December 10, 2010

Secretary Clark
Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Via: https://ftcpublic.commentworks.com/ftc/revisedgreenguides/

RE: Proposed Revisions to the Green Guides, 16 CFR Part 260, Project No. P954501

Dear Secretary Clark,

This document represents Comments of the Center for Resource Solutions ("CRS") on the Proposed Revisions to the Green Guides. CRS comments closely mirror our expertise and focus on Carbon Offsets § 260.5, Certifications and Seals of Approval § 260.6, and Renewable Energy - § 260.14.

Thank you for accepting and considering our comments. CRS is pleased to participate in these important discussions. Please contact me with any questions.

Sincerely,

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CENTER FOR RESOURCE SOLUTIONS COMMENTS ON PROPOSED REVISIONS TO THE GREEN GUIDES, 16 CFR PART 260, PROJECT NO. P954501

Center for Resource Solutions ("CRS") appreciates the opportunity to provide feedback to the Federal Trade Commission (the "Commission") on the Proposed Revisions to the Green Guides. CRS supports the involvement of the Commission in this area and recognizes the value of the hard work involved in conducting the Commission's consumer perception survey.

Background on CRS and Green-e®

CRS is a national nonprofit with global impact; our mission is to create policy and market solutions to advance sustainable energy. We practice leadership through collaboration and promote environmental innovation to build policies and consumer-protection mechanisms in renewable energy, greenhouse gas reductions and energy efficiency.

CRS administers the Green-e® suite of programs. There are three Green-e programs. Green-e Energy is the nation's leading independent certification and verification consumer protection program for renewable electricity and renewable energy certificates ("RECs"). In 2009, over sixty percent of voluntary renewable energy purchases in the United States were certified by Green-e Energy. Green-e Climate is a certification program that sets consumer protection and environmental-integrity standards for carbon offsets sold in the voluntary market. Green-e Marketplace recognizes companies that make meaningful commitments to use renewable energy by allowing them to display the Green-e logo when they have purchased a qualifying amount of renewable energy and passed the program's verification standards.

Stakeholder-driven standards supported by rigorous verification audits are a cornerstone of the Green-e programs and enable CRS to provide independent third-party certification of renewable transactions. CRS is an Associate Member of the International Social and Environmental Accreditation and Labeling Alliance ("ISEAL", www.isealalliance.org), which sets best practice standards for independent certification programs.

The Green-e certification programs are overseen by an independent governance board. Our Standards have been developed and are periodically revised through an open stakeholder process. Green-e program documents, including the Standards, contract templates, and the annual verification report, are available at www.green-e.org.

Participants in Green-e Energy and Green-e Climate contractually agree to abide by the programs' standards and the programs' Codes of Conduct, which dictate the types of claims and product disclosure that must be made to their customers. CRS staff monitors marketing materials used by participating sellers to ensure that the materials are accurate, do not present misleading information, and are consistent with the Green-e Energy governing documents.

Carbon Offsets - § 260.5

CRS commends the Commission's involvement in carbon offset claims. Green-e Climate is the only voluntary consumer protection program for retail carbon offsets operating in the market. While Green-e Climate provides more specific guidance than proposed by the Commission for offset quality and customer disclosure, CRS believes the scope of the Commissions guidance is appropriate.

Defining Carbon Offsets and Requiring Disclosures

CRS supports the Commission's proposals 1) not to create definitions or standards for environmental terms like "carbon offset," "carbon footprint," or "carbon neutral," given the rapidly evolving market and a lack of perceived confusion, and 2) not to issue guidance on allowable project types and uniform methodologies for calculating reductions, because this would place the Commission in the role of setting environmental policy.

Timing of Emissions Reductions

With respect to § 260.5(b), CRS supports the Commission's proposed guidance that "it is deceptive to misrepresent, directly or by implication, that a carbon offset represents emissions reductions that have already occurred or will occur in the immediate future," and that, as a result, marketers should qualify their offset claims regarding the timing of reductions. We also support the Commission's proposed "two years or longer" threshold for this disclosure: "to avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emissions reductions that will not occur for two years or longer."

It is important that there be some flexibility for the sellers of offsets in terms of sourcing verified emissions reductions and the timing of the sale relative to the timing of the emissions reduction. This is due, in part, to the volatility of market demand, and also because the timing of reductions can vary over the year, depending on the project type and location. This flexibility is also necessary for verification organizations, which cannot manage week-by-week or month-by-month verification of sales against supply. Green-e Climate, currently the only program in the market to verify offset sales, administers annual verification and requires that emissions reductions retired or transferred must match sales at the time of the annual verification audit, which occurs in the first quarter of the year following the year of sales. In this way, the Commission's proposed "two years" threshold is appropriate, in that it is consistent with the limitations of verification organizations that administer verification activities annually, and it affords sellers a reasonable amount of flexibility in terms of sourcing and balancing inventory.

