



April 24, 2023

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

RE: Green Guides Review, Matter No. P954501. Comments of Center for Resource Solutions in response to Guides for the Use of Environmental Marketing Claims Regulatory Review and Request for Public Comment.

To Whom It May Concern:

Center for Resource Solutions (CRS) appreciates this opportunity to provide comment in response to the Federal Trade Commission's (FTC's) regulatory review and request for public comment for the Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides") published in the Federal Register (Vol. 87, No. 243) on December 20, 2022 (87 FR 77766) ("Notice"). Our comments are focused on the Renewable Energy Claims (§ 260.15), Carbon Offsets (§ 260.5), and Certifications and Seals of Approval (§ 260.6) sections of the Guides, as well as claims not currently covered by the Guides.

Introduction to CRS and the Green-e® Programs

Center for Resource Solutions (CRS) is a 501(c)(3) nonprofit organization, established in 1997, that creates policy and market solutions to advance sustainable energy. CRS has been instrumental in the development of renewable energy and greenhouse gas (GHG) policies and markets through programs that provide technical guidance in the areas of accounting, tracking and verification, and consumer protection.

CRS administers the Green-e® standards and certification programs. For over 25 years, the Green-e® Energy program has been the nation's leading independent certification and consumer protection program for renewable electricity and renewable energy certificates (RECs). The Green-e® Climate program is an independent, third-party retail standard and certification program that sets consumer protection and environmental-integrity standards for carbon offsets sold in the voluntary market. The Green-e® Marketplace program recognizes companies that use certified renewable energy and carbon offsets by allowing them to display the Green-e® logo, for company-wide or product-specific claims,

when they have purchased a qualifying amount of certified renewable energy or offsets and passed the programs' verification standards. The Green-e® Renewable Fuels program was launched in 2021 as a standard and certification for biomethane products and associated environmental attributes and is in the process of expanding to certify green hydrogen transactions and programs.

In 2021, the Green-e® Energy program certified retail sales of over 110 million megawatt-hours (MWh), representing approximately half of overall voluntary renewable energy purchases in the US, serving over 1.3 million retail purchasers of Green-e® certified renewable energy, including over 309,000 businesses. Nearly half of all installed wind capacity in the US is supplying Green-e® certified transactions.¹ The Green-e® Energy program certifies renewable energy products that are available in all 50 states and the District of Columbia.

Stakeholder-driven standards supported by rigorous verification audits are a cornerstone of the Green-e® programs. Participants in Green-e® programs, e.g. sellers of renewable energy, renewable fuels, and carbon offsets, contractually agree to abide by the Green-e® Standards and Codes of Conduct.² Green-e® certified products are required to undergo an independent annual audit of sales to demonstrate compliance with Green-e® Standards and Codes of Conduct and to verify sales against tracking system, credit registry, and other transaction data to ensure no double counting and exclusive sales and retail claims. The Green-e® Energy program also prevents instances of double claiming by verifying that there are no other renewable energy usage claims being made on either the RECs or underlying electricity associated with certified sales. Sellers of certified products are required to provide a verified Product Content Label with minimum information about the renewable energy, carbon offset, or renewable fuel sold and other terms, conditions, and disclosures related to the sale. Certified products must also undergo a marketing compliance review of marketing materials to ensure truthful advertising.

The Green-e® certification programs are overseen by an independent governance board.³ The Green-e® Standards have been developed and are regularly updated through an open stakeholder process. Green-e® program documents, including the Standards, Codes of Conduct, and the annual verification report, are publicly available at www.green-e.org.

These comments are based, in part, on comments and supporting documentation that we receive during open stakeholder comment periods for adoption and changes to Green-e® Standards, including Green-e® Energy, Green-e® Climate, and Green-e® Renewable Fuels.

¹ For more information, please see the 2021 Green-e® Verification Report (2020 Data), available at: <https://resourcesolutions.org/g2021/>.

² The latest versions of Green-e® program documents are publicly available at: <https://www.green-e.org/programs/energy/documents>, <https://www.green-e.org/programs/climate/documents>, <https://www.green-e.org/programs/renewable-fuels/documents>, and <https://www.green-e.org/programs/marketplace/documents>.

³ The current list of members of the Green-e® Governance Board is available at: <https://www.green-e.org/who>.

Comments regarding the Renewable Energy Claims Section (§ 260.15) of the Green Guides

The current guidance in the Renewable Energy Claims section (§ 260.15) of the Green Guides remains extremely valuable and has been reinforced by state law and voluntary standards. There is no widespread deception in renewable energy markets, due in part to FTC guidance, state regulations, and consumer protection programs like the Green-e® Energy program. The FTC should not impose new restrictions on renewable energy use claims and transactions, which may be in conflict with state law and established standards and practices. We support existing guidance for additional disclosure and qualifying statements to be used by companies to distinguish between renewable energy products and purchasing with different benefits or to prevent potential misperceptions by consumers.

