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BEFORE THE UNITED STATE DEPARTMENT  
OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE

IN RE: ) 7 CFR Parts 1005,  
 ) 1006, and 1007  
Milk in the Appalachian, )  
Southeast, and Florida ) Docket No. 23-J-0019  
Marketing Areas )  
 ) AMS-DA-23-0003

**RULEMAKING HEARING BEFORE  
CHIEF PRESIDING ADMINISTRATIVE LAW JUDGE  
CHANNING D. STROTHER, JUDGE**

**MARCH 2, 2023  
Volume 6 of 6 Volumes**

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Also Present:

Dennis Tonak, Esq.  
Prairie Farms

\* \*Reporter's Note: All names are spelled phonetically unless otherwise provided to the Reporter by the parties.

1 (Whereupon, Volume 6 begins).

2 THE COURT: Okay, everybody. Let's go ahead  
3 swear this witness first.

4 Whereupon,

5 **MICHAEL SUMNERS,**

6 having been first duly sworn, was  
7 examined and testified as follows:

8

9 THE COURT: Your witness.

10 **DIRECT EXAMINATION**

11 BY MR. MILTNER:

12 Q. Thank you. For the record, my name is Ryan  
13 Miltner, M-I-L-T-N-E-R. I represent the Select Milk  
14 Producer, the cooperatives that's a member of DCMA.  
15 Mr. Sumners is here on the stand, I'm not his Counsel,  
16 but I'm going to kind of be his, I would say  
17 Coordinator, I guess, we're going to try and steer the  
18 questions here because he does not have a prepared  
19 statement or anything else, but. So Mike, if you want  
20 to give your name for the record, spell it, and let  
21 folks know generally where you're located and such.

22 A. Michael Sumners, M-I-C-H-A-E-L, S-U-M-N-E-R-S,  
23 Paris, Tennessee.

24 Q. How far is Paris from where we are here in  
25 Nashville?

1       A.   Time-wise about two hours and 15 minutes, miles  
2 125.

3       Q.   And you have a dairy farm there?

4       A.   Yes.

5       Q.   It's Trihope Dairy, correct?

6       A.   Correct.

7       Q.   How long have you been a dairy producer?

8       A.   I grew up on a dairy farm, went to college and  
9 started dairying in 1981 in this county.

10      Q.   You started here in Franklin?

11      A.   Yea.  I went to work for someone, later became  
12 partners, worked with him for 20 years.  And in 2001, I  
13 moved to Paris and bought a farm and been there ever  
14 since.

15      Q.   And how many cows do you milk at your farm?

16      A.   Right now I have a totals of about 860, we're  
17 milking around 800 right now.

18      Q.   Now we met the first time, longer ago than I want  
19 to admit, but probably close to 20 years ago, and at  
20 that time I think you were an independent producer,  
21 correct?

22      A.   Correct.

23      Q.   Have you usually been an independent dairy  
24 farmer?

25      A.   When I started, I was with the Co-op for about 10

1 years, and then in Franklin I started shipping milk to  
2 farmers in Alabama for about four years, then I  
3 switched, my milk went to Kroger as independent until  
4 2001. In 2001, I started shipping milk to Old Dean's  
5 that became New Dean's, then it became Morning Star,  
6 then Saputo in 2016 I shipped milk to DFA until January  
7 1 of 2023.

8 Q. For those years you were shipping to Dean's, New  
9 Dean's, Morning Star and Saputo, which is all the same  
10 plant, right, they've changed ownership?

11 A. Yes.

12 Q. For all those years up until you mentioned DFA,  
13 you were not a member of a cooperative, correct?

14 A. Correct.

15 Q. In 2016, did you become a member of DFA at that  
16 point?

17 A. Yes.

18 Q. Okay. And then today, are you still a member of  
19 DFA?

20 A. No.

21 Q. Are you independent?

22 A. No.

23 Q. So what -- who markets your milk now?

24 A. It's a new Co-op, and it's mentored by Jacoby.

25 Q. So Jacoby is the managing entity of the Co-op,

1 they do the payroll and services and the like?

2 A. Correct.

3 Q. Were you one of the folks that started this  
4 Co-op?

5 A. Yes.

6 Q. And why, why did you and these other producers  
7 choose to start a new cooperative?

8 A. Because Saputo is 27 miles from the farm and we  
9 was able to make a deal with Saputo to get better milk  
10 price, and Saputo Plant is not a pool distributing  
11 plant, it's a partially regulated plant, so my milk is  
12 not even pooled.

13 Q. So you and these local farmers thought you'd be  
14 able to get a better price under your own Co-op than  
15 whatever your previous marketing arrangements were?

16 A. Correct.

17 Q. Have you -- is this the first Federal Order  
18 hearing you've attended?

19 A. No.

20 Q. How many hearings like this do you think you've  
21 been to since you've been a producer?

22 A. Probably in my lifetime, I've probably been to 10  
23 or more?

24 Q. Have you -- in those other hearings, have you  
25 been a witness or offered a proposal at any of those

1 hearings before?