Substantiating Claims - Tracking

With respect to § 260.5(a), CRS generally supports the Commission's proposed guidance that "sellers should employ competent and reliable scientific and accounting methods to

properly quantify claimed emissions reductions and to ensure that they do not sell the same reduction more than one time." We suggest that this guidance be supplemented with the following: "This may include sourcing emissions reductions from projects registered with credible third-party GHG project certification programs which administer project standards; the use of electronic registries which track ownership of emissions reductions; and, for retail sales, the use of third-party consumer-protection programs which verify that offset seller's sales match supply to ensure against double selling." Adding this sentence would provide needed additional guidance to sellers about existing tools at their disposal in the market which may help them to substantiate their claims by providing assurances regarding quantification of emissions and double selling. This is consistent with the Commission's proposed guidance around third-party certifications as substantiation.

Substantiating Claims - Additionality

CRS supports the Commission's proposals 1) not to establish a specific additionality test or tests, because this falls within the realm of setting environmental standards or policy, and therefore outside of the purview of the Commission; and 2) not to issue guidance on which specific additionality tests sellers must meet to substantiate offset claims, given that there is no consensus on which test(s) is most appropriate for different projects in different locations.

With respect to § 260.5(c), CRS also supports the Commission's proposed guidance that "it is deceptive to claim, directly or by implication, that a carbon offset represents an emissions reduction if the reduction, or the activity that caused the reduction was required by law."

Substantiating Claims - Use of RECs

CRS urges the Commission to refrain from providing guidance on "the use of RECs as a basis for offset claims" or "carbon offsets [that] are based on the purchase of RECs," as described by the Commission in § VI.E.2.d and VI.E.4.e of the Notice. CRS supports the Commission's proposed decision not to provide guidance on this issue beyond that marketers must substantiate their claims and possess evidence that emissions reductions are not being double counted.

Renewable energy projects are one of the leading sources of carbon offsets internationally, and are supported by project certification standards administered by the UNFCCC as well as several voluntary certification programs, including the Gold Standard, the Voluntary Carbon Standard, and Green-e Climate. U.S.-based renewable energy is and should continue to be a valid offset project type. For renewable energy projects that meet requirements for offset projects (e.g., additionality, verification, etc.), RECs can be used to track and substantiate carbon claims. In fact, any project certification organization that certifies carbon reductions from renewable energy projects in the U.S. and does not also require REC validation and retirement would be highly likely to result in double counting of carbon reductions.

It is important to distinguish between selling a REC as an offset (Notice, Section VI.E.2.d, pg. 176)—an activity which can be considered deceptive based on key distinctions between the two commodities, and using RECs to substantiate a carbon claim (i.e. track and ensure proper retirement and ownership of emissions reductions associated with renewable energy generation)—which for a valid, additional renewable energy offset project can significantly lower transaction costs and increase assurances of offset quality/legitimacy by utilizing existing infrastructure and mechanisms for tracking and verification.

Please see the Appendix to this document for continued discussion related to the comments received by the Commission on this topic.

Certifications and Seals of Approval - § 260.6

CRS recognizes the important role the Commission has in sorting through the abundance of environmental seals to distinguish between corporate self-certification logos, industry marks, and legitimate certification organizations. Many environmental seals imply that certain environmental claims have been verified by an independent certification organization when in fact they have not, and increasing clarity on the use of such seals will improve the overall value to consumers of certification marks.

Disclosure of Material Connections

The importance of disclosure in the case of seals granted to members of membership-based industry organizations, articulated in § 260.6(b), should not carry over to third party certifications. CRS requests clarification that the Endorsement Guides, Disclosure of Material Connections does not apply to third party certification organizations (§ 255.5). The Endorsement Guides provide guidance on the non-deceptive use of endorsements in marketing. As most certification organizations charge for certification services, [1] CRS believes it is not deceptive to display a legitimate certification mark without disclosing that a fee was charged for certification. The public does not expect certification organizations to provide such services for free, and thus it is not deceptive or confusing to display certification marks without disclosing that a fee was paid to certifiers or the amount of the fee.

