

U.S. Federal Trade Commission
Carbon Offset Workshop - Comment, Project No. P074207
Comments of NativeEnergy, Inc.

Thank you for the opportunity to provide our views in response to the following questions posed by the Federal Trade Commission (“FTC”):

- 1) **What express claims are sellers making for carbon offsets and RECs? What claims if any, are implied by that advertising/ How do consumers interpret these claims? . . . What constitutes a reasonable basis to support these claims?**

As a general rule, claims regarding carbon offsets and RECs can be distilled to the simple statement: “With this purchase, you can make a difference.” Making a difference fundamentally means helping to make a change occur that otherwise would not. Note the emphasis on “helping” to make the change occur. The purchase need not be the sole cause. Rather, depending on the context of the claim, the purchase must be at least a material contributor, or may need to be a necessary (but alone insufficient) cause of such change. What is important, therefore, with respect to all “make a difference” claims, is that the consumer be confident that its (his/her) purchase will influence the future development of carbon-reduction or renewable energy markets and/or projects and that the consumer be apprised of manner in which its purchase affects that future development.

- 2) **What express claims are companies making for their products and services based on the customers’ purchase of carbon offsets or RECs?**

Perhaps the most common and important claim being made is that the customer can “reduce its (his/her) GHG emissions” by purchasing RECs or carbon offsets. The power represented by RECs typically reduces greenhouse gas (GHG) emissions by displacing power otherwise generated by burning fossil fuels. Carbon offset projects reduce GHG emissions by destroying methane, by storing incremental CO₂ in trees or soil, by increasing the generation by electricity by non-GHG emitting resources in lieu of GHG emitting resources, by reducing, through conservation or efficiency, the amount of electrical or thermal energy produced from GHG emitting resources, or by other means.



When customers purchase RECs or carbon offsets, they are effectively purchasing substantiation for certain claims. With RECs, that claim at a minimum is to the non-price attributes, including the environmental attributes, of the underlying electricity generation that is represented by the purchased RECs – As a result of the purchase of wind RECs, a customer expects he or she can accurately say, “I use non-emitting electricity,” for example. With carbon offsets, the claim is that GHG emissions have been reduced by a specific project, and as a consequence the buyer’s net GHG emissions are lower. Both REC and offset purchases allow the customer to claim that its (his/her) emissions are reduced as a consequence of the purchase.

One challenging question is whether a customer in purchasing from any renewable energy project or GHG reducing activity believes it is legitimately reducing its (his/her) GHG emissions footprint? We urge the FTC to offer guidance regarding claims that a purchase will reduce an individual’s GHG footprint as a result of the purchase from projects that have been in operation for many years and do nothing to reduce overall GHG levels from a recent and meaningful baseline. Only purchases from those projects that were implemented more recently, and were enabled to be implemented based on the expectation of REC or offset revenues, should be recognized as legitimate means of reducing one’s GHG footprint.

A second challenging question is whether a customer in reducing its own GHG emissions footprint believes it is also reducing the overall GHG emissions level. The challenge for sellers is to avoid leading customers to conclude that their purchase, by reducing their own GHG emissions footprint, also reduces overall emissions, in those circumstances in which in fact it does not, at least not directly. Based on more than 10 years experience in the renewable energy and carbon offsets market, we believe that REC and offset customers purchase principally out of a desire to reduce not just their own, but overall GHG emissions. This is a crucial point. It is possible for an entity to reduce its own burden on the environment without causing any overall change. Examples include purchases from most operating wind farms or landfill gas collection projects. Once the initial investment is made, these projects can be expected to operate at their peak capacity regardless of RECs or offsets sales, as they have low operation costs and most of the investment is recovered through the sale of the underlying commodity (electricity or landfill gas). We know that REC purchases do not actually cause a “new” wind farm to be “turned on” to produce the purchased RECs when it would have been “turned off” without the specific purchase. Consequently, the regional portfolio of generation and resulting emissions are not directly affected by the individual purchase. These kinds of projects certainly reduce overall GHG emissions from a recent and meaningful baseline, and thus it is critical for the REC and offset market to reward those investors who were enabled to implement these projects by their expectation of REC or offset revenues. It is also very important, however, for the purchasers to understand that, with many projects, their purchase, in and of itself, does not directly cause a reduction in overall GHG emissions levels.

This issue is especially relevant in the context of carbon offsets, given the prevailing practice of marketing reductions in GHG emissions that have already occurred and have been documented and verified as having occurred. As one cannot change the past, it is impossible for the purchase of a previously generated reduction to be the cause of that reduction.

We would therefore urge the FTC to consider prohibiting unqualified claims of direct impact on overall emissions levels, such as “your purchase reduces emissions,” or “our purchase reduced emissions,” without reasonable substantiation of a clear cause-and-effect relationship between the purchase itself and a subsequently resulting overall emissions level that is lower than it would have been absent that specific purchase.

More common, and accurate, claims with respect to the purchase of RECs or carbon offsets representing previously generated or pre-ordained GHG reductions make clear that the impact on future emissions levels is limited to demonstrating market demand for RECs and offsets – rewarding current investors in REC and offset projects, and thereby, collectively with other purchasers, sending a market signal that can stimulate incremental investment in more REC and offset projects in the future than would have been implemented absent such market demand.

