

# POWER STRUGGLE: HOW SHAREHOLDER PRIMACY IN THE ELECTRICAL UTILITY SECTOR IS HOLDING BACK AN AFFORDABLE AND JUST ENERGY TRANSITION

ISSUE BRIEF BY **NIKO LUSIANI** | MAY 2022

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## EXECUTIVE SUMMARY

The production, distribution, and governance of electricity in our economy is currently undergoing a profound transformation. This transformation is accelerated by climate change, extreme weather events, technological developments, changes in consumer preferences toward localized energy production, and the “electrification of everything” from heating to cooking to transport to data processing and beyond.

Whether this moment in the political economy of electricity leads to a more affordable, more resilient, more democratic, and more just zero-carbon energy system—or simply intensifies the costly, vulnerable, top-down, fossil fuel-driven energy sector we currently live with—depends on the rules put in place and the financial decisions made today to shape how the electric utility sector develops over the next decade. Investor-owned utilities (IOUs) play a particularly critical role, tasked with delivering on this promise in the public interest.

For years, Roosevelt Institute scholars and thinkers have dissected how the shareholder-first business model gripping most of corporate America has stunted economic dynamism, worker compensation, innovation, and productivity. This issue brief explores to what extent the maximization of shareholder value over all other concerns characterizes the IOUs supplying electricity to three-quarters of Americans. It then details the costs of foregoing crucial investments that could bolster energy infrastructure and facilitate a just transition to clean and affordable energy.

Analyzing the financial data filed with the Securities and Exchange Commission (SEC) for all 39 publicly listed electric utilities in the 2021 Edison Electric Institute Index showed that electric utility companies have passed over \$250 billion on to shareholders over the past decade—that is, over 86 percent of the industry’s earnings distributed directly out to shareholders, mostly in cash dividend payments. These findings suggest that despite being “clothed in the public interest,” the electricity sector currently prioritizes



maximizing shareholder value through payouts almost as much as purely profit-oriented firms. Directionally, IOUs have increased annual shareholder payouts 65 percent over the past decade, with companies boosting payouts by over 10 percent between 2019 and 2020. In 2021 alone, IOUs paid investors \$32 billion.

Several companies stand out as “Payout Aristocrats” (those with particularly high payouts)—including big names such as Dominion, Evergy, Avangrid, and Edison International, which all allocated more than 100 percent of profits to shareholders in the past decade. Yet, even smaller private electric utility companies pay out shareholders a disproportionate amount of their net earnings. In fact, this issue brief finds that there is no correlation between company size and payout ratios—illustrating how gripped by shareholder primacy this industry has become.

Rather than choosing to retain and reinvest earnings in a more resilient, affordable, just, and zero-carbon electricity system, these findings indicate that US electricity companies have chosen to extract profits and pass those on to already-wealthy shareholders—not to consumers, not to neighboring communities, and not to future generations.

Further, the investor-owned electricity conglomerates core to this transformation seem intent through their lobbying on obstructing an affordable, resilient, and just net-zero future—a process emblematic of the wider struggle across our economy between public power and corporate power. As this issue brief explains, the power struggle underway today over the future of electricity in America revolves around energy justice—namely, who has the right to produce and distribute electrons, who must bear the economic and health burdens of doing so, and who gets to enjoy the financial benefits.

To meet the needs of current and future generations with an affordable and just electricity transition, it is incumbent on state and federal regulators to better allocate the risks and rewards in the electric energy system so that they favor the enduring public interest. This issue brief, while shining light on the lopsided nature of shareholder primacy in the electricity sector, does not aim to provide a conclusive formula for how such power and privilege should be reallocated. However, a number of opportunities to reshape policies along these lines stand out, including creating a ban or very low bright-line limits on share buybacks, implementing an annual shareholder payout cap, instituting a new set of binding fiduciary duties toward the public interest, and establishing clear guardrails to protect against utility lobbying efforts currently undermining the needed transformations.

As the US energy system currently operates, customers, communities, and the planet face consistent and increasing risks—from rising prices and worsening service to looming climate catastrophe portended by fossil fuel dependency—while energy company shareholders receive increasing financial returns from taking on very little risk. This issue brief details how fundamentally skewed that allocation is—and urges action in the public interest to rectify this imbalance.



# INTRODUCTION: ARE ELECTRIC UTILITIES ON THE WAY TO OR IN THE WAY OF POWERING A JUST, ZERO-CARBON ECONOMY?

The production, distribution, and governance of electricity in our economy is currently undergoing a profound transformation. This transformation is accelerated by climate change, extreme weather events, technological developments, changes in consumer preferences toward localized energy production, and the “electrification of everything” from heating to cooking to transport to data processing and beyond.

Whether this disequilibrium in the political economy of electricity leads to a more affordable, more resilient, more democratic, and more just zero-carbon energy system—or simply intensifies the costly, vulnerable, top-down, fossil fuel-driven energy sector—depends on the rules put in place today to shape how the electric utility sector develops over the next decade.

Transitioning how we produce electric energy will be a key component of reaching President Biden’s target of 100 percent carbon-free electricity nationwide by 2035. Electric utility companies—investor-owned, publicly owned, and cooperatively owned—are currently responsible for roughly one-third of all greenhouse gas emissions in the United States (EIA 2021a). Most of these emissions stem from gas- and coal-burning power plants, which both exacerbate climate change and leave toxic health, environmental, and economic legacies in the communities in which they operate. While many private IOUs have announced plans to reduce carbon emissions and retool the electric grid, and have begun investing to do so, these plans will only result in a 2.9 percent decrease in overall US energy emissions by 2050 at their current pace, according to the US Energy Information Administration (EIA 2022a). Much more ambitious action is needed.

Meanwhile, Americans are becoming more dependent on electrical power, while also facing increasing supply disruptions due to climate-driven extreme weather events, such as the extreme cold weather in Texas and wildfires across California and Colorado (Blunt 2022). The necessary response—to be more resilient and less dependent on fossil fuels—will require one of the largest transformations our electric grid has ever undergone. Distributed, decentralized solar, wind, and other renewable energy production are critical renewable and cost-efficient tools toward these ends.



A recent modeling study, which accounted for current weather disruptions, distribution costs, and other factors, found that the cheapest way to reach a carbon-free electricity grid is to vastly expand distributed renewable energy to unlock the full potential of the current electrical system (Clack et al. 2020).

Yet, IOUs in state after state are making these same distributed energy resources more costly—largely because they see these technologies as a growing threat to their role as incumbent, centralized electric utility monopolies able to control the power of the future (Peskie 2016; Kind 2013). Some utility companies and their lobbying arms have even successfully convinced state lawmakers that the only way to make up for the lost revenue from more distributed and self-produced household solar systems is by charging low-income households more (Farrell 2021b). This logic presupposes a false trade-off: that we can either have distributed energy resources, or we can have low prices from centralized energy providers—but we cannot have both because there is no financial slack in the system. As shown below, this argument is faulty given the significant sums being distributed to shareholders by these same companies.

