April 24, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave NW, Suite CC-5610

Washington, DC 20580

Submitted via the Federal eRulemaking Portal: www.regulations.gov

Re: Green Guides Review, Matter No. P954501

Clean Air Task Force ("CATF"), Green Strategies, Inc., and The NorthBridge Group are pleased to offer comments on the Federal Trade Commission's ("FTC") Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides")," 87 Fed. Reg. 77766 (Dec 20, 2022). CATF brings over 25 years of policy, legal, and technical expertise and commitment to exploring all potential solutions to the climate and clean energy space. CATF has offices in Boston, Washington, D.C., and Brussels, Belgium. Green Strategies, Inc. is a strategic business consulting firm assisting companies in adopting and executing best-in-class sustainability and climate strategies. The NorthBridge Group is a leading economic and strategic consulting firm serving the energy and electricity sector through market insights, climate policy, and analysis of clean energy procurement strategies.

Introduction

We strongly support the FTC's intention to consider modifications to the Green Guides to improve the "efficiency, costs, benefits, and regulatory impacts of the Guides." Several changes in the marketplace since the Green Guides were last updated underlie the importance and timeliness of this effort: 1) many more companies are taking actions to proactively address the challenge of climate change – and "making claims regarding their environmental performance," including through the procurement of clean energy; 2) the range and complexity of voluntary company initiatives to address climate change is increasing; and 3) the expectations and sophistication of consumers seeking and relying on information to evaluate company environmental performance are evolving. Prominent media outlets and other stakeholders have recently examined corporate marketing claims relating to renewable electricity use (see the appendix below for examples of articles examining renewable energy claims) and questioned the integrity of current practices that allow marketers to claim renewable use by possessing renewable energy credits ("RECs") irrespective of when and where such RECs are generated and whether they coincide with a marketer's own electricity consumption.

Our comments are focused solely on 16 C.F.R. § 260.15, "Renewable Energy Claims," which was added in 2012. At the time, this section was a needed addition to the Guides to accommodate companies that were beginning to enter into renewable energy transactions and wanted to make claims about those activities while seeking to ensure that such claims were not misleading. A decade on, the number of corporate clean energy transactions and the complexity of these transactions have increased. **This section of the Green Guides no longer serves its intended purpose: companies are not being given adequate guidance on how to communicate their clean energy claims to the marketplace in ways that are transparent and accurate.**

Problems with 16 C.F.R. § 260.15: Renewable Energy Claims

The central problems with the 2012 guidance include:

1. **The Green Guides allow marketers to claim they are "using" renewable energy or that their products are "made with" renewable energy when such claims are in certain instances demonstrably false.**[1]

2. **The Green Guides enable claims of renewable energy purchase or use that could be reasonably interpreted by consumers to reflect contributions those marketers are making to mitigate climate change, yet the Guides do not provide guidance to marketers on how to provide evidence of climate-positive contributions.**

3. **By focusing solely on "renewable energy", the Green Guides fail to provide guidance to marketers whose energy use and procurement extends to other forms of carbon-free energy.**

We elaborate on these shortcomings below.

1. **The Green Guides allow marketers to claim they are "using" renewable energy or that their products are "made with" renewable energy when such claims are in certain instances demonstrably false.**

In 2012, the Green Guides decided to allow marketers to make claims of renewable energy use so long as the marketer can match RECs[2] with megawatt-hours ("MWh") of the actual electricity

[1] The World Resources Institute ("WRI") and the World Business Council on Sustainable Development (WBCSD) recently launched an update process to the Greenhouse Gas Protocol's ("Protocol") Corporate Standard and Scope 2 Guidance, which provide a common framework for entities around the world under which to report the indirect emissions associated with the consumption of purchased electricity. The Protocol establishes mechanisms by which companies can purchase clean electricity, whether directly or through instruments, and use their purchases to calculate reductions in Scope 2 emissions. In addition to serving as the most widely used greenhouse gas accounting methodology, the Protocol also informs the requirements of corporate climate leadership initiatives such as the Environmental Protection Agency's Green Power Partnership. The Protocol indicates that a Scope 2 update may involve establishing new limitations on the ability to match consumption with instruments based on timing and geographic location considerations. https://ghgprotocol.org/sites/default/files/Scope%202%20Survey%20Memo.pdf

[2] A "REC" is a commodity instrument representing the environmental attributes associated with a megawatt-hour (MWh) of qualified renewable electricity generation, such as from wind or solar. In the United States, RECs are the

they purchase and use (typically grid-supplied electricity).[3] Grid-supplied electricity comes from a mix of resources, but on nearly all U.S. grids, fossil resources contribute significant shares of grid-supplied power. The FTC adopted relatively few limitations on marketers' ability to match RECs with electricity consumption and then make claims of renewable "use," but given growing media scrutiny and consumer interest into whether companies are meaningfully reducing their reliance on fossil fuels, the FTC should reconsider its current guidance.

