

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

To: The Commission

**COMMENTS OF CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC.**

Pursuant to the Commission’s Public Notice, released February 24, 2015 (DA-15-244), Consolidated Edison Company of New York, Inc. (“Con Edison”) and Orange and Rockland Utilities, Inc. (“O&R”) (together, “the Companies”) submit the following comments in support of the Petition for Expedited Declaratory Ruling, filed by Edison Electric Institute (“EEI”) and American Gas Association (“AGA”) in CG Docket No. 02-278 (the “Petition”), that non-emergency, service related telephone calls from utilities to their customers who have provided a phone number, including a cell phone number, are not in violation of the Telephone Consumer Protection Act of 1991 (“TCPA”).

**STATEMENT OF INTEREST**

Con Edison, one of the largest investor-owned utilities in the U.S, is a subsidiary of Consolidated Edison, Inc., serving over three million electric, gas and steam customers in New York City and Westchester County, New York. O&R, also a subsidiary of Consolidated Edison, Inc., is an electric and gas utility serving customers in Orange and Rockland Counties, New York. O&R and its two utility subsidiaries, Rockland Electric Company in New Jersey and Pike County Light & Power Company in Pennsylvania,

serve a population of approximately 750,000 electric and gas customers in seven counties in New York, northern New Jersey and northeastern Pennsylvania. The Commission's decision in this proceeding will have a significant impact on the customer relations practices and procedures of these utilities.

## **THE COMPANIES SUPPORT THE PETITION**

The Companies support the Petition filed by AGA and EEI in this proceeding. The Companies are continuously engaged in essential and effective means of communication to inform their electric, natural gas, and steam customers of critical, service-related issues. The Companies already rely on automated calls, text messages, and e-mails to relay important service-related information to their customers in emergency and non-emergency situations. Examples of such communications include (but are not limited to) planned outages, special meter reading and other service appointment reminders, and campaigns to enroll customers in our outage text notification programs. In all cases, calls or texts to the customer are made using the telephone number provided by the customer when establishing or continuing service. Indeed, the New York State Public Service Commission encourages the use of such forms of communications to customers.<sup>1</sup>

The Companies are continuously preparing for circumstances that can affect their ability to deliver electric, natural gas, and steam services, including the effective

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<sup>1</sup> See February 21, 2014, New York State Public Service Commission *Order Approving Electric, Gas and Steam Rate Plans In Accord with Joint Proposa*, in Case No. 13-E-0030. Specifically, "The Company will continue to focus on and develop additional outreach efforts to assist in the collection of customer cell phone numbers and email addresses. With respect to its storm/outage related communications, the Company will continue to utilize blast emails that communicate safety and preparedness information prior to forecasted storms and heat events, and will develop opt-in text messages to provide customers with updated information during storms and other events." (at page 92).

communication of information to their customers. The Companies work together with federal, state, and local governments and regulators in order to have the ability to respond effectively to any service-affecting event. The Companies' efforts also include developing and implementing notification programs to provide customers with the best and most up-to-date information available regarding service issues, whether those issues are the result of planned outages or curtailment, natural disasters, unplanned outages, other emergencies, or customer-related issues such as financial assistance programs, meter reading appointments, and service appointments.

### **Con Edison and O&R Customer Communications**

As the Companies' customers increase their reliance on cellular telephones as a means of everyday communication, as well as a platform for business transactions, the Companies are placing a corresponding emphasis on providing customers with useful information and self-service options via the communication channels they find most convenient. The following are a few examples of the types of messages that the Companies send to customers that have provided cell phone numbers or opted into texting programs:

- *Special Meter Reading and Service Appointment Reminders* – Con Edison offers special meter reading appointments to customers that request to have their meters read at a time other than their regular billing cycle date. In the interest of making this process as convenient and efficient as possible, Con Edison will contact customers with pre-recorded reminders via automated phone calls one day in advance of the scheduled appointment date. Con Edison also makes outbound calls with pre-recorded messages to remind customers of other types of service

appointments. This practice is modeled after similar reminder calls that have become standard practice in other industries, most notably appointment reminders for healthcare services.

- *Campaign to Enroll Customers in Outage Text Notifications* – Following Superstorm Sandy in 2012, the Companies began programs to provide automated outage notifications to customers via phone calls and/or text messages. Outage communications are emergency-related, and thus are exempted from the TCPA standards regarding cellular telephones. However, contacting customers for purpose of promoting these new services may not be viewed as an emergency. To inform customers of the new outage text program and encourage widespread enrollment, Con Edison conducted two non-emergency automated outbound call campaigns to customers that had provided cellular telephone numbers. In each case, pre-recorded messages were used to inform customers of the program and to tell them how to opt in.
- *Planned Outages* – For planned work that requires service outages, O&R will call affected customers up to a week in advance of the project to notify them of the planned outage. These calls are automated and utilize a pre-recorded message with important information for customers.

These communications have become a critical means of interaction with the Companies' customers, a fact reinforced by a low complaint rate from customers regarding their communications efforts. To facilitate continued use of these important tools, the Companies urge the Commission to clarify that customers have given "prior express consent" to receive non-telemarketing, informational communications related to their

utility service when they provide a telephone number, including a cell phone number, to their utility company, and that no additional consents are required. It is vital that the Companies be allowed to continue to communicate with their customers in this essential and effective manner without the threat of lawsuits, however frivolous, claiming violations of the TCPA.

Without a definitive ruling from the Commission about calls and texts to their customers for purposes such as those described above, utilities will be effectively foreclosed from providing this important information to customers as they will be reluctant to bear the risk of litigation for making these calls. This is particularly true where those calls may not be considered emergency communications because they are, for instance, about service restoration, special appointments, or planned work.

## **CONCLUSION**

For the foregoing reasons, the Companies support the Petition and request that the Commission confirm that providing a telephone number to a utility, including a cell phone number, constitutes “prior express consent” to receive non-telemarketing, service-related, informational calls or texts at that number.

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Respectfully submitted,

**CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC. and ORANGE AND  
ROCKLAND UTILITIES, INC.**

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