In addition to failing to create carbon-free and resilient electricity at sufficient pace, IOUs are driving up prices for households across the US. The price of electricity jumped 4.3 percent in 2021—the largest annual increase since 2008 (EIA 2022b). Between April 2021 and April 2022, average electricity prices across the US jumped 11 percent (BLS 2022). In Florida, Hawaii, Illinois, and New York, rates are up about 15 percent (Penn 2022). Higher electricity prices are an important driver of overall inflation and hit lower-income households particularly hard. Electricity costs make up a higher proportion of total expenditures for low-income families than affluent households—with the poorest 20 percent of households spending approximately 4 percent of their total expenditures on electricity, while the richest 20 percent spends only 2 percent (Beecher 2021). As a result of high costs, many low-income American households have been forced to choose between food and electricity as private utility companies have shut off access to electricity for millions of American families (Su et al. 2022).

Racial and geographic electricity burdens compound upon these economic ones. Because of a variety of factors, including utility rate design, housing, inaccessibility of energy assistance, and efficiency programs, Black households reportedly spend 43 percent more of their income on energy costs, Latinx households 20 percent more, and Native American households 45 percent more than their white counterparts (Drehobl et al. 2020; Hendricks et al. 2021). Meanwhile, energy burdens are heavier in some regions of the US than others. Low-income households in southern states in particular have higher energy burdens than similar low-income households in northern states, according to official sources (EERE 2018).



A just energy transition for all Americans requires both access to and more democratic control over low-cost, resilient, clean, and distributed electricity. This is especially true for low-income families of color in the South, who face higher health and economic burdens in our current system.

Yet, the investor-owned electricity conglomerates core to this transformation seem intent on obstructing a just energy future—a process emblematic of the wider struggle across our economy between public power and corporate power. As this issue brief explains, the power struggle underway today over the future of electricity in America revolves around energy justice—namely, who has the right to produce and distribute electrons, who must bear the economic and health burdens of doing so, and who gets to enjoy the financial benefits.

This issue brief finds that investor-owned electric utilities across the country are far from doing everything financially possible to invest in a just and affordable energy transition. The industry argues that it faces steep trade-offs—for example, between affordable rates and allowing for distributed household/community production, or between investing in fossil fuel-free energy sources and building reliable grids. Yet, this research finds that significant amounts of financing now being distributed to shareholders could be invested in the just energy transition by tackling the industry's current business model: one characterized by the primacy of private, shareholder returns over the public interest.

The following section provides brief historical context about the public nature of electricity markets; the third section summarizes the main findings of the financial accounting research; and the fourth section concludes with policy proposals for curbing shareholder primacy in the production, distribution, and governance of the electrical energy fueling our lives.



# “CLOTHED IN THE PUBLIC INTEREST”: THE HISTORIC REGULATORY ARRANGEMENT GOVERNING PRIVATE ELECTRIC UTILITIES

Private IOUs provide power for roughly three-quarters of US electricity customers (around 100 million) (EIA 2019), particularly those concentrated in denser, more urban areas of the country. Publicly owned utilities and cooperatives serve the remaining quarter, especially, but not exclusively, in rural areas where private actors have historically found little incentive to provide services.

The market for electrical power is very different from most other commodities in that the provision of electricity in the US is considered fundamentally public in nature. Since the 19<sup>th</sup> century, the basic legal premise has been that a private IOU “was created for public purposes [and] performs a function of the state.”<sup>1</sup> And, being “clothed with a public interest,” private utilities should therefore be expected to be controlled by the public for the common good.<sup>2</sup>

After a brief early history of fierce and chaotic competition between a litany of private providers, policymakers and industry arrived at a regulatory settlement in the early 20<sup>th</sup> century by which de facto natural monopolies would be allowed to operate without competition, but would in turn be regulated in the public interest. Private companies would be given the rights to monopolize a mostly urban captive consumer base reliant on electricity. Companies would receive protection from competition, with revenues predetermined, and a certain return on equity virtually guaranteed by government regulators. In return, state governments armed with Public Utility Commissions would have the duty to protect the public, for example by ensuring affordable cost-of-service rates and reliable service (Peskie 2016).

At the federal level, years of mismanagement and abuse by electric holding companies throughout the early 20<sup>th</sup> century led President Franklin D. Roosevelt to sign into law the Public Utility Holding Company Act (PUHCA), to amend the Federal Power Act (FPA), and to invest in public provision. The Roosevelt administration put into place new rules to govern private providers, while financial support was provided to develop publicly

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<sup>1</sup> Smyth v. Ames, 169 US 466, 544 (1898).

<sup>2</sup> Munn v. Illinois, 94 US 113, 126 (1876): “Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.”

or cooperatively run electricity providers, especially in unserved rural areas, but also to outcompete abusive private providers. As a result of these efforts, IOUs' share of electricity generation fell from 95 to 75 percent during the New Deal era (Pescoe 2016).

This regulatory arrangement and the cost-of-service rate-making model that flowed from it, while useful for its time, has largely locked in place a structure of regional electrical monopolies with few incentives to innovate or respond to changing technology, but significant incentives to grow ever more consolidated, to capture state regulatory mechanisms to their favor (Hirsh 1999), and to distribute gains to shareholders.

Indeed, over time and especially since regulatory changes in the mid-1980s, the electric market went from several hundred independent, local companies down to today's roughly 40 utility conglomerates—most of which are multistate, multinational holding corporations (Hempling 2018; see Annex A). Because these new conglomerates have many more customers and stakeholders in many more jurisdictions, this market consolidation distanced corporate decision-making from even more consumers and communities. The size and influence exerted with this expanded market share also resulted in more centralized political power of single conglomerates, and in turn more incentives to remain entrenched in a dominant position that prevents innovative business models more fit for 21<sup>st</sup> century realities (Farrell 2017). While the public benefits of electricity mergers are questionable, energy conglomerates are quite lucrative for company shareholders. When Exelon bought Washington, DC-based utility Pepco, for example, it pledged \$100 million toward a fund earmarked for rate credits, low-income assistance, and energy efficiency, which meant a total of only \$50 per customer. Meanwhile, Pepco shareholders reportedly enjoyed a \$1.1 billion gain (Farrell 2017).

Along these lines, the next section zooms into just how significant and low-risk shareholder returns have become in the US investor-owned electricity sector.



# INVESTOR-OWNED UTILITIES DELIVER SIGNIFICANT AND LOW-RISK SHAREHOLDER RETURNS

Over the past decade, IOUs have emerged as reliable and low-risk sources for increasing shareholder returns. IOUs were once thought of as the “most boring sector in the stock market universe” (Joseph 2021). Yet more recently, Wall Street is increasingly turning up the pressure on them to increase returns, seeking hedges against inflation and increasing interest rates, especially as this industry has a captive market of consumers and is protected against most forms of competition. This section compares these steadily increasing shareholder returns to public interest metrics (in particular, affordability and zero-carbon investments), shining a light on how misaligned financial incentives driving corporate decision-making in the utility sector are holding back the just energy transition.

