

**CERTIFIED  
TRANSCRIPT**

NATIONAL FEDERAL MILK MARKETING ORDER  
PRICING FORMULA HEARING

DOCKET NO.: 23-J-0067; AMS-DA-23-0031

Before the Honorable Jill Clifton, Judge

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Carmel, Indiana

January 18, 2024

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Reported by:

MYRA A. PISH, RPR, C.S.R.  
Certificate No. 11613

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12 Nicole Hancock  
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14 FOR SELECT MILK PRODUCERS, INC.:

15 Ryan Miltner

16 FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

17 Steve Rosenbaum

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19 Dr. Roger Cryan

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21 (Please note: Appearances for all parties are subject to  
22 change daily, and may not be reported or listed on  
23 subsequent days' transcripts.)

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M A S T E R I N D E X

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1 THURSDAY, JANUARY 18, 2024 -- MORNING SESSION

2 THE COURT: All right. Let's go on record.

3 We're back on record. It is 2024, January 18.

4 It's a Thursday. It's approximately 8:09 in the morning,  
5 and this is day 46 of this milk rulemaking hearing.

6 I'd like to begin with the administrative  
7 matter -- matters, that we said we would begin with today.

8 MS. McMURTRAY: Yes. Good morning, Your Honor.  
9 Michelle McMurray on behalf of the Agricultural Marketing  
10 Service.

11 We are placing on the record marked as the next  
12 exhibit, which I'm not sure what that is right now, but it  
13 is just an e-mail between AMS and Crystal Creamery. We  
14 are placing it as an exhibit on the record pursuant to  
15 7 CFR 900.16(c). Information in --

16 THE COURT: .1?

17 MS. McMURTRAY: Oh, 900.16(c).

18 And information in this document has been redacted  
19 to ensure that no personal identifiable information is  
20 contained within it.

21 THE COURT: I believe the next exhibit number is  
22 462. Oh. Oh, yeah, that's true, because I have -- thank  
23 you.

24 Emily, you are a godsend. Exhibit 465.

25 USDA REPRESENTATIVE: Was that on the record?

26 MS. COALE: She's going to ask for a raise.

27 THE COURT: I think time off is appropriate.

28 (Thereafter, Exhibit Number 465 was marked



1 for identification.)

2 MS. HANCOCK: Is it online?

3 MS. TAYLOR: It is not online yet, but it will be.  
4 But we do have copies.

5 MS. HANCOCK: Oh, okay. Thank you.

6 THE COURT: All right. Do we need to go off  
7 record to distribute copies?

8 All right. Let's go off record while those copies  
9 are distributed. We're not yet online. We're working on  
10 that. And we go off record at 8:11.

11 (An off-the-record discussion took place.)

12 THE COURT: Let's go back on record.

13 All right. We're back on record at 8:13.

14 MS. McMURTRAY: Your Honor, we are placing this on  
15 the record because it was a communication that happened  
16 between AMS and a party outside.

17 THE COURT: Your volume isn't quite loud enough.

18 MS. McMURTRAY: Oh, is that better?

19 THE COURT: Yeah, but I'm sorry you're leaning  
20 over.

21 MS. McMURTRAY: It's okay. It's alright.

22 Yes, we are, again, just placing this on the  
23 record. It was a communication that happened outside of  
24 the hearing between AMS and another party. And so to  
25 ensure that full clarity and to comply with the  
26 regulations, we want to make sure that it's on the record.

27 THE COURT: Excellent.

28 Is the date of every e-mail in this chain



1 December 12th, 2023?

2 MS. McMURTRAY: Yes. That -- that is our  
3 understanding, that it occurred on December 12th.

4 THE COURT: Okay. All right.

5 Is there anyone here that has any objection to my  
6 admitting into evidence Exhibit 465?

7 There is none. Exhibit 465 is admitted into  
8 evidence.

9 (Thereafter, Exhibit Number 465 was received  
10 into evidence.)

11 THE COURT: And now we're ready for  
12 cross-examination.

13 While the witness is resuming the witness chair,  
14 would anyone like to be the first at the podium to  
15 cross-examine?

16 And I would like the witness to again state and  
17 spell first and last name.

18 THE WITNESS: Tim Kelly, T-I-M, K-E-L-L-Y.

19 THE COURT: Thank you. And of course you remain  
20 sworn.

21 THE WITNESS: Yep.

22 TIM KELLY,  
23 Having been previously sworn, was examined  
24 and testified as follows:

25 CROSS-EXAMINATION

26 BY MS. HANCOCK:

27 Q. Good morning, Mr. Kelly. I'm Nicole Hancock with  
28 National Milk.





1           In your testimony you talked about your opposition  
2 to Proposal 19 and support for Proposal 20, which is MIG's  
3 proposal to eliminate the \$1.60 base differential from the  
4 Class I price; is that correct?

5           A.    Yes, ma'am.

6           Q.    And do you understand that a consequence of that  
7 proposal is that in reducing or eliminating the base  
8 differential from the Class I price, it would take  
9 approximately \$660 million out of the pool each year?

10          A.    I didn't know the number, but I would assume that  
11 to be true.

12          Q.    Okay. And do you expect that that \$660 million  
13 would, annually then, be paid through privately-negotiated  
14 contracts with dairy farmers who would be producing the  
15 fluid milk to supply the market?

16          A.    If that was the case, if that negotiation was  
17 taking place. But currently at Shamrock we don't do that.  
18 We pay within the pool. There's no negotiation done with  
19 the dairy farmer, our negotiation is done with the co-op.

20          Q.    Okay. So maybe another way I could say that,  
21 then, would be do you expect that that \$660 million then  
22 would be negotiated through an additional payment that  
23 would be made to the co-op from whom you obtain that milk?

24          A.    That is -- that is potentially a solution or could  
25 happen, correct.

26          Q.    Okay. And it's also potential that something less  
27 than that could be agreed upon?

28          A.    Uh-huh.



1 THE COURT: The answer?

2 THE WITNESS: Well --

3 MS. HANCOCK: You have to answer audibly, when you  
4 say "uh-huh."

5 THE WITNESS: Yes, I'm sorry. Thank you.

6 MS. HANCOCK: That's okay.

7 THE WITNESS: Yes.

8 BY MS. HANCOCK:

9 Q. And potentially, none of that \$660 million could  
10 be negotiated to be paid to the co-ops; is that correct?

11 A. Potentially. These are theoretical questions, and  
12 it could go either way. I mean, my argument would be  
13 anything that's done within the differential of lowering  
14 it, without a question you are going to have minuses, or  
15 you are going to have pluses which could affect the dairy  
16 farmer. But my argument is that the reduction of Class I  
17 tonnage is a much greater loss than that amount, and hence  
18 the reason why I support, you know, doing away with that.  
19 We're in tough competition right now is the point I'm  
20 making.

21 Q. Tough competition with whom?

22 A. Other products, as I stated yesterday, plant-based  
23 products and things that we're trying to compete against.

24 Q. And other Class I fluid milk handlers as well?

25 A. Sure.

26 Q. Okay. And you -- you pay currently over-order  
27 premiums?

28 A. Yes, ma'am.



1 Q. And can you give me the range of over-order  
2 premiums that you pay?

3 A. Yeah, I'll give a range. Anywhere from, let's  
4 say, \$1.50 to north of \$2.

5 Q. And is it dependent on the contract that you  
6 negotiate?

7 A. That is correct.

8 Q. And do you get a breakdown about what's included  
9 within the cost of your over-order premium?

10 A. I would say within the negotiation we're  
11 discussing it more in generalized terms. They aren't  
12 breaking it down similar to the way the differential is  
13 done, saying that this amount's going for balancing or  
14 this amount's going for fuel, or those types -- that  
15 discussion is not had. It's a -- it's more of a blanket  
16 umbrella number.

17 Q. Okay. So you don't have visibility into knowing  
18 what those costs that you're -- that are being paid by the  
19 over-order premium are designed to cover?

20 A. I do not.

21 Q. Do you have -- and how long are those contracts,  
22 generally?

23 A. Just depends. I know yesterday it was testified  
24 they could be on a daily basis, or meaning whenever they  
25 need to change. Typically ours can run from anywhere  
26 between two and five years.

27 Q. And -- and do you also have contracts with your  
28 retailers or wholesalers to whom you deliver your final



1 products?

2 A. Is that a rhetorical question? Yes, ma'am, we do.

3 Q. Just the way we have to build --

4 A. Yes, ma'am.

5 Q. To build a record, you kind of have to --

6 A. Yeah, I getcha.

7 Q. -- ask some of the basic questions first.

8 A. I got you. Yes, ma'am.

9 Q. Okay. So the answer is "yes"?

10 A. Yes, ma'am.

11 Q. Okay. And how long are those contracts generally?

12 A. Oh, that's a great question. Some -- some can  
13 expire at any time. Typically, what I mean by that is  
14 they are rolling 90 days, so 90-day out clauses, to as far  
15 out as -- I'd say now we're leaning more towards three  
16 years, but they have been as long as five. But I'd say  
17 rolling 90-day to 36 months would be probably something  
18 that we're more in the realm of.

19 Q. And when you say "rolling 90 days," are those  
20 evergreen contracts and then --

21 A. Yes, ma'am.

22 Q. -- you just have an opportunity to end it with a  
23 90-day or 180-day notice?

24 A. Yes, ma'am.

25 Q. And those contracts, are they considered to be  
26 cost-plus contracts?

27 A. Not necessarily.

28 Q. Do you enter into cost-plus contracts?



1 A. Within certain private label or store brands,  
2 correct, we do.

3 Q. And can you describe for me what cost-plus  
4 contracts are?

5 A. Basically they would be the cost of the product  
6 ingredients, packaging, any loss factors that would be  
7 associated with that, and manufacturing costs,  
8 distribution costs to the store.

9 Q. And do you build in there a moveable variable  
10 price that's based on the announced Class I price?

11 A. Yes, we do.

12 Q. Okay. So you have the announced Class I price in  
13 your contract --

14 A. Uh-huh.

15 Q. -- plus a fixed amount that covers your cost and  
16 your margin?

17 A. That is correct. And typically within these  
18 contracts, the first that you stated, the advanced pricing  
19 of the movers, would be on a monthly basis mover. The  
20 other assets, excluding freight, which we would use a  
21 government -- I think it's EIA.gov -- EIA.gov, for -- I  
22 think that's it -- is the website that we use for diesel  
23 fuel management, and that could potentially move on a  
24 quarterly basis. But typically within the -- what we  
25 would call tolling, for lack of a better term, would be  
26 fixed.

27 Q. Okay. So other than the movement that might occur  
28 periodically with transportation, the only other variable



1 or mover within your contract with your retail outlets  
2 moves with the Class I announced price?

3 A. For our private label products, that is correct.

4 Q. How long are your private label contracts?

5 A. Those are those agreements that we referred to  
6 earlier.

7 Q. We talked about a couple of different iterations  
8 that you have. Which one?

9 A. Either it would be the rolling 90 days or they  
10 could be as far out as three years.

11 Q. Okay. So your private label could --

12 A. Right. Typically branded is completely different.

13 Q. And if you removed that \$1.60 out of --

14 A. But let me -- do you mind if I follow up with  
15 that?

16 Q. Sure.

17 A. On the branded, keep in mind, on the branded  
18 it's -- your review could be every six months. It could  
19 be annual. I would lean more, to be honest with you, it  
20 would be more on an annualized basis. You are assessed  
21 how your products are doing, and then you are in or out.

22 Q. And do you renegotiate the price at that point as  
23 well?

24 A. Potentially if you can get some increases through.  
25 But I don't know if you have ever been on a retail call,  
26 it's not the easiest thing to do.

27 Q. Yeah. So generally what you are really evaluating  
28 is the success of the sale of that product?



1 A. Yes, ma'am.

2 Q. So you are not really renegotiating the prices of  
3 at those intervals, you are really just looking at your  
4 volume sales?

5 A. Looking at that, that's correct. And adjusting  
6 for cost of living increases, acronym of that is COLA, so  
7 cost of living. Those types of things could be assessed  
8 on an annualized basis.

9 Q. So if there was something, an anomaly that had  
10 happened that wasn't already captured in the pricing, you  
11 could renegotiate it, but absent some kind of leveraged  
12 opportunity like that, you are really kind of stuck with  
13 the pricing?

14 A. Yes, ma'am. That's right.

15 Q. And so if you were to eliminate that \$1.60 from  
16 the Class I announced price that would be included within  
17 the price differential, you don't have that leverage of  
18 being able to directly pass that through to your retailers  
19 or wholesalers, do you?

20 A. In the standpoint of -- can you rephrase the  
21 question?

22 Q. Yeah.

23 A. I --

24 Q. Currently that \$1.60 base differential is built  
25 into the Class I announced price?

26 A. So -- so what you are asking is, if it went away,  
27 would I lower my price to the retailer?

28 Q. I'm asking the precursor question to that, just



1 for you to acknowledge that if that base differential was  
2 eliminated from the Class I price, it would no longer be  
3 automatically included in that Class I announced price?

4 A. Oh, I understand. Yes, you're correct. If it's  
5 done on an escalator bid business, correct.

6 Q. And --

7 A. Because it's utilizing components. And with ours,  
8 it would be mover, butterfat skim mover. That would be  
9 within our market area that we --

10 Q. So --

11 (Court Reporter clarification.)

12 THE COURT: Mr. Kelly --

13 THE WITNESS: Yes, ma'am.

14 THE COURT: -- if you and Ms. Hansen (sic) were  
15 having a discussion about all factors, both of you know a  
16 lot, but whoever is going to judge whether the Secretary  
17 of Agriculture has put together the proper components of  
18 regulation may know nothing about milk when they pick up  
19 the transcript.

20 And so Ms. Hansen (sic) is doing a beautiful job  
21 of taking us step-by-step. Now, if you interrupt her to  
22 say "uh-huh," you have disrupted the flow of the question  
23 and answer, even though that's great in conversational  
24 tone, because it shows you are paying attention.

25 But you are very quick in your thinking and in  
26 your answer, but you need to remember that your audience  
27 may be very slow on all these items of vocabulary and an  
28 understanding of how they actually work.





1 THE WITNESS: Understood.

2 For the record, Honey, you're welcome. She just  
3 helped you out.

4 MS. HANCOCK: And just for the record, I think he  
5 was talking to his wife.

6 When you read a transcript, you realize how hard  
7 it is to tell what people were really intending.

8 THE WITNESS: Thank you for the coaching, by the  
9 way, Your Honor.

10 THE COURT: You're welcome.

11 BY MS. HANCOCK:

12 Q. So just -- I'm not entirely sure if our record is  
13 clear, and I want to make sure that it is.

14 So my -- if I'm repeating myself, forgive me. But  
15 I just want to clarify, if you remove that Class I  
16 price -- strike that.

17 If you remove \$1.60 from the base differential  
18 that would be included in the Class I price, that would  
19 remove it from the advanced price mover that is already  
20 factored into your current contracts with your retailers  
21 or wholesalers; is that right?

22 A. Yes.

23 Q. And if you are not at a time period in which it is  
24 time for you to renegotiate those prices, there's not a  
25 way to build that back into the contract at that point; is  
26 that correct?

27 A. That is not necessarily the case.

28 Q. It could be that you could ask your retailers to



1 cover that additional cost if you had to pay that out?

2 A. We would do whatever the pluses and minuses would  
3 be. If it's minuses for my business, I can almost assure  
4 you the retailer would come to us and ask us to give it  
5 back to them. And if it was going to be hurting Shamrock,  
6 I'm going to go to them to help adjust the contract  
7 throughout.

8 Q. And then you are at the mercy of your retailers  
9 agreeing to renegotiate, correct?

10 A. Yes.

11 MS. HANCOCK: That's all I have. Thank you so  
12 much for your time.

13 THE WITNESS: Absolutely.

14 CROSS-EXAMINATION

15 BY MR. MILTNER:

16 Q. Good morning, Mr. Kelly.

17 A. Mr. Miltner.

18 Q. I'm Ryan Miltner, I represent Select Milk  
19 Producers.

20 When it comes to the balancing charges that  
21 Shamrock pays, do you know if that covers all of the  
22 actual balancing costs incurred by your milk suppliers?

23 A. I'm not privy to their profit and loss statements.  
24 But for me, Mr. Miltner, when I see that I'm paying for  
25 the balancing throughout within the differential, and then  
26 in negotiations that have taken place over the last couple  
27 of years, that it's very clear that balancing is put into  
28 the over-order premium portion of it. But my assumption



1 is it's covering it. My assumption is they wouldn't be  
2 asking for the increases to help offset any of the losses  
3 or anything that they are having. That's all -- it's all  
4 an assumption. So I couldn't tell you is it covering it  
5 or whatnot, but I would tell you I'm paying for it.

6 Q. Do you participate in negotiating the raw milk  
7 supply agreements between Shamrock and your supplier?

8 A. Yes, sir.

9 Q. Okay. So in those negotiations, does -- is it a  
10 cooperative supplier?

11 A. Yes, sir.

12 Q. Okay. So in your conversations --

13 A. Just for the record, half of my milk in Phoenix is  
14 from a family farm, the other half is from a co-op. And  
15 100% of my milk is from Maryland-Virginia in Federal  
16 Order 5, just for clarification.

17 Q. And is your co-op in Arizona, UDA?

18 A. Yes, sir.

19 Q. Okay. So when you are negotiating with UDA or  
20 Maryland-Virginia, and they are -- they let you know about  
21 the over-order premium, is there a discussion about how  
22 that over-order premium is -- is put together, about  
23 what's included in there and what portion of that is  
24 supposed to cover the balancing costs incurred by the  
25 cooperative?

26 A. I would state, in fairness, in generalized  
27 negotiation terms, yes. Nothing is laid out on an Excel  
28 spreadsheet stating, this portion of the over-order



1 premium is covering this, this is covering that. It's a  
2 generalized statement saying, basically, our costs have  
3 increased, we need to take this through. That's the  
4 conversation.

5 Q. And I want you to just assume that there were a  
6 situation where the costs to the cooperative for balancing  
7 that they incur are, say, \$2.60, and the over-order  
8 premium included \$1 that was associated with balancing,  
9 and you had \$0.60 in the regulated price that USDA has  
10 ascribed to balancing, there would be \$1 there that would  
11 be a cost to the cooperative that's not paid by the  
12 handler in that scenario, correct?

13 A. That is correct.

14 Q. Do you know if that type of scenario exists with  
15 either of your agreements, where there are additional  
16 balancing costs that the cooperative is not compensated  
17 for directly or indirectly?

18 A. I don't know that. I can tell you, Mr. Miltner,  
19 that within that, in helping -- we provide rolling  
20 forecasts to our co-ops, particularly -- and I'll use UDA  
21 as an example here, since a majority of our tonnage is  
22 through Arizona -- we provide willing forecasts to them.  
23 We can be penalized for being above or under if we -- for  
24 that. You know, which I understand, it's managing the  
25 milk shed.

26 I can also tell you that Shamrock makes  
27 significant investments to increase raw tank silage,  
28 silos, to help with that balancing, not only with UDA but



1 at our farm.

2 Just for everyone's knowledge, when you go by a  
3 dairy plant and you see the tall silos, typically  
4 60,000 gallons would be the tall ones. It's roughly a  
5 million and a half dollars. So I would say not only  
6 Shamrock, but others make significant capital investments  
7 to help manage that. So that burden is put back onto the  
8 processor.

9 Q. Well, you described it as a burden, but it's --  
10 would it be more correctly characterized as an investment  
11 by Shamrock to lower costs that it would otherwise incur?

12 A. Yes, sir. I call that a burden, cost increases.  
13 But your statement is correct.

14 Q. And I forget which of the MIG witnesses testified  
15 to this, but the testimony was that there are balancing  
16 costs that are incurred on both sides of the raw milk sale  
17 equation, that there are costs incurred by the Class I  
18 buyer, and costs incurred by the producer, whether that's  
19 a farm or a cooperative of farmers.

20 Do you recall that testimony?

21 A. I don't, but I agree with that statement.

22 Q. Okay. So that was my next question, was that that  
23 is Shamrock's experience, that there are balancing costs  
24 incurred on both sides of the equation?

25 A. There are absolute, with managing this massive  
26 supply of milk, costs at the farm level and at the  
27 processor level.

28 Q. And you have stated that -- that Shamrock pays



1 twice for balancing.

2 That's in your testimony, correct?

3 A. Yes, it is.

4 Q. But you can't say that you're necessarily paying  
5 twice for the same balancing costs, because you don't know  
6 if all of your cooperative's balancing expenses are  
7 covered by those payments, do you?

8 A. I heard the question. I'm just trying to make  
9 sure I answer it in the way...

10 So can you rephrase that one more time a different  
11 way for me? Sorry.

12 Q. Sure. Let me break it up a little bit.

13 A. Yeah.

14 Q. It's -- is it correct that Shamrock makes two  
15 balancing payments when it buys milk?

16 A. I would state that we make a balancing payment  
17 through the Federal Order system, and then we pay an  
18 over-order premium, which stated to me, is needed to help  
19 with balancing of milk. Does it state "balancing"? I  
20 don't know what our agreements state at that level, but  
21 that's my understanding.

22 So I would answer your question as yes, I'm paying  
23 for it twice.

24 Q. But I also understand from your answers to my  
25 questions earlier that you don't know if the totality of  
26 those payments is sufficient to cover the actual balancing  
27 expenses of your milk suppliers.

28 A. I don't know that, that is correct.



1 Q. So even though there are two balancing payments,  
2 you don't know if you're paying twice for the same  
3 balancing service?

4 A. I don't. But my argument isn't that. My argument  
5 is that they have the option to pass that along to the  
6 processor and recoup those costs. So to state that they  
7 are only getting it through the differential is incorrect.  
8 The -- sorry -- the dairy farmer may only be getting it  
9 through the differential, but what I pay and gets passed  
10 through to the consumer is paid.

11 Q. So is it your testimony, then, that cooperatives  
12 have the power to dictate prices to their customers?

13 A. Meaning to the processor?

14 Q. Yes.

15 A. Yes.

16 Q. So if your cooperatives came to you and said, "The  
17 over-order premium is going up \$1," you would have no say  
18 in that negotiation?

19 A. Within our order system in Arizona, no, I have no  
20 competition.

21 Within Federal Order 5, I do have options to price  
22 negotiate with Maryland-Virginia, DFA.

23 Q. Do you know -- do you have familiarity with the  
24 Mideast Order or the Southwest Order and the state of  
25 competition among cooperatives for customers in those  
26 marketing areas?

27 A. It's a generalized statement. I don't know what  
28 you mean. I'm familiar with the market areas, but I'm not



1 familiar with how co-ops have to go about. You are  
2 familiar with Arizona, and Arizona is an anomaly. It's a  
3 very large state with the population center in the middle,  
4 and to get any milk -- the closest milk, non-UDA milk,  
5 would be a roughly six- to eight-hour drive.

6 Q. So you mention that Arizona is an anomaly in that  
7 regard.

8 A. Yeah.

9 Q. So your experience with a cooperative being able  
10 to dictate prices, that's not the case in the other parts  
11 of the country necessarily, though, is it?

12 A. Let's -- let's -- I'm sorry. Sorry, Judge.

13 Let me give you an example just to help out with  
14 this. I want to educate the group here more than  
15 anything, and you can stop me at any time.

16 The co-op, on numerous times within the contract  
17 period, and they didn't have to, would come to me and  
18 state, "Tim, we have got some increased costs. We really  
19 need help. Can you help us with -- helping us cover  
20 diesel fuel?"

21 Wasn't in the agreement. I could say no, I'm  
22 paying through the system. That's up to you. I didn't.  
23 Absolutely.

24 I had the co-op come to me and state -- as we are  
25 all aware, animal husbandry became a big issue a couple  
26 years ago. We, as a community, farming community, aren't  
27 doing a good enough job to track down those workers to see  
28 are they going from farm to farm. We need to make an





1 investment to help track down these workers to make sure  
2 that they are not going from one farm to the other and  
3 causing issues. We need help with that. What do you  
4 need? I accepted it.

5 So I'm saying that the cost that you are re- --  
6 anyone is referring to, the processors are more than  
7 willing to work with them to help it if it's going to help  
8 the milk shed, if it's going to help us. Bad press on a  
9 single farm is bad press for the Shamrock Farms brand.

10 So we do make and help co-ops -- and I will tell  
11 you this, the farming community in Arizona, I have lived  
12 there my entire life. My family has been there for three  
13 generations. They are close personal friends of the  
14 farmers. I want to do everything I can to help them sell  
15 more milk, make more money, and I'm willing to do things  
16 that I can potentially absorb, which will help my brand  
17 and protect it, or that I can go to the customer and try  
18 to pass that along. I'm willing to make those -- those --  
19 add those uncomfortable conversations to help the dairy  
20 farmer.

21 Sorry for the rant.

22 Q. No need to apologize. And I think -- I think  
23 building a record with everyone's experience is exactly  
24 what we need to do to help the Secretary make a good  
25 decision.

26 In Shamrock's experience, is the current regulated  
27 minimum price too high?

28 A. I would state that for Shamrock -- arguing if it's



1 too high or too low I think is an argument for another  
2 time. The question is, is I'm trying to look for  
3 stability. If I can have stability within the milk price,  
4 the milk market, then I can easily work with our  
5 retailers.

6 But keep in mind, when you go to a grocery store,  
7 particularly within Class I, we're working backwards.  
8 Look at the shelf space that is given to the plant-based  
9 alternative beverages, and that's who I'm really competing  
10 with, because that's who is gaining the space every year.  
11 Year over year, they are gaining more space.

12 So is it enough for the farmer? Do they -- should  
13 they get more? I think that's -- a conversation should be  
14 had throughout the entire industry, it should be had  
15 throughout the co-ops.

16 But from what I see on when I have a 400% increase  
17 in my over-order premium, when I have continual increases  
18 happening throughout and helping out when I have penalties  
19 that are paid that, in my opinion, are already supposed to  
20 be covered within the Class I differential, but I have  
21 nowhere to go, as an employee of Shamrock, that's not  
22 fair. Then you put on top of it depooling and other  
23 options, other competitions I have to do, it's a battle  
24 every day. I'm willing to have it, I'm not complaining,  
25 but I'm just stating, we're in an iceberg situation. I  
26 truly believe that National Milk's proposals are looking  
27 at the top of that iceberg, and it's very small.

28 Increased -- you know, we have an issue.



1 Make Allowances are a problem. The dairy farmer who was  
2 up here yesterday, completely understand, he doesn't want  
3 to have any increases. I get it. But they are looking at  
4 that and saying, "Just throw it on Class I."

5 But no one is looking below the waterline, saying,  
6 "That's where the iceberg is." Saying, "What is that  
7 going to do?"

8 And my opinion within this, and my opinion  
9 throughout all of this, is that we're in a whipsaw effect.  
10 The pendulum swings one way, oh, wait, after COVID it,  
11 then we swing it back, and we say, "Now we need to do  
12 this." And the whipsaw seems to be the Class I side,  
13 which is the -- which I think we all agree is declining at  
14 a rate that none of us want.

15 Q. I think as you describe those issues that you  
16 perceive for your company --

17 A. Yes.

18 Q. -- some of those can be fixed through regulation,  
19 others -- others cannot, correct?

20 A. Yes.

21 MR. MILTNER: I think that's all I have. I  
22 appreciate your answers.

23 THE WITNESS: Thanks, Mr. Miltner.

24 THE COURT: Is there anyone else who would like to  
25 cross-examine Tim Kelly before I invite the Agricultural  
26 Marketing Service questions?

27 I see no one. I invite the Agricultural Marketing  
28 Service to ask questions of Tim Kelly.



## CROSS-EXAMINATION

1  
2 BY MS. TAYLOR:

3 Q. Good morning.

4 A. Good morning, Erin.

5 Q. Thank you for coming and testifying this week.

6 A. You know, we could have done this in Phoenix. I  
7 think we're all going there after. It's only 70 today.

8 Q. That's looking very pleasant.

9 A. Yeah, it will be nice.

10 Q. I didn't intend to be here for three seasons of  
11 the year, to be quite honest.

12 A. I'm sure you didn't.

13 Q. None of us did.

14 Let's see, I don't -- I'm going to start -- I  
15 guess I'll start with Exhibit 23 to try to keep organized.

16 A. Sure.

17 Q. You mentioned that your plants have HTST and  
18 extended shelf life products.

19 A. That's correct.

20 Q. For your extended shelf life products, how --  
21 what's your code date on those products? Is that similar  
22 to what we heard yesterday?

23 A. Yes, ma'am. So for paper, so a 64-ounce carton,  
24 it would be, well, let's call it 70 days. For bottles, it  
25 can be over 100 to 130 days. It could go longer, Erin.  
26 The issue becomes more of the product breaking down,  
27 separating, so much as chocolate separating. But that  
28 process could go -- it could go longer.



1 Q. Okay. But 70 days is a good minimum?

2 A. For the paper board. Plastic bottles, 100  
3 days-plus.

4 Q. Okay. And what's your average shelf life on your  
5 HTST products, then?

6 A. Roughly 18 -- 18 to 21 days.

7 Q. Thank you.

8 You talked some in your statement that basically  
9 sourcing milk really isn't an issue for you. You have  
10 been able to get what you need. But you mention there  
11 have been a couple of times where milk has been tight.

12 Can you expand on when those occurred?

13 A. Yes, last year. We had a new Class I plant come  
14 into Phoenix, and that tightened it up. And I think it  
15 was just -- I think it was just an issue for the farmers  
16 getting ahead of it. We had some really bad weather in  
17 Arizona last year, and I think a lot of people might  
18 understand. But then when you have the humidity, as I  
19 stated, particularly the cows in Arizona, they don't do  
20 very well with the humidity coming up, but then after a  
21 couple of weeks it's fine.

22 Q. Okay.

23 A. So I do -- let's state, I didn't have an issue.  
24 Potentially our co-op had issues sourcing it. But  
25 Shamrock, we got everything we ever needed.

26 Q. Okay. So you weren't short?

27 A. I wasn't.

28 Q. Okay. I'm going to ask you two more questions on



1 this one. I think the other attorneys asked most of my  
2 questions --

3 A. Sure.

4 Q. -- when it comes to that proposal.

5 I wanted to turn to your statement on -- your  
6 second, Part 2 statement kind of on all the other  
7 proposals.

8 For the --

9 A. Would that be -- would that be at the top  
10 Exhibit 23A?

11 Q. Yes, which is officially Exhibit Number 463 --

12 A. Thank you.

13 Q. -- in the record.

14 So you opposed Proposals 1 and 2 which would  
15 update the components in the formulas, and you state  
16 Shamrock doesn't receive components at those proposed  
17 levels.

18 Do you know the components on average of the milk  
19 that you do receive?

20 A. Offhand, I do not.

21 Q. Are they more than the current levels in the  
22 formulas?

23 A. No. Ours were less. We did run that modeling, so  
24 it would be increased cost for us.

25 Q. They're less than what's currently in the --

26 A. I'm sorry, yes. Our solids are less than what's  
27 currently in the proposal.

28 Q. In the proposal.



1 But not what's currently in the formulas, which is

2 3 --

3 A. I -- I don't know that.

4 Q. Okay.

5 A. Sorry.

6 Q. Okay. For the Class I mover, you mention that you  
7 do hedge some products --

8 A. Uh-huh.

9 Q. -- and you are looking to do more.

10 Which products, could you kind of expand on what  
11 types of hedging you are doing, what products exactly --

12 A. Yes. And typically -- well, right now we have  
13 particularly some foodservice customers that are requ- --

14 THE COURT: Mr. Kelly, slow motion. Speak slowly,  
15 please.

16 THE WITNESS: You got it.

17 BY MS. TAYLOR:

18 Q. If it makes you feel better, I have also been  
19 admonished during this hearing, so you're in good company.

20 A. I'm a sales guy, we talk fast. Look over here.  
21 The -- so I apologize, I'll slow down.

22 So within -- within our customer base we have  
23 foodservice customers that are really looking for a stable  
24 price. I think I even stated yesterday where they have  
25 menu boards that can cost millions of dollars to change,  
26 so they are asking us to reduce risk for them. No pluses  
27 or minuses, I don't make anything, they don't, we just  
28 cover it all off of it just to help stabilize the price.



1 Q. And did you do that before the new mover was  
2 implemented in 2018?

3 A. I couldn't answer that. I couldn't answer that.

4 Q. Okay. Is your foodservice ESL or HTST products?

5 A. ESL. We have both, but what I'm hedging is the  
6 ESL.

7 Q. Is the ESL part? Okay.

8 You mentioned it's difficult to manage pricing  
9 volatility when you are receiving your costs after you  
10 have priced products to the customer. We have advanced  
11 pricing for Class I.

12 So what exactly are you talking about there?

13 A. One more -- repeat the question. I didn't catch  
14 it.

15 Q. Sure. You have a statement in here that says,  
16 "It's difficult to manage pricing volatility when you are  
17 receiving your costs after you have priced products to the  
18 customer."

19 A. Yeah. So our Class II items particularly --

20 Q. Class II.

21 A. -- and last year, it was tough for the entire  
22 industry.

23 Q. Could you expand on that?

24 A. Well, I'm -- I just remember January of last year,  
25 and we were millions of dollars behind.

26 Q. On your Class II side?

27 A. Yes.

28 Q. I want to turn to the table that's on page 5 of





1 this Exhibit 463.

2 And I guess my first question, if you could just  
3 expand for the record, when you want USDA to look at this  
4 table --

5 A. Uh-huh.

6 Q. -- what do you want us to see from this table?

7 What are your important points that you want us to take  
8 away when we look at the numbers on this table?

9 A. Well, one, as you can see, the proposals that are  
10 in -- particularly in the market area are big increases.  
11 And I think Warren stated yesterday that our business is  
12 done, as I like to say, in mils. Meaning, I lose business  
13 going out to the fifth decimal point. So a penny is a  
14 lot. This would increase it substantially within these  
15 models.

16 The other -- the other thing, Erin, that I  
17 certainly have, and this is my personal beef, is we're  
18 trying to paintbrush which is going to work for everybody.  
19 Basically, politics is local. I would say business,  
20 particularly milk, is local.

21 The milk that I have had and that I brought into  
22 our plants, particularly over the last -- well, that I can  
23 recall -- 20 years, those facilities are 20, 30 minutes  
24 away tops. Our farm is about 45. The Arizona dairy  
25 farmer, I describe them more as land speculators than  
26 dairy farmers now because their -- their land is very  
27 valuable, and then they are moving -- some are moving out.  
28 But my plants -- pardon me -- my farms that I'm purchasing



1 are still local there.

2 The other statement, the other thing to that would  
3 be that rate, I know what it costs, because when I'm doing  
4 the hauling, we haul our own milk as well for our farm. I  
5 know what the costs are. And I'm already paying for fuel  
6 increases throughout the over-order premium, so I'm having  
7 a hard time seeing this level of substantial increase  
8 within a differential to help with what they are saying is  
9 marketing of milk. I don't need help with marketing of  
10 milk. I don't need help with anything that they are  
11 doing.

12 Balancing I would give you, but I'm making  
13 significant investments to help with the balancing  
14 problem. I'm getting, as I stated, penalized, fined,  
15 burdened, or charged more for my milk because of URC  
16 issues or different things like -- universal receiving  
17 credit issues, URC. So we are making investments to help  
18 offset that. Those are capital investments.

19 I would also state, Shamrock's making significant  
20 investments within the extended shelf life, which is  
21 apples and oranges when you compare ESL and HTST. When  
22 you talk about processing costs of HTST, and I'm going to  
23 give ranges of 30 to \$0.40 a gallon, and you look at  
24 ESL -- not aseptic which Hood does, but Shamrock does  
25 ESL -- you are talking ranges in the \$1.65 to \$2 a gallon.  
26 And you have to be perfect, and you are running that  
27 product that you would run chocolate, that you would have  
28 enough product to withstand for four to five weeks, and



1 you are having those carrying costs of covering that  
2 inventory, as I said, has to be perfect.

3 My HTST business, I flip our cold room, I turn  
4 over our cold room and inventory about every 30 hours. On  
5 ESL, every 30 to 60 days, potentially.

6 So we're -- we want to make investments. We need  
7 to make money so that we can continue to help the dairy  
8 farmer look at value-added products that we can put out in  
9 the marketplace and, thus, increase Class I. Any cost  
10 increase that is here within the differential, within the  
11 mover, within Class II, anything that they take away from  
12 that is very difficult for me to spend.

13 One other thing, and then I'll stop with it. An  
14 HTST filler, all in, is probably going to cost you, in  
15 lines and everything -- just bought a new filler -- so  
16 it's going to cost around 5 to \$7 million, and you are in  
17 the HTST business.

18 Utilizing current internal things that are there,  
19 you know, glycol chilling, you are looking at 35 to  
20 40 million in ESL. I mean, it's not even close.

21 So as I said, there -- you know, you look at any  
22 of these increases in costs, and them putting more and  
23 more pressure saying, "What do you do with processors?  
24 What are you doing? What are you doing to help?"

25 We're trying to do it. Shamrock's for one.  
26 Others in the MIG group. That's why we call ourselves the  
27 Innovation Group, we're trying to innovate. We're trying  
28 to come up with new products that we can sell within



1 Class I, but any increases of that certainly is going to  
2 slow down our investment.

3 Q. Okay. So that talks about just the general  
4 increase.

5 A. Uh-huh.

6 Q. Are you concerned about -- are you more or less or  
7 equally concerned about the changes or -- of any  
8 competitive relationships between yourself and your  
9 competing plants?

10 So when I look at the numbers in here --

11 A. Yep.

12 Q. -- from your plant to -- well, first let me ask  
13 this. Particularly for Virginia, the --

14 A. Yes.

15 Q. -- the plant locations you listed there are ones  
16 you consider your competitors; is that accurate?

17 A. Sure.

18 Q. Okay. And so when I looked at the numbers, you  
19 know, the differences between the differentials of those  
20 plants now versus what the difference between those  
21 differentials would be under the proposal, they are  
22 relatively the same -- the differences. So maybe \$0.20  
23 here or whatever.

24 Are you more concerned about any competitive  
25 changes between you and your competitors or -- or the  
26 overall increase, even though you would be on the same --  
27 relatively on the same kind of level playing field?  
28 Because yesterday you mentioned some -- I wrote this down,



1 you said if you were on a similar regulatory playing  
2 field, you can compete.

3 A. Uh-huh.

4 Q. So that's kind of why I'm asking this question.

5 A. Yeah, absolutely. But within this base, I can  
6 compete with -- with people that are listed here. That  
7 isn't the argument. That's not my competition per se.  
8 It's a portion of it.

9 My competition are the water-based, plant-based  
10 products. That's my competition that I'm very concerned  
11 about.

12 So it's twofold, sure, I think that within this.  
13 And I think I'm in support of all of my competitors here  
14 being able to make significant investments in marketing,  
15 because we -- I believe we need to go and tell the  
16 consumer the benefits about milk, do a better job of that,  
17 which MilkPEP does a good job, and we're continuing to  
18 make investments there. I think DMI is doing a very good  
19 job of spending money and doing that as well.

20 Q. What's DMI?

21 A. I'm sorry, Dairy Marketing, Inc., the marketing  
22 arm checkoff program for the dairy farmers.

23 Q. Okay. Thank you.

24 A. You're welcome. I think they are doing a very  
25 good job.

26 And if you are going to make this saying, "Tim,  
27 but if Maryland-Virginia is getting the same price as you,  
28 that's fair." Okay? I'm arguing the increase to me isn't



1 fair. That's my argument.

2 Q. Okay.

3 THE COURT: I wrote down MilkPEP. What is that?

4 THE WITNESS: Milk -- so milk, and then P --  
5 P-E-P. And it stands for the Milk Processor Education  
6 Program.

7 BY MS. TAYLOR:

8 Q. Just a couple more quick questions.

9 In Arizona, for your plant there, do you take 100%  
10 of the Shamrock Farm milk and then UDA does the balancing  
11 and you work with them?

12 A. Yes, ma'am.

13 Q. Okay. And then for your plant out there -- well,  
14 for both plants, do you know what percentage of -- what's  
15 your percentage of HTST versus ESL products that come out  
16 of those plants, roughly?

