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Submitted Electronically:  
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Competition Bureau  
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**RE: Competition Bureau's Proposed Guidelines Concerning Environmental Claims**

Capital Power provides this submission in response to the consultation published December 23, 2024<sup>1</sup> by the Competition Bureau (the "Bureau") on its guidelines<sup>2</sup> regarding environmental claims (the "proposed" or "draft guidelines"). While the proposed guidelines aim to support assessing compliance with the greenwashing provisions (the "provisions") enacted through the *Competition Act*<sup>3</sup> (the "Act") on June 20, 2024, Capital Power remains concerned the provisions present unintended and adverse consequences for Canadian businesses.

The proposed guidelines do not offer transparency to businesses' concerns on the operationalization nor enforcement of the Act's greenwashing provisions. Clarity for applicability as well as assessment of compliance is imminent for Canadian businesses, inherently as we undertake the energy transition and progress exploration of new, novel, and lower-carbon technologies. Without clear guidance, there will be an adverse impact on the level of ESG-related information disclosed by Canadian businesses, potentially constraining ability to raise capital, undermining Canada's competitiveness and investment environment. It is crucial to establish reasonable bounds for what constitutes misleading information and to recognize potential for individual interpretation of material.

The prevailing political climate and potential imposition of forthcoming U.S./Canadian tariffs<sup>4</sup>, have exacerbated uncertainty faced by businesses, necessitating a reduction in regulatory ambiguity. Capital Power submits the Bureau should prioritize minimizing regulatory uncertainty to support and enable incumbent Canadian businesses to thrive and foster an environment that attracts new investment. The greenwashing provisions and their subsequent guidelines pose a hindrance at a time when regulatory relief is critically needed.

Capital Power recommends the Bureau review feedback received through this consultation to inform the finalized guidelines, and incorporate the following primary concerns:

- (1) Lack of clarity and guidance regarding the introduction of direct access to the Competition Tribunal by private parties, and how the Bureau's approach may influence grant(s) of leave;
- (2) Aligning guidelines with the Securities and Exchange Commission (SEC) and Canadian Securities Administrators (CSA) mandated disclosure obligations to reduce conflicting requirements as well as regulatory and administrative burden;
- (3) Amending guidelines to account for novel or first-in-kind solutions to provide a balanced approach to forward-looking strategies and representations; and,
- (4) Development of "pre-qualified" tests and methodologies for businesses to reference for determining appropriate standards or means of compliance.

Capital Power's feedback is detailed in the submission that follows, preceded by a brief company overview.

**Company Overview**

Capital Power (TSX: CPX) is a growth-oriented power producer with approximately 10 GW of power generation at 30 facilities across North America. We prioritize safely delivering reliable and affordable power communities can depend on, building lower-carbon power systems, and creating balanced solutions for our energy future.

We're proud to own and operate 4,200 MW of thermal and 780 MW of renewable power generation capacity in Canada, as well as 4,400 MW of thermal and 600 MW of renewable power generation capacity in the United States. We continue to advance developments that support Canada's economic growth and diversification, inclusive of 170 MW of battery energy storage, 165 MW of thermal expansion projects, and 126 MW of new renewable generation. We are Powering Change by Changing Power™.

<sup>1</sup> Competition Bureau Canada, [Recent Greenwashing Amendments to the Law](#), December 23, 2024.

<sup>2</sup> Competition Bureau Canada, [Environmental claims and the Competition Act](#), December 23, 2024.

<sup>3</sup> Government of Canada, [Competition Act](#) (R.S.C., 1985, C. c-34), §74.01 Deceptive Marketing Practices.

<sup>4</sup> Department of Finance Canada, [Canada announces \\$155B tariff package in response to unjustified U.S. tariffs](#), February 3, 2025.

## **Comments RE: Proposed Guidelines Regarding Environmental Claims Under the Competition Act**

### **Extent of Claims and Forward-Looking Statements**

The guidelines indicate that for claims concerning the business as a whole, the environmental impact of all activities of the business must be taken into consideration. In practice, this requirement is vastly complex for businesses that span multiple jurisdictions, interact with numerous stakeholders, and consider indirect and cumulative impacts (e.g. supply chain emissions or lifecycle impacts). It further amplifies uncertainty and risk associated with external factors such as climate change, evolving regulatory and reporting standards, as well as market dynamics, proving it to be difficult for businesses to develop assertions aligned with the requirements of the Act. It further impedes businesses' abilities to make aspirational claims, or those based on scenario analyses, discounting approaches to achieve government-mandated emissions reduction goals and voice long-term decarbonization strategies.

