New Brunswick Insurance Board

DECISION

IN THE MATTER:
Of a rate revision application for the Aviva Insurance Company of Canada
With respect to automobile insurance rates for
Private Passenger

Hearing Date: December 20, 2021
Written Hearing

PANEL:	Mr. Marven Grant	Vice-Chair
	Ms. Ferne Ashford, Q.C.	Member
	Mr. Cyril Johnston, LL. B.	Member

Applicant: **Aviva Insurance Company of Canada**

Decision Rendered: January 20, 2022

Summary

[1] Aviva Insurance Company of Canada (the "Applicant" or "Aviva") filed a Rate Revision Application (the "Filing" or the "Application") with respect to automobile insurance rates for Private Passenger Vehicles (PPV) in New Brunswick, initially requesting approval for a proposed average rate increase of +12.99% (+10.63% after capping) based on an indicated average rate increase of +23.04%, later amended to proposed +13.00% (+10.64% after capping), based on an indicated average rate level change of +23.87%.

[2] Pursuant to subsection 267.5(1) of the *Insurance Act,* R.S.N.B., 1973 c. I-12 (the "*Act*"), the New Brunswick Insurance Board (the "Board") convened a Panel of the Board (the "Panel") to conduct a Written Hearing (the "Hearing") on December 20, 2021 with deliberations held by video conference.

[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 Consumer Advocate for Insurance ("CAI"). On August 17, 2021 the CAI advised of her intent to intervene. The OAG also confirmed its intention to intervene on August 24, 2021.

[4] The Panel, after examining the evidence, determines that the average rate increase of +13.00% (+10.64% after capping) proposed by the Applicant is just and reasonable in all of the circumstances and is approved as requested.

[5] The approved rates will be effective on June 1, 2022 for new and renewal business.

Exhibits

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

EXHIBIT	DESCRIPTION	DATE
1	Original Filing submission	Jan 29, 2021
2	Round 1 Questions from NBIB	Mar 22, 2021
3	Round 1 Response to NBIB	Mar 26, 2021
4	Round 1 Questions from Eckler Ltd.	Apr 27, 2021
5	Round 1 Response to Eckler Ltd.	May 21, 2021
6	Round 2 Questions from Eckler Ltd.	June 7, 2021
7	Round 2 Response to Eckler Ltd.	June 11, 2021
8	Amendment 1	June 18, 2021
9	Round 3 Questions from Eckler Ltd.	June 25, 2021
10	Round 3 Response to Eckler Ltd.	July 2, 2021
11	Amendment 2	July 9, 2021
12	Round 4 Questions from Eckler Ltd.	July 12, 2021
13	Round 4 Response to Eckler Ltd.	July 12, 2021
14	Eckler Ltd. Actuarial Report	July 16, 2021
15	Round 1 Questions OAG to Company	Sept 28, 2021
16	Round 1 Company Response to OAG	Oct 8, 2021
17	Round 2 Questions OAG to Company	Oct 20, 2021
18	Round 2 Company Response to OAG	Nov 5, 2021
19	Intervenor Expert Report	Nov 19, 2021
20	Final Submission from CAI	Nov 25, 2021
21	Final Submission from Company	Dec 3, 2021
22	Final Submission from OAG	Dec 3, 2021
23	Aviva Group Amendment 1	Dec 16, 2021

1. Introduction

[7] The Board is mandated by the Legislature to provide 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.

Procedural History

[8] Aviva filed this Application for the PPV category on January 29, 2021. The original indicated average rate change in the Filing was +23.04% and the Applicant proposed an overall average rate increase of +12.99% (+10.63% after capping).

[9] Following questions from the Board staff and then the Board's consulting actuaries (Eckler Ltd.) the Applicant made several amendments to its Filing, with a final indicated rate change of +23.87% and a proposed overall average rate increase of +13.00% (+10.64% after capping).

[10] The Board determined that a hearing was appropriate and issued a Notice of Hearing.

