

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1699 Session of
2013

INTRODUCED BY ROSS, CUTLER, REED, COHEN, GINGRICH, STERN,
KAUFFMAN, GODSHALL, HICKERNELL, DAVIS, SCHLOSSBERG, O'BRIEN,
VITALI, SAYLOR, QUINN, HARKINS, EVERETT, DENLINGER, BRIGGS,
GIBBONS, GERGELY, CORBIN, TOEPEL, KAMPF, BRADFORD, LUCAS,
VEREB, MURT, ELLIS AND GABLER, SEPTEMBER 25, 2013

AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND
ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED,
JANUARY 14, 2014

AN ACT

1 Providing for the regulation of certain reciprocal internal
2 combustion engines; AND IMPOSING CERTAIN POWERS AND DUTIES ON <--
3 THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Definitions.

7 The following words and phrases when used in this act shall
8 have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Demand response generating resource." ~~A stationary~~ <--
11 ~~generator subject to an agreement or obligation to provide power~~
12 ~~in response to power grid needs, economic signals from~~
13 ~~competitive wholesale electric markets or special retail rates.~~
14 A GENERATOR WHICH IS COMPENSATED AS A DEMAND RESPONSE RESOURCE <--
15 BY PJM OR A GENERATOR COMPENSATED TO PARTICIPATE IN A DEMAND
16 RESPONSE PROGRAM FOR PJM. THE TERM SHALL NOT INCLUDE A GENERATOR

1 THAT DERIVES ITS ENERGY FROM AN ALTERNATIVE ENERGY SOURCE THAT
2 QUALIFIES AS A TIER I SOURCE UNDER THE ACT OF NOVEMBER 30, 2004
3 (P.L.1672, NO.213), KNOWN AS THE ALTERNATIVE ENERGY PORTFOLIO
4 STANDARDS ACT.

5 "Department." The Department of Environmental Protection of
6 the Commonwealth.

7 ~~"Emergency." The term shall mean:~~

<--

8 ~~(1) An electric power outage due to:~~

9 ~~(i) a failure of the electrical grid;~~

10 ~~(ii) an on site disaster;~~

11 ~~(iii) local equipment failure;~~

12 ~~(iv) a public service emergency, such as a flood, a~~
13 ~~fire or a natural disaster; or~~

14 ~~(v) a severe weather condition, such as a hurricane~~
15 ~~or tornado.~~

16 ~~(2) Any situation in which there is a deviation of~~
17 ~~voltage or frequency from the electric public utility or~~
18 ~~regional transmission operator to the premise of 5% or~~
19 ~~greater below standard voltage or frequency.~~

20 ~~"Emergency generator." A stationary generator whose~~
21 ~~operation is limited to emergencies and required testing and~~
22 ~~maintenance. The term shall not include any demand response~~
23 ~~generating resources.~~

24 "Energy year." The 12-month period beginning on June 1 and
25 ending on May 31.

26 "Environmental Protection Agency" or "EPA." The United
27 States Environmental Protection Agency or the administrator of
28 the United States Environmental Protection Agency.

29 "Federal Energy Regulatory Commission" or "FERC." The
30 Federal Energy Regulatory Commission or the administrator of the

1 Federal Energy Regulatory Commission.

2 ~~"Nonemergency generator." A stationary generator that:~~ <--

3 ~~(1) May be used during an emergency.~~

4 ~~(2) May be used for testing and maintenance purposes.~~

5 ~~(3) May be used for any other purpose at times other~~
6 ~~than during an emergency.~~

7 ~~(4) Is a demand response generating resource.~~

8 "GENERATOR." A MACHINE POWERED BY A RECIPROCATING INTERNAL <--
9 COMBUSTION ENGINE THAT CONVERTS MECHANICAL ENERGY INTO ELECTRIC
10 ENERGY.

11 "PJM interconnection" or "PJM." The regional transmission
12 organization registered to do business in this Commonwealth as
13 PJM Interconnection, L.L.C., or any successor to PJM as the
14 regional transmission organization, approved by the Federal
15 Energy Regulatory Commission to manage the wholesale procurement
16 of electricity and electric generation capacity, and serving all
17 or parts of the states of Delaware, the District of Columbia,
18 Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey,
19 North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and West
20 Virginia.

