

**Joint Consumer Groups Comments to the Federal Trade Commission on Guides for the Use of
Environmental Marketing Claims
Green Guides Review (16 CFR Part 260) (Matter No. P954501 (formerly P952501))
February 21, 2023**

Thank you for the opportunity to provide comments on the Federal Trade Commission (FTC) Green Guides, regarding environmental marketing claims.¹ These comments are submitted by the following non-profit organizations, which advocate for the interests of low-income energy and utility consumers: The National Consumer Law Center², Public Citizen,³ the Maryland Energy Advocates Coalition,⁴ and the Pennsylvania Utility Law Project.⁵

These comments propose changes in several areas of the Green Guides, 16 C.F.R. part 260, which relate to protections for low-income energy consumers. We urge the FTC to adopt changes to the Green Guides that will discourage and reduce the use of deceptive environmental claims for marketing several home energy products to consumers. Deceptive claims associated with energy supply contracts, renewable energy certificates, gas and alternative gas utility services, and other products lead customers to purchase energy products that they do not need or overpay for home energy. Misleading environmental claims can also create suspicion and mistrust when consumers learn of the falsehoods, which undermines support for effective measures to fight climate change.

Pursuant to 16 C.F.R. § 260.2, the marketers of products have the responsibility to determine that any reasonable interpretation of environmental marketing claims is truthful:

“To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis before they make the claims.” 16 C.F.R. § 260.2.

When evaluating “all reasonable interpretations of their claims,” we urge the FTC to consider the wide variations in educational background, expertise in energy or environmental matters, the needs of consumers with limited English proficiency, and the needs of consumers with disabilities that affect their ability to read or interpret environmental marketing claims. Where marketers engage in deceptive practices, exploiting the environmental concerns of low-income consumers and others, the FTC should exercise its enforcement authority against these bad actors.

Below, we respond to several of the specific questions raised in the request for public comment on the FTC’s Guides for the Use of Environmental Marketing Claims.

Consumer Advocates’ Responses to Questions

Question 1: Is there a continuing need for the Guides? Why or why not?

Advocates believe that the Guides are needed, to set clear guidelines about impermissible environmental claims. Concern about climate change has only grown since the last iteration of the Green Guides was developed.⁶ Exaggerated claims of environmental benefits, or “greenwashing,” are common. Greenwashing may drive customers to pay excessive prices for products and services that they perceive as environmentally friendly, or to purchase products and services that they do not need. Greenwashing also can harm the companies themselves when consumers learn the truth.⁷

Further, deceptive marketing and greenwashing could undermine legitimate attempts at effective climate action. This concern is widely shared and prompted the UN to issue a report condemning greenwashing.⁸ The Green Guides provide another tool to keep businesses accountable and to support valid environmental claims and effective climate measures.

Question 3: What modifications, if any, should be made to the Guides to increase their benefits to consumers?

We recommend several modifications to the Green Guides, as follows.

1) Renewable Energy Certificates (RECs)

The current Green Guides address Carbon Offsets at 16 C.F.R. § 260.5, but we urge the FTC to provide more clarity regarding a similar instrument, Renewable Energy Certificates (RECs). While carbon offsets represent avoided amounts of CO or CO₂ emissions from various sources, a RECs is a tradeable financial instrument or accounting tool which represents megawatt-hours of energy generated from solar, wind, or other renewable resources.⁹ When renewable energy is generated, the producer of the energy can sell the energy itself, and may also create and sell a REC. In theory, a REC represents an amount of electricity generated with renewable energy, and the market for RECs helps spur the deployment of new renewable energy generation services. In practice, many RECs may be of low quality, representing wind farms built many years ago, or energy derived from less desirable sources such as trash incineration.¹⁰

RECs are confusing, even for savvy consumers.¹¹ The concept of selling energy to one buyer and selling the idea of its renewable nature to another is not intuitive. We urge the FTC to prohibit exaggerated claims about the beneficial climate impacts associated with RECs, and to require that RECs be represented as accurately as possible to prospective consumers. We suggest the following addition to the Green Guides, with a further related modification suggested in the next section:

Section 260.xx, Renewable Energy Certificates (RECs)

- 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 service, unless the marketer has matched such non-renewable energy use with renewable energy certificates, except as provided in part (c).

b) It is deceptive to misrepresent, directly or by implication, the type of renewable energy resource that is represented by the renewable energy certificate.

c) It is deceptive to describe electricity or other energy source as renewable, “green”, or other climate-friendly term, if the electricity or energy source is itself being sold to the consumer, and if any portion of the electricity or energy source is generated with or contains fossil fuels, even where such electricity or energy source is paired with a REC.

