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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1051

In the Matter of)	
)	ORDER
MICROCLIMATES, INC.)	
)	
Application to Provide Heating Services)	

DISPOSITION: Agreement Not Suspended

On May 8, 2002, MicroClimates, Inc., filed an application with the Public Utility Commission of Oregon (Commission), pursuant to ORS 757.005(1)(b)(F) and ORS 757.007(1), for approval of a heating and cooling services agreement with LDP Beaverton LLC and Beaverton-The Round Owners Association, Inc.

At its public meeting on June 18, 2002, the Commission adopted Staff's recommendation not to suspend the heating and cooling services agreement between MicroClimates, Inc., LDP Beaverton LLC and Beaverton-The Round Owners Association, Inc., allowing the agreement to go into effect on July 1, 2002. Staff's recommendation is attached as Appendix A and is incorporated by reference.

ORDER

IT IS ORDERED that the heating and cooling services agreement between MicroClimates, Inc., LDP Beaverton LLC and Beaverton-The Round Owners Association, Inc., not be suspended, as described in Appendix A.

Made, entered and effective _____.

BY THE COMMISSION:

Becky L. Beier
 Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

ITEM NO. CA25

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 18, 2002**

REGULAR _____ CONSENT X EFFECTIVE DATE July 1, 2002

DATE: June 3, 2002

TO: John Savage through Lee Sparling and Jack Breen III

FROM: Bill McNamee

SUBJECT: MICROCLIMATES: (UM 1051) Heating and Cooling Services Agreement by and among MicroClimates, LDP Beaverton LLC, and Beaverton-The Round Owners Association, Inc.

STAFF RECOMMENDATION:

I recommend that the Commission not suspend the Heating and Cooling Services Agreement between MicroClimates, LDP Beaverton LLC, and Beaverton-The Round Owners Association, Inc. This will allow the Agreement to become effective July 1, 2002, and satisfy OPUC requirements for MicroClimates to begin serving the heating and cooling requirements of a mixed-use, high-density development known as the Round, that is located adjacent to the Beaverton Central MAX Station.

DISCUSSION:

On May 8, 2002, MicroClimates, Inc. (MCI) filed with the OPUC a Heating and Cooling Services Agreement (HCS Agreement) pursuant to ORS 757.005(1)(b)(F) and 757.007(1). The filing was docketed as UM 1051.

The above mentioned statutes require that every exempt-from-regulation entity furnishing heat to any number of customers shall file with the Commission all contracts and schedules establishing rates, terms, and conditions for provision of heating services. The Commission has the option of either suspending the filing for further review or not suspending the filing (*see ORS 757.007(2) and (3)*). If not suspended, or if determined reasonable by the Commission after suspension, the contract shall not be subject to further Commission review unless either: (1) A formal written complaint is filed; or (2) The Commission upon its own motion opens an investigation (*see ORS 757.009*).

MCI is an affiliate of Portland General Electric Company and is a wholly-owned subsidiary of Portland General Holding II. The affiliated interest standards under ORS

UM 1051
June 3, 2002
Page 2

757.495, however, are not applicable to the proposed HCS Agreement because PGE is not directly or indirectly involved in the HCS Agreement and, therefore, no PGE rate making issues are involved. Because the HCS Agreement contains business sensitive and confidential information, the MCI filing included a Motion for a Protective Order. The UM 1051 Administrative Law Judge issued a Standard Protective Order on May 24, 2002 (*Order No. 02-351*).

OVERVIEW

In 1996, the City of Beaverton issued an RFP for a mixed-use, high-density, pedestrian-oriented development on the City's property, which was the site for the planned Beaverton Central MAX Station. The 8-acre development site was known as the Round. The City's objectives were to have the Round form the nucleus of Beaverton's downtown and stimulate private development consistent with Beaverton's Downtown Development Plan. BCB Group won the RFP competition to develop the Round.