17 A. I do.

18 Q. You don't want to --

19 A. I don't want to divulge it.

20 Q. Okay. That's fine.

21 A. I know it to the gallon. But, yes, I don't want  
22 to share.

23 Q. Okay.

24 MS. TAYLOR: That's it from AMS. Thank you for  
25 your time.

26 THE WITNESS: You're welcome.

27 THE COURT: Is there any other cross-examination  
28 of Mr. Kelly that you would like to ask and you have not



1 yet had the opportunity to ask?

2 I see none.

3 Mr. English.

4 MR. ENGLISH: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. ENGLISH:

7 Q. Chip English for the Milk Innovation Group.

8 Good morning, Mr. Kelly.

9 A. Good morning, Chip.

10 Q. So I want to ask one question following up  
11 directly on USDA, and then a couple of questions that they  
12 asked and Mr. Miltner asked, and then finally, one  
13 question from National Milk.

14 I want you to go back to Exhibit 23A, page 5,  
15 Table 1, that you were just looking at with USDA --  
16 Ms. Taylor.

17 A. Uh-huh.

18 Q. That's a "yes," right? Sorry.

19 A. Yes, Chip.

20 Q. Okay. So I just want to make sure that we're  
21 clear. The model -- this is going to compare Shamrock to  
22 Maryland-Virginia in Newport News.

23 Today, you have a \$0.30 lower Class I differential  
24 than Newport News, correct? You are at \$2.90 and they are  
25 \$3.20, correct? That's the --

26 A. Give me a second, Chip.

27 Q. Yes.

28 THE WITNESS: Judge, can you tell him to slow



1 down?

2 THE COURT: I was caught up with him, Mr. Kelly.

3 THE WITNESS: I thought we were friends.

4 I do see it now, Chip. Thanks.

5 BY MR. ENGLISH:

6 Q. And the model, which is -- the model average,  
7 which is the third column, would take you to \$4.70,  
8 correct?

9 A. Correct.

10 Q. And the Maryland-Virginia plant, Newport News, to  
11 \$5.55, correct?

12 A. Correct.

13 Q. Which is \$0.85 higher, correct?

14 A. Correct.

15 Q. But if you go to the National Milk proposal, you  
16 would both be at \$1.80, correct?

17 A. That's correct.

18 Q. So today you're \$0.30 less, and if the model's  
19 accepted, you would be the same, correct?

20 A. Correct.

21 Q. Does that change your competitive relationship?

22 A. Absolutely.

23 THE COURT: I -- when -- all right. So when you  
24 said \$1.80, Mr. English, you are taking the --

25 MR. ENGLISH: The next to the last --

26 THE COURT: -- proposal, and then you are  
27 subtracting the current?

28 MR. ENGLISH: Yes, the next to the last column.





1 THE COURT: So that shows \$1.80 increase.

2 MR. ENGLISH: You are right.

3 THE COURT: Okay. I'm with you.

4 MR. ENGLISH: Okay. We're both getting a \$1.80  
5 increase. So, you're correct, Your Honor, I got it -- I  
6 went one step too far.

7 It maintains the same relationship as today, but  
8 it does deviate from the model, so thank you for the  
9 correction, Your Honor.

10 BY MR. ENGLISH:

11 Q. Do you see that, Mr. Kelly? Because the Judge has  
12 corrected me that I was looking at the wrong one.

13 A. I do see that.

14 Q. I want to talk just a little bit more about  
15 balancing --

16 A. Sure.

17 Q. -- and over-order premiums.

18 Do you have experience, given where you live and  
19 how you drive to work, when your co-op says they are short  
20 of milk, do you have, you know, any examples that say,  
21 "I'm not sure that's the case"? Like, when you are  
22 driving to work you see something?

23 A. Yes. So en route, when I receive those types of  
24 phone calls, I immediately like to fact check. So I will  
25 drive by the facility to see if the drying operations are  
26 running. And there are times when that happens where I  
27 see drying operations going. And my argument is, why am I  
28 not getting that milk if the times are tough and those



1 calls are being made? So I want to make sure that I'm  
2 getting that milk versus running their operations.

3 Q. And then, finally, only because I think you used a  
4 term in response to a question from Ms. Hancock, and the  
5 term I think has been used earlier in this hearing, but  
6 has not been used recently, and I want to make sure we  
7 have your definition of the term.

8 You used the term "tolling."

9 A. Yes.

10 Q. T-O-L-L-I-N-G.

11 And what is your definition of tolling?

12 A. Internal manufacturing costs by the processor.

13 Q. And that is when you are producing private label  
14 product because, ultimately, the product belongs to the  
15 customer, correct?

16 A. Right. So depending on our agreements, you will  
17 have, let's call it components, ingredients, raw, whatever  
18 components that you want to class, and then there would be  
19 my internal capital costs, manufacturing, labor, all of  
20 the others, that would be figured into the tolling level.

21 MR. ENGLISH: I have no further questions, and I  
22 thank you for your testimony.

23 I move admission -- I have already moved  
24 admission. Now I ask for you to rule on my motion made at  
25 the end of the day yesterday with respect to Exhibits 462,  
26 463, and 464.

27 THE COURT: I want to take a moment to acknowledge  
28 my appreciation for how quickly each of you moved through



1 a massive amount of information. It was quite helpful,  
2 and you did it in short order, and it was just a model for  
3 how we all should work to try to finish this hearing.

4 MR. ENGLISH: Thank you, Your Honor.

5 THE WITNESS: Amen.

6 THE COURT: Is there any objection to the  
7 admission into evidence of Exhibit 462?

8 There is none. Exhibit 462, also marked  
9 MIG/Shamrock-23, is admitted into evidence.

10 (Thereafter, Exhibit Number 462 was received  
11 into evidence.)

12 THE COURT: Is there any objection to the  
13 admission into evidence of Exhibit 463, also marked  
14 MIG/Shamrock-23A?

15 There is none. Exhibit 463 is admitted into  
16 evidence.

17 (Thereafter, Exhibit Number 463 was received  
18 into evidence.)

19 THE COURT: Is there any objection to the  
20 admission into evidence of Exhibit 464, also marked  
21 MIG/Shamrock, Exhibit 23B, like boy?

22 There is none. Exhibit 464 is admitted into  
23 evidence.

24 (Thereafter, Exhibit Number 464 was received  
25 into evidence.)

26 THE COURT: And I --

27 MR. ENGLISH: Mr. Kelly is excused to go back to  
28 Phoenix.



1 THE COURT: Yes.

2 THE WITNESS: Later.

3 THE COURT: Thank you so much, Mr. Kelly.

4 Let's take a 15-minute break. Please be back and  
5 ready to go at 9:20. It's not quite 15 minutes. 9:20.

6 (Whereupon, a break was taken.)

7 THE COURT: Let's go back on record.

8 We're back on record at 9:20.

9 Before we proceed, for some reason yesterday I  
10 started calling Ms. Hancock, Ms. Hansen. I know that the  
11 transcript will correctly show "sic," S-I-C, which means I  
12 made a mistake, each time I said Hansen.

13 I just want to make clear right now there is not  
14 another lawyer participating named Nicole Hansen. It's  
15 always Nicole Hancock.

16 And, Ms. Hancock, you were too polite to say,  
17 "Your Honor, it's Hancock."

18 Now, had that been Mr. Rosenbaum, he would have  
19 let me know right away.

20 All right. I'd like the witness in the stand to  
21 state and spell his name.

22 THE WITNESS: Hello, Your Honor.

23 My name is Chuck Turner, C-H-U-C-K, T-U-R-N-E-R.

24 THE COURT: Have you previously testified in this  
25 proceeding?

26 THE WITNESS: I have.

27 THE COURT: You remain sworn.

28 THE WITNESS: Yes.



1 MS. VULIN: Thank you, Your Honor. Ashley Vulin  
2 with the Milk Innovation Group.

3 We have handed out three documents, and I'll go  
4 through them and ask that they be marked. The first is  
5 Exhibit MIG/Turner-25, and we ask that that be marked as  
6 Exhibit 466.

7 THE COURT: Yes.

8 (Thereafter, Exhibit Number 466 was marked  
9 for identification.)

10 MS. VULIN: The second is Exhibit MIG/Turner-25A,  
11 and we ask that that be marked as Exhibit 467.

12 THE COURT: Yes.

13 (Thereafter, Exhibit Number 467 was marked  
14 for identification.)

15 MS. VULIN: And the final is MIG/Turner-25B, and  
16 we ask that that be marked 468.

17 (Thereafter, Exhibit Number 468 was marked  
18 for identification.)

19 CHUCK TURNER,

20 Having been previously sworn, was examined  
21 and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. VULIN:

24 Q. And, Mr. Turner, Exhibits 466 and 467 are your  
25 written testimonies in this proceeding, correct?

26 A. I honestly wasn't paying attention to you, I'm  
27 sorry.

28 Q. That's all right. I'll say they are your written



1 testimonies. And then Exhibit 468 for the record, is the  
2 PowerPoint presentation you are going to give.

3 A. I agree.

4 Q. Thank you.

5 A. The Judge, Ashley, complimented Chip and Tim on  
6 their efficiency of doing this, and you're stuck with me  
7 stammering through this, so I apologize ahead of time.

8 Q. I have full confidence, don't worry.

9 MS. VULIN: If we could pull up the PowerPoint,  
10 please.

11 THE COURT: All right. And I want to make sure  
12 the volume for Ms. Vulin is approximately the same as the  
13 volume for Mr. Turner. So right now, Mr. Turner's voice  
14 is softer, which means some adjustments so that you can  
15 see your laptop and your written material and still have  
16 the microphone near your mouth.

17 THE WITNESS: All right. How's that?

18 THE COURT: That's excellent. But always talk to  
19 the mic, not me. Right? There we go. Thank you.

20 All right. We have the presentation up. And  
21 Ms. Vulin, you may proceed.

22 MS. VULIN: Thank you, Your Honor.

23 BY MS. VULIN:

24 Q. So, Mr. Turner, I know you have testified  
25 previously, but I just want to kind of reorient everyone  
26 with you and your business.

27 So we could go to the next slide, please.

28 Can you remind us, what's your position with



1 Turner Dairy?

2 A. I'm the president of Turner Dairy Farms and third  
3 generation of my family involved in owning and running the  
4 business. And proud to say that we have a fourth  
5 generation actively involved in learning to run it and  
6 manage it.

7 Q. And I know you previously testified, but can you  
8 remind us about the location and products made by  
9 Turner's -- by Turner Dairies?

10 A. And, yeah, actually, I was -- I should have said  
11 more to your first question.

12 Our family also owns a smaller plant in the city  
13 of Pittsburgh called Pittsburgh Special-T Dairy, LLC, and  
14 I'm a member of that corporation. And we're -- our Turner  
15 Dairy Farms is a one-third owner of a Class II plant in  
16 Northwestern Pennsylvania called Titusville Dairy Products  
17 Company, and I'm the president of that company.

18 And to your next question. Two plants are in  
19 Allegheny County, one in suburban Pittsburgh, one in the  
20 city of Pittsburgh; and then Titusville Dairy Products is  
21 up in, I think it's Crawford County. It's right on the  
22 line of Crawford and Venango Counties in Northwestern  
23 Pennsylvania.

24 Q. And can you tell us --

25 THE COURT: What is the spelling of that second  
26 county?

27 THE WITNESS: Venango, V-E-N-A-N-G-O.

28 THE COURT: Thank you.



1 BY MS. VULIN:

2 Q. And can you tell us about some of the products  
3 that Turner manufactures?

4 A. Okay. In our -- in our two fluid milk plants, we  
5 make HTST milk, flavored milk, some value-added products  
6 like buttermilk, but all fluid products, plus some drinks  
7 and juices.

8 In the Titusville plant we make ice cream mix,  
9 cottage cheese, and sour cream.

10 And we also make some Class II creams and ice  
11 cream mixes in our plant in Penn Hills.

12 Q. And the last time you were here you talked about  
13 some brownie batter milk, and my next question was  
14 supposed to be, do you have some of those products to  
15 share today? But we heard there was an unfortunate run on  
16 the grocery store.

17 A. Yeah. Thanks for pointing that out. I actually  
18 had our plant make an ex- -- it was supposed to be  
19 discontinued the very beginning of January, and I had them  
20 make a last batch last week so I'd have a fresh cut. Our  
21 plant manager asked if he wanted me to set it aside, and I  
22 told him, no, I am certainly capable of getting up to the  
23 cooler and getting it. Which I put off a couple of days,  
24 and by the time I got up there it was sold out.

25 So I did stop at a store to keep my promise to you  
26 and Ms. Keefe, but that's -- that was the best I could do.

27 Q. Well, I can selfishly say I know why it sold out  
28 because it was quite delicious.





1           And is Turner a small business as defined by the  
2 Small Business Administration?

3           A.    Yes, all the businesses are small businesses.

4           Q.    And so if we could go to the next slide, please.

5                   And so this slide here, "Market Forces Must  
6 Prevail." What do you mean by that?

7           A.    The -- my -- in my view, and I'm not an economist,  
8 but the milk price is set by economics. I saw  
9 Dr. Stephenson's slide with the supply and demand curve.  
10 Whatever we do here, the milk price is going to be set by  
11 the supply and demand, and in my view, mostly in the  
12 United States, it's by -- it's really affected by milk  
13 supply.

14                   You know, the real thing is, you know, there's  
15 28,000 dairy farmers. Of course, most of them don't make  
16 enough milk to really move the needle, but, you know, they  
17 make decision -- they made decisions a year ago, two years  
18 ago on how many cows they are going to milk. They can  
19 have some effect on that decision in a short-term, but not  
20 much. And then they also have decided how they are going  
21 to feed those cows, which is going to affect how much milk  
22 they get. And that's a more short-term decision, but  
23 there's still really not a lot they can do about it right  
24 now to affect how much milk they make.

25           Q.    And you talked about it's really the farm supply  
26 that's setting the price.

27                   How is that different from what we're talking  
28 about here, the FMMO Class I price?



1           A.     Well, when we set the -- so the -- when I talked  
2 about the milk price in general, that's the some kind of  
3 weighted average of what the United St- -- you know, what  
4 our national dairy herd is making.

5           The Class I differentials, because the Class II,  
6 III, and IV are essentially national prices, the Class I  
7 differential really affects who gets what. How much  
8 Class I is in your Federal Order, what's the blend, how  
9 much is that dragged down by the manufacturing classes in  
10 a given month, are those manufacturing classes allowed to  
11 depool and not share, all that factors into it. So  
12 there's 28,000 different milk prices out there based on  
13 the economics and the regulated price.

14          Q.     And so just from a big picture perspective, why do  
15 you support MIG's positions at this hearing?

16          A.     Yeah. I might even back up a little bit from why  
17 I support it, why I got involved in MIG, if I could jump  
18 in --

19          Q.     Yeah.

20          A.     -- maybe I'm jumping ahead, but --

21          Q.     Yes.

22          A.     Passing this business along to our family, you  
23 know, my goal is to -- is to have a viable business. I  
24 have been doing a lot of -- seeing this thing, this  
25 hearing coming for the last several years, I have been  
26 doing a lot of reading and researching. We rejoined IDFA,  
27 got involved in their economic policy discussions. I  
28 attended Farm Bureau's -- Farm Bureau's meeting in Kansas



1 City a year or so ago, talked a lot to our farmers and in  
2 our state industry to try to see what -- because this --  
3 it seems to me like this is not -- not working.

4 And as -- as these discussions, these economic  
5 policy discussions, and under, you know, Mike Brown's  
6 leadership, there were certain voices that wouldn't --  
7 weren't satisfied with just letting this go, of just --  
8 you know, this -- you know, most of my colleagues, when I  
9 talk to them about stuff like this, their answer isn't  
10 that they don't agree, their answer is, you are never  
11 going to change it.

12 Well, there's certain people that wouldn't accept  
13 that for an answer, and when I found out that -- that  
14 those people formed an organization to advocate within  
15 IDFA, and then, you know, by themselves at this hearing, I  
16 was eager to join when I had an opportunity.

17 Q. Thank you.

18 And so then after you joined MIG, why were you in  
19 support of the proposals developed by the group?

20 A. Class I sales are really important to us.  
21 That's -- that's what our business is, that's what the  
22 future of our business is, and we want to -- we need -- I  
23 think we need a platform that supports that and supports  
24 the small dairy farmers that ship milk to us.

25 Q. And you have up here some -- a list of, you know,  
26 some reasons why you support MIG.

27 Can you walk us through what you think the big  
28 picture market considerations are that USDA should keep in



1 mind as they are setting FMMO pricing?

2 A. Well, I think as we raise, you know, this -- I  
3 think that a lot of this discussion about Class I  
4 differentials is because of a perception that raising  
5 Make -- the necessary increases in Make Allowances  
6 decrease the regulated price. My view is, they don't  
7 affect the milk price, at least in a middle to long run.  
8 But so a lot of this is in reaction to that. And really,  
9 if we raise Class I prices, what we end up doing is that,  
10 you know, that just pushes down commodity prices, I think,  
11 particularly powders.

12 Q. Is that because raising the Class I price will  
13 generate the production of more milk that the market has  
14 to clear through III and IV?

15 A. I would argue it's the same amount of milk at the  
16 same weighted average price, but because we have raised  
17 Class I, we are going to push down, you know, Class III  
18 and IV products.

19 Q. Thank you.

20 And I know that Turner works primarily or  
21 exclusively with independent farms?

22 A. Right.

23 Q. How, in your experience, are small farms being  
24 served by the FMMO system?

25 A. Our small farms are not just the 30 Pennsylvania  
26 farms that ship milk to Turner's, but the small farms in  
27 Pennsylvania are really, really struggling, and in my  
28 view, not able to take the commodity -- the base commodity



1 prices as, you know, Class IV -- at this point Class III  
2 is just so low that when we add a mover to it, that it  
3 isn't covering their costs.

4 Q. Thank you.

5 And if you could go to the next slide, please.

6 A. There's that brownie batter milk.

7 Q. My personal apologies to everyone.

8 A. Yes.

9 Q. It's quite good.

10 So I know in your testimony you talked a little  
11 bit about the burdens of FMMOs on Turner.

12 What are just some of those either administrative  
13 or monetary burdens that Turner experiences from the  
14 FMMOs?

15 A. Yeah, I mean, the reporting is -- is huge. Just  
16 the idea that for a business our size, with 220 employees  
17 at Turner's, to -- to have to close the business every  
18 month, you know, the first couple business days, get sales  
19 locked down, inventory locked down, account for every  
20 pound of milk, every pound of butterfat, every pound of  
21 components, and get a report filed by the 7th is quite --  
22 it's a big undertaking. It's like doing your tax return  
23 every month.

24 Q. And are there benefits that Turner gets from the  
25 FMMO system?

26 A. Yes. Yes, certainly. And those, I think -- I  
27 think really as I was thinking about this, the big thing  
28 is the integrity of the system. There is just not



1 questions that when anybody in our industry reads a report  
2 from AMS, that it's -- that it's accurate, it's -- you  
3 know, it's put together right. You know, the tests, all  
4 that we go through with tests, there's not question from  
5 our farmers if the butterfat or protein tests are  
6 accurate, that the pricing is done right, their check  
7 every month is audited, you know, and then it's reported.

8 And so there is -- there is a great deal of  
9 confidence, I think, from all members of the industry when  
10 they look at the -- at the products and the system. And  
11 we heard yesterday from Mr. Miller about the twice monthly  
12 checks, you know, that there's -- there's things that they  
13 can bank on.

14 Q. And I know we're here to discuss the \$1.60 base  
15 Class I differential. Let's start with the Grade A piece  
16 of that.

17 I understand that Turner supports Proposal 20,  
18 which would eliminate the \$0.40 allocated to the base  
19 differential for maintaining Grade A status.

20 So my question is, what is Turner's experience  
21 with available Grade B milk in Pennsylvania?

22 A. In -- in our part of the state, at least, it's  
23 really disappeared. When I came into the industry, there  
24 was Grade B milk. I can remember driving along country  
25 roads and you'd see a platform out by the road with milk  
26 cans on it. But that -- the plants and the farms have  
27 largely either gone out of business or had to switch to  
28 Grade A. And I don't even know where you could buy a load



1 of Grade B milk anymore.

2 Q. So if you wanted, just hypothetically, wanted to  
3 buy a load of Grade B milk, you wouldn't know who to call  
4 to find it?

5 A. No. It's not there.

6 Q. And then let's talk next about the balancing costs  
7 which make up \$0.60 of the \$1.60 base Class I  
8 differential.

9 Now, we touched on this briefly, but remind me,  
10 100% of Turner's milk comes from independent suppliers,  
11 correct?

12 A. Yes.

13 Q. And you said there were about 30 suppliers?

14 A. Yeah. About 30 in Pennsylvania and two in Ohio.

15 Q. And for Turner's 32 independent suppliers, does  
16 Turner accept all milk that they produce?

17 A. Yeah, we -- we -- our arrangement with them is  
18 that we buy all the milk that they produce.

19 Q. Do they sell -- to your knowledge, do they sell  
20 any of their milk to any other processors?

21 A. No, they don't. I know they don't.

22 Q. So it's an exclusive arrangement between Turner  
23 and those farms?

24 A. Right.

25 Q. And does Turner make any efforts to balance its  
26 milk supply, I think, in -- I guess we'll start with the  
27 fact that you accept all milk from these farms.

28 Do you consider that a balancing function?



1           A.     Yeah.  Sure.  And it's -- you know, we have close  
2 relationships with these farms.  Many -- many -- most are  
3 multi-generational.  I have worked with two, three,  
4 four generations of the family members that have run --  
5 that are running these farms.  I have been on almost all  
6 the farms.  The -- I have -- we have farms that whose  
7 family has been shipping milk to us longer than I have  
8 been alive, and I'm not as young as I used to be.

9           And so we -- we -- this close relationship, our  
10 field man knows who's -- you know, who's got expansion  
11 projects in mind, who's got expansion projects in -- in  
12 construction, who wants to add cows.  They also know who  
13 is likely not going to, you know, stay in the business for  
14 very long.  So we have a pretty good idea where that milk  
15 supply is going, and if we need to -- you know, if we need  
16 to or can add a producer.

17          Q.     And we heard earlier some questions about this  
18 double payment for balancing, so I want to tease that out  
19 a little bit.

20          A.     Yeah.

21          Q.     What is the order that Turner's plant is regulated  
22 under?

23          A.     The Mideast, Federal Order 33.

24          Q.     And do you know what Class I utilization is  
25 approximately in that order?

26          A.     I used to.  Any -- it depends.  If -- I think if  
27 everybody's in the pool, it's in the low 30s.  I'm kind of  
28 looking at Dave Hood behind you.  I think it's in the low





1 30s if everybody is in the pool. When they are not in the  
2 pool now, it climbs up towards 40.

3 Q. So the \$0.60 that Turner pays into the pool for  
4 balancing is diluted amongst all of the suppliers who  
5 participate in the pool, correct?

6 A. Right.

7 Q. So Turner's own suppliers are not receiving from  
8 the pool that \$0.60 that Turner pays in, correct?

9 A. Right. Two-thirds of it, or even 70% of it, is  
10 going to the MA to get redistributed.

11 Q. So even if, hypothetically, Turner suppliers did  
12 have \$0.60 worth of hundredweight for their own balancing  
13 costs, they would not be getting that payment completely  
14 covered by the pool, correct?

15 A. No.

16 Q. And so if they had to seek those costs elsewhere  
17 in order to have them covered, that would be the payment  
18 or the double payment that Turner would be giving to them,  
19 correct?

20 A. Well, yeah, but we are -- yeah. So we and our  
21 producers are left holding the bag to do that balancing.

22 Q. And I understand that also hauling rates are  
23 something that Turner contributes in the balancing efforts  
24 between it and its suppliers?

25 A. Not exactly. The -- so the one of the ways that  
26 the producers pay for balancing is through their hauling  
27 rates, because a lot of our milk is diverted to a  
28 manufacturing or a bottling -- another bottling plant.



1 And so to some extent, the hauler takes that into account  
2 when he sets their per hundredweight hauling charges. We  
3 also subsidize certain of those trips. If it's kind of  
4 outside the range of what a normal delivery would be to  
5 our plant, then we will pay so many dollars per trip to  
6 the hauler for making that diversion. So that's -- that's  
7 part of it that we fund.

8 Q. And we have heard that over-order premiums can be  
9 difficult for cooperatives to obtain.

10 Does Turner pay any over-order premiums to its  
11 suppliers?

12 A. Yes. To the -- not to cooperatives, to our  
13 farmers.

14 Q. Yes. Yes.

15 A. Okay.

16 Q. The testimony came from cooperatives, but the  
17 question to you is, does Turner pay to its own suppliers  
18 any over-order premium or payment above the Class I  
19 minimum?

20 A. Yes, we pay premiums above the Federal Order  
21 minimums, and those premiums take kind of three forms.  
22 The first, and we talked about it last time I was here a  
23 little bit, there's an over-order premium mandated by the  
24 Pennsylvania Milk Marketing Board. We also pay quality  
25 premiums, and then we also pay a generic premium --  
26 market-based premium on top of that.

27 Q. And are those -- and of course the Pennsylvania  
28 state premium isn't negotiated between Turner and its



1 suppliers, correct?

2 A. It is not.

3 Q. But the other premiums, are those the results of  
4 negotiations and communications between Turner and its  
5 suppliers?

6 A. Yeah. The quality premium is a longstanding --  
7 you know, we change it, but it's been in place for 30-some  
8 years to get the caliber of farm and the quality of milk  
9 that we want for ourselves, but we also need it for one of  
10 the cheese plants we divert to.

11 Q. And then the last piece is the \$0.60 for the  
12 incentive to service the Class I market.

13 And in your experience, why do farms choose to  
14 supply Turner Dairy as opposed to another operation?

15 A. It's really our relationship. We have -- like, we  
16 have been a good partner, a good place for them to sell  
17 their milk for a long time. We're, a lot of times,  
18 friends. They -- you know, there's a lot of trust that  
19 they are going to get that check twice a month. We  
20 advocate for each other, you know, in state and other  
21 issues.

22 And I think the other thing, too, is that when  
23 shipping to a family-owned company and to somebody whose  
24 brand is out there, they are really proud. We're actually  
25 proud of each other's success. And we want -- you know,  
26 it's -- we're looking for mutual success. And, you know,  
27 when -- a lot of farms, you would be surprised when you go  
28 talk to farms, you say, "Where do you ship your milk?"



1 And a lot of times the farm -- you know, you can see kind  
2 of a glazed-over look in their eye, and they really don't  
3 know.

4 And that -- our farmers don't have that. They  
5 know where their milk's going, and they know who our  
6 customers are, and they are really proud of that. And  
7 that's -- so that's why they ship to us.

8 And, of course, there's economics underlies all  
9 that, but it -- you know, we're a good market.

10 Q. And do the FMMOs serve any function in  
11 incentivizing these suppliers to service Turner Dairies?

12 A. No. Actually, it's -- it's counterproductive, I  
13 think.

14 Q. How so?

15 A. Well, when every farmer in a multistate region  
16 gets the same price, the message is, why -- why are you  
17 going to try harder? Why do you want to ship to a place  
18 where you -- you know, they want a certain caliber of  
19 cleanliness of farm, you know, on their rating scores, or  
20 you want better bacterial standards, you know. If I can  
21 just go along and get along, why do I want to put up with  
22 the hassles to shipping to Turner's for the same price?  
23 So to me, it -- because it's blended, there's not --  
24 there's not an incentive.

25 Q. And is the milk supply in Pennsylvania sufficient  
26 to meet Turner's needs?

27 A. Absolutely.

28 Q. And in your experience, if there was tightening or



1 a change in the milk supply you needed, is it -- about how  
2 long does it take to grow fluid production? Is that a  
3 multi-year process? How -- how long would that take?

4 A. We're -- we're blessed that we're -- we have been  
5 able to grow our fluid milk sales most years. But I would  
6 tell you our farmers can usually grow faster than we grow.  
7 So, you know, our real problem is -- you know, is more  
8 like slowing them down. And, you know, generally that's  
9 the exit -- the farms exiting the market and our decision  
10 is whether we want to replace farms that exit, because,  
11 you know, that brings down the average growth rate. But  
12 typically, you know, we have very seldom had to shut off  
13 farms. But we typically won't add farms, because, you  
14 know, we're afraid that they will grow faster than -- that  
15 we can't keep up with their growth.

16 Q. And if you did have a short-term shortage in the  
17 milk that you needed to run your plant or serve your  
18 customers, how would you address that?

19 A. Yeah. If -- if -- yeah, I'd say most of those  
20 aren't really short-term. So we would look to add a good  
21 farm or a couple good farms, and that could be done  
22 relatively quickly. In the interim, we could buy milk on  
23 the spot market from a -- you know, from a local plant or  
24 from a cooperative.

25 Q. And yesterday Ms. Keefe testified that one of the  
26 MIG members had told her, "I'm not looking for \$1.60 price  
27 reduction, I'm looking for a way to be able to direct that  
28 to my suppliers."



1 Does that sound familiar to you?

2 A. I'm not sure if that was -- I'm not sure that was  
3 me, but I -- you know, that is how I feel. I'm not here  
4 to lower our farm's prices. I actually would like to see  
5 a more sustainable system for these -- for these farms.

6 So, you know, I'm not here to take money out of  
7 farmers' pockets. And I'm definitely not here to take  
8 money out of the farmers' pockets that ship milk to us,  
9 but rather to fix a program that's not, in my view,  
10 working for small farms.

11 Q. And if we could go to the next slide, please, I  
12 would like to talk about Proposal 19.

13 So this chart is similar to one, if not identical  
14 to one, you have shared before. Can you just walk us  
15 through what the chart on the slide represents.

16 A. Yeah. This is a chart that -- and, Your Honor, I  
17 appreciate your organization, because when I was trying to  
18 remember when I presented this last, I actually couldn't  
19 exactly narrow down the exact date I was here. But this  
20 was on a slide in week three or four of the hearing that I  
21 presented, and I just put it up here for a reminder of the  
22 decline in fluid milk sales.

23 So this is a slide that was part of a presentation  
24 from MilkPEP. Prime Consulting did the work; MilkPEP made  
25 this presentation to their -- to the processors in early  
26 2022, so almost two years ago, based on 2021 data.

27 And this black line at the top shows the -- the  
28 experienced decline in fluid milk sales and then the



1 expected decline in fluid milk sales, showing that the  
2 trajectory, the -- that if nothing changed, we're looking  
3 at 2038 before this thing would turn around with  
4 processors not doing anything about it. And the soonest  
5 it could -- that they thought it could turn around, if we  
6 took their advice, was 2028 -- or 2029, forgive me.

7 Q. And so if USDA were to adopt Proposal 19, it's  
8 your understanding that would raise the Class I price,  
9 correct?

10 A. Correct.

11 Q. And so what do you think the impact would be on  
12 Class I if in the midst of this decline that's projected  
13 to last another 15 years, what do you think would happen  
14 to that if the Class I price were to go up?

15 A. We would steepen the decline, so we would actually  
16 make Class I or fluid milk decline more than expected.

17 Q. And I know that there's been quite a bit of  
18 testimony on elasticity, and I won't -- I know you don't  
19 have a study or anything like that, but you do have a lot  
20 of real world experience with prices and sales.

21 So can you tell us from that, what's your take on  
22 what would the impact to Class I sales be if the Class I  
23 price goes up?

24 A. Yeah. I'd like to make two kind of big points on  
25 this. The first -- the first being that that decline, the  
26 fact that the curve would go down based on an increase of  
27 sales is not controversial based on elasticity. Every  
28 economist that testified gave an elasticity number with a



1 minus sign in front of it. So it -- the controversy is  
2 whether it's technically elastic or not. But everyone --  
3 everyone's numbers say that increasing the milk price is  
4 going to decrease sales, so that's not controversial.

5 I would tend to agree with -- based on our  
6 experiences at Turner's, I saw some slides on it yesterday  
7 that -- from HP Hood, that showed what our experience was  
8 the last couple years, that raising the increased prices  
9 definitely caused our customers -- so this is the second  
10 point, just to be clear -- that the increased prices the  
11 last year and a half or two years actually caused our  
12 sales to go down volume-wise, and that people definitely  
13 traded down from gallons to half gallons.

14 Q. And does Turner sell only branded products?

15 A. Yeah. It's -- and so that was the other challenge  
16 that was brought out in -- in those slides, is we're --  
17 100% of our products are branded, and it has been a real  
18 challenge to grow sales in an environment where  
19 everybody's trying to make their grocery budgets, you  
20 know, ends meet.

21 Q. Thank you.

22 If you could go to the next slide, please.

23 A. Might I add one other --

24 Q. Yes.

25 A. -- one other thing. And this is directed at a  
26 question that Ms. Taylor asked of the Hood witness, was  
27 that we did see that those sales declines moderated in the  
28 last -- in the second half of last year. So we did see,





1 as -- as prices came back to -- to the mean, that we did  
2 see the challenge become less for us to -- for selling  
3 branded milk and for keeping our volume in line.

4 Q. So just to make sure I'm clear. You are saying  
5 both -- both sides of that coin are true: As prices go  
6 up, volume will go down, but then as you saw recently, as  
7 the prices went back down, the volume can recover?

8 A. The volume did recover. I won't tell you that it  
9 got to a plus, but it did -- it -- it did -- the gap  
10 narrowed.

11 Q. Thank you.

12 And if we could go to the next slide, please.

13 Remind us the location of -- I see we see it here,  
14 but why don't you tell us about the location of Turner's  
15 plant, please.

16 A. Yes. So, again, we're in Allegheny County, which  
17 is the county the city of Pittsburgh is in. Right now, we  
18 have a Class I differential of \$2.10. Right now our  
19 competitors, two competitors on here, have Class I  
20 differentials of \$2 or \$2.10.

21 When Proposal 19, when the model minimum for both  
22 of those for -- you can see the model minimum increased  
23 \$1.90 for our plant, increased \$2 for one competitor,  
24 \$1.90 for another competitor.

25 Q. Can I stop you there?

26 A. Yeah.

27 Q. So just looking at the model minimum increase --

28 A. Yeah.



1 Q. -- it -- it about doubles for Turner; is that  
2 right?

3 A. Yeah.

4 Q. What -- what is that -- what is the impact of that  
5 kind of cost increase on your Class I differential, just  
6 looking at the model number?

7 A. Yeah, doubling, it's almost the highest in the  
8 country. And it's -- yeah, it's huge. And I don't -- it  
9 doesn't really make any sense to me.

10 Q. By the "highest," you mean the highest level or  
11 degree of increase?

12 A. Yeah. Like, I don't know that anybody else has  
13 really doubled. At least, you can -- this is more clear  
14 on the next -- on the next slide.

15 Q. And given your testimony that you're able to  
16 acquire sufficient amounts of milk in Pennsylvania, do you  
17 believe any cost increase is necessary to ensure that  
18 ongoing supply of milk?

19 A. No. We could -- we don't need a cost increase to  
20 procure milk.

21 Q. Thank you.

22 So then if you want to move now then to the --  
23 actually, go back. Sorry.

24 A. Let's see.

25 Q. There we go. So I stopped you at the model  
26 minimum.

27 A. Yeah.

28 Q. If you want to continue now with the NMPF



1 Proposal 19 columns, please.

2 A. Right. So as I understood some of the prior  
3 testimony, there was a committee for the Mideast Order  
4 that got together and looked at the model and made  
5 adjustments. And when they made adjustments, they moved  
6 our -- our Class I differential up \$0.20, but moved the  
7 counties where two of their members' plants were located  
8 down.

9 And you can see the -- the main competitor on this  
10 chart would be the DFA plant in the city of Sharpsville,  
11 that they -- it's actually a \$0.30 swing. We went from --  
12 you know, the model showed that we should have a \$0.10  
13 cost advantage, and they switched it to us having a \$0.20  
14 cost disadvantage, so the swing is actually \$0.30.

15 Q. And when considering how these prices impact the  
16 competitive relationship, is \$0.30 a big deal?

17 A. It is, yeah. That's over \$0.025 a gallon, and  
18 it's absolutely a big deal.

19 Q. And you said that this DFA Sharpsville plant, it's  
20 a direct competitor of yours?

21 A. It is. One of the witnesses that represented  
22 these -- this -- I don't know if it's a committee or a  
23 working -- this Mideast working group for National Milk,  
24 indicated that he didn't know if the dairy -- the plant in  
25 the city of Sharpsville actually came and competed in  
26 Pittsburgh or not. But I can tell you absolutely that  
27 they do. And in fact, they have the number one -- they  
28 are the number one -- have the number one market share in



1 our city.

2 Q. And we heard earlier testimony that NMPF didn't  
3 invite any proprietary processors to these working group  
4 committees.

5 But are you aware if they -- or did you hear any  
6 testimony that they invited any independent dairy farmers  
7 to consider these differentials?

8 A. No, I did not. And I think it's especially  
9 important in our part of the country. I don't know other  
10 areas of the country where there are a lot of independent  
11 producers, but I know that Pennsylvania has significant  
12 amounts of independent or non-member farmers. And to the  
13 extent that, you know, they are significant in the  
14 marketplace, their opinion or their thoughts were not  
15 heard when these adjustments were made.

16 Q. And given that Turner's milk supply is 100% from  
17 independent farmers, that was a concern to you?

18 A. Yeah, it's a concern to me. And actually,  
19 every -- other than the cooperative-owned plants, every  
20 other participant in our market -- or competitor in our  
21 market has independent milk supplies, so it is especially  
22 concerning to the whole -- to the whole region.

23 Q. Thank you.

24 If we could go to the next slide, please.

25 A. Sure.

26 Q. So just to orient us, the small full United States  
27 map on the left is Map 9 from Ms. Keefe's testimony found  
28 in Exhibit 441, correct?



1 A. I believe you.

2 Q. And here we have got an excerpt of kind of your  
3 area of the country, correct?

4 A. Correct.

5 Q. And just so no one's confused, we -- we figured  
6 out that the number 4, which represents the Special-T  
7 plant in Turner, is tucked right there behind the number 5  
8 where your mouse is?

9 A. Right. So the -- so the plants are only  
10 11 miles -- no, our plant is number 3, right? And then we  
11 have another competitor, Schneider Dairy, that's number 5,  
12 that we're -- we're 11 miles apart. Those two plants are  
13 less than two miles apart.

14 Q. And the number 4 plant, the Special-T is --

15 A. Tucked in there.

16 Q. -- tucked behind 5?

17 A. Correct.

18 Q. Okay. So now that we're oriented, what  
19 observations -- oh, sorry, can you point us, where is  
20 Allegheny County?

21 A. So, yeah, Allegheny County is -- is the one I'm  
22 circling with the mouse. I don't know if that helps in  
23 the -- very much for the hearing record, but --

24 Q. Where the 5 and the 3 are located?

25 A. Yeah. Correct.

26 Q. Go ahead.

27 A. This straight line here, this is the line between  
28 Pennsylvania and either Ohio to the north, and then this,



1 this wiggly line here, is actually the Ohio River. So  
2 these counties in here are actually West Virginia.

3 And to my point on the last slide, you can see  
4 that the shades of -- of red and orange, all -- that's the  
5 dark red indicating larger increases. You can see that  
6 the only orange county is a cooperative-owned plant, and  
7 the only light red county is a cooperative-owned plant.  
8 Otherwise, all these -- all of these plants that are not  
9 in that category, you know, in other words, family-owned,  
10 all had increases, larger increases in the cooperative  
11 plants in these -- in their -- in -- as in their proposal.

12 Q. And given the robust supply of milk in  
13 Pennsylvania, do you believe that these significant  
14 increases are warranted across the area or geographic area  
15 as a whole?

16 A. No, I don't.

17 Q. Thank you.

18 THE COURT: Ms. Vulin, I would like to capture a  
19 little bit of what he showed us with the cursor.

20 The little part of West Virginia that is shown is  
21 just to the right of the balloon with number 1 in it; is  
22 that correct?

23 THE WITNESS: That's correct. That would be what  
24 they call the Northern Panhandle of West Virginia.

25 THE COURT: And the straight line that would be  
26 the right side of that West Virginia boundary is the  
27 boundary between what two states?

28 THE WITNESS: Well, it's three states. So on the



1 east of that line is Pennsylvania, and on the west of that  
2 line is Ohio north of the Ohio River, and West Virginia  
3 south of the Ohio River.