2 A. Yes.

3 Q. You're a little bit familiar with the process,  
4 you've been here this whole week, correct?

5 A. Yes.

6 Q. So, you submitted a proposal and I'll let you  
7 decide how you want to do this; do you want to talk  
8 about your proposal now or would you like to talk about  
9 your reactions to the other proposals we've had  
10 testimony about this week?

11 A. Well my proposal, most of it, I was told wasn't  
12 authorized by I guess the law, government's, Federal  
13 Orders that they couldn't do what I was asking to do,  
14 but part of that was diversions and then they let that  
15 in there. So diversions in my mind and the southeast  
16 where you have a deficit market, it's another revenue  
17 source to move milk, just like tea credits. It's  
18 usually, of course there's some diversions used locally  
19 during holiday, for some reason, the plant shut down.  
20 You'll always have diversions, but in my view,  
21 diversions ought to be with individual handlers, and if  
22 those diversions couldn't be pooled with other handlers,  
23 they would limit those diversions as much as possible.

24 Q. Most of the folks in this room have some  
25 familiarity with what diversions are and those sorts of

1 things and this is going to end up in a stack of paper  
2 read by some folks that might not always be as familiar  
3 as we are, so when you talk about a diversion in that  
4 context, what are you referring to in your mind?

5 A. Well, diversions are milk that is associated with  
6 the market, but not necessarily needed at a pool  
7 distributing plant that day. But I'm not sure that my  
8 personal milk has ever been diverted, it's always gone  
9 to pool distributing plants, and when that milk gets  
10 delivered, that handler that's marketing the milk, they  
11 have diversions that other milk that they can move to a  
12 plant, could be a non-pool plant, and they can collect  
13 utilization at the Class I value at that plant.

14 Q. Your milk, you say as the regulations would say,  
15 has physically received at that plant, correct?

16 A. Correct.

17 Q. And when you say a diversion, you're talking  
18 about milk that might be associated with that plant, but  
19 isn't necessarily received there?

20 A. Or associated with a handler. They actually, one  
21 handler can transfer diversions to other handlers. Well  
22 they have to do it correctly on paper, but basically  
23 that's what happens.

24 Q. So put aside for a second what you might have  
25 been told about your proposal and whether it was



1 authorized by statute or authorized and permissible; I  
2 want to ask you what are the changes that you think  
3 should be made to Order 7 to help producers like you?

4 A. I think we need to be more transparent of what  
5 the value of the milk plant is. We know what Federal  
6 Orders are, we have no idea what the milk plant is  
7 paying for milk.

8 Q. And so how would you propose that that  
9 transparency be achieved?

10 A. Easiest way is when the plant gets audited, that  
11 number gets publicized, and say that was done. You  
12 could do it on, I guess, a market-wide number, you can't  
13 do it on individual plant I don't think.

14 Q. So in addition to say the regulated price, the  
15 Class I price, what do you -- what do you think would be  
16 included in that overall milk plant cost that you, as a  
17 producer, you would like to see?

18 A. Well, there's usually over-order premiums at  
19 those plants, I'd like to know what the over-order  
20 premium is. And farmers, if they're going to negotiate  
21 for the value of their milk, I don't have to have the  
22 best price, but I'd like to have the fair price, you  
23 come to fair price in negotiations, but if you don't  
24 know what the prices are, you don't know whether you'll  
25 have an efficiently run Co-op or not. I know I've seen

1 with DFA from 2016, I've seen a lot of inefficiencies.  
2 Before I switched to this new plant, I had two drivers,  
3 two trucks, two trailers getting my milk from market.  
4 Now I've got a part-time driver, a truck to trailer,  
5 delivering milk the same day. DFA, they wanted me to  
6 fund a hauler, they wanted to haul milk at his  
7 convenience, it's not as efficient is what I'd like to  
8 see it hauled.

9 Q. Do those inefficiencies, do you hit your bottom  
10 line on the front?

11 A. Well, if I'm paying for the freight, yes.

12 Q. Let me, that's a good point. You talk about the  
13 freight, and specifically the haulers, we heard a lot  
14 about the T-credit programs and different variations on  
15 that, how to get additional milk in to supply these  
16 markets, as a producer's who's been in Tennessee farming  
17 milking cows for 40 years, what, what problem do you see  
18 that you think the Department should hear about from a  
19 producer in the area and then I would say, based on what  
20 you've heard from the other testimony, do you have  
21 thoughts on whether any of the other proposals would  
22 help solve the problems that you know others said  
23 particular --

