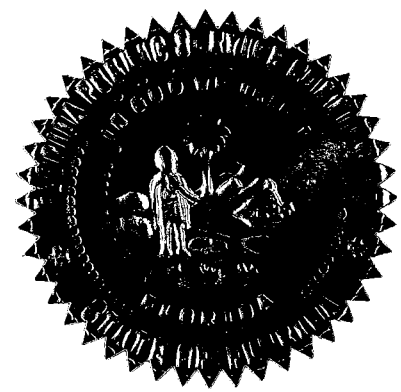


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020640-SU

In the Matter of

APPLICATION FOR CERTIFICATE TO PROVIDE
WASTEWATER SERVICE IN LEE COUNTY BY
GISTRO, INC.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 30

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. MCMURRIAN

DATE: Tuesday, March 13, 2007

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official Commission Reporter
(850)413-6732

1 APPEARANCES:

2 MARTIN S. FRIEDMAN, ESQUIRE, appearing on behalf of
3 Bonita Springs Utilities, Inc.

4 KATHRYN COWDERY, ESQUIRE, appearing on behalf of
5 Gistro, Inc.

6 ROSANNE GERVASI, ESQUIRE, and PAT BRADY, appearing on
7 behalf of the Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: And we are on our final item for
3 today's agenda, which is Number 30.

4 MS. GERVASI: Commissioners, Rosanne Gervasi
5 appearing on behalf of the Commission staff. Item 30 is
6 staff's recommendation to decline to acknowledge Gistro, Inc.'s
7 notice of withdrawal of its application for a wastewater
8 certificate and to grant Gistro's certificate application and
9 set rates and charges for the utility. If the Commission
10 acknowledges the application withdrawal in Issue 1, Issues
11 2 through 5 will not need be ruled upon, and in that event the
12 docket should be closed in Issue 6.

13 Ms. Kathryn Cowdery is present and wishes to address
14 the Commission on behalf of Gistro, Inc. And Mr. Martin
15 Friedman is also present, appearing on behalf of the Bonita
16 Springs Co-op, which provides the wastewater treatment services
17 in this area.

18 Staff is available for any questions.

19 CHAIRMAN EDGAR: Thank you.

20 Ms. Cowdery.

21 MS. COWDERY: Thank you. I'm Kathryn Cowdery with
22 Ruden McClosky in Tallahassee, Florida, representing Gistro,
23 Inc. Gistro is a privately owned wastewater collection system.
24 It was built approximately 23 years ago. It consists of two
25 lift stations and collection lines for approximately 200

1 connections.

2 I have to say staff did a beautiful job of taking a
3 lot of information and summarizing it for you in about 3-1/2
4 pages. That summary cannot possibly show the amount of work
5 that Gistro and staff have done in this matter over the number
6 of years that this case has been going through the Commission
7 proceeding. So, if you have any questions, it would not be
8 surprising.

9 BSU has provided the wastewater treatment service
10 from Gistro's collection system since approximately 1991.
11 Since that time, Gistro has been providing service for no
12 compensation. Mr. Holzberg has been paying for lift station
13 repairs and maintenance throughout this time period. Gistro
14 applied for a certificate of authorization for its wastewater
15 collection system with the expectation that the PSC would grant
16 it a service availability charge for any new wastewater
17 connections. Gistro was informed that no service availability
18 charge would be set or could be set because of the lack of old
19 tax records to prove that the cost of construction of lines was
20 not written off on the developer's taxes.

21 I sent a number of letters to the IRS asking for
22 these tax records from back in the 1980s under various names of
23 various corporations, and the letters, form letters come back,
24 you know, they don't keep them that old, basically. So we
25 don't have the old tax records.

1 The staff recommendation sets rate base at only
2 \$18,845. The revenue requirement is only \$21,251. You heard
3 Mr. Reilly talking to you about small utilities that have
4 revenues of less than \$150,000. Now we're talking \$21,000 if
5 this utility were to be certificated. The utility plant in
6 service is \$267,000, according to what staff has set.
7 Accumulated depreciation was \$150,000-plus, and contribution in
8 aid of construction, because of the lack of proof that costs
9 weren't written off, is \$247,000, about, so that brings us back
10 to our revenue requirement of \$21,000.