Part (c) is intended to address claims that the electricity itself is “green power,” as is discussed in further detail below.

2) Green power supply claims by competitive energy supply companies

In certain states, competitive energy supply companies are permitted to sell contracts for electricity supply to residential consumers, in competition with the consumer’s distribution utility company.¹² Suppliers frequently market “renewable” or “green power” energy products by presenting these to consumers as a way to have a direct impact in the fight against climate change, leading customers to believe that they are choosing renewable energy for their household uses.¹³ Yet in all or nearly all instances, competitive energy supply companies are actually purchasing renewable energy certificates (RECs), and offering them to consumers as “green power” products, often at an inflated price compared with the market value of the RECs. This is often not clear to consumers, and we have heard complaints from consumers who believed that they were purchasing a supply of renewable energy that would directly power their homes.

We urge the FTC to prohibit marketing terms that lead a consumer to believe that they are buying renewable energy, when they are in fact buying electricity from their local utility grid plus a REC. Competitive energy supply companies and their agents should not be allowed to claim or imply that the regular energy from the electric grid (which is mostly generated with fossil fuels) PLUS a REC somehow equals “green power” or 100% renewable energy. The REC might do little or nothing to balance out the use of non-renewable electricity, and the customer is likely to be paying more attention to the way that they believe the electricity itself is generated. When the thing that is being sold is the electricity itself, it is deceptive to imply that this electricity has somehow transformed into renewable energy through the addition of the REC. Usually, the customer is paying a higher price based on their belief that the electricity is generated with renewable energy and directly supplied to the home, or their belief that the negative impacts of the fossil-fuel generated electricity are fully eliminated by the REC. Neither is true. Although RECs can be useful tools to assign renewable energy credits for some purposes, we assert that it is a misuse of RECs when they are used to claim or imply that fossil-fuel generated electricity itself has somehow become renewable, when that electricity is the product being sold.

Consumer confusion is understandable, considering these examples from competitive energy supply marketing:

- i) **“GREEN ENERGY IS SMART, SUSTAINABLE AND COST-EFFECTIVE Selecting renewable energy is one of the most powerful ways to make a difference which can benefit you, your family and the environment.** Along with the environmental benefits Verde offers special promotions on select plans to all new customers when they sign up for a new electricity plan.” Verde Energy, available at <https://www.verdeenergy.com/service-area/ma/> (viewed Feb. 2, 2023) (emphasis supplied).
- ii) **“What is Green Mountain doing to help the environment in Pennsylvania? Green Mountain is offering Pennsylvania residents the choice of cleaner electricity products for their home,** made from renewable sources like wind and solar. Did you know that the traditional production of electricity from dirty sources like coal is the largest source of industrial air pollution in the U.S.? **By choosing clean Pollution Free™ electricity from Green Mountain, you can help reduce your household’s share of carbon dioxide (CO2) emissions and help fight climate change.** Choosing renewable electricity products also helps encourage the development of new renewable, pollution-free generation facilities in Pennsylvania and nearby states. The demand of Green Mountain customers in Pennsylvania helped lead to the development of the first utility-scale wind farm in the Eastern U.S., in Somerset County, PA in 1999.” Green Mountain Energy, available at <https://www.greenmountainenergy.com/customer-service-center/energy-questions-faq/pennsylvania-faqs> (viewed Feb. 2, 2023)(emphasis supplied).
- iii) **“You have the power to choose the cleaner option. Right now, the electricity that comes to your home likely includes dirty fossil fuels, which pollute our environment. But by choosing 100% wind and solar energy, you can help improve the air we breathe and the world we share.”**
“Change the world without changing your life. You can make a positive impact on the planet—every time you flip on your light switch.”
Clean Choice Energy, available at https://cleanchoiceenergy.com/products/clean-electricity?type=tof&lob=rr&utm_source=google&utm_medium=cpc&utm_campaign=ny_utility_keywords&utm_content=generic_no_offer&url_id=1157&att_id=17&utm_term=clean%20energy%20ny&adw_campaignid=18783775087&adw_adgroupid=143822456795&adw_placement=&adw_matchtype=p&gclid=Cj0KCQjA2-2eBhCIARIsAGLQ2RmBe4Ea49PgFucA2PMM0-D_z3I5ggEiNM1ICKojll53yyCtlul8kPlaAi_uEALw_wcB&gclsrc=aw.ds (viewed Feb. 2, 2023)(emphasis supplied).

