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August 21, 2019

Robert N. Barley, Chairman
c/o Douglas L. Eberly, Esq.
Pennsylvania Milk Marketing Board
Room 110, Agriculture Bldg.
2301 North Cameron Street
Harrisburg, PA 17110

RE: Clarification of July 22, 2019 Letter from PAMD re Milk
Procurement Cost Hearing

Dear Chairman Barley and Members of the Board:

On July 22, 2019, the Pennsylvania Association of Milk Dealers (PAMD) sent a letter to request: (1) Holding the implementation phase of the procurement hearing in early 2020 instead of October 2019, (2) Holding a conference pursuant to 1 Pa. Code 35.112 to explore the possibility of a compromise; (3) Extending the pre-submission deadlines. With respect to the hearing date and conference request, PAMD stated:

PAMD requests that the hearing be held sometime in early 2020 as originally contemplated. That may even allow for the Board to hold a conference among the parties to narrow the issues and explore the possibility of a compromise to the extent feasible under the Milk Marketing Law. PAMD is willing to explore those concepts. We believe such a conference would be authorized pursuant to 1 Pa. Code 35.112 which authorizes "prehearing or other conferences ... to expedite the orderly conduct and disposition of a hearing" which may address "offers of settlement or proposals of adjustment" among other things. See also 1 Pa. Code 35.111 and 1 Pa. Code 35.113.

The Board has responded to request number 3 by extending the pre-submission deadlines. The Board has not responded to the other two requests. It occurs to PAMD that what was intended as requests may not have been clear enough. Therefore, PAMD seeks to offer the following clarification.

The request to move the hearing from October 2019 to early 2020 is an independent request and was made due to the reasons articulated in the July 22, 2019 letter. Many of those reasons still exist, not the least of which is that PAMD will not be able to have the input of the

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expert with the primary knowledge of the hearing. This request also contemplated (but was not clear enough) moving the pre-submission deadlines closer to the time of the hearing in 2020 to allow for the input of Dave Stonesifer who is not available until November. Failing to schedule the hearing and move the pre-submissions accordingly will both disadvantage PAMD and add cost to PAMD's case preparation.

The request for the Board to exercise its authority pursuant to 1 Pa. Code 35.112 is dependent on the hearing being scheduled for 2020 and all pre-submission deadlines being tolled. PAMD believes that a conference held by the Board to explore compromise could result in the parties identifying a resolution of the issue that could avoid the expense and adversarial nature of the hearing.

PAMD is expected to continue its opposition to the cooperative procurement charge as currently proposed by the Pennsylvania Association of Dairy Cooperatives (PADC) if the hearing process continues; however, PAMD asks the Board to hold a conference that is structured with the protections of a settlement conference to facilitate a discussion of potential compromise. If the conference bears fruit, it could avoid additional hearing days, extensive post-hearing briefing and the possibility of litigation. With appropriate protections so not to prejudice PAMD in its opposition to the cooperative procurement charge should a hearing become necessary, PAMD is prepared to offer suggestions for compromise.

PAMD affirmatively requests a conference to explore a compromise solution, but this request is only sensible for PAMD if the Board reschedules both the hearing date and the pre-submission deadlines in order to allow the parties to achieve cost savings should the parties reach a compromise.

Before submitting its July 22, 2019 letter, PAMD requested feedback from interested parties on these requests and PADC was the only party expressing opposition to moving the hearing to early 2020 and to a conference to explore compromise.

Thank you for your consideration of these requests.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC



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