

**PGEN COMMENTS ON EPA’S PROPOSED RULE: NATIONAL EMISSION
STANDARDS FOR HAZARDOUS AIR POLLUTANTS: RECIPROCATING INTERNAL
COMBUSTION ENGINES AND NEW SOURCE PERFORMANCE STANDARDS:
INTERNAL COMBUSTION ENGINES; ELECTRONIC REPORTING**

Docket ID No. EPA-HQ-OAR-20220879

The Power Generators Air Coalition (“PGen”) appreciates the opportunity to submit these comments on the U.S. Environmental Protection Agency’s (“EPA” or the “Agency”) proposed rule entitled “Reciprocating Internal Combustion Engines and New Source Performance Standards: Internal Combustion Engines; Electronic Reporting” (“Proposed Rule” or “Proposal”).¹ These comments address two issues: first, PGen provides suggestions related to certain aspects of reporting obligations and the proposed requirement to replace “annually” with “every 12 months” in the regulations. Second, PGen addresses EPA’s solicitation for comments regarding the “50-hour provision” of the rules relating to the use of emergency generators to mitigate local transmission and/or distribution limitations to avert potential voltage collapse or line overloads that could lead to the interruption of power supply in a local area or region – i.e., demand response programs involving behind the meter emergency generators.²

PGen is an incorporated nonprofit 501(c)(6) organization whose members are diverse electric generating companies—public power, rural electric cooperatives, and investor-owned utilities—with a mix of solar, wind, hydroelectric, nuclear, and fossil generation. PGen is a collaborative effort of electric generators to share information and expertise in the interest of constructively evaluating and effectively managing air emissions to meet and exceed environmental laws and regulations and in the interest of informing sound regulation and public policy.³ Our members include leaders in the ongoing transition to cleaner energy in the United States. PGen and its members work to ensure that environmental regulations support a clean, safe, reliable, and affordable electric system for the nation.

Reporting Requirements

PGen members generally do not themselves own and operate emergency engines that would participate in demand response programs within the meaning of 40 C.F.R. § 63.6640(f)(4)(ii).⁴ However, as discussed more fully below, PGen members have an important interest in such

¹ 88 Fed. Reg. 61,361 (June. 26, 2023).

² These provisions appear in 40 C.F.R. § 63.6640(f)(4)(ii) (NESHAP); 40 C.F.R. §§ 60.4211(f)(3)(i), 60.4243(d)(3)(i) (NSPS). We note that although EPA refers in the Proposal to the “50-hour provision,” which arguably spans the entirety of § 63.6640(f)(4) and §§ 60.4211(f)(3), 60.4243(d)(3), the Proposal specifies that it is considering only subsection (ii) of § 63.6640(f)(4) and subsection (i) §§ 60.4211(f)(3)(i), 60.4243(d)(3)(i).

³ Additional information on PGen and its members can be found at PGen.org.

⁴ In the remainder of these comments, we refer to 40 C.F.R. § 63.6640(f)(4)(ii) only. The same reasoning and suggestions apply to the similar provisions in the NSPS rules, §§ 60.4211(f)(3)(i), 60.4243(d)(3)(i).

emergency engines being able to operate within these demand response programs without undue burden on the operators of these small facilities.

The Proposed Rule provides that owners of emergency engines that operate for the demand response “purpose specified in § 63.6640(f)(4)(ii) ... must submit an annual report” through EPA’s Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI).⁵ The small entities that may participate in these demand response programs, however, are not the type of entities that are accustomed to EPA’s electronic reporting procedures. Indeed, they are not even accustomed to EPA’s complicated regulations for recordkeeping; that is why the current rules provide, for example, that records that must be kept by the engine owners may be kept instead by the “[t]he local balancing authority or local transmission and distribution system operator ... on behalf of the engine owner or operator.” 40 C.F.R. § 63.6640(f)(4)(ii)(E). Similarly, PGen suggests that EPA should allow these engine owners’ electronic reporting to be submitted on their behalf by the local balancing authority or local transmission and distribution system operator.

