Addendum to Decision

An Amendment was issued on November 15, 20 and December 20, 2023 to this decision; the amendments have been made to the text and underlined.

New Brunswick Insurance Board

DECISION

IN THE MATTER OF:

A rate revision application for the

Promutuel de l'Estuaire Société mutuelle d'assurance générale

With respect to automobile insurance rates for

Private Passenger Vehicles

Hearing Dates: July 5, July 25 and August 4, 2023

Written Hearing

PANEL:	Mr. Marven Grant	Vice - Chair
	Ms. Elizabeth Turgeon, LL.B.	Member
	Mr. Cyril Johnston, LL.B.	Member
Applicant:	**Promutuel de l'Estuaire Société mutuelle d'assurance générale**	
Intervenor:	The Office of the Consumer Advocate for Insurance	Ms. Michèle Pelletier, LL.B., K.C.
Decision Rendered:	September 8, 2023	

NBIB Reference 2022-330

Summary

[1] Promutuel de l’Estuaire Société mutuelle d’assurance générale (the "Applicant" or "Promutuel-E”) filed an application to revise rates (the “Filing” or the “Application”) with respect to automobile insurance rates for Private Passenger Vehicles (“PPV”) in New Brunswick. Promutuel-E presented its filing to the New Brunswick Insurance Board (the “Board”) based on an overall rate change indication of +23.45% and proposed an overall average rate increase of +14.83% (before capping) and +14.49% (after capping). Over the course of two amendments to the Filing, the indicated average rate change was amended to +23.6% while the proposed rate change remained the same.

[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 a Written Hearing (the “Hearing”) on July 5, 2023 with deliberations held by video conference on that date, which continued on July 25, 2023 and August 4, 2023.

[3] In compliance with subsection 19.71(3) of the *Act,* the Board provided to the Office of the Attorney General (“OAG”), all documents relevant to the Hearing. This documentation was also provided to the Office of the Consumer Advocate for Insurance (“CAI”). On June 1, 2023, the OAG advised the Board of its decision not to intervene in this matter. The CAI opted to intervene, submitting a final written submission on June 14, 2023. The Applicant did not deliver a final written submission.

[4] Following deliberations on July 5 and July 25, 2023, the Panel requested that the Applicant provide revised indicated and proposed average rate level changes by coverage reflecting the following adjustments:

1) Non-Physical Damage Coverages, Future Severity Trend:

- *Set the future severity trend equal to the past severity trend (i.e., remove the inflation adjustment).*

2) Physical Damage Coverages, Future Severity Trend:

- *Set the future severity trend equal to the past severity trend +50% of the selected inflation adjustment (i.e., 5% for PD Tort, DC-PD and Collision, 2.5% for Comprehensive and SP and 3.75% for AP), capped at 15%.*

[5] The Board also requested that, taking into consideration the results from the revised indications incorporating all of the adjustments to assumptions detailed in Paragraph [4], the Applicant review and confirm the proposed rate changes by coverage as well as overall.

[6] The Applicant responded to the request on August 1, 2023, with the requested information and exhibits. The requested changes result in a decrease to the Applicant's overall indication from +23.6% to +13.09%. Taking into consideration the revised indication, the Applicant nevertheless maintained its proposed overall rate change of +14.83% on the following basis:

> *"As per your request, the future trends have been adjusted. However, please note that we find it unreasonable that BI and AB (and indirectly UA and SEF) future trends wouldn't increase in the current macroeconomical context, especially considering the significant increase in all physical damage coverages."*

[7] The Panel, after examining all of the evidence and submissions made by the parties, including the Applicant's response of August 1, 2023, determines that the proposed average rate changes are not just and reasonable as they are not supported by the revised indications. The Applicant is ordered to incorporate changes to the Filing as per the request for assumption adjustments sent to the Applicant on July 26, 2023.

[8] Promutuel-E is ordered to adopt the revised indicated overall average rate change of +13.09% and the overall average rate level change <u>as per table at paragraph [54]</u> effective <u>January 31, 2024 for both new business and renewal business</u>.

