

1 **BEFORE THE INSURANCE COMMISSIONER**
2 **OF THE STATE OF CALIFORNIA**

3
4 In the Matter of the Requests for
5 Compensation of:

File Nos. RFC-2023-015
RFC-2024-001
RFC-2024-002
RFC-2024-003
RFC-2024-004
RFC-2024-005

6
7 CONSUMER WATCHDOG,

8 **ORDER GRANTING REQUEST FOR**
9 **RECONSIDERATION OF DECISIONS**
10 **AWARDING COMPENSATION**

11
12 Intervenor.

13 The above-entitled matter consists of six separate decisions awarding compensation
14 (collectively, Decisions) by the Insurance Commissioner of the State of California
15 (Commissioner), through the Chief Administrative Law Judge of the Administrative Hearing
16 Bureau (AHB), on October 18, 2024 to Intervenor Consumer Watchdog (Watchdog) for its role
17 as an intervenor in rate change applications with the Department of Insurance (Department).¹ On
18 or about November 4, 2024, the Department’s Rate Enforcement Bureau (REB) in the Legal
19 Branch filed a request for reconsideration pursuant to Gov. Code section 11521, and Title 10 of
20 the California Code of Regulations, section 2659.1.²

21 **BACKGROUND**

22 The Decisions at issue concern six of Watchdog’s individual requests for compensation
23 pursuant to Insurance Code section 1861.10(b), and 10 CCR sections 2661.1 and 2662.3 et seq.
24 Proposition 103 allows for public participation through consumer intervention. Any person who
25 “represents the interests of consumers” and intends to raise any issue relevant to a rate proceeding
26 is permitted to intervene.³ Recognizing the importance of public participation, Proposition 103

27 ¹ AHB issued a seventh decision on October 18, 2024, Case No. RFC-2024-006. REB filed a request for
28 reconsideration in that matter on November 12, 2024, but that matter is not included in the instant Order.

² All further references to regulations are to Title 10 of the California Code of Regulations.

³ Ins. Code section 1861.10 states in relevant part:

1 authorized the award of certain costs, expenses, and reasonable attorneys’ fees to an intervenor
 2 who makes a “substantial contribution” to a rate decision.⁴ The Commissioner has the authority to
 3 award these fees based on a finding that an intervenor has made a “substantial contribution.”⁵
 4 Requests for compensation should be reviewed within ninety (90) days after submission under 10
 5 CCR sections 2662.5 and 2662.6.

Insurer	AHB Case No.	Request for Compensation	Date Decision Issued
Garrison/USAA	RFC-2023-015	5/5/23	10/18/24
Allstate Northbrook	RFC-2024-001	1/10/24	10/18/24
Pacific Spec. Preferred	RFC-2024-002	1/17/24	10/18/24
State Farm General	RFC-2024-003	12/5/23	10/18/24
State Farm	RFC-2024-004	1/29/24	10/18/24
State Farm	RFC-2024-005	2/24/24	10/18/24

13 Decisions on each of these six requests for compensation were not issued until
 14 October 18, 2024, which is beyond the time provided under the applicable regulations. This was
 15 not raised as an issue by any of the parties. In fact, the basis for the instant request for
 16 reconsideration is not that AHB granted Watchdog’s requests for compensation. REB requests the
 17 Commissioner to reconsider the Decisions because the Decisions raise questions about the
 18 manner in which parties handle and informally resolve applications for rate increases. REB
 19 contends the Decisions contain improper opinions regarding longstanding Department practices
 20 to resolve such disputes, and further, the Decisions cite to improper law and facts in support of
 21 such opinions. As explained below, the Commissioner agrees with REB and grants the request for
 22 reconsideration on this basis. Granting REB’s request for reconsideration will not affect the

24 (a) Any person may initiate or intervene in any proceeding permitted or established pursuant to
 25 this chapter, challenge any action of the commissioner under this article, and enforce any
 provision of the article.

26 (b) The commissioner or a court shall award reasonable advocacy and witness fees and
 27 expenses to any person who demonstrates that (1) the person represents the interests of
 consumers, and, (2) that he or she has made a substantial contribution to the adoption of any
 order, regulation, or decision by the commissioner or a court.

28 Also see 10 CCR sections 2661.2, 2661.3(g).

⁴ Ins. Code section 1861.10(b); 10 CCR section 2661.1(a), (d), (k), (l).