## THE SCALE AND SCOPE OF SHAREHOLDER PAYOUTS IN THE PRIVATE ELECTRICITY SECTOR

Over the past decade, investor-owned electricity corporations in the US<sup>3</sup> have accomplished what holders of their stock most prize: distributing a significant and growing proportion of their overall net earnings to shareholders in the form of dividends (DVs) and open-market share repurchases or buybacks (BBs). The research in this issue brief analyzed financial data filed at the SEC for all of the 39 publicly listed electric utilities in the 2021 Edison Electric Institute Index. The findings from this analysis provide new evidence about the scale and scope of shareholder returns in the American electricity market, with four significant takeaways.

First, electric utility companies have paid over \$250 billion to shareholders in the past decade—94 percent through cash dividends and the remaining 6 percent through share buybacks. Annual shareholder payouts have increased 65 percent over the past decade,<sup>4</sup> with companies boosting year-on-year payouts by over 10 percent in 2019 and 2020. In 2021 alone, IOUs paid investors \$32 billion.

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<sup>3</sup> This analysis includes financial data from all 39 publicly traded US investor-owned electric utilities listed in the Edison Electric Institute Index, based on the consolidated financial accounts of the identified firms, as reported in their 10-Q and 10-K SEC filings. More details and caveats in Annex C: Methodology.

<sup>4</sup> This does not include increased shareholder value occurring through stock price adjustments. Not adjusted for inflation.



**FIGURE 1. US INVESTOR-OWNED UTILITIES TOTAL SHAREHOLDER PAYOUTS AND PAYOUT RATIOS (2012-2021), \$MNS AND % OF NET EARNINGS**

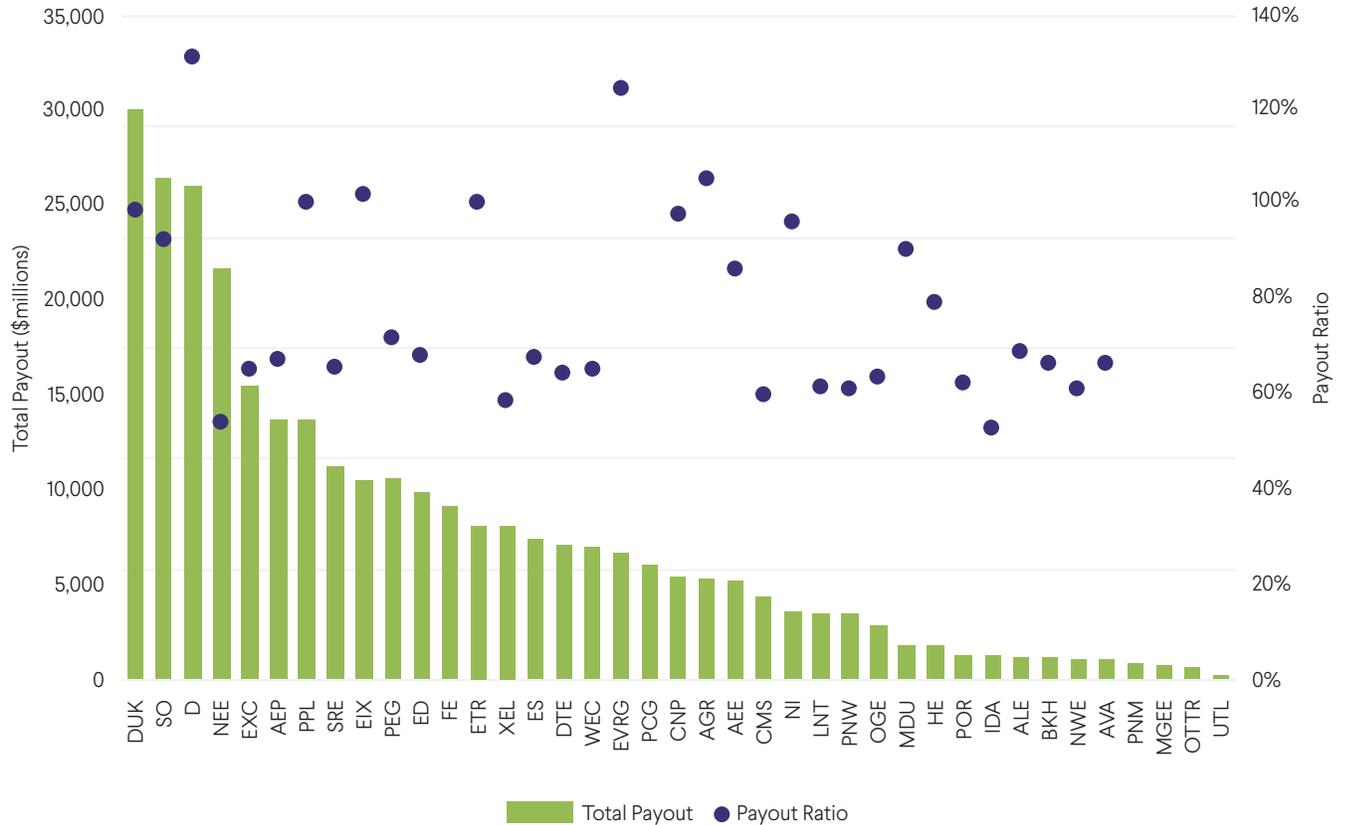


Second, in relative terms, IOUs distributed 86 percent of their net profits to shareholders from 2012 to 2021—close to the 100 percent of earnings that publicly traded nonfinancial corporations spent on average in the decade pre-pandemic (Palladino et al. 2021). Yet, unlike most publicly traded corporations, which are constituted as purely profit-driven entities, investor-owned electric enterprises have thoroughly public purposes, as discussed above. Far from being the “most boring sector in the stock market universe,” IOUs distributed all of their profits (104 percent) to shareholders in 2020—with significant costs, detailed below. While there was a minor stagnation in 2021, this trend of electric companies extracting value from their companies and passing to shareholders has increased steadily over time (see Figure 1).

Third, several companies stand out as “Payout Aristocrats”—companies that are particularly generous to their shareholders. In absolute terms, Duke Energy offered a handsome \$25 billion to investors over the past decade, while Southern Company (the energy conglomerate which owns Georgia Power, Alabama Power, and Mississippi Power) and Dominion Energy each distributed over \$22 billion. Several companies distributed well over 100 percent of profits to shareholders over the past decade, including Dominion, Eversource, Avangrid (parent of Central Maine Power, New York State Electric & Gas, Rochester Gas & Electric, and United Illuminating), Edison International (Southern California Edison), Entergy, and PPL (which owns PPL Electric, Louisville Gas & Electric, and Kentucky Utilities).

Finally, even the smallest private electric utilities in the US—despite having few profits to distribute—still pay out shareholders over half their net earnings. In fact, there is no correlation between utility size and payout ratio—suggesting that shareholder primacy operates as a driving force across this segment of the utility sector.

**FIGURE 2. INDIVIDUAL UTILITY COMPANIES' TOTAL SHAREHOLDER PAYOUTS AND PAYOUT RATIOS (2012-2021), \$MNS AND % OF NET EARNINGS**



Overall, it is hard to see how the public purposes of electric utilities are being met when so much of their net earnings are distributed directly to private, wealthy shareholders. These findings indicate that rather than choosing to retain and reinvest earnings in a more resilient, affordable, just, and zero-carbon electricity system that would benefit consumers, neighboring communities, and future generations, US electricity companies have chosen instead to extract excess profits and prioritize shareholders.

