February 12, 2024

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

Gas producers sometimes publicly describe their product as "certified," "responsible," or "differentiated" and market it as a climate-friendly fossil fuel. But too often these green claims are false or misleading due to opaque methodology, unreliable technology, and unacknowledged downstream climate effects of gas combustion. Still, many utilities are using so-called "certified" gas to falsely burnish their climate bona fides, and some charge premiums for gas bearing these often meaningless designations.[1] We therefore urge the Federal Trade Commission (FTC) to investigate and crack down on unfair and deceptive environmental claims made by fossil fuel producers and gas certification programs, including by updating FTC Guides for the Use of Environmental Marketing Claims, informally known as the "Green Guides," to expressly provide guidance on the claims those programs can legitimately make.

Gas, frequently called "natural" gas, is mostly methane, a greenhouse gas which has roughly 80 times more warming power than carbon dioxide over a 20-year period.[2] Proponents argue that natural gas burns cleaner than coal or petroleum, with comparatively lower combustion-related carbon dioxide emissions that contribute to long-term climate change. But natural gas exploration, drilling, and production still have a significant environmental impact. When gas leaks from the wellhead, pipeline, or distribution network, or inside homes and businesses, much of the climate advantage of reduced carbon dioxide is lost.[3] Studies measuring methane leakage have concluded that "[i]f gas leaks, even a little, 'it's as bad as coal.'"[4]

The gas industry has already engaged in a greenwashing campaign simply by labeling gas as "natural" and promoting it as a "bridge" between fossil fuels and renewables — a public relations effort that fails to acknowledge the negative short- and long-term consequences of gas.[5] Now, another dangerous greenwashing scheme is at play: the past decade has seen a proliferation of third-party "gas certifiers" that evaluate methane emissions and proclaim certain gas as

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[1] Michelle Thompson, *Going for the Green: Responsibly Sourced Gas*, HART Energy (Feb. 18, 2022), https://www.hartenergy.com/exclusives/going-green-responsibly-sourced-gas-198840.

[2] *Facts about Methane*, United National Environment Programme (2024), https://www.unep.org/explore-topics/energy/facts-about-methane.

[3] Hannah Story Brown, *The Unholy Alliance Between 'Certified' Clean Natural Gas Producers and the Certifying Companies*, The American Prospect (Aug. 3, 2023), https://prospect.org/environment/2023-08-03-unholy-alliance-certified-clean-natural-gas/.

[4] Hiroko Tabuchi, *Leaks Can Make Natural Gas as Bad for the Climate as Coal, a Study Says*, N.Y. Times (July 13, 2023), https://www.nytimes.com/2023/07/13/climate/natural-gas-leaks-coal-climate-change.html.

[5] Greg Muttit, *Gas Is Not a Bridge Fuel, It's a Wall. So Why Are Governments Still Financing It?*, Int'l Inst. for Sustainable Dev. (June 10, 2021), https://www.iisd.org/articles/gas-bridge-fuel.

"certified" or "responsible," and therefore preferable from a climate perspective.[6] Oil and gas producers pay the certifiers for this designation, price their gas higher than non-certified gas, and tout its environmental benefits in their marketing materials. For example, Chevron promotes its "responsibly sourced gas" as "natural gas produced at facilities that have undergone an assessment by a third-party certifier" and which meets the "highest environmental and community standards."[7] The costs associated with this purportedly premium gas are then passed on to consumers through higher utility rates.[8]

Gas producers, certifiers, and monitoring companies have profit motives at the heart of their effort, and have estimated that prices for certified gas could be set at five percent higher than market price.[9] The Differentiated Gas Coordinating Council (DGCC) is an example of the well-coordinated effort to exploit and monetize certified gas claims, and of the brazen conflicts of interest that arise in a lobby group that includes gas producers and their third-party certifiers. The gas companies' profits depend on the monitoring companies certifying their gas, and the monitoring companies' profits depend on willing industry customers. Thus, there is no incentive to ensure the accuracy of emissions measurements.[10]

It is therefore not surprising that independent research casts substantial doubt on the effectiveness of gas certification technology, the soundness of its methodologies, and the accuracy of certification claims — none of which are standardized across certification companies. One test of sensor technologies, including those used by certification companies, yielded so many false positives that flipping a coin could have been more accurate.[11] And when certified thermographers from Earthworks double-checked emissions at oil and gas production sites in Colorado purportedly monitored by Project Canary, a leading gas certification company, they recorded 22 pollution events, none of which the monitors at the sites detected.[12] Furthermore, a review of 115 monthly monitoring reports found only one instance where documented pollution triggered agency notification and required action.[13]

