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Mr. Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington DC 20580

Re: Comments on Green Guides

Please accept these comments on "Guides for the Use of Environmental Marketing Claims" (Green Guides) on behalf of every American who uses electricity. As described more fully below, in one critical aspect the Green Guides are seriously inadequate: they fail to address the sale of electricity to consumers from so-called "renewable" or "green" sources. Instead the Guides address only marketing claims about *products* "made from" so-called renewable energy. (See Guides, pages 154 to 186 for description of Renewable Energy Claims and Carbon Offset Claims, which the Green Guides state are "Claims Not Addressed by the Current Green Guides".) Yet, as shown by the specific examples below, throughout the U.S., electric power producers, wholesalers, and retailers are currently engaged in widespread marketing fraud with regard to "renewable energy" made by burning "biomass" which can consist of trees, tires, garbage and other similar materials.

In fact, consumers have already filed hundreds of false marketing claims with regard to electric power facilities that burn or propose to burn "biomass" for electricity. The failure of the Guides to address the issue of the sale of "renewable energy" in the form of electricity that is sold to the grid and hence to consumers renders the Guides significantly defective. The FTC has abdicated its statutory duty to protect the consumers from false marketing claims by failing to provide guidelines for the sale of so-called"green" electricity.

This letter is responsive to questions 1, 15, 16, 17, and 18 on which the FTC seeks comments.

I. The Guides erroneously fail to cover claims about (a) the sale of electricity generated by "renewable" sources and (b) offsets.

The Guides state that they "apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale,

or sale of such item or service to individuals, businesses or other entities. The Guides apply to environmental claims in labeling, advertising, promotional materials and all other forms of marketing in any medium, whether asserted directly or by implication, through words, symbols, logos, depiction, product brand names, or any other means." Guides, page 194. Electricity used for individual, commercial or industrial consumption is a "service" as that term is used in the Guides. Claims about the "green" attributes of "renewable electricity" are made both by the producers of the electricity and by the utilities which provide electricity to users (individuals, business, and other entities.) Examples of these "green" claims are provided below. Across the country electric power generators and utilities that sell the power to end users make environmental claims in the labeling, advertising, promotional materials and in other forms of marketing, both directly and by implication, through words, symbols, logos, depiction, and product names. Examples are widespread. These claims are made by virtually every utility in the U.S. as to the environmental attributes of the electricity they are selling to consumers. Yet, at least half of the claims are deceptive and misleading, as shown below.

The rationale provided at pages 154-186 as to why the FTC is not covering renewable energy claims and offset claims are defective, arbitrary and capricious.

The following statement on page 152 of the Guides, in the Overview totally lacks merit, is inaccurate, and factually invalid:

> "Renewable energy generally refers to electricity derived from constantly replenished sources (e.g., wind power). Once renewable electricity is introduced into the grid, it is physically indistinguishable from electricity generated from conventional sources. Consumers, therefore, cannot determine for themselves the source of the electricity flowing into their homes. Because electricity transactions can be tracked, however, retail customers can "buy" renewable power by either: (1) purchasing renewable energy certificates (RECs); or (2) purchasing renewable power through contracts with their utility."

In fact, according to the Biomass Power Association and state and federal government figures (easily found on websites dealing with renewable energy) at least 50% of "renewable energy" generated in the U.S. is derived from burning "biomass" or garbage. Most of the biomass consists of trees from America's forests, or agricultural materials. When biomass or garbage is burned to make so-called "renewable" energy it emits toxic air pollution, dries up rivers, and causes climate change. www.energyjustice.net Therefore, in fact, renewable energy does not "generally refer to electricity derived from constantly replenished sources (e.g. wind power)" since most of it comes from incinerators. Burning trees is not infinitely "renewable" like wind or solar, because eventually there won't be enough trees to burn. Moreover, utilities market their "renewable electricity" directly to consumers by advertisements on websites and on consumers' utility bills, using

logos, images, and materials that directly and by implication portray a portion of the electricity being sold to the consumer as "green" --- when it fact, 50% of it on average across the U.S. comes from an incinerator that burns "biomass" – not from wind or solar or a non-smokestack technology.

Consumers are deceived and utilities engage in false marketing by using images such as windmills on their marketing materials when the "renewable energy" is generated by burning trees or other materials in incinerators. As the Guides note on page 154, many businesses "tout their renewable energy purchases to market their products or services. For example, a clothing manufacturer may claim that its garments are "made with renewable energy…." Page 154. While the Guides cover the business' claims about the product (i.e. the clothing) they are selling, the Guides ignore the marketing by the electricity generator and the utility to the business. Hence, this allows a business to claim that its product is made with "renewable energy," implying that it is "green" and good for the environment, when, as shown in more detail below, the electricity is made by burning biomass in an incinerator.