Furthermore, third party certification organizations that are part of a 501(c)(3) nonprofit organization are beholden to their mission by a fiduciary board. Fiduciary governance structures ensure that program's policies are developed in open, transparent processes involving all important stakeholder groups and are implemented such that all certified entities are subject to the same requirements and verification standards. In contrast with

[1] E.g. Green Seal, http://www.greenseal.org/GreenBusiness/Certification/GetCertified.aspx; EcoLogo http://www.ecologo.org/en/certified/cost/ ; LEED http://www.gbci.org/main-nav/building-certification/resources/fees/current.aspx ; ULE http://www.ulenvironment.com/ulenvironment/eng/documents/env/EEC-Terms&Conditions-eff-26Aug2010.pdf ;

membership based industry groups, certification of individual companies by a third party certifier is not determined by a vote of other members. These certification programs include open stakeholder process and publically available standards. There are well developed best practices for independent certification organizations that the Commission may refer to. For example, certification organizations participating in the International Social and Environmental Accreditation and Labeling ("ISEAL") Alliance (www.isealalliance.org), have demonstrated a commitment to such requirements.

To display the fee paid to the certification organization on the product may confuse customers as it may convey that anyone who pays the fee can use the logo, when in reality, the fee is one of the lesser requirements of product certification.

In such cases where material connection is required (i.e., a membership based industry group whose primary qualifications is the payment of a fee), CRS requests further clarification as to whether the Commission would require the amount of the material connection to be disclosed.

Coordination with International Certification Organizations

As stated on page 25 of the Proposed Guides, the purpose of the guides is to prevent the dissemination of misleading claims, not to encourage or discourage particular environmental claims or consumer behavior based on environmental policy concerns. However, the narrow consumer-protection scope of the Guides does not render international standards such as ISEAL irrelevant. **CRS urges the Commission to look to ISEAL to help define the best practices for certifying organizations.** ISEAL emphasizes an open stakeholder process for standard setting and, while requiring independence in standard setting and certification activities, does not prohibit certifiers from obtaining certification fees from producers or sellers who meet the certification requirements.

Substantiation Beyond Certification

CRS agrees with § 260.6(c) conveying that third-party certification does not eliminate a marketer's obligation to ensure that it has substantiation for all claims reasonably communicated by the certification. Marketers should be held responsible for all claims they make regardless of third-party substantiation. However, legitimate claims that are backed by outside certification will often be easier to substantiate.

Qualification of Environmental Seals

CRS agrees with the Commission's guidance articulated in § 260.6(d) and § 260.6(e), and Example 5, that an unqualified environmental certification or seal of approval (i.e. one that does not state the basis for the certification) likely covers a general benefit claim that is impossible to substantiate. Furthermore, language qualifying a certification or seal of approval should be clear and prominent and should clearly convey that the certification or seal of approval refers only to the specific limited benefits.

CRS believes our Green-e programs are in accordance with these guidelines. Our Green-e Marketplace program, which provides for on-product logo use by qualifying participants, requires participants to include specific language around the Green-e logo and next to the Green-e logo, specifically, "100% of the electricity used to manufacture this product is offset with renewable electricity." Our Green-e Energy and Green-e Climate programs also require clear disclosure of the nature of the certification. Furthermore, we require marketers of Green-e Certified renewable energy and offsets to include information about our program and what is certified as well as a link to our website in all subscription mechanisms. CRS believes that by providing this information our certifications do not provide a general environmental benefit claim, but a specific claim related to renewable energy, carbon offsets, or renewable energy use and the associated environmental impacts.

Self Certification

Consumers likely assume that all certifications have been conducted by an independent third party with expertise in evaluating the environmental attributes of the product, therefore, marketers should disclose when they have fabricated their own seal, as articulated in Example 1. Self-certification is inherently deceptive, and at a minimum, disclosure language should be included to clarify that the seal was not granted by an independent third party. CRS requests the Commission clarify that such a requirement is not limited to self certifications that say "certified," but apply to all logos that resemble certification marks or purport to demonstrate the product or service's environmental performance.

Additionally, companies that sell renewable energy products are not independent certifiers, and should not create an eco-logo resembling a certification mark for the products they sell. Customers of renewable energy should not use a logo provided by a seller of renewable energy as customers will assume the mark is a certification mark from an independent third party, when in fact, no independent verification has not occurred.

