

SEARCHING FOR “GREEN” ELECTRONS
IN A DEREGULATED ELECTRICITY MARKET:
HOW GREEN IS GREEN?

By
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INTRODUCTION

Would you like a simple and inexpensive way to help preserve the environment and improve your local ecosystem? Well, for just a few dollars per month you can help provide a cleaner and healthier environment for the current and future generations.¹ Simply by choosing a renewable energy source for your electricity, you can purchase energy which will be nuclear-free, coal-free, and air-pollution free. Making this choice does so much for the environment and costs you so little.

Since the deregulation of California's electricity market, "green" electricity advertising promotions similar to the one above have become one of the newest and most evident promotional strategies of electricity providers and marketers. Believing that the additional money promotes greater use of clean, renewable energy sources, consumers choosing one of these green energy options pay a premium above the normal electricity rates.² However, critics contend that opting for one of these green alternatives will have little or no positive impact on the environment.³ Indeed, these critics maintain that in some cases the choice may actually increase pollution.⁴ If true, such marketing campaigns will invariably undermine one important goal of electricity deregulation, namely, developing environmentally sensitive electricity resources.⁵ Equally concerning is the potentially false or misleading nature of such green energy claims.

This Article examines the emergence of green energy marketing resulting from the deregulation of the U.S. electricity industry. Specifically, this Article focuses on California's deregulation effort and the subsequent green energy marketing occurring there. Part I provides a general background of the development of U.S. electricity deregulation and a brief analysis of Assembly Bill 1890, California's deregulation legislation. Part II discusses the meaning of green energy and the ways green marketers are promoting green energy as an alternative

¹ See PG&E Energy Services brochure promoting its Clean Choice™ renewable energy option. PGEG-1-50/100 (1998).

² See Public Citizen, *Report Shows California Consumers Deceived By "Green" Electricity Marketing* (last modified Oct. 22, 1998) <<http://www.citizen.org/Press/pr-elec4.htm>>.

³ See *id.*

⁴ See *id.* at 14-15 (explaining how green energy sales may result in overall dirtier fuel mix).

⁵ The Legislature's intent in enacting AB 1890 (California's Electricity Restructuring Bill) was to "preserve[] California's commitment to developing diverse, environmentally sensitive electricity resources." Stats. 1996, ch. 854, § 1 (AB 1890). The California Public Utilities Code was amended to state that the delivery of electricity will continue to be regulated to ensure environmental protection. See CAL. PUB. UTIL. CODE § 330(f) (West Supp. 1999).

to less environmentally friendly energy sources. Part III examines existing federal and state regulations governing green energy marketing. Finally, Part IV proposes improvements to regulations relating to green energy to ensure both that consumers are well-informed and that green marketers are not misleading the public. These proposals advocate developing uniform federal regulations. Only under broad federal standards can the twin goals of developing environmentally sensitive electricity resources and preventing public deception effectively be achieved.

I. THE DEREGULATED ELECTRICITY MARKET

A. *The Emergence of Deregulation*

The term "deregulation" first appeared in the late 1960s when Microwave Communications, Inc. (MCI) challenged American Telephone and Telegraph Company's (AT&T) federally regulated monopoly on telephone service.⁶ Put simply, deregulation means replacing a government-regulated industry with free market competition. However, because governments are disinclined to relinquish complete control over a regulated industry, often only certain segments of an industry are opened to competition.⁷ Accordingly, deregulation has come to mean either the partial or complete removal of government regulations. In truth, the term deregulation is a misnomer; a more appropriate term would be "re-regulation." Since the telecommunications industry first opened the nation's eyes to deregulation as the "universal solvent of economic ills,"⁸ other major industries have followed suit, most notably the airlines in the 1970s and, more recently, the electric power industry.⁹

Proponents of deregulation often contend that regulation is burdensome and bureaucratic, resulting in industries that are overpriced and inefficient.¹⁰ These advocates defend free market competition as the remedy to such evils.

⁶ See Richard D. Cudahy, *The Folklore of Deregulation (with Apologies to Thurman Arnold)*, 15 YALE J. ON REG. 427, 428-30 (1998).

⁷ For instance, California opened its electricity generation, marketing, and billing functions to competition, but continues to regulate the delivery of the electricity over local lines.

⁸ See Cudahy, *supra* note 6, at 427.

⁹ See *id.* (discussing deregulation of telecommunications, airline, and electric power industries).

¹⁰ See Michael Evan Stern & Margaret M. Mlynczak Stern, *A Critical Overview of the Economic and Environmental Consequences of the Deregulation of the U.S. Electric Power Industry*, 4 ENVTL. LAW. 79, 102 (1997) (discussing deregulation rationales).

With respect to electric power, supporters contend that deregulation will both decrease prices and result in cleaner power from renewable energy sources such as wind, solar, geothermal, and biomass.¹¹ Supporters postulate two benefits from market competition in the electric power industry: more efficient use of fossil fuels, and a cleaner environment.¹² However, whether these benefits will actually materialize remains to be seen.

B. Federal Electricity Deregulation

Prior to the late 1970s, the U.S. electric power system was a carefully regulated industry, with local monopolistic utilities providing power to nearly all electricity consumers. Numerous factors — including the 1970s oil embargo, inflation, and safety and environmental regulations — created political pressure for Congress to provide incentives to develop alternative energy sources.¹³ Consequently, in 1978 Congress enacted the Public Utilities Regulatory Policies Act (PURPA) which, by requiring the local utility to purchase power from alternative generators of electricity called “qualifying facilities,” encouraged the development of renewable energy sources.¹⁴ However, because of inherent limitations and restrictions, PURPA was only moderately successful.

In 1992 Congress took another step toward deregulation when it enacted the Energy Policy Act, which further opened the restricted electricity market to specific “exempt wholesale generators.”¹⁵ These exempt generators were freed from strict federal requirements which had served as significant barriers to market entry. The 1992 Act achieved greater success than PURPA in creating a competitive free market in the electricity industry, but the market was still far from

¹¹ See Jon Entine, *The Green Power Hustle*, *UTNE READER*, Nov.-Dec. 1998, at 16-19 (discussing green power marketing).

