

**AMENDMENT TO COMMITTEE PRINT #1**  
**OFFERED BY MR. WAXMAN OF CALIFORNIA**

Page 133, after line 23, insert the following and make the necessary conforming changes in the table of contents:

1 **Subtitle I—Energy Efficiency Per-**  
2 **formance Standards for Retail**  
3 **Electricity and Natural Gas Dis-**  
4 **tributors**

5 **SEC. 201. ENERGY EFFICIENCY PERFORMANCE STANDARDS**  
6 **FOR RETAIL ELECTRICITY AND NATURAL**  
7 **GAS DISTRIBUTORS.**

8 (a) IN GENERAL.—Title VI of the Public Utility Reg-  
9 ulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is  
10 amended by adding at the end the following:

11 **“SEC. 610. ENERGY EFFICIENCY PERFORMANCE STAND-**  
12 **ARDS FOR RETAIL ELECTRICITY AND NAT-**  
13 **URAL GAS DISTRIBUTORS.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) BASE QUANTITY.—The term ‘base quan-  
16 tity’, with respect to a retail electricity or natural  
17 gas distributor, means the total quantity of electric  
18 energy or natural gas delivered by the retail elec-

1       tricity or natural gas distributor to retail customers  
2       (other than to an electricity distributor for purposes  
3       of electric generation) during the most recent cal-  
4       endar year for which information is available.

5           “(2) CHP SAVINGS.—

6           “(A) IN GENERAL.—The term ‘CHP sav-  
7       ings’ means the increment of electric output of  
8       a new combined heat and power system that is  
9       attributable to the higher efficiency of the com-  
10      bined system (as compared to the efficiency of  
11      separate production of the electric and thermal  
12      outputs), as determined in accordance with  
13      such regulations as the Secretary may promul-  
14      gate.

15          “(B) RELATED DEFINITION.—For pur-  
16      poses of subparagraph (A), the term ‘new com-  
17      bined heat and power system’ means a system  
18      that uses the same energy source for the gen-  
19      eration of electrical or mechanical power and  
20      the production of steam or another form of use-  
21      ful thermal energy, if—

22           “(i) the facility at which the system is  
23           used meets such requirements relating to  
24           efficiency and other operating characteris-

1           tics as the Secretary may promulgate by  
2           regulation;

3           “(ii) the net wholesale sales of elec-  
4           tricity by the facility will not exceed 50  
5           percent of total annual electric generation  
6           by the facility; and

7           “(iii) the facility commences operation  
8           after June 30, 2007.

9           “(3) CUSTOMER FACILITY SAVINGS.—The term  
10          ‘customer facility savings’ means a reduction in end-  
11          use electricity or natural gas consumption (including  
12          recycled energy savings) at a facility of an end-use  
13          consumer of electricity or natural gas served by a re-  
14          tail electricity or natural gas distributor, as com-  
15          pared to—

16               “(A) consumption at that facility during a  
17               base year;

18               “(B) in the case of new equipment, regard-  
19               less of whether the new equipment replaces ex-  
20               isting equipment at the end of the useful life of  
21               the existing equipment, consumption by the new  
22               equipment of average efficiency; or

23               “(C) in the case of a new facility, con-  
24               sumption at a reference facility.

1           “(4) ELECTRICITY SAVINGS.—The term ‘elec-  
2           tricity savings’ means, as determined in accordance  
3           with such regulations as the Secretary may promul-  
4           gate—

5                   “(A) customer facility savings of electricity  
6                   consumption, adjusted to reflect any associated  
7                   increase in fuel consumption at the facility;

8                   “(B) reductions in distribution system  
9                   losses of electricity achieved by a retail elec-  
10                  tricity distributor, as compared to losses attrib-  
11                  utable to new or replacement distribution sys-  
12                  tem equipment of average efficiency (as defined  
13                  in regulations to be promulgated by the Sec-  
14                  retary); and

15                  “(C) CHP savings.

