



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

DECISION REGARDING PETITION FOR RULEMAKING

On March 21, 2019, a Petition for Rulemaking (the “Petition”) by multiple organizations¹ was served on the Department of Insurance (“Department”) citing Government Code section 11340.6 as authority for the Petition. The Petition requests that Commissioner Ricardo Lara promulgate regulations “authorizing” the Department “to require all 1,300 insurance companies doing business in California to disclose all fossil fuel–related investments and underwriting of fossil fuel–related projects.” The Petition states that “instead of a periodic data call,” regulations are necessary “(1) to prevent any potential institutional, administrative, legal or legislative opposition; (2) to prevent unnecessary and dangerous delays in receipt of such information; and (3) to ensure that the Insurance Commissioner may enquire, follow-up, and effectively regulate the insurance industry in this evolving, climate-changing environment for all consumers.”

RELIEF REQUESTED

Petitioners urge the Department to promulgate emergency regulations requiring all insurers licensed in California to “disclose: (1) all their investments in fossil fuel–related entities, and (2) all the fossil fuel–related companies and projects that they underwrite or otherwise insure.”

AUTHORITY AND REFERENCE CITED IN THE PETITION

Petitioners cite California Government Code section 11340.6 and Insurance Code sections 730, 740, 900, 902, 11694, 12389(h), 12389.4, 12921(a) and 12922, as well as

¹ Consumer Watchdog, 1000 Grandmothers for Future Generations, 350 Bay Area, 350 Chico, 350 Conejo/San Fernando Valley, 350 Maine, 350 Silicon Valley, 350 South Bay Los Angeles, 350.org, 350 Marin, Alameda County Interfaith Climate Action Network, Amazon Watch, Asian Pacific Environmental Network, Avaaz, Azul, Bay Area-System Change not Climate Change, Beyond Extreme Energy, Bold Alliance, California Environmental Justice Alliance, Californians Against Fracking and Dangerous Drilling, Center for Biological Diversity, Center for International Environmental Law, ClientEarth, Climate Hawks Vote, Climate Resolve, Coalition for Clean Air, Communities for a Better Environment (CBE), Connecticut Citizens Action Group, Courage Campaign, Divest Invest, Earthworks, Filipino/American Coalition for Environmental Solidarity (FACES), Food & Water Watch, Fossil Free California, Fox Valley Citizens for Peace & Justice, Friends of the Earth U.S., Fundacja “Rozwój TAK - Odkrywki NIE,” Greenaction for Health and Environmental Justice, Greenpeace, Indivisible South Bay LA, Market Forces, Movement for a People’s Party, No Coal Alliance, No Coal in Oakland, No Coal in Richmond, No Coal Vallejo, Oil Change International, Presente.org, Public Citizen, Rainforest Action Network, Rootskeeper, San Francisco Baykeeper, Sierra Club California, SoCal 350 Climate Action, Stand.earth, SumOfUs.org, Sunflower Alliance, Sunrise Project, Sustainable Energy & Economy Network, urgewald, Waterkeeper Alliance (“Petitioners”).

Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805 and Proposition 103 generally.² Government Code section 11340.6 is part of California's Administrative Procedure Act (the "APA") found in Chapter 3.5 of Part 1, Division 3 of Title 2 of the California Government Code (Government Code sections 11340-11361).

THE COMMISSIONER'S DETERMINATION

The Commissioner declines to grant the Petition at this time. While the Commissioner shares the Petitioners' concerns about the effects of climate change and potential risks to consumers and insurance companies, the Petition only targets a single element of the much broader challenge of climate risk. The Commissioner is pursuing a much more comprehensive climate strategy, which will include incentivizing climate smart investments, and invites the Petitioners, consumers, and the insurance industry to work with him in realizing a comprehensive climate strategy.

REASONS SUPPORTING THE COMMISSIONER'S DETERMINATION

Commissioner Lara has developed strong, foundational climate and clean air policies throughout his career and will continue to lead on climate policy as the state's insurance regulator. The Commissioner will seek a comprehensive approach to climate risk mitigation built on analysis, innovation, and cohesive policies that bring insurers into the fight against climate change, not just intermittently, but in a sustained way – as he has in the fight to reduce super pollutant emissions^{3,4} and diesel pollution⁵, and prevent new offshore oil operations⁶.