Companies often transact for RECs only on an unbundled basis, meaning that the companies do not actually contract for the electricity associated with the RECs. For example, a company may purchase RECs from renewable projects located far away geographically from its operations. Consequently, the electricity associated with the RECs does not contribute to the local grid serving the company's load. In addition, a company's use of electricity may not coincide with when wind and solar projects generate electricity, and there are often frequent mismatches between the timing and location of consumption and variable generation. During those periods, a company may rely on fossil generation. Accordingly, REC ownership may be a fair indicator of renewable energy *purchases* but may not accurately reflect renewable energy *consumption* (or *"use"*). (Even if a company is purchasing unbundled RECs, it can reasonably claim to be "using" the underlying electricity so long as the electricity is generated from or delivered to the same grid region as the company's consumption.)

To further illustrate how RECs do not necessarily equate to renewable energy consumption, consider the following example of a marketer wishing to procure clean energy and/or RECs in an amount equal to its annual consumption.

- Company A obtains unbundled solar RECs from a different regional grid in an amount that equals its annual electricity use but continues to rely on the local electric grid for 100 percent of its electricity supply. Under the current rules, the buyer can report 100 percent renewable energy *usage* since the buyer can apply all the RECs purchased from the contracted solar resources in a different grid against its total load. This claim is misleading because Company A still relies on the local grid, which may supply Company A with a mix of unabated fossil and non-fossil resources or potentially all fossil generation.

- Company B purchases attributes from a variety of carbon-free electricity projects located on the same grid as its operations and matches those attributes on a time- and location-basis with its consumption.[4] The carbon-free electricity that Company B has invested in

primary instrument used in the marketplace. In non-U.S. jurisdictions, such instruments have different names from RECs, and an energy attribute certificate ("EAC") is a general term that can apply to any type of instrument. For simplicity the terms in these comments, "REC" or "EAC" are used to mean all similar attribute instruments regardless of their in-market name.

[3] The Green Guides explain that, in the absence of a REC, a company cannot make a claim of renewable energy use. For example, even if a company has on-site solar rooftop panels at its manufacturing facility, the company cannot make a claim to renewable use if it has sold the associated RECs to a different party.

[4] The physics of the electric grid make it impossible to track electricity moving through it from a particular generation source to a particular customer. Electricity buyers contract for an amount of electricity to be delivered to a specific location and at a specific time but not for specific MWh. Differences between the types of generation are reflected in attributes like RECs. Therefore, a reasonable proxy for "use" are RECs aligned to the time and location of a buyer's consumption, more similar to how electricity supply is purchased and sold in today's electric markets.

is being generated in the same grid at the same time that Company B is consuming electricity.

Under the current Green Guides, Company A and Company B could market the same 100 percent renewable energy use claim irrespective of the fact that Company B has a much more credible claim of renewable energy "usage." Company A could certainly make a different claim, such as reporting that it "invested in" enough renewable energy to match its annual electricity use.

Claims of "using" or "being powered by" renewable energy or of products being "made with" renewable energy imply that a marketer relies on renewable energy in its operations and to meet its demand. (In the case of a 100 percent renewable energy claim, a marketer implies it did not rely on fossil energy.) A marketer can make such claims even when the marketer has only purchased RECs from generation far from load that is not deliverable to supply and that does not necessarily coincide with the timing of its actual electricity consumption.

We believe that it would not be overly burdensome to companies for the FTC to require more precise and accurate language when describing the purchase of, rather than use of, renewable energy and RECs. REC purchases *are* a common way for companies to support renewable energy project development, and companies should be able to talk about REC purchases as a way of "supporting" or "investing in" renewable energy.[5] The Green Guides can help marketers differentiate whether they are "using" renewable energy in their operations versus "purchasing" renewable energy that does not play a role in meeting a marketer's electricity demand (the relevant question is not whether a marketer is relying on unbundled RECs to make claims; the relevant question is whether the marketer is purchasing RECs, bundled or unbundled, from projects that generate or deliver renewable electricity to the same grid region as the marketer's electricity use).