In late 1998, BCB Group encountered financial difficulty and ceased construction of the Round. In June, 2001, the City and MCI acquired the property out of the BCB Group federal bankruptcy proceeding. In July, 2001, the City and MCI signed a Disposition and Development Agreement (DDA) with Beaverton DPP-LP (DPP). DPP redesigned the project to include approximately 264 housing units, 123,485 square feet of commercial space, and 341,926 square feet of office space (*see attached map*).

The Round will be developed as a planned development unit in a series of construction phases. The project can generally be broken into two areas – that north of the Tri-Met MAX tracks, and that south of the MAX tracks. The north site contains a total of three construction phases, while the south site contains four phases. The current construction schedule calls for all phases to be completed by the end of 2005.

On the north site, the four-story Crescent/Promenade Building is currently under construction. This building will contain 65 residential units and 27,000 square feet of commercial space. The five-story Office Building 1 is under construction on the south site. This building will contain 92,278 square feet of office space and 11,675 square feet of commercial space. MicroClimate's central heating and cooling plant will be located on the ground floor of this building.

STAFF REVIEW

The HCS Agreement requires that MCI have its central plant ready to supply heating and cooling services in accordance with the time schedule for completion of Phase 1 construction.¹ Office

¹ The HCS Agreement obligates MCI to serve the remaining phases of the Round development.

UM 1051
June 3, 2002
Page 3

Building 1 is scheduled to be complete on September 30, 2002, and the Crescent/Promenade Building is scheduled to be complete on October 15, 2002. To ensure that it satisfies OPUC regulatory requirements and has time to complete its central plant, MCI requests an effective date for the HCS Agreement of July 1, 2002.

To Staff's knowledge, this is the first filing the OPUC has received from a non-utility entity seeking to provide heating services to end-use customers. ORS 757.007 states that the Commission may suspend the contract's effective date for a period of not more than 120 days in order to determine the reasonableness of the contract and any impacts on existing customers of electric and natural gas utilities. If the contract is not suspended, or if it is determined reasonable by the Commission after suspension, the contract will not be subject to further Commission review.

ORS 757.009, however, provides a procedure for reregulation if either: (1) A formal written complaint is filed with the Commission; or (2) The Commission upon its own motion opens an investigation to review contract provisions and activities.

Generally, Staff reviews special contracts to ensure that the proposed rates are reasonable and that utility customers are not harmed. Staff has reviewed the HCS Agreement under these general criteria, with the understanding that if adverse issues arise in the future, the Commission may revisit the Agreement's terms and provisions under ORS 757.009.

The initial term of the HCS Agreement is three years, with up to five additional three-year renewals upon mutual consent of the parties. The price structure in the proposed HCS agreement sets a fixed monthly rate per square foot of commercial and residential space. The price is adjusted over time for inflation and other factors. While the Agreement's price levels are confidential, I have converted the rate per square foot to an estimated cents per kWh value and determined that the Agreement's price structure offers rates that are slightly lower than PGE's currently effective electric tariffs.

Therefore, given the current energy marketplace, I conclude that the HCS Agreement's rate structure is reasonable. Given that the rate increase over time is primarily tied to the general inflation rate, the risk of volatile energy prices is largely borne by MCI, rather than its customers. In regard to impacts on existing utility customers, the financial outcome of MCI's venture is not tied to PGE's regulated electric business, therefore PGE's electric customers will not be harmed by the HCS Agreement.

The Round at the Beaverton Central Light Rail Station is designed to be a high quality residential/commercial development, which establishes a focus for the Beaverton downtown area. MicroClimates, Inc. has worked with the City of Beaverton to rebound from the BCB

UM 1051
June 3, 2002
Page 4

Group bankruptcy. The parties appear to be making substantial progress. I recommend that the Commission allow the process to proceed by not suspending the proposed HCS Agreement. If unanticipated issues arise in the future, the Commission may investigate and take appropriate actions via ORS 757.009.

PROPOSED COMMISSION MOTION:

The Heating and Cooling Services Agreement by and among MicroClimates, LDP Beaverton LLC, and Beaverton-The Round Owners Association, Inc. (*UM 1051*) not be suspended and thereby allowed to become effective July 1, 2002.