Addendum to Decision

An Amendment was issued on September 1, 2023 to effective dates; the amendments have been made to the text below.

New Brunswick Insurance Board

DECISION

IN THE MATTER OF:

a rate revision application for the Facility Association

With respect to automobile insurance rates for

Commercial Vehicles

Hearing Dates: July 18 – 19, 2023

PANEL:	Ms. Marie-Claude Doucet, LL.B.	Chair
	Ms. Carol Dixon, CPA	Member
	Ms. Rachel Arseneau-Ferguson	Member
Applicant:	**Facility Association**	
Intervenors:	The Office of the Attorney General	Mr. Christopher Whibbs, LL.B. Jason Caissie, LL.B.
	The Office of the Consumer Advocate for Insurance	Ms. Michèle Pelletier, LL.B., K.C.
Decision Rendered:	August 31, 2023	

Addendum to Decision

Paragraphs [10] and [67] Effective date changes from December 1, 2023 for both new business and renewals to: **January 1, 2024 for new business and for renewals.**

Summary

[1] Facility Association (the "Applicant" or "FA") filed a Rate Revision Application (the "Filing" or the "Application") with respect to automobile insurance rates for Commercial Vehicles ("CV") in New Brunswick. FA presented the Filing to the New Brunswick Insurance Board (the "Board" or "NBIB") with an overall rate change indication of +4.50% and proposed an overall average rate increase of +2.90%.

[2] Pursuant to subsection 267.5(1) of the Insurance *Act,* R.S.N.B., 1973 c. I-12 (the "*Act*"), the Board convened a Panel of the Board (the "Panel") to conduct an Oral Hearing (the "Hearing") on July 18-19, 2023, in Saint John, New Brunswick, with deliberations held on July 19, 2023.

[3] In compliance with subsection 19.71(3) of the *Act,* the Board provided the Office of the Attorney General ("OAG") with all documents relevant to the Hearing. This documentation was also provided to the Office of the Consumer Advocate for Insurance ("CAI").

[4] Both the OAG and the CAI intervened in this Hearing; the OAG questioned the Applicant by way of written interrogatories, and submitted an expert report and a final written submission with the assistance of actuaries, Oliver Wyman ("OW"). An expert actuary from OW also testified at the Hearing. The CAI filed a final written submission as well. Both intervenors cross-examined the Applicant's expert witness during the Hearing and made oral submissions at the Hearing.

[5] Following initial deliberations on July 19, 2023, the Panel requested that the Applicant provides amended indications and impacts resulting from the following adjustments to assumptions:

1. *While maintaining the past severity trend at 15%, modify the future severity trend for TPL-BI to 8.3% stemming from the model based on:*
    a. *Semi-annual data from 2002H1 through 2021H2, excluding 2010H2 and 2011H2;*
    b. *With seasonality; and*
    c. *With scalar as well as change in trend at 2013H2.*

2. *In the determination of the Return on Investment ("RoI"), modify the rolling average of the Government of Canada bonds yields as at June 30, 2022 from Bank of Canada to rely on the rolling 3-month average, while keeping all the other components unchanged.*

3. *In the determination of the RoI, modify the data source for the corporate bond yield to rely on Canadian Institute of Actuaries ("CIA") Report on Canadian Economic Statistics 1924-2021; Final Release, Table 3A (Issued in May 2022).*

The baseline for these revisions is the filed indication (or 4.5%) dated November 15, 2022. The revised indications should show the impact for each of the 3 items separately, as well as for all items combined. Each revised indication should also detail the impact by coverage, as well as overall.

[6] The Panel also requested that the Applicant revises and confirms the proposed rate changes by coverage as well as overall, taking into account the revised indications.

