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Secretary Clark  
Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex J)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**RE: NRG Companies' Comments on the Federal Trade Commission's Proposed Revised Green Guides, 16 CFR Part 260, Project No. P954501**

Dear Secretary Clark:

The NRG companies support effective, commercially reasonable standards to ensure clear, responsible and accurate descriptions of renewable electricity and carbon offsets in retail marketing. Such standards will help build consumer awareness of renewable energy products and related services, and to have confidence in the environmental benefits associated with purchasing and supporting such products and services. The NRG Companies respectfully offer these comments on the Commission's proposed revisions to the Green Guides, focusing on the relatively few proposed revisions that, in our view, are likely not to help achieve this objective.

NRG Energy, Inc. is primarily a wholesale power generation company with a significant presence in major competitive power markets in the U.S. as well as major retail electricity franchises. NRG owns and operates one of the country's largest and most diverse power generation portfolios and its power plants provide nearly 26,000 megawatts of generation capacity—enough to supply nearly 21 million homes. NRG has investments in solar, wind and nuclear power, as well as electric vehicle infrastructure. NRG's retail businesses, Reliant Energy and Green Mountain Energy Company, combined serve more than 1.8 million residential, business, commercial and industrial customers. Green Mountain Energy Company also offers RECs and carbon offsets to individuals, businesses and other organizations.

**1. Reporting the specific technology mix that generates renewable energy should not be mandatory**

The Commission proposes to require marketers to disclose the type or source of the renewable energy they sell in Section VI.D.4.a. of the October 15, 2010 Federal Register notice (75 Fed. Reg.

63591). While the NRG Companies agree that all claims of renewable energy must be able to be substantiated and not misleading, we are concerned that a requirement that all renewable energy marketing material disclose the “ingredients” goes beyond this basic requirement and could interfere with marketing efforts to develop products that best meet customer preferences.

For example, customers in a sunny area may prefer solar products. While the marketer of a 100% solar product would naturally benefit from disclosing its source, the marketer of a product based on RECs from both wind and solar may not. However, as long as the 100% mixed wind and solar product does not make misleading claims regarding its solar content, it should not be required to disclose its components. It would be sufficient, in order to not be misleading and to base all claims on substantial evidence, to substantiate that a REC is obtained, without double counting, for each of the megawatt hours of electric energy sold as “renewable energy”.

Clearly, any specific claims regarding specific renewable type or source content should be required to be based on substantial evidence and to not be misleading. The FTC should not, however, require all renewable energy products to disclose their various renewable energy components, as this would do nothing to avoid deceptive or misleading practices, but could interfere with the efforts of competitive renewable energy providers to meet customer demand for various products.

**2. Claims of “hosting” renewable energy, like claims of producing renewable energy, are not misleading and should be allowed by the Guidelines.**

The Commission also characterizes as “subtle double counting” the practice of touting renewable energy facilities in advertising by companies that sell the RECs produced by those facilities. (75 Fed. Reg. 63590 (October 15, 2010)). While the specific example given by the Commission (the claim that a store is “solar powered” even though it sells the RECs from the solar panels on its roof) does appear to be fairly blatant double counting, there are numerous accurate advertising claims that could be made by producers of renewable energy that are not misleading and in no way lend themselves to double counting. For example, a store with solar generating equipment on the roof could accurately assert that it is a proud producer of renewable energy, without claiming or implying that it is the consumer of the renewable energy produced by the solar equipment. Throughout America, factories and communities proudly announce the products they make, without anyone believing that, because the factory is not also the buyer of the products, the claims are somehow illegitimate or that the shoes, light bulbs or cars from the factory are in some way being sold twice.

Consistent with this widespread practice, the Commission should recognize that production of renewable energy is itself meritorious, and is often highly visible, even though it is not equivalent to the purchase or use of the renewable energy. The Commission should therefore not prohibit commercial speech regarding the production of renewable energy in an attempt to avoid double counting of the distinct merits of consuming it. Claims to host a renewable energy production facility that sells RECs should therefore be allowed, while claims by the seller of those RECs to be “renewably powered” should not. Similarly, disseminating factual information (e.g., public company S.E.C. filings or investor presentations) regarding the development of, operation of, or investment in renewable energy producing facilities should not be characterized by the Commission

or its Guidelines as a double counting of the environmental benefits associated with the consumption of the renewable energy produced by the projects.

