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13 BEFORE THE INSURANCE COMMISSIONER
14 OF THE STATE OF CALIFORNIA

15 In the Matter of the Rate Application of
16
17 USAA Casualty Insurance Company,
18
19 Applicant.

File No.: 24-744

**CONSUMER WATCHDOG'S
PETITION FOR HEARING,
PETITION TO INTERVENE, AND
NOTICE OF INTENT TO SEEK
COMPENSATION**

[Ins. Code §§ 1861.05 and 1861.10; Cal.
Code Regs, tit. 10, §§ 2653.1, 2661.2
and 2661.3]

1 Consumer Watchdog hereby requests that the Insurance Commissioner notice a public
2 hearing pursuant to Insurance Code sections 1861.05, subdivisions (a) and (c), and 1861.10,
3 subdivision (a), on the issues raised in this petition regarding the above-referenced Rate
4 Application of USAA Casualty Insurance Company (“USAA Casualty” or “Applicant”), at
5 which time Applicant will be directed to appear and respond to the issues raised in this petition.
6 Consumer Watchdog also hereby requests that it be granted leave to intervene in the proceeding
7 on the Application. Consumer Watchdog intends to seek compensation in this proceeding, and,
8 pursuant to California Code of Regulations, title 10 (“10 CCR”), section 2661.3, subdivision (c),
9 Consumer Watchdog’s proposed budget is attached hereto as Exhibit A.

10 In support of its petition, Consumer Watchdog alleges:

11 **I. THE APPLICATION**

12 1. On or about March 27, 2024, Applicant filed a Rate Application with the
13 California Department of Insurance (“CDI”), seeking approval of an overall +19.8%
14 (\$689.3 million) rate increase (File No. 24-744 [“the Application”]) to its prior passenger auto
15 (“PPA”) line of insurance.

16 2. On or about April 19, 2024, the public was notified by the CDI of the Application.

17 **II. PETITIONER**

18 3. Petitioner Consumer Watchdog is a nonprofit, nonpartisan public interest
19 corporation organized to represent the interests of consumers and taxpayers. A core focus of
20 Consumer Watchdog’s advocacy is the representation of the interests of insurance consumers
21 and policyholders, particularly as they relate to the implementation and enforcement of
22 Proposition 103, in matters before the Legislature, the courts, and the CDI.

23 4. Consumer Watchdog’s founder authored Proposition 103 and led the successful
24 campaign for its enactment by California voters in 1988. Consumer Watchdog’s staff and
25 consultants include some of the nation’s foremost consumer advocates and experts on insurance
26 ratemaking matters.

27 5. Consumer Watchdog has served as a public watchdog with regard to insurance
28 rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements

1 and the status of the rollback regulations; reviewing and challenging rate filings made by insurers
2 seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI;
3 and educating the public concerning industry underwriting and rating practices, their rights under
4 Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and
5 intervened in actions in state court and appeared as amicus curiae in matters involving the
6 interpretation and application of Proposition 103 and the Insurance Code.¹

7 6. Consumer Watchdog has initiated and intervened in numerous proceedings before
8 the CDI related to the implementation and enforcement of Proposition 103's reforms, including
9 over 150 such proceedings in the last twenty years. In every proceeding that has resulted in a
10 final decision and in which Consumer Watchdog sought compensation from 2003–2022, the
11 Commissioner found that Consumer Watchdog made a substantial contribution, meaning that its
12 participation was separate and distinct from any other party and that it presented relevant issues,
13 evidence, and arguments that resulted in more credible, non-frivolous information being
14 available to the Commissioner in making his final decision.