[7] The Applicant responded to the request on July 27, 2023, providing the Board with the additional information and supporting exhibits ("Revised Indications"). The required changes, reflecting the combined effect of all of the adjustments particularized in paragraph [5], result in a decrease to the Applicant's overall rate change indication from +4.50% to -

1.40%, taking into account a revised effective date. The Applicant revised the proposed average rate level change to 0%, notwithstanding the negative rate change indication. The basis for this was:

> *We recognize that overall indication is negative (-1.4%), however we note that annual net trend is positive and wishes to avoid taking a small rate decrease in one year and a rate increase in subsequent year to maintain rate stability. Thus, if the Board wishes to adopt this alternate indication, we would propose no change based on this alternate indication scenario.*
>
> *Finally, while we have provided alternate indications as requested, we respectfully believe our original filing indications are reasonable and fair estimations of our rate needs for FA's book of business, and helps advance FA's goal toward minimizing our market share in the industry*.
>
> [Record of Hearing, page 805]

[8] The Panel, after examining all of the evidence and submissions made by the parties, including the Applicant's response to the Panel's request for amended indications received on July 27, 2023, determines that the indications supporting the proposed overall average rate change must be modified. The Applicant is ordered to incorporate changes to the Filing as per the request for assumption adjustments sent to the Applicant on July 20, 2023.

[9] The Panel finds that FA's revised proposed overall average rate level change, as provided by the Applicant in its response document dated July 27, 2023, is not just and reasonable in these circumstances and FA is ordered to amend its Filing and adopt a -1.4% average rate change in accordance with its revised indications as per above.

[10] The approved rates will be effective on January 1, 2024, for both new and renewal business.

Exhibits

[11] As part of the Hearing process, the Panel accepted the following Exhibits as part of the Record of Hearing:

EXHIBIT	DESCRIPTION	DATE
1	Original Filing Submission	November 15, 2022
2	Round 1 Questions from NBIB	November 25, 2022
3	Round 1 Response to NBIB and Amendment	November 30, 2022
4	Round 1 Questions from KPMG	December 23, 2022
5	Round 1 Response to KPMG	January 10, 2023
6	Round 2 Questions from KPMG	January 24, 2023
7	Round 2 Response to KPMG	January 27, 2023
8	Actuarial Review Summary	February 18, 2023
9	Round 1 IRs OAG to FA	May 5, 2023
10	Round 1 Response to IRs by FA to OAG	May 12, 2023
11	Round 2 IRs from OAG to FA	May 19, 2023
12	Round 2 Responses to IRs by FA to OAG	May 29, 2023
13	OAG Intervenor Expert Report	June 12, 2023
14	Round 1 IRs from FA to OAG	June 20, 2023
15	Round 1 Response to IRs by OAG to FA	June 23, 2023
16	Final Written Submission from CAI	June 29, 2023
17	Final Written Submission from OAG	July 4, 2023
18	Final Written Submission from FA	July 4, 2023
19	Request for Revisions from Board to FA	July 21, 2023
20	Response to Request for Revisions	July 27, 2023

1. Introduction

[12] The Board is mandated by the Legislature with the general supervision of automobile insurance rates in the Province of New Brunswick. In order to fulfill that mandate, the Board exercises the powers prescribed by the *Act*. One key responsibility for the Board is to ensure that rates charged, or proposed to be charged, are just and reasonable. Under the *Act*, the Facility Association must file with the Board the rates it proposes to charge and request approval of a change in those rates; the Board may investigate, and hold a hearing, to ensure the rates are just and reasonable.

2. Procedural History

[13] The Applicant filed this Application for the Commercial Vehicle category on November 15, 2022. The original overall rate level change indication of the Filing was +4.50% and the Applicant sought an overall average rate increase of + 2.90%.

[14] Following rounds of questions from the Board staff and the Board's consulting actuaries (KPMG), the Board decided that it was appropriate to thoroughly test and consider the methods and assumptions in the Filing. The Board issued a Notice of Hearing on April 4, 2023, and convened a Panel of the Board to conduct an Oral Hearing to consider the Application. This Oral Hearing was scheduled to coincide with an oral hearing respecting the Applicant's filing for the Taxi and Limousine line of business.

[15] Prior to the Hearing, in addition to the Filing, additional information and clarifications were provided; the Board staff and the board's consulting actuaries (KPMG) posed a number of questions to the Applicant, and the OAG submitted two sets of interrogatories to the Applicant. The Applicant responded to all questions posed and the answers form part of the Record.

[16] The OAG's Intervenor Expert Report, prepared by OW on behalf of the OAG, was delivered on June 12, 2023. FA requested, and was granted, the opportunity to deliver interrogatories to the OAG's expert and these responses, too, form part of the Record.

