

June 20, 2008

Maine Milk Commission Special Meeting Minutes
Deering Building, Room 233
Augusta, Maine 04333

Notices for the June 20, 2008 meeting were distributed to Commission members, intervenors and other interested parties May 23 and 27, 2008 and sent to the Secretary of State's Office for posting on May 21, 2008.

Commission Present: Chair, Michael Wiers, Richard Cook, Colon Durrell, John Joseph Jr. and Tim Drake, *ex-officio*.

Commission Absent: None

Department Officials: None

Staff Present: Stanley Millay, Executive Director and Carol Gauthier, Office Associate.

Legal Counsel: Amy Mills, Assistant Attorney General not present.

Intervenors Present: John Blake, H.P. Hood, Inc., Tom Brigham Oakhurst Dairy John Economy Garelick Farms of Maine and Julie-Marie Bickford Executive Director, Maine Dairy Industry Association (MDIA).

Others Present: Dale Cole and Fred Hardy from MDIA; Chuck Farrand, Brian Call and Joan Gibson, dairy farmers; Robert Wellington from Agri-Mark Cooperative, Francis Ackerman from the Maine Attorney General Office and Ruby Hardy, public attendee.

Chairman Wiers called the meeting to order at 1.40 pm.

Agenda Item 1: Minutes: Colon Durrell made a motion to accept the minutes of the May 23 and June 6, 2008 meetings. Richard Cook seconded. Motion passed 4-0.

Agenda Item 2: Amy Mills, Assistant Attorney General: No report.

Agenda Item 3: Minimum Prices: Stan Millay reported that there is a prevailing premium of \$1.10/cwt on Class I for July 2008 reported by Dairy Marketing Services (DMS) and Agri-Mark Cooperative. In addition to this premium, both Agri-Mark and DMS reported that an additional \$0.75/cwt for milk that comes from producers who do not treat their cows with the rBST hormone will be in affect. Federal Order One Class I price for July is \$24.03. He explained that schedules were prepared using this information plus producer cost of production adjustments (COPA) of \$1.17/cwt., \$1.29/cwt. in addition to one for \$1.49/cwt. that was in effect for June prices. He stated that these price schedules were for comparison purposes and that the Commission was not bound to them, and should make their pricing determination after hearing testimony. He referred to a hand out of an explanation prepared by Robert (Bob) Wellington of the change to the Federal Milk Income Loss Contract (MILC) made by the 2007 Farm Bill recently enacted by Congress. He said that Mr. Wellington would speak about that at some point during the meeting.

Stan Millay further explained that Cumberland Farms had become licensed as a Maine milk dealer and had told him that they were going to distribute milk in Maine to their company-owned stores and were

exploring sales to other stores in Maine. He pointed out that this volume of milk had been shifted from the Garelick Farms of Maine plant in Bangor to a processing plant in Massachusetts thus effectively removing it from being subject to the Maine Milk Commission's COPA on the Class I price. He asked John Economy if he could add anything more.

John Economy confirmed that his plant's Cumberland Farms processing volume had moved from Bangor to a processing plant in Franklin MA.

Dale Cole said that he had no knowledge of evidence to suggest that the move is related to Maine premiums and to the COPA. He said it was interesting that both the Bangor Plant and the Franklin Plant are owned by Dean Foods. He asked if there were other things beyond price that were impacting Cumberland Farms' decision to become dealers, such as quality issues or wholesale pricing differences between plants.

John Economy responded that the move was initiated by Cumberland Farms and no quality problems were involved. He said it was an economic decision by Cumberland Farms.

Tom Brigham asked if the Bangor Plant would be able to replace the volume and if the loss would lead to lay-offs there.

John Economy replied that lay-offs would likely result.

Chairman Wiers asked if the loss in processing volume would affect the Maine Milk Pool.

Stan Millay answered saying that the COPA was the basis used by Maine milk processing plants to calculate their payment obligation into the Maine Pool. He said the Cumberland Farms volume processed in MA would not be subject to the Commission premiums and not be subject to the COPA. He said that this would reduce payments to Maine producers from the Maine Milk Pool and would also reduce payments to some Maine producers from Commission premiums they would have received from Maine sales through the Bangor Plant.

Dale Cole pointed out that there were two large processing milk plants in Portland ME and Cumberland Farms apparently by-passed both in order to buy milk from MA. He called this remarkable. He said he believed that the Federal Order zone differential between MA and ME added to the cost of milk in MA.

Tom Brigham pointed out that the zone differential was diluted somewhat by the Maine Milk Commission's requirement that the differential not be deducted on milk produced and sold in Maine.

John Joseph asked if the volume taken from the Bangor Plant would be replaced.

John Economy replied saying no. He stated that his plant would need to work around the loss. He went to say that this situation is exactly what we (processors) have been warning about for at least two years now.