The Guides discuss comments made about the definition of "renewable energy." Then it states, page 160,

> "First, the term "renewable energy" has an emerging meaning. Industry does not appear to have a uniform definition of the term, and commenters discussed different energy sources that they believe are "renewable." There appears to be a consensus, however, that renewable energy excludes fossil fuels. The results of the Commission's study suggests that a significant minority of consumers have a similar, general understanding of renewable energy; specifically, it is not derived from fossil fuels. Based on both this information and the comments, the Commission proposes advising marketers not to make an unqualified "made with renewable energy" claim if an item was manufactured with energy produced using fossil fuels."

This comment is legally defective and made with complete ignorance of the law. The term "renewable energy" is defined under state laws and has a specific meaning in each state that has a "renewable portfolio standard." Under state RPS's, utilities are required to purchase a certain percentage of the electricity from "renewable energy generating sources." These sources are defined differently in each of the states with an RPS. In some states, burning tires, garbage, poultry litter, dead animals, and more, qualifies as "renewable energy." www.energyjustice.net There is no mystery here as to what constitutes "renewable energy" that utilities sell to consumers as "green" electricity. While the industry comments reflected in the guides would lead one to believe that there is a mystery, and that renewable means anything but "fossil fuels", the industry, particularly large waste corporations like Covanta Waste have a vested interest in obfuscating the issue because they make billions of dollars selling "green" energy made from burning "biomass" which can consist of trees, garbage, tires, and so forth depending on the state definition.

Regulating only the claims of the business that sells the clothing "made from" renewable energy allows the incinerator industry, power producers, and utilities to continue to market "renewable energy" made from burning biomass, garbage, tires, etc. as "clean and green." This is misleading and false advertising and must be addressed by the Guides.

II. Ways in which biomass combustion power facilities currently violate the proposed Guides, indicating a need to ensure that power sales are covered.

The Guides do not consider the use of biomass combustion to generate electrical energy on a commercial scale. This is despite the fact that currently hundreds of these plants are proposed around the country and they are marketed using descriptors like "green", "climate friendly", "carbon neutral" and "renewable" in ways that are in violation of provisions 260.2 Interpretation and Substantiation of Environmental Marketing Claims, 260.4 General Environmental Benefit Claims, and § 260.14 Renewable Energy Claims [as examples see http://libertygreenrenewables.com, http://www.scottsburgrenewableenergy.com, www.pioneerrenewable.com]. Moreover, the common claims of the proponents of biomass combustion frequently are overstatements of the environmental attributes [see page 201] that have no scientific substantiation, e.g "cleaner than coal". http://nobiomassburning.org/docs/Plant_Data_Chart_2.pdf

III. Section 260.14 "Renewable Energy Claims" and Section 260.15-Renewable Materials Claims should cover the sale of electricity

This sections details why the sale of biomass combustion power, one form of renewable energy, should be covered by the Guides.

A. Failure to meet the definition of renewable stated in the Guide.

Biomass combustion produces power by a fundamentally different process than the production of power by other "renewables" such as wind and solar, and should be treated as a separate sector by the Guides. On page 152 the term is defined as "Renewable energy generally refers to electricity derived from constantly replenished (e.g., wind power)." For the burning of biomass, especially wood, there is no automatic constant replenishment because the operators of the plants are not responsible for maintaining the actual carbon storage capacity of the forests. Therefore, the claim that biomass combustion is "renewable" is not credible. Therefore the claims that biomass is renewable without qualification is in violation of 260.14, and this provision of the Guide needs to be rewritten to explicitly address biomass combustion.

B. Guides direct that a claim provide substantiation via a Performance Test

On page 173, the Guides indicate the necessity of meeting a performance test to substantiate a claim. Performance test is defined as "whether the project achieves a level

of performance (e.g., an emission rate, a technology standard, or a practice standard) with respect to emission reductions and/or removals that is significantly better than business as usual."

First, though the claims are made that biomass combustion is clean the smokestack emissions of these plants for carbon dioxide, NOx, and particulates are higher, per unit of power produced, than burning coal to produce electricity. The emissions caused by biomass combustion must be addressed in the Guide.
http://nobiomassburning.org/docs/Plant_Data_Chart_2.pdf

Second, biomass power facilities are frequently stated to be "high efficiency". These plants typically run at 22-24% thermal efficiency, whereas coal plants typically run at 33% efficiency and natural gas plants may exceed 75% efficiency. Typical of the information currently before the public is the following:

On the web site of one company marketing its "renewable energy", http://libertygreenrenewables.com/content/technology, the boiler technology chosen is cited as having "demonstrated high thermal efficiency." In fact these boilers operate at an efficiency of about 24-26%, significantly less than other types of boilers using fuels such as natural gas where efficiencies often exceed 70% in some applications. In addition the wood storage piles at each site will be uncovered and the moisture content of the wood will affect both thermal efficiency and air emissions, but this is not accounted for. The industry also states the bubbling bed fluid technology is claimed to have "a low emissions profile." There is no substantiation to this, and in comparison to other fuel combustion burners there is nothing that is inherently low emissions about the bubbling bed technology as shown in the table in the air permit on potential to emit.