Achieving a sustainable insurance sector in California that reduces climate risks will require innovative products to promote mitigation and adaptation, thoughtful assessment of physical and transition risks, collaboration with insurers and state regulators, expanding information on hazards throughout the state, and laws intended to implement effective policies.

Insurers are required to disclose investments publicly in their financial statements, and the Department has developed a methodology to identify and categorize the fossil fuel portion of those investments. The Department has a database that includes information regarding insurers' investments in fossil fuel-related entities. The Department also increased the utility of those data by partnering with collaborators to produce scenario

² Ins. Code § 1861.01 et seq. In addition, the following provisions of Proposition 103 are specifically referenced: Ins. Code § 1861.05, subs. (a)-(c); Ins. Code § 1861.07; and Ins. Code § 1861.10, subd. (a).

³ Senate Bill 605 (Lara), signed by Governor, Sept. 21, 2014 (2013-2014 Reg. Sess.); Senate Bill 1383 (Lara), signed by Governor, Sept. 19, 2016 (2015-2016 Reg. Sess.).⁴ Senate Bill 1013 (Lara), signed by Governor, Sept. 13, 2018 (2017-2018 Reg. Sess.).

⁴ Senate Bill 1013 (Lara), signed by Governor, Sept. 13, 2018 (2017-2018 Reg. Sess.).

⁵ Senate Bill 1204 (Lara), signed by Governor, Sept. 21, 2014 (2013-2014 Reg. Sess.).

⁶ Senate Bill 834 (Jackson & Lara), signed by Governor, Sept. 8, 2018 (2017-2018 Reg. Sess.).

analyses as recently as January 2019. Reducing fossil fuel production and climate pollutant emissions are crucial elements of a strategy for reducing future climate risks.

Petitioners also propose a rule to require insurers to disclose all fossil fuel–related companies and projects that they insure. But such a proposed rule alone will not effectively address the complex and historically-entrenched manner in which fossil fuels are utilized by businesses today. Instead, it is necessary to develop an approach that encourages the best ideas of climate-aligned businesses to break these harmful habits.

The Petition raises significant policy questions, beyond the insurance sector, that need further consideration to ensure that any new regulation is crafted carefully to maximize rather than frustrate an effective climate strategy. For example, if the public had the ability to review the policy limits and coverage of specific businesses, such information could be used for purposes inconsistent with climate goals by exposing and severely impairing a business’s internal strategies and efforts to transition from fossil-fuel energy to renewable energy. These questions together with other vexing policy concerns would surely benefit from broader consultation and collaboration between environmental advocates, international and state partners as well as insurers.

There is a strong need for broader collaboration between the Department, the insurance industry and our climate partners. Towards this end, upon taking the oath of office in January, Commissioner Lara established a Deputy Commissioner position for Climate and Sustainability, prioritizing climate policies, including the issues raised in the Petition. This will embed climate issues into the fabric of the Department, providing a mechanism for collaborative policy discussions and developing strategies that address climate change.

Based on the foregoing, the goals of the Petitioners with respect to climate mitigation and climate adaptation align with the goals of Commissioner Lara. Commissioner Lara invites Petitioners to join with him to develop a comprehensive climate strategy that will bring the California insurance industry into the 21st century as active partners in the fight against climate change.

AGENCY CONTACT PERSON

Bryant Henley, Deputy Commissioner & Special Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
916-492-3735

OBTAINING COPIES OF THE PETITION

Interested persons may obtain a copy of the Petition from the Agency Contact Person.

Dated: April 22, 2019



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

Consumer Watchdog
6330 San Vicente Blvd, Suite 250
Los Angeles, CA 90048

Dear Pamela Pressley and Michael Mattoch,

On March 21st, I received a petition signed by your organization regarding insurers' disclosure of fossil-fuel investments and today I responded to the petition by declining it. While we agree – fossil-fuel investments are counterproductive and we need to transition away from them – I believe a more comprehensive approach, including consideration of investments, is necessary to achieve the most effective and lasting response to climate change. And I am asking you to work with me in this effort.

I am committed to setting clear, measurable goals and policy shifts to reduce the emissions causing enhanced climate risks. Before my election as Insurance Commissioner, I partnered together with coalitions of environmental groups when I authored nation-leading legislation that reduced super pollutant emissions, prevented new offshore oil operations, and accelerated the transition away from diesel trucks, which are polluting the neighborhoods of predominantly working class communities of color like mine. But we did not accomplish it alone. In each case, we have brought industry to the table to recognize the threat and to have a common approach. Whether it was dairies, refrigerants, or trucking companies, we have found ways to work together towards a common goal.