21 ~~"Stationary generator." An emergency or nonemergency~~ <--
22 ~~generator powered by a reciprocating internal combustion engine~~
23 ~~which is not a "nonroad engine" as the term is defined in 40 CFR~~
24 ~~89.2 (relating to definitions). The term shall not include~~
25 ~~residential generators used only during times of emergency,~~
26 ~~existing generators at fire stations, new or existing stationary~~
27 ~~internal combustion engines used at a nuclear power plant as an~~
28 ~~emergency generator which is subject to the regulations of the~~
29 ~~Nuclear Regulatory Commission, or generators less than 37~~
30 ~~kilowatts.~~

1 Section 2. Registration of ~~nonemergency generators~~ DEMAND <--
2 RESPONSE GENERATING RESOURCES.
3 (a) Registration.--Beginning with the energy year commencing
4 in 2014 and every ~~five~~ TWO years thereafter, ~~nonemergency~~ <--
5 ~~generators~~ DEMAND RESPONSE GENERATING RESOURCES shall register <--
6 with the department. Immediately upon any changes to the
7 registration information provided under paragraph (1), (2), (3),
8 ~~(4) or (5)~~ (4), (5) OR (6), updated registration information <--
9 shall be submitted to the department. Within 90 days of the
10 effective date of this act, the department shall provide the
11 form and manner for the registration required under this
12 section, which shall include:
13 (1) A generator owner's contact information.
14 (2) The physical address where the generator is or will
15 be installed and the date of installation.
16 (3) A description of the generator, including make,
17 model number, serial number and year of manufacture.
18 (4) The standby power rating ~~and horsepower~~ OF THE <--
19 GENERATOR AND RATED POWER of the engine powering the
20 generator.
21 (5) THE TYPE OF DEMAND RESPONSE PROGRAM IN WHICH THE <--
22 GENERATOR PARTICIPATES AND THE NAME AND ADDRESS OF THE
23 AGGREGATOR, IF ANY.
24 ~~(5)~~ (6) Any additional information the department deems <--
25 necessary, CONSISTENT WITH 40 CFR §§ 60.4214(D)(1) (RELATING <--
26 TO WHAT ARE MY NOTIFICATION, REPORTING, AND RECORDKEEPING
27 REQUIREMENTS IF I AM AN OWNER OR OPERATOR OF A STATIONARY CI
28 INTERNAL COMBUSTION ENGINE?), 60.4245(E)(1) (RELATING TO WHAT
29 ARE MY NOTIFICATION, REPORTING, AND RECORDKEEPING
30 REQUIREMENTS IF I AM AN OWNER OR OPERATOR OF A STATIONARY SI

INTERNAL COMBUSTION ENGINE?) AND 63.6650 (H) (1) (RELATING TO
WHAT REPORTS MUST I SUBMIT AND WHEN?).

~~(b) Streamlined compliance certification form. Within 120~~ <--
~~days of the effective date of this act, the department shall~~
~~publish a technical guidance document detailing measurement and~~
~~verification options to comply with the reasonable assurance~~
~~requirement under paragraph (1), and a compliance certification~~
~~form that the owner or operator of a nonemergency generator~~
~~shall submit for the energy year beginning in 2016, and every~~
~~five years thereafter, and at any time when the information~~
~~required under subsection (a) (1), (2), (3) or (5) is revised or~~
~~becomes outdated. Information on the form shall include, but is~~
~~not limited to:~~

~~(1) Information adequate to reasonably assure the~~
~~department that the nonemergency generator meets the~~
~~requirements of section 4.~~

~~(2) Attestation of an owner or operator that the~~
~~information supplied in the compliance certification form is~~
~~accurate and that the nonemergency generator has been and~~
~~will continue to be operated and fueled in a manner~~
~~consistent with the requirements under section 4 and assured~~
~~under paragraph (1).~~

~~(c)~~ (B) Registration fees.--The department shall assess a <--
registration fee for each ~~nonemergency generator~~ DEMAND RESPONSE <--
GENERATING RESOURCE that registers in accordance with this
section. For the energy year beginning in 2014, the fee shall be
\$40 per ~~nonemergency generator~~ DEMAND RESPONSE GENERATING <--
RESOURCE. The fees authorized under this subsection shall be
adjusted annually to reflect any upward changes in the Consumer
Price Index for All Urban Consumers for the Pennsylvania, New

1 Jersey, Delaware and Maryland area in the preceding 12 months,
2 and the department shall immediately submit the adjusted amounts
3 to the Legislative Reference Bureau for publication as a notice
4 in the Pennsylvania Bulletin.