1. Regarding questions III.A.1, 2, and 13 in the Notice concerning continuing need for, benefits of, and degree of industry compliance with the Guides, **guidance in parts (a), (c), and (d) of § 260.15, and examples 3 and 5 in that section, emphasizing the importance of renewable energy certificate (REC) ownership, are still relevant and needed to prevent deceptive renewable energy claims and marketing.**

Regarding question III.A.4 in the Notice concerning the impact of the Guides on the flow of truthful versus deceptive information to consumers, this guidance ensures that there is not more than one claim being made on the same unit of renewable energy and that renewable energy use is exclusive and verifiable. Without it, even with more precise data related to the generation sources of electricity consumed at specific locations, there could be double claiming of renewable energy.⁴

RECs are universally used as the basis of renewable energy claims in the US, for verification and to avoid double counting of renewable energy, in both compliance and voluntary markets. There is a long history of consistent use and no significant deviation in practice. All credible renewable energy use claims in the US are substantiated with REC ownership and retirement. It would be deceptive for companies to claim use of renewable energy without RECs.

All available US voluntary renewable energy market⁵ data reflects REC ownership, including all Green-e® Energy program data,⁶ all National Renewable Energy Laboratory (NREL) voluntary green power

⁴ US Environmental Protection Agency (EPA), US Department of Energy (DOE), World Resources Institute (WRI), Center for Resource Solutions (CRS), National Renewable Energy Laboratory (NREL). (September 2018). *Guide to Purchasing Green Power: Renewable Electricity, Renewable Energy Certificates, and On-Site Renewable Generation*. U.S. EPA. Office of Air (6202J) EPA430-K-04-015. Pg. 2-4. Available at: https://www.epa.gov/sites/default/files/2016-01/documents/purchasing_guide_for_web.pdf; "In addition to being essential to substantiate environmental claims, RECs help avoid double counting and claiming of the same generation attributes by more than one party."

⁵ For a description, See US EPA, US DOE, WRI, CRS, NREL. (September 2018). *Guide to Purchasing Green Power: Renewable Electricity, Renewable Energy Certificates, and On-Site Renewable Generation*. U.S. EPA. Office of Air (6202J) EPA430-K-04-015. Pg. 2-5. Available at: https://www.epa.gov/sites/default/files/2016-01/documents/purchasing_guide_for_web.pdf.

⁶ The most recent Green-e® program data is available here: <https://resource-solutions.org/g2022/>.

market data,⁷ and all US Environmental Protection Agency (EPA) Green Power Partnership data.⁸

According to NREL:

“RECs are involved in every legal claim to the use of renewable energy in the United States in both voluntary and compliance markets. A REC equates to an exclusive property right to the clean energy attributes of one megawatt-hour of renewable generation. That right is exercised when a buyer ‘retires’ a REC, removing it from circulation and preventing double claims to the same output. In 2022, about 240 million RECs were retired in voluntary markets, compared to around 390 million RECs in compliance markets.”⁹

Though the eligibility requirements and preferences of different programs and buyers may be different, the RECs used to verify transactions of renewable energy at the wholesale or retail level and for compliance or voluntary programs are not different instruments. In fact, renewable energy purchasing for compliance or voluntary purposes can be identical in terms of the RECs, tracking systems, generating facilities, purchasing entities, and verification protocols.

2. Regarding questions III.A.17 and 17c in the Notice concerning consistency with other federal, state, or local laws or regulations and whether the Guides have assisted in promoting national consistency with respect to the regulation of environmental claims, **REC ownership requirements for both voluntary and compliance renewable energy transactions have been reinforced since 2012, by states, the federal government, and voluntary standards.**

Our *Legal Basis of Renewable Energy Certificates* document, updated this month, provides several examples.¹⁰ Others include a 2022 ruling by the North Carolina Utilities Commission that agrees with the REC requirement in the renewable energy claims guidance in the Green Guides and recognizes that controlling statute for the state’s Renewable Energy and Energy Efficiency Portfolio Standard (REPS) is consistent in order to prohibit double counting.¹¹ The state of Massachusetts also upheld the

⁷ O’Shaughnessy, E. et al. (2018). *Status and Trends in the U.S. Voluntary Green Power Market: 2017 Data*. Golden, CO: National Renewable Energy Laboratory. NREL/TP-6A20-72204. Pg. 1. <https://www.nrel.gov/docs/fy19osti/72204.pdf>. “For each green power product, RECs are retired on behalf of retail electricity customers to allow those customers to make valid claims to renewable energy use. The inclusion of RECs in all seven green power products ensures that the associated renewable energy use cannot be double counted and claimed by a utility for RPS compliance.”

NREL Voluntary Green Power Procurement data is available here: <https://www.nrel.gov/analysis/green-power.html>.

⁸ US EPA (May 2019) EPA’s Green Power Partnership. *Partnership Requirements*. U.S. Environmental Protection Agency. Pg. 4. Available at: https://www.epa.gov/sites/default/files/2016-01/documents/gpp_partnership_reqs.pdf: “For a green power procurement to qualify for the GPP, Partner organizations must retire, or not resell, the RECs associated with their green power purchase.”