¹² See *Competition Among Electrical Utilities Would Foster Energy Efficiency, Cleaner Air, Says NRDC*, *BUSINESS WIRE*, Apr. 12, 1995, at *1, available in WESTLAW, BWIREPLUS Database (citing comments of Ralph Cavanaugh of the Natural Resources Defense Council (NRDC)). However, Ralph Cavanaugh also states that “[g]etting [deregulation] wrong means multi-billion dollar losses for people and worse news still for the environment.” *Id.*

¹³ See Stern & Stern, *supra* note 10, at 85-87 (discussing deregulation of U.S. electric industry).

¹⁴ See PURPA §§ 2-607, 15 U.S.C. §§ 3201-3211, 16 U.S.C. §§ 824a-4, 2601-2645, 42 U.S.C. § 6808, 43 U.S.C. §§ 2001-2012 (1994). The complexities of PURPA render it beyond the scope of this discussion. See also Stern & Stern, *supra* note 9, at 88-90.

¹⁵ See Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (codified in scattered sections of 15 U.S.C., 16 U.S.C., 25 U.S.C., 26 U.S.C., 30 U.S.C., 42 U.S.C. (1994)). As with PURPA, a thorough analysis of the Energy Policy Act is outside the scope of this Article. See also Stern & Stern, *supra* note 10, at 91-94.

free. Finally, in 1996 the Federal Energy Regulatory Commission (FERC) created the "Open Access Rule"¹⁶ which provided access to the nationwide wholesale electricity transmission system. This rule essentially ordered electric utilities to allow buyers and sellers of electricity to use the utilities' transmission lines — a practice commonly referred to as "wheeling."¹⁷ Without such wheeling requirements, electricity producers had no means to deliver electricity to customers and therefore could not effectively compete with the utilities. By creating the Open Access Rule, FERC paved the way for deregulation of the electric power industry nationwide.¹⁸

C. California Electricity Deregulation

California's legislature unanimously enacted its deregulation law, Assembly Bill 1890 ("AB 1890"), in August 1996. A month later, Governor Pete Wilson signed AB 1890 into law.¹⁹ As one of the first states to enact electricity deregulation legislation, California is on the leading edge, and other states are paying close attention.²⁰ Although it passed unanimously in the California legislature, AB 1890 nonetheless faced at least one significant obstacle. Claiming that the legislation effectively bailed out the three major investor-owned utilities²¹ for prior unsound investments, consumer activists placed an initiative, Proposition 9, on the November 1998 ballot. Proposition 9 would have limited the utilities' reimbursement for certain investments, especially those investments in failed nuclear power plants.²² However, the initiative failed by a significant margin.²³

¹⁶ The Open Access Rule is the name given to FERC Orders Numbers 888 (61 Fed. Reg. 21,540) and 889 (61 Fed. Reg. 21,737).

¹⁷ See Arden Dale, *What They Say, What They Mean*, WALL ST. J., Sept. 14, 1998, at R4 (explaining terms used in electricity deregulation).

¹⁸ See Stern & Stern, *supra* note 10, at 94-100, for a more detailed discussion of the Open Access Rule and its effect upon deregulation.

¹⁹ AB 1890 was codified in the Statutes of 1996, Chapter 854 to amend sections of California's Civil Code, Commercial Code, Government Code, and Public Utilities Code.

²⁰ See Allyson LaBorde, *Learning the Hard Way*, WALL ST. J., Sept. 14, 1998, at R8 (discussing California's electricity deregulation).

²¹ The three utilities, Pacific Gas & Electric Co., Southern California Edison, and San Diego Gas & Electric Co., provide approximately 80% of the power to California's 30 million residents. *See id.*

²² Such investments have been termed "stranded costs." Stranded costs are utilities' unrecoverable investments in power plants or related power purchase contracts. Prior to deregulation, these costs were embedded in customers' electricity bills and recovered over the long-term. *See Dale, supra* note 17, at R4 (explaining terms used in electricity deregulation).

²³ *See Failed Plan Called Boon to Ratepayers*, SACRAMENTO BEE, November 18, 1998, at A6 (noting that Proposition 9 lost resoundingly at polls).

California's deregulation law changes the electricity industry's structure in several significant ways. First, it allows consumers the choice of purchasing power either from the local utility, an independent marketer, or directly from a producer.²⁴ To facilitate this, AB 1890 requires the utility to transport the power, regardless of the source, directly to the customer over the utility's transmission lines. Such mandatory "wheeling" requirements are critical because prior to deregulation utilities could, and did, refuse access to their lines to maintain monopoly power.²⁵

Additionally, AB 1890 creates two new administrative organizations: the Power Exchange ("PX") and the Independent System Operator ("ISO"). These two organizations control power sales and the operation of the utilities' high-power transmission lines. In general, the PX acts as an automated commodity exchange with electricity prices set by hourly auction.²⁶ The ISO schedules access to the privately owned transmission grid to prevent utilities from favoring their own customers when access is restricted during high demand periods.²⁷

Three other significant changes, all concerning a customer's electricity bill, deserve comment. First, instead of simply a lump-sum charge, a customer's bill now separately states the different rates for generation, transmission, and distribution. In theory, this provides the customer with specific information so that he or she can choose the lowest-cost options. The second change is an additional charge assessed to each customer which allows the utilities to recover their "stranded costs" — those costs representing prior unfavorable investments.²⁸ Termed the Competition Transition Charge ("CTC"), this nonbypassable fee remains in effect until 2002 and cannot be avoided, even by choosing a non-utility provider. As mentioned above in connection with Proposition 9, the CTC remains a contentious issue. Finally, rates for small commercial customers and residential customers were automatically reduced by ten percent as of January

²⁴ See Robert B. Keeler & Daniel W. Douglass, *What Real Property Lawyers Need to Know About Electric Utility Restructuring*, 20 REAL PROP. LAW REP. 188, 189 (Aug. 1997).

²⁵ See *id.*

²⁶ See *id.*; see also LaBorde, *supra* note 20, at R18 (discussing Power Exchange and Independent System Operator). Under AB 1890, all power either generated or purchased by the utilities must pass through the PX. Customers purchasing power from a non-utility has the option of getting that power either through the PX or directly from the seller. Competing with the Power Exchange is the private Automated Power Exchange, which offers electronic trading and electricity price information. *Id.*

²⁷ See Keeler & Douglass, *supra* note 24, at 189.

²⁸ See Dale, *supra* note 17 (discussing stranded costs).

