

To all with an interest in CERT
and CESP

Date: 21 September 2012

Dear Colleague

Approach to enforcement of the Government's Carbon Emissions Reduction Target (CERT) and Community Energy Saving Programme (CESP)

This letter sets out the way Ofgem and the Gas and Electricity Markets Authority ("the Authority") will approach actions taken by parties with obligations under the Government's Carbon Emissions Reduction Target (CERT) and Community Energy Saving Programme (CESP) after the schemes' end date of 31 December 2012¹. Specifically, this letter reminds parties that Ofgem takes mitigation action into account in its enforcement procedures. The letter provides more clarity on the potential types of mitigation action to which the Authority and Ofgem² will attach most weight if a party fails to meet an obligation. We consider it is in the best interests of consumers to provide additional clarity now about how we will consider actions taken after the CERT and CESP schemes' deadlines.

We take compliance with all obligations very seriously and will take proportionate enforcement action against those who fail to meet their obligations. In considering whether or not to open an investigation, to impose a penalty and the level of that penalty, we will take account of mitigation actions as well as a number of other factors.

Background

The Carbon Emissions Reduction Target (CERT) requires gas and electricity suppliers to achieve targets for a reduction in CO₂ emissions generated by the domestic sector. Suppliers are required to achieve an overall target level of CO₂ emissions savings of 293 million tonnes of CO₂ with at least 40% of the target to be met in relation to Priority Group consumers, who are defined as those in receipt of certain income-related benefits, or those over 70 years of age. Suppliers also have a Super Priority Group (SPG) Obligation and an Insulation Obligation.

The Community Energy Saving Programme (CESP) requires certain gas and electricity suppliers and certain electricity generators to meet an obligation for reducing CO₂ emissions in domestic properties in Great Britain. CESP is designed to drive a whole house, area-intensive approach to increasing the energy efficiency of the housing stock, building on local partnerships. It is focused on low income households, targeted through the lowest

¹ This letter is without prejudice to our *Enforcement Guidelines on Complaints and Investigations*, 2012
<http://www.ofgem.gov.uk/About%20us/enforcement/Documents1/Enforcement%20guidelines%202012.pdf>

² There are several references in this letter both to Ofgem and the Authority. Ofgem supports the Authority in its role as regulator of the gas and electricity industries in Great Britain. This includes supporting the Authority in its enforcement role.

10% of the Indices of Multiple Deprivation. More information on both programmes can be found on the Ofgem website³.

Throughout this letter we refer to companies with obligations under CERT and/or CESP as the "obligated parties".

Ofgem's role in relation to CERT and CESP

Ofgem's role is largely functional: the CERT and CESP targets are set out in legislation. Our role is to determine the individual obligations of qualifying obligated parties, administer the schemes, report to the Secretary of State and initiate enforcement action where appropriate. To be clear, Ofgem does not set policy in these areas.

If an obligated party does not achieve one or more of its obligations⁴ by 31 December 2012, Ofgem will consider enforcement action. Ofgem takes compliance with obligations very seriously and will take proportionate enforcement action against parties who fail to meet their obligations. In accordance with our general approach⁵ to enforcement, we will:

1. Decide whether to open an investigation into a possible breach of an obligation.
2. If an investigation is opened, gather information and evidence regarding the possible breach.
3. Then produce a statement of case, or decide that there is no case to answer.
4. If a statement of case is served, give the obligated party an opportunity to make further representations to us.
5. Establish a committee of the Authority which will decide whether there has been a breach and, if so, what penalty⁶ to impose, taking into account factors such as consumer detriment, costs avoided by the company, any mitigating or aggravating action and other factors (such as the need for a penal element). A Settlement Committee of the Authority will also consider proposals made by obligated parties to settle investigations.

