PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY
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To: Federal Trade Commission

From: Public Employees for Environmental Responsibility

Date: 4/24/23

RE: Matter No. P954501 (Docket FTC-2022-0077), Guides for the Use of Environmental Marketing Claims

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Public Employees for Environmental Responsibility (PEER) urges the FTC to update the Guides for the Use of Environmental Marketing Claims (Green Guides) to adopt strong standards to help protect consumers from abusive and deceptive marketing claims surrounding carbon offsets and renewable energy credits. These abusive and deceptive marketing claims are designed to make some people rich, burden consumers with unnecessary costs, and distract decision makers and the public from more cost-effective climate solutions.

PEER is a 501(c)(3) organization that supports current and former public employees who seek a higher standard of environmental ethics and scientific integrity within their agencies. We do this by defending whistleblowers, shining the light on improper or illegal government actions, working to improve laws and regulations, and supporting the work of other organizations. We have worked extensively with current and former government employees, as well as other non-profit organizations, concerned about misleading claims made about the use of offsets and renewable energy credits and its impact on consumers and our nation's ability to mitigate climate impacts.

Below, PEER discusses General Issues Question 1, Specific Claims Question 1 regarding carbon offsets, and then several questions posed in the public comment on renewable energy credits.

I. Question 1: Is there a continuing need for the Guides? Why or why not?

Yes, there is a continuing need for the Green Guides. As companies attempt to meet increasing consumer demand for clean energy and green products,[1] the Green Guides are needed to help marketers avoid making environmental claims that are unfair or deceptive under Section 5 of the Federal Trade Commission Act (FTCA) and to guide FTC enforcement actions against marketers who make environmental claims that are inconsistent with the Green Guides. In addition, the Green Guides help give consumers confidence that claims about the environmental attributes of products are not misleading. The FTC has noted that companies that do not have evidence to

[1] Alec Tyson, Cary Funk and Brian Kennedy, *Americans Largely Favor U.S. Taking Steps To Become Carbon Neutral by 2050*, PEW RESEARCH CENTER, (Mar. 1, 2022) https://www.pewresearch.org/science/2022/03/01/americans-largely-favor-u-s-taking-steps-to-become-carbon-neutral-by-2050/

support their environmental marketing claims or who mislead consumers about the environmental attributes of their products "erode consumer confidence and undermine those companies that are playing by the rules."[2]

In fact, the usefulness of the Green Guides is of increasing importance because consumers are increasingly changing their consumption habits in response to concerns about climate change and other environmental issues[3] Consumers have been shown to make purchasing decisions based on claims of "environmental friendliness" across all tested product categories.[4]

II. The FTC Should Not Allow False and Misleading Claims Regarding Carbon Offsets

PEER recommends that the FTC provide clear language stipulating that, while offsets can provide environmental benefits, purchasers cannot use them to claim actual or numerically specific greenhouse gas reductions or to make "net zero energy" claims.

Companies, government entities and individuals are increasingly using carbon offsets to claim specific reductions in greenhouse gas emissions and make "net zero," "carbon neutral," or "climate neutral" emissions claims. Many consumers interpret claims of "net zero" to mean "having zero impact" or that the goods or services were produced in a climate friendly way.[5]However, while some offsets may support greenhouse gas emissions reductions, a growing body of evidence shows that carbon offsets do not provide tangible climate benefits.[6]

One central problem is it is often impossible for consumers to know whether an offset is "additional," meaning the reduction in greenhouse gases would not have happened but for the financing provided from the purchase of the offset. In addition, the complexity and subjectivity of offsets render them impossible to certify, regulate or enforce.

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[2] FEDERAL TRADE COMMISSION, *FTC Cracks Down on Misleading and Unsubstantiated Environmental Marketing Claims*, (OCT. 29, 2013) https://www.ftc.gov/news-events/press-releases/2013/10/ftc-cracks-down-misleading-unsubstantiated-environmental.

[3] DELOITTE, *#GetOutInFront*, 23, 31 (Dec. 2020), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-get-out-infront-final.pdf?id=us:2el:3dp:wsjspon:awa:WSJCMO:2021:WSJFY21;

[4] GLOBESCAN, *Healthy and Sustainable Living 2022 Highlights Report*, (Nov. 2022) https://globescan.wpenginepowered.com/wp-content/uploads/2022/11/GlobeScan_Healthy_and_Sustainable_Living_Highlights_Report_2022.pdf.