US EPA Green Power Partnership program data is available here: <https://www.epa.gov/greenpower/program-data-viewer>.

⁹ O’Shaughnessy, E. and Sumner, J. (2023). *The need for better insights into voluntary renewable energy markets*. Front. Sustain. Energy Policy, Sec. Energy and Society, Volume 2 - 2023. Available at: <https://www.frontiersin.org/articles/10.3389/fsuep.2023.1174427/full>.

¹⁰ CRS. (2023). *The Legal Basis for Renewable Energy Certificates*. V2.0. Available at: <https://resource-solutions.org/document/the-legal-basis-for-renewable-energy-certificates/>.

¹¹ North Carolina Utilities Commission. Dec 20, 2022. Docket No. E-100, Sub 113. In the Matter of Request for Declaratory Ruling by Optima MH, LLC, Regarding Directed Biogas Under N.C.G.S. § 62-133.8. Order Granting Optima’s Request for Declaratory Relief. Pg. 20-1. <https://starwl.ncuc.gov/NCUC/ViewFile.aspx?id=a7afdffd-e212-4924-a58f-f27c7fa526cf>

Renewable Energy Claims section of the Green Guides and its own consistent environmental marketing regulations in a matter before the Massachusetts Department of Public Utilities in 2022.¹²

The US EPA and Department of Energy (DOE), with CRS, NREL, and the World Resources Institute (WRI), updated their joint *Guide to Purchasing Green Power* in 2018, reinforcing the requirement for RECs in the Renewable Energy Claims section of the Green Guides:

“Voluntary or non-regulatory markets and programs invariably require RECs as proof of green power purchases, and the Federal Trade Commission has issued environmental marketing guidelines that require ownership of RECs to substantiate commercial renewable energy claims. This substantiated claims guidance extends not only to those who claim to be using renewable energy, but also to those who claim to be selling renewable energy, such as renewable energy project developers.”¹³

Furthermore, it says:

“RECs embody the environmental attributes of generation. They are essential to verifying ownership and the right to claim environmental attributes. It cannot be overemphasized that RECs, as a tracking instrument, must be conveyed to the buyer who claims to consume green power, regardless of the product option chosen or how green power is procured, including in the case of on-site self-generation and physical PPAs. If the RECs are owned by the project owner and not conveyed to the electricity consumer, the consuming organization must purchase replacement RECs, and the green power claim must be based on the replacement RECs.”¹⁴

RECs, as a type of Energy Attribute Certificate (EAC) for renewable resources, are required for all renewable energy purchasing by federal agencies recognized by the White House Council on Environmental Quality (CEQ) in the 2022 Implementing Instructions for Executive Order 14057.¹⁵

Non-governmental organizations (NGOs) and industry associations and partnerships have created and updated voluntary certifications and standards since 2012 that align with and reinforce the Renewable Energy Claims section of the Green Guides. These include:

¹² Massachusetts Department of Public Utilities. 22-32-C. December 9, 2022 Order. Petition of Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty for Review and Approval of an Agreement to Purchase Renewable Natural Gas from Fall River RNG LLC and of the Liberty RNG Program. Pg. 15-16, Footnote 17. <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/16354005>

Massachusetts Department of Public Utilities. 22-32. Liberty Utilities (New England Natural Gas Company) Corp. d/b/a Liberty. Sept 16, 2022. The Initial Brief of The Office of the Attorney General. Pg. 14-15. <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15504707>

¹³ US EPA, US DOE, WRI, CRS, NREL. (September 2018). Guide to Purchasing Green Power: Renewable Electricity, Renewable Energy Certificates, and On-Site Renewable Generation. U.S. EPA. Office of Air (6202J) EPA430-K-04-015. pg. 2-4. Available at <https://www.epa.gov/greenpower/guide-purchasing-green-power>

¹⁴ Ibid. Pg. 6-10.

¹⁵ The White House, Council on Environmental Quality (CEQ). (2022) *Implementing Instructions for Executive Order 14057 Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*. Pg. 11-13. Available at: https://www.sustainability.gov/pdfs/EO_14057_Implementing_Instructions.pdf

