

# LOBBY WATCH



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Look to His Bond:

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## Is Rick Perry Bailing Out Energy Future Holdings?

*“My ships have all miscarried, my creditors grow cruel, my estate is very low.”*

—Antonio, the Merchant of Venice

Five years after the \$45 billion purchase of TXU Corp.—the biggest leveraged buyout in history—the smartest guys in the room look dumb. Wind energy and the shale fracking boom have tanked the electricity prices that were to pay off the deal’s \$35 billion debt.<sup>1</sup> Meanwhile a brutal recession shattered a fairy tale beloved by big investors.

When buyout artists at Goldman Sachs, Kohlberg Kravis Roberts and TPG Capital gobbled up TXU in 2007, big investors liked to say that they deserve rich rewards because they lose everything when they bet wrong. One recession later, such claims are tempered by the laughter they elicit. Let’s just say that both political parties have bailed out too many auto companies, insurers and banks for people to believe that this is how it works for the big boys.

History cautions that stupid bets by powerful people can’t be counted out until the bailout card plays itself out. TXU’s successor, Energy Future Holdings Corp., wields extraordinary clout. Only AT&T can rival it as a Texas lobby force.<sup>2</sup> With this energy powerhouse careening towards bankruptcy, Austin insiders have begun to ask, “Is Governor Perry bailing it out?”

The 1999 pitch for deregulating Texas electricity markets was that competition would slash consumer energy costs. With rock-bottom natural gas prices, Perry’s Public Utility Commissioners now are jacking up electric bills, supposedly to avert blackouts in severe weather.<sup>3</sup> In such emergencies, wholesale electricity prices can leap from \$50 a megawatt hour up to a state-set cap that has been \$3,000 per megawatt hour. Perry’s commissioners increased the cap 50 percent this summer to \$4,500 (costing the average household an estimated \$40 to \$200 a year).<sup>4</sup>

Electricity is an odd commodity. Difficult and expensive to store, most electricity is produced on demand. The free-market system that keeps the lights on during severe weather also is known as “price gouging.” The utility commissioners extol market solutions and suggest that market economics prompt them to increase wholesale caps. Yet caps don’t exist in free markets. The truth is that a free market in electricity would be political suicide.

Significantly, the commissioners admit that their cap increase will not get the desired power plants built. They already are discussing

doubling the new cap to \$9,000 per megawatt hour. Yet a 2012 report that Texas regulators commissioned on averting blackouts says that even that price probably won't do the job.<sup>5</sup>

Nothing compels power producers to invest these windfall revenues in new plants. The No. 1 producer serving Texas' deregulated markets is massively indebted Energy Future Holdings. It may not build new plants, even if regulators make consumers pay the company a fortune. Then there's the Enron problem. Higher caps boost incentives for producers to fabricate shortages or otherwise game the system.

There are better ways to avert blackouts. The cheapest option is to invest in energy conservation, eliminating the need for new plants.<sup>6</sup> Perry's commissioners want to slash conservation spending rather than boosting it.<sup>7</sup>

Commissioners also can make consumers pay producers to build more plants, forcibly creating a so-called "capacity market." They probably will do so if and when higher caps fail to deliver the new power plants. Texas even could end up with a bastardized system that pays producers to build plants *and* has astronomical wholesale caps. This would be a gift to Energy Future Holdings, which has advocated both higher caps *and* a capacity market.

*Lobby Watch* identified 10 politically active players that have urged the Public Utility Commission to increase electric bills by imposing a capacity market or raising caps. These same powerful interests contributed more than \$3.5 million to Texas state PACs and candidates just since January 2009. Two-thirds of that total came from contributors affiliated with Energy Future Holdings.

Governor Perry was the top recipient of money from energy interests pressing for rate hikes or a capacity market. Eight percent of the \$3.5 million distributed by these energy interests went to the governor who appointed all three utility commissioners.

