

# VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

## CHAPTER 752

*An Act to amend the Code of Virginia by adding a section numbered 10.1-1307.02 and to direct the State Corporation Commission to conduct a proceeding to determine appropriate energy conservation and demand response targets that can realistically be accomplished through demand-side management portfolios and other energy conservation, energy efficiency, and demand-side management programs to be administered by generating electric utilities, and directing the Air Pollution Control Board to adopt regulations providing exemptions to certain air quality requirements.*

[H 2531]

Approved March 30, 2009

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 10.1-1307.02 as follows:**

*§ 10.1-1307.02. Permit for generation of electricity during ISO-declared emergency.*

*A. As used in this section:*

*"Emergency generation source" means a stationary internal combustion engine that operates according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.*

*"ISO-declared emergency" means a condition that exists when the independent system operator, as defined in § 56-576, notifies electric utilities that an emergency exists or may occur and that complies with the definition of "emergency" adopted by the Board pursuant to subsection B.*

*"Retail customer" has the same meaning ascribed thereto in § 56-576.*

*B. The Board shall adopt a general permit or permits for the use of back-up generation to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during ISO-declared emergencies. Such general permit or permits shall include a definition of "emergency" that is compatible with the ISO's emergency operations manual. After adoption of such general permit or permits, any amendments to the Board's regulations necessary to carry out the provisions of this section shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.*

**2. § 1.** *That the State Corporation Commission shall conduct a formal public proceeding that will include an evidentiary hearing for the purpose of determining achievable, cost-effective energy conservation and demand response targets that can realistically be accomplished in the Commonwealth through demand-side management portfolios administered by each generating electric utility in the Commonwealth. As used in this act, "generating electric utility" means a public service corporation that serves electric load at retail, has rates regulated by the State Corporation Commission, and that, as of January 1, 2009, directly owns and operates electric generation facilities in excess of six megawatts, other than diesel generators used for voltage control. The determination of what consumption and peak load reductions can be achieved cost-effectively shall consider standard industry-recognized tests. The Commission shall determine which test should be given greatest weight when preparing a cost-benefit analysis of a demand-side management program, taking into consideration the public interest and the potential impact on economic development in the Commonwealth.*

*§ 2. That the State Corporation Commission shall report its findings to the Governor and the General Assembly on or before November 15, 2009. Such report shall (i) indicate the range of consumption and peak load reductions that are potentially achievable by each generating electric utility, the range of costs that consumers would pay to achieve those reductions, and the range of financial benefits or savings that could be realized if the targets were met over a 15-year period; and (ii) determine a just and reasonable ratemaking methodology to be employed to quantify the cost responsibility of each customer class to pay for generating electric utility-administered demand-side management programs. This evaluation shall include an examination of the class cost responsibility methods used in other jurisdictions, including, but not limited to, the allocation of costs based on projected class benefits and the allocation of costs based on program participation. The analysis shall also examine other jurisdictions that permit certain nonresidential customers or classes of customers to either be exempt from paying for the utility demand-side management programs or to opt out of participating in or paying for the utility demand-side management programs, and determine if it would be in the public interest for the Commonwealth to have a similar policy.*

*§ 3. That the State Corporation Commission, for the service area of a generating electric utility that has elected to meet its capacity obligations of a regional transmission entity through a fixed capacity resource requirement as an alternative to other capacity mechanisms, shall approve any demand response program proposed to be offered to retail customers by the generating electric utility or any*

*other qualified nonutility provider if, following notice and the opportunity for a hearing, the State Corporation Commission finds (i) any nonutility provider to be qualified, (ii) the program to be effective, reliable, and verifiable as a capacity resource, and (iii) such program to be in the public interest. A State Corporation Commission order issued pursuant to this section shall not affect any contract between a retail customer and a curtailment service provider executed prior to July 1, 2009.*

*§ 4. That the State Air Pollution Control Board, in consultation with the State Corporation Commission and the Department of Mines, Minerals and Energy, shall adopt an air general permit or permits for the construction, installation, and operation of distillate oil, natural gas, liquid propane gas, and bio-diesel fired electric generating facilities that participate in a voluntary demand response program (i.e., load curtailment, demand response, peak shaving or like program) and that qualify as non major facilities under the Clean Air Act Amendments of 1990. Participation in PJM Interconnection LLC's Emergency Load Response Program, as defined in PJM Interconnection LLC's Manual 13 Emergency Operations, shall not be considered as participating in a voluntary load reduction program. The air general permit shall have requirements ensuring air quality is protected, including appropriate control technologies.*