



State Senator Liz Krueger  
Assembly Assistant Speaker Félix W. Ortiz

February 25, 2019

The Honorable Thomas P. DiNapoli  
Office of the New York State Comptroller  
110 State Street  
Albany, NY 12236

Dear Comptroller DiNapoli:

Thank you for your recent letter discussing the action your office has taken to address the climate crisis and your concerns about the bill we carry, the Fossil Fuel Divestment Act, to require the state Common Retirement Fund (CRF) to divest from the top two hundred fossil fuel producers. Climate change is the greatest threat currently facing humanity. As you point out, it creates risks and opportunities for our pension investments. We believe that divestment is an integral part of a broad strategy to address climate change, within both the narrow focus of an investment portfolio, and the broader global struggle.

The Fossil Fuel Divestment Act, S.2126/A.1536, would require your office to divest the CRF of all holdings in the two hundred largest publicly traded fossil fuel companies, known as the Carbon Underground 200 (CU 200). The legislation provides for a five-year timeframe for completion of oil and gas divestment in order to maximize financial flexibility, as well as a financial “safety valve” that permits your office to cease and/or reverse divestment if you can demonstrate significant loss of value to the CRF as a direct result of divestment.

Throughout the 20th Century, coal, oil, and gas were profitable investments. But the world is now beginning to realize that in order to avoid the worst effects of climate change, 85% of current fossil fuel reserves must stay in the ground. These reserves are a significant part of the valuation of fossil fuel companies. Therefore, the more action we take to prevent climate change, by, for example, passing the Climate and Community Protection Act or Governor Cuomo’s proposed Climate Leadership Act, the more rapidly the value of fossil fuel companies will drop, as their unneeded reserves become stranded assets weighing down their balance sheets. The impact of the clean-energy transition is already being felt by these companies, and the economics of renewable energy continues to develop in such a way as to threaten the hegemony of fossil fuels regardless of the actions taken by governments.

We entirely agree that you and your office have a fiduciary responsibility to manage the CRF in the best interests of members. However, you are in no way required to continue investing in any specific company or industry, particularly when there is a convincing case that the CRF would realize a better return by moving that money elsewhere.

Evidence that fossil fuel companies have become a bad investment is readily available. Leading fossil fuel-free investment indices have outperformed their fossil fuel-inclusive counterparts consistently over the last decade and more. Consider, for example, the MSCI ACWI Ex Fossil Fuels Index. This index is based on the MSCI All Country World Index, one of the main global equity indices, but it excludes companies that own oil, gas, and coal reserves. From its inception on November 30, 2010, to January 31, 2019, the MSCI ACWI Ex Fossil Fuels Index generated an 11.63% annualized gross return, versus a 10.91% return generated by the MSCI ACWI benchmark. Similarly, the S&P Global 1200 Fossil Fuels Free index generated an 8.2% return over the last five years, compared to 7.5% for its S&P Global 1200 benchmark.

While it is true that there have been periods during which fossil fuel indices have outperformed those without fossil fuel stocks, particularly during parts of the last century, fossil fuel stocks have not been a source of outperformance for at least the past ten years. More importantly, long-term trends toward a low-carbon economy do not suggest a repeat of any sustained fossil fuel boom similar to previous periods.

Although the report you referenced by Corporate Knights was necessarily produced without access to the CRF's detailed investment information, nevertheless it demonstrates the significant opportunity cost of the failure to divest. Their comparison of the CRF's actual portfolio versus an ex fossil fuels portfolio suggests an opportunity cost of \$22.2 billion over the last decade. Even if that number is off by half or more, the order of magnitude should still be of great concern.

In the face of such analysis, fiduciary duty would seem to require a serious consideration of a divestment strategy. That is the conclusion drawn by more than 1,000 institutions worldwide, including governments, faith-based organizations, philanthropic foundations, and pension funds with investments totaling over \$8 trillion that have committed to at least partial divestment. A small sample of the institutions involved in the divestment movement includes: the Teachers Retirement System of the City of New York, New York City Employees Retirement System, California Public Employees' Retirement System (CalPERS), California State Teacher's Retirement System; Pratt Institute, Union Theological Seminary, The New School, and Stanford and Syracuse Universities; the cities of Seattle, San Francisco, Portland, Minneapolis, and Ithaca; the World Council of Churches, and the United Methodist Church USA; Guardian Media Group, the Rockefeller Brothers and Family Funds, The Blumenthal Foundation; and the national sovereign wealth funds of Norway and Ireland.

