

FINAL NOTICE REGARDING THE IMPOSITION OF A FINANCIAL PENALTY UNDER REGULATION 38 (1) AND 38 (5) OF THE ELECTRICITY AND GAS (MARKET INTEGRITY AND TRANSPARENCY) (ENFORCEMENT ETC.) REGULATIONS 2013

25 March 2020

Final notice regarding the imposition of a financial penalty by the Gas and Electricity Markets Authority in respect of a contravention of Article 5 (prohibition on market manipulation) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25th October 2011 on wholesale energy market integrity and transparency ('REMIT')¹ by InterGen.

1 Recipient of Notice

1.1 This final notice is given to:

InterGen (UK) Ltd ("InterGen UK") of 30 Crown Place, Earl Street, London, United Kingdom, EC2A 4ES with Company number 03039100;

Coryton Energy Company Ltd ("Coryton") of Coryton Power Station, Stanford-Le-Hope, The Manorway, SS17 9GN with Company number FC020597;

Rocksavage Power Company Ltd ("Rocksavage") of Cow Hey Lane, Cheshire, Runcorn, WA7 4FZ with Company number FC018868; and

Spalding Energy Company Ltd ("Spalding") of British Sugar Buildings, Spalding, West Marsh Road, PE11 2BG with Company number FC019668;

collectively known as "InterGen"² pursuant to regulation 38(1) and 38(5) of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 ("the Regulations")³.

2 Background

2.1 The Gas and Electricity Markets Authority ('the Authority') takes breaches of REMIT very seriously. It is important to ensure that energy consumers and market participants have confidence in the integrity of energy markets, that prices set on the wholesale energy

¹ OJ No L 326, 08.12.2011, p1.

² Coryton, Rocksavage and Spalding are each the holders of an Electricity Generation Licence granted or treated as granted under section 6 of the Electricity Act 1989 (EA 1989), and so are a "regulated person" within the meaning of section 25(8) of the EA 1989. InterGen (UK) Ltd is the administrative agent for the three licensees and provides the access to market for the three licensees' power stations, and employs the energy traders who sell the plants' power and dispatch them. Throughout this document, "InterGen" collectively refers to InterGen (UK) Ltd, Coryton, Rocksavage and Spalding.

³ Statutory Instrument reference S.I. 1389/2013.

markets reflect a fair and competitive interplay between supply and demand and that no profits can be drawn from market abuse.

- 2.2 The Authority is satisfied that InterGen breached Article 5 of REMIT on 31 October, 7 November, 8 November and 15 November 2016. Article 5 of REMIT provides that “any engagement in, or attempt to engage in, market manipulation on wholesale energy markets shall be prohibited”.
- 2.3 In particular, the Authority finds that InterGen engaged in market manipulation as defined by Article (2)(2)(a) (iii) and 2(2)(b), in that InterGen staff entered into transactions and issued orders to trade wholesale energy products which:-
 - 2.4 employed or attempted to employ a fictitious device or any other form of deception or contrivance which gave, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products; and/or
 - 2.5 disseminated information which gave or was likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, where the disseminating person knew, or ought to have known, that the information was false or misleading.
- 2.6 The Authority finds that InterGen engaged in market manipulation on 31 October 2016, 7 November 2016, 8 November 2016 and 15 November 2016 (“the Four Days”) and thus contravened Article 5 on a number of occasions. InterGen submitted false or misleading “Physical Notifications” which misrepresented its best estimate of expected generation for particular time periods. Physical Notifications inform the system operator (ESO) whether or not a power plant will generate electricity over an interval of time. The submission of misleading Physical Notifications led to the manipulation of the market from which InterGen derived profits. InterGen also submitted false or misleading signals to the ESO on the power plants’ operational characteristics (“Dynamic Parameters”). While Ofgem recognises Dynamic Parameters may reflect commercial issues to a limited extent, in this instance, the information submitted was supplied solely with a view to achieving even higher revenues for the power plants within the Balancing Mechanism.
- 2.7 InterGen’s traders sent the ESO false or misleading Physical Notifications that indicated that they would not be generating at the high demand periods (“Darkness Peaks”) in order to induce the ESO to pay it to generate. Once InterGen staff executed this tactic, they would then submit updated information (through revised Physical Notifications) to the ESO showing that, contrary to the earlier information, the power stations would actually be generating through the Darkness Peak period.
- 2.8 InterGen disseminated false or misleading data on its supply of power for the Darkness Peak in order to be “extended on” (i.e. paid to generate) during the day (in particular during the hours leading up to the Darkness Peak) for large sums of money in the Balancing Mechanism.