Annual/Every 12 Months Requirements

EPA is proposing to replace any annual requirements under the regulations – e.g., the oil change requirements – with a requirement to conduct these actions “every 12 months.” EPA’s concern, according to the Proposal, is that “annually” can be interpreted to allow the required actions to be as much as almost 24 months apart, if rules require them merely to be conducted any time in consecutive calendar years. PGen does not object to EPA’s proposed clarification that what is meant by “annual” requirements is that the required actions should be conducted at about a 12-month interval, and certainly not as much as almost 24 months apart. However, the regulatory language that EPA proposes is too rigid.

PGEN Suggests that EPA retain the current regulatory language as “annual” in tables 2c and 2d of subpart ZZZZ and include language consistent with other EPA regulatory programs that clarify and impose limits on what “annually” means. For example, the Agency’s Part 75 regulations require and/or allow an “annual” frequency for certain actions, such as annual Relative Accuracy Test Audits. For example, 40 C.F.R Part 75, App. B, § 2.3.1.2 provides that, in some instances, “Relative accuracy test audits of primary and redundant backup [for various pollutants] may be performed annually (*i.e., once every four successive QA operating quarters ...*)” (Emphasis added.) The emphasized language, if added to Subpart ZZZZ where “annually” is used, would provide appropriate flexibility to allow up to 15 months to complete the actions required and meet the “annual” requirement as EPA intends while providing some reasonable amount of flexibility.

50-Hour Provision

As mentioned earlier, PGen members generally do not themselves own and operate emergency engines that would participate in demand response programs within the meaning of 40 C.F.R. § 63.6640(f)(4)(ii). Rather, PGen members urge EPA to retain the 50-hour provision so that

⁵ Proposed 40 C.F.R. § 63.6650(h).

private, third-party entities that own small emergency generators within the members' territories remain able to participate in demand response programs designed to shore up the reliability of the power delivery system in extreme conditions. PGen members (and the entire power industry) are engaged in a profound transformation of the Nation's electric power production and delivery systems. Because of the rapid pace of this transformation, leading to substantial retirements and curtailment of dispatchable, fossil-fired generation and its replacement primarily with non-dispatchable, renewable generation, reserve margins all across the United States have decreased significantly. Accordingly, while still few in any particular year, there are more and more instances in which local areas or regions are—or come very close to—experiencing local transmission and/or distribution limitations that may lead to the interruption of power supply in the area or region. Consequently, for example, due to the constraints of the existing system, PGen member American Electric Power (AEP) is actively evaluating the ability to expand upon third-party demand response within three of its operating companies. So are others in PGen and in the industry.

Removing the 50-hour provision would significantly diminish the power industry's ability to support grid reliability and resiliency. For example, since 2020, the Department of Energy has issued eleven emergency orders (and/or extensions thereof) under Section 202(c) of the Federal Power Act to preserve the reliability of bulk electric power system in light of extreme weather conditions.⁶ In these circumstances, the ability of the local balancing authority or local transmission and distribution system operator to call upon owners of small emergency generators to produce their own power and thus relieve the pressure on the local power distribution system (through a demand response program consistent with the requirements of 40 C.F.R. § 63.6640(f)(4)(ii)) can be the difference between blackouts on the hottest days of the Summer or the coldest days of the Winter and maintaining the power on those days – that is, potentially the difference between death and life for some. Indeed, at least one of the DOE Emergency Orders issued last year required the operation of generators owned by data centers in Northern California in precisely the demand response configurations envisioned under the 50-Hour provision.⁷

According to the Proposal, “Based on reported information, in the last few years, there appears to have been very little need for engines to operate for the purpose specified in the 50-hour provision.”⁸ Whatever “very little” means in that sentence, even once a year or in a season, at one or more local area or region of the U.S., is more than enough to justify the provision. That would be one more blackout – and one more potential loss of life – avoided. PGen members do not have a specific accounting of how many times or how “little” the 50-hour provision has been used in the past few years. What PGen knows for sure, however, is that the number of times the 50-hour provision was used or was very close to being used is not zero. For example, as PGen member Consumers Energy reports in its own comments on this Proposal, since the Company started its demand response program in 2017, MISO notified Consumers Energy of the potential of a maximum generation warning event (i.e., not having adequate generation) which could lead

⁶ See <https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority>.