Exhibits

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

EXHIBIT	DESCRIPTION	DATE
1	Original Private Passenger Rate Filing	December 22, 2022
2	Re-submission of Incomplete Filing	January 11, 2023
3	Round 1 Questions from NBIB	January 25, 2023
4	Round 1 Response to NBIB	January 31, 2023
5	Round 2 Questions from NBIB	March 6, 2023
6	Round 2 Response to NBIB	March 10, 2023
7	Round 1 Questions from Eckler	March 20, 2023
8	Round 1 Response to Eckler	April 6, 2023
9	Round 2 Questions from Eckler	May 1, 2023
10	Round 2 Response to Eckler	May 5, 2023
11	Round 3 Questions from Eckler	May 10, 2023
12	Round 3 Response to Eckler	May 11, 2023
13	Eckler Storyboard	May 16, 2023
14	CAI Final Submission	June 14, 2023
15	Request for Revisions	July 26, 2023
16	Revised Indications	August 1, 2023
17	Request for Capping on Indications	August 8, 2023
18	Response to Capping Request	August 17, 2023
19	Updated Request for Capping on Indications	August 17, 2023
20	Revised Indications and Proposed Average Rate Level Changes with and without Capping	August 31, 2023

1. Introduction

[10] 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*, each insurer carrying on the business of automobile insurance in the province must file with the Board the rates it proposes to charge at least once every 12 months from the date of its last filing. An insurer must appear before the Board when:

a. The Insurer files for a rate change more than twice in a 12-month period, or
b. The Insurer files rates where the average rate increase is more than 3% greater than the rates charged by it within the 12 months prior to the date on which it proposes to begin to charge the rates, or
c. The Board requires it to do so.

2. Procedural History

[11] The Applicant filed the Application for the PPV category on December 22, 2022, and filed an amendment on January 11, 2023, to be compliant with the Board's Filing Guidelines. The original overall rate level change indication of the Filing was +23.45% and the Applicant sought an overall average rate increase of +14.83% (before capping) and + 14.49% (after capping).

[12] The Board issued a Notice of Hearing on May 29, 2023, and convened this Panel to conduct a Written Hearing on the matter. The CAI chose to participate as an Intervenor, while the OAG declined.

[13] A pre-hearing written submission was provided by the CAI to the Panel for consideration.

[14] The Hearing took place on July 5, 2023 with deliberations taking place virtually. The Hearing was adjourned and reconvened on July 25, 2023, following which the request for assumption adjustments was delivered to the Applicant. The Applicant responded on August 1, 2023, and the Panel reconvened on August 4, 2023.

3. Evidence and Positions of the Parties

Promutuel de l'Estuaire Société mutuelle d'assurance générale

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

[16] 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 (before capping)	Proposed (after capping)
Bodily Injury (TPL-BI)	26.93%	20.00%	19.60%
Property Damage (TPL-PD)	34.85%	20.00%	19.60%
Property Damage – Direct Compensation (DC-PD)	24.02%	15.00%	14.67%
Accident Benefits (AB)	3.16%	3.00%	2.81%
Uninsured Auto (UA)	96.30%	30.00%	29.73%
Collision (COL)	30.60%	18.00%	17.57%
Comprehensive (COM)	26.56%	16.00%	15.67%
Specified Perils (SP)	130.87%	30.00%	24.14%
All Perils	113.72%	17.22%	16.91%
Underinsured Motorist (UM) – SEF44	-39.48%	0.00%	0.00%
Total	23.58%	14.83%	14.49%

[17] The rate indication calculations detailed in the Filing incorporate various assumptions, including an after-tax target return on equity (ROE) of 10.00% (implied ROE of 4.87% with proposed rate change), a target Return on Premium of 3.68%, an implied Return on Premium of -0.89%, an investment rate on cash flow (discount rate) of 3.60%, and a 1.6:1 premium to surplus ratio. If the proposed rates are approved, the average rates would increase from the current average premium of approximately $1,125 to approximately $1,292 before capping and $1,288 after capping.