4 THE COURT: Ah. Good. Thank you.

5 Ms. Vulin, you may proceed.

6 MS. VULIN: Thank you, Your Honor.

7 BY MS. VULIN:

8 Q. If we could go to the next slide, please.

9 So first I'll ask you, who took those photographs?

10 A. I took one, and our sales manager took the other  
11 three.

12 Q. Where were they taken?

13 A. At grocery stores in the -- in Western  
14 Pennsylvania. Most of them are within just a couple of  
15 miles of our plant.

16 Q. And can you indicate to us which of the products  
17 that we're looking at are Turner's products?

18 A. Okay. So the -- and I apologize, I know you all  
19 can't see this, but the labels with the cow and the  
20 "Turner" logo, those are ours. And in -- in these three  
21 pictures, the rest are store brand. So that would be a  
22 Giant Eagle brand milk. And you can see like, you know,  
23 for example, in -- in this lower picture, you know, we're  
24 a third of the case, or in this picture here, about, you  
25 know, maybe a third of that case also. This --

26 Q. And you are indicating the three pictures on the  
27 left?

28 A. The three pictures on the left are our product



1 next to store brand product that's made by this DFA plant.

2 Q. And we can see that distinct Turner's red label in  
3 many of those. So for the record, that's what he's  
4 indicating with his mouse.

5 A. Correct.

6 Q. And then how about the photo on the right?

7 A. Yeah, this is a little bit more rural. This is a  
8 locally-owned grocery store chain, and you can see our  
9 product next to a Dean's brand product in both doors. And  
10 that's just in case anybody had any doubt that that plant  
11 competes in Pittsburgh.

12 This scenario plays out in a hundred supermarkets,  
13 not -- not against Turner's, but, you know, there's  
14 probably -- we probably split 30 cases and other  
15 competitors would be splitting cases with this DFA plant  
16 as well.

17 Q. And when you say "other competitors," you referred  
18 to store branded products.

19 Is it your understanding those are manufactured by  
20 the DFA Sharpsville plant?

21 A. Yes.

22 Q. And then you indicated in another photo the  
23 products with the Deans label.

24 Is that also a DFA-owned plant?

25 A. It is.

26 Q. Thank you.

27 So if we could go to the next slide, please.

28 A. Yes.





1 Q. How would Proposal 19 impact Turner Dairy?

2 A. Yeah, so it would be devastating. It would be  
3 very difficult. And it's -- and we're in a little bit of  
4 a unique situation. I tried to bring this up, paint this  
5 picture last time I was here also. And, actually, to --  
6 so my first point here, is that the large Class I  
7 increase, so doubling the differential not only hurts our  
8 milk sales, but it disadvantages us when -- with handlers  
9 we compete to to our east that aren't regulated.

10 So I'm going to flip back a couple of slides  
11 actually. I know this is off script. But you can see  
12 these -- these plants here, 7 and 8. There's also a --  
13 you know, a plant up in this region.

14 So those plants, if it -- if the differential  
15 doubled from \$2.10 to \$2.40, or their -- you know, their  
16 differential went up correspondingly, they are going to  
17 pay all that money directly to their farms. For us,  
18 two-thirds of that increase is going to go to the Market  
19 Administrator to be distributed to farms, you know, right  
20 now delivering to cheese plants, and that's going to put  
21 us at a competitive disadvantage in the country where we  
22 compete -- where our dairy farmers are. So we're trying  
23 to compete for farms in these areas, in these counties  
24 right here. And -- and processors to our east, because  
25 they don't have to pay into the pool, are going to have an  
26 advantage when it comes to recruiting or to -- you know,  
27 to working with the best farms.

28 Q. And you are on slide 7 right now, just for the



1 record.

2 A. I'm on slide 7, and I'm trying to figure out how  
3 to get to --

4 THE COURT: Now, stay on page 7, if you would. I  
5 want you to capture in words what you showed us with your  
6 cursor, and I want you to focus on the bubbles that are  
7 numbered 7 and 8, and tell me why a plant in the location  
8 where 7 and 8 are is not paying into a pool.

9 THE WITNESS: So this line -- and this line isn't  
10 exactly in the right place, but these --

11 MS. VULIN: The blue line down the middle?

12 THE WITNESS: The blue line is representing the  
13 end of the Federal Orders. It actually cuts through  
14 Armstrong and Westmoreland Counties, not on the county  
15 lines as is indicated here. However --

16 THE COURT: So, again, we're capturing this in  
17 words for people who couldn't see what you just did, and  
18 the blue line you are talking about is to the left of  
19 these bubbles 7 and 8?

20 THE WITNESS: Yeah. So I'm going to stop touching  
21 the mouse so that I do this -- do this better.

22 THE COURT: I loved you showing us with the mouse,  
23 it's just that it's going to be lost --

24 THE WITNESS: It's not going to show up, right?

25 THE COURT: -- for the record. So we do both.

26 THE WITNESS: So Federal Order 33 has an eastern  
27 boundary. And for those of you who have been there,  
28 there's not a wall, okay? And there's no intention of



1 building a wall. So we have farms on the other side of  
2 this line, and we -- that's where a lot of our milk comes  
3 from. And we actually make deliveries on the other side  
4 of that line, and these processors are --

5 MS. VULIN: By "these processors," you mean 7 and  
6 8?

7 THE WITNESS: -- 7 and 8. Letting go of the  
8 mouse.

9 Processors 7 and 8 are also working and want to  
10 work with the best farms in the same areas, and they don't  
11 have a pool to pay into. The Commonwealth of  
12 Pennsylvania, our milk marketing board, would require them  
13 to pay this differential to their farmers, but that's  
14 going to be a much higher pay rate than we would have,  
15 because two-thirds of our differential is going to the  
16 pool.

17 THE COURT: So when you were saying that the line  
18 isn't exactly in the right place, could you say in words  
19 if you were talking about the blue line to the left of  
20 bubble 7 and 8?

21 THE WITNESS: Might I politely request that we  
22 don't get into that? Because it's -- it would be very  
23 difficult, and there's really no -- no end result to it.

24 THE COURT: All right.

25 THE WITNESS: It's just really not on the county  
26 line, so let's just say that and leave it there.

27 THE COURT: All right. Very good.

28 Ms. Vulin, you were about to lead us to a new



1 slide.

2 MS. VULIN: Thank you.

3 BY MS. VULIN:

4 Q. If we could return to page 9.

5 A. Okay. So --

6 Q. Anything further about Proposal 19 you want to  
7 share?

8 A. Yeah. I just got through my first bullet, and  
9 that was to show the issue we have to our east.

10 To our west, I already showed you, is we have  
11 competitive plants that proposed an advantageous situation  
12 for themselves. And then we already covered the fact that  
13 non-member milk wasn't considered.

14 The other thing I heard in the testimony by the  
15 National Milk Mideast witness was this stair-stepping  
16 strategy, which sounded essentially like these -- what I  
17 heard is that these differentials are based on the fact  
18 that they need to move milk from Michigan down into -- and  
19 I'm not going to say Southeast order, I'm going to say the  
20 Southeastern United States, because I know where that is,  
21 okay? So that when I say -- or I don't know what -- I'll  
22 just say Southeast United States.

23 So essentially they are moving milk a half day's  
24 drive so that the truck can make the delivery and get  
25 back, and that's -- that seemed to me what justified these  
26 differentials, because they got to move milk almost the  
27 entire depth of the country in half-day drive increments.

28 However, that's not our situation. All of our



1 farms are within 70 miles. Many of them, I mean, some as  
2 close as 25 miles to our plant. Why -- you know, why do I  
3 need to see a cost increase because they are driving milk  
4 from Michigan to Georgia?

5 Q. Thank you.

6 And if we could go to the next slide, please.

7 I know Turner opposes a number of other proposals,  
8 so I just wanted to talk briefly about those. Let's start  
9 with Proposal 21.

10 Why does Turner oppose that proposal?

11 A. Okay. So this is the -- raising the Class II  
12 differential.

13 Q. Correct.

14 A. To me it -- our big problem -- I guess there are  
15 two big problems. One, our Turner's plant is -- it's a  
16 Class I plant, and we don't have the opportunity to depool  
17 the -- our Class II usage there.

18 The real particular problem for me as president of  
19 Titusville Dairy is that we have -- we make, as I  
20 mentioned before, cottage cheese, sour creams, that are  
21 distributed regionally, and we make ice cream mix that is  
22 actually distributed beyond regionally, so we need to be  
23 competitive with ice cream mix that's made, you know, in  
24 big parts -- in other parts of the country. And so we  
25 would need to look at our formulas and make -- and we're  
26 using farm milk now for our solids to the greatest extent  
27 we can, and we would just have to make sure that that is  
28 still competitive, so we would have to -- to do a cost



1 analysis, are we better off with skim milk powder and  
2 water or nonfat dry milk and water in -- as opposed to  
3 farm milk.

4 Q. Thank you.

5 And I know you previously had testified about the  
6 return to the higher-of, but one of the proposals that was  
7 addressed after you had testified went to advanced  
8 pricing.

9 So do you -- it looks like you might have a  
10 thought on that.

11 A. Yeah, this is the -- I mean, there's, by some  
12 count, like 18 proposals here that are bad for fluid milk,  
13 but this is the worst of all of them. I have been here  
14 long enough to remember the days before advanced pricing  
15 and trying to work with the state-regulated milk system  
16 on -- without advanced pricing, and it -- I can tell you  
17 for sure it will be a catastrophe to live without advanced  
18 pricing.

19 And those were -- if we look at the volatility in  
20 those days, it was much less than the volatility we have  
21 now. And, you know, I have seen that volatility in  
22 Class II butterfat this year, and it's -- it's not pretty.  
23 And we just couldn't live without advanced pricing.

24 And the other thing I'll point out on that fact is  
25 processors aren't unique in that. I have been in this  
26 industry 36 years, and I have actually never talked to  
27 anyone, a -- not a farmer, not a cooperative plant  
28 manager, not a processor, not a cheese plant that is happy



1 with the idea -- or that they don't know their costs or  
2 their price until after the month's over. There is no one  
3 that -- that is happy that we're doing this after the  
4 fact. I understand it might be necessary, but we should  
5 be looking at doing more pricing in advance and not less.

6 Q. And I know you have previously testified about  
7 hedging and the higher-of --

8 A. Right.

9 Q. -- but you did have an update on some of the  
10 education there, and we wanted to make sure that was  
11 shared.

12 A. Yes. I would like to say publicly, I was wrong in  
13 an answer to Ms. Taylor last time I was up here, and IDFA  
14 is going to do a seminar next week at Dairy Forum on risk  
15 management and hedging. And I thank Mike Brown and the  
16 staff at IDFA for doing that. And I'm sure that my  
17 concerns with -- that knowing the way that they do  
18 business, there's no concern that, you know, anything will  
19 be going on outside the realm of -- you know, will all be  
20 done carefully and according to all the rules for, you  
21 know, proper trade and all that.

22 Q. But nice to know that --

23 A. It is going to happen, yeah.

24 Q. Sorry to interrupt you.

25 Nice to know that the industry is responding  
26 quickly to interests that this hearing generated on that  
27 issue?

28 A. Yeah. And my son and my nephew will be there, and



1 there's only one thing they have to do at Dairy Forum next  
2 week, and that's go to that seminar.

3 Q. And if we could go to the last slide, please.

4 A. We can. No, we can't. Shoot. Is that it?

5 Q. Yeah. Why don't you share with us just your final  
6 thoughts on the direction that the industry and FMMOs, you  
7 know, are headed or should head.

8 A. Yeah. So we're -- we're at, in my view -- and  
9 like I said, I have been concerned about this for -- for  
10 quite a while now, and I think we're really at an  
11 inflection point. I think in -- in Federal Orders we have  
12 grown to where exports are now at or exceeding the amount  
13 of fluid milk that's being produced by American dairy  
14 farms. I know that this policy is very hard on small  
15 farms and on the rural economies, for example, in  
16 Pennsylvania, that depend on those farms.

17 And I -- I personally don't think we could justify  
18 it, but we could -- this policy could be justified, the  
19 damage that it's doing in -- on small farms in rural  
20 economies, because U.S. consumers are inarguably getting  
21 inexpensive, affordable dairy products which are important  
22 parts of their diet.

23 But as we are exporting more and more of this  
24 nonfat dry milk and whey, I think the policy gets harder  
25 to justify, because now those -- those inexpensive  
26 products aren't benefitting people in the United States  
27 that need them.

28 So I think more and more, our farmers are taking





1 price -- you know, they are taking prices for low cost  
2 commodities, they are -- you know, and we're exporting --  
3 we're just subsidizing exports. Not just subsidizing.  
4 But, you know, the pains that our farms are feeling is  
5 serving the export market and not our domestic market.

6 So that's -- so I think we really need to consider  
7 what we are doing and why we are doing it and who the  
8 program serves.

9 Q. Thank you, Mr. Turner.

10 MS. VULIN: So, Your Honor, that concludes my  
11 direct examination. I would like to move, pending  
12 cross-examination, admission of Exhibits 466, 467, and  
13 468, and --

14 THE COURT: Thank you.

15 And, Mr. Turner, you are very eloquent, and I  
16 appreciate your being back here.

17 THE WITNESS: Thank you.

18 MS. VULIN: And I think we may be due for a break,  
19 but I will defer to the court reporter there.

20 THE COURT: I would like a ten-minute break  
21 myself. So please be back and ready to go by 10:30.

22 (Whereupon, a break was taken.)

23 THE COURT: All right. Let's go back on record.  
24 We're back on record at 10:31.

25 Who will begin cross-examination of Chuck Turner?

26 THE WITNESS: Hearing none?

27 MS. HANCOCK: That sounded so well.

28 ///



## CROSS-EXAMINATION

1  
2 BY MS. HANCOCK:

3 Q. Good morning. I'm Nicole Hancock with National  
4 Milk.

5 Good morning, Mr. Turner.

6 A. Good morning.

7 Q. Were you one of the founding members of Milk  
8 Innovation Group?

9 A. I was not.

10 Q. Do you know when it was formed?

11 A. No.

12 Q. When did you join?

13 A. After -- after Dairy Forum last year, so that's  
14 when I first discussed it with someone, some members from  
15 HP Hood and from Aurora Organic. I talked to them at  
16 Dairy Forum, and then there were some follow-up  
17 conversations over the next couple of months. And I would  
18 say we probably signed in May, but I -- I could be wrong.

19 Q. And did you sign on to Milk Innovation Group in  
20 anticipation of the efforts and work that would be put  
21 into this hearing?

22 A. Yes.

23 Q. And specifically to advance the interests for the  
24 Class I market?

25 A. Yes.

26 Q. And you are also a member of IDFA?

27 A. Yes.

28 Q. And all of the MIG members are members of IDFA?



1           A.     I believe so.  But I -- I'm sure we are, and I  
2 think the rest are.

3           Q.     And there were some issues at this hearing that  
4 were not going to be supported or promoted by IDFA that  
5 some of the Class I handlers wanted to make sure their  
6 interests were protected, and that was the reason for the  
7 Milk Innovation Group having a separate carve-off?

8           A.     I think the way I said it was, I think that what  
9 we have here is -- is a group of fluid milk processors  
10 that aren't satisfied with letting this trajectory keep  
11 going down, and many of them have invested quite a bit  
12 of -- a bit of -- a lot of money and time and effort into  
13 trying to get a better outcome for fluid milk in this  
14 hearing.

15          Q.     And is that through Proposal 20?

16          A.     That's what's left.  So that is through a few  
17 proposals that were made.  20 was accepted, and I think we  
18 made a -- we also made a proposal to try to keep the  
19 advantages of the mover that we have now, but -- but  
20 offset some unanticipated consequences that have hurt  
21 dairy farmers, and we had a proposal for that.  And also  
22 to advocate against proposals that are damaging to fluid  
23 milk.

24          Q.     And it's fair to say that between the mover and  
25 the differentials, that the cost increase would be in the  
26 hundreds of millions of dollars to the Class I handlers?

27          A.     The potential, if everything went against fluid  
28 milk and nothing for; is that what you are saying?



1 Q. Yes.

2 A. I actually -- I don't know. I know it's a lot of  
3 money. I heard numbers in the billions maybe.

4 Q. And that's part of the reason why it's so  
5 important for Milk Innovation Group to be able to put  
6 together its own efforts related to the Class I market?

7 A. I don't know that it's our own efforts or that --  
8 I think that, honestly, that hopefully this is a start of  
9 more fluid milk processors being more interested and  
10 advocating for some of the -- answer some of the big  
11 questions that Dr. Stephenson talked about yesterday. I  
12 think we're not -- we're just kind of touching on some of  
13 them at this hearing.

14 But I think if we want fluid -- this is -- you  
15 know, it's an industry problem, not something we should be  
16 dumping on USDA to solve. But our industry really needs  
17 to take -- take control of this and -- and get systems,  
18 not just regulatory systems, but get systems in place that  
19 let us treat this like the wonderful product that it is  
20 and grow it.

21 Q. And I think you -- you testified with your counsel  
22 that one of the benefits of the Federal Order system is  
23 the integrity in milk pricing that the Federal Order  
24 system offers; is that accurate?

25 A. So when I said "pricing," you know, I meant  
26 what -- just to be clear, I'm not -- I don't want to leave  
27 it open-ended, which is whatever pricing that -- that --  
28 how you said it. But when the price is set, everyone



1 knows it's calculated right, that the surveys were honest  
2 and fair. You know, when somebody says how much butter  
3 was sold last week at what price, people don't doubt that.  
4 And they -- and it's -- it's calculated correctly, they  
5 are based -- it's fair, everybody sees it, and can --  
6 can -- a farmer can look at their milk check compared to  
7 the published blend price and know how they are doing.  
8 All those things are things that would be a tragic loss if  
9 we didn't keep them.

10 Q. Okay. So when you were talking about the pricing  
11 integrity that the Federal Order system offers, you meant  
12 because it offers that visibility and transparency to the  
13 industry so that people can show that -- that when they  
14 compare their milk checks, that they are getting paid  
15 fairly?

16 A. I think that's what I said.

17 Q. Okay. And so if Proposal 20 were adopted and base  
18 differentials were removed from that calculation, and --  
19 and dairy producers were left to rely on a separate  
20 negotiated price to cover the items that those  
21 differentials are designed to cover, how does that offer  
22 that same integrity protection?

23 A. That's a good question. I think that -- I know  
24 that -- I shouldn't say I know. I would hope that between  
25 our farmers and us that there is that integrity, and they  
26 would know -- you know, we would -- they would know what's  
27 being paid and what's -- you know, I think, not -- not  
28 every producer deals directly with a handler that they



1 know, and so I don't know. So I guess that's a good  
2 question. I don't really have an answer for you to make  
3 you happy, I guess.

4 Q. Do you use Farmers Union to balance your milk?

5 A. Who?

6 Q. Farmers Union?

7 A. No.

8 Q. Is that a cooperative?

9 A. It was. I don't know if they are still there or  
10 not. I guess they are.

11 Q. And were you using Farmers Union to balance your  
12 milk?

13 A. No.

14 Q. Did you ever provide any testimony that you had  
15 used Farmers Union to balance your milk?

16 A. No.

17 Q. Is -- and you understand that when -- that a  
18 cooperative has to pay the same price that Turner pays for  
19 its fluid milk pricing or for its fluid milk?

20 A. I do not.

21 Q. You don't believe that they pay into the pool the  
22 same price that Turner pays?

23 A. Oh, pays? I thought you meant to the producer.

24 Q. No, into the pool.

25 A. Yes, I do believe that.

26 Q. And in Titusville, does Turner have a Class II  
27 plant?

28 A. We are a one-third owner of that plant.



1 Q. And is that an unregulated plant?

2 A. I don't -- I don't know. I think it's -- it's an  
3 unregulated plant, and I really can't say how the milk is  
4 pooled. One of our partners has been responsible --  
5 another one of our owners has been responsible for that  
6 milk supply for the entire time I have been on the board  
7 and of that company.

8 Q. And it's fair to say that Turner has the ability  
9 to decide to pool or not pool its Class II milk in that  
10 plant?

11 A. It is, but we don't put any -- we put very little  
12 milk into that plant. Another, Marburger Farm Dairy is  
13 one of the other owners, and they -- they -- because they  
14 are north of the city -- I don't know if you want me to  
15 pull it up on the map -- because they are between the city  
16 of Pittsburgh and that plant, their milk supplies are in  
17 closer proximity, and they do the lion's share of the milk  
18 supply for that plant.

19 Q. Okay.

20 MS. HANCOCK: That's all I have. Thanks so much  
21 for your time.

22 THE WITNESS: Sure.

23 CROSS-EXAMINATION

24 BY DR. CRYAN:

25 Q. Good morning, Mr. Turner.

26 A. Hi, Dr. Cryan.

27 Q. I'm Roger Cryan with the American Farm Bureau  
28 Federation. Thanks for being here.



1           You in your -- in your written testimony you say  
2 that you believe that raising the Class II differential  
3 will increase the use of nonfat dry milk and decrease the  
4 amount of producer milk sourced from Northwestern  
5 Pennsylvania.

6           The Class II price is already \$0.70 higher than  
7 the Class IV price, so what stops -- what stops that  
8 switch from happening right now?

9           A.   Honestly, we haven't re-evaluated -- I mean, we  
10 have been using farm milk to make ice cream mix and  
11 cottage cheese and sour cream for a long time and honestly  
12 haven't re-evaluated -- we don't re-evaluate formulas  
13 regularly.

14          Q.   Okay.

15          A.   So I assume it makes sense to use farm milk, but I  
16 haven't -- I actually personally haven't checked that.

17          Q.   Are there costs to dry and reuse --

18               THE COURT:   Speak up, Dr. Cryan.

19 BY DR. CRYAN:

20          Q.   Are there costs to dry Class IV milk?

21          A.   Sure.

22          Q.   Are there quality concerns that you have that you  
23 stick to fresh milk because you believe it's a better  
24 product?

25          A.   Yeah.

26          Q.   Okay.  You -- when -- I'm sorry if I missed this,  
27 but when you say you balance your -- your milk supply on  
28 your own, does that mean you take all the milk from all





1 your producers and no more milk?

2 A. What was the last few words?

3 Q. And no more milk from anybody else?

4 A. Right.

5 Q. Okay. And do you -- do you sell surplus?

6 A. Yes.

7 Q. To pool plants?

8 A. To pool plants and non-pool plants.

9 Q. Okay. And you are advocating to cut the Class I  
10 differential by \$1.60.

11 How much of that \$1.60 do you think will -- will  
12 return to producers' paychecks?

13 A. I would hope to see our farmers get all of -- all  
14 of it.

15 Q. Do you think that will be common across the  
16 country?

17 A. I don't know.

18 Q. Okay.

19 DR. CRYAN: That's all I have. Thank you very  
20 much.

21 THE WITNESS: Thanks.

22 THE COURT: Is there other cross-examination for  
23 Mr. Turner before I invite the Agricultural Marketing  
24 Service questions?

25 There is none. I invite the Agricultural  
26 Marketing Service.

27 ///

28 ///



## 1 CROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. Good morning.

4 A. Good morning.

5 Q. Thanks for coming back to testify.

6 A. Can't stay away.

7 Q. All right. Just a few questions. Let's see.

8 For your Class I plants, do you make any Class II  
9 at those plants?10 A. Yes. Yeah. We make ice cream mix and fluid  
11 creams at the -- at our -- our Turner Dairy plant, and we  
12 make a coffee beverage at the -- and a -- a biscuit mix,  
13 at the former -- the Special-T plant in the city.14 Q. Okay. And if I remember correctly, all of your  
15 Class I is HTST products?

16 A. It is.

17 Q. Okay. And then you talk about how you balance by  
18 delivering milk to a cheese plant when you have too much  
19 from your three dozen farmers?

20 A. Most -- yeah.

21 Q. Okay. Is that -- is that milk pooled?

22 A. Yes.

23 Q. And then you -- you pay premiums to your  
24 suppliers; is that correct?

25 A. Yes.

26 Q. Can you just talk a little bit about that? You  
27 know, how -- nothing confidential -- but just generally  
28 how they are structured, how often do you guys negotiate

1 those, the type of items that are -- are just -- you know,  
2 I guess the better question is, other than balancing,  
3 which has been discussed a lot by the MIG members, what  
4 other types of costs do you think are incorporated in that  
5 number that you agree on?

6 A. The one -- one big thing that really is not, you  
7 know, thought about as a cost of balancing is -- is  
8 funding, you know. So we have to pay farmers for the milk  
9 by the 17th, which means I got to move the money on the  
10 16th. Well, you know, if I'm selling a lot of milk to a  
11 cheese plant or to, you know, a competitor's fluid plant,  
12 I need paid before I have to pay. So there's --  
13 there's -- that's a big risk or -- of, you know, something  
14 big that we have to consider in balancing, that sometimes  
15 falls by the wayside.

16 As -- as far as premiums, the main structure is --  
17 is the Pennsylvania Milk Marketing over-order premium.  
18 Then we have a quality premium that's based on mostly  
19 bacteria counts. Somatic cell factors into it. And it  
20 actually is -- it has to qualify daily at the plant it's  
21 received in to that plant's receiving standards. So for a  
22 couple plants, including one of our plants, it has to meet  
23 a standard plate count test of less than 20,000 every --  
24 every time the load's received.

25 Q. And what happens if a load comes in and doesn't  
26 meet that standard?

27 A. The first -- first -- we have a little grace, not  
28 much grace, but if you are between 20,000 and 30,000,



1 first time, you can get a pass and you can still qualify.  
2 If it's over 30, or you have a second time, you are  
3 disqualified from the quality premium.

4 Q. And is it the -- on the producer to find the place  
5 to send that milk then, or do you do it?

6 A. No, it's not a rejection, it's a disqualification  
7 from the quality program.

8 Q. Okay. They just don't get that premium?

9 A. There's also a receiving standard where the milk  
10 would be -- it's at a higher level, the milk would be  
11 rejected. And of course, if -- if -- if we have repeated  
12 problems, then -- then we have to have a hard talk.

13 Q. Okay. And when you do reject a load --

14 A. Yeah.

15 Q. -- let's say for whatever reason, temperature or  
16 something, how do you -- how do you back -- what do you do  
17 to backfill that, or do you backfill that in some way?

18 A. You mean bring in a replacement?

19 Q. Yeah. Or are you just short a load?

20 A. We can fill in. We can usually pull a load back  
21 out of one of our plants that we supply. There's usually  
22 a time lag.

23 Q. Okay. And so you talked about your premiums as  
24 the PMMB premium.

25 A. Right.

26 Q. And then a quality premium on top of that.

27 A. Yeah. And then on top of that, there's a -- what  
28 I'll call a market-based premium, you know, depending on



1 time of year, and our milk -- if we're trying to encourage  
2 or discourage production, you know, that number can be  
3 zero and it could be a quarter.

4 Q. So it could be -- it's seasonal?

5 A. It's --

6 Q. Could be somehow seasonal?

7 A. It's seasonal, but it's also based on, you know,  
8 are we up to our eyeballs in milk or think we're going to  
9 need milk next fall. Our year is such that, you know, I  
10 need -- like at this point I'm not worried about having  
11 enough milk until the third week of August. And then  
12 if -- you know, then I need to have enough -- then I'll  
13 worry about it until the third week of December. And, you  
14 know, this type of year we have plenty, so this is where  
15 we're -- you know, we can make adjustments up or down.

16 Q. Okay. Are those premiums negotiated between you  
17 and those suppliers, or are they just, this is what it is?

18 A. They are long-term. We have regular, used to be  
19 annual, but they are now -- they are sometimes every  
20 couple years, meetings with our dairy -- luncheons with  
21 our dairy farmers, and we'll remind everybody what it is  
22 or if we make changes. We make the changes and, but  
23 listen, you know, so it's not made -- it's not like we  
24 throw it out there and say, here's what it is, take it or  
25 leave it. But there's conversation, and there's -- you  
26 know, there's listening as well as presenting on our part.

27 Q. Okay. In your statement, and I'm in 25, you talk  
28 about -- and this goes back to your quality premium -- but



1 you talk about how the milk, the different scores -- a  
2 97 score.

3 A. Yeah.

4 Q. Can you just describe what you are talking about  
5 that for the record?

6 A. Yeah. Would you mind telling me what page?

7 Q. Yeah. I'm on page 5.

8 A. Okay. Thank you.

9 Q. Uh-huh. That second paragraph from the bottom.

10 A. Right. So what this is, is our rating -- our  
11 rating scores, and I'm just using that as a kind of a  
12 proxy for -- when -- when I talk about farm quality,  
13 it's -- there's also, I'll say a caliber of farm that is  
14 somebody we trust to do things right, you know. So we  
15 don't -- you can't test all this into -- or enforce this  
16 all into it. So there's, you know, people that you know  
17 that aren't going to be on the news for mistreating their  
18 animals or, you know, doing -- doing things wrong.

19 And so that -- I kind of use that, so our -- on  
20 our U.S. Public Health rating, our last score was a -- is  
21 a 97. That's average for the -- you know, for the 25  
22 farms that were inspected on that -- on that rating. So  
23 that's what I get at. So it's not just about counts. It  
24 is about, you know, are you doing things right, are you  
25 operating -- you know, are you taking care of your  
26 animals, that kind of -- that kind of thing.

27 Q. And that can go as a factor into the premium?

28 A. No.



1 Q. It doesn't.

2 A. No. That's just if we want -- do we want to be  
3 partners with you.

4 THE COURT: I have a question on that. I'm  
5 looking at page 5, and you have the 97% there, and you  
6 called it your U.S. Public Health rating?

7 THE WITNESS: Yeah.

8 THE COURT: And the document says Capital IMS.

9 THE WITNESS: Yes. As you might have noticed,  
10 Your Honor, we don't suffer from lack of regulation and  
11 acronyms in the milk business.

12 So the FDA's -- well, I'm not even sure. U.S. --  
13 it's U.S. Public Health Service is the government branch  
14 that does the rating. It is done under a regulatory  
15 system called the Interstate Milk Shipments Program. And  
16 so I use those terms interchangeably for that reason.

17 THE COURT: Thank you.

18 THE WITNESS: Sure.

19 BY MS. TAYLOR:

20 Q. If I can turn to your statement, Exhibit 467,  
21 which is 25A, and the first subject you are talking about  
22 is the proposals to change the milk composition standards.

23 And I have asked this of other witnesses, so I'm  
24 curious, can you give us an idea of what the component  
25 averages are that come in to Turner?

26 A. I should have known to look that up, but I don't  
27 know.

28 Q. Okay.



1           A.     I know our butterfat's higher, but that's kind of  
2     irrelevant with this rate. But it's running 4.1, 4.2 now,  
3     where it used to be 3.6, you know, 3.7 this time of year.  
4     But I actually don't -- don't pay attention to the solids,  
5     and I should have looked.

6           Q.     So you are not sure if they are above or below,  
7     would you say what the current milk composition standard  
8     factors are or the proposed ones? I'm just --

9           A.     I don't know. Sally is giving me a signal. I  
10    can't -- I know that they studied it, but I don't know the  
11    results, I'm sorry.

12          Q.     I don't want --

13          A.     I didn't want to take the risk of interpreting her  
14    signal -- misinterpreting her signal.

15          Q.     That's fair.

16          A.     So she knows.

17          Q.     Okay.

18          A.     Dave Hood knows.

19          Q.     I want to move to the talk on the mover, and --  
20    and this is on the page of -- page 5. You talk about the  
21    times before advanced pricing. And everyone on the USDA  
22    side's scratching their head trying to figure out when  
23    that is.

24          A.     Yeah.

25          Q.     So can you -- can you illuminate the record of  
26    what exactly you are talking about that.

27          A.     Yeah. Actually, no. I tried to find it, and I  
28    don't want to throw her under the bus, but Sally couldn't





1 find it.

2 I think -- I know that we got advanced pricing  
3 with Federal Order Reform in about 2000, but I think we  
4 had it in Federal Order 36 before that for some time. And  
5 the reason I -- I would know that, is in our state system  
6 we had to -- they had to predict, you know, set prices  
7 without knowing, which is one thing to do like, personally  
8 with risk management tools, it's another thing to try to  
9 get a government organization to set a reasonable price  
10 without knowing what the underlying costs are. And so it  
11 was a -- it was a real ordeal.

12 Of course, prices -- for a lot of time prices  
13 didn't move much, and, you know, then we got some  
14 volatility, realized we needed advanced pricing. And  
15 since then we have worse volatility.

16 Q. Well, was this comment perhaps more specific as to  
17 a state regulatory -- in Pennsylvania?

18 A. Oh, no, it's -- no.

19 Q. I mean, your general sentiment, I'm just trying to  
20 figure out when in the Federal Order system, as no one on  
21 my side of the aisle can figure out when we didn't have  
22 advanced pricing, so I was trying to --

23 A. I would say it came in in the mid to late 1990s.

24 Q. Okay.

25 A. And before that we were finding out our costs on  
26 the 5th of the month following.

27 Q. Okay.

28 A. No, it's like we -- some -- I talked about



1 Class II. It's -- you know, it's been a wreck this year  
2 with butter -- you know, you set your Class II prices, and  
3 we found it in October. You know, we knew we had a  
4 problem during the month of October. We didn't know  
5 exactly what the magnitude of the problem was until the  
6 price was announced. But, you know, those things just --  
7 if that was our whole industry having to deal -- the whole  
8 fluid industry, it would be tragic.

9 Q. Okay. Last question on balancing.

10 Does -- do you all buy any milk if you need on a  
11 spot market?

12 A. No.

13 Q. "No"?

14 A. No. And this started with my uncle really.

15 His -- our philosophy is to have more milk than we need,  
16 and if it is good milk, we can sell it.

17 Q. Okay. And your brownie batter chocolate milk it  
18 sounds like?

19 A. Yeah. Well, I meant raw milk. Yeah. But, yeah.  
20 So fortunately it works, right?

21 Q. It does.

22 MS. TAYLOR: I don't have any for questions for  
23 you, Mr. Turner. So I appreciate your time.

24 I did want to note, and maybe ask, what we did  
25 notice on Exhibit 468, which is marked MIG-25B, on the  
26 pages in the presentation, it says MIG-25A in the header.

27 THE WITNESS: Sorry.

28 MS. TAYLOR: Nope. I just wanted to make sure if



1 we all go back and refer to something, it is the same. So  
2 maybe we could correct that, so if someone ever prints off  
3 a page out of this presentation that will be online, we'll  
4 all refer to it.

5 THE WITNESS: How do we solve that, Your Honor?

6 THE COURT: Ms. Vulin will know.

7 MS. VULIN: Your Honor, since the cover page is  
8 correct for all of our copies, I don't believe we need to  
9 do anything different there. And we will just resubmit a  
10 corrected version to USDA so that -- and we'll print three  
11 copies of that, so the record copies can be accurate and  
12 the online copy can be accurate.

13 Does that work?

14 THE COURT: That works. And then the rest of us  
15 can just mark on the hard copy that we have, when we're  
16 talking about 468, any reference at the top that says  
17 "25A" will just be corrected to what the cover page says,  
18 which is "25B."

19 All right. And are there any other questions  
20 before I ask Ms. Vulin if she has any follow-up questions?

21 No.

22 Ms. Vulin do you have any follow-up questions?

23 MS. VULIN: Just a very quick one.

24 REDIRECT EXAMINATION

25 BY MS. VULIN:

26 Q. The brownie batter product that you have described  
27 that's an HTST product, correct?

28 A. It is, yes.



1 Q. I just wanted to clarify that.

2 MS. VULIN: Nothing further, Your Honor.

3 So we move admission of Exhibits 866, 867, and  
4 868.

5 MR. HILL: No, 4.

6 MS. VULIN: Almost there. 466, 467 and 468.

7 THE COURT: Someone should do a study on why we  
8 don't say what we intend to say.

9 THE WITNESS: I always thought it was because I  
10 was married.

11 THE COURT: All right. Is there any objection as  
12 to the admission into evidence of Exhibit 466, also  
13 MIG/Turner-25?

14 There is none. Exhibit 466 is admitted into  
15 evidence.

16 (Thereafter, Exhibit Number 466 was received  
17 into evidence.)

18 THE COURT: Is there any objection to the  
19 admission into evidence of Exhibit 467, also  
20 MIG/Turner-25A?

21 There is none. Exhibit 467 is admitted into  
22 evidence.

23 (Thereafter, Exhibit Number 467 was received  
24 into evidence.)

25 THE COURT: Is there any objection to the  
26 admission into evidence of Exhibit 468, also  
27 MIG/Turner-25B, like boy?

28 There is none. Exhibit 468 is admitted into



1 evidence.

2 (Thereafter, Exhibit Number 468 was received  
3 into evidence.)

4 THE COURT: Thank you so much, Mr. Turner.

5 THE WITNESS: You're welcome. And I apologize for  
6 messing up that PowerPoint. That was clearly me and not  
7 our attorneys.

8 THE COURT: Thank you. I like people who take  
9 responsibility.

10 MS. VULIN: You did great. Thank you, Mr. Turner.

11 THE COURT: Thank you.

12 Let's go off record for just a minute. We're at  
13 11:01.

14 (An off-the-record discussion took place.)

15 THE COURT: Let's go back on record.

16 We're back on record at 11:03. We have a new  
17 witness in the witness chair. I would like you please to  
18 state and spell your name for us.

19 THE WITNESS: Jay Luikart, J-A-Y, L-U-I-K-A-R-T.

20 THE COURT: Have you previously testified in this  
21 proceeding?

22 THE WITNESS: No, I have not.

23 THE COURT: I'd like you to be sworn in at this  
24 time.

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JAY LUIKART,

Being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. VULIN:

Q. Good morning, Mr. Luikart.

A. Hello.

Q. Before you -- you have three documents, the first is MIG/Danone Exhibit 20 Corrected.

MS. VULIN: Now, I have already forgotten what exhibit number we are on.

MS. TAYLOR: 469.

MS. VULIN: 469, thank you. We'd ask that that be marked as Exhibit 469.

THE COURT: Yes.

(Thereafter, Exhibit Number 469 was marked for identification.)

MS. VULIN: The next one is MIG/Danone-20A. We would ask that that be marked as Exhibit 470.

THE COURT: Yes.

(Thereafter, Exhibit Number 470 was marked for identification.)

MS. VULIN: And the final is Exhibit MIG/Danone-20B, and we ask that that be marked as Exhibit 471.

THE COURT: Yes.

(Thereafter, Exhibit Number 471 was marked for identification.)



1 BY MS. VULIN:

2 Q. And the first two documents, Exhibits 469 and 470,  
3 are your written testimony, correct?

4 A. Yes, they are.

5 Q. And Exhibit 471 is your PowerPoint?

6 A. Yes.

7 Q. And I just wanted to make a note for the record,  
8 that when Danone North America submitted its written  
9 testimony in support of Proposal 20 back in the fall, it  
10 was a different witness for Danone who was going to  
11 present, correct?

12 A. Yes, that's correct.

13 Q. But after begging and pleading and paying some  
14 bribes, you were able to get the opportunity to come in  
15 his place?

16 A. Next-man-up mentality.

17 Q. And so that is why we have Exhibit 20 Corrected,  
18 correct?

19 A. Yes.

20 Q. Thank you?

21 THE COURT: Now, again, I need to have the volume  
22 be the same for Ms. Vulin as it is for you, Mr. Luikart.  
23 Your voice is softer so far, but you will have to be able  
24 to see your PowerPoint, either on your laptop or your hard  
25 copy, and have that microphone close enough to your mouth  
26 while you are still looking at all those things. So you  
27 may have to adjust them.

28 THE WITNESS: Is this better?



1 THE COURT: That's very good.

2 THE WITNESS: Okay.

3 THE COURT: As long as you can still see  
4 everything you need to see.

5 THE WITNESS: We'll work it out.

6 THE COURT: Because you can also swing that arm  
7 closer.

8 THE WITNESS: I'll make sure I'm talking in the  
9 microphone.

10 THE COURT: That's good. All right. Very good.

11 Ms. Vulin, you may proceed.

12 BY MS. VULIN:

13 Q. So, Mr. Luikart, if we could bring up your  
14 PowerPoint, please.

15 If you could tell us, what's your position with  
16 Danone?

17 A. So I'm the head of supply chain for Horizon  
18 Organic in our premium dairy business unit.

19 Q. And our other reminder to speak loud is to speak  
20 slow, so I'll give you that one too.

21 A. Okay.

22 THE COURT: And would you repeat that?

23 THE WITNESS: I'm the head of supply chain for  
24 Horizon Organic in our premium dairy business unit.

25 BY MS. VULIN:

26 Q. And how long have you worked for Danone?

27 A. I have been with Danone almost eight years. It  
28 will be eight years in April.





1 Q. And can you give us a quick summary of your  
2 educational background?

3 A. Sure. I have a food science degree from  
4 University of Wisconsin and an MBA from the University of  
5 Minnesota.