We recommend that competitive energy supply marketing claims should be included in the Green Guides. The FTC has already noted its concern over the unfair practices which have been widely documented in this market.¹⁴

The following suggested language could be used for such a rule:

Section 260.xx, Non-Utility Energy Supply Renewable Energy Claims

- a) It is deceptive for a non-utility energy supply company (also known as competitive energy supply company or alternative retail energy supply company) or its agent to misrepresent, directly or by implication, that:
 - i) The company will directly supply energy generated with renewable resources to the customer's location, or
 - ii) There will be any change to the amount of renewable energy that will be supplied directly to the customer or used by the customer, or
 - iii) Purchasing the company's energy supply or service will cause a reduction in carbon emissions, greenhouse gas emissions, or the emission of other pollutants.
- b) It is a deceptive practice for a non-utility energy supply company to use climate-friendly terms such as "green power," "Clean Energy," "Carbon Free" or "Pollution Free" to describe electricity or electrical service, when the electricity itself is the product being marketed and sold to the customer.
- c) Any claim of environmental benefit that is based on the purchase of renewable energy certificates (RECs) must clearly state that
 - i) The electricity in the customer's home or business will not change, and
 - ii) The contract for electric supply includes the purchase of RECs, which each represent a unit of renewable energy generated anywhere in the United States.
- d) It is deceptive for a non-utility energy supply company to misrepresent, directly or by implication, that the renewable energy represented by the RECs is created with a particular type of renewable resource, such as solar or wind, if the REC in fact originated from another type or types of renewable energy resource.

This language could be accompanied by a sample disclosure statement, such as the following:

Sample Disclosure: If you purchase this Energy Plan, you are agreeing to buy local utility grid electricity which includes electricity generated from fossil fuels **plus** renewable energy certificates ("RECs") in an amount sufficient to match the percent of "green power" in your contract. The RECs represent the following source or sources: [Seller should indicate solar, wind, geothermal, ocean, or other specific types as needed].

Further, we urge the FTC to clarify its guidance on Renewable Energy Claims at 16 C.F.R. § 260.15. This section states that:

(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 of the advertised service, unless the marketer has matched such non-renewable energy 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 the source of the renewable energy (e.g., wind or solar energy).

(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 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.

As written, part (a) of this section could be stretched or misinterpreted to allow for claims that energy suppliers are selling actual “renewable energy” directly to consumers, for use in their homes. While there may be a valid justification to state that a consumer product was made with renewable energy when in fact the manufacturer purchased RECs, such claims should not be allowed when the product being sold is the energy itself, as stated above. Consumers pay a premium for “green power” sold by competitive electric supply companies, and should at a minimum know exactly what they are purchasing.¹⁵ We urge the FTC to include language in 16 C.F.R. § 260.15 to clarify that this section applies to products and services, but not to claims about the renewable content of the electricity itself. The FTC could add additional protection by creating a new rule for energy greenwashing, as suggested above.

3) Gas and Alternatives to Gas

Gas utility companies are currently grappling with state climate goals that directly or indirectly call for a reduction in household gas consumption. In light of these challenges, some companies have engaged in efforts to portray gas utility service as environmentally-friendly.¹⁶ This type of greenwashing has led to litigation.¹⁷ The Green Guides should prohibit gas utility companies and their agents from making deceptive claims about their fossil fuel products. Similarly, gas utility companies that seek to

introduce “renewable” or “sustainable” gas or hydrogen into their existing gas systems should be prohibited from making unsupported environmental claims related to these alternatives.¹⁸

We urge the FTC to add a section to the Green Guides to prohibit misrepresentation and unsupported environmental claims associated with gas, renewable gas, hydrogen, and other alternatives to gas.

Question 8: Evidence of interest in environmental issues; Does this evidence indicate the guides should be modified?

Increasingly, Americans are convinced of the reality of climate change and believe that this problem is urgent and must be addressed.¹⁹ Further, a growing body of research shows that people of color and members of low-income households are the most concerned about climate change and environmental issues.²⁰ Since communities of color and low-income communities are frequently targeted for door-to-door or telemarketing sales, sometimes by bad actors, consumer protections are particularly important to help prevent exploitation of environmental concerns and additional predatory practices against these communities.

Question 15: What potentially unfair or deceptive environmental marketing claims, if any, are not covered by the Guides?

Please see the response to Question 3, above.

Question 16: What modifications, if any, should be made to the Guides to account for changes in relevant technology or economic conditions?

Please see the response to Question 3, above.