- 2.9 On each occasion that a breach occurred InterGen's behavior may be summarised as follows:
- 2.10 InterGen would send Physical Notifications to the ESO stating that one or more of its power plants would not be running for the remainder of the day. InterGen's traders would usually submit these Physical Notifications between 07:00 - 11:30, typically indicating that the plants would be not producing any power from 12:00 throughout the rest of the day. InterGen staff referred to this tactic as "dropping" or "pulling the PN";
 - 2.11 The information provided by InterGen to the ESO stated that its power plants would not be generating on the days in question was false and misleading. InterGen intended that the power plants would generate electricity on those days. InterGen had separate contractual commitments to provide electricity on the days in question, which could be satisfied by either generating or delivering electricity that it had purchased in the market. Although InterGen took some steps, both before and after the relevant Physical Notification being "pulled", to purchase electricity in the market to meet its contractual commitments, InterGen did not purchase sufficient volumes of electricity to meet these contractual commitments in full. In particular, InterGen did not purchase electricity to meet its obligations at the Darkness Peak. InterGen staff knew, or ought to have known, that, due to the high prices in the within day market, it would not be able to purchase sufficient electricity to meet its contractual obligations at the Darkness Peak. This meant that it needed to generate electricity to meet those commitments despite its statements to the ESO that it would not generate;
 - 2.12 On each occasion a breach occurred at least one of the InterGen plants was extended/offered on by the ESO from 12:00 until the Darkness Peak or just before. That is, the ESO paid the plants money to produce power at its minimum level in such a way that they will be available to generate at the Darkness Peak;
 - 2.13 From 13:30 - 15:30, generally once an offer had been secured from the ESO in the Balancing Mechanism to generate up until the Darkness Peak, and having failed to purchase electricity to satisfy its pre-existing commitments in the Darkness Peak, InterGen's traders would then submit updated Physical Notifications showing that the plants would be running for the Darkness Peak and for the rest of the day;
 - 2.14 On several occasions InterGen's staff increased the Dynamic Parameters reporting the minimum value at which those plants may export electricity to the wholesale market (the "Stable Export Levels"). InterGen did so only in order that the ESO had to buy more power from InterGen's plants at the misleading "minimum level".
- 2.15 The Authority finds that, in addition to REMIT, InterGen breached Standard Licence Condition ("SLC") 5.1 of the Standard Electricity Generation Licence by failing to comply with Grid Code obligations.⁸ Namely, Balancing Code (BC) 1.4.2 which requires Dynamic Parameters to reasonably reflect the expected true operating characteristics of the

Balancing Mechanism (BM) Unit and be prepared in accordance with Good Industry Practice; and BC1.4.3.3 of the Grid Code which requires BM participants to use reasonable endeavours to ensure data held by the ESO is accurate at all times.

- 2.16 The Authority finds that on the Four Days, InterGen contravened Article 5 by: issuing an order to trade in wholesale energy products by submitting bid offer pairs on each of the Four Days; submitting, on each of the Four Days, false / misleading Physical Notifications, and on several occasions, a false / misleading Stable Export Limit, all of which the bid offer pair employed as a fictitious device; and that fictitious device gave, or was likely to give, false or misleading signals regarding the supply of wholesale energy products; and in submitting said false / misleading Physical Notifications, Stable Export Limits disseminated information which gave or was likely to give false or misleading signals as to the supply of, demand for, or price of wholesale energy products and that it knew, or ought to have known, that that information was false or misleading. The Specified Power Stations also breached Standard Licence Condition 5.1 of their Electricity Generation Licence because the Dynamic Parameters they submitted did not reflect their true operating characteristics as required by BC 1.4.2 and by failing to use reasonable endeavours to ensure that the data held by the ESO was accurate at all times as required by BC 1.4.3. InterGen did this by submitting Physical Notifications, which misrepresented its best estimate of expected generation for particular time periods. Physical Notifications inform the ESO whether or not a power plant will generate electricity over an interval of time. InterGen's traders sent the ESO false or misleading Physical Notifications that indicated that the power stations would not be generating at all during the high demand period from around 17:00 to 19:00 (the Darkness Peak), when in fact it had a contracted position to meet (i.e. it had agreed to supply electricity to other parties during this period and either required to generate to meet this obligation or purchase electricity from the market to meet it – it had not done so). InterGen submitted these misleading Physical Notifications in order to induce the ESO to pay the power stations to generate by purchasing the minimum level of power (i.e. a volume of power equal to the power stations' Stable Export Limit) across the day so that the power stations would be able to generate at the Darkness Peak. This is referred to as an 'extension'. Once the 'extension' had been achieved, InterGen then re-submitted Physical Notifications showing that the power stations would, in fact, be generating at the Darkness Peak. InterGen also submitted false or misleading signals to the ESO on the power stations' operational characteristics by submitting false or misleading Stable Export Limits (the minimum level at which a power station can, under stable conditions, generate). It did this in order to require the ESO to purchase a higher volume of power in order to "extend" the power stations on to ensure they were available at the Darkness Peak. InterGen submitted an inflated Stable Export Limit with no underlying technical reason and purely for the purposes of commercial gain.

