Terry Boston, President & CEO
PJM Interconnection
PO Box 1525
Southeastern, PA 19399-1525

Dear Mr. Boston:

As you are likely aware, there has been an ongoing debate concerning the recent enactment of a Final Rule by the Environmental Protection Agency ("EPA") concerning the use of certain reciprocating internal combustion engines (standby emergency generators) that are being used to satisfy contracted PJM demand response ("DR") obligations through curtailment service providers.

During the EPA rulemaking process, DR providers strenuously argued that if EPA did not provide at least a 60 hour pollution exemption for these units, that the reliability of the bulk power system would be jeopardized.

Citing the importance of providing emergency demand response during critical times when peaks in demand stress the electric grid, DR providers argued that stationary "behind-the-meter" emergency backup generators were a critical component of the reliable operation of the system, and therefore that necessitated exemptions from pollution controls, which EPA had originally sought to impose.

After a robust rulemaking process, EPA acquiesced to the DR providers' arguments, and provided a 100 hour per year pollution exemption for these units, the vast majority of which have no pollution controls and use diesel as their fuel source.

Since EPA's RICE NESHAPs rule was finalized, several states, including the Commonwealth, have been reviewing the potential impact of allowing thousands of uncontrolled standby generators to operate without pollution controls during the worst air quality days of the year.
In fact, in September, I, along with many other lawmakers, introduced House Bill 1699, which I enclose for your reference. In brief, the bill, beginning in 2014, would provide for the registration and reporting of for-profit standby generators that are being compensated by PJM as a demand response generating resource. The legislation also requires that, beginning in 2016, these units would be required to meet pollution standards, which were developed in consultation with the Pennsylvania Department of Environmental Protection.

In the spring, I, along with Representative Bryan Cutler, visited PJM to discuss this issue before HB 1699 was developed. During that meeting, we specifically asked whether requiring standby generators to install pollution controls would pose a reliability threat to PJM’s operation of the bulk power system. At that time, we were told that there would be no reliability issues with requiring pollution controls because of PJM’s capacity market construct and because there were sufficient other resources to provide for the reliable operation of the system.

I am writing to inquire and confirm that should HB 1699 become law, that it would not cause a reliability issue for PJM. Opponents of this proposal continue to argue that the EPA-endorsed pollution exemption is necessary to preserve reliability, and I believe that by way of your reply to this letter, the issue can be firmly resolved.

I greatly appreciate your assistance. Please know that the House Environmental Resources & Energy Committee is having a public hearing on HB 1699 on November 20th, so your prompt reply is appreciated.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,

Chris Ross
Representative Chris Ross
158th Legislative District

cc: Howard Schneider, Chair, PJM Board
Andrew Ott, Executive Vice President, Market Services, PJM
Steven Boyle, Manager, Regulatory & Legislative Affairs, PJM

Enclosure – HB 1699
AN ACT

Providing for the regulation of certain reciprocal internal combustion engines.

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

Section 1. Definitions.

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

"Demand response generating resource." A stationary generator subject to an agreement or obligation to provide power in response to power grid needs, economic signals from competitive wholesale electric markets or special retail rates.

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

"Emergency." The term shall mean:

(1) An electric power outage due to:
(i) a failure of the electrical grid;
(ii) an on-site disaster;
(iii) local equipment failure;
(iv) a public service emergency, such as a flood, a fire or a natural disaster; or
(v) a severe weather condition, such as a hurricane or tornado.
(2) Any situation in which there is a deviation of voltage or frequency from the electric public utility or regional transmission operator to the premise of 5% or greater below standard voltage or frequency.
"Emergency generator." A stationary generator whose operation is limited to emergencies and required testing and maintenance. The term shall not include any demand response generating resources.
"Energy year." The 12-month period beginning on June 1 and ending on May 31.
"Environmental Protection Agency" or "EPA." The United States Environmental Protection Agency or the administrator of the United States Environmental Protection Agency.
"Nonemergency generator." A stationary generator that:
(1) May be used during an emergency.
(2) May be used for testing and maintenance purposes.
(3) May be used for any other purpose at times other than during an emergency.
(4) Is a demand response generating resource.
"PJM interconnection" or "PJM." The regional transmission
organization registered to do business in this Commonwealth as
PJM Interconnection, L.L.C., or any successor to PJM as the
regional transmission organization, approved by the Federal
Energy Regulatory Commission to manage the wholesale procurement
of electricity and electric generation capacity, and serving all
or parts of the states of Delaware, the District of Columbia,
Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey,
North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and West
Virginia.

