

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	

**COMMENTS OF  
THE AMERICAN PUBLIC POWER ASSOCIATION,  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, AND  
AMERICAN GAS ASSOCIATION**

The American Public Power Association (“APPA”), National Rural Electric Cooperative Association (“NRECA”), and American Gas Association (“AGA”) appreciate the opportunity to provide comments on the Petition for Declaratory Ruling (“DR”) filed by the Edison Electric Institute (“EEI”) on March 7, 2025.<sup>1</sup> EEI requests the FCC to clarify that utilities have “prior express consent” under the Telephone Consumer Protection Act of 1991 (“TCPA”)<sup>2</sup> to send non-telemarketing, demand response calls and texts based on a utility customer’s provision of a telephone number to the utility because such communications are “closely related” to a customer’s utility service.<sup>3</sup> APPA, NRECA, and AGA support the Petition for Declaratory

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<sup>1</sup> Petition for Declaratory Ruling, CG Docket No. 02-278, filed by Edison Electric Institute on March 7, 2025.

<sup>2</sup> 47 U.S.C. § 227.

<sup>3</sup> The TCPA applies to calls and texts made using an automatic telephone dialing system or prerecorded or artificial voice. In 2016, the FCC clarified that providing a telephone number to a utility constitutes “prior express consent” under the TCPA to receive calls and texts at that number that are “closely related” to the customer’s utility service. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 31 FCC Rcd 9054 ¶ 1 (“2016 DR”).

Ruling and urge the FCC to clarify that non-telemarketing, demand response calls and texts are “closely related” to a customer’s utility service, as they are essential for effective grid management and for customers to have the information they need to manage their cost of living, in particular considering rising energy demands and costs. Thus, utilities can place non-telemarketing, demand response communications subject to the TCPA based on a customer’s provision of a telephone number to a utility unless and until a customer revokes consent. This is consistent with the TCPA’s goal of protecting consumers from unwanted messages while ensuring they receive essential and desired communications.

## **I. INTRODUCTION**

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. APPA represents public power before the federal government to protect the interests of the more than 55 million people that public power utilities serve, and the 93,000 people they employ.

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million people in 47 states. Rural electric cooperatives are private, non-profit entities that are owned and governed by the members to whom they deliver electricity. They serve 56 percent of the nation, 88 percent of all counties, and 12 percent of the nation’s electric customers, while accounting for approximately 11 percent of all electric energy sold in the United States. Rural electric cooperatives serve the vast majority of the nation’s persistent poverty counties (330 out of 353, or 93 percent). Electric cooperatives operate at cost and without a profit incentive.

AGA, founded in 1918, represents more than 200 local energy companies that deliver safe and reliable natural gas throughout the country. There are more than 79 million residential, commercial, and industrial natural gas customers in the United States, of which 94 percent — more than 74 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one third of United States energy needs.<sup>4</sup>

Electric and gas utilities are committed to providing safe, reliable, and efficient service and ensuring that customers receive important, time-sensitive communications regarding their service that they rely on. In furtherance of such efforts, many members of APPA, NRECA, and AGA have implemented notification programs to provide customers with the most current information regarding their service. It is information that customers want and need to receive.

In addition to voice calls to residential landlines and email communications, communications may be initiated to wireless phones via voice calls and text messaging. The use of automated messaging systems to notify customers increases the speed and reliability with which electric and gas utilities can communicate with, and convey important information to, their customers and decreases the costs associated with providing such notice. Proactively communicating with customers about issues pertaining to their utility service increases customer satisfaction and empowers customers to manage their electricity and gas usage to help keep bills

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<sup>4</sup> For more information, please visit [www.aga.org](http://www.aga.org).

lower.<sup>5</sup> This is especially important for customers who live in small communities or persistent poverty counties.

