

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL TRADE COMMISSION

**Guides for the Use of
Environmental Marketing Claims**

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Project No. P954501

**COMMENTS OF THE
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES**

Pursuant to the Federal Trade Commission’s (“FTC” or “Commission”) request for public comment on proposed, revised Guides for the Use of Environmental Marketing Claims (“Green Guides” or “Guides”) issued on October 15, 2010,¹ the Massachusetts Department of Public Utilities (“Mass DPU”) hereby submits its comments. In its request for public comment the Commission proposes to strengthen, add specificity to, or enhance the accessibility of the current guidance on general “green” claims and environmental seals, and proposes new guidance regarding emerging claims not currently addressed in the Guides, such as renewable energy and carbon offsets. The Mass DPU focuses its comments on the proposed new guidance regarding marketing claims about renewable energy and carbon offsets.

I. INTRODUCTION

The proposed, revised Guides represent the culmination of a periodic review that helps ensure that the Guides keep pace with evolving customer perceptions and new environmental claims. Beginning in 2007, the Commission sought public comments on the continuing

¹ *Guides for the Use of Environmental Marketing Claims*, 75 Fed. Reg. 63552 (proposed Oct. 15, 2010) (to be codified at 16 C.F.R. pt. 260).

effectiveness of the Guides, held public workshops on emerging green marketing issues, and conducted research on consumer perception of environmental claims. Comments submitted following the FTC's January 8, 2008 workshop to examine advertising claims regarding renewable energy and carbon offsets² have resulted in the proposed amendments to 16 C.F.R. Part 260, specifically §§ 260.5 Carbon Offsets and 260.14 Renewable Energy Claims.

The Mass DPU is the agency of the Commonwealth of Massachusetts charged with general regulatory supervision over gas and electric companies in Massachusetts and has jurisdiction to regulate rates and charges for the sale of electric energy and natural gas to consumers. Massachusetts General Laws c. 164, § 76 et seq. Part of the Mass DPU's mission is to ensure that residential ratepayers' rights are protected.³ As renewable energy is marketed to residential ratepayers and carbon offsets are available to comply with upcoming greenhouse gas emissions regulations for the electric and gas industry, guidance on marketing claims for these products is appropriate. Accordingly, the Mass DPU provides comments on the proposed, new guidance on renewable energy and carbon offsets.

The proposed, new guidance for renewable energy and carbon offset marketing claims in sections 260.5 and 260.14 provides important consumer protections. The Mass DPU endorses these proposed sections as valuable improvements and also recommends the Commission consider adding a provision to the renewable energy section. The 'additionality' provision found in the carbon offset section should also be applied to renewable energy. Voluntary purchasers of renewable energy should know with certainty whether or not their

² *Guides for the Use of Environmental Marketing Claims; Carbon Offsets and Renewable Energy Certificates; Public Workshop*; 72 Fed. Reg. 66094 (issued Nov. 27, 2007).

³ Department of Public Utilities Mission Statement, available at: [http://www.mass.gov/?pageID=eoeaaagencylanding&L=5&L0=Home&L1=Grants+%26+Technical+Assistance&L2=Guidance+%26+Technical+Assistance&L3=Agencies+and+Divisions&L4=Department+of+Public+Utilities+\(DPU\)&sid=Eoeaa](http://www.mass.gov/?pageID=eoeaaagencylanding&L=5&L0=Home&L1=Grants+%26+Technical+Assistance&L2=Guidance+%26+Technical+Assistance&L3=Agencies+and+Divisions&L4=Department+of+Public+Utilities+(DPU)&sid=Eoeaa).

purchase will fund procurement *additional* to the amount required by law under renewable portfolio standards.

II. PROPOSED, NEW GUIDANCE ON RENEWABLE ENERGY AND CARBON OFFSETS ESTABLISHES A BASELINE FOR CONSUMER PROTECTION

The proposed revisions are consistent with the Environmental Marketing Guidelines for Electricity developed by the National Association of Attorneys General (“NAAG Guidelines”).⁴ While the NAAG Guidelines are more expansive and rigorous than the proposed revisions to the Green Guides, the proposed revisions incorporate many of the same consumer protection principles. The two publications provide a complementary set of guidelines for marketers of environmental claims, which will ultimately serve to inform the public and eliminate deceptive advertising.