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

Section 2. Registration of nonemergency generators.
(a) Registration.--Beginning with the energy year commencing
in 2014 and every five years thereafter, nonemergency generators
shall register with the department. Immediately upon any changes
to the registration information provided under paragraph (1),
(2), (3), (4) or (5), updated registration information shall be
submitted to the department. Within 90 days of the effective
date of this act, the department shall provide the form and
manner for the registration required under this section, which
shall include:

(1) A generator owner's contact information.
(2) The physical address where the generator is or will be installed and the date of installation.

(3) A description of the generator, including make, model number, serial number and year of manufacture.

(4) The standby power rating and horsepower of the engine powering the generator.

(5) Any additional information the department deems necessary.

(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) Registration fees.--The department shall assess a registration fee for each nonemergency generator that registers
in accordance with this section. For the energy year beginning in 2014, the fee shall be $40 per nonemergency generator. 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 Jersey, Delaware and Maryland area in the preceding 12 months, and the department shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

Section 3. Reporting and recordkeeping requirements for nonemergency generators.

(a) Reporting.--The owner or operator of a nonemergency generator shall annually report to the department all of the following information no later than 90 days after the completion of each energy year:

(1) The daily and annual fuel types and amounts consumed by the engine powering each generator.

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

(3) Descriptions of emergencies requiring operation.

(b) Recordkeeping.--The owner or operator of a nonemergency generator shall maintain each record required by section 2 and this section for a minimum of five years after the date the record is made. The owner or operator shall promptly provide copies of records to the department, if requested.

Section 4. Emissions standards for nonemergency generators. Beginning in energy year 2016, nonemergency generators shall not exceed the emissions standards as set forth under this section under full load design conditions or at the load.
conditions specified by the applicable testing methods.

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

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

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

Section 5. Blind compliance audit.

(a) Department duties.--Beginning nine months after the
beginning of the 2014 energy year, and at the beginning of every
energy year thereafter, the department shall forward a list of
nonemergency generators compiled under section 2(a) to the
Pennsylvania Public Utility Commission for the purpose of an
annual compliance audit.

(b) Pennsylvania Public Utility Commission duties.--Pursuant
to the authority provided to the Pennsylvania Public Utility
Commission under PJM's Open Access Transmission Tariff,
Attachment M, Section D and the "Required Disclosure" provisions
of section 18.17.2 of the Operating Agreement of PJM, the
commission shall conduct a blind compliance audit pursuant to
this section to ensure that nonemergency generators
participating in PJM programs and those nonemergency generators
participating in programs established under 66 Pa.C.S. § 2806.1
(relating to energy efficiency and conservation program) meet
the requirements of this act. The commission shall do all of the
following:

(1) Request annually from PJM a listing of all demand
response generating resources located in this Commonwealth.
Except as provided for by this section, the commission shall
not disclose any confidential or proprietary information
received from PJM pursuant to this section.

(2) Compare the list of nonemergency generators provided
by the department under subsection (a) with the list of
demand response generating resources provided under paragraph
(1).

(3) Where a nonemergency generator is found to be listed
as a demand response generating resource in PJM but is not
included on the list provided by the department, the
commission shall confirm that the nonemergency generator is
participating in the PJM markets as a demand response
generating resource.

(4) In any instance where the commission confirms that
the nonemergency generator is participating in the PJM
markets as a demand response generating resource but has not
complied with this act, the commission shall notify FERC
enforcement staff alleging a violation of PJM's Open Access
Transmission Tariff, and may, at its discretion, also file a
complaint with FERC, with a request that consideration of the
complaint be expedited.

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

Section 6. Violations and penalties.

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

(1) Willfulness of the violation.
(2) Damage to air, soil, water or other natural resource of this Commonwealth or their uses.
(3) Any financial benefit that the owner or operator realized as a result of noncompliance.
(4) The necessity to deter future violations of this 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.
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 or applications of this act which can be given effect without the invalid provision or application.

Section 9. Effective date.

This act shall take effect immediately.