# OPPORTUNITY COSTS OF A SHAREHOLDER-FIRST ELECTRICITY INDUSTRY

Industry-wide shareholder payouts come at the cost of other critical investments for a just, zero-carbon electricity transition. Comparing industry shareholder payouts to spending to ensure other public necessities, such as affordability, resilience, and zero-carbon production, gives stark evidence to just how lopsided the industry has become.

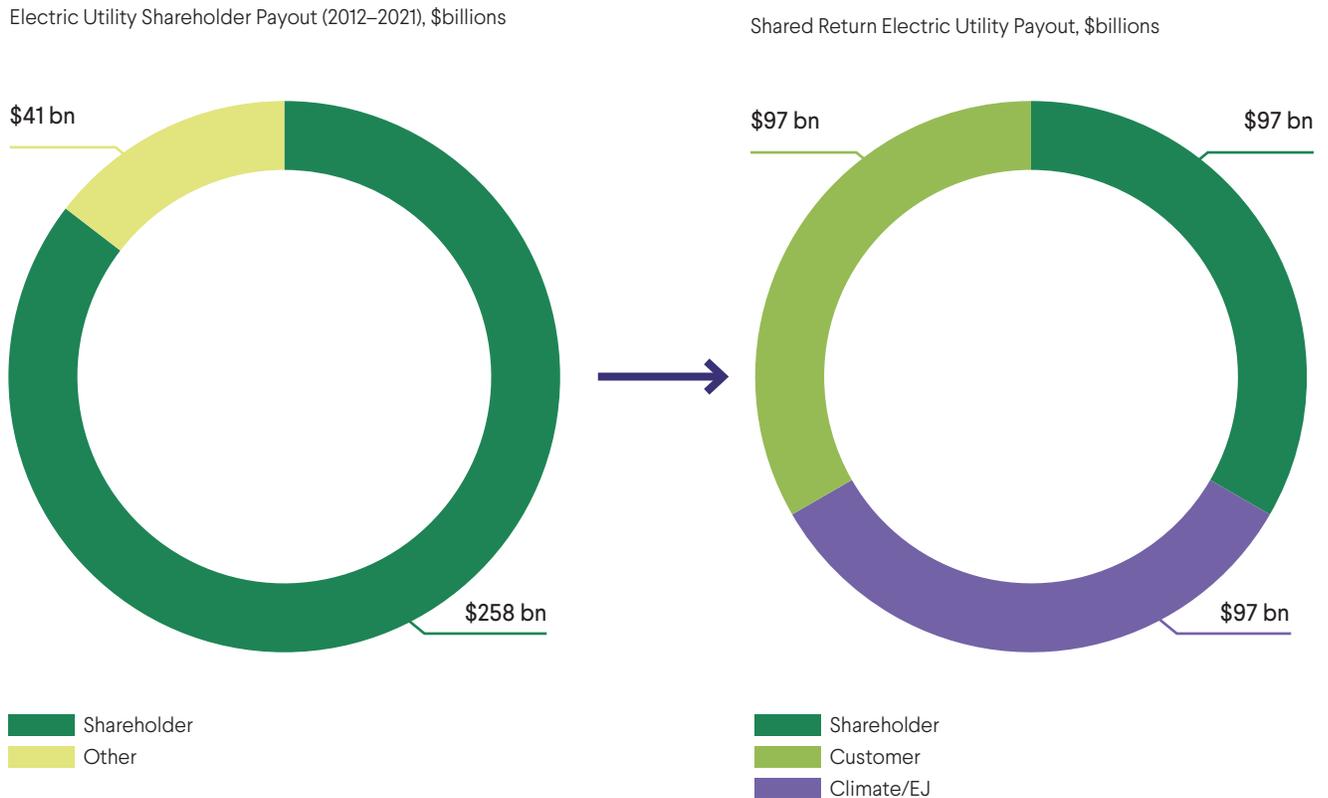
Keeping electricity affordable is crucial for many families to be able to keep the lights on and manage inflationary pressures, and will also be essential to ensuring buy-in and support for the clean energy transition. US households pay on average around \$100 per month on electricity (EIA 2021b)—a sizeable proportion of family budgets, especially for those on lower or fixed incomes. Had electric companies spent the last decade's \$250 billion of shareholder payouts to lower bills instead of increasing returns, families and businesses would have received an estimated \$19 monthly rebate in their electricity costs every year for the past decade. That is, distributing profits to families instead of shareholders could have led to an estimated 20 percent decrease in electricity bills across the nation—for a decade. These rebates could have targeted relief to lower- and middle-income families. For many families struggling to make ends meet, these price savings could have helped them put food on the table and keep the lights on at night.

Not only does shareholder primacy prevent utility companies from using earnings to ease the burden on families, it actively makes electricity bills more expensive. ConEd recently proposed an 11 percent increase in electricity prices for its customers in the New York area (Walton 2022), which could put people even further behind on utility bills or prevent them paying for other critical household expenditures. While the company insisted the higher prices were necessary to invest in clean energy, this analysis illustrates that ConEd had cash to spare: It distributed 77 percent of its earnings to shareholders in 2021 and consistently increased its dividends by 5 to 10 percent over the past five years. These dividend payments, if used to bring rates down or if retained for clean energy investments, which are less volatile to price shocks (Melodia and Karlsson 2022), could over time largely obviate the need for any rate increases.

Shareholder payouts in the electric utility sector are further thwarting a just energy transition because substantial financing is required to ensure resilience to climate shocks. Due to an uptick of climate-related extreme weather events like floods, wildfires, and cold/hot snaps, the American Society of Civil Engineers anticipates that by 2029, the US will face a gap of about \$200 billion in funding to strengthen the grid while making it more reliable over time (ASCE 2022). This entire gap could have been filled by the \$250 billion distributed to shareholders over the past decade. Looking ahead, curbing current levels of shareholder distributions into the future could cover this gap and then some.



**FIGURE 3. CURRENT SHAREHOLDER PAYOUT RATIO VS. POSSIBLE SHARED RETURN ELECTRIC UTILITY PAYOUT, \$BNS**



This brief does not aim to provide a conclusive formula for how utility companies and their regulators should ensure needed financing in an affordable, just transition while also providing a reasonable return to shareholders. However, if the net earnings of IOUs had been equally shared—with one-third toward affordability, one-third toward climate and environmental justice aims, and one-third toward shareholder returns (referred to here as the “Shared Return” Electric Utility Payout)—the analysis in this issue brief finds that electricity prices could have been decreased by about 7 percent through the entire decade, while simultaneously providing almost \$100 billion to invest in energy efficiency, zero-carbon electricity generation, transmission and distribution, and other environmental justice projects.

