



December 10, 2010

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

**Re: Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954501**

Dear Secretary Clark,  
3Degrees Group, Inc. (3Degrees) appreciates the opportunity to comment on the Federal Trade Commission's (FTC) proposed revised Guides for the Use of Environmental Marketing Claims (Green Guides). 3Degrees is a leading environmental commodities sales, trading, and advisory firm that markets renewable energy certificates (RECs) and carbon offsets in compliance and voluntary markets across the United States. 3Degrees serves hundreds of businesses, utilities, and other load serving entities, along with many thousands of residential customers through our utility green power program marketing services. In this capacity, 3Degrees seeks to implement best practices for marketing and disclosure and fully supports the FTC's goal to prevent consumer deception and increase the integrity of environmental claims.

The following comments are meant to offer insight into areas of the environmental markets in which 3Degrees has particular expertise. They are listed by section according to the order of the Green Guides.

**§ 260.3 General Principles**

**§ 260.3 (a)**

3Degrees fully supports a FTC requirement that, to ensure adequate consumer disclosure, any information associated with environmental claims should be clear, prominent, and understandable. Many environmental claims, however, may use accounting methodology or data that needs explanation at a level of detail that is often unachievable within the spatial limitations of a marketing piece or product packaging. Nevertheless, customers deserve this information. 3Degrees suggests that the FTC clarify the language used in § 260.3(a) to allow disclosure language near an environmental claim to direct a consumer to a website with more detailed and specific information. As the section reads now, the language could be interpreted as requiring that, if a renewable energy marketer were to use a green power environmental equivalency developed by the U.S. Environmental Protection Agency<sup>1</sup> (EPA), the FTC would require that the entire methodology behind the calculation to be posted "in close

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<sup>1</sup> U.S. EPA Green Power Equivalency Calculator Methodologies: <http://www.epa.gov/greenpower/pubs/calcmeth.htm> (retrieved 12/9/10).

proximity to the qualified claim.”<sup>2</sup> 3Degrees does not believe this is the FTC’s intent and requests clarifying language from the FTC to this effect.

## **§ 260.5 Carbon Offsets**

### **§ 260.5 (a)**

3Degrees supports the FTC’s guidance that carbon offset marketers should “employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions and to ensure that they do not sell the same reduction more than one time.”<sup>3</sup> To ensure proper consumer protection, carbon offsets should be real, permanent, and verified by third-party programs. Double counting should not be permitted.

### **§ 260.5 (b,c)**

3Degrees agrees with the FTC’s guidance as it relates to claims of emission reductions that may occur in the future and supports a two year threshold. We also agree that it is “deceptive to claim, directly or by implication, that a carbon offset represents an emission reduction if the reduction, or the activity that caused the reduction, was required by law.”<sup>4</sup>

## **§ 260.6 Certifications and Seals of Approval**

### **§ 260.6 (a)**

3Degrees agrees with the FTC’s proposed guidance and supports the use of independent, third-party certification for products and services. Legitimate certification increases consumer protection and confidence.

### **§ 260.6 (b)**

3Degrees agrees with the FTC that when a material connection exists between a marketer and certifying body (i.e., the connection is not reasonably expected by the audience), the marketer should fully disclose that relationship. To use an FTC example, there is a material connection when the certification comes from a trade association of which the marketer is a dues-paying member.<sup>5</sup> “[C]onsumers are likely to believe [the certification] reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser.”<sup>6</sup> To state the FTC guidance in another way, unless otherwise disclosed, consumers reasonably expect that a certification mark comes from an independent third-party.

3Degrees believes it is then logical to conclude that, when the certification comes from an independent third-party, no additional disclosure is necessary. Unlike a certification mark from a marketer’s trade-association, a marketer is just one of many stakeholders

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<sup>2</sup> FCT Green Guides. Section 260.3 (a).

<sup>3</sup> Ibid. Section 260.5(a)

<sup>4</sup> Ibid. Section 260.5(c)

<sup>5</sup> FTC’s Endorsement Guides, 16 C.F.R. Section 255.5

<sup>6</sup> Ibid. Section 255.0 (b)

purchasing a service from an independent third-party certification organization. The marketer has no more financial ownership or advisory role over the certifying organization than any other stakeholder. 3Degrees believes that reasonable consumers understand that a certification organization cannot provide its services for free and that it must recoup its cost through certification fees. 3Degrees believes it is not the FTC's intent to require disclosure for independent third-party certification and asks that the FTC affirm this position.

#### **§ 260.6 (c,d,e)**

Regarding section 260.6 (c,d,e), 3Degrees agrees with and supports the FTC's guidance. Third-party certification does not eliminate a marketer's obligation to ensure that it has substantiation for all claims reasonably communicated by the certification. Marketers should not use unqualified certifications and any language qualifying a certification should be clear, prominent, and convey only the benefits associated with the certification.

