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Dear Chairman Barley and Members of the Board:

Please accept this letter brief on behalf of the Pennsylvania Association of Milk Dealers in support of the Grange's petition to establish the Over Order Premium at $1.00 per hundredweight for six months.

The hyper focus of anyone that wants to see the Over Order Premium set below $1.00 or go to zero in order to FORCE proponents of the Over Order Premium to support so-called Over Order Premium reform that would distribute a new Pennsylvania Class I premium/charge/tax (who knows) to all producers in an effort to make everything so-called equal among all types of Pennsylvania producers (See generally Testimony of John Painter, see also Tr. 134-135) is contrary to the Pennsylvania Milk Board's statutory authority under Section 801 of the Milk Marketing Law (31 P.S. 700j-801), based on an erroneous assumption that equal is fair by failing to acknowledge different business models and the significant benefits that accrue to all Pennsylvania producers and the Pennsylvania dairy economy from the Over Order Premium supporting Class I processors and their suppliers, and tantamount to killing the Goose that Laid the Golden Eggs where access to pooling, a stronger blend price, and money being spent to support the agricultural economy so that everyone has better access to services such as veterinarians, feed mills, equipment providers etc are the golden eggs that will go when the Over Order Premium and the Pennsylvania's Class I infrastructure is sacrificed.

The discussion regarding the level and duration of the Over Order Premium must be placed in the context of the Board's duty with respect to producer prices. The Over Order Premium is part of the producer price that is established pursuant to section 801 of the Milk Marketing Law, and, with respect to producer prices, the Board is required to establish producer prices that will best protect the milk industry of the Commonwealth, insure a sufficient supply of fluid milk and an adequate reserve supply "*as will be most beneficial to the public interest, best protect the milk industry of the Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth having special regard to the health and welfare of children residing therein.*" At the outset it bears reminding that Section 801 is geared toward maintaining an adequate supply of *fluid* milk and enough reserve supply for balancing the fluid market. That is the plain language of the statute. In establishing producer prices the Board is required to consider costs of production but may establish a different price if it is necessary to keep

Pennsylvania milk from being threatened. Here are relevant excerpts from Section 801 with italics added by this author emphasizing the most relevant provisions to this discussion:

> The board … shall ascertain and maintain such prices paid to producers, to dealers and to stores for milk in the respective milk marketing areas *as will be most beneficial to the public interest, best protect the milk industry of the Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth, having special regard to the health and welfare of children residing therein*.
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> ….
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> The board shall base all prices upon all conditions affecting the milk industry in each milk marketing area, including the amount necessary to yield a reasonable return to the producer, which return shall not be less than the cost of production and a reasonable profit to the producer, of the *quantity of milk necessary to supply the consumer demand for fluid milk plus a reasonable reserve supply as determined by the board*, and a reasonable return on aggregate milk sales by milk dealers or handlers and stores selling milk.
>
> ….
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> *However, where the board determines that the market for Pennsylvania produced milk is threatened it may establish producer prices designed to market the milk*. In ascertaining such returns, the board shall utilize available information concerning producers' cost of production and a cross-section representative of producers, dealers and stores in the area and shall consider unit costs of various types of products and of various sizes of containers.

31 P.S. 700j-801.

According to the testimony, an Over Order Premium of $1.00 is necessary to help producers serving the Class I market with rising input costs (see generally Testimony of Matt Espenshade, Jeff Ansell, Paul Hartman) and harm that they are facing as a result of recent Federal Milk Marketing Order ("FMMO") changes described by Expert Witness Sara Dorland, who explained that the US Department of Agriculture had determined that the cost of servicing the Class I market has increased and decided to increase Class I differentials to address the added cost, but due to the fact that producer zone adjustments do not actually reflect where producers sit relative to Class I plants in Pennsylvania, Pennsylvania's Class I producers have not experienced a full reimbursement associated with serving the Class I market. In fact, she explained Class I processors pay higher Class I differentials but Class I producers are receiving a smaller share of them relative to before the recent FMMO changes because of the zone from where producers are supplying the raw milk. (Tr. 151-153) She explained that is where the Over Order Premium plays a critical role noting that the Over Order Premium is the antidote to FMMOs which exacerbated an already existing problem by making it difficult to incentivize Class I producers to incur the costs (acknowledged by USDA) of serving the Class I market when they do not receive the full reimbursement following FMMO changes because they are paying a larger portion of the Class I differential into the FMMO pool for the benefit of producers of other classes of milk. (Tr 144).

