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February 23, 2022

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: March 2, 2022 Over-Order Premium Hearing

Dear Chairman Barley and Members of the Board:

On behalf of the Pennsylvania Association of Milk Dealers (hereafter "PAMD"), I file this motion to strike the testimony of the Department of Agriculture witness Mr. Hostetter, the Farm Bureau witness Mr. Painter, and portions of Mr. Wood's proposed testimony. I also file this motion to exclude the testimony submitted by the Farm Bureau because it is late filed rebuttal testimony disguised as surrebuttal testimony and it serves to support the Department of Agriculture testimony, which itself is outside the scope of the hearing, thus making the Farm Bureau testimony beyond the scope of this hearing. Moreover, it deprives parties that did not notice their appearance and parties that did notice their appearance of the opportunity to respond to a major position change by waiting until surrebuttal.

It is fundamental to a fair hearing that the evidence allowed is limited to the scope of the hearing as set forth in the hearing notice. For the upcoming Over Order Premium Hearing on March 2, 2022, the Milk Marketing Board (hereafter, Board or PMMB) stated the scope of the hearing as follows:

"The purpose of the hearing is to receive testimony and exhibits concerning the level and duration of the Class I over-order premium." Bulletin No. 1606 (Feb. 2, 2022).

This stated purpose cannot be viewed in a vacuum, it is essentially the same purpose used in the announcement of the semi-annual Over Order Premium hearings for many years. And when parties sought to address issues that were not geared toward deciding how much the Over Order Premium should be or how many months it should continue at that level, the Milk Marketing Board would schedule separate proceedings (hearings or workshops for example) to allow all parties the opportunity to prepare. Indeed, the issue of distribution was addressed in workshops and separate proceedings many years ago when it was ultimately decided not to pool the Over Order Premium hearing and the issue of the so-called stranded premium was addressed in a separate proceeding many years ago.

Therefore, based on the Board's own hearing notice, neither PAMD nor other members of industry could have known that in a hearing that is held in the normal course every six months would have required witnesses to address issues that have been addressed previously and issues that involve a potential major course shift. To allow testimony that goes beyond the scope of the typical semi-annual Over Order Premium hearing would deprive PAMD and potentially other members of the industry due process.

Additionally, testimony was just submitted this morning by the Farm Bureau that should be excluded both because it is not proper surrebuttal and because the testimony goes beyond the scope of the hearing. The Farm Bureau was on notice of the request to maintain the Over Order Premium at \$1.00 for six months when the Grange filed its testimony. There was no new testimony offered in support of continuing the \$1.00 premium on rebuttal and the Farm Bureau does not purport to respond to such testimony. Instead, the Farm Bureau admits that their testimony supports the testimony of the Department of Agriculture, which is in itself outside the scope of the hearing. By waiting for surrebuttal, the Farm Bureau has deprived those in support of the continuation of the Over Order Premium from having a chance to prepare a response. Filing early on the day surrebuttal is due does not give the parties an adequate ability to prepare a response.

Based on Mr. Wood's outline, PAMD moves to strike testimony listed in item 3 related to "the inequities of the distribution of money," testimony listed in item 4 related to "the transportation of fluid milk from farmers all over the state trying to either be in or not in the premium pool and the problems that it causes," and testimony listed in item 5 related to "some possible solutions that need to be discussed a lot more" because this testimony is geared toward eliminating the Over Order Premium not establishing a level and duration of the Over Order Premium.

PAMD moves to strike Mr. Hostetter's testimony in its entirety because his testimony speaks to distribution of the Over Order Premium as evidenced in his points 1 through 3 on page 1 of his testimony.

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PAMD moves to strike Mr. Painter's testimony despite ostensibly addressing the level of the Over Order Premium by suggesting it should be zero, because the evidence to support the request speaks to the distribution of the Over Order Premium, again a topic that is beyond the scope of this hearing.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC

/s/ Wendy M. Yoviene

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