



EPA DECISION IMPACTS BACKUP GENERATORS

We are pleased to forward the latest information on the use of backup generators from Greenberg Traurig.

- Gary R. Brown

***By Christopher Bell and Michael Cooke on May 4, 2015
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In a decision issued on May 1, the DC Circuit vacated a U.S. EPA rule that allowed backup generators to operate up to 100 hours/year without emission controls as part of so-called emergency power demand/response programs intended to address short-term capacity shortfalls in the electrical grid. *Delaware DNREC v. EPA*, No. 13-1093, (D.C. Cir. May 1, 2015). In these programs, owners/operators of backup generators enter into contracts with electricity distribution companies to sell power back into the grid under emergency power shortage conditions. The more sophisticated efforts by "aggregators" appeared to be aimed at creating "virtual" power plants by coordinating the distribution of electricity from backup generators.

These programs were becoming popular with owners/operators of large industrial, commercial or institutional buildings with backup generators, as they provided an opportunity for revenue from an otherwise rarely used asset (particularly when compared to the traditional demand/response option, which was often simply a mandate to reduce energy consumption). While the DC Circuit's decision does not prohibit demand/response agreements, it effectively makes them impractical or uneconomical, because the backup generators would now need pollution control equipment to operate at those levels.

While the DC Circuit vacated the rule, the court did note that if this decision would cause administrative or other difficulties, EPA (or any of the parties) could petition the court for a stay of the mandate to allow the current standards to remain in place while EPA figures out what, if anything, to do next.

This decision may signal where the DC Circuit might end up in a challenge to a related EPA rule that allows backup generators to run up to 50 hours/year to sell electricity into the grid even in the absence of a capacity shortfall/emergency. The 50-hour rule for non-emergency situations rule has also allowed owners/operators of industrial/commercial/institutional buildings to extract revenue from their backup generators.

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