

**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 CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC AND
CENTERPOINT ENERGY RESOURCES CORP. IN SUPPORT OF PETITION FOR
EXPEDITED DECLARATORY RULING**

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Pursuant to the Commission’s Public Notice in the above-referenced proceeding, CenterPoint Energy Houston Electric, LLC (“CEHE”) and CenterPoint Energy Resources Corp. (“CERC”) (together, “CenterPoint”) submit these comments in support of the Petition for Expedited Declaratory Ruling (“Petition”) filed in this docket by the Edison Electric Institute (“EEI”) and the American Gas Association (“AGA”).

I. INTRODUCTION

CEHE owns and operates an electric transmission and distribution utility serving the Houston metropolitan area and CERC owns and operates a local natural gas distribution businesses in six states. Through these businesses, CenterPoint provides utility services to over 5 million metered customers, including over 2 million electric customers in Texas and approximately 3.4 million gas customers in Texas, Oklahoma, Arkansas, Mississippi, Louisiana and Minnesota. CenterPoint’s ability to communicate with those customers in a timely and effective manner regarding service outages or other threats to system reliability or public safety is critical to providing safe and reliable electric or gas utility service to those customers.

While the Company has traditionally relied on sending prerecorded messages to customers’ landlines to notify them of service outages, customers’ declining use of landlines and increasing adoption of cell phones and other wireless devices as their primary (or only) method of contact has required CenterPoint to adapt its customer notification program to accommodate increasing cell

phone and wireless device usage. Investments in smart grid infrastructure have also been made to facilitate timely communications with customers regarding their utility services.

But CenterPoint is increasingly concerned that recent class action lawsuits filed against utilities for communicating important information to their customers threatens its ability to ensure that customers are aware of and can readily utilize the outage notification that CenterPoint offers its customers. These important communications include:

- automatic notification of a power outage that cannot be resolved quickly by CenterPoint's smart grid technology;
- providing updates to customers regarding restoration activity, expected repair times, work crew activity and other services to ensure that customers receive the most up-to-date information available regarding service restoration; and
- notification regarding service interruption and problem identification.

In the past, the Commission has been supportive of interpreting the customer consent requirements under the Telephone Consumer Protection Act ("TCPA") in a manner that does not hinder the ability of utilities like CenterPoint to communicate service issues to its customers. Unfortunately, the actions of overzealous lawyers have muddied the issues regarding customer consent requirements and the use automated cell phone contact by utilities to notify customers of service outage programs. This, in turn, has had a chilling effect on CenterPoint's ability to fully deploy its outage notification program. In order to remedy this situation, CenterPoint supports the Petition and requests that the Commission provide a definitive ruling that the provision of a wireless number to a utility or retail electric provider constitutes "prior express consent" under the TCPA for purposes of automated, service-related utility contacts to a wireless device.

II. COMMENTS

A. **Timely automated contact with customers via their wireless devices is necessary to providing safe and reliable service and represents a considerable benefit to customers.**

Service interruptions are an inconvenience for customers and can be a significant public safety risk. They can also have a considerable economic impact on businesses that rely on continuous utility service to serve their customers. To mitigate the impacts and safety risks associated with service interruptions, it is essential that utilities and retail electric providers have the ability to communicate service outage information to customers in a timely manner. Only in this way can customers prepare for the outage and anticipate restoration of service.

CenterPoint's Power Alert Service ("PAS") program notifies customers by automated email, text message or phone call of a service outage in their area and provides timely automated updates notifying customers of the progress of service restoration. Customers participating in the program receive, on average, no more than 3 messages per incident, and customers may opt-out of the program at any time. Customer support for the PAS program has been overwhelmingly positive. In fact, customer surveys show that approximately 90% of CenterPoint's participating customers appreciate the timely notifications regarding their service.¹ Customer feedback makes clear that the automated notifications not only gives them notice of service interruptions and assures them that CenterPoint is working to fix the problem, but also that it saves the customer time because they do not have to contact CenterPoint about any service interruption². In addition, CenterPoint's hearing-impaired customers have responded that the service makes it easier for them to receive the notifications. In short, customers want to receive these notifications.

Importantly, as more and more customers continue to abandon the use of landlines, the effectiveness of the PAS program is diminished. This is due to the recent class action lawsuit

¹ See Attachment A regarding CenterPoint's PAS program customer satisfaction and current subscriber numbers.

