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Allstate Northbrook Indemnity Company

11 **BEFORE THE INSURANCE COMMISSIONER**

12 **OF THE STATE OF CALIFORNIA**

13
14 In the Matter of the Requests for Compensation of

15 CONSUMER WATCHDOG,

16 Intervenor.

File No.: RFC-2024-001

17 **ALLSTATE NORTHBROOK**
18 **INDEMNITY COMPANY'S PETITION**
19 **AND JOINDER IN PETITION BY RATE**
20 **ENFORCEMENT BUREAU FOR**
21 **RECONSIDERATION OF DECISION IN**
22 **THE MATTER OF THE REQUEST FOR**
23 **COMPENSATION BY INTERVENOR**
24 **CONSUMER WATCHDOG**

*In the Matter of the Rate Application of
Allstate Northbrook Indemnity Company*

Rate Application No. 23-1442 (RFC-2024-
0001)

1 **I. INTRODUCTION**

2 Allstate Northbrook Indemnity Company (“Allstate”) petitions the Commissioner to
3 reconsider and modify¹ the decision granting compensation to Consumer Watchdog, issued on October
4 18, 2024, in RFC-2024-001 (the “Decision”), by the Administrative Hearing Bureau (“AHB.”)
5 Allstate joins the Rate Enforcement Bureau (“REB”) Petition in requesting a stay in the application of
6 the Decision to pending and future rate matters; and further requests the Commissioner to expressly
7 reaffirm the appropriateness of the procedures followed by the parties in settling the underlying rate
8 dispute.²

9 **II. ANALYSIS**

10 The Decision questions the longstanding guidance followed for decades by insurers, consumer
11 intervenors and REB under the Commissioner’s Advisory Notice dated February 18, 2005, (“Advisory
12 Notice”),³ that encourages parties to settle rate disputes without the burden and cost of formal
13 adjudicatory proceedings. After more than two decades, the Decision suddenly and stunningly
14 suggests that rates approved by the Commissioner under this guidance are improper and might be open
15 to collateral attack because the parties did not file the settlement for review by the AHB under 10 CCR
16 §2656.1 of the Commissioner’s regulations.

17 The brief submitted by REB addresses many of the errors in the Decision. Allstate joins in the
18 arguments made by REB. Allstate’s Petition seeks to raise an additional fundamental error
19 undermining the Decision’s analysis. Specifically, the Decision fails to provide support for the AHB’s
20
21

22 ¹ This Petition is submitted pursuant to 10 CCR §2662.7, providing that an insurer may submit within 30 days a petition
23 for reconsideration of the decision awarding compensation or any part for which compensation is sought. Allstate does
24 not contest the amount awarded to Consumer Watchdog in the Decision, but objects to the analysis in Section I of the
25 Discussion that questions the process followed by all the parties in reaching a settlement of the underlying rate application.
Although Allstate does not contest the amount awarded in the Decision, pursuant to §2662.7(b), no payment by Allstate is
required until 30 days after a decision by the Commissioner on the Petition.

26 ²The Decision threatens to undermine the entire prior approval process in California, endangers the Commissioner’s
27 sustainability strategy for improving the availability of wildfire insurance, and contradicts Governor Newsom’s Executive
28 Order calling for a more efficient rate approval process. Given the enormous public policy implications of this Decision,
Allstate urges the Commissioner to expressly reaffirm the procedures followed by the parties and consider designating any
reaffirmation as precedential pursuant to Cal. Gov’t Code §11425.60.

³ A copy of the Advisory Notice is located here: <https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/Advisory-Notice-February-18-2005.pdf>.

1 authority over a matter in which no notice of hearing was ever issued. The AHB does not cite to any
2 authority because none exists.

3 Contrary to the analysis in the Decision, AHB lacks authority over any rate dispute *unless and*
4 *until* a “notice” of hearing is issued by the Commissioner. No review of the Settlement was ever
5 required under §2656.1 because no notice of an adjudicatory proceeding, as required by statute, was
6 ever issued by the Commissioner. Consequently, the parties followed the proper and correct procedure
7 as permitted under the Advisory Notice.

8 Notice is a fundamental right under the Administrative Procedures Act (“APA”), and a
9 necessary prerequisite to commencing an adjudicative hearing. The Administrative Adjudication Bill
10 of Rights⁴ (the “Bill of Rights”) prescribes “the governing procedure by which an agency conducts an
11 *adjudicative proceeding*.”⁵ The very first requirement established in the Bill of Rights is for the agency
12 to give “*notice* and an opportunity to be heard.”⁶

13 The AHB has no authority over a rate matter until a notice is issued triggering the
14 commencement of an adjudicatory proceeding. Proposition 103 unambiguously declares that
15 “[h]earings are *commenced* by filing a *notice*,”⁷ and Chapters 4.5 and Chapter 5, which govern
16 adjudicatory hearings under the APA, apply only to “an *adjudicative proceeding commenced*,” on or
17 after the operative date of the APA. In conformance with these statutory requirements, the
18 Commissioner’s regulations provide that it is only “if the Commissioner grants a hearing” that the
19 matter “shall be filed by the [REB] with the [AHB].”