- 2.17 In the circumstances, and mindful of its obligations under REMIT to enforce the prohibitions set out in REMIT to ensure that consumers and market participants can have confidence in the integrity of the electricity and gas wholesale markets, InterGen has agreed to pay restitution of £12,791,000 to recompense the losses suffered by those

parties affected by its REMIT breach. The Authority also determined that the contraventions of Article 5 of REMIT warranted a penalty of £35,000,000.

- 2.18 Recognising that InterGen has admitted it has breached Article 5 of REMIT and has agreed to settle this matter during the early settlement window, the Authority has discounted the penalty by 30% in accordance with its REMIT Penalties Statement⁴. Accordingly, the penalty was reduced to £24,500,000.
- 2.19 The Authority has given InterGen a warning notice pursuant to regulations 30(1) and 35 of the Regulations (“the Warning Notice”) and a decision notice pursuant to regulations 31(1) and 36 of the Regulations (“the Decision Notice”) detailing its proposal to impose and its decision to impose a penalty on InterGen under regulation 26(1)(a) of the Regulations and detailing InterGen’s agreement to make a payment in restitution in respect of InterGen’s contraventions of Article 5 of REMIT.

3 Restitution and Penalty

- 3.1 Provided that InterGen does not refer the Decision Notice to the Upper Tribunal under regulation 31(4) of the Regulations within the timescale for doing so prescribed by the Tribunal Procedure (Upper Tribunal) Rules 2008⁵ the Authority:
- 3.2 notes that InterGen has agreed to pay restitution in respect of its breach of Article 5 of REMIT in the sum of £12,791,000 to recompense the losses suffered by those parties affected by its REMIT breach. This restitution is to be paid to the ESO by no later than 5 pm on the date that is the forty second day after the date on which this final notice shall be deemed to have been served on InterGen by the Authority (excluding the day on which this final notice shall be deemed to have been served on InterGen). Payment of the restitution shall be made by means of electronic transfer.
- 3.3 a financial penalty on InterGen in respect of its breach of Article 5 of REMIT in the sum of £24,500,000 such penalty to be paid to the Authority by no later than 5 pm on the date that is the forty second day after the date on which this final notice shall be deemed to have been served on InterGen by the Authority (excluding the day on which this final notice shall be deemed to have been served on InterGen). Payment of the penalty shall be made by means of electronic transfer.

⁴ The Authority’s statement of policy on financial penalties and restitution under REMIT made pursuant to REMIT and the Regulations published on 23rd June 2015 available at

https://www.ofgem.gov.uk/sites/default/files/docs/2015/06/remit_penalties_statement_23_june_2015_1.pdf

⁵ Statutory Instrument reference S.I. 2698/2008.

- 3.4 If InterGen does refer the Decision Notice to the Upper Tribunal under regulation 31(4) of the Regulations within the timescale for doing so prescribed by the Tribunal Procedure (Upper Tribunal) Rules 2008, this final notice shall immediately cease to have effect, but for the avoidance of doubt the Warning Notice and Decision Notice shall remain extant.
- 3.5 If the financial penalty due to the Authority is not paid in full in accordance with paragraph 3.1, the financial penalty may be recovered and is recoverable by the Authority as a debt. The Authority may apply to the court for an injunction compelling payment of the penalty to the Authority or may use any other appropriate means of securing payment of the penalty to the Authority.

4 Publication

- 4.1 The Authority will publish:
- the Authority Web Text in the form set out in Annex 1;
 - the Authority Press Release in the form set out in Annex 2 to this final notice;
 - this Final Notice dated 25 March 2020

Dated: 25 March 2020



Tom Corcut
Deputy Director
Gas and Electricity Markets Authority