[18] The Applicant justified the selection of 14.83% as a proposed average rate change as follows:

> *Our analysis suggests that the indicated overall rate change is 23.49%. Not going directly to the indicated premium helps us gain more experience and solidify our hypothesis over the next year. There is also some uncertainty regarding the post-pandemic level of car usage. For those reasons, we did not select 100% of the indicated premium….*
>
> Exhibit 2, page 439 of the Record

The Office of the Consumer Advocate for Insurance

[19] The CAI, in her final written submission, argued that the increase proposed by the Applicant is neither just nor reasonable. In support of this conclusion, the CAI argued that the actual loss experience that will emerge for 2020 and 2021 will be materially less than the rate indication model forecasts presented, the loss trend selections and fixed expense trends are not supported, and contingent commissions ratios are too high. In addition, the CAI's submission raises concerns about the Applicant's after-tax Return on Equity assumption and the reasonableness of rates overall.

[20] Finally, the CAI questions the Applicant's target ROE of 10%. She submits:

> *"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 huge increase requested by the present insurer, we submit the consumers of New Brunswick may have difficulties paying their insurance premiums. …*
> *We submit that the proposed increase is high and not justified. This increase requested by Promutuel de l'Estuaire is neither just nor reasonable."*
>
> Exhibit 14, page 1239-1240 of the Record

3. Analysis and Reasons

[21] The Panel has reviewed all the evidence before it, in addition to the written submission from the CAI.

[22] The Panel recognizes and accepts the actuarial expertise of the Applicant's actuaries who prepared the Filing and responded to the various inquiries.

[23] The materials within the Record raised several issues for the Panel to consider and determine at the Hearing. Each of those issues is considered individually below.

a. COVID 19 / "New Normal" adjustments
b. Trends – Future Trends
c. Return on Equity
d. Contingent Commission Ratio

[24] The Panel's decision reflects that each model and methodology decision is laced with layers of data, assumptions, and judgement. As set out below in more detail, in one material respect, the Panel determined that the Applicant had not met its burden of satisfying the Panel that the rates proposed in the Filing were just and reasonable. Consequently, the Panel requested revised indications with corresponding revised proposed average rate level changes and concludes that the Applicant may adopt the revised overall indicated average rate level changes <u>as amended, as set out at paragraph [54].</u>

A. ***Covid -19 / "New Normal Adjustments"***

[25] In this Filing, the Applicant adopted an approach to its Covid-19 adjustment that differs from its previous filings by assuming a 'new normal' factor. For the loss experience during accident years 2020 and 2021, prior to its trend analysis, adjustments were applied to those accident years' experience to reflect this data at pre-pandemic levels.

[26] After this adjustment, Promutuel-E applied a 'new normal' factor to all accident years' experience to reflect its presumption that the future loss costs will not completely return to pre-Covid levels for some coverages during the upcoming policy period. In the previous filing, the Applicant assumed a 'new normal' factor of 1.00 (i.e., effectively assuming that the experience during the effective period would revert to pre-COVID levels). This year, for the Comprehensive coverage, the Applicant made no adjustment (factor of 1.0), while for All Perils coverage the adjustment was 0.95 and for all other coverages the adjustment was 0.9. The rationale for this approach was described as:

> *"it could be argued there should be a drop in car usage due to work-from-home policies. This new normal is in between the pre-pandemic level of car usage and the pandemic level of car usage and affect our selected frequency."*
>
> Page 893 of the Record

[27] The factor was judgmentally selected based on a comparison of the difference between levels of car usages before and during the pandemic. The impact of the inclusion of a 'new normal' adjustment on provincial indicated rate levels was to reduce the overall average rate indication by 8.7%.