20 Here, the Commissioner expressly withheld ruling on the Motion for Hearing and never issued
21 a Notice of Hearing while the parties engaged in settlement discussions. With no Notice of Hearing
22 issued,⁸ the parties – particularly, Allstate, whose rate application was at issue -- had every right to
23 rely on the longtime practice established by the Advisory Notice that encourages parities to engage in
24

25 ⁴ Cal. Gov’t Code §§11425.10 – 11425.60.

26 ⁵ Cal. Gov’t Code §11425.10 (a).

27 ⁶ Cal. Gov’t Code §11425.10 (a) (1).

28 ⁷ Cal. Ins. Code §1861.08 (b).

⁸ Allstate did not receive notice of an adjudicatory proceeding in either the rate application or the Request for Compensation; notwithstanding, it is faced with an AHB Decision that questions the legitimacy of a settlement by all the parties and approved by the Commissioner.

1 pre-hearing discussions before an adjudicatory hearing is commenced. The procedure followed by the
2 Commissioner is expressly authorized by the Government Code, which provides that an agency may
3 settle a matter “without an adjudicative proceeding.”⁹

4 The Decision by AHB labels the process followed by the parties as a “preference” for an
5 “informal rate review process,” but fails to recognize that the Commissioner has broad authority to
6 adopt formal and informal procedures for the efficient administration of Proposition 103.¹⁰ Although
7 the Advisory Notice is a rule of general applicability, the parties had a right to rely on it. As explained
8 by REB, the APA and related caselaw expressly exempts rules and regulations for rate proceedings
9 from formal rulemaking.¹¹

10 It would be a waste of administrative resources to file with the ALJ a settlement in which the
11 Commissioner and his staff fully participated and approved. Under §2654.1, an ALJ’s authority over
12 settlements is limited to issuing a “recommend[ation] to the Commissioner [for] approval or
13 disapproval.” Here, the Settlement was negotiated by all Parties — Allstate, Consumer Watchdog, and
14 the California Department of Insurance — and *the Commissioner* approved the Settlement, obviating
15 the need for the ALJ to make any recommendations to the Commissioner.

16 III. CONCLUSION

17 The Decision’s analysis is fundamentally flawed. It fails to recognize previous guidance
18 established by the Commissioner, conflicts with statutory requirements, and unnecessarily complicates
19 the rate approval process. AHB lacks authority over the rate application until issuance of a statutorily
20 required Notice of Hearing. A Notice of Hearing was not issued, and therefore, no ALJ review was
21 permissible or necessary under Section 2656.1. Accordingly, Allstate requests the Commissioner to
22 expressly reaffirm that the parties followed the correct procedure in the underlying rate matter and to
23 reaffirm that this procedure shall be followed for all pending and future rate applications.

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25 ⁹ Cal. Gov’t Code §11415.60 (a).

26 ¹⁰ See, e.g., *20th Cent. Ins. Co. v. Garamendi*, 8 Cal.4th 216 (1994), upholding the Commissioner’s rate rollback
27 regulations under Proposition 103: “The rate regulations—both generally and specifically as to rollbacks—do indeed come
28 within the rate setting exception [of the APA], hence fall outside the OAL review requirements, and therefore are not
invalid because of OAL disapproval,” also noting elsewhere that the Commissioner “has broad discretion to adopt rules
and regulations [for rate proceedings] as necessary to promote the public welfare” (citation omitted.).

¹¹ *Id.*

1 Dated: November 13, 2024

Respectfully Submitted,

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is Willkie Farr & Gallagher LLP, 333 Bush Street, 34th Floor, San Francisco, CA 94104.

On November 13, 2024, I served the following documents on the individuals identified below:

ALLSTATE NORTHBROOK INDEMNITY COMPANY’S PETITION AND JOINDER IN PETITION BY RATE ENFORCEMENT BUREAU FOR RECONSIDERATION OF DECISION IN THE MATTER OF THE REQUEST FOR COMPENSATION BY INTERVENOR CONSUMER WATCHDOG

- Via Electronic Mail as a PDF file, by transmitting on this date via e-mail a true and correct copy scanned into an electronic file in Adobe “pdf” format. The transmission was reported as complete and without error.
- Via US mail by enclosing the documents in an envelope and placing the envelope for collection and mailing on the date and at the place from the included service list following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 13, 2024 at San Francisco, California.

By: /s/ Terri L. Nocco
Terri L. Nocco

SERVICE LIST

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