We need to re-envision the insurance industry and work collaboratively to develop policies that align with our climate goals. Investments are part of the broader discussion, but not the totality of what we must consider. Meeting the targets set in international agreements requires a combination of innovating new products, such as those that have been used to promote green buildings, and collaborating with national and international partners. We need strategies that reduce climate risks in vulnerable areas, promote investments in natural infrastructure, and advance social equity. This is the type of comprehensive approach that will reorient the industry towards a pathway that meets the goals of recent international agreements, including the Paris Agreement, the Under2 Memorandum of Understanding, and the Kigali Amendment.

A national coalition is needed to make this effort a reality, and California can lead this effort. I represent California at the National Association of Insurance Commissioners, and I am engaging with other U.S. states to amplify the power of California policies. The California Department of Insurance began implementing the NAIC Insurer Climate Risk Disclosure survey in 2010, yet only a half-dozen states participate. The survey itself accomplishes some, but not all of the recommendations established by the Task Force on Climate-related Financial Disclosures, a leading international financial initiative supported by over 580 firms. Our efforts to communicate with industry about the overlap between the NAIC Insurer Climate Risk Disclosure survey and both international and national recommendations will provide leadership among U.S. Insurance Commissioners.

To reduce climate risk and achieve the targets of the Paris Agreement, companies need to reduce emissions and make climate smart investments. Therefore, we need the proper incentives to direct investing to address climate change and away from fossil fuels. We do ourselves a disservice if we understate the challenges inherent to this task. Fossil fuels are present throughout society, touching

businesses in their energy consumption, throughout their supply chains, and in their investments. International task forces have been working to produce a standard for climate-friendly investments and there is more work yet to be done. What constitutes a fossil fuel-related or non-fossil fuel-related entity? How does one identify utilities that have varying proportions of energy coming from a variety of sources? We need transitioning businesses to have the investment support to continue moving towards cleaner energy. As we learn more from our own experience and that of other financial regulators on the most effective investment principles, we can work together to set targets that allow us significant progress on this issue.

A comprehensive strategy includes incentivizing climate smart investments to accelerate emissions reductions. On my first day in office I established a Deputy Commissioner position for Climate and Sustainability, prioritizing climate policies, including the issues you raise. This will embed your issues into the fabric of the Department, providing a mechanism for collaborative policy discussions and developing strategies that address climate change. As Insurance Commissioner, I am also engaged and supportive of ongoing efforts to develop international standards for investing. California is part of the United Nations Sustainable Insurance Forum to identify the best disclosure practices in accordance with the recommendations of the Task Force on Climate-related Financial Disclosures. The California Department of Insurance has an existing Climate Risk Carbon Initiative database, providing a foundation of information on insurer investments from the past three years. The California Department of Insurance has also provided information for scenario analysis, providing a tool for understanding transition and physical risks related to insurer investments.

As I did with legislation strengthening clean truck standards and focusing state investments in clean heavy duty vehicles in SB 1204 (2014) and SB 1403 (2018), setting targets for super pollutant emissions reductions in SB 605 (2015), SB 1383 (2016) and SB 1013 (2018), developing super pollutant reduction incentive programs in SB 563 (2017) and SB 1013 (2018), and advocating for the largest investment in clean air in California's history in 2017, I will pursue a comprehensive and ambitious agenda that is aligned with climate and clean air targets. In 2015, few people were talking about the risks of super pollutants to climate change. Now, reducing super pollutant emissions is recognized as a critical component of the global response to climate, and we have drawn businesses to California that specialize in zero-emission trucks and buses.

When I was sworn in as Insurance Commissioner, I committed to create a pathway that brings the insurance industry into the fight against climate change and I remain committed today. Insurers have the capacity to fight climate change through innovative products, climate smart investments, and by bringing their risk management expertise to the table. This needs to be comprehensive and it needs to be collaborative. I invite you to come and work with me and the Department to achieve this goal. Please do not hesitate to reach out to Deputy for Climate and Sustainability Mike Peterson at 916-492-3735.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ricardo Lara', with a stylized, cursive script.

RICARDO LARA
Insurance Commissioner