[17] Between June 29 and July 4, 2023, pre-hearing final written submissions were provided by the Applicant, the OAG, and the CAI to the Panel for consideration.

[18] The Hearing took place on July 18-19, 2023. Following deliberations, on July 19, 2023, a request for assumption adjustments and revised indications was delivered to the Applicant, on July 20, 2023, to which a response was received on July 27, 2023.

2. Evidence and Positions of the Parties

Facility Association

[19] The Applicant's Filing forms the main portion of its submission and the evidence before the Panel.

[20] FA presented its Filing to the Board with an original overall original rate change indication of +4.50% and proposed an overall average rate increase of +2.90%.

[21] The following sets out the indicated and the proposed changes to the existing rates by coverage as of the date of the Hearing:

Coverage	Indicated	Proposed (No Capping)
Bodily Injury (TPL-BI)	15.60%	11.00%
Property Damage (TPL-PD)	15.60%	11.00%
Property Damage – Direct Compensation (DCPD)	-2.80%	-2.80%
Accident Benefits (AB)	-5.50%	-5.00%
Uninsured Auto (UA)	-0.70%	0.00%
Collision (COL)	0.00%	0.00%
Comprehensive (COM)	-0.20%	0.00%
Specified Perils (SP)	-6.70%	-5.00%
Underinsured Motorist (UM) – SEF44	-5.00%	-5.00%
Total	4.50%	2.90%

[22] The rate indication calculations detailed in the Filing incorporate various assumptions, including an after-tax target return on equity (“ROE”) of 12.00%, a target Return on Premium of 7.51%, an investment rate on cash flow (discount rate) of 1.88%, an after-tax investment rate on capital of 1.88%, and a 2:1 premium to surplus ratio. The proposed overall average rate change would result in an implied ROE of 10.80% and an implied Return on Premium of 6.80%. Proposed average rates would increase from the current average premium of approximately $2,435 to approximately $2,506.

[23] In its final written submission made to the Board, the Applicant provided the following reasoning for its proposed rate increase:

> *FA’s role in the market place is to guarantee the availability of automobile insurance to those eligible to obtain it, with the Facility Association Residual Market (FARM) acting as the “market of last resort”. A healthy and competitive voluntary market keeps the FARM’s size relatively small. According to GISA’s 2022 AIX data, the FARM’s share of the New Brunswick CV market premium in 2021 was 7.7%, a decrease of 0.1% from 2020 (CV written vehicles in 2021 accounted for 13.6% of total written vehicles for FARM New Brunswick all automobile), and the results of that premium are shared with the voluntary market. In fact, the FARM non-private passenger premium level in 2022 was the 4th largest of 32 active insurer groups (including the FARM) in the province, according to 2022 MSA data.*

It is important, in our view, that FARM rates are set to generate an appropriate return to ensure a properly functioning market, and to provide an appropriate signal to drivers of the risk profile they present, which is largely a factor of their driving behaviours. It is important to note that over the period 2012-2021, New Brunswick (NB) FARM commercial vehicles had collision claims frequencies that were 2.4 times higher than NB industry commercial vehicles, and bodily injury claims frequencies that were 2.6 times higher than NB industry commercial vehicles.

[Record of Hearing, page 787]

[24] The Applicant argued that the data, assumptions and methodologies underlying the Filing are reasonable and consistent and maintained that in light of FA's unique mandate in the industry, the residual market volumes should be as small as possible.

The Office of the Attorney General

[25] The OAG intervened in the Hearing and took an active part in the review of the Application, questioning the assumptions therein through the pre-hearing interrogatory process, filing an expert report, questioning the Applicant's expert witness during the oral hearing, calling its own expert witness and making final written and oral submissions to the Panel. The OAG's position, through OW, its expert actuaries, challenged several aspects of the Filing and suggested that alternative assumptions, judgments and methods presented by its expert actuaries were more appropriate than those presented by the Applicant. Areas of concern that were raised by the OAG to be addressed at the Hearing included:

A. Estimates of Ultimate Loss Amounts for TPL-BI
B. Trend – TPL-BI Severity
C. Payment Plan
D. Profit Provision
E. Return on Investment (RoI)

[26] The OAG argued that the adoption of its alternative assumptions, judgments, and methods, which it suggested are more appropriate than those presented by the Applicant, would

reduce the overall average rate level change to a level less than the overall average rate level change indicated by FA.

