

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
April 11, 2019

Curtis A. Morgan
President and Chief Executive Officer
Vistra Energy
6555 Sierra Drive
Irving, TX 75039

Dear Mr. Morgan:

Pursuant to Rules X and XI of the U.S. House of Representatives, this Committee is responsible for oversight of the Environmental Protection Agency's (EPA) implementation of the Clean Air Act (CAA).

As such, we are deeply troubled by several reports of allegedly unethical behavior by EPA officials, particularly in the Office of Air and Radiation, and their relationship with the Utility Air Regulatory Group (UARG), of which your utility is a member. These allegations of unethical behavior have raised substantial questions regarding whether these officials are properly carrying out the CAA as directed by Congress or instead changing Agency policies and programs to benefit former clients.¹ The Office of Air and Radiation's agenda also appears remarkably similar to the substantive agenda advanced by UARG.² Because of your company's participation in UARG, we are writing to request certain materials from your company to assist the Committee in its investigation of these issues.

¹ See, e.g., *As Trump Dismantles Clean Air Rules, an Industry Lawyer Delivers for Ex-Clients*, The New York Times (Aug. 19, 2018); *EPA Official Bill Wehrum Stayed in Close Touch With His Former Law Firm, New Emails Show*, The Washington Post (Feb. 13, 2019); *EPA Regulator Skirts the Line Between Former Clients and Current Job*, The Washington Post (Feb. 25, 2019); *Bill Wehrum and the 'Holy Grail'*, Politico (Mar. 4, 2019).

² *How a Top EPA Regulator's Law Firm Profited From the Fight to Roll Back Air Rules*, Politico (Feb. 20, 2019).

EPA's mission is to protect human health and the environment. This mission has been severely compromised by the Trump Administration's deregulatory agenda.³ EPA is attempting to undermine or eliminate critically important safeguards which, if successful, would jeopardize public health by worsening air quality and exacerbating the harm climate change will inflict on all Americans. At the same time, many industry interests stand to profit significantly from EPA's deregulatory agenda, especially the coal industry, which appears to have invested heavily in UARG.⁴

UARG has avoided any transparency, with details of its funding and internal organization only recently revealed.⁵ Your company contributed a total of \$805,467 in 2017 through subsidiaries Dynegy and Luminant to fund UARG's activities, with a higher contribution projected for 2018.⁶ This amount appears to be directly proportional to your company's amount of fossil fuel-powered electrical generation.⁷

As has been reported in detail, this money paid for William Wehrum's involvement in UARG's efforts to support the Trump Administration's deregulatory agenda during his time at Hunton & Williams (now Hunton Andrews Kurth, collectively, "Hunton").⁸ By his own admission, Mr. Wehrum was approached in "early 2017" about the possibility of being nominated to serve as EPA Assistant Administrator of the Office of Air and Radiation.⁹ Mr. Wehrum continued to work on behalf of UARG members during this time, including convening the UARG Policy Committee on June 22-23, 2017, at Hunton's offices.¹⁰ Less than three months later, President Trump sent Mr. Wehrum's nomination to the Senate.¹¹ We are concerned that Mr. Wehrum has failed to distance himself sufficiently from his private sector work on behalf of UARG members now that he holds a position in the public trust with significant health and safety responsibilities.

³ See, e.g., *An Inside Look at How Trump Turned the EPA Into an Industry Subsidiary*, Yale Environment 360 (Oct. 4, 2018) (e360.yale.edu/features/an-inside-look-at-how-trump-turned-the-epa-into-an-industry-subsidiary).

⁴ See, e.g., *Trump EPA Acts to Roll Back Control on Climate-Changing Coal*, Associated Press (Dec. 6, 2018) (www.apnews.com/c9f226034f05432b9a00f975e15815bf); *supra* note 2.

⁵ See, e.g., *Power Companies Wield Influence Through Anonymous Group*, S&P Global Market Intelligence (July 19, 2016); see also *supra* note 2.

⁶ "2017 Utility Air Regulatory Participation Summary of Receipts As of June 20, 2017." Published by Politico, *supra* note 2.

⁷ "Introduction to Workshop Materials" at 4. Published by Politico, *supra* note 2.

⁸ *Supra* notes 1 & 2.

⁹ *Supra* note 2.