⁵ Ins. Code section 1861.10(b); 10 CCR section 2662.6.

1 granting of Watchdog’s requests for compensation, or the amounts awarded to Watchdog for their
2 participation in the rate applications at issue.

3 **LEGAL STANDARD**

4 Gov. Code section 11521(a), provides that an “agency itself may order a reconsideration
5 of all or part of the case on its own motion or on petition of any party...If additional time is
6 needed to evaluate a petition for reconsideration filed prior to the expiration of any of the
7 applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely
8 for the purpose of considering the petition.” 10 CCR section 2659.1 affirms that petitions for
9 reconsideration of the Commissioner’s decisions shall be provided within the time set forth under
10 Gov. Code section 11521.

11 **DECISION AND ANALYSIS**

12 **1. Overview of Department’s Procedure for Handling an Intervened Rate Change
13 Application and Subsequent Request for Intervenor Compensation**

14 Pursuant to Department regulations, an intervenor submits a request for compensation to
15 the Public Advisor under 10 CCR section 2662.3. The request for compensation is then forwarded
16 to AHB for review and preparation of a draft decision that meets the requirements of 10 CCR
17 sections 2662.5 and 2662.6. The draft decision would then be forwarded to the Commissioner or
18 a Department official delegated by the Commissioner to decide such requests, and a final
19 determination would be issued.

20 Here, the basis for Watchdog’s requests for compensation in each of the cases stem from
21 their participation in a rate change application. Proposition 103 provides for public participation
22 and intervention in the rate review process. In each of the six separate cases at issue, the parties –
23 the Department, Watchdog, and the insurer – resolved the requested rate change application
24 without a need for a formal hearing, and settled the matter through a signed stipulation between
25 all the parties, as allowed under 10 CCR section 2656.1(a). When the parties settle, the settlement
26 stipulation is posted on the Department’s public website and the new agreed-upon rates then take
27 effect. The intervenor – Watchdog – can then submit a request for compensation to the Public
28 Advisor within the Department.

1 The procedure described above is explained in a Department Advisory Notice titled
2 “Rate Increase Applications Which Exceed the Statutory Thresholds Set Forth in California
3 Insurance Code Section 1861.05(c)(3),” dated February 18, 2005 (Advisory Notice), issued
4 under then-Insurance Commissioner John Garamendi.⁶ Where a rate increase sought exceeds
5 the threshold of 7% for personal lines or 15% for commercial lines listed in Insurance Code
6 section 1861.05(c) (such as in these Decisions), and an intervenor has requested a hearing, the
7 Department will initiate joint discussions among the parties to discuss the rate application. If the
8 parties agree to a specific rate change, the insurer may then amend its rate application to request
9 the agreed-upon change. If the parties do not agree to a specific rate change, then the parties
10 may either proceed with a formal noticed hearing, or the insurer may withdraw the rate
11 application. This resolution process was set forth in the above-referenced Advisory Notice, and
12 affirmed by the appellate court in *Association of California Ins. Co. v. Poizner* (2009) 180
13 Cal.App.4th 1029, 1051: “The regulations thus permit the Commissioner to adopt an order or
14 decision on a rate change application based on an approved settlement and without holding a
15 formal rate hearing.”

16 The parties followed the longstanding procedures described above. None of the parties
17 involved in the rate hearing process raised issues with the procedures, the ensuing settlement, or
18 the Commissioner’s approval of the settlement stipulation. In fact, when AHB requested
19 additional briefing from the parties regarding the proposed settlement, Watchdog asserted the
20 following:

21
22 [T]he Parties followed CDI’s long-standing practice to resolve this proceeding by
23 executing a three-way settlement stipulation prior to the issuance of a Notice of
24 Hearing or other order referring the matter to AHB; the Applicant then amended its
25 rate application to request the agreed-upon rates; the application was approved by
26 the Insurance Commissioner pursuant to his authority under Insurance Code section
27 1861.05; and the rate proceeding was concluded by the withdrawal of Consumer
28 Watchdog’s Petition for Hearing. **This process has been followed by the CDI for
over two decades to resolve challenges by consumer representatives to
applications under Section 1861.05 when a three-way settlement is reached**

⁶ This Advisory Notice can be found on the Department’s public website at
<https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/Advisory-Notice-February-18-2005.pdf> .