1998. By the end of March 2002, the rates may be reduced by an additional ten percent. Unfortunately, the CTC more than counteracts any rate reduction, resulting in overall higher costs to most consumers.²⁹ Yet, regardless of whether deregulation ultimately brings about its desired benefits, it has already created a new sub-industry, namely, the green power marketing industry.

II. GREEN ENERGY

A. What is Green Electricity?

Most people would agree that the predominant electricity generation sources — coal, oil, natural gas, nuclear, and hydroelectric power — have significant negative environmental impacts. While the significance of any specific impact undoubtedly is subject to debate, using these sources in electricity production clearly has *some* detrimental effects upon the environment either by polluting the air, contaminating ground water, creating hazardous wastes, destroying landscapes, or endangering plant and animal habitat.³⁰ Moreover, often the production method chosen will produce multiple adverse impacts, thus compounding the negative environmental effects. With the advent of deregulation, new marketing strategies have developed to tap into the market of citizens who are concerned about these negative impacts and who are willing to pay a premium to reduce their environmental impact. These strategies have given rise to two new terms: “green energy” and “green marketing.”

A broad spectrum of definitional possibilities exists for the term “green energy.” At the top of this spectrum are those methods of energy generation that have no impact, or a negligible impact, on the environment. Solar and wind energy are probably the best examples in this category, although each has some environmental impact. For instance, solar energy production typically requires the construction of solar cells and land development, which adversely impact habitat. Similarly, wind energy production requires the construction of windmills, which directly impacts both habitat and wildlife.³¹

²⁹ See AB 1890 § 1.(b)(1)-(4) (discussing rate reductions).

³⁰ See Elliot Burg, *Power Play: Environmental Marketing by Deregulated Electric Companies - Risks and Opportunities*, National Association of Attorneys General: Consumer Protection Report, Jan. 1998.

³¹ See Patricia Jacobus, *Windmills May Turn Friendlier To Birds*, S.F. CHRON., Nov. 7, 1998, at A18 (describing windmills butchering endangered raptors).

The next level of this green energy spectrum includes those production methods that create little or no pollution but have more significant environmental impacts than those at the highest level. Hydropower is the most obvious example in this category. Hydropower typically creates a negligible amount of pollution during electricity generation. However, because large areas of land are flooded when constructing these projects, hydropower nonetheless causes significant habitat loss and environmental destruction.

Still further down the spectrum are those energy generation methods that incorporate state-of-the-art environmental protection techniques or that otherwise cause less environmental impact than average. In this category, one might include natural gas and even nuclear energy. However, with no generally accepted definition of green energy, ambiguity necessarily results.

Although no precise definition of green energy exists, the term "green energy" generally refers to energy generation that, at least to some extent, purportedly causes less environmental damage than average utility system resources.³² Furthermore, the term "green" is often used interchangeably with "renewable" when referring to energy. Renewable energy typically refers to electricity produced through sources such as solar, wind, geothermal, biomass, and possibly hydropower.³³ However, the term renewable is not necessarily synonymous with minimal environmental effect.³⁴

³² See Public Citizen, *supra* note 2, at 5 n.1 (defining green energy).

³³ See CAL. CODE REGS. tit. 20, § 1391(c) (1999) (listing definitions of different energy sources). California regulations provide definitions as follows:

"Eligible renewable" means a technology other than a conventional power source, as defined in the Public Utilities Code, that uses one of the following energy sources, provided that a power source utilizing more than 25% fossil fuel may not be included:

- Wind power means the power source created by movement of air that is converted to electrical energy in a wind turbine. CAL. CODE REGS. tit. 20, § 1391(c)(5).
- Solar power means the power source that is comprised of radiation from the sun that is directly or indirectly converted to electric energy. CAL. CODE REGS. tit. 20, § 1391(c)(4).
- Geothermal means the power source that is thermal energy naturally produced within the earth that is converted to electrical energy in boilers and/or turbines. CAL. CODE REGS. tit. 20, § 1391(c)(2).
- Biomass means the power source that is comprised of combustible residues or gasses from agricultural waste and other solid waste converted to electrical energy. See CAL. CODE REGS. tit. 20, § 1391(c)(1).

Also, the term "renewable energy" is federally defined as: "any energy resource which has recently originated in the sun, including, among others, solar radiation, wind, ocean currents and waves, hydropower and photovoltaic energy." 42 U.S.C. § 7372(2) (1994). However, as used by green energy marketers, the term "renewable" has been given a broader definition.

³⁴ See Public Citizen, *supra* note 2, at 5 n.1 (defining green energy).

Along these lines, the term "green marketing" is simply the sale of electricity products that cause less than average environmental impact. According to one of the major providers in the green marketing arena, what green marketers are really selling is a reduction of eco-guilt.³⁵ Green marketers tout green electricity as a way to support the environment without changing one's lifestyle. However, it has become clear that some of these green marketers may not be delivering on their promises of cleaner, renewable, or environmentally friendly energy.

B. Green Marketing Claims and Realities

The claims green marketers make in their environmental marketing promotions range from general to specific. General environmental claims typically include broad assertions that choosing green electricity will reduce pollution, decrease reliance on fossil fuels, clean up the environment, or replace dirtier generation plants with cleaner resources.³⁶ Many such unqualified claims are vague at best and tend to be interpreted differently by different consumers. Alternatively, specific environmental claims may include additional information regarding the source of the power, the fuel type, the generation process, or percentages of renewable or green energy used.³⁷ While specific claims may seem less confusing, they also present definitional and verification problems. Regardless of the specificity of the claims, consumers may not know exactly what they are getting for the additional cost. Consequently, consumers choosing to pay a premium for what they believe is environmentally friendly power often are being misled.³⁸

Consumers may be misled in at least two different ways. First, when marketers repackage existing green energy and sell it to purchasers who pay a premium, these purchasers are being misled as to the incremental effect their purchases will have on the environment. These purchases will have no effect on the environment because the green energy has already been sold. Second, without definitional standards, green marketers may actually be selling non-green energy as if it were green.

³⁵ See Entine, *supra* note 11, at 16-17 (discussing comments of Kevin Hartley, vice-president of Green Mountain Energy Resources, as printed in the *Pittsburgh Post-Gazette*).