The Office of the Consumer Advocate for Insurance

[27] The CAI argued that the increase proposed by the Applicant is neither just nor reasonable. The CAI further argued that the alternatives presented by the OAG are more appropriate and that these alternatives ought to be preferred and applied in favour of New Brunswick consumers. In her written submission to the Panel, she concluded:

> *"The CAI reiterates to the Board that automobile insurance is mandatory in New Brunswick and therefore, rates should be reasonable, affordable, and fair. With this other increase requested by the present insurer, we submit the consumers of New Brunswick may have difficulties paying their insurance premiums. We ask the Board to choose the alternatives presented by the Office of the Attorney General, which are reasonable under all circumstances. We must remember that FA is the last option for insureds. They don't have any option and can't shop around. Rates must be just and reasonable for the consumers of New Brunswick and not only for the insurers."*

[Record of Hearing, page 759]

3. Analysis and Reasons

[28] The Panel has reviewed the Record of documentary evidence, including the final written submissions from all parties. It also received and reviewed the alternative rate change indications provided by FA on July 27, 2023, in response to the Panel's request. In addition, the Panel had the advantage of hearing the *viva voce* evidence from each of the witnesses at the Hearing, along with cross-examination, and the oral submissions from all parties.

[29] The Panel recognizes and accepts the actuarial expertise of the actuaries who prepared the Filing and the Expert Report, responded to the various inquiries and testified at the Hearing.

[30] The Panel’s decision accounts for the complexity and interactions between data, assumptions, judgment, models and methods. As set out below in more detail, on some of the issues, the Panel was satisfied that the Applicant satisfied its evidentiary burden of establishing that the selected data, assumptions, judgment, models and methods would lead to indicated rates that are just and reasonable while for other issues, the Applicant is required to make changes.

A. ***Estimates of Ultimate Loss Amounts – TPL-BI***

[31] The final settlement value of claims reported to the insurer following a motor vehicle accident are not immediately known. In order to reasonably estimate the final, or ‘ultimate’ settlement amount for a group of claims incurred in a given period (aka accident period), it is considered generally accepted practice for actuaries to consider the estimates from a number of actuarial methods. The selection of the most reasonable method and its underlying assumptions depends on several factors, including actuarial judgment and surrounding context.

[32] In this Filing, there is increased uncertainty associated with the development of ultimate claim amounts for TPL-BI claims incurred in the 2021H1 and 2021H2 accident periods due to the long-tail nature of the coverage and the distortion created in the historical development patterns as a result of the pandemic. FA explained that after considering multiple loss estimate methods in their selection of the ultimate loss amounts for these accident period, they selected the Expected Loss Ratio (“ELR”) method to account for the lack of maturity in the data for TPL-BI. That method, often used for immature experience periods, particularly in the case of long-tail lines of business, is not reactive to the activity observed to date (actual reported claims in the period). As per FA’s comments, the method is based on a priori assumptions are selected based on long term average loss ratios, trended and on-leveled to the respective accident periods.

[33] The OAG suggested that a more appropriate judgment for the periods 2021H1 and 2021H2 would have been to adopt a method that would assign some weight to the actual experience, rather than relying solely on an *a priori* estimate. In its final written submission, the OAG summarized the ultimate loss estimates obtained through the use of five actuarial methods (Incurred Development, Expected Loss Ratio, Incurred Bornhuetter-Ferguson (BF), Incurred Benktander, and Generalized Cape Cod), highlighting the considerable variability in estimates for these immature accident periods. The OAG argued that averaging the estimates obtained through the three methods that assign partial weights to the actual experience – the Bornhuetter-Ferguson Method, the Benktander Method and the Cape Cod Method – would produce a more reasonable estimate of ultimate loss for these accident periods. It estimates that this alternative approach would reduce the overall average rate level change indication by 0.7%.

