UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Request for Comments on Revised Draft of Proposed Environmental Marketing Guidelines for Electricity

Response to the National Association of Attorneys General

Comment of the Staff of the Bureau of Consumer Protection of the Federal Trade Commission(1)

August 12, 1999

I. Introduction and Summary

The staff of the Bureau of Consumer Protection of the Federal Trade Commission (FTC) appreciates this opportunity to comment on the Second Discussion Draft Environmental Marketing Guidelines for Electricity (Draft Guidelines), proposed by the Environmental Marketing Subcommittee of the National Association of Attorneys General (NAAG) Energy Deregulation Working Group (Subcommittee). The Subcommittee has led the development of industry guidelines governing environmental marketing claims for consumer electricity products that will facilitate competition in retail electric power markets.

The FTC is an independent administrative agency responsible for maintaining competition and safeguarding the interests of consumers. The staff of the FTC has a longstanding interest in regulation of and competition in energy markets, and has submitted comments to the Federal Energy Regulatory Commission (FERC), as well as many state and regional regulatory bodies.(2) The staff actively monitors industry and legislative developments in the electric industry at the state and federal levels that will affect consumers' interests. The FTC's mission in this area includes attempting to ensure truth in advertising and to prevent and remedy unfair or deceptive trade acts or practices.

The staff applauds the Subcommittee's thorough and intensive efforts in reshaping the Draft Guidelines in light of the staff's and others' prior comments.(3) We continue to support the Draft Guidelines' use of the FTC's Guides for the Use of Environmental Marketing Claims, 16 C.F.R. Part 260 (FTC Green Guides), as the starting point for developing guidelines tailored to electricity. In large part, the revisions in the Draft Guidelines incorporate many of the general suggestions made in the staff's First Guidelines Comment. We appreciate the Subcommittee's consideration in that regard. Our intent here is to suggest improvements in six general areas to an already thoughtfully crafted proposal.

In brief, this comment observes that:

1) Research to date suggests consumers would not benefit from requiring a disclosure in advertisements about the use of a "tagging" system;
2) Caution should be exercised when requiring companies to disclose the environmental effects of their power on a "life cycle" basis;
3) The requirement that all environmental claims disclose the impact of other types of environmental harm appears too restrictive and may chill advertising claims that would otherwise provide information useful to consumers' purchasing decisions;

4) After further consideration of its earlier comment, staff believes it would be premature to state definitively and categorically that the term "clean" connotes a claim of general environmental benefit, and to impose the burden of substantiating all environmental benefits whenever it is used;
5) Further consideration should be given to the issue of allowable tolerances between claimed and actual content of power supply portfolios; and
6) Other general FTC guidance and principles concerning substantiation and endorsements may be appropriately incorporated into the Draft Guidelines.

II. Disclosures for Claims Substantiated Under a Tagging System

The Draft Guidelines propose that any environmental claims that are substantiated through a "certificate-based" or "tradeable tags" tracking system should be "accompanied by a clear and prominent disclosure of the use of a tagging system to substantiate the claim."(4) The staff believes this requirement is not necessary to prevent deception, and will not aid consumers in making informed choices about their electricity purchases.

Certificate-based or tradeable tags is one of two methods that have been suggested for tracking electric power from generator to consumer to substantiate claims regarding the attributes of retail electricity. A "tagging" system involves the separation of power, which is a pure commodity, from its characteristics. Each unit of power generated is given a tag describing its characteristics, and the tag may be sold separately from the power itself. Under tagging, there are two separate markets operating at the wholesale level. A retailer (or upstream distributor) may buy power from the pool or from a particular generator and then buy "tags" from other generators which give the retailer the right to claim that the power it sells has the attributes associated with the tags that it holds. This allows for consumers to support environmentally preferred power through their power purchases, even when technological constraints on the grid would prevent the consumer from purchasing the green power from the generator that produced it. By contrast, the second method relies on a "contract path." Under this method, each unit of power, along with its attributes (fuel type, emissions, etc.), is accounted for in contractual arrangements between the generator and a wholesale buyer, between various distributors and retailers, and between the retailer and the consumer. The distinguishing characteristic of the contracts system is that power is sold together with its attributes.