[5] Amelang, S., *"Climate neutral" product labels mislead vast majority of consumers – survey*, CLEAN ENERGY WIRE, (Sept. 26, 2022) https://www.cleanenergywire.org/news/climate-neutral-product-labels-mislead-vast-majority-consumers-survey.

[6] Haya, B.K. et al., *Comprehensive review of carbon quantification by improved forest management offset protocols*, FRONTIERS IN FORESTS AND GLOBAL CHANGE (2023) https://doi.org/10.3389/ffgc.2023.958879; *see also* https://www.bloomberg.com/news/articles/2022-04-08/dutch-watchdog-rules-klm-s-carbon-zero-ad-is-misleadinghttps://www.reuters.com/business/aerospace-defense/dutch-airline-klm-sued-over-greenwashing-ads-2022-07-06/https://www.cleanenergywire.org/news/climate-pledges-put-companies-crosshairs-consumer-litigation; Akshat Rathi, Natasha White and Demetrios Pogkas, J*unk Carbon Offsets Are What Make These Big Companies 'Carbon Neutral'*, BLOOMBERG, (Nov. 21, 2022) https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/?leadSource=uverify%20wall. https://www.just-food.com/news/swedish-court-bans-arlas-net-zero-advertising/

For example:

1. California's cap-and-trade program has failed to produce meaningful reductions because it relies on trading offsets that are not real, permanent, quantifiable, verifiable, or enforceable. Nor can the state show that any claimed greenhouse gas emission reduction would not have occurred otherwise.[7]
2. The Guardian, the German weekly Die Zeit, and non-profit SourceMaterial investigated forest carbon offsets approved by Verra—"the world's leading carbon standard" in the voluntary offsets market—and revealed that "more than 90% of their rainforest offset credits … are likely to be 'phantom credits' and do not represent genuine carbon reductions."[8] Additional analysis "indicat[ed] that 94% of the credits had no benefit to climate."[9]
3. Another scientific study of hundreds of carbon offset projects revealed that "[m]ajor registries in the carbon offset market are systemically over-crediting projects and delivering dubious carbon offsets, a practice that allows some companies to make unjustified claims of climate Progress."[10]

The language in 16 C.F.R. § 260.5 is obsolete and insufficient to address false and misleading claims surrounding carbon offsets. As such, PEER suggest the following language for 16 C.F.R. § 260.5:

"It is deceptive to misrepresent or suggest, directly or by implication, that a carbon offset represents specific emission or greenhouse gas reductions or removals. Purchasers and marketers of offsets cannot make specific claims that they use 'net zero energy', are 'carbon neutral', are' climate neutral' or have reduced or removed emissions or greenhouse gases based on the purchase of carbon offsets.

III. The FTC Should Not Allow False and Misleading Claims Regarding Renewable Energy Credits (RECs)

We urge the FTC to require that Renewable Energy Credits (RECs) be represented as accurately as possible to prospective consumers. To do this, we recommend that the FTC amend 16 C.F.R. § 260.15 to distinguish marketing claims based on the use of bundled RECs and unbundled RECs. The current language in § 260.15 is vague, false and encourages deceptive marketing practices that harm consumers and greenwashes the use of fossil fuels.

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[7] Badgley, G. et al., *Systematic over-crediting in California's Forest Carbon Offsets program*, GLOBAL CHANGE BIOLOGY, 28(4), pp. 1433–1445 (2021) https://doi.org/10.1111/gcb.15943.

[8] Patrick Greenfield, *Revealed: More than 90% of Rainforest Carbon Offsets by Biggest Certifier Are Worthless, Analysis Shows*, GUARDIAN (Jan. 18, 2023), https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe.

[9] *Id.*

[10] Emma Newburger, *Major registries in the carbon offset market are allowing dubious credits, report says*, CNBC, (Mar. 21, 2023) https://www.cnbc.com/2023/03/21/registries-in-carbon-offset-market-allowing-dubious-credits-report.html; s*ee also* Haya, B.K. et al. *supra* note 6.