The proposed revisions to the Green Guides provide reasonable guidance for marketers of renewable energy and carbon offsets. The proposed definition that renewable energy is, at the least, not derived from fossil-fuels reflects the consensus of the energy regulatory community and establishes a baseline for renewable energy marketing claims. Further, to address potential ambiguity, the revisions recommend disclosing what type of renewable energy source is being offered, *i.e.*, wind or solar. The Guides now explain that “made with renewable energy” claims should be supported by renewable energy, or renewable energy certificates (“RECs”), powering virtually all significant manufacturing processes and that the marketer must still retain ownership of the renewable energy source’s environmental attributes, embodied by the RECs. The revisions require that carbon offsets be properly quantified, and the Guides now recommend using sophisticated accounting protocols and rigorous tracking

⁴ National Association of Attorneys General, *Environmental Marketing Guidelines for Electricity* (December 1999), available at: http://apps3.eere.energy.gov/greenpower/buying/pdfs/naag_0100.pdf.

mechanisms to adequately substantiate marketing claims and to ensure that reductions in carbon emissions are not sold more than once. In addition, sales of carbon offsets that fund emissions reductions more than two years into the future should be properly qualified in consumer marketing materials. Finally, the proposed revisions to the Green Guides incorporate the concept of ‘additionality’ by declaring that any carbon offsets used for compliance with a legal mandate be disclosed to consumers as such. These common sense guidelines establish a foundation of protection against deceptive marketing claims regarding renewable energy and carbon offsets, which represent a new and increasingly popular class of goods and services. Accordingly, the Mass DPU supports these proposed, new sections to the Guides.

III. FTC SHOULD INCORPORATE AN ‘ADDITIONALITY’ PROVISION FOR RENEWABLE ENERGY SIMILAR TO THE ONE FOR CARBON OFFSETS

Proposed, new Section 260.5(c) establishes that, “[i]t is deceptive to claim, directly or by implication, that a carbon offset represents an emission [sic] reduction if the reduction, or the activity that has caused the reduction, was required by law.” The Commission has found that “when consumers purchase carbon offsets, they expect that they are supporting a reduction in greenhouse gas emissions.”⁵ It is reasonable to assume that consumers have a similar expectation regarding purchases of renewable energy. Thus, the Commission should consider adopting the same ‘additionality’ principle for renewable energy.

As discussed in the workshop on renewable energy and carbon offsets,⁶ some states have enacted laws requiring “electricity suppliers or utilities to obtain renewable energy for a

⁵ *Guides for the Use of Environmental Marketing Claims*, 75 Fed. Reg. at 63597.

⁶ Carbon Offsets Workshop, agenda available at:
<http://www.ftc.gov/bcp/workshops/carbonoffsets/agenda.pdf>

certain percentage of the electricity that they are providing to their customers.”⁷ These same entities are also marketing renewable energy or “green power.”⁸ There may be circumstances where it is unclear whether the renewable energy purchases would be in excess of, i.e., *additional* to, the electricity supplier or utility’s legal requirement. It is plausible that a consumer may perceive that its individual participation in a “green power” program will result in the voluntary purchase of renewable energy, rather than merely facilitating the utility’s compliance with the law. If the electricity supplier or utility purchases renewable energy or RECs for compliance purposes, it should clearly disclose this practice in its “green power” marketing materials to avoid misleading consumers.

The Commission should adopt an ‘additionality’ provision for renewable energy marketing claims, similar to the one it proposes for carbon offsets. The Mass DPU suggests the following language derived from the provision on carbon offsets:

“It is deceptive to claim, directly, or by implication that *renewable energy* represents a *voluntary purchase of additional renewable energy* if the *purchase*, or the activity that caused the *purchase*, was required by law.”

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Mass DPU hereby files these comments and respectfully requests that the Commission consider them in its deliberations and adopt an ‘additionality’ principle applicable to renewable energy.

⁷ Lori Bird, National Renewable Energy Laboratory, Carbon Offsets Workshop, Tr. at 43.

⁸ Id. at 47.