11 Based on this type recommendation, Gistro filed a
12 notice of withdrawal of its application on June 5th, 2006. It
13 is not worth it for this utility company to become
14 certificated. The two main points I want to make is, first,
15 that the Commission should acknowledge Gistro's notice of
16 withdrawal of its certificate application and close this
17 docket. Gistro does not want to become a regulated utility.
18 It has not, it is not, and it will not take any action which
19 would result in it coming under the PSC's jurisdiction.

20 Now, the second point is that after the notice of
21 withdrawal was filed, staff after having gone through a lot of
22 work on this, and set up rates and everything, wanted to know,
23 you know, what are you going to do with these other
24 connections. And our response was we don't know. So, what we
25 did was we sat down to try to figure out what kind of business

1 plan Gistro would have with regard to these not yet connected
2 lots. And what we came up with was a plan which we thought
3 would not bring the utility under the Commission's
4 jurisdiction. It is a proposed plan. Nothing has been done to
5 sell any stock.

6 What the plan is is that Gistro would sell shares of
7 stock to developers. The developers buy the stock, they become
8 a part owner in the system. If the system is ever sold, they
9 would get a proportionate share of the sale price of the
10 system. They are an investor in the system. Now the by-laws
11 were set up such that any developer who purchased shares of
12 stock and became an owner in the system would then be allowed
13 to have one connection for his lots per share of stock. And
14 that's the plan.

15 Okay. Now, if I cannot convince you that this plan
16 doesn't bring the utility under the Commission's jurisdiction,
17 then Gistro will abandon that plan. You know, we won't do it,
18 because we do not want to become certificated. So what this
19 means today is that in order to vote consistently with the law,
20 you would need to acknowledge Gistro's notice of withdrawal and
21 you would either do that by saying we acknowledge your notice
22 of withdrawal, because we don't believe that your plan to sell
23 stock to developers to allow them an opportunity to connect to
24 your system, we think that that would bring you under our
25 jurisdiction. We don't agree with staff on that. Or you would

1 say, you know, we agree with staff, you can't sell stock and
2 remain nonjurisdictional, and I would say, okay, we are not
3 going to do it. So that is sort of where we are on it.

4 The main point is found in Issue 1, should the
5 Commission acknowledge Gistro, Inc.'s notice of withdrawal of
6 its application for wastewater certificate. The staff
7 recommendation that the Commission should not acknowledge
8 Gistro's notice of withdrawal is based on one proposition, and
9 that is that Gistro's proposed business plan provides that only
10 by paying Gistro to become a part owner in the system may a
11 person or entity connect property to the system. Staff
12 recommends that this activity indeed constitutes a form of
13 compensation for service. That is on Page 10 of the staff
14 recommendation.

15 The collection system is privately owned property.
16 Mr. Holzberg is 90 years old and he wants to sell his
17 collection system. There is not a buyer out there that we are
18 aware of for the collection system. Bonita Springs Utilities
19 at one point did look into this about, you know, five years ago
20 or so, but that never went anywhere for various reasons on both
21 sides, I believe. BSU and Gistro are in litigation concerning
22 their 1991 wastewater agreement. So, that area, however, is
23 outside the Commission's jurisdiction, since BSU is an exempt
24 utility.

25 If Gistro were to sell its stock to BSU, the

1 Commission would not assert jurisdiction over that transaction
2 because BSU is exempt and it is just a stock transfer. If BSU
3 were to sell ten shares of stock -- I mean, if Gistro were to
4 sell ten shares of stock to BSU, the Commission wouldn't assert
5 jurisdiction over that transaction. If Gistro were to sell ten
6 shares of stocks to an investor, the Commission wouldn't assert
7 jurisdiction over that transaction. So the bottom line is the
8 actual stock sale is not, I don't think, what the Commission
9 staff has any problem with. That in and of itself does not
10 bring the Commission into the jurisdictional picture.