In addition, the draft guidelines enforce that environmental claims must be true, both in terms of its literal meaning and the general impression it conveys through the entirety of its representation (i.e. words, phrases, text display, and visual elements). The guidelines do not account for unintentional misrepresentation, nor do they present reasonable bounds for what constitutes misleading information or a company's responsibility to inform versus educate.

Capital Power submits the Bureau establish 'safe harbour' provisions to protect businesses from legal liability for representations involving forward-looking information and those established from scenario analysis, and permit amendments to such statements as new information, technologies, and methodologies become available. Safe harbours would be advantageous in promoting climate and sustainability-focused disclosures, especially in instances where the use of assumptions and approximations are necessitated by evolving data and methodologies. Such an approach would also encourage sharing of decision-useful information, while considering requirements of mandatory disclosures and security filings.

### **Existing Frameworks for Disclosures and Security Filings**

The greenwashing provisions do not consider existing and forthcoming disclosure practices, some of which also address environmental reporting and deceptive marketing practices. The Act's amendments have created overlap with existing disclosure laws governed by securities commissions, rules for public RFPs, federal and provincial reporting laws, and the recently released Canadian Sustainability Disclosure Standards (CSDS).

Though the CSDS are currently voluntary, they could be required if mandated by provincial and territorial regulators and may form the basis for future mandatory climate-related disclosures introduced by Canadian regulators, inclusive of anticipated amendments from the CSA<sup>5</sup>. CSDS 2 in particular emphasizes disclosure of climate-related risks and opportunities that could impact an entity's cash flows, access to finance, or cost of capital over various time horizons. Such disclosures necessitate detailed information on strategy, risk management, and metrics – all of which are integral to the standards' requirements and encourage use of forward-looking approaches. These laws are rapidly evolving and changing, which may lead to heightened risk exposure of contravening the Act if required or encouraged to file such information and with government bodies, security regulators, and other parties as needed.

Capital Power submits the guidelines be reviewed to reduce conflicting requirements with other statutorily mandated disclosure practices, to ensure the provisions do not result in undue administrative burden or additional costs for ESG reporting.

### **Defining Appropriate Methodologies and Tests**

Section 74.01 of the Act references using "adequate and proper test(s)" and "internationally recognized" methodologies to ensure compliance with the provisions, but do not define these terms. The guidelines note the Bureau will likely consider a methodology to be 'internationally recognized' if it is recognized in two or more countries, but does not necessarily require it be recognized by the governments of two or more countries. The provisions do not mandate use of international standards but do require a business to demonstrate how the methodology used to substantiate claims is adequate in the circumstances including Canadian context (e.g. geography, climate). This approach does not remedy ambiguity and amplifies the risk of non-compliance.

The guidelines reinforce businesses making claims for "sustainability," "net-zero" and "carbon-neutral" do so in a manner that is consistent with the most recent evidence and methodologies of independent third-party organizations with well-recognized expertise in the appropriate field. This approach does not consider novel technologies or solutions, of which availability of substantiation materials may not satisfy nor be available for the Bureau – particularly for first-in-kind projects or strategies.

<sup>5</sup> Canadian Securities Administrators (CSA), [CSA issues market update on climate-related disclosure project](#), December 18, 2024.

Capital Power submits that the guidelines should be amended to include a fulsome, but not exhaustive, list of “pre-qualified” tests and methodologies businesses can reference to support determining appropriate standards or means of compliance. Further, Capital Power recommends the guidelines be amended to include provisions for first-in-kind and novel technologies to ensure they account for advancements, innovation, and use of information as it becomes available.

### **Private Rights of Action**

The provisions present significant risk and vulnerability by introducing private rights of action through the Competition Tribunal. While the Competition Tribunal is not bound by the Bureau’s Guidelines, there should be alignment at a high level between the considerations of each the Tribunal and Bureau. Further, increased transparency with respect to the approach of both the Tribunal and Bureau will help to reduce uncertainty for industry and the corresponding impacts on investment in the country.

Given the potential for there to be an onslaught of claims, Capital Power submits clear criteria should be established and consulted upon to ensure that claims meet a certain threshold prior to entering the Tribunal process.

### **Closing Remarks**

Capital Power is committed to working collaboratively with the Bureau and other participants to ensure that future guidelines provide clear direction for businesses impacted by the Act amendments. We are highly supportive of a 12-month transition period for Canadian businesses to become compliant with the requirements of the new provisions. Clear guidance is critical to foster an environment where Canadian businesses can thrive, grow, and innovate, while enabling new advancements and investment.

We appreciate the opportunity to submit feedback on the proposed guidelines and look forward to participating in ongoing consultation. Should the Bureau wish to discuss further or have questions regarding this submission, please contact me at 780-392-5934 or [kbruce@capitalpower.com](mailto:kbruce@capitalpower.com) with any inquiries.

Regards,



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