2. **Claims of renewable energy purchase or use could be reasonably interpreted by consumers to reflect contributions those marketers are making to mitigate climate change, yet the Green Guides do not provide guidance to marketers on how to provide evidence of climate-positive contributions.**

The Green Guides do not require marketers to evaluate whether purchased RECs come from renewable generation projects that change the grid mix that serves a marketer's demand, nor do the Green Guides ask companies to assess whether the procurement of RECs has significant or incremental greenhouse gas ("GHG") reduction impact.

Since 2012, it has become increasingly clear that REC purchases do not necessarily equate to a real climate impact. For example, as discussed above, a company can acquire RECs to match 100

[5] It is important to note that companies making claims based on ownership of RECs is entirely appropriate based on the current greenhouse gas accounting rules of the Greenhouse Gas Protocol's Corporate Guidance and the Scope 2 rules of the Protocol. But two points are important to consider: 1) the administrators of the Protocol are currently considering changes to Scope 2 accounting (in part because of the growing concern about potentially misleading results of those rules as discussed here); and 2) greenhouse gas accounting rules are not the concern of the FTC, whose mandate is to ensure that marketplace claims are fair and accurate, and it can act to meet that goal irrespective of the current state of voluntary greenhouse gas accounting practices.

percent of its electricity use but rely entirely on fossil generation for its consumption. It is also possible for a company to acquire RECs from projects where renewable energy production is already relatively abundant and the displacement of fossil energy is minimal. Additionally, a company could acquire RECs from an existing project, whose emissions reduction potential has already been achieved. Again, while a company making REC purchases can make perfectly appropriate claims (such as "supporting" or "investing" in renewable energy), claims of achieving climate impact should be backed by additional information.

Consider an example of two otherwise identical REC transactions but sourced from different locations.

- Transaction A is for 5 MWh of RECs from a new solar farm in California, a state which already has a high penetration of renewable energy at given times.

- Transaction B is for 5 MWh of RECs from a new solar project in West Virginia, a state whose grid still relies heavily on gas and coal generation during the day.

Transaction B would likely directly displace significant fossil generation otherwise supplying West Virginia's grid, whereas the solar in Transaction A is more likely to compete with other solar or existing renewable generation on the California grid. These two transactions would have very different emissions impact. In fact, in a recent study, Salesforce concluded that a new West Virginia solar project had almost three times the emissions impact as a new California solar project.[6] Without further guidance from the Green Guides, potential claims of climate benefit from these transactions could be exactly the same.

3. **By covering only "renewable energy" claims, the Green Guides fail to provide guidance to marketers whose energy use and procurement extend to other forms of carbon-free electricity.**

Climate science literature increasingly suggests that replacing existing fossil energy while maintaining grid reliability will require substantial new investments in carbon-free electricity that is firm and dispatchable.[7] Full grid decarbonization will require a broad array of firm and dispatchable carbon-free resources in addition to adding more variable renewables (such as wind and solar).

The Green Guides currently only provide guidance on claims related to *renewable energy* and do not cover other grid decarbonization tools such as fossil energy with carbon capture and storage, low-carbon hydrogen, nuclear energy, demand response, energy storage, load shifting, etc. Many

---

[6] Megan Lorenzen & Max Scher, Salesforce, *More than a Megawatt: Embedding Social & Environmental Impact in the Renewable Energy Procurement Process* (2020), https://c1.sfdcstatic.com/content/dam/web/en_us/www/assets/pdf/sustainability/sustainability-more-than-megawatt.pdf.

[7] Nestor Sepulveda et al., *The Role of Firm Low-Carbon Electricity Resources in Deep Decarbonization of Power Generation*, 2 Joule 2402, https://www.sciencedirect.com/science/article/pii/S2542435118303866; The NorthBridge Group, *Review and Assessment of Literature on Deep Decarbonization in the United States: Importance of System Scale and Technological Diversity* (2021), https://nbgroup.com/docs/CATF_Deep_Decarbonization_Literature_Review_2021.pdf.

marketers are already investing across this broad array of decarbonization tools, and more are likely to do so in the future.[8] FTC guidance should be broadened to cover claims arising from such investments.