6 Q. And what did you do after you graduated?

7 A. I started my career with Nestle, worked in  
8 manufacturing roles across chocolate plants, frozen pizza  
9 plants, you know, production roles, operation,  
10 maintenance, those sorts of things.

11 Following that, I moved into a plant manager role  
12 at TreeHouse Foods managing a pickle plant. Then I found  
13 myself into Danone in manufacturing sites out in Oregon.  
14 Following that, heading to corporate in 2019. And since  
15 2021, I have been supporting the premium dairy business  
16 unit.

17 Q. And what manufacturing sites did you work at for  
18 Danone?

19 A. The two, one was in Portland producing Yocream  
20 frozen yogurt, and the other was in Eugene managing the So  
21 Delicious Dairy Free ice cream production.

22 Q. And how long have you been in your current role?

23 A. Since -- sorry. Since 2021 I have been supporting  
24 the Horizon business and about 2022 is when I started  
25 leading supply chain for the business.

26 Q. When you started leading the supply chain for --

27 A. For Horizon, yes.

28 Q. And what are the job responsibilities that fall



1 within your current role?

2 A. Sure. So my team consists of planning functions,  
3 so everything from demand and supply planning to  
4 materials, milk planning, those sorts of things, research  
5 and development, quality food safety, manufacturing, and  
6 then some customer solutions we call it, and logistics and  
7 warehousing.

8 Q. What does customer solutions mean?

9 A. It's really the customer-facing order handling,  
10 making sure -- you know, there's a sales organization  
11 within my team, ensures that when the orders are placed,  
12 they are getting in the right places and we are doing the  
13 right things for our customers.

14 Q. Thank you.

15 If we could go to the next slide, please.

16 So I understand that Danone is a B Corp. I know  
17 you are not a lawyer, so I won't have you define it that  
18 way. But just give us a general understanding of what is  
19 a B Corp.

20 A. Sure. So, you know, I think Danone's -- Danone's  
21 approach is twofold. One is, you know, obviously  
22 economic, we follow that.

23 But then certified B Corp. and our ambitions there  
24 help us look at, you know, doing the right thing for the  
25 planet, for society, things like that, on top of it. So  
26 it's a dual -- dual purpose or dual role that we carry in  
27 the world.

28 Q. And if we could go to the next slide, please.



1 Can you tell us a little bit about some of  
2 Danone's brands.

3 A. Sure. I'll start with mine, which is Horizon  
4 Organic and Wallaby Organic, but then, you know, I'll kind  
5 of go through order and talk about some of these. They  
6 are great brands that a lot of us know or have lived with.

7 So the yogurt business is our largest, and we're  
8 looking at Dannon brand, Oikos, some of the other big  
9 names there.

10 Beverage creations is also large producing for  
11 coffee creamers, plant-based coffee creamers, and then  
12 some ready-to-drink coffee and water.

13 The plant-based business, the majority of that is  
14 Silk, but there's also So Delicious Dairy Free, and then  
15 the Follow Your Heart brand.

16 THE COURT: Can you --

17 THE WITNESS: Am I going too fast? Sorry.

18 BY MS. VULIN:

19 Q. That's all right.

20 A. I'm trying not to get yelled at.

21 Q. No yelling, I promise.

22 A. Okay.

23 Q. You left off at plant-based.

24 A. Plant-based. Okay.

25 And then the last two --

26 THE COURT: Start there again on plant-based --

27 THE WITNESS: Sure.

28 THE COURT: -- because when you said "So



1 Delicious," we're all looking at the logo, but the court  
2 reporter has to get that as one of the things. So start  
3 again --

4 THE WITNESS: Got it. Okay.

5 So the plant-based business unit has three main  
6 brands: Silk, So Delicious, and Follow Your Heart.

7 BY MS. VULIN:

8 Q. Thank you.

9 And we could go to the next slide, please.

10 So I understand these are the portfolios, and --  
11 and in your role, let's start with the Horizon portfolio.  
12 Can you tell us about some of the different types of  
13 products that you offer.

14 A. Sure. So we -- we -- in the fluid milk world, we  
15 have ESL products, half gallon and gallons, and then we  
16 have aseptic products. A lot of people are familiar with  
17 the small eight-ounce milk boxes for kids' lunch boxes,  
18 things like that. And then we have products, a few  
19 cheese, some powder, some other smaller products in the  
20 business.

21 Q. Some other smaller products in?

22 A. In the business.

23 Q. In the business.

24 And, of course, Danone has other portfolios as  
25 well?

26 A. Absolutely. Yeah.

27 Q. And of the products that you have been describing,  
28 can you identify for us the organic products?



1           A.     Our business is all organic, and then inside the  
2 yogurt, which is part of our business, there's Wallaby  
3 Organic. And then the only other organic, there's a very  
4 tiny part in the Happy Family business that was on the  
5 previous page.

6           Q.     And the Happy Family business is baby food, as I  
7 understand?

8           A.     Yeah. It's mostly targeting younger kids.

9           THE COURT: So, again, part of going slowly is be  
10 slow to respond to what Ms. Vulin has asked.

11          THE WITNESS: Okay.

12          MS. VULIN: It is a tricky dance.

13          THE WITNESS: I'll try my best. Yes.

14 BY MS. VULIN:

15          Q.     So how does the -- how does Danone's Horizon fluid  
16 milk unit fit within kind of the organic fluid milk  
17 sector? Is it a small portion, a large portion?

18          A.     We're the largest in the -- in the United States  
19 as far as fluid milk goes.

20          Q.     The Horizon brand is the largest by volume in the  
21 United States?

22          A.     Yes. Yes.

23          Q.     And I understand that Danone recently announced  
24 the sale of its Horizon and Wallaby Organic product lines,  
25 correct?

26          A.     Yes, that's true. There's been a statement out.  
27 We are -- we're very excited. The brands are great  
28 brands, a lot of potential. Very, very much looking



1 forward to the future. I can't get into too much more  
2 detail. The statements are all we're allowed to talk  
3 about at the moment.

4 Q. And Danone still is currently the owner --

5 A. Yes.

6 Q. -- of those brands though, correct?

7 A. Yes, they are.

8 Q. And so based on that ownership and, of course,  
9 your expertise and Danone's historical experience in the  
10 organic space, that's why Danone is here advocating for  
11 changes that would support its organic fluid business,  
12 correct?

13 A. Yes, that's true.

14 Q. And I believe you said this, but just to save you  
15 any cross-examination, you said that you don't really have  
16 any further details to offer about that sale, correct?

17 A. No. At this time, no.

18 Q. So if we could go to the next slide, please.

19 I'd like to talk a little bit about Danone's  
20 manufacturing and, you know, kind of office footprint.

21 First, let's start with, how many employees does  
22 Danone have?

23 A. 5900 as of currently across the United States and  
24 Canada.

25 Q. And here I see there's a number of manufacturing  
26 sites as indicated by the purple bubbles.

27 Are all of those dairy manufacturing sites?

28 A. No, they are not.



1 Q. That's Danone's entire footprint?

2 A. Yes.

3 Q. And can you tell us a little bit about Danone's  
4 organic milk supply? Is it direct ship, farmers,  
5 cooperatives --

6 A. Yeah.

7 Q. -- mix of both?

8 A. Yeah, it's a mix of both. We -- we do direct  
9 relationships and get milk through co-ops. It's a  
10 regional milk supply that matches up with our  
11 manufacturing footprint. In general, it's a little  
12 further distance away from the factories than -- than what  
13 I'm hearing about when we talk about HTST. But you can  
14 see with the factories around the U.S., and we'll -- I'll  
15 show in the next slide where some of our bigger production  
16 factories are, it works in regions definitely across the  
17 United States, not a national distribution of milk.

18 Q. Thank you.

19 And if we could go to the next slide.

20 Can you tell us a little bit about some of  
21 Danone's manufacturing plants.

22 A. Sure. These are the four largest milk-producing  
23 sites. So we have got the Dallas site; Mount Crawford,  
24 Virginia; Salt Lake City; and City of Industry,  
25 California. These all produce for Horizon Organic. Three  
26 of them -- so the three not Salt Lake City also produce  
27 for other businesses. But Danone's Salt Lake City is  
28 dedicated to milk production.



1 Q. And you mentioned that Danone suppliers are  
2 largely regional.

3 About how many organic suppliers does Danone have?

4 A. 400 to 500 in the organic world.

5 Q. And does Danone quota or limit the milk supply  
6 from those suppliers or do you accept all milk that they  
7 produce?

8 A. We take all the milk from a -- from a farm and  
9 bring it into our supply. Some of the co-ops do a little  
10 bit of balancing. But the majority of our supply, we --  
11 we're directly taking whatever the farm produces.

12 Q. And if we could go to the slide, please.

13 So in light of Danone's significant organic  
14 business, can you give us just big picture why Danone  
15 supports MIG's Proposal 20?

16 A. Yeah. So we -- we're here in support of, you  
17 know, for our business and for our producers looking at  
18 what's best for the total -- the total solution here. We  
19 -- we as Horizon Organic are looking to grow the business,  
20 continuing to develop our great brand and our great  
21 products, and grow the industry. We've got a great  
22 position to do that. When we are looking at proposals and  
23 pooling in general, we're paying a lot of money in, and it  
24 takes money away from our business that we could put into  
25 other places, whether it's innovation for the business or  
26 back to farmers and support more growth in the business.

27 Q. And let's start with the Grade A piece.

28 Are you aware of any organic Grade B milk?





1 A. No.

2 Q. You have never heard of organic Grade B milk even  
3 existing?

4 A. No. I even -- you know, I checked, and nobody's  
5 got any they know of that we can find. I don't think we  
6 would want it either.

7 Q. And given that -- sorry, then I'll signal that I'm  
8 moving to the second factor, right, this balancing that we  
9 have talked a lot about.

10 Given that Danone accepts all milk from most of  
11 its suppliers, do you believe that it's Danone who is  
12 contributing a lot of the balancing in its organic milk  
13 supply?

14 A. We -- we manage the balancing ourselves. So we do  
15 that within our production network. We do it within our  
16 sites where there's multiple lines that we can work with  
17 and run production or flex the lines. We also do it  
18 through our ESL products and our longer shelf lives. So  
19 we are able to do the best we can to avoid or reduce  
20 balancing as much as possible by using those levers.

21 Q. Using those levers?

22 A. Levers, sorry.

23 Q. And I know that in your role, right, as managing  
24 the supply chain, is this an ongoing conversation, how  
25 much milk you are getting, where it's going, how that flow  
26 is being managed?

27 A. I probably spend a couple hours a day working on  
28 where milk's going, where it needs to land, and making



1 sure it gets in the right spots. Yes.

2 Q. And yesterday some witnesses were asked about how  
3 leaving more of the market to be managed by -- well,  
4 sorry, I'm going to back up.

5 Does organic dairy pay its producers a price above  
6 the Class I minimum price?

7 A. Absolutely. Yeah. There's a premium. We -- we  
8 enter agreements directly with our producers. We -- you  
9 know, they are one-year, two-year, three-year, sometimes  
10 with auto renewals. It is a much different market than  
11 the conventional.

12 Q. Would you be willing to share us a range? We know  
13 generally from the hearing kind of what a Class I  
14 announced minimum price is. Where is the range of where  
15 organic milk is getting priced in comparison?

16 A. In one of the testimonies we say \$34 a  
17 hundredweight. You know, I know the Class I price can  
18 change up and down, but we know that's a good number to  
19 use for a rough -- rough estimation.

20 Q. Fair to say significantly higher than the  
21 Class I --

22 A. Absolutely. Yeah.

23 Q. -- than the Class I minimum price?

24 A. Yes.

25 Q. And you said that organic milk supplies are not --  
26 are negotiated on longer-term contracts; is that right?

27 A. Correct.

28 Q. And is that price for the milk, is that set within



1 the contract or will that fluctuate month to month?

2 A. Definitely not month to month. It's usually  
3 annual, and maybe there's a renewal. When we renew the  
4 contract, we have those discussions through -- you know,  
5 there could be the duration of the terms. So farmers have  
6 more predictability of what their price that they are  
7 getting paid is throughout the contract.

8 Q. And in your experience, as part of managing the  
9 supply chain, do you find that farmers like having a fixed  
10 long-term price as opposed to a fluctuating price?

11 A. I think -- I think for people who choose to get  
12 into organic, that's the feedback we get it is it's one of  
13 the things they look forward to, is that consistency and  
14 they are able to plan their business more -- more through  
15 the year and understand what's going to happen.

16 Q. And when Danone is negotiating its milk supply  
17 agreements with its organic suppliers, do you discuss the  
18 Class I FMMO minimum price or do the FMMOs play any role  
19 in those negotiations?

20 A. We're really divorced from that. There's not any  
21 discussion. It's really focused on what price we're going  
22 to solve on that matches their needs and ours the best  
23 that we can possible.

24 Q. And as I started referencing before we kind of  
25 laid some of this ground work, yesterday there were some  
26 witnesses who were asked about how over-order premiums  
27 operate within the market and how -- how negotiations  
28 directly between suppliers and processors are able to



1 handle fairly pricing the milk.

2 Do you feel like in the organic space the organic  
3 dairy market has managed to utilize those direct processor  
4 and producer negotiations to the benefit of all?

5 A. Yes, I do.

6 Q. And we have also heard some discussion about  
7 potential challenges of acquiring milk supplies. So going  
8 to the next factor of -- not the next slide, sorry -- but  
9 the final factor of incentive to serve the market.

10 Does -- does Danone ever run into issues of having  
11 a shortage of their organic milk supply?

12 A. We can get the milk we need. We work with the  
13 suppliers, and if we have times of expansion, we have been  
14 able to work with them over time to solve our needs and  
15 then adjust as needed.

16 Q. Is it fair to say the many hours you spend each  
17 day on supply is ensuring that you have that adequate  
18 supply of milk for fluid needs?

19 A. Absolutely. We're looking, you know, at  
20 short-term what's happening today, next month, next  
21 quarter, next year, and even three years out to see where  
22 the business is planning on going and what we need to  
23 solve from a milk perspective.

24 Q. And if Danone finds itself with a surplus of milk,  
25 how does it manage that side of balancing?

26 A. So the first -- the first thing we do is find a  
27 home for it in our finished goods. It's the most cost  
28 effective way for us. We have paid a lot of money for



1 this milk. It is liquid gold. We got to put it into our  
2 products. If we cannot do that for some reason, we would  
3 potentially utilize a -- you know, within Danone, a  
4 different product that could be conventional and downgrade  
5 the milk. But it is very, very expensive, so we try to  
6 avoid that as much as possible and we make it as rare as  
7 we possibly can.

8 Q. And do you ever sell it on the open market?

9 A. It could be possible. It's not -- not frequent.  
10 We -- we don't want to do that at all, if possible.

11 Q. And if you did, do you typically sell it as  
12 organic milk first and conventional milk second, or how  
13 does that --

14 A. We would try organic, if possible. If that's not  
15 possible, then we would sell it as conventional.

16 Q. And you said is -- does that occur with some  
17 frequency or is that quite rare?

18 A. We would like it to be rare. That's the  
19 intention. It's usually centered around a, you know,  
20 maintenance downtime at a plant or something like that  
21 where we have got a reason why we have to move milk.

22 Q. So let's say a pure kind of supply management  
23 issue and more something arises at a plant and all of a  
24 sudden you have to shut a line down and find a home for  
25 that milk?

26 A. Yes.

27 Q. Thank you.

28 And we could go to the next slide, please.



1           So I understand Danone opposes Proposal 19.

2           Just from a general perspective, the money that  
3 Danone pays into the pool, do you recognize or see any  
4 benefit or role that that plays in your relationship with  
5 your suppliers?

6           A.    It's -- it turns into money out of the business  
7 that we can't reinvest in the places we would want to  
8 invest it. So we look at it from the perspective of milk  
9 total. And, you know, we have prices we have agreed with  
10 our suppliers, we have hauling costs into the plants, and  
11 then pooling gets lumped in together.

12           And so when we are looking at the components of  
13 our full P&L, pooling becomes a cost that then we can't --  
14 can't go action. We have -- you know, we have ability to  
15 go look at what we're doing from a milk supply. We have  
16 ability to go optimize our hauling, along with many other  
17 things, through the P&L. But the pooling is just a fixed  
18 cost that goes against our business that we can't action  
19 against other things.

20           THE COURT:   Would you explain what that means,  
21 "that we can't action"?

22           THE WITNESS:   Yes. So I'll give an example. If  
23 hauling costs are high, we can try to find ways to  
24 optimize the hauling, you know, fill trucks fuller, pick  
25 up differently, do things to make that cost as efficient  
26 as possible.

27           Pooling is -- is a fixed cost that we pay, that  
28 there's no action to be taken besides paying, and so we



1 have to look elsewhere in our P&L to do this.

2 MS. VULIN: Thank you, Your Honor.

3 BY MS. VULIN:

4 Q. And, again, just generally, to the extent that  
5 Proposal 19 would raise that pool obligation for Danone,  
6 do you see any -- again, any benefit from that or is that  
7 why Danone opposes, because it's just a higher non-action  
8 item on its P&L?

9 A. Yes. It's -- it will raise our cost of production  
10 through the chain, raising our total cost of what we're --  
11 what we're doing. And there might be ways that we  
12 would -- well, obviously we would rather spend that money  
13 in different ways to, you know, innovate the business, get  
14 money back to farmers. But we would -- we would have to  
15 take other actions of the business that could affect  
16 product price, things like that, down the road.

17 Q. And to the extent higher Class I minimum prices  
18 would encourage milk production in the conventional  
19 market, does that give any benefit to Danone's Horizon  
20 Organic line?

21 A. No. Being organic, we're -- we're separate. I  
22 don't think it would help us at all.

23 Q. Thank you.

24 And if we could go to the next slide, please.

25 So I know Danone was supportive of a proposal that  
26 was not accepted to exempt organic operations from their  
27 pool obligations if certain criteria were met.

28 But can you tell us, again, generally why Danone



1 feels like the organic marketplace is misaligned or  
2 doesn't fit well within the FMMO system?

3 A. Sure. We -- we function so differently. I talked  
4 about it a little bit, but with -- with the way we  
5 interact with farmers, the way we approach the market, the  
6 way we handle balancing, it is very significantly  
7 different. And we're paying money into a system that  
8 doesn't bring back benefit to our business or the  
9 producers.

10 We'd like that to change. We would like  
11 discussion to be able to continue here. I think this is a  
12 great start and really looking forward to potentially  
13 getting down the road where we can find a way to create  
14 benefit for the company.

15 Q. And we have heard from a number of cooperatives or  
16 suppliers about increased costs in recent years at the  
17 farm level.

18 Have organic suppliers experienced increased  
19 costs?

20 A. Yes. Absolutely.

21 Q. And can you give us at a high level -- and maybe  
22 we should have started here -- what are some of the  
23 primary expenses or obligations that are unique to the  
24 organic supplier in order to maintain the organic  
25 certification?

26 A. Yeah. You know, I'm not the farm expert, but I'm  
27 happy to talk a little bit. You know, the cows have to be  
28 out on pasture. There's different requirements for how





1 they are handled, how they are treated. Certifications  
2 cost money at the farms, at the factories, all the way  
3 through the process. It's -- it's very distinctly  
4 different.

5 And then the way that we run the network with ESL  
6 production, and Tim talked about this, was, you know, it's  
7 quite a bit more expensive to invest in the facilities and  
8 operate this way. And it's -- I would suppose it's not  
9 mandatory organic, but because of the nature of farm to  
10 factory to customer, it really is the best way to do it in  
11 our view, and it does add a lot of cost and complexity to  
12 the organic operation.

13 Q. You say processing organic milk on an ESL line is  
14 the best way to do it?

15 A. That's -- that's our opinion, yes.

16 Q. And organic farmers have to utilize only organic  
17 feed, correct?

18 A. Yes. Feed costs -- the health and welfare of the  
19 animals is different with higher costs and things like  
20 that.

21 Q. And so if Danone were able to free up some of its  
22 capital that was previously spent on its pool obligation,  
23 what are the ways in which Danone could use that money to  
24 support its organic supply chain?

25 A. I think there's, you know, immediately -- feedback  
26 we get consistently from farmers is the pressure they have  
27 financially on the farms, and there's a lot of work that  
28 we could do. To look at our pay price is one, but then



1 also, otherwise, we can support the farms with investments  
2 and things like that that they are looking for. We -- we  
3 would like to do that more than we're able to today.

4 Q. And to the extent you are able to grow sales of  
5 Horizon products, that benefits everyone along with supply  
6 chain, correct?

7 A. That's -- that's our other position is, you know,  
8 freeing us up to grow our business helps the dairy  
9 industry in totality, the organic industry in totality,  
10 because we're -- we're very confident we have the right  
11 brand and the proposition to go do that, where some of the  
12 other areas of the dairy industry aren't growing as fast,  
13 and I think we can uniquely go do that if we're able to.

14 Q. And we have heard a lot of discussion from a lot  
15 of economists about elasticity.

16 But in your personal experience, how does an  
17 increase in price impact a product like Horizon Organic's  
18 fluid products?

19 A. I'm sure in 45 days of hearing there's been a  
20 better expert than me. But what I can tell you from -- if  
21 we have to increase our prices, our sales go down, 100%,  
22 and it's not by a significant -- or not by a small amount.  
23 It is pretty significant if we increase our prices.

24 (Court Reporter clarification.)

25 THE WITNESS: If we increase our prices, the sales  
26 will go down.

27 THE COURT: And it's not?

28 THE WITNESS: Not by an insignificant amount.



1 (Court Reporter clarification.)

2 THE WITNESS: I will try my best.

3 MS. VULIN: It's tricky.

4 BY MS. VULIN:

5 Q. And Danone's organic products, all of those are  
6 branded products, correct?

7 A. Yes.

8 Q. And so to the extent that -- I believe you saw  
9 Mr. Newell testifying about how price increases can  
10 disproportionately impact branded products.

11 That's been your experience also in the Horizon  
12 Organic space?

13 A. Yes. 100%.

14 Q. Thank you.

15 THE COURT: May I inquire on that?

16 Are there unbranded organic products for sale?

17 THE WITNESS: Yes, there are.

18 THE COURT: All right. And so those are made for  
19 a particular company that wants to have an organic line?

20 THE WITNESS: Yes. It's similar to the  
21 conventional market, but it's less of a total -- and I  
22 don't know the exact percentages. It probably flipped  
23 over -- from branded versus private label in the organic  
24 world is probably the inverse of private label to organic  
25 in the conventional world.

26 THE COURT: Interesting. Thank you.

27 MS. VULIN: In that way, you mean that in the  
28 conventional world you are going to find a lot more



1 private label than --

2 THE WITNESS: The majority private label in the  
3 conventional world, and the majority branded in the  
4 organic world.

5 MS. VULIN: Great. Thank you.

6 Nothing further, Your Honor. I would ask that  
7 after cross-examination, Exhibits 469, 470, and 471 be  
8 admitted into evidence.

9 THE COURT: Very good.

10 I would invite cross-examination.

11 CROSS-EXAMINATION

12 BY MS. HANCOCK:

13 Q. Good morning. I'm Nicole Hancock with National  
14 Milk.

15 Your testimony, I think you said that you were  
16 assigned this from someone else who had put in the  
17 original testimony.

18 But did you do anything to verify or adopt the  
19 testimony that's written to be your own?

20 A. Yes, I did.

21 Q. Okay. So you are comfortable with the content --

22 A. I do.

23 Q. -- that's contained?

24 On Exhibit 469, on page 4, it says that Danone  
25 helped found the Milk Innovation Group.

26 Do you know when that was formed?

27 A. Yeah. It was spring of last year.

28 Q. Spring of 2023?



1 A. Correct.

2 Q. And do you know if that was -- is -- it is a  
3 special interest group that was formed out of IDFA  
4 members?

5 A. I don't know that.

6 Q. A group that was formed specifically to address  
7 the Class I issues at this hearing?

8 A. That's my understanding, yes.

9 Q. And your testimony and presentations here really  
10 focus on organic milk; is that accurate?

11 A. Yes.

12 Q. And does Danone also have conventional milk as  
13 well?

14 A. Yes, they do.

15 Q. Do you know what percentage of the fluid milk that  
16 Danone produces is conventional as opposed to organic? Or  
17 as compared to, maybe not as opposed to.

18 A. Apologies, I don't. My focus is really 100%  
19 organic, so I'm not -- kind of not in that world. I don't  
20 know the details for sure.

21 Q. Do you know if the conventional milk is supplied  
22 by independent suppliers as well?

23 A. I know it's a lot of family farms, and I know  
24 there's -- there's some independents and some co-ops. I  
25 don't know the detail of it.

26 Q. Just outside of the area where you operate, so you  
27 don't have that background?

28 A. I -- I spend all my time on organic, so I



1 unfortunately haven't got much detail there.

2 Q. Is any of your testimony here designed to also  
3 address your conventional fluid milk market as well?

4 A. No. We're -- you know, we support all of MIG's  
5 proposals as part of that group, but we're here really on  
6 behalf of Horizon Organic and the organic portion.

7 Q. Is -- do you have conventional milk that's used  
8 for Class I?

9 A. Not that I'm aware of. I'd have to check.

10 Q. Okay. And so is it -- what's it used for; do you  
11 know? What products do you make?

12 A. The other dairy products, the biggest one is the  
13 yogurt.

14 Q. And is that -- is that milk pooled?

15 A. I'm not aware of the details. I haven't looked at  
16 all that.

17 Q. Did you -- I can't remember if it was you or  
18 someone else who testified to this. But the milk that you  
19 take from your independent producers, do you take all of  
20 it?

21 A. Yes, we do.

22 Q. And you pay for that on a fixed fee basis?

23 A. Yes.

24 Q. And to the extent that -- well, it's subjected to  
25 the minimum pricing under Class I; is that right?

26 A. Yes.

27 Q. And I think you said that on average it is about  
28 \$34 a hundredweight for the fixed fee price that Danone



1 pays for its organic milk?

2 A. Yeah. That's the average.

3 Q. And to the extent that that is an amount in excess  
4 of the Class I milk, that's essentially an over-order  
5 premium; is that right?

6 A. We don't use that term. But I -- gathering from  
7 the last couple days, it is similar to that, I suppose.

8 Q. And it is a negotiated contracted amount above and  
9 beyond the minimum pricing?

10 A. Yes.

11 Q. And that's a --

12 A. If I can correct. We're not referencing the  
13 minimum pricing. We don't reference Class I. We  
14 negotiate a pay price, and then -- independent of any  
15 Class I or II or III.

16 Q. Okay.

17 A. There's no class in the organic. For us, it is  
18 all bought for whatever use we're going to use it for.

19 Q. And my question, it's kind of embedded in there,  
20 but my question was really to the extent that it is in  
21 excess of the minimum Class I pricing that you are  
22 required or obligated to pay, that extra amount is  
23 essentially just a premium that Danone has negotiated with  
24 its producers?

25 A. Yes.

26 Q. And you have testified to this on page 4 of your  
27 testimony, but it's Danone's position that it would prefer  
28 to not be subjected to the Federal Order system at all



1 because it doesn't believe, at least with respect to its  
2 organic operation, that it gets any benefit out of the  
3 Federal Order system; is that accurate?

4 A. Yes, that's accurate.

5 Q. So would you prefer that there was just not a  
6 Federal Order system that existed so that Danone didn't  
7 have to be subjected to that regulation and minimum  
8 payment requirement?

9 A. I think for organic, it's not working today, to  
10 provide benefit to the organic business, so that's our  
11 position. It's -- you know, as far as conventional goes,  
12 I -- you know, I don't have opinions on that. I'm really  
13 here for organic.

14 Q. Last year did Danone terminate a number of  
15 production contracts with its independent producers?

16 A. Can you be more specific?

17 Q. Well, are you aware of a time that Danone  
18 terminated a chunk of contracts with its producers?

19 A. Yes.

20 Q. What was the reason?

21 A. There -- it depends on what's going on. And if  
22 you are referencing what I think you are referencing,  
23 we're making decisions at times -- and this is before my  
24 time in the business -- really looking at what's the  
25 economics of certain producers. These are very tough  
26 decisions because we know these farms. We -- we have  
27 dealt with them for many years. And, you know, in the  
28 case of that was the distance from our closest producing





1 facility was further than it had been in the past when  
2 there was one closer in proximity. So as we exited, you  
3 know, we try to do the best we can to support them through  
4 transition periods with investments for the business.

5 Q. Do you know how many dairy farms that Danone  
6 terminated in that business decision?

7 A. I don't remember the exact number.

8 Q. Was it 200 or more?

9 A. No. No. I don't think so. I think less than a  
10 hundred.

11 Q. And is that a way in which that Danone engages in  
12 balancing is by controlling which producers services its  
13 plants?

14 A. No. I wouldn't word it that way.

15 Q. It is a way to control the supply coming into the  
16 plants though; is that correct?

17 A. Total supply, yes. Not -- not balancing. I  
18 wouldn't consider that balancing.

19 Q. But those producers had to find alternative  
20 sources on their own for their milk?

21 A. There was transitional support given. I wouldn't  
22 agree with the term "on their own." And I do think most  
23 of them have found places and markets for their milk.

24 Q. And the ones that weren't able to find alternative  
25 sources [sic] for their milk, did they go out of business?

26 A. I don't know that detail.

27 Q. You talked at the very beginning of your testimony  
28 about Danone being a B Corp.?



1           You have to answer audibly.

2           A.    Yes.

3           Q.    Danone is still a publicly-traded company?

4           A.    Yes.

5           Q.    And even as a B Corporation, you still have  
6 obligations to make a financial return to the ownership?

7           A.    Yes.

8           Q.    And that's true even with an altruistic mission  
9 that would be supported by the B Corporation designation?

10          A.    Yes.

11          Q.    And that that B Corp. designation that supports  
12 that altruistic mission, that comes with a financial  
13 benefit of tax credits, too; is that right?

14          A.    I'm not a tax person, so I don't know.

15                MS. HANCOCK: That's all I have. Thank you.

16                THE WITNESS: I apologize.

17                MS. HANCOCK: Thanks so much for your time.

18                                CROSS-EXAMINATION

19 BY MR. MILTNER:

20          Q.    Good morning, Mr. Luikart.

21          A.    Hi.

22          Q.    Ryan Miltner on behalf of Select Milk Producers.

23                I want to walk through with you, if I could, how  
24 your organic producers are paid and how some of these  
25 changes affect who pays what and who receives what, so we  
26 have a clear record on that.

27                So your organic producers, are they paid generally  
28 a fixed price for the milk that they deliver to Danone?



1 A. Yes.

2 Q. In previous testimony in the hearing I think it  
3 was suggested that somewhere in the neighborhood of \$35 a  
4 hundredweight is a fair market price today.

5 I don't want to know necessarily what your  
6 contracts are, but is that in the ballpark of what organic  
7 milk would sell for today?

8 A. Ballpark, yes.

9 Q. Okay. So if we assume that just, for this  
10 illustration, that your farmers are getting paid \$35 a  
11 hundredweight for milk that ends up in a Horizon carton.  
12 And let's assume that the Class I price is \$20, okay?

13 So in that case, Danone is paying \$15 over the  
14 minimum, correct?

15 A. Yes.

16 Q. Okay. Now, for Danone, does Danone have a pool  
17 payment obligation above and beyond that \$35 that it  
18 makes?

19 A. That's my understanding, yes.

20 Q. Okay. So if -- if the differential were reduced  
21 by \$1.60 under Proposal 20, you would still be  
22 contractually obligated to pay your producers that \$35; is  
23 that correct?

24 A. If we had an existing contract, yes.

25 Q. Okay. And then you wouldn't pay \$1.60 less into  
26 the pool, correct?

27 A. Correct.

28 Q. Okay. Now, some Class I handlers have suggested



1 that if they don't have to make that pool payment, that  
2 \$1.60, they would pay some or all of that to their  
3 producers that are supplying them.

4 Given that you're under fixed contracts in the  
5 organic world, do you expect that Danone would pay any of  
6 that \$1.60 to its supplying farms?

7 A. I think -- I think over time we would. I couldn't  
8 make an exact commitment, but the intention would be is to  
9 take the money that we're currently looking at and move  
10 that to parts of the business that would help us do the  
11 things we need to, which is continue to grow. And, you  
12 know, I mentioned innovation and, you know, products we  
13 bring to the market, but also growing the milk supply in  
14 totality could take reinvestment of the funds to the  
15 farmers as well.

16 Q. Okay. So when you talk about reinvestment, you  
17 are talking not only reinvesting into research,  
18 innovation, capital expenditures, but some reinvestment  
19 into growing the milk supply, which would be dollars to  
20 your supplying farms?

21 A. Yes.

22 Q. Now, I want to summarize some of your written  
23 testimony, and tell me if I have this correct or if I'm  
24 oversimplifying it or misstating it, please.

25 Part of your opposition to increasing Class I  
26 differentials is that you're already paying a higher than  
27 minimum price; you are going to be getting the same  
28 certified organic milk that you would receive then as you



1 are now; and that the benefit of that increased  
2 differential will not necessarily make its way to your  
3 shippers.

4 Is that an accurate summary of what you have  
5 testified to or what your written statement says?

6 A. I think so. Yeah. The -- I would clarify the --  
7 and what we're intending to say is the money paid into the  
8 pool doesn't make its way back to support growth of our  
9 business and our farms directly, it supports the pool.  
10 And we would like to reinvest that directly into our  
11 business. That would be the intention if we were able to  
12 reduce that.

13 Q. Okay. So you'd prefer that money not be pooled  
14 and distributed, but that it be reserved simply for your  
15 organic suppliers in your business?

16 A. And we're -- remember, we're talking with regards  
17 to an increase, right?

18 Q. Correct. Okay.

19 THE COURT: That confused me.

20 So you are talking about the \$1.60, Mr. Miltner?

21 MR. MILTNER: No, Your Honor. I was talking about  
22 the increases to the Class I surface under Proposal 19.

23 I believe -- did the witness have the same  
24 understanding?

25 THE WITNESS: That was how I understood what you  
26 were asking.

27 THE COURT: All right. Good. I wasn't tuned in.  
28 Thank you both.



1 MR. MILTNER: Thank you.

2 BY MR. MILTNER:

3 Q. Does Danone have a position on the proposals to  
4 change the Make Allowance components of the minimum price  
5 formulas?

6 A. Can you rephrase that again or --

7 Q. Sure. There are proposals to change  
8 Make Allowances within the formulas to -- essentially,  
9 which would reduce the Class III and IV prices, thereby  
10 reduce Class I and II prices. Those proposals are under  
11 consideration as well.

12 And I was wondering if Danone had a position on  
13 those?

14 A. We do not.

15 MR. MILTNER: I think that's all I have. I  
16 appreciate your time.

17 THE WITNESS: Thank you.

18 THE COURT: Is there anyone else who would like to  
19 question this witness before I invite Agricultural  
20 Marketing Service?

21 I see no one. I invite the Agricultural Marketing  
22 Service to ask its questions of Mr. Luikart.

23 CROSS-EXAMINATION

24 BY MS. TAYLOR:

25 Q. Good morning.

26 A. Hello.

27 Q. Thank you for joining us today.

28 A. No problem.



1 Q. Just a few questions.

2 I think you answered in response to Ms. Hancock's  
3 questions that you have about 400 to 500 organic  
4 suppliers. And I missed the part where I think you were  
5 talking about co-ops.

6 So could you just -- I'm sorry for being  
7 duplicative.

8 A. We have a mixture of direct and co-op suppliers --

9 Q. Okay.

10 A. -- within that 4- to 500.

11 Q. That's close.

12 And so for your direct shippers you said you take  
13 all their milk?

14 A. Yes.

15 Q. And then for your co-op, that might vary based on  
16 your needs?

17 A. Most co-ops, we take all of it from a specific  
18 farm, and at -- there's a few that we have some balancing  
19 relationships within the co-ops where they may ship to  
20 another customer.

21 Q. Okay. If you don't need it?

22 A. Yeah.

23 Q. Okay. And so for the times -- and I know you  
24 explained there's not many times where you try to find a  
25 home for your surplus milk. But in times of that surplus  
26 and you have to find a different home, whether it's in  
27 maybe some of your yogurt plants, I guess, or some other  
28 products, either organic or conventional, is that milk



1 pooled?

2 A. It would have been, yes.

3 Q. Even if it goes into a non-fluid use?

4 A. Yeah. It's -- it's pooled as part of the organic  
5 purchase that we do.

6 Q. Okay. And then do you have ESL products?

7 A. Yes.

8 Q. And HTST products as well?

9 A. In organic, no HTST.

10 Q. And I had asked some other witnesses.

11 About what's the shelf life on those ESL products?

12 A. We have similar to the others that they talked  
13 about, so in the --

14 Q. 70 to --

15 A. -- 70 to 90 range, something like that.

16 Q. Okay. And for your ESL products, do you all  
17 utilize any type of hedging?

18 A. I don't participate in that. We -- not that I'm  
19 aware of.

20 Q. For your organic milk, which -- and your  
21 presentation you listed it as premium dairy, under that  
22 kind of heading.

23 So do you receive a premium price in the market  
24 for that?

25 A. I -- yes, we do.

26 Q. Okay. But your contracts, you -- I think I heard  
27 in one place the contracts were fixed. I think I heard in  
28 a different place in an answer to Ms. Vulin's questions,





1 the way I interpreted the answer could be that they're  
2 not -- they may fluctuate a little bit.

3 So can you just clarify for me?

4 A. When we set a contract for the milk, it's -- I'll  
5 just -- you know, most contracts are a year or longer in  
6 duration with a fixed price. They may -- if -- let's say  
7 it is a three-year, they may have a review after a year  
8 for the next year's duration. But it's not shorter than  
9 that. It's usually a year -- year long.

10 Q. Okay. And they are fixed for that time.

11 And so there's no additional plus or minus off of  
12 that during the month for who knows what reason?

13 A. We have a time -- so we have a quality program  
14 like a lot of different suppliers do, that we pay for  
15 quality. We also have seasonal premiums that we enact  
16 certain times of the years as well.

17 Q. So the organic regulations came about in the late  
18 '90s, and, you know, Federal Orders have been around long  
19 before that. So I'm always curious as to why, when  
20 organic contracts were structured, they didn't have the  
21 ability to take into account these Federal Order  
22 regulations that weren't new at that time.

23 A. I don't know -- I don't know if I can comment on  
24 that out of what I have experience with.

25 Q. Okay. One last question, if you know.

26 The milk that you receive for your fluid side of  
27 the business, do you know what the milk composition is of  
28 that raw milk?



1           A.     We -- I don't know the exact butterfat percents.  
2     We focus on that with regards to -- some of our supply is  
3     managed on total volumetric, and some might be on  
4     component pricing for butterfat and skim. I -- I couldn't  
5     tell you the exact percentages. I'm sorry.

6           Q.     Okay. I'm -- just so the record's clear, you  
7     won't know whether it was more or less than what's  
8     currently in the formulas or more or less than what's  
9     being proposed?

10          A.     I haven't reviewed that.

11          Q.     Okay.

12                 MS. TAYLOR: That's it from AMS. Thank you.

13                 THE WITNESS: Thank you.

14                 THE COURT: Does anyone else have any  
15     cross-examination before I turn to Ms. Vulin?

16                 I see no -- yep, Ms. Hancock.

17                 MS. HANCOCK: Just one question.

18                                 CROSS-EXAMINATION

19     BY MS. HANCOCK:

20                 Q.     To the extent that you have conventional milk for  
21     your Class II markets, you benefit for paying into the  
22     Class II prices from the overall Class I increase as well;  
23     is that right? You get the overall benefit of the pool  
24     draw?

