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December 10, 2010

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

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

Dear Secretary Clark:

The Renewable Energy Markets Association (REMA) appreciates the opportunity to provide comments on the Federal Trade Commission's (FTC) proposed revisions to the Green Guides (16 CFR Part 260, Project No. P954501).

REMA represents the collective interests of both for-profit companies and nonprofit organizations that sell or promote the sale of renewable energy products, including renewable technology, renewable electricity, and renewable energy certificates (RECs), to individuals, companies and institutions throughout North America. REMA actively engages in policy proceedings at the federal and state level.

REMA supports the FTC in meeting the challenges of revising the Green Guides to reflect a fair, informed, and dynamic marketplace for environmental products. REMA also acknowledges the FTC's statutory responsibilities in crafting and enforcing these rules. When they were first released in 1992, the FTC's Guides for the Use of Environmental Marketing Claims (hereafter "Green Guides") sought to establish general outlines for marketers to describe and distribute their environmentally-related products, as well as provide guidance on consumers' product interpretations to avoid consumer confusion. The most recent proposed revisions to the Green Guides address new developments in substantiating environmental claims that were little known in past editions, as highlighted by the significant addition of renewable energy and carbon offset components.

REMA's Green Guide recommendations are designed to foster the growth of renewable energy products such as Renewable Energy Certificates (RECs) and Green Power programs while maintaining the industry's practice of accurate product and sourcing disclosure in order to protect customers. These formal comments support measures that will instill consumer confidence in renewable energy products, and ensure that marketers have the flexibility to respond to creative customer needs and emerging energy technologies.

Five of the following responses and recommendations address proposed additions to the Green Guides; three separate recommendations respond to FTC discussion points that were not formally adopted in the proposed rulemaking. The summary positions below are elaborated upon later within the comment document.

REMA Position Overview

I. § 260.3 (a) Information required to substantiate green claims

REMA requests for more clarity on the required proximity of substantiating information.

II. § 260.6 (b) 'Material connection' between certifying bodies and marketers

REMA recommends that certification from independent, third parties should not constitute a material connection and disclosure of any fees paid by the marketer to such an organization for certification services should not be required. Also, the use of a marketer's brand logo should not require qualification.

III. § 260.14 (b) 'Made with renewable energy' claims

REMA recommends that an acceptable and sufficient industry claim should be "made with renewable energy."

IV. § 260.14 (c) Threshold for claiming 'made with renewable energy'

REMA recommends that "renewably powered" should mean 100% of electrical consumption is met with a renewable source or combination of renewable sources and anything less than all or virtually all warrants a percentage-based disclosure, and REMA requests continued consumer research to determine distinguishing language for "made with" and "assembled with" renewable energy claims.

V. § 260.14 (d) 'Hosting' of renewable energy systems

REMA recommends that 'Hosting' should be the accepted language for renewable energy generators to use when they have sold the RECs associated with their onsite renewable generation systems but still desire to describe the technology on their property.

VI. Items addressed without issued guidance

a. REC disclosures

REMA recommends that there should be not be a required disclosure of RECs when they are unbundled.

b. Disclosing the geographic location of renewable energy generation

REMA recommends that geographic sourcing disclosure of RECs should occur if local benefits are implied.

c. Substantiating carbon emission reduction claims and the use of RECs

REMA recommends that the FTC should affirm the use of RECs towards reducing Scope 2 Greenhouse Gas emissions.

Voluntary Renewable Energy Market Background and Information

REMA's recommendations take a high level approach. There exists today a vibrant market for individual and corporate customers to voluntarily purchase renewable energy in order to encourage the development of renewable energy resources and to reduce greenhouse gas emissions.

According to the U.S. Department of Energy's Green Power Network, there are currently 133 marketers actively selling to small and large customers, and 20 environmental brokers that facilitate REC transactions between buyers and sellers across the U.S.¹ These providers are in addition to utilities that sell renewable electricity differentiated from standard electricity. There are also thousands of photovoltaic (PV) providers in the U.S. who sell PV systems directly to end-use customers, including large commercial and government customers.