Demand for RECs has significantly increased.[11] From 2010 to 2018, REC sales have steadily grown 14% per year, while in 2018 "RECs made up 47% of all the renewable energy sourced in the US through green power markets."[12] Consumers want renewable energy and are willing to pay higher utility bills for it. In 2019, over 40% of consumers preferred "renewable utility generation as a first or second choice compared with just 25% last year."[13]

The use of RECs are important because they can be used to track and verify the sale of renewable energy. Consumers are now faced with a dizzying array of energy choices based on energy providers purchase and sale of RECs and companies are making false and misleading claims about their use of renewable energy based on their purchase of RECs. As a result, consumers are often misled into believing they are purchasing renewable energy when they are purchasing electricity produced from fossil fuels and "unbundled" RECs.

To address these problems, we urge the FTC to develop separate rules for the use of bundled RECs and unbundled RECs.

Recommendations for Bundled RECs

FTC regulations should make clear that marketers can only make claims that they are selling renewable energy if they are selling bundled RECs. The FTC should define a bundled REC as 1 megawatt-hour (MWh) of electricity generated from a renewable energy source that is sold with the associated renewable energy credit and retired.[14]

The regulations should stipulate that purchasers can only make claims they are buying renewable energy if they purchase renewable energy and the associated RECs, and then retire those RECs. This change would allow the sellers and purchasers of bundled RECs to make verifiable claims about renewable energy purchases and consumption.

The regulations should also specify that when marketers make claims of renewable energy or clean energy purchases and sales using bundled RECs, they must qualify these claims by specifying the types of renewable or clean energy in question (e.g., solar, wind, biomass, waste-to-energy etc.). This is because no one common definition of renewable energy exists in the United States, and many voluntary and states programs have definitions of renewable energy that differ from one another.

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[11] William Gore-Randall, *Renewable Energy Credits' Carbon Secret*, LAZARD ASSET MANAGEMENT, (November 2020) https://www.lazardassetmanagement.com/ae/en_us/references/fundamental-focus/renewable-energy-credits-carbon-secret.
[12] *Id.*
[13] Sarah Keller, *Consumer Demand for Clean Energy Significantly Increases*, BUSINESSWIRE, (Apr. 22, 2019) https://www.businesswire.com/news/home/20190422005350/en/Consumer-Demand-for-Clean-Energy-Significantly-Increases.
[14] *See* ENVTL. PROTECTION AGENCY, *Unbundle Electricity and Renewable Energy Certificates*, (July 14, 2022) https://www.epa.gov/lmop/unbundle-electricity-and-renewable-energy-certificates.

Recommendations for Unbundled RECs

The FTC regulations should also develop specific regulations around the use of unbundled RECs that require the disclosure of the type of energy being used and the type of unbundled RECs being used.

Unbundled RECs are different than bundled RECs. Unbundled RECs refer to RECs that are sold, delivered, or purchased separately **from electricity**. When renewable energy is generated, the producer of the energy can sell the energy itself, and may also create and sell an unbundled REC to another buyer who can claim the environmental attributes of the energy that generated the REC.

Unbundled RECs are confusing, even for savvy consumers, as the concept of selling energy to one buyer and selling the idea (or credit) of its renewable nature to another is not intuitive. This can lead to false and misleading energy claims. For example, because of marketing claims, a customer in Maryland may think they are purchasing 100 percent wind energy in Maryland's deregulated energy market when in fact they are purchasing energy produced from coal and fracked gas along with the associated wind RECs from a wind farm in Iowa.

In addition, the climate benefits of unbundled RECs are increasingly being called into question in both the United States and Europe. A study published in the journal Nature Climate Change revealed that while current greenhouse gas accounting standards allow companies to use unbundled RECs to report a "reduction in emissions from purchased electricity," this leads to an "inflated estimate" of their effectiveness of mitigation efforts.[15] Moreover, the study outlined that if these claims were removed, companies' combined 2015–2019 emission trajectories would "no longer [be] aligned with the 1.5 °C goal, and only barely with the well below 2 °C goal of the Paris Agreement."[16]

The Green Guides should therefore require that any claims made about unbundled RECs should be qualified and disclose the type of energy being used and the type of unbundled REC being used. PEER supports a rule which develops guidance for unfair and deceptive claims regarding carbon offsets and renewable energy claims that aligns with our commentary provided herein.

PEER thanks the FTC for the opportunity to comment on the FTC Green Guides.

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[15] Bjørn, A., Lloyd, S.M., Brander, M. et al, *Renewable energy certificates threaten the integrity of corporate science-based targets*, NAT. CLIM. CHANG. 12, 539–546 (2022). https://doi.org/10.1038/s41558-022-01379-5.
[16] *Id.*

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