



HERBERT
SMITH
FREEHILLS

The Manager
Market Announcements Office
ASX Limited

29 June 2020

Dear Sir/Madam

**Takeover bid by UAC Energy Holdings Pty Ltd for Infigen
Second Supplementary Bidder's Statement**

We act for UAC Energy Holdings Pty Ltd ACN 640 077 747 (**UAC**).

We attach, by way of service pursuant to section 647(3)(a)(ii) of the *Corporations Act 2001* (Cth), a copy of the second supplementary bidder's statement in relation to UAC's off-market bid for all the stapled securities in Infigen Energy Ltd ABN 39 105 051 616 (**IEL**) and Infigen Energy Trust ARSN 116 244 118 (**IET**) (ASX:IFN) (together, **Infigen**).

This release has been authorised by the board of directors of UAC.

Yours sincerely

Andrew Rich
Partner
Herbert Smith Freehills
+61 2 9225 5707
+61 407 538 761
andrew.rich@hsf.com

Nick Baker
Partner
Herbert Smith Freehills
+61 3 9288 1297
+61 420 399 061
nick.baker@hsf.com

Joshua Santilli
Solicitor
Herbert Smith Freehills
+61 2 9322 4382
+61 424 092 771
joshua.santilli@hsf.com

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership ABN 98 773 882 646, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Doc 86532014

For personal use only

Second Supplementary Bidder's Statement

This document is a supplementary bidder's statement under section 643 of the *Corporations Act 2001* (Cth). It is the second supplementary bidder's statement (**Second Supplementary Bidder's Statement**) issued by UAC Energy Holdings Pty Ltd (ACN 640 077 747) (**UAC**) in relation to its off-market takeover bid for all the stapled securities in Infigen Energy Limited (ABN 39 105 051 616) and Infigen Energy Trust (ARSN 116 244 118) (together, **Infigen**). This Second Supplementary Bidder's Statement supplements, and should be read together with, UAC's bidder's statement dated 9 June 2020 (**Original Bidder's Statement**) and UAC's first supplementary bidder's statement dated 25 June 2020 (**First Supplementary Bidder's Statement**). Unless the context otherwise requires, terms defined in the Original Bidder's Statement and First Supplementary Bidder's Statement have the same meaning as in this Second Supplementary Bidder's Statement. A copy of this Second Supplementary Bidder's Statement has been lodged with ASIC. Neither ASIC nor any of its officers take any responsibility for its contents.

Summary of key developments

UAC today announces that:

- it has declared its Offer wholly unconditional;
- it has increased its Offer Price to A\$0.86 per Stapled Security;
- it will accelerate payment terms to T+10 Business Days; and
- if necessary, due to a change in control of Infigen, UAC will procure the provision of an unsecured loan to Infigen, on arm's length terms, to refinance its Corporate Facility.

1 Key reasons why you should accept the Improved UAC Offer

- (1) The Improved UAC Offer is clearly superior to the Iberdrola Offer (see the table comparing the key features of the two offers at Attachment 1).
- (2) The Improved UAC Offer is unconditional and may remain superior even if the conditional Iberdrola Offer is increased.
- (3) Iberdrola may not be able to satisfy its conditions before the end of its offer period, even if the Iberdrola Offer is increased.
- (4) The Improved UAC Offer is currently scheduled to close before the Iberdrola Offer. The Iberdrola Offer may remain conditional at the time of the Improved UAC Offer closing.
- (5) The Improved UAC Offer has more favourable payment terms than the Iberdrola Offer.
- (6) The Improved UAC Offer has the flexibility to allow you to accept for *all or some* of your Stapled Securities, whereas the Iberdrola Offer only allows you to accept for *all* of your Stapled Securities.
- (7) Accordingly, given the attractiveness of the UAC Offer and the uncertainty around the Iberdrola Offer, you have the flexibility to:
 - accept the Improved UAC Offer now before it closes for some of your Stapled Securities and be paid within 10 Business Days after the date of receipt of your valid acceptance; and
 - hold onto some of your Stapled Securities.
- (8) Unlike the Iberdrola Offer, your ability to receive payment for your Stapled Securities does not depend on the actions of other Infigen Securityholders.

2 Increase in Offer Price and Offer declared unconditional

2.1 Response to Infigen's target's statement

On 23 June 2020, Infigen published its target's statement in response to UAC's takeover bid for Infigen (the **Original UAC Offer**).

The Infigen directors gave four reasons for rejecting the Original UAC Offer. UAC has carefully and respectfully considered and listened to those reasons.

In response, UAC is pleased to announce that it has declared its offer wholly unconditional and increased the cash consideration to A\$0.86 per Stapled Security (the **Improved UAC Offer**).¹ This addresses each of those four reasons (as summarised in the following table).