24 A. T-credits were started in '96 and it was supposed  
25 to be for supplemental milk, but now T-credits are used

1 to supply the market. And you collect the money to haul  
2 milk, if you haul milk, it's not full cost to haul the  
3 milk, so where does the rest of the money come from? It  
4 usually comes from the local producer who takes less,  
5 you keep getting less local milk, you have to keep  
6 hauling more milk and you need more money to haul more  
7 milk. Other areas in the country where they get large  
8 volumes of milk, they build them a milk plant. Here we  
9 have milk plants and we keep losing our milk supply  
10 around the milk plant. So I don't know why it doesn't  
11 work both ways, milk plant needs local milk, and if you  
12 got a lot of milk that's having to haul it somewhere,  
13 they realize they can't afford to haul it so they build  
14 a milk plant. So how do you keep a local supply of milk  
15 by subsidizing milk hauled in? Of course they tell you  
16 that they can't negotiate the value to cover the cost  
17 but, they can't collect from Wal-Mart, they say. All  
18 Wal-Mart needs is the true cost of milk, but nobody  
19 wants to show what the true cost of milk is or if they  
20 show it, they don't believe it. And I guess that's what  
21 the Federal Order is for to show them true cost of milk.

22 Q. So, you think, I'm trying to summarize what  
23 you're saying, I'm not trying to put words in your  
24 mouth, but I think what you're tying together, the  
25 previous point you made about having transparency tea

1 about the actual price paid for milk at the plants, and  
2 that would be a benefit not just to you as a producer,  
3 but you think that type of transparency would also  
4 incentivize local, more local farms, is that how those  
5 two concepts are linked or am I missing part of that?

6 A. When I started in the dairy business, I didn't  
7 have anything, I just, I had a job, and I became  
8 partners. I hadn't inherited a farm or money and now  
9 I'm looking at 800 cattle, all of it's come from milk  
10 shed. And your profit margin is a very small number and  
11 that's what you can grow your business with is a profit  
12 margin, when they take that little bit of profit margin  
13 and use to haul milk, it's hard to stay in the dairy  
14 business in the Southeast, so I don't think you can set  
15 the price on milk, but if you give the farmer the  
16 ability to see what's going on, they can negotiate a  
17 fair price in milk. And I've also seen where some  
18 farmers are paid different than others within their own  
19 organization. We have, within DFA, you had a \$1.30  
20 seasonality, volume, quality, that was divided among  
21 dairy farmers. So you could easily put one farmer in a  
22 profitable margin and the money would come from another  
23 farmer and make him unprofitable, and a lot of stuff  
24 within the Co-ops need to be dealt with in the Federal  
25 Orders giving the handlers more money for them to buy it

1 up differently than what they're testifying they're  
2 going to do with it here, doesn't solve the problem,  
3 that's why you need transparency.

4 Q. Okay. Would I be right if I suggested that that  
5 lack of transparency also applied to a plant that had a  
6 number of different independent shippers that they might  
7 have different terms as well, it's not entirely a Co-op  
8 issue?

9 A. Well, the -- well, I think what we call a volume  
10 premium started here. The volume premium is an easy way  
11 to procure milk. And the independent producer, which I  
12 was most of the time, you're using deliveries to get  
13 Co-op to do services below cost, but they call it a  
14 volume premium. They knew they was going to pay more  
15 money, so the easiest way to procure milk is to go out  
16 and get the larger producers, which that leaves the  
17 little producers with the Co-op. The Co-op's got  
18 services they're performing at below costs and the  
19 little guy gets hurt. Now this new Co-op that I  
20 recently involved in, the rule is everybody gets the  
21 same, no matter what size you are, you just have to have  
22 milk quality that goes into the plant, and then they  
23 have Assembly Cost of getting milk to the plant would be  
24 higher than mine because I can ship loads of milk at a  
25 time.

1 Q. But help with the transparency you think we  
2 should be encouraging those types of practices?

3 A. Yea, everything's going to be transparent.

4 Q. Is there anything else that you want to make sure  
5 you have a chance to say on the record about your  
6 proposal or the other proposals or any of the other  
7 testimony that you've heard this week that you have  
8 views on that you think would be helpful for AMS?

9 A. My proposal would be easy, if you're gonna  
10 subsidize outside milk in or subsidize South Georgia milk  
11 in Florida, then back away from Florida, it ought to be  
12 transparent. And diversions are not to move milk away  
13 from the plant, they're used to bring milk in anymore,  
14 so I don't know why we have diversions in the Southeast,  
15 that money that is used for that milk ought to just be  
16 put in a transportation fund and everybody sees what's  
17 going on.

18 And I'd like to say one other thing about a  
19 pool, and that's what we do is we pool. And when you  
20 pool, you're always going to be taking away from  
21 somebody and giving it to somebody else, that's what a  
22 pool is. If you do too much of it, it's not a good  
23 thing, if you do the right amount, it's a good thing.

