

PA Milk Marketing Board
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A Hard Lesson in “Government for the People”

The board voted on August 11th to accept a consent order with Upstate Niagara Dairy Cooperative (hereafter called Upstate), located in Buffalo, NY. The consent order resolved a staff-issued citation the company received for bidding under PA minimum prices under The Emergency Food Assistance Program (TEFAP). You may remember that I wrote about this situation recently, but I did not mention any names or refer to any companies.

Upstate was issued a citation by the board on June 2, 2021, that stated specific violations of Section 807 of the Milk Marketing Law and that it could be subject to revocation or suspension of its license to sell milk in PA. According to TEFAP award documents, Upstate planned to deliver milk to PA locations primarily from its Williamsport processing plant that is supplied by 100% New York produced milk.

The plant’s location had nothing to do with the issuance of the citation; rather, it was the submission of bids for below minimum prices. Based on my and board members’ communications with several PA milk dealers and PA Department of Agriculture (PDA) staff who administer TEFAP in Pennsylvania, Upstate has had a noticeable track record of contract awards over the years. Until we were advised of the problem with this year’s 1st and 3rd quarters’ contracts, we were not certain what was the cause, at least of those particular contracts.

Upstate was issued a citation with a warning for the 1st quarter violations mainly because individuals at USDA had communicated that it did not have to honor PA law regarding minimum pricing for federal bids and we wanted to be fair. This communication, however, directly conflicts with USDA’s own statements on bid solicitations assuming bidders will honor respective state laws including those on prices. The 1st quarter citation informed Upstate that it should contact board staff with any questions related to pricing of milk sold in the commonwealth.

Along came the 3rd quarter violation which we view as more serious since a warning had already been issued. Rather than contact board staff, Upstate chose to ask an accounting firm for advice about possible allowable discounts that might be used to calculate a bid price for the 3rd quarter TEFAP awards. The accounting firm provided inaccurate information leading to where we are at the present time.

In my previous article I spoke about these violations and my hope that USDA would release the offending company from the particular contract as it had done before. This would allow board staff time to work with other dealers to secure donations and provide PA food banks with much-needed fresh milk supplies. Also, as in the past, portions of the contracts could be rebid by other dealers and only a few weeks’ deliveries would be disrupted.

Unfortunately, my hope was not realized, and the board and staff have undergone several months of frustrating discussions with both Upstate and USDA.

Upstate initially resisted accepting any consequences for its actions, or at least any consequences that would have it admit culpability and wrongdoing. It took many weeks of discussions to convince the company that it could either follow our normal procedures for development of a compromise solution, that include acceptance of responsibility for the violation, or attend a hearing in front of the board which could result in a revocation or suspension of its license.

The consent order that was accepted by the board by vote on August 11 is the result of those weeks of discussions. The legal case disposition can be viewed on our website, section Legal, and under Sunshine Meetings.

USDA is another matter. This government agency has chosen to be what I would personally consider less than cooperative in working toward a solution to ensure that PA food banks—serving over 200,00 citizens of the commonwealth each month—received much needed fresh milk deliveries. Our attorneys have been advised that our law “is our problem” and that USDA cannot discuss particular TEFAP awards with us.

The agency has refused to allow Upstate to pull out of its contract so that certain awards could be rebid. It has, however, chosen to waive the contract compliance on a weekly basis and we do not have information in a timely enough manner to seek donations from other dealers. This is happening with USDA awareness of how its decisions are negatively impacting milk deliveries to PA food banks.

Having been told that USDA would not discuss the issues with our staff, I asked PDA to attempt to resolve the issue, convincing USDA to allow Upstate to deliver milk to food banks and invoice at PA minimums. USDA has refused to do this.

The board’s only solution would be to allow Upstate to sell milk at below minimum prices in the commonwealth, something we do not feel is appropriate and in direct conflict with our commitment to enforce regulations equitably in all situations.

The best we can do at this time is to continue to monitor the TEFAP award process to ensure that contracts are given to those dealers who have bid, at least, the PA minimum prices. We hope that in doing this that some of our PA milk processors will fairly win some of the contracts.

PMMB is always available to address questions and concerns. I can be reached at 717-210-8244 or by email at chardbarge@pa.gov.