- *Green-e® program documents.* REC retirement is verified for all Green-e® Energy certified renewable energy sales.¹⁶
- *The Electronic Product Environmental Assessment Tool (EPEAT) and the Institute of Electrical and Electronics Engineers (IEEE) standards.* All eligible renewable energy supply options for renewable energy use by a manufacturer in IEEE Std 1680.1-2018 for Environmental and Social Responsibility Assessment of Computers and Displays include RECs.¹⁷ New EPEAT guidance that applies to all product categories is expected to be released soon with a similar requirement for REC ownership for all renewable energy supply options.
- *Greenhouse Gas Protocol Scope 2 Guidance.* In 2015, the GHG Protocol released updated corporate reporting guidance for the calculation of emissions associated with purchased electricity (Scope 2 emissions). The guidance recognizes RECs as the basis for customer GHG claims for purchased renewable electricity in the US and requires that, “electricity from renewable facilities for which the attributes have been sold off (via contracts or certificates) shall be characterized as having the GHG attributes of the residual mix in the utility or supplier-specific emission factor.”¹⁸
- *RE100 Technical Criteria.* Requirements for the global RE100 initiative stipulate that, for every eligible purchasing option, the REC/EAC must be retained, where issued, or otherwise the environmental attributes must be exclusively owned.¹⁹
- *US Green Building Council’s (USGBC) Leadership in Energy and Environmental Design (LEED) Rating Systems.* All environmental attributes associated with renewable energy generation must be retired on behalf of the LEED project in order to earn credit for renewable energy procurement under the LEED Building Design and Construction rating system v4.1 (2022).²⁰
- *The Sustainable Purchasing Leadership Council (SPLC) Guidance.* RECs are required for all recognized renewable energy purchasing options in the US.²¹

¹⁶ See *Green-e® Energy Code of Conduct for Canada and the United States*, Version 2.3. Updated December 11, 2020. Available at: <https://www.green-e.org/docs/energy/Green-e%20Energy%20Code%20of%20Conduct.pdf>.

See definitions of “Null Electricity (or Power)” and “Renewable Energy Certificate (REC)” at <https://www.green-e.org/glossary>.

¹⁷ “IEEE Standard for Environmental and Social Responsibility Assessment of Computers and Displays,” in *IEEE Std 1680.1-2018 (Revision of IEEE Std 1680.1-2009)*, vol., no., pp.1-121, 19 March 2018, doi: 10.1109/IEEESTD.2018.8320570. Pg. 88-96, <https://ieeexplore.ieee.org/document/8320570>. And “IEEE Standard for Environmental and Social Responsibility Assessment of Computers and Displays--Amendment 1: Editorial and Technical Corrections and Clarifications,” in *IEEE Std 1680.1a-2020 (Amendment to IEEE Std 1680.1-2018)*, vol., no., pp.1-65, 10 April 2020, doi: 10.1109/IEEESTD.2020.9062658. pg. 42-50, <https://ieeexplore.ieee.org/document/9062658>

¹⁸ Sotos, M. (2015) *GHG Protocol Scope 2 Guidance: An Amendment to the GHG Protocol Corporate Standard*. World Resources Institute. Pg. 60. Available online: <https://ghgprotocol.org/sites/default/files/2023-03/Scope%20%20Guidance.pdf>.

¹⁹ RE100. 12 December 2022. *RE100 Technical Criteria*. CDP and The Climate Group. Available at: <https://www.there100.org/sites/re100/files/2022-12/Dec%2012%20-%20RE100%20technical%20criteria%20%2B%20appendices.pdf>

²⁰ US Green Building Council. July 29, 2022. *LEED v4.1 Building Design and Construction Rating System*. Pg. 86, <https://build.usgbc.org/bdc41>

²¹ Sustainable Purchasing Leadership Council. July 8, 2016. *Guidance for Leadership in Sustainable Purchasing v2.0*. Pg. 146-7, 154, <https://multco-web7-psh-files-usw2-s3-us-west-2.amazonaws.com/s3fs-public/SPLC%20Guidance%20v2.0.pdf>

- *The Cradle to Cradle Certified® Product Standard*. RECs must be retained by the applicant or canceled on the applicant's behalf in all cases.²²

3. Guidance in parts (a) and (c) of § 260.15 recognizing unqualified renewable energy usage claims on the basis of REC purchases remains appropriate and beneficial.

Matching system or unspecified electricity use with RECs to substantiate a renewable energy claim is common practice by both electricity providers and customers in both voluntary and compliance markets. It is consistent with settled state law and the only option for verifiable renewable delivery and use in the regions of the US with organized wholesale electricity markets (including the Northeast and Mid-Atlantic). This has also been reinforced since 2012 by many of the same sources above.

Another example is in New Jersey where the state's Board of Public Utilities (BPU) issued a 2021 Order reinforcing the state's reliance upon the retirement of RECs to satisfy the Renewable Portfolio Standard (RPS), as the state's primary means of promoting renewable energy, and to disclose renewable energy used in generating the electricity supplied to customers in the Environmental Information Disclosure (EID) program.²³ BPU Staff found that:

"The Federal Trade Commission ("FTC") also provides green guidelines for environmental marketing claims, which support the proposition that it is appropriate to make environmental claims regarding consumption of system electricity if the TPS [third party supplier] retires an equivalent amount of RECs. Given the extensive statutory support for a market-based compliance mechanism for the RPS, Staff sees no merit to Petitioners' generalized allegation that TPSs are misleading customers by touting the environmental benefits of renewable energy production."²⁴