[28] The Panel is in agreement that the post-pandemic world may well see fewer vehicles on the road in this Province, driving down the frequency of accidents and losses, but there is nothing to suggest that the extraordinary experience of 2020 or 2021 will be repeated in the near future. The Panel thoroughly considered the assumptions and methodologies underlying the Applicant's approach to the Covid adjustment and the 'new normal' factor and is in agreement that this approach is reasonable at this time.

B. ***Trends – Future Trends***

[29] Loss trends are assumptions that measure the annual rate of change of past and future claims costs over time.

[30] The selection of loss trends requires the analysis of past data and the application of professional judgment in order to select trend rates that reasonably reflect the rates of change of past experience and are reasonable predictions of future expected rates of change for each coverage.

[31] The data available to the Applicant at the time it prepared the filing was as of December 31, 2021.

[32] In prior filings, the Applicant had adopted the common assumption that past and future trend rates were equal for all coverages. In this Filing, however, the Applicant adjusted future severity trends upwards from past trends, for all coverages. The selected past and future loss cost trends (combining severity and frequency) for all coverages are set out below:

Coverage	Past Trend	Future Trend
Bodily Injury	+0.00%	+7.5%
Property Damage Tort	+0.25%	+12.25%
Direct Compensation Property Damage	+6.50%	+15.25%
Accident Benefits	+0.75%	+5.50%
Uninsured Automobile	+0.00%	+7.50%
Collision	+7.50%	+17.00%
Comprehensive	+12.50%	+16.75%
All perils	+11.50%	+17.00%
Specified Perils	+12.50%	+16.75%
Underinsured Motorist	+0.00%	+7.50%

[33] The above table reflects the results of the Applicant's methodology where, after adjusting the 2020 and 2021 data as described above, it performed a trend analysis based upon New Brunswick industry data. However, the Applicant took a novel approach for selecting future trends by applying an inflation adjustment to its severity trends, capped at 15% per annum. This was said to be for the purpose of reflecting the impact of the very recent significant changes in the rate of inflation on its future trends.

[34] The data used to support this adjustment is based on the results of a monthly trend analysis using the Applicant's internal Collision and Comprehensive data from the Province of Quebec. The future severity trends were adjusted upwards by 10% for PD Tort, DCPD and Collision, and by 5% for other coverages (7.5% for All Perils). The Applicant then capped future severity trends at +15%.

[35] The use of Quebec Collision and Comprehensive monthly data as part of this analysis is not prohibited, necessarily. The Panel acknowledges the practice to look for data outside of New Brunswick to provide a foundation for some assumptions and methodologies may be reasonable. This may especially be so when the volume of data in New Brunswick is thin and thus not particularly credible. However, as has been made clear in the past, an insurer who draws on extra-provincial data for a filing in New Brunswick must justify it to the Panel for the purposes for which it is being used.

[36] The Quebec data relates only to the company's own Collision and Comprehensive experience in that province, as Quebec has a different regulatory regime for the other coverages. Therefore, the Panel first addressed a concern with respect to the use of the inflationary experience for those two coverages and whether it translates fairly to non-physical damage coverages in New Brunswick. The concern had been raised by the Board's actuaries, Eckler Ltd., during the review process and the Applicant responded:

> *"The medical costs have been increasing in the last few years and we believe it will continue. We are also having additional expenses to compensate for the lack of family doctor available to evaluate victims of perils and for the delay in court (legal fees). <u>The pandemic also brought the uncertainty that some insured might want to maximised (sic) their claim to make a profit</u>."*
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> Page 881 of the Record

[37] The Panel agrees with the CAI's argument that the final sentence in that interrogatory response is unsupported by data and it is unfairly judgmental. The Panel finds that such a statement, wholly unsupported by data or evidence, is inflammatory and inappropriate. The Panel has placed absolutely no weight upon this argument or position of the Applicant.

[38] The inflationary adjustment applied by the Applicant to its severity trends has a significant impact on its indicated rate change. The removal of the adjustment would reduce the average indicated rate change to 5.61%, a reduction of almost 18%.