24 Q. Okay. Anything else you want to make sure I ask  
25 you?

1 A. Pardon?

2 Q. Is there anything else you want me to ask you?

3 A. No.

4 THE COURT: I suppose AMS gets to go  
5 first, then Mr. Beshore gets a crack at it.

6 Cross-examination of this witness.

7 **CROSS EXAMINATION**

8 BY MS. TAYLOR:

9 Q. Good afternoon Mr. Sumners.

10 A. Good afternoon.

11 Q. Thanks for testifying today. I think your  
12 coordinator did a good job making sure that you were  
13 able to get, you know, your thoughts on the record. One  
14 of the last statements you made, you said that you pool,  
15 if you pool too much, it's not a good thing, if you pool  
16 just the right amount, it's a goods thing?

17 A. Correct.

18 Q. Paraphrasing, just expand on what you mean by  
19 that.

20 A. Well, the best pool I know of is life insurance,  
21 because you pay in because you care and you hope you  
22 never collect, where most pools are wanting somebody to  
23 pay in, and you do all the collecting, but not any dairy  
24 farmer can supply the total plant, so you need others to  
25 serve that plant. And in hauling, for smaller farmers,

1 it doesn't matter how far one farmer is from the plant,  
2 what matters is loading that truck to get it to the  
3 plant, so that's a little pool there that everybody  
4 shares in the assembly of that milk to get into that  
5 plant. Some think that their haul ought to be more or  
6 less than the other guy, but that assembled load, all  
7 the producers on that assembled load ought to be paying  
8 the same value to get to the plant, I call that a good  
9 pool, but if you're taking enough money away from your  
10 local milk to bring other milk in and you keep losing  
11 your local milk, I'd say that's a bad pool.

12 Q. And that's how you would, of I'm understanding  
13 you correctly, that's your view on the current  
14 Transportation Credit program that there's money being  
15 used to bring in milk from outside the area to go to  
16 Class I plants that should instead be being going to the  
17 local producers?

18 A. I don't know that the Federal Orders can come up  
19 with the exact pool. You also have the cooperative that  
20 has their pool, and even independent buyers that they  
21 can have different prices to different people too, but  
22 over time, if you're losing your local supply and you're  
23 having to go buy more expensive milk, you would think  
24 that maybe you ought to keep a local supply, but I don't  
25 think we come to that realization yet.



1           Q. Well, along that same thought then, do you have,  
2 I think you've been here all week and heard testimony on  
3 the distributing plant delivery credit, which the  
4 proponents of that proposal purport that it's to help  
5 the local producers, do you have an opinion on that  
6 proposal whether you think it's a good idea or not, it  
7 would be helpful or not?

8           A. As long as that money goes back to those little  
9 producers. I think I like Prairie Farms proposal more  
10 than DCMA. Of course a lot of our growth, if we have  
11 growth, is going to come from large dairies. I think  
12 now they use the 5,000 cow number and they'll locate  
13 where they have benefits. Some of these smaller farms,  
14 they've been there forever, they may have a labor cost  
15 issue with costs where the guy that's getting all the  
16 funding to move his milk because he's located in a  
17 preferred location, he's got the benefit of his location  
18 and then he gets his milk off, whereas the little guy  
19 who's close to the milk plant, who's got other expenses,  
20 he won't draw as much money because he's, the miles to  
21 the plant are less.

22           Q. So I take that then you prefer the Prairie Farms  
23 proposal because it's on a per hundredweight basis and  
24 not reflective or mileage?

25           A. Right, I think, which basically we're talking

1 about increasing value with no diversions is what we're  
2 talking about with these credits, in-area credits,  
3 talking about the milk plant paying more, but it goes  
4 directly back to the people that deliver to the plant.  
5 And one, I'm in West Tennessee, my core price, I'm  
6 usually paying 20, 30 cents over Chicago price. And  
7 then I got friends in East Tennessee, they're paying  
8 \$1.50 and \$2.00, and corn is a big expense in our  
9 business. So the expenses on corn is quite a bit more.  
10 So, under the proposal, my milk, it could go to East  
11 Tennessee. I could get credits to go to East Tennessee  
12 and compete with that milk over there with their higher  
13 cost and I got low cost, I just don't think that's fair.

14 Q. So this kind of ties into my next question,  
15 you're talking about costs, it's been requested that we  
16 consider this procedure on an emergency basis, what that  
17 means essentially is we do the process a little bit  
18 differently and we would issue a decision and the  
19 producers would vote on that right away, and it would  
20 make it a little bit quicker, so can you speak a little  
21 bit in your experience about the conditions right now  
22 and whether you think the Department should consider  
23 this on emergency basis and skip a few steps in order to  
24 get a decision out if the Secretary so chooses?

25 A. My financial situation right now?

1 Q. You don't have to divulge private information,  
2 but, you know, just generally what's it like out there  
3 for farmers like you, your neighbors, other farms in  
4 Tennessee right now trying to, you know, make it work?

