Continuous Disclosure Policy

Adopted by:

Infigen Energy Limited
Infigen Energy (Bermuda) Limited
Infigen Energy RE Limited in its capacity as Responsible Entity of Infigen Energy Trust

Adopted: 22 February 2006
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INFIGEN ENERGY

CONTINUOUS DISCLOSURE POLICY

1. BACKGROUND

Infigen Energy (**IFN**) is listed on the Australian Securities Exchange (**ASX**). IFN is a triple stapled structure whereby a unit in Infigen Energy Trust (**IET**) is stapled to one share in Infigen Energy Limited (**IEL**) and one share in Infigen Energy (Bermuda) Limited (**IEBL**) so that none of the securities (unit and shares) can be dealt with separately.

Infigen Energy RE Limited (**IERL**) is the responsible entity of IET. IEL, IEBL, IET and their respective subsidiary entities are collectively referred to as 'IFN' throughout this policy. The Boards of IEL, IEBL and IERL are collectively referred to as the '**IFN Boards**'.

IFN is committed to responsible corporate governance and has endorsed this Continuous Disclosure Policy as part of its corporate governance framework.

2. PURPOSE OF THIS POLICY

The purpose of this policy is to:

(a) ensure IFN's announcements to the market via the ASX's Market Announcements Office:

  (i) are made in a timely manner;

  (ii) are factual;

  (iii) do not omit material information; and

  (iv) are expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions;

(b) provide guidance to Directors, officers, employees, agents and other contractors to IFN (collectively, **Relevant Persons**) for recognising and ensuring compliance with continuous disclosure obligations.

3. SOURCE OF LEGAL OBLIGATIONS

The sources of legal obligations necessitating this policy include:

(a) Chapter 3 of the ASX Listing Rules, which sets out the continuous disclosure requirements IFN must comply with in order to ensure timely disclosure of information to keep the market informed of events and developments as they occur; and

(b) Chapter 6CA of *Corporations Act 2001 (Cth)* (**Corporations Act**), which provides legislative support and complements the continuous disclosure regime of the ASX.

In addition, the ASX has issued Guidance Note 8 to assist listed entities understand and comply with their continuous disclosure obligations.

4. LIAISON WITH ASX

The ASX Listing Rules require IFN to appoint a person to be responsible for communications with the ASX in relation to Listing Rule matters. That person is the Company Secretary for IFN. The Company Secretary will be the ongoing liaison between the ASX and the IFN Boards and management.

5. OBLIGATIONS FOR CONTINUOUS DISCLOSURE

Continuous disclosure is a mandatory obligation under the Corporations Act for listed entities. The ASX Listing Rules set out the specific disclosure rules and these are administered by the ASX.

The ASX Listing Rules require that IFN must immediately notify the ASX once it becomes aware of any information which a reasonable person would expect to have a material effect on the price or value of IFN securities.

The specific rules within Chapter 3 of the ASX Listing Rules are as follows:

- Listing Rule 3.1 requires a listed entity to disclose 'market sensitive' information to ASX immediately;
- Listing Rule 3.1A sets out the exceptions to the general disclosure requirement in Listing Rule 3.1; and
- Listing Rule 3.1B requires information to be disclosed to the ASX if the ASX requests that information to correct or prevent a false market (in ASX's view).

(a) Immediately

Listing Rule 3.1 requires disclosure of market sensitive information to ASX immediately. The ASX has confirmed in Guidance Note 8 that 'immediately' does not mean 'instantaneously', but rather "promptly and without delay". The ASX recognises the speed at which disclosure can be made will depend on various factors, including the source of the information, the forewarning an entity had of the information (if any), the complexity of the situation, the need for verification and in some cases internal governance requirements.

The ASX acknowledges that there will be a period of time between when an entity first becomes obliged to provide information to the ASX and when it is able to actually provide that information to the ASX in the form of a market announcement. An entity must prepare the market announcement and provide it to the ASX as quickly as possible in the circumstances and not "deferring, postponing or putting it off to a later time".

(b) Aware

Listing Rule 3.1 requires immediate notification to the ASX once an entity becomes aware of relevant material information. Under the Listing Rules, an entity becomes aware of information when an officer (Director, Secretary or Senior Manager) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.