The market for green power (renewable electricity and RECs sold independently of electricity) is strong and growing. In 2009, U.S. consumers made voluntary purchases of renewable energy totaling in excess of 30 million mega-watt hours (MWh), a 17% increase over 2008 levels. Voluntary demand is served almost exclusively by new renewables, meaning renewable generation that began commercial operation since the beginning of 1997. Further, voluntary purchases of renewable energy have grown at an average annual rate of 41% since 2005.² These data demonstrate that the voluntary market for renewable energy is larger than many people recognize. Understanding the voluntary renewable power market's expanse and history should assist the FTC in appraising REMA's recommendations that are intended to support the continued, uninterrupted growth of the market and ensure consumer protection.

I. On Information Required to Substantiate Green Claims, § 260.3 (a)

In § 260.3(a), the FTC states that qualifications and disclosures associated with an environmental claim should be placed in "close proximity to the qualified claim." REMA requests that FTC clarify the proximity of any detailed information required to qualify renewable energy claims. Given the limited physical area on typical marketing materials and product packaging, a general statement of disclosure near the claim could direct the consumer to more detailed information on a marketer's website

Customers regularly perceive official online product websites as sources for additional product information. REMA believes that providing consumers a web address at which they can find all the detailed disclosures meeting the FTC's guidelines is sufficient and asks the FTC to affirm this understanding.

II. On the 'Material connection' Between Certifying Bodies and Marketers, § 260.6 (b)

The FTC recommends additional disclosure for seals granted to members of membership-based industry organizations. REMA supports this approach. However, REMA believes that certification from reputable, independent, third-party consumer protection organizations should never constitute a material connection that would require additional disclosure. The renewable energy market has regional tracking systems to verify renewable energy ownership and transfer, and independent, third-party

¹ U.S. Department of Energy, Energy Efficiency and Renewable Energy Office, Green Power Network, <http://apps3.eere.energy.gov/greenpower/markets/certificates.shtml?page=2>, 22 June, 2010, compiled 15 Nov. 2010.

² L. Bird, J. Sumner, *Green Power Marketing in the United States: A Status Report (2009 Data)*, Golden, CO: National Renewable Energy Laboratory, pg. v, Sep. 2010, 2 Nov. 2010, http://www.renewablemarketers.org/pdf/resources/NREL_2009_VRE.pdf.

certifiers can provide an additional layer of consumer protection. These organizations may require fees for certification in order to sustain their operations. Because marketers possess no more financial ownership or advisory role in these third party certifying bodies than any other stakeholder, REMA believes it is not deceptive to display a legitimate certification mark without disclosing that a fee was charged for certification. Therefore, we recommend the FTC affirm that the use of logos of independent, third-parties do not require disclosure of any fees that may be paid to these organizations.

A potential interpretation of this subsection could imply that the use of a marketer's brand logos by a consumer may create potential confusion, as other customers are capable of interpreting these logos as representing broad environmental claims. REMA does not support this possible extended application of § 260.6 (b). Use of a marketer's logos by a customer does not represent an environmental claim, but rather a declaration of one's supplier, and therefore should be exempt from further disclosure of qualification.

III. On 'Made With Renewable Energy' Claims, § 260.14 (b)

REMA and the FTC understand that the renewable energy markets are continually evolving, creating new sources of electric generation and new financial tools to support them. Customer understanding of renewable energy is rapidly increasing, too. As the FTC itself explained in its Supplementary Information document, "the term renewable energy has an *emerging meaning*"³ [emphasis added]. Rigid definitions would prove burdensome as REC purchases are frequently made from a portfolio of renewable energy with changing source and fuel proportions. To constrain the definition by requiring marketers to detail the generation type risks impeding market growth of an industry that is centered on innovative technologies.

Within the Supplementary Information document, the FTC's product research illustrates a misunderstanding among consumers of what is meant by the term "renewable energy."⁴ Although it may appear reasonable to relieve this confusion by requiring the disclosure of the specific type of energy generation, REMA contends that specifying the source of the renewable energy, as articulated in § 260.14(b), would be overly burdensome as consumers frequently purchase RECs from a portfolio of generation sources.

Knowing the specific generation technology provides little confidence in the product compared to third party validation, certification, and reputable marketers. REMA pledges to work through its education and outreach activities and industry networks to better inform consumers and stakeholders to help differentiate between claims of made with renewable materials versus renewable energy. This would alleviate any potential confusion by the consumer without prohibitively constraining the type of renewable energy that could be provided.