11 I think what the staff has a problem with is that the
12 by-laws allow the shareholders one connection per share. The
13 shareholders exercise of that right is not the receipt of
14 utility service by the public for compensation which is your
15 narrow jurisdictional issue here. The shareholder, as an owner
16 of the system, does not meet the definition of the public. He
17 is an owner. He is a part owner of the system. And the
18 connection to the wastewater collection system is not for
19 compensation. As an owner, he has the right to connect. And
20 it is a right exercised by an owner of the collection system.

21 The money paid by the developer for stock gives the
22 developer an owner interest in the utility. If the entire
23 system is subsequently sold, that developer would obtain a
24 portion of the proceeds of the sale commensurate with his
25 shareholdings.

1 What is the alternative? The alternative is if you
2 agree with staff, then Gistro will just maintain the status quo
3 business plan, which is basically Mr. Holzberg continues to
4 operate his collection system and he doesn't allow anybody else
5 to connect to his system. It is his privately owned system.
6 You know, so that is sort of where we stand on it.

7 In conclusion, I would just say we ask you, again, to
8 please acknowledge Gistro's notice of withdrawal of its
9 certificate application and close this docket. We also ask you
10 to consider to approve the plan proposed by Gistro to bring in
11 new investors to the system as not being a jurisdictional
12 matter. And if you don't approve, then we will just, you know,
13 withdraw the plan. Thank you.

14 CHAIRMAN EDGAR: Mr. Friedman.

15 MR. FRIEDMAN: Thank you. I'm Martin Friedman of the
16 law firm of Rose, Sundstrom & Bentley. We represent Bonita
17 Springs Utilities. We support the staff's recommendation. The
18 legal argument that the staff has set forth regarding the
19 withdrawal of the application, I think, is well reasoned, and
20 certainly is indicative of the current status of the law as it
21 relates to the PSC. And I'm not going to reiterate or
22 regurgitate that for you, it was well written in the
23 recommendation.

24 You know, one of the reasons we are in this
25 predicament is that Mr. Holzberg, when his company did that

1 development, had his own facility at one time, had his own
2 sewer plant. There was a final temporary injunction issued in
3 a lawsuit by DEP against Mr. Holzberg that says he has operated
4 his facility in an unauthorized manner out of compliance with
5 the Department's regulations and applicable Florida Statutes.
6 As a result of that, Mr. Holzberg entered into a consent order
7 in 1993 and it required him to undertake corrective actions.
8 And what he chose to do as his corrective action was to connect
9 to the central system of BSU. So he is in this predicament
10 because he didn't know how or was unwilling to operate his
11 facility in accordance with the DEP regulations.

12 The issue of -- this selling stock, I think, is a
13 real subterfuge. I mean, if you think about what it is, if you
14 want to get service from these lines, from this utility, you
15 have got to be a shareholder. Now, if that is not paying
16 compensation for service, I don't know what is. If I own
17 property and I don't want to be a shareholder, I'm not going to
18 be able to connect. So, I mean, I think that is a whole
19 subterfuge.

20 The backup argument that Gistro has is, well, if you
21 don't like that plan, then we just won't let anybody connect to
22 our utility system and we won't charge anybody for service.
23 Well, that also won't work. And also let me tell you, Gistro
24 had a lawsuit against one of these developers and it ended up
25 into a settlement agreement by which that developer paid Gistro

1 \$187,500 in order to settle the lawsuit.

2 Now, it was a confidential settlement agreement. I
3 would suggest to you that when there is a lawsuit involving
4 connecting to the utility line and the property owner/developer
5 ends up paying money to connect to that line, that that makes
6 the utility jurisdictional. So I think notwithstanding what
7 the utility says it will not do in the future, it already has
8 taken steps to accept money to connect to its system and it is
9 jurisdictional.

10 Now, if it wants to refund that \$187,500 to that
11 property owner, then maybe they can, you know, unwind, but I
12 think it is too little too late. The staff's analysis is very
13 clear and it is certainly indicative of the status of the law,
14 and we would suggest to you that you accept the staff's
15 recommendation in total.

