

From: Allen, Meredith
Sent: 8/25/2010 10:24:52 AM
To: 'Baker, Amy C.' (AB1@cpuc.ca.gov); 'Simon, Sean A.' (SVN@cpuc.ca.gov)
Cc:
Bcc:
Subject: Waiver of Rights

Amy, Sean,

The language below is from the 2010 draft. The same language was adopted in the 2009 protocol. The 2008 protocol included similar language expect the reference is to the 2006 OIR docket rather than R.08-08-009.

Please let me know if you have questions or need additional information.

Thanks,
Meredith

See Section XVII of the RPS Protocol.

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Except as expressly set forth in this Protocol, by submitting an Offer, Participant knowingly and voluntarily waives all remedies or damages at law or equity concerning or related in any way to the Solicitation, the Solicitation Protocol and/or any attachments to the Solicitation Protocol (“Waived Claims”). The assertion of any Waived Claims by Participant may, to the extent that Participant’s Offer has not already been disqualified, automatically disqualify such Offer from further consideration in the Solicitation or otherwise.

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By submitting an Offer, Participant agrees that the only forums in which Participant may assert any challenge with respect to the conduct or results of the Solicitation is the CPUC’s RPS OIR docket, R.08-08-009 or through the alternative dispute resolution (“ADR”) services provided by the CPUC pursuant to Resolution ALJ-185, August 25, 2005. The ADR process is voluntary in nature, and does not include processes, such as binding arbitration, that impose a solution on the disputing parties. However, PG&E will consider the use of ADR under the appropriate circumstances. Additional information about this program is available on the CPUC's website at the following link:
www.cpuc.ca.gov/PUBLISHED/Agenda_resolution/47777.htm

Participant further agrees that other than through the ADR process, the only means of challenging the conduct or results of the Solicitation is a protest to an Advice Letter Filing

seeking approval of one or more Agreements entered into as a result of the Solicitation, that the sole basis for any such protest shall be that PG&E allegedly failed in a material respect to conduct the Solicitation in accordance with this Protocol, and the exclusive remedy available to Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the Solicitation that the CPUC determines was not previously conducted in accordance with the Solicitation Protocol. Participant expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorneys fees. Unless PG&E elects to do otherwise in its sole discretion during the pendency of such a protest or ADR process, the Solicitation and any related regulatory proceedings related to the Solicitation, including the RPS OIR, will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the Solicitation or PG&E has elected to terminate the Solicitation.

Participant agrees to indemnify and hold PG&E harmless from any and all claims by any other Participant asserted in response to the assertion of a Waived Claim by Participant or as a result of a Participant's protest to an advice letter filing with the CPUC resulting from the Solicitation.

Except as expressly provided in this Protocol, nothing herein including Participant's waiver of the Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of PG&E. Nothing in this Protocol is intended to prevent any Participant from informally communicating with the CPUC or its staff regarding this Solicitation or any other matter.