



January 21, 2004

File: 44200-50/MMB 03-26

DELIVERED BY FAX

Eric Erikson
Director of Finance
Island Farms Dairies Co-op Association
PO Box 38 - 2220 Dowler Pl
Victoria BC V8W 2M1

Tom Demma
General Manager
BC Milk Marketing Board
200 - 32160 S Fraser Way
Abbotsford BC V2T 1W5

Heather Douglas
Executive Director
BC Milk Producers Association
3236 Beta Ave
Burnaby BC V5G 4K4

Chris Groenendijk
President
Island Milk Producers Organization
3210 Mt Sicker Rd
Chemainus BC V0R 1K4

Dear Sirs/Mesdames:

**AN APPEAL BY ISLAND FARMS DAIRIES CO-OP ASSOCIATION FROM A
NOVEMBER 26, 2003 DECISION OF THE BRITISH COLUMBIA MILK MARKETING
BOARD CONCERNING AN INCREASE IN THE VENDOR MARKETING COSTS AND
LOSSES LEVY**

Introduction

This is a decision regarding “a request for information” made by the British Columbia Milk Marketing Board (the “Milk Board”) in the above captioned appeal.

Island Farms Ltd. (“Island Farms”) is appealing to the British Columbia Farm Industry Review Board (the “Provincial board”) a November 26, 2003 decision of the Milk Board adding a \$1.96/HL increase to the Marketing Costs and Losses Levy effective January 1, 2004. On December 31, 2004 the Provincial board heard and dismissed a stay application by Island Farms.

On January 14, 2004, the Milk Board applied to the Provincial board for an order directing Island Farms to answer a series of 19 questions relating to Island Farms’ sales (volumes, margins,

British Columbia
Farm Industry Review Board

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5
Telephone: 250 356-8945
Facsimile: 250 356-5131

Location:
3rd Floor, 1007 Fort Street
Victoria BC V8V 3K5
Email: firb@gems9.gov.bc.ca
Website: www.firb.gov.bc.ca

importation from Alberta and freight costs). Island Farms opposes this request, taking the position that the questions asked are irrelevant to the matter at hand, stating:

The comment made that the BCMMB needs to “more fully understand the market being served by IF” does not address the issue that the largest cost to any dairy (which is milk) has been increased a further \$1.96/Hectoliter higher than what those processors who have plants in Alberta now pay for raw milk.

Those processors, who have plants in Alberta are already selling substantial amounts of Alberta milk in BC. With this recent price advantage, the Alberta processor (whose price for raw milk dropped by \$1.96/Hl), in addition to making more than a BC processor on every Alberta liter of milk they sell in BC, can use that \$1.96/Hl advantage to accelerate the flow of packaged Alberta milk to the BC marketplace by under-cutting BC-only processors’ prices to customers.

[emphasis in original]

The application was heard by telephone conference call on January 20, 2004. In addition to representatives from the Milk Board and Island Farms, representatives from two Intervenors were also on the call (Island Milk Producers Organization and the British Columbia Milk Producers Association) to observe the proceedings.

Decision

The relevant section regarding production of documents in an appeal to the Provincial board is set out in s. 8(5) of the *Natural Products Marketing (BC) Act* (the “Act”):

8(5) On its own motion or, on the written request of a party to an appeal under subsection (1), the Provincial board may direct that a party to the appeal provide the Provincial board and other parties to the appeal with a copy of each document the Provincial board specifies in its direction.

Section 8(5) allows the Provincial board on its own motion or at the request of a party to order production of documents. This applies to a commodity board and also extends to other parties, appellants as well as intervenors. In our view the production required by s. 8(5) is subject only to claims of relevancy and privilege.

In this case, the Milk Board is not seeking production of documents from Island Farms but rather is seeking answers to questions, something akin to interrogatories. The Provincial board does not have the authority to direct a party to answer questions of another party in advance of a hearing. Similarly, there is no pre-hearing examination for discovery. Appeals before the Provincial board are intended to be less formal than court proceedings. The lack of these pre-hearing procedures may create some difficulties for the parties in terms of knowing the case they will have to meet. However, the Legislature has recognised the need for appeals to be heard on a timely basis, with relatively simple procedures in order that unrepresented parties can participate.

The Milk Board is seeking a response to 19 questions to understand the market being served by Island Farms. If there are documents in the possession of Island Farms which are responsive to

these questions, it is within the Panel's power to order those documents be produced. However, Island Farms is under no obligation to generate documents to respond to these questions.

During the course of the telephone conference call, the Panel Chair put each of the 19 questions to Eric Erikson of Island Farms in order to determine whether there were documents in existence which were responsive to these questions. The questions and a summary of his responses are set out below.