16 CHAIRMAN EDGAR: Commissioners? Commissioner
17 McMurrrian.

18 COMMISSIONER McMURRIAN: Ms. Cowdery, why don't you
19 want to be certificated?

20 MS. COWDERY: Because it's not worth it to become a
21 regulated utility when you are this small. Once you are
22 regulated, you have to, you know, you pay regulatory assessment
23 fees, you have to keep books and records in conformance with
24 NARUC, you have got to send out -- you have to start sending
25 out billing. And the other thing is, as I stated earlier, Mr.

1 Holzberg was expecting that he would be able to have connection
2 fees, and the lack of original documentation has made that not
3 possible.

4 You know, without that kind of -- without being
5 allowed to have the connection fees, it is just not, it's just
6 not worth it. You know, it is his private property. He feels
7 very, very strongly about private property rights.

8 COMMISSIONER McMURRIAN: I guess I want to follow up
9 with staff on the things that Ms. Cowdery just said, and I
10 guess the other points that have been made, and the point
11 raised about the \$187,000 settlement, is that any of our
12 concern? Would that have triggered them being a utility?
13 Basically anything, just have at the arguments made.

14 MS. GERVASI: Commissioner, we do address that
15 lawsuit settlement in the course of our discussion on Issue 1.
16 And basically what we are recommending is that that was money
17 that was paid in damages during the course of a lawsuit that
18 the Commission did not have jurisdiction over. It was a
19 lawsuit in tort and in contract.

20 COMMISSIONER McMURRIAN: I guess I should ask about
21 Ms. Cowdery's concern about the connection fees that Mr.
22 Holzberg -- I hope I'm getting the names right -- came to the
23 Commission for a certificate, and hoped to get those fees
24 settled. If he were to become a certificated entity, then
25 would it be able to get those kind of charges or is it still --

1 or do we still have the hurdle of not having the correct
2 documentation?

3 MS. GERVASI: We have that hurdle, and we addressed
4 that in the rates and charges issue. Essentially, the plant --
5 well, the technical staff can address it probably much more
6 articulately than I can, but the costs were imputed because
7 they couldn't prove that they weren't written off or fully
8 depreciated, and that's standard Commission practice.

9 MS. BRADY: Did you want me to take a crack at that,
10 Commissioner McMurrin, or did you --

11 COMMISSIONER McMURRIAN: If there's something that
12 you need to add, certainly.

13 MS. BRADY: Pat Brady on behalf of Commission staff.
14 And I also want to take this opportunity to thank Ms. Cowdery
15 for her participation in this docket. Only when she became
16 involved did we have a halfway decent chance of, you know,
17 getting some kind of reasonable information to give you a
18 recommendation.

19 There is a reason for the imputation. There is a
20 rule. If they aren't able to provide documentation, the
21 assumption by the Commission by precedent after precedent over
22 the years is that, as a developer, not knowing if he was going
23 to be regulated, he would have charged those costs off. There
24 is no reason for him not to have done that.

25 I also want to point out the fact that Mr. Holzberg

1 lost in foreclosure some of those costs, the requirement to pay
2 them. And there may be some other financial things that have
3 gone on that we haven't bothered to go into in discovery
4 because we have dealt with the information that has been given
5 us. But, basically, if they do not provide evidence that they
6 did not cost the goods off and lines when he built those homes,
7 that we have to assume that he has done so.

8 I also want to point out the utility is pretty highly
9 depreciated. Staff was somewhat generous in their plant costs,
10 trying to give him some recent plant costs to include in rate
11 base so he would have a revenue requirement. Lake Placid
12 versus Gistro, they are not the same thing. Lake Placid is a
13 water and wastewater treatment and lines. There is a reason
14 this utility's rate base is so low. It is the way the numbers
15 fall out. He has only lines, wastewater lines that he has to
16 lift to BSU's system. He has electricity and a monthly
17 maintenance charge. We do recognize that he will have
18 regulatory costs. We had him -- not us, but Ms. Cowdery had
19 Mr. Holzberg contact a very well known accounting firm that
20 does nothing but this, and they provided their cost to bill,
21 their cost to set up the books and records, their cost to do
22 the annual regulatory filing, and we allowed 100 percent of
23 those costs in his rate base.