How to Update the Green Guides to Address these Problems

1. **Claims of "using" or being "powered by" renewable energy or claims that products are "made with" renewable energy (or any form of carbon-free energy) should be based on carbon-free energy procurements that are location- and time- matched with consumption. Claims based solely on REC purchase, but not "use," should be more accurate, potentially indicating that a marketer "invested in," "supported," or "helped enable" carbon-free energy production.**

A reasonable consumer may inaccurately interpret claims indicating that a marketer "uses" or that a product is "made with" renewable energy to mean that the company directly used the renewable energy underlying REC purchases in its production processes, when, in many cases, the company may have purchased RECs from different grids from where it consumes electricity. Claims of "use" or "made with" or "powered by" renewable or other carbon-free electricity should be backed by purchases of RECs and other types of EACs for non-renewable carbon-free energy[9] that are matched with their electricity consumption on both a time- and location-basis.[10] Adopting these matching requirements would result in more accurate claims, since the renewable/carbon-free energy purchased would be supplying the same grid at the same time that the marketer is using the electricity, making it less likely that the company is consuming fossil-generated electricity from the grid.[11]

Again, the Guidance should continue to allow for fair and accurate claims related to any form of carbon-free energy procurement, even if claims of "using" or "made with" carbon-free are not appropriate. Companies *should* be empowered to make claims about having "invested in" or

---

[8] In 2021, the largest U.S. trade association of companies that purchase and deploy clean electricity rebranded itself from the Renewable Energy Buyers Alliance to the Clean Energy Buyers Alliance in an anticipation of its member companies relying on technologies that are not renewable but otherwise carbon-free. Sarah Golden, *The Renewable Energy Buyers Alliance is now the Clean Energy Buyers Alliance*, GreenBiz (Nov. 18, 2021), https://www.greenbiz.com/article/renewable-energy-buyers-alliance-now-clean-energy-buyers-alliance. Individual companies including Google, Google, *The Internet is 24x7—carbon-free energy should be too*, (Sept. 2019), https://sustainability.google/progress/projects/24x7/, and Microsoft, Lucas Joppa, *Made to measure: Sustainability commitment progress and updates*, (Jul. 14, 2021), https://blogs.microsoft.com/blog/2021/07/14/made-to-measure-sustainability-commitment-progress-and-updates/, indicate that they will rely on a range of carbon-free technologies to meet clean electricity procurement goals.

[9] Purchases could include unbundled RECs/EACs or other transactions involving renewable and carbon-free electricity that is sourced from or delivered to the same grid region as consumption.

[10] By using increasingly available "granular" certificates with information reflecting the hour and location of generation, companies could demonstrate that the CFE purchases are generated in or delivered to their local electric grid and matched to their actual load on an hourly basis.

[11] After regional attribute markets become more developed, it may also be valuable to consider narrower market areas or load zones that account for transmission constraints within regional grids, where the locational marginal price is the same within a regional grid. The link between EACs and physical energy deliverability increases as the definition of geographic market boundary becomes narrower. But as geographic granularity increases, issues may arise over the liquidity of EAC markets in these sub-areas.

"helped enable" carbon- free energy, and they should be free to make claims about how the quantity of electricity they invested in compares to the amount of their annual electricity use.

2. **Allow claims about "climate impact" or "emissions reductions" when those claims are based on actual calculations of the avoided emissions impacts of transactions.**

Explicit or implied claims about the climate/emissions benefits of marketer procurement of carbon-free energy should be based on actual assessments of impact. As illustrated above, the procurement of the same amount of renewable energy can have wildly different impacts on emissions reductions based on the location and timing of the generation and the grid resources displaced.

To improve the accuracy of claims, the Green Guides should require companies to disclose whether or not they have calculated the emissions impact to the atmosphere of their carbon-free energy procurement. Without such calculations, companies should disclose that the climate impact related to their carbon-free energy claim has not been estimated and cannot be substantiated.

If a company has calculated impact, we suggest that the Green Guides recommend that marketers disclose the calculated emissions impact associated with the renewable energy claim. This added disclosure will prevent the consumer from misinterpreting the climate impact arising from marketer actions and instead allow the consumer to better understand and compare the real environmental impacts of a renewable/carbon-free energy claim.

3. **Amend Section XI to add "Carbon-Free Energy" alongside "Renewable Energy."**

We recommend the Green Guides add "Carbon-Free Energy" along with "Renewable Energy" in Section XI in recognition of the need for a broad array of carbon-free energy technologies that will contribute to grid decarbonization and that marketers will want to make claims of environmental and climate benefit from using and/or purchasing different types of non-renewable carbon-free energy. We suggest that the FTC use the definition of "carbon pollution-free electricity" as set forth by the Biden Administration in its *Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability* ("EO"). The definition of carbon pollution-free electricity as described in section 603d of the EO is as follows:

- "Carbon pollution-free electricity" means electrical energy produced from *resources that generate no carbon emissions, including marine energy, solar, wind, hydrokinetic (including tidal, wave, current, and thermal), geothermal, hydroelectric, nuclear, renewably sourced hydrogen, and electrical energy generation from fossil resources to the extent there is active capture and storage of carbon dioxide emissions that meets EPA requirements.*[12]

[12] Exec. Order No. 14,057, 86 Fed. Reg. 70935 (Dec. 8, 2021).