³⁶ See Nancy Rader, *Green Buyers Beware: A Critical Review of "Green Electricity" Products*, Report by Public Citizen, released Oct. 22, 1998, at 27 (citing claims made in advertising materials of green marketers). This report is available from Public Citizen at 1600 20th St. NW, Washington, D.C., 20009, or 1-800-289-3787.

³⁷ See Burg, *supra* note 30, at 1, 3.

³⁸ See Rader, *supra* note 36, at 7-8.

Most of the renewable power generation that exists today may be attributed to the Public Utilities Regulatory Policies Act, which encouraged the development of renewable energy sources.³⁹ By requiring electric utilities to purchase power from renewable energy producers under long-term contracts, PURPA was instrumental in creating the renewable energy market. However, with the new competitive electricity market comes a nearly irresistible opportunity for green marketers and utilities controlling renewable energy resources: selling premium priced electricity — electricity which would have been delivered to customers anyway — to customers choosing a green option.⁴⁰ In essence, green marketers can *resell* existing utility resources to green energy purchasers. Acknowledging this problem, California's restructuring legislation, AB 1890, prevents the three major investor-owned utilities, Pacific Gas & Electric Co., Southern California Edison, and San Diego Gas & Electric Co., from reselling their contracted renewable power to green marketers through 2001.⁴¹ Yet beginning in 2002, even these utilities may resell their renewable power. Consequently, AB 1890 did not solve the reselling problem; it merely postponed it.

Notwithstanding this statutory preclusion, most California green marketers obtain wholesale renewable power from municipal or out-of-state, investor-owned utilities.⁴² So, while customers believe the premium they pay for green power is promoting environmentally friendly energy, green marketers are simply repackaging pre-existing renewable resources and pocketing the difference.⁴³ Such practices create several obvious problems.⁴⁴

First, no additional benefit accrues to the environment because resales of existing utility resources do not encourage or create additional renewable sources.⁴⁵ This result follows because these resales are derived either from non-

³⁹ See Nancy A. Rader & William P. Short III, *Competitive Retail Markets: Tenuous Ground for Renewable Energy*, THE ELECTRICITY JOURNAL, Apr. 1998, at 72-73.

⁴⁰ See Rader, *supra* note 36, at 7-8.

⁴¹ After 2001, however, these utilities will be free to sell their contracted renewable power to green marketers, as other municipal and out-of-state investor-owned utilities are currently doing. See *id.*

⁴² See *id.*

⁴³ See Entine, *supra* note 11, at 16-19 (discussing green power marketing). There is one exception to this general allegation. Of all the green energy companies selling or marketing power in California, only one, Clean 'n Green Energy, sells renewable power that is not under contract to or owned by a utility. Thus, Clean 'n Green Energy is the only company that directly supports renewable energy producers and does not simply repackage utility resources. See Rader, *supra* note 36, at 17-18.

⁴⁴ For a discussion of additional problems not discussed in this Article, see Rader, *supra* note 36, at 8-9.

⁴⁵ See Rader, *supra* note 36, at 8-9 (explaining problems with reselling renewable energy).

utility power plants under long-term contract, which are already operating at full capacity, or from low-cost, renewable, utility-owned power which would be sold regardless of the green marketers' efforts.⁴⁶ In these situations, even implications of an incremental environmental benefit are clearly erroneous and deceptive.

Second, because existing renewable power producers are typically under long-term contract with the utilities, the premium paid does not find its way to the renewable power producers. Instead, the utility pockets the entire windfall.⁴⁷ The obvious problem with this scenario is that the renewable energy producers do not receive any economic benefit for, and therefore no incentive to continue providing, their superior product. In a way, the utilities are thwarting competitive market operation. As a result, rather than incentivizing and strengthening the renewable power industry, green marketing leaves renewable power producers in no better position than if the specific green energy sales were not made at all.

A third problem is that, contrary to green marketers' claims, choosing green energy may actually increase adverse environmental effects.⁴⁸ Because a portion of the renewable energy being resold in California as green power comes from out-of-state utilities, the non-California utility must replace this power somehow. In doing so, the out-of-state utility will likely look for the lowest cost replacement — normally without regard to environmental consequences. Where the choice of the non-California utility is a dirtier power source than would have been used in California if not for the purchase of the renewable out-of-state power, the net result on the environment is negative.⁴⁹ Stated plainly, the non-California utility would be replacing cleaner California power with dirtier out-of-state power, resulting in a net loss to the environment. Such a scenario is probable because California generally has cleaner energy sources than other states — especially the Midwestern states which use cheap energy from high-polluting, coal-fired generators.⁵⁰ Various efforts have been made to address these potential green marketing problems.

⁴⁶ See *id.*

⁴⁷ See *id.* Presumably, the green marketer will get a small share of this windfall.

⁴⁸ See Public Citizen, *supra* note 2, at 14-15 (explaining how green energy sales may result in overall dirtier fuel mix).

⁴⁹ See *id.*

⁵⁰ See Stern & Stern, *supra* note 10, at 136-38 (discussing transboundary pollution).

III. STANDARDS, REGULATIONS, AND ENFORCEMENT

Standards potentially affecting green marketing range from voluntary to federally mandated. Private organizations have developed voluntary certification programs for green electricity marketers. In addition, both federal and state laws potentially play a role in regulating and enforcing green electricity marketing practices. In general, the Federal Trade Commission Act ("FTC Act") proscribes deceptive advertising practices.⁵¹ Moreover, in 1996 the FTC promulgated regulations specifically dealing with deceptive advertising as applied to environmental marketing claims.⁵² In addition to the applicable federal legislation, the National Association of Attorneys General has weighed in to express its views on environmental marketing. Further supplementing these restrictions are California statutes and regulations.

A. The Green-e Renewable Electricity Certification Program

In an attempt to address some of the apparent deficiencies in green marketing, a private, non-profit organization has stepped up to create a sort of stamp of approval for green energy programs. Through the Green-e certification program, consumers theoretically should be able to weed out the non-environmental green electricity products from those that are truly legitimate. Yet, while such a program may be effective in theory, the current Green-e certification program is woefully inadequate.

In late 1997, the Center for Resource Solutions ("CRS"), an independent, non-profit organization in San Francisco, developed the Green-e brand certification to protect consumers from unscrupulous green marketers and to "promote[] consumer confidence and encourage[] consumers to learn about and purchase clean, 'green,' renewable electricity."⁵³ Its goal was to develop stringent environmental, ethical, and consumer protection criteria and approve only those products meeting these standards. In theory, consumers seeing the Green-e brand logo on any green marketing or green energy product can be assured that their

⁵¹ Section 5(a)(1) of the Federal Trade Commission Act reads: "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." 15 U.S.C. § 45(a)(1) (1994).