[39] The Panel reflected on the burden of proof applicable to the reasonableness of the Applicant's proposed rates. That burden rests upon the Applicant to establish to the Panel that the rates proposed to be charged are just and reasonable. While an inflationary adjustment may well be appropriate in the current environment, the Panel found support for the Applicant's methodology only with respect to the physical damage coverages, as these would have comparable experience to the Quebec data.

[40] While the adjustment for physical damage coverages is considered to be reasonable, the Panel does not accept the 10% adjustment as a reasonable one. The Panel does not accept that the entire experience is either likely to continue at that level in the future, or that it is directly comparable in New Brunswick. The Applicant has not provided the Panel with the benefit of any evidentiary basis to compare the

experience in the two provinces, and therefore the Panel judgmentally accepts that an adjustment of 50% of the proposed adjustment, capped at 15% is a more reasonable one. This reflects the Panel's acceptance that there is some support for inflationary adjustment, but that the magnitude is not supported in the evidence. The Panel's decision reflects that an adjustment is reasonable but to a lesser degree than the Applicant proposes.

[41] The Panel was not persuaded that the Quebec property damage experience was reasonably predictive of the future experience in New Brunswick for the non-property damage coverages. The Applicant provided no evidentiary foundation for such an argument to be accepted.

[42] To be clear, the Panel was willing to support the appropriateness of a well-documented methodology to support a possible adjustment to the non-physical coverages, but the material in the Record was simply insufficient to allow it to do so.

[43] As a result, the Panel rejects the Applicant's future severity trends for non-physical damage coverages, and the Applicant was ordered to instead apply its past severity trends to the future for those coverages. For the physical damage coverages, the Applicant's arguments have at least some basis in the evidence, and for the purpose of this uncertain year, the Panel accepts an appropriate severity trend adjustment to be 50% of the proposed adjustment, with resulting future severity trends capped at +15.0%.

C. Return on Equity

[44] Promutuel-E adopted a 10.0% after-tax target ROE for the purpose of its Filing and a premium to surplus ratio of 1.6:1. The CAI argued that these assumptions lead to an excessive and unreasonable rate indication.

[45] The CAI, as intervenor, did not provide evidence, beyond argument and identification of different treatment in different jurisdictions, which challenged the reasonableness of a 10% target after-tax ROE. While other regulators may arrive at a different conclusion in the specific circumstances of their jurisdictions, this Panel is satisfied that a target after-tax target ROE of 10% is reasonable in the circumstances.

[46] The Panel reiterates that there is no benchmark for the target ROE in New Brunswick, and each application is assessed individually on a case-by-case basis after considering all of the surrounding circumstances.

D. Contingent Commission

[47] The Applicant increased its contingent commission ratio by nearly 100% since its prior filing. For the current Filing, the selected ratio was 3.79% while the previous ratio was closer to 2.0%. The Panel sought further information on the point since the Applicant was using an average of this expense, including years of the more profitable experience during the Covid-19 pandemic. When questioned by the Board's actuaries, Eckler, on this significant increase, the Applicant responded that 71% of the increase was due to one broker who had experienced significant decreases in loss ratios in recent years. It further explained:

> *"We are aware that our selection is a bit high considering the COVID context. However, our contingent commission ratio was increasing in the past few years since the cancellation of unprofitable major brokers in 2017."*
>
> Page 880 of the Record

[48] As part of a requested sensitivity analysis, the Applicant responded that a return to a 2% ratio, as had been the case in prior filings, would have decreased the overall provincial indicated average rate level change by 3.1%.

[49] A contingent profit commission is an appropriate component of the Applicant's expenses for the rate making period. The Panel accepts the Applicant's explanation and rationale for the higher number for this particular year, and further accepts the suggestion by the Applicant that it would reexamine the issue closely in the next filing. For the purposes of this Filing, the assumption is a reasonable one.