Third, biomass combustion facilities are marketed as "carbon neutral" but fail to address the timing of emissions reductions. The Guide on p. 180 reflects that emissions that took as long as three years to be balanced were not considered by poll respondents to be balanced or neutral. Moreover, in addressing offsets on p/ 183 the statement is made that "when emission reductions did not occur for several years, 43 percent of respondents indicated that the carbon offset claim was misleading." Since the current scientific data indicates that the duration of time to achieve balance of carbon emissions is in excess of a hundred years, claims of carbon neutrality by the proponents of biomass combustion are in violation of 260.2 and represent an overstatement of an environmental attribute [see P 201].

The following is an example of a typical biomass industry web site with references to carbon neutrality: Liberty Green claims on its website http://libertygreenrenewables.com/content/objectives that the plant will be designed to have "carbon neutral emissions" and on page 3 of the proposal that its proposed plant would be "carbon-neutral." Such claims cannot be substantiated. The web site cites credits which are now considered out of date, while more recent science [Searchinger, et. al. Science 326:527, Oct 23, 2009], including the EPA finding and the articles cited below lend reasonable doubt to the statement. On the

web site [http://libertygreenrenewables.com/content/environmental-groups-support-biomass-generation] the statement is made that "The result is no net addition of C02 into the atmosphere." yet as noted below, while technically true, the time window is over hundreds or thousands of years, a time window that means biomass combustion in the next few decades will actually accelerate the rise of carbon dioxide in the atmosphere. The information provided by Liberty Green is deceptive because it does not make clear that the time to achieve no net addition of carbon is, at minimum centuries.

The FTC in developing the Guides should have taken into consideration that the EPA has issued a proposed Endangerment Finding on greenhouse gases and CO2. The scientific reports that the EPA relied on in making this finding are used to justify the statement that "for a given amount of CO2 released today, about half will be taken up by the oceans and terrestrial vegetation over the next 30 years, a further 30 percent will be removed over a few centuries, and the remaining 20 percent will only slowly decay over time such that it will take many thousands of years to remove from the atmosphere." 74. Fed Reg.18886, 18899. Liberty Green Renewables, whose website is cited above therefore, lacks a reasonable basis to claim "carbon-neutrality" without clearly indicating the time it will take to achieve "neutrality". The FTC should address the issue of carbon neutrality of biomass burning in the Guides, since there are perhaps hundreds of examples like Liberty Green where industry is marketing its electricity as "carbon neutral" and beneficial to the climate.

The Liberty Green web site does not list the amount of carbon being emitted from the plant nor does it explain how the plant will "compensate" for those emissions, likely to be in excess of 600,000,000 pounds of carbon dioxide per year. Therefore Liberty Green lacks a reasonable basis to claim "carbon-neutrality".

On the Liberty Green website, Objectives page [http://www.libertygreenrenewables.com/content/objectives] the claim is made that the plant is "designed with carbon neutral emissions" There is nothing in the design of the biomass facility as currently known that makes the emissions carbon neutral. This claim is totally false and unsubstantiated and such claims should be covered by the Guides.

In sum, the Guides should cover the marketing of electricity generated from renewable sources, and require substantiation of claims via Performance Tests.

III. Claims about the ozone, Guides, Section 260. 10

This section states that it is deceptive to misrepresent, directly or by implication, that a service is safe for, or friendly to, the ozone layer or the atmosphere. Biomass combustion produces more NOx and particulates per until of power than burning coal [see A above] and biomass combustion produces significant amounts of volatile organic chemicals. In the presence of water and heat these compounds form ozone. Yet production of these compounds is typically not accounted for by the proponents of biomass. These claims should be covered by the Guides.