We certainly do not mean to criticize the sale or purchase of previously generated RECs or offsets. We sell them. Given that we understand that customers are motivated principally by a desire to reduce future GHG emissions, however, where subsidizing pre-existing or pre-ordained GHG reductions is the means to that end, it is important for marketers to convey accurately the degree to which, and the manner in which, REC and offset purchases contribute to future reductions in overall GHG emissions. Paying a specific GHG reduction project to operate when it otherwise wouldn't, and buying a previously generated reduction to stimulate market demand for future GHG reduction projects to be implemented later, are different. We encourage the FTC to provide guidance to marketers and customers in limiting claims appropriately, and in disclosing the relevant facts.

3) **When consumers purchase carbon offsets or RECs, what property rights do they acquire?**

Individuals appear less interested in “property rights” than in causing a good outcome. Being the agent of change—the cause—seems crucial to many buyers. See # 6 for a more detailed discussion of this central concept, along with supporting material. Business customers, in addition to wanting to cause change, are interested in being able use their purchases to address their corporate footprints, or GHG inventories. These inventories are calculated according to protocols developed by leading non-profit organizations (notably World Resources Institute) and governmental agencies (EPA's Climate Leaders). Entities making formal assessments of their footprints are motivated to adhere to the guidelines of the program in which they are participating.

4) **When consumers purchase carbon offsets or RECs, what do they think they are buying?**

See #1, #2, #3, and #6.

5) **What impact do consumers believe their carbon offset purchases will have on future quantities of greenhouse gases in the atmosphere?**

As we discussed in response to Question 2, we believe, based on considerable experience, that consumers are motivated principally by a desire to reduce future quantities of greenhouse gases in the atmosphere. As such, it is critically important that sellers disclose clearly and accurately both the degree to which and the manner in which purchases impact future quantities of GHG emissions. These impacts may be direct and immediate, as in the case of paying a specific project to operate when it otherwise wouldn't, or indirect and remote in time, as in the case when the purchase from an operating project, together with other purchases from operating projects, creates sufficient incremental market demand that it stimulates the later implementation of a renewable energy or offset project that itself will reduce emissions over time.

6) **Do consumers understand that some activities supported by carbon offset programs do not result in immediate carbon emissions? If so, when do consumers expect such offset programs will have an impact?**

Activities supported by carbon offset programs *result in* carbon emissions only when they *cause* them. Activities supported by carbon offset programs cause and result in carbon emissions in three circumstances:

Case 1:

When the activity is paying a project to operate when it otherwise would not. Such projects are rare – certain fuel switching projects and small hydro projects, for example, that would “switch back” to fossil fuel or “switch off” during periods in which they cannot cover a higher cost biomass fuel, or high operations costs that exceed power sales revenues. The overwhelming majority of renewable energy projects and other offset projects – wind farms, power generation or gas injection from landfill gas and agricultural methane being principal examples, can be expected to generate all or substantially all their power or gas to recover their investment through the sale or use of their power and gas, even if REC/offset revenues aren't realized.

Case 2:

When the activity, such as purchasing pre-existing or pre-ordained RECs or offsets from operating projects, creates sufficient market demand that it stimulates investment in more (i.e., other) renewable energy or other offset projects later.

Case 3:

When the activity directly finances the subsequent implementation of a specific renewable energy or carbon offset project.

Importantly, only in Case 1 – the rare case – can the activity be seen as resulting in “immediate” carbon reductions. In both Cases 2 and 3, the carbon reductions result, or begin resulting, only upon the implementation of the renewable energy or other offset project(s) that are implemented in response to the market demand (Case 2) or in response to the specific project financing (Case 3), and then ***the resulting reductions necessarily occur over the operating lives of those projects***. In short, we should recognize that more than “some” activities supported by carbon offset programs do not result in immediate carbon reductions. Most do not.

The delay in the occurrence of the reductions in Case 2 and Case 3 is not a substantive concern. The intrinsic environmental value of a reduction in emissions is not significantly different between Case 1, on the one hand, and Cases 2 and 3 on the other. Greenhouse gases, and CO₂ in particular, have a long life in the atmosphere, ~100 years for CO₂. Actions taken today to address the increasing concentration of GHG will only have an effect over the long-term – decades, even centuries. Laws and policies to address GHG take this long-term view, with target reductions and levels being set for dates like 2020 and 2050. As a result, reductions of GHG that will occur in 10 years, 20 years, or 30 years, all offer unquestioned value in addressing the long-term risks of climate change.

We do, however, urge the FTC to consider the differences among the three cases as matters for consumer disclosure. Each has merit, and each has drawbacks. In Cases 1 and 3, the customer achieves what many customers are principally motivated to do – to be a direct and proximate cause of incremental GHG reductions, either by enabling a specific project to operate (Case 1), or enabling (or helping to, as applicable) a specific project to be built (Case 3). In Case 1, the reductions are immediate, in Case 3 they occur over the life of the project. In Case 2, the reductions purchased occur immediately, or already did, but any reductions actually ***caused by*** the purchase will occur later and over the operating lives of the projects stimulated by the market demand, just as with Case 3.