The extension of an entity's awareness beyond the information its officers in fact know ("ought reasonably" to know) effectively deems an entity to be aware of information if it is known by any person within the entity and it is of such significance that it ought reasonably to have been brought to the attention of an officer in the normal course. Thus, an entity cannot avoid or delay its continuous disclosure obligations by employees simply not bringing relevant potential market sensitive information to the attention of its officers in a timely manner. It is therefore important that all employees escalate material information to their manager in a timely manner for assessment.

An entity may receive initial information about an event or circumstance that could potentially be materially price sensitive information, however further information is required before the entity is in a position to reasonably form a view. In this situation there is no obligation to disclose until the officer has, or ought reasonably to have, sufficient information about the event or circumstance in order to be able to form a view as to its market sensitivity. For example, in

some circumstances the entity may need to obtain legal advice before it is aware that the matter is market sensitive.

This is not an avenue, however, for an entity to avoid or delay disclosure by forming a convenient view that it needs further information or by delaying any necessary enquiries or request for further information (to enable a proper assessment). The test of whether information is market sensitive is an objective test and if the entity in fact has market sensitive information then a disclosure obligation arises, regardless of whether the subjective opinion of an officer determined that further information was required.

(c) Material effect / material information

The Corporations Act states that a reasonable person is taken to expect information to be 'market sensitive' or have a 'material effect' on the price or value of an entity's securities if the information "would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of" those securities.

The above Corporations Act test is a hypothetical-based test that requires judgement and may be difficult to apply (ie. the listed entity is effectively required to predict how investors will react to particular information when it is disclosed).

The test is an objective one and the fact that an entity's officers may honestly believe that information is not market sensitive will not avoid a breach of Listing Rule 3.1 if that view is ultimately found to be incorrect. Guidance Note 8 indicates that it may be helpful to an officer who is faced with a decision regarding whether information is market sensitive to ask the following questions:

(i) "Would this information influence my decision to buy or sell securities in the entity at their current market price?"

(ii) "Would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, knowing this information had not been disclosed to the market?"

If the answer to either question is "yes", then that should be taken to be a cautionary indication that the information may well be market sensitive and may need to be disclosed (unless it falls within the exceptions/carve-outs in Listing Rule 1A.

Where an entity determines not to disclose particular information and there is a sudden and unexplained movement in market price or trading volumes of its securities, it may need to revisit the decision due to such movement possibly indicating that the information has leaked and its initial determination regarding market sensitivity of the information was incorrect.

6. EXCEPTIONS TO THE LEGAL OBLIGATION TO DISCLOSE

ASX Listing Rule 3.1A provides exceptions to continuous disclosure requirements to disclose material information while each of the following (a), (b) and (c) are satisfied in relation to the information:

(a) one or more of the following apply:

  (i) it would be a breach of the law to disclose the information;

  (ii) the information concerns an incomplete proposal or negotiation;

  (iii) the information comprises matters of supposition or is insufficiently definite to warrant disclosure;

  (iv) the information is generated for internal management purposes; or

  (v) the information is a trade secret; and

(b) the information is confidential and the ASX has not formed the view that the information has ceased to be confidential; and

(c) a reasonable person would not expect the information to be disclosed.

If a Relevant Person considers that material information could be confidential, then he or she should take all necessary steps to ensure that the information remains confidential. That information should not be disclosed to external parties except on the basis of a written confidentiality undertaking.

7. DISCLOSURE PROCESS

The process for identifying and disclosing information to the ASX and the market involves the following steps:

(a) Relevant Persons are to inform the Company Secretary immediately upon becoming aware of any material information concerning IEL, IEBL or IET, any of their subsidiary entities, or any joint venture entities, that may require disclosure (even if it appears to fall within the exception categories in Listing Rule 3.1A – refer section 6 above);

(b) the Company Secretary will co-ordinate a determination as to whether any identified material information is required to be disclosed to the ASX. Such determination will normally involve the Chief Executive Officer, the Chairman, other Directors and other relevant senior management;

(c) the Company Secretary and/or Investor Relations will co-ordinate preparation of the actual form of the disclosure with the Chief Executive Officer or the Chairman (with relevant members of the senior management team being involved as necessary) and, wherever feasible, circulate a draft of the relevant disclosure to Directors for the opportunity to review prior to release (with the Chief Executive Officer being authorised to finalise the market announcement, or in his or her absence, the Executive Director - Finance and Commercial, the Chairman or another Director); and

(d) the Company Secretary will co-ordinate lodgement of the market announcement to the ASX on behalf of IFN, as necessary.