Unverified Claims Scheduled for Subsequent Verification

CRS believes that it is unnecessary to tell customers that the product has not yet been evaluated by the certification organization in cases where the seller is contractually required to comply with the certification organization's standards and that product will be evaluated when the information becomes available. CRS would like clarification on Example 4 as it applies to industries whose environmental claims are based on yearly cycles of sales where the claims are tied to specific years and are impossible to verify until after the close of the selling year. As a result, a substantial portion of the verification cannot happen until after the claims have been made. In situations like this, certification organizations rely on contractual guarantees and attestations to bind marketers to standards. For example, marketers of renewable electricity need to convey certification of the product in advance of purchase, however, they cannot buy supply in advance of demand as electricity can't be stored, and there is

uncertainty of amount that will be generated and used. Another example of post sale certification is for certification of the claim "we use 100% renewable electricity". In order to evaluate and verify such a claim, the Green-e Marketplace program must compare all of the electricity use over a year with the amount of RECs purchased and require a true up as necessary. At the start of the year, the participant estimates the amount of electricity that will be used and purchases a matching amount of RECs. During the year, the participant may use the particular Green-e logo, and at the end of the year the Green-e Marketplace program matches actual electricity usage to the REC purchase and requires a true up as part of verification.

Renewable Energy Claims - § 260.14

CRS commends the Commission for addressing deceptive marketing practices related to renewable energy claims. Truthful advertising is imperative in this complicated market. Some consumer confusion is inevitable, given the complexities of the renewable energy market and electricity grid, and CRS recommends that for potentially confusing claims—such as those regarding renewable energy—the Commission advise advertisers to provide additional clarifying information rather than calling out particular words, such as "hosting," as deceptive. These qualifying statements will serve to educate customers, providing clarity to the overall market.

"Made with Renewable Energy" Claims

With respect to § 260.14(a)-(c), CRS asks the Commission to provide additional guidance on the perceived scope of an unqualified "made with renewable energy" claim, articulated in § 260.14(a). The Commission's proposal to advise marketers not to make an unqualified "made with renewable energy" claim if an item was manufactured with energy produced using fossil fuels is unclear as it may refer to more than just the electricity.

CRS agrees with the statement on page 161 that is not necessary for the Commission to define renewable energy sources, however, we strongly urge the Commission to clarify that renewable energy excludes nuclear fuel. Uranium is not a renewable resource and to imply otherwise is deceptive.

The Commission should clarify that the word "power" in § 260.14(a) is intended to refer to electricity only, and does not refer to other energy inputs, such as natural gas for heating or operating manufacturing equipment, or transportation fuels used to move goods.

CRS requests the Commission consider allowing more-specific language about where in the product's lifecycle the renewable energy is used, such as "assembled with renewable energy" or "manufactured with renewable energy."

Specifying the source of the renewable energy, as articulated in § 260.14(b) would be overly burdensome as frequently REC purchases are made from a portfolio of renewable

energy and the type of renewable energy and proportion of various renewable energy fuel types changes.

If the Commission determines that consumers perceive the word "energy" to include both electricity and other fuel inputs, then CRS requests the Commission specifically allow use of the phrases "assembled with 100% renewable electricity" or "manufactured with 100% renewable electricity" for products that have been produced using 100% renewable electricity in the manufacturing or assembly stage of production. Consumers would understand that the electricity used to manufacture the product was renewable electricity or RECs bundled with system electricity. Consumers would be less likely to incorrectly assume that the product was itself renewable or made out of renewable materials.

CRS agrees with the proposed addition of § 260.14(d) that it would be deceptive for a marketer to represent or imply that it uses renewable energy if the marketer has sold all of the renewable attributes of its generation. By selling RECs a company transfers the right to characterize its electricity as renewable.

Businesses Also Host Renewable Energy and Sell the RECs

The Commission proposes on page 223, § 260.14 Example 2 that the language "hosts a renewable power facility" is likely to mislead consumers if, in fact, the company has sold its rights to claim credit for the renewable energy "because reasonable consumers likely would interpret this claim to mean that the company uses renewable energy." This consumer misperception is likely the result of a lack of education and information about this approach to siting renewable energy. Like other environmental claims that consumers tend to misinterpret, it requires further qualification.

The way this example is presented would discourage use of the most descriptive term for this type of arrangement, "host." However, to explain why they have a highly visible renewable energy system on their building or site, companies or agencies would likely resort to synonyms, such as "we generate renewable energy" and the root problem of providing an inadequate explanation of the arrangement and its benefits would remain. CRS agrees with other commenters who propose a positive example of the information to substantiate and explain what hosting a facility means.

> **Example 2**: A company places solar panels on its store roof to generate power and advertises that its store is "100% solar-powered." The company, however, sells renewable energy certificates based on the renewable attributes of all the power it generates. Even if the company uses the electricity generated by the solar panels, it has, by selling renewable energy certificates, transferred the right to characterize that electricity as renewable. The company's claim is therefore deceptive. It also would be deceptive for this company to advertise that it "hosts a renewable power facility" without further explanation because reasonable consumers likely would interpret this claim to mean that the company uses renewable energy. To avoid misleading consumers the claim must include information that the RECs have been sold and the fact that the "host" does not use the renewable energy, such as

"company X does not use the renewable energy from the renewable energy project it hosts on its site."