5 Section 3. Reporting and recordkeeping requirements for

6 ~~nonemergency generators~~ DEMAND RESPONSE GENERATING <--
7 RESOURCES.

8 (a) Reporting.--The owner or operator of a ~~nonemergency~~ <--
9 ~~generator~~ DEMAND RESPONSE GENERATING RESOURCE shall annually <--
10 report to the department all of the following information no
11 later than 90 days after the completion of each energy year:

12 (1) The daily and annual fuel types and amounts consumed
13 by the engine powering each ~~generator~~ DEMAND RESPONSE <--
14 GENERATING RESOURCE.

15 (2) The daily and annual hours of operation, delineated
16 by testing and maintenance hours, emergency hours and
17 nonemergency hours.

18 (3) ~~Descriptions of emergencies requiring operation.~~ ANY <--
19 ADDITIONAL INFORMATION THE DEPARTMENT DEEMS NECESSARY,
20 CONSISTENT WITH 40 CFR §§ 60.4214(D) (1) (RELATING TO WHAT ARE
21 MY NOTIFICATION, REPORTING, AND RECORDKEEPING REQUIREMENTS IF
22 I AM AN OWNER OR OPERATOR OF A STATIONARY CI INTERNAL
23 COMBUSTION ENGINE?), 60.4245(E) (1) (RELATING TO WHAT ARE MY
24 NOTIFICATION, REPORTING, AND RECORDKEEPING REQUIREMENTS IF I
25 AM AN OWNER OR OPERATOR OF A STATIONARY SI INTERNAL
26 COMBUSTION ENGINE?) AND 63.6650(H) (1) (RELATING TO WHAT
27 REPORTS MUST I SUBMIT AND WHEN?).

28 (b) Recordkeeping.--The owner or operator of a ~~nonemergency~~ <--
29 ~~generator~~ DEMAND RESPONSE GENERATING RESOURCE shall maintain <--
30 each record required by section 2 and this section for a minimum

1 of five years after the date the record is made. The owner or
2 operator shall promptly provide copies of records to the
3 department, if requested.

4 ~~Section 4. Emissions standards for nonemergency generators.~~ <--

5 ~~Beginning in energy year 2016, nonemergency generators shall~~
6 ~~not exceed the emissions standards as set forth under this~~
7 ~~section under full load design conditions or at the load~~
8 ~~conditions specified by the applicable testing methods.~~

9 ~~(1) New engines shall meet the applicable Tier 3 or Tier~~
10 ~~4 emissions standards set forth by the EPA under 40 CFR Pt.~~
11 ~~60 Subpt. IIII (relating to standards of performance for~~
12 ~~stationary compression ignition internal combustion engines)~~
13 ~~or JJJJ (relating to standards of performance for stationary~~
14 ~~spark ignition internal combustion engines).~~

15 ~~(2) Existing engines with a rated horsepower of greater~~
16 ~~than 37 kilowatts but less than or equal to 750 kilowatts~~
17 ~~shall meet the Tier 3 emissions standards set forth by the~~
18 ~~EPA under 40 CFR Pt. 60 Subpt. IIII or JJJJ.~~

19 ~~(3) Existing engines with a rated horsepower of greater~~
20 ~~than 750 kilowatts shall meet the Tier 4 standards set forth~~
21 ~~by the EPA under 40 CFR Pt. 60 Subpt. IIII or JJJJ.~~

22 SECTION 4. CONFIDENTIALITY. <--

23 THE REGISTRATION AND REPORTING REQUIREMENTS UNDER SECTIONS 2
24 AND 3 SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 13.2 OF THE
25 ACT OF JANUARY 8, 1960 (1959 P.L.2119, NO.787), KNOWN AS THE AIR
26 POLLUTION CONTROL ACT.