25                 A.     I'm not sure. I would have to look at that. I'm  
26     sorry, I don't know.

27                 Q.     Do you know volume of conventional milk is paid in  
28     at Class II --



1 A. No.

2 Q. -- by Danone?

3 A. No, I don't.

4 MS. HANCOCK: Okay.

5 MS. VULIN: Just a couple quick questions.

6 REDIRECT EXAMINATION

7 BY MS. VULIN:

8 Q. You were asked about how frequently the contracts  
9 are set with suppliers, and you said annually, although  
10 sometimes they are longer.

11 Once those are set, are there -- there are  
12 continued communications with your suppliers after that,  
13 correct?

14 A. Yeah. We have a team that works with them  
15 consistently throughout the year, you know, many meetings,  
16 many discussions. And we -- we value those relationships  
17 really highly. We have to know what's going on on the  
18 farms to understand if things are going well or not.  
19 Certainly throughout the year we're continuing those  
20 discussions.

21 (Court Reporter clarification.)

22 THE WITNESS: Continuing those discussions.

23 BY MS. VULIN:

24 Q. And then another question about this issue of  
25 balancing.

26 To the extent that you have certain cooperative  
27 suppliers who also perform, as you said, some balancing by  
28 selling to other processors, all of that milk to your



1 understanding is still within the organic marketplace,  
2 correct?

3 A. Yes. Generally it's an organic supply that they  
4 are working to balance internally. I would say we're --  
5 we're quite often the majority purchaser from these --  
6 these suppliers, so we end up needing to take a lot of the  
7 milk; otherwise, we create financial hardship for them.

8 Q. And to the extent that they are selling milk  
9 elsewhere in the form of a balancing type sale, it is your  
10 understanding that's still being sold into the organic  
11 marketplace, generally?

12 A. As far as I know. It would be very bad for them  
13 also to not sell as organic given all the costs that have  
14 gone on to get it to become organic.

15 Q. Thank you.

16 MS. VULIN: Nothing further, Your Honor, so I  
17 would move to admit Exhibits 469, 470, and 471.

18 THE COURT: Is there any -- oh, another question?

19 MR. SIMS: I have one quick question for the  
20 witness.

21 THE COURT: Yes, you may.

22 RECROSS-EXAMINATION

23 BY MR. SIMS:

24 Q. Yes, sir, Jeffrey Sims with Lone Star Milk  
25 Producers. I have one quick question.

26 I believe I heard you say that on occasion,  
27 although you don't want to do it, you will send your  
28 organic milk to a conventional outlet for balancing?



1 A. Yes.

2 Q. Okay. So I guess I have more than one question.

3 That wa --

4 A. That was an easy one.

5 Q. Yeah, that's right.

6 So we have heard -- or we will hear -- that there  
7 is -- that conventional milk cannot substitute for organic  
8 milk. And that's a fair statement.

9 But what you just said is that there is  
10 substitutability going the other direction, correct? That  
11 organic milk can actually substitute for conventional  
12 milk?

13 A. Yes.

14 MR. SIMS: Thank you.

15 THE COURT: Is there any objection to the  
16 admission into evidence of Exhibit 469 also marked  
17 MIG/Danone Exhibit 20 Corrected?

18 There is none. Exhibit 469 is admitted into  
19 evidence.

20 (Thereafter, Exhibit Number 469 was received  
21 into evidence.)

22 THE COURT: Is there any objection to the  
23 admission into evidence of Exhibit 470, also marked  
24 MIG/Danone-Exhibit 20A?

25 There is none. Exhibit 470 is admitted into  
26 evidence.

27 (Thereafter, Exhibit Number 470 was received  
28 into evidence.)



1 THE COURT: Is there any objection to the  
2 admission into evidence of Exhibit 471, also marked  
3 MIG/Danone-20B, like boy?

4 There is none. Exhibit 471 is admitted into  
5 evidence.

6 (Thereafter, Exhibit Number 471 was received  
7 into evidence.)

8 MS. VULIN: Thank you, Your Honor. So that  
9 concludes Mr. Luikart's testimony. I know we are at the  
10 lunch break hour, but I do have one request, if I could.

11 Mr. Turner wanted to clarify just one of his  
12 answers before he departed, and I am wondering if we can  
13 get him on for three to four minutes before the lunch  
14 break.

15 THE COURT: Of course. Of course.

16 MS. VULIN: Thank you, Your Honor.

17 THE COURT: And, Mr. Luikart, thank you so much.  
18 I appreciate your very informative presentation today.

19 THE WITNESS: Thank you.

20 MR. ENGLISH: Thank you, Your Honor. This is Chip  
21 English for Milk Innovation Group.

22 And because Ms. Vulin was handling Danone, I'm the  
23 one who discussed matters with Mr. Turner, so it will be  
24 more efficient if I do this. And we appreciate it so  
25 Mr. Turner can get on the road rather than after the lunch  
26 hour.

27 THE COURT: Agreed.

28 Mr. Turner, state and spell your name.



1 THE WITNESS: Yes. Chuck Turner, C-H-U-C-K,  
2 T-U-R-N-E-R.

3 THE COURT: Mr. English, you may proceed.

4 CHUCK TURNER,

5 Having been previously sworn, was examined  
6 and testified as follows:

7 REDIRECT EXAMINATION

8 BY MR. ENGLISH:

9 Q. So, Mr. Turner, you were asked a couple of  
10 questions from Ms. Hancock for National Milk about a  
11 cooperative named Farmers Union, correct?

12 A. Yes.

13 Q. And how did you interpret the question?

14 A. I interpreted it narrowly and answered the  
15 questions truthfully.

16 Q. And your narrow interpretation was that, were you  
17 using it for balancing, correct?

18 A. Right, we do not -- we did -- did not ever buy  
19 their milk from them, and we never used their milk for  
20 balancing.

21 Q. So to the extent others might have interpreted the  
22 question more broadly --

23 A. Yes.

24 Q. -- could you, for the record, state the actual  
25 relationship and when it ended with Farmers Union?

26 A. One of the plants that we balance with is a cheese  
27 plant in Ohio. What -- what we do is we pool milk for  
28 them, and they take surplus milk from us when we have



1 Christmas break or when schools let out for the summer.  
2 One of the milk supplies they asked us to balance  
3 between -- and I looked it up while I was sitting there --  
4 between 2014 and 2019 was milk from Farmers Union. So  
5 this is milk they brought to us. We pooled it. We did  
6 not buy it or use it in our plant other than for balancing  
7 minimums, and even at that point we bought it from the  
8 balancing partner, not from Farmers Union.

9 Q. Thank you.

10 MR. ENGLISH: I have no further questions. And  
11 obviously, if someone else has a follow-up question,  
12 that's fine, but I think it was important for the record  
13 to be clear.

14 THE COURT: What is the cheese plant in Ohio?

15 THE WITNESS: Yes.

16 MR. ENGLISH: What's the name of it?

17 THE WITNESS: Oh. It's Rothenbühler Cheesemakers.

18 MR. ENGLISH: You're going to have to spell that,  
19 I'm sure.

20 THE WITNESS: All right. You ready?

21 R-O-T-H-E-N-B-U-H-L-E-R, and there might be some unusual  
22 punctuation over the O.

23 MR. ENGLISH: An umlaut, maybe.

24 THE WITNESS: Yes.

25 THE COURT: Oh, an umlaut perhaps.

26 MR. ENGLISH: U-M-L-A-U-T.

27 THE COURT: But if you put in the U-H, you might  
28 not need it. I don't know.





1 Do you still balance with the Rothenbühler plant?

2 THE WITNESS: We do. They replace that milk with  
3 other producer milk.

4 THE COURT: Understood.

5 BY MR. ENGLISH:

6 Q. And you've had no relationship of any kind with  
7 Farmers Union since 2019, correct?

8 A. Correct.

9 MR. ENGLISH: I have no further questions.

10 THE COURT: Thank you.

11 Any follow-up?

12 DR. CRYAN: I really -- this is Roger Cryan from  
13 Farmers -- Farm Bureau. Not Farmers Union, from American  
14 Farm Bureau Federation.

15 THE COURT: You have been watching too many  
16 commercials on television.

17 DR. CRYAN: I have been watching -- I've been  
18 hearing the discussion about Farmers Union.

19 RE CROSS-EXAMINATION

20 BY DR. CRYAN:

21 Q. I apologize if I missed this, but the milk is all  
22 the -- all the milk that you are discussing is pooled, the  
23 milk that you receive from producers and then send to the  
24 cheese plant in order to -- to address your surpluses? Is  
25 that all pooled milk?

26 A. Normally, yes. And it is more than a cheese -- it  
27 is more than one plant, it's a few plants.

28 Q. And do you not believe that if you have additional



1 milk, if you balance your supply by having additional  
2 milk, and then you ship your surplus into the market, that  
3 you don't believe that that's balancing? That's using the  
4 market for balancing?

5 A. Right.

6 Q. That's your interpretation of balancing?

7 A. Well, it is not anything that's done for us by  
8 the -- it's -- we don't need a Federal Order system to do  
9 that.

10 Q. Okay. All right. Thank you very much.

11 A. Okay.

12 Q. You understand that when that milk is shipped to  
13 those manufacturing plants, it is pooled as manufactured  
14 class [sic] milk; is that correct?

15 A. As what?

16 Q. If you ship that milk to a Class III plant, it is  
17 pooled as Class III milk?

18 A. Sure.

19 DR. CRYAN: Okay. Very good. Thank you.

20 THE COURT: All right. Any other follow-up from  
21 for Mr. Turner?

22 Mr. English, you may approach just to let me know  
23 if we're finished.

24 MR. ENGLISH: I am finished. And I appreciate  
25 Your Honor, the court reporter, and others indulging us to  
26 go four-and-a-half extra minutes so that Mr. Turner can  
27 get on the road.

28 THE COURT: Excellent.



1 MR. ENGLISH: Thank you.

2 THE COURT: Mr. Turner, thank you. And I'm  
3 glad -- I knew that when Ms. Hancock asked that question  
4 that you didn't think about it, and I'm glad you realized  
5 what you wanted to add.

6 THE WITNESS: Well, that was our attorney's  
7 thought, that I was too narrow in my interpretation of the  
8 question. And it is to their credit that I'm back up  
9 here.

10 THE COURT: Good. All right. Good team.  
11 Thank you. May step down.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Let's take an hour for  
14 lunch. Please be back and ready to go at 1:05.

15 (Whereupon, the luncheon recess took place.)

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1 THURSDAY, JANUARY 18, 2024 - - AFTERNOON SESSION

2 THE COURT: Let's go back on record.

3 We're back on the record at about 1:08.

4 I appreciate very much those of you who gave up  
5 part of your lunch in order to set up our table and  
6 microphones for the panel of three.

7 I understand we will first have a single witness;  
8 is that correct?

9 MR. ENGLISH: Good afternoon, Your Honor. This is  
10 Chip English for the Milk Innovation Group.

11 And you are entirely correct. Our next witness is  
12 Dave Hardy, a dairy farmer. And he had submitted this  
13 morning, and we have been passing out during breaks so we  
14 could save the time, exhibits.

15 And so we have Exhibit MIG-65, which is  
16 Mr. Hardy's written statement, and I would like to have  
17 that marked as the next number. And, of course, I have  
18 forgotten what that is.

19 THE COURT: I think that is 472.

20 So is that David Hardy's exhibit?

21 All right. Let's mark David Hardy's exhibit as  
22 472.

23 (Thereafter, Exhibit Number 472 was marked  
24 for identification.)

25 MR. ENGLISH: Thank you.

26 THE COURT: You're welcome.

27 I would like the gentleman in the witness chair to  
28 identify himself by stating and spelling his name.



1 THE WITNESS: My name is David Hardy, and it's  
2 D-A-V-I-D, H-A-R-D-Y.

3 THE COURT: Thank you.

4 And you're very tall, but I think you have  
5 positioned your microphone pretty well.

6 THE WITNESS: About right?

7 THE COURT: I can hear you well.

8 THE WITNESS: Okay. Good.

9 THE COURT: Good.

10 I'll swear you in. You have not previously  
11 testified in this proceeding?

12 THE WITNESS: I have not.

13 THE COURT: All right. I'll swear you in.

14 DAVID HARDY,

15 Being first duly sworn, was examined and  
16 testified as follows:

17 THE COURT: Thank you.

18 Mr. English, you may proceed.

19 DIRECT EXAMINATION

20 BY MR. ENGLISH:

21 Q. So, Mr. Hardy, as you have already noted, you need  
22 to speak into the microphone.

23 A. Yes.

24 Q. And secondly, the court reporter, who often nicely  
25 but still chastises me for going too quickly, will need to  
26 be taking down your statement as you read. And for most  
27 people, reading tends to speed up over time, or people  
28 read more quickly. So we ask that you read slowly enough



1 for the court reporter so that everything will be taken  
2 down and can be understood.

3 A. I will do my best.

4 Q. In which case, you may proceed with your  
5 statement, which is Exhibit 472. Thank you, sir.

6 A. Thank you.

7 I appreciate the opportunity to offer testimony on  
8 federal milk pricing topics the Department is considering  
9 within this hearing.

10 As I stated earlier, my name is David Hardy, and I  
11 am a dairy farmer from Mohawk, New York, where I farm with  
12 my wife Susan and my son Aaron and his wife Sara.

13 Collectively, we are operate a 100-cow certified  
14 organic dairy and produce crops on as many as 450 acres,  
15 which is in hay and pasture. We have farmed at this  
16 location for over 30 years and are blessed to have created  
17 a livelihood in dairy farming in the state of New York.

18 I am a first generation farmer. I grew up outside  
19 of Boston, Massachusetts. And for me, it is exciting to  
20 have the next generation integrating into management and  
21 ownership of the farm. This is a goal that most farmers I  
22 work with also strive for.

23 We became certified organic in 1999. We are  
24 members of and market our milk through CROPP Cooperative,  
25 better known as Organic Valley.

26 THE COURT: And would you spell CROPP, the way  
27 it's shown in your statement?

28 THE WITNESS: Yes. C-R-O-P-P.



1 THE COURT: And all are in capital letters?

2 THE WITNESS: That's correct.

3 THE COURT: Thank you.

4 THE WITNESS: Certified organic milk requires  
5 adherence to federal standards established by law.

6 Organic milk is strictly segregated from non-organic milk,  
7 starting at the farm, going all the way to a finished  
8 product -- finished organic product purchased by  
9 consumers.

10 In addition to dairy farming, I was elected to the  
11 seven-member CROPP Cooperative board in 2016. Today I  
12 serve as the board president. Before my board of director  
13 role, I was employed as a regional pool manager for the  
14 cooperative in the state of New York. I have also served  
15 in various other leadership roles for CROPP.

16 My life's work has been in organic dairy.

17 I talk with dozens of organic dairy farmers a year  
18 and work on a day-to-day basis with the cooperative  
19 leadership on topics such as our long-term vision of the  
20 cooperative, overall market performance, member concerns,  
21 including supply and pay price discussions, general  
22 cooperative governance, as well as industry positioning,  
23 and some organic dairy policy matters.

24 As the board, we often serve as a sounding board  
25 for various product launches and marketing campaigns.  
26 Ultimately, we are responsible for the evaluation of our  
27 co-op's business leadership and ensuring the co-op adheres  
28 and excels at our stated mission.



1 CROPP cooperatives stated mission is: "The  
2 purpose of Cooperative Region of Organic Producer Pools is  
3 to create and operate a marketing cooperative that  
4 promotes regional farm diversity and economic stability by  
5 the means of organic agricultural methods and the sale of  
6 certified organic products."

7 CROPP Cooperative was established in 1988 and is  
8 the largest organic farmer-owned cooperative in the United  
9 States. Today, we are made up of over 1600 organic  
10 farmers in 32 states. We are in the process of extending  
11 our membership to another over 150 farmers over the next  
12 couple years, as we look to provide more opportunities for  
13 small family farmers and to offer premium food -- premium  
14 food to customers and consumers.

15 While we offer organic products within four other  
16 commodities, we are overwhelmingly positioned in organic  
17 dairy. Organic dairy represents 95% of the cooperative's  
18 business. Overall the cooperative generates nearly  
19 \$1.2 billion in annual sales. We market branded products  
20 as Organic Valley, but also sell ingredients and bulk  
21 offerings to commercial organic buyers.

22 With an average herd size under 80 cows, we are a  
23 cooperative of small farms. The vast majority of labor on  
24 these organic dairies is family members living on the farm  
25 and contributing to a local economy.

26 I checked with co-op staff and by examining annual  
27 milk receipts we estimate that 99.6% of the membership  
28 would meet the Small Business Administration's thresholds





1 under \$3.75 million in average annual receipts to be  
2 considered a small dairy farm.

3 Just like all in the dairy industry, organic dairy  
4 farmers like myself are operating in an extremely  
5 competitive landscape. Marketing swings, variable  
6 weather, and the public perception of all dairy all impact  
7 my farm.

8 Unlike most dairy, organic dairy at my co-op is  
9 unique and places no utility in the pricing scheme  
10 established within the FMMO system. I can honestly say  
11 that the majority of farmers -- organic farmers I talk to  
12 about federal milk pricing have hardly any idea of how it  
13 operates, and secondly, bluntly ask me, "Well, why should  
14 we be part of that type of system? We are organic, and  
15 that's not how my monthly milk price is determined."

16 And they are right.

17 CROPP Cooperative does not base monthly pay prices  
18 on the gyrations of the FMMOs or future -- dairy futures  
19 market.

20 Many farmers come to CROPP Cooperative because:  
21 One, they are seeking organic price premiums for their  
22 farm milk that are historically substantially higher than  
23 conventional mark; and, two, our marketing cooperative  
24 provides stability in its base organic milk price.

25 Like most in the dairy industry, I am paid on the  
26 components of my farm milk. But unlike many in the  
27 dairy -- in dairy, my base milk price remains stable  
28 throughout the year.



1           Of course, I receive quality premiums and some  
2           seasonal adjustments, but over the past eight years, my  
3           base milk price has only changed 12 times.

4           On average, that's only 1.5 changes per year to my  
5           base milk price. It's not a monthly or quarterly change  
6           where I'm guessing what my milk price will be. In terms  
7           of the degree of change, the most recent price change was  
8           a \$0.50 per hundredweight increase starting January 1st,  
9           2024.

10           This allows me to plan my farm financials and  
11           lessens the volatility that often plagues non-organic  
12           dairy farmers. This demonstrates that the cooperative  
13           serves, in part, as a de facto hedging tool. I can make  
14           all kinds of decisions and approaches on my input side to  
15           lessen costs and maximize milk volume, but I do not have  
16           to worry about the bottom line -- the bottom falling out  
17           of my milk price.

18           See the graph below that illustrates the organic  
19           milk price stability provided by CROPP Cooperative.

20           And if you look at that chart, this is based on  
21           percent change. So the blue line represents organic --  
22           CROPP organic pay price, and the red line represents all  
23           milk.

24           At the cooperative we, as the board and  
25           management, with member input, annually establish our base  
26           price -- our base price based on market performance --

27           THE COURT: Would you start again with -- at the  
28           beginning of that sentence, please?



1 THE WITNESS: Sure.

2 At the -- at the cooperative we, as the board and  
3 management, with member input, annually establish our  
4 base -- our pay price based on market performance and our  
5 own ability to manage supply and inventories of our  
6 organic products. Our aim is to provide the greatest  
7 return to our membership, and secondly, to maintain the  
8 long-term viability of the cooperative. To date, we have  
9 been successful as a collection of dairy farmers and co-op  
10 leadership that is constantly under refinement and change.  
11 We are in it for the long haul.

12 I recognize this portion of the hearing is focused  
13 on Class I and to a lesser extent Class II differentials.  
14 For organic dairy farmers, the differentials are an  
15 abstract exercise which does not impact our milk movement  
16 or what products we process for the organic marketplace.  
17 My organic farm milk is not moved in a manner to respond  
18 to signals provided by classified pricing system and the  
19 Class I differentials. For me, it is also hard to  
20 understand how Class I differentials would still maintain  
21 a Grade A cost factor when there really are not any farms  
22 purposely licensed or shipping Grade B milk in the  
23 industry.

24 THE COURT: And that last phrase was "or shipping  
25 Grade"?

26 THE WITNESS: -- B milk in the industry.

27 THE COURT: Thank you.

28 THE WITNESS: For me, the FMMO hearing proposals



1 must be considered primarily from the point of view of:  
2 What pressures do -- what pressures do changes create for  
3 my marketing co-op that I am an owner of, and how will  
4 those pressures manifest and impact my milk price or my  
5 cooperative's business footing?

6 As I understand it, changes to increase the  
7 Class I differentials represent the largest risk to my  
8 cooperative. Our staff estimates that these proposed  
9 changes would cost as much as 30% more above our current  
10 annual pooling obligations.

11 As an organic farmer and a board member, I can  
12 share insights on what increased pooling obligations and  
13 FMMO costs would mean for Organic Valley. They would  
14 fundamentally restrict our ability to return more  
15 financial stability to our farmers. We would have to  
16 consider:

17 (1) Increasing retail consumer and customer  
18 organic prices, a non-starter in a high inflationary  
19 economy, and especially a risk for those of us in the  
20 premium dairy categories;

21 (2) Requiring a pull back on cooperative asset  
22 investments and staffing, a move that would essentially  
23 limit our ability to bring product to market;

24 (3) Suppressing farmer pay price increase  
25 opportunities and perhaps a reality that we may need to  
26 reduce our base milk pay price.

27 The cooperative cannot sustain the risk of these  
28 increased costs without significant harm. Even more



1 problematic is that organic dairy farmers and our co-op  
2 receive no overall upside benefit for our mandated  
3 participation in the FMMO system. As a collection of  
4 farmers that voluntarily manage our own supply through a  
5 quota system with organic farm prices well above the  
6 regulated minimum blend prices, this system undermines  
7 what we hope to offer producers and consumers of organic  
8 dairy.

9 We cannot pretend that all milk is alike, and that  
10 all dairy processing is alike, and that FMMOs should have  
11 the same bearing given the differences.

12 I urge the Department not to increase Class I or  
13 II differential or, if anything, make adjustments to  
14 lessen their impact on fluid Class II processors.

15 I do believe the USDA certified organic dairy is  
16 not treated equitably in the FMMO system and more  
17 fundamental reform to change -- to change that is  
18 necessary. I know you have all spent months and weeks and  
19 maybe even years on the topics in this hearing, but fixing  
20 the FMMO problems faced by organic farmers and organic  
21 dairy companies need to be addressed.

22 I have been to Indiana in the past since CROPP  
23 Cooperative has 170 dairy members in the state, but I  
24 never thought I would be here to talk about USDA federal  
25 milk pricing.

26 Thank you for the opportunity to share my  
27 testimony, and I would welcome any questions from the  
28 USDA.



1 BY MR. ENGLISH:

2 Q. Chip English for the Milk Innovation Group.

3 Mr. Hardy, thank you for your testimony. I have  
4 just a couple questions before I turn you over for further  
5 examination.

6 And this is on page 4, which is the chart at the  
7 top of the page. And you've already briefly stated this,  
8 but I want to be clear about it.

9 This is not in dollars, correct?

10 A. That is correct.

11 Q. This is the percent change from a prior time  
12 period to the next time period, in the blue line which is  
13 the crop price, and the red or orange line, which is the  
14 all-milk price, correct?

15 A. Correct.

16 Q. And the management team that will be testifying as  
17 a panel after you are done will also have the same chart  
18 and probably can answer more questions, correct?

19 A. That is correct.

20 MR. ENGLISH: With that, Your Honor, I am complete  
21 with my direct examination, and the witness is available  
22 for further examination.

23 Thank you very much, Mr. Hardy.

24 THE COURT: Who will begin cross-examination of  
25 Mr. Hardy?

26 Mr. Miltner will.

27 //

28 //



## 1 CROSS-EXAMINATION

2 BY MR. MILTNER:

3 Q. Good afternoon, Mr. Hardy. My name is Ryan  
4 Miltner. I represent Select Milk Producers, a cooperative  
5 in the Midwest and Southwest.6 Have you been an Organic Valley or CROPP member  
7 since you started -- since you got your organic  
8 certification?

9 A. No, I have not.

10 Q. Before you were a member of OV, did you market  
11 your milk through a different cooperative?

12 A. Not through a cooperative.

13 Q. Okay. If you are willing to share, how did you  
14 market your milk before you joined Organic Valley?15 A. I originally, in 1999, when I became certified  
16 organic, I was offered a price through Organic Cow out of  
17 Vermont. And during the time when I did my transition to  
18 the time I shipped my first load of milk, Horizon Organic  
19 bought that company. So I shipped to Horizon Organic  
20 dairy for four years.21 Q. Okay. I would categorize Organic Valley as a  
22 vertically integrated cooperative in the sense that  
23 they -- they have members that supply milk to manufacture  
24 products all within the same business.

25 Would you agree with that?

26 A. Yes.

27 Q. Okay. I don't necessarily want you to share  
28 specific financials with the group. But is Organic Valley

1 generally able to pay you more for your milk than you  
2 would have received by selling to a Horizon or someone  
3 else?

4 A. I don't know the answer to that question.

5 Q. Okay. The fixed price that Organic Valley members  
6 receive, does that include any earnings from the  
7 cooperative's vertically integrated operations, in other  
8 words, profits from the sale of the products that they  
9 manufacture?

10 A. I'm not sure I understand the question. Could you  
11 rephrase?

12 Q. Sure.

13 The fixed price that Organic Valley members  
14 receive --

15 A. Yes.

16 Q. -- is that just for the milk that they supply to  
17 the cooperative or does it also include profits of the  
18 cooperative for the products that are sold?

19 A. Can you state that, please, one more time?

20 Q. Let me go at it a different way. I want to make  
21 sure that we understand each other.

22 When you sold -- when you were selling your milk  
23 to Horizon --

24 A. Yes.

25 Q. -- they paid you a price for your milk, correct?

26 A. Correct.

27 Q. And presumably Horizon then made profits from  
28 putting that milk in a carton and selling it to stores,





1 correct?

2 A. Correct.

3 Q. Okay. Now, Organic Valley is a vertically  
4 integrated company and, presumably, makes money from  
5 selling packaged milk to stores, correct?

6 A. Yes.

7 (Court Reporter clarification.)

8 THE WITNESS: Yes.

9 BY MR. MILTNER:

10 Q. Okay. So you also stated that you receive a fixed  
11 price for your organic milk, correct?

12 A. Fixed base price with quality and premiums.

13 Q. Okay. Do the members also receive an additional  
14 payment periodically or monthly for the profits that  
15 result from selling packaged milk?

16 A. They can. In a -- the name of it escapes me at  
17 the moment. It is almost like a 13th check, depending on  
18 the profits of the co-op.

19 Q. Okay. So for the co-op I work with they call that  
20 a patronage check?

21 A. Yes. The word I was looking for.

22 Q. Okay. There's a patronage check that reflects the  
23 profits of the manufacturing and retail --

24 A. Potentially.

25 Q. -- wholesale operations?

26 A. Potentially.

27 Q. Potentially, because sometimes that money is  
28 reinvested or because there's no profit or --



1 A. Because there is not enough profit.

2 Q. Not enough profit. Very good.

3 THE COURT: Might I ask, is it just once a year  
4 that the decision is made whether there are profits to  
5 distribute?

6 THE WITNESS: Correct. Generally in January.

7 THE COURT: Thank you.

8 BY MR. MILTNER:

9 Q. Are there other organic farmers in your part of  
10 New York?

11 A. Yes. Other meaning CROPP Cooperative farmers or  
12 organic farmers in general?

13 Q. I was speaking to organic farmers in general.

14 A. Yes.

15 Q. Okay. Are some of those farmers marketing their  
16 milk to cooperatives or handlers other than CROPP/Organic  
17 Valley?

18 A. Yes.

19 Q. Generally, if you know, does Organic Valley pay  
20 more to organic farmers in your area than competing  
21 cooperatives or buyers?

22 A. I don't know that.

23 (Court Reporter clarification.)

24 THE WITNESS: I don't know that.

25 THE COURT: You might have to swing that mic a  
26 little closer that way toward you.

27 THE WITNESS: Okay. How is that, better?

28 THE COURT: Almost better but --



1 THE WITNESS: Almost better.

2 THE COURT: Now better.

3 THE WITNESS: Okay. Thank you.

4 By MR. MILTNER:

5 Q. On page 4 of your statement, it's the very last  
6 sentence in there, and you -- you wrote, "Our staff  
7 estimates that these proposed changes would cost as much  
8 as 30% more above our current annual pooling obligations."

9 I understand that to mean that the increases to  
10 the Class I differentials, proposed by National Milk would  
11 increase the pool payment by 30%, which is different from  
12 increasing the cost of acquiring milk by 30%.

13 Do I have that correct?

14 A. Yes.

15 Q. Now, I want you to think back to the time when you  
16 were shipping to Horizon for a moment. And I assume this  
17 would apply to a farmer that today would be shipping to  
18 Horizon.

19 An increase to the Class I differentials would not  
20 reduce the pay to that organic farmer shipping to a  
21 Horizon; is that -- would that be your expectation as  
22 well?

23 A. I would assume so.

24 Q. Okay. So when you are testifying today, and I  
25 know you are here both on behalf of your farm and on  
26 behalf of the cooperative, where you talk about negative  
27 price impacts, I interpret those price impacts as being a  
28 result of your co-op being a vertically integrated handler



1 and that that obligation, that increased cost, is divorced  
2 from the farm operations.

3 Would you agree with that characterization?

4 A. Could you repeat that again, please?

5 Q. Okay. Let me just -- I'll simplify it again. My  
6 questions sometimes get lengthy, and I apologize.

7 The increased costs that you are testifying about  
8 that you have expressed concern about --

9 A. Uh-huh.

10 Q. -- that's -- as I understand it and interpret it,  
11 it's attributable to the fact that Organic Valley packages  
12 milk, it's not a result of anything that any of your  
13 organic farm operations have done or business they  
14 conduct?

15 A. Right.

16 Q. Okay.

17 MR. MILTNER: I think that's all I have. Thank  
18 you so much for answering my questions.

19 THE WITNESS: Thank you.

20 THE COURT: Who next would like to cross-examine  
21 Mr. Hardy?

22 I see nobody. I invite the Agricultural Marketing  
23 Service to ask questions of Mr. Hardy.

24 CROSS-EXAMINATION

25 BY MS. TAYLOR:

26 Q. Good afternoon.

27 A. Good afternoon.

28 Q. Thank you so much for being here today. Just a



1 few questions. I think some of my questions will be  
2 better suited for your management team, so I will not ask  
3 them of you, and if there's any other ones, just let me  
4 know and I'll save them for later.

5 A. Sure.

6 Q. You mentioned that organic dairy represents 95% of  
7 the cooperative's business.

8 What's the other 5%?

9 A. It would be eggs, produce, meat and grain.

10 Q. Of the organic dairy piece, do you know how much  
11 is in the fluid space and how much is in manufactured  
12 products?

13 A. Fluid accounts for around 55% of the business, but  
14 I think the team coming up after me could answer that a  
15 little bit better.

16 Q. Thank you. Hopefully they are listening.

17 A. They may have left the room. I don't know.

18 Q. You say you are paid on your components, but your  
19 base price remains stable?

20 A. Correct.

21 Q. So could you just talk a little bit, just kind  
22 of -- I don't want any confidential information, just  
23 structurally how that works for you.

24 A. So the base price is based on a certain level of  
25 components, and then anything we produce over that  
26 increases.

27 Q. Okay. And do you know the components of your raw  
28 milk?



1 A. Of my personal raw milk?

2 Q. Yes.

3 A. I do.

4 Q. Would you mind sharing those, if you feel  
5 inclined?

6 A. No.

7 Q. Okay.

8 THE COURT: I wonder if he was saying, "No, I  
9 don't mind"?

10 THE WITNESS: No, I'm not going to share.

11 MS. TAYLOR: Okay. That's fine.

12 BY MS. TAYLOR:

13 Q. And you receive quality premiums and seasonal  
14 adjustments.

15 Can you talk about what those seasonal adjustments  
16 are --

17 A. The cooperative --

18 Q. -- conceptually?

19 A. Sure. The cooperative pays a premium for winter  
20 milk, and it deduct in spring flush time. And of course  
21 quality, based on quality of your milk.

22 Q. Okay. And you say on average that your base price  
23 has only changed 12 times over the past eight years.

24 And what causes it to change?

25 A. Supply/demand balance.

26 Q. And could that --

27 A. If we oversupply, we have to balance that.

28 Potential pay price increase or decrease.



1 Q. Okay. So it could be up or down?

2 A. It could be up or down.

3 Q. Okay. And that's something the board figures out?

4 A. Yes.

5 MS. TAYLOR: That's it from AMS. Thank you for  
6 your time today.

7 THE WITNESS: Thank you.

8 THE COURT: Mr. Hardy, I'm looking at Exhibit 472,  
9 and I see that the Hardy Family Farm, LLC, is located in  
10 Mohawk, New York.

11 Which part of New York is that, for me?

12 THE WITNESS: Our farm is about one hour east of  
13 Syracuse, New York, one hour west of Albany, New York,  
14 right off of -- eight miles south of I-90, in the hills of  
15 the Mohawk River Valley.

16 THE COURT: Wonderful.

17 So I just want to congratulate you on a life well  
18 lived. Your consistency, having been a pioneer in going  
19 organic back in 1999, and having been willing to serve in  
20 a voluntary basis, in helping promote the organic dairy  
21 and other organic farming, long before many of us had even  
22 heard the word organic, I think is very much commendable  
23 and to be congratulated. And I just -- I just  
24 congratulate you on your work.

25 THE WITNESS: Thank you. I appreciate that.

26 THE COURT: You're very welcome.

27 And, Mr. English.

28 MR. ENGLISH: Good afternoon, Your Honor. I have



1 no further questions, but I move admission of Exhibit 472,  
2 and then the witness maybe excused.

3 THE COURT: Is there any objection to the  
4 admission into evidence of Exhibit 472, also marked  
5 MIG-65?

6 There is no objection. I admit into evidence  
7 Exhibit 472.

8 (Thereafter, Exhibit Number 472 was received  
9 into evidence.)

10 THE COURT: Thank you, Mr. Hardy. You may step  
11 down, and you are free to stay, and you are also free to  
12 go.

13 THE WITNESS: Thank you.

14 MR. ENGLISH: Your Honor, Chip English for the  
15 Milk Innovation Group. I too want to say thank you for  
16 those who set up the tables in advance.

17 Our next three witnesses for Organic Valley are  
18 Shawna Nelson, Chris Dahl, and Adam Warthesen,  
19 W-A-R-T-H-E-S-E-N.

20 THE COURT: So we're checking the mics to make  
21 sure they are on. And I thank not only these folks for  
22 getting this set up while the rest of us were having  
23 lunch, but also our sound man, Dakota, who devoted most of  
24 his lunch hour to making sure we were ready to go.

25 MR. ENGLISH: And I too, Your Honor. I meant to  
26 include Dakota, but I meant the whole setup, tables, the  
27 three chairs, the three microphones, all very helpful.

28 THE COURT: So I'm going to do this one at a time.





1 I would like to start with Ms. Nelson. I would  
2 like for you to state and spell your name, and this will  
3 also be a microphone sound check. I think the mic is way  
4 too far away from you.

5 Dakota, would you come help us adjust this? If  
6 you can extend that so that -- let him do it. He knows  
7 where the levers are.

8 State and spell your name, please.

9 MS. NELSON: Shawna Nelson, S-H-A-W-N-A,  
10 N-E-L-S-O-N.

11 THE COURT: Have you previously testified in this  
12 proceeding?

13 MS. NELSON: No.

14 THE COURT: I'd like to swear you in.

15 SHAWNA NELSON,

16 Being first duly sworn, was examined and  
17 testified as follows:

18 THE COURT: And now, to your left, I would like  
19 you to state and spell your name.

20 MR. DAHL: Chris Dahl, C-H-R-I-S, D-A-H-L.

21 THE COURT: Have you previously testified in this  
22 proceeding?

23 MR. DAHL: I have not.

24 THE COURT: I'd like to swear you in.

25 CHRIS DAHL,

26 Being first duly sworn, was examined and  
27 testified as follows:

28 THE COURT: And to Mr. Dahl's left, would you



1 state and spell your name?

2 MR. WARTHESEN: You bet. My name is Adam  
3 Warthesen, A-D-A-M, W-A-R-T-H-E-S-E-N.

4 THE COURT: And you pronounce that Warthesen?

5 MR. WARTHESEN: Yes.

6 THE COURT: Have you previously testified in this  
7 proceeding?

8 MR. WARTHESEN: I have not.

9 THE COURT: Would you raise your right hand,  
10 please.

11 ADAM WARTHESEN,

12 Being first duly sworn, was examined and  
13 testified as follows:

14 THE COURT: Now, this room gets particularly dry  
15 in the afternoon, and I find it difficult to speak, even  
16 though I'm not trying to speak a lot. So at any time you  
17 want to take a break and try to open one of these bottles  
18 of water, get your throat lubricated, please do that. I  
19 think it -- you might find it necessary.

20 All right. And --

21 MR. ENGLISH: Your Honor, we have three documents  
22 to mark.

23 THE COURT: Very good.

24 And I see a laptop. Are we going to have a  
25 PowerPoint.

26 MR. ENGLISH: There will be a PowerPoint. That's  
27 the third of the three documents.

28 THE COURT: Excellent. You may identify the



1 documents.

2 MR. ENGLISH: So the first document is  
3 MIG/OV-Exhibit 22 Corrected, which was the statement  
4 submitted back in September. And I'll represent the  
5 correction, this may sound a little familiar, is that  
6 there has been a change-out in the testimony. Ms. Nelson  
7 is appearing in lieu of a statement made before, but  
8 there's no other change in the testimony that was  
9 pre-submitted.

10 So I would like to have MIG/OV-Exhibit 22  
11 Corrected marked, Your Honor.

12 THE COURT: Yes, that will be Exhibit 473.  
13 (Thereafter, Exhibit Number 473 was marked  
14 for identification.)

15 MR. ENGLISH: The second document is MIG/OV/CROPP  
16 Exhibit 22A, which was submitted timely for today's  
17 discussion. And I have that as marked as 474.

18 THE COURT: Yes.  
19 (Thereafter, Exhibit Number 474 was marked  
20 for identification.)

21 MR. ENGLISH: And then as in prior MIG witnesses  
22 this week, we have MIG/OV/CROPP Exhibit 22B, which is the  
23 PowerPoint presentation that will form the basis of their  
24 actual oral testimony today.

25 Could I have that marked as 475?

26 THE COURT: Yes.  
27 (Thereafter, Exhibit Number 475 was marked  
28 for identification.)



## 1 DIRECT EXAMINATION

2 BY MR. ENGLISH:

3 Q. Before we start the presentation, I would like to  
4 have each of the witnesses briefly introduce themselves,  
5 starting with Ms. Nelson.6 A. (Ms. Nelson) Absolutely. My name is Shawna  
7 Nelson as I stated earlier. I have been with the  
8 cooperative, so CROPP Cooperative/Organic Valley for  
9 19 years this upcoming May, and I oversee our membership  
10 team, which is approximately 150 employees that work  
11 across all of our pools. So you heard that in David  
12 Hardy's presentation, but our dairy pool, our egg pool,  
13 our meat pools, our produce pool, and our grower pool.14 Within dairy, specifically, I oversee our farmer  
15 relations and resources; field operations; supply  
16 forecasting and supply management; farmer payroll; Federal  
17 Milk Marketing Order reports and filings; and milk  
18 hauling, so that is the assembly of our milk, and milk  
19 supplying, which is the delivery of where we deliver it to  
20 our different plants; along with the management of our own  
21 fleet. And I have a bachelor's of science degree from the  
22 University of Wisconsin-Stevens Point in business  
23 administration.

24 Q. Thank you.

25 Mr. Dahl, could you briefly introduce yourself as  
26 well.27 A. (Mr. Dahl) Yes. Chris Dahl. I manage our dairy  
28 payroll and milk handler relationships at the cooperative.

1 Along with that work comes the Federal Milk Marketing  
2 Order reports, which brings me here today. I have been  
3 with the cooperative for 18 years.

4 Q. And, Mr. Warthesen, could you please introduce  
5 yourself.

6 A. (Mr. Warthesen) You bet. I'm Adam Warthesen.  
7 I'm the junior of the group. I have only been here ten  
8 years at the cooperative. I oversee our government  
9 affairs and industry relations. So I work on policy for  
10 the cooperative, and I interact with our trade  
11 associations and trade partners.