1 **prior to any notices or order referring the matter to AHB.** There is no cause at
2 this juncture for AHB to reopen the instant rate proceeding to issue a proposed
3 decision on a stipulation regarding an application that has already been approved by
the Commissioner and implemented by the company.

4 (Emphasis added.) (Consumer Watchdog’s Response to AHB’s Order for Additional Briefing in
5 Case No. RFC-2024-001; p. 1:10-21.)

6 None of the parties in these matters – the Department, the insurer, or Watchdog – raised
7 an issue as to the procedures described above. Yet, AHB’s Decisions call these procedures into
8 question. What this raises for the Commissioner is that clarification on this process beyond an
9 Advisory Notice is needed.

10 **2. REB’s Request for Reconsideration**

11 REB filed the present request for reconsideration on or about November 4, 2024 on
12 essentially three grounds: (1) the Decisions contain multiple improper advisory opinions
13 regarding Proposition 103; (2) portions of the Decisions conflict with previous published
14 regulatory guidance from the Department; and (3) the Decisions contain erroneous interpretations
15 of the law. (REB’s Request for Reconsideration, p. 1.)

16 REB takes issue with those portions of the Decisions that call into question the
17 Department’s longstanding practices of resolving intervened rate change applications where there
18 is no formal notice of hearing. As discussed above, none of the parties previously raised any
19 issues with regard to the Department’s handling of rate change applications involving a public
20 participant. To the extent that the Decisions raise such issues, such explanation was unnecessary
21 in the determination of Watchdog’s requests for compensation. Similarly, to the extent the
22 Decisions seek to interpret Proposition 103 or applicable statutes and regulations in a manner
23 which conflict with the law, such explanation is also unnecessary in determining Watchdog’s
24 requests for compensation.

25 **3. Consumer Watchdog’s Opposition to Request for Reconsideration**

26 Watchdog responded to REB’s request on November 5, 2024, urging the Commissioner to
27 deny the request for reconsideration. While Watchdog’s response fails to address alleged errors in
28 the facts and law cited in REB’s request for reconsideration, it notes that “compliance with

1 Proposition 103’s protections against price gouging need not delay the proper resolution of
2 insurance companies’ requests for rate increases.” Watchdog also contends that disturbing the
3 Decisions would “undermine the integrity of the agency, the authority and independence of the
4 administrative law judges, and the laws [the Commissioner is] required to uphold.”

5 However, the issue in these Decisions is not about complying with Proposition 103’s
6 mandate that the Commissioner ensures that California insurance rates are not “excessive,
7 inadequate, or unfairly discriminatory” or the delay of insurers’ requests for rate increases. These
8 Decisions involve Watchdog’s requests for compensation. In the rate review application at the
9 heart of each of Watchdog’s requests for compensation, Watchdog intervened in the rate change
10 application, participated in the process, and agreed to each and every increase requested by
11 insurers, which was then approved in a stipulated settlement signed by Watchdog, the Department
12 and the insurer. When asked by AHB to comment on the procedure in the settlement of these rate
13 change applications, Watchdog asked the Court not to interfere and to abide by long-standing
14 practices by the parties in reaching a settlement stipulation.

15 Watchdog objects to the extent the Decisions or REB’s request for reconsideration
16 “undermines” the public’s statutory right to participate in rate hearings or challenge unlawful
17 practices of insurance companies. Again, this was not an issue raised in the Decisions or REB’s
18 request for reconsideration. The Decisions grant Watchdog’s requests for compensation based on
19 their participation in an insurer’s application for a rate change. As Watchdog explains in each
20 request for compensation, Watchdog intervened in an insurer rate change application, participated
21 in, and ultimately agreed to and settled upon a rate increase for the insurer. Based upon its
22 participation, Watchdog seeks to recover compensation. In each of the Decisions issued on
23 October 18, 2024, Watchdog’s requests for compensation were granted.

24 Regarding these Decisions, the Commissioner notes it is unacceptable that the Decisions
25 on the requests for compensation were issued well beyond the ninety days provided for under the
26 regulations. Even though Watchdog never formally raised this as an issue, the Commissioner
27 supports public participation in the rate application process as provided under Proposition 103,
28 and seeks to hold his Department accountable for meeting the timelines set forth under applicable

1 statutes and regulations.⁷ Public participants should not have to wait nearly a year to receive
2 compensation for their participation in the rate review process.

