

No. **09-0836**

**Official Order
of the
Commissioner of Insurance
of the
State of Texas
Austin, Texas**

Date:

OCT 15 2009

Subject Considered:

**2009 Texas Windstorm Insurance Association
Annual Rate Filing**

General remarks and official action taken:

On this day came on for consideration by the Commissioner of Insurance (Commissioner) the matter of the Texas Windstorm Insurance Association's (Association) annual filing of a proposed manual rate for all types and classes of risks written by the Association submitted by the Association pursuant to the Insurance Code §2210.352.

After considering the Association's Annual Rate Filing, the rate analyses of the Association and the Coastal Windstorm Insurance Coalition (CWIC), Department of Insurance Staff's analysis, and all written comments presented, the Commissioner adopts the following findings of fact and conclusions of law.

FINDINGS OF FACT

A. Introductory Findings of Fact

1. House Bill 4409 (HB 4409), enacted by the 81st Texas legislature, amended the Insurance Code Chapter 2210, including making extensive revisions to the way in which deficits of the Texas Windstorm Insurance Association (Association) would be funded. This amendment became effective immediately on June 19, 2009.
2. The Department of Insurance (Department) received the Association's annual filing of a proposed manual rate for all types and classes of risks written by the Association (rate filing) (filing Reference No. P-0809-02). The rate filing was made pursuant to the Insurance Code §2210.352(a).
3. The proposed changes were rate increases of ten percent for both residential and commercial risks, the statutory maximum, based on indicated changes of

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- +28 percent and +23 percent for residential and commercial risks, respectively. The indicated changes were subsequently amended by the Association to +26 percent and +21 percent, respectively, to correct a computational error. While permitted under Insurance Code §2210.355(i), the Association did not propose the establishment of rating territories. It also did not recommend any changes in classification relativities.
4. The Commissioner provided notice of the rate filing to all interested persons on August 19, 2009.
 5. Pursuant to the Insurance Code §2210.354 and 28 Texas Administrative Code §5.4901, the Department gave notice that all written requests from interested persons for additional supporting information concerning the rate filing were required to be submitted to the Office of the Chief Clerk, Texas Department of Insurance, on or before September 1, 2009.
 6. In the same August 19, 2009 notice, the Department gave notice that all interested persons may submit written comments concerning the rate filing to the Office of the Chief Clerk, Texas Department of Insurance, on or before September 30, 2009.
 7. Requests for additional information were submitted by the Coastal Windstorm Insurance Coalition (CWIC) and Department staff.
 8. All requests for additional supporting information were delivered to the Association on September 8, 2009.
 9. On September 11, 2009, the Association requested that the Commissioner extend the Association's time for response to the request for additional supporting information from September 14, 2009, until September 28, 2009. On September 14, 2009, the Association modified this request to seek a response date of September 18, 2009. On September 15, 2009, the Commissioner granted the Association's amended request and extended the Association's response date to September 18, 2009.
 10. The Association provided its responses to the request for additional supporting information to the Department on September 18, 2009. The Department sent the Association's response to CWIC on September 21, 2009.
 11. Written comments concerning the Association's rate filing were received from the Honorable Senator Mike Jackson, who recommended that there be no increase in rates at this time due to the additional burden it would place on

Texans still recovering from the effects of Hurricane Ike; and CWIC, which recommended rate decreases of ten percent based on its analyses.

B. Ratemaking Findings of Fact

12. The ratemaking approach used by the Association in its rate filing is essentially identical to the ratemaking approach used in previous years, and effectively assumes that Association costs would rise or fall in direct proportion to the volume of business it writes.
13. To arrive at its indicated rate needs for residential and commercial coverage the Association estimated its non-hurricane losses and loss adjustment expenses (LAE), operating expenses, average annual hurricane losses and LAE (based on an average of historical and modeled indications), and added a judgmentally selected rate provision of 40 percent to provide for a contribution to the catastrophe reserve trust fund (CRTF). This last provision was justified by the observation that it incorporated savings from the lack of any purchase of reinsurance.
14. Such a ratemaking approach and the bases for its assumptions worked reasonably well under the funding mechanism for the Association that existed pursuant to Insurance Code Chapter 2210 that was in effect until June 19, 2009.
15. The prior statute basically provided that if an occurrence or series of occurrences were to happen in a given year, any shortfalls in available funding would be funded by various assessments levied against the members of the Association. There would be no further financial responsibility for the Association as a result of that occurrence or series of occurrences, immediately or in the future.
16. The enactment of HB 4409 fundamentally changed the funding mechanism and the financial obligations of the Association in the event of a shortfall in available funds.
17. Pursuant to Subchapter B-1, Chapter 2210, the Insurance Code, insured losses and operating expenses resulting from an occurrence or series of occurrences that are in excess of the Association's available premiums, other revenues, and any amounts available in the Catastrophe Reserve Trust Fund (CRTF) must be paid from the proceeds of some combination of three classes of public securities.
18. Chapter 2210, as amended, continues to rely on the CRTF as a source of funding for the Association's excess losses.