[34] FA recognized that the ELR method theoretically implies that zero weight is given to the actual loss emergence. FA also raised that the selected *a-priori* expected loss ratios include adjustments to account for the impact of COVID-19 on these periods and to consider information obtained through meetings with FA management, publicly available mobility reports, industry and pool experience, and professional judgment. FA argued that, given that these adjustments consider industry and FA experience, the actual experience for the two data periods was taken into consideration.

[35] While it is true that FA's reliance on the ELR method for these accident periods results in the selection of the highest loss estimates produced by the methods presented, the Panel was satisfied that FA displayed no bias toward selecting a method to achieve a certain result.

[36] The OAG's objection to FA's selection of ultimate loss estimates based on the ELR method is confined to the 2021H1 and 2021H2 accident periods for TPL-BI. For all other accident periods and coverages, the OAG took no issue with FA's selections, including the use of the same methodology for the Accident Benefits coverage.

[37] The Panel considered the evidence, including the witnesses' evidence at the Hearing, tested by cross-examination. There is no dispute that the data for the two 2021 accident periods is immature and that the TPL-BI coverage is a long-tail coverage for which claims characteristically takes longer to develop. Where there are several methodologies available to an Applicant in its rate filing, the Panel must consider several factors, including the Applicant's burden of proof that the approach selected is reasonable in all of the circumstances. FA was persuasive in its reasoning for the exclusion of volatile and immature data points, combined with the uncertainties associated with the development of claims that occurred in Covid-19 environment, in the context of this long-tail coverage. The use of the ELR Method for data points that are immature is a reasonable one, particularly where the uncertainty is heightened by the Covid-19 environment. While the resulting ultimate loss amounts may be the highest of the options available, that by itself does not render a method unreasonable or unreliable. The question is whether the method and the underlying assumptions result in a reasonable selection for the particular coverage in the specific circumstances. For the reasons stated, the Panel finds that FA has satisfied its evidentiary burden on this element of its Filing and the Applicant's ultimate loss analysis is accepted.

B. Loss Trend – TPL-BI Severity

[38] Loss cost trends are assumptions that measure the annual rates of change in claims costs from historical periods to projection period. The OAG raised a concern with respect to the Applicant's TPL-BI severity trend; all other trends were undisputed.

[39] The selection of loss cost trends should reasonably reflect the rates of change in the historical experience and represent sensible estimates of future expected rates of change for each coverage. To achieve that objective, the selection of loss cost trends requires the analysis of historical data and anticipated conditions, as well as the application of professional judgment.

[40] To select its TPL-BI severity trend, the Applicant utilized data spanning from 2002H1 to 2019H2 and included scalars at 2003H2 and 2008H1. The 2003 scalar coincides with the Minor Injury Regulation (MIR) reform in New Brunswick. The 2008 scalar reflects a change in the direction of the curve but is not tied to a known event in the industry. The resultant model produces a severity trend of +15.0% with an adjusted R-squared value of 51.29%, and p-values of less than 5%. FA opted to exclude the 2020 and 2021 data reasoning that the COVID-19 "stay-at-home" orders and other directives in 2020 and 2021 resulted in a dramatic decline in traffic, and accidents. This exacerbates the uncertainty relating to these data points, and how it affects post-COVID-19 patterns and levels. Therefore, trend rates were estimated without influence of this data.

[41] The OAG suggested that the data and modelling was inappropriate. The OAG's alternative model uses a slightly different data set – 2002H1 to 2021H2, but excluding two high data points in 2010H2 and 2011H2, and inserting a scalar and trend change at 2013H2. That change coincides with the timing of the MIR amendments introduced in 2013, which increased the limits available for minor injury. The model produces a severity trend of +8.3 % with an adjusted R-squared that is slightly higher but roughly equivalent to that obtained through the model presented by the Applicant. Seasonality in the OAG model produces a p-value that is more than 5%. Even if the excluded data points are reintroduced, the 2013 cliff is statistically significant. The OAG suggested that modelling the severity data for TPL-BI is challenging as the sparsity of claims leads to decreased credibility. As a result, the OAG suggested that a "holistic" approach to trend selections would be more appropriate, preferring fitting multiple regression models and selecting a trend rate that aligns with the broader evidence.