24 I can't read my handwriting, and I apologize for
25 that. I think that is basically it. What I would like to add

1 to that, though, is I'm sorry that Mr. Holzberg will not take
2 advantage of the rate base. Staff has given him \$21,000 of
3 which, if he had taken advantage of ten years ago when we first
4 recommended he do this, he would have what he had to go to
5 court to get back from the builder. He would have had over
6 \$200,000. Yes, he has expenses, but he has been paying them
7 himself. And there is -- I'm just indicating that over the
8 long-term regulation will pay out.

9 And my final comment is I do understand that
10 Mr. Holzberg is trying desperately to sell the system. Once we
11 have rate base established and rates and charges, if they take
12 advantage of that, there are a number of companies that staff
13 could make aware that there is a utility out there that do like
14 to pick up these small stand-alone that have rates and charges
15 set by the Commission. But I don't think anyone is going to
16 offer him anything unless they know what the revenue stream is
17 going to be, the guaranteed revenue extreme. That's all I have
18 to add.

19 CHAIRMAN EDGAR: Thank you. Yes.

20 COMMISSIONER McMURRIAN: And I think you touched on
21 it there at the end, Ms. Brady, but I just want to ask
22 specifically to get it laid out. What are the customer impacts
23 if Mr. Holzberg chooses the abandonment route?

24 MS. BRADY: The county will appoint -- immediately
25 they have to notify us and the county. He can't walk away. He

1 has to give, I believe it is a 60-day notice to the county and
2 to the Commission. The county will appoint a receiver. My
3 guess is it will be BSU, and that will be that. They will be
4 taken care of.

5 CHAIRMAN EDGAR: Ms. Cowdery.

6 MS. COWDERY: I just want to say that under no
7 circumstances would Mr. Holzberg abandon this system. He takes
8 a lot of pride in his business and what he does, and that's one
9 of the reasons, you know, he has very strong feelings in this
10 case. And he would not abandon the system. He would keep
11 working at it like he has been.

12 CHAIRMAN EDGAR: Thank you.

13 COMMISSIONER McMURRIAN: I guess I should apologize
14 then, because I took some of your comments to suggest that that
15 may be his alternative to this, but I apologize.

16 CHAIRMAN EDGAR: Commissioners, further discussion.
17 Questions?

18 Commissioner Carter.

19 COMMISSIONER CARTER: At the appropriate time, Madam
20 Chairman, I would be prepared to make a motion.

21 CHAIRMAN EDGAR: I think we are there.

22 COMMISSIONER CARTER: I would move staff's
23 recommendation in this case on Issue -- I think you said we
24 have to break it down. Let me look at my notes.

25 MS. GERVASI: The recommendation to decline to

1 acknowledge the application withdrawal.

2 COMMISSIONER CARTER: On Issue 1. Move staff
3 recommendation on Issue 1.

4 CHAIRMAN EDGAR: Okay.

5 COMMISSIONER McMURRIAN: Second.

6 CHAIRMAN EDGAR: Okay. And I concur, so all in favor
7 say aye.

8 (Unanimous affirmative vote.)

9 CHAIRMAN EDGAR: Opposed? Show it adopted.

10 MS. COWDERY: Chairman.

11 CHAIRMAN EDGAR: Ms. Cowdery.

12 MS. COWDERY: I just want to point out that we are
13 abandoning that business plan, and the whole basis for staff's
14 recommendation of allowing certification was that we had a plan
15 to do this. So by abandoning that business plan, there is no
16 basis in staff's recommendation to be certificated. So I know
17 you just voted, but the plan is not there. There is no plan to
18 do what staff thought would be collecting any compensation and
19 what Mr. Friedman thought, agreed, would be collecting
20 compensation. We are not going to do it. We have never done
21 it. I think under those circumstances the notice of withdrawal
22 should be accepted.

23 MR. FRIEDMAN: If I might comment a second. If you
24 look at what the implications of what Ms. Cowdery is
25 suggesting, she is suggesting to you that this gentleman who

1 built a subdivision, built a collection system, built a
2 subdivision, I know that some of his lots were foreclosed on,
3 but he went into this business to build this subdivision, built
4 this sewer collection system and now he is going to say all the
5 lots that aren't connected out there, you are out of luck. You
6 can't connect to my collection system. If you want to get
7 sewer service, you can try to build a line down that
8 right-of-way to BSU's system wherever it's located.