1. What percentage of IF sales are in each of the geographic zones in British Columbia (i.e., Fraser Valley, South Island, North Island, Bulkley Valley, Cariboo, Kootenays, Okanagan and Peace River)?
2. What is the actual volume of sales in these zones?
3. What is the margin on sales by zone?
4. What is the freight on product sales into each zone?

Island Farms does not track sales by zones and as such does not have any documents responding to these questions.

5. What volume of sales does IF have outside of BC?

Mr. Erikson advised that he could find out this information but was unaware of a document that may respond to this question.

6. Does IF import product from AB for sale in BC?
7. Does IF source AB product for sale in AB?
8. What is the margin on AB product sold in BC by zone?
9. What is the freight cost on finished product from AB to each of the Zones?

Island Farms does not import milk from Alberta and therefore these questions are not applicable.

10. What is the freight cost on finished product from IF plants to each of the Zones?

Similar to questions 1-5, Island Farms does not track sales by zones and as such does not have any documents responding to this question.

11. What is the net change in the margin on sales with the increase in the MCLL?

Mr. Erikson advised that he has no idea of the net change in margin on sales with the increase in the Marketing Costs and Losses Levy. He is not aware of any documents responsive to this question.

12. What is the expected market growth in each zone without the increase in the MCLL? (\$1.07/hL)
13. What is the expected growth in each zone with the increase in the MCLL? (\$3.03/hL)

These questions relate to hypothetical situations and as such Mr. Erikson is not aware of any documents that may respond to these questions.

14. Provide the change in sales volume in each zone over the past twelve months and explain why it changed.

As Island Farms does not track data by zones, Mr. Erikson is not aware of any documents that respond to this question.

15. How did lower pricing in BC grow IF market share in the eastern BC market? (BC prices are generally lower than AB for six to eight weeks following AB price increases.)

Mr. Erikson is not aware of any documents that respond to this question. He does not believe that the six to eight week delay in following Alberta pricing has given Island Farms any advantage as everyone is aware of the change.

16. What is preventing IF from growing market share in each of the zones?

This question relates to a hypothetical situation and as such Mr. Erikson is not aware of any documents that may respond to these questions.

17. How have sales been impacted by Class 1 price decreases and increases over the last few years?

Mr. Erikson was unable to answer this question. He was not aware of any documents that may respond to these questions.

18. Given price increases and decreases over the past 24 months, how has IF adjusted its selling prices to its customers commensurate with the cost of milk purchased?

Island Farms adjusts its selling prices to its customers based on the increase or decrease in the cost to purchase milk. Mr. Erikson is not aware of any documents that may respond to these questions.

19. As IF has participated in meetings where differences in milk prices between eastern and western Canada have been discussed, what is its position on price harmonization matters?

Island Farms does not have a document that responds to this question.

Based on Mr. Erikson's responses to the 19 questions submitted by the Milk Board, it is apparent that Island Farms does not have many documents in its possession that are responsive to these particular questions. That said, Mr. Erikson now knows, at least in part, how the Milk Board intends to defend this appeal. Accordingly, Mr. Erikson should be prepared to answer these questions, even those based on hypothetical situations, should they be put to him on cross-examination.

It should be remembered that the appellant bears the onus of proving its case. It will be insufficient for Island Farms to come to this appeal and argue that increasing the Marketing Costs and Losses Levy by \$1.96/HL will render them less competitive without laying an evidentiary foundation to support that claim.

Order

Given that Island Farms' annual reports may respond to some of the issue raised in the Milk Board's request and as such may be relevant to this appeal, the Panel directs Island Farms to produce its annual reports for the past two years subject to any claim of privilege. In addition, Island Farms is directed to produce any document in its possession setting out the volume of sales outside BC. If no document exists, Mr. Erikson should be prepared to answer this question on cross-examination at the appeal.

Pursuant to s. 8(5) of the *Act*, Island Farms is to comply with the above direction no later than the close of business on Thursday, January 22, 2003.

If as a result of reviewing the Appellant's disclosed documents, the Milk Board obtains further documents which it anticipates relying on at the hearing of the appeal, these documents must be delivered to the offices of the Provincial board, with copies to the Appellant and Intervenors no later than the close of business, Friday, January 23, 2004.

Given our orders with respect to production of documents, it is the Provincial board's expectation that *all* documents ultimately tendered in the hearing of this appeal will have been disclosed in advance. In the event of an objection being raised at the hearing of the appeal, parties cannot expect to rely on undisclosed documents.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per

(Original signed by):

Christine J. Elsaesser, Vice Chair

cc: Peter Vaartnou
Jones Emery Hargreaves Swan

Robert Hrabinsky
Macaulay McColl