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Guidance for Third-Party Solar Projects

The Vermont Attorney General’s Office and Department of Public Service issue the following guidance to all solar companies doing business in Vermont. The purpose of this guidance is to clarify the statements that a solar provider may make about the renewable nature of solar projects in which the Renewable Energy Certificates are retained and sold by the solar provider. *This guidance does not address solar projects that retire the RECs or transfer ownership of the RECs directly to the consumer or Vermont utility.*

1. What are RECs? What is null electricity?

Renewable energy certificates or renewable energy credits (“RECs”) are what make solar a “green” or renewable energy resource—they 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. Whoever buys the RECs has paid an extra cost to bring renewable energy to the grid and has the only legal claim that their energy 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 from the electric grid.

2. What are third-party solar projects that sell RECs? What happens to those RECs?

In a third-party solar project, a solar provider builds, maintains, and owns the solar panels, and then sells the value associated with the electricity generated by those panels to a consumer.¹ These projects do not sell actual electricity directly to the consumer; utilities provide bill credits to the consumer, and the consumer reimburses the solar provider for some fraction of the value of those credits.

¹ The provider is the “third party” in relation to the consumer and utility, because in Vermont, only utilities are entitled to sell electricity.

Some of these third-party solar projects are known as community solar arrays, solar gardens, or shared solar projects, which all involve a type of group net metering arrangement. The solar panels are generally constructed in a location away from the consumer's home and serve multiple consumers within a given utility service territory, through Vermont's group net metering provisions. In a group solar arrangement, the consumer buys a portion of the net metering credits generated by the solar array, through a lease, service agreement, net metering credit purchase agreement, or up-front purchase from the solar provider. In other third-party solar projects, the solar provider might install the solar panels directly on the consumer's property and sell the value for the electricity generated by those panels back to the consumer through a contract similar to those used in a group net metered solar arrangement.

In these scenarios, the project is owned by the solar provider, as are the tax credits and potentially the RECs that are associated with the production of that solar energy, depending on the election made by the solar provider. Many solar providers who elect to retain the RECS then sell them to help finance the project, typically in the regional REC market.² In those projects where the RECs are sold, consumers who enter into agreements with the provider are paying money to help *generate* solar energy, but from a legal perspective, the consumers are not *using* solar energy from that project. Only the purchaser of those RECs is entitled to make claims about the renewability of the power associated with that project.

3. Can I describe third-party solar projects as “renewable” if the RECs are sold?

NO. Nearly all solar providers are promoting their third-party solar projects as clean, renewable energy for the benefit of local Vermonters. But if a solar provider retains and then sells the RECs, then it is deceptive to state or imply that the electricity consumed from that solar project 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.”³

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

² Selling RECs is a common and legal practice that gives the provider an additional source of revenue.

³ This is codified in federal law at 16 C.F.R. § 260.15(d).

such generators to *exercise caution and qualify claims about their generation by disclosing that their electricity is not renewable.*⁴

In February 2015, the FTC reviewed statements by Green Mountain Power (GMP) about the renewable nature of its energy projects and provided important guidance to the industry to avoid making deceptive statements:

- “[P]ublic statements about electricity generation, including the development of generating facilities, can lead to consumer misperception if inadequately qualified.”
- “By selling RECs, a company has transferred its right to characterize its electricity as renewable.”
- The FTC “urge[d] GMP [to] carefully review its current and future communications to ensure that Vermont customers, and other market participants, *clearly understand* that GMP sells RECs for many of its renewable facilities and *thus has forfeited its right to characterize the power delivered from those facilities as renewable, in any way.*”⁵

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 solar 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 solar energy; disclosures on websites (such as on an “FAQ” page) are not enough. Below are some example statements.

<i>Examples of deceptive statements for a solar project that sells its RECs</i>	<i>Examples of acceptable statements and adequate disclosures</i>
“By joining our Community Solar you’ve joined a new, renewables-driven community helping to build our clean energy future”	“The renewable attributes (RECs) of this electricity will be sold by us to keep the cost of your panels affordable.”
“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.”