12 Q. And to be clear, what we're going to do is go  
13 through the PowerPoint presentation. And for simplicity,  
14 a portion of it will start with Ms. Nelson. And then  
15 we'll turn to Mr. Dahl, and I will say, "Turning to  
16 Mr. Dahl." And then we'll turn to Mr. Warthesen, and I  
17 will say, "Let's turn to Mr. Warthesen."

18 We have also, in preparation, suggested that  
19 during cross-examination, each witness will decide -- what  
20 the question is, who will answer, and when they do, they  
21 will say, "This is Shawna," or "This is Chris," or "This  
22 is Adam." At least, that's the goal.

23 MR. ENGLISH: Yes, I was looking at you, Myra.  
24 Thank you.

25 BY MR. ENGLISH:

26 Q. So could we start the presentation. So let's  
27 start with what is Organic Valley, and what does the word  
28 "CROPP" mean?



1           A.     (Ms. Nelson)   So CROPP Cooperative is the  
2 cooperative that is owned by our farmer-owners, and  
3 Organic Valley is the brand name that you will see us in  
4 the marketplace.  And so as you can see here, you will see  
5 those products listed as Organic Valley for dairy, eggs,  
6 produce, and within our grower pool.

7           Q.     And so now I'm going to minimally be involved, so  
8 if you could, thinking about the slides, tell us about the  
9 left-hand side and the information as provided there.

10          A.     (Ms. Nelson)  Absolutely.  So CROPP Cooperative  
11 was established in 1988, so we just celebrated our 35th  
12 anniversary.  We have \$1.2 billion in sales, and you see  
13 those sales across 50 different states.  And our farmers,  
14 we have 1600, and they are in 32 different states.  And we  
15 have 920 employees across our cooperative.

16                 On the milk side specifically, and our dairy  
17 farmers, we do take all of the milk from our dairy  
18 farmers, and that equates to 262,000 on-farm pickups each  
19 year, with 38 haulers.  We haul our own milk, but we also  
20 use contract haulers.  That is 34,000 loads of milk that  
21 we're scheduling into different plants.  And there's 90  
22 different delivery locations that we're using across our  
23 co-man and our plant at work.

24          Q.     Ad co-man means co-manufacturing?

25          A.     (Ms. Nelson)  Co-manufacturing, yes.  Thank you  
26 for catching that.

27          Q.     That's quite all right.

28                 So now, if you turn to page 3, the next slide,



1 please discuss the map, and then I'll ask you two  
2 questions about it.

3 A. (Ms. Nelson) Yeah. So I talked a little bit  
4 about some of our statistics on that last slide, but this  
5 map shows you our footprint across the U.S. around farms  
6 and our co-manufacturing and plant locations.

7 And so in the green dots you will see our farm  
8 locations across the United States. Again, we're in 32  
9 states, and this is showing you that we have 1418 -- so  
10 1,418 -- dairy farms.

11 Now, as Dave mentioned earlier, we are in the  
12 process of procuring new farms, and so that number as of  
13 yesterday was actually 1,436, because between putting the  
14 map together and now we have increased the number of farms  
15 that are shipping with the cooperative.

16 In the yellow stars here, you can see our dairy  
17 co-manufacturing plants, and in the orange-ish stars you  
18 will see our locations. We have made a unique and  
19 intentional strategy, as a cooperative, to minimize our  
20 investment in brick and mortar, and we rely on a network  
21 and relationships within our co-manufacturing network.  
22 And you can see where those are located compared to our  
23 dairy farms.

24 Q. So I think what you have indicated is the map is  
25 representative but not quite up to date?

26 A. (Ms. Nelson) Correct.

27 Q. Is that true about the co-manufacturing as well?

28 A. (Ms. Nelson) Yes.



1 Q. If you turn to the next slide, please, tell us  
2 about your branded products.

3 A. (Ms. Nelson) So as we stated earlier, we have  
4 sales of over \$1.2 billion, and our branded products are  
5 sold in 50 states and 18 countries. And our branded  
6 portfolio has approximately 137 different products. We do  
7 have products across all of the classes, but 55% of our  
8 milk goes into Class I.

9 Q. Would you then go to the next slide. And first  
10 just discuss the left-hand side, and then I'll ask  
11 questions about the right-hand side.

12 A. (Ms. Nelson) Understood.

13 So all of our members that ship milk with the  
14 cooperative are USDA certified organic. 99.6 [sic] of  
15 them are small dairies, according to the Small Business  
16 Administration. And really what that means to us is our  
17 dairies are owned and operated as family farms and run by  
18 the family.

19 We have quite a diversity in culture within our  
20 membership, both in the communities, with 50% of our  
21 membership being in the Plain community, meaning Amish and  
22 Mennonite members, and our approach to dairy. So we have  
23 a span of 12- to 1,000-cow farms. So some of our farms  
24 have 12 cows, and some of them go all the way up to 1,000  
25 cows. And we have a different milking operations, so we  
26 have hand milkers, we have robots. And so there's quite a  
27 diversity in what -- how our members milk their cows as  
28 well.





1 Q. Now let's turn to the right-hand side of the  
2 slide, and please tell us what's going on in this slide  
3 and what is it showing, please.

4 A. (Ms. Nelson) So this slide is showing you, of the  
5 milk that's going into our Class I plants, how many farm  
6 pickups it takes, how many farmers are on that route to  
7 assemble a full route of milk that's delivered to those  
8 plants.

9 So as you can see, that goes from one all the way  
10 to more than 20, with 35% of our milk that's delivering  
11 into Class I having between six and ten farms on that  
12 load.

13 Q. And your experience, that's a little different  
14 from the conventional market, correct?

15 A. (Ms. Nelson) A little different, yep.

16 Q. Let's turn to the next slide, slide 6, for those  
17 following along.

18 And what does -- what is the pictorial here?

19 A. (Ms. Nelson) So earlier we talked about our  
20 reliance and our intentional and unique strategy of using  
21 co-manufacturing plants. But we do own three plants  
22 within the cooperative. One of those is a creamery in  
23 Chaseburg, Wisconsin, where we standardize milk and butter  
24 production.

25 The second one is a plant in McMinnville, Oregon.  
26 Again, we standardize milk there and do powder production.

27 Q. Could you spell McMinnville for the court  
28 reporter, please?



1 A. (Ms. Nelson) I will give it a try.

2 M-C-M-I-N-N-V-I-L-L-E.

3 Q. Sorry to interrupt.

4 A. (Ms. Nelson) And then the third plant that we  
5 operate is a conversion and labeling facility in Cashton,  
6 Wisconsin, as you can see in the picture. We do ghee  
7 refinement and packaging there, and cheese conversion and  
8 packaging there as well.

9 Q. So what kind of refinement do you do there?

10 A. (Ms. Nelson) Ghee. So it's melting down butter  
11 into a clarified product.

12 Q. And is that -- how is that spelled?

13 A. (Ms. Nelson) G-H-E-E.

14 Q. I'm trying to help the court reporter out. It is  
15 not mere curiosity on my part.

16 A. (Ms. Nelson) And then on cheese conversion, just  
17 to be a little bit more specific, it's taking larger  
18 blocks and getting them down into retail sizes and  
19 packages.

20 Q. So --

21 THE COURT: I'd like to go back to the first  
22 picture on slide page 6.

23 What was the location of that first plant?

24 MS. NELSON: In this upper right -- or upper left  
25 corner?

26 THE COURT: Yes.

27 MS. NELSON: That is our Chaseburg Creamery.

28 THE COURT: And where is that?



1 MS. NELSON: In Chaseburg, Wisconsin.

2 THE COURT: And how is Chaseburg spelled?

3 MS. NELSON: C-H-A-S-E-B-U-R-G.

4 THE COURT: Thank you.

5 BY MR. ENGLISH:

6 Q. All right. So Mr. Dahl, if you could pick up for  
7 slide 7.

8 Could you please discuss this slide.

9 A. (Mr. Dahl) Certainly. And, again, just for the  
10 court reporter, this is Chris Dahl again, as introduced  
11 earlier. My team manages the dairy payroll and the  
12 Federal Milk Marketing Order reports that go along with  
13 that.

14 And within that team we file those reports  
15 ourselves. We also work with our milk handling partners  
16 who file Federal Order reports on our behalf. Not only do  
17 we file the reports, but we receive the receipts and  
18 utilizations as a result of those monthly reports, which  
19 really is what has kept me engaged in this specifically  
20 and brought me here today, because in the multiple  
21 proposals we have seen, there is some detrimental effects  
22 that I can see on the reports that we submit if some of  
23 those proposals would move forward.

24 In addition, the table that is shown here does  
25 show the exposure that we have amongst all the Federal  
26 Orders. As you can see, we have farmers in eight of the  
27 11 orders, processing facilities in nine of those orders.  
28 And those would be co-manufacturers of ours. And fluid



1 co-mans in six of those orders.

2 THE COURT: Who and what? Co-mans?

3 MR. DAHL: Fluid co-manufacturing, yep.

4 THE COURT: Correct. So the difference between  
5 the processing column that's got every order -- I mean,  
6 all the orders that are shown on this page, and the one  
7 next to it, what is the difference between those?

8 MR. DAHL: So processing is going to include  
9 co-manufacturers who make every product, any product for  
10 us, cheese, butter, or fluid milk. The fluid column is  
11 simply those who are only bottling milk for us.

12 THE COURT: Thank you.

13 BY MR. ENGLISH:

14 Q. And just to be clear, the order that's omitted on  
15 this is Order 6, correct?

16 A. (Mr. Dahl) That is correct.

17 Q. So let's turn to page 8.

18 And please discuss this slide and your views from  
19 this slide.

20 A. (Mr. Dahl) Yeah. On this page we wanted to  
21 discuss the organic dairy and how it looks within the  
22 Federal Milk Marketing Order system. As you can see here,  
23 organic dairy is heavily indexed in Class I, much greater  
24 than the rest of the Federal Milk Market Order system, and  
25 any Class III is the adverse effect. We are under index  
26 in Class III while the Federal Milk Market Order system is  
27 highly indexed there.

28 The biggest concern here with -- with this mix of



1 utilization is -- is any increase that we would see in  
2 Class I negatively impacts organic without any -- any  
3 benefit in return to our cooperative and its members.

4 A few other things just to point out here about  
5 organic dairy within the Federal Milk Market Order system.  
6 Our pay price currently is and historically is well above  
7 the uniform prices within the Federal Milk Market Order  
8 system. We have long-term membership agreements with our  
9 organic members. And, you know, Federal Milk Market Order  
10 pool milk just simply is not substitutable with organic  
11 milk.

12 Q. So you mention Class I, but there's also a  
13 proposal to increase Class II. That would also negatively  
14 impact?

15 A. (Mr. Dahl) Correct.

16 Q. So let's go to the next slide. Continuing with  
17 you, Mr. Dahl.

18 A. (Mr. Dahl) yeah. So this slide here, and I know  
19 Mr. Hardy got some questions on it and answered them well,  
20 but we'll expand on it a little bit more here with our pay  
21 price within Organic Valley.

22 Our pay price is set annually by our Board of  
23 Director -- Board of Directors and management team, with  
24 input from the entire membership. The price that we --  
25 that the board establishes is based upon the needs of our  
26 farmer membership, the ability of our co-op to meet sales  
27 targets and manage our inventories, and also obviously  
28 cost of goods, right, what is our cost of goods. You have



1 to be able to be knowledgeable of that when setting your  
2 pay price.

3 To us, pooling obligations that we see is a cost  
4 of good to our cooperative when trying to make pricing  
5 decisions. The -- even though it is a cost of a good, you  
6 know, that doesn't -- it isn't a direct impact -- isn't a  
7 direct factor in our setting of that pay price, right? It  
8 indirectly affects how we set our organic pay price,  
9 because it is a cost of good to us. We don't tie our pay  
10 price to it, but it impacts the dollars we have to be able  
11 to set a price.

12 And that's what I -- that's mentioned here, you  
13 know, the rules and requirements do indirectly impact, as  
14 I noted. The Federal Milk Market Orders as they stand  
15 today and how they impact us are really taking money away  
16 from our crop owners and members.

17 You know, in my role, you know, when the board and  
18 management team is trying to make pay price decisions, you  
19 know, the question of what's pooling going -- what are  
20 pooling obligations going to be or what are they, or maybe  
21 even worse, you know, the board makes a pay price change,  
22 and within a month we see pooling obligations spike.

23 As many of us know here, trying to explain pooling  
24 to folks who don't work in it day in and day out is very  
25 difficult. Thankfully we have Mr. Hardy who understands  
26 it on our board.

27 But not only that, the question we get in return  
28 on that that's very difficult to answer is when we tell



1 our board, hey, our pooling obligation is this in a cost  
2 to us, and they ask, well, what are we getting out of  
3 that? I don't have an answer today to tell the board what  
4 organic is getting out of the Federal Milk Market Order.

5 Q. So let's go to the next slide, which we saw  
6 earlier with Mr. Hardy. So this is page 10 now for those  
7 online.

8 What -- please discuss now what this is and the  
9 heading.

10 A. (Mr. Dahl) Yeah. So, again, this is similar --  
11 it is the same chart that we saw with Mr. Hardy, and this  
12 is really trying to demonstrate and illustrate the stable  
13 price that we strive for. This, again, is showing  
14 percentage of change year to year in our pay price. It is  
15 not dollars. And, you know, it really reflects how our  
16 established pay price is not tied to the conventional --  
17 or to the Federal Milk Market Order pricing system. If it  
18 were, we would see many higher ups and down like that.  
19 And it is a concern of ours, and we want to be able to  
20 strive and maintain this blue stable and sustainable line.

21 Q. So it starts with a point in time, and so let me  
22 see if I can get this right.

23 A. (Mr. Dahl) Sure.

24 Q. In 2017, it is showing basically looks like maybe  
25 minus 9% or minus 8%; is that correct?

26 A. (Mr. Dahl) That is correct.

27 Q. And that is to the prior time period, which would  
28 be 2016 --



1 A. (Mr. Dahl) Yes.

2 Q. -- correct?

3 And then 2018, it looks pretty much even, it may  
4 have been down a half percent or something; is that  
5 correct?

6 A. (Mr. Dahl) Correct.

7 Q. And -- but also, what it is showing is the  
8 all-milk price has gone down basically 20% from the prior  
9 year in 2018 as compared to 2017, correct?

10 A. (Mr. Dahl) Yes.

11 Q. Okay. Why is stable pay price important to your  
12 farmers?

13 A. (Mr. Dahl) The stable pay price is important for  
14 our farmers so they can continue to support small family  
15 farms. It is important, they can make their plans on  
16 their farm to be profitable when they know what they are  
17 going to be paid. You know, the next generation is a huge  
18 thing to organics in our cooperative, and being able to  
19 maintain that stable price is actually critical for our  
20 future success.

21 Q. So let's turn to page 11, and I'm going to ask a  
22 specific question in a moment, but let's start with  
23 general.

24 What is being shown on the slide that is page 11?

25 A. (Mr. Dahl) Yeah. So in general what is being  
26 shown on this page is the blue line is showing our percent  
27 in change of pool obligation month over month, and this  
28 dates back to January of 2021.





1           In that same timeframe, the orange line represents  
2 the percentage of our supply that is supplying the Class I  
3 fluid market.

4           Q.    So what the heck is going on between April and May  
5 of 2021 when literally the blue line goes off the chart?

6           A.    (Mr. Dahl) Yeah, it -- it did go off the chart.  
7 You know, it's -- we didn't put it on here, but it is a  
8 425% increase pooling obligation in that period of time.  
9 Very difficult to plan for that. I -- I can't tell you  
10 what exactly happened in that timeframe, but I can tell  
11 you that we didn't have control over what happened.

12          Q.    And, in fact, basically your Class I was the  
13 same --

14          A.    (Mr. Dahl) Exactly.

15          Q.    -- correct?

16                And part of this is if you try to do 425%, the  
17 chart would have basically disappeared in everything else,  
18 correct?

19          A.    (Mr. Dahl) Yes.

20          Q.    So that's why you didn't put that on?

21          A.    (Mr. Dahl) Exactly correct.

22                Yeah, in addition, I would say, you know, organic  
23 is one of the few growing Class I sectors. Forcing  
24 organic dollars into the pool, in my opinion, does two  
25 things: It's going to take money from farmers who have  
26 taken the risk and committed to maintaining the organic  
27 certificate, and we're going to take those dollars and pay  
28 them to non-organic farms, which we can't use their milk



1 in our organic system.

2 Q. All right. One last slide I think for you before  
3 we turn over to the next witness.

4 Was there --

5 A. (Mr. Dahl) I think I'm off the hook. I think  
6 Adam is up.

7 Q. Oh, I'm sorry. I got it in the wrong order in my  
8 outline. All right. So actually you are done.

9 So, Adam, could you take it from here on page 12.

10 Was there an alternative that USDA should have  
11 heard?

12 A. (Mr. Warthesen) Yeah. Thanks, Chip. This is  
13 Adam Warthesen for the court reporter.

14 So as part of the Milk Innovation Group, as  
15 Organic Valley, we had been very interested in an organic  
16 exemption proposal being heard because, as Chris  
17 described, and as Dave did, we feel that organic remains  
18 in an untenable position within the orders.

19 When the original Hearing Notice came out,  
20 obviously it said, you know, the current pricing  
21 provisions applicable to all FMMOs. So we felt that the  
22 challenges that organics was facing would be one of those  
23 topics we would want to hear. You know, that obviously  
24 wasn't the case, and so that decision was made, you know,  
25 ad hoc that only amendments to the uniform pricing  
26 formulas was going to be the subject area.

27 We continue to believe that organics is in an  
28 untenable position, that it demon- -- that the orders



1 demonstrate a lack of flexibility, that the will of the  
2 majority suppresses the minority, as organics is a small  
3 portion of the entire milk production in the U.S. And,  
4 you know, we've talked to many farmers, in fact, 174 of  
5 them that had supported this being included in the  
6 hearing.

7 Q. So that not having been heard at the hearing, what  
8 is your position then if you turn the slide on  
9 Proposal 20?

10 A. (Mr. Warthesen) Yeah. As Chris described  
11 earlier, the Class I differentials put an impact on our  
12 business. You know, we think and we believe in MIG's  
13 proposal, which is Proposal 20, that says, let's examine  
14 these differentials. The Grade A, the balancing costs,  
15 the incentive service, none of those things are something  
16 that are -- that we're already doing those ourselves  
17 within the co-op, and us paying those out does not service  
18 our marketplace at all.

19 Q. So let me -- let me ask a question related to some  
20 testimony we have heard earlier today.

21 If the \$1.60 that is the current base  
22 differential, if USDA were to adopt that proposal such  
23 that Organic Valley in its processing capacity was paying  
24 \$1.60 less, what is the practical impact of that on  
25 Organic Valley and your farmers?

26 A. (Mr. Warthesen) I appreciate the question.

27 So the three of us and those that work at the  
28 co-op, we are agents of the principals. So Dave Hardy and



1 our membership own the cooperative, so that \$1.60 would be  
2 brought back into the cooperative, and the decision would  
3 be made by the board and management about where to deploy  
4 those assets. It could likely be a price increase to the  
5 farmers or it could be an investment in their equity in  
6 assets of the co-op.

7 Q. In any event, it is a benefit to the farmers,  
8 correct?

9 A. (Mr. Warthesen) It is a decision that will be  
10 made by the board on how to use those resources.

11 Q. So let's turn now to the next slide.

12 And there's a lot of information on this slide,  
13 but let's -- so this is the basis for the opposition to  
14 19, correct?

15 A. (Mr. Warthesen) Yes, that's correct. So, you  
16 know, this -- I want to point out with this chart, right?  
17 In the earlier graph that Mr. Dahl showed, you know, our  
18 milk placements for Class I stays pretty consistent, so we  
19 really are not moving milk around to satisfy sort of any  
20 signals from the orders.

21 We are also seeing a continued burden that we  
22 cannot mitigate. You know, our only real option to  
23 mitigate sort of pooling costs would be crafty depooling,  
24 and when we're highly leveraged in Class I, there's not  
25 really a lot of opportunity for that.

26 So if you look at Number 19 Current, this just  
27 demonstrates sort of the cost increase that we would see  
28 for the 13 processors, and these are our 13 processors for



1 our fluid milk. Our math as we sort of overlay this on  
2 our volume shows that this would be the biggest impact on  
3 our co-op. This would be a 30% increase in our pooling  
4 obligations annually.

5 Q. So let's go to the next slide and talk about that  
6 a little bit and your position on other proposals.

7 A. (Mr. Warthesen) Yep, thank you.

8 So here I just wanted to acknowledge we support  
9 Proposals 8, 9, 14, and 15. We oppose Proposals 1, 2, 13,  
10 16, 17, 18, 19, and 21.

11 Q. Then you say worst case scenario is a 40% increase  
12 in pooling obligations. A moment ago you talked about 30%  
13 on the Class I.

14 And so the other 10% would be on the rest of the  
15 proposals?

16 A. (Mr. Warthesen) Yep, thank you.

17 There's -- some of those other proposals we looked  
18 at sort of -- because these are -- the Department is  
19 characterizing them in five issue topics, I kind of looked  
20 at what are the -- what would be the worst case scenario  
21 in any one of those issue topics if that proposal was  
22 adopted. And so there's one on Class II that would  
23 increase our costs by about 4%. There's another one by  
24 Edge Co-Op that would increase our costs by about 4%. So  
25 if you kind of do the aggregate, worst case scenario, it  
26 is a 40% increase. This is a multimillion-dollar increase  
27 to Organic Valley, not -- on already a multimillion-dollar  
28 pooling obligation we have.



1 Q. And, again, that's a multimillion-dollar increase  
2 on your dairy farmer-owners for whom you are agents?

3 A. (Mr. Warthesen) Correct.

4 Q. Do you have any concluding remarks either from  
5 that slide or the next slide?

6 A. (Mr. Warthesen) Well, I think what I would like  
7 to say on this final slide is like Organic Valley, right,  
8 we are agents of the principals. Our farmers own us, and  
9 they are the owners of the co-op. We work on their  
10 behalf.

11 But the employees are there because they believe  
12 in a vibrant and diverse dairy economy. You know, we as  
13 Organic Valley, we want to -- you know, we believe in  
14 innovation. We want to see it applauded, and we want to  
15 see it fostered. We have new products coming out -- I  
16 would love to share some of them with you -- that look at  
17 innovation right now.

18 You know, we would love the organic exemption  
19 proposal to be heard. We're not at that place in this  
20 hearing, so we are stating what is the place where we see  
21 the greatest risk and where do we think some proposals  
22 make some progress. And we think Number 20 begins to  
23 address some of the unintentional consequences that  
24 companies like us face because of the orders.

25 And then, you know, I had stated already, but we  
26 have been interested in, how does organic be understood  
27 within the orders, since 2015. And we thought if it -- if  
28 it wasn't going to be heard in 2015, why wouldn't it be



1 heard at a national hearing? If it isn't heard at a  
2 national hearing, like when is that opportunity? So we're  
3 going to continue to investigate that with our partner and  
4 our firm and with our owner-members.

5 Q. Do you have any concluding remarks other than  
6 those, anything else you want to say before I turn you  
7 over for further examination?

8 A. (Mr. Warthesen) No, I -- I -- not that I have.  
9 Appreciate the opportunity to give remarks.

10 MR. ENGLISH: Thank you, all three of you.

11 Your Honor, subject to cross-examination, I move  
12 admission of Exhibits 473, 474, and 475.

13 THE COURT: Thank you, Mr. English.

14 MR. ENGLISH: The witnesses are available, and  
15 they will determine based upon the question who is the  
16 best to answer. And as I said, they will endeavor to  
17 identify, as they already have, who is speaking.

18 THE COURT: So it is your proposal that the  
19 cross-examiner does not necessarily name a witness who  
20 will answer the question?

21 MR. ENGLISH: I think that would be inefficient.  
22 I mean, they could do it, but I think they are going to  
23 find, you know, that they know -- the witnesses know best  
24 who is the person to answer.

25 THE COURT: I see. All right.

26 MR. ENGLISH: And it is clear, I think, the lines  
27 of who is doing what, but I think -- I think we should let  
28 the witnesses decide who is going to answer, because



1 that's the whole point of having the panel. We could have  
2 done three separate witnesses, and then it would have been  
3 much more inefficient, I think.

4 THE COURT: All right. Well, those who are  
5 cross-examining, if you wish to ask a particular question  
6 to a particular witness, ask my permission.

7 We're going to take a little break right now,  
8 let's take ten minutes. Please be back and ready to go at  
9 2:30.

10 (Whereupon, a break was taken.)

11 THE COURT: Let's go back on record.

12 Back on record at 2:30.

13 Who would like to be the first to ask  
14 cross-examination questions of the panel?

15 CROSS-EXAMINATION

16 BY DR. CRYAN:

17 Q. Good afternoon, everybody.

18 A. (Ms. Nelson) Good afternoon.

19 Q. Collective Organic Valley.

20 I have met Adam before. It's nice to see you.

21 A. (Mr. Warthesen) Nice to see you, Roger. Glad you  
22 are here.

23 Q. I'm Roger Cryan with the American Farm Bureau  
24 Federation.

25 And my first question is about the table on  
26 page 8, about the organic and Federal Order total milk  
27 utilization by class.

28 To be honest with you, that was -- it was





1 surprising to me how low Class I utilization for organic  
2 milk was, and it seems to suggest an evolution towards a  
3 more comprehensive -- more comprehensive consumption of  
4 organic dairy products in the market.

5 Is that -- is that -- is that accurate?

6 A. (Mr. Warthesen) This is Adam for the court  
7 reporter.

8 Thanks for pointing that out. I think many of us  
9 in the room also recognize the consuming habits of public  
10 are changing somewhat with dairy. So you might -- that  
11 might continue to evolve in the future, but right now it's  
12 just kind of what it is. I think that the Class I where  
13 55% of organic is continues to be our experience as well.

14 Q. It is my recollection it used to be more like 80  
15 or 85%?

16 A. (Mr. Warthesen) I believe it was higher. I  
17 couldn't really comment on, you know, how much back --

18 Q. Okay.

19 A. (Mr. Warthesen) -- that was. I know you were at  
20 AMS. I'm sure you have some stats on it.

21 Q. That was my recollection. I don't have -- that  
22 could be -- I guess it's -- it's -- it's not on the  
23 record. I don't know. I don't know --

24 THE COURT: You don't need to testify, Dr. Cryan.

25 DR. CRYAN: It's not relevant because it's outside  
26 the scope. I'm sorry.

27 BY DR. CRYAN:

28 Q. So the other question is, with respect to the



1 operations of Organic Valley, one of the concerns, if I  
2 heard right, was the ups and downs of the pool draws and  
3 the pool contributions.

4 Would be helpful if the -- if the pool draws or  
5 contributions were more consistent from month to month?

6 A. (Mr. Warthesen) So this is Adam again for the  
7 court reporter.

8 We have got a brand new CFO at Organic Valley, and  
9 when we showed that same chart about variability, his  
10 remark to us, well, how do I plan my business plan given  
11 that variability? So, of course, we would -- you know, I  
12 think that's a big challenge for us and the fact that it  
13 just seems to be every year increasing to be more and  
14 more, it's perhaps even a bigger challenge. So you have  
15 both variability and both increased costs.

16 Q. So more consistent PPDs and pool draws and so  
17 forth would be a positive contribution to the business?

18 A. (Mr. Warthesen) Yes.

19 DR. CRYAN: Very good. That's all I have got.  
20 Thank you very much.

21 THE COURT: Is there anyone else who has  
22 cross-examination questions for the panel before I call on  
23 the Agricultural Marketing Service to ask questions they  
24 have?

25 There is no one. I invite the Agricultural  
26 Marketing Service to proceed with questions.

27 MS. TAYLOR: Thank you, Your Honor.

28 //



## CROSS-EXAMINATION

1  
2 BY MS. TAYLOR:

3 Q. Good afternoon.

4 A. (Ms. Nelson) Good afternoon.

5 A. (Mr. Warthesen) Good afternoon.

6 A. (Mr. Dahl) Good afternoon.

7 Q. Thank you to all three of you for coming to  
8 testify today.

9 Let's see where I want to start.

10 In your statement, I think in both exhibits, you  
11 talked about how you try to maintain about a  
12 91% utilization, organic utilization of your supplies.  
13 Now, that's what you strive to maintain.

14 So how does that maybe vary from year to year or  
15 seasonally? Does it?

16 A. (Mr. Warthesen) Erin, I would ask Shawna Nelson,  
17 this is Adam, to respond to the question on our --

18 A. (Ms. Nelson) Could you point to me where you are  
19 looking at?

20 Q. Certainly. I am on Exhibit 22, page 4, and here  
21 is -- the last full paragraph from the bottom says, "We  
22 strive to maintain a 98% organic utilization."

23 A. (Ms. Nelson) Absolutely. So it is our goal to  
24 achieve a 98-or-higher percent utilization. This year, we  
25 are striving to achieve 98.85%. And so there's a lot of  
26 ways that we go about doing that. And I can expand  
27 further if --

28 Q. Sure. That would be great.



1           A.     (Ms. Nelson)   So the first way is really around  
2     supply and demand forecasting.   So we put a lot of  
3     emphasis on understanding from our 1400-plus dairy farmers  
4     how much milk they are anticipating producing, and we have  
5     mechanisms for them to share that with the cooperative if  
6     they are expecting to go, you know, significantly up or  
7     down compared to what they have in prior years.

8                 We do the same on the demand side of our business.  
9     Every month we go through a process.

10                (Court Reporter clarification.)

11                MS. NELSON:   Sorry.   Thank you.

12                Every month we go through a process on the demand  
13     side to say, you know, what are we anticipating from all  
14     of our streams of business, how much demand we're going to  
15     have.   And so it really starts with that supply and demand  
16     balance.

17                Whenever we see something out of balance, our  
18     first place to go to is inventory.   And so within what we  
19     do, you know, are we able to increase a little bit or pull  
20     from a little bit to help that balance.   Because often, to  
21     your earlier question, right, it might be a seasonal  
22     piece.   Spring flush, we might build a little bit more; in  
23     the fall, we might reduce from a little bit more.

24                And then we look at our customers and say, you  
25     know, are there opportunities where they could do the  
26     same, because we are supplying, you know, bulk milk to  
27     different customers.

28                From there, really, we're then looking at, you



1 know, really a small amount that really can get through,  
2 so that 98.85%. And often that is, you know, related to  
3 low quality or temperature, where we might have to dump  
4 that load. It is related to a plant breakdown where we  
5 find out that the plant's breaking down right now and we  
6 have to move the milk that was planned on going into that.  
7 Or it's related to, you know, weather challenges where we,  
8 you know, can't get the route to where we were  
9 anticipating. So it's very much, you know, kind of  
10 disruptions in that supply chain that lead to that little  
11 over 1% that we have as conventional use.

12 MS. TAYLOR: Okay. Thank you.

13 THE COURT: So that is astonishing to me. That  
14 98% is actually 98.85%?

15 MS. NELSON: That's our target for 2024.

16 THE COURT: Wow. Great.

17 BY MS. TAYLOR:

18 Q. Later on on page 6 of this same statement, I think  
19 it is in a different one, it was on a chart, and you all  
20 talked about it. You estimate about 55% of organic goes  
21 into Class I.

22 Is that of the whole organic market or is that OV  
23 specific or both?

24 A. (Mr. Warthesen) This is Adam Warthesen. I can  
25 respond to that.

26 That was aggregate numbers that was put together  
27 by Sally Keefe for the whole organic industry. Organic  
28 Valley's experience is very similar.



1 Q. And for the breakdown in the -- on the  
2 manufacturing side of that chart, is OV's experience  
3 similar to those numbers?

4 A. (Mr. Warthesen) I have those numbers. I think  
5 it's very close. I think we might have a little greater  
6 weighting in III and IV.

7 Q. And less in II?

8 A. (Mr. Warthesen) A little bit less in II. And  
9 actually probably a -- for -- I don't want to speak beyond  
10 that. That -- that's kind of what I remember.

11 Q. Okay. And so for your milk that goes into  
12 manufacturing, is that milk pooled?

13 A. (Mr. Dahl) I would say, yes, the majority of that  
14 milk is pooled. When there's an opportunity for us to  
15 depool, we will do that. But, again, being so heavily  
16 invested in Class I those -- those abilities to do that  
17 are limited quite often.

18 Q. Okay.

19 THE COURT: And that was Chris Dahl?

20 MR. DAHL: Correct.

21 MS. TAYLOR: This is going to be a fun part of the  
22 transcript to read.

23 BY MS. TAYLOR:

24 Q. Okay. On page 10, under the balancing header, in  
25 that bottom paragraph, you are talking -- you say, These  
26 companies -- meaning -- I think meaning organic  
27 companies -- including us, assume almost all balancing  
28 functions to ensure the milk and dairy products maintain



1 certified organic status and can be marketed as certified  
2 organic, and I was kind of summarizing there.

3 You say almost all balancing functions. So kind  
4 of what's the rest?

5 A. (Mr. Warthesen) This is Adam with -- again.

6 That's a really good question. I'm wondering why  
7 we wrote "all" there. My guess is that we have sometimes  
8 farms that will produce at certain levels for us as well,  
9 so they take on some of that balancing as well given your  
10 demands. And our team will work with them in and out to  
11 figure out, you know, what's the right contributions they  
12 are making to the cop co-op.

13 Q. Does that mean -- I'm trying to figure out what  
14 that means. Your producers --

15 A. (Mr. Warthesen) Well, one of the balancing costs  
16 that are produced -- or balancing functions that we have  
17 as a co-op, is if we don't have enough milk, we'll go out  
18 and sign new members to bring them on.

19 Q. Uh-huh. But some of the balancing is -- I mean, I  
20 guess what I'm trying to get at, is some of the balancing  
21 on the producer side to make sure if you -- they have  
22 only -- if they have told you they are only going to  
23 produce so much and you plan for that, that they don't  
24 produce more than that? Is that what you are talking  
25 about?

26 A. (Mr. Warthesen) Say that again just so I make  
27 sure I get the right response?

28 Q. Yep. So I think you are talking a lot about the



1 balancing the co-op -- effort that the co-op as a business  
2 entity puts into figuring things out. And that's almost  
3 all the balancing.

4 But is some of that balancing then on the producer  
5 to make sure they produce what they told you they were  
6 going to produce and not necessarily more or less?

7 A. (Ms. Nelson) This is Shawna. I'll take that  
8 question.

9 Yes. So through our supply management program,  
10 our producers have an active base, and we want them to  
11 have that as close to their actual production as possible.

12 Now, we do have ways that if they are wanting to  
13 increase, right, if they are going to increase that  
14 amount, they can signal that to us and see that growth.  
15 But they are responsible to keep their active base and  
16 actual production close and communicate changes to us.

17 Q. Okay. And do you have limits on the growth?

18 A. (Ms. Nelson) So long as they meet all of our  
19 cooperative policies and the organic standards with their  
20 growth, we do not have limits on the growth. They submit  
21 what they would like to grow with from a production  
22 standpoint. We do a review process to make sure that it  
23 wouldn't put any of our organic standards or cooperative  
24 standards at risk, and then they would get an approval, so  
25 long as that's true.

26 Q. Okay. I'm trying to ask these questions in some  
27 organized fashion.

28 I'm going to turn to Exhibit 22A, and on page 11.





1           In the pages before that -- so this is your  
2           opposition to the other -- or your stance on the other  
3           proposal at the hearing. This one in particular,  
4           Proposal 19. And you write under number 2, the proposal  
5           "could result in inefficient movements of organic milk."

6           And I read the text there, but I was wondering if  
7           you could maybe explain that a little bit more.

8           A.     (Mr. Warthesen) I guess what I would say -- this  
9           is Adam again with Organic Valley.

10           What I would say is that our feelings that that --  
11           this increase causes us inefficiencies, period, because we  
12           are having to pay into a pooling obligation that we reap  
13           no benefit out of. So we feel that is an inefficiency for  
14           our business.

15           Q.     Okay. But it wouldn't necessarily change the  
16           actual shipments of where your milk goes?

17           A.     (Mr. Warthesen) No. I think you have seen in the  
18           chart previous that Chris showed, we have pretty  
19           consistent placement of our milk in Class I, and those 13  
20           facilities are the 13 facilities we use.

21           Q.     Okay. And so I have asked a similar question to  
22           other MIG members, and I'm turning to the Table 2 on  
23           page 12 of that same exhibit.

24           And I just want you to kind of verbalize what you  
25           want USDA to take away from looking at this table, if you  
26           could.

27           A.     (Mr. Warthesen) This is Adam again.

28           So Table 2, right, shows the 13 plants that



1 service our Class I use. And then there is a set of the  
2 "current," which is the current differentials for  
3 location. And then you have a model that was I think  
4 discussed by an earlier witness quite a bit, and then the  
5 "Model Average" is that next column. "Proposal 19"  
6 describes the biggest risk of 19, which would show the  
7 increases that -- that are -- that would be put forth.  
8 And "19 Less Current" is sort of that spike in cost.  
9 So -- and then the model -- "Number 19 Less the Model" is  
10 just 19 subtracted from that model average. So that "19  
11 Less Current," that's the increased cost that we would be  
12 facing on top of our existing pooling.

13 Q. So the major takeaway is that column and the  
14 impact it would have on OV?

15 A. (Mr. Warthesen) That's correct.

16 Q. Okay.

17 A. (Mr. Warthesen) And as I stated earlier, you  
18 know, when we aggregate those numbers against all our  
19 volumes, it is about a 30% increase on our pooling costs,  
20 just for this one proposal.

21 Q. And you talked a little bit about throughout this  
22 statement, and some we had just a question about that  
23 non-organic sales that you have.

24 What happens to that milk, that doesn't go into  
25 one of your organic plants?

26 A. (Ms. Nelson) So often -- this is Shawna. Sorry.

27 If we are in a position where something needs to  
28 go non-organic, for the reasons that I previously had



1 stated, we're often getting several dollars below the  
2 class price for that plant with a spot sale. So we are  
3 often looking for an opportunity to place that at a  
4 several-dollar loss.

5 Now, if you remember, right, we pay our farmers  
6 based on the cost of milk based on what we set with the  
7 Board of Directors, and so that full pay price less  
8 whatever we get out of it, that loss is something that the  
9 cooperative takes. And so you can imagine why we are so  
10 clear on what our target is and try to minimize that as  
11 much as we possibly can because those losses are losses  
12 that the cooperative bears.

13 Q. And when it goes to -- when it is sold, do you  
14 know, where does it end up? Does it end up -- what class,  
15 I guess, would I ask?

16 A. (Ms. Nelson) It can end up in any of the classes,  
17 and I haven't specifically looked at the data to be able  
18 to tell you where it ends up more often than not.

19 Q. Okay. So it can be anywhere from I to IV, it just  
20 depends?

21 A. (Ms. Nelson) Correct. On location, that we have  
22 the load availability, what plants have space, several  
23 factors when you are looking. Usually we know like the  
24 day that the load is being freed up or a day or two ahead,  
25 and so there's usually little awareness that we have of  
26 placement need.

27 Q. Okay. If you couldn't find a home for it, even at  
28 a discounted rate, what would happen to it?



1           A.     (Ms. Nelson) We try everything that we can to be  
2     able to place it, but we would have to dump the milk if we  
3     weren't able to find a home for it.

4           Q.     Okay. For your contracts with your producers, how  
5     long do those range?

6           A.     (Ms. Nelson) So we do not have contracts with our  
7     producers. They are membership agreements, and so they  
8     are a farmer-owner of our cooperative, and so those are  
9     ongoing with term- -- they have a termination period,  
10    right? But it doesn't have a start and a stop day.

11          Q.     Okay.

12          A.     (Ms. Nelson) It is on ongoing agreement.

13          Q.     And then -- I'm trying to relate this to what  
14    Mr. Hardy was talking about. You know, those fixed prices  
15    then can be adjusted throughout the year or -- can you  
16    talk a little bit about kind of how they might be  
17    adjusted?

18          A.     (Ms. Nelson) Absolutely. So the board looks at  
19    annually the pay price for the farmers and then will  
20    publish what they plan for the pay price to be. And so  
21    that's how the pricing is established is ultimately by  
22    decision of our Board of Directors. And at any point the  
23    board can review that and make a change to that pay price.  
24    Dave mentioned that that doesn't happen all that  
25    frequently. It is often through that annual review  
26    process. But it is set by the Board of Directors and  
27    communicated out.