The Board specifically upheld unqualified renewable energy usage claims on the basis of RECs in the state, rejecting a suggestion for additional labelling within the EID regarding the nature of a REC.²⁵ Furthermore, the Board reinforced the broader role and importance of RECs to achieving the state's renewable energy goals: "More importantly, the Board believes that the Legislature's decision to authorize RECs as a tool to achieve the State's renewable energy goals was a sound one and has been justified by New Jersey's record on renewable energy."²⁶

²² Cradle to Cradle Products Innovation Institute. 2021. *Cradle to Cradle Certified® Product Standard Version 4.0*, Pg. 46. <https://api.c2ccertified.org/assets/cradle-to-cradle-certified-product-standard-version-4.0---cradle-to-cradle-products-innovation-institute.pdf>

²³ New Jersey Board of Public Utilities. April 7, 2021. Order. Docket No. QO20100664. In the Matter of Cavallo Petition for Enforcement of Environmental Information Disclosure (EID) rules and for Amendments to EID Rules. <https://www.nj.gov/bpu/pdf/boardorders/2021/20210407/8D%20ORDER%20Cavallo%20revised.pdf>

²⁴ *Ibid*, Pg. 3-4.

²⁵ *Ibid*, Pg. 4.

²⁶ *Ibid*, Pg. 5.

4. Regarding questions III.A.13a and b in the Notice, **enforcement and prevention based on FTC guidance has reduced deception and uncertainty about renewable energy claims.**

The clearest example was in February 2015 when FTC Staff responded to a petition by Vermont Law School to investigate renewable energy marketing claims being made by Green Mountain Power to Vermont electricity customers.²⁷ FTC Staff expressed concerns with Green Mountain Power's claims given that it was selling its RECs to entities outside of Vermont and urged the company to prevent consumer confusion by clearly communicating the implications of its REC sales for Vermont customers.

In its letter, FTC Staff added valuable explanation and context to the Green Guides, including the way in which the guidance prevents double counting:

"[T]he operation of the renewable energy market relies heavily on the expectation of all market participants that these certificates have not been counted or claimed twice (i.e., double counted). Such double-counting can occur, for instance, through [...] renewable energy claims made by a company that already sold the RECs for its renewable generation. [...] Such double counting, in turn, not only risks deceiving consumers but also threatens the integrity of the entire REC market. By selling RECs, a company has transferred its right to characterize its electricity as renewable;"²⁸

And its applicability to power providers:

"In addressing these issues in the Green Guides, the Commission [...] did warn that power providers that sell null electricity to their customers, but sell RECs based on that electricity to another party, should keep in mind that their customers may mistakenly believe the electricity they purchase is renewable, when legally it is not. Accordingly, it advised such generators to exercise caution and qualify claims about their generation by disclosing that their electricity is not renewable."²⁹

Not only the Green Guides but this 2015 letter from Division of Enforcement Staff and the Statement of Basis and Purpose referenced in the letter are cited often in regulatory proceedings and standard development processes pertaining to renewable energy reporting and claims, including in the proceedings in North Carolina and Massachusetts cited above.

Subsequently, in December 2015, the Vermont Office of the Attorney General issued new guidance for solar companies and community solar providers in Vermont that is consistent with and references both the Green Guides and the 2015 FTC Staff letter and includes an attachment on REC Best Practices and

²⁷ U.S. Federal Trade Commission (FTC). (2015). Letter from James A. Kohm, Associate Director, Division of Enforcement, Bureau of Consumer Protection, to R. Jeffrey Behm, Esq., Sheehey, Furlong & Behm, P.C. February 5, 2015. Available at: www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf

²⁸ *Ibid.* Pg. 3.

²⁹ *Ibid.* Pg. 3-4.

Claims from CRS.³⁰ This guidance led to changes in solar company marketing language to reduce the risk of deception.³¹

Around the same time, similar concerns were raised in Colorado and elsewhere regarding state “solar garden” programs and community solar project contracts stipulating that the local utility or the solar developer receives the associated energy attributes. On the basis of the Green Guides, but without specific investigation or enforcement activities by the FTC, states and the solar industry at large began to pay closer attention to renewable energy marketing claims by solar developers. CRS, the US EPA, the US DOE, NREL, the Clean Energy States Alliance (CESA), and other organizations worked with industry associations to produce additional guidance and resources for states, solar companies, and consumers during this time and in the following years, including CESA’s *Consumer Protection for Community Solar: A Guide for States* (June 2017)³² and CRS’s *Solar Energy on Campus* series of briefs (Parts I-IV, Aug-Dec 2016)³³ and *Best Practices for Marketing Community Solar Programs* one-sheet (Sept 2018)³⁴. This demonstrates the preventative effect of the Green Guides.

5. The FTC should not expand language in the Green Guides to restrict or regulate renewable energy transactions or set environmental policy or standards.