The Company Secretary is responsible for ensuring that copies of all finalised announcements made to the ASX are promptly circulated to the IFN Boards.

In relation to the determination as to whether certain information is to be disclosed to the ASX and market (refer paragraph 7(b) above), the ASX have provided within Guidance Note 8 a *decision process diagram* for listed entities to generally follow when an entity becomes aware of information that could have a material effect on the price or value of its listed securities (refer Annexure 2).

8. INFORMATION TO BE DISCLOSED

Examples of material information may include:

- major acquisitions or divestitures;
- changes to the IFN Boards or senior management;
- a major change in IFN's financial forecast or expected financial results;
- confirmation of an estimated dividend/distribution or declaration of a dividend/distribution;
- a significant change in accounting policy adopted by IFN;
- a rating applied by a rating agency to IFN or its securities, and any change in such a rating; and

- a significant change in market or regulatory conditions that is likely to have a major effect on IFN's financial results.

An issue or cancellation of equity securities, or entering into an agreement to issue or cancel equity securities, should always be considered material, and must be immediately announced to the ASX.

The above examples are indicative only, and are not exhaustive. If in doubt as to whether information is sufficiently material, Relevant Persons should take a conservative view and report it to, or discuss it with, their Manager or the Company Secretary.

Market sensitive earnings surprise

Where an entity becomes aware that its earnings for the current reporting period will differ materially from *market expectations*, it needs to consider whether the difference is of such a magnitude that a reasonable person would expect it to have a material effect on the price or value of the entity's securities (ie. a market sensitive earnings surprise).

The ASX states in Guidance Note 8 that it considers the most appropriate guide to determine 'market expectations' for these purposes is:

- *earnings guidance*, where an entity has published such guidance for that reporting period;
- the *consensus earnings forecasts* of sell-side analysts, where an entity has not published earnings guidance for the current reporting period; or
- its *earnings for the prior corresponding period*, where an entity has not published earnings guidance and is not covered by sell-side analysts.

(i) Earnings guidance issued

Where a listed entity has published earnings guidance to the market, the Corporations Act includes the following requirements:

- an obligation to release updated information concerning its earnings under Listing Rule 3.1 where a reasonable person would expect that information to have a material effect on the price or value of the entity's securities (section 674); and
- an obligation to update its published earnings guidance where failure to do so would mislead or be likely to mislead (section 1041H).

As indicated in paragraph 5(c) above, to determine whether information may have a material effect on the price or value of an entity's securities, the legislation effectively requires an entity to predict how investors (who commonly invest in securities) will react to particular information when it is disclosed.

To assist, the ASX has suggested in Guidance Note 8 that entities could apply former[1] *accounting standards criteria* (refer below) to assess the materiality of information. Notwithstanding application of an accounting standards-based approach, the ASX point out that this does not displace the test for materiality of information within the Corporations Act (ie. the information "*would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of*" those securities).

[1] The relevant accounting standard (AASB 1031 *Materiality*, July 2004) was effectively withdrawn on 1 January 2014 due to the move to International Financial Reporting Standards (IFRS) in Australia.

In applying accounting standards criteria, the ASX suggests assessing whether the new earnings guidance information varies to the published earnings guidance by approximately:

- 10% or more: treat the variation as material and presume that the entity's guidance to the market requires updating;
- 5% or less: treat the variation as not being material and presume that the entity's guidance to the market does not require updating; and
- where the price movement is between 5% and 10%: the entity needs to form a judgement as to whether or not it is material. Smaller listed entities or those that have relatively variable earnings may consider applying a materiality threshold that is closer to 10%. Very large listed entities or those that normally have very stable or predictable earnings may consider applying a materiality threshold that is closer to 5% than to 10%.

The ASX stresses that the above suggestion to apply former accounting standards criteria to assist with materiality assessments does not apply to entities that have not published guidance for the current reporting period.

Guidance Note 8 indicates that an entity should have a reasonable degree of certainty of the expected variation in earnings before issuing updated disclosure – an entity's earnings may be comparatively ahead of or behind market expectations part way through a reporting period, but that situation may not prevail at the end of the reporting period. Similarly, the market's expectations may also change over the course of a reporting period. The ASX points out that it is a matter of judgement, in some cases an entity may have sufficient information before the end of the reporting period to determine it is facing a market sensitive earnings surprise. In other cases it may not have the requisite degree of certainty until after the end of the reporting period when it is in the course of preparing its financial statements for the period.

