

WENDY M. YOVIENE, SHAREHOLDER
Direct Dial: 202.326.5027
Direct Fax: 202.336.5227
E-Mail Address: wyoviene@bakerdonelson.com

October 22, 2019

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

Re: Cooperative Procurement Hearing
Attorney Eyes Only Motion For Interim Compromise

Dear Chairman Barley and Members of the Board

The Pennsylvania Association of Dairy Cooperatives (PADC) and the Pennsylvania Association of Milk Dealers (PAMD) have reached a temporary compromise with respect to the Cooperative Procurement Cost Hearing and make this joint motion urging the Board to adopt an interim order that tolls the Cooperative Procurement Hearing Proceeding and which adopts the terms of the compromise on an interim basis as articulated in the attached draft order.

The compromise is temporary and is intended to give PADC and PAMD breathing time to alleviate the ongoing burden on resources and to consider whether a more permanent compromise can be reached. If a more permanent compromise cannot be reached, this interim compromise stipulates that the Board would move forward with the hearing that was scheduled for October 9, 2019 in July of 2020 without prejudice to any party for their participation in these compromise proceedings.

The compromise and attachments are being submitted confidentially with this motion pending action by the Board to adopt provisions as articulated in the attached Agreement in Furtherance of Procurement Hearing Compromise providing that no party will be prejudiced in the Cooperative Procurement Hearing Proceeding by their participation in these compromise proceedings. PADC and PAMD therefore move for an Order that reflects the confidentiality and non-prejudice provisions in the Agreement in Furtherance of Procurement Hearing Compromise so that when these attachments and this compromise is made public there are appropriate protections for the interested parties who are acting in good faith seeking to streamline the hearing process if possible.

Robert N. Barley, Chairman

October 22, 2019

Page 2

PADC and PAMD are attaching a draft order for the Board's consideration along with attachments that address the parties' proposal for implementation and enforcement. Attachments 1 and 2 reflect how the interim charge would be reflected on the Producer and Resale Price Sheets. Attachment 3 reflects the method for calculating the dealer obligation for the interim charge. The bottom panel of Attachment 3 can be made available to the Board and Board Staff as a live spreadsheet that links to the PMMB Form 62. As a live spreadsheet that is linked to the Form 62, it will obviate the need for any changes to MARS.

Both PADC and PAMD urge the Board to adopt the Draft Order and attachments. The specific provisions of the draft order, including but not limited to the protections under Section II, are vital to PADC and PAMD's willingness to adhere to this compromise, and PADC and PAMD reserve the right to withdraw their consent to compromise if the terms of the Draft Order would be altered in any material respect.

Counsel for the interested parties have been consulted and the following do not object to the draft order: Department of Agriculture, Pennsylvania Farm Bureau, Pennsylvania Food Merchants and Dean Foods. Board Staff plans to respond to this motion and thus could not offer their non-objection.

PADC and PAMD respectfully ask the Board to adopt the proposed compromise with sufficient time for it to become effective at 12:01 am on January 1, 2020.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC



Wendy M. Yoviene

Attachments