The four reasons given by the Infigen directors	The Improved UAC Offer
The Iberdrola Offer offers a higher price	The Improved UAC offer is at the same price as the Iberdrola Offer - A\$0.86 per Stapled Security
The Original UAC Offer is subject to highly prescriptive conditions	The Improved UAC Offer is no longer subject to any conditions
Unlike the Original UAC Offer, the Iberdrola Offer is subject to limited defeating conditions	The Improved UAC Offer is wholly unconditional The Iberdrola Offer, is subject to a large number of conditions (including a FIRB approval condition, which cannot be waived)
It is uncertain whether UAC has sufficient funding to complete the Original UAC Offer	UAC has sufficient funding to complete the Improved UAC Offer (see section 5 below)

UAC's unconditional cash offer constitutes a superior proposal to Infigen securityholders. It is at the same price as the Iberdrola Offer but, unlike the Iberdrola Offer, it is free from all conditions and reflects enhanced payment terms. UAC intends to pay Infigen securityholders who validly accept the Improved UAC Offer within 10 Business Days after the date of their acceptance being received.

UAC looks forward to working constructively and collaboratively with the Infigen Board over the remaining course of UAC takeover bid and beyond the close of the offer period.

UAC expects the Infigen directors to imminently commence the matching rights process under the bid implementation agreement between Iberdrola and Infigen dated 17 June 2020.

3 No assurance Iberdrola will obtain FIRB approval or, if so, when

The Iberdrola Offer remains highly conditional. Those conditions include the need for approval from the Foreign Investment Review Board approval (**FIRB**), as well as a minimum acceptance condition (see section 4 below) and a material adverse change condition.

There is no assurance that Iberdrola will obtain FIRB approval or that such approval will be forthcoming whilst the Improved UAC Offer remains open for acceptance.

¹ UAC has lodged a notice of variation with ASIC, and served that notice on Infigen, to give effect to the increase of the Offer Price. A copy of the notice is set out at Attachment 2 to this supplementary bidder's statement. This supplementary bidder's statement, including the notice of variation, is being sent to Infigen securityholders to satisfy the requirements of s650D(1)(c)(ii) of the Corporations Act.

This is a fact expressly acknowledged by Iberdrola on page 40 of its bidder's statement:

"Iberdrola Australia notes that the review period for FIRB applications has been extended to up to 6 months as a response to the effect of COVID-19 on business conditions, but generally is confident that the transaction is consistent with the Australian Government's foreign investment policy and expects FIRB Approval to be given in due course. However, there is a risk that FIRB Approval may not be given before the end of the [Iberdrola] Offer Period."

Iberdrola is under no obligation to, and has made no statement that it will, extend the offer period in respect of the Iberdrola Offer in the event that it does not obtain FIRB approval before the end of its scheduled closing date.

The Improved UAC Offer is not subject to FIRB approval or any other conditions. UAC received FIRB approval on 19 June 2020.

4 No assurance Iberdrola will satisfy or waive its minimum acceptance condition

Iberdrola states in its announcement of 17 June 2020 that it intends to 'integrate Infigen's operational expertise into Iberdrola group's worldwide footprint' and has included a 50% minimum acceptance condition in the Iberdrola Offer.

Until Iberdrola satisfies or waives its minimum acceptance condition, there is no assurance that you will receive payment for your Stapled Securities under the Iberdrola Offer. A number of substantial Infigen securityholders have not stated their intentions in respect of their Stapled Securities.

Your ability to receive payment for your Stapled Securities under the Iberdrola Offer currently depends on the actions of other Infigen securityholders (as well as FIRB approval and no material adverse change occurring).

By way of contrast, the Improved UAC Offer is not subject to a minimum acceptance condition or any other conditions.

If you accept the Improved UAC Offer you will receive A\$0.86 per Stapled Security irrespective of the actions of any other Infigen securityholder.

5 Funding and financing arrangements

5.1 Financing arrangements

As noted in Infigen's target's statement dated 23 June 2020, certain Infigen Group Members are a party to financing arrangements which contain provisions which may be triggered on a change in control of Infigen, including its Corporate Facility (as defined in Infigen's target's statement). In its bidder's statement dated 24 June 2020, Iberdrola informed the market that the Corporate Facility was drawn to A\$450 million as at 31 March 2020.

UAC will support Infigen seeking any required consents or waivers to any change of control or review event arising from the Improved UAC Offer from financiers to Infigen.

If Infigen's Corporate Facility lenders:

- call for a review subsequent to a change in control occurring; or
- require repayment subsequent to the review,

then, if it is necessary, it is UAC's intention to procure that AC Energy Australia Pte Ltd (an indirect wholly owned subsidiary of AC Energy, Inc. and a 75% shareholder in UAC) provides an unsecured loan, on arm's length terms, to Infigen to refinance the Corporate Facility (the **Replacement Financing**).