It is important to provide positive guidance on how to explain "hosted" facilities because this arrangement is becoming more and more common as renewable energy developers and consumers struggle to site facilities. This alternative language balances the need to protect the public from deceptive claims while providing guidance on the information consumers need to understand what "hosted" actually means. CRS recommended guidance can be found on the learn section of the Green-e website in the documents "Best Practices in Public Claims for Green Power Purchases and Sales" and "Best Practices in Public Claims for Solar Photovoltaic Systems."[2] CRS requests the Commission provide specific guidance on acceptable qualifications, including best practices for the prominence and prevalence of these qualifiers.

Large Scale Generators Selling Electricity To One Purchaser And RECs To Another

CRS seeks clarity regarding appropriate claims for generators who have a substantial portion of their business centered on generating renewable energy. Many such generators sell null electricity (electricity that has been stripped of its environmental attributes) to one party and RECs to another party.

Such generators frequently make claims such as "I operate a 100 megawatt wind power facility" or "This facility generated 100,000 MWh of wind energy in 2010." As these generators primary business is producing renewable energy, it is clear that the facility isn't using renewable energy in a factory manufacturing process of a second product. As such, there are no customers of such a product to deceive.

However, large scale generators may cause electricity customers, including wholesale or large scale electricity buyers, to believe that they are purchasing renewable energy. Utility scale generators that talk about the size of their renewable generation facility should include clear and prominent information about the non renewable (or "null") electricity actually provided to customers, as well as information about the sale of the RECs to a separate customer.

CRS recommends that information about generation, when the RECs are being sold separately, be matched with qualifying statements explaining the electricity provided to the customer is not renewable and does not contain RECs. Clarifying language may also be necessary when average emissions rate rates of generation do not correspond with the average emissions of the power provided to electricity customers.

Answers To Questions Not Already Addressed Above

1) Do consumers interpret general environmental claims, when qualified by a particular attribute, to mean that the particular attribute provides the product with

[2] CRS, http://www.green-e.org/learn_re_claims.shtml (accessed Dec. 10, 2010).

a net environmental benefit? Please provide any relevant consumer perception evidence. Should the Commission advise marketers that a qualified-general environmental claim is deceptive if a particular attribute represents an environmental improvement in one area, but causes a negative impact elsewhere that makes the product less environmentally beneficial than the product otherwise would be? Why or why not?

Clarifying a general environmental claim with, manufactured with 100% renewable electricity will effectively direct consumer attention to the environmental benefits of using renewable energy.

2) Would it be helpful to include an example in the Guides illustrating a qualified general environmental claim that is nevertheless deceptive? For example, a marketer advertises its product as "Eco-friendly sheets –made from bamboo." Consumers would likely interpret this claim to mean that the sheets are made from a natural fiber, using a process that is similar to that used for other natural fibers. The sheets, however, are actually a man-made fiber, rayon. Although bamboo can be used to make rayon, rayon is manufactured through a process that uses toxic chemicals and releases hazardous air pollutants. In this instance, the advertisement is deceptive.

Yes, more examples provide additional guidance to marketers. Clear guidance will help prevent unintended green-washing.

3) The Commission's consumer perception study found that 27 percent of respondents interpreted the claims "green" and "eco-friendly" as suggesting that a product has no (rather than "some") negative impact. Viewing this finding alone, would it be deceptive for a product to be advertised with an unqualified general environmental benefit claim if the product had a negligible environmental impact?

Any product that can demonstrate with credible scientific evidence that its production and consumption have negligible environmental impact would be a tremendous improvement over the products on the market today and would be deserving of "green" and "eco-friendly" labeling. For example, renewable energy providers that sell "Green Power" may be selling a product that has some negative impacts on wildlife habitat or may have some emissions of GHG's associated with the product, for example in the case of biomass. Such labeling is not deceptive.

All generation technologies create some form of adverse environmental impact. These impacts are generally addressed in site licensing or local environmental permitting processes prior to construction, with the project or facility subjected to a set of mitigations or regulatory conditions meant to lessen the adverse impacts. As long as the project is fulfilling such requirements, it seems counterproductive to impose some additional requirement for calculating what an acceptable "net environmental benefit" claim might be in this context. That wind turbines might contribute to avian mortality does not change the nature of the renewable electricity resource.

