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Congressional probe looks at lobbying group funded by Ameren, other utilities

By Bryce Gray St. Louis Post-Dispatch Apr 22, 2019

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The coal-fired Rush Island Energy Center electricity generation plant owned by Ameren Missouri in Jefferson County.

Photo by David Carson, dcarson@post-dispatch.com

A congressional probe of two Environmental Protection Agency officials has ensnared St. Louis-based Ameren Corp., which is being asked to disclose its ties to a lobbying group accused of trying to undermine federal air pollution regulations.

Ameren is one of eight coal-heavy power companies that have been asked by the House Committee on Energy and Commerce to produce records documenting their support of the Utility Air Regulatory Group (UARG), which is described as “a secretive front group” by the committee’s Democratic leadership.

The request comes amid the committee’s look into the activities of EPA officials William Wehrum and David Harlow, who serve in leading roles in the agency’s Office of Air and Radiation. Both Wehrum and Harlow previously worked at Hunton Andrews Kurth LLP, a Richmond, Va.-based law firm that represented UARG.

The committee, in a statement on April 11 announcing the inquiry, said the agenda of the Office of Air and Radiation was now “remarkably similar to the substantive agenda” of UARG, raising the possibility that Wehrum and Harlow may have violated federal ethics rules.

“These allegations have raised substantial questions regarding whether Mr. Wehrum and Mr. Harlow are properly carrying out the (Clean Air Act) as directed by Congress, or instead changing Agency policies and programs to benefit former clients,” the committee said.

The committee, led by its chairman, Rep. Frank Pallone Jr., D-N.J., also wants to understand how UARG is being funded: Are shareholders of companies such as Ameren paying for lobbying or are ratepayers?

According to its letter to Ameren, the committee says the utility paid “\$265,865 in 2017 to fund UARG’s activities, with a higher contribution projected for 2018. This amount appears to be directly proportional to your company’s amount of fossil fuel-powered electrical generation.”

Some other companies involved in the investigation paid higher amounts, the committee said.

“It is upsetting to think that you’re paying for a utility to lobby for what’s not in their customers’ interest,” said John Coffman, a lawyer and utilities expert representing the Consumers Council of Missouri.

“(UARG) is a group that environmental groups would be at odds with.”

Warren Wood, vice president of legislative and regulatory affairs for Ameren Missouri, acknowledges the utility has been a UARG member “since its formation some four decades ago.”

He and other Ameren officials said UARG primarily helped member companies interpret complex air quality regulations and develop “cost-effective” plans for compliance. The company also said UARG, along with environmental organizations, had helped the EPA develop requirements for things such as continuous air monitoring.

As recently as 2017, Ameren argued before utility regulators at the Missouri Public Service Commission that it should be allowed to recover more than \$200,000 tied to membership dues for groups such as UARG, “since Ameren Missouri customers benefit from membership in these groups,” according to testimony from Laura Moore, the company’s director of regulatory accounting.

Ameren also suggested that lobbying is not the focus of UARG, and said that the group’s charter prohibits “legislative lobbying” — though it was unclear if that extends to the regulatory arena.

The PSC sees things differently.

While reviewing Ameren's finances during a rate case in 2015, PSC staff voiced "concerns with the amount of lobbying that is performed by" UARG and other groups, according to testimony from Jason Kunst, a utility regulatory auditor for the agency. That lobbying didn't necessarily align with the interests of ratepayers, Kunst said.

It's not immediately clear how Ameren pays for UARG activities. The so-called "black box" settlements that often resolve Ameren rate cases mask any breakdowns of what specific expenses are passed to ratepayers. Traditionally, the PSC has not allowed lobbying costs to be recovered through electric rates, but it's uncertain as to whether that happened in at least 2015, when parties agreed to a revenue increase of \$11 million to resolve a set of issues that included dues, donations and lobbying expenses.

The confusion is apparently shared by the House committee, whose first questions to Ameren ask how it covers its UARG expenses, and to explain how its "substantial annual contributions to UARG are consistent with your obligations to ratepayers."

Ameren declined to provide those answers to the Post-Dispatch, citing the ongoing process of gathering information to respond to the House request. The committee has given the company until Thursday to reply.

Over the years, UARG has led legal challenges to major components of the Clean Air Act that affect coal power. Matt Kasper, research director for the Energy & Policy Institute, a utility industry watchdog group, said a prominent example included the EPA's 2009 classification of carbon dioxide as a pollutant that threatens the current and future welfare of the public — a finding that essentially forms the legal basis of any federal action on climate change.

“(UARG) has kind of been set up for the whole industry to share legal costs for fighting EPA regulations,” Kasper said. “Clearly, it’s political.”

As the House probe has surfaced, several of UARG’s top donors have reportedly left the group in recent days, according to various news outlets — including Duke Energy Corp., Dominion Energy Corp., and DTE Energy Co.

“As the company winds down coal, we view our continued participation as not aligned with our company’s priorities,” DTE told E&E News in a statement.

Wood said that Ameren had “not made a decision” about whether it would stay in the group, adding that the company evaluated the net benefits of its UARG membership each year.

In addition to Ameren and DTE, other utilities that received letters from the congressional committee are American Electric Power, FirstEnergy, Southern Company Services, Tennessee Valley Authority, Tri-State Generation and Transmission Association, and Vistra Energy.



Oversight letter sent to Ameren

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