

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

August 30, 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: PAMD's Response To PADC's Motion to Strike
Regarding Cooperative Milk Procurement Cost Hearing

Dear Chairman Barley and Members of the Board:

Even as the Pennsylvania Association of Milk Dealers (PAMD) is attempting to resolve this hearing through compromise, PAMD must preserve its rights and the integrity of this proceeding should those efforts fail. The motion to strike filed by the Pennsylvania Association of Dairy Cooperatives (PADC) with respect to Board Staff's Rebuttal Implementation Testimony is not well-founded and threatens PAMD's tentative plans for rebuttal. Therefore PAMD urges the Board to deny the motion to strike for the following reasons.

At the outset it is important to remind the Board that PADC's case and chief initially left the question of implementation unanswered. This of course led to the bifurcation of the hearing. That meant that interested parties, including PAMD, Board Staff and representatives for Pennsylvania producers, among others could not fully comprehend how and to what extent the proposal would impact their interests or the interests of the Pennsylvania industry until the Petitioners clarified their intentions for implementation.

In particular, this meant that nobody knew until PADC's implementation filing how or if the proposal would benefit Pennsylvania producers, but we now know, subject to cross examination, that the implementation proposal does not provide a mechanism to pass back benefits of the proposed Cooperative Charge to the Cooperatives' Pennsylvania members. As a result, the testimony from the first part of the hearing cited by Board Staff has become relevant to whether it is good or bad policy to adopt the Cooperative Charge. In addition, nobody knew with certainty until now, what would be the value of the proposal to the Cooperatives as the amount passed through to the cooperatives could have been affected by implementation. Further, nobody knew until now what would be the impact on milk dealers because of the amount passed

Robert N. Barley, Chairman
August 30, 2019
Page 2

through in the prices and the amount recovered could not be known with certainty until the implementation methods were proposed, among other things.

Therefore, it is perfectly appropriate for an interested party such as Board Staff to voice its concerns about the cost-benefit analysis, including the impact on the operations of the Board now that the interested parties have a better idea of who will benefit, who will not benefit and who will be hurt by PADC's proposals for implementation. They may still have more to say on this topic after PAMD's rebuttal filing. Therefore the Staff's testimony about the impact on the Pennsylvania producer (page 3, part C) and the impact on the Staffing (page 4, part F) are part of a cost-benefit analysis (page 4, part G) that could not have been known until the Cooperatives made clear their intentions for implementation. Therefore that testimony is appropriate even if unanticipated by the Cooperatives. Moreover, Staff makes a very good point - PADC may respond to this testimony on surrebuttal, thus PADC is not deprived of any due process.

Board Staff has also suggested how to present the Cooperative Charge to the public (including wholesale milk customers and consumers) if it is adopted and has suggested that because they view it as a premium it should be called a premium and presumably because included on the same price sheet for disclosure. This is absolutely an aspect of implementation, technical but still important, and PADC should simply respond to the Board Staff. PAMD will be offering testimony with respect to how the Cooperative Charge should be presented if adopted as well.

PAMD is also very concerned that PADC's motion to strike suggests that all policy arguments about whether the Cooperative Only Charge should be adopted had to be offered during the first phase, as if to suggest that whether a Cooperative Charge will be adopted is a fait accompli. How the Cooperative Charge is implemented affects PAMD's cost benefit analysis as well and PAMD intends to address the impact of the different implementation methods from a cost benefit perspective as well as others. PAMD also intends to further argue policy now that it has more information about the Cooperative's intentions for the Cooperative Charge. It is important to understand that the level of opposition to a proposal becomes more or less when the impacts of the proposal can be understood. To deprive the parties of the opportunity to make policy arguments now that there is a clearer understanding of the Petitioner's intentions would raise serious due process concerns. The parties cannot have been expected to forecast all of the possibilities and make all of their policy arguments when the Petitioners did not carry their burden of explaining the possibilities.

In order to ensure that all parties have a full and fair opportunity to present their cases against the Cooperative Charge, the Board should deny PADC's motion to strike because it seeks to prevent an interested party from explaining its position now that it has a better understanding of the Petitioner's proposal.

Thank you for your consideration of this response.

Robert N. Barley, Chairman
August 30, 2019
Page 3

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

A handwritten signature in black ink, appearing to read "Wendy Yoviene". The signature is fluid and cursive, with the first name "Wendy" and last name "Yoviene" clearly distinguishable.

Wendy M. Yoviene

cc: Interested Parties