IV. False claims of cost efficiency, Sections 260.2 and 260.4

The proponents of biomass facilities say they are cost efficient, yet National Renewable Energy Labs has found that biomass combustion is actually one of the most expensive forms of power generation after accounting for all the tax subsidies and grants.
http://www.nrel.gov/analysis/tech_costs.html
ttp://www.nrel.gov/analysis/analysis_tools_tech_bio.html/

The following is an example from the Liberty Green Renewables website:

The web site states that the generation of the electricity will be cost efficient: "Generating power through the use of biomass represents the most cost-effective and cleanest way to provide renewable electricity" [http://www.libertygreenrenewables.com/content/frequently-asked-questions-woody-biomass-power-generation] Yet the web site does not substantiate this in any way, citing only the subsidies which use tax dollars to make the plant profitable -- hence ultimately costing taxpayers, whether they be residents of Indiana or wherever the power is cold, millions of dollars even if it is not reflected in the monthly bills of the residents of Indiana. The publication Business First of Louisville on December 31, 2008, quoted one of the Liberty Green Renewables investors, Mr. Naulty. It reported Mr. Naulty,

"said a local utility has signed a letter of intent with Liberty Green Renewables to purchase all of the electricity generated by the plant, as well as the plant's Renewable Energy Credits. He declined to disclose the identity of the company, citing a confidentiality agreement with the utility." [http://www.bizjournals.com/louisville/stories/2008/12/29/daily33.html]

So, while the company claims the electricity will be "cost effective" it will not disclose financial figures. Without the actual numbers involved there is no way to substantiate the claim. Thus, the Guides need to cover such claims.

V. Other false claims as to carbon cycle that should be covered by Sections 260.2 and 260.14

The Liberty Green Renewables website provides further examples about why biomass energy should be covered by the Guides.

On the "Environmental Benefits" page of the Liberty Green Renewables web site [http://www.scottsburgrenewableenergy.com/?q=content/environmental-benefits], the company indicates that:

> "If the biomass material is burned to produce power, rather than allowed to decay, the carbon dioxide released to the air through the combustion process is no greater than the amount produced through natural decay. This is why biomass power generation is considered "carbon neutral".

A similar claim was made in a letter sent to the citizens of Scottsburg, Indiana on November 3, 2009, which states "Biomass energy is considered carbon neutral because it doesn't add more carbon dioxide to the air than would naturally occur." In fact when trees decay, substantial amounts of carbon are returned to the ground and remain as soil nutrients. Moreover, the window of time for release of carbon is much slower than when the tree is burned, a process that vaporizes more than 95% of the tree, releasing almost all of the carbon and other potential pollutants. There is nothing in the ecosphere that will rapidly reabsorb or balance the carbon released by burning. Therefore the conclusion that "this is why biomass power generation is

considered ‘carbon neutral’” is without merit and is inaccurate and is an example of the type of claim that should be covered by the Guides in order to protect consumers.

On the “Biomass” research page of the Liberty Green web site [http://www.libertygreenrenewables.com/content/environmental-groups-support-biomass-generation] the statement is made: “This also avoids the concern about the fate of sequestered CO2 and its long-term environmental effects.” However, scientific facts indicate that the immediate spike in carbon dioxide emissions from biomass combustion will require just as much sequestration or immediately applicable “neutralization” as burning fossil fuels if climate change and the rise in atmospheric carbon dioxide is to be slowed by reducing current and near-term levels.

IV. Health impacts

Because of the emissions of particulates and dioxin, as well as other hazardous air pollutants [HAP], there is a significant health risk to communities from biomass combustion facilities that are marketed as “clean and green” “renewable energy.” Multiple physicians groups as well as the American Lung Association oppose the building of these plants. Information and the letters are found on: http://www.saveamericasforests.org/Forests%20-%20Incinerators%20-%20Biomass/index.html

Particulate emissions from biomass combustion facilities are of particular interest since there is no known safe threshold of exposure [http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=58003,] and a known linear dose response curve to exposure [http://circ.ahajournals.org/cgi/content/full/109/21/2655] which makes these chemicals significantly different from other hazardous pollutants where a safe threshold can be set.

The latest research has led the American Heart Association [http://circ.ahajournals.org/cgi/content/full/109/21/2655 p 116.] to conclude that Although the dangers to 1 individual at any single time point may be small, the public health burden derived from this ubiquitous risk is enormous. Short-term increases in $PM_{2.5}$ levels lead to the early mortality of tens of thousands of individuals per year in the United States alone.”

These risks are not acknowledged in the information available to the public from the proponents of biomass.

The Guide must have substantial additions written in to address the use of biomass combustion for the generation of electrical power. The EIA has estimated that by 2020 there may be as much as 70 GW of electrical power being generated in the country from biomass combustion. [http://www.eia.doe.gov/oiaf/analysispaper/biomass/figure_4.html] This would produce in excess of 700,000,000 tons of carbon dioxide every year and millions of tons of particulates and NOx. This is hardly clean and green power and will affect the lives of millions of citizens. The marketing claims currently being made should be addressed in the Guides so that American citizens can make informed decisions about whether or not to buy the electricity from these facilities.

Very Truly Yours,

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For Biomass Accountability Project