(ii) No earnings guidance issued

Where a listed entity has not published earnings guidance, the ASX advises that:

- a listed entity does not have an obligation to correct the earnings forecast of any individual analyst or the consensus estimate of any individual information vendor to bring them into alignment with its own internal earnings forecast;
- similarly, there is no obligation on an entity to publish its internal earnings projections simply because these happen to differ from an analyst's forecast or a consensus estimate; and
- where an entity believes that the analysts' consensus estimate is being distorted by an obvious outlier that is out of line with the entity's own internal forecasts, the entity may adjust the consensus estimate to exclude that outlier to form a view regarding market expectations.

Notwithstanding, where an entity has not published earnings guidance, analysts forecasts and consensus estimates can be relevant indicators of market expectations, and an entity will have an obligation to make an appropriate announcement if it becomes aware that its earnings for the current reporting period are likely to differ so significantly from market expectations that information about that difference is market sensitive. The ASX expects an entity in this situation which is covered by sell-side analysts, to monitor such analyst forecasts and/or consensus estimates so that it has an understanding of the market's expectations for its earnings and can identify any potential market sensitive earnings surprise that may be emerging.

9. DEALING WITH ANALYSTS AND JOURNALISTS

IFN must ensure that it does not provide analysts, journalists or other select groups of market participants any material price sensitive non-public information about IFN at any time, for example, during analyst briefings, answering analysts' or journalists' questions or reviewing

draft analyst research reports. It is permissible to clarify or correct any errors of interpretation that analysts or journalists make concerning already publicly available information, but only to the extent that the clarification or correction does not itself amount to disclosing material non-public information (such as correcting market expectations about profit forecasts).

In order to ensure transparency and confidence in IFN's disclosure practices, all information provided to analysts and journalists at a briefing, such as presentation slides, should also be provided to the Company Secretary for immediate release to the ASX and posted on IFN's website if not previously released publicly. The information must always be released to ASX before it is presented at the briefing.

Slides from other public speeches by a Director or senior management, such as at an industry seminar, which relate to IFN or its business should also be made available in this way. IFN may provide web-cam access through its website to IFN briefings and other events such as general meetings if convenient.

All dealings with investors, brokers, analysts and journalists should be carefully monitored and notes taken of material matters covered by those employees participating in such dealings for subsequent review to ensure that material non-public information was not inadvertently disclosed, and if it was, to immediately disclose that information to the ASX via the Company Secretary.

10. AUTHORISED SPOKESPERSONS

The only people authorised to speak publicly on behalf of or in relation to IFN (ie. to make public verbal statements in respect of IFN) are:

- the Chairman;
- the Chief Executive Officer; and
- any other person who is expressly authorised by the Chairman or the Chief Executive Officer.

This requirement applies in respect of all enquiries by the media, analysts and securityholders.

The Chairman or the Chief Executive Officer may authorise an employee to issue media releases or other written statements on behalf of IFN. No employee may issue such media releases or other written statements without the express authority of the Chairman or the Chief Executive Officer.

11. TRADING HALTS/SUSPENSIONS

It may be necessary to request a trading halt (maximum of 2 trading days) and/or a voluntary trading suspension from the ASX to ensure that orderly trading in IFN securities is maintained and to manage disclosure obligations. Only the Chairman or the Chief Executive Officer may authorise a request to the ASX for a trading halt or trading suspension in IFN securities. In the absence of the Chairman and Chief Executive Officer, any other Director may authorise such a request to the ASX.

The ASX has advised that a trading halt or voluntary suspension is often beneficial for both the market and the entity as it ensures the entity's securities are not trading on an uninformed basis. A trading halt or suspension may also reduce the exposure of the entity and/or its officers to legal/financial consequences that could follow if the entity is subsequently found to have breached its disclosure obligations.

The ASX does not expect an entity to request a trading halt or voluntary suspension before it has assessed whether particular information is in fact market sensitive and requires disclosure under Listing Rule 3.1.

