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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 GEICO Casualty Company,
18 Applicant.

19 File No.: 16-7870

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

24 [Ins. Code §§ 1861.05(c) and 1861.10; Cal. Code Regs,
25 tit. 10, §§ 2653.1, 2661.2 and 2661.3]

26 Consumer Watchdog hereby requests that the Insurance Commissioner notice a public hearing
27 pursuant to Insurance Code sections 1861.02, 1861.05, subdivisions (a) and (c), and 1861.10,
28 subdivision (a), on the above-referenced rate application of GEICO Casualty Company ("Applicant") at
which time Applicant will be directed to appear and respond to the issues raised in this petition.

Consumer Watchdog also hereby requests that it be granted leave to intervene in the proceeding on
Applicant's rate filing. Consumer Watchdog intends to seek compensation in this proceeding, and,
pursuant to California Code of Regulations, title 10 ("10 CCR"), section 2661.3 subdivision (c),
Consumer Watchdog's proposed budget is attached hereto as Exhibit A.

In support of its petition, Consumer Watchdog alleges:

I. THE APPLICATION

1. On or about November 23, 2016, Applicant filed its rate application with the California
Department of Insurance ("CDI"), seeking an overall +4.9% rate increase to its Private Passenger Auto

1 program (File No. 16-7870) (the “Application”). On or about December 9, 2016, the public was notified
2 of the Application.

3 **II. PETITIONER**

4 2. Petitioner Consumer Watchdog is a nonprofit, nonpartisan, public interest corporation
5 organized to represent the interests of consumers and taxpayers. A core focus of Consumer Watchdog’s
6 advocacy is the representation of the interests of insurance consumers and policyholders, particularly as
7 they relate to the implementation and enforcement of Proposition 103, in matters before the Legislature,
8 the courts, and the CDI.

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

12 4. Consumer Watchdog has served as a public watchdog with regard to insurance rates and
13 insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements and the status of
14 the rollback regulations; reviewing and challenging rate filings made by insurers seeking excessive
15 rates; participating in rulemaking and adjudicatory hearings before the CDI; and educating the public
16 concerning industry underwriting and rating practices, their rights under Proposition 103, and other
17 provisions of state law. Consumer Watchdog has also initiated and intervened in actions in state court
18 and appeared as amicus curiae in matters involving the interpretation and application of Proposition 103
19 and the Insurance Code.¹

20 5. Consumer Watchdog has initiated and intervened in numerous proceedings before the
21 CDI related to the implementation and enforcement of Proposition 103’s reforms, including over 90
22 such proceedings in the last ten years. In each and every proceeding in the last ten years that has resulted
23 in a final decision and in which Consumer Watchdog sought compensation, the Commissioner found
24

25 ¹ For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*
26 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *Proposition*
27 *103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish Speaking Citizens’*
28 *Foundation v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Insurance Co.* (2004) 116
Cal.App.4th 968; *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029; *The*
Foundation for Taxpayer and Consumer Rights v. Garamendi (2005) 132 Cal.App.4th 1354; and
Association of California Insurance Companies v. Poizner (2009) 180 Cal.App.4th 1029.

1 that Consumer Watchdog made a substantial contribution, meaning that its participation was separate
2 and distinct from any other party and that it presented relevant issues, evidence and arguments that
3 resulted in more credible, non-frivolous information being available to the Commissioner in making his
4 final decision.

5 **III. EVIDENCE**

6 6. At the requested public hearing, Consumer Watchdog will present and elicit evidence that
7 the rates proposed in the Application is excessive and/or unfairly discriminatory in violation of
8 Insurance Code section 1861.05, subdivision (a), which provides that “[n]o rate shall be approved or
9 remain in effect which is excessive, inadequate, [or] unfairly discriminatory.” Additionally, Consumer
10 Watchdog will present and elicit evidence that Applicant’s proposed rates violate 10 CCR § 2644.1,
11 which provides that “[n]o rate shall be approved or remain in effect that is above the maximum
12 permitted earned premium as defined in section 2644.2.”