See section 5.2 for further information relating to the Replacement Financing.

5.2 Sources of funding

The additional cash consideration payable under the Improved UAC Offer as a result of the increase to the Offer Price described above will be provided from funds supplied by AC Renewables International Pte Ltd (**ACRI**), a related body corporate of UAC and an indirect wholly owned subsidiary of AC Energy, Inc.

The arrangements under which those funds will be provided are the same as set out in section 5.2 of the Original Bidder's Statement.

Any amounts required to refinance Infigen's Corporate Facility by way of the Replacement Financing, will be sourced from funds supplied by ACRI to AC Energy Australia Pte Ltd and ACRI has committed to UAC to ensure that AC Energy Australia Pte Ltd provides the Replacement Financing. As at the date of this Second Supplementary Bidder's Statement ACRI has cash, short-term deposits, equivalent liquid assets, and available credit lines in excess of the aggregate of the maximum amount that UAC could be required to pay under the Improved UAC Offer at the increased Offer Price and the principal amount of the Replacement Financing, together with transaction costs.

5.3 Consent from AC Renewables International Pte Ltd

AC Renewables International Pte Ltd has given, and not withdrawn before the lodgement of this Second Supplementary Bidder's Statement, its written consent to be named in this Second Supplementary Bidder's Statement in the form and context in which it is so named.

6 How to accept the Improved UAC Offer

For details on how to accept the Improved UAC Offer, see UAC's bidder's statement dated 9 June 2020, a copy of which has been posted to you.

If you have any questions about the Improved UAC Offer, or how to accept it, please call the UAC Offer Information Line, Monday to Friday (other than public holidays) between 8.30am and 5.00pm (Sydney, Australia time) on either 1300 095 747 (within Australia) or +61 3 9415 4310 (outside Australia).

7 Third party statements

This Second Supplementary Bidder's Statement includes statements which are made in, or based on statements made in, documents lodged with ASIC or given to ASX. Under the terms of ASIC Class Order 13/521, the parties making those statements are not required to consent to, and have not consented to, inclusion of those statements in this Second Supplementary Bidder's Statement. If you would like to receive a copy of any of those documents, or the relevant parts of the documents containing the statements within 2 business days of your request (and free of charge), during the bid period, please contact the UAC Offer Information Line on 1300 095 747 (within Australia) or +61 3 9415 4310 (outside Australia). Calls to these numbers may be recorded.

8 Approval

Signed for and on behalf of UAC Energy Holdings Pty Ltd (ACN 640 077 747) following a resolution passed by its directors.



Anton Rohner, Director

date 29 June 2020

Attachment 1

Comparison of the key features of Iberdrola Offer and the Improved UAC Offer

	Iberdrola Offer	Improved UAC Offer
Offer price	A\$0.86 per Stapled Security <i>See Iberdrola's Bidder's Statement, section 9.1(c)</i>	A\$0.86 per Stapled Security
Ability to accept offer for some of your holding	You can only accept for all your holding. If you purport to accept for some of your holding you will be deemed to have accepted for all your holding. <i>See Iberdrola's Bidder's Statement, Frequently Asked Questions, page 11.</i>	You can accept for <u>all or some</u> of your holding
Timing of payment	Subject to other terms in section 9.9 of Iberdrola's Bidder's Statement and the Iberdrola Offer becoming unconditional, Iberdrola will pay you on or before the earlier of: (i) one month after its offer is accepted or, if the offer is subject to a condition when you accept the offer, one month after the Iberdrola Offer becomes or is declared unconditional; and (ii) 21 days after the end of the offer period of the Iberdrola Offer. <i>See Iberdrola's Bidder's Statement, section 9.9(a).</i>	UAC intends to pay you within 10 Business Days after the date of a valid acceptance being received from you
Minimum acceptance condition	The Iberdrola Offer is conditional on Iberdrola acquiring a Relevant Interest in more than 50% of the Stapled Securities <i>See Iberdrola's Bidder's Statement, section 9.7(a)</i>	None
FIRB condition	The Iberdrola Offer is conditional on FIRB approval being obtained <i>See Iberdrola's Bidder's Statement, section 9.7(b)</i>	None
No regulatory impediment condition	The Iberdrola Offer is conditional on there being no regulatory impediments <i>See Iberdrola's Bidder's Statement, section 9.7(c)</i>	None