5 A. Well, I think my, there's a few small farms left  
6 around me and I think they're -- I think they're, well,  
7 no, the last two years have been good in the dairy  
8 business. DFA has done better at paying people, the  
9 milk price is a lot better. And then you had the  
10 pandemic that put a lot of money into dairy. These  
11 smaller guys, they got DMC, but I'd say the last two  
12 years, with all the government money that we received,  
13 it's probably the best two years I've had in a long time  
14 and it got me back on my feet whereas if you go back to  
15 '15, '16, '17 when I was getting paid dollars under  
16 Federal Order minimum, it was a pretty tough situation,  
17 but the pandemic and the good price this year has put me  
18 back in good standing and I got a relationship with a  
19 milk plant that's paying a good price now and I'm in  
20 better shape than I've been in a long time. Now three  
21 years ago I was thinking about getting out of the dairy  
22 business, but now I see some hope for the next three  
23 years anyway.

24 MS. TAYLOR: Thank you, I think that's  
25 all my questions at the moment. Thanks for coming

1 today.

2 MR. SUMNERS: Thank you.

3 THE COURT: May have questions from  
4 others, Mr. Sumners. Anyone else have any questions for  
5 this witness? Mr. Miltner, any?

6 MR. MILTNER: Mike, is there anything  
7 else you want to say?

8 MR. SUMNERS: No, I think that's it.

9 THE COURT: Very well, you may stand  
10 down then, thanks for being here, Mr. Sumners. Thanks  
11 for sitting through all the rest of this hearing, for  
12 talking to us today. Okay, who's next? Is it  
13 pronounced Keefe?

14 MS. KEEFE: Yes, it is.

15 THE COURT: Welcome Ms. Keefe.

16 Whereupon,

17 **SALLY KEEFE,**

18 having been first duly sworn, was  
19 examined and testified as follows:

20 **DIRECT EXAMINATION**

21

22 THE COURT: You're here by yourself, you  
23 don't have a lawyer, moderator?

24 MS. KEEFE: I have no moderator.

25 THE COURT: You have a statement that

1 you submitted, a piece of paper, single-page testimony  
2 of Sally Keefe, Consultant for Milk Innovation Group?

3 MS. KEEFE: Yes.

4 THE COURT: Would you like that to be  
5 marked as an exhibit?

6 MS. KEEFE: Yes, I would.

7 THE COURT: 101.

8 (Whereupon, Exhibit No. 101 was marked for  
9 evidence.)

10 THE COURT: Anything you'd like to say  
11 before you read your statement into the record?

12 MS. KEEFE: I think I'm good.

13 THE COURT: Very well, the floor is  
14 yours.

15 MS. KEEFE: "My name is Sally Keefe, it  
16 is spelled S--L-L-Y, K-E-E-F-E. I am from Boulder,  
17 Colorado. I provided my private address to the USDA.  
18 I'm a Consultant for the Milk Innovation Group. Milk  
19 Innovation Group is a group of fluid processors and  
20 producers. The seven members are Anderson Erickson  
21 Dairy, Aurora Organic Dairy, Danone North America,  
22 Fairlife, HP Hood, Organic Valley Cooperative and  
23 Shamrock Foods. Some of our members are handlers  
24 regulated by the three southeastern orders."

25 "The Milk Innovation Group is concerned

1 about efforts to increase regulated minimum prices for  
2 Class I milk to fund proposed assembly credits in an  
3 environment where fluid milk sales continue to decline  
4 precipitously. The group recognizes that market  
5 conditions in the Appalachian, Florida and Southeast  
6 orders are unique."

7 "Establishing an assembly performance  
8 credit for the producers that actually supply and served  
9 Class I is an interesting policy question. The Milk  
10 Innovation Group supports allocating more Class I  
11 dollars to the producers supplying Class I plants."

12 "Regarding any proposed assembly  
13 performance credit, we suggest consideration of the  
14 provisions in Order 30, the Upper Midwest. In the Upper  
15 Midwest, the assembly credit is funded by the pool and  
16 does not enhance Class I prices."

17 "We do not support effectively  
18 increasing the Class I differential by 50 cents per  
19 hundredweight with an assembly credit. However, we are  
20 intrigued by using assembly credits to better align the  
21 Class I supply chain and ultimately improve the health  
22 of Class I."

23 THE COURT: Is that the end of your  
24 statement?

25 MS. KEEFE: It is.

1 THE COURT: Any questions AMS?

2 MS. TAYLOR: Yes.

3 **CROSS EXAMINATION**

4 BY MS. TAYLOR:

5 Q. Good afternoon. Thanks for testifying today.

6 A. You're welcome.

7 Q. And hanging around all week so that you could  
8 testify today. The Milk Innovation Group, you say some  
9 of your members are handlers regulated in the Orders,  
10 can you tell us who those are of this list?

