

Energy Law



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November 10, 2009



## Governor Signs SB 695 Directing the California Public Utilities Commission to Establish Rules to Restore Direct Access Electricity Purchasing for Some Industrial and Commercial Customers

**If you are not currently a direct access customer, you are urged to monitor the rulemaking**

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On October 11, 2009, Governor Schwarzenegger signed Senate Bill (SB) 695, the Ratepayer Protection Act (the “Act”), into law. The bill, authored by Senator Kehoe, represents a compromise between utilities, consumer groups and business interests. The Act will, among other things, allow a phase-in for nonresidential end-use customers to purchase electricity directly from non utility sources. The phased-in restoration of so-called “Direct Access” or “Customer Choice” electricity purchasing offers the potential for industrial and commercial customers to secure an important business advantage by locking in favorable electricity rates from non utility suppliers. Importantly, the Act does not eliminate the existing prohibition on Direct Access; it merely directs the California Public Utilities Commission (“Commission”) to consider and develop limited Direct Access rules in the coming months. The details of the final rule remain uncertain and warrant close monitoring and/or participation in the rulemaking process.

Beginning in 1998, California retail electricity customers had the choice either to subscribe to traditional bundled utility service or to purchase electricity on a competitive basis from a non utility source.<sup>1</sup> Customers who purchased bundled utility service paid the utility a charge for distribution and transmission as well as for the electricity commodity. A Direct Access customer also received distribution and transmission services from the utility, but purchased electricity

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directly through an independent non utility electricity services provider. Customers choosing Direct Access had the ability to enter into long-term electricity contracts that locked in electricity prices, thereby creating stability and certainty for future business costs.

Following the energy crisis of 2000-2001, the California Legislature enacted a series of provisions related to utility electricity sales in California. Among those provisions, the Legislature directed the Commission to suspend the right of retail customers within a public utility's service area to enter into new contracts to purchase electricity from non utility sources.<sup>2</sup> As a result, the Commission prohibited any new Direct Access contracts, but allowed Direct Access contracts existing prior to September 20, 2001, to remain in place.

SB 695 addresses the Direct Access prohibition and directs the Commission to establish a phase-in schedule to restore – on a limited basis – Direct Access choice for nonresidential retail customers. Within six months (by April 2010), the Commission must adopt and implement a schedule that will allow nonresidential retail customers to acquire electric services from non utility providers. The phase-in schedule, however, is only a partial restoration of Direct Access choice. The Commission must set a maximum allowable total kilowatt hour limit for Direct Access within each utility's service area. Non utility retail providers of electricity through Direct Access must also meet the applicable Renewable Portfolio Standard that applies to the electric utilities, and Direct Access customers must continue to contribute to the public utility's resource adequacy costs (i.e., new generation). In other words, all utility customers, including Direct Access customers, must share the utility's costs to provide adequate resources through new generation construction, while Direct Access customers may separately contract for the electricity purchase portion of their energy bills.

Business interests generally applauded the return of Direct Access because of its potential to reduce energy costs through alternative, competitively available sources. Nevertheless, the details of the final rule implementing the limited restoration of Direct Access remain uncertain and will depend on the Commission's upcoming rulemaking.

Industrial and commercial businesses should act promptly to monitor and engage in the Commission rulemaking process to ensure that they will have an opportunity to take advantage of Direct Access contracts in the coming year.

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<sup>1</sup> See, R.07-05-025, P.06-12-002, *Granting Petition and Instituting Rulemaking Regarding the Conditions for Lifting of Direct Access Suspension Instituted Pursuant to AB 1X and D0109060*, issued May 30, 2007.

<sup>2</sup> D.01-09-060, *Interim Opinion Suspending Direct Access*, issued September 20, 2001.

[back to top](#)

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