Julie-Marie Bickford said that MDIA had been watching and was concerned. She said that the Cumberland Farms situation is customer driven. She said that in the past Cumberland Farms had done things differently that seemed to have very little regard for the dairy industry. She said that MDIA cannot see how there is a savings for Cumberland Farms giving the handling and trucking costs. She explained that similar moves had been made in CA by shifting milk across state lines to avoid premiums imposed by one state or another. She went on to point out that the COPA was not the only

item in Maine's minimum pricing structure and urged the Commission not to slash the COPA. She said that the Dealer Margin and the Retail Margins also impact the difference in the cost of milk at the various levels compared to milk from out of state. She pointed out that there was no handling fee for July, so that would not be a factor between ME and MA this time.

John Blake told the Commission that Cumberland Farms was not the only store chain looking to buy cheaper milk.

Dale Cole said that someone has the answer as to what the cost is out of the Franklin (MA) Plant. He said that the Federal Order forces transportation costs onto the producer. He said that if the Franklin Plant had to pay for transportation, their costs would be much higher and the situation would be much different.

Chairman Wiers pointed out that things change and that there have been changes in the past that the Commission had to adjust to. He said that everyone needed to work together. He stated that the Commission needs to look at the entire milk industry. He said that Cumberland Farms decision to buy milk from MA is a logical choice if they can save money doing it. He reminded the Commission that they have heard that this might happen (buying outside of Maine milk) and now it has.

John Joseph asked John Economy if he believed that the Commission minimum prices were to blame for Cumberland Farms decision to change processors.

John Economy answered by saying you needed to look at all of the economic factors and Commission minimum prices were only one piece. He said it was a business decision by Cumberland Farms that unfortunately affected a significant Maine volume.

Julie-Marie Bickford said that MDIA supported the recent dealer margin increase that was energy cost driven. She reminded the Commission that producer costs were not set up the same way, making it much more difficult for producers to get cost recovery. She stated that she was now uncomfortable supporting the dealer cost increase because she was now afraid that the Commission would decrease the COPA because of the Cumberland Farms situation and that would hurt producers. She pointed out that the number of Maine dairy producers continued to dwindle.

Bob Wellington told the Commission that there was out of state raw milk volume still coming into Maine processing plants to balance.

Dale Cole reported that producer costs were continuing to rise. He pointed out that once Maine producers are gone, this milk volume is gone forever and dependence on out of state milk will increase the cost of milk in Maine.

Chairman Wiers asked Stan Millay if Cumberland Farms dealer license allowed them to sell to others. Stan replied that it does and said that in fact, Cumberland Farms attorney had asked specifically about doing that.

Julie-Marie Bickford provided handouts to the Commission that spoke of increased costs to producers, including feed prices in general and the market dynamic surrounding the increased cost of fuel.

Bob Wellington explained that there was a lot of pressure on reducing rBST premiums. He stated that there was an excess of milk around the northeast. He said that the price of cheese was high so cheese manufacturers were reluctant to grow their inventories. He said that school milk was out for the summer. He said some of the smaller processors around the northeast were not paying the rBST

premium thus causing added economic pressure to those that were paying it. He reported that many more manufacturers were demanding rBST free

John Joseph asked how the higher Class I price of \$24.03/cwt. reconciled with a surplus in the Northeast.

Bob Wellington explained that there is a surplus in the northeast but across the country there is not. He said that nationally sales are strong but the cost of moving excess milk out of our area is expensive.

John Joseph remarked that the powder plant in MA must be doing a lot of processing.

Bob Wellington said that this was not so because powder plants out of the area are not paying more for rBST free so their costs of powder are lower which sets up an economic disadvantage for the MA powder plant.

Dale Cole asked who was pushing to lower or eliminate rBST premiums.

Bob Wellington said he could not name names, but it was a large milk buyer.

Dale Cole pointed out that producers were coaxed to give up using rBST and signed up to do so in part because they were promised a rBST free premium. He went on to say that retailers used rBST free to get more money for that milk. He said that now that producers had stopped using it, it seemed that the premiums were now to be taken back.

Richard Cook asked how the COPA affected the big picture of milk in Maine.

John Economy said that the Cumberland Farms decision was their idea and he was not privy to their reasons in making the change. He said he hoped they would come back after trying it for awhile.

Fred Hardy stated that dropping the COPA altogether would only amount to about \$0.10 per gallon.

Bob Wellington said that the July milk price was up due mostly to cheese prices and he expected August to come down a little. He said they could not charge their customers more than market conditions would allow because of their competitors.

John Blake said that he believed that the Cumberland Farms situation was not a test and was here to stay. He went on to say that the \$1.49/cwt. COPA in affect on June milk amounted to \$0.13 per gallon and helped make it economically feasible for Cumberland Farms to make the change. He also pointed out that rBST free was standard milk now, making it more difficult to charge a premium for. He said that over time it would become increasing more difficult to charge a rBST free premium to their customers.