28          Q.     Okay. And does your board feel that the pay price



1 you do offer is enough to cover their costs?

2 A. (Ms. Nelson) The board is always looking at  
3 feedback from farmers, and, you know, different years  
4 bring different challenges, and trying to take all of  
5 those pieces into consideration. But as not being on the  
6 Board of Directors, I ought not to answer if they feel  
7 like the current price is meeting those needs.

8 THE COURT: Could I ask a question about that. Do  
9 any of the employees sit in on the board meetings, take  
10 minutes or anything like that?

11 MS. NELSON: Yes. So employees do sit in on the  
12 board meetings. Some of them have different roles, so  
13 whether it's sharing information or presenting  
14 recommendations or taking notes. They are offered -- or  
15 invited to participate. So that would be at the  
16 discretion of the board who would be in the room.

17 BY MS. TAYLOR:

18 Q. Mr. Hardy said you guys could answer this  
19 question.

20 So the compo- -- do you know what the average  
21 components are for your member milk?

22 A. (Mr. Warthesen) This is Adam for the court  
23 reporter.

24 So we did in August submit information through the  
25 Milk Innovation Group to Sally Keefe. Sally Keefe  
26 aggregated that with other MIG members, and I think that  
27 was submitted as testimony early on.

28 Beyond that, I mean, our components -- you know, I



1 think we probably have a high- -- slightly higher  
2 butterfat than the conventional. But we'd probably really  
3 not say too much more about that because it is aggregated  
4 data that we think the Department probably has.

5 Q. Okay. Would you like to answer the question of  
6 whether you think it's more or less than what's currently  
7 provided for in the formulas?

8 A. (Mr. Warthesen) I'd really need to look at what  
9 we submitted again, and I probably shouldn't guess.

10 Q. Okay. For your fluid products, are they ESL?

11 A. (Mr. Warthesen) This is Adam again.

12 So for our fluid, we have both ESL, UHT, HTST, as  
13 well as aseptic.

14 Q. The whole gamut.

15 A. (Mr. Warthesen) Come again?

16 Q. I said you have the whole gamut.

17 A. (Mr. Warthesen) There you go.

18 Q. For your ESL, we had some discussion, I think it  
19 was this morning or yesterday, I can't remember, about  
20 what makes it an ESL product, so that part it is on the  
21 record.

22 But for the shelf life piece of that, can you  
23 speak to what the shelf life is for your ESL products?

24 A. (Mr. Warthesen) I think it would be similar to  
25 what the industry standards are. You know, I don't know  
26 that we would have anything unique to provide in that --

27 Q. Okay.

28 A. (Mr. Warthesen) -- in terms of additional



1 content.

2 Q. And do you all do any types of hedging to help you  
3 hedge some of your costs?

4 And I say this as from the Class I side of things,  
5 the discussion of the Class I processors to use hedging  
6 tools available to them to hedge particularly their ESL  
7 products?

8 A. (Mr. Warthesen) Yeah. This is Adam again.

9 No, I'm not familiar with anything that the co-op  
10 does --

11 Q. Okay.

12 A. (Mr. Warthesen) -- in terms of hedging. I think  
13 we might hedge fuel for some of our transportation, but  
14 that's totally unrelated.

15 Q. Yeah. Okay.

16 I wanted to turn to your presentation Exhibit 475,  
17 slide 10. And Mr. English helped -- kind of just helped  
18 us kind of get a little more clarity of what this chart is  
19 showing us, but I just want to make sure it's clear for  
20 the record.

21 So from -- if I look at 2017, and I'll use the  
22 number -- you know, the same number Mr. English used of  
23 minus 9%. So I'm to look at that, it tells me the pay  
24 price for CROPP producers was 9% less than what it paid in  
25 2016; is that accurate?

26 A. (Mr. Warthesen) That is accurate.

27 Q. And so in 2018, the pay price was similarly 9, 10%  
28 less than what you paid in 2017?



1 A. (Mr. Dahl) Correct.

2 Q. And then it looks like from there on out it's been  
3 pretty stable?

4 A. (Mr. Dahl) Yes.

5 Q. Just could you expand, maybe it is just curiosity  
6 on my part, what was going on in 2017 and 2018 that your  
7 pay prices were on the decline?

8 A. (Ms. Nelson) This is Shawna. I'll take that one.

9 So in 2017 and 2018, as a cooperative, our milk  
10 supply was higher than our demand. And so, ultimately,  
11 what we were talking about earlier as far as balancing  
12 costs, we were bearing the burden of those, and ultimately  
13 they had an impact on pay price.

14 So coming out of those years we spent time with  
15 our membership to say, how do we learn from that, how --  
16 as a business, how do we learn from that on the farm side.  
17 And that's where we evolved some of those tools around  
18 supply management in tandem with our farmers to try to  
19 prevent situations like that from happening again.

20 Q. Okay. Thanks. That's super helpful.

21 A. (Ms. Nelson) Yep.

22 Q. And then on the next page 11, is this Organic  
23 Valley information and not just organic industry  
24 information generally?

25 A. (Mr. Dahl) This is specific to Organic Valley.

26 Q. Okay. So if I look at this -- I want to look at  
27 the orange line, Class I percent of total supply. So that  
28 is of Organic Valley's total supply?





1 A. (Mr. Dahl) Correct.

2 Q. So when I look at that orange line generally, it  
3 looks like kind of, as a percentage basis at least, your  
4 Class I sales are relative -- have been relatively even?

5 A. (Mr. Dahl) Yes.

6 Q. Is that the same on a volume basis?

7 A. (Mr. Dahl) I would have to say the volume basis  
8 probably reflects similar, but I don't have the exact  
9 figure here.

10 Q. Okay. Thanks.

11 And one last question I asked someone this  
12 morning. For your contracts and how they have kind of  
13 evolved over time, right? So organic industry kind of had  
14 its birth in the '90s, and Federal Order pricing has been  
15 around for substantially longer than that.

16 So why has it been the organic contracts have  
17 been -- kind of not been able to account for Federal Order  
18 pricing when it's not a new rule that came about after  
19 you -- those industries started?

20 A. (Mr. Warthesen) Erin, when you talk about  
21 "contracts," are you talking about --

22 Q. Member prices, the fact that --

23 A. (Mr. Warthesen) Member, okay.

24 Q. -- as a whole on organic, not just CROPP and  
25 Organic Valley, but, you know, organic producers are paid  
26 generally a flat price.

27 And so I'm always curious as to the fact that  
28 these regs have been around for -- since the '30s,



1 generally, you know, and organic came around in the '90s,  
2 why it seems that the industry hasn't been able to somehow  
3 evolve those pay prices to reflect the fact that these  
4 Federal Order regulations exist?

5 A. (Mr. Warthesen) I might speak to that.

6 So our experience in creating a pay price is  
7 what Shawna said earlier, we're really owned by farmers.  
8 They are -- want to see a business, and at least us, as  
9 Organic Valley, perform in a manner that ensures that pay  
10 price for them. And so they have looked at what does it  
11 cost to produce milk on their organic farm, and they asked  
12 the business to be able to bring to bear the ability to  
13 return that from the marketplace. So it hasn't been  
14 something that's been built in since, you know, the '90s.

15 I will say we have been, as the organic industry,  
16 interested in an organic exemption because we don't think  
17 it fits right with our current pricing and the way we  
18 approach the marketplace. So it's really been driven by  
19 the farmers and by the unique relationship that we have  
20 had with them.

21 MS. TAYLOR: I think that's it from AMS. Thank  
22 you for your time.

23 THE COURT: Are there any follow-up questions  
24 before I invite Mr. English back to the stand?

25 There are none.

26 Mr. English.

27 MR. ENGLISH: Good afternoon again, Your Honor.

28 Chip English.



1 I have no further questions for the witnesses. I  
2 do now ask for your ruling on my earlier motion to admit  
3 Exhibits 473, 474, and 475.

4 THE COURT: I applaud you for the success of this  
5 panel format. I thought it was excellent.

6 Is there any objection to the admission into  
7 evidence of Exhibit 473, also marked MIG/OV Exhibit 22  
8 Corrected?

9 There is none. Exhibit 473 is admitted into  
10 evidence.

11 (Thereafter, Exhibit Number 473 was received  
12 into evidence.)

13 THE COURT: Is there any objection to the  
14 admission into evidence of Exhibit 474, also marked  
15 MIG/OV/CROPP Exhibit 22A?

16 There is none. Exhibit 474 is admitted into  
17 evidence.

18 (Thereafter, Exhibit Number 474 was received  
19 into evidence.)

20 THE COURT: Is there any objection to the  
21 admission into evidence of Exhibit 475, also marked  
22 MIG/OV/CROPP Exhibit 22B?

23 There is none. Exhibit 475 is admitted into  
24 evidence.

25 (Thereafter, Exhibit Number 475 was received  
26 into evidence.)

27 MR. ENGLISH: Your Honor, I believe these  
28 witnesses may be excused. And maybe while we reorganized



1 this area to be one witness, we have -- for various  
2 reasons, in the good news department, we have moved much  
3 more quickly today than we did in prior days, but also in  
4 a way that have changed our own schedule.

5 So we're going to actually call Cammie Garofolo  
6 next, G-A-R-O-F-O-L-O, rather than Juan Velez. And we  
7 have passed out Mr. Velez's -- Dr. Velez's testimony. We  
8 are now, while I think this is fixed up here, going to  
9 pass out the alternative testimony. And we're going to go  
10 with Cammie first, and, boy, if we keep going at this  
11 speed, maybe we'll get to Dr. Velez too.

12 THE COURT: So spell again the name of our next  
13 witness?

14 MR. ENGLISH: C-A-M-M-I-E, G-A-R-O-F-O-L-O.

15 All of this was predistributed -- I mean,  
16 presubmitted and sent to everybody, but we hadn't quite  
17 handed out things.

18 And, yes, the three of you may -- you don't have  
19 to hang out.

20 THE COURT: And I thank you, each of you.  
21 Excellent work.

22 All right. Let's take a 15-minute break. Please  
23 be back and ready to go at 3:20.

24 (Whereupon, a break was taken.)

25 THE COURT: Let's go back on record.

26 We're back on record at 3:21.

27 I'd like the witness in the stand to please state  
28 and spell your name.



1 THE WITNESS: My name is Cammie Garofolo. I know  
2 it's hard to pronounce. Spelled G-A-R-O-F-O-L-O.

3 THE COURT: Have you previously testified in this  
4 proceeding?

5 THE WITNESS: No, I have not.

6 THE COURT: I'll swear you in.

7 CAMMIE GAROFOLO,

8 Being first duly sworn, was examined and  
9 testified as follows:

10 THE COURT: Thank you.

11 And you have heard the instructions to many  
12 witnesses. I think you have already mastered your  
13 microphone distance.

14 I'll call on counsel to identify himself.

15 MR. ENGLISH: Thank you, Your Honor.

16 This is Chip English with the Milk Innovation  
17 Group.

18 And we have with this witness three presubmitted  
19 documents. The first is Exhibit MIG/Aurora-18, which I  
20 would like to have marked I believe as 476.

21 THE COURT: Correct.

22 (Thereafter, Exhibit Number 476 was marked  
23 for identification.)

24 MR. ENGLISH: We then have exhibit MIG/Aurora-18A,  
25 which I would like to have marked as 477.

26 THE COURT: Correct.

27 (Thereafter, Exhibit Number 477 was marked  
28 for identification.)



1 MR. ENGLISH: Those two are written statements.

2 And finally I would have marked a PowerPoint  
3 presentation, labeled milk MIG/Aurora Organic Dairy  
4 Exhibit 18B. I would like to have that marked as 478.

5 (Thereafter, Exhibit Number 478 was marked  
6 for identification.)

7 THE COURT: Correct. And all have been so marked.

8 DIRECT EXAMINATION

9 BY MR. ENGLISH:

10 Q. So I would like to start, Ms. Garofolo, with a  
11 brief discussion of your background.

12 A. Okay. I am the Chief Financial Officer of Aurora  
13 Organic Dairy. I have been at Aurora over 17 years. I  
14 grew up on a small farm in Northwest Missouri. I have a  
15 bachelor's degree from the University of Missouri in  
16 business administration. And I have a master's degree in  
17 economics from the University of Colorado.

18 Q. And with that, doing it a little differently, I'm  
19 going to have you provide your PowerPoint presentation  
20 with as little -- little commentary from me, as little as  
21 possible, so I would like to tell the story of Aurora  
22 Organic Dairy.

23 A. All right. So I'm going to start just telling you  
24 a little bit about our business. We are a vertically  
25 integrated producer and processor of organic milk. We own  
26 and operate four dairy farms in Colorado and Texas. The  
27 farms are our foundation. We have about 37,000 organic  
28 acres that we own, and we have about 25,000 cows in our



1 herd. Across our total company we have about 800  
2 employees. And the milk that we supply is about 60% of  
3 our overall milk supply that we process, so it is a very  
4 significant and meaningful part of our business, and it's  
5 where we started.

6 We have two processing plants, ESL processing  
7 plants. One is in Platteville, Colorado, and the other is  
8 in Columbia, Missouri. All the milk that we handle in our  
9 two plants is certified organic, and all of it is ESL or  
10 aseptic, so extended shelf life.

11 This is a geographic view of our operating  
12 footprint you can see that we have got our operations in  
13 the center part of the U.S. We do ship nationwide from  
14 our Central U.S. footprint. We have product in all 50  
15 states, which we ship from our two plants in Colorado and  
16 Missouri.

17 This is a view of the products that we sell. You  
18 can see we supply a variety of milk products in a variety  
19 of different packaging sizes ranging from gallons, half  
20 gallons, to a variety of small bottles. We do -- most of  
21 the products that we supply -- most of what we handle is  
22 Class I. We're very, very heavy Class I. We do a little  
23 bit of Class II.

24 And our excess butterfat we send to a co-packer to  
25 turn into butter. All of these products are sold at  
26 retail. We don't have any of our products going through  
27 schools or institutional channels. It is all retail  
28 products. And we do consumer brands, so we are private



1 label.

2 So I thought I would describe a -- compare and  
3 contrast some of the differences of organic versus  
4 conventional and what makes organic a little bit  
5 different. We have touched on this with Organic Valley's  
6 testimony and Horizon's testimony, and I just wanted to  
7 highlight a few things which I think are very relevant  
8 when it comes to the Federal Market Orders.

9 First of all, the utilization of the organic milk  
10 supply chain is very different from conventional. We are  
11 more heavily weighted in Class I, as was discussed in the  
12 previous testimony, and very little of the overall milk  
13 supply goes into III and IV. So when we're thinking about  
14 incentives to create milk available for fluid use, there's  
15 not a lot of shifting between classes that can happen to  
16 do that.

17 THE COURT: Let me stop you. We're keeping up  
18 with you because we are studying your slide as you go, but  
19 just imagine yourself capturing every word and slow down.

20 THE WITNESS: I will do that. Thank you.

21 THE COURT: Thank you.

22 THE WITNESS: So the second difference between  
23 organic and conventional is also the price. The price for  
24 organic milk is much higher than conventional, and that is  
25 because the cost of production is a lot higher. There's a  
26 lot of differences in the organic production practices  
27 that drive that production cost, and that production cost  
28 difference is the basis for why the pay price is so





1 different.

2 The third thing about organic is that increases in  
3 the supply require really long lead times. There's a lot  
4 of upfront costs to expand organic supply. There's  
5 transition timelines and costs that are incurred in order  
6 for a conventional dairy to convert to organic.

7 So it's -- short market signals can't bring on  
8 more organic milk. It is a very long planning process, so  
9 there's a lot of thought and a lot of upfront capital and  
10 risk that's taken to do that. So that's very different.

11 And then just, frankly, the fact that organic milk  
12 is a certification, it's a -- it's legally different. You  
13 cannot put non-organic milk in a carton and label it  
14 organic. So when you have an organic milk supply that you  
15 have invested in that costs a lot more, as you can  
16 imagine, the balancing risk for that -- we have talked a  
17 lot about that, I will talk about it too -- is very, very  
18 high. And so the industry puts a lot of effort into  
19 balancing its own supply.

20 THE COURT: Before you go on to the next slide,  
21 you are on page 6.

22 THE WITNESS: Yes, that's correct.

23 THE COURT: Read the white writing down on the  
24 picture.

25 THE WITNESS: This is a picture -- and I should  
26 have done this on my prior slide as well. This is a  
27 picture of one of our dairies. This is our Pepper Dairy,  
28 which is in Dublin, Texas. That's in the center of the



1 state. It's a grass-fed organic dairy.

2 THE COURT: And if you would like to go to the  
3 previous slide, I would like you to.

4 Oh, the one where you said you would tell us more  
5 about the picture.

6 THE WITNESS: Sure. My first slide was of our  
7 High Plains Dairy farm. This is in Gill, Colorado, kind  
8 of in the northeastern part of the state, not too far from  
9 our processing plant. This was one of our -- this was our  
10 second dairy in our system.

11 THE COURT: All right. And that was on your  
12 page 2.

13 THE WITNESS: Yes. This dairy is in Colorado.

14 THE COURT: Thank you.

15 And Gill is spelled?

16 THE WITNESS: G-I-L-L.

17 THE COURT: Which is the British way of saying  
18 Jill.

19 All right. You're now on page 7.

20 THE WITNESS: Okay. So I'm going to start with  
21 our support for MIG Proposal 20, which is to reduce the  
22 Class I base differential from \$1.60 to zero.

23 The reason that we support that is that we feel  
24 that the \$1.60 that we pay into the producer settlement  
25 fund does not provide the services or it does not do what  
26 it's intended to do for organic. Talking about grass --  
27 excuse me, I've got grass on my mind after talking about  
28 the grass-fed dairy.



1 I'm not aware of any Grade B organic milk. We  
2 don't -- we can't receive it.

3 I'll talk a lot about balancing. We do a lot and  
4 have invested a lot to balance our own milk supply, and  
5 unfortunately, the FMMO system doesn't provide any  
6 mechanism to help us balance. We have to do it ourselves.  
7 And we have invested a lot to do that.

8 And in our case, and I'll talk about that, I know  
9 this is a -- this is a big topic, is who bears the  
10 balancing costs. And in our business, the balancing costs  
11 aren't borne by our processing side along, it is borne  
12 by -- we -- it's in partnership with our dairy farms and  
13 our dairy partners, and I'll talk about how we go about  
14 doing that.

15 And lastly, in terms of the incentives, there's --  
16 again, there's not really any -- the price surface, so the  
17 pricing mechanisms in the FMMO system don't provide any  
18 incentives to really attract any additional organic milk  
19 into Class I. It doesn't encourage it to shift between  
20 classes, and it doesn't encourage new supply.

21 So I want to talk about balancing and how we go  
22 about it. And these bullets are numbered for a reason  
23 because this is the hierarchy that we follow when we're  
24 looking at how we need to balance our milk supply. And  
25 really I should have like a sub A before number one, which  
26 is planning.

27 And I heard some discussion, OV talked about how  
28 they plan. We plan a lot. Planning is really important,



1 not only in the short-term of daily or weekly or quarterly  
2 or annually, but we plan milk supply years in advance.  
3 And you can imagine it's very, very difficult to actually  
4 project what's going to happen in an industry two years,  
5 three years down the road, but we are talking about milk  
6 supply that far in advance.

7 But when I look about the tactics about how we  
8 operate on an ongoing basis, our first line of balancing  
9 is in the products that we make, and they are all extended  
10 shelf life or aseptic. We use inventory and carry  
11 significant amounts of inventory all the time, so we carry  
12 anywhere from two weeks to three weeks of our sales in  
13 inventory. And we do -- and sometimes it gets larger  
14 during periods where we have more milk, and we draw down  
15 on that inventory when milk supply is a little bit  
16 shorter.

17 But inventory won't carry us alone, even with the  
18 long shelf life. So we do produce excess milk, especially  
19 sometimes in the flush season, into organic powder. We  
20 use that powder in our own production to fortify for fluid  
21 milk that we sell into California.

22 If we can't use all of our organic powder, which  
23 occasionally we have more than what we need for our own  
24 needs, we will have to find an organic market for it. We  
25 don't dispose of it into the conventional industry, but we  
26 do look for other organic food manufacturers who use  
27 organic powder in their production processes, and that's  
28 where we -- that's where we market it. But our own use is



1 primary.

2 And then here is where things get a little bit  
3 sticky. If we see that we have a persistent oversupply  
4 that is long lasting, then we have to look at, what do we  
5 do to balance our larger milk supply?

6 Let me tell you a little bit about the -- and so  
7 let me talk before I get into all that we do from a farm  
8 perspective, let me tell you a little bit about how we  
9 source the milk that is not from our own farms.

10 We buy from independent producers, and we have --  
11 we do buy from a couple of co-ops. But our co-op  
12 arrangement is not the typical co-op arrangement. There  
13 is a specific producer on the other side, and the co-op is  
14 really just a middle man that the producer has a  
15 relationship with that's being maintained. So the co-op  
16 isn't providing a balancing service to us in this  
17 traditional sense, but rather we're working with that  
18 producer on the other side.

19 And our contracts are either -- we have a variety  
20 of ways that we source, but most of our contracts are for  
21 either fixed -- they are either fixed or fixed within a  
22 range in terms of volumes, but we also have contracts  
23 where we take all the supply that the producer is  
24 producing. So the majority of the balancing risk is  
25 falling on us.

26 And when it comes to a time where we have too much  
27 milk and we are faced having to address it through the  
28 farm side, often we'll go to our own farms first because



1 we have contractual obligations with the independent  
2 producer or the co-op, and we will turn to our own farm  
3 first and adjust herd practices, milking frequency, things  
4 like that.

5 We also will turn to our farmer partners if we  
6 have to and ask them to adjust their milk supply as well.  
7 And when we do, often they are -- say often, pretty much  
8 always -- there's some kind of compensation that we have  
9 to provide that producer in order for them to adjust their  
10 own operational practices to adjust their milk supply. So  
11 it's not a one-sided thing, and it's very much a partner  
12 relationship where we're all working together to get  
13 through the cycle in order to get out on the other side  
14 healthy. Because it doesn't do us any good to have that  
15 not work in a mutually beneficial way because we need them  
16 and they need us.

17 And when push comes to shove, we do occasionally  
18 have to dump or have our milk go to animal feed. That's  
19 certainly a last resort, but it happens.

20 I know the question has come up from -- in this  
21 hearing about how much organic milk gets balanced into the  
22 conventional market. And in our case I looked back over  
23 the last ten years, and we have sold into the conventional  
24 market .4% of our milk supply. And when we have done so,  
25 it's been into either Class III or Class IV. And it's  
26 been at a price no higher than the Class III or Class IV,  
27 and often there have been times where it's been lower.

28 The conventional market for us is just not a



1 viable outlet. If we have milk to go into -- and we try  
2 to go into the conventional market at a spot -- in the  
3 spot market, often we find that the buyer that can take it  
4 is so far away that the cost to haul it doesn't even make  
5 it worth it to send it, so it is better for us almost to  
6 dump it than to pay as much or more to haul it there than  
7 what we're going to get paid. So we really focus on  
8 balancing within our own footprint a lot. And anybody  
9 that you talk to at Aurora can tell you the "B" word comes  
10 up every day.

11 So I want to show you some -- a little bit of  
12 what -- how we have invested in balancing. So this is a  
13 picture of one of our automatic storage and retrieval  
14 systems. This is looking up. These are pallets of  
15 organic milk. This particular facility holds 12,000  
16 pallets. We have two of them.

17 To give you some sense of the scale of how much  
18 inventory we carry, this particular facility holds  
19 2.5 million gallons of milk. If you unloaded all the  
20 pallets, loaded them on trucks, and lined the trucks up on  
21 the highway, end to end to end, they would cover seven and  
22 a half miles. So it is a significant amount of product  
23 that we carry all the time.

24 The other place that we have invested is in our  
25 processing facilities, in our ESL and our aseptic lines.  
26 ESL processing equipment costs three times more than an  
27 HTST line, and an aseptic processing and filling line  
28 costs five times more than an HTST line. So there's



1 significant capital tied up into being able to achieve  
2 those extended shelf lives, which give us flexibility when  
3 we're needing to balance fluctuations and supply versus  
4 demand.

5 THE COURT: Before you leave page 9, would you  
6 read the white writing?

7 THE WITNESS: Yes. The writing at the bottom  
8 says, "Cold storage warehouse adjacent to Platteville  
9 plant," in Platteville, Colorado.

10 THE COURT: And that is not ESL or aseptic?

11 THE WITNESS: It is.

12 THE COURT: Oh, it is?

13 THE WITNESS: This particular warehouse is --  
14 these pictures here, this is all ESL. So this still  
15 requires it to be refrigerated. But this product has more  
16 than 65 days of code.

17 THE COURT: Thank you.

18 THE WITNESS: So we talked -- I talked a little  
19 bit about incentives to -- for supply for organic fluid  
20 production. In our case, as you can tell, this is a  
21 picture of our Coldwater Dairy Farm, which is in the  
22 Panhandle of Texas. We have two milking parlors there.  
23 You can see them on the left and on the right.

24 We have invested significant capital and have  
25 taken a lot of risk in order to ensure a sufficient milk  
26 supply for our organic fluid customers. And we have -- or  
27 we have transitioned thousands of acres from conventional  
28 to organic, and we've provided financial support to those





1 that supply us as well. So it -- we're not only investing  
2 in our own facilities, but we have provided capital for  
3 other farmers to supply us.

4 So I want to talk about Aurora's opposition to  
5 Proposal 19, which is the increase in the Class I  
6 differential. We're opposing National Milk's proposal on  
7 three grounds.

8 The first one is that we believe that the Class I  
9 differential should not be increased in Colorado, in  
10 particular, because Colorado has an adequate milk supply  
11 to meet fluid milk demand in Colorado. And I'm going to  
12 walk you through that, taking also into account our  
13 organic footprint, which is different.

14 Second, we believe that increasing the  
15 differential on the basis to compensate farmers for  
16 increases in hauling costs don't make sense for organic at  
17 all. In our model, the organic -- the hauling costs are  
18 borne by the processor. We don't ask our farmers to incur  
19 those costs. We pay the farmer a farm gate cost, and it  
20 makes them indifferent to where their milk goes.

21 And lastly, I want to show you how the organic  
22 supply chain is different, in particular and in the  
23 context of the University of Wisconsin model, which is  
24 being used to set the price surface. The organic supply  
25 chain is very different, and I'm going to show you in our  
26 case how different it is versus what the model assumes  
27 happens. And I think that's something that we have to be  
28 very mindful of when we are setting policy based on the



1 model to organic products.

2 So first I'd like to talk a little bit about  
3 Colorado. I know there was a lot of testimony earlier in  
4 the hearing about Colorado. So what I want to do is, I  
5 took the analysis that Steve Stout from DFA prepared,  
6 where he was looking at the milk supply in Colorado and  
7 the milk -- the consumer demand for fluid milk in Colorado  
8 and was showing how much or how little milk was going to  
9 be available in Colorado and why there needed to be an  
10 additional adjustment to the model results for the  
11 differential in Colorado.

12 And what I want to show is that if you break down  
13 the milk supply in Colorado and the demand in Colorado,  
14 and you take into account our organic supplies and our  
15 organic consumers, which are different, that there's more  
16 than enough milk in Colorado to not only meet the organic  
17 supply but also the conventional supply when you factor  
18 out the organic, which Aurora has covered.

19 So what this -- what this table does is it -- the  
20 years is a little different than Steve's analysis because  
21 I used the years in which there was a USDA agriculture  
22 production survey that reported the amount of organic milk  
23 in the state. Otherwise, I used all the same data sources  
24 that Steve had used.

25 And what you can see is that organic milk supply  
26 during this timeframe increased 164%, conventional organic  
27 supply -- or conventional supply increased 60%, and the  
28 overall Colorado supply was 64%. So organic contributed



1 significantly to the increase in milk supply in Colorado  
2 over this timeframe.

3 And then if you break down what's happening in  
4 demand, which is on the right side of the table, you will  
5 see that organic beverage demand increased 68%, whereas  
6 conventional beverage demand decreased 11%.

7 So even though there was a large increase in both  
8 conventional supply and organic supply, and there are  
9 other demands on the conventional supply in the state,  
10 there's still a lot of milk in the state, and in  
11 particular, with the increase in organic in terms of fluid  
12 milk demand, there's plenty of milk in the state to meet  
13 both organic and conventional.

14 And I think if you look forward -- and this is my  
15 next table, so this is Table 2 on page 13 -- what I did is  
16 I rolled the same analysis forward to 2022 to look at the  
17 claim that there wasn't enough excess milk in Colorado to  
18 be able to serve the fluid need after taking into account  
19 DFA's contractual obligations.

20 Now, while on principle I don't think policy  
21 should be set around a private contract, I wanted to show  
22 that it doesn't actually matter. If you take out the  
23 organic demand, which Aurora has supplied, there's -- and  
24 you look at what DFA claims that they have left that's  
25 available for fluid -- to meet fluid demand, there's still  
26 more than enough milk available in the state. So I don't  
27 think the economic conditions in the state warrant any  
28 type of increase in the Class I differential to attract



1 more milk into the state.

2 So I want to talk briefly just -- I'm just going  
3 to touch on this and keep going in terms of hauling.  
4 There was also an argument that we needed to increase the  
5 differential in Colorado because transportation costs have  
6 gone up. I'm not disputing that transportation costs have  
7 gone up, they have. But I think that when you look at  
8 organic, we, the processor, pay the hauling costs. Our  
9 farmer doesn't have to bear that cost at all. So asking  
10 me to increase the Class I differential that I pay into  
11 the producer settlement fund to compensate for additional  
12 transportation costs that my producer doesn't incur, that  
13 I have already paid, means I'm effectively paying that  
14 cost twice, which just doesn't make sense.

15 This particular picture is our Platteville Dairy  
16 Farm, which is adjacent to our Platteville dairy plant.  
17 So you actually can see the cows do get the vantage of the  
18 plant in their background. And if you look even further,  
19 you can see some mountains. Not in this picture though.

20 So I want to talk a little bit about the model.  
21 The model, I understand, has a lot of inputs and is very  
22 rigorous in many aspects. But I think that there's one  
23 important aspect that is missing, and it's concerning when  
24 we're using it to set policy. And that is the assumptions  
25 that it makes in regards to organic supply chains, and  
26 mine in particular.

27 So I would like to walk you through. The left  
28 side is just a snapshot of the area of the United States



1 where my two plants reside. And you can see on the left  
2 I've got a red circle. That little triangle is our  
3 Platteville plant. And on the right side, the triangle  
4 with the red circle is our Columbia, Missouri, plant.

5 Now, the way that these lines work, the orange  
6 lines are the assumptions about where the milk is shipped  
7 from that plant, and the green lines are the assumptions  
8 on the raw milk flows.

9 So if you look at my Platteville plant, you will  
10 see that there is green lines actually leaving where my  
11 plant is moving south. That's because my plant is in Weld  
12 County, which is, I think, 60% -- I have to look in my  
13 testimony -- I think it is 60% of the cows in Colorado are  
14 in Weld County. So the milk supply is almost -- is very  
15 concentrated in Weld County, and it is actually moving out  
16 of the county, not in.

17 The orange lines are the assumptions as to where  
18 my plant distributes. So it assumes that I'm reaching as  
19 far as Western Nebraska, Southern Wyoming, and Eastern  
20 Colorado.

21 And if you look over to the Columbia plant, you  
22 can see that it assumes my milk supply is coming from  
23 Southern Iowa, and I'm hitting St. Louis.

24 So now if you look at the map on the right, the  
25 orange states are where I distribute -- I ship milk out of  
26 my two plants. And you can see my two plants are circled  
27 in red, and the green dots are where my dairy farms are  
28 that are supplying the majority of my milk. So you can



1 see that my milk supply is traveling a much longer  
2 distance to my plant, and my packaged milk, my finished  
3 goods, are going much farther and much wider.

4 And, yes, I have Alaska and Hawaii on here for a  
5 reason. We do ship product that ends up in -- that goes  
6 out to those two states.

7 So you can see that how my milk flows and who I  
8 actually compete against when it comes to who the  
9 processors that I compete against, I compete against  
10 processors across the U.S., not in Colorado specifically  
11 or Missouri specifically.

12 And I think this is very concerning because we're  
13 looking to set policy for organic products based on this,  
14 because we are being grouped in with everything else,  
15 without being considered that we're different.

16 And I don't think my organic supply chain is all  
17 that different. I didn't ask OV to do the same thing, but  
18 if -- you know, they did show a map of how they are spread  
19 out, and I would guess if they overlaid where their  
20 product ends up, they would end up with a map of the U.S.  
21 that's colored very similar to mine.

22 So we also oppose other -- other proposals, and  
23 I'm just going to go through these pretty quickly. We do  
24 oppose Proposals 1 and 2, which relate to the milk  
25 components. Changes in the component values and the skim  
26 price formulas for Class I, all it does for me is it just  
27 increases my cost because it increases what I pay into the  
28 producer settlement fund. I cannot change my class --



1 what I'm charging for my milk to my customers based on  
2 those higher component prices.

3 We also propose Proposals 13, 16, 17, and 18,  
4 which are the mover proposals. Again, our organic prices  
5 aren't associated in any way with classified pricing, so  
6 changes in the mover don't benefit my organic producers at  
7 all. And I do believe philosophically that Class I  
8 conventional processors should have access to the same  
9 risk management tools as the rest of the industry.

10 We oppose Proposal 21, which is the Class II  
11 differential. We do produce some creams and creamers,  
12 which are Class II. They are in a -- they are in with our  
13 fluid plant, and we cannot reformulate or change anything  
14 if that Class I differential is raised in our formulation.  
15 So for us it just becomes an added cost, and we don't --  
16 when -- we don't have any -- we don't get any benefit out  
17 of that -- that -- to offset that additional cost.

18 So I wanted to kind of conclude my prepared  
19 remarks with a view, frankly, for myself as a consumer,  
20 and a little bit as an economist I guess, since I do have  
21 an economics degree.

22 There's been a lot of discussion about elasticity.  
23 And I happened to be in my grocery store last week. I  
24 always stop by the dairy case to see what's happening.  
25 And I was really surprised because part of the dairy case  
26 was empty, and this is a picture of it.

27 This is a Safeway. It's -- it is the store I shop  
28 all the time. It is just around the corner from my house.



1 And they had a \$1.97 gallons. And I looked at this  
2 picture and said, "How is milk not somewhat elastic if you  
3 sell gallons at \$1.97 and the shelves are empty?" It  
4 tells me that there is some elasticity. And we can argue  
5 about how much, but the fact is price does matter. And  
6 I -- I do think that price over time does have a lasting  
7 impact.

8 Now, I want to go to the next slide, page 18,  
9 because this is a picture of the dairy case, in particular  
10 where I as an organic supplier play, I'll just put it that  
11 way. And there are a couple of notable things about the  
12 dairy case as a consumer that I want to point out.

13 First of all, half of the doors were non-dairy.  
14 Half of the doors were dairy products, milk-based  
15 products; half the doors were not. It's a very, very  
16 competitive space.

17 And then if you look at, just -- just step back  
18 and ask yourself, "Where are all the yellow promotion  
19 tags? And on what products are they on?" They are on the  
20 plant-based milk, the non-dairy products on the right-hand  
21 side of the picture. The left side is all the organic  
22 products, the value-added products. There are a few  
23 conventional gallons in the bottom. But the left side is  
24 the value-added dairy space, and the right side is the  
25 plant-based space. And non-dairy space, but it is  
26 primarily plant-based. You can see it, it is Oatly oat  
27 milk, almond milk.

28 This is who we compete against, and this is the --





1 this is the competitor that Class I faces. And I think if  
2 we continually raise prices that cause all of us Class I  
3 producers to have to raise prices some way somehow, and  
4 we're limited in how far we can go, Class I volume is  
5 going to go down because we're going to lose this battle,  
6 because we can't compete with all those yellow shelf tags,  
7 not if our costs are going up.

8 Class I volume has declined 18% over the last ten  
9 years alone. I'm not talking about per capita, I'm  
10 talking about absolute volume. There is less class milk  
11 out there being sold. There's less -- and if we continue  
12 to reduce Class I volume -- and now I'm just talking about  
13 industry total, not organic -- there's going to be less  
14 money for farmers. There just is. And I don't know how  
15 to overcome that.

16 I think the way to win is we've got to encourage  
17 innovation, and we've got to look and see what consumers  
18 want, and we've got to create a system that supports and  
19 encourages us to create products that consumers want so we  
20 can grow the industry and support the farmer.

21 Consumers have a lot of choices, and we want them  
22 to choose us, not non-dairy, not plant-based beverages,  
23 not any of the other stuff. We want them to choose milk.  
24 And if we continue to raise prices, then they are not  
25 going to choose milk, they are going to choose something  
26 else, because we're going to lose in that game.

27 And I think that, you know, there's been a lot of  
28 talk about organic and -- you know, in terms of the FMMO



1 system, you know, I believe that the system needs to  
2 reflect the current marketplace, and the fact that organic  
3 isn't really recognized or supported in any way, and we're  
4 asked to pay more and more into the pool, and that money  
5 goes to the rest of the industry and doesn't go at all to  
6 our farmers or to support anything that we're doing in  
7 terms of balancing or creating new supply and new  
8 products. I think that's a problem, and that's a part of  
9 the system that needs to be modernized. And I know that  
10 wasn't permitted in this hearing, but I think it's  
11 relevant in terms of when we're talking about you are  
12 asking us to continue to pay more to support the farmer.

13 And if the \$1.60 in our proposal gets approved,  
14 we'll take the \$1.60 and we'll use it to better keep up  
15 with prices at the farm gate and to expand supply to grow  
16 what we sell, to expand the market to benefit the farmer.  
17 That's what we'll do. And we'll try to balance -- and  
18 we'll invest in balancing so we can make sure that every  
19 drop of milk that we have, that none of it gets dumped,  
20 that it all ends up out in the marketplace to consumers.

21 So that's all I've got for my kind of prepared  
22 stuff.

23 Chip, you want to --

24 MR. ENGLISH: This is Chip English.

25 There's certainly no way I can add on that, and  
26 I'm not going to try.

27 Your Honor, I proactively in advance of  
28 cross-examination, recognizing your order will come later,



1 move for the admission of Exhibits 476, 477, 478.

2 And the witness is available for further  
3 examination.

4 THE COURT: Thank you, Mr. English.

5 Who would like to begin cross-examination?

6 CROSS-EXAMINATION

7 BY DR. CRYAN:

8 Q. Hello, Mrs. Garofolo.

9 A. Hi, Dr. Cryan. Nice to see you.

10 Q. Nice to see you too.

11 A. How are you?

12 Q. Very well. I am Roger Cryan with the American  
13 Farm Bureau Federation, for the record.

14 I appreciate your passion and everything you are  
15 doing here. So thank you for that.

16 Regarding Class II, you said you're primarily  
17 using fluid -- it is primarily fluid cream that you are  
18 producing; is that right?

19 A. Correct. Yeah, we do have half and half, heavy  
20 whip, coffee creamers, that sort of thing.

21 Q. And your -- your milk requirement, that is your --  
22 the raw cream you are using, ends up somewhere in the  
23 ballpark of \$50 per hundredweight or more, that's in the  
24 Federal Order minimum, would be \$50 hundredweight or more  
25 for heavy cream; is that right?

26 A. That I'm getting organic cream for \$50 a  
27 hundredweight?

28 Q. Oh, no, not the organic cream --



1 A. I wish.

2 Q. -- but the obligation, the Federal Order  
3 obligation is \$50 or more?

4 A. Yeah. I have to do the math but --

5 Q. Typically?

6 A. -- I'll trust you. I don't know. I haven't  
7 looked at it specifically.

8 Q. Do you think a \$0.76 increase in the Class I --  
9 Class II price, Class II differential, will affect your  
10 use of Class II milk?

11 A. It -- it will just -- so I'm sorry, say that --  
12 say your question again?

13 Q. Do you believe that a \$0.76 increase in the  
14 Class II differential will affect your use of Class II  
15 cream?

16 A. It will increase my cost that is hard for me to  
17 pass along. We will look for alternative uses for it if  
18 it becomes cost -- if the margin and the cost doesn't make  
19 sense anymore.

