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Guidance for Renewable Energy Marketing Claims

The Vermont Attorney General's Office and Department of Public Service issue this updated guidance to clarify that all marketers of renewable energy projects must comply with the rules that prohibit deceptive marketing statements.

1. What are renewable energy projects?

Renewable energy is generally an energy source that is naturally replenished, such as solar, wind, hydro, geothermal, and biomass. The 2011 Vermont Comprehensive Energy Plan sets out a pathway for Vermont to obtain 90% of its energy from renewable sources by 2050.

2. What are RECs? What is null electricity?

Renewable energy certificates or renewable energy credits ("RECs") are certificates that track the source of the renewable energy and are the legal attribute of renewable energy. The nature of electricity is that it is physically untraceable. Once generated, the electricity flows into a common pool where it cannot be physically traced to its source or end use. The system of tracking attributes via RECs is the only legal way of characterizing the "renewability" of different sources of electricity. RECs can be separated, or "unbundled," from the electric output and sold to anyone, such as to a utility that needs renewable credits to comply with a state renewable portfolio standard. Because the RECs are produced in relation to electric output, RECs can be continuously sold as more electricity is produced.¹ Whoever buys the RECs has paid a cost to bring renewable energy to the grid and has the only legal claim that their energy, equal to the RECs purchased, is renewable. Electricity that has its RECs stripped away and sold is called "null electricity." Null electricity is not renewable and is simply unspecified and undifferentiated power.

¹ Vermont's Renewable Energy Standard ([Act 56](#) passed in 2015) begins in 2017 and over time will require more renewable energy to be consumed in Vermont. Currently, however, other regional states have higher renewable energy standards that create more demand for RECs. Selling RECs to out-of-state buyers is a common and legal practice that gives renewable energy power providers an additional source of revenue, thereby encouraging the development of new renewable energy facilities.

3. *Can my company describe renewable energy projects as “renewable” if the RECs are sold?*

NO. If a renewable energy project sells its RECs out-of-state, then it is deceptive to state or imply that the electricity consumed from that renewable project in Vermont is “renewable,” “clean,” “green,” etc. That practice is known as “double counting” the RECs, and it is deceptive. The Federal Trade Commission (FTC) has issued its *Guides for the Use of Environmental Marketing Claims* (known as the “Green Guides”), which state:

“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.”²

As the FTC has explained, this applies to power providers:

“[P]ower providers that sell null electricity to their customers, but sell RECs based on that electricity to another party, should keep in mind that their customers may mistakenly believe the electricity they purchase is renewable. Accordingly, the Commission advises such generators to *exercise caution and qualify claims about their generation by disclosing that their electricity is not renewable.*”³

The FTC has clarified⁴ that this also applies to utilities:

- “[A] utility should avoid unqualified or poorly qualified representations that state or imply that its customers will receive renewable electricity from its renewable facilities when, in fact, the utility has sold or will sell the RECs from those projects elsewhere.”
- “[I]f the utility subsequently sells RECs from the [renewable] facility, it carries a particular burden to inform their customers that they are no longer receiving renewable electricity.”

In that same letter, the FTC provided overall guidance to the industry:

- “By selling RECs, a company has transferred its right to characterize its electricity as renewable.”
- “[P]ublic statements about electricity generation, including the development of generating facilities, can lead to consumer misperception if inadequately qualified.”

² This is codified in federal law at 16 C.F.R. § 260.15(d).

³ Green Guides’ Statement of Basis and Purpose, page 225 (emphasis added).

⁴ FTC Letter to Green Mountain Power (Feb. 5, 2015) *available at*: https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf.

4. *What are examples of deceptive statements?*

As the FTC explains, “a claim is deceptive if it likely misleads reasonable consumers. Therefore, the Green Guides are based on how consumers reasonably interpret claims, not on technical or scientific definitions.”

Public statements, including those on websites or in print material, that energy is “clean” or “renewable” can be deceptive if the RECs are sold and there is no adequate disclosure about it. Disclosures must be proximate to the promotion of renewable energy; disclosures on websites (such as on an “FAQ” page) are not enough. Below are some example statements drawn from promotional material distributed in Vermont.