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19. The CRTF was completely exhausted in 2008 by the losses of Hurricanes Dolly and Ike.
20. It is desirable to rebuild the CRTF.
21. The three classes of public securities created under Subchapter B-1, Chapter 2210, the Insurance Code, which can be issued for terms of up to ten years, are: Class 1 public securities, which could be issued in principal amounts of up to \$1 billion and which would be repaid from Association premiums and other funds; Class 2 public securities, which could be issued in principal amounts of up to \$1 billion and which would be repaid from a combination of Association member assessments and premium surcharges assessed against property and casualty policyholders residing or having insured property or operations in a catastrophe area; and Class 3 public securities, which could be issued in principal amounts of up to \$500 million and which would be repaid from Association member assessments.
22. The Association would be faced with the need to fund a large fixed dollar amount both immediately and for years into the future to cover the costs arising from any Class 1 public securities that had to be issued to cover the Association's excess insured losses and operating expenses arising from an occurrence or series of occurrences in a year.
23. If the statutorily authorized \$1 billion of Class 1 public securities were to be issued, the Texas Public Finance Authority and its advisors have estimated that, under current conditions, public securities purchasers would require that the annual long-term net premium income of the Association be between approximately \$235 million and \$281 million, depending on the interest rate.
24. "Net premium income," in the context of Finding No. 23, refers to the premiums available to the Association after deducting Association operating expenses (such as agents' commissions, premium taxes, general overhead costs) and normal non-hurricane losses and LAE.
25. The annual long-term debt service required by the public securities described in Finding No. 23 is estimated to be between \$157 million and \$187 million, meaning that the excess of the net premium income over the debt service costs in any year, or some portion of it, would be available to add to the CRTF the following year.
26. Finding of Facts Nos. 22 and 23 suggest that in projecting rate needs the Association must consider not only its normal ongoing costs (non-hurricane losses and LAE and operating costs), but whether the resulting rates,

together with the premium income that would result given the existing size of the Association and any reasonably anticipated growth or decline in the volume of business written, would be sufficient to cover those ongoing costs and the potentially sizable fixed net premium income requirements of any public securities issued.

27. The Association must therefore combine an analysis of the various cost components of the rates to determine its likely on-going operating cost needs with an in-depth analysis of the overall financial cash flows of the Association that will result from those needs as well as any fixed cost obligations arising from public securities that have been issued or are anticipated to be issued, given existing and reasonably anticipated changes in the volume of business the Association writes in order to determine rates that are in compliance with the Insurance Code Article 1.02 and §2210.355.
28. The Association may no longer assume that its financial needs are proportional to the amount of business it writes and rely on any shortfalls being made up from assessments of members.
29. The Association, and its board of directors in exercising its oversight responsibilities, must examine or consider the implications of this new funding reality in determining the Association's rate needs.
30. Department staff conducted such a review of the Association's rate needs. Based on the rate filing and the responses to requests for additional supporting information, including certain minor technical modifications to some assumptions (such as increasing the anticipated trends in loss costs), the Department determined that the existing level of rates, given the volume of business of the Association that could be reasonably anticipated for 2010, would be adequate to fund on-going Association losses and LAE, operating costs, and to cover the currently estimated Class 1 public securities costs that would result should it be necessary to issue Class 1 public securities in the maximum amount authorized under the Insurance Code 2210.072(b).
31. If there is no need in 2010 to issue Class 1 public securities, there could be funds available to add to the CRTF in 2011. This is consistent with the legislative intent to continue the CRTF.
32. The new funding reality created by the HB 4409 amendments to Insurance Code Chapter 2210 projects that at some time in the future the Association may be faced with funding two or more Class 1 public security issues at the same time.

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33. Should a catastrophic hurricane occur in 2010 that required the issuance of Class 1 public securities, when the Association considers its rate needs for 2011 it would have to recognize that another severe hurricane could occur in that year. This could require the Association to fund not only the Class 1 public securities issued in 2010 but also any new Class 1 public securities necessary to pay for the 2011 hurricane losses. This could lead to the need for substantial rate increases in 2011.
34. Finding of Facts Nos. 30 and 31 suggest that no increase in Association rates would be necessary at this time.
35. Finding of Facts Nos. 32 and 33 suggest that some increase in Association rates now might be appropriate in order to mitigate future substantial rate increases.
36. The Department recognizes that Texans living along the coast are still recovering from the effects of Hurricanes Dolly and Ike, and increases in Association rates at this time would only further exacerbate the burdens they are facing.
37. Based upon the foregoing considerations, the Commissioner has determined that some modest rate increases less than the ten percent increases being proposed by the Association may be prudent and reasonable so as to mitigate future substantial increases that may otherwise be required.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code Chapter 2210.
2. The Insurance Code §2210.352(c) provides that the Commissioner shall approve or disapprove the Association's filing made pursuant to §2210.352(a) in writing on or before October 15 of the year in which the filing is made, or the filing is deemed approved.
3. The Insurance Code §2210.352(d) provides that if the Commissioner disapproves a filing, the Commissioner shall state in writing the reasons for the disapproval and the criteria the Association is required to meet to obtain approval.
4. The Insurance Code §2210.355(b) and §2210.452 require that the Department must consider the past and prospective loss experience of hazards for which insurance is made available, the Association's expenses of

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operation, a reasonable margin for contributions to the CRTF, and all other relevant factors.

5. The Insurance Code Article 1.02 and §2210.355(c) require that rates must be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the foregoing Findings of Fact and Conclusions of Law be adopted.

IT IS FURTHER ORDERED that the 2009 Manual Rate Filing for all types of risks written by the Association be, and is hereby, disapproved in all respects.

AND IT IS SO ORDERED.


MIKE GEESLIN
COMMISSIONER OF INSURANCE