In addition, we urge the FTC to consider addressing energy efficiency claims in the Green Guides, to discourage retailers and contractors from overstating the benefits of energy efficiency upgrades, home heating systems, and efficient appliances. Energy efficiency improvements, as well as newer efficient electric appliances and HVAC systems, can help to keep energy bills affordable for consumers, and can improve health and safety in the household. However, these benefits should not be exaggerated or overpromised to consumers, particularly when claiming that new measures and appliances will reduce household energy bills. The differences in housing conditions and the needs of families make it difficult to predict the exact financial impact of such measures without sophisticated energy audits. Accurate information about the expected performance of efficiency measures and efficient appliances will likely become even more important as programs funded by the Inflation Reduction Act²¹ are implemented, and new rebates and incentives for home energy efficiency and electrification put these purchases within reach for more consumers.²²

Thank you for the opportunity to comment on the FTC Green Guides. If you have any questions or need further information, please contact Jenifer Bosco, National Consumer Law Center, at jbosco@nclc.org or 617-542-8010.

Respectfully submitted,

National Consumer Law Center, on behalf of our low-income clients

Public Citizen

The Maryland Energy Advocates Coalition

Pennsylvania Utility Law Project, on behalf of our low-income clients

¹ 87 FR 77766.

² Since 1969, the nonprofit National Consumer Law Center (NCLC) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

³ Public Citizen is a nonpartisan, not-for-profit research and consumer advocacy organization representing the interests of our more than 400,000 members and supporters across the United States. We promote policies that provide affordable, sustainable and reliable energy for our members. We intervene in cases before the Federal Energy Regulatory Commission and state utility commissions to advocate those electric power market reforms that ensure fair and affordable rates for household consumers.

⁴ The Maryland Energy Advocates Coalition works to ensure affordable utility bills for limited income families through advocacy, reporting and education.

⁵ The Pennsylvania Utility Law Project (PULP) provides information, assistance, and advice about residential utility and energy matters affecting low-income consumers. PULP serves all of Pennsylvania.

⁶ E.g., Leiserowitz, A., Maibach, E., Rosenthal, S., Kotcher, J., Carman, J., Neyens, L., Marlon, J., Lacroix, K., & Goldberg, M., *Dramatic increase in public beliefs and worries about climate change*, Yale University and George Mason University. New Haven, CT: Yale Program on Climate Change Communication (Sept. 27, 2021), available at <https://climatecommunication.yale.edu/publications/dramatic-increase-in-public-beliefs-and-worries-about-climate-change/>.

⁷ Ioannis Ioannou, George Kassinis, and Giorgos Papagiannakis, *How Greenwashing Affects the Bottom Line*, Harvard Business Review (July 21, 2022), available at <https://hbr.org/2022/07/how-greenwashing-affects-the-bottom-line>.

⁸ United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities, *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions* (2022), available at https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf?_gl=1*nixmjc*_ga*OTM2ODIyMjI1LjE2NzUzNzQyMTY.*_ga_TK9BQL5X7Z*MTY3NTM3NDIxNS4wLjAuMTY3NTM3NDIxNS4wLjAuMA.