18) How should marketers qualify carbon offset claims, if at all, to avoid deception about the timing of emission reductions? Should marketers disclose if their offsets reflect emission reductions that are not scheduled to occur in two years? Should marketers make a disclosure if emission reductions are not scheduled to occur in some other time period? If so, what time period, and why? Would such a disclosure adequately qualify an offset claim to avoid deception? Please provide any relevant consumer perception evidence about this issue or on carbon offsets, generally.

CRS supports the Commission's proposed "two years or longer" threshold for disclosure regarding the timing of emissions reductions relative to the time of sale. A two year timeframe is consistent with the limitations of certain verification organizations, which verify projects annually, and it affords sellers a reasonable amount of flexibility in terms of sourcing.

Our position is based, in part, on comments and supporting documentation that we received during the second open stakeholder comment period for the adoption of the *Green-e Climate Standard*, from April 17, 2007 to May 8, 2007. Commenters presented evidence of the substantial difference in terms of environmental impact between an offset representing an emissions reduction that has already occurred, and one which represents a stream of planned future reductions. In the latter case, climate damage occurs over the period of years of the future stream. As a result, commenters questioned whether such future promises should be allowed to represent themselves as a true offset against current year emissions.

Commenters specifically suggested "explicit differentiation between the two types of offsets" and that planned future offsets be "identified simply and clearly" as incorporating ongoing climate damage, urging that "full and distinctive and simple consumer disclosure is needed."

Apart from the substantive differences between current and future offsets, CRS would like to highlight the additional uncertainty surrounding future reductions, which puts the consumer of a future offset at risk of being defrauded. Planned reductions may, for any number of reasons, simply not occur as planned, in which case the customer will not have received the emissions reduction purchased before the fact.

Conclusion

CRS urges the Commission provide additional clarity regarding the scope of "made with renewable energy" claims and appropriate claims for generators of renewable energy who are selling off the RECs. Use of the term "hosting" should be allowed if sufficient language is provided explaining that the RECs, and all rights to use renewable energy have been sold. CRS urges the Commission to look to ISEAL to help define the requirements of legitimate certification organizations, and to clarify that certification fees paid to such legitimate certification organizations do not need to be disclosed upon use of

a certification mark**.** CRS believes that it is unnecessary to tell customers that the product has not yet been evaluated by the certification organization in cases where the product is contractually required to comply with the certification organization standards and that product will be evaluated when the information becomes available. CRS supports the Commission's proposed language impacting carbon offsets.

Thank you for accepting and considering our comments. CRS is pleased to participate in these important discussions.

Appendix: Comments Addressing Section VI.E.2.d of the Notice

With respect to the following comment received by the Commission:

- "REC should not be used for offsets because the two are distinctive commodities and conflating them could mislead consumers" (Notice, Section VI.E.2.d, pg. 176).

RECs and offsets are indeed distinct commodities, and conflating them could mislead consumers. The distinction between the two should be made clear, especially by marketers selling both products. They perform separate roles in the marketplace, are subject to different eligibility requirements, and endow their purchasers with different environmental claims. However, the conclusion that U.S. renewable energy cannot therefore produce offsets under certain circumstances, or that U.S. renewable energy is therefore not a valid offset project type, cannot and should not be drawn from this. Renewable energy is widely considered to be a valid offset project type around the world by voluntary and compliance offset mechanisms alike. The largest and most prominent GHG project certification programs in the world allow renewable energy as an eligible offset project type, including the Clean Development Mechanism, the Voluntary Carbon Standard, and the Gold Standard (the areas of operation for the latter two include the U.S.). In fact, renewable energy projects have historically represented a large proportion, if not the majority of projects registered under these programs.

The generation of renewable energy backs down conventional GHG emitting electricity generation and reduces the need for new fossil-fueled power plants, which (without a regulatory cap on emissions in the electricity sector) leads to reduced GHG emissions. These emissions reductions can only be bought and sold as offsets if the renewable generation facility has been proven additional. Since not all renewable energy facilities are additional, not all renewable energy facilities can generate offsets. So, while renewable energy is a valid offset project type, not every renewable energy facility that can generate a REC, can generate an offset. It should also be noted that, while offsets can be derived from additional renewable energy projects, RECs and offsets cannot both be sold from the same megawatt-hours ("MWhs") of generation; this would amount to double selling. Existing offset and renewable energy certification programs ensure that RECs and offsets respectively are tracked and that emissions reductions are not double-counted.