Although tags may seem more complicated than contracts and may raise the suspicions of some consumers with only a cursory understanding of the tagging system, staff does not believe that the benefits to consumers of NAAG's proposed required disclosure of the use of a tagging system would outweigh its burdens. Research conducted by the National Council on Competition and the Electric Industry (NCCEI)(5) indicates that consumers have less confidence in environmental claims about power when they are told that a tagging system is used to support them. There is no reason, however, that a well-designed tagging system would be any less reliable for tracking electric power than a contracts system. Moreover, some believe it would be less expensive to operate. Both systems succeed in matching the premiums that consumers are willing to pay for green power to the generators who invest in and produce that power. Thus, for the purposes relevant to consumers, there is no difference between the methods.(6)

Furthermore, it is important to note that these tracking methods are systems of substantiating claims, and should not greatly affect the products or benefits that consumers are purchasing. The FTC does not generally require that substantiation methods be disclosed. Rather than require that consumers evaluate for themselves whether a test result was obtained based on sound scientific methods, the statutes, rules and guides that the FTC enforces seek to ensure that the substantiation is reasonable. For example, the FTC Green Guides allow for recycled content to be calculated on the basis of annual averages,(7) but disclosure of this fact to consumers is not required. Likewise, consumers do not generally know what test methods are used to calculate the nutritional content stated on food labels, but as long as the methods are reasonable and reliable, consumers are not misled or injured by such omissions. Moreover, it would be extremely difficult to craft a disclosure that would be easy to understand and not confusing. Accordingly, a disclosure might actually serve to increase consumer confusion, and could needlessly undermine consumers' confidence in the new electricity market. For these reasons, the staff believes that requiring a disclosure for tags-based claims is not necessary to prevent consumers from being misled or to assist them in making informed choices about electricity.

III. Issues in Accounting for Life Cycle Effects

The Draft Guidelines propose that environmental claims should account for a number of factors associated not only with electricity generation, but also with the life cycle of the product, including fuel source creation or preparation, waste disposal, and facility siting.(8) The comment included in this Section also states that "life cycle aspects that are further afield should be taken into account when the claim requires it to avoid deception." Such a requirement would be over-inclusive by its application to all claims, rather than only to claims that raise life cycle issues by their own terms.

When making a claim about environmental benefit, it is imperative that marketers not ignore significant impacts that would affect the claim. On the other hand, if required to account for every environmental effect of electricity production, marketers may be significantly hampered in their ability to make any environmental claims and thus consumers may be deprived of useful information. The staff considers it unnecessary and contrary to consumers' interests to require marketers to disclose all environmental impacts from the entire life cycle of their products when making any environmental claims, for several reasons.

The Comment in Section 2(h) states that "consumers evaluate such claims primarily with reference to . . . the creation or preparation of the fuel source, the actual generation of the electricity, the disposal of waste resulting from generation, and the siting of the generating facility." Although there may be a significant percentage of consumers that perceive claims in this way, the FTC staff is unaware of research or studies supporting this view. The staff considers it premature to make such a judgment about consumer attitudes and to base advertising guidelines on such an assumption absent such evidence. In addition, this claims interpretation approach would depart from the approach represented in the FTC Green Guides.

Furthermore, the examples in the Draft Guidelines seem to indicate that life cycle disclosures will be required for some fuel sources, but are silent with respect to others. For instance, Example 1 in Section 2(g), Geographic Limitations on Claims, describes a clean air claim about a wind farm product without suggesting that the claim should include a statement that windmill production, siting and construction may generate emissions. In Section 3(b), "Green" and "Clean," Example 2 states that an offer of "green power" from solar panels would not be deceptive because it is renewable and its generation and transmission processes and placement of the panels create no releases or significant harm to the environment. The example, however, does not mention the environmental attributes of manufacturing the panels or any other process associated with the product's life cycle. Example 3 in the same section, as well as some examples in other sections, are similarly silent as to environmental impacts broader than the face of the claim itself, and thus appear inconsistent with a life cycle disclosure principle.

The examples in the Draft Guidelines illustrate some of the difficulties in determining what effects should be considered under a life cycle analysis. Further, there is no widely accepted and established method for measuring life cycle environmental effects. Because of this and the lack of evidence regarding consumer attitudes, the FTC's Green Guides do not require marketers to account for the effects from the entire life cycle of a product.

Consistent with the principles embodied in the FTC Green Guides, staff supports a guideline by which marketers would be required to account for the significant life cycle effects of their product(s) to the extent that their advertising claims warrant. For example, a claim that a product "meets all ISO 14000 standards for environmental quality" would require substantiation with competent and reliable evidence based on a life cycle analysis meeting ISO 14000 standards. On the other hand, a claim that a company's "natural gas plants release 20% less smog-forming compounds than neighboring coal-burning plants" by its terms does not seem to imply any claims about emissions produced by extraction of the natural gas or transporting the fuel, and should not require substantiation of those effects.