Barry Smitherman is the No. 2 recipient of money from energy interests clamoring for rate hikes. Smitherman was a Perry-appointed utility commissioner until 2011, when the governor appointed him to an unexpired Railroad Commission term. For his current campaign to retain his Railroad Commission seat, Smitherman has collected \$228,451 from the electricity interests tracked here. This generous support sends a market signal that this industry will take care of the regulators who serve its needs.<sup>8</sup>

### Rate-Hike Proponent Contributions To Texas State Candidates & PACs Jan. 2009 to July 2012

Amount	Parent Company (related entities)	Backs Higher Caps	Backs Capacity Market
\$2,377,175	Energy Future Holdings* ( <a href="#">Luminant Energy</a> )	X	X
\$307,853	Citigroup, Inc. ( <a href="#">Citigroup Energy, Inc.</a> )		X
\$303,060	<a href="#">NRG</a> (Energy Plus, Everything Energy, Green Mtn., Reliant, US		X
\$198,298	<a href="#">Exelon Corp.</a> (Constellation Energy)		X
\$149,275	<a href="#">NextEra Energy</a> (Florida Power & Light)	X	X
\$128,650	BP America, Inc. ( <a href="#">BP Energy Co.</a> )	X	
\$36,050	<a href="#">GDF SUEZ Energy</a> (International Power)	X	
\$20,220	<a href="#">Direct Energy</a> (CPL Retail, First Choice, Gateway Energy, WTU Retail)	X	
\$10,226	<a href="#">Calpine Corp.</a>	X	
\$10,000	Riverstone Holdings, LLC/Carlyle Group ( <a href="#">Topaz Power Group</a> )	X	X
<b>\$3,540,807</b>	<b>TOTAL</b>		

\*Includes investors Goldman Sachs, KKR and TPG.

Note: Subsequent pages show the top sources of this money, as well as the top recipients of it.

**Top Recipients of Money from Rate-Hike Proponents  
(Jan. 2009 to July 2012)**

Amount	Recipient	Office Held or Sought
<b>\$284,025</b>	<b>Rick Perry</b>	<b>Governor</b>
<b>\$228,451</b>	<b>Barry Smitherman</b>	<b>Railroad Commission</b>
\$172,000	Mex. American Legislative Caucus	
\$157,200	Kay Bailey Hutchison	Governor
\$144,107	Texas Legislative Black Caucus	
\$130,000	David Dewhurst	Lieutenant Governor
\$110,500	Joe Straus	Speaker
\$76,000	Legislative Study Group - Caucus	
\$74,633	Troy Fraser	Senate
\$56,172	Tom Schieffer	Governor
\$56,000	Todd Staples	Agriculture Commissioner
\$54,270	Bill White	Governor
\$52,696	Greg Abbott	Attorney General
\$49,500	John J. Carona	Senate
\$35,000	Rene O. Oliveira	House
\$32,500	TX Republican Party	
\$30,678	Byron Curtis Cook	House
\$30,000	Mex. Am. Leg. Leadership Fdn.	
\$29,750	Glenn A. Hegar, Jr.	Senate
\$27,950	Royce West	Senate
\$27,000	Kirk P. Watson	Senate
\$26,250	Burt Solomons	House
\$25,602	Warren D. Chisum	Railroad Commission/House
\$25,250	TX Democratic Party	
\$25,000	Garnet F. Coleman	House
\$24,300	Harvey Hilderbran	House
\$24,211	Rafael M. Anchia	House
\$23,600	Christopher G. Turner	House
\$23,500	John Whitmire	Senate
\$23,200	Dan Branch	House
\$22,750	James R. Pitts	House
\$22,500	Steve Ogden	Senate
\$21,394	Juan 'Chuy' Hinojosa	Senate
\$20,500	TX Republican Leg. Caucus	
\$20,000	Craig Estes	Senate
\$19,950	Kelly Hancock	House
\$18,500	Dennis H. Bonnen	House
\$17,000	McLennan Co. Democratic Party	
\$16,500	Bob Deuell	Senate
\$16,500	Jim R. Dunnam	House
\$16,500	Patricia F. Harless	House
\$16,250	Charles L. Geren	House
\$16,000	Susan Combs	Comptroller
\$16,000	Kel G. Seliger	Senate
<b>\$2,339,689</b>	<b>TOTAL (66% of all rate-hike money)</b>	