Mitigation actions are one factor Ofgem may take into account in its decision on whether to open, or continue, an investigation. The Authority may take mitigation into account in considering whether to impose a penalty and the level of that penalty. We consider it is in the best interests of consumers to provide additional clarity now to obligated parties about how mitigation action taken after the closure of the CERT and CESP schemes will be considered. This letter is intended to help inform any decisions that obligated parties take over the next few months regarding the delivery of measures to consumers after 31 December 2012. The letter has been written taking into account the particular circumstances around the CERT and CESP schemes, such as the potential for multiple, significant breaches of the obligations and a strong consumers' interest in prompt delivery of measures, including after 31 December 2012. The approach set out in this letter should not be assumed to apply in other circumstances.

We expect obligated parties to continue to make every effort to achieve their obligations under CERT and CESP by 31 December 2012. Measures completed after 31 December 2012 cannot count towards achievement of an obligated party's obligation. Mitigation action is not a substitute for compliance with the obligations, and obligated parties should not be able to benefit from non-compliance.

³ <http://www.ofgem.gov.uk/Sustainability/Environment/EnergyEff/Pages/EnergyEff.aspx>

⁴ Under Article 9(1) and/ or 9(2) and/or 13(1) and/or 13A(1) of the Electricity and Gas (Carbon Emissions Reduction) Order 2008, and Article 14(1) of the Electricity and Gas (Community Energy Saving Programme) Order 2009.

⁵ Further details on our approach can be found at:

Ofgem, *Enforcement Guidelines on Complaints and Investigations*, 2012
<http://www.ofgem.gov.uk/About%20us/enforcement/Documents1/Enforcement%20guidelines%202012.pdf>

⁶ Further details on our approach to financial penalties can be found at:

Ofgem, *Utilities Act Statement of policy with respect to financial penalties*, 2003
<http://www.ofgem.gov.uk/About%20us/Documents1/Utilities%20Act%20-%20Statement%20of%20policy%20with%20respect%20to%20financial%20penalties.pdf>

Given the short time remaining to the fixed deadlines involved, it is not appropriate to issue a provisional order (to mandate compliance) or to start enforcement action before 31 December 2012.

Mitigation action

In considering mitigation actions, we will give most weight to CERT/CESP measures⁷ that are delivered shortly after 31 December 2012. We consider that earlier delivery of energy efficiency measures is generally in the interests of consumers and that the timeliness of mitigation action is an important factor. We therefore expect any mitigation actions to be undertaken – and reported to us – promptly. Ofgem will report to the Secretary of State on 30 April 2013 on the extent to which obligated parties met their CERT and CESP obligations by 31 December 2012. This will also be a key date for assessing the mitigation actions taken by the parties.

We also note that some obligated parties will shortly have new obligations starting under the Energy Company Obligation (ECO). Work to mitigate any under-delivery against CERT and CESP targets should not detract from delivery against these new obligations.

We recognise that some obligated parties may wish to undertake alternative mitigation actions. In that case, we would consider what weight should be attached to these as mitigation actions. Delivery of similar measures (and to similar households) to those allowed under CERT and CESP is preferable to no action at all, but the onus will be on obligated parties to provide evidence to demonstrate that the steps they have taken achieve equivalent outcomes. Mitigation actions which match or are a close match to those under the CERT and CESP schemes will have greater weight in our assessment than other mitigation actions. We would also want to understand why it was not feasible to deliver CERT and CESP measures. These reasons may be a factor in the enforcement decisions which will take into account all the circumstances of the case.

Next steps

The CERT and CESP quarterly update will be published shortly which will show current progress against obligation levels.

As noted above, we expect obligated parties to make every effort to comply with their obligations, including making consumers aware of the measures available.

Obligated parties are obliged to provide final notification of actions completed under CERT and CESP by 31 January 2013. We will report to the Secretary of State by 30 April 2013 on whether each party complied with its obligations as at 31 December 2012. This will not include measures completed after 31 December which can only be considered as mitigation action.

Yours sincerely



Stuart Cook
Managing Director - E-Serve

⁷ We use the term 'CERT/CESP measures' to describe measures that are approved qualifying actions under CERT or CESP respectively. However our use of this term should not be taken as implying that late completion of qualifying action will be counted towards CERT or CESP obligations.