⁵² See 16 C.F.R. §§ 260.1 - 260.8 (1998).

⁵³ See *Information for Power Providers* (visited Apr. 3, 1999) <<http://www.green-e.org/power/index.html>>.

purchase will actually have an incremental positive impact on the environment. As of January 25, 1999 the Green-*e* program encompassed only existing renewable resources; however, according to its website, Green-*e* was also preparing a prospective standard to address new, as opposed to existing, renewable resources. It should be emphasized that Green-*e* product certification is entirely voluntary. Green marketers simply have the *option* of seeking certification for specific product offerings” if they meet certain requirements.⁵⁴

CRS relies upon three major devices to ensure green electricity products meet the Green-*e* standards.⁵⁵ First, for each certified electricity product, CRS requires a resource disclosure label describing the resources used in generating the energy (e.g., fifty percent of the electricity comes from renewable electricity resources). Second, each participant must undergo an annual audit, performed by CRS, on the certified product. Third, participating companies must abide by CRS’s professional Code of Conduct. In combination, these requirements outwardly appear to provide some assurance that the certified product helps to “preserve and protect the environment.”⁵⁶ According to one critic, however, the Green-*e* certification program scarcely goes beyond what is already required under California law.⁵⁷

For example, the resource disclosure requirement touted by CRS merely restates what is already required under the California Public Utilities Code.⁵⁸ Furthermore, because Green-*e* standards allow the participants to include re-sales of existing renewables controlled by utilities in the resource composition disclosure, the disclosure requirement suffers from the same flaws discussed above in Part II.B. in relation to claims of renewables. Thus, the Green-*e* program’s redundant resource disclosure mandate is meaningless at best; at worst, it compounds existing deceptions.

Similarly, the California regulations already contain an audit mandate comparable to that required under the Green-*e* standards.⁵⁹ Moreover, as of October

⁵⁴ See *id.*

⁵⁵ See *id.*

⁵⁶ Preserving and protecting the environment is one of the missions of the Green-*e* Program. See *id.*

⁵⁷ See Rader, *supra* note 36, at 22-26 (discussing Green-*e* program).

⁵⁸ See CAL. PUB. UTIL. CODE § 398.4 (West Supp. 1999). The California Public Utilities Code requires that any retail supplier of electricity in California that makes any claims that its electricity sources are different than net system power must disclose the specific sources. *Id.* However, only those suppliers making claims must disclose the specific sources. *Id.*

⁵⁹ See CAL. CODE REGS. tit. 20, § 1394(b)(2) (1999). The California regulations require only that the supplier provide an attestation to the Energy Commission that an audit was performed. *Id.*

1998, CRS audit protocols for the Green-*e* program had not even been fully developed, thus casting doubt upon the legitimacy and effectiveness of the audit procedure.⁶⁰

As to the Green-*e* Code of Conduct, CRS provides little detail, other than to explain that the Code governs the marketing and business practices of the participants. Yet, enforcement seems lax: participants who violate the Code of Conduct merely *can* lose permission to use the Green-*e* logo. This suggests that a participant might be allowed to continue to use the logo even if found out of compliance. With such feeble enforcement mechanisms, the contribution the CRS Code of Conduct makes to consumer protection is more illusory than real.

In sum, while a voluntary green electricity certification program holds some potential promise, the Green-*e* project leaves much to be desired in truly informing and protecting consumers. Moreover, deregulation under AB 1890 appears to have refocused the Public Utilities Code on the neutral dissemination of information to the public, rather than on actively protecting the public interest. Fortunately, however, other consumer protections exist.

B. Section 5 of the Federal Trade Commission Act

Aside from voluntary programs of dubious value, federal law seeks to protect consumers by preventing unfair methods of competition. Specifically, section 5 of the FTC Act declares unlawful all deceptive acts or practices affecting commerce.⁶¹ Such a proscription clearly encompasses green advertising or marketing practices which deceive consumers. The standards used by the FTC to determine whether an act or practice is deceptive are explicit. For instance, a statement is deceptive if it “actually misleads consumers,” or if it “has the tendency or capacity to deceive a substantial segment of the purchasing public in some material respect.”⁶² Practices likely to cause substantial numbers of the public to “make purchasing decisions based on false beliefs” also violate section 5.⁶³ With respect to what constitutes “substantial numbers,” the FTC has held that as little as “somewhere between [fourteen] and [thirty-three] percent” suf-

⁶⁰ See Rader, *supra* note 36, at 23 n.74.

⁶¹ See 15 U.S.C. § 45 (a)(1) (1994).

⁶² Statement of Basis and Purpose for the Funeral Industry Practices Rule, 47 FR 42260, 42274 (1982).

⁶³ See Raymond Lee Organization, Inc., 92 F.T.C. 489, 649 (1978), *aff'd*, 679 F.2d 905 (D.C. Cir. 1980).

ficed.⁶⁴ Applying these standards to the advertising practices of green marketers certainly suggests blatant violations of section 5 of the FTC Act. Despite these apparent infractions, however, the applicable standards of proof and other considerations significantly decrease the probability that the FTC will find a specific act or practice in violation of the Act.

In requiring the FTC to overcome several rigorous requirements, subsection 5(n) of the FTC Act expressly limits the FTC's authority to declare a specific act or practice unlawful.⁶⁵ Specifically, before the FTC finds a violation of the Act, it must clear three hurdles. First, it must determine that the questionable act is "likely to cause substantial injury to consumers."⁶⁶ Certainly, deceptive claims in advertisements for pharmaceutical products or other potentially dangerous products may qualify as likely to cause substantial injury, but whether deceptive green marketing claims might attain this level is an open question. Further unanswered questions are how the FTC should determine whether an injury is likely and what types of injuries qualify. Because green energy marketing is a relatively recent development, little FTC guidance is available in this area.

The second hurdle relates to the first: if consumers themselves can "reasonably" avoid the injury, then the FTC cannot declare an act or practice in violation of the Act.⁶⁷ Thus, only if substantial injury is likely to occur *and* it is unavoidable will the FTC be able to halt the practice. Again, uncertainties exist as to how a consumer might reasonably avoid an injury caused by deceptive green marketing practices. Is choosing a non-green electricity provider a "reasonable" method of avoiding potential injury? If so, the FTC Act may be impotent with respect to green marketing.