**3. Offsets that will produce emission reductions in future years should not be required to have specific disclosure regarding their timing.**

The Commission appropriately recognizes the complexity and challenges surrounding carbon offsets, and wisely chooses to not insert itself in policy making. In our view, the evolution of offsets as a credible, robust and environmentally sound category of products has been enhanced by the overwhelming support of California voters for the state's cap and trade law, AB32, on November 2, and by the California Air Resources Board (ARB) proposed rules for a carbon market which are set forth in the ARB Staff Report: Initial Statement of Reasons (ISOR) (Proposed Regulations to Implement the California Cap and Trade Program Part 1, Volume 1, (October 28, 2010)). Notably, the ARB's proposed rule identifies several categories of offsets that qualify for compliance use, based on protocols developed and approved by the Climate Action Reserve, and contemplates the potential for additional categories of offsets. (See Executive Summary, ARB Staff Report: ISOR, pp. ES4-ES5) The actions of the State of California will, in our view, help establish high standards of quality in voluntary markets, and indicate that policy makers are indeed acting to clarify and reinforce examples of high quality, additional, verifiable and permanent offsets.

In one area, however, the Commission has proposed what we consider to be a policy that may unfairly distinguish between certain offset classes. This is the proposal to require the sellers of offsets whose emission reductions will take place more than two years in the future to notify consumers of this characteristic of their product. Such an obligation has the potential to place entire categories of offsets, including those from avoided deforestation, afforestation, and various other land uses, under a disclosure obligation that could create a consumer perception of lower quality or lesser effectiveness in reducing greenhouse gas emissions.<sup>1</sup>

We believe it is crucial that high standards of environmental quality be established for offsets in both compliance and voluntary markets, and that such standards are especially important for deforestation, afforestation and land-use related offsets. Such standards, however, are available to, or can be developed for policymakers.<sup>2</sup> As such standards are more widely used, both in

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<sup>1</sup> As a practical matter, the issue the Commission is attempting to address can be adequately addressed by high quality offset standards, such as those developed by CAR and other highly credible standard setting organizations. Under such standards, it is impossible to sell or buy offsets based on emission reductions that have not already taken place. For example, under such standards, forestry and land-use based offsets can only be sold for emission reductions that have already taken place. While the projects that produce these emission reductions may well continue to achieve reductions in the future, the actual offsets represent vintages or years in which emission reductions have been achieved prior to certification and sale. Accordingly, there is no opportunity for the sale of future emission reductions in the form of offsets certified by such organizations.

<sup>2</sup> For example, the Climate Action Reserve, in addition to developing the offset standards adopted by the ARB, has also promulgated a standard for forestry-based offsets in the US, and is in the process of adapting that standard for use in subtropical and tropical forests.

Federal Trade Commission

December 10, 2010

Page 4

compliance and voluntary markets, we believe consumers will come to understand the difference between high quality offsets, whose GHG reductions are real, and lower quality offsets, whose emission reductions may be more dubious. It would be inappropriate for the Commission to take actions that would make even high quality forestry and land-use based offsets appear to be of low quality, especially when policy makers are beginning to actively address these very issues. Accordingly, we respectfully urge the Commission not to impose this notification requirement on forestry and land-use based offsets that are developed or approved under standards that only allow for the sale of emission reductions that have already been achieved.

The NRG Companies appreciate the opportunity to comment on the proposed revisions to the FTC's Green Guides. We will continue our efforts to support the robust expansion of renewable energy and carbon offsets markets for consumers and we look forward to the FTC's efforts to ensure that the evolution of these markets continue for the benefit of all stakeholders.

Sincerely,

Steve Corneli  
SVP Sustainability, Policy and Strategy  
NRG Energy, Inc.