## **II. THE IMPORTANCE OF DEMAND RESPONSE PROGRAMS AND COMMUNICATIONS**

Demand response programs target short-term, intentional modification of electricity usage by customers during peak times or in response to market prices. Demand response programs continue to proliferate along with growth in advanced metering infrastructure and a desire to reduce electricity and gas usage and costs. Demand response programs have a critical role in helping to reduce customer bills while enhancing electric grid and gas system reliability. This benefits both consumers and utilities. Some of the cost savings associated with demand response programs include:

- Reduced demand for electricity and gas during peak times;
- Reduced demand for transmission;
- Reduced operation and maintenance (“O&M”) costs<sup>6</sup> due to transformer loading relief and other grid equipment loading relief;
- A reduction in system losses, resulting in increased efficiency and lower costs of power supply to consumers;
- An overall reduction in market volatility, resulting in savings for a broad cross-section of consumers; and

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<sup>5</sup> See J.D. Power 2024 U.S. Electric Utility Residential Customer Satisfaction Study (December 18, 2024), <https://www.jdpower.com/business/press-releases/2024-us-electric-utility-residential-customer-satisfaction-study>.

<sup>6</sup> O&M costs are the annual cost of buying electricity from the grid minus any income from the sale of electricity to the grid.

- Sustained reliability in the event of an extreme weather event or other stress on the system.

As an example of how a utility's non-telemarketing, demand response communications to customers can help lower their bills and cost of living, last month Delaware Electric Cooperative ("DEC"), a member-owned electric utility, announced that its Beat the Peak program saved members more than \$1.7 million in 2024.<sup>7</sup> DEC provides alerts to members when energy costs are at their highest and encourages members to reduce energy consumption during peak demand times and keep electricity rates affordable. According to DEC, the program has resulted in more than \$42 million in customer savings since 2008.<sup>8</sup>

A joint action agency ("JAA")<sup>9</sup> in the Northeast has a demand response program that sends a text message and email notification to customers who have enrolled in the program when there is going to be a peak event, and the notifications include an opt-out link for the event. There are currently 2,700 devices in the program, and the JAA has saved more than \$500,000 in transmission and capacity costs in customer rates since the program's inception in 2020.

A large public power utility in the West has found a behavioral demand response program to be an important addition to its demand response portfolio. The utility currently sends either text messages or interactive voice response messages to approximately 50,000 customers on summer days when it anticipates tight grid conditions, asking customers to voluntarily reduce energy usage for a few hours. The utility has received virtually no negative feedback from

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<sup>7</sup> See *DEC Members Saved \$1.7 Million in 2024 Through Beat the Peak Program* (Feb. 3, 2025), <https://www.delaware.coop/press-room/dec-members-saved-17-million-2024-through-beat-peak-program>.

<sup>8</sup> *Id.*

<sup>9</sup> JAAs are not-for-profit entities set up to pool the resources of multiple public power utilities.

customers, and the percentage of customers who have opted out of receiving messages is less than four percent. During the summer of 2024, the utility saved 1.9 MW per event – over 28 MW total – through this program.

Demand response communications, including peak time communications, help ensure that utilities can continue to provide safe, reliable, and efficient service, and they are important communications that customers want to receive so they can reduce their energy consumption and experience cost savings. Such communications are often time-sensitive, and they are no less important than communications about service outages, service restoration, field work that affects a customer’s utility service, eligibility for subsidized or low-cost services, and potential brownouts or reduced system pressure due to heavy energy usage.<sup>10</sup> All such communications are “closely related” to a customer’s utility service. Under the TCPA, consumers have a right to opt-out of receiving automated calls and text messages, but the FCC should clarify that utilities have the required prior express consent under the TCPA to place non-telemarketing, demand response calls and texts to customers absent instructions from customers to the contrary.

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<sup>10</sup> The 2016 DR cites communications about service outages, service restoration, field work that affects a customer’s utility service, eligibility for subsidized or low-cost services, and potential brownouts due to heavy energy usage as examples of communications that are “closely related” to a customer’s utility services, and utilities have “prior express consent” under the TCPA to send such communications based on a customer’s provision of a telephone number unless and until the customer instructs otherwise. 2016 DR ¶ 30.

### **III. CONCLUSION**

APPA, NRECA and AGA appreciate the opportunity to submit these comments in support of the Petition for Declaratory Ruling filed by EEI. APPA, NRECA, and AGA urge the FCC to clarify that non-telemarketing, demand response calls and texts are “closely related” to a customer’s utility service, as they are essential for effective grid management and empowering consumers to manage their electric and gas usage and cost of living. Thus, utilities can place non-telemarketing, demand response communications subject to the TCPA based on a customer’s provision of a telephone number to a utility unless and until a customer revokes consent.

Respectfully submitted,

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April 10, 2025