Finally, even if the questionable practice meets the first two requirements, "countervailing benefits to consumers or to competition" can still outweigh these

⁶⁴ See *Bristol-Myers Co.*, 85 F.T.C. 688, 744 (1975).

⁶⁵ Section 5(n) of the Federal Trade Commission Act reads:

"The Commission shall have no authority under this section... to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination." 15 U.S.C. § 45(n) (1994).

⁶⁶ *Id.*

⁶⁷ *Id.*

other factors.⁶⁸ Moreover, in balancing these factors, the FTC may consider established public policies as well as other evidence. With respect to electricity deregulation, public policy clearly favors competition, which in turn necessarily entails employing marketing strategies. Although the FTC has not yet addressed this point, with the current groundswell of support for deregulation from both ends of the political spectrum, it is difficult to imagine a green marketing practice sufficiently egregious to violate section 5.

In addition, only the FTC has the authority to take formal action to prevent deceptive marketing practices. Thus, even if such a practice were identified, because section 5 lacks a citizen suit provision, the FTC still has discretion whether or not to pursue the violator. In all likelihood, especially given section 5(n)'s high standard of proof, the FTC will focus its energies on other potential violators rather than on green energy marketers. However, to its credit, the FTC has taken modest action to help clarify the relationship between the FTC Act and environmental marketing.

C. FTC Guidance

Acknowledging the uncertainties and difficulties regarding the application of section 5 to environmental marketing claims, the FTC passed regulations, titled "Guides For the Use of Environmental Marketing Claims" ("Guides"), to provide guidance for companies involved in environmental advertising.⁶⁹ Although the FTC did not specifically target participants in the deregulated electricity industry, the scope of the Guides is certainly broad enough to encompass green energy marketing claims. For instance, the Guides apply to *any* claim concerning the environmental attributes of a product, package, or service.⁷⁰ Moreover, the Guides apply to nearly all forms of marketing, both direct and

⁶⁸ *Id.*

⁶⁹ See 16 C.F.R. §§ 260.1 - 260.8 (1998). Part 260 is titled "Guides for the Use of Environmental Marketing Claims." The FTC originally issued the Guides in 1992, and modified them in 1996 and 1998.

⁷⁰ Section 260.2 of the Guides states that they:

"apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means including marketing through digital or electronic means, such as the Internet or electronic mail. The guides apply to any claim about the environmental attributes of a product, package or service in connection with the sale, offering for sale, or marketing of such product, package or service for personal, family or household use, or for commercial, institutional or industrial use." 16 C.F.R. § 260.2.

indirect.⁷¹ With their broad scope, the Guides provide not only answers to questions of interpretation and substantiation of marketing claims but general principles applicable to all environmental marketing claims.⁷²

Regarding interpretation and substantiation, the FTC requires that the party making the assertion about an environmental attribute "possess and rely upon a reasonable basis substantiating the claim."⁷³ The reasonable basis must consist of "competent and reliable evidence," which normally requires scientific documentation.⁷⁴ Given the infancy of electricity deregulation, one finds it hard to believe that scientific studies substantiating the green energy marketing claims have been conducted, much less that the parties possess and are relying upon results from these studies. Indeed, many of the green marketing claims make predictions about the future effects of choosing green energy, such as "a cleaner environment ... [for] generations to come."⁷⁵ As yet, no one has provided "competent and reliable" evidence pointing to long-term environmental benefits from selecting a so-called green electricity product. To the contrary, many experts predict just the opposite.⁷⁶ Plainly, it appears that many of the current green marketers are making unfounded assertions in violation of the FTC Guides.

In addition to the interpretation and substantiation requirements, the Guides also provide general principles applicable to all environmental marketing claims.⁷⁷ For example, the Guides state that any disclosures and qualifications used by marketers should be "sufficiently clear, prominent and understandable to prevent deception."⁷⁸ Marketers may not overstate an environmental benefit, either expressly or impliedly.⁷⁹ Moreover, in comparing products, the Guides direct that marketers should avoid deception by making clear the basis of comparison.⁸⁰ In addition to these general standards which appear to provide substantial

⁷¹ See *id.*

⁷² See 16 C.F.R. §§ 260.5 - 260.7 (addressing interpretation, substantiation, general principles, and environmental marketing claims).

⁷³ See 16 C.F.R. § 260.5 (addressing interpretation and substantiation issues).

⁷⁴ *Id.*

⁷⁵ See, e.g., PG&E Energy Services brochure promoting its Clean Choice™ renewable energy option. PGEGL-50/100 (1998).

⁷⁶ See Rader, *supra* note 36, at 8-9 (explaining problems with reselling renewable energy).

⁷⁷ See 16 C.F.R. § 260.6 (addressing generally applicable principles).

⁷⁸ See 16 C.F.R. § 260.6(a).

⁷⁹ See 16 C.F.R. § 260.6(c).

⁸⁰ See 16 C.F.R. § 260.6(d).

guidance, the FTC Guides also provide a separate section applying specifically to environmental claims.⁸¹

The environmental marketing claims section sets forth rules dealing with both general environmental benefit claims and particular types of environmental claims.⁸² Because none of the Guides' specific provisions addresses green energy marketing, only that part addressing general environmental benefit claims is relevant to green electricity marketing.⁸³ The relevant subsection proscribes direct or implied representations that a product offers a general environmental benefit.⁸⁴ This subsection explicitly recognizes that such claims are inherently difficult to interpret and "may convey a wide range of meanings to consumers."⁸⁵ Consequently, to prevent consumer confusion, every such unqualified claim either must be substantiated or avoided.

Unfortunately, while the Guides provide specific examples illustrating claims falling within a "safe harbor" for other environmental attributes,⁸⁶ the Guides provide no examples relating to green energy. This creates serious uncertainties, especially when one considers the slothful pace at which the FTC develops standards.⁸⁷ Thus, how this section applies to green energy marketing remains unclear.