9 Now, he went into this business as a utility, and I
10 think by telling the public that now he can back out because he
11 finds that it is not financially advantageous to him, that he
12 can back out and say, all right, now nobody else can connect to
13 my system. And that is the implication of what is going to
14 happen if you accept what Ms. Cowdery says. And I would
15 suggest to you that you shouldn't send that message that people
16 can go into the business and then all of a sudden say it's not
17 good for me anymore. I don't own these lots anymore because
18 they got foreclosed, so I'm out of the business. I don't think
19 you can do that, and I don't think that is a good message to
20 send to the public.

21 CHAIRMAN EDGAR: Ms. Cowdery.

22 MS. COWDERY: Mr. Holzberg has not connected any lots
23 since 2002. He has continually taken the position ever since
24 1991 when the system went -- the treatment started over at
25 Bonita Springs Utilities that no one may connect to his system

1 without compensation, okay.

2 Now, I understand his original understanding, you
3 know, put him at odds with PSC regulation, but he didn't
4 connect anybody for compensation. But especially since 2002,
5 his attorney has sent out letters to developers saying, putting
6 them on notice that you may not connect to this system. If
7 anyone connects to the system, it is trespass. And that has
8 been his position and BSU is aware of that.

9 It is a privately owned entity. It is not a
10 regulated entity. It does not have a certificated territory.
11 The Public Service Commission has absolutely no jurisdiction
12 over a utility -- and I don't use the defined word utility --
13 over a collection system which is not providing service to the
14 public for compensation. There's no jurisdiction.

15 CHAIRMAN EDGAR: Ms. Gervasi.

16 MS. GERVASI: Staff agrees with Ms. Cowdery on this
17 point. That is not to say that disputes may not arise with
18 respect to how remaining lots will get service, but it will not
19 be within the Commission's jurisdiction to resolve those kinds
20 of disputes if the company does not provide service for
21 compensation because they will not be a utility under the
22 definition of Chapter 367.

23 I personally wasn't aware that the company would
24 abandon their plan to sell stock if the Commission disagreed
25 that that did not bring them within the regulatory realm, but I

1 do agree that if they do abandon that plan and they continue to
2 provide service free of charge, that the Commission doesn't
3 have the regulatory authority over them. They wouldn't fall
4 within the Commission's regulatory realm, in which case staff
5 would recommend that the company does have the right to
6 withdraw the application. If something were to change and we
7 learn that the company was providing any kind of service for
8 compensation, we would bring that to your attention at that
9 time.

10 CHAIRMAN EDGAR: Mr. Friedman.

11 MR. FRIEDMAN: I'm speechless. I mean, this seems
12 like there is maybe a little regulatory crack in here that
13 there is a problem without a cure. I mean, what you are
14 looking at is, number one, I still think this \$187,000 for
15 trespass, as Ms. Cowdery had mentioned, it was for somebody
16 connecting to the system and their, quote, damages in tort, was
17 to pay \$187,000 in damages. That's a connection. That's a
18 connection fee if I haven't seen it. And I will bet you that
19 Mr. Holzberg will be able to think of a way for anybody else
20 that wants to connect to the system to connect to it, he will
21 sue them for damages, they will pay him some money, and it will
22 be a whole ruse.

23 There is a problem. He built a utility system, sold
24 lots to people, got it foreclosed on because he is not a very
25 good businessman, and now you have got lots out there that are

1 basically unbuildable because he shirked his duty and now he is
2 skirting by finding a little crack in the PSC's jurisdiction by
3 saying I'm not jurisdictional. I'm not charging for service
4 and nobody can connect to me, either. And I think that once
5 you start you can't stop.

6 CHAIRMAN EDGAR: Well, often we are accused of having
7 a cure where there isn't a problem, but in this instance, this
8 point has been raised that possibly there is a problem without
9 a cure. And I have a hard time believing that to be the case,
10 either. So, Ms. Cowdery.