27 Section 5. Blind compliance audit.

28 (a) Department duties.--Beginning nine months after the
29 beginning of the 2014 energy year, and at the beginning of every
30 energy year thereafter, the department shall forward a list of

1 ~~nonemergency generators~~ DEMAND RESPONSE GENERATING RESOURCES <--
2 compiled under section 2(a) to the Pennsylvania Public Utility
3 Commission for the purpose of an annual compliance audit.
4 (b) Pennsylvania Public Utility Commission duties.--Pursuant
5 to the authority provided to the Pennsylvania Public Utility
6 Commission under PJM's Open Access Transmission Tariff,
7 Attachment M, Section D and the "Required Disclosure" provisions
8 of section 18.17.2 of the Operating Agreement of PJM, the
9 commission shall conduct a blind compliance audit pursuant to
10 this section to ensure that ~~nonemergency generators~~ DEMAND <--
11 RESPONSE GENERATING RESOURCES participating in PJM programs and
12 those ~~nonemergency generators~~ DEMAND RESPONSE GENERATING <--
13 RESOURCES participating in programs established under 66 Pa.C.S.
14 § 2806.1 (relating to energy efficiency and conservation
15 program) meet the requirements of this act. The commission shall
16 do all of the following:
17 (1) Request annually from PJM a listing of all demand
18 response generating resources located in this Commonwealth.
19 Except as provided for by this section, the commission shall
20 not disclose any confidential or proprietary information
21 received from PJM pursuant to this section.
22 (2) Compare the list of ~~nonemergency generators~~ DEMAND <--
23 RESPONSE GENERATING RESOURCES provided by the department
24 under subsection (a) with the list of demand response
25 generating resources provided under paragraph (1).
26 (3) Where a ~~nonemergency generator~~ DEMAND RESPONSE <--
27 GENERATING RESOURCE is found to be listed as a demand
28 response generating resource in PJM but is not included on
29 the list provided by the department, the commission shall
30 confirm that the ~~nonemergency generator~~ DEMAND RESPONSE <--

1 GENERATING RESOURCE is participating in the PJM markets as a
2 demand response generating resource.

3 (4) In any instance where the commission confirms that
4 the ~~nonemergency generator~~ DEMAND RESPONSE GENERATING <--
5 RESOURCE is participating in the PJM markets as a demand
6 response generating resource but has not complied with this
7 act, the commission shall notify FERC enforcement staff
8 alleging a violation of PJM's Open Access Transmission
9 Tariff, and may, at its discretion, also file a complaint
10 with FERC, with a request that consideration of the complaint
11 be expedited.

12 (5) In any instance where the commission determines that
13 noncompliance with this act is deliberate and continuing, the
14 commission shall refer the matter to the Attorney General for
15 prosecution under the act of December 17, 1968 (P.L.1224,
16 No.387), known as the Unfair Trade Practices and Consumer
17 Protection Law, and shall concomitantly notify the department
18 that a referral has been made.

19 Section 6. Violations and penalties.

20 (a) Penalties.--The department shall establish AND ENFORCE <--
21 civil penalties for failure to comply with sections ~~2, 3 and 4~~ 2 <--
22 AND 3. In determining the amount of the penalty, the department
23 shall consider all of the following:

24 (1) Willfulness of the violation.

25 (2) Damage to air, soil, water or other natural resource
26 of this Commonwealth or their uses.

27 (3) Any financial benefit that the owner or operator
28 realized as a result of noncompliance.

29 (4) The necessity to deter future violations of this
30 act.

(5) The compliance history of the owner or operator.

(6) Costs realized by the department as a result of the violation.

(7) The size of the source or facility.

(8) The severity and duration of the violation.

(9) The owner's or operator's cooperation in resolving the violation.

(10) The amount of time it took the owner or operator to achieve compliance.

(11) Whether the violation was voluntarily reported.

(12) Other factors unique to the owner or operator of the source or facility.

(b) Continuing violations.--Each violation of any provision of this act and each day of continued violation shall constitute a separate offense and violation.

(C) LIMITATION ON ACTION.--NOTWITHSTANDING THE PROVISIONS OF <-- ANY OTHER STATUTE TO THE CONTRARY, AN ACTION FOR A CIVIL OR CRIMINAL PENALTY UNDER THIS ACT MAY BE COMMENCED AT ANY TIME WITHIN A PERIOD OF SEVEN YEARS FROM THE DATE THE OFFENSE IS DISCOVERED.

Section 7. Disposition of fees, fines and civil penalties.

All fees, fines and civil penalties levied and collected under this act shall be paid into and administered in accordance with the Clean Air Fund, as established under section 9.2 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act.

Section 8. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions

1 or applications of this act which can be given effect without
2 the invalid provision or application.

3 Section 9. Effective date.

4 This act shall take effect immediately.