² See Attachment B for direct quotes from CenterPoint's customers regarding their support for the PAS program.

activity that seeks hundreds of millions of dollars in damages from utilities that have notified customers of the availability of their service outage programs using automated messages sent to customers' wireless numbers. Specifically, this litigation risk has prevented CenterPoint from achieving widespread participation in the PAS program because, taking a conservative position, CenterPoint allows only customers that affirmatively opt-in to the PAS program specifically to receive service outage notifications, even if the customer has previously provided the Company a cell phone number as their primary method of contact. Because CenterPoint does not have a billing relationship with end-use electric consumers, the only way to get the word out to those consumers is through an expensive media campaign. CenterPoint would like to eliminate the opt-in requirement (but still allow customers to opt-out at any time) so that it can immediately expand the program to all of the end-use electric customers in the greater-Houston area. But this can only occur if the Commission provides clear guidance that for purposes of automated, service outage-related notifications, the "prior express consent" requirement under the TCPA is satisfied when a customer provides a cell phone number to their utility or retail electric provider. Absent such guidance, CenterPoint's ability to make its service outage program available to all customers cannot occur without exposing the Company to considerable litigation risk or forcing the Company to embark on an expensive media campaign.

B. Existing law and FCC precedent suggest that automated cell phone contact regarding service outages is allowed under the TCPA without the need for additional customer consent, but definitive guidance on this issue is needed.

As noted in AGA and EEI's Petition, the U.S. Congress and this Commission have indicated on several occasions that sending automated notifications to customers' cell phones is not a violation of the TCPA.³ And this Commission has recognized that many service-related calls

³ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Petition for Expedited Declaratory Ruling at 7-9 (Feb. 12, 2015) [hereinafter referred to as "Petition"].

by utilities fall within the law's exception for emergency communications.⁴ In fact, it appears the primary intent of the TCPA's restrictions on cell phone contact is to limit telemarketing calls to wireless numbers and not calls or messages about energy consumption, outages, appointment reminders or other service-related issues.⁵ But because the FCC has never issued a definitive statement that no additional express consent is necessary for automated wireless non-emergency contact, potential litigants have construed ambiguity in the law to interpret almost any cell phone contact with a customer as triggering the private right of action and damages provisions under the law.⁶ This is especially true for non-emergency calls about service restoration, non-payment, and appointment reminders. By clarifying that these types of important service-related calls to customers' cell phones or other wireless devices does not require additional express consent under TCPA, the Commission would remove any ambiguity about its interpretation of the law and allow utilities to continue implementing these necessary programs without the threat of litigation.

C. Any harm associated with allowing automated cell phone contact without additional consent can be easily mitigated.

The Commission can rule that no additional consent is necessary for automated non-emergency wireless notifications involving utility service and remain confident that customers will be protected against unwanted contact. Utility service is a customer-centric service. For this reason, CenterPoint's corporate values center around safety, integrity, accountability, innovation and respect for our customers and our employees. Unlike other businesses, utility service providers receive no benefit from inundating customers with unnecessary communication. But the fact remains that information regarding service outages can impact the everyday lives of our end-

⁴ Petition at 9.

⁵ Petition at 7.

⁶ As noted in the Petition, the TCPA provides a private right of action for every customer to recover \$500 in damages for each violation of the law and treble damages for each knowing or willful violation. 47 U.S.C. § 227(b)(3). For CenterPoint, that means a single text message warning a customer of a service outage, sent to every customer in its system, could result in *billions* of dollars in potential monetary damages.

use customers, and our research shows that the majority of customers want to receive service-related notifications. CenterPoint's PAS program provides customers with access to this important information, but also allows customers to opt-out of the CenterPoint's service notification program at any time. Customers also have the ability to opt-out of the program by sending a reply to any unwanted text message they receive.

It is also important to note that CenterPoint's utility business, unlike other industries, is heavily regulated by the states in which it provides utility service, and any customer in those states may file a complaint with the state regulator regarding practically any aspect of his or her utility service, including the communications it receives from the utility. On that note, in Texas, the Public Utility Commission of Texas ("PUCT") already regulates the amount and types of unsolicited automated communications that any person or entity can send to another person. The PUCT expressly prohibits any person from using an automatic dial-announcing device ("ADAD") to contact a person without acquiring a permit from the PUCT, and it imposes strict requirements on the content of any communications made using an ADAD.⁷ The PUCT also provides a process for complaints and investigations of any violations of the ADAD regulations. Therefore, to the extent a customer takes exception to a utility's communication methods, that customer can always seek redress through the state regulator.