The FTC’s guidance for renewable energy claims addresses areas of clear deception and reinforces the legal foundation of renewable energy claims and procurement in the US. Just as there is and must continue to be great consistency in terms of REC use for all renewable energy claims and programs to avoid deception, there is and can continue to be great variety in terms of program and transaction requirements and preferences beyond REC ownership without inherent deception. States have requirements for renewable energy delivery and reporting to customers, including in state RPS and power source or environmental disclosure label programs. These programs include different eligibility requirements regarding generator location and geographic sourcing of RECs, REC vintage and banking, the accounting or reporting timeframe, and the type of transaction or form of contract used to procure and deliver renewable energy (e.g. “bundled,” “unbundled,” “firmed-and-shaped,” etc.). The FTC’s guidance for renewable energy claims should not preempt, constrain, or conflict with these or

³⁰ State of Vermont Office of the Attorney General. December 2015. *Guidance on Renewable Energy Marketing Claims*. Available at: <https://ago.vermont.gov/sites/ago/files/wp-content/uploads/2018/01/Guidance-on-Renewable-Marketing.pdf>

³¹ Polhamus, Mike. "Vermont Attorney General warns solar companies to stop 'false marketing'." VTDigger. Dec 20 2015. <https://vtdigger.org/2015/12/20/vermont-attorney-general-warns-solar-companies-to-stop-false-marketing/>. Accessed 18 April 2023.

³² Chace, D. and Housman, N. June 2017. *Consumer Protection for Community Solar: A Guide for States*. Clean Energy States Alliance. Available at: <https://www.cesa.org/wp-content/uploads/Consumer-Protection-for-Community-Solar.pdf>.

³³ CRS. December 28, 2016. *Solar Energy on Campus, Part I: Renewable Energy Usage Claims*. Available at: <https://resource-solutions.org/document/solar-energy-campus-1/>

CRS. December 28, 2016. *Solar Energy on Campus, Part II: Solar Purchasing Options and Communicating Renewable Energy Use*. Available at: <https://resource-solutions.org/document/solar-energy-campus-2/>

CRS. December 28, 2016. *Solar Energy on Campus, Part III: Key Considerations for Solar Developers Working With Higher Education Institutions*. Available at: <https://resource-solutions.org/document/solar-energy-campus-3/>

CRS. December 28, 2016. *Solar Energy on Campus, Part IV: Community Purchasing Campaigns and Renewable Energy Usage Claims*. Available at: <https://resource-solutions.org/document/solar-energy-campus-4/>

³⁴ CRS. September 24, 2018. *Best Practices for Marketing Community Solar Programs*. Available at: <https://resource-solutions.org/document/092418/>.

future state or federal requirements. This would cause consumer confusion and disrupt renewable energy markets and policy.

Regarding question III.A.3 in the Notice, modifications to the existing guidance that restrict renewable energy claims (beyond our limited suggestions under comment no. 7 below) would not limit the flow of deceptive information or necessarily increase benefits to consumers. We can provide more information upon request.

6. We support existing guidance for additional disclosure and qualifying statements to prevent potential misperceptions by consumers and distinguish between renewable energy products and purchasing and more specific claims.

Distinctions about how renewable energy is transacted in different compliance and voluntary markets and differences between renewable energy projects, products, purchasing, and claims can be addressed, if needed to prevent or reduce risk of deception, with additional disclosure and qualifying statements, provided they can be substantiated. Those differences, around which states and consumers set requirements and express preferences to meet objectives beyond accurate accounting and non-deceptive claims, include:

- REC transaction type (e.g. bundled vs. unbundled);
- Geographic boundaries for procurement and generator location (e.g. local grid region vs. nationally sourced);
- Accounting and procurement timeframe (e.g. hourly vs. annual);
- REC vintage and banking;
- Generation facility age;
- Whether renewable energy generation was actively and voluntarily procured or delivered by default or mandate;
- Impact of procurement on new clean generation;
- Avoided grid emissions associated with procured generation; and
- Emissions reductions beyond a baseline due to procurement.

While universal restrictions on claims and modifications to the Green Guides in these areas are not needed for the reasons explained above, and due mostly to the contractual nature of use, where a specific claim or product implies qualities in any of these areas, qualification and substantiation should be required to prevent deception.

To the extent that consumers may not understand how renewable energy is transacted in their respective markets or the role and function of RECs with respect to renewable energy claims, like other claims that consumers tend to misinterpret, this can also be addressed with accompanying qualification statements and disclosure, where necessary. If what the company is doing is consistent

with legal requirements and industry practice for procuring renewable energy, but not well understood by customers, deception can be avoided with proper disclosure. In contrast, changing claims guidance to match consumer misperceptions would perpetuate consumer misunderstandings and result in inaccurate statements, more consumer dissatisfaction, and potentially less choice over time.