Overall, the FTC Guides create a broad framework to address environmental marketing claims. Unfortunately, by failing to specifically address green energy marketing claims, they fall short of preventing deceptive electricity advertising. Moreover, the Guides are voluntary in nature and do not preempt inconsistent state laws.⁸⁸ Rather, they are merely intended to facilitate compliance with section 5(a) of the FTC Act.⁸⁹ As a result, the Guides have yet to become important considerations for green energy marketers.

⁸¹ See 16 C.F.R. § 260.7.

⁸² See *id.*

⁸³ The subsections addressing the specific claims relate to features unassociated with electricity such as biodegradability, compostability, recyclability. See 16 C.F.R. § 260.7(b)-(h).

⁸⁴ See 16 C.F.R. § 260.7(a).

⁸⁵ *Id.*

⁸⁶ See 16 C.F.R. § 260.7(b)-(c) (providing examples of claims regarding such things as degradability, compostability, and recyclability which would not violate the Act).

⁸⁷ See David F. Welsh, *Environmental Marketing and Federal Preemption of State Law: Eliminating the "Gray" behind the "Green,"* 81 CAL. L. REV. 991, 1006-1011 (1993) (noting that FTC's case-by-case adjudication method is time-consuming, ineffective, and brings very few prosecutions to enforce standards).

⁸⁸ See 16 C.F.R. § 260.8.

⁸⁹ See *id.*

D. Attorneys General Recommendations

The state offices of attorney general ("AGOs") and the National Association of Attorneys General (NAAG) also have expressed their views on environmental marketing, both in general and as applied to green electricity marketing.⁹⁰ Indeed, the FTC promulgated its environmental marketing Guides only after a group of eleven AGOs issued two reports⁹¹ in the early 1990s proposing specific environmental marketing restrictions. The Guides were analogous to many of the AGOs' recommendations. More recently, the NAAG created a new subcommittee to address environmental marketing issues.⁹² The goal of this subcommittee is to develop specific marketing standards expressly aimed at environmental benefit claims by the electric power industry. However, as of early 1999, the subcommittee had not yet completed its task. One can only hope that these NAAG marketing standards, when completed, will sufficiently address the inadequacies in the FTC Guides.

E. California Law

In addition to the mandatory electrical generation source disclosures mentioned in Part II.C. above, California statutes also address deceptive advertising with respect to environmental marketing claims. In fact, California law expressly recognizes the FTC Guides in its deceptive marketing statute, section 17200 of the Business and Professions Code.⁹³ This statute makes it unlawful for any person to make, explicitly or impliedly, any misleading environmental marketing claim.⁹⁴ Moreover, the statute broadly defines "environmental marketing claim" to include any of the claims covered in the FTC Guides.⁹⁵ In adopting the FTC guidelines, California explicitly recognized that uniform standards are needed

⁹⁰ See Burg, *supra* note 30.

⁹¹ Eleven AGOs issued the Green Report and the Green Report II, in 1990 and 1991 respectively, both of which listed recommendations for responsible environmental marketing. *See id.*

⁹² The subcommittee is part of the NAAG Energy Deregulation Working Group. *See id.* at *2.

⁹³ See CAL. BUS. & PROF. CODE § 17200 (West 1997).

⁹⁴ *See id.*

⁹⁵ *Id.*

to protect consumers.⁹⁶ Furthermore, consumers have greater rights under California law than under the FTC Act.

Unlike the FTC Act, the California Civil Code allows a private cause of action under the Consumers Legal Remedies Act against any person engaging in deceptive marketing practices.⁹⁷ Specifically, representing that goods or services have characteristics, benefits, or quantities which they lack is unlawful.⁹⁸ Moreover, in addition to other damages, a consumer who prevails in an action is entitled to costs and attorney fees. Thus, compared to federal avenues of redress, California provides greater opportunity and incentive for consumers to challenge advertisers engaging in deceptive marketing practices. However, whether individuals will take advantage of these opportunities remains to be seen. If the number of suits brought under state deceptive marketing laws is any indication, very few claims will ever be brought under the environmental marketing laws.⁹⁹

F. Special Concerns in Green Electricity Marketing

Although both federal and state laws governing deceptive advertising address typical product claims, electricity marketing poses unique problems stemming simply from the nature of electricity. Neither federal nor state laws have yet spoken to these particularities. One novel characteristic derives from the method used to deliver electricity.

⁹⁶ See Stats. 1995, ch. 642, § 1 (S.B. 426), which states:

"The Legislature finds and declares that it is the public policy of the state that environmental marketing claims, whether explicit or implied, must be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of products and packages. Accurate and useful information about the environmental impact of products and packages will not be available to consumers unless uniform standards for environmental marketing claims, such as the Federal Trade Commission Guidelines for Environmental Marketing Claims, are adopted by the various states."

⁹⁷ See CAL. CIV. CODE § 1750 (West 1998). Section 1750 is known as the Consumers Legal Remedies Act.

⁹⁸ See CAL. CIV. CODE § 1770 (West 1998). In pertinent part, section 1770 reads:

"The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: ... (5) Representing that goods or services have ... characteristics, ... benefits, or quantities which they do not have" CAL. CIV. CODE § 1770(a)(5).

⁹⁹ Because of deficiencies in state laws, few claims have been brought under general state deceptive advertising laws. See Welsh, *supra* note 87, at 1000.

In most cases, electricity generators transmit power to a power pool, or grid, where it is mixed together and then sent as needed to subscribers.¹⁰⁰ A consumer who purchases green electricity will not receive the electrons produced by the green electricity generator; rather, the consumer will get a proportion of whatever electrons are in the power pool at that time.¹⁰¹ At best, all we can be sure of is that the green electricity generator has contributed as many electrons to the pool as the consumer has used.¹⁰² Thus, a tracing problem exists as to what energy is purchased and what energy is received.¹⁰³

Another problem peculiar to electricity marketing is the ever-changing characteristics of the electric power.¹⁰⁴ For instance, the mix of power available for transmission to consumers varies over time. Whether source-specific power is available may depend on what generators and transmission lines are operative, and, in the case of wind or solar power, it may even depend on the weather.¹⁰⁵ As a result, predicting the source and environmental attributes of electric power is substantially more difficult than with other products or services.¹⁰⁶ These unique characteristics of electricity demonstrate the importance of developing laws that specifically address green energy marketing.

