

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Milk Marketing Board

MINUTES

SUNSHINE MEETING

August 11, 2021

1:00 P.M.

AG Building – Room 202

Call: +1 (267) 332-8737, ID: 753 012 563#

**1. CALL OF MEETING TO ORDER/ROLL CALL:**

**Chairman Rob Barley** called the regular Sunshine Meeting of the Pennsylvania Milk Marketing Board to order at 1:00 P.M. in Room 202 of the Agriculture Building in Harrisburg, PA.

Chairman Barley opened the meeting with the Pledge of Allegiance followed by a moment of silence and reflection.

**Secretary Hardbarger** called the roll. Those in attendance and constituting a quorum were:

**Board Members:**

**Present:** Chairman Robert Barley, Consumer Member Kristi Kassimer, Member James Van Blarcom.

**Absent:** None

**DISCUSSION:** Chairman Barley Welcomed Kristi Rooker Kassimer as the newly appointed Consumer Member of the Board. She is going to work hard for the farmers, processors, and consumers.

Consumer Member Kassimer thanked the Chairman and stated that it was great to see the staff, and to be able to catch up with the Board. She is looking forward to what is ahead.

**2. ACCEPTANCE OF MINUTES:**

A. Acceptance of Minutes of the July 7, 2021, Sunshine Meeting.

**PRESENTED by:** Chairman Barley

**MOTION by:** Consumer Member Kassimer

Moved to accept the minutes for the July 7, 2021, Sunshine Meeting. *Note:* Minutes were prepared and distributed to the Board members for their review prior to the August 11, 2021, Sunshine Meeting). **Seconded by Member Van Blarcom. Motion carried without dissent.**

**Assenting:** Chairman Barley, Consumer Member Kassimer, Member Van Blarcom

**Dissenting:** None

**3. PUBLIC INPUT (PERTAINING TO GENERAL ISSUES:**

N/A

#### **4. OLD BUSINESS:**

N/A

#### **5. NEW BUSINESS:**

N/A

#### **6. REPORT OF CHIEF COUNSEL:**

**DISCUSSION:** Attorney Eberly stated that the Board met earlier in an executive session about a personnel matter. No official actions or deliberations were taken.

#### **7. LEGAL CASE DISPOSITIONS**

1. Upstate Niagara Cooperative Dealer

**PRESENTED by:** Attorney Petruscu

**DISCUSSION:** Attorney Petruscu presented **1. Legal Docket No. CE-21-004** for Upstate Niagara Cooperative, a dealer who submitted bids for The Emergency Food Assistance Program (“TEFAP”), for sales of price-controlled products into Pennsylvania using bids prices below Pennsylvania’s Milk Marketing Board minimum prices, in violation of Section 807 of the Milk Marketing Law. A consent order was acknowledged and consenting to the settlement of the Citation with the Board for \$36,240.00

Attorney Petruscu provided further background information to the Board regarding Upstate and TEFAP, as follows:

- In January 2021 Upstate bid on a TEFAP contract for deliveries to food banks in PA.
- Upstate was told, incorrectly, by IDFA and/or USDA PA minimum prices did not apply because it was a NY company.
- Because Upstate got bad information, we issued a written warning on February 23.
- The warning specifically told Upstate to contact us with future questions.
- In May 2021 Upstate was again awarded contracts based on bids that were below applicable PA minimum prices.
- According to Upstate, the below-minimum bids were based on information regarding applicable discounts Upstate received from Herbein and Company
  - Upstate was told it could bid at the licensee-to-licensee discount because the food banks are licensed as subdealers.
  - This is wrong because the food banks are not the purchaser, USDA is.
    - Therefore, the limited-service discount applies.
  - Upstate was the only bidder to apply the licensee-to-licensee discount. All other bidders applied the limited-service discount.
- All other bids were made at or above applicable PA minimum prices, including the correct discount
- We issued this citation
- We’re presenting the consent order to resolve the citation for the offer to sell milk below the applicable minimum price.

- USDA has refused to allow Upstate to withdraw its bid.
- USDA also has refused, to this point, to honor PA minimum prices.
- USDA will only buy the milk at a price based on the illegal bid, which would result in a below minimum price transaction.
- USDA won't adjust the price to pay PA minimum prices.
- All of this – the award based on an illegal bid and the refusal to pay PA minimum prices – despite the USDA bid solicitation notice explicitly stating “the contractor shall comply with all state laws applicable to its performance under this contract. This may include applicable milk minimum pricing and state marketing orders.”
- Upstate doesn't want to violate the Milk Marketing Law by selling below minimum and has been receiving from USDA weekly a performance waiver – Upstate doesn't want to sell below minimum but USDA refuses to pay at least minimum.
- This means that food banks are not receiving the milk they thought they would receive under this particular contract.
- Carol has worked with PAMD to arrange for some donations, but USDA delays its decision each week past the point where it's feasible/possible for donations to be made
- We're going to continue monitoring each bid solicitation and the bids made to ensure compliance with the Milk Marketing Law

**DISCUSSION:** Chairman Barley stated that it this is very unfortunate but important to handle and follow according to the Law. The Board is not happy with USDA, but hopefully it is a lesson learned and moving forward we will not have issues. We have opportunities for PA processors and beyond, in understanding that the law needs to be followed. As a Board, they are always open to suggestions.

**MOTION by:** Member Van Blarcom

Moved to accept the consent order as presented. **(1. Legal Docket CE-21-004 ) Seconded by Consumer Member Kassimer. Motion carried without dissent.**

**Assenting:** Chairman Barley, Consumer Member Kassimer, Member Van Blarcom  
**Dissenting:** None

**8. LICENSE APPLICATIONS:**

N/A

**9. REMINDERS:**

**PRESENTED by:** Chairman Barley

<u>MEETING (s)</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Regular Sunshine meeting	Wed. Sept 1, 2021	1:00 P.M.	Room 309 Ag Bldg/ or Call: 267-332-8737 ID: 204 700 193#

<u>HEARING</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Over-Order Premium Hearing	Wed. Sept 1, 2021	10:00 A.M.	Room 309 Ag Bldg/ or Call: 267-332-8737 ID: 204 700 193#

**10. ADJOURNMENT:**

Chairman Barley hearing no further matters to come before the Board, adjourned the meeting 1:20 P.M.