## Top Sources of the \$3.5 Million in Rate-Hike Contributions

Amount	Contributor	Rate-Hike Affiliation
\$889,221	Oncor Electric Delivery PAC	TXU Energy Corp.
\$442,138	<a href="#">Erle A. Nye</a>	EX-TXU Chair & CEO
\$437,820	Energy Future Energy Leaders PAC	Energy Future Holdings
\$231,653	Lyndon & Kay Olson	CITIGROUP senior advisor
\$199,100	NRG Energy PAC	NRG Energy, Inc.
\$176,048	Exelon PAC	Exelon Corp.
\$120,500	BP North America Employee PAC	BP America
\$105,025	Florida Power & Light FPL PAC	NextEra Energy
\$105,000	Charles J. Wilder	EX-TXU Chair, President & CEO
\$98,278	Energy Future Holdings Employee PAC	Energy Future Holdings
\$94,767	Luminant Employees PAC	Luminant
\$79,464	<a href="#">Donald Evans</a>	Energy Future Holdings Chair
\$69,000	CITIGROUP PAC	CITIGROUP, Inc.
\$55,122	Reliant Energy PAC	NRG's Reliant Energy
\$38,000	John F. Young	Energy Future Holdings President & CEO
\$31,750	NextEra Energy Resources	NextEra Energy Resources, LLC
\$28,500	GDF Suez Energy NA PAC	Suez Energy North America, Inc.
\$21,500	Todd Williams	Goldman Sachs & Co. (TXU buyout)
\$21,000	David Bonderman	TPG Capital, L.P. (TXU buyout)
\$20,493	Curtis Seidlits, Jr.	Ex-TXU Senior Vice President
\$15,720	Direct Energy	Direct Energy
\$12,350	Michael Smith Greene	Energy Future Holdings Vice Chair
\$11,000	Jerome S. Farrington	TXU Chair Emeritus
\$11,000	International Power America	Suez Energy North America, Inc.
\$10,000	<a href="#">Peter R. Coneway</a>	Riverstone Holdings Mng. Partner
\$10,000	John Rowe	Ex-Exelon Corp. Chair & CEO
<b>\$3,334,449</b>	<b>TOTAL</b> (94% of all rate-hike money)	

Note: To prevent double counting, table excludes donations that individuals made to rate-hike PACs.

Interests promoting cap increases or a capacity market also spent from \$26 million to \$51 million on 1,078 annual Texas lobby contracts since 2009 (Texas lobbyists report incomes in ranges). Energy Future Holdings accounted for half of this lobby blitz, spending up to \$26 million on 555 annual contracts. NRG came next, paying up to \$10 million for 134 contracts.

## Texas Lobby Expenditures by Rate-Hike Proponents (2009 Through September 2012)

Max. Value of Contracts	Min. Value of Contracts	Parent Company	Annual Contracts
\$26,485,000	\$13,385,000	Energy Future Holdings	555
\$10,310,000	\$6,090,000	NRG	134
\$3,690,000	\$1,915,000	Exelon Corp.	58
\$3,090,000	\$1,065,000	Direct Energy	136
\$2,445,000	\$980,000	Citigroup, Inc.	78
\$1,690,000	\$750,000	Calpine Corp.	39
\$1,475,000	\$730,000	NextEra Energy	39
\$735,000	\$360,000	BP America, Inc.	13
\$680,000	\$300,000	Riverstone Holdings, LLC	14
\$520,000	\$245,000	GDF SUEZ Energy	12
<b>\$51,120,000</b>	<b>\$25,820,000</b>	<b>TOTALS</b>	<b>1,078</b>