[11] Prior to the Hearing, four (4) rounds of interrogatories were asked by the Board's consulting actuaries and answered by the Applicant. The OAG also took advantage of the opportunity to question the Applicant by way of two rounds of written interrogatories and all parties provided written submissions for the Panel's consideration.

[12] Finally, the written Hearing in this matter was held on December 20, 2021, with deliberations held virtually.

2. Positions of the Parties

Aviva Insurance Company of Canada

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

[14] Aviva initially presented its Filing to the Board with an overall rate change indication of +23.04% and proposed an overall average rate increase of +12.99% (+10.63% after capping). The Applicant made a number of amendments, finally reaching an overall rate change indication of +23.87%, with a proposed average rate change of +13.00% (+10.64% after capping).

[15] The following sets out the amended indicated and proposed changes to the existing rates by coverage:

Coverage	Indicated	Proposed
Bodily Injury Tort (BI)	43.75%	32.49%
Property Damage Tort (PD)	31.88%	16.58%
Property Damage - Direct Compensation (DCPD)	46.05%	31.39%
Accident Benefits (AB)	37.78%	24.42%
Uninsured Auto (UA)	11.68%	6.30%
Collision	8.65%	2.82%
Comprehensive	23.07%	9.35%
Specified Perils (SP)	3.68%	1.60%
Underinsured Motorist (UM) – SEF44	14.71%	0.00%
Total	23.87%	13.00%*

*10.64% after capping

[16] The rate indication calculations detailed in the Filing, as amended, incorporate various assumptions, including a target return on equity (ROE) of 12%, an implied Return on Premium of 1.09%, a pre-tax investment rate on cash flows (discount rate) of 1.75%, an investment rate on capital (ROI) of 1.75% and a 2:1 premium to surplus ratio. The proposed average overall rate change would increase average rates from the current average of approximately $1,116 to approximately $1,261 ($1,235 after capping).

[17] Aviva argues that the indications in the Filings are the best estimates of the future costs and expenses, including a provision for profit.

[18] Aviva's proposed average rate change is more than 10% lower than its calculated indication; Aviva provides the following rationale:

> "We use the indication as a guide and also consider inputs from business units, underwriters in determining the proposed rate change. Although the indication is

presented as a point estimate, the indication has a range and varies by accident year. The pre-credibility and post–credibility indications are considered as well. Generally, we try to maintain stability in pricing and therefore avoid taking large rate increase. However, given the recent results and the high indication we find it necessary to take a larger increase this year to maintain business viability in the difficult market."

[Record, page 1517]

[19] The Applicant submitted that the assumptions contained in the Filing are reasonable and are supported by accepted actuarial practice.

Office of the Attorney General

[20] The OAG intervened in this Hearing and took an active part in the review and analysis of the Filing. In its final submission, with the assistance of its expert actuaries Oliver Wyman (OW), the OAG identified several aspects of the Filing where alternate calculations and/ or assumptions are argued to be more appropriate. Areas of concern that were raised by the OAG to be addressed at this Hearing include:

- Loss Trends – Exclusion of Facility Association ("FA") data from Loss Experience
- Loss Trends – Property Damage selection
- Complement of Credibility
- Expense provisions for Contingent Profit Commissions
- Profit Provision
- COVID-19

[21] The OAG argues that with alternate assumptions, judgment and calculations, which it suggests are reasonable and more appropriate, the Applicant's indicated average rate is +14.4%, rather than +23.87%. This level, the OAG notes, is more closely aligned with Aviva's proposed average rate change of +13.00%.

Consumer Advocate for Insurance

[22] The CAI provided a written submission to the Panel for consideration. The CAI supports the alternatives and assumptions presented by the OAG and its expert actuary, OW. In particular, the CAI's submission raises concerns about the reasonableness of rates overall, the impact of the COVID-19 pandemic on automobile experience, and the Return on Equity assumption.

3. Analysis and Reasons

[23] The Panel has reviewed all the written evidence in the Record including the Applicant's responses to the interrogatories and the final submissions from all parties.