11 A. Yea, both Shamrock Roods and Organic Cooperative  
12 are handlers in these Orders.

13 Q. And how many plants do they have then that are  
14 regulated, do you know?

15 A. Organic Valley/CROPP Cooperative is 9 C-handlers  
16 and I believe Shamrock has one, one plant.

17 Q. Okay. So you also say some of your members are  
18 producers, can you, represent producers, can you say who  
19 those members are?

20 A. Aurora Organic Dairy and Organic Valley  
21 Cooperative are farm production dairy producers.

22 Q. And then the other list are independent  
23 processors?

24 A. Yes.

25 Q. Okay. In your first paragraph -- or second

1 paragraph, you talk about the concern of increasing  
2 regulated minimum prices given the decline in fluid milk  
3 sales?

4 A. Uh-huh (affirmative).

5 Q. So can you, like other witnesses, elaborate on  
6 the appropriateness or not of not appraising? I know  
7 you're talking specifically about the assembly credit,  
8 but there's also discussion this week on increasing  
9 assessments for our transportation credits and the new  
10 distributing plant delivery credit, so generally your  
11 impression on the appropriateness of raising Class I  
12 price to consumers?

13 A. Generally we're very concerned about any increase  
14 in Class I prices where per capita consumption of Class  
15 I milk is declining so rapidly. You know, it's, our  
16 perspective on it is just the basic laws of supply and  
17 demand, like we don't think that it makes sense to  
18 increase the regulated minimum price when the demand for  
19 our product is dropping off.

20 Q. Okay. So then leads me to my next question,  
21 given that, if producers are experiencing increased  
22 costs to service the Class I market, how do you, I mean,  
23 what is the reaction for how they would otherwise recoup  
24 those costs?

25 A. As other people have testified to, it's a



1 balance. I mean, there has to be a balance between  
2 entire supply chain, and the pushing it all of it onto  
3 the processor is not probably realistic. On the other  
4 hands, you know, clearly the situation down here is that  
5 it's a deficit milk area, so there's balance that needs  
6 to be achieved.

7 Q. And we've heard other testimony this week about  
8 the success or not success of raising over-order  
9 premiums or collecting on the over-order premiums  
10 they're trying to get, can you speak or react to some of  
11 that testimony on what some people say they've been  
12 unable to have success in?

13 A. I can speak to it generally. In my experience,  
14 once over-order premiums are negotiated between a  
15 processor and a milk supplier, at that point they're  
16 paid. I'm not aware of people refusing to pay once  
17 they've agreed to pay.

18 Q. Okay. You mentioned the assembly credit in the  
19 Upper Midwest, can you illuminated for the record how  
20 that or how you understand that credit to operate?

21 A. My understanding of that credit, it's much  
22 smaller than what's being discussed here. It's about 8  
23 cents a hundredweight and it is funded out of the pool,  
24 so it's not added on to the minimum Class I price. It  
25 is, you know, it is a small amount of money relative to

1 what's being discussed here today, so it's not entirely  
2 the same sort of a concept, like I don't think that 8  
3 cents a hundredweight is going to cause the sorts of,  
4 create the kinds of incentives that people are wanting  
5 to put into place here, but that idea of having,  
6 directing a portion of Class I differential directly  
7 towards the milk that is actually supplying the Class I  
8 plants, that makes a lot of sense to us.

9 Q. Okay. And is that credit paid out on a per  
10 hundredweight basis then or?

11 A. Yea, I believe it's paid out on a per  
12 hundredweight basis. It's -- yea.

13 Q. In your last paragraph, you state that "we are  
14 intrigued by using assembly credits to better align with  
15 Class I supply chain and ultimately improve the health  
16 of Class I," could you expound on what you mean by that  
17 sentence?

18 A. Sure. You know, we do believe that one of the  
19 things that Class I needs in order to help stem the  
20 decline in demand is more innovation, and we think that  
21 that includes developing milk supplies that are tailored  
22 for the plants involved. And assembly credits could be  
23 a really good way of providing value directly to the  
24 producers involved doing that.

25 Q. And I'll speak to Shamrock since they are the one

1 to have a plant down here, if you could speak to what  
2 happens if they don't get the milk or if one of their  
3 suppliers says they're having a hard time getting that  
4 milk to them?

5 A. I'm not -- I can't speak for Shamrock on that,  
6 so, sorry.

7 Q. There's been some discussion this week on the  
8 impact of unequal raw product costs between handlers and  
9 how that impacts their competitive situation, you know,  
10 if they have different transportation costs and things,  
11 then raw products are obviously not the same, can you --  
12 would you like to speak to that point?

13 A. No, I don't want to speak to that point today,  
14 thank you.

15 Q. Does Milk Innovation Group have a position on the  
16 other, DCMA proposals that have been offered?

17 A. No, we don't have a position on the other DCMA  
18 proposals or on the first two Prairie Farms  
19 transportation credit proposals or Mr. Sumners'  
20 proposals regarding the diversions.