The fact is there is a need for and considerable benefit to encouraging automated wireless contact with customers for service-related notifications, and any potential harm associated with permitting this type contact is easily corrected.

⁷ 16 TEX. ADMIN. CODE § 26.125 (2015).

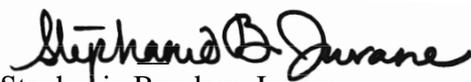
D. The Commission should clarify that, in deregulated utility markets, a customer's consent to use his cell phone number extends to both the customer's transmission and distribution service provider and retail electric provider.

The Texas electric utility market was deregulated in 1999 to open certain areas of the state to retail competition. A retail electric provider ("REP") sells electric energy to retail customers in the areas of Texas where the sale of electricity is open to retail competition. A transmission and distribution utility ("TDU") (like CenterPoint) owns the transmission and distribution lines through which customers receive their electric service and sells use of the wires to the REP. Because the TDU is responsible for maintaining the transmission and distribution lines and restoring service after an interruption, the TDU must also be able to communicate with customers regarding outages. However, it is the REP and not the TDU that collects contact information from the customer. And while CenterPoint believes FCC precedent allows a TDU to contact the customer directly even if the customer gave his or her contact information to an intermediary (the REP), the Commission should confirm in a declaratory ruling that the customer's consent extends to both the TDU and the REP.

III. CONCLUSION

For these reasons, CenterPoint encourages the Commission to issue a declaratory ruling that a customer who provides a cell phone number to a utility or REP constitutes "prior express consent" under the TCPA for purposes of automated, service-related utility contacts to a wireless device.

Respectfully submitted,

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CenterPoint Energy Power Alert Service KPI Dashboard

VOC Satisfaction Measures		Program To Date	Prior 90 Days	Trending
Overall satisfaction with PAS		87%	87%	↕
Combined responses for all delivery methods (e-mail, text and phone. 4 or 5 on a 5-point scale)				
Had an actual Power Outage		87%	87%	↕
Measure that confirms if the customer actually experienced a power outage in the last 2 weeks? (Yes or No)				
Internal System Performance Metrics		Program To Date	Prior 90 Days	Trending
Successful "Power Out" message creation		98%	98%	↕
Measure that confirms a PAS notification was issues for all registered users that have an outage				
Successful "Power Out" message delivery <15 minutes		95%	98%	↑
Measure that reviews timeliness of Power Out Notification statuses once delivered to SendWord Now				
Successful "Power On" message delivery <15 minutes		90%	92%	↑
Measure that reviews timeliness of Power On Notification statuses once delivered to SendWord Now				
Power restoration within original EOT (Default Time)		61%	63%	↑
Power restored within the original default EOT time *				
Default restoration time accuracy		29%	29%	↕
Power restored within +60m or -15m of default time				
Average +/- Minutes - Default EOT not Met		25	24	↕
Estimated restoration time accuracy (Internal)		83%	83%	↕
Power restored within +60m or -15m of estimate				
EOT Changes		1.44	1.41	↑
Average Times an EOT is changed				

* Data used to compile this metric includes all sustained cases, even during weather events and increasing storm levels. Weather impacts in the last 90 days has negatively impacted this metric.



CenterPoint Energy Power Alert Service Registrations by Service Center

GREENSPOINT	54,755
SOUTH HOUSTON	44,102
CYPRESS	40,081
KATY	35,589
SUGARLAND	34,918
HUMBLE	34,354
H.O. CLARKE	25,223
SPRING BRANCH	23,881
MAG PARK	23,014
BELLAIRE	22,135
FT. BEND	19,159
CHANNELVIEW	16,783
BAYTOWN	13,713
BRAZOSPORT	4,616
GALVESTON	3,485
ROSHARON	1009
WHARTON	859
SEALY	172



CenterPoint Energy Power Alert Service Customer Comments

Verbatim:

- *"I love this service. Being deaf it scared me when the power went out, I received the message on my phone and I sent it out to my neighbors. It has been a great service for me. Thank you so much"*
- *"Thanks for adding this system. It is a huge help to know that CenterPoint is aware of outages and that they provide estimates for when it will be back on. That prevents us having to call."*
- *"I love the power alert. It's one of the best things you guys have done. It lets me know that you are aware of the situation which is very comforting. Losing power is upsetting and it makes me feel better to know that you're working on it and when you have an estimate of when it will return. Thank you so much."*