#### **General comments**

In cases where a marketer of renewable energy and/or carbon offsets is contractually required to comply with a certification organization's standards on a regular schedule, 3Degrees believes that it is unnecessary to inform consumers that a renewable energy or carbon offset product has yet to be evaluated by the certification organization. Electricity use and delivery are real time events that cannot be verified until after the fact; it is logistically impossible to audit the balance of supply and sales every time a marketer makes a sale. Such a requirement would place insurmountable burdens on marketers due to the variability of electricity or offset generation and customer sales.

### **§ 260.14 Renewable Energy Claims**

#### **§ 260.14 (b)**

In its Supplementary Information, the FTC points out that some consumers "believe that a 'made with renewable energy' claim implies that the advertised product is also made with renewable materials [...] or made from recycled materials[...]. The cause of these consumers' confusion is not entirely apparent."<sup>7</sup> While 3Degrees shares the FTC's desire to alleviate consumer confusion, we believe that the FTC's proposal to require the exact source of the renewable energy is not the best solution for the following reasons:

- 1) Many corporate buyers of renewable energy or RECs take a portfolio approach to purchasing. This means that the renewable energy they buy may vary over the course of a multi-year purchasing contract, coming from many different renewable energy generation sources. To require the naming of specific resource type is overly burdensome and has the potential to drive up the cost of procurement for the end corporate REC buyer by requiring them to limit their renewable energy purchase to a specific type(s) of renewable energy or make burdensome disclosures.

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<sup>7</sup> FTC, Supplementary Information, Guides for the Use of Environmental Marketing Claims. Section VI.D.4.(a)

- 2) As the FTC states in the Supplementary Information, neither this nor other qualifiers were tested on consumers.<sup>8</sup> Because the proposed qualifier would create a significant burden and its effectiveness is untested and unknown, 3Degrees recommends that the FTC remove the requirement.

If the FTC feels this requirement is absolutely necessary to alleviate consumer confusion, 3Degrees recommends that the guidance is amended to require an *example* of renewable energy, rather than the exact type of renewable energy purchased. This would provide context for the renewable energy claim and *may* help reduce consumers' misperception without prohibitively constraining the type of renewable energy that could be provided.

#### § 260.14 (c)

3Degrees agrees with the FTC that it is deceptive to make a “made with renewable energy” claim unless all or virtually all of the significant manufacturing processes involved in making the product or package are powered with renewable energy or conventional energy offset by RECs. Unless 100% of electrical consumption is matched with renewable energy or RECs, 3Degrees recommends that the claim should be qualified with a percentage-based disclosure.

#### § 260.14 (d)

3Degrees fully supports the FTC's guidance when it states that “If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.” By selling RECs, a company or electricity generator transfers all rights to characterize the remaining electricity as renewable in any way, directly or indirectly. This guidance matches that of the EPA and many other environmental policy experts; it has been the industry standard for many years.

If a company advertises that it “hosts a renewable power facility” after it has sold the RECs (and any environmental benefits associated with the RECs) and gives no further explanation, 3Degrees agrees with the FTC that consumers may conclude that the company is using renewable energy and, as such, the claim is deceptive. Therefore, for any company that owns a generation facility or electricity where the RECs have been sold separately, any claim cannot imply, either directly or indirectly, that any environmental attribute or benefit for which the REC purchaser has contracted – avoided emissions, zero emissions, or otherwise – is owned by anyone other than the REC purchaser<sup>9</sup>. In other words, the emission characteristics for the remaining non-renewable electricity must be represented in any marketing or reporting as having emissions and not having environmental benefits. To allow otherwise would constitute double-claiming of the environmental attributes and would deceive consumers.

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<sup>8</sup> Ibid.

<sup>9</sup> Purchasing renewable energy has the effect of avoiding emissions from fossil-fuel generation elsewhere on the electric grid. This environmental benefit is known as “avoided emissions” and is contained within the standard REC definition. The EPA endorses this approach and offers guidance on how to calculate the avoided emissions associated with a REC purchase on its website: <http://www.epa.gov/greenpower/pubs/calculator.htm> (retrieved 12/9/10).

3Degrees requests that the FTC explicitly affirm this in its guidance to prevent consumer deception.

This principle applies to all generators that sell electricity to one purchaser and RECs to another, no matter the size of the generator. When the RECs and the electricity are sold to separate buyers, any claims about the facility or the remaining electricity must not represent, directly or by implication, that the environmental attributes have been retained by the generator or are provided to any customer other than the REC buyer. Claims should be matched with qualifying statements explaining the amount of non-renewable electricity actually provided to customers, as well as a disclosure that the RECs have been sold to a separate organization. 3Degrees recommends that the FTC make this guidance explicit.

### **Conclusion**

3Degrees is grateful for this opportunity to offer comments and suggestions. We believe these minor clarifications and amendments will improve the Green Guides and its ease of use, thereby helping to ensure integrity in environmental claims and greater levels of consumer protection. We welcome the opportunity to discuss any of these recommendations with the FTC.

Sincerely,

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