Where there is a delay releasing a market announcement under Listing Rule 3.1 and the market is trading, the ASX has stated that a trading halt is necessary. The ASX has advised that a 'delay' in this situation is not a mere passing of time, but rather a deferring, postponing or putting off of the announcement to a later time. Examples provided by the ASX where a trading halt should be requested include the following:

- where an entity considers a market announcement to be significant and it ought to be approved by its Board before it is released to the market but, due to the unavailability of Directors, the Board meeting is not able to be held promptly and without delay; and
- where the situation is uncertain or evolving but is likely to resolve itself within a relatively short period (ie. within the 2 trading days of a potential trading halt) and the entity considers that it would be better for the announcement to be delayed until there is greater certainty or clarity around the outcome (eg. a leak of information about a transaction under negotiation where the outcome is expected to be known in a relatively short period).

The continuous disclosure obligations for an entity continue to apply whilst an entity's securities are in a trading halt or voluntary suspension. Information that may have a material effect on the value of the entity's securities must continue to be released immediately under Listing Rule 3.1 during any trading halt or voluntary suspension.

12. MANAGING MARKET SPECULATION AND RUMOUR

In general, IFN does not respond to market speculation or rumour except where:

(a) the speculation or rumour indicate that the subject matter is no longer confidential and therefore the exception to disclosure set out in Listing Rule 3.1A no longer applies (refer paragraph 6 above);

(b) the ASX formally requests disclosure by IFN on the matter (which it may do under Listing Rule 3.1B); or

(c) the Chief Executive Officer or the Chairman consider that it is appropriate to make a disclosure in the circumstances.

Only authorised spokespersons may make any statement on behalf of IFN in relation to market speculation or rumour. If a Relevant Person becomes aware of any market speculation or rumour, these should be reported to the Company Secretary, Investor Relations or the Chief Executive Officer immediately.

13. WEBSITE

All market announcements will be posted on, or made available through, IFN's website immediately after they are released to the ASX. The website will also contain other corporate material of interest to security holders, such as:

- copies or summaries of relevant corporate governance policies, including IFN's Board Charter and Securities Trading Policy; and
- any recent Prospectus or Product Disclosure Statement issued by IFN.

14. CONSEQUENCES FOR BREACH OF THE CONTINUOUS DISCLOSURE POLICY

The IFN Boards take continuous disclosure very seriously. Non-compliance with continuous disclosure obligations under this policy may constitute a breach of section 674(2) of the Corporations Act or the ASX Listing Rules, which can result in the following consequences:

(a) a criminal offence under the Corporations Act, a fine (up to $110,000), imprisonment or both;

(b) a civil offence under the Corporations Act and a fine (up to $1 million);

(c) ASIC taking administrative action by issuing an infringement notice imposing a penalty for alleged breach (up to $100,000);

(d) personal liability as a result of a Relevant Person's involvement with contravening IFN's continuous disclosure obligations. This breach is a civil offence and may lead to a fine. However, Relevant Persons will not be liable if the Relevant Person can prove that they:

  (i) took all steps (if any) that were reasonable in the circumstances to ensure IFN complied with its continuous disclosure obligations; and

  (ii) after doing so, believed on reasonable grounds IFN was complying with its obligations;

(e) a claim by a third party for compensation. A third party who incurs a loss as a result of a breach of IFN's continuous disclosure obligations may commence an action against IFN, or any Relevant Person who was involved in the breach;

(f) damage to IFN's reputation; and/or

(g) internal disciplinary action against Relevant Persons, and in serious cases, dismissal.

15. REVIEW OF THIS POLICY

The Company Secretary will be responsible for keeping this policy under review and for liaising with management and the IFN Boards to ensure it is updated as circumstances warrant.

A formal review of this policy will take place at least every two years. A report detailing the outcome of the review, including any recommended amendments to the policy, will be provided to the Audit, Risk and Compliance Committees of IFN, who will in turn determine whether to recommend any proposed amendments to the IFN Boards for final approval.

ANNEXURE 1

ASX Listing Rules – Immediate notice of material information

Listing Rule 3.1 – General rule

Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.

Listing Rule 3.1A – Exception to rule 3.1

Listing rule 3.1 does not apply to particular information while each of the following requirements is satisfied in relation to the information:

3.1A.1 One or more of the following 5 situations applies:

- It would be a breach of a law to disclose the information;
- The information concerns an incomplete proposal or negotiation;
- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- The information is generated for the internal management purposes of the entity; or
- The information is a trade secret; and

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and

3.1A.3 A reasonable person would not expect the information to be disclosed.

Listing Rule 3.1B – False market

If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must immediately give ASX that information.

ANNEXURE 2

Continuous Disclosure – ASX Decision Process Diagram