⁷ DOE, Order 202-22-2 (Sep. 4, 2022); DOE, Amendment Number 1 to Order 202-22-2 (Sep. 8, 2022) (both orders attached in Attachment A).

⁸ 88 Fed. Reg. at 41,368.

to voltage reductions (e.g., “blackouts”) three times. Consumers Energy has notified its emergency demand response program participants on each of those occasions. Since 2014, AEP experienced three emergency/pre-emergency load management events within the PJM footprint and subsequently notified commercial/industrial customers enrolled in demand response programs. These types of events are expected to increase, as more and more firm generation is retired.

Moreover, the fact the 50-hour provision has been used infrequently in the last eight years, since it was remanded voluntarily at around the same time as the Court’s decision in *Delaware Dep’t of Nat. Res. & Env’t Control v. EPA*,⁹ militates for keeping the provision, not deleting it. Indeed, the fact the provision has been used infrequently supports the conclusion that (1) emergency generators and grid operators alike have not “abused” the system, so to speak, by deliberately relying on such emergency generators often; and (2) the concern that animated the *Delaware* decision to remand the (somewhat similar) “100-hour” emergency demand response provision—that somehow the availability of these emergency generators for peak shaving would distort “capacity markets”¹⁰ has been disproved by the facts over the last decade (at least with respect to emergency generators subject to the 50-hour provision).

We also note that the Court did not hold that these types of demand response programs can never pass legal muster; the Court merely remanded the 100-hour provision on the ground EPA failed to adequately respond to comments on the issue and explain the basis for—or perhaps even limiting, if appropriate—that provision. EPA should do so here, rather than simply deleting the 50-hour provision. As an initial matter, EPA all but concedes in the Proposed Rule and the *Delaware* court noted that the “capacity markets” issue is relevant only in areas of the country that have such markets; in particular, rural areas of the country, which are often primarily served by electric cooperatives, are mostly not part of such markets. There is not even need for additional justification for these areas. Indeed, the opposite is true: there is no justification or rationale for EPA not retaining the 50-hour provision for any area of the country that is no within a capacity market.

As to areas within capacity markets, EPA should explain that the emergency generators at issue under the 50-hour provision are those located in area sources of hazardous air pollutants, so they are likely very small and unlikely to make a perceptible difference in these capacity markets. As mentioned above, moreover, EPA can use the evidence of infrequent, but crucial for reliability and grid stability, use of the 50-hour provision over the last decade to further support its conclusion that the 50-hour provision has in fact had no perceptible impact, if any, on the capacity markets.

Indeed, the concern that the *Delaware* court found EPA did not adequately consider in the 2013 rulemaking is no longer germane to the issues, because the U.S. electric grid is very different now than it was back in 2013. Whatever the merits of the capacity markets argument then, it no longer holds. Most of the U.S. grid has lost (and is losing) so much firm generation, that there is a very real threat to grid reliability and stability in extreme weather conditions. The demand

⁹ 785 F.3d 1 (2015).

¹⁰ *Id.* at 11-13 (explaining capacity markets).

response programs that the 50-hour provision allows, even if used infrequently, are precisely the types of programs that the grid needs to shore up reliability and that EPA should be encouraging. Indeed, there is not one shred of evidence or even information that the 50-hour provision has had a negative effect on any capacity market in the last decade, since the provision became effective. This hard evidence of a lack of negative effect on the markets is more than enough to respond to the stale comments on this issue, if EPA feels it necessary to do so.

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