[42] While the Applicant combined the results of the separately modelled frequency and severity to determine the loss cost trend for TPL-BI, it explained that it also directly modelled the loss cost data to provide an added measure of reasonableness for the resulting loss cost trend. In FA's view, its loss cost model accounts well for loss costs for the entire data set, and any residual runs are random. FA observed that the loss cost trend indicated through this

alternative model indicates that its selected loss cost trend for TPL-BI is within a range that is considered reasonable from a statistical perspective.

[43] At the request of the Board's actuaries, KPMG, the Applicant performed a sensitivity test of its TPL-BI severity model by including the COVID-19 data points. The resulting trend was +14.2%, with an adjusted R-squared of 57.91%, indicating that the exclusion of these data points had no significant impact on the selection of the severity trend for this coverage. The loss cost trend at 6.5% remained within the confidence level.

[44] The Panel finds that the models presented by the Applicant and the OAG are both plausible, and observes that both models showed roughly equivalent statistical measurements. The Applicant's support in the Record and through oral evidence for its past severity trend of +15.0% was solid and the model was robust. The Panel finds that the past trend of +15.0% up to December 31, 2021, is a just and reasonable one.

[45] However, for the future severity trend, the Applicant has not persuaded the Panel that the trend will likely continue at +15.0% for the period post-December 31, 2021. As such, the Panel finds that this position is excessive and not adequately supported. The alternative models, the consideration of additional data points, and the OAG's model all provide a signal that the future trend will more likely be less than +15.0%. The Panel finds that in these circumstances, the OAG's model, with its 2013H2 cliff reflecting the results of the 2013 MIR reform is a more reasonable approach, and the heat map of indicated regression statistics over various experience time periods tends to indicate that a future trend rate of 8.3% would be reasonable.

[46] The Panel requested that FA provide amended indications to reflect a TPL-BI severity past trend of +15.0% and a future trend of +8.3%, with the future severity trend model being based on semi-annual data from 2002H1 through 2021H2, excluding the 2010H2 and 2011H2 data points, and including with a seasonality variable, as well as a scalar and change in trend at 2013H2. The Applicant indicated that incorporating this alternative trend would reduce

the overall indicated rate change from +4.5% to +1.1%, taking into account the revised effective date.

C. Payment Plan

[47] When policyholders purchase an automobile insurance policy through FA, they are in reality contracting with an FA Servicing Carrier operating in this Province who underwrites the policies for FA. In New Brunswick, there is currently only one Service Carrier.

[48] Payment plans are typically offered by Servicing Carriers because insurance premiums are due and payable at the commencement of the policy period but many policyholders may wish to spread the expense out and pay monthly. These monthly plans are typically subject to a fee (premium financing fee), which is collected and retained by the Servicing Carrier, not FA. These premium financing fees are not mandatory and can be avoided by either paying the full amount of the premium when due, or by financing the cost through another entity such as a line of credit, a loan or similar. The fees relate not to the insurance, but to the policyholder's personal finance decisions.

[49] It is the Servicing Carrier who bears the risk that a policyholder defaults on payment, and also receives the benefits of the revenue from the premium financing fee. As such, it is the servicing carriers who provide this service, who determine the fee for that service. While the cost of FA policies is spread over all insurers, the revenue and risk related to those payment plans remain with the Servicing Carrier itself. These features distinguish payment plan revenues from the premiums paid for the insurance coverage.

[50] FA argued that it should not be required to reflect revenues from the premium financing fees within the ratemaking analysis as it does not provide this service and, further, those payments are not an insurance premium. FA does not have the data on which the Servicing Carrier relies to set the premium financing fees rate of 6%.

[51] The Panel does not consider premium financing fees, in the FA situation, to relate to rates charged for the insurance coverage provided through FA and finds it is reasonable that these fees are not included as revenue in the Filing. While not necessarily for determination, the Panel also notes that it is not satisfied that the OAG is correct when it argues that there is no credit risk associated with the premium financing fees.

D. Profit Provision

[52] Ratemaking requires appropriate consideration of reasonable profit provisions. FA's indications are based on a target after-tax return on equity (ROE) of 12%. The Panel noted that FA's target ROE selection of 12% is the same assumption used in past filings, and is a commonly used target after tax provision in this province, though there is no guideline or benchmark for ROE in New Brunswick. This ROE, with the other profit-related assumptions, equates to a 7.51% target return on premium.

