No. 2024-8911

Official Order
of the
Texas Commissioner of Insurance

Date: 10/14/2024

Subject Considered:

Texas Windstorm Insurance Association 2024 Annual Rate Filing
Petition No. P-0824-03 Residential; Petition No. P-0824-04, Commercial

General Remarks and Official Action Taken:

The subject of this order is the Texas Windstorm Insurance Association's (TWIA) proposed 10 percent uniform rate increase to residential and commercial rates for policies delivered, issued for delivery, or renewed on or after January 1, 2025.

Background

TWIA must file with the Texas Department of Insurance (TDI) a proposed manual rate for all types and classes of risks it writes not later than August 15 of each year. When the proposed rates are more than the rates in effect on the date of the filing, the commissioner must approve or disapprove the proposed rates before TWIA may use them. Insurance Code § 2210.352.

After considering TWIA's filing and responses to requests for additional supporting information, TDI staff analysis, and comments submitted on the rate filing, the commissioner adopts the following findings of fact and conclusions of law:

Findings of Fact

1. TWIA made its rate adequacy analysis publicly available on its website on July 1, 2024. The rate adequacy analysis included:

    a. All user-selected hurricane model input assumptions; and

b. Output data with the same content and in the same format that is customarily provided to TWIA by hurricane modelers and to TDI by TWIA.

2. The output data was in a searchable electronic format that allowed for efficient analysis and was sufficiently detailed to allow the historical experience in this state to be compared to results produced by the model.

3. On July 15, 2024, TWIA's Actuarial and Underwriting Committee reviewed the 2024 rate adequacy analysis prepared by TWIA's actuarial staff and voted 5 to 1 to recommend a 10% rate increase for both residential and commercial policies in TWIA's annual rate filing.

4. On August 6, 2024, TWIA's board of directors accepted public comment on the rate adequacy analysis at a public meeting of the board, before voting on the submission of a proposed rate filing to TDI.

5. At the August 6, 2024, meeting, TWIA's board of directors accepted the Actuarial and Underwriting Committee's recommendation by a vote of 6 to 3 and directed TWIA staff to file a 10% increase for residential and commercial policies in its annual rate filing.

6. On August 13, 2024, TWIA submitted its 2024 annual rate filing to TDI. TWIA's 2024 annual rate filing consists of separate filings for residential policies (S723754) and commercial policies (S723755). Both filings contain rate pages showing the current and proposed rates, a cover letter, an actuarial memo, rate indication exhibits (in both PDF and Excel formats), a document containing the catastrophe model disclosures described in 28 TAC § 5.4160(d), and TDI Exhibits A and C.

7. On August 14, 2024, the commissioner posted on TDI's website and submitted to the Texas Secretary of State a notice of the rate filing. The notice provided information on how to obtain a copy of the filing, the procedure and deadlines for submitting requests for additional supporting information on the filing, and the procedure and deadlines for submitting written comments or information related to the filing. The notice specified that TDI must receive any requests for additional supporting information by 5 p.m. Central time on August 29, 2024, and any comments or other information related to the filing by 5 p.m. Central time on October 1, 2024.

8. On August 23, 2024, TDI staff submitted a request for additional supporting information, which TDI's chief clerk forwarded to TWIA. After a follow-up request, TWIA provided its complete response to TDI staff on August 30, 2024.

Rate Standards and General Rate Requirements

9. TWIA's rates are subject to the rate standards in Insurance Code § 2210.355 and must be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer. Under Insurance Code § 2210.355(b), the commissioner must consider:

   a. The past and prospective loss experience within and outside this state of hazards for which insurance is made available through the plan of operation, if any;

   b. The expenses of the operation, including acquisition costs;

   c. A reasonable margin for profit and contingencies;

   d. Payment of public security obligations issued under Insurance Code Chapter 2210, including the additional amount of any debt service coverage determined by the association to be required for the issuance of marketable public securities; and

   e. All other relevant factors, within and outside this state.

10. The commissioner may also consider results from recognized catastrophe models, as contemplated by Insurance Code § 2210.355(h).

11. TWIA's rates are also subject to the requirements in Insurance Code § 560.002, which requires a rate to be just, fair, reasonable, and adequate, and prohibits a rate from being confiscatory, unfairly discriminatory, or excessive for the risks to which the rate applies.

Actuarial Review

12. TWIA's filing includes actuarial rate indications to support the proposed rate changes. The rate indications in the filing are the same as the rate adequacy

analyses TWIA made publicly available on its website on July 1, 2024. There are separate rate indications for residential and commercial policies.