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[6] *See* Justin Jacobs, *US gas industry pursues 'responsible' label to keep customers*, Fin. Times (Feb. 23, 2022), https://www.ft.com/content/bbb3a299-833a-4ffe-9f99-c0ee231e61f7.
[7] Newsroom, *explainer: what is responsibly sourced gas?*, Chevron (Aug. 11, 2022), https://www.chevron.com/newsroom/2022/q3/explainer-what-is-responsibly-sourced-gas.
[8] Hannah Story Brown, *Utilities Are Increasingly Passing Premiums for "Certified" Gas Onto Consumers Across the Country*, Revolving Door Project (Nov. 1, 2023), https://therevolvingdoorproject.org/utilities-are-increasingly-passing-premiums-for-certified-gas-onto-consumers-across-the-country/.
[9] Jim Magill & Alisdair Bowles, *Responsible Gas Offers End-Users a Choice to Buy Environmentally Friendly Product*, S&P Global (Nov. 7, 2019), https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/natural-gas/110619-responsible-gas-offers-end-users-a-choice-to-buy-environmentally-friendly-product; Liz Hampton & Scott Disavino, *Focus: U.S. natural gas producers hope customers will pay more for 'green gas,'* Reuters (June 30, 2021), https://www.reuters.com/business/energy/us-natural-gas-producers-hope-customers-will-pay-more-green-gas-2021-06-30/.
[10] Hannah Story Brown, *The Unholy Alliance Between 'Certified' Clean Natural Gas Producers and the Certifying Companies*, The American Prospect (Aug. 3, 2023), https://prospect.org/environment/2023-08-03-unholy-alliance-certified-clean-natural-gas/.
[11] *CERTIFIED DISASTER: How Project Canary and Gas Certification are Misleading Markets*, Earthworks. https://earthworks.org/wp-content/uploads/2023/04/CertifiedDisaster-FactSheet-Final-4-14-23-1.pdf.; Clay Bell et al., *Performance of continuous emission monitoring solutions under single-blind controlled testing protocol*, ChemRxiv (Mar. 2, 2023), https://chemrxiv.org/engage/chemrxiv/article-details/63ffc86a32cd591f12b304c3.
[12] *CERTIFIED DISASTER: How Project Canary and Gas Certification are Misleading Markets*, Earthworks. https://earthworks.org/wp-content/uploads/2023/04/CertifiedDisaster-FactSheet-Final-4-14-23-1.pdf.
[13] *Id*.

Gas certification companies currently operate in a Wild West environment. According to the Environmental Defense Fund (EDF), some oil and gas companies may "cherry-pick which sites to certify within their portfolio," seeking "certification of better performing facilities while leaving older, leakier facilities outside of the analysis."[14] Ultimately, EDF has cautioned that "few companies do the kind of robust measurement-based accurate monitoring and reporting necessary to sustain a claim that the gas they produce is fundamentally cleaner than the industry average."[15] And EDF further warns that it is unaware of any company that conducts certification "with the kind of transparency required to enable independent verification that the so called certified gas is really worth the premium price."[16]

The reality is that gas certification schemes allow the oil and gas industry to justify the continued expansion of methane gas use and undermine efforts towards a just transition to renewables. Energy modeling experts at the International Energy Agency recently found that getting to net zero greenhouse gas emissions by 2050 requires an 80 percent reduction in the use of methane gas.[17] Research by Oil Change International found that 60 percent of the fossil fuels in currently active fields and mines must stay in the ground to limit global temperature increase to 1.5°C.[18] The fossil fuel industry's marketing of "certified" gas is aimed at convincing the public that reducing the use of methane gas is unnecessary, because the gas system is getting "cleaner." But the evidence is to the contrary, and the FTC should not permit the industry to falsely claim credit for reducing methane pollution from the gas system, especially when it comes at the expense of the fight against climate change.

Moreover, certified gas schemes directly harm consumers, who end up paying a higher price for gas that might not be as clean as its producers claim. According to the Revolving Door Project, "[u]tilities in Massachusetts, New York, Vermont, New Jersey, Michigan, Colorado, and Virginia have purchased or plan to purchase certified natural gas at premium rates and have received or sought approval to pass those costs — ranging from tens to hundreds of thousands of dollars a year — onto consumers."[19] Certified gas categorization issues are also implicating federal agencies in litigation. The Federal Energy Regulatory Commission (FERC) is currently embroiled in a lawsuit claiming that FERC should not have approved Tennessee Gas Pipeline's producer-certified gas aggregation pooling service while failing to evaluate the criteria for that gas's certification.[20]