7. Regarding question III.A.3 in the Notice, **while it is not necessary to change the Renewable Energy Claims section of the Green Guides at this time, potentially helpful modifications include the following.**

a. **Clarification that RECs are for renewable *electricity* claims only and additional guidance that use of RECs for non-electrical energy usage is deceptive.**

Existing guidance in the Renewable Energy Claims section does not distinguish between electricity and non-electrical energy. However, RECs represent the generation attributes of renewable *electricity* generation. They are used to demonstrate renewable electricity purchasing, delivery, and use within the broader context of functioning voluntary and compliance renewable electricity markets. Some language in the Renewable Energy Claims section can be modified to clarify this. See suggested edits below. The name “renewable energy certificates” is nevertheless correct and should not be changed, and use of “renewable energy” and “made with renewable energy” claims in reference to renewable electricity is not deceptive.³⁵ However, additional disclosure in the case that there are significant fuel inputs that are not electricity for the company or product associated with the claim can reduce the risk of deception.³⁶

In addition, new guidance could be added that it is deceptive to make renewable energy delivery or use claims or made with renewable energy claims for non-electrical energy matched with renewable energy certificates. See suggested language below. For example, pairing RECs with natural gas sales or consumption produces no credible claim to renewable energy usage for gas customers and represents an inappropriate use of the REC instrument.

b. **Additional high-level guidance for non-electrical renewable energy or renewable fuels claims.**

The FTC may wish to address renewable energy claims for non-electrical energy or renewable fuels use, e.g. for thermal or transportation applications. These claims will be affected by federal and state regulatory markets for renewable transportation fuels, including state low-carbon fuel standards (LCFS) and clean fuels programs (CFP), the federal Renewable Fuel Standard (RFS), that use various tradable

³⁵ For example, this is consistent with both Green-e® program rules for marketing and disclosure and US EPA Green Power Partnership guidance for partner communications and credible claims.

³⁶ We interpret existing subsection (c) of §260.15 as guidance to disclose significant non-renewable energy use, electricity or non-electrical energy.

compliance instruments (e.g. LCFS credits, CFP credits, and renewable identification numbers [RINs]), as well as a nascent voluntary market for renewable energy for thermal applications. There is no common instrument or consensus on claims and accounting across these markets.

The Green-e® Renewable Fuels program is providing consumer protection and verification in the voluntary market for biomethane, also known as renewable natural gas (RNG), and the Green-e® Renewable Fuels Standard and Code of Conduct³⁷ contain requirements to substantiate renewable fuels claims. The program verifies sales of renewable fuel products, renewable gas tariffs, and renewable fuels certificates (RFCs). Sellers of Green-e® certified renewable fuels are required to disclose the quantity, type, vintage, carbon intensity, and geographic source of renewable fuel. CRS verifies that renewable fuel is not sold more than once or claimed by more than one party.

The FTC may include additional guidance or examples in the Renewable Energy Claims section that companies should use clear and prominent disclosure when renewable energy claims apply to non-electricity fuel use, substantiate verified renewable fuel production and exclusive delivery and use (no double counting),³⁸ and include qualifying statements regarding the activities covered (e.g. equipment operation, thermal applications, or transportation), the proportion of renewable fuel used, and the renewable energy project, if needed to prevent deception. See suggested language below.

While it is possible to substantiate exclusive delivery and use of renewable fuels (e.g. biomethane) contractually using certificates (e.g. RFCs), i.e. contractual delivery of a renewable fuel,³⁹ RECs cannot be matched with non-renewable non-electrical fuels for renewable fuels, renewable energy, “green gas” or similar claims. See comment no. 7a above. There is no type or amount of disclosure or qualification for a renewable energy product or program that pairs RECs with natural gas, for example, that would sufficiently avoid misleading the customer. Labeling such a program as renewable energy or “green gas” is inherently misleading since subscribers will not physically or contractually receive biomethane.

Edits to language in the Renewable Energy Claims section (§ 260.15) of the Green Guides consistent with the suggestions above include:

- (a) It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable energy or that a service uses renewable energy. A marketer should not make unqualified renewable energy claims, directly or by implication, if fossil fuel, or electricity derived from fossil fuel, is used to manufacture any part of the advertised item or is used to power any part

³⁷ Available on the Green-e® website here: <https://www.green-e.org/programs/renewable-fuels/documents>.

³⁸ We interpret existing subsection (a) of §260.15 as guidance to substantiate all renewable energy claims, for electricity or non-electrical energy, and demonstrate exclusive use.

³⁹ For example, see program rules and documents for the Green-e® Renewable Fuels program, available at: <https://www.green-e.org/programs/renewable-fuels>. An RFC represents the environmental benefits of one dekatherm of renewable gas. For each dekatherm of renewable fuel produced, an equivalent RFC is produced. Purchasing and pairing RFCs with gas supply substantiates claims of using and receiving the benefits of that renewable fuel.

of the advertised service, unless the marketer has matched such non-renewable ~~energy~~electricity use with renewable energy certificates.

(b) Research suggests that reasonable consumers may interpret renewable energy claims differently than marketers may intend. Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable energy claims. For instance, marketers may minimize the risk of deception by specifying whether a claim is for electricity or non-electricity fuels, as well as the source (e.g., wind, ~~or solar energy, biomethane~~).

(c) It is deceptive to make an unqualified “made with renewable energy” claim unless all, or virtually all, of the significant manufacturing processes involved in making the product or package are powered with renewable energy or non-renewable ~~energy~~electricity matched by renewable energy certificates. When this is not the case, marketers should clearly and prominently specify the percentage of renewable energy that powered the significant manufacturing processes involved in making the product or package.