16           “(5) NATURAL GAS SAVINGS.—The term ‘nat-  
17           ural gas savings’ means, as determined in accord-  
18           ance with such regulations as the Secretary may  
19           promulgate—

20                   “(A) customer facility savings of natural  
21                   gas, adjusted to reflect any associated increase  
22                   in electricity consumption at the facility; and

23                   “(B) reductions in leakage, operational  
24                   losses, and gas fuel consumption in the oper-  
25                   ation of a gas distribution system achieved by

1 a retail gas distributor, as compared to similar  
2 losses during a base year.

3 “(6) RECYCLED ENERGY SAVINGS.—The term  
4 ‘recycled energy savings’ means a reduction in elec-  
5 tricity or natural gas consumption that is attrib-  
6 utable to electrical or mechanical power (or both), or  
7 thermal energy, produced by modifying an industrial  
8 or commercial system that was in operation before  
9 July 1, 2007, in order to recapture energy that  
10 would otherwise be wasted.

11 “(7) RETAIL ELECTRICITY OR NATURAL GAS  
12 DISTRIBUTOR.—The term ‘retail electricity or nat-  
13 ural gas distributor’ means a person or Federal or  
14 State agency that—

15 “(A) owns or operates an electric or nat-  
16 ural gas distribution facility; and

17 “(B) using the facility, delivers to con-  
18 sumers of the energy that are not affiliated  
19 with, and that are not lessees or tenants of, the  
20 person or agency, during the most recent cal-  
21 endar year for which data are available—

22 “(i) more than 800,000 megawatt  
23 hours of electricity; or

24 “(ii) more than 1,000,000,000 cubic  
25 feet of natural gas.

1           “(8) VERIFIED ELECTRICITY OR NATURAL GAS  
2 SAVINGS.—The term ‘verified electricity or natural  
3 gas savings’ means electricity savings or natural gas  
4 savings that meet the requirements of subsection (c).

5           “(b) PERFORMANCE STANDARD.—

6           “(1) IN GENERAL.—For calendar year 2010,  
7 and each calendar year thereafter, each retail elec-  
8 tricity or natural gas distributor shall submit to the  
9 Secretary, by not later than March 31 of the cal-  
10 endar year after the applicable calendar year, a  
11 number of credits issued under subsection (d) equal  
12 to the following percentages of the base quantity of  
13 the retail electricity or natural gas distributor appli-  
14 cable to the calendar year:

Year	Electricity Credits (%)	Natural Gas Credits (%)
2010	0.5	0.3
2011	1.25	0.6
2012	2.0	1.0
2013	3.0	1.5
2014	4.0	2.0
2015	5.0	2.5
2016	6.0	3.0
2017	7.0	3.5
2018	8.0	4.0
2019	9.0	4.5
2020	10.0	5.0

1           “(2) SUBSEQUENT CALENDAR YEARS.—For cal-  
2           endar year 2021 and each calendar year thereafter,  
3           each retail electricity or natural gas distributor shall  
4           submit to the Secretary, by not later than March 31  
5           of the calendar year after the applicable calendar  
6           year, a number of credits issued under subsection  
7           (d) equal to such a percentage of the base quantity  
8           of the retail electricity or natural gas distributor as  
9           the Secretary may determine, by regulation, but in  
10          no case less than the applicable percentage for cal-  
11          endar year 2020.