3 **4. Insurer Responses to REB’s Request for Reconsideration**

4 On November 13, 2024, the Commissioner received a letter from the Personal Insurance
5 Federation of California, the Pacific Association of Domestic Insurers, American Property
6 Casualty Insurance Association and National Association of Mutual Insurance Companies (the
7 Trades) urging him to reject those portions of the Decision that stray beyond the granting of
8 Watchdog’s request for compensation. The Trades contend that the Decisions seek to require rate
9 applications that have been resolved absent a noticed hearing to follow the same procedures even
10 though it is contrary to longstanding practices, and inconsistent with the law. In light of the
11 present insurance crisis where California seeks to improve delays in rate review and approval,
12 adding the additional requirement that settlement stipulations must be approved by AHB – a
13 requirement that has never existed and is not mandated by law – would delay an already extended
14 process to the detriment of the insurance market.

15 On November 14, 2024, Allstate Northbrook Indemnity Company (Allstate) submitted a
16 petition for reconsideration of the Decisions, along with a joinder of REB’s request for
17 reconsideration. Allstate notes that the Decisions improperly question the longstanding guidance
18 followed for decades pursuant to the Advisory Notice that encourages parties to settle rate
19 disputes without the burden and cost of formal adjudicatory proceedings. Further, Allstate notes
20 that AHB has no authority over a matter in which no notice of hearing was issued. Hence, Allstate
21 asks that the Commissioner reaffirm the appropriateness of the procedures followed by the parties
22 in settling the underlying rate dispute.

23 That same day, State Farm General Insurance Company, and State Farm Mutual
24 Automobile Insurance Company (collectively, State Farm), also submitted a petition for
25 reconsideration. State Farm contends AHB seeks to usurp the Commissioner’s authority in
26 approving submitted rate applications, and that AHB is limited to issuing proposed adjudicatory

27 ⁷ While Watchdog did not formally raise the issue regarding the passing of the deadline in which these
28 Decisions were due, Watchdog reached out to Department representatives informally, and the Department
takes note to address this issue moving forward.

1 decisions whereas the Decisions at issue appear to be final. State Farm contends that AHB does
2 not have the authority to issue a final decision in the name of the Commissioner, and does not
3 have the authority to overrule a rate approval issued by the Commissioner. Attempts to follow the
4 unsupported procedure set forth in the Decisions should be rejected.⁸

5 On November 15, 2024, USAA Casualty Insurance Company, on behalf of Garrison
6 Property and Casualty Insurance Company, sent a letter to Commissioner Lara in support of
7 REB's request for reconsideration because the Commissioner has the authority to manage rate
8 applications through settlement stipulations, and to continue adherence to the process followed by
9 the Department, intervenors, and insurers for the past twenty years, which allow for informal
10 resolution of rate applications. To allow otherwise would result in adding additional length to an
11 already lengthy process required for rate approval.

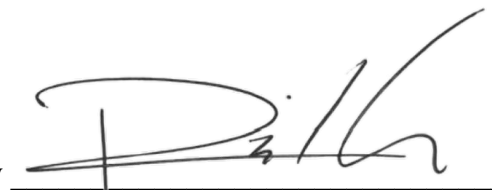
12 **CONCLUSION AND ORDER**

13 Based on the foregoing, REB's request for reconsideration is granted pursuant to Gov.
14 Code section 11521(a). The Commissioner vacates the Decisions issued by AHB on
15 October 18, 2024 without prejudice, and will re-issue those Decisions authorizing payments to
16 Consumer Watchdog and striking out the portions of dicta which (1) contain improper advisory
17 opinions regarding Proposition 103, (2) conflict with longstanding Department policies and
18 procedures, and (3) contain erroneous legal interpretations by December 6, 2024.

19 **IT IS SO ORDERED.**

20
21 DATED: November 25, 2024

22
23 By



24 RICARDO LARA
25 Insurance Commissioner

26
27 _____
28 ⁸ State Farm notes that Watchdog seeks to now submit settlements to AHB, despite the fact that it is
contrary to the procedures followed by all parties for over the past twenty years, and for which no
authority exists for such procedure.