15 **III. ISSUES AND EVIDENCE TO BE PRESENTED AND POSITIONS OF PETITIONER**

16 7. In the rate proceeding initiated by Consumer Watchdog's petition, Consumer
17 Watchdog will present and elicit evidence to show that the rates proposed in the Application are
18 excessive and/or unfairly discriminatory in violation of Insurance Code section 1861.05,
19 subdivision (a), which provides that "[n]o rate shall be approved or remain in effect which is
20 excessive, inadequate, [or] unfairly discriminatory." Additionally, Consumer Watchdog will
21 present and elicit evidence that Applicant's proposed rates violate 10 CCR § 2644.1, which
22
23

24 ¹ For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*
25 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243;
26 *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish*
27 *Speaking Citizens' Found. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Ins. Co.*
28 *(2004) 116 Cal.App.4th 968; State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th
1029; *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th
1354; *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029; *Mercury Cas. Co. v.*
Jones (2017) 8 Cal.App.5th 561; *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82; and *State*
Farm General Ins. Co. v. Lara (2021) 71 Cal.App.5th 197.

1 provides that “[n]o rate shall be approved or remain in effect that is above the maximum
2 permitted earned premium as defined in section 2644.2.”

3 8. Based on Consumer Watchdog’s preliminary analysis in consultation with its
4 actuarial expert and the information contained in the Application, Consumer Watchdog has
5 identified the following issues with the Application on which it intends to present and elicit
6 evidence as set forth in (a)–(d) below. Each of these issues is directly relevant to determining
7 whether Applicant’s proposed rate increase is excessive under Insurance Code section
8 1861.05(a). Consumer Watchdog intends to request further information on these issues through
9 informal/formal discovery from the Applicant and reserves the right to develop and refine its
10 positions as more information is made available.

11 a) Loss and Premium Trends (10 CCR § 2644.7): Consumer Watchdog’s current
12 position, to the extent now known, is that Applicant’s frequency and severity trend
13 selections result in excessive net trends which overstate the projected losses, causing
14 an inflated rate indication. Consumer Watchdog’s preliminary analyses indicate a
15 much lower rate need, particularly for Bodily Injury and Collision. Applicant’s Filing
16 Memorandum states, “We chose to use total paid claims since it was readily available
17 and commonly used. Closed claims were selected because they are most closely
18 related to paid claims . . . We then used these [quarterly loss ratios] to select the most
19 appropriate of the five point fits (8, 12, 16, 20, and 24) allowed by Regulation
20 2644.7.” These statements do not provide support for the actuarial soundness of
21 Applicant’s trend selections beyond the opinion that they are the “most appropriate”.
22 Consumer Watchdog’s preliminary analysis shows that lower trend factors, reflecting
23 the latest data but also incorporating additional historical experience, are more
24 reasonable and actuarially sound. This analysis produces an overall rate indication
25 that is substantially lower than the 19.8% rate increase proposed by Applicant. Based
26 on these findings, Applicant does not fully support the assertion that the selected
27 trend factors are the most actuarially sound.

- 1 b) Improper Loss Development (10 CCR § 2644.6): Applicant has used the combined
2 loss & DCCE incurred development method in this filing. Given that pure loss
3 develops quite differently from DCCE for this book of business (e.g., 12-Ult LDF of
4 9.575 for paid BI pure loss and 39.109 for paid BI DCCE), the development patterns
5 should be analyzed separately to properly estimate the ultimate values. Applicant has
6 failed to justify the use of combined Loss and DCCE in its analysis of development
7 patterns.
- 8 c) Improper Loss Development (10 CCR § 2644.6): Applicant uses incurred loss
9 development in the rate templates. For Uninsured Motorists, the developed incurred
10 losses are 36% higher than the developed paid losses for the most recent year. For
11 Bodily Injury, the developed incurred losses are 24% higher than the developed paid
12 losses for the most recent year. Applicant fails to explain why there is such a large
13 difference between paid and incurred development. Nor does it demonstrate that the
14 much higher incurred development method is the most actuarially sound.
- 15 d) Improper / Unsupported Excluded Expenses (10 CCR § 2644.10): Applicant has not
16 shown that the sum of the institutional advertising expenses listed on page 4.1 of the
17 Prior Approval Rate Template, \$8,125,505, is appropriate. Consumer Watchdog's
18 current position, to the extent now known, is that Applicant has failed to provide
19 sufficient information in the filing to support its claim that less than 1% of advertising
20 expenses over the last three years have been institutional. Per the regulation:
21 "Institutional advertising' means advertising not aimed at obtaining business for a
22 specific insurer and not providing consumers with information pertinent to the
23 decision whether to buy the insurer's product." It seems highly unlikely that less than
24 1% of Applicant's advertising expenses were for institutional advertising over the last
25 three years. Further, Consumer Watchdog notes that the three-year total non-
26 institutional advertising amount from page 4.1, \$1,193,958,362, is identical between
27 the three USAA-affiliated companies that recently filed rate applications for Auto
28 (Garrison, USAA, and USAA Casualty). It is questionable that the exact same