Cap increases and potential capacity market costs are not the only new levies that Texas consumers face under deregulation. Perry's Utility Commissioners awarded utility companies \$5 billion in 2009 to install power lines to transmit West Texas wind energy to the eastern half of the state. Energy Future Holdings is the majority owner of Oncor Electric Delivery Co., which landed the largest of these awards—for \$1.3 billion.<sup>9</sup> Commissioners will soon weigh requests to charge households an estimated \$55 a year for the new power lines.<sup>10</sup>

Energy Future Holdings recently announced that it will shutter its coal-fired Monticello plant this winter due to anemic power prices. The non-profit Electric Reliability Council of Texas, which runs the electric grid under the supervision of the Utility Commission and the Texas Legislature, quickly responded that it may pay the company a premium to keep running Monticello. The Sierra Club denounced this proposal as a “ratepayer-funded bailout.”<sup>11</sup>

Energy Future Holdings exercises a unique role in the Texas lobby. No other corporation

simultaneously exercises so much political influence while hurtling so swiftly towards bankruptcy.

The No. 1 beneficiary of this troubled giant's largess is Governor Perry, whose utility commissioners raised the wholesale cap once and probably will do so again. In the likely event that higher caps don't avert blackouts, expect the commission to embrace a capacity market. To do so they will direct producers to build more plants and force consumers to pay for them—even when they don't use the extra power.

Perry's administration appears to be doing all it can to jack up the electric bills paid to Texas power companies—led by Energy Future Holdings. This clumsy soaking of ratepayers looks like an effort to bail out the engineers of the biggest leveraged bailout in human history. Yet the investment bet known as Energy Future Holdings was so colossally wrong that all the king's horses and all the king's men may not be able to put Humpty Dumpty together again. •

## Notes

<sup>1</sup> “A Record Buyout Turns Sour,” *New York Times*, February 29, 2012.

<sup>2</sup> During the 2011 legislative session, for example, Energy Future Holdings entities spent up to \$6.8 million on 134 lobby contracts. AT&T spent up to \$10.6 million that year on 110 lobbyists. See “[Austin's Oldest Profession](#),” Texans for Public Justice, February 2012.

<sup>3</sup> The most common scenario in these latitudes are heat waves that send air conditioners into overdrive. A severe freeze in 2011 also wreaked havoc, in part because frozen pipes knocked out unweatherized power plants.

<sup>4</sup> “Texas' Blackout Avoidance Measures Could Cost Billions,” *Texas Tribune*, June 21, 2012. Commissioner Kenneth Anderson urged his colleagues to postpone that increase until after the volatile summer months, arguing that a rushed vote would not yield instantaneous construction of power plants but would result in extraordinary profits for generators. “You're carting away money, not in wheelbarrows, but in Mack trucks,” he warned.

<sup>5</sup> “[ERCOT Investment Incentives and Resource Adequacy](#),” The Brattle Group, June 1, 2012. The non-profit Electric Reliability Council of Texas (ERCOT) runs the electric grid under the supervision of the Utility Commission and the Texas Legislature.

<sup>6</sup> “Another Path to Keep Juice Flowing,” *Dallas Morning News*, September 17, 2012.

<sup>7</sup> “PUC Should Embrace Energy Alternatives,” *Austin American-Statesman*, September 22, 2012.

<sup>8</sup> Smitherman promoted deregulation at the utility commission; he chaired the agency in the second half of his seven-year tenure there.

<sup>9</sup> “[Political Juice Amped Up \\$5 Billion Power-Grid Contracts](#),” *Lobby Watch*, March 15, 2010.

<sup>10</sup> “Texas' Blackout Avoidance Measures Could Cost Billions,” *Texas Tribune*, June 21, 2012.

<sup>11</sup> “ERCOT Might Require, and Pay, EFH to Run Its Idled Coal Plants this Winter to Keep the Lights On,” *Dallas Morning News*, September 26, 2012.