Julie-Marie Bickford stated that rBST free was a marketing tool that forced producers to stop using it which increased their production costs. She said that taking back the premium was making a cost that producers could not absorb. She said that she reluctantly conceded that the Commission could consider a lower cost of production adjustment in July prices only because the Class I price had risen \$2.60 from June. She stated that she was very concerned that the Commission would use a reduction in the COPA as the only tool to try to influence Cumberland Farms to change their minds about making permanent their test run of being a dealer for milk when there are other factors that also influence the price. The farmer should not always have to be the one to balance the market, especially

in light of the recently approved make allowance and the increases in both the dealer and retailer margins.

Chairman Wiers pointed out that now that most retailers in Maine were selling at or near the Commission minimums, there was not as much retail margin as there was, so making another economic reason for Cumberland Farms to try to buy their milk cheaper to keep their margins.

Julie-Marie Bickford remarked that now there seems to be even more reason for Maine to pursue a Maine milk label law to identify what is Maine milk and what is not.

Colon Durrell said that it amounts to quite a bit when you add up the Commission minimum wholesale, retail and COPA prices. He made a motion to set the cost of production adjustment at \$1.17/cwt. and adopt schedule #07-08 that included a \$24.03/cwt. Class I Price as announced by Federal Northeast Milk Market Administrator, plus \$1.85/cwt. as prevailing in neighboring states, plus \$0.00/cwt. for a handling fee and plus a \$0.20/cwt. processor assessment, for a total dealer Class I cost of \$27.25/cwt. John Joseph seconded.

Julie-Marie Bickford introduced dairy producers Brian Call and his wife Joan Gibson. Mr. Call told the Commission that his grain and fuel bills from the first of the year to date were higher than his milk checks, making it very difficult for him to keep farming.

Julie-Marie Bickford reminded the Commission that the increases in the minimum prices for July were a result of the higher Class I price and it would affect out of state milk prices as well as those in Maine.

Motion passed 3-1 with Tim Drake voting against; Chairman Wiers did not vote.

Agenda Item 4: Maine Monthly Price Survey: The Commission reviewed the Maine price survey for June 2008 which included prices for Augusta, Bangor and Presque Isle. The IAMCA price survey for May was not available.

Stan Millay pointed out that Wal-Mart Brewer has not dropped their retail prices as has most other major retail stores, making that store one with some of the highest retail milk prices in the state. He went on to explain that both the Augusta and Presque Isle Wal-Marts were selling below the minimum milk prices in June. He also reported that the Stop & Shop store in Kennebunk was selling below the minimum price in June.

The Commission instructed staff to proceed with appropriate enforcement measures and report back.

Agenda Item 5: Next Scheduled Meetings:

- July 18, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- August 22, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- September 19, 2008 Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME

- October 17, 2008 Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME
- November 21, 2008, Friday 1:30 p.m.
Room 233, Department of Agriculture, Food & Rural Resources, Augusta ME

Agenda Item 6: Other:

1. **Milk Commission Budget:** The Commission reviewed the latest budget summary.
2. **Cost of Production Study:** No report.
3. **Milk Promotions:** The Commission received copies of milk promotions proposed by General Mills that had been reviewed by staff and found to be within the rules. Secondly, an Oakhurst promotion that offered a combination price that included milk was not discussed as planned because Amy Mills was not able to attend the meeting. This item will be carried over to the July 18 meeting. Lastly, the Commission reviewed a written promotion request by Stop & Shop that allowed a customer to buy six gallons of milk and get a seventh gallon free. After discussion, the Commission determined that there was not enough margin between the wholesale minimum and the retail minimum to give away a seventh gallon without compromising the minimum retail prices in most instances. Based on the information available, the Commission determined that it could not approve the promotion as outlined in the request.
4. **Dealer Cost and Accounting System:** No action taken; still waiting for a report from Amy Mills and George Criner.
5. **Chapter 2 Hearing Procedure:** Stan Millay reported that he had discussed this rule with Amy Mills. He said they had determined that most of this rule was covered by other statutes. He said that he would have a recommendation ready for the next meeting.
6. **Calais IGA and Calais Wal-Mart Price Violations:** The Commission reviewed a draft letter that will be sent Calais Wal-Mart in follow-up to a minimum milk price violation that occurred when a store employee received the May prices that were effective May 4th but changed them May 1st. The Commission instructed staff to proceed with the letter.

The Commission reviewed a draft Consent Agreement between the Commission and Bell's Calais IGA prepared by Amy Mills. The Calais IGA violation was their second since 2004. The Commission instructed staff to proceed with the agreement as presented.

Bob Wellington reviewed a handout that he prepared explaining how the Federal MILC will work under the 2007 farm Bill. He said it might kick in and make payments to some producers as early as August.

Joan Gibson asked if there was anything that could be done to help smaller dairy producers, many of whom cannot pay their bills under the current milk prices.

Julie-Marie Bickford said that the MILC might help some. She provided a handout about a NY meeting on milk labeling.

Agenda Item 7: Executive Session: The Commission did not go into Executive Session.

Adjourned: 3:40 p.m. (120 minutes).

Stanley Millay, Executive Director, Maine, Milk Commission.