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December 15, 2023

Via E-Mail

BC Farm Industry Review Board
2975 Jutland Rd
Victoria, BC V8T 5J9

Attention: Peter Donkers, Chair

Dear Sirs/Mesdames:

Re: BC Chicken Marketing Board Long-Term Chicken Pricing Recommendation Review

We have been retained by the Primary Poultry Processors Association of BC (the "**Processors Association**") in this proceeding. We write further to the BC Farm Industry Review Board's (the "**Review Board**") letter of December 11, 2023, in which the Review Board invited the Processors Association to bring an application relating to its request for confidentiality over certain documents in the proceeding.

By this letter, the Processors Association applies for an order pursuant to s. 42 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 25 (the "*ATA*") allowing its members to provide evidence and submissions in a redacted format to preserve the confidentiality of the redacted information. The nature of the confidential documents and information at issue are described in greater detail below, along with the reasons why the confidentiality of such information must be maintained.

Legal Test

Pursuant to s. 42 of the *ATA*, the Appeal Board may "direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice."

Section 42 of the *ATA* applies to the Review Board by virtue of s. 8.1(1)(a) of the *Natural Products Marketing (BC) Act*, R.S.B.C. 1996, c. 330. Thus, the issue is whether the administration of justice requires the confidentiality protections sought by the Processors Association.

The Confidential Information

In this proceeding, the Processors Association's members intend to take the position that the Recommendation (as defined in the Review Board's December 11, 2023 letter) will have significant impacts on producers, including lost customers, reduced product demand, and changes to their operations.

In support of this position, the Processors Association's members expect to tender evidence and submissions relating to the following:

- (a) customers that have been lost since the Recommendation was announced, and the volume of excess capacity that producers have been left with as a result (the "**Customer Information**");
- (b) changes to business operations as a result of the Recommendation, including changes to plans for constructing new facilities or reductions in processing capacity (the "**Operations Information**").

(Collectively the "**Customer and Operations Information**").

The Customer and Operations Information is highly confidential, and its disclosure to competitors or existing or new customers would be detrimental to the Processors Association's members. For example, if new or other customers were to learn of the volume of surplus processing capacity that a processor has as a result of recently lost customers, the new or other customer could use such information against the processor in pricing negotiations. Furthermore, competitors within or outside of British Columbia could also use the Customer and Operations Information against other processors when seeking to gain or maintain new customers.

Accordingly, without sufficient confidentiality orders in place, the Processors Association's members likely will not be able to tender such evidence due to the potential impact doing so will have on their business operations, as described above. This will hamper the Processors Association's ability to participate in the review process and to put forward its position through evidence. The administration of justice therefore requires an order pursuant to s. 42 of the *ATA* protection the confidentiality of the Customer and Operations Information.

For these reasons, the Processors Association seeks an order that will allow it to tender evidence and submissions that contain redactions of the following:

- (a) customer names;
- (b) volumes of product supplied to existing or former customers; and
- (c) specific changes to processors' operations as a result of the Recommendation.



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Such an approach strikes an appropriate balance between the need to protect the confidentiality of the Customer and Operations Information and the presumption that the proceeding is open to the public, since only portions of the evidence and submissions will be redacted.

For clarity, unredacted copies of this information will be provided to the Review Board (on the understanding that this information will not be further disclosed and is not subject to disclosure under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165) .

To the extent that any participant believes a redaction has been improperly applied, it would be open to that participant to challenge the redaction by way of further application to the Review Board.

Provision of Documents to the Chicken Board

In its December 11, 2023 letter, the Review Board requested that the Processors Association identify whether or not the confidential information at issue was previously provided to the British Columbia Chicken Marketing Board (the "**Chicken Board**"). Given that much of the Customer and Operations Information did not exist until after the Chicken Board released the Recommendation, not all such information was provided to the Chicken Board. However, the Chicken Board did previously acknowledge the need to protect sensitive information received through its review process and cooperated with producers in protecting the confidentiality of sensitive information that was provided to the Chicken Board.

Closure

For the reasons set out above, the administration of justice requires an order protecting the confidentiality of the Customer and Operations Information.

Yours truly,



David E. Gruber

DEG:TP

cc: Woody Siemens, Executive Director, BC Chicken Marketing Board
Stephanie Nelson, Executive Director, BC Broiler Hatching Egg Commission
BC Chicken Growers' Association
Craig Evans, Executive Director, Primary Poultry Processors' Association of BC
Ernie Silveri, Executive Director, BC Egg Hatchery Association BCFIRB website