AMENDMENT

[50] **On October 13, 2023, following the release of the Decision, the Applicant disclosed a calculation error in their Filing that had recently been discovered. Contingent commissions, other acquisitions and general expenses had been allocated proportionally to PPV based on weight. It was discovered that**

the commercial vehicle written premiums were mistakenly underestimated, resulting in a higher proportion being allocated to PPV. As a result of correcting this error, the proposed rates in the Amended filing have been adjusted as found in the Table below. The Panel has reviewed the Amended filing and the rationale and determines that the approved rates must be amended accordingly.

[51] **On November 15, 2023 the Applicant advised of a change in effective dates from October 15, 2023 to January 15, 2024 for both new and renewal business. The effective dates were further changed to January 31, 2024 for new and renewal business on December 20, 2023.**

[52] **On November 20, 2023, a further amendment was made to the table at paragraph 54.**

4. Decision

[53] For the reasons set out above, the Panel finds the indicated average rate changes in the Applicant's Filing are not just and reasonable and must be modified using revised assumptions, as follows:

1) *Non-Physical Damage Coverages, Future Severity Trend:*
   - *Set the future severity trend equal to the past severity trend (i.e., remove the inflation adjustment).*

2) *Physical Damage Coverages, Future Severity Trend:*
   - *Set the future severity trend equal to the past severity trend +50% of the selected inflation adjustment (i.e., 5% for PD Tort, DCPD and Collision, 2.5% for Comprehensive and SP and 3.75% for AP), capped at 15%.*

[54] The Applicant's revised indications resulting from these changes, with its corresponding proposed rate changes are:

	REVISED DUE TO NBIB REVIEW				Amended October 13, 2023		
Coverage	**Original Indicated**	**Revised Indicated**	**Revised Proposed before Capping**	**Revised Proposed after Capping**	Revised Indicated	Revised Proposed Before Capping	Revised Proposed After Capping
Bodily Injury (TPL-BI)	26.93%	13.67%	13.67%	13.67%	13.25%	13.00%	13.00%
Property Damage (TPL-PD)	34.85%	20.46%	20.00%	20.00%	18.19%	18.00%	18.00%
Property Damage – Direct Compensation (DCPD)	24.02%	13.83%	13.83%	13.83%	12.06%	11.00%	11.00%
Accident Benefits (AB)	3.16%	-6.48%	0.00%	0.00%	-7.65%	0.00%	0.00%
Uninsured Auto (UA)	96.30%	72.23%	30.00%	29.99%	70.16%	30.00%	30.00%
Collision (COL)	30.60%	17.51%	17.51%	17.51%	15.58%	15.00%	15.00%
Comprehensive (COM)	26.56%	21.08%	16.00%	15.96%	19.89%	16.00%	15.96%
Specified Perils (SP)	130.87%	120.84%	30.00%	24.78%	118.95%	30.00%	24.65%
All Perils	113.72%	104.16%	16.92%	16.92%	101.59%	15.39%	15.39%
Underinsured Motorist (UM) – SEF44	-39.48%	-45.12%	0.00%	0.00%	-45.50%	0.00%	0.00%
Total	+23.58%	+13.09%	12.67%	+12.66%	+11.76%	+11.12%	+11.11%

[55] The revised by-coverage indications, as provided by the Applicant on August 1, 2023, <u>and amended in correspondence of October 13, 2023,</u> are just and reasonable in all circumstances. The by-coverage proposed changes as amended August 31, 2023 <u>and on October 13, 2023,</u> by the Applicant are considered by the Panel to be just and reasonable. The resulting revised overall indicated average rate level change of +11.76% and the revised overall proposed average rate level changes of +11.12% before capping and +<u>11.11%</u> after capping are approved.

[56] The approved rates will be effective on <u>January 31, 2024 for new business and January 31, 2024</u> for renewal business.

Dated at Saint John, New Brunswick, on September 8, 2023 and <u>amended on November 15, 20 and December 20, 2023.</u>

Marven Grant, Vice-Chair

New Brunswick Insurance Board

WE CONCUR:

Ms. Elizabeth Turgeon, Board Member

Mr. Cyril Johnston, Board Member