<i>Examples of deceptive statements for a renewable project that sells its RECs</i>	<i>Examples of acceptable statements and adequate disclosures</i>
“It’s green power”	“[we] buy 100% percent of the wind farm’s production . . . and sell the associated renewable energy credits.”
“The power of the wind is ours to use and enjoy”	“The sale of RECs allows us to support and generate new renewable resources, while controlling costs by selling RECs to other entities. Sales of such RECs affect [our] claim to what portion of the energy provided to [our] customers is renewable. This avoids double counting since the purchasers of these RECs will have the right to claim the renewability.”
“Your home is now running on cleaner, cheaper, greener energy”	“We retain the renewable credits (RECs) associated with our solar farms. We expect to sell these and use proceeds from them to keep your price per panel as low as possible.”
“Local customers can take the first step toward relying on the sun to provide their household electricity needs”	“Remember, unless you pay us to retire your RECs, technically, according to the FTC, you are not buying solar power, nor are you buying renewable energy, you are simply buying solar panels and lowering your utility bills through emissions-free solar generation.
“We deliver clean, safe, in-state, renewable energy”	“The sale of RECs in no way negates the fact that community solar arrays are in fact creating energy from a source that has renewable attributes”

Please see the attached “REC Best Practices and Claims” as well as the further resources below, and visit Green-e.org for more explanation and examples of what statements are allowed.

5. What are the consequences of making deceptive statements?

A deceptive statement about the renewable attributes of an energy project that sells its RECs would violate the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), which prohibits unfair or deceptive acts or practices. The Vermont Attorney General is authorized to investigate deceptive claims by issuing subpoenas under 9 V.S.A. § 2460, and can seek injunctive relief. 9 V.S.A. § 2458. The Attorney General may seek civil penalties of up to \$10,000 per violation and consumers who have been harmed may also sue for relief. 9 V.S.A. § 2461.

The Federal Trade Commission Act also prohibits deceptive acts and practices in or affecting commerce. 15 U.S.C. § 45. This applies to marketers of renewable energy projects: “the Commission can take action under the FTC Act if a marketer makes an environmental claim inconsistent with the [Green Guides].” 16 C.F.R. § 260.1(a). The FTC is authorized to conduct investigations by subpoena, and take enforcement actions including seeking injunctive relief and civil penalties.

<i>What should marketers of renewable energy projects do?</i>

- 1. If you are a utility, power provider, or other marketer of a renewable energy project that sells the RECS, do not make any statements or suggestions that consumers are using renewable energy from your project.**
 - a. You may say that consumers are helping to generate renewable energy, but you may not imply that a consumer’s home is using, or running on, “clean, green, renewable energy,” etc.
- 2. Describe exactly what happens to the RECs in your renewable energy project – who owns the RECs and whether they are sold.**
- 3. Describe this clearly and up front on any main webpage for your renewable energy project, not just on an FAQ page.**
- 4. The descriptions should be clear, conspicuous, and in understandable language.** Look at the examples contained in this Guidance for suggestions.
- 5. The descriptions should be harmonized across all promotional materials:** i.e., all webpages, all brochures, and all discussions that you have with a consumer, whether in person, or via phone or email. The explanation of what happens to the RECs should be the same, and it should be clear across all forms of communication with the public.
- 6. All contracts and lease agreements should have the same clear explanation of who owns the RECs and whether the RECs will be sold.** For example, some acceptable lease and contract provisions are as follows:
 - a. “Developer shall be the sole owner of any renewable energy certificates available in connection with the net generation of the Project, and as part of the bargain of this Agreement, Developer expects to sell the renewable energy certificates.”

- b. “Owner owns all RECs associated with the community solar array (CSA). You agree the Owner may sell associated RECs to facilitate the construction of the CSA. Owner expects to sell the RECs associated with the electricity generated by the CSA.”

7. Harmonize all contracts and lease agreements with all websites and promotional materials (including discussions). For instance:

- a. if a consumer only looked at your website, the website would be clear on what happens to the RECs;
- b. if a consumer only looked at the contract or lease agreement, the same clarity is provided;
- c. and, of course, a consumer reviewing both your website and contract should see the *same, clear* disclosure about the RECs in both places.

Conclusion: The Attorney General and Department of Public Service urge all marketers of renewable energy projects in Vermont to follow the above recommendations and regulations. Failure to disclose the ownership and sale of RECs while promoting “clean, renewable energy” constitutes deceptive marketing—it causes consumer confusion and undermines fair competition. The Attorney General’s Office and Department of Public Service look forward to working with businesses and consumers to ensure a fair and vibrant renewable energy industry in Vermont.