13 7. Based on Consumer Watchdog’s preliminary analysis and review of the information
14 contained in the Application, the evidence Consumer Watchdog intends to submit during the proceeding
15 to show that Applicant’s proposed rates are excessive and/or unfairly discriminatory in violation of
16 Insurance Code section 1861.05, subdivision (a), the prior approval rate regulations, 10 CCR § 2644.1,
17 et seq., Insurance Code Section 1861.02(a), and the auto rating factor regulations, will focus on the
18 following issues, among others that may be uncovered during the course of discovery:

19 a. Excessive Rates (10 CCR § 2644.1): Applicant’s proposed rate changes are in excess of
20 the maximum permitted earned premium for the UMBI, UMPD, comprehensive and rental
21 reimbursement coverages. (Prior Approval Rate Template Summary.) In addition, Applicant is
22 requesting a +4.9% rate increase despite having a large net income during 2015. According to the filing
23 submitted, Applicant during 2015 had a net income of \$25 million on earned premiums of \$212 million.
24 This is a net income of 12% of premium. The large net income would be consistent with a rate decrease
25 rather than the +4.9% proposed.

26 b. Loss and Premium Trends (10 CCR § 2644.7): For the premium trend, the selected
27 premium trends are among the lowest of the various indications (either most negative or least positive).
28 This understates the projected premium, resulting in an inflated rate indication. The selected loss trends

1 were among the highest of the various indications (either most positive or least negative). This
2 overstates the projected losses, resulting in an inflated rate indication. Applicant failed to prove that the
3 trend selections are the most actuarially sound or that the data period used is the most actuarially sound.

4 c. Excluded Expenses (10 CCR§ 2644.10): Applicant failed to provide the institutional
5 advertising expenses required by the regulations. Applicant has not shown that all of its institutional
6 advertising expenses have been reflected in the excluded expense provision. There may also be excluded
7 expenses for other categories that should be reflected in the rate calculation but were not adequately
8 reflected in the filing.

9 d. Unsupported Variance 2C (10 CCR § 2644.27(f)(2)(B)): Applicant seeks this variance
10 based upon the claim that its average California premium is 21.2% lower than the expected average
11 California premium based upon the CDI Auto Premium Survey. Applicant has not only failed to provide
12 specific calculations, but it also failed to demonstrate that these calculations conform to the regulations
13 requirement that the calculations include “any applicable fees.” (10 CCR § 2644.27(f)(2)(C).) In
14 addition, Applicant provided an incorrect value for the most recent year expense ratio of 28.5%. Using
15 the Commissioner’s method for calculating the expense ratio, Applicant’s most recent year expense ratio
16 is lower than the value calculated by Applicant, making the adjustment for the variance lower than what
17 is included in the rate templates.

18 e. Unsupported Variances 8A and 8E (10 CCR § 2644.27(f)(8)): Applicant’s analysis of
19 potential distorting events on the loss and premium trend were not adequately documented or supported.
20 The changes Applicant claims impact the average mileage rating factors and the timing of claim closures
21 were implemented in the second quarter of 2012 and on August 1, 2011 respectively. The impact of
22 these changes should be reflected in the data underlying the 8-point and 12-point trends selected by
23 Applicant.