1 amount would have been spent for each of the three companies, since non-
2 institutional advertising is defined in the regulation as advertising that is aimed at
3 obtaining business for a specific insurer. Based on the information currently available
4 in the Application, and subject to review of additional information that may be
5 obtained from Applicant during the proceeding through formal or informal discovery
6 on these and other excluded expenses items, it is Consumer Watchdog's position that
7 Applicant has not proven that its three-year average excluded expense ratio of 0.1%
8 shown on page 4.2 of the Prior Approval Rate Template is appropriate. Applicant has
9 not provided examples of non-institutional advertising in accordance with the above-
10 referenced regulation and with the CDI's Prior Approval Rate Filing Instructions.
11 Consumer Watchdog reserves the right to seek discovery and raise additional issues
12 regarding the accuracy of the amounts listed in page 4.2 of the Prior Approval Rate
13 Template for other categories of excluded expenses that should be reflected in the rate
14 calculation but may not be adequately reflected in the filing, including political
15 contribution and lobbying expenses, excessive executive compensation, bad faith
16 judgments and associated DCCE, costs of unsuccessful defense of discrimination
17 claims, and fines and penalties.

18 9. This petition is based upon Consumer Watchdog's preliminary analysis of the
19 Application. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add
20 issues for consideration as more information becomes available, including but not limited to
21 violations of Insurance Code section 1859 if it is discovered during the course of the proceeding
22 that Applicant has willfully withheld information from, or knowingly given false or misleading
23 information to, the Commissioner or to any rating organization, advisory organization, insurer or
24 group, association, or other organization of insurers that will affect its rates, rating systems, or
25 premiums that are the subject of this filing.

26 **IV. AUTHORITY FOR PETITION AND GRANTING REQUEST FOR A HEARING**

27 10. The authority for this petition for hearing is Insurance Code section 1861.10,
28 subdivision (a), which grants "any person" the right to initiate or intervene in a proceeding

1 permitted or established by Proposition 103 and the right to enforce Proposition 103.
2 Specifically, as stated above, Consumer Watchdog initiates this proceeding to enforce Insurance
3 Code section 1861.05 and the Commissioner’s regulations.

4 11. Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05,
5 subdivision (c), which allows “a consumer or his or her representative” to request a hearing on a
6 rate application and 10 CCR § 2653.1, which provides that “any person, whether as an
7 individual, representative of an organization, or on behalf of the general public, may request a
8 hearing by submitting a petition for hearing.”

9 12. This petition is timely pursuant to Insurance Code section 1861.05, subdivision
10 (c), and 10 CCR § 2646.4(a)(1) because it is filed within forty-five (45) days of the April 19,
11 2024 public notice date.