## CONFUSING PRIVATE MEANS WITH PUBLIC ENDS

When questioned about the significant shareholder returns driving corporate decision-making, representatives of IOU conglomerates argue that ensuring steady, predictable shareholder payments makes it cheaper to raise cash for future investments.<sup>5</sup> According to industry, the shareholder-first business model is especially important to attract private investors into what is—and, for an energy transition to occur, will continue to be—the most capital-intensive industry in the country (EEI 2022). Freezing shareholder payouts, according to industry, could lead to shareholders looking elsewhere to invest—ultimately hurting consumers and investments into the energy transition by pulling low-cost financing away from needed electric investments.

However, governance over the US electric utility sector was distinctly arranged with public ends in mind—not to enrich shareholders. As described in the previous section of this brief, private investment was accepted by policymakers, judges, and the public, but only as means toward fulfilling public goals. Public authorities grant IOUs the ability to sell to a captive consumer base highly dependent on their product, with state and federal protections against competition, very little risk to earnings, and essentially guaranteed stable returns over time. In return, these utilities must meet public aims—which today surely includes an affordable and just zero-carbon energy transition. However, the needed investments are not at all happening quickly enough or at scale, largely because it is not in the financial, private interest of incumbents to transform into a more distributed, resilient, and renewable system. Indeed, continuing to rely on business-as-usual shareholder primacy business models in this sector is delaying needed action in the public interest of a just electrical system and a livable planet.

What's more, such extravagant, outsized, and increasing private returns are not necessary to invest in this transition. Under current market conditions and with a captive consumer base, the electric utility industry is very attractive to investors. There is little reason to think that today's shareholders would lose interest in these companies even if payouts fell. With so much uncertainty in the capital markets today, not many investors would pull away from very reliable dividend yields, which arguably only enhance the comparative attractiveness of utility stocks.<sup>6</sup>

Regulations governing IOUs consistently insulate shareholders from most risks to returns. However, the actions aimed at securing increasing returns (e.g., proposing higher rates for consumers, preventing household solar and storage competition from coming online, lobbying against climate and environmental justice legislation) lead to more volatile risks for the public at large, through increased price and service risks for consumers,

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<sup>5</sup> See, for example, the spokesman of Entergy in New Orleans responding to critics in Stein 2022.

<sup>6</sup> Note in particular that electric utility companies regularly sit in the “top 10” of stock picks for investors looking to hedge against inflation, increasing interest rates and other tumultuous world events. See, for example, Root, 2022.



increased pollution risks to surrounding communities, and increased climate risks to the planet. Utility companies are accentuating these same public risks through their lobbying efforts—with many reportedly even passing on the costs of their lobbying against climate change mitigation and environmental justice efforts to the same customers facing the highest burdens from climate change (Smith et al. 2019). In the words of one industry expert, “[the electric industry has] become so distorted that shareholders can only ever benefit and ratepayers can only ever pay up” (Stein 2022).

## RESTORING THE PUBLIC INTEREST IN THE PRODUCTION, DISTRIBUTION, AND GOVERNANCE OF ELECTRICAL POWER

This issue brief has detailed how fundamentally skewed the allocation of risk is within the private electricity market. Customers, communities, and the planet face consistent and increasing risks—from increased prices and less dependable service, to the continuation of a fossil fuel-based electricity sector that is leading us to climate catastrophe. Meanwhile, shareholders of the same IOUs face little risk but have benefited greatly through consistently increasing financial returns.

Readers might be surprised to learn that some very prominent investors who would be benefiting greatly from these steady and increasing payouts actually chose a different track. Warren Buffett, for example, has taken the approach with his electric utility holdings to not pay out any dividends whatsoever. Buffett has made the decision to retain and reinvest profits from electric utilities rather than distribute specifically because shareholder payouts come at the expense of essential investments.<sup>7</sup>

To meet the needs of current and future generations with an affordable and just electricity transition, it is incumbent on state and federal regulators to better allocate these risks—in favor of the enduring public interest. Disrupting the extraordinary power shareholders have within these utility companies is one step toward reforming the structure of this market toward public interest ends—and may create new opportunities

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<sup>7</sup> See Warren Buffett’s approach: “BHE, unlike BNSF [the Burlington Northern Santa Fe railroad], pays no dividends on its common stock, a highly unusual practice in the electric-utility industry,” Buffett wrote. “That Spartan policy has been the case throughout our 21 years of ownership. Unlike railroads, our country’s electric utilities need a massive makeover in which the ultimate costs will be staggering. The effort will absorb all of BHE’s earnings for decades to come. We welcome the challenge and believe the added investment will be appropriately rewarded.” <https://www.barrons.com/articles/why-berkshire-hathaway-energy-is-one-of-warren-buffetts-4-jewels-51614704142>.

for more distributed, more innovative, cleaner, and more democratic forms of energy production and distribution. A number of opportunities to reshape policies along these lines stand out.

*Ensure shared risks and shared returns.*

- Policymakers should consider establishing a ban or very low bright-line limits to end manipulative and extractive share buybacks in the electricity sector.
- An annual shareholder payout (dividend and buyback) cap across the industry of one-third of net income could be put into place, with a mandate to use existing earnings to unleash significant financing to invest in an affordable, just energy transition.
- More research is needed to understand how shareholder payouts in the utility sector are undermining emissions reductions.
- Payment plans should be based on percent of income, deposits for reconnection should be eliminated, and power shut-offs prohibited for low-income households that include infants or people who are elderly or disabled so that families never have to face the risk of losing power during difficult times.

*Reform the governance of the electric utility sector.*

- Ensuring that public purpose remains central to electricity generation, production, and governance is crucial for providing electricity as a public good. Currently, IOUs are not delivering on this promise. Various alternatives exist to fit different regional contexts—from public ownership to cooperatives to consumer ownership.
- If remaining for-profit entities, electric utilities should be subject to a new set of binding fiduciary duties toward the public interest.

*Curb utilities' political power.*

- Clear guardrails must be put into place to protect against undue utility lobbying efforts that circumvent established regulatory compacts. In particular, utility company Boards should have the duty to approve all meaningful political expenditures, and utilities should not be allowed to use consumers' payments to engage in political lobbying.

*Apply and enforce antitrust law and enforcement in the electric utility sector.*

- Discriminatory pricing targeting solar customers must end.
- The Federal Energy Regulatory Commission could adopt a stance of opposing utility mergers by default unless there is a clear and demonstrated public interest.
- State regulators should more closely interrogate utility mergers on public interest grounds.
- The FTC could develop additional inquiry/investigation into this industry.