(d) If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.

(e) It is deceptive to make renewable energy claims or “made with renewable energy” claims for non-electrical energy that has been matched with renewable energy certificates.

[...]

Example 3: An automobile company ~~uses 100% non-renewable energy to produce its cars. The company~~ purchases renewable energy certificates to match the non-renewable ~~energy~~electricity that powers all of the significant manufacturing processes for the seats, but no other parts, of its cars. If the company states, “The seats of our cars are made with renewable energy,” the claim would not be deceptive, as long as the company clearly and prominently qualifies the claim such as by specifying the renewable energy source.

Comments regarding “Clean Energy ” or “Carbon-free energy” Claims Not Currently Covered by the Green Guides

Regarding question III.A.7 in the Notice concerning changes to claims since 2012 and claims not currently covered by the Guides, the FTC may wish to provide additional guidance for “clean energy ” or “carbon-free energy” claims. “Clean” and “carbon-free” refer to the GHG emissions profile of the generation being used (an “attributorial” claim about the emissions from generation at the source of purchased electricity), not changes to emissions on the grid or the emissions impact of generation being used (a “consequential” claim about changes to emissions at other sources on the grid).

Importantly, **this guidance would only apply to the portion of that energy (non-renewable energy) that is not already addressed in § 260.15 of the Guides.** Consistent with 260.15(d) for renewable energy claims, **guidance for this portion should specify that energy attribute certificates (EACs) or exclusive attribute ownership is required to avoid deceptive resource-specific electricity usage and delivery claims.** This is consistent, for example, with the White House CEQ's 2022 Implementing Instructions for Executive Order 14057, which require that EACs are obtained and retired for all carbon-free energy purchasing by federal agencies in compliance with the Order.⁴⁰

Our comments under nos. 5 and 6 in the previous section on renewable energy claims generally pertain to clean and carbon-free energy claims as well: FTC guidance should not regulate specified energy transactions or set environmental policy or standards, and differences between clean or carbon-free energy projects, products, purchasing, and claims—e.g. in terms of transaction type, geographic boundaries, procurement timeframe, or procurement impact—can be addressed, if needed to prevent or reduce risk of deception, with additional disclosure and qualifying statements, provided they can be substantiated.

Comments regarding the Carbon Offsets Section (§ 260.5) of the Green Guides

Regarding questions III.B.1.a-c in the Notice, **existing guidance in parts (a)-(c) of § 260.5 remains relevant and needed to prevent deceptive carbon offset claims.** Carbon offset sellers should still employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and prevent double selling. They should not misrepresent that reductions have already or will occur soon if they will not occur for more than two years. It is remains deceptive to claim an offset if the reduction is required by law.

The scope of the FTC's existing guidance in this section is generally appropriate. States and voluntary standards provide more specific guidance on offset quality. We support that the FTC does not issue guidance on allowable project types and methodologies for calculating reductions, or use of specific additionality tests to substantiate offset claims, as different test combinations are employed depending on the overall structure of an offset verification program, and based on project type, location, size, market and regulatory context, etc. In addition to offset project verification standards and programs, third-party consumer protection programs for retail carbon offsets, such as the Green-e® Climate program, are also available to verify that offset sales match supply to prevent double selling.

However, **helpful modifications to this section include guidance that, to avoid deception, carbon offsets should be substantiated with credits issued by a third-party offset project verification**

⁴⁰ The White House, Council on Environmental Quality (CEQ). (2022) *Implementing Instructions for Executive Order 14057 Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*. Pg. 11-13. Available at: https://www.sustainability.gov/pdfs/EO_14057_Implementing_Instructions.pdf

program or regulatory body with requirements pertaining to the verification, permanence, enforceability, and quantification of emissions reductions, and the administration of defined project “additionality” tests. Marketers may minimize the risk of deception by specifying the type of offset project and verification standard used.

Regarding question III.B.1.d in the Notice, we have no research concerning consumer perceptions of “net zero,” “carbon neutral,” “low carbon,” or “carbon negative.” We generally encourage FTC to refrain from setting environmental standards. However, these claims or accompanying disclosure can specify:

- Whether emissions associated with the product or service have been reduced or offset by verified reductions elsewhere, and in what proportion;
- The emitting activities that the claim is covering (e.g. emissions at different points in the lifecycle of a product or service);
- Whether direct and/or indirect emissions associated with the product or service are covered;
- Which individual greenhouse gases are covered; and
- Whether a particular standard, methodology, or protocol has been used to support the claim.

Comments regarding the Certifications and Seals of Approval Section (§ 260.6) of the Green Guides

We support existing guidance in parts (a)-(e) of § 260.6. No modifications to this guidance are needed at this time.

Please let me know if we can provide any further information or answer any other questions.

Sincerely,

_____/s/____

Todd Jones

Director, Policy