

BAKER DONELSON

901 K STREET, NW · SUITE 900 · WASHINGTON, D.C. 20001 · 202.508.3400 · bakerdonelson.com

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

September 7, 2018

VIA EMAIL

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: October 9th Procurement Cost Hearing - Request to delay hearing start with corresponding pre-submission extensions or request to at least extend the remaining pre-submission deadlines

Dear Chairman Barley and Members of the Board,

In our preparations for the upcoming hearing, we at PAMD have been plagued by the absence of Carl Herbein due to his serious illness. The new members of the Board may not realize this, but Carl Herbein has served as an expert for PAMD since the 1970s and he is now rather suddenly and unexpectedly receiving home hospice care. While Herbein & Co and PAMD had been working on a transition plan for the future, Carl's illness caught us before we were quite ready. The transition from Carl to new Herbein staff has been difficult in large part due to the realization that Carl was extremely hands on with respect to PMMB matters and that his dairy team was already extremely booked. Carl's illness has put a great burden on his dairy team to cover their work and his work. As a result, we have experienced delays and difficulties preparing for the upcoming hearing. Chief among them is our delay in providing materials to Board staff to audit so that Staff could provide the Board with feedback on the technical accuracy of PAMD's cost submissions as it has done in the past. I wish to note that PAMD had prepared the cross section cost data for Staff's audit believing that we would offer 2017 data, but just before PADC's initial pre-submission and after a number of plant visits had been completed based on 2017 costs, PAMD learned that PADC was planning to use 2016 data. Accordingly, we decided to switch over and provide 2016 data so that the Board would have data from the same year. This has necessitated additional audit work first by Herbein and then by Board Staff that had not been factored into the schedule. At this point, I, as lead counsel for PAMD, have concluded that PAMD needs more time to present a proper rebuttal case to the Board. I would

Robert N. Barley, Chairman
September 7, 2018
Page 2

also note that we are all personally traumatized by Carl's severe illness. Therefore, PAMD respectfully requests that the Board reschedule the hearing to a later date to give PAMD sufficient time to prepare a proper rebuttal and to provide Board staff with sufficient time to audit PAMD's cost submissions for comparison to PADC's cost submissions.

PAMD is proposing that the hearing be moved to no earlier than November 5. If the hearing is scheduled for November 5-8 or 6-9, PAMD would propose the following adjustment to the pre-submission schedule: Rebuttal October 5 by 2 pm, Surrebuttal October 24 by 2 pm. PAMD has consulted with counsel for the interested parties and Board Staff, the Farm Bureau, the Department of Agriculture and the Food Merchants do not oppose this request or the proposed submission and hearing dates.

Please note, however, that PADC wishes to keep the hearing dates during the week of October 9, but under all circumstances, PAMD agrees to delaying the pre-submission dates for rebuttal to September 20 at 2 pm and for surrebuttal to October 5 at 2 pm.

Given the difficulties that have been discussed herein, given expert schedules after September 12 and what I believe we know about Board Staff's competing demands, PAMD still believes moving the hearing start date to November is the surest way of giving PAMD the opportunity to put together a rebuttal case that is worthy of the Board's time and consideration and therefore PAMD stands by its request to reschedule the hearing to no earlier than November 5 with rebuttal submissions due on October 5 and surrebuttal submissions due on October 24.

PAMD appreciates PADC's willingness to extend the rebuttal and surrebuttal deadlines in recognition of the above-mentioned circumstances while keeping the October 9th start date, and if the Board is not willing or able to reschedule the hearing, PAMD urges the Board to extend the rebuttal and surrebuttal deadlines to at least the dates suggested by PADC as a minimum accommodation.

Thank you for your consideration of this important request.

Respectfully submitted,

/s/ Wendy M. Yoviene

Wendy M. Yoviene

cc: Interested Parties

CERTIFICATE OF SERVICE

On this 7th day of September, 2018, I, Samira Fredericks, a secretary in the law office of Baker Donelson, 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 via e-mail and U.S. mail to the following persons:

INTERESTED PARTIES

1. **Chief Counsel**

Douglas Eberly
PA Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110-9408

deberly@state.pa.us

2. **Board Staff**

Andrew L. Saylor, Esq.
PA Milk Marketing Board
2301 North Cameron Street
Harrisburg, PA 17110-9408

asaylor@pa.gov

3. **Pennsylvania Farm Bureau**

John J. Bell, Esq.
510 S. 31st Street
P.O. Box 8736
Camp Hill, PA 17011-8736

jjbell@pfb.com

4. **Pennsylvania Association of Dairy Cooperatives**

Marvin Beshore, Esq.
130 State Street
Harrisburg, PA 17101-1026

Mbeshore@beshorelaw.com

Dean Ellinwood
Dairy Marketing Services
P.O. Box 4844
Syracuse, NY 13221-4844

Dean.Ellinwood@DairyMarketingServices.com

Troye Cooper
Maryland & Virginia Milk Producers Cooperative
Association, Inc.
1985 Isaac Newton Square West
Reston, VA 20190

tcooper@mdvamilk.com

5. Pennsylvania Food Merchants Association

Allen Warshaw, Esq.
1035 McCormick Road
Mechanicsburg, PA 17055

allen.warshaw@gmail.com

6. Commonwealth of Pennsylvania, Department of Agriculture


John H. Howard, Esq.
Pennsylvania Department of Agriculture
Governor's Office of General Counsel
2301 North Cameron Street
Harrisburg, PA 17110

johoward@pa.gov

7. Dean Foods Company

Charles M. English, Jr., Esq.
Davis Wright Tremaine LLP
Suite 800
1919 Pennsylvania Avenue, NW
Washington, DC 20006

chipenglish@dwt.com



Samira Fredericks