

**COMMONWEALTH OF PENNSYLVANIA**  
Pennsylvania Milk Marketing Board

**In the Matter of: November 6, 2013 Over-Price Premium Hearing**

**Surrebuttal Witness and Exhibit List**

The Pennsylvania Association of Milk Dealers, by and through Ober Kaler Grimes & Shriver, will participate in the above hearing by cross-examining witnesses and is expected to call Carl Herbein of Herbein & Company as an expert witness in cost accounting and milk cost accounting to provide surrebuttal testimony in addition to his previously submitted rebuttal testimony. He will rely on the attached testimony and exhibits as the basis for his opinions offered on surrebuttal.

Respectfully submitted,

/s/ Wendy Yoviene

Wendy M. Yoviene

## CERTIFICATE OF SERVICE

On this 31<sup>st</sup> day of October, 2013, I, Samira Fredericks, a secretary in the law office of Ober, Kaler, Grimes & Shriver, hereby certify that I have served on this day true and correct copies of the foregoing on behalf of the Pennsylvania Association of Milk Dealers by E-mail to the following persons:

### INTERESTED PARTIES

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Samira Fredericks

SURREBUTTAL TESTIMONY OF

CARL D. HERBEIN, CPA

Appearing on Behalf of the Pennsylvania Milk Dealer Associations

Surrebuttal Testimony before Pennsylvania Milk Marketing Board

Over-Price Premium Hearing

November 6, 2013

## **Surrebuttal Testimony of Carl D. Herbein, CPA**

### **Over-Price Premium Hearing**

I am Carl D. Herbein, CPA, President and CEO of Herbein + Company, Inc. and my address is 2763 Century Blvd., Reading, PA 19610. I wish to present Surrebuttal Testimony on behalf of the Pennsylvania Milk Dealer Associations concerning Areas 1, 2, 3, and 4. I also submitted Rebuttal Testimony, which included an analysis of my study conducted, commented on the cross-section and comments on exhibits which I submitted at that time. I will not re-introduce that information and it should be considered part of my opinion and testimony.

### **Surrebuttal Comments**

I have received the PMMB Staff Rebuttal Exhibits and in reviewing Staff Rebuttal Exhibit #1 I have now determined that Line B – Total OPP Adjustment Pounds is incorrectly presented. Upon further analysis of the supporting detail I find that these pounds include significant Class I pounds which are subject to dealer / dealer service contracts (tolling agreements). The Eastern portion of Pennsylvania has historically had significant and long-standing tolling agreements many of which were grandfathered when the service agreement order was enacted. Based upon my review and experience with a number of these contracts I find that the PMMB calculation of the over-price premium in no way affects the in-to-store price for controlled products sold subject to a tolling agreement. Some of these older tolling contracts include raw milk costs based upon Federal announced skim and butterfat, plus MilkPEP, plus Market Administrator fees, plus actual premiums paid. Thus the calculation errors made in determining the over-price premium in no way affected an in-to-store price for such a customer. Thus, to include those tolling pounds significantly overstates the dealer over-price premium amount which PMMB Staff suggests should be subject to the claw back proposal they have presented. The significance of tolling in Areas 1 is approximately 46%, Area 2 is approximately 36%, Area 3 is approximately 27%, and Area 4 is approximately 20% of Class I sales in the respective areas.

We have made PMMB Staff aware of this issue and believe that it is impossible to calculate a claw back amount properly.

Another problem with the claw back is that it cannot be clawed back from those that allegedly originally benefited due to marketplace changes as to the location of Class I processing and sales as well as the effect of

percentage discounts (in Areas 1, 2, and 3) on the actual overstatement and the correction. In analyzing the volume changes taking place within Areas 1, 2, 3, and 4 I also recommend that the use of a 45 month period could result in clawing back more revenue than was originally created by the error in the over-price premium calculation if more Class I volume moves into an individual plant or into an individual area. The location of controlled product processing and from where customers are served are changing significantly at this time based upon my discussions with the Milk Dealers affected.

### **Summary and Recommendation**

The Milk Dealers urge the Board to reject the Board Staff's proposal to adjust milk prices in Areas 1, 2, 3, and 4 for the 45 month period that they recommend. Additionally, with the discovery that tolling Class I pounds have been included in Board Staff's analysis further affects the unacceptability of the claw back recommendation. It continues to be my opinion that the severely reduced level of profitability requires that dealer margins not be further reduced.