IV. Qualification Requirements May Cause an Unnecessary Chilling of Claims

The Draft Guidelines state a general principle that "if a claim states a specific environmental benefit, it should be accompanied by disclosure of all environmental harms associated with the relevant product or company that reduce or eliminate the stated environmental benefit."(9) Example 1 in this section would require disclosure of emissions from a company's waste incineration plants in an advertising claim about emissions from the company's electricity production. The text and example may go too far in requiring disclosure of matters not raised by the claim itself. They could be read as requiring advertisers to disclose all environmental characteristics of their products whenever they make advertising claims about any characteristic. This may be broader than the Subcommittee actually intends, but modifications to the quoted language (and similar language in the comment following it) as well as additional examples are needed to define the limits of the principle.

In Example 1, the claim that the company is "working to reduce air pollution in Ohio" is still true and substantiated, even if the company also produces pollution from other sources. Under the example, it is still true that pollution is less than it would have been but for the company's investment in scrubber technology. Consumers may find the information useful in making purchasing decisions, and those decisions are not undermined if air pollution from other pre-existing sources is not disclosed. The claim does not state or imply that the company produces no air pollution -- just that it is "working" toward reductions -- so consumers should already be aware that the company continues to produce some level of air pollution.

Example 2 in Section 4(e), Emissions Claims, appears to apply the concept described above to emissions claims in particular. The example implies the same type of overly broad restrictions on otherwise truthful claims. It describes a claim stating that a product is "good for the environment" because it produces "20% less SO2."(10) The example finds the claim deceptive because the product would still emit significant amounts of air pollutants. Although the claim would less likely be deceptive if it said "better" rather than "good" for the environment, if the amount of SO2 emissions is lower because of newly installed scrubber technology and the reduction benefits the environment, even a "good" for the environment claim may not necessarily be misleading. The advertiser should be able to communicate that information to consumers, so long as the advertising does not overstate the reduction in emissions or understate the plant's overall effect on air pollution.(11)

V. Defining "Clean" to Be a Claim of General Environmental Benefit Is Premature

The Draft Guidelines state that both "green" and "clean" are terms of general environmental benefit.(12) The Draft Guidelines therefore impose requirements on the use of these terms consistent with the FTC Green Guides requirements for such claims.(13) Accordingly, whenever the term "green" or "clean" is used, "every implied representation that the general assertion conveys to consumers must be substantiated," and these terms should be "accompanied by clear and prominent disclosure of the sense in which the term is being used." With respect to the term "clean," there is a wide variety of ways in which the term could be used, and a significant lack of experience with or consumer research concerning interpretation of advertising using the term. These factors suggest that it is premature to state definitively and categorically that the term connotes a claim of general environmental benefit.

The staff's First Guidelines Comment urged that it would be premature and unnecessarily restrictive to adopt standardized, predetermined definitions for the terms "green" and "clean," due to the lack of consumer research and experience with their use in advertising. Instead, that comment suggested an easier approach would be to simply rely on the approach taken for general environmental benefit claims in the FTC Green Guides. The staff continues to believe that adopting the requirements for general environmental benefit claims is the proper approach for claims using the term "green."(14)

Upon further reflection, however, the staff believes that applying this approach to the term "clean" could result in unnecessary limitations on advertising claims and could deprive consumers of a shorthand way of recognizing certain environmental information about electricity products. Given the use of the term "clean" in everyday speech and in other energy advertising contexts -- such as the long-standing use of the phrase "clean natural gas" -- it seems likely that consumers could interpret the term "clean" to refer only to emissions, rather than to other broad environmental qualities.(15) Accordingly, it would be preferable for NAAG to adopt this narrower interpretation, rather than to equate "clean" with "green." Of course, it would be best to test this interpretation by consumer research. Absent such research, however, the staff believes that requiring advertisers to substantiate all possible environmental claims about a product claimed to be "clean" would unnecessarily inhibit advertisers from conveying desirable attributes of their products in ways that consumers are likely to understand.

