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## MEMORANDUM

*Attorney/Client Privilege*

March 13, 2013

TO: Melinda J. Davison  
FROM: Robert L. Molinelli  
RE: OPUC authority to consider voluntary carbon reductions in ratemaking.

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### I. INTRODUCTION

The Oregon Public Utility Commission (“OPUC”) arguably has both general and specific authority to consider utilities’ voluntary carbon emissions reductions in ratemaking proceedings. Additionally, the OPUC, currently considers reductions in greenhouse gas emissions as part of its integrated resource planning review, which it views as a complementary process to ratemaking.

### II. DISCUSSION

#### A. **ORS Section 756.040 arguably grants the OPUC general authority to consider voluntary carbon reductions in ratemakings.**

The OPUC derives its general regulatory authority from the Oregon Revised States (“ORS”). Pursuant to ORS section 756.040, the OPUC has broad authority to set rates that are just and reasonable. Pacific Northwest Bell Telephone Co. v. Davis, 608 P.2d 547, 551 (Or. 1979). In determining whether rates are fair and reasonable the OPUC must balance the interests of consumers and investors. ORS § 756.040 (“[r]ates are fair and reasonable for the purposes of this subsection if the rates provide adequate revenue both for operating expenses of the public utility... and for capital costs of the utility, with a return to the equity holder”). The OPUC is also charged with protecting the public generally in determining just and reasonable rates. ORS § 756.040 (“the commission *shall* make use of the jurisdiction and powers of the office to *protect* such customers, *and the public generally*, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates”)

(emphasis added). Additionally, it is the policy of the State of Oregon that environmental quality be preserved for both present and future generations. ORS § 469.010.<sup>1</sup> Additionally, the legislature of Oregon has determined that “[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources and environment of Oregon.” ORS § 468A.200(3).

The OPUC’s authority and duty to regulate to protect the public generally from unjust and unreasonable practices, arguably gives the OPUC latitude to consider broader concerns in ratemaking. Furthermore, Oregon’s adopted environmental policy should be read in conjunction with the OPUC’s authority. Thus, in exercising its duty to protect the public generally, the OPUC arguably has the authority to consider factors, such as carbon reduction, which contribute to the “preservation and enhancement of environmental quality.” ORS § 469.010(c). Read together, these statutory provisions suggest the OPUC has general statutory authority to consider carbon emissions reduction in ratemaking, for the purposes of protecting the public generally.

**B. ORS Section 757.262 and ORS Section 757.289 Arguably Grant Specific Authority for the OPUC to Consider Carbon Emission Reductions in Ratemakings.**

In addition to the above general grant of authority, the ORS also arguably provides specific authority for the OPUC to consider carbon emissions reductions in ratemaking. “The OPUC, by rule, may adopt policies designed to encourage the acquisition of cost-effective conservation resources and small-scale, renewable-fuel electric generating resources.” ORS § 757.262. Additionally, the OPUC “may authorize an electric company to include in its rates the costs of funding or implementing cost-effective energy conservation measures implemented on or after June 6, 2007.” ORS § 757.689.

These two statutory provisions suggest that the OPUC has the authority to implement and allow the recovery of conservation costs in ratemaking. Furthermore, the institution of conservation measures and technology will arguably lead directly to corresponding reduction in carbon emissions. Therefore, if the OPUC considers carbon emissions reductions as they relate directly to conservation measures and costs, it appears the OPUC is statutorily authorized to include those conservation costs in utilities’ rates.

**C. The OPUC Already Considers Carbon Emissions Reductions in Integrated Resource Planning.**

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<sup>1</sup> “It is, therefore, the policy of Oregon: (a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system... (c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality... (f) That cost-effectiveness be considered in state agency decision-making relating to energy sources, facilities or conservation, and that cost-effectiveness be considered in all agency decision-making relating to energy facilities.” ORS § 469.010(2)(a),(c), (f).

The OPUC established integrated resource planning for utilities in 1989. Re Investigation of Integrated Resource Planning for Resource Acquisitions by Energy Utilities in Oregon, OPUC Docket No. UM 180, Order 89-507 (Apr. 20, 1989). In approving the guidelines for the review of resource plans, the OPUC determined that external costs should be considered, “to the extent they are in furtherance of and consistent with the energy policy of the State of Oregon expressed in ORS 469.010.” Id. at 11. Currently, the OPUC requires the consideration of, among other environmental costs, the cost of a utility’s greenhouse gases. Re PacificCorp 2008 Integrated Resource Plan, OPUC Docket No. LC47, Order No. 10-066, at 55 (Feb. 24, 2010). Additionally, the OPUC’s guidelines require utilities to “develop a portfolio to achieve voluntary carbon reduction limits required by Oregon Law.” Id. While the OPUC considers integrated resource planning to be separate from ratemaking, it has previously stated that “we consider the integrated resource planning process to complement the rate-making process. In ratemaking proceedings in which the reasonableness of resource acquisitions is reviewed, the Commission gives considerable weight to utility actions that are consistent with [approved plans].” Id. at 66.

While the existence of the integrated resource planning process does not constitute independent legal authority for the OPUC to consider carbon emission reductions in ratemaking, it lends further support for the proposition that the OPUC can legally consider voluntary reductions in carbon emissions, at the very least indirectly, in the context of ratemaking.

### III. CONCLUSION

The OPUC arguably has both general and specific authority to consider carbon emissions reductions in its ratemaking processes. This authority arguably stems from the OPUC’s general authority to set rates that are just and reasonable, as well as specific statutory provisions which authorize it to implement and allow cost recovery of conservation measures. Finally, the OPUC’s integrated resource planning process lends further support that carbon reduction can be considered in the ratemaking process, albeit indirectly.