⁴ Green Guides’ Statement of Basis and Purpose, page 225 (emphasis added).

⁵ FTC Letter to GMP (Feb. 5, 2015) *available at*: https://www.ftc.gov/system/files/documents/public_statements/624571/150205gmpletter.pdf (emphasis added).

<p>“Local customers can take the first step toward relying on the sun to provide their household electricity needs”</p>	<p>“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 believe, however, that for every solar panel up and operating, some other generation source is offset.”</p>
<p>“We deliver clean, safe, in-state, renewable energy”</p>	<p>“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”</p>

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 a solar project where the RECs are sold would violate the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), which prohibits unfair or deceptive acts or practices. Violations of the Act are subject to injunctive relief and civil penalties of up to \$10,000 per violation. 9 V.S.A. § 2458. The Attorney General is authorized to investigate deceptive claims by issuing subpoenas under 9 V.S.A. § 2460.

The Federal Trade Commission Act also prohibits deceptive acts and practices in or affecting commerce. 15 U.S.C. § 45. This applies to solar energy providers: “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 solar providers do?</i>

- 1. If your solar project 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, solar, renewable energy,” etc.
- 2. Describe exactly what happens to the RECs in your third-party solar project – who owns the RECs and whether they are sold.**
- 3. Describe this clearly and up front on any main webpage for your solar 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. “Owner [the solar provider] 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.”
 - b. “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.”
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 solar companies that offer solar 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 solar providers and consumers to ensure a fair and vibrant solar 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 “solar energy” in the subject line

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

FURTHER RESOURCES

The Department of Public Service – compilation of solar energy resources
http://publicservice.vermont.gov/topics/renewable_energy/resources#solar

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>

FTC Consumer Guide: "Solar Power for Your Home"

<http://www.consumer.ftc.gov/articles/0532-solar-power-your-home>

Center for Resource Solutions – "REC Best Practices and Claims"

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

Center for Resource Solutions – "Best Practices in Public Claims for Solar Systems"

<http://www.green-e.org/docs/energy/Solar%20FAQ%20and%20Claims.pdf>

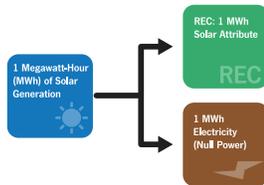
"Solar Power for Your Home: A Consumer's Guide"

<http://www.lsuagcenter.com/NR/rdonlyres/EA8EB533-3AA4-4283-AB72-09E75C6EFDAC/101040/pub3366SolarPowerForYourHome2.pdf>

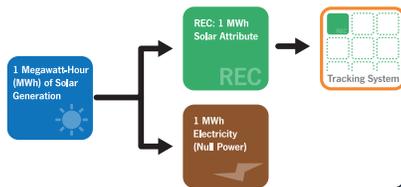
REC Best Practices and Claims

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

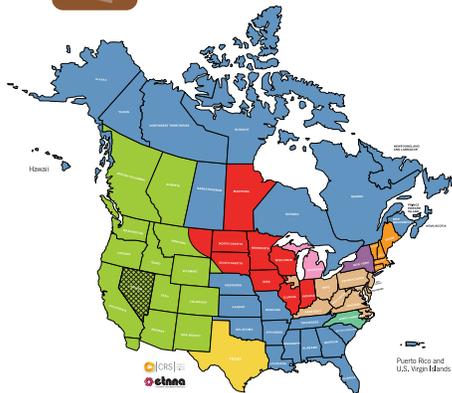


Electronic tracking systems are a useful tool for tracking ownership of RECs:



Renewable Energy Certificate Tracking Systems in North America

- ERCOT: Electric Reliability Council of Texas
- MIRECS: Michigan Renewable Energy Certification System
- M-RETS: The Midwest Renewable Energy Tracking System
- NAR: North American Renewables Registry
- NCARETS: North Carolina Renewable Energy Tracking System
- NEPOOL-GIS: New England Power Pool Generation Information System
- NVTREC: 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