VI. Allowance for Claimed vs. Actual Production

Various types of numerical or percentage type claims are discussed and defined in the Draft Guidelines Section 4(h), Other Quantitative Claims. These include "No x or X-free," "Low x," "100% x or All-x," and other specific percentage claims. The comment following the section states that "the Guideline does not permit tolerances from quantitative claims that favor the marketer," except for de minimis(16) tolerances in situations where the marketer occasionally uses a small amount of emergency backup power, and then only with clear and prominent disclosure of the reliance on emergency backup. This standard may excessively restrict legitimate claims that would be informative and useful to consumers. It seems premature to take such an approach at a point when marketers and regulators have so little experience advertising products and using tracking to substantiate them. The staff believes that incorporating a reasonableness standard for tolerances, rather than any specific level of tolerance, would be a more workable approach.

Variations between claimed performance and actual performance may occur through no fault of the marketer, and in greater than de minimis amounts, for a variety of reasons. In addition, advertising claims for electricity products are necessarily made before the product is actually produced and before actual demand is known. Thus, it is not reasonable to expect electricity marketers to be able to match their advertising claims exactly all of the time, or even over a year's time. So long as the marketer had a reasonable basis supporting the claims at the time they were made, and the deviation is not material to consumers' expectations under the circumstances, numerical or percentage claims that constitute the reasonably expected amounts will convey useful information to consumers. A rigid standard defining as deceptive any failure to meet exactly the claimed production will reduce the incentives of marketers to make useful and informative claims regarding various types of power that they might provide to consumers.(17)

The degree to which a tolerance should be specified for the difference between predicted and actual production has mostly to do with the technological and meteorological constraints that are specific to the industry, and generally change over time. Because there has been little experience with competitive electricity marketing claims, using a fixed tolerance, such as 5% or 10%, would find little support from an analysis of the industry. Rather than setting a standard using a specific percentage allowance, it might be preferable to use a reasonableness standard in which deviations from the claimed production would be considered on a case-by-case basis.

Allowing a tolerance in reasonable amounts for unexpected and unintended deviations from advertising claims does not mean that marketers would be able to inflate numerical or percentage claims about the environmental characteristics of their products. That is, an electricity seller who can reasonably expect to supply 40% of demand from solar power could not advertise that their product is 50% solar simply because there is an allowance for reasonable deviances to account for unexpected, unintended events. Such an inflated claim would not be reasonably substantiated when made, and the subsequent deviation would not be due to unexpected events.

Unlike the certification organizations such as Green-e, neither the Attorneys General nor the FTC has the expertise or the resources to audit the portfolio of each electricity marketer each year. When an investigation is opened because of an apparent discrepancy, it may be that a marketer with huge differences between projected and actual portfolios actually has a justifiable reason, while another marketer might have very small differences that are not justified.

Clearly, there would be no justification for persistent downward deviations year after year. But in a given year, the law enforcement agency would consider whether it was reasonable for the marketer to make the claim(s) that it did. A reasonableness standard would be workable as a starting point until experience can be gained that will allow more specific standards to be set, if necessary, and will avoid the possibility that a numerical percentage standard could sanction some unreasonable results. The need for a disclosure regarding a de minimis or reasonable tolerance is also questionable.

An additional consideration applies to the requirements for "low x" claims, in Section 4(h)(2). "Low" is defined to mean less than 10% of the amount in system power. This percentage standard seems overly stringent, especially since companies must disclose the exact ratio to the system average, and since "system power" is defined to include all power generated (so the system average itself already contains power with relatively low levels of the component at issue). A given product might still be quite "low" in some component even when it contains even half as much as the amount of that component in system power. For example, under the Draft Guidelines definition, a marketer could not claim to have a "low emissions" product, even where its emissions were only a quarter of the amount in system power, and one third the amount from a natural gas plant. Because a claim of "low" is very useful in guiding consumers to the products having relatively less of something, it would seem unduly restrictive to define the term and limit such claims to such extreme reduction levels.

VII. Incorporate Other FTC Principles in Draft Guidelines

The Draft Guidelines use the FTC Green Guides as a starting point and baseline. Certain sections of the Draft Guidelines could also benefit from the application of other principles developed in FTC guidance and case law for advertising in general.

For the most part, the Draft Guidelines present examples that are very useful in illustrating the principles involved. In several instances, however, the Draft Guidelines' examples create some ambiguity about what wording is part of a hypothetical claim and what wording is part of the example's explanation. This distinction is particularly important because any claim (even a hypothetical one) can only be evaluated based on the message in the ad itself. The Draft Guidelines should carefully identify what words are being used as part of a hypothetical advertisement, in order to preserve the usefulness and force of their most concrete form of the guidance. Example 3 in Section 2(f), Comparative Claims, is one such instance. There, it seems likely that the hypothetical advertisement is meant to include the entire phrase, "our facilities emit fewer pollutants than a competing company's facility," but the placement of the quotation marks in the example makes it uncertain. Conversely, Example 7 in Section 3(b) appears to quote an ad as saying that it is "based on 'use of new scrubber technology, which reduces the emission of SO2,'" but the example is unclear as to whether the quoted language is describing the wording of the advertisement itself or describing the advertiser's substantiation.