13. According to the rate indications in the filing, TWIA's rates are inadequate by 38% for residential policies and 45% for commercial policies.

14. TWIA developed its rate indications using the loss ratio method, which compares the estimated percentage of each premium dollar needed to cover future losses, loss adjustment expenses (LAE), and other fixed expenses to the amount of each premium dollar that is available to pay for such costs.

15. TWIA's rate indications include estimates of the following costs: hurricane losses and LAE; non-hurricane losses and LAE; reinsurance; commission expenses; general expenses; and taxes, licenses, and fees. The indications also include a judgmentally selected rate provision of 5.0% to provide for a contribution to the Catastrophe Reserve Trust Fund (CRTF).

16. In its rate indications, TWIA estimated that future hurricane losses and LAE will amount to 43.2% of premium, at the current rate level, for residential policies and 51.8% of premium, at the current rate level, for commercial policies.

17. TWIA's estimate of hurricane losses considers industry hurricane loss experience for the 58-year period 1966–2023 (residential) or for the 54-year period 1970–2023 (commercial), meteorological hurricane experience for the 173-year period 1851–2023, and modeled hurricane losses. The modeled hurricane losses are derived from catastrophe models run on TWIA's exposures as of November 30, 2023. TWIA's estimate of hurricane LAE considers TWIA's LAE for accident years with hurricanes in the 44-year period 1980–2023.

18. In its rate indications, TWIA estimated that future non-hurricane losses and LAE will amount to 13.9% of premium, at the current rate level, for residential policies and 4.6% of premium, at the current rate level, for commercial policies.

19. TWIA's estimate of non-hurricane losses considers its non-hurricane loss experience for the 10-year period 2014–2023. TWIA's estimate of non-hurricane LAE considers TWIA's LAE for accident years without hurricanes in the 44-year period 1980–2023.

20. In its rate indications, TWIA estimated that future reinsurance costs will amount to 44.0% of premium, at the current rate level, for residential policies and 50.4% of premium, at the current rate level, for commercial policies.

21. TWIA's estimate of reinsurance costs considers the actual cost of TWIA's 2024–2025 reinsurance contract, net of expected recoveries, brokerage fees, ceding commissions, and issuance fees. This contract provides reinsurance coverage of $4.05 billion in excess of a $2.45 billion retention.

22. TWIA purchased this amount of reinsurance to fulfill its obligation under Insurance Code § 2210.453 to maintain total available loss funding in an amount not less than the 1-in-100 probable maximum loss (PML) for a catastrophe year.

23. In its rate indications, TWIA estimated that future general expenses will amount to 5.2% of premium, at the current rate level, for both residential and commercial policies. In developing this estimate, TWIA considered its general expenses for the three-year period 2021–2023 and projected values for 2024.

24. In its rate indications, TWIA estimated that future taxes, licenses, and fees will amount to 1.8% of premium for both residential and commercial policies. In developing this estimate, TWIA considered its taxes, licenses, and fees for the three-year period 2021–2023 and projected values for 2024.

25. The rate indications include a 16.0% provision for commission expenses. Agents earn 16.0% of the premium for residential policies (except for manufactured homes) and commercial policies. Agents earn 12.0% of the premium for manufactured home policies.

26. TDI actuarial staff reviewed the rate indications in TWIA's filing to assess the actuarial soundness of the proposed rate changes. The review evaluated the appropriateness of the rate-making parameters TWIA used in the indications, including the experience data used to estimate projected losses and expenses, the procedures and methods used to adjust historical data to prospective levels (e.g., trending, loss development, premium on-leveling, etc.), and the treatment and estimation of catastrophe losses.

27. TDI actuarial staff evaluated how the rate indications would change if an alternate, more favorable estimate of future reinsurance costs were used. The alternate estimate was calculated by trending expected reinsurance recoveries and premium to the midpoint of the reinsurance contract. This method was used by TWIA in previous filings.

28. TDI actuarial staff evaluated how the rate indications would change if an alternate, more favorable estimate of future average premium were used. The alternate estimate assumes that average premium will continue to increase at the rate it did between 2021 and 2023. For residential, the alternate estimate also accounts for the expected impact of the 2024 Adjusted Building Cost (ABC) factor change, which will increase Coverage A limits by 12%–13% for residential renewals effective on or after June 1, 2024, unless the policyholder selects a different limit.