Conclusion

By requiring more precise language when discussing marketer procurement of RECs and carbon-free energy, the FTC will reduce the risk that the reasonable consumer misinterprets claims about the energy used to produce the goods and services they consume and the actual benefits to the climate arising from marketer actions. By adopting these recommendations, the FTC will also allow consumers to better differentiate and subsequently reward marketers who are taking more advanced actions on climate change mitigation – an imperative given the growing interest of consumers for this type of information.

Respectfully submitted,

Armond Cohen
Executive Director
armond@catf.us
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
(617) 680-0341

Respectfully submitted,

Roger Ballentine
President
roger@greenstrategies.com
Green Strategies, Inc.
816 Connecticut Ave NW,
Suite 200
Washington D.C. 20006
(202) 328-1123

Respectfully submitted,

Neil Fisher
Partner
nf@nbgroup.com
The NorthBridge Group
30 Monument Street
Concord, MA 01742
(781) 266-2611

Appendix - List of Articles Examining Renewable Energy Claims

- Sarah Golden, *Corporate Leaders Are Greenwashing – and They Know It*, GreenBiz (Apr. 13, 2023), https://www.greenbiz.com/article/corporate-leaders-are-greenwashing-and-they-know-it
- Justin Keeble, *Report: Executives fear greenwashing and the economy will stall sustainability progress*, Google Cloud Blog (Apr. 12, 2023), https://cloud.google.com/blog/transform/2023-google-cloud-sustainability-survey
- Kim Mackreal, *"Greenwashing" Targeted in Latest European Regulatory Push*, Wall St. J. (Mar. 22, 2023), https://www.wsj.com/articles/greenwashing-targeted-in-latest-european-regulatory-push-13fbac3
- Ben Elgin & Sinduja Rangarajan, *What Really Happens When Emissions Vanish*, Bloomberg (Oct. 31, 2022), https://www.bloomberg.com/news/features/2022-11-01/intel-p-g-cisco-among-major-companies-exaggerating-climate-progress
- Eric Roston & Ben Elgin, *Companies' Climate Goals in Jeopardy From Flawed Energy Credits*, Bloomberg (Jun. 9, 2022), https://www.bloomberg.com/news/articles/2022-06-09/flawed-renewable-energy-credits-are-derailing-climate-efforts#xj4y7vzkg
- Phred Dvorak, *Climate-Reporting Rules Could Let Companies Look Greener Than They Are*, Wall St. J. (Apr. 7, 2022), https://www.wsj.com/articles/the-standards-companies-use-to-report-carbon-emissions-face-review-11649323800
- Gautam Naik, *Problematic Corporate Purchases of Clean Energy Credits Threaten Net Zero Goals*, S&P Global (May 5, 2021), https://www.spglobal.com/esg/insights/problematic-corporate-purchases-of-clean-energy-credits-threaten-net-zero-goals
- Shannon Hughes & Samuel Huestis, *Clean Energy 101: The REC Market*, Rocky Mountain Inst., (Jun. 2, 2022), https://rmi.org/clean-energy-101-the-rec-market/
- *Why 24/7 clean energy beats carbon offsetting*, World Economic Forum, (Nov. 16, 2021), https://www.weforum.org/agenda/2021/11/no-more-greenwashing-24-7-clean-energy/
- Kaitlyn L Cook, *Hale and Hearty Blog. Brown University. Is There Greenwashing in Renewable Energy Purchasing?*, Brown Univ.: Hale and Hearty Blog (May 22, 2020), https://blogs.brown.edu/haleandhearty/2020/05/22/is-there-greenwashing-in-renewable-energy-purchasing/
- Jemma Green, *The Rise Of Renewable Energy Certificates*, Forbes (Oct. 7, 2020), https://www.forbes.com/sites/jemmagreen/2020/10/07/the-rise-of-renewable-energy-certificates/?sh=17d1a0ac3710

- Mike Scott, *New Rules to Crack Down on 'Greenwash' in Corporate Clean Energy Claims*, Reuters Events (Oct. 29, 2018), https://www.reutersevents.com/sustainability/new-rules-crack-down-greenwash-corporate-clean-energy-claims