

Response to the
National Association of Attorneys General

Comment of the Staff of the
Bureau of Consumer Protection
of the Federal Trade Commission (1)

August 12, 1999

I. Introduction and Summary

guidelines governing environmental marketing claims for consumer electricity products that will facilitate competition in retail electric power markets.

The FTC is an independent administrative agency responsible for maintaining competition and safeguarding the interests of consumers. The staff of the FTC has a longstanding interest in regulation of and competition in energy markets, and has submitted comments to the Federal Energy Regulatory Commission (FERC), as well as many state and regional regulatory bodies.(2) The staff actively monitors industry and legislative developments in the electric industry at the state and federal levels that will affect consumers' interests. The FTC's mission in this area includes attempting to ensure truth in advertising and to prevent and remedy unfair or deceptive trade acts or practices.

The staff applauds the Subcommittee's thorough and intensive efforts in reshaping the Draft Guidelines in light of the staff's and others' prior comments.(3)

4) After further consideration of its earlier comment, staff believes it would be premature to state definitively and categorically that the term "clean" connotes a claim of general environmental benefit, and to impo

disclosure for tags-

IV. Qualification Requirements May Cause an Unnecessary Chilling of Claims

The Draft Guidelines state a general principle that "if a claim states a specific environmental benefit, it should be

Green Guides' Section 260.7(h), Example 1, concerning "ozone friendly" claims; however, staff is not aware of any association between electricity generation and ozone-depleting compounds. The second example in the FTC Green Guides concerning such claims more aptly pertains to electricity. The second FTC Green Guides example illustrates that an "ozone friendly" claim is also deceptive if the product produces compounds that contribute to formation of ground-level ozone and smog. Thus, the wording of the Draft Guidelines' example could be changed to state that an ozone-friendly claim is deceptive if the product emits "any NOx or other substance that degrades air quality." In that way, the example would be consistent with both the FTC Green Guides and current operating conditions in the electric industry.

FTC advertising guidelines other than the Green Guides may also provide concepts applicable to Section 3(f), Environmental Certifications. The Subcommittee may wish to consider adding language in that section to address the potential deception when a certifying organization lacks the expertise necessary to make an environmental certification, or the certification is not based on the actual exercise of such expertise, or the organization is not independent from the advertiser. Such prohibitions are consistent with the FTC's guidelines concerning product endorsements by experts and organizations (Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255), as well as FTC orders prohibiting such endorsements.⁽¹⁹⁾

* * * * *

The staff supports NAAG's efforts, and looks forward to further participation as the process moves forward.

Respectfully submitted,

Joan Z. Bernstein, Director

Elaine D. Kolish, Assoc. Dir., Division of Enforcement
Mary K. Engle, Asst. Dir., Division of Enforcement
Gina Schaar Howard, Attorney, Division of Enforcement