29. TDI actuarial staff evaluated how the rate indications would change if an alternate, more favorable estimate of future general expenses were used. The alternate estimate assumes that TWIA's general expense ratio will continue to decrease at the rate it did between 2021 and 2023.

30. In combination, the alternate estimates described in Findings of Fact 27–29 lowered the indications to 26% for residential and 38% for commercial. These indications are still well above the proposed 10% rate increase.

31. TDI actuarial staff concluded that TWIA's current rates are inadequate to cover expected losses and expenses, and that there is a sound actuarial basis for a 10% rate increase.

32. TDI actuarial staff concluded that TWIA's proposed rate changes are consistent with Insurance Code § 2210.355(b)(1)–(4) and (c).

Other Relevant Considerations

33. In addition to the actuarial standards in Insurance Code § 560.002 and § 2210.355(b)(1)–(4) and (c), there are requirements in § 560.002 that rates be "just" and "fair" and in § 2210.355(b)(5) that "all other relevant factors, within and outside this state" be considered in adopting TWIA's rates.

Public Comments

34. TDI received 434 timely written comments on the filing.

35. In addition to providing an opportunity for written comment, TDI heard comments at two public meetings—one in Galveston on September 23, 2024, and one in Corpus Christi on September 27, 2024. TDI heard 58 comments in total at the public meetings.

36. The comments came from individuals, elected officials, coastal business associations and chambers of commerce, consumer advocacy groups, local charities, and insurance agents.

37. Of the 492 total comments TDI received, both written and in person, all but three opposed any rate increase. The persistent theme of the comments against a rate increase was that TWIA policies are unaffordable.

38. The comments included those from:

a. The chief financial officer for the Kingsville Independent School District, who commented on how all of the district's insurance costs have expanded dramatically over the past few years. He expressed concern that if this increase went into effect, the district would not be able to afford enough coverage to cover a catastrophic event.

b. The city manager of the City of Galveston, who commented that coastal governments, residents, and school districts face challenges from statutory property tax growth revenue restrictions. He expressed that TWIA coverage is not only essential to protect against losses and maintain economic stability but also is necessary to obtain real estate financing. He also commented on the critical role that the people who work for coastal industries play in the Texas economy and on how the proposed rate increase will impact them.

c. The president and CEO of the Galveston Regional Chamber of Commerce, who commented at the Galveston meeting about the high percentage of small businesses in the area and their challenges in finding workers.

d. The superintendent of schools for Flour Bluff Independent School District, who commented on the financial burden that rising insurance costs place on Flour

Bluff and other school districts. Flour Bluff ISD is having to divert funds needed for teacher salaries and retention, educational programs, and technology investments to pay for insurance.

e. A member of the Galveston City Council, who commented at the Galveston meeting that many workers are being forced off the island because they cannot afford to live there.

f. A commenter at the Corpus Christi meeting, who suggested that TWIA reduce agent commissions and find other ways to reduce costs before asking policyholders to pay more.

g. A state senator at the Corpus Christi meeting, who commented that property values are rising more on the coast than in the rest of the state, therefore coastal residents already pay higher insurance costs than other Texas residents. She also commented that half the buildings in one of the school districts in her district are uninsured.

h. A state representative at the Corpus Christi meeting, who commented on how insurance costs already cut into local school districts' limited budgets, meaning that the districts will not be able to insure all their buildings. These school districts already face a gap between expenses and revenue.

i. A commercial landlord at the Corpus Christi meeting, who commented that insurance is his largest expense and that he passes it on to his tenants. His tenants include an adult day care center that can no longer afford to provide the same level of care due to the rent increase.

j. A director of a nonprofit serving vulnerable youth, who commented at the Corpus Christi meeting that her nonprofit pays $43,000 to TWIA for insurance annually. She estimated that the increase could cost funding for over 90 students.

39. In comments to the TWIA board of directors made in advance of the vote, the Port of Corpus Christi's CEO stated that the industries that operate in the port account for over 95,000 direct and indirect jobs across the state and that the coastal bend community has seen over $65 billion of infrastructure investment over the past decade.

40. Legislators who commented, both in person and in writing, consistently pointed out that the 89th Legislature will begin in a few months and asked for the opportunity to address TWIA's funding issues then.

Hurricane Beryl Recovery

41. As of October 11, 2024, TWIA received 31,163 claims arising from Hurricane Beryl and has paid $258.7 million in claims from that hurricane.

42. TWIA anticipates that paying claims arising from Hurricane Beryl will exhaust the CRTF, the balance of which was $451.4 million as of June 30, 2024.