IV. On Establishing a Threshold for Claiming 'Made with Renewable Energy,' § 260.14 (c)

To further assist commercial customers in accurately discussing their renewable energy purchases, REMA supports clear percentage-based disclosures of procured renewable electricity. We discourage

3 U.S. Federal Trade Commission, "Guides for the Use of Environmental Marketing Claims" (16 CFR Part 260), Supplementary Information, <http://www.ftc.gov/os/fedreg/2010/october/101006greenguidesfrn.pdf>, pg. 160.

4 Ibid, pg. 161. Consumers registered confusion when differentiating between "made with renewable energy" versus "made with renewable materials."

broad, unsubstantiated declarations of renewable energy use, such as a business claiming to be “renewably powered” when it has only matched 10% of its electricity consumption with RECs.

REMA agrees with the FTC that consumers believe that an otherwise unqualified claim of “renewably powered” means 100% of electrical consumption is met with a renewable source or combination of renewable sources. REMA contends that anything less warrants disclosure. The creation of an alternative threshold below 100% would inject unnecessary customer confusion and permit renewable energy purchasers to take advantage of prevailing public perceptions of “renewably powered.”

REMA also recognizes the complexity of substantiating a product’s “made with renewable energy” claim, especially when considering modern manufacturing’s geographically diverse assembly and supply chain components. If the FTC were to provide guidance on language differentiating between “*assembled with*” and “*made with*” renewable energy, marketers would be better equipped in applying accurate environmental claims. Therefore REMA recommends that the FTC conduct continued consumer perception research to consider what phrases would most accurately advise marketers in distinguishing what *part* of the product’s manufacturing process was met with renewable energy.

On the issue of accurately claiming renewable energy use when under statutory procurements like a Renewable Portfolio Standard (RPS), REMA believes it is an industry best practice that green energy claims should be reserved for those making voluntary purchases. Companies that are doing nothing more than satisfying their locality’s required standards for renewable energy consumption, such as meeting an RPS, should not be able to claim that they are using green, renewable energy. This claim should be reserved for those companies, organizations, and individuals who go above and beyond statutory requirements.

V. On the Use of ‘Hosting’ to Describe Renewable Energy Systems, § 260.14 (d)

REMA member companies and commercial customers have used the term ‘hosting’ renewable power systems to describe on-site renewable energy generators that have sold the RECs for many years. The use of this terminology has been actively supported by the U.S. federal government, as most recently illustrated by the EPA’s Green Power Partnership Leader 2010 Awards to Kohl’s and the Intel Corporation for—among numerous achievements—being “host” to renewable energy generation on their own facilities after having sold the associated RECs.⁵ By using the term ‘hosting’ the customer has the ability to describe the on-site renewable power, while not claiming to be ‘renewably powered’.

REMA objects to the FTC’s proposed recommendation to disallow the use of the term ‘hosting’ in all instances when describing on-site renewable power systems that have sold the RECs to third party purchasers. ‘Hosting’ language permits a property owner to acknowledge and publicly describe the existence of renewable energy generation technology on their rooftop, lawn, or back forty. If the FTC proposed provision were taken to its logical end, it would mean a farmer would not be allowed to describe the presence of wind turbines on his or her own acreage. Similarly, a university or retail store would not be able to discuss the solar system on their roof, even when it is within plain view. More importantly, by disallowing the already federally allowed mention of on-site renewable technology in instances where RECs have been sold, the FTC would be creating a huge new disincentive to the voluntary private sector and government investment in renewable power. This is unnecessary and we

⁵ U.S. Environmental Protection Agency, 2010 Green Power Leadership Awards, 24 Oct., 2010.

<http://epa.gov/greenpower/awards/winners.htm>

believe counter to the intention of parallel government renewable power incentive programs at the State and Federal level.

It is our position that allowing use of the term 'hosting' does not conflict with existing renewable marketplace standards. REMA continues to support a clear distinction between generating renewable energy (and directly claiming the subsequent environmental attributes) and providing facilities with onsite renewable energy generation an opportunity to showcase their support of renewable energy. Clearly, if the party in question has sold the RECs from their onsite system, the party cannot claim to be renewably powered. The party could, however, describe the fact that a renewable power system is located or hosted on the premises, and selling RECs to the local utility or financing entity. By disclosing the sale of RECs, and not claiming to be renewable generated, the owner of the system is simply reporting that the on-site solar or wind system has been added to the renewable energy mix.