While the FMMO change is benefitting PA producers because a higher blend price for non-Class I producers is offsetting other reductions in milk prices that came about as a result of USDA giving concessions in the form of higher make allowances which translate to lower manufacturing minimum prices, Expert, Sara Dorland, explained that the Over Order Premium at a $1.00 level is necessary to incentivize producers to service Class I plants. (Tr. 155).

Similarly, Mr. Craig Marburger, who is President of Marburger Dairy, a fluid processing plant operating in western Pennsylvania since 1938, indicated that the recent reduction in the Over Order Premium and the recent harm facing Class I producers from FMMO changes has made it so his producers are looking at alternatives (Tr. 101-10, 105, 110) to supplying Marburger Dairy to achieve competitive pricing and that the Over Order Premium returning to $1.00 would help him to incentivize his producers to remain with Marburger versus joining a cooperative or otherwise being attracted to supplying new processing facilities coming online in New York. Mr. Marburger also explained that in the long run it would be harmful to Pennsylvania producers to choose to supply New York plants because transportation costs (also noted by Expert Sara Dorland) are a big factor in milk movement decisions and based on his experience in the dairy industry since 1995, he believed the New York plants would ultimately replace Pennsylvania milk with nearby New York milk once nearby suppliers could be developed. (Tr. 102, 111-112). He further explained that if he and other fluid plants can't source milk, Class I plants may not be in place to return to should producers lose their New York markets. Of course, if this reasonably likely outcome comes about with a continued reduction or zeroing out of the Over Order Premium, the Board's decision will be contrary to Section 801's focus on establishing a producer price that maintains an adequate supply of fluid milk and sufficient reserve supply to balance the fluid market.

Similarly, Mr. Jeff Ansell, a dairy farmer shipping to Marburger Dairy testified that in the face of increasing input costs and other changes his farm needed the Over Order Premium to help sustain his farm. He explained that the Over Order Premium of $1.00 is very meaningful to his farm and dairy farms with whom he consults as a Nutrien Ag Crop consultant. It makes a big difference to his dairy farm that he and wife and four kids run with 55 milking cows and 80 young stock. He explained that though some may think the Over Order Premium is not significant enough for its absence to harm his business, he wanted the Board to know it was very meaningful. At $1.00 per hundredweight, Mr. Ansell can use the Over Order Premium to pay for a year's worth of seed corn for feed for their cows, six months of veterinary services, nine months of skid loader payments, or a month of feed purchases from the local milk. He explained that every bit of the Over Order Premium counts and because he does not have access to other resources and support or revenue sources from cooperative membership, the Over Order Premium is an important way to incentivize him to serve the Class I market. (Tr. 121). He also wanted the Board to know that by supporting his farm, and the farms he consults to, the Over Order Premium is also helping to sustain the broader agricultural economy. Maintaining local suppliers like equipment and feed companies, and local service providers like veterinarians and equipment repair is critical to the entire dairy industry and Pennsylvania's agricultural economy in general and the Over Order Premium is a revenue source that helps Class I producers to support these businesses just as cooperative members who share in the revenue of manufacturing can support the agricultural economy. (Tr. 115-135).

At the same time, there was no evidence and evidence to the contrary in fact that a $1.00 Over Order Premium would create a competitive threat for Pennsylvania produced milk. Expert, Sara Dorland, and plant owner, Craig Marburger, explained that a lot of new processing is coming online especially in New York and the market for milk is tightening, and with it, competition is giving rise to premiums.