The activities described in all three Cases are legitimate and effective means to address GHG emissions. Case 1 is rare in practice, because the project type is rare. Case 3 is relatively rare because having REC and offsets purchases contribute meaningfully to the financing and

construction of a specific new project typically requires a long term purchase,¹ which customers in the voluntary REC and offset markets are largely unwilling to do. Case 2 is the predominant practice because it is easy to lend credence to the practice through third party verification, and many customers understand intuitively the claim that increased demand will tend to increase supply.

Many customers – the bulk of NativeEnergy’s customer base, in fact – desire to have a closer, proximate connection to bringing a specific new project on line. These customers appreciate a business model that we developed that works in Case 3, without requiring a long-term commitment. This model is based principally on two propositions:

- A project that is truly uneconomic without incremental revenues for its RECs or offsets (i.e., that is “additional” on a project-specific basis), can be made economic and enabled to be implemented either: by increasing its revenues over time, through a long-term purchase contract; or by reducing its upfront investment cost to a level that those incremental revenues are not needed over time, through an upfront purchase contract.
- Any group of customers that collectively makes such a project economic and helps enable its implementation (either under a long-term contract or through an upfront purchase) helps cause all the GHG reductions the project will generate over its operating life. Each such customer, therefore, helps cause as share of that long-term stream of GHG reductions, in proportion to the customer’s relative financial contribution.

The Case 3 model we employ involves the customer’s making a single, upfront purchase, avoiding an unwanted long-term commitment, of a share of the GHG reductions the project produces over its operating life. In short, we enable our customers to purchase *exactly what their purchase helps cause*.

This model, which we refer to as our “forward stream” model, is preferred by many of our customers and other stakeholders. The value proposition is simple: help build this project. The result is intuitive: renewable energy projects operate over terms of many years. Recently, more than 40 customers, experts, and advocates signed on to a letter that said:

At the most fundamental level, we simply want to do what is in our power to address climate change. We want to make a difference in the world. There are a number of paths we can take, but all of us who have signed this letter share a particular and powerful

¹ See, e.g., Holt, E.; Bird, L. (2005) *Emerging Markets for Renewable Energy Certificates; Opportunities and Challenges*; NREL Report No. TP-620-37388; *Direct testimony of Matthew Freedman on the implications of short-term contracting within the Renewables Portfolio Standard Program*, California Public Utility Commission Rulemaking 06-02-012.

aspiration: We want to cause something to happen that otherwise would not occur without our support. Obviously, other financial models for developing offset projects make sense. We, however, want our purchase of carbon offsets to be responsible for the development of a new project that otherwise would have been unable to go forward. We want this assurance of a project's "additionality." The forward stream is one of the best ways we know to achieve the direct causal link to "our" offsets, a link that is essential to us.

In these comments, we do not argue that our forward stream model is better or more valuable than the conventional (Case 2) model – we wish to convey only that a significant number of customers in the voluntary offsets market prefer it. We know well from experience that while there is a class of customers who will not pay for a REC or an offset unless it can be proved to have already been generated, there is also a class of customers who will not pay for an offset if it has already been generated. This latter class wants directly to produce new reductions. We urge the FTC to endeavor to accommodate the preferences of both classes of customers, and ensure that each is enabled to determine, through adequate disclosure, that they are in fact getting what they prefer.

The difference in the purchase of a REC or offset from an operating project (Case 2) and our forward stream model is not what most people expect, or appreciate at first glance. The purchases are the same in that both fundamentally support new developments that produce GHG reductions over time. A conventional Case 2 purchase does that indirectly, by stimulating overall market demand. A forward-stream Case 3 purchase does that directly, by financing a specific new project. Many people see the two models as dramatically different in that a conventional Case 2 customer owns completed commodity at the time of purchase, while a forward stream customer owns a commodity generated over time.

We believe that there is no intrinsic environmental benefit from a person owning a REC or carbon commodity at any given point in time. Rather, the more significant issue from both an environmental and consumer preference perspective, given that customers' principal motivation is to make a difference – to *cause* change – is when the environmental *effect* of the customer's purchase occurs. With both Case 2 and Case 3, that is necessarily over time.

To conclude our response to this question, we urge the FTC to develop customer disclosure guidelines that inform customers of the variety of innovative ways they can address their GHG emissions while promoting the development of new renewable energy resources and GHG reduction projects.

- 7) **What is the relationship between the concept of additionality in carbon offset markets and the FTC's standard for deception under the FTC act?**

Addressed in #1.

- 8) **Please identify state laws that specifically address consumer protection issues in the carbon offset and REC markets.**
- 9) **Please identify third-party and self-regulatory programs that address consumer protection issues in the carbon offset and REC markets.**

As noted previously, the US EPA, the UN, Green-e, the Gold Standard, the Voluntary Carbon Standard set standards that protect consumers making offset and REC purchases.

They do so by using credible science and engaging in open and transparent processes to set standards and assess projects and products.