As it evaluates how to best protect consumer interests in the steadily evolving renewable power landscape, REMA respectfully recommends that the FTC remain mindful of the complex range of participants in renewable energy markets. Developers, businesses, landowners, homeowners, and government are all critical elements of the energy value stream and contribute meaningfully to continued development and operation of the renewable energy industry. Each member plays its own role: the host hosts; the developer develops; the facility owner owns; the electricity buyer buys the electricity. Denying one participant of this market the right to highlight their participation could unintentionally stifle the sustained economic growth of all stakeholders in the dynamic voluntary renewable power market. Such an economic downturn can be easily avoided simply by maintaining existing and commonly accepted industry standard terminology that allows on-site renewable power customers to describe their role in 'hosting' a renewable power system in those instances when the associated RECs have been sold.

VI. Items Addressed Without Issued Guidance (pgs. 163-186 of the Supplementary Information Section)

On REC disclosures, pg. 163

REMA agrees with the FTC's conclusion that the revised guides should not advise marketers to disclose that their renewable energy claims are based on RECs. REMA maintains its position that no matter whether the product is electricity bundled with renewable energy attributes or RECs sold separately from electricity, the customer receives the same environmental benefits. Years of REMA-member experience involving the certification, validation, and sale of RECs support the FTC's discussion position that, "No evidence on the record suggests that a contract-based system more reliably tracks renewable energy than a well-designed REC-based system."⁶

On Disclosing the Geographic Location of Renewable Energy Generation, pg. 164

REMA acknowledges the FTC's commentary concerning renewable energy advertisements that imply local benefits and subsequent potential customer confusion. When an advertisement for a renewable energy product implies a local benefit, REMA supports the geographic disclosure of the renewable energy generator.

⁶ Op. Cit. U.S. Federal Trade Commission, pg. 164

On Substantiating Carbon Emission Reduction Claims and the Use of RECs, pg. 186

REMA asks that the FTC affirm that the use of RECs can assist a consumer in reducing their Scope 2 emissions. Although the FTC declined to provide general guidance on this topic, claiming that it was “beyond the agency’s purview,”⁷ REMA posits that the FTC should take this opportunity to cement the fungibility of RECs in meeting Scope 2 GHG reductions, just as other influential governing bodies have done.

Recent actions within the U.S. federal government support REMA’s recommended position on RECs and Scope 2 emissions. Executive Order 13514 requires federal agencies to make greenhouse gas emission reductions a priority for federal agencies, and begin reporting greenhouse gas emissions from direct and indirect activities.⁸ Moreover, on October 6, 2010, the White House Council on Environmental Quality (CEQ) released its Federal Greenhouse Gas Accounting and Reporting Guidance, which clearly states that RECs are among the limited number of instruments that may be used to reduce the purchaser’s Scope 2 emissions associated with conventional energy purchase and consumption.

Additionally, The Environmental Protection Agency’s (EPA) Green Power Partnership, which supports Fortune 500 companies, utilities, and government agencies in procuring renewable energy, explicitly clarifies that voluntary purchasers of renewable energy or RECs may—and should—rightly claim the indirect emissions reductions resulting from their organization’s delivered electricity consumption.⁹ The FTC has already embarked on issuing guidance for environmental commodities such as RECs and Carbon Offsets, and issuing further guidance on the interplay between these two items could provide added consumer clarity.

Concluding Remarks

Again, REMA wishes to thank the FTC for inviting industry stakeholders and the general public to comment on the 2010 revision of the Green Guides. The FTC’s series of workshops and stakeholder outreach have yielded an improved set of guidelines that more accurately reflect the renewable energy marketplace than previous editions. Incorporating REMA’s aforementioned recommendations will provide renewable energy project developers, marketers, and consumers the confidence and clarity they require to advance technologies and products that will reduce the effects climate change and improve the lives of millions.

For either questions or clarifications regarding REMA’s formal comments, please contact Kyle Gibeault, REMA General Manager, at 202-596-3974, or kgibeault@ttcorp.com.

7 Ibid, pg. 186.

8 Executive Order 13514 of October 5, 2009, “Federal Leadership in Environmental, Energy, and Economic Performance,” Federal Register Vol. 74, No. 194. Thursday, October 8, 2009.

9.U.S. Environmental Protection Agency. Last updated, March 24, 2010, at <http://www.epa.gov/greenpower/buygp/claims.htm>. See specifically item 7, “Making Environmental Claims.”

Respectfully submitted,

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