¹⁰ *Supra* note 2.

¹¹ www.whitehouse.gov/presidential-actions/eight-nominations-sent-senate-today/

To assist the Committee's investigation into these issues, we request you answer the following questions:

1. What is the source of the funds your company contributes to UARG: are these ratepayer or shareholder monies?
2. If you have used ratepayer funds, has the public utility commission in each state in which you operate specifically approved the use of such funds for this purpose?
3. Please explain how your substantial annual contributions to UARG are consistent with your obligations to ratepayers.

To further assist the Committee's investigation into these issues, we also request the following:

1. All documents exchanged and communications between employees of your company and any of the current or former EPA employees on the attached list. For any former employees on the list, this request is limited to when each such individual was employed by EPA.
2. All documents relating to the legal status of UARG.¹² This includes, but is not limited to, articles of incorporation, by-laws, and any federal or state regulatory filings. There is no temporal limit to this request.
3. All documents relating to UARG between January 1, 2005 and December 31, 2007, and since November 9, 2016. This includes, but is not limited to:
 - a. Budgets;
 - b. Funding requests;
 - c. Expense reports;
 - d. Workshop Materials;
 - e. Membership and leadership nominations;
 - f. Documents relating to the UARG Policy Committee, including all documents relating to meetings thereof;
 - g. Documents relating to UARG's Technical Committees; and
 - h. Documents relating to the UARG Planning Committee.
4. All documents and communications relating to any meeting attended by Mandy Gunasekara and an employee of your company on June 22 or June 23, 2017. In addition, please prepare and provide a list of all attendees at any such meeting,

¹² *Supra* note 2 (quoting William Wehrum asserting that the Utility Air Regulatory Group is a "legal entity").

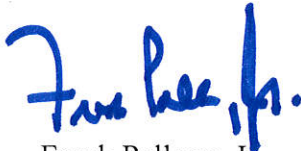
including the name, title and organizational affiliation of each attendee, and all documents exchanged at such meeting(s).

5. All documents and communications relating to any meeting attended by William Wehrum and an employee of your company on December 7 or December 8, 2017. In addition, please prepare and provide a list of all attendees at any such meeting, including the name, title and organizational affiliation of each attendee.

Please provide the requested information by April 25, 2019. These document requests apply to any subsidiaries of your company with responsive materials in the same manner as if the Committee sent a separate request directly to each such subsidiary.

An attachment to this letter provides additional information about how to respond to the Committee's request. If you have any questions, please contact Rick Kessler with the Committee staff at (202) 225-2927. We appreciate your cooperation and look forward to your timely response.

Sincerely,



Frank Pallone, Jr.
Chairman



Paul D. Tonko
Chairman
Subcommittee on Environment
and Climate Change



Diana DeGette
Chair
Subcommittee on Oversight
and Investigations

cc: The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce
The Honorable John Shimkus, Ranking Member, Subcommittee on Environment and Climate Change
The Honorable Brett Guthrie, Ranking Member, Subcommittee on Oversight and Investigations

Attachment A

List of EPA Officials for Document Requests

Office of the Administrator

- Administrator Andrew Wheeler
- Former Administrator Scott Pruitt
- Chief of Staff Ryan Jackson
- Former Deputy Chief of Staff Byron Brown
- Office of Policy Associate Administrator Brittany Bolen
- Former Office of Policy Associate Administrator Samantha Dravis
- Director of Public Liaison Amy Dewey

Office of Air and Radiation

- Assistant Administrator William Wehrum
- Senior Counsel to the Assistant Administrator David Harlow
- Deputy Assistant Administrator Clint Woods
- Former Principal Deputy Assistant Administrator and Former Senior Policy Advisor Mandy Gunasekara
- Emily Atkinson
- Josh Lewis
- Office of Air Quality Planning and Standards (OAQPS) Director Peter Tsirigotis
- OAQPS Associate Director Bill Harnett
- OAQPS Associate Director Mike Koerber
- OAQPS Air Quality Policy Division Associate Director Juan Santiago
- Former Deputy Assistant Administrator for Office of Research and Development Richard Yamada

Office of General Counsel

- General Counsel Matthew Leopold
- Principal Deputy General Counsel David Fatouhi
- Deputy General Counsel Justin Schwab
- Former Deputy General Counsel Erik Baptist