[53] The OAG argued that the 7.51% return on premium profit provision is unreasonably high compared to the provision allowed in other provinces. To support its argument on the reasonableness of the target profit provision selected by FA, the OAG referred to a report prepared in 2013 considering the Ontario industry and return on equity. The Panel, however, finds that the report is dated, and not supported by any evidence or expert that has relevant expertise to opine on its applicability to the New Brunswick environment. The Panel notes parenthetically that 7.51% is not the highest, as PEI is slightly higher.

[54] FA responded that each province has its own regulatory regime, different insurance products, different claims payment patterns and fiscal environments. The Panel agrees, it is not a fair comparison to simply look at a table comparing rates between provinces without more contextual background. The simple comparison of ROE, or ROP, among various jurisdictions is not particularly probative. Each jurisdiction has its own legislation, and unique industry challenges for ensuring competition and a robust and healthy market for

insurance products. The degree of riskiness in a particular market is one factor that must be reflected in ROE/ROP and may differ between jurisdictions.

[55] Furthermore, this rate application is for FA, not a typical insurer. FA explained that its role in the marketplace is to guarantee the availability of automobile insurance to those eligible to obtain it, with the Facility Association Residual Market (FARM) acting as the “market of last resort”. FA is the umbrella under which the member insurers bear the real risk. Each of those member insurers requires capital to support the risk they bear. FA justified its selection on the basis that they do not seek to have lower than market rate to be competitive, as they are the insurer of last resort. In that respect, it was notable that the Panel heard evidence that FA has the fourth largest market share for commercial vehicles.

[56] There are a myriad of reasons for the drivers of commercial vehicles to be insured through the FARM, and the Filing was lacking in the particulars of where that increased market share was coming from, whether it be newcomers, drivers with poor records, younger drivers, types of vehicles, industry classes or some other factor. This information might be of value to future panels considering future filings for FA.

[57] FA in this case has selected a 12% ROE, consistent with prior filings and within the range of returns across the province. In these circumstances, the Panel is therefore satisfied that the selected target ROE used in this Filing is just and reasonable.

E. Return on Investment (RoI)

[58] The development of rate indications requires applications to account for, inter alia, the revenue received from sources other than directly from policyholders, including revenue from investment of surplus funds. In its Application, FA selected a pre-tax return on investment (ROI) assumption of 1.88%. This ROI was selected to be consistent with the insurance industry’s actual mix of bond yield rates based on the distribution of such investments in the industry. In other words, the selected ROI was selected to reflect the yield on an asset portfolio that would be similar to that of its members. In particular, in

this Application FA determined the RoI of 1.88% based on the proportion of government versus corporate bonds reported in MSA Researcher, B04 – Total Canadian Property Casualty Industry (Ex ICBC-SAF, Ex Lloyd's), page 40.22 as at 2021.4. It also assumes investment expenses of 0.15%.

[59] With respect to government bonds, FA uses of Government bond yield from Bank of Canada. This methodology, argued FA, is consistent with previous decisions of panels of the Board. In this filing, FA has modified its methodology to rely on a rolling 12-month rolling average yield instead of a single yield as at a specific date . It argued that this modification mitigates the month-to-month volatility, promotes year-over-year stability, avoids "flip-flopping" between methods and across assumptions, as well as provides some governance.

[60] The OAG argued that the Applicant's approach to investment income fails to take into account the more current investment environment in which significantly higher rates have been observed in the government bond rates. The OAG argued that the formulaic approach adopted by FA lacks consideration of the interest rates that are reasonable for the preparation of a rate application in the current changing environment.

[61] Ratemaking by its nature is a prospective exercise, seeking to find the best estimate of returns going forward. In other words, the rates charged must not be excessive, nor should they be inadequate, all based upon a reflection of the best estimate of future costs and revenues. Interest rates at the time of the Filing (November 2022), differ from the rates at the effective cut off date for the Applicant to complete the analysis and Application process (June 2022), and those also differ from the rates at the time of the Hearing. The Panel accepts that a rate filing with the Board is a multi-faceted and intensive work product that must, by necessity, have a cut-off date for data and calculations. For the purpose of determining its RoI assumption, FA is using data that was available as at June 30, 2022, at which time it began its ratemaking analysis.

