

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

Date: 24 August 2020

Final notice regarding the imposition of a financial penalty by the Gas and Electricity Markets Authority in respect of a contravention of Article 4 (obligation to publish inside information) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ('REMIT')¹ by SSE Generation Limited.

1 Recipient of Notice

- 1.1 This final notice is given to is given to SSE Generation Limited of No.1 Forbury Place, 43 Forbury Road, Reading, RG1 3JH incorporated and registered in England and Wales with company number 02310571 ("the Company") pursuant to regulation 38(1) and 38(5) of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 ('the Regulations')².

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 markets reflect a fair and competitive interplay between supply and demand and that no profits can be drawn from market abuse.
- 2.2 The Company is a market participant in the UK wholesale energy market and a subsidiary of SSE PLC.
- 2.3 The Authority is satisfied that the Company breached Article 4(1)³ of REMIT on 22 March 2016 by failing to publically disclose inside information to the wholesale energy market in an effective and timely manner.
- 2.4 Article 4(1) of REMIT provides that "*market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part.*".

¹ OJ No L 326, 08.12.2011, p1.

² Statutory Instrument reference S.I. 1389/2013.

³ References to "Article" in this final notice are references to the relevant Article numbers of REMIT.

- 2.5 Article 2(1) of REMIT specifies that "*inside information*' means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products." and that "information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of wholesale energy products;".
- 2.6 On 3 February 2016 the Company announced that it was consulting on a proposal to end commercial operations at three of its four generating units at Fiddler's Ferry coal fired power station and that its expectation was that "the three units would likely close by 1 April 2016"⁴.
- 2.7 On 22 March 2016, the Company:
- 2.7.1 signed non-binding Heads of Terms ("HoTs") for a one-year contract to provide ancillary services to National Grid from 1 April 2016 covering any one of the three available units scheduled to close at Fiddler's Ferry by 1 April 2016; and
 - 2.7.2 took a decision to retain Transmission Entry Capacity ("TEC")⁵ for Fiddler's Ferry of 1,455MW, equivalent to the capacity of three units, for the year 2016/17.
- 2.8 On 30 March 2016⁶, the Company signed a contract to provide ancillary services to National Grid and announced:
- 2.8.1 that it had secured a one-year contract to provide ancillary services to National Grid from 1 April 2016 covering any one of the three available units scheduled to close at Fiddler's Ferry;
 - 2.8.2 that it had taken a decision to retain TEC for Fiddler's Ferry of 1,455MW, equivalent to the capacity of three units for the year 2016/17; and
 - 2.8.3 that the Company would enter all or part of Fiddler's Ferry's capacity into any 2017/18 Capacity Market auction⁷.
- 2.9 The Authority finds that on 22 March 2016 the Company had information that:

⁴ <https://www.sse.com/news-and-views/2016/02/consultation-on-future-of-sse-fiddlers-ferry-power-station>

⁵ Transmission Entry Capacity (TEC) is the commercial right to export power on to the National Grid.

⁶ <https://sse.com/newsandviews/allarticles/2016/03/fiddlers-ferry-coal-fired-power-station/>

⁷The Capacity Market is a Government electricity market intervention designed to ensure security of electricity supply by providing a payment to generators for availability. The first contracts came into force in 2018/19. In 2016 there was some speculation that Capacity Market auctions may be held to provide availability in 2017/18.

- 2.9.1 was of a 'precise' nature that had not been made public within the meaning of Article 2(1) of REMIT; and
- 2.9.2 which, if it were made public, would have been likely to have significantly affect the prices of wholesale energy products.
- 2.10 Specifically, the Authority finds that on 22 March 2016 the following was inside information for the purposes of Article 2(1) REMIT and should have been disclosed by the Company:
- The Company signed non-binding HoTs to provide ancillary services to National Grid at Fiddler's Ferry Power Station from 1 April 2016. The Company also made the decision to retain TEC for the station of 1,455MW, equivalent to the capacity of three units, for 2016/17. Consequently, the three units would, subject to the successful conclusion of negotiations for the ancillary services contract, likely stay open.*
- 2.11 The Authority finds that the inside information was likely to significantly affect the price of wholesale energy products for the following reasons:
- 2.11.1 It relates to the availability to the Great Britain ("GB") electricity market of a significant volume of potential generation capacity previously indicated likely not to be available, at a combined total of 1455MW of potential supply⁸;
- 2.11.2 In March 2016, forecast margins between supply and demand for Winter 2016 were known to be very tight⁹. In the face of tight margins, this additional capacity would be expected to put downward pressure on prices; and
- 2.11.3 A reasonable investor, had they known the Inside Information, would have been likely to use the information to inform their trading decisions.
- 2.12 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, the Authority determined to impose a financial penalty of £2,627,000 (two million, six hundred and twenty seven thousand pounds sterling on the Company in respect of the contravention of Article 4 of REMIT.
- 2.13 The financial penalty was calculated with reference to the six-step process set out in the REMIT Penalties Statement¹⁰ and the representations made by the Company to the Authority. While, the Authority recognises the novelty of the case and the lack of published guidance available at the time of the breach, the Authority also notes SSE's failure to recognise the importance of making an

⁸ The three generating units at Fiddler's Ferry amount to approximately 3% of peak GB electricity demand.

⁹ As the first Capacity Market contracts did not come into force until 2018/19, in 2016 forecast margins for Winter 2016 remained tight. For more information on historical forecast margins see National Grid's Winter Outlook reports <https://www.nationalgrideso.com/research-publications/winter-outlook>.

¹⁰ 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

announcement on 22 March 2016 even though at that stage there remained a degree of uncertainty as to the final outcome.

- 2.14 Recognising that the Company has admitted it has breached Article 4 of REMIT and has agreed to settle this matter during the early settlement window, the Authority has discounted the penalty in accordance with its REMIT Penalties Statement¹¹. Accordingly, the penalty was reduced to £2,060,000 (two million and sixty thousand pounds sterling).
- 2.15 The Authority has given the Company 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 the Company under regulation 26(1)(a) of the Regulations in respect of the Company’s contraventions of Article 4 of REMIT.

3 Penalty

- 3.1 Provided that the Company 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 2008¹² the Authority imposes a financial penalty on the Company in respect of its breach of Article 4 of REMIT in the sum of £2,060,000 (two million and sixty thousand pounds sterling), such penalty to be paid to the Authority by no later than 5 pm on the date that is the fourteenth day after the date on which this final notice shall be deemed to have been served on the Company by the Authority (excluding the day on which this final notice shall be deemed to have been served on the Company). Payment of the penalty to the Authority shall be made by means of electronic transfer.
- 3.2 If the Company 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.
- 3.3 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.

¹¹ 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

¹² Statutory Instrument reference S.I. 2698/2008.

4 Publication

4.1 The Authority will publish:

4.1.1 the Authority Web Text in the form set out in Annex 1;

4.1.2 the Authority Press Release in the form set out in Annex 2 to this Final Notice;

4.1.3 this Final Notice dated 24 August 2020

Dated: 24 August 2020

Charles Hargreaves
Deputy Director, Enforcement, Consumers and Markets
Gas and Electricity Markets Authority