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## ANNEX A: INVESTOR-OWNED ELECTRIC UTILITIES, MAJOR OPERATING SUBSIDIARIES AND SERVICE TERRITORIES

| TIK  | Company Name                                     | Major Operating Electric Subsidiaries                         | Service Territories    |
|------|--|---|------------------------|
| PNW  | Pinnacle West Capital Corp                       | Arizona Public Service  | AZ                     |
|      |  | Bright Canyon Energy  | AZ                     |
| AEP  | American Electric Power Co                       | AEP Ohio  | OH                     |
|      |  | AEP Texas   | TX                     |
|      |  | Appalachian Power   | VA, WV, TN             |
|      |  | Indiana Michigan Power  | IN, MI                 |
|      |  | Kentucky Power  | KY                     |
|      |  | Public Service Company of Oklahoma                            | OK                     |
|      |  | Southwestern Electric Power Company                           | AR, LA, TX             |
| BKH  | Black Hills Corp                                 | Black Hills Power   | SD, WY                 |
|      |  | Cheyenne Light, Fuel & Power Company                          | WY                     |
| ED   | Consolidated Edison Inc                          | ConEd   | NY                     |
|      |  | Orange and Rockland Utilities                                 | NY, NJ                 |
| CMS  | CMS Energy Corp                                  | Consumers Energy  | MI                     |
| DTE  | DTE Energy Co                                    | DTE Energy  | MI                     |
| D    | Dominion Energy Inc                              | Dominion Energy   | VA, NC, WV, UT, ID, WY |
| DUK  | Duke Energy Corp                                 | Duke Energy Carolinas (formerly Duke Power)                   | NC, SC                 |
|      |  | Duke Energy Ohio (formerly Cincinnati Gas & Electric Company) | OH                     |
|      |  | Duke Energy Kentucky (formerly Union Light, Heat & Power)     | KY                     |
|      |  | Duke Energy Indiana (formerly Public Service Indiana)         | IN                     |
|      |  | Duke Energy Florida (formerly Florida Power Company)          | FL                     |
|      |  | Duke Energy Progress (formerly Carolina Power and Light)      | NC, SC                 |
|      |  | Duke Energy Puerto Rico                                       | PR                     |
| NEE  | Nextera Energy Inc                               | Florida Power & Light   | FL                     |
|      |  | Gulf Power Company  | FL                     |
| HE   | Hawaiian Electric Industries                     | Hawaiian Electric Company                                     | HI                     |
|      |  | Maui Electric Company   | HI                     |
|      |  | Hawai'i Electric Light Company                                | HI                     |
| CNP  | Centerpoint Energy Inc (formerly Reliant Energy) | Centerpoint   | TX, IN                 |
| IDA  | IdaCorp Inc                                      | Idaho Power Company   | ID                     |
| EVRG | Eergy Inc  | Eergy   | MO, KS                 |
| MDU  | MDU Resources Group Inc                          | Montana-Dakota Utilities                                      | MN, ND, SD, WY         |
| MGEE | MGE Energy Inc                                   | Madison Gas and Electric Co.                                  | WI                     |

## ANNEX A: INVESTOR-OWNED ELECTRIC UTILITIES, MAJOR OPERATING SUBSIDIARIES AND SERVICE TERRITORIES

| TIK                                    | Company Name      | Major Operating Electric Subsidiaries                                  | Service Territories        |
|--|-------------------|--|----------------------------|
| <b>ETR</b>                             | Entergy Corp      | Entergy Arkansas (formerly Arkansas Power and Light Company)           | AK                         |
|  |                   | Entergy Louisiana (formerly Louisiana Power and Light Company)         | LA                         |
|  |                   | Entergy New Orleans (formerly New Orleans Public Service, Inc.)        | LA                         |
|  |                   | Entergy Mississippi (formerly Mississippi Power and Light Company)     | MS                         |
|  |                   | Entergy Texas (formerly the Texas operations of Gulf States Utilities) | TX                         |
| <b>ALE</b>                             | ALLETE Inc        | Minnesota Power  | MN                         |
|  |                   | Superior Water, Light and Power  | WI                         |
| <b>ES</b>                              | Eversource Energy | Eversource   | CT, MA, NH                 |
| <b>NI</b>                              | NiSource Inc      | Northern Indiana Public Service Co. (NIPSCO)                           | IN                         |
| <b>XEL</b>                             | Xcel Energy Inc   | Xcel Energy  | MI, MN, NM, ND, SD, TX, WI |
| <b>NWE</b>                             | Northwestern Corp | NorthWestern Energy  | SD, NE, MT                 |
| <b>FE</b>                              | FirstEnergy Corp  | Ohio Edison  | OH                         |
|  |                   | Illuminating Company   | OH                         |
|  |                   | Toledo Edison  | OH                         |
|  |                   | Met-Ed   | PA                         |
|  |                   | Penn Power   | PA                         |
|  |                   | Penelec  | PA                         |
|  |                   | West Penn Power  | PA                         |
|  |                   | Jersey Central Power & Light   | NJ                         |
|  |                   | Mon Power  | WV                         |
| Potomac Edison                         | MD, WV            |  |                            |
| <b>OGE</b>                             | OGE Energy Corp   | Oklahoma Gas & Electric Company  | OK, AR                     |
| <b>OTTR</b>                            | Otter Tail Corp   | Otter Tail Power Company   | MN, SD, ND                 |
| <b>PCG</b>                             | PG&E Corp         | PG&E   | CA                         |
| <b>SRE</b>                             | Sempra Energy     | San Diego Gas & Electric   | CA                         |
|  |                   | Oncor Electric   | TX                         |
| <b>PPL</b>                             | PPL Corp          | PPL Electric   | PA                         |
|  |                   | Louisville Gas and Electric  | KY                         |
|  |                   | Kentucky Utilities   | KY                         |
| <b>EXC</b>                             | Exelon Corp       | Commonwealth Edison  | IL                         |
|  |                   | PECO (formerly the Philadelphia Electric Company)                      | PA                         |
|  |                   | Baltimore Gas and Electric   | MD                         |
|  |                   | Delmarva Power & Light   | DE, MD                     |
|  |                   | Atlantic City Electric   | NJ                         |
| Potomac Electric Power Company (PEPCO) | DC, MD            |  |                            |

## ANNEX A: INVESTOR-OWNED ELECTRIC UTILITIES, MAJOR OPERATING SUBSIDIARIES AND SERVICE TERRITORIES

| TIK | Company Name                       | Major Operating Electric Subsidiaries           | Service Territories |
|-----|------------------------------------|---|---------------------|
| PNM | PNM Resources Inc                  | Public Service Company of New Mexico            | NM                  |
|     |                                    | Texas—New Mexico Power                          | TX                  |
|     |                                    | Public Service Electric and Gas Company (PSE&G) | NJ                  |
|     |                                    | PSEG Long Island                                | NY                  |
| EIX | Edison Int'l                       | Southern California Edison                      | CA                  |
| SO  | Southern Company                   | Alabama Power                                   | AL                  |
|     |                                    | Georgia Power                                   | GA                  |
|     |                                    | Mississippi Power                               | MS                  |
| AEE | Ameren Corp                        | Ameren Missouri                                 | MO                  |
|     |                                    | Ameren Illinois                                 | IL                  |
| UTL | Unitil Corp                        | Unitil  | NH, MA, ME          |
| AVA | Avista Corp                        | Avista  | WA, ID, OR          |
|     |                                    | Alaska Electric Light and Power Company         | AK                  |
| WEC | WEC Energy Group Inc               | Wisconsin Electric Power and Wisconsin Gas      | WI                  |
|     |                                    | Wisconsin Public Service Corporation            | WI                  |
|     |                                    | Wisconsin River Power Company                   | WI                  |
|     |                                    | Upper Michigan Energy Resources                 | MI                  |
| LNT | Alliant Energy Corp                | Interstate Power and Light Company              | IA                  |
|     |                                    | Wisconsin Power and Light Company               | WI                  |
| POR | Portland General Electric Co       | Portland General Electric (PGE)                 | OR                  |
| AGR | Avangrid (part of Iberdrola Group) | Central Maine Power                             | ME                  |
|     |                                    | New York State Electric & Gas (NYSEG)           | NY                  |
|     |                                    | Rochester Gas & Electric (RG&E)                 | NY                  |
|     |                                    | United Illuminating Company (UI)                | CT                  |

