

1 **Public Utilities Code Section 365.1**

2 (a) Except as expressly authorized by this section, and subject to the limitations in subdivisions  
3 (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from  
4 other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise  
5 authorizes direct transactions. For purposes of this section, “other provider” means any person,  
6 corporation, or other entity that is authorized to provide electric service within the service  
7 territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker,  
8 or marketer, as defined in Section 331, and an electric service provider, as defined in Section  
9 218.3. “Other provider” does not include a community choice aggregator, as defined in Section  
10 331.1, and the limitations in this section do not apply to the sale of electricity by “other  
11 providers” to a community choice aggregator for resale to community choice aggregation  
12 electricity consumers pursuant to Section 366.2.

13 (b) The commission shall allow individual retail nonresidential end-use customers to acquire  
14 electric service from other providers in each electrical corporation’s distribution service territory,  
15 up to a maximum allowable total kilowatthours annual limit. The maximum allowable annual  
16 limit shall be established by the commission for each electrical corporation at the maximum total  
17 kilowatthours supplied by all other providers to distribution customers of that electrical  
18 corporation during any sequential 12-month period between April 1, 1998, and the effective date  
19 of this section. Within six months of the effective date of this section, or by July 1, 2010,  
20 whichever is sooner, the commission shall adopt and implement a reopening schedule that  
21 commences immediately and will phase in the allowable amount of increased kilowatthours over  
22 a period of not less than three years, and not more than five years, raising the allowable limit of  
23 kilowatthours supplied by other providers in each electrical corporation’s distribution service  
24 territory from the number of kilowatthours provided by other providers as of the effective date of  
25 this section, to the maximum allowable annual limit for that electrical corporation’s distribution  
26 service territory. The commission shall review and, if appropriate, modify its currently effective  
27 rules governing direct transactions, but that review shall not delay the start of the phase-in  
28 schedule.

29 (c) Once the commission has authorized additional direct transactions pursuant to subdivision  
30 (b), it shall do both of the following:

31 (1) Ensure that other providers are subject to the same requirements that are applicable to the  
32 state’s three largest electrical corporations under any programs or rules adopted by the  
33 commission to implement the resource adequacy provisions of Section 380, the renewables  
34 portfolio standard provisions of Article 16 (commencing with Section 399.11), and the  
35 requirements for the electricity sector adopted by the State Air Resources Board pursuant to the  
36 California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section  
37 38500) of the Health and Safety Code). This requirement applies notwithstanding any prior  
38 decision of the commission to the contrary.

39 (2) (A) Ensure that, in the event that the commission authorizes, in the situation of a contract  
40 with a third party, or orders, in the situation of utility-owned generation, an electrical corporation  
41 to obtain generation resources that the commission determines are needed to meet system or  
42 local area reliability needs for the benefit of all customers in the electrical corporation’s  
43 distribution service territory, the net capacity costs of those generation resources are allocated on

44 a fully nonbypassable basis consistent with departing load provisions as determined by the  
45 commission, to all of the following:

46 (i) Bundled service customers of the electrical corporation.

47 (ii) Customers that purchase electricity through a direct transaction with other providers.

48 (iii) Customers of community choice aggregators.

49 (B) If the commission authorizes or orders an electrical corporation to obtain generation  
50 resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a  
51 system or local reliability need in a manner that benefits all customers of the electrical  
52 corporation. The commission shall allocate the costs of those generation resources to ratepayers  
53 in a manner that is fair and equitable to all customers, whether they receive electric service from  
54 the electrical corporation, a community choice aggregator, or an electric service provider.

55 (C) The resource adequacy benefits of generation resources acquired by an electrical  
56 corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net  
57 capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary  
58 services value of the resource from the total costs paid by the electrical corporation pursuant to a  
59 contract with a third party or the annual revenue requirement for the resource if the electrical  
60 corporation directly owns the resource. An energy auction shall not be required as a condition for  
61 applying this allocation, but may be allowed as a means to establish the energy and ancillary  
62 services value of the resource for purposes of determining the net costs of capacity to be  
63 recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs  
64 of contracts with third parties shall be allowed for the terms of those contracts.

65 (D) It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance  
66 to the commission with respect to the implementation of subdivision (g) of Section 380, as well  
67 as to ensure that the customers to whom the net costs and benefits of capacity are allocated are  
68 not required to pay for the cost of electricity they do not consume.

69 (d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to  
70 subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource  
71 adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If  
72 the commission later orders that electrical corporations cease procuring capacity through a  
73 centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c)  
74 shall again apply.

75 (2) If the use of a centralized resource adequacy mechanism is authorized by the commission and  
76 has been implemented as set forth in paragraph (1), the net capacity costs of generation resources  
77 that the commission determines are required to meet urgent system or urgent local grid reliability  
78 needs, and that the commission authorizes to be procured outside of the Section 380 or Section  
79 454.5 processes, shall be recovered according to the provisions of paragraph (2) of subdivision  
80 (c).

81 (3) Nothing in this subdivision supplants the resource adequacy requirements of Section 380 or  
82 the resource procurement procedures established in Section 454.5.

83 (e) The commission may report to the Legislature on the efficacy of authorizing individual retail  
84 end-use residential customers to enter into direct transactions, including appropriate consumer  
85 protections.