[24] The Panel recognizes and accepts the actuarial expertise of the Applicant's actuaries who prepared the Filing and responded to the inquiries from the Board and others, as well as the expertise of OW on behalf of the OAG.

[25] The Application, as amended, raised several issues for the Panel to consider and determine at the Hearing. Each of those issues is discussed individually below.

A. Loss Trend Rates and the Treatment of the Facility Association Experience

[26] Loss trends are measures of annual rates of changes of past and future claims costs over time.

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

[28] The OAG suggests that Aviva's loss trend analysis used in this Filing should be based on data from the entire industry, including data from the Facility Association. Aviva has excluded that data from its analysis relying, in part, upon the NBIB RFG-1 Guidelines at 10.Section 3: Appendix A part b:

"… where industry-wide statistics are used, Facility Association Residual Market Risks results should be excluded…"

[29] The OAG argues that the Board's Guidelines are at odds with what is being required in other provinces and are inconsistently interpreted by other rate filers.

[30] The Board is subject to legislation passed by the New Brunswick Legislature and in furtherance of its mandate, has created Guidelines applicable to all insurers operating in the Province of New Brunswick. The Board's jurisdiction to do so is unquestioned, and its Guidelines reflect policy choices for this jurisdiction. The Guidelines on this point are suggestive, indicating that FA risks "should" be excluded. In this context, a panel of the Board considering a filing may be open to considering a different approach, if it is properly supported in the Record by the parties, and if the panel is persuaded that the policy decisions in the Guidelines ought to be overridden in the context before it. The Panel finds nothing persuasive in the Record or the submissions to support the OAG's argument that the Guidelines, as applied to the Applicant's Filing, are unreasonable or that would support a deviation from the Guidelines.

[31] With respect to other filings before the Board, while consistency is desirable where reasonably possible, this Panel is not privy to the evidence, the arguments or the deliberations of other panels on prior applications. Prior decisions rendered in those different contexts are therefore not binding upon this Panel. Importantly, the Panel is influenced by both the Applicant's compliance with the Guidelines and its consistency over time in its own prior filings in how it has approached the content of industry data.

[32] The OAG maintains the view that the changing percentage of risks in the Facility Association over time will distort the measurement of the loss trend rate. In response, Aviva points out that any impact on trends would be immaterial considering the size and relative stability of the FA market in New Brunswick over time. This stability is confirmed in the Board's own data regarding FA's market share in New Brunswick, which is found in the Record at page 1468.

[33] Aviva went further to respond to the OAG's concern by compiling a comparative table of selected loss trend assumptions utilizing industry data both including and excluding FA. This table is found at page 1469 of the Record. Aviva suggests, and the Panel agrees, that the impact of excluding FA from the industry data is immaterial.

[34] The Panel concludes that the exclusion of the FA experience from industry data in loss trend analysis is appropriate.

B. Loss Trend Rates and Property Damage Selection

[35] Aviva's Property Damage loss cost trend rate is 2.0%, compiled by calculating the frequency and severity trends independently. The OAG argues that it was unreasonable for Aviva to utilize different time periods for each of those analyses. However, the Panel agrees with Aviva that the variables, including the time period underlying the severity and frequency trends need not be identical for trend derivation. Aviva has been consistent in this approach with its prior filings, and its rationale is well supported in the Record.

[36] The OAG's expert is critical of Aviva's decision to treat the 2014-2 severity data point as an outlier rather than including a scalar to model a change in the severity at that point in time. In its report, OW chose to consider that data point as a one-time shift in severity and argues that Aviva's approach overestimates the future severity trend and, consequently, the rate level change need. To explain its position, OW observes three separate clusters of severity residuals in the plot graph at page 1494 of the Record and argues that Aviva's selected model is a poor fit for pre-2012 data. In light of these deficiencies, and the view that none of the Aviva severity trend models fit the data well, OW suggests a more appropriate loss cost trend is 0.0% instead of +2.0%.