11 MS. COWDERY: Just one last.

12 CHAIRMAN EDGAR: Yes.

13 MS. COWDERY: And I think you must have -- when I
14 said abandon the business, abandon the plan, you thought I said
15 plant. But, as BSU knows, as it is currently involved in
16 litigation with Mr. Holzberg, if there is anything between the
17 developers and Mr. Holzberg that needs to be addressed in the
18 courts, that is where the redress would be, is in the courts.

19 CHAIRMAN EDGAR: Commissioner Carter.

20 COMMISSIONER CARTER: Madam Chairman, I say if they
21 want to go to court, let them go to court, but we have got
22 stuff to do here. And I would suggest -- I mean, we have gone
23 with Issue 1, and I would ask for a procedural update from
24 staff on where we need to go further. I mean, you know, we
25 haven't denied anyone an opportunity to go to court. You still

1 can do that, but we have got to do Commission business, so
2 let's do Commission business.

3 MS. GERVASI: Commissioners, Issues 2 through
4 5 assume that the company would continue with their plan to
5 sell stock in exchange for connections. If that is not going
6 to be the case, and the company wishes to withdraw its
7 application and abandon that plan and not charge for service,
8 that is a whole different set of facts than what we have based
9 our recommendation on. And we would change our recommendation
10 to say that the application withdrawal should be acknowledged
11 and that the docket should be closed and continuing disputes
12 will be addressed in the appropriate forum, which is not the
13 Public Service Commission.

14 CHAIRMAN EDGAR: Mr. Cooke, did you have additional
15 thoughts?

16 MR. COOKE: Just one addition to that is that it
17 should be acknowledged that the withdrawal is based upon not
18 providing the utility service for compensation. I think that
19 needs to be clear in the recognition and the change of our
20 recommendation, because the whole recommendation is hinged upon
21 our view that the stock sale is for compensation for providing
22 service. But if that is not going to happen, or no other
23 provision of service is going to happen based on compensation
24 for those services, then we would agree that the application
25 could be withdrawn.

1 CHAIRMAN EDGAR: Commissioner Carter.

2 COMMISSIONER CARTER: Here is my problem with that,
3 there is nothing in the file other than a verbal
4 representation. So, I mean, we are going to just -- we are
5 left to guesstimate. You know, he may get up and maybe he had
6 Chinese food and get indigestion and say I change my mind. We
7 need to have something in the file, don't you think? I mean,
8 if it is true, then why doesn't he put it in writing. I don't
9 think that the Commission should be in the position where we
10 are guesstimating about a decision that a person may or may not
11 make. That is like, you know, a lot of times my wife goes to
12 the mall and says she is not going to buy anything.

13 CHAIRMAN EDGAR: Ms. Cowdery.

14 MS. COWDERY: Commissioner Carter, I can speak as
15 Mr. Holzberg and Gistro's attorney on the record as an officer
16 of the court that he has informed me that his decision is that
17 he will not go ahead with his business plan to sell stock. If
18 the Commission does not accept it as being not providing
19 service for compensation, he will not go ahead with it.

20 COMMISSIONER CARTER: Could you put that in writing?

21 MS. COWDERY: I can scribble it out to Ms. Gervasi
22 now or I can give her a letter tomorrow.

23 MR. COOKE: And we can close based on -- you could
24 authorize us to administratively close based upon receipt of
25 something in writing.

1 CHAIRMAN EDGAR: Contingent upon receipt.

2 COMMISSIONER CARTER: I'm cool with that.

3 CHAIRMAN EDGAR: Mr. Reilly.

4 MR. REILLY: I have stayed out of this up until now,
5 but I have just one small comment.

6 CHAIRMAN EDGAR: Compelled to join in.

7 MR. REILLY: I just cannot remain silent.

8 CHAIRMAN EDGAR: And we welcome you to the
9 discussion, Mr. Reilly.

10 MR. REILLY: Just one small point. I agree with your
11 Legal Staff saying that the stock option is gone, therefore
12 jurisdiction is gone. The only troublesome thing about this
13 whole scenario is if staff and this Commission has told this
14 man how he can circumvent jurisdiction, which is to let a
15 developer come in, connect, have him take offense at that
16 connection, allow it to go into court under some pretense of
17 tort, and then be paid a sum of money as a resolution of that
18 suit, which is the highway to avoid jurisdiction.