24 8. Consumer Watchdog will also present and elicit evidence during the proceeding to show
25 that Applicant’s use of occupation as a rating factor violates sections 1861.05(a) and 1861.02(a), and 10
26 CCR § 2632.5(d). Specifically, Insurance Code section 1861.02(a) provides that “[r]ates and premiums
27 for an automobile insurance policy . . . shall be determined by application of the following [rating]
28 factors in decreasing order of importance,” and that any optional rating factors must be adopted by the

1 Commissioner by regulation and have a substantial relationship to risk of loss or else will constitute
2 unfair discrimination. (Ins. Code § 1861.02(a)(4).) The authorized optional rating factors that have been
3 adopted by the Commissioner are set forth in 10 CCR § 2632.5(d). Applicant proposes to apply its
4 requested rate increase disproportionately to most severely impact its policyholders that are not within
5 its “Professional” or “Skilled Artisans and Technicians” occupational groups by seeking an overall
6 11.4% increase to its “Standard Program”. (See Prior Approval Rate Application, Filing Memorandum,
7 p. 2 [requesting a -0.4% decrease for “Professionals” and a 2.2% increase for “Skilled Artisans and
8 Technicians”].) GEICO also seeks to revise its Rating/Rule Manual to apply discounts ranging from 12-
9 39% for various coverages for its occupational and other groups. (See “Prior Approval Rate Application,
10 Proposed Revisions to “Group Eligibility” Rating Rules, p. 1.) Use of these occupation groups to charge
11 rates and premiums based on occupational status results in excessive and/or unfairly discriminatory rates
12 in violation of sections 1861.02(a)(4) and 1861.05(a), and the application of unauthorized rating factors
13 in violation of section 1861.02(a)(1)-(4) and the auto rating factor regulations at 10 CCR §§ 2632.4 and
14 2632.5.

15 9. Based upon its initial analysis, Consumer Watchdog respectfully submits that the
16 Commissioner should reject the requested overall rate increase, order an overall rate decrease, reject the
17 proposed rate and premium differentials based on occupation, and take such further corrective action as
18 necessary.

19 10. This petition is based upon Consumer Watchdog’s preliminary analysis of the
20 Application. Thus, Consumer Watchdog reserves the right to modify, withdraw and/or add issues for
21 consideration as more information becomes available.

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

23 11. The authority for this petition for hearing is Insurance Code section 1861.10, subdivision
24 (a), which grants “any person” the right to initiate or intervene in a proceeding permitted or established
25 by Proposition 103 and the right to enforce Proposition 103. Specifically, as stated above, Consumer
26 Watchdog initiates this rate proceeding to enforce Insurance Code sections 1861.02 and 1861.05 and the
27 private passenger automobile rating factor regulations (10 CCR § 2644.1 et seq.).
28

1 12. Additionally, a hearing is authorized pursuant to 10 CCR § 2653.1, which provides that
2 “any person, whether as an individual, representative of an organization, or on behalf of the general
3 public, may request a hearing by submitting a petition for hearing.”

4 13. This petition is timely pursuant to Insurance Code section 1861.05, subdivision (c), and
5 10 CCR § 2646.4(a)(1) because it is filed within forty-five (45) days of the public notice date.

6 14. This petition does not involve a rate that has been approved by the Insurance
7 Commissioner after a hearing within the preceding 12 months.

8 **V. INTEREST OF PETITIONER**

9 15. Consumer Watchdog’s interest in the above-captioned proceeding is to ensure that
10 Applicant’s automobile insurance policyholders are charged rates and premiums that comply with
11 Insurance Code sections 1861.05(a) and 1861.02, and with the requirements contained in the regulations
12 promulgated thereunder. Pursuant to state law, drivers must purchase automobile insurance. Consumers
13 who are overcharged by insurers for this mandatory insurance coverage are part of Consumer
14 Watchdog’s core constituency.

15 16. As noted in paragraphs 2-5 above, Consumer Watchdog’s staff and consultants have
16 substantial experience and expertise in insurance rate matters, which Consumer Watchdog believes will
17 aid the CDI in its review of the Application and aid the Commissioner in making his ultimate decision as
18 to whether to approve or disapprove the requested rates. As noted in paragraph 5 above, the
19 Commissioner has found that Consumer Watchdog has made a substantial contribution in all of the rate
20 proceedings in which it has intervened in the last ten years that have proceeded to a final decision and
21 Consumer Watchdog has sought compensation. If leave to intervene is granted, Consumer Watchdog
22 will submit testimony from actuarial experts and participate fully in all aspects of this proceeding.