[37] With respect to the decision to exclude the 2014-2 severity data point, Aviva argues that the data point visually differs significantly from other observations but find that there is no contextual explanation for the inclusion of a scalar (as suggested by OW) to model a shift in the

severity curve. The box plot found at page 1472 of the Record supports the conclusion that the point is an outlier.

[38] The Panel agrees that in all of the circumstances and in the absence of a contemporaneous explanatory event such as a policy change or other significant event, the decision to treat the 2014-2 data point as an outlier instead of a shift in the curve is reasonable. The consistency of Aviva's approach is confirmed in that this same data point was treated as an outlier last year and accepted as such by the prior panel. While not bound by prior determinations, this Panel sees nothing in the Record or the submissions of sufficient persuasive power to deviate from Aviva's approach.

[39] Responding to the criticism surrounding runs in Aviva's selected severity trend model residuals, Aviva performed a "runs test" analysis on the severity data supports, the results of which support the conclusion that the residual pattern is random. With respect to the criticism of poor fit for pre-2012 data, Aviva points out that Property Damage is a short-term coverage, so it is reasonable to select a model based on the most recent years of experience. Aviva also argues that if a model is fit on accident year 2012 and later experience it may not fit observations prior to that time period very well. The Panel accepts Aviva's explanations and responses and finds that the company's approach on these issues is reasonable. The trend of +2.0% is a reasonable selection.

C. Complement of Credibility

[40] In the determination of the rate level change required, the Applicant assessed the credibility of its own experience data for each of the coverages. This year, Aviva made a change to the complement of credibility whereby it used the permissible loss ratio, adjusted for net trend since the previous filing and for the gap between the previous filing's indicated and approved average rate level change.

[41] The expert report from OW does not take issue with the methodology, *per se*, but states:

> While we are not in disagreement with Aviva Group's complement of credibility methodology, we emphasize that a proposed overall rate change that is significantly less than the indicated overall rate change calculated by Aviva Group **does not diminish the importance of the review of the filing assumptions that determine the appropriateness of indicated rate change calculated by Aviva Group**.
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> Record, page 1496

[42] This Panel agrees, as does Aviva, that a robust review of filing assumptions is appropriate in every filing as outlined in the Rate Filing Guidelines and the Board's detailed reviews and hearing procedures. This essential review work of the Board is not diminished by the fact that a proposed rate change is different than the indicated overall rate change.

D. Expense Provision – Contingent Profit Commissions ("CPC")

[43] Aviva includes contingent profit commissions as a relevant component of its rate indications. The OAG raises a concern with the magnitude of the provision that has been included. In its report, OW states that the increase in contingent commissions is, in part, attributed to the property product (i.e., homeowners' insurance) profitability. The OAG argues that auto insurance rates should not be affected by the property product profitability.

[44] In addition, the OAG argues that the increases to premiums in recent years result in higher contingent profit commissions, which then goes on to support rate increases – creating a circularity argument.

[45] Aviva points to the actuarial standards of practice to support the inclusion of commission as a relevant component of the rate, as well as the Board's Filing Guidelines:

> "Rates are to be inclusive of commissions and other expense provisions used by the insurer, and are to be considered prior to the granting of policyholder dividends."

[46] In response to the criticism of the inclusion of contingent profit commissions that relate to the property product, Aviva explains that the commission payment to a broker is based on the aggregate results of the broker's entire portfolio, not individual products. Aviva explained that

the payment is not broken down by product as it would not be practical to do so, and this is a standard market practice for CPC payments.

[47] Finally, with respect to the argument that the commission payments are unfairly circular, Aviva denies this allegation, and states that the CPC payments are based not just on profitability, but also retention and growth of a broker's book of business.

[48] The Panel takes notice that it is common practice to include a provision for contingent profit commissions in a rate filing before the Board as these are legitimate expenses which are designed to compensate for the profitability of the broker's book of business, not the insurer's. As such, the inclusion of a contingent profit commission is in accordance with the Filing Guidelines and is otherwise appropriate as a legitimate expense. The Panel further accepts the submission of Aviva that the contingent profit commission payment cannot reasonably be separated by the various pieces of business/product and that its practices are in accordance with reasonable and appropriate business practices. The proposed contingent profit commission provision is a reasonable one.