**ANNEX B: TABLE: INDIVIDUAL UTILITY COMPANIES' TOTAL SHAREHOLDER  
PAYOUTS, PAYOUT RATIOS, AND AMOUNT SAVED IF FULL PAYOUTS  
DISTRIBUTED TO CUSTOMERS (2012–2021)  
(ALL IN \$MILLIONS, EXCEPT CUSTOMER SAVINGS)**

|      | Net Earnings | Total DVs | Total BBs | Total payout | Payout Ratio | Customers | "Shared Return" - Customers | Monthly customer savings | "Shared Return" - Climate and EJ |
|------|--------------|-----------|-----------|--------------|--------------|-----------|-----------------------------|--------------------------|----------------------------------|
| DUK  | 26,042       | 24,275    | 1,500     | 25,775       | 99.0%        | 7.8       | 8,594                       | \$9.18                   | 8,594                            |
| SO   | 24,488       | 22,141    | 545       | 22,686       | 92.6%        | 9.0       | 8,081                       | \$7.48                   | 8,081                            |
| D    | 17,022       | 19,224    | 3,141     | 22,365       | 131.4%       | 7.0       | 5,617                       | \$6.69                   | 5,617                            |
| NEE  | 34,225       | 18,505    | 119       | 18,624       | 54.4%        | 5.6       | 11,294                      | \$16.81                  | 11,294                           |
| EXC  | 20,290       | 13,266    | 0         | 13,266       | 65.4%        | 10.0      | 6,696                       | \$5.58                   | 6,696                            |
| AEP  | 17,477       | 11,790    | 0         | 11,790       | 67.5%        | 5.5       | 5,767                       | \$8.74                   | 5,767                            |
| PPL  | 11,667       | 10,663    | 1,078     | 11,741       | 100.6%       | 2.4       | 3,850                       | \$13.41                  | 3,850                            |
| SRE  | 14,513       | 8,783     | 800       | 9,583        | 66.0%        | 5.2       | 4,789                       | \$7.68                   | 4,789                            |
| EIX  | 8,802        | 6,753     | 2,237     | 8,990        | 102.1%       | 5.0       | 2,905                       | \$4.84                   | 2,905                            |
| PEG  | 12,564       | 8,565     | 503       | 9,068        | 72.2%        | 3.4       | 4,146                       | \$10.16                  | 4,146                            |
| ED   | 12,430       | 8,242     | 231       | 8,473        | 68.2%        | 3.4       | 4,102                       | \$10.05                  | 4,102                            |
| FE   | -1,240       | 7,520     | 296       | 7,816        |              | 6.0       |                             |                          |                                  |
| ETR  | 6,909        | 6,683     | 283       | 6,966        | 100.8%       | 3.0       | 2,280                       | \$6.33                   | 2,280                            |
| XEL  | 11,834       | 6,882     | 65        | 6,947        | 58.7%        | 3.7       | 3,905                       | \$8.80                   | 3,905                            |
| ES   | 9,308        | 5,938     | 375       | 6,313        | 67.8%        | 3.1       | 3,072                       | \$8.26                   | 3,072                            |
| DTE  | 9,469        | 5,809     | 296       | 6,105        | 64.5%        | 2.2       | 3,125                       | \$11.84                  | 3,125                            |
| WEC  | 9,196        | 5,789     | 211       | 5,999        | 65.2%        | 1.6       | 3,035                       | \$15.81                  | 3,035                            |
| EVRG | 4,547        | 3,007     | 2,671     | 5,678        | 124.9%       | 1.6       | 1,501                       | \$7.82                   | 1,501                            |
| PCG  | -8,808       | 5,154     | 0         | 5,154        |              | 5.5       |                             |                          |                                  |
| CNP  | 4,743        | 4,665     | 0         | 4,665        | 98.4%        | 2.5       | 1,565                       | \$5.22                   | 1,565                            |
| AGR  | 4,285        | 4,487     | 47        | 4,534        | 105.8%       | 2.3       | 1,414                       | \$5.12                   | 1,414                            |
| AEE  | 5,211        | 4,391     | 115       | 4,506        | 86.5%        | 3.6       | 1,720                       | \$3.98                   | 1,720                            |
| CMS  | 6,290        | 3,667     | 105       | 3,772        | 60.0%        | 1.8       | 2,076                       | \$9.61                   | 2,076                            |
| NI   | 3,125        | 3,015     | 0         | 3,015        | 96.5%        | 0.5       | 1,031                       | \$17.18                  | 1,031                            |
| LNT  | 4,731        | 2,903     | 22        | 2,925        | 61.8%        | 1.0       | 1,561                       | \$13.34                  | 1,561                            |
| PNW  | 4,772        | 2,890     | 37        | 2,927        | 61.3%        | 1.3       | 1,575                       | \$10.09                  | 1,575                            |
| OGE  | 3,790        | 2,393     | 19        | 2,412        | 63.6%        | 0.9       | 1,251                       | \$11.98                  | 1,251                            |
| MDU  | 1,676        | 1,488     | 33        | 1,521        | 90.7%        | 0.1       | 553                         | \$32.22                  | 553                              |
| HE   | 1,924        | 1,291     | 242       | 1,533        | 79.7%        | 0.5       | 635                         | \$11.31                  | 635                              |
| POR  | 1,798        | 1,126     | 0         | 1,126        | 62.6%        | 0.9       | 593                         | \$5.49                   | 593                              |
| IDA  | 2,093        | 1,086     | 24        | 1,110        | 53.1%        | 0.6       | 691                         | \$9.59                   | 691                              |



