

BEFORE THE PENNSYLVANIA MILK MARKETING BOARD

COOPERATIVE PROCUREMENT COSTS HEARING

All Milk Marketing Areas

October 5, 2020

Testimony of David DeSantis

Presented on behalf of the Commonwealth of Pennsylvania

Department of Agriculture

Submitted August 7, 2020

Dear Chairman Barley and Members of the Board:

Good morning. I'm Dave DeSantis. I was the Chief of Enforcement and Accounting for the Pennsylvania Milk Marketing Board for several years before retiring in 2015. I have been following with some interest these proceedings regarding reimbursement to the cooperatives for ordinary costs that they, the coops, have incurred in the course of procuring milk for Pennsylvania Class I milk dealers. These are costs that represent expenses which would have otherwise been incurred by those dealers had they purchased that milk from their own independent producers. I am here today to offer my perspective on that subject.

The Milk Marketing Law defines a milk dealer as “any person, who purchases or receives or handles on consignment or otherwise milk within the Commonwealth, for processing or manufacture and further sale, within or without the Commonwealth,...If a cooperative distributes or makes available on consignment or otherwise milk within this Commonwealth to stores, as defined in this act, or to consumers, as defined in this act, or to other milk dealers or handlers, as defined in this act, or acts as an agent for its members, it shall be deemed to be a milk dealer or handler as to that part of its business.”

It is my belief that when a cooperative provides services in conjunction with the sale of milk to Pennsylvania dealers the cooperative is acting as a milk dealer and must sell those services at or above cost as provided by the Milk Marketing Law. In this respect there are actually two separate sales – the sale of the milk, which is governed by the minimum pricing statutes of the Milk Marketing Law, and the sale of the services associated with the sale of that milk which is also governed by the Milk Marketing Law. Those services include but are not limited to the traditional administrative, laboratory and fieldwork services. These services are detailed in Section 149.46 of the Regulations of the Milk Marketing Board (Pa. Code Title 7,

Chapter 149, Uniform System of Accounts) and further described in the PMMB-60C (INSTRUCTIONS FOR COOPERATIVE PMMB-60 COST REPORT). Without going into the detail regarding those costs, I shall simply refer to them as cooperative procurement services and related costs throughout the balance of my testimony.

These dealer-to-dealer transactions, which are outside of the minimum pricing provisions of the Act, are more commonly known as tolling. In the past tolling evolved as processing dealers found that they could contract with other processors to perform some or most of the processing functions at lower costs than they could achieve at their own facilities.

The concept of one dealer, albeit, a cooperative acting as a dealer, providing cooperative procurement services for another dealer is exactly analogous to those dealers who are currently providing processing services for another dealer.

I firmly believe that the cooperatives are acting as milk dealers in this respect and must be required to charge cost for the cooperative procurement services they provide.

We now find ourselves in a market where cooperatives may be operating significant processing plants. Here we may find legacy contracts, tolling contracts, that have been deemed to be at or above cost. I suggest that market stability continues to make these ongoing contracts viable, and in the interest of the marketplace they should remain intact.

The focus of this hearing is on one discrete aspect of dealer-to-dealer transactions – the cost of cooperative procurement services and the incorporation of those costs into the resale price structure of the Board. To that end, I believe the Board should also consider additional details that will make implementation of payment for, and recovery of, cooperative procurement costs in the resale price structure.

To the extent that any cooperative may be operating as a processing milk dealer, any revenues from providing those services should offset expenses as provided in sections 149.32 and section 149.42(9) of the Board's regulations:

§ 149.32. Crediting “other income” against expenses.

Since miscellaneous “other income” items are usually the result of expenses incurred, they shall be considered as credits against expenses in the most appropriate cost center.

For example: Consulting income or income from clerical or computer service rendered an affiliated or other organization shall be credited against administrative expense.

§ 149.42. Income and cost of sales accounts.

(9) *Processing services income*—Includes the gross income derived from performing one or several services to raw product of another licensee.

Simply stated, if a cooperative is also operating as a processing dealer, any income derived from cooperative procurement services in the sale of raw milk to other dealers, should be a reduction of costs from the receiving, lab and fieldwork cost center. For example, if a cooperative is operating as a Pennsylvania Class I dealer and is using the same in-house field services for its own milk supply along with those same services being used to support coop sales to another dealer, income from that sale of cooperative procurement services should offset and reduce the costs for field services at that coop-owned dealer.

The Board should also consider timing of cost recovery when addressing how to implement this order. Typically, costs for the previous year are recorded on the Milk Dealer's Financial Statement (PMMB-60) and are incorporated into the costs for the following year's cost replacement hearing.

Since this is a new and significant cost, I suggest that it be incorporated into the unit cost system and the resale price structure as quickly as practicable. To this end, I would suggest that the cooperatives submit to their processing dealer customers, invoices for cooperative procurement services for milk delivered in the previous calendar year. Additionally, cooperatives operating any processing dealer enterprise that may have used in-house resources for cooperative procurement services, should calculate the cost of those services and related income. Those financial statements should be resubmitted to the Board for audit before any pricing both at the dealer-to-dealer or at the resale level should be implemented.

The quickest implementation would entail use of the financial data currently in place. This may also be the most efficient implementation since data for 2020 will not even be submitted for several months and will take several months after that to audit and hold cost replacement hearings. These coming winter months are typically a slower period for the audit staff so that auditing the resubmitted financial statements with these very limited revisions should be achievable. In any case, the coops should submit bills for cooperative procurement costs for year 2020 for incorporation into the next round of cost replacement hearings.

