



## Adding Ambiguity to Complexity (with a Dash of Politics): Republican AGs Challenge Corporate Clean Energy Claims

On September 24th, sixteen state attorneys general sent a [letter](#) to major tech sector buyers of renewable energy to “raise serious concerns” and gather information about claims relating to “using” or being “powered by” renewable energy as well as claims about the impact of their clean energy programs and practices. The AGs also allege that in a quest for 24/7 carbon-free power, tech companies have “locked up relatively rare baseload sources like nuclear power for themselves,” contributing to the “grid-reliability crisis.” At a time when power is becoming scarce, reputations are at risk from the left and the right alike. Meanwhile, we face a climate crisis. What is a well-intentioned company to do?

### *“Use” or “Powered By” Claims*

The AGs question the validity of market-based renewable energy procurement, especially when companies buy renewable energy certificates (RECs) that are “unbundled” from the electricity that they buy but nevertheless claim to be “using” or “powered by” renewable energy. The AGs raise whether such claims are “deceptive” and based on “environmental accounting gimmicks” – fundamentally because of the use of “unbundled” and non-additional RECs. To be clear, the Republican AGs are not primarily concerned with accounting accuracy or making corporate sustainability actions more climate impactful. But that does not mean that their attacks are entirely baseless, and companies are facing an increasing level of reputational risk.

Green Strategies has been advising our clients for years that, contrary to common practice, they should NOT make claims about “using” or being “powered by” renewable energy if they were making such claims based solely on market-based Scope 2 attributional accounting. The Greenhouse Gas Protocol’s (GHGP) Scope 2 Guidance does allow a company to reduce its Scope 2 inventory through ownership of a REC (unbundled or otherwise). But replacement in an inventory of a higher emission-factor consumed MWh with a zero-emission-factor MWh represented in a REC does not automatically equal the “use” of clean energy. And although it is fair to interpret the U.S. Federal Trade Commission’s (FTC) Green Guides as allowing use-claims based on REC ownership, the Guides are woefully out of date, and this is a reputational issue more than a legal one.<sup>1</sup>

Admittedly, when advising against many “use” claims, we were mostly worried that climate-minded stakeholders might criticize such claims. We were less concerned about criticisms from anti-clean energy political actors. Now we are there. The AGs argue that to make clean energy claims, “companies engage

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<sup>1</sup> We prefer that companies talk about “equaling” or “matching” their consumed electricity with clean energy purchases and investments (though the AGs also challenge these types of claims – like we said, only some of the AGs’ criticisms are fair).

in a shell game whereby they purchase unbundled 'renewable energy certificates' (RECs) and then claim the 'renewable' attribute of energy that is used by someone else as their own energy use."<sup>2</sup>

We frankly may be at a point where use claims are an unnecessary distraction for companies. Companies making real investments in the clean energy transition as part of their climate commitments should talk exactly about that.

### *Emissions Reduction Claims*

The Republican AGs criticize two types of corporate emissions reduction claims: 1) the use of unbundled RECs to claim a reduction in *the company's* emissions; and 2) the use of unbundled RECs to claim a reduction in emissions *anywhere*. We caution our clients about equating Scope 2 inventory reductions from replacements of grid-average-emission-factor MWhs with attribute-based zero-emission-factor MWhs with actual, measurable emissions avoided or reduced on the power system (e.g., "our renewable energy purchases equate to taking X cars off the road").

In our view, the AGs get many things wrong in their analysis of these points, and their negative conclusions are overly broad. Depending on the corporate procurement in question, companies can often make legitimate qualitative and even quantitative claims of emissions impact and furtherance of grid decarbonization.

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Our take from all of this is that companies should be very intentional and use more precise language in the design of their climate goals and in the claims they make as they execute on those plans. Corporate procurement of clean energy remains a critical tool in driving a clean energy transition. Setting goals and taking actions that maintain and grow the clean energy marketplace, expand the deployment of clean resources, bring new clean energy technologies to the market, and reduce the use of fossil generation are all things that corporates today are bringing to fruition. No protests from anti-clean energy political actors should distract us from maintaining that course. But how we set goals, take action, and describe those actions needs to evolve.

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<sup>2</sup>There are circumstances where a "use" or "powered by" claim may be appropriate, such as deployment of on-site renewable energy. Time and location matched procurement of renewable energy with plausible deliverability might also strengthen a use claim (though we question the value of a use claim versus a claim based on actual emissions impact). According to a recent [blog update](#), GHGP's Scope 2 update (to be released later this month) will address corporate claims related to renewable energy procurements and market-based Scope 2 accounting.