- ⁹ Green Power Partnership, U.S. Environ. Protection Agency, *Offsets and RECs: What's the Difference?* (Feb. 2018), available at https://www.epa.gov/sites/default/files/2018-03/documents/gpp_guide_recs_offsets.pdf.
- ¹⁰ Laurel Peltier, *Retail Energy's Greenwashing: How Fictional Renewable Energy Certificates Became "100% Renewable" Electricity* (Sept. 2022), available at <https://static1.squarespace.com/static/5f3489173119d979768248eb/t/63af4cb09cd8f9321ba3bd9c/1672432816708/Retail+Energy+Greenwashing.pdf>.
- ¹¹ See, e.g., David Roberts, VOX, *RECs, which put the "green" in green electricity, explained* (Nov 9, 2015), available at <https://www.vox.com/2015/11/9/9696820/renewable-energy-certificates>
- ¹² E.g., National Governors Association, *Electricity Markets 101, Electricity Market Structures – Questions & Answers – What Is The Difference Between Vertically Integrated And Restructured Electricity Markets?* (2021) (available at <https://www.nga.org/electricity-markets/>).
- ¹³ Laurel Peltier, *Retail Energy's Greenwashing: How Fictional Renewable Energy Certificates Became "100% Renewable" Electricity* (Sept. 2022).
- ¹⁴ *Statement of Commissioner Rohit Chopra Regarding the FTC EnergyGuide Rule*, Commission File No. R611004 (December 22, 2020) available at https://www.ftc.gov/system/files/documents/public_statements/1585238/20201222_final_chopra_statement_on_energyguide_rule.pdf. See also, e.g., The Wall Street Journal, *Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn't.* (March 8, 2021); National Consumer Law Center, *Competing to Overcharge Customers: The Competitive Electric Supplier Market in Massachusetts* (April 2018), available at <https://www.nclc.org/resources/competing-to-overcharge-consumers-the-competitive-electric-supplier-market-in-massachusetts/>.
- ¹⁵ Laurel Peltier, *Retail Energy's Greenwashing: How Fictional Renewable Energy Certificates Became "100% Renewable" Electricity* (Sept. 2022) ("Yet, in reality, "green power" retail energy offers are not for renewable electricity, but actually for cheap, unbundled voluntary renewable energy certificates (RECs) from energy generators, often from Texas or Oklahoma.").
- ¹⁶ Jeffrey Ball, Canary Media, *Inside the high-dollar race to sell natural gas as low-carbon* (Jan. 30, 2023) ("Seemingly weekly, a major U.S. industry player — a gas producer, a gas-pipeline operator, an LNG exporter — announces a claim that some of the gas from which it makes money has been produced in a way that's extra-climate-conscious. At least eight of the 10 biggest producers of U.S. natural gas — among them ExxonMobil, BP, Chesapeake Energy and Southwestern Energy — have made green-gas claims.").
- ¹⁷ E.g., *In the Matter of the Petition of the Maryland Office of People's Counsel*, "Memorandum of Petitioner Maryland Office of People's Counsel," Civil Case No. 15-CV-22-00197 (Cir. Ct. Montgomery Cty. MD, Sept. 1, 2022) ("In the era of climate change and natural gas price volatility, attempts . . . to broadly and unqualifiedly brand fossil fuels as "clean energy" and "smart for the environment and your wallet" are an insidious form of "greenwashing," or the misleading of customers regarding a product's environmental benefits. Greenwashing is detrimental to the public interest."); Aviva Bechky, Washington City Paper, *Washington Gas Faces Lawsuits in D.C. and Maryland Over Alleged 'Greenwashing'* (Feb. 1, 2023), available at <https://washingtoncitypaper.com/article/587521/washington-gas-faces-lawsuits-in-d-c-and-maryland-over-alleged-greenwashing/>; Sander Gusinow, Oregon Business, *Elected Officials and Climate Justice Groups Call on Oregon Department of Justice to Investigate NW Natural* (August 16, 2022), available at <https://www.oregonbusiness.com/article/energy-environment/item/19628-calls-to-investigate-nw-naturals>;
- ¹⁸ E.g., Utility Dive, *Opinion: High risk, small reward: Regulators should tread carefully when reviewing utility hydrogen proposals* (April 5, 2022), available at https://www.utilitydive.com/news/high-risk-small-reward-regulators-should-tread-carefully-when-reviewing-u/621390/?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202022-04-05%20Utility%20Dive%20Newsletter%20%5Bissue:40858%5D&utm_term=Utility%20Dive.
- ¹⁹ Leiserowitz, A., Maibach, E., Rosenthal, S., Kotcher, J., Carman, J., Neyens, L., Marlon, J., Lacroix, K., & Goldberg, M., *Dramatic increase in public beliefs and worries about climate change*, Yale University and George Mason University. New Haven, CT: Yale Program on Climate Change Communication (Sept. 27, 2021).
- ²⁰ Yale Program on Climate Change Communication, *Climate Note: Which racial/ethnic groups care most about climate change?*, (April 16, 2020); American Psychiatric Association, "Healthy Minds" Poll, *Two-Thirds of Black Americans Believe Climate Change Is Hurting Americans' Health, According to New Poll* (April 11, 2022); Neil Lewis Jr., FiveThirtyEight, *Why Many Americans Underestimate Who Is Most Concerned About The Environment* (Nov. 18,

2021); GreenLatinos et. al., [*EVs -- Survey Says: Considerable Interest in Electric Vehicles Across Racial, Ethnic Demographics*](#) (Sept. 2022).

²¹ Inflation Reduction Act, Public Law No. 117-169, Sections 50121 & 50122 (Aug. 16, 2022).

²² See, e.g., NCLC et al., *Letter to the U.S. Department of Energy regarding Implementation of the home energy rebate programs in the Inflation Reduction Act* (January 18, 2023), available at <https://www.nclc.org/resources/letter-to-the-u-s-department-of-energy-regarding-implementation-of-the-home-energy-rebate-programs-in-the-inflation-reduction-act/>.