by the utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360, Florida Administrative Code. In addition, after the temporary rates are in effect, pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should file monthly reports no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month until the final order is issued. The monthly reports should also indicate the status of the security being used to guarantee repayment of any potential refund.

In conclusion staff recommends that, in the event of a protest filed by a party other than the utility, the utility should be authorized to implement the approved proposed agency action rates on a temporary basis, subject to refund, pending the final outcome of this proceeding. Should the final rates be lower than the temporary rates, the applicant should be required to refund the difference, with interest, pursuant to Rule 25-30.360, Florida Administrative Code. Prior to the implementation of any temporary rates, the utility should be required to provide evidence of security as described in staff's analysis. In addition, after the temporary rates are in effect, pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should file monthly reports no later than the 20th of each month indicating the monthly and total amount of money that was subject to refund at the end of the preceding month until the final order is issued. The monthly reports should also indicate the status of the security being used to guarantee repayment of any potential refund.



**Issue 5:** Should this docket be closed?

**Recommendation:** No. If no timely protest is received to the proposed agency action issues, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of a proposed notice reflecting the utility's approved rates, a statement confirming that the notice has been given; receipt of a revised tariff, and an affidavit attesting that the books and records of the utility have been established and that the applicant is aware of his responsibility to timely file annual reports and remit RAFs for 2006 and in all future years. Upon receipt and verification of such documents, the docket should be administratively closed. If a timely protest to a proposed agency action issue is filed by a person whose interests are substantially affected, the docket should remain open in order to proceed to hearing. (Gervasi)

**Staff Analysis:** If no timely protest is received to the proposed agency action issues, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of a proposed notice of the utility's approved rates, a statement confirming that the notice has been given, a revised tariff; and an affidavit attesting that the books and records of the utility have been established and that the applicant is aware of his responsibility to timely file annual reports and remit RAFs for 2006 and in all future years. Upon receipt and verification of such documents, the docket should be administratively closed. If a timely protest to a proposed agency action issue is filed by a person whose interests are substantially affected, the docket should remain open in order to proceed to hearing.

**GISTRO, INC.**  
**Wastewater Service Territory**  
**Lee County, Florida**

**Township 47 South, Range 25 East, Section 25**

That portion of the North 1/2 of the Southeast 1/4 lying West of Southern Pines Drive, Section 25, Township 47 South, Range 25 East, Lee County, Florida.

Also described as:

The North 1/2 of the Southeast 1/4 of Section 25, Township 47 South, Range 25 East, less and except the following parcel: Commencing at the East 1/4 corner, also the Point of Beginning, thence run a distance of 540 feet due West, thence run South 9 degrees East a distance of 1350 feet, thence run 300 feet due East to the East line of said Section, thence run due North a distance of 1280 feet to the Point of Beginning.

**GISTRO, INC.**  
**Wastewater Rate Base**  
**As of December 31, 2005**

<b>Description</b>	<b>Staff Recommended</b>
Utility Plant in Service	\$ 267,127
Accumulated Depreciation	( 150,563)
Contributions in Aid of Construction (CIAC)	( 247,122)
Amortization of CIAC	<u>149,403</u>
Rate Base	\$ 18,845

**GISTRO, INC.**  
**Staff Recommended Wastewater Account Balances**  
**As of December 31, 2005**

<b>Acct. No.</b>	<b>Account Name</b>	<b>Plant Balance</b>	<b>Accumulated Depreciation Balance</b>
351	Organization	\$ 9,250	\$( 260)
360	Collecting Sewers – Force	\$ 10,418	\$( 8,299)
361	Collecting Sewers – Gravity	\$173,016	\$(101,974)
363	Services to Customers	\$ 63,688	\$( 39,130)
370	Receiving Wells	\$ 4,400	\$( 440)
371	Pumping Equipment	<u>\$ 6,355</u>	<u>\$( 460)</u>
		\$267,127	\$(150,563)

**GISTRO, INC.**  
**Revenue Requirement**

<b>Description</b>	<b>Utility Proposed</b>	<b>Staff Recommended</b>
Revenue	\$ 96,000	\$21,251
O& M Expense		
Salaries and Wages—Officer	18,000	6,000
Purchased Power	2,000	1,600
Materials and Supplies	15,000	2,500
Contract Services—Professional	4,912	4,912
Contract Services—Other	4,000	2,280
Miscellaneous Expenses	<u>22,088</u>	<u>500</u>
Total O&M Expense	66,000	17,792
Depreciation Expense	0	7,780
Amortization Expense	0	( 6,949)
Taxes Other Than Income	<u>0</u>	<u>955</u>
Return on Investment	\$ 30,000	\$ 1,673

**GISTRO, INC.**

**Staff Recommended Rates and Charges**

**Quarterly Wastewater Service Rate**

Quarterly Flat Rate	\$19.18
(per residential connection)	

**Miscellaneous Service Charges**

Initial Connection	\$15.00
Normal Reconnection	\$15.00
Violation Reconnection	Actual Cost
Premises Visit (in lieu of disconnection)	\$10.00
Late Payment Charge	\$ 5.00