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THE STATE

Largest Energy Users Can Still Bypass Utilities

■ PUC vote: 'Direct-access' contracts are kept for big customers, but they must pay a surcharge. Foes fear a burden for others.

By TIM REITERMAN, TIMES STAFF WRITER

SAN FRANCISCO -- With billions of dollars in the balance, state regulators on Thursday ruled that California's largest energy consumers can continue to bypass utilities and buy less costly electricity directly from alternative providers.

A sharply divided Public Utilities Commission voted 3-2 to preserve so-called direct-access contracts that were signed before Sept. 20. But the commission ruled that those customers will be required to pay a surcharge or exit fee to cover their fair share of the state's power purchase costs and perhaps other expenses.

Commissioner Jeff Brown, who sponsored the measure, said the amount of the fees would be determined later, but would fully protect homeowners and other small and medium-sized ratepayers. But consumer groups expressed fear that other utility customers would end up bearing the cost of the exodus of big customers last year. And PUC President Loretta M. Lynch, who was on the losing side of the vote, said she is skeptical that fair exit fees ever will be established.

"We are holding out a hope and prayer of exit fees," she said after the meeting. "I am concerned that the direct-access customers won't pay what they should."

Decision Called Crucial to Public Institutions

The vote capped months of debate and lobbying by powerful special interests that entered into alternative power contracts in droves to insulate themselves from record utility rate increases. The customers range from industrial and commercial users to the state's university systems and the Los Angeles Unified School District.

"This [PUC decision] was critical to the public institutions," said Dian Grueneich, who represents the University of California and the California State University, which save an estimated \$10 million a year through direct access. "Those millions mean more with the budget crunch they are undergoing."

Direct access was a cornerstone of the state's controversial deregulation of wholesale energy markets. The number of direct-access customers rocketed last year--from about 2% to 12% of the state's power load--in anticipation of the PUC's vote to suspend the program. But that also heightened fears that a shrinking pool of utility customers would be left to pay for billions of dollars in power purchased by the state Department of Water Resources.

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The PUC voted on Sept. 20 to immediately suspend direct access--one of several steps state officials sought to facilitate the sale of bonds to pay for power costs.

A proposed decision by Commissioner Carl Wood would have made that suspension retroactive to July 1. But the measure set off protests from direct-access customers, who said that voiding contracts would cost them millions of dollars, cause litigation and harm the state's business climate.

Brown proposed an alternate decision that would not roll back the direct-access contracts but would provide for exit fees. It was backed by not only the direct-access lobby, but also the PUC's consumer protection arm, the Office of Ratepayer Advocates.

Oscar Hidalgo, spokesman for the Department of Water Resources, said the agency supported it as "a fair and equitable way to repay debt we absorbed in 2001."

Fight Shaping Up Over Amount of 'Exit Fees'

Lynch tried to block the vote, noting that three Democratic state senators-- President Pro Tempore John Burton, Energy Committee Chairwoman Debra Bowen and Environmental Committee Chairman Byron Sher--had requested a delay. But she and Wood lost their bid for a delay, which usually is granted as professional courtesy.

Brown teamed up with the only Republican on the panel, Henry Duque, and with Michael Peevey, Gov. Gray Davis' most recent PUC appointee and a former head of utility and energy companies. The trio defeated Wood's measure and approved Brown's.

"It appears that Davis is creating a commission to do the bidding of big business," said Mindy Spatt, spokeswoman for the Utility Reform Network consumer group. "The same fat cats who were lobbying for direct access now will be lobbying for exit fees. The question is: Is this commission willing to stand up to their lobbying?"

Gary Ackerman, director of Western Power Trading Forum, which represents power providers, said a fight already is shaping up over the size of the exit fees and what costs to include in the calculation. "Obviously those who don't want direct access will make them as high as possible," Ackerman said.

PUC officials acknowledged that they do not yet know exactly how much of a burden was shifted from the direct-access customers to other utility ratepayers. "It will be a hard task to discern those costs," said Brown, who noted that the cost shift would be \$340 million a year for state-purchased power alone.

Wood estimated that the cost shift amounted to nearly \$3 billion last year, about two-thirds for electricity purchases by the Water Resources Department.

The decision allows direct-access customers to renew contracts or switch providers, and that is particularly important to the state university systems as well as to other customers of Enron, which is in bankruptcy. Contracts for the state universities expire March 31.

David Huard--who represents Los Angeles Unified School District, Del Taco, Lowes Warehouse and the city of Corona--said, "If the exit fee is so large that it does not make direct-access contracts economic, they could be forced back onto bundled utility service." Lynch said that if direct-access customers come flocking back, it will make the power demand at utilities unpredictable.

"This decision will make it more difficult to get the utilities back in the power-buying business and the state out of it," she said.

Brown said that if fair fees cannot be established, he would support suspension of all contracts signed after July 1.

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