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[14] Erin Murphy, *New York utility regulator approves a first-of-its-kind certified gas pilot program. Now what?*, EDF (Sept. 19, 2023), https://blogs.edf.org/energyexchange/2023/09/19/new-york-utility-regulator-approves-a-first-of-its-kind-certified-gas-pilot-program-now-what/.
[15] *Id*.
[16] *Id*.
[17] The Imperative of Cutting Methane from Fossil Fuels, Int'l Energy Agency (2023), https://iea.blob.core.windows.net/assets/9efb310e-94d7-4c46-817b-9493fe5abb0a/Theimperativeofcuttingmethanefromfossilfuels.pdf.
[18] Kelly Trout, *Sky's Limit Data Update: Shut Down 60% of Existing Fossil Fuel Extraction to Keep 1.5°C in Reach,* Oil Change International (August 2023), https://priceofoil.org/content/uploads/2023/08/skys-limit-data-update-2023-v3.pdf
[19] Hannah Story Brown, *Utilities Are Increasingly Passing Premiums for "Certified" Gas Onto Consumers Across the Country*, Revolving Door Project (Nov. 1, 2023), https://therevolvingdoorproject.org/utilities-are-increasingly-passing-premiums-for-certified-gas-onto-consumers-across-the-country/; https://therevolvingdoorproject.org/wp-content/uploads/2023/11/RDP-Research-Doc-Utilities-Passing-on-Premiums-for-Certified-Gas.pdf.
[20] *Antero Resources Corp. v. FERC*, D.C. Cir. Nos. 22-1278 and 22-1280 (consolidated).

Through its Green Guides, the FTC can begin to address the "certified" gas marketing practices of the gas industry. In 1992, the FTC first issued Guides for the Use of Making Environmental Claims, which became known as the Green Guides.[21] The Green Guides serve as a baseline for identifying deceptive environmental marketing practices. Several states have incorporated them into their consumer protection laws, and courts have looked to them in proceedings against manufacturers alleging that consumers were deceived into purchasing "green" products they would not have otherwise bought. The Green Guides recognize that "sometimes what companies think their green claims mean and what consumers really understand are two different things."[22] The Green Guides caution, in pertinent part, that "sellers should employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions," and prohibit unqualified general benefit claims that cannot be substantiated.[23] Gas certification claims fall under this admonition. But current Green Guides — last updated in 2012 — do not specifically address claims about certified gas. In fact, they don't include any guidance for oil and gas marketing whatsoever, in contrast to explicit guidance on misleading claims from gas suppliers and utilities in other countries, such as the United Kingdom.[24]

Evidence strongly suggests that current gas certification programs violate the FTC Act, which charges the Commission with protecting consumers from "unfair or deceptive acts or practices."[25] A conflict-of-interest laden relationship between gas producers and monitoring and certification companies has resulted in unjustifiably higher prices that the producers are charging consumers for misleadingly labeled clean gas.

To help us better understand how the FTC is addressing false or misleading claims from gas certification companies, please respond to the following questions in writing by March 31, 2024:

1. Has the FTC examined the "certified," "differentiated," or "responsible" gas certification process and the clean gas claims made by the gas industry? If so, what has the Commission found? If not, will the Commission commit to investigating these claims?

2. In the next iteration of the Green Guides, will the FTC include guidance expressly addressing claims about certified gas? If so, when does the FTC anticipate that guidance will be published? If not, why not?

3. Does the FTC believe that the Green Guides can sufficiently address gas certification claims? Has the FTC considered commencing a rulemaking proceeding to promulgate regulations that address them? If so, what is the status of those considerations? If not, why not?

This greenwashing scheme demands an FTC investigation and the express inclusion of guidance for third-party natural gas certification regimes in revised FTC Green Guides. These

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[21] 57 Fed. Reg. 36,363 (Aug. 13, 1992).
[22] Federal Trade Commission, Green Guides, https://www.ftc.gov/news-events/topics/truth-advertising/green-guides.
[23] 16 C.F.R. § 260.5(a).
[24] *Advertising Guidance - misleading environmental claims and social responsibility*, ASA and CAP (July 23, 2023), https://www.asa.org.uk/resource/advertising-guidance-misleading-environmental-claims-and-social-responsibility.html.
[25] 15 U.S.C. § 45.

steps will help prevent gas producers and certification companies from misleading and ripping off consumers, harming the environment, and hindering progress on climate change.

We thank you in advance for your attention to this important matter.

Sincerely,

Edward J. Markey
United States Senator

Jeffrey A. Merkley
United States Senator

Sheldon Whitehouse
United States Senator

Elizabeth Warren
United States Senator

Richard Blumenthal
United States Senator

Bernard Sanders
United States Senator

Cory A. Booker
United States Senator