19 So I don't mind giving this man this one bite, the
20 dog one bite, but if this is the modus operandi of
21 circumventing regulation in the future, which is what seems to
22 be coming from all of this, I hope that the Commission will
23 communicate that we will look through any ruse to avoid
24 jurisdiction. There is no difference. If it's a suit, I mean,
25 that is a classic way to do it. A trespass, suit, give me my

1 damages, I am gone.

2 So you are going to say, all right, we are going to
3 let you get away with this once, but don't try this a second
4 time because this is no more of a subterfuge than the selling
5 of stock if you settle a damages suit in a circuit court. And
6 that is my opinion. I mean, it is just another way to skin the
7 cat. So I would hope that your recommendation would put this
8 man on notice that we will look to substance instead of form.

9 MR. FRIEDMAN: Would you believe that's twice Mr.
10 Reilly and I agree with each other in one day?

11 CHAIRMAN EDGAR: I knew when I got up this morning it
12 was going to be an interesting day. Okay. Let me see if I can
13 recap and look to staff for correction, if need be.

14 We did take a vote on Issue 1, however, my
15 understanding is that the facts have changed from what they
16 were at that time so that that vote needs to be set aside.

17 Mr. Cooke, is there a better way to do that?

18 MR. COOKE: I think Issue 1 is fine. You found that
19 there was no right to withdraw based on the understanding at
20 that time, that there was a continuation of a plan. Now we
21 have been told that that plan will not continue and under that
22 case we are recommending that there is not jurisdiction.

23 CHAIRMAN EDGAR: Okay. I understand. Commissioners,
24 are we all clear? Any questions on that? I guess I'm the only
25 one that is amused, sorry. All right. So the vote that we

1 took on Issue 1 does stand. However, the recommendation on
2 Issues 2 through 6 are different due to the representations of
3 Ms. Cowdery on behalf of her client. And so I think where we
4 are is to follow up on the recommendation from staff that we
5 close the -- that we are done with this item and we close the
6 docket contingent upon receipt from Ms. Cowdery confirming the
7 representation she has made on behalf of her client.

8 And, Commissioner Carter, you are welcome to give
9 that a whirl.

10 COMMISSIONER CARTER: Thank you, Madam Chairman. I
11 will give it a shot.

12 I will recommend staff's recommendations based upon
13 the facts in this case, and I think that gives you the leeway
14 to make the determination about jurisdiction and whatever
15 issues, because, I mean, to try to craft it now is going to
16 be -- pardon the pun -- messy. But I think that based upon the
17 representations that have been made to staff, now we are in a
18 different posture than we were before.

19 Can I do that, Mr. Cooke?

20 MR. COOKE: I believe so. I think that is what we
21 are trying to do. We are trying to craft sort of a subpart to
22 our first issue which we didn't anticipate would come up, which
23 is that the applicant has affirmed that they are not going to
24 provide these services for compensation and that they will
25 provide something in writing to the Commission to that effect,

1 and upon receipt of that, that the staff could administratively
2 close this docket.

3 COMMISSIONER CARTER: That sounds great.

4 CHAIRMAN EDGAR: So moved?

5 COMMISSIONER CARTER: Yes. That is what I was
6 saying, yes. So moved.

7 CHAIRMAN EDGAR: Thank you, Mr. Cooke.

8 Thank you, Commissioner Carter.

9 Commissioner McMurrian.

10 COMMISSIONER McMURRIAN: Second.

11 CHAIRMAN EDGAR: All right. All in favor say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN EDGAR: Show it adopted.

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STATE OF FLORIDA)

CERTIFICATE OF REPORTER

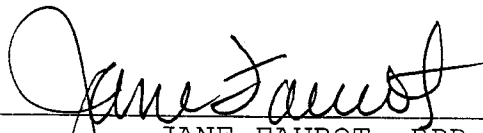
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 19th day of March, 2007.



JANE FAUROT, RPR
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