12          “(c) MEASUREMENT AND VERIFICATION OF SAV-  
13          INGS.—Not later than June 30, 2009, the Secretary shall  
14          promulgate regulations regarding measurement and  
15          verification of electricity and natural gas savings under  
16          this section, including—

17                 “(1) procedures and standards for defining and  
18                 measuring electricity savings and natural gas sav-  
19                 ings that will be eligible to receive credits under sub-  
20                 section (d)(2), which shall—

21                         “(A) specify the types of energy efficiency  
22                         and energy conservation measures that will be  
23                         eligible for the credits;

24                         “(B) require that energy consumption esti-  
25                         mates for customer-facilities or portions of fa-

1           ilities in the applicable base and current years  
2           be adjusted, as appropriate, to account for  
3           changes in weather, level of production, and  
4           building area;

5           “(C) account for the useful life of elec-  
6           tricity savings measures;

7           “(D) include deemed savings values for  
8           specific, commonly-used efficiency measures;

9           “(E) specify the extent to which electricity  
10          savings and natural gas savings attributable to  
11          measures carried out before July 1, 2007, are  
12          eligible to receive credits under this section; and

13          “(F) exclude savings that—

14                 “(i) are not properly attributable to  
15                 measures carried out by the entity seeking  
16                 the credit (or a designated agent of the en-  
17                 tity); or

18                 “(ii) have already been credited under  
19                 this section to another entity; and

20          “(2) procedures and standards for third-party  
21          verification of reported electricity savings or natural  
22          gas savings.

23          “(d) CREDIT AND TRADING SYSTEM.—

24          “(1) CREDIT REGULATIONS.—



1           “(A) IN GENERAL.—Not later than June  
2           30, 2009, the Secretary shall promulgate regu-  
3           lations regarding—

4                   “(i) the issuance of credits under this  
5           section;

6                   “(ii) a national credit trading system;  
7           and

8                   “(iii) a system for independent moni-  
9           toring of the market for the credits.

10           “(B) LIMITATIONS.—In promulgating reg-  
11           ulations under subparagraph (A), the Secretary  
12           may establish such limitations as the Secretary  
13           determines to be appropriate with respect to the  
14           extent to which a retail electricity or natural  
15           gas distributor may achieve compliance with  
16           subsection (b) by submitting credits issued for  
17           electricity or natural gas savings that are not  
18           customer facility savings at a facility served by  
19           the retail electricity or natural gas distributor.

20           “(C) REQUIREMENT.—In promulgating  
21           regulations under subparagraph (A), the Sec-  
22           retary shall provide for the issuance of appro-  
23           priate credits for the mechanical output of new  
24           combined heat and power systems.

1           “(2) ISSUANCE OF CREDITS.—In accordance  
2 with the regulations promulgated under paragraph  
3 (1), the Secretary shall issue credits for—

4           “(A) verified electricity and natural gas  
5 savings achieved by a retail electricity or nat-  
6 ural gas distributor in a certain calendar year;  
7 and

8           “(B) verified electricity and natural gas  
9 savings achieved by other entities (including  
10 State agencies), if—

11           “(i)(I) no retail electricity or natural  
12 gas distributor paid a substantial portion  
13 of the cost of achieving the savings; or

14           “(II) if a retail electricity or natural  
15 gas distributor paid a substantial portion  
16 of the cost of achieving the savings, the re-  
17 tail electricity or natural gas distributor  
18 has waived any entitlement to the credit;  
19 and

20           “(ii) the measures used to achieve the  
21 verified electricity and natural gas savings  
22 were installed or placed in operation by the  
23 entity seeking certification (or a designated  
24 agent of the entity).

1           “(3) VALUE OF CREDITS.—A credit issued by  
2 the Secretary under this subsection shall have a  
3 value of—

4           “(A) 1,000 kilowatt-hours, in the case of  
5 an electricity savings credit; or

6           “(B) 10 therms, in the case of a natural  
7 gas savings credit.

8           “(4) FEE.—

9           “(A) IN GENERAL.—Subject to subpara-  
10 graph (B), the Secretary shall charge the recipi-  
11 ent of a credit under this section a fee in an  
12 amount equal to, as determined by the Sec-  
13 retary, the administrative costs of issuing, re-  
14 cording, monitoring the sale or exchange of,  
15 and receiving the credit.

16           “(B) MAXIMUM AMOUNT.—Notwith-  
17 standing subparagraph (A), the amount of a fee  
18 under this paragraph shall be not more than, as  
19 applicable—

20           “(i) \$1 for a electric credit; or

21           “(ii) \$0.10 for a natural gas credit.

