

THE TAKEOVER PANEL

TEXAS UTILITIES COMPANY ("TEXAS")

PACIFICORP/

THE ENERGY GROUP PLC ("ENERGY")

The full Panel met on 29 April 1998 to consider an appeal by PacifiCorp against a ruling of the Panel Executive regarding the procedure which should apply in connection with Rule 32.1 in relation to possible revisions of the competing offers for Energy by wholly-owned subsidiaries of Texas and PacifiCorp. The Panel Executive had ruled that a procedure which permitted formula sealed bids would achieve the fairest and most orderly framework for possible revisions to the competing offers. The Panel upholds the ruling of the Panel Executive.

BACKGROUND

PacifiCorp and Texas have each announced and subsequently increased an offer for Energy which currently remains open for acceptance. Neither offer has yet been declared final and may therefore be increased or otherwise revised. Rule 32.1 of the Code provides that the last date for posting a revised offer document is Day 46 of the timetable which is established by the posting by the later competing offeror of its first offer document. There has only been a handful of cases since the introduction of the Code in which two competing offers have remained capable of revision as Day 46 approached. In only one of those cases has the appropriate procedure been considered by the full Panel. In 1983 competing offers by Allianz Versicherungs - AG and BAT Industries Plc for Eagle Star Holdings Plc were considered, but, even in that case, the proposed procedure was not ultimately tested. The Panel decided, in the circumstances of that case, that only minor amendments to the normal procedure were necessary. It ruled that any offer had to be announced before 5.00pm on Day 46, having been lodged with the Panel Executive at least 30 minutes previously. The final

date for posting any such increased offer would have been two business days after Day 46.

In the present case the Panel Executive discussed the Eagle Star decision with each of the parties in order to establish whether there were any objections to the same procedure applying in the present case. As a result of these discussions, it became apparent that it would not be possible to reach consensus. In view of the fact that persons might be dealing in the market in the expectation that Day 46 would ordinarily have been Sunday, 26 April, the Panel Executive issued Panel Statement 1998/7 on 23 April extending the offer timetable (including Day 46) to allow time to establish a fair and orderly procedure for possible revisions of the competing offers for Energy.

Following further discussions with the parties, the Panel Executive ultimately ruled in favour of a form of sealed bid procedure under which each offeror would be allowed, if it so wished, to state in its sealed bid that it would offer a certain amount more in cash than the other offeror subject to a specified maximum amount (a "Formula Sealed Bid"). PacifiCorp appealed against the ruling of the Panel Executive, contending that either the procedure strictly envisaged by Rule 32.1 should apply (i.e. that any revised offer must be announced and posted by midnight on Day 46) or any sealed bid procedure should allow the competing offerors to specify only a fixed price.

THE PANEL'S DECISION

The Panel is concerned to ensure, as effectively as it can, that the Code should be operated in such a way as to provide an orderly framework under which takeovers are conducted. Whilst the circumstances of any future case may well be different, in this particular case the Panel considers that no revision to the competing offers for Energy may be announced after 3.30pm on 1 May except by means of the following sealed bid procedure.

- 1 Any sealed bid must be of at least 840p in cash, although, in addition to the cash offer, shares or other forms of consideration may be made available. A bid may be at a fixed price but, if it is a Formula Sealed Bid, the amount by which it is expressed to exceed the other offeror's cash bid, subject to any stated maximum price per Energy share, must also be in cash and must be at least 5p. The bid must incorporate the full terms and conditions of the offer and include a cash confirmation statement from the offeror's financial adviser.
- 2 Each competing offeror must lodge any sealed bid with the Panel Executive not later than 4.00pm on Friday, 1 May. No further revisions will be permitted thereafter except with the permission of the Panel, which will only be given in wholly exceptional circumstances.
- 3 The Panel Executive will, as soon as practicable on 1 May, notify both offerors of the outcome of the sealed bid procedure and, having taken account of the effect of any Formula Sealed Bids, will confirm to each the level at which it will be required to announce its final offer. Each offeror must then immediately announce its final offer.
- 4 If, following any such announcement on 1 May, an offeror seeks a dispensation from or suspension of its obligation to post its offer on the basis that its offer was clearly the lower of the two, the Panel Executive will consult Energy in considering whether to grant any such dispensation or suspension.
- 5 Subject to paragraph 4 above, the final day for posting any such final offer will be Tuesday, 5 May and the final day on which either offer will be capable of becoming unconditional as to acceptances will be 14 days thereafter - i.e. on Tuesday, 19 May.

29 April 1998