Therefore, the evidence before the Board is that the Over Order Premium of $1.00 is necessary to ensure an adequate supply of milk for the Pennsylvania Class I infrastructure and the consumers who rely on it for a wholesome supply of fluid milk. At the same time, there was no evidence suggesting $1.00 is too high. (Tr. 165-166). The testimony of the consumer witness was shown to have be focused on only three retailers, she did not know who they were, she was not aware that price differences could be because of loss leaders etc. Lowering the premium because it has been $1.00 for a long time without evidence of competitive threat is not contemplated by the statute when the evidence by all witnesses offering testimony about producer costs suggests that inputs costs are rising and farmers need help.

At the same time, the statute does not authorize the Board to lower the Over Order Premium because there are farmers that are also facing rising input costs that are not sharing in the Over Order Premium as much as some producers are. That complaint might only become relevant if the Over Order Premium is somehow threatening an adequate reserve supply, but alas, the evidence is clear that there is an abundance of non-Class I milk in Pennsylvania as was testified to by Expert, Sara Dorland, who explained that Class I is declining nationally and Pennsylvania is following that trend though lesser so than some states and manufacturing is increasing in relation to Class I for many manufactured products such as cottage cheese, yogurt etc.

When it comes to establishing the producer price for Class I milk it is noteworthy that the Over Order Premium, which is part of the producer price, must be established in order to best protect the dairy industry and ensure a sufficient supply of *fluid* milk especially for the school children. The Board's mandate is not to ensure that every dairy farmer, including those like Mr. Painter who ship their milk out of state for organic processing, or those who ship to plants that are part of the export market or the boom of manufactured products such as cottage cheese, yogurt, cheese, etc have access to the Over Order Premium. Indeed, it follows that in this hearing, that is held to establish the producer price for Class I milk of which the Over Order Premium is part, making decisions that are geared toward ensuring that every Pennsylvania dairy farmer receives an equal share of a Class I premium is beyond the criteria contemplated by the Milk Marketing Law and quite frankly ultra vires. Nor it is sound decision making to take action that will harm the Class I sector when the evidence makes clear that the Class I sector contributes to the well-being of the other sectors of the Pennsylvania dairy industry by funding the blend price, by providing access to pooling and the blend price, and by generally contributing to the agricultural economy.

Although the Over Order Premium may have reached more producers when there was a larger amount of Class I relative to manufacturing when the Over Order Premium was first established, that does not justify reducing the Over Order Premium in the face of expansive farmer testimony that the Over Order Premium is needed to address rising costs and testimony by others parsing that more carefully explaining it is needed to address the fact that recent FMMO changes resulted in Pennsylvania's Class I producers not receiving full reimbursement for serving the Class I market in the face of such costs increasing. Again, the Over Order Premium, whatever one of its benefits was when it was first established, must be established based on evidence of costs of production, whether the market for Pennsylvania milk is threatened and what level is necessary to ensure an adequate supply for fluid milk and reserve supply. That evidence in this hearing supports an Over Order Premium of $1.00 for six months.

Killing the OOP (like the farmer killed the goose that laid the golden eggs because he wanted all the gold directly and immediately) because some PA farmers want to get it will harm the Class I infrastructure in Pennsylvania and in turn take away the multiple ways (the golden eggs) in which Pennsylvania's Class I sector supports the rest of the Pennsylvania dairy industry. Expert, Sara Dorland, explained the Over Order Premium is serving an incredibly stabilizing role for Pennsylvania's Class I dairy industry and even if, as a questioner suggested (Tr. 171) the purpose may have been focused differently on getting dollars to more farmers when more participated in Class I markets, it would be unwise, one might say irrational, for the Board to now ignore the massive and important benefits of the Over Order Premium in its current form, under today's regulatory and market circumstances and at the requested level of $1.00 per hundredweight as applied to Pennsylvania produced, processed and sold Class I milk. (Tr. 171).

The evidence supports an over order premium of $1.00 for six months and the Board should vote to adopt a $1.00 over order premium for six months without regard to policy discussions not the subject matter of this hearing as evidenced by the call of the hearing among other things.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

/s/ Wendy M. Yoviene

Wendy M. Yoviene

CC: INTERESTED PARTIES