Where the renewable energy facility has been proven additional, and as long as the MWh is not being sold as a REC or otherwise allocated elsewhere, RECs can be used to track and substantiate the emissions reductions associated with the renewable energy generation, which can be sold as offsets. It works basically like this: an offset seller procures a certain quantity of renewable MWhs of generation ("RECs") from renewable energy generation facilities that have passed well-conceived and widely-used additionality tests. The seller then retires the MWhs on behalf of a customer purchasing their offset product in an amount equivalent to the amount of renewable MWhs needed to result in the precise quantity of emissions reductions or offsets that the consumer has

purchased (in units of CO_2e) based on established baseline emissions rates which vary by region and technology type.

RECs are not being "sold as offsets" in this scenario (a common disparagement of this kind of substantiation, which misunderstands the difference between RECs and offsets). Rather, RECs are merely being used to track and ensure proper retirement of emissions reductions associated with the renewable energy generation represented by RECs. This can be done as long as the facility is additional. And because of well-developed U.S. REC markets, standardized contracts, and prevalent tracking systems, a consumer can easily be assured through legal documentation or third-party certification that the environmental benefits of RECs are fully aggregated and delivered.

In fact, where a renewable energy project in the U.S. is generating offsets, the RECs for those MWhs of generation (for which the project received carbon credits) should always be retired to prevent double selling of RECs and offsets for the same MWh.

"Selling RECs as offsets," on the other hand, (i.e. RECs from non-additional facilities or facilities that have not been evaluated against a valid offset protocol/standard which assesses additionality and other eligibility criteria) to address scope 1 or 3 emissions (e.g. smoke stack emissions, or vehicle or air travel) creates confusion in the market and should not be allowed as the underlying emission reductions have not been proven to meet offset standards.

With respect to the following comment received by the Commission:

- "There is little or no evidence that renewable energy generation always reduces traditional power generation because the actual emission reductions associated with grid power vary considerably across the United States, and there are no uniform standards for calculating the emissions displaced by renewable energy" (Notice, Section VI.E.2.d, pg. 177).

There is, in fact, strong evidence that renewable energy generation reduces traditional power generation (see below). And though emissions reductions associated with grid power do vary across regions of the U.S., there are well-established and accepted methodologies, including standard practices, for calculating the emissions displaced by renewable energy generation in different regions of the country.

While it is difficult to pinpoint the exact emitting units being backed down, numerous studies, conducted for various regions across the U.S., have been done to estimate the effects of renewable energy generation on the grid.[3,4,5] They have all shown that it is fossil fuel generation, as opposed to other renewable energy facilities, that is being

[3] *Final Report - 2006 Minnesota Wind Integration Study, Volume 1*, Prepared by EnerNex Corporation in collaboration with the Midwest Independent System Operator for the Minnesota Public Utilities Commission, November 2006.

[4] *Estimated Marginal Fuel Displacement By Wind Generation in PJM*, Monitoring Analytics, 2009

[5] Northwest Power and Conservation Council. "Power System Marginal CO2 Production Factors". Whitefish, Montana. April 2006

displaced (even in the Northwest where hydropower represents such a large part of the fuel mix), resulting in real emissions reductions.

As for quantifying the emissions reductions, in the U.S., emissions information from the electricity sector is available in the Emissions and Generation Resource Integrated Database ("eGRID"). Average emission rates, fossil fuel emission rates, and non-baseload emission rates are calculated for all North American Electric Reliability Corporation ("NERC") regions and eGRID sub-regions. The use of regional baseline emissions rates, based on reliable, official numbers from authoritative and credible sources, is considered standard practice (e.g. recommended by the World Resources Institute ("WRI") in their highly-regarded GHG Protocol[6]), and is perfectly acceptable as a conservative and data-driven estimate of the emissions displaced by renewable energy generation in different regions of the country. Such estimation in GHG accounting should not be cause for concern and is not unique to renewable energy-derived offsets, nor is the effect of such estimation particularly pronounced in the case of renewable energy-derived offsets. Rather, conservative estimation is a common feature of accounting for all emissions reduction project types, and the abundance of information available from the electricity sector makes for more robust and transparent estimations in the case of renewable energy compared to most.

With respect to the following comment received by the Commission:

- "Sellers cannot prove that renewable energy generation, and any associated GHG emissions reductions, are additional. […] RECs merely subsidize existing projects and do not contribute sufficiently to a project's income stream to create a market for new renewable energy generation" (Notice, Section VI.E.2.d, pg. 177).

In actuality, transparency in the U.S. electricity sector makes the additionality of renewable energy projects easier to substantiate than in most other countries. Performance and technology additionality tests, which assess the market penetration of zero-carbon technologies in the electricity sector, in order to evaluate what is 'beyond business as usual,' may be informed by readily accessible, frequently updated, high-quality, and region-specific data on the prevalence of renewable energy generation facilities.