The Pennsylvania Department of Agriculture appreciates the Board's willingness to recognize these very real cooperative procurement costs borne by the cooperatives, as shown by its attempt to incorporate these costs into the resale price structure through Official General Order A-1004. However, the Department also wants to emphasize that OGO A-1004 was a temporary and imperfect solution, and therefore would not support continuation of this Order beyond its scheduled expiration date of December 31, 2020. The Department respectfully asks the Board, through this hearing, to implement a *permanent* mechanism to reimburse cooperatives for costs of procurement services provided to dealers, and for dealers to recover these costs

through the cost replacement process as I have outlined in my testimony today. Having worked with Board Staff for many years, I have every confidence that they can provide the Board with reliable information expeditiously to make this possible.

I thank ya'll for your time and sincerely thank you for your service to the dairy industry and Pennsylvania's milk consumers. No one knows better than I what a great job this Board does.

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PROFESSIONAL EXPERIENCE

CURRENT

July 2015 to
Present

Retired
Substitute Teacher Service (Part Time)
2901 Dutton Mill Road
Aston, Pennsylvania 19014

I currently substitute teach in various school districts in the Harrisburg area in grades K through 12. I am qualified as a guest or emergency substitute teacher. I generally work 1 to 3 days per week depending on my availability. This job has honed my skills in adaptability.

DAIRY EXPERIENCE

January 1992 to
July 2015

Chief, Enforcement and Accounting Division
Pennsylvania Milk Marketing Board
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408

Chief of the Enforcement and Accounting Division is a high-level management position with significant impact on the policies and procedures of the Milk Marketing Board. The Division comprises a staff of seven milk marketing auditors, four milk marketing examiners, one special investigator, one accountant, one calibration specialist and two audit supervisors who, under my control and direction, monitor and regulate the marketing of milk in Pennsylvania. In the capacity of chief of the division, I:

- Enforce Board orders establishing minimum prices for milk and otherwise regulating the milk industry in Pennsylvania.
- Supervise audits of milk dealers and retailers to determine their compliance with the laws and regulations administered by the Board.
- Direct special investigations that are used to establish minimum farm, wholesale, and retail prices of milk.
- Prepare hearing exhibits and give testimony concerning the cost of producing, processing, packaging, and delivering milk.

- Continually develop procedures and guidelines for the efficient enforcement of milk marketing laws, regulations, and official general orders.
- Designed a mechanized pricing methodology that automatically incorporates changes in raw product costs and federal milk pricing strategies into the resale pricing structure for price-controlled packaged milk.
- Provide analysis and expertise to the Board members on the complex matters that face the dairy industry.
- Compose proposed official general orders, findings of fact, and conclusions of law and interpret for enforcement existing Milk Marketing Law, Regulations and Board Orders.
- Interact regularly with prominent industry groups, such as dairy cooperatives and farm, milk dealer, and retailer organizations.

I have acquired a unique and detailed understanding of milk marketing not only in Pennsylvania, but also on regional and national levels. Thus in the course of performing my duties I have:

- Represented the Board before committees of the Pennsylvania and Maryland state legislatures and in interviews for television, radio, and newspapers.
- Initiated communication with government officials in surrounding states to improve the regional milk marketing environment.
- Orchestrated negotiations with government officials in surrounding states to improve the regional milk marketing environment.
- Initiated ongoing discussions with New York and New Jersey Departments of Agriculture concerning cooperative milk pricing strategies.
- Served as the United States membership and recruitment coordinator for the Executive Committee of the International Association of Milk Control Agencies.

March 1989 to
January 1992

Field Supervisor
Pennsylvania Milk Marketing Board

I had direct day-to-day supervisory responsibilities for a staff of four milk marketing auditors and two milk marketing examiners. My duties included training staff, scheduling audits, reviewing audit reports, testifying as an expert witness at agency price hearings, and developing operational procedures to continue to be used by Board staff and the industry.

February 1984 to
March 1989

Auditor II
Pennsylvania Milk Marketing Board

I was responsible for conducting specialized audits of large-scale milk dealers. These audits were used to determine the costs associated with milk procurement, processing and transportation. I also wrote the agency's financial audit programs, created the first Lotus programs used by the Board for monthly price adjustments, and testified and enforcement proceedings.

NON-DAIRY EXPERIENCE

December 1982 to
February 1984

Senior Outreach Specialist
Veterans Outreach and Assistance Center
18 South Rohland Street
Pottstown, Pennsylvania 19464

October 1981 to
November 1982

Accounts Receivable Supervisor
The Devereux Foundation
P.O. Box 400
Devon, Pennsylvania 19333

January 1980 to
November 1981

Retail Controller
Jefferson Ward, Inc.
823 East Gate Drive #4
Mt Laurel, New Jersey 08054

June 1979 to
November 1979

Accountant
Management Problem Solvers
611 Thompson Run Road
Monroeville, Pennsylvania 15146

1976

Assistant Manager
K-Mart Corporation
Lewistown, Pennsylvania

EDUCATION

A.S. Biology – Community College of Allegheny County (1975)

B.S. Psychology – University of Pittsburgh (1977)

A.S. Accounting – Community College of Allegheny County (1979)

TRAINING

Harrisburg Area Community College
Accounting

Business Communications
Spread Sheet, Programming and Computer Classes

Dale Carnegie Systems
Public Speaking, Communications

MILITARY

United States Army 1971 – 1973
Honorable Discharge