You have stated on several occasions that you believe a policy of shareholder engagement is a more effective strategy than divestment to affect changes in the business practices of fossil fuel producers. However, although we recognize and applaud your success in using shareholder engagement with many companies to change corporate behavior related to

labor, governance, and environmental issues, we respectfully submit that your significant efforts to influence fossil fuel producers like those listed in the CU200 have not succeeded.

From 2000 to 2015, the oil and gas industry spent over \$3 trillion dollars in the U.S. alone to explore and tap new fuel reserves that can never be burned. In that same period, the industry invested just \$14.8 billion in renewable energy, representing just one half of one percent (0.5%) of total capital spending. In fact, since you took office in 2007, several of the largest CU 200 companies have reduced or ceased their minimal efforts to transition to alternative energy business models. Significantly, these companies also continue to fund efforts to spread climate science denial, and spend heavily on lobbying to prevent effective climate action at all levels of government. One of the largest holdings in the CRF, Exxon, is currently being sued by our own Attorney General for allegedly defrauding investors.

Beyond purely financial considerations, it is vital that New York State continue to lead the fight against climate change in every way possible. Fossil fuel divestment is one strategy among many that make up a holistic approach to addressing the climate crisis. Academic research suggests that divestment movements can have significant impact on companies through changes in market norms and the process of stigmatization. Stigmatization can impact enterprise value by discouraging engagement by business partners, employees, lenders, governments, politicians, etc, as well as leading to restrictive legislation. For example, the increased scrutiny tar sands have received as a result of divestment and allied stigmatization campaigns was a contributing factor in Exxon's decision to write down the value of its tar sands reserves. Peabody Energy, in their 2014 annual report, said this of the divestment movement: "the impact of such efforts may adversely affect the demand for and price of securities issued by us, and impact our access to the capital and financial markets." Shell now cites divestment as a major material risk to its current business model, one that could lead to project delays or cancellations and potentially affect its ability to access capital, and Goldman Sachs recently reported that divestment, "has been a key driver of the coal sector's 60% de-rating over the past five years."

We also believe that New York has a moral responsibility to take steps to avert the threat posed by climate change to the health, welfare and prosperity of all New Yorkers and all people on the planet. Profiting from investments in a business model that perpetuates climate change (or worse, losing money on those investments) is not morally acceptable and puts New York on the wrong side of history. Last year, regarding divestment from private prisons, you stated, "for nearly two decades, the fund has recognized private prisons is a controversial industry and restricted investments." When divesting from Sudan in 2007, you said, "I'm confident the members of the Retirement System do not want the pension fund to support governments that engage in genocide." The same is true about companies that put the future of our entire planet at risk.

You suggest in your letter that legislative action to require your office to divest from fossil fuels runs afoul of the State Constitution. However, based on our consultation with several experts, we are confident that the Fossil Fuel Divestment Act is on solid constitutional ground. According to the Constitution, the Legislature "shall define the powers and duties" of the Comptroller. The Comptroller's authority over the pension fund derives from legislative statute. That statute explicitly anticipates and provides for limitation of the comptroller's investment

discretion, stating that “the comptroller shall invest the available monies in any investments and securities authorized by law.” Currently, limitations are in place relating to the use of certain investment mechanisms, and your office has additionally placed limitations on investments in private prisons and companies that do business with Iran and Sudan.

In light of your concerns regarding legislative action, we once again urge you not to wait for the legislature to act: build on your record of financial prudence and climate leadership by beginning the necessary analyses that would give the CRF the option to divest. Such an action would provide you maximum flexibility in carrying out a multifaceted strategy, and put fossil fuel producers on notice that your efforts at engagement can no longer be dismissed without fear of consequences.

Thank you again for taking part in this important discussion. As we have made clear, we continue to believe that fossil fuel divestment is financially prudent, strategically effective, and morally imperative, and the most responsible reaction to the realities of climate change.

Sincerely,



Liz Krueger  
State Senator



Félix W. Ortiz  
Assembly Assistant Speaker

cc:  
Members of the New York State Senate and Assembly