Both the discussion of substantiation in Section 2(b) of the Draft Guidelines, as well as Definition 5(c), Competent and Reliable Evidence, seem to adopt the FTC's definition of scientific evidence for all types of environmental claims about electricity products or companies. General FTC principles of substantiation do not require scientific evidence for every claim, but only where the nature of a particular claim makes it reasonable to expect such evidence as substantiation.(18) Requiring scientific evidence for all claims would mean imposing a standard much higher than the one for substantiation in general, which simply requires that there be a reasonable basis, consisting of some form of competent and reliable evidence, for a claim. Legitimate claims could be discouraged by requiring that electricity marketers have scientific evidence for claims such as the percent of solar power in a portfolio (which could be substantiated by contracts rather than scientific research) or for the fact that a company donates a percent of profits to environmental causes. Instead, the Draft Guidelines should qualify the requirement for scientific evidence by limiting it to those situations in which such evidence would reasonably be expected.

The fact pattern and conclusion of Example 1 in Section 3(e), Emissions Claims, are sound, and with a slight change in wording could be made consistent with the FTC Green Guides. The example states that an "ozone friendly" claim would be deceptive if the product emits "any ozone-depleting substance." This wording is consistent with the FTC

Green Guides' Section 260.7(h), Example 1, concerning "ozone friendly" claims; however, staff is not aware of any association between electricity generation and ozone-depleting compounds. The second example in the FTC Green Guides concerning such claims more aptly pertains to electricity. The second FTC Green Guides example illustrates that an "ozone friendly" claim is also deceptive if the product produces compounds that contribute to formation of ground-level ozone and smog. Thus, the wording of the Draft Guidelines' example could be changed to state that an ozone-friendly claim is deceptive if the product emits "any NOx or other substance that degrades air quality." In that way, the example would be consistent with both the FTC Green Guides and current operating conditions in the electric industry.

FTC advertising guidelines other than the Green Guides may also provide concepts applicable to Section 3(f), Environmental Certifications. The Subcommittee may wish to consider adding language in that section to address the potential deception when a certifying organization lacks the expertise necessary to make an environmental certification, or the certification is not based on the actual exercise of such expertise, or the organization is not independent from the advertiser. Such prohibitions are consistent with the FTC's guidelines concerning product endorsements by experts and organizations (Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255), as well as FTC orders prohibiting such endorsements.(19)

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The staff supports NAAG's efforts, and looks forward to further participation as the process moves forward.

Respectfully submitted,

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Endnotes:

1. This comment represents the views of the staff of the FTC's Bureau of Consumer Protection. They are not necessarily the views of the FTC or of any individual Commissioner.

2. For example, the staff submitted a comment on consumer protection issues to the Utah Public Service Commission <www.ftc.gov/be/advofile.htm (V980016)>. On May 26, 1999, Elaine Kolish, Associate Director of the Enforcement Division, Bureau of Consumer Protection, provided testimony about the FTC's consumer protection role in emerging electricity markets before the U.S. House of Representatives Committee on Commerce Subcommittee on Energy and Power
< www.ftc.gov/os/1999/9905/electrictestimony.shtm >.

3. The staff previously submitted a comment addressing the first draft of the Draft Guidelines, on August 10, 1998 <www.ftc.gov/be/V980020.shtm> (First Guidelines Comment).

4. Draft Guidelines, Section 2(b), Substantiation.

5. Melissa J. Hermann & Brian Roe, "Consumer Research on Tracking Approaches and Product Versus Supplier Labeling," National Council on Competition and the Electric Industry (Oct. 1998).

6. It may make a difference to consumers if the environmental benefits associated with the power they are buying will be enjoyed in a remote geographical area rather than in the region where they live. If advertising implied a geographical scope that was different from the scope of the tagging system, the existing guidelines prohibiting misrepresentation or overstatement of environmental benefits would cover them. This problem could also be solved by limiting the geographical area over which tags can be traded.