[62] The Record confirms that at the time of the Filing preparation (June 30, 2022), the government bond risk-free rate was 2.99% and rose to between 3% and 4% between late 2022 and early 2023. The OAG argued that the rate of 1.48% adopted by FA for government bonds is an unreasonable assumption.

[63] It is acknowledged that the assumption of a future interest rate in the current economic environment is a challenging task. While a 12-month rolling average tends to be a reasonable approach in a relatively stable economic environment, it performs sub-optimally in a quickly changing environment. In those circumstances, the Panel ordered that the Applicant restate its indications using a rolling three-month average instead of 12 months.

[64] For corporate bonds, the Applicant adopted the rates available in the Canadian Institute of Actuaries ("CIA") Report on Canadian Economic Statistics from 2020. The Panel requires the Applicant to instead adopt the 2021 report, which was published in May 2022 and therefore available at the time the Applicant started to prepare this Filing in June 2022.

[65] The incorporation of these two changes to the RoI assumption further reduced the Applicant's overall indicated rate change.

4. Decision

[66] The Revised Indications resulted in substantial changes to the indicated rate change for each coverage, as set out below:

	Indicated	Proposed (No Capping)	Revised indication effective January 1, 2024	Proposed
Bodily Injury (TPL-BI)	15.60%	11.00%	0.90%	0.00%
Property Damage (TPL-PD)	15.60%	11.00%	0.90%	0.00%
Property Damage – Direct Compensation (DCPD)	-2.80%	-2.80%	-3.50%	0.00%
Accident Benefits (AB)	-5.50%	-5.00%	-8.10%	0.00%
Uninsured Auto (UA)	-0.70%	0.00%	-3.70%	0.00%
Collision (COL)	0.00%	0.00%	-0.30%	0.00%
Comprehensive (COM)	-0.20%	0.00%	-1.20%	0.00%
Specified Perils (SP)	-6.70%	-5.00%	-8.60%	0.00%
Underinsured Motorist (UM) – SEF44	-5.00%	-5.00%	-10.00%	0.00%
Total	4.50%	2.90%	-1.40%	0.00%

[67] The Applicant’s indicated overall average rate change under the Revised Indications is negative (-1.40%). Nevertheless, the Applicant advised the Board that its proposed overall average rate change, considering the results from the Revised Indications, was 0%, or no change. It argued that this proposal would better account for the observed positive annual net trend and would avoid short-term fluctuations while maintaining rate stability. The Panel finds no support for the Applicant’s request to set rates higher than its reasonable and actuarially supported assumptions are indicating. While the rates must be just and reasonable, and FA does not seek to increase market share or competitive edge,

nonetheless, this Panel finds that it would be unreasonable for FA's rates for 2023/2024 to be set higher than its indications.

[68] For the reasons set out above, the Panel finds that Applicant's Filing is not just and reasonable in its entirety and the Applicant is ordered to amend its Filing and adopt a -1.4% overall average rate change based on the following adjustments to assumptions:

1. *While maintaining the past severity trend at 15%, modify the future severity trend for TPL-BI to 8.3% stemming from the model based on:*
    a. *Semi-annual data from 2002H1 through 2021H2, excluding 2010H2 and 2011H2;*
    b. *With seasonality; and*
    c. *With scalar as well as change in trend at 2013H2.*

2. *In the determination of the Return on Investment ("RoI"), modify the rolling average of the Government of Canada bonds yields as at June 30, 2022 from Bank of Canada to rely on the rolling 3-month average, while keeping all the other components unchanged.*

3. *In the determination of the RoI, modify the data source for the corporate bond yield to rely on Canadian Institute of Actuaries ("CIA") Report on Canadian Economic Statistics 1924-2021; Final Release, Table 3A (Issued in May 2022).*

[69] The approved rates will be effective on January 1, 2024, for both new and renewal business.

Dated at Saint John, New Brunswick, on August 31, 2023.

Ms. Marie-Claude Doucet, Chair

New Brunswick Insurance Board

WE CONCUR:

Ms. Carol Dixon, Board Member

Ms. Rachel Arseneau-Ferguson, Board Member