43. TWIA's chief actuary stated at the August 6, 2024, board meeting that at current premium levels, a 10% rate increase would yield approximately $75 million per year for the CRTF. He stated that while a 10% rate increase would be a step in the right direction, it would not establish rate adequacy.

44. TDI recognizes that coastal Texans are still recovering from Hurricane Beryl and increases in rates at this time would exacerbate the burdens they are facing.

Agent Commissions and Other Expenses

45. As noted in Finding of Fact 25, TWIA agents earn 16.0% of the premium for residential policies (except for manufactured homes) and commercial policies and 12.0% of the premium for manufactured home policies.

46. This is higher than the industry average of 13% of the premium for private market commissions.

47. Even if agent commissions were to be dropped to the industry average, rate indications would still be greater than 10%. However, the fact that TWIA pays commissions in excess of the industry average should be considered in assessing whether asking TWIA policyholders to pay for a rate increase is fair or just.

48. There may be other areas in which TWIA can cut expenses before asking policyholders to pay higher rates.

89th Legislature

49. The Legislature will have the opportunity to address TWIA's funding structure when the 89th Regular Session begins on January 14, 2025.

Conclusions of Law

1. The commissioner of insurance has jurisdiction over this matter under Insurance Code Chapter 2210.

2. Insurance Code § 2210.3511 requires that TWIA make its rate adequacy analysis publicly available at least 14 days before the board of directors votes on the submission of a proposed rate filing.

3. Insurance Code § 2210.352 requires that any proposed rate that exceeds the rate in effect must be approved by two-thirds of TWIA's board of directors.

4. Insurance Code § 2210.352 requires that TWIA file with TDI a proposed manual rate for all types and classes of risks written by TWIA not later than August 15 of each year.

5. Insurance Code §§ 2210.352 and 2210.354 and 28 TAC § 5.4701 require that the commissioner provide all interested persons a reasonable opportunity to review the filing, obtain copies, submit written comments or information related to the filing, and request additional supporting information on the filing.

6. Insurance Code § 2210.354 and 28 TAC § 5.4701 require written requests for additional supporting information and written comments or information related to the filing to be submitted no later than 5 p.m. on the date specified in the notice of the annual rate filing.

7. Insurance Code § 2210.354 requires TWIA to respond to a request for additional supporting information not later than the fifth day after the request is delivered.

8. Insurance Code § 2210.352(c) provides that the commissioner shall approve or disapprove TWIA's filings made under § 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.

9. 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 TWIA is required to meet to obtain approval.

10. Insurance Code § 2210.355(b) requires the commissioner to consider the past and prospective loss experience of hazards for which insurance is made available, TWIA's expenses of operation, a reasonable margin for contributions to the CRTF, payment of public security obligations, and all other relevant factors.

11. Insurance Code § 2210.355(c) requires that rates must be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer.

12. Insurance Code § 2210.355(h) allows the commissioner to consider recognized catastrophe models in adopting rates.

13. The statutory requirements for posting TWIA's rate adequacy analysis under Insurance Code § 2210.3511 have been met.

14. The statutory requirements for voting on TWIA's annual rate filing under Insurance Code § 2210.352 have been met.

15. The statutory requirements for providing all interested persons a reasonable opportunity to review the filing, obtain copies, submit written comments or information related to the filing, and request additional supporting information on the filing under Insurance Code §§ 2210.352 and 2210.354, and 28 TAC § 5.4701 have been met.

16. The statutory requirements for responding to a request for additional supporting information under Insurance Code § 2210.354 have been met.

17. The actuarial requirements of Insurance Code § 2210.355(b)(1)–(4) and (c) have been met.

18. The TWIA rate requirements in Insurance Code § 2210.355 do not include "fair" and "just," but these requirements should be read in conjunction with Insurance Code § 560.002. Doing so means requiring TWIA rates to meet all the requirements in both sections and disapproving filed rates that do not, even if those rates meet some of the requirements.

19. The evidence gathered from the comments shows that a rate increase would be unjust and unfair because of the hardships a rate increase would impose on the coast.

20. The "fair" and "just" requirements of Insurance Code § 560.002 have not been met.

21. The items in Findings of Fact 33–49 constitute "other relevant factors within and outside this state," which must be considered under Insurance Code § 2210.355(b)(5) before TWIA's annual rate filing can be approved.

Order

It is ordered that the foregoing findings of fact and conclusions of law are adopted.

It is further ordered that the TWIA 2024 Annual Rate Filing is disapproved.

Signed by:
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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

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