**ANNEX B: TABLE: INDIVIDUAL UTILITY COMPANIES' TOTAL SHAREHOLDER PAYOUTS, PAYOUT RATIOS, AND AMOUNT SAVED IF FULL PAYOUTS DISTRIBUTED TO CUSTOMERS (2012–2021)**  
(ALL IN \$MILLIONS, EXCEPT CUSTOMER SAVINGS)

|                      | Net Earnings   | Total DVs        | Total BBs     | Total payout   | Payout Ratio | Customers    | "Shared Return" - Customers | Monthly customer savings | "Shared Return" - Climate and EJ |
|----------------------|----------------|------------------|---------------|----------------|--------------|--------------|-----------------------------|--------------------------|----------------------------------|
| <b>ALE</b>           | 1,498          | 1,034            | 0             | 1,034          | 69.0%        | 0.2          | 494                         | \$24.97                  | 494                              |
| <b>BKH</b>           | 1,467          | 971              | 5             | 976            | 66.5%        | 1.3          | 484                         | \$3.10                   | 484                              |
| <b>NWE</b>           | 1,532          | 937              | 0             | 937            | 61.2%        | 0.5          | 506                         | \$9.36                   | 506                              |
| <b>AVA</b>           | 1,368          | 911              | 3             | 914            | 66.8%        | 0.3          | 451                         | \$11.06                  | 451                              |
| <b>PNM</b>           | 1,071          | 758              | 0             | 758            | 70.8%        | 0.8          | 353                         | \$3.68                   | 353                              |
| <b>MGEE</b>          | 833            | 437              | 211           | 648            | 77.7%        | 0.2          | 275                         | \$14.60                  | 275                              |
| <b>OTTR</b>          | 739            | 511              | 13            | 525            | 71.0%        | 0.1          | 244                         | \$15.64                  | 244                              |
| <b>UTL</b>           | 292            | 206              | 2             | 207            | 70.9%        | 0.1          | 96                          | \$7.51                   | 96                               |
| <b>TOTAL (\$mns)</b> | <b>293,973</b> | <b>\$238,155</b> | <b>15,230</b> | <b>253,385</b> | <b>86.2%</b> | <b>110.4</b> | <b>\$97,011</b>             | <b>\$7.32</b>            | <b>\$97,011</b>                  |

## ANNEX C: METHODOLOGY

### *Corporate finance data*

To understand the role of shareholder primacy in the electric utility market, the 39 publicly listed electric utilities included in the 2021 Edison Electric Institute Index were selected to be as comprehensive of the sector as possible. The remaining handful of private utility companies were not included in this sample because either public information was not available, or in the case of Berkshire Hathaway Energy electric energy holdings, because they are a part of much larger corporate entities for which only the consolidated financial information is available, making specific utility financial analysis very difficult.<sup>8</sup>

<sup>8</sup> The UK parent company National Grid plc (NGG) was not included in the full analysis, but the company does have relevant operations in Massachusetts, New York, and Rhode Island. According to SEC filings, the parent company distributed on average \$2 billion per year to shareholders, totaling \$21 billion over the past decade. These dividends paid out were on average 61 percent of the company's earnings. All data came from SEC 6-K filings. Data for 2012 to 2020 was pulled from Compustat, with fiscal years ending on March 31. Dividend data for 2021 was taken directly from company's 6-K filing, and the net income numbers from YahooFinance. The exchange rate used was 1 GBP = 1.25475 USD.

With this universe of 39 firms, the author consulted Compustat to compile the following information by quarter and year over the past decade (2012 to 2021), all of which comes from company filings with the US Securities and Exchange Commission (SEC):

- Total revenue (REV)
- Net income (NI)
- Total cash dividends paid for common/ordinary capital, preferred/preference capital, and other share capital (DVs)
- Total shares repurchased
- Repurchase price - average per share quarter
- Dividends per share

The total dollar amount of share repurchases (BBs) was computed by multiplying the total shares repurchased with the repurchase price of that particular period.

The following ratios were then computed using this primary information:

- Dividend payout ratio =  $DV/NI$
- Share repurchases (dollar amount) = Total shares repurchased + repurchase price
- Buyback payout ratio =  $BB/NI$
- Total payout ratio =  $(DVs+BBs)/NI$
- Payout as % of revenue =  $(DVs+BBs)/REV$

In computing payout ratios for quarters and years in which the company made a loss (i.e., net income is a negative denominator), there are a few options to avoid being misleading while retaining a fair analysis. Deleting these observations as outliers may be tempting but leaves the analysis incomplete and is misleading as it would tend to underreport the phenomenon being diagnosed. For example, assume a firm in the first quarter earns \$5 million and pays out a dividend of \$1 million. The dividend payout ratio is simply one-fifth, or 20 percent. Now assume in the second quarter the same firm makes a loss of \$1 million but continues to payout a dividend of \$1 million. Simply dividing the payout (1 million) by the loss (-1 million) would end up in a negative (-) 100 percent payout ratio, which is entirely misleading as the firm is distributing more, not less, of its net income in the second quarter. That is, the firm is paying out 100 percent of the \$1 million plus the additional losses of \$1 million. Deleting these negative ratios would be omitting from the sample instances when firms distribute cash dividends or repurchase shares well beyond what their earnings can cover in the period—precisely the type of extractive behavior the study sets out to detect. The data could be windsorized to the closest “reasonable value,”



but it is hard to know what is reasonable in this context and trimming the dataset again would only obscure the outliers. Instead, for individual firm ratios when net income is below zero, the author input the value of 1 into the denominator. This is a conservative approach as it doesn't report the losses in the period, but it is the least misleading of options, in our view. To further smooth out these discrepancies when reporting on industry-wide trends, the author uses median ratios to help adjust for these net income losses. And when reporting on individual companies, the issue brief takes the perspective of the full-year period, which helps smooth out quarterly ups and downs. Finally, when reporting on results from the entire decade, the issue brief uses the total amounts across all the companies, and does not use medians of the ratios.

A note on limitations of the corporate finance research: I base the data analysis on the consolidated financial accounts of the parent corporations under question. This poses two problems for attributing these numbers to the specific production/distribution of electrical energy. First, many of the 39 parent firms are conglomerates owning many other smaller operating electric utilities in various states (see Annex A above). As a result, the issue brief is at times not able to disaggregate specific financial information about specific operating utility companies. The second limitation is that some of these electrical utilities also provide gas to homes in addition to electricity, and the research is not able to extract out the finances related to electricity alone. Third, unlike dividends, share repurchases aren't necessarily smoothed out over time so can have big impacts one year, and none the next. Analyzing the 10-year period helps to address this issue.

#### *Electricity customer data*

To provide context and perspective, the issue brief next compares the total amount of shareholder payouts from these companies to total number of electricity customers in each service area. The author did this by drawing up the number of customers per firm, relying on company websites and SEC filings consulted in March 2022. Where the data is available, gas-only customers were separated out from the electricity customers and focused on the company-reported number of accounts. This would include business and households—but not total people served which would lead to much higher numbers. Therefore, by “customer” the author refers here to the full household, business, or other accounts served.

The total amount of payouts per firm was then divided by the number of customers per firm to understand what customer saving might look like over the course of the 10 years. The same is done across the entire sample to better understand industry-wide trends.

To understand the consequences of instituting a cap on shareholder payouts, a simple third (33 percent) was taken out of the 10-year net income of each of the firms, and the sector at large, and then evenly distributed to shareholders, customers, and climate investments.



## ABOUT THE AUTHOR

**Niko Lusiani** is director of the Roosevelt Institute's corporate power program, where he works to dissect and dismantle the ways in which extractive corporate behavior jeopardizes workers, consumers, our natural environment, and our shared economic system. Lusiani develops cutting-edge research exploring the mechanisms by and extent to which firms, executives, and shareholders have gained, retained, and wield outsized power in our economy and politics, while also teeing up policies to promote shared prosperity and reclaim power for workers and the public by curbing corporate power.

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