December 10, 2010

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

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

Dear Secretary Clark:

Community Energy, Inc. (CEI) 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).

As a renewable energy marketer and developer, CEI supports the FTC in meeting the challenges of revising the Green Guides to reflect a fair, informed, and dynamic marketplace for environmental products. CEI also acknowledges FTC's statutory responsibilities in crafting and enforcing these rules. When it was 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 deception. 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.

CEI'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. These formal comments support measures that will instill consumer confidence in renewable energy products, and ensure that marketers are provided the flexibility to respond to creative customer needs, novel financing instruments, and emerging energy technologies. Three 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:

VRE Background Information

CEI's following recommendations are best understood from an initial macro level view. 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 and associated RECs directly to end-use 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 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 when these markets opened. 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 most people recognize, and the markets' expanse and history is the basis for CEI's recommendations.

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

CEI agrees with the FTC that the source of renewable energy (e.g., wind or solar energy) should be clearly stated when making claims of renewable energy use and that the word "renewable" is not specific enough to provide consumer disclosure. Consumers are interested in the source of renewable energy and have preferences among the technologies. Our experience is that consumers want to know how green power is generated and we suggest that they have the right to know.

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

To further assist commercial customers in accurately disseminating their renewable energy purchases, CEI supports clear percentage-based disclosures of procured renewable electricity in place of broad, unsubstantiated declarations of renewable energy use (i.e. a business claiming to be "renewably powered," when it has only replaced 10% of its electricity consumption with RECs).

CEI 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. CEI 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."

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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

CEI also recognizes the complexity of substantiating a product's "made with renewable energy" claim, especially when considering manufacturing's geographically diverse assembly and supply chain components. If 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 CEI recommends that FTC conduct continued consumer perception research to consider what phrases would most accurately advise marketers in distinguishing what *part* of the product's manufacturing supply chain was supplied with the use of renewable energy.

On the issue of accurately claiming renewable energy use when under statutory procurements like an RPS, CEI believes it is an industry best practice that green energy claims should be reserved for those making voluntary purchases distinguishable from conventional grid supply. 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)

The term „hosting' when used in reference to a solar system from which the Renewable Energy Credits are not retained by the host is the industry standard. This standard has been created precisely to make the distinction between users of renewable energy who purchase or retain Renewable Energy Credits and those who do not and to avoid potential double-counting. This term has become the industry standard way for solar hosts to describe their relationship to solar. To disallow the use of the term host would leave no way for solar hosts to communicate the value and role of their site in collecting the solar energy that powers the solar generation, and would tend to exclude them from the market, limiting the adoption of solar. To illustrate the industry acceptance and use of „hosting,' the EPA's recent Green Power Partnership Leader 2010 Awards endorsed both Kohl's and the Intel Corporation for—among numerous achievements—the "hosting" of renewable energy generation on their own facilities.[3]

This stance does not conflict with existing marketplace standards. CEI continues to support a clear distinction between generating renewable energy (and 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 proposed provision taken to its logical end, it would artificially constrain ordinary site descriptions and impact renewable energy marketing beyond simply „hosting,' whereby even a farmer would not be allowed to mention the presence of wind turbines on his or her own acreage. It might be comparable to a city or sports stadium including the name of the home team even though they do not employ the players. „Hosting' language permits a property owner to acknowledge the existence of renewable energy generation technology on their property, building, lawn, or farm acreage, regardless of technology or scale.

3 U.S. Environmental Protection Agency, 2010 Green Power Leadership Awards, 24 Oct., 2010. http://www.epa.gov/greenpower/awards/winners.htm.

FTC must remain mindful of the complex range of participants in the renewable energy markets. Businesses, landowners, and homeowners are all critical elements of the 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 part of this marketplace the right to recognize its own participation could stifle growth of all players. As leaders in the renewable energy markets, CEI supports the goal of educating both consumers and providers with accurate and informative terminology to describe their unique renewable energy generation arrangement.

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

On REC disclosures, pg. 163

CEI asks FTC to distinguish between RECs and renewable electricity (or renewable power). While all claims of using renewable energy must be based on ownership of RECs, only when those RECs come from projects generating within a customer's power pool (defined as The North American Electric Reliability Corporation (NERC) region, Independent System Operator (ISO), Regional Transmission Organization (RTO) or Balancing Authority Area of the customer being served; and/or an adjacent NERC, ISO, RTO or Balancing Authority Area region where the electricity, bundled with a REC, is wheeled into the respective region of the customer being served) should a customer be able to claim using renewable electricity or renewable power. If a customer is purchasing RECs from projects outside its power pool, they should be required to distinguish this product as matching their electricity usage with RECs. This is the approach taken by The Center for Resource Solutions' Green-e Energy Program and affirmed by the PA Public Utility Commission and other regulatory bodies in reviewing marketing claims associated with renewable energy products.

While CEI acknowledges that tracking physical electricity flowing through the grid is impossible, the power pools serve as general boundaries within which added generation affects generation dispatch and load, and across which electricity does not flow without special consideration. Following is an example of how no distinctions between renewable electricity within a power pool and RECs from outside potentially lead to deceptive claims: marketers in a distant grid region, say the northeast, could claim to be "Powered by Wind Energy" by purchasing RECs from Texas (ERCOT), however it would be possible that no wind energy is generated within the grid aggregation of generation that serves the customer. This claim is deceptive because there is no way that customers within that distant region are using or supplied by wind energy in Texas. On the other hand, if marketers within an ISO, say the PJM, region are buying RECs generated at wind energy projects within the PJM region, the electricity from those wind projects is part of the aggregation of generation and dispatch serving those customers. In that case the purchase of RECs guarantees a like amount of wind generation in the grid supply serving that customer, which is the claim.

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

In CEI's ten years of renewable energy marketing experience, consumers assume a local benefit of renewable purchases unless they are told the renewable generation is not local to them. For consumers, the idea that they are receiving renewable electricity that may come from the other side of the country is counter intuitive. Because consumers assume generation is local, CEI asks FTC to require marketers to disclose generation source if RECs are sourced outside a customer's power pool as defined above.

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

CEI asks that FTC affirm that the use of RECs can assist a consumer in reducing their Scope 2 emissions. Although FTC declined to provide general guidance on this topic, claiming that it "beyond the agency's purview,"[4] CEI posits that FTC should take this opportunity to cement the fungibility of RECs in meeting Scope II GHG reductions, just as other influential governing bodies have done.

Recent actions within the U.S. federal government support CEI'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.[5] 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.[6] 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, CEI 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 CEI'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.

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4 Ibid, pg. 186.

5 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.

6.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

For either questions or clarifications regarding CEI's formal comments, please contact Jay Carlis, Vice President of Sales and Marketing at 610-230-0378 or Jay.Carlis@CommunityEnergyInc.com .

Sincerely,

Jay Carlis, Vice President, Sales and Marketing
Community Energy, Inc.