21 Q. Okay. We've been requested to hear this,  
22 consider this rulemaking on an emergency basis, that  
23 conditions warrant that we should expedite the process,  
24 does Milk Innovation Group have a position on that?

25 A. We don't have a view on that.

1 Q. And I think my last question I should have asked  
2 in the beginning, you said that Organic Valley is your,  
3 I think it was Organic Valley and, I can't remember,  
4 producer members, I'm just curious, how many producers  
5 members kind of does your group represent?

6 A. Nationally Organic Valley has over a thousand  
7 members, and then -- so well over a thousand. I do not  
8 know how many are in the Southeast.

9 Q. Okay.

10 MS. TAYLOR: That's all the questions I  
11 have. Thank you.

12 THE COURT: Any questions of this  
13 witness from any other participant?

14 **CROSS EXAMINATION**

15 BY MR. TONAK:

16 Q. Dennis Tonak with Prairie Farms. In particular,  
17 I wanted to call your attention to the second to last  
18 paragraph, I believe you indicated you did not know a  
19 lot about the Order 30 Assembly Credit, are you aware  
20 that the Order 30 Assembly Credit only applies to milk  
21 transferred from a supply plant to a pool distributing  
22 plant and the credit is only on the pro rata share of  
23 Class I milk?

24 A. It is my understanding that that is the Order 30  
25 Transportation Credits and that the Assembly Credits are

1 on the producer milk.

2 MR. TONAK: Okay. I will accept that.  
3 Thank you.

4 THE COURT: Questions from any other  
5 participants? Further cross by AMS? Your witness.

6 MS. TAYLOR: I have one more question  
7 that just hit me.

8 Q. There's been a lot of talk about the importance  
9 of keeping a local supply versus bringing in outside  
10 milk, can you speak to that point on the importance from  
11 a processor perspective and from the producer members  
12 that you have on the importance of a local, keeping a  
13 vital local supply?

14 A. The members of our group are very invested and  
15 interested in keeping a local supply of milk for every  
16 single one of their facilities whether located in this  
17 order or any other order, because it is, by far, the  
18 best milk supply for the plants. It is the most  
19 cost-effective, it provides good service, like local  
20 supplies are absolutely essential.

21 THE COURT: Nothing further AMS?  
22 Anything further you'd like to say, Ms. Keefe?

23 MS. KEEFE: No, thank you.

24 THE COURT: Okay. Thank you for being  
25 here. You're welcome to step down. Is that all the

1 witnesses we have? I guess I would move -- we should  
2 consider whether exhibit 101 should be admitted for the  
3 record, is there any objection?

4 MR. HILL: No objection.

5 MR. BESHORE: (Nodded negative.)

6 THE COURT: Exhibit statement of  
7 Ms. Keefe marked exhibit 101 is admitted into the  
8 record.

9 THE COURT: Okay, before we get to --  
10 schedules, come to any conclusions about that or do we  
11 need a further break? Okay, we've completed all the  
12 witnesses here, so with that, I don't think there's  
13 anything else outstanding, so I close the hearing,  
14 unless someone's got something else that they have left  
15 out and wants to raise or should put into the record. I  
16 will close the hearing which basically means that the  
17 record is closed except for transcript corrections, my  
18 ruling on transcript corrections will go into the record  
19 and the significant of that is for briefing. I see  
20 briefing on exceptions to under 7CFR 900 - I can't read  
21 my own handwriting, but anyway the briefing section says  
22 that no factual evidence shall be cited in the brief  
23 other than what's in the hearing record. And so if  
24 something comes up, someone asks to reopen the record  
25 essentially, so there we have it.

1 MR. HILL: So the expectation is that  
2 the transcript will become available to AMS in about two  
3 weeks, then we'll post it to the website, and we're  
4 proposing that after it is posted to the website, there  
5 is one week for transcript corrections after the time  
6 that it's posted on the website, and further three weeks  
7 after those corrections for a briefing?

8 THE COURT: Yes, Mr. Beshore.

9 MR. BESHORE: The only question I have  
10 is, what effect, if any, in AMS's view does the briefing  
11 schedule have with respect to the statutory deadlines  
12 for actions on a mandatory hearing of the sort?

13 MR. HILL: Does the briefing schedule  
14 affect that one way or the other?

15 THE COURT: Let's go off the record.

16 (Whereupon, discussion was held off record.)

17 THE COURT: The due date for recommended  
18 decision is tied to the due date of the last brief as I  
19 understand it under the regs. Okay, so we're talking  
20 about to expect transcripts around March 16th, I guess,  
21 you said a week for transcript corrections?

22 MR. HILL: That would be correct, Your  
23 Honor.

24 THE COURT: That'll make 23rd for  
25 correction, approximate, I'm saying approximately, we

1 could use those dates, but we can base it on a week from  
2 a particular date rather than a date certain?

