Subject Category: Guides for the Use of Environmental Marketing Claims; Project No. P954501

Submission of Comments

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There are numerous theoretical questions raised by claims based on a framework for trading vaguely defined "attributes." I encourage the FTC to pause and consider in more depth the precedent it may be setting with these guides for other markets and industries where public benefit claims are being made. Specifically, I find it curious that the FTC has placed in quotes the term "buy" in its discussion of green power and RECs.[1]

An essential component to the substantiation of green power claims is the assumption that the participation in green power programs or payments for RECs conveys private ownership over something. More specifically, this line of reasoning assumes that these programs and markets are equivalent to consumers selecting electricity from particular suppliers at the exclusion of other suppliers, such as would be possible in a normal private good market.

It appears by its own use of quotation marks that even the FTC is not confident in this assumption. Yet, there is no exploration or effort made to justify the assumption even though it is fundamental to all subsequent marketing claim analyses provided in the guides.

I ask that the FTC provide support for its confidence that a "buy" results in a conveyance of unambiguous ownership such as would be necessary to support a marketing claim. Specifically, what does it mean to trade in and own a "renewable attribute," or more broadly, an "environmental attribute?" Is the FTC confident that their analysis is based on a sound economic theory of private ownership, including accepted definitions for excludable and rival goods? The issued guides do not clearly address these issues, nor does it appear that the FTC analysis has even asked these questions.

It is not sufficient to simply assume that ownership is logically justified because an existing commercial marketing practice for making ownership claims exists, especially when the commercial practice involves trade in an intangible "good" that has its origins as a public good. What is occurring here is essentially the commodization of charity, which can be a powerful mechanism, but one that is also easily abused and misunderstood and warrants careful analysis and design.

Although not a complete analysis of these questions, I refer you to the following article, which addresses the ownership issues with respect to electricity from renewable sources and its application to greenhouse gas emissions accounting.

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[1] See first instance page 152, section D.1, first paragraph.

Gillenwater, M., “Taking green power into account,” *Environmental Finance*, October 2008. <http://www.princeton.edu/~mgillenw/EF_CDP_Gillenwater_small.pdf>

Referring to page 157 (section D.2.c) of the draft guides, you have defined double counting in a fashion that misses other important types of double counting. See article above for a more complete definition of the term in this context.

Referring to page 163 (Section D.4.a), the FTC uses the phrase "offset by RECs." The use of this phrase is highly problematic, in that it presents, without analysis or justification, that RECs function as an offset instrument. As laid out in multiple papers and documents, using RECs as offsets is no more acceptable for electricity than it is for emissions (see citations below). If RECs do not satisfy a reasonable definition of additionality, then they cannot be considered to offset anything. The FTC is careful to point out the importance of additionality in its discussion of the relationship between RECs and greenhouse gas emission offsets, yet it ignores the issue of additionality in stating that RECs are "offsets," and therefore additional, with respect to electricity consumption. If the FTC is not able to make a determination on issues related to RECs used as emissions offsets, then why is the FTC comfortable assuming RECs can "offset" non-renewable-sourced electricity consumption?

“Maintaining Carbon Market Integrity: Why Renewable Energy Certificates Are Not Offsets” Offset Quality Initiative, June 2009. <www.offsetqualityinitiative.org/OQI%20REC%20Brief%20Web.pdf>

Gillenwater, Michael, “Redefining RECs (Part 1): Untangling attributes and offsets,” *Energy Policy*, Volume 36, Issue 6, June 2008, Pages 2109-2119. <http://dx.doi.org/10.1016/j.enpol.2008.02.036>

Gillenwater, Michael, “Redefining RECs (Part 2): Untangling certificates and emission markets,” *Energy Policy,* Volume 36, Issue 6, June 2008, Pages 2120-2129. <http://dx.doi.org/10.1016/j.enpol.2008.02.019>

In summary, the FTC is being conservative in its conclusions with regard to RECs and emission offsets. Unfortunately, this same care is not being taken with respect to the use of RECs outside of the emission offset context. More generally, it would be prudent for the FTC to consider the implications of these guides for other tradable instruments that could be created in the future and that purport to represent "additional" public good benefits or attributes.