If you are a consumer or a business and wish to file a complaint, please visit the [Consumer Assistance Program](#) or call (802) 656-3183.

For general inquiries about this Guidance, please contact: AGO.ConsumerInfo@vermont.gov and put “renewable energy” in the subject line

For questions about renewable energy generally and Vermont’s renewable energy plan, please visit the Public Service Department at http://publicservice.vermont.gov/renewable_energy

FURTHER RESOURCES

FTC Green Guides

<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguides.pdf>

FTC Green Guides’ Statement of Basis and Purpose

<https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf>

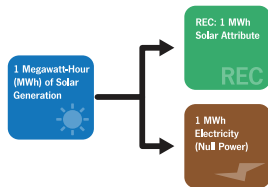
Center for Resource Solutions – “REC Best Practices and Claims”

http://www.resource-solutions.org/pub_pdfs/REC%20Best%20Practices%20and%20Claims.pdf

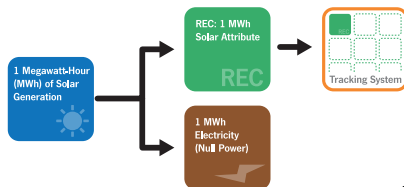
REC Best Practices and Claims

For every megawatt-hour of clean, renewable electricity generation, a renewable energy certificate (REC) is created. A REC embodies all of the environmental attributes of the generation and can be tracked and traded separately from the underlying electricity.

How RECs Work

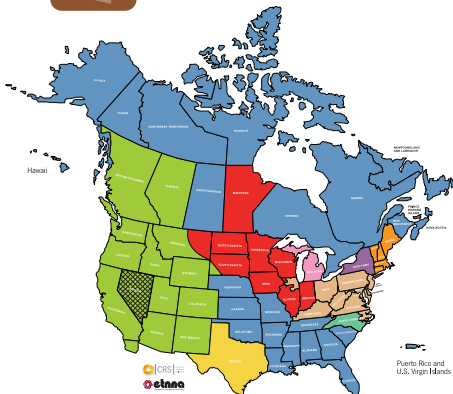


Electronic tracking systems are a useful tool for tracking ownership of RECs:



Renewable Energy Certificate Tracking Systems in North America

- ERCOT: Electric Reliability Council of Texas
- MBRECS: Michigan Renewable Energy Certification System
- MBRETS: The Midwest Renewable Energy Tracking System
- NAR: North American Renewables Registry
- NC-RETS: North Carolina Renewable Energy Tracking System
- NEPOOL-GES: New England Power Pool Generation Information System
- NVTRAC: Nevada Tracks Renewable Energy Credits
- NYGATS: New York Generation Attribute Tracking System (in development)
- PJM-GATS: PJM's Generation Attribute Tracking System
- WREGIS: WECC's Western Renewable Energy Generation Information System



Example Claims for a Solar Panel Owner or Leaseholder

Example 1



Keeps and retires RECs and is the only party to make claims about using the renewable energy.
Claim: "We use renewable energy."

Example 2



Does not own the RECs and makes public claims about using renewable energy.
Claim: "We use solar power."

DOUBLE CLAIM

Example 3



Keeps the RECs but a third party (such as a utility) makes a public claim about delivering the renewable energy to other customers, such as through a renewable portfolio standard.

Utility Claim: "All solar installations in our territory contribute to our state requirements to deliver renewable energy to consumers."

DOUBLE CLAIM

Example 4



Does not own the RECs but makes clear, accurate, and prominent statements about who owns the RECs.
Claim: "We host a solar PV system, and sell the renewable energy to other parties."

REC Best Practices

1. Be clear in your contracts and power purchase agreements: who owns the RECs? Be specific and accurate about REC ownership and renewable energy claims
2. If you are making a claim about using renewable energy, make sure you own and retire the RECs
3. Use electronic REC tracking systems if possible
4. Educate owners of solar panels about what types of claims they can make, whether they are keeping the RECs or selling them to another party
5. If you don't own the RECs, don't make public claims about using renewable energy
6. Get your sales and/or claims independently certified



CRS

center for
resource
solutions

Learn more at green-e.org/learn