3 MR. HILL: Correct.

4 THE COURT: Okay. So, that's around  
5 23rd. How about objections to transcript corrections,  
6 do you want a date for that?

7 MR. HILL: A week.

8 THE COURT: All right. And then I have  
9 time to consider those, I guess, you want to give me a  
10 deadline for -- someone has objected, I got to rule, I  
11 guess, you want to give us a week, so that'd be the 6th  
12 around the 6th of April. I mean, you guys get started  
13 on briefs, obviously just because we say briefs are due  
14 at a particular time doesn't mean you can't start  
15 writing as soon as transcript gets in. Mr. Beshore?

16 MR. HILL: Yes, just to make clear  
17 again, the expectation is for briefs three weeks after  
18 the transcript corrections.

19 THE COURT: After my ruling on them or  
20 after objections, after corrections?

21 MR. HILL: Transcript there, original  
22 transcript, they'll be writing them as you said.

23 THE COURT: Three weeks after the 16th,  
24 so.

25 MS. TAYLOR: That's the 6th when you



1 rule on objections. Yea, that doesn't really work.

2 THE COURT: Are we on the record --  
3 let's stay off -- let's go off.

4 (Whereupon, discussion was held off the  
5 record.)

6 THE COURT: Mr. Hill, you can lay out  
7 the brief, everyone in the room agreed upon this  
8 procedural schedule.

9 MR. HILL: So in case I did not say this  
10 correctly the first time, we expect the transcripts in  
11 approximately two weeks. When the transcripts arrive,  
12 they will be placed on the AMS website. One week after  
13 they are placed on the website, we are expecting  
14 transcript corrections. Three weeks after that date  
15 will be the time scheduled for simultaneous briefing.  
16 Also, let me say one last thing, Your Honor, once AMS  
17 receives the briefing and posts them on the website, it  
18 post the rest of the briefing dates, the transcript  
19 corrections and the actual date for the simultaneous  
20 briefing.

21 THE COURT: That would be helpful. When  
22 do you expect to have the exhibits up?

23 MS. TAYLOR: Same time as the  
24 transcript.

25 MR. HILL: At the same time as the

1 transcript.

2 THE COURT: Does the court reporter  
3 handle that or how, just curious?

4 MS. TAYLOR: They'll scan them in and  
5 send them to us and we'll post them on the website.

6 THE COURT: Very well. Mr. Beshore, you  
7 stood up?

8 MR. BESHORE: I just want to confirm on  
9 the record the briefs may be filed electronically with  
10 the --

11 MS. TAYLOR: Court reporter, I mean,  
12 hearing clerk's office.

13 THE COURT: Hearing clerk's office, yea,  
14 let's put that in the record briefs, all filings can be  
15 made via e-mail to the hearing clerk's office. The  
16 hearing clerk's office closes at 5 o'clock or 4 o'clock?

17 MS. TAYLOR: 5 o'clock.

18 THE COURT: 5 o'clock so.

19 MS. TAYLOR: We can put a link to the  
20 proper e-mail address that those should be filed at on  
21 our website too.

22 THE COURT: Thank you. I like this  
23 whole website process. It gets everything out there.  
24 So to be, to be timely, need to get it in before  
25 5 o'clock via e-mail, well, I won't say that -- in

1 certain instances, they're very drastic effects of not  
2 doing something in a timely manner, that may or may not  
3 be true here, probably not.

4 MS. TAYLOR: I could ask a courtesy on  
5 behalf of AMS, but also, and provide us a copy  
6 electronically, it does, can take a couple of days to  
7 get them from the hearing clerk.

8 THE COURT: Yes, please provide courtesy  
9 copies to -- they can provide courtesy copies to my  
10 office as well.

11 MR. HILL: I think, Your Honor, you  
12 also mentioned exceptions to the transcript corrections?

13 THE COURT: I didn't say objections,  
14 proposed corrections.

15 MR. HILL: I think you wanted that one  
16 week after the transcript corrections?

17 THE COURT: Post-transcript corrections,  
18 correct. Okay, is that it?

19 MR. HILL: (Nodded affirmative).

20 THE COURT: Okay, congratulations to  
21 everybody. I've enjoyed this proceeding. I appreciate  
22 the professional demeanor preparedness, general  
23 cooperation of everybody that's worked on this case  
24 these past few days and very gratifying to work with you  
25 all. Safe travels back to your homes wherever that may

1 be and I look forward to seeing further documents, at  
2 least the ones that come to me in this case. Thank you  
3 Everyone.

4 (Whereupon, these proceedings were adjourned.)

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**CERTIFICATE**

STATE OF TENNESSEE

COUNTY OF WILLIAMSON

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 251 through 607 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in any way interested in the result of said case.

This, the 18th day of March 2023.

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Lisa Finch,

Notary Public