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

24 17. The authority for Consumer Watchdog’s petition to intervene is Insurance Code section
25 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in any proceeding
26 permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1 of the Insurance
27 Code] . . . and enforce any provision of this article.” This proceeding is a proceeding to enforce
28 Insurance Code sections 1861.02 and 1861.05 pursuant to Insurance Code section 1861.10(a), and hence

1 is a proceeding both “permitted” and “established” by Chapter 9. This petition to intervene is also
2 authorized by 10 CCR § 2644.1 et seq. Although consumer presence in departmental proceedings
3 typically results in significant reductions to policyholders’ rates, the amount of savings for each
4 individual consumer is outweighed by the time and expense of hiring individual counsel or an advocacy
5 group to protect his or her rights. Thus, an independent organization like Consumer Watchdog
6 introduces a voice that otherwise would be absent from this proceeding.

7 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

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

11 **VIII. INTENT TO SEEK COMPENSATION**

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

18 20. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to 10
19 CCR § 2661.3(c), Consumer Watchdog’s estimated budget in this proceeding is attached hereto as
20 Exhibit A. Consumer Watchdog has based its estimated budget on several factors including: (1) the
21 technical and legal expertise needed to address these issues; (2) its current best estimate of the time
22 needed to participate effectively in these proceedings, taking into account the time already expended by
23 Consumer Watchdog staff and its consulting actuary and an estimate of time needed to complete
24 remaining tasks through completion of a noticed evidentiary hearing; and (3) past experience in similar
25 rate proceedings before the CDI. The estimated budget is reasonable and the staffing level is
26 appropriate, given the expertise that Consumer Watchdog and its consultants bring to these proceedings
27 when the issues involved are issues at the very core of its organizational mission and strike at the very
28 heart of Proposition 103 itself. The budget presented in the attached Exhibit is a preliminary estimate,

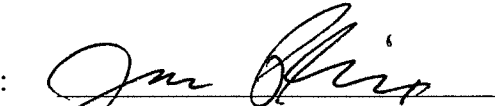
1 and Consumer Watchdog reserves the right to amend its proposed budget as its expenses become more
2 certain, or in its request for final compensation. Consumer Watchdog will give notice of such
3 modifications as soon as practicable after it discovers the need to revise its estimates, and shall comply
4 with the budget revision requirements in the relevant intervenor regulations.

5 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance Commissioner
6 GRANT its petition for hearing and petition to intervene in the proceeding initiated on Applicant's class
7 plans.

8
9 DATED: January 23, 2017

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Jonathan Phenix
CONSUMER WATCHDOG

10
11
12
13 By:


Jonathan Phenix
Attorneys for CONSUMER WATCHDOG

1 **VERIFICATION OF JONATHAN PHENIX IN SUPPORT OF CONSUMER WATCHDOG'S**
2 **PETITION FOR HEARING, PETITION TO INTERVENE, AND NOTICE OF INTENT TO**
3 **SEEK COMPENSATION**

4 I, Jonathan Phenix, verify:

5 1. I am an attorney employed by Consumer Watchdog. If called as a witness, I could and
6 would testify competently to the facts stated in this verification.

7 2. I personally prepared the pleading titled, "Consumer Watchdog's Petition for Hearing,
8 Petition to Intervene, and Notice of Intent to Seek Compensation" filed in this matter. All of the factual
9 matters alleged therein are true of my own personal knowledge, or I believe them to be true after I
10 conducted some inquiry and investigation.

11 3. Pursuant to California Code of Regulations, title 10, section 2661.3, Consumer Watchdog
12 attaches as Exhibit A its estimated budget in this proceeding.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct.

15 Executed on January 23, 2017 at Santa Monica, California.

16 
17 _____
Jonathan Phenix