12 **V. INTEREST OF PETITIONER**

13 13. Consumer Watchdog’s interest in the above-captioned proceeding is to ensure that
14 Applicant’s automobile insurance policyholders are charged rates and premiums that comply
15 with the provisions of Insurance Code section 1861.05(a)’s requirement that “no rate shall be
16 approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or
17 otherwise in violation of this chapter,” and the requirements contained in the regulations
18 promulgated thereunder. Pursuant to state law, drivers are required to purchase automobile
19 insurance. Consumers who are overcharged by insurers for this insurance coverage are part of
20 Consumer Watchdog’s core constituency. The specific issues and positions to be taken by
21 Consumer Watchdog in this proceeding, to the extent known at this time, are set forth in
22 paragraphs 8(a)–(d) *supra*.

23 14. As noted in paragraphs 3–6 *supra*, Consumer Watchdog’s staff and consultants
24 have substantial experience and expertise in insurance rate matters, which Consumer Watchdog
25 believes will aid the CDI in its review of the Application and aid the Commissioner in making
26 his ultimate decision as to whether to approve or disapprove the requested rate. As noted in
27 paragraph 6 above, the Commissioner has found that Consumer Watchdog has made a
28 substantial contribution to his decisions in every rate proceeding that has resulted in a final

1 decision and in which Consumer Watchdog sought compensation from 2003–2022. If leave to
2 intervene is granted, Consumer Watchdog will participate fully in all aspects of this proceeding.

3 15. Consumer Watchdog also has an interest in ensuring that Applicant, the CDI, and
4 the Insurance Commissioner comply with the laws enacted by the voters under Proposition 103,
5 and the rules and regulations that implement those laws, including that all information submitted
6 to the CDI in connection with the Application is made publicly available.

7 **VI. AUTHORITY FOR PETITION TO INTERVENE**

8 16. The authority for Consumer Watchdog’s petition to intervene is Insurance Code
9 section 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in
10 any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division
11 1 of the Insurance Code] . . . and enforce any provision of this article.” This proceeding is a
12 proceeding to enforce Insurance Code section 1861.05 pursuant to Insurance Code section
13 1861.10(a), and hence is a proceeding both “permitted” and “established” by Chapter 9. Per the
14 voters’ instruction, the mandatory right to intervene under section 1861.10(a), like all the
15 provisions of Proposition 103, must be “liberally construed and applied in order to fully promote
16 its underlying purposes.” (Prop. 103, § 8.) Thus, section 1861.10 must be interpreted and applied
17 broadly in a manner to fully encourage consumer participation. (*Ibid.*; see also *Ass’n of*
18 *California Ins. Cos. v. Poizner, supra*, 180 Cal.App.4th at 1052 [stating “the goal of fostering
19 consumer participation in the administrative rate-setting process” as “one of the purposes of
20 Proposition 103”].) The broad intervention standard enacted by section 1861.10 ensures that
21 consumers will be able to participate in proceedings *independently of the CDI staff* who may take
22 different positions or emphasize different issues in the proceeding, and with all rights accorded
23 to any other party, including the right to raise additional issues and/or violations as they become
24 known during the course of the proceeding through informal or formal discovery.

25 17. This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. In
26 compliance with 10 CCR § 2661.3, the specific issues to be raised and positions to be taken by
27 Consumer Watchdog, *to the extent known at this time*, are set forth in paragraph 8, *supra*. Each
28 of these issues relate directly to specific standards and requirements under the ratemaking

1 formula at 10 CCR § 2644.1 et seq. and thus are directly relevant to ultimately determining
2 whether Applicant's requested rate is excessive or otherwise unjustified. Although consumer
3 presence in departmental proceedings typically results in significant reductions to policyholders'
4 rates, the amount of savings for each individual consumer is outweighed by the time and expense
5 of hiring individual counsel or an advocacy group to protect his or her rights. Thus, an
6 independent organization like Consumer Watchdog introduces a voice that otherwise would be
7 absent from this proceeding.

8 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

9 18. Consumer Watchdog verifies, in accordance with 10 CCR § 2661.3, that it will be
10 able to attend and participate in this proceeding without unreasonably delaying this proceeding
11 or any other proceedings before the Insurance Commissioner.