For personal use only

	Iberdrola Offer	Improved UAC Offer
No material adverse change condition	The Iberdrola Offer is conditional on there being no material adverse change <i>See Iberdrola's Bidder's Statement, section 9.7(d)</i>	None
No specified events condition	The Iberdrola Offer is conditional on there being no specified events <i>See Iberdrola's Bidder's Statement, section 9.7(e)</i>	None
No prescribed occurrences condition	The Iberdrola Offer is conditional on there being no prescribed occurrences <i>See Iberdrola's Bidder's Statement, section 9.7(f)</i>	None
No untrue statements to ASX condition	The Iberdrola Offer is conditional on there being no statements on the ASX in the twelve months prior to the announcement of the Iberdrola Offer that are incorrect, untrue or misleading in a material respect <i>See Iberdrola's Bidder's Statement, section 9.7(g)</i>	None
Restrictions on Infigen's conduct of business	Iberdrola has imposed a long list of conduct of business restrictions on Infigen <i>See the bid implementation agreement between Iberdrola and Infigen, 17 June 2020, clause 4</i>	None
Break fee	Infigen has agreed to pay Iberdrola a break fee of \$8,395,962 in certain circumstances <i>See the bid implementation agreement between Iberdrola and Infigen, 17 June 2020, clause 6</i>	None
Exclusivity arrangements	Infigen has agreed with Iberdrola that Infigen will be subject to a broad exclusivity regime, including a no-shop, no-talk, notification and matching right regime <i>See the bid implementation agreement between Iberdrola and Infigen, 17 June 2020, clause 7</i>	None
Representations and warranties	Infigen has given a number of representations and warranties in favour of Iberdrola <i>See the bid implementation agreement between Iberdrola and Infigen, 17 June 2020, clause 9.4 and Schedule 2</i>	None

Attachment 2

Notice of variation – increasing the offer price

Attached.

For personal use only

UAC Energy Holdings Pty Ltd ACN 640 077 747

Notice of variation – Increase in consideration offered

To: **Australian Securities and Investments Commission (ASIC)**
ASX Limited
Infigen (ASX:IFN)
Each Infigen securityholder and other person referred to in s650D(1)(c) and s650D(2) of the Corporations Act 2001 (Cth) (as modified by ASIC Class Order 13/521)

UAC Energy Holdings Pty Ltd ACN 640 077 747 gives notice that its takeover offers for all of the stapled securities in Infigen Energy Ltd ABN 39 105 051 616 and Infigen Energy Trust ARSN 116 244 118 (ASX:IFN) (together, **Infigen**) contained in its bidder's statement dated 9 June 2020 are varied by increasing the offer consideration from A\$0.80 to A\$0.86 for each Infigen stapled security.

A copy of this notice was lodged with ASIC on 29 June 2020. ASIC takes no responsibility for the contents of this notice.

date 29 June 2020

Signed for and on behalf of
UAC Energy Holdings Pty Ltd
ACN 640 077 747 by

sign here ► 

Anton Rohner, Director

Attachment 3

Notice declaring takeover offers unconditional

Attached.

For personal use only

UAC Energy Holdings Pty Ltd ACN 640 077 747

Notice declaring takeover offers free of remaining defeating conditions

To: Infigen Energy (ASX:IFN) and ASX Limited

For the purposes of section 650F of the *Corporations Act 2001* (Cth), UAC Energy Holdings Pty Ltd gives notice declaring that:

1 its takeover offers under its off-market takeover bid for all the stapled securities in Infigen Energy Ltd ABN 39 105 051 616 and Infigen Energy Trust ARSN 116 244 118 (together, **Infigen**) contained in its bidder's statement dated 9 June 2020 (**Bidder's Statement**) are free from the following defeating conditions in section 9.7 (Conditions of this offer) of the Bidder's Statement:

- Section 9.7(b) (Other regulatory approvals);
- Section 9.7(c) (No regulatory action);
- Section 9.7(d) (Disclosure of Change of Control Provisions in Financing Arrangements);
- Section 9.7(e) (Waiver of Change of Control Provisions);
- Section 9.7(f) (No material adverse change);
- Section 9.7(g) (No prescribed occurrences);
- Section 9.7(h) (Financing);
- Section 9.7(i) (No change of control or other adverse rights under Material Contracts);
- Section 9.7(j) (No material acquisitions, disposals, capital expenditure or changes in the conduct of business);
- Section 9.7(k) (No Insolvency Event);
- Section 9.7(l) (Responsible entity and other changes);
- Section 9.7(m) (No untrue statements to ASX or ASIC);
- Section 9.7(n) (Equal access);
- Section 9.7(o) (No issue of convertible securities, derivatives or other rights); and
- Section 9.7(p) (No distributions); and

2 its voting power in Infigen is 13.4%.

Accordingly, the takeover offers have now become wholly unconditional.

date 29 June 2020

Signed for and on behalf of
UAC Energy Holdings Pty Ltd
ACN 640 077 747 by

sign here ► 

Anton Rohner
Director