E. Profit Provision

[49] Aviva adopted a target after-tax ROE of 12% in this Filing. The OAG questions the reasonableness of this target, arguing that other provinces have commissioned studies on reasonable profit provisions.

[50] Aviva's submission notes that in a prior filing it had requested a target ROE of 15% and was instructed to reduce that target to 12% by that panel, following concerns raised by the OAG.

[51] The Panel is aware that there have been some studies commissioned by other regulators in differing regulatory environments, though not the particulars of any findings. Those studies are not before this Panel nor are they binding. In this jurisdiction, the Panel is satisfied that a 12% after tax ROE is reasonable at the present time for a target after-tax ROE. While not

derogating from the consideration of the target after-tax ROE, the Panel takes some notice that the implied ROE is 2.73%, based on Aviva's proposed rate increase.

[52] The Panel reiterates that there is no benchmark for target ROE in New Brunswick, and each application is assessed individually on a case-by-case basis based on circumstances existing at the time.

[53] The OAG's expert also questions the Applicant's selection of 1.75% for the assumed rate of return on investment (ROI) and discount rate. OW found the selected ROI to be low considering Aviva's actual historical returns on investments. A higher assumed ROI would result in lower indicated rate changes.

[54] In response, Aviva noted that the 1.75% selected rate of return on investment is based on the projected portfolio yield as determined at the time of filing. In response to an interrogatory, the company detailed the projected portfolio and market yields for the period affected by the proposed rates which supports this assumption. The selected projected return reflects Aviva's own investment strategy which focusses on long term investment returns including liquid government debt and investment grade public debt. While this strategy may yield lower returns, Aviva argues that it protects the company's solvency, which in turn protects its customers.

[55] The Panel agrees and notes that assumptions in the Filing should, as much as possible, provide a best estimate of the prospective period, even though these assumptions may not reflect historical results. The Panel finds that the ROI assumption adopted by Aviva is reasonable in the circumstances and accepts the selected rate.

F. COVID-19

[56] Finally, the OAG questions the Applicant's decision to decline any adjustments to reflect the potential impact on its experience from the Covid-19 pandemic, which began in early 2020. The OAG suggests that the actual loss experience for 2020 and 2021 will be materially less than

the model forecasts presented by Aviva. In the view of both intervenors, Aviva should have adjusted its loss experience to reflect lower future claims costs.

[57] Aviva's filing was delivered on January 29, 2021, and at that time the most recent data available was as of December 31, 2019. The Panel recognizes that the actuarial work underlying a filing takes a significant amount of time to be completed. While best efforts are made to ensure the most recent industry data is used by applicants, in this filing the most recent data available to the company at the time of its analysis was used. With the timing of data availability and the amount of actuarial work underlying the Filing, it is not reasonable to anticipate that the Applicant could rework all of the analyses to reflect December 31, 2020 data before filing. It was therefore reasonable to use the December 31, 2019 data as was done.

[58] There is little doubt that the pandemic has not spared the auto insurance industry from its impact. The nature and extent of the impacts are not yet known and the Panel recognizes that there remain many uncertainties arising from the pandemic and its aftermath, including assumptions surrounding the future behaviour of insureds. The Applicant's methodologies are reasonable at the current time and will be reassessed in the next filing. In the interim, of course, the Board itself continues to monitor the measures taken by insurers and the impacts upon policyholders in the province.

4. Decision

[59] For the reasons set out above, the Panel finds the Applicant's proposed average rate level change is just and reasonable and approves the Applicant's **proposed average rate change of +13.00% (+10.64% after capping).**

[60] The approved rates will be effective on June 1, 2022 for new business and renewals.

Dated at Saint John, New Brunswick, on January 20, 2022.

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Marven Grant, Vice-Chair
New Brunswick Insurance Board

WE CONCUR:

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Ferne Ashford, Member

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Cyril Johnston, Member