12 **VIII. INTENT TO SEEK COMPENSATION**

13 19. The Commissioner has awarded Consumer Watchdog compensation for its
14 reasonable advocacy and witness fees and expenses in past departmental proceedings. The
15 Commissioner issued Consumer Watchdog's latest Finding of Eligibility on July 26, 2022,
16 effective for two years as of July 12, 2022. Consumer Watchdog was previously found eligible to
17 seek compensation on August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14,
18 2016; July 24, 2014; July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004;
19 June 20, 2002; October 1, 1997; September 26, 1995; September 27, 1994; and September 13,
20 1993.

21 20. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to
22 10 CCR § 2661.3(c), Consumer Watchdog's estimated budget in this proceeding is attached
23 hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors
24 including: (1) the technical and legal expertise needed to address these issues; (2) its current best
25 estimate of the time needed to participate effectively in these proceedings, taking into account
26 the time already expended by Consumer Watchdog's legal and actuarial staff and an estimate of
27 time needed to complete remaining tasks through completion of a noticed evidentiary hearing;
28 and (3) past experience in similar rate proceedings before the CDI. The estimated budget is

1 reasonable and the staffing level is appropriate, given the expertise that Consumer Watchdog and
2 its consultants bring to these proceedings when the issues involved are issues at the very core of
3 its organizational mission and strike at the very heart of Proposition 103 itself. The budget
4 presented in the attached Exhibit A is a preliminary estimate, and Consumer Watchdog reserves
5 the right to amend its proposed budget as its expenses become more certain, or in its request for
6 final compensation. Consumer Watchdog will give notice of such modifications as soon as
7 practicable after it discovers the need to revise its estimates and shall comply with the budget
8 revision requirements in the relevant intervenor regulations.

9 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance
10 Commissioner GRANT its petition for hearing and petition to intervene in the proceeding,
11 having all rights and responsibilities accorded any other party to the proceeding.

12
13 DATED: June 3, 2024

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Benjamin Powell
CONSUMER WATCHDOG

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17 By:  _____
18 Benjamin Powell
19 Attorneys for CONSUMER WATCHDOG
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**EXHIBIT A
PRELIMINARY BUDGET**

ITEMS

ESTIMATED COST

1. Consumer Watchdog Attorneys and Paralegal

Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 100 hours \$59,500

- Draft and edit petition for hearing and petition to intervene; supervise Consumer Watchdog counsel; oversee preparation of motions, briefing; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant’s counsel; assist in all phases of proceeding, evidentiary hearing, and preparation of post-hearing briefing.

Benjamin Powell (Staff Attorney) @ \$350 per hour, 200 hours \$70,000

- Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicant’s counsel; participate in briefing legal issues; conduct discovery, preparation of motions, and preparation for evidentiary hearing; participate in examination of witnesses and all phases of evidentiary hearing and post-hearing legal briefing; prepare request for compensation.

Kaitlyn Gentile (Paralegal) @ \$200 per hour, 50 hours \$10,000

- Draft and edit petition for hearing and petition to intervene; assist with discovery and preparation of motions and briefs; prepare request for compensation.

Harvey Rosenfield (Of Counsel) @ \$695 per hour, 15 hours \$10,425

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

2. Expert Witness: Ben Armstrong

Ben Armstrong, Staff Actuary @ \$425 per hour, 100 hours \$42,500

- Staff actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurer’s expert witnesses.

3. Consumer Watchdog Expenses

Office expenses (photocopies, facsimile, telephone calls, postage, etc.)\$2,000

Travel (ground transportation; airfare; hotel)\$5,000

Consumer Watchdog Subtotal\$199,425

4. Expert Witness: AIS Risk Consultants, Inc.

Allan I. Schwartz, President of AIS Risk Consultants @ \$915 per hour, 50 hours \$45,750

- Consulting actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurers' expert witnesses.

TOTAL ESTIMATED BUDGET:

\$245,175

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