7. FTC Green Guides, 16 C.F.R. § 260.7(e).

8. Draft Guidelines, Section 2(h), Scope of Claims.

9. Draft Guidelines, Section 2(c), Qualifications and Disclosures.

10. The example also includes a statement that the claim is deceptive based on the lack of basis for comparison. Although this statement is correct, it would be less confusing to limit the example so that it illustrates only one problem at a time. For example, the hypothetical claim could be that the product produces "20% less SO2 than 5 years ago."

11. A similar problem arises due to an ambiguity in Example 5 in Section 3(b), "Green" and "Clean." The example deals with an ad urging consumers to "Help us make the environment clean" by buying a product produced by half renewable sources and half system power. The example finds the claim deceptive because the use of system power would result in harmful emissions and radioactive waste. This example may be ambiguous because many electricity sellers will be required to disclose their fuel sources and emissions levels in advertising under the mandatory disclosure requirements being adopted by many states. If the advertising in this example included disclosures indicating that the fuel sources used would continue to emit some pollutants, but at a level lower than the system average, then the claim would not be deceptive.

12. Draft Guidelines, Section 3(b).

13. 16 C.F.R. § 260.7(a).

14. This does not necessarily mean, however, that a "green" product must be entirely benign and completely free of environmental impacts. Consumer interpretation of the term has not been tested to our knowledge, and remains uncertain. If consumers interpret the term "green" to mean that a product is environmentally preferable, but not necessarily free of environmental impacts, then the claim could be substantiated by competent and reliable evidence that it is superior to other products in environmentally significant ways.

15. This concept is raised in Example 6, also in Section 3(b), which poses the situation of a seller claiming to use "clean coal." The example states that the claim is deceptive because consumers "may infer" a representation that the fuel source "will eliminate the levels of air emissions commonly associated with coal." Such an inference is not necessarily obvious enough, however, to state that the words "clean coal" imply that claim without copy testing or other research to verify it. Moreover, the natural gas industry currently makes the claim "clean natural gas" with respect to automobile fuels but, to our knowledge, there has been no regulatory or legal challenge testing it to date.

16. In the sections on "No x or X-free" and "100% X or All-x," the use of the phrase "less than" in conjunction with the de minimis standard (amount must be, e.g., "less than a de minimis percentage of the percentage of "x" in the total system power") is somewhat confusing. Also, in the section on "Specific percentage claims," it would be clearer to state the requirements as "...that 'p%' is greater than or equal to the percentage of 'x'..." for claims of a small amount of 'x' and "...that 'p%' is less than or equal to the percentage of 'x'" for claims about a large amount. The current reference to the "maximum/minimum percentage of 'x'" may imply that the relevant percentage varies, for example,

from day to day or hour to hour (that 'p' must be greater/less than the percentage of 'x' on any given day or in any given hour), which is not the case with allowance for annual averaging. With annual averaging, there is only one relevant percentage and it is the annual percentage of 'x.' The definitions might be reworded to avoid these grammatical problems.

17. The chilling effect on numerical or percentage claims could have economic consequences for the electricity market's development as well. If the claim by a company that wishes to advertise its wind power is limited by the strict need to produce the claimed amount of wind power, then the company will be less likely to be able to obtain an adequate return on the investment that it made. Thus, there will be less incentive for companies to invest in environmentally superior technologies that happen to have variable production potential, a result contrary to most states' goals of encouraging such development.

18. *See* Pfizer, Inc., 81 F.T.C. 23, 64 (1972); see also FTC Policy Statement Regarding Advertising Substantiation, appended to Thompson Medical Co., 104 F.T.C. 648, 839 (1984), *aff'd*, 791 F. 2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

19. *See* Black & Decker, 113 F.T.C. 63 (Jan. 10, 1990) (consent order entered settling allegations that iron ad carried deceptive endorsement of National Fire Safety Council, which lacked expertise in evaluation and testing of appliance fire safety); *FTC v. Nat'l Energy Specialists Ass'n*, 1992 U.S. Dist. LEXIS 18453 (D. Kan. Aug. 26, 1992) (Complaint) and 1993-1 Trade Cas. (CCH), p. 70211 (D. Kan. April 29, 1993) (Order) (trade association endorsements of energy efficiency and savings allegedly were false and misleading because they were granted based only on application and payment of fee). *See also* Complaint filed in Screen Test U.S.A., No. 99-2371, U.S. Dist. Ct., D.N.J. (May 27, 1999), <www.ftc.gov/opa/1999/9905/screen.shtm> (alleging that supposedly independent, nonprofit organization endorsing modeling agency is simply a shell corporation owned and organized by the agency itself).