IV. PROPOSALS FOR IMPROVEMENT

Because competition in the electricity industry is still in its infancy, regulators presently have the opportunity to promulgate regulations that operate prospectively. Rather than simply addressing problems on a post-hoc, piecemeal basis, regulators should act quickly to devise a comprehensive framework before deceptive green marketing becomes rampant. An effective regulatory scheme must be understandable, comprehensive, and enforceable. To achieve these goals, such a framework must meet certain prerequisites. Moreover, only a federal program can adequately meet all of these imperatives.

¹⁰⁰ See Burg, *supra* note 30, at *3.

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ This tracing problem is addressed more thoroughly by Nancy Rader. She concludes that without a region-wide tracking system, which as yet is nonexistent, it is impossible to verify green marketing claims. See Rader, *supra* note 36, at 18-26.

¹⁰⁴ See Burg, *supra* note 30, at *3.

¹⁰⁵ See *id.*

¹⁰⁶ See *id.*

A. Basic Requirements

One problem that will continue to frustrate green marketing regulation unless remedied is the current lack of standard definitions for environmental marketing terms. As mentioned previously, no commonly accepted lexicon exists for terms such as "green," "clean," or "renewable." Consequently, consumers, marketers, and regulators, in essence, are speaking different languages. Consumers believe they are actually benefiting the environment; green marketers, even if trying to avoid deceptive practices, have no clear guidance in complying with the regulations; and regulators assume that the regulations are accomplishing their goal. Until accepted standard definitions for environmental marketing terms exist, any attempt to eliminate deceptive marketing will fail.

Another basic requirement is mandatory disclosure of environmental attributes. Disclosure is necessary to ensure that consumers are informed about the power they are purchasing. For instance, in both their monthly bills and in all advertising, consumers should be provided with information regarding fuel sources, air and water emissions, contract terms, price, and generator location.¹⁰⁷ Although it may be difficult to determine precisely what material should be disclosed, and in what form, without such information consumers would be making choices in a vacuum.¹⁰⁸

In addition, national uniform standards must be implemented for regulation to be truly effective. With open access to transmission lines as one of the key agents fueling competition in the electricity industry, green marketers can purchase power generated in Vermont and sell it to consumers in California. The Vermont generator may also be selling power to numerous other states as well. The burden of complying with the numerous, and likely inconsistent, state regulations would be substantial and would likely only discourage competition.¹⁰⁹ Without uniformity, marketers and energy producers would incur un-

¹⁰⁷ See *id.* at *4 (discussing mandated disclosures).

¹⁰⁸ See *id.* at *4 (describing considerations affecting mandated disclosures). The NAAG Report raises complex and difficult issues with regard to what information should be disclosed. For instance: Should the claims be based on past experience with their electricity sources or on projections into the future? Should advertising be limited to the specific product or service being offered or should it include information about the company? How should companies account for differences in source tracking systems when no uniform nationwide tracking system or regulations exist? These are just some of the difficulties which regulators must address.

¹⁰⁹ See Welsh, *supra* note 87, 1003-1005 (discussing problems with state law uniformity problems in environmental marketing).

necessary costs resulting in inefficiency. Only uniform standards can efficiently address these concerns.

B. Federal Control

Clearly, the most expedient method of developing uniform, comprehensive, efficient, and enforceable green marketing laws is through federal authority.¹¹⁰ Unfortunately, usurping state power nearly always entails political battles. With regard to green energy marketing and its effect upon interstate commerce, Congress certainly has the power to preempt state law under the Commerce Clause.¹¹¹ The question, therefore, is not whether Congress *can* preempt state law, but whether it *should*. In this situation, despite the probable state backlash, federal control provides the best chance for success for several reasons.

First, as should be apparent, regulation of green marketing is becoming increasingly complex and important. No single state has sufficient resources or technical expertise to address the myriad of issues likely to arise in this context. For reasons of uniformity and efficiency, federal agencies are the obvious choice to shoulder this burden. This is not to say, however, that states should be entirely left out. States' experience in this arena will be invaluable, and they should be encouraged to play an influential advisory role in developing the regulatory standards.¹¹²

Additionally, federal authorities have the ability to incorporate national concerns, taking into consideration each state's unique energy circumstances. In contrast, an individual state is primarily concerned with its own particular situation, not that of its neighbor. For example, federal regulations could address a situation where, as a result of deceptive green marketing, one state's pollution decreases, while as a whole, the net pollution in the United States (or even globally) increases. Because states will likely adopt a myopic view of green energy regulations, federal control is appropriate.

Finally, as alluded to earlier, to ensure consistent enforcement of green marketing regulations, the federal government must be involved.¹¹³ Federal authorities have the ability to allow independent state enforcement of federal laws,

¹¹⁰ See *id.* at 1014-22 (justifying federal preemption in general green marketing arena).

¹¹¹ See U.S. CONST. art. I, § 8, cl. 3. This clause is commonly known as the Commerce Clause.

¹¹² See Welsh, *supra* note 87, at 1018-19.

¹¹³ See *id.* at 1019-20 (discussing advantages of federal enforcement).

thus alleviating some of the burden on the federal agencies and providing states with a meaningful role in policing deceptive marketing practices.¹¹⁴ Moreover, the federal government can provide financial support and incentives through conditional grants and other programs for those states unwilling or financially unable to adequately enforce green marketing regulations.¹¹⁵ Lastly, involving the federal government enables both federal and state courts to curb deceptive marketing practices.¹¹⁶ In sum, while claims of federal bureaucratic inefficiencies will undoubtedly arise, the advantages of a federal regulatory scheme outweigh states' concerns.¹¹⁷

CONCLUSION

Competition in electricity generation broadly promises to provide many benefits: lower energy costs, increased efficiencies, and reduced environmental impacts. Proponents of deregulation contend that the resulting competition will replace outdated and inefficient government-sanctioned monopolies with efficient use of resources and a cleaner environment. However, the growth of green energy marketing, lacking adequate regulatory oversight to prevent deceptive marketing practices, threatens this environmental objective. Only through the adoption of uniform and enforceable regulations governing green marketing can we achieve this goal. At this unique juncture of consumer protection and environmental protection, some governing body — whether federal or state — should address this issue head-on, and soon. Otherwise, electricity deregulation itself will have successfully deceived the public.

¹¹⁴ See *id.* at 1020.

¹¹⁵ See *id.*

¹¹⁶ See *id.*

¹¹⁷ For a more thorough analysis of the state versus federal question, see *id.* at 1014-22.