22           “(C) USE OF FUNDS.—The Secretary shall  
23 use fees received under this paragraph for the  
24 administrative costs of carrying out this sub-  
25 section.

1           “(5) CREDIT SALE AND USE.—In accordance  
2 with regulations promulgated under paragraph (1),  
3 any entity that receives a credit under this section  
4 may—

5           “(A) sell or transfer the credit to any other  
6 entity; or

7           “(B) use the credit to achieve compliance  
8 with the performance standard under sub-  
9 section (b).

10          “(e) BUYOUT OPTION.—In lieu of submitting credits  
11 to achieve compliance with an applicable performance  
12 standard under subsection (b) for a calendar year, a retail  
13 electricity or natural gas distributor may pay to the Sec-  
14 retary, by not later than March 31 of the following cal-  
15 endar year, a buyout fee in an amount equal to, as ad-  
16 justed for inflation in accordance with such regulations as  
17 the Secretary may promulgate—

18           “(1) \$50 for each electricity savings credit oth-  
19 erwise required to be submitted by the retail elec-  
20 tricity or natural gas distributor; or

21           “(2) \$5 for each natural gas savings credit oth-  
22 erwise required to be submitted by the retail elec-  
23 tricity or natural gas distributor.

24          “(f) STATE ADMINISTRATION.—On receipt of an ap-  
25 plication from the Governor of a State, the Secretary may

1 authorize the State to administer and enforce an energy  
2 efficiency program in the State in lieu of the program  
3 under this section, if the Secretary determines that the  
4 State program will achieve electricity savings and natural  
5 gas savings at least equivalent to the electricity savings  
6 and natural gas savings that would be required to be  
7 achieved by electricity and natural gas distributors in the  
8 State under this section.

9       “(g) INFORMATION AND REPORTS.—In accordance  
10 with section 13 of the Federal Energy Administration Act  
11 of 1974 (15 U.S.C. 774), the Secretary may require any  
12 retail electricity or natural gas distributor or other entity  
13 that receives a credit under this section, and any other  
14 entity as the Secretary determines to be necessary, to pro-  
15 vide such information and reports, and access to any  
16 records or facility of the entity, as the Secretary deter-  
17 mines to be appropriate to carry out this section.

18       “(h) ENFORCEMENT.—

19               “(1) FAILURE TO SUBMIT CREDITS.—Except in  
20 a case in which a State program is carried out in  
21 lieu of the program under this section under sub-  
22 section (f), if a retail electricity or natural gas dis-  
23 tributor fails to submit to the Secretary any credit  
24 required for compliance with the applicable perform-  
25 ance standard under subsection (b), or to pay to the

1 Secretary an applicable buyout payment under sub-  
2 section (e), the Secretary shall assess against the re-  
3 tail electricity or natural gas distributor a civil pen-  
4 alty for each such failure in an amount equal to, as  
5 adjusted for inflation in accordance with such regu-  
6 lations as the Secretary may promulgate—

7 “(A) \$100 for each electricity savings cred-  
8 it or buyout payment failed to be made by the  
9 retail electricity or natural gas distributor; or

10 “(B) \$10 for each natural gas savings  
11 credit or buyout payment failed to be made by  
12 the retail electricity or natural gas distributor.

13 “(2) PROCEDURE.—The procedures under sec-  
14 tion 31(c) of the Federal Power Act (16 U.S.C.  
15 823b(c)) shall apply to a civil penalty assessed under  
16 paragraph (1).

17 “(i) STATE LAW.—Nothing in this section supersedes  
18 or otherwise affects any State or local law (including regu-  
19 lations) relating to electricity savings or natural gas sav-  
20 ings, to the extent that the State or local law requires  
21 equal or greater electricity savings or natural gas saving  
22 than the savings required by this section.”.