States with RPSs have developed rigorous methods to account for the renewable generation that is used to meet RPS goals. These methods, paired with the use of electronic renewable energy attribute tracking systems, allow renewable generators in the U.S. to clearly identify which renewable generation was used for RPS purposes, and which generation could be evaluated for additionality for carbon market purposes.

And while it is true that renewable energy projects must sell their electricity in order to create carbon reductions, it is also true that revenue from the sale of offsets can move a project from a nonviable internal rate of return to one that can attract investment and allow project development to go forward. This depends on a number of factors, including

[6] WRI guidance is available online at: http://www.ghgprotocol.org/files/electricity_final.pdf

RPS compliance costs, the relative price of wholesale power, offsets, and the federal production tax credit, the cost of transmission, and the value of the power produced to end users.

We agree with the argument that RECs should not be sold as offsets because RECs are not required to be additional. However, it is important, again, to properly distinguish between RECs and offsets in as much as renewable energy-derived offsets must be additional, whereas this is not a requirement for RECs. Additionality is needed in order to separate the emissions reductions from the activity producing them (e.g. electricity generation) and apply them to emissions outside of the activity/industry sector (e.g. transportation). In other words, emissions reductions are only salable as a distinct commodity if they were actually made to be sold as emissions reductions, and not just a part of something else. With RECs, electricity generation (renewable) is paired with electricity usage (conventional/null); one MWh of emissions-free generation for one MWh of null electricity usage. REC purchasers buy the claim to MWhs of zero-emitting generation, like any other zero-emissions product you could buy (e.g. paper). The projects generating the emissions-free power do not need to be additional in order to convey the benefits of the power embedded in the product (one of which is carbon reducing effect that renewable energy has on the grid). However, in order to take the emissions reductions associated with the renewable generation and use them to offset emissions from an activity other than electricity, one would need assurance that the renewable energy project creating the emissions reductions did so in response to the purchase, or demand for voluntary emissions reductions, meaning the emissions reductions were produced to be sold as emissions reductions.

With respect to the following comment received by the Commission:

- "The critics questioned whether renewable energy generators can take credit for the emissions reductions that occur at fossil fuel-fired facilities. There is currently no mechanism to establish who owns such emissions reductions – the renewable energy generator or the fossil fuel-fired generator. Therefore, the comments raised concerns about double counting if both generators take credit for the same emissions reduction." (Notice, Section VI.E.2.d, pg. 177-8).

Without a cap on the electricity sector, ownership of the emissions reductions is not afforded to fossil-fuel generators. To credit fossil-fuel facilities with an emissions reduction due to renewable energy generation in the absence of a cap is not only counterintuitive, it also defies existing legal and contractual REC definitions where the environmental attributes are embodied within in the REC.[7]

[7] Renewable energy tracking systems in some states have incorporated such definitions. For example, "A REC includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, including […] any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, or any other GHGs that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of global climate change; and the reporting rights to these avoided emissions, such as Green Tag reporting rights" (CA PUC, Decision 08-08-028 August 21, 2008, Rulemaking 06-02-012, Sec. 4.2). For more information see http://docs.cpuc.ca.gov/published/FINAL_DECISION/86954-03.htm#P257_64410.

Reductions in emissions associated with reductions in output that result from new renewable generation on the grid are reflected in the scope 1 emissions for the fossil generators, but there is no mechanism to afford generators (and no reason for them to receive or claim) any credit for those reductions without a compliance system or emissions cap. Until there is a cap, the emissions reductions can and should be sold by the projects responsible for or causing those emissions reductions (renewable generators) even though the reductions happen outside the project boundary.

In other words, where the reduction and the project producing the reduction are located in different places, the reduction claim should lie with the project producing the reductions until the location of the emissions reductions (fossil fuel generators) has some claim to them (i.e. until a cap is in place which regulates scope 1 total emissions in the sector). This is common practice in offset schemes throughout the world.

Attributing the emissions reductions to the fossil fuel generator in the absence of a cap would result in no entity able to sell emissions reductions from renewable energy, because there would be no way to show additionality with respect to emissions reductions being sold by the fossil fuel generator, since the emissions reductions are caused elsewhere. The emissions reductions would be entirely disconnected from the activity reducing the emissions, and offset revenue would be having no effect on whether or not the reduction happened. In the absence of a cap, emissions reductions must be attributed to the party producing the reductions in order to assess whether or not that it was the purchase, the carbon revenue, that made the project and reduction happen. If not, the emitting entity may as well receive credit for reducing electrical output for any reason, including economic downturn or reduced market demand, and by definition these are reductions that would have happened anyway, and are not additional.