20 Q. Okay. But it would be an increase of about a  
21 percent?

22 A. I'm sorry, say it again?

23 Q. Wouldn't that be an increase of about 1%?

24 A. I have to do the math. But we think in terms of  
25 pennies, right? You add -- I mean, passing a penny along  
26 in any product to a retailer is not a simple thing. So if  
27 it's whatever percentage it is, when it translates to  
28 pennies of profit or pennies of cost, it's very difficult



1 to pass along.

2 Q. Sure. Okay.

3 Your slide showed the dairy case, including the  
4 un-dairy stuff on the right. You said that the specials  
5 are all on the value-added stuff. But of course, you also  
6 made a point of pointing out that conventional milk was  
7 selling for \$1.97 a gallon.

8 Do you believe that we should -- that should be  
9 lower, that price should be lower?

10 A. Absolutely not. I did the math on that product.  
11 I don't -- it's -- that's not a sustainable product. I'm  
12 not advocating for it at all.

13 My point on that picture is just that consumers  
14 respond to price. Milk consumers respond to price. I  
15 don't advocate at all for \$1.97 gallons. That's not  
16 sustainable.

17 Q. You -- you touched on it more in your -- in the  
18 narrations of your slide, I think, than in what you  
19 actually said, but you suggested that we need more  
20 innovation in the dairy sector.

21 How does a lower Class I price spur innovation?

22 A. It frees up capital, and it allows you to -- you  
23 know, for us -- so I'll speak for us. So the \$1.60 for us  
24 is what -- it creates what we pay -- it's what we pay into  
25 the producer settlement fund, that Class I differential.  
26 And for us, we don't get any value out of what we pay into  
27 the producer settlement fund. We don't get assistance  
28 with balancing. It doesn't create any incentives for milk



1 to move to Class I. So if we had that \$1.60, we would  
2 first use it to expand supply and support our farmers, and  
3 we would use it to create opportunities to sell more milk,  
4 which also benefits the farmer.

5 Q. But do you believe that in a competitive market,  
6 if everybody's Class I price goes down by \$1.60, that that  
7 would actually allow you to collect another \$1.60 that you  
8 can spend on innovation?

9 A. What do you mean allow me to collect another  
10 dollar? I'm not sure I understand.

11 Q. In a -- if everyone's minimum price obligation is  
12 dropped by \$1.60, doesn't that just end up going into the  
13 market price --

14 A. No, not necessarily.

15 Q. -- doesn't competition just force prices down  
16 across the board?

17 A. No. I don't necessarily think that's the case.

18 Q. Okay. Okay.

19 And finally, the -- if -- again, if I understand  
20 right from what you were presenting, that you are  
21 primarily a Class I handler?

22 A. That's correct.

23 Q. And some of the numbers we saw with the last  
24 witness indicate that across the board organic milk is  
25 about 55% Class I.

26 You are -- your use is not representative of that,  
27 yours is fundamentally a Class I business?

28 A. We are fundamentally a Class I business.



1 DR. CRYAN: Thank you very much. Thanks.

2 I'm done. Thank you.

3 CROSS-EXAMINATION

4 BY MS. HANCOCK:

5 Q. Good afternoon. I'm Nicole Hancock for National  
6 Milk.

7 I'm on Exhibit 478 on page 16 of your PowerPoint  
8 presentation. This is where you have outlined Aurora's  
9 position on the proposals that are here in the hearing.

10 A. Yes, that's correct.

11 Q. And I think it's fair to say that because Aurora  
12 is an organic Class I fluid milk company, primarily, that  
13 Aurora does not feel that the Federal Order offers it  
14 benefits. I think you said that multiple times. Is that  
15 fair?

16 A. Certain benefits. I think there are some benefits  
17 they offer. The information that the Federal Order system  
18 provides is very useful and helpful. We do use that. We  
19 use their lab for testing services.

20 I just think that the fundamental tenets on which  
21 the orders are trying to achieve in terms of providing an  
22 adequate supply of milk and incentive to move milk to  
23 Class I doesn't do anything for organic and versus what we  
24 pay into the pool.

25 Q. And you supported the proposal that's not part of  
26 this hearing but could be at some point in the future  
27 considered, you support having organic milk exempted out  
28 of the pooling requirements?



1 A. I do.

2 Q. And part of that is -- is -- or that's what's  
3 driving, in large part, the opposition that you have  
4 against some of these proposals, that increasing the price  
5 to Aurora doesn't give you a corresponding increase in any  
6 benefits?

7 A. That's correct. All these proposals increase my  
8 costs without any benefit, and it's -- they are not costs  
9 that I can pass along either.

10 Q. And in turn, you also support the proposals that  
11 would decrease your pool obligations in order to reduce  
12 that obligation where you don't believe you are getting  
13 any benefit?

14 A. That's correct.

15 Q. And you had just said a moment ago when you were  
16 talking with Dr. Cryan, that you didn't believe that  
17 removing the \$1.60 in base differentials would result in  
18 a -- translate into \$1.60 reduction in the price of the  
19 products at the retail level.

20 Is that right?

21 A. I said not necessarily. I think different  
22 reta- --I'm sorry -- different processors are going to use  
23 that -- would use that money differently. I think it  
24 really -- I can't really speak to what others would do  
25 exactly except for what we would do, but I don't think it  
26 necessarily reduces prices.

27 Q. Okay. Because it means that just a movement on  
28 the price doesn't translate into a dollar-for-dollar





1 reaction at the retail level; is that right?

2 A. Yes, that's true.

3 Q. And when we were just looking at \$1.97 per gallon,  
4 that would result in a \$0.37 gallon of milk, right?

5 A. Yeah. And we know that wasn't true.

6 Q. Right. That's not going to happen?

7 A. That's true.

8 Q. Because even if you could provide it to your  
9 retail outlets for that price, they certainly -- they  
10 could just increase their margins they were collecting,  
11 assuming there were any margins to be had?

12 A. That's true.

13 Q. So then is it true then that the inverse would  
14 also be true, that increasing \$1.60 or -- a hundredweight  
15 wouldn't necessarily translate into \$1.60 increase in the  
16 milk prices at the retail level?

17 A. So say that question again. I'm sorry.

18 Q. Yeah. If it's true that a reduction of \$1.60  
19 wouldn't translate all the way through to \$1.60  
20 corresponding reduction at the retail level, the inverse  
21 of that would be true as well, that increasing it \$1.60  
22 wouldn't necessarily translate into \$1.60 at the retail  
23 level?

24 A. Not necessarily. But increasing it \$1.60 harms  
25 the industry overall because there's less capital to  
26 invest in -- so it's a long game. And it's a long game in  
27 my view in both places. If you -- if you decreased it  
28 \$1.60, and processors decided to invest that \$1.60 in



1 innovation to create products to expand demand, right, it  
2 does haven't to translate to more price or less price. If  
3 you increased it \$1.60 at the processor level, now there's  
4 less capital available to innovate. So maybe they can  
5 pass it along, maybe not, but the industry's harmed.

6 Q. And the same is true for farmers who were  
7 experiencing pressure on their bottom line as well; is  
8 that right?

9 A. I agree. I'm not disputing that farmers pay --  
10 face pressure. What I -- my issue here is that what we  
11 pay into the pooling system doesn't support organic  
12 farmers at all. We pay them a pay price that's based on  
13 production, that's long-term, and stable in nature. And  
14 so any payment that I make into the producer settlement  
15 fund, up or down, but if it increases, it makes things a  
16 lot more difficult for me to support my farmers. And if I  
17 had some of the money from the pool back that I pay that  
18 gets spread to conventional producers, I could give that  
19 money back to the organic farm supply and make it --  
20 improve it with the same cost increases that they have  
21 experienced.

22 Q. And in the organic industry, because you pay a  
23 premium price to your dairy producers, you are able to  
24 help ensure that they have enough margin to be able to  
25 stay in business; is that right?

26 A. Yes, we do. We -- yes.

27 Q. You had mentioned Colorado and the supplies of  
28 milk in Colorado being more than adequate to supply the



1 Class I fluid milk needs in your state, at least with  
2 respect to Colorado.

3 Do you recall that?

4 A. Uh-huh. I do.

5 Q. Can you just answer yes or no?

6 A. Yes.

7 Q. And is it fair to say -- and you used DFA as  
8 another Class I handler that was in that market, and you  
9 provided some information that you believed reflected what  
10 their ability was to source milk in that market; is that  
11 right?

12 A. Yes. I used information from their written  
13 testimony.

14 Q. And it's fair to say that you don't have any  
15 firsthand knowledge about DFA's ability to source and  
16 supply milk for their Class I fluid milk needs?

17 A. No. I relied on the information that they put in  
18 their testimony in terms of their milk supply. I used  
19 their numbers.

20 Q. And you used that to draw a different conclusion  
21 than what they testified to?

22 A. Their testimony said they had -- they testified  
23 how much milk they had available to meet fluid milk demand  
24 in Colorado. All I did was I took out the organic  
25 portion, which I have supplied with my own farms, and did  
26 the math for the difference.

27 MS. HANCOCK: That's all I have. Thank you so  
28 much for your time.



1 THE WITNESS: Thank you.

2 THE COURT: Is there other cross-examination  
3 before I call on the AMS for their questions?

4 There is none. I do call on the Agricultural  
5 Marketing Service to ask any questions you have of  
6 Ms. Garofolo.

7 THE WITNESS: Yes, you got it right. Thank you.

8 THE COURT: Thank you.

9 MS. TAYLOR: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. TAYLOR:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Thank you so much for coming here to testify  
15 today.

16 A. You're welcome.

17 Q. Just a few questions.

18 You mentioned Aurora has four farms, and then you  
19 do buy some milk from independents and from one -- one  
20 co-op member, but you probably consider them like an  
21 independent, I take it?

22 A. We have two co-ops, but one -- but the other --  
23 but one of the co-ops has two producers that we treat like  
24 independent farmers.

25 Q. Okay. And so what's the percentage of your own  
26 farm production versus your production -- or your supply  
27 that comes from those?

28 A. About 60% of our milk supply comes from our own



1 farms.

2 Q. Okay.

3 A. And 30% from the other supplies.

4 Q. 40%?

5 A. I'm sorry. Yeah, 40%.

6 Q. Okay.

7 A. I can't do math.

8 Q. It is late in the day.

9 And you're primarily a Class I operation?

10 A. Yes.

11 Q. About how much of your utilization is Class I  
12 versus the other classes?

13 A. About 90%-ish. It varies, 85 to 90%.

14 Q. And of those products, do you have ESL, HTST? Can  
15 you kind of --

16 A. Everything we do is either ESL or aseptic, so  
17 aseptic shelf stable.

18 Q. Okay.

19 A. We don't do any HTST.

20 Q. Okay. And if I remember, somewhere in your  
21 statement you might have talked about the shelf life of  
22 those products, but I can't find it.

23 So can you --

24 A. Yeah. It's 65 is the low on the ESL, and the high  
25 is 240 days on the aseptic.

26 Q. I'm going to turn to page Exhibit 476 on page 3.

27 And the bottom sentence of that first paragraph,  
28 reads: "The Federal Order system exacerbates these risks



1 by depriving organic parties of equal access to risk  
2 management tools."

3 Can you expand on what you mean there about what  
4 tools aren't available?

5 A. Give me just a moment.

6 Q. Sure.

7 A. So the risk management tools that we are talking  
8 about is the risk management tools have to do with the  
9 fact that we have a very narrow subset of buyers, so the  
10 Federal Milk Market system is intended to help milk move  
11 around freely, and in organic we're constrained. There  
12 is -- the opportunities and the outlets are very limited.

13 And then when we mention the higher risk of  
14 disposing milk at an immense loss, this has -- this is  
15 intended to -- this is the preamble to balancing.

16 Q. Okay.

17 A. So when we're long or short, we can't use the  
18 Federal Milk Market system to help us balance. I can't  
19 call Todd and ask him to send me some more organic milk if  
20 I'm short.

21 Q. That is true.

22 A. I wish I could.

23 Q. You could call him and ask, but he's probably  
24 going to tell you no.

25 Okay. And then on the next page, in that first  
26 paragraph, and I just didn't understand the sentence. I  
27 just want to make sure I understand what you are trying to  
28 get at, the sentence in the middle that starts "however."



1 It reads: "However, a contract organic producer outside  
2 of a co-op relationship typically has little or no way to  
3 provide a Class I processor priority or flexibility in  
4 shipped volumes."

5 And I'm trying just to understand that sentence in  
6 relation to what you are saying in that paragraph.

7 A. All right. Give me just a moment here.

8 Q. Uh-huh.

9 A. So what we're talking about here is -- and it's  
10 probably -- I would put more emphasis on the flexibility  
11 than the priority, but when -- if an organic producer  
12 is -- if they are doing a direct contract with a  
13 processor, there's no -- from a processor's perspective,  
14 there's, you know, no way to increase or change, there's  
15 no flexibility there, if we're just buying milk directly  
16 from a farmer, and especially if we're taking everything.

17 But if an independent farmer has multiple  
18 contracts where they have multiple commitments to  
19 different processors, they can't freely move milk between  
20 those processors if they have agreed to give this  
21 processor ten loads and -- or this processor a third  
22 and -- I'll do it in proportions is probably the best way  
23 to describe it. If they have agreed to give a third, a  
24 third, a third, but one of the thirds needs more than a  
25 third, that farmer, if they have done that independently,  
26 they really can't flex at all. Right? Because they have  
27 got contract commitments to multiple parties. And if you  
28 are on the other side of it, then you are really



1 constrained by how much milk you are getting from that  
2 farmer.

3 Q. Is that something that Aurora then experiences  
4 with the independent farmers that ship to you?

5 A. We have experienced that where we have a contract  
6 with the farmer and we're taking some portion of their  
7 supply, and they have another contract on the other side.  
8 And often we want more, and we're asking them for more,  
9 but we're limited in how much more we can get because they  
10 have a contract on the other side that they still have to  
11 fulfill.

12 Q. Okay. That's in relation to the independent  
13 farms, not necessarily your own farm production, which you  
14 have more control over?

15 A. We have more control over our own farm. But you  
16 can't turn the girls on or off necessarily.

17 Q. And does all your own farm production get used by  
18 Aurora?

19 A. It does. Yes.

20 Q. And then down below that -- on that page, the  
21 second to the last paragraph, the last part of that  
22 sentence is talking about "the treatment of organic and  
23 conventional milk as identical under the Federal Orders  
24 provides unequal risk management benefits to organic  
25 participants."

26 And I think that talks to that risk management  
27 thing we just talked to a little bit earlier?

28 A. That's correct.





1 Q. And then it says: "Incorrect pricing signals to  
2 conventional participants."

3 So can you expand on that piece of your sentence?

4 A. Yes. And this -- so the price signals have --  
5 what we're talking about -- I'm talking about here is that  
6 to the extent that the milk is utilized very differently,  
7 and there's a lot of class -- organic in Class I,  
8 depending on what's happening in the marketplace, if  
9 organic is -- if the trends in organic are very different  
10 from conventional, you could run into this mismatch  
11 between what's going on between the two -- the two  
12 supplies within the market system.

13 Q. Okay.

14 A. Does that make sense?

15 Q. It does. Yeah.

16 A. So if one is going up and the other is going down,  
17 it could cause price signals that are contrary to what is  
18 really happen -- what you really want it to -- what the  
19 end market orders are intended to do.

20 Q. Okay. And there's been -- this record is full of  
21 information about the declining Class I sales.

22 So given that discussion that we have had  
23 previously, how has Aurora Class I sales compared?

24 A. Our Class I sales have been very healthy.

25 Q. Does "healthy" mean stable or "healthy" mean  
26 growing? And if you don't want to answer, that's fine.

27 A. Healthy means growing.

28 Q. I'm going to turn to the next Exhibit 477 where



1 you discuss the other proposals at the hearing. The first  
2 one being opposition to the Proposals 1 and 2 to increase  
3 the components in -- in the formulas.

4 Do you know what the components are that Aurora  
5 receives in its raw milk supplies?

6 A. I can tell you that our components are above the  
7 current standard but are below the proposed.

8 Q. Okay. And on the discussion we have had around --  
9 and I say "we" generally in this hearing -- around the  
10 Class I mover proposals, moving to the next page, is on  
11 the ability for Class I processors to use hedging tools  
12 under those.

13 Does Aurora use any type of hedging tools for your  
14 Class I products?

15 A. No. The organic prices are in no way correlated  
16 to any of the Class III, Class IV conventional prices, and  
17 you can't hedge the producer settlement fund obligation  
18 because you don't know what the utilization is going to be  
19 in any given month. So we hedge kind of the old-fashioned  
20 way with fixed -- with, you know, stable fixed price milk  
21 contracts. I say that's the old-fashioned way I guess.

22 Q. And then on page 8 of this statement, you had  
23 talked about how Aurora pays the hauling for its supplies.

24 Is that both own farm and your independent  
25 supplies?

26 A. Yes.

27 Q. And that's a consideration in whatever it is the  
28 price -- that's on the contract with those producers?



1           A.    We don't really -- when we're negotiating with the  
2 supply, I guess the haul is part of it, but we make the  
3 decision on which plant we send it to. So it is less of a  
4 factor in what we're going to pay the farmer. We're more  
5 looking at what the farm gate price is to be paid to the  
6 farmer because, you know, we'll send milk to either plant  
7 depending on what makes sense for us from a production  
8 standpoint.

9           Q.    But does it change what plant the farmer's milk  
10 goes to?

11          A.    Does the cost of the haul?

12          Q.    No. Does your decision on where to send the milk  
13 often change?

14          A.    It can, yeah. It does from time to time. It's  
15 fairly consistent, but we do change from time to time  
16 which farm we ship to which plant. And that decision  
17 doesn't affect the farmer at all. We incur that cost.

18          Q.    Okay.

19                MS. TAYLOR: That's it from AMS. Thank you so  
20 much.

21                THE WITNESS: All right. Thank you very much for  
22 having me.

23                THE COURT: Are there other questions before  
24 Mr. English resumes questions if he has any?

25                I see none.

26                Mr. English.

27                MR. ENGLISH: Your Honor, I really do not have any  
28 questions for this wonderful witness.



1 I do move admission -- well, I have already moved  
2 the admission, and now I ask for your ruling on  
3 Exhibits 476, 477, and 478.

4 THE COURT: I agree that Ms. Garofolo is an  
5 excellent witness, and I thank you, even you spoke at a  
6 great volume, great presence. I just am so glad you came  
7 to this stage, and many people now can ponder your ideas.

8 THE WITNESS: Thank you very much.

9 THE COURT: Is there any objection to the  
10 admission into evidence of Exhibit 476, also  
11 MIG/Aurora-18?

12 There is none. Exhibit 476 is admitted into  
13 evidence.

14 (Thereafter, Exhibit Number 476 was received  
15 into evidence.)

16 THE COURT: Is there any objection of the  
17 admission into evidence of Exhibit 477, which is also  
18 named MIG/Aurora-18A?

19 There is none. Exhibit 477 is admitted into  
20 evidence.

21 (Thereafter, Exhibit Number 477 was received  
22 into evidence.)

23 THE COURT: Is there any objection to the  
24 admission into evidence of Exhibit 478, also named  
25 MIG/Aurora Organic Dairy Exhibit 18B, like boy?

26 There is none. Exhibit 478 is admitted into  
27 evidence.

28 (Thereafter, Exhibit Number 478 was received



1 into evidence.)

2 MR. ENGLISH: I believe the witness may be  
3 excused.

4 THE COURT: She may. She's welcome to stay or  
5 leave.

6 MR. ENGLISH: We have another witness, but I'm not  
7 sure if the court reporter needs a short break. I'd love  
8 to use the time we have to some extent, but I also  
9 recognize the extreme value of our court reporter. So I  
10 leave it to her and the judge to tell us how long our  
11 break is going to be.

12 And we're passing out MIG Exhibit 66, which is  
13 Dr. Juan, J-U-A-N, Velez, V-E-L-E-Z, Dr. Velez's  
14 testimony.

15 THE COURT: Spell the last name again.

16 MR. ENGLISH: V-E-L-E-Z.

17 THE COURT: He's testified before, has he not?

18 MR. ENGLISH: He has not.

19 THE COURT: He's not. Okay.

20 All right. And any other exhibits?

21 MR. ENGLISH: Just the MIG Exhibit 66. He's just  
22 going to simply do a PowerPoint presentation.

23 THE COURT: Let's take -- let's take ten minutes.  
24 Please be back and ready to go at 4:38.

25 MR. ENGLISH: Thank you, Your Honor.

26 (Whereupon, a break was taken.)

27 THE COURT: Let's go back on record.

28 We're back on the record at 4:38.



1 Mr. English.

2 MR. ENGLISH: Yes, Your Honor. So two things.

3 First we have a witness, Dr. Velez. We have an  
4 exhibit, MIG Exhibit 66, which I'm going to have marked as  
5 479.

6 THE COURT: Yes.

7 (Thereafter, Exhibit Number 479 was marked  
8 for identification.)

9 MR. ENGLISH: And before you swear the witness,  
10 there's been a fair bit of conversation off the record  
11 with the grace of the court reporter and Your Honor, but  
12 also the caveat about National Milk's availability, but we  
13 might try to go past 5 o'clock. I assure anybody that if  
14 we go past 5:00, it would only be to complete the direct  
15 exam, we would not start the cross-exam. But I understand  
16 that National Milk may have a conflict, and so it may be  
17 till 5:00. We'll see what we can do.

18 So let's get started.

19 THE COURT: Yes, except that I also want time to  
20 know what's happening tomorrow, so --

21 MR. ENGLISH: We can make sure that --

22 THE COURT: Okay. That would be great.

23 MR. ENGLISH: I appreciate that, Ms. Hancock, very  
24 much.

25 THE COURT: Me too.

26 I'm going to turn to the man in the witness chair.  
27 Would you please state and spell your name.

28 THE WITNESS: Juan Velez, J-U-A-N, V-E-L-E-Z, not



1 to be confused with Juan Valdez. We are both from  
2 Columbia, but he's not related.

3 THE COURT: He's on television in commercials?

4 THE WITNESS: Correct.

5 THE COURT: He has a donkey or a burro?

6 THE WITNESS: Coffee man, yes.

7 THE COURT: Very good.

8 And tell me about your doctorate.

9 THE WITNESS: I'm a doctor in veterinary medicine.

10 THE COURT: Ah, wonderful.

11 And what initials would follow your name?

12 MR. ENGLISH: A whole bunch of them, Your Honor.

13 Do you have the exhibit, Your Honor?

14 THE COURT: Oh, yes. Well, I don't have it yet,  
15 but I will.

16 MR. ENGLISH: So the initials MV, MS, Diploma ACT.

17 THE WITNESS: So doctor in veterinary medicine,  
18 master of science, and a diplomate of the American College  
19 of Theriogenology. Do not ask me to spell it.

20 (Court Reporter clarification.)

21 THE WITNESS: American College of Theriogenology,  
22 which is the study of reproduction in animals.  
23 Theriogenology.

24 THE COURT: So it starts out --

25 THE WITNESS: T-H-E-R-I-O, and then genology.

26 THE COURT: She can find it.

27 MR. ENGLISH: I'll make sure you have it.

28 THE COURT: I'm going to swear you in.



1                   JUAN VELEZ, MV, MS, DIPL. ACT,  
2                   Being first duly sworn, was examined and  
3                   testified as follows:

4                   THE COURT: Thank you.

5                   DIRECT EXAMINATION

6 BY MR. ENGLISH:

7                   Q. So, Doctor, you have a PowerPoint presentation  
8                   which has been marked as Exhibit 479, and I would ask that  
9                   you, slowly for the court reporter and for the  
10                  participants, provide your testimony and science behind  
11                  organic.

12                  A. Thank you.

13                  The title for me in the company, the chief  
14                  agricultural officer, means that I am in charge on -- of  
15                  the entire agricultural division that Ms. Muller was  
16                  talking about in the slides, crop and milk production of  
17                  the Aurora Organic Farms.

18                  Tell you a little bit more about me. I was born  
19                  and raised in Columbia, not Missouri, South America, at a  
20                  beef ranch, and we do milk 60 Jersey cows at home still.  
21                  We have dairy farms since the early '80s as well as a  
22                  ranch, beef ranch.

23                  I went to vet school in University of La Salle in  
24                  Bogota, came to the United States and attended Texas A&M.  
25                  Graduated in 1990 from my master's in physiology of  
26                  reproduction. Then I went to the University of Florida  
27                  when I further studies -- my studies in production  
28                  medicine, doing my residency in the vet school. There I





1 was exposed to intensive dairy operations in the United  
2 States, which was a surprise to me that there were that  
3 many in Florida, even back then in the early '90s.

4 I went back to Columbia and practiced for two  
5 years, bovine veterinarian practice. And I was hired by  
6 Aurora Dairy Corporation at that time in 1995. I was  
7 hired to run the herd health programs, the training, and  
8 to develop the organic herd health protocols for the  
9 organic farms that they owned back in the early '90s in  
10 Idaho.

11 At that point, we also had conventional dairy  
12 farms. I was exposed to production of organic as well as  
13 conventional dairy farms all the way back to the early  
14 '90s.

15 As I worked for about nine years on clinic  
16 reproduction, protocols, and training, by default I  
17 started getting involved in management. And since 2004,  
18 when Aurora Organic was created, by becoming 100% organic  
19 company, I started getting involved in management, and my  
20 role evolved from managing the farms to what my title is  
21 today of chief agricultural officer. Today, that entails  
22 four farms, ten milking parlors, about 20,000 acres under  
23 my control, approximately 26,000 cows, and 15,000 heifers,  
24 approximately.

25 I am deeply involved in research and academia with  
26 partnerships with several universities. We do a lot of  
27 research. I'm a co-author of more than 20 scientific  
28 papers related to health and well-being in organic cows.



1 I'm also an adjunct professor at Colorado State  
2 University, which I participate in committees and some  
3 classes that I'm asked to lecture.

4 I'm also a co-founder and past president of the  
5 Dairy Cattle Welfare Council. The passion for -- that I  
6 developed since I was growing up in my home country for  
7 cows is demonstrated through my CV. I still have that  
8 passion. I still get involved in the -- I still walk the  
9 cows. I still go to the pens. I still go to the  
10 pastures. I still have direct interaction with them. But  
11 also, very importantly, we -- our employees that take care  
12 of them daily.

13 My most important task today, and I really  
14 appreciate the invitation and the opportunity to be able  
15 to explain to the group and be part of this hearing, is to  
16 show the real differences that exist between organic milk  
17 production and conventional milk production. It is  
18 obvious to some of those of us who are in the organic  
19 business, but it is not that obvious to people on the  
20 outside of the organic business. Sometimes it is  
21 misinterpreted as organic is just no use of BST, for  
22 example.

23 But I want to explain that there's some key  
24 differences. Organic is highly regulated by the United  
25 States Department of Agriculture under the agricultural  
26 marketing system that developed the program called NOP, or  
27 National Organic Program. It's federally regulated, and  
28 the standards are very comprehensive. My intention is not



1 to go through the standards, of course. My intention is  
2 just to portray the key differences that have a  
3 significant impact on the cost of organic milk production.

4 But there are three components of it: You have to  
5 feed the cows certified organic feed; you have some strict  
6 grazing requirements; and you have some limitations on  
7 what you can use for cow care.

8 Let's talk a little bit about the feed component.  
9 For feed to be certified organic, it has to go through --  
10 the land has to go through a three-year transition. That  
11 means you have to manage the land organically for three  
12 years, but you cannot sell that feed as organic. So you  
13 will get conventional prices while you are managing it  
14 organically. That means without the use of synthetic  
15 fertilizers, without the use of pesticides or herbicides,  
16 and without being able to use genetically modified  
17 organisms, seed. You have to have distinct boundaries and  
18 buffer zones with your non-organic neighbors, which  
19 reduces the acres that you are actually farming. As a  
20 matter of good practices in organic, you must develop a  
21 plan to have crop rotations.

22 Let's talk a little bit about the grazing  
23 requirements. It says in the rule that cows must graze a  
24 minimum of 120 days during the grazing season. That's a  
25 minimum. And that cows must have at least 30% of the Dry  
26 Matter Intake Demand coming from that grazing. And it  
27 states very clearly that all animals older than 180 days  
28 of age must graze.



1           Now let's talk a little bit about cow care, or cow  
2 care and reproduction in the organic world. In the  
3 organic systems plan, you must state your preventive  
4 health practices. Since you don't have the same tools for  
5 treatment as you have in conventional, it is imperative  
6 that organic farmers have very well written protocols on  
7 how we are going to prevent illnesses from happening at  
8 the farm, which conventional farms may have as well, but  
9 it is a requirement in organic.

10           So no synthetic products are approved unless some  
11 exceptions that are in the organic list of approved  
12 substances. But the key factors, the key components, the  
13 key three "no's" in organic health practices are no  
14 hormones, no antibiotics, no pesticides.

15           So I want to spend a couple of minutes on no  
16 hormones and the impact on reproduction and the difference  
17 between organic and conventional on that particular  
18 aspect.

19           The development of ovulation synchronization  
20 protocols using hormones in the organic -- in the --  
21 excuse me -- in the conventional world have had an  
22 incredibly positive impact on pregnancy rates over the  
23 last 20 years, specifically over the last 12 years. That  
24 means that 21-day pregnancy rates that used to be in the  
25 ranges of 14, 15%, are today close to 25, 30% in many  
26 conventional dairies, because the cows are being  
27 inseminated at a much higher rate because ovulation is  
28 being controlled by hormones.



1           None of those tools are available in organic. We  
2 still have to do old-fashioned heat detection. Now, we  
3 could use some heat detection aids, but we still have to  
4 catch that cow in heat, either by the aids that we may use  
5 by chalking the cow or pedometers, you know, sensors, but  
6 it's still not 100% of the cows are caught in heat.

7           With the method of synchronization of ovulation,  
8 100% of the cows are bred. That shortens the calving  
9 interval. Between one calving and the next one, it's  
10 shortened, which means that the cows on an average a herd  
11 will stay with fewer average days in milk in the lactation  
12 cycle, where they are more efficient in converting feed to  
13 milk.

14           Also, for animal welfare reasons, an organic  
15 producer cannot restrict the use of a prohibitive  
16 substance. So if we have to use it for animal welfare  
17 reasons, if we have to use antibiotics, for example, for  
18 animal welfare reasons, that animal have to be disposed --  
19 or removed from the dairy, either disposed of or sold to a  
20 conventional farmer, if you find somebody that may buy an  
21 animal that was sick and was treated, but it cannot stay  
22 in the herd.

23           So these things that I just described are -- there  
24 are other factors, but those three describe the most  
25 important things that make organic production per cow  
26 lower than conventional production.

27           This graph is showing the pounds per cow on the  
28 left, per lactation, and the years in which the data was



1 taken by the USDA. The orange bars are representing the  
2 conventional cows, and the blue bars are representing  
3 organic cows. 2016, organic milk production per cow per  
4 lactation was around 14,990 pounds; for conventional, it  
5 was 24,000 pounds per lactation.

6 Most of that difference comes from the production  
7 systems that I just described. So why, again, is the  
8 production lower?

9 Grazing is a big factor in production per cow.  
10 The cow is spending a lot of energy going out and doing  
11 her own -- harvesting her own feed, by the walking that  
12 she has to do and the active grazing, she uses a lot of  
13 energy.

14 The genetically modified organism seed available  
15 nowadays with the technology of GMO, there are forages  
16 that have very high digestibility in the rumen, and that  
17 way the cow absorbs much better the nutrients. Without  
18 having GMO, the forage digestibility that you find in the  
19 organic certified forages is lower. We don't have access  
20 to byproducts that provide some important amino acids and  
21 sources of energy. I don't think that you guys in this  
22 room drink enough organic whiskey or organic beer to  
23 provide us organic producers with byproducts like white  
24 rice or distiller grain for us to be able to utilize some  
25 of those byproducts effectively.

26 We cannot use synthetic amino acids, and we cannot  
27 use ionophores which are classified in the chemistry  
28 definition of antibiotics, and those ionophores are



1     incredibly efficient at increasing feed efficiency in the  
2     rumen.

3             THE COURT:   And just so that will be easily  
4     captured in the transcript, please spell it.  It's on  
5     page 8.

6             THE WITNESS:  Ionophores, I-O-N-O-P-H-O-R-E-S.

7             THE COURT:  Thank you.

8             THE WITNESS:  As I was explaining earlier, when it  
9     comes to reproduction, this lower pregnancy rates, which  
10    increase the average days in milk due to the fact that  
11    hormones are not allowed to create that ovulation  
12    synchronization, which means we cannot do time artificial  
13    insemination, and we also don't have the hormones that  
14    help with uterine involution, means after the cow has  
15    calved, the uterus needs to come back to its normal size  
16    for the cow to cycle again.  And hormones like  
17    prostaglandin F2 alpha are very helpful if the cow is  
18    given an injection between day 20 and day 30 to improve  
19    that involution of the uterus to the normal stage.

20            The other key point is cost of production.  So  
21    cost per hundredweight obviously comes from two things,  
22    the total volume of milk and the cost that goes into  
23    production of that milk.  So if we divide, like most  
24    dairymen divide their cost of production in four buckets:  
25    Feed costs; payroll costs, whether it's a family farm and  
26    the family members are getting paid or not, there's a  
27    hidden cost on them for as well, but there's a cost;  
28    operational cost; and then cattle cost or replacement



1 cost, the cost of replacing the animal that actually is  
2 not productive anymore and ends up going to the beef  
3 market.

4 So if we talk about beef -- I'm sorry -- if we  
5 talk about feed, the cost of organic feed is significantly  
6 higher. Because, as I stated earlier, things like not  
7 having GMO seed, not being able to use synthetic  
8 herbicides or pesticides or fertilizers lowers the yield  
9 per acre, making it more expensive. Also, you need a  
10 large land base in the systems required for grazing. And  
11 there is a significant upfront investment on the land that  
12 has to go through a three-year transition to become  
13 organic as I was explaining.

14 The table, it's an indication of an average of the  
15 last three years for the price for those three key  
16 commodities for production -- for the dairy production,  
17 both in conventional and organic. A bushel of corn has  
18 average approximately \$5 a bushel the last three years;  
19 production of organic corn has been around \$10 over the  
20 last three years.

21 If we talk about soybean meal, the difference are  
22 conventional, about 390, organic about \$1250 per ton.

23 When we talk about alfalfa hay, premium alfalfa  
24 hay, we talk about 250 for conventional, and \$310 for  
25 organic, so significant differences.

26 If we talk about labor the second component, just  
27 as an example, in the document written in Trends and  
28 Drivers of U.S. Dairy Productivity and Efficiency, it was





1 stated that organic dairy operations have a higher cost.  
2 One of those reasons is grazing requires labor. To take  
3 the cows out to the pastures and bring them back to the  
4 pastures requires more labor than if you didn't have to  
5 graze. Again, not only for Aurora's larger scale farms,  
6 but also for the family farm, the family has to go and get  
7 them from the pasture whether they are getting paid or  
8 not.

9 And it is very labor intensive to keep all the  
10 records that are required in the organic system plan to  
11 satisfy the certification processes.

12 Cost of operations is also greater in organic.  
13 Routine operational expenses are higher. For example,  
14 bedding, if I am going to bed with any agricultural  
15 products like corn stalks, cotton burrs, straw, it must be  
16 certified organic. So the bedding that I put for my  
17 calves, the bedding that I put for the cows, in weather  
18 like the one that we have had this week, the cost is  
19 significantly higher because it has to be certified  
20 organic.

21 We're also restricted by the kind of chemicals  
22 that we can use to wash the parlor to do our CIPs, and  
23 that cost us more money than if we were able to use any of  
24 the chemical that are available for the conventional  
25 producer.

26 Also, there's some restrictions on the use of teat  
27 dips, the disinfectant that we use pre-milking and  
28 post-milking.



1 THE COURT: Let me stop you there. We're at the  
2 bottom of page 11. It's 5:00, 5:01.

3 How would you like to proceed?

4 Mr. English, would you consult with Ms. Hancock?

5 MR. ENGLISH: I believe Ms. Hancock says we may  
6 move forward. We have got just three more pages, I think.

7 THE COURT: All right. Great.

8 MR. ENGLISH: I appreciate that, Ms. Hancock.

9 THE COURT: All right. Thank you, Doctor. You  
10 may resume.

11 THE WITNESS: Page 11. I just finished 11. We're  
12 moving to 12. Yes.

13 So the other bucket, the last bucket, on cost of  
14 production is the cost of replacement. Raising that baby  
15 calf from birth, until she calves to replace an older cow  
16 that wasn't productive anymore.

17 Unfortunately in the organic world we don't have a  
18 certified milk replacer to feed that baby calf that is  
19 available in the conventional world at a cheaper rate. We  
20 have to take milk from the bulk tank that we could be  
21 selling at a premium to one of the retailers and feeding  
22 that calf with it.

23 Again, the bedding for those calves, as you saw on  
24 the video, have to be certified organic.

25 In a report by scientists from University of  
26 Minnesota, they state very clearly on a study they do that  
27 the age of first calving in organic production systems is  
28 greater than in conventional. So the older it takes a



1 heifer to deliver her first baby, so that she enters in  
2 first lactation, it's more. So that means you have longer  
3 costs because she is growing slower.

4 Again, the use antibiotics is prohibited.

5 And the disposal rate of those replacements is  
6 much higher. By that I mean, any baby calf that may need  
7 antibiotics for a respiratory issue, which are relatively  
8 common in baby calves, no different than ear infections in  
9 human babies, that animal must be treated with antibiotic  
10 so that it doesn't suffer and remove from the herd. So I  
11 cannot count on that animal to come back as a replacement  
12 heifer, making everything more expensive.

13 So I stated the reasons for much higher cost per  
14 hundredweight, lower production and higher cost on all the  
15 key four buckets of costs: Feed costs; labor costs; the  
16 maintenance cost per cow, labor; and the replacement  
17 cost -- I mean the maintenance cost and operations, I  
18 mean, and the labor cost, and the replacement.

19 So the conclusions of my presentation is that  
20 organic dairy production is very different than  
21 conventional dairy production, that the national organic  
22 program standards for organic dairy production results in  
23 lower production per cow, higher feed costs, higher labor  
24 costs, higher operational costs, and higher replacement  
25 costs. Therefore, organic milk production costs per  
26 hundredweight is significantly higher than conventional  
27 dairy production.

28 And thank you for listening, for the opportunity.



1 MR. ENGLISH: Your Honor, I have no questions for  
2 the witness. I will move again, subject to  
3 cross-examination, 479, move that into the record. The  
4 witness will be available tomorrow for cross-examination.  
5 And I appreciate the indulgence that we could go a few  
6 minutes long so that he could finish his direct.

7 THE COURT: I do too.

8 Now, stay right where you are, Doctor, until I  
9 find out what tomorrow's menu brings.

10 What do you have to contribute?

11 MR. ENGLISH: I'm going to let Ms. Vulin take that  
12 because I have nothing to contribute after this witness.

13 I will contribute one thing: The Senate and the  
14 House have passed legislation to extend funding until  
15 March.

16 THE COURT: Hallelujah.

17 MS. VULIN: Your Honor, tomorrow the Milk  
18 Innovation Group had will finish Mr. Velez's  
19 cross-examination in the morning. And then we'll have Jed  
20 Ellis with Shehadey Family Foods; Jacob Schuelke with  
21 Crystal Creamery; and Tim Doelman with fa!rlife, all of  
22 whom have testified previously.

23 THE COURT: Excellent.

24 Mr. Rosenbaum.

25 MR. ROSENBAUM: If there's time remaining, then  
26 Mike Brown will testify for the International Dairy Foods  
27 Association on Proposal 21.

28 MS. TAYLOR: I have two of your witnesses for



1 Friday.

2 MR. ROSENBAUM: We got so squeezed that they are  
3 not going to be here tomorrow.

4 MS. TAYLOR: All right.

5 THE COURT: This is all good news. All right. I  
6 will not keep us any longer. I'll see you all at 8:00  
7 tomorrow morning. We go off record at 5:06.

8 (An off-the-record discussion took place.)

9 THE COURT: We're back on record at 5:06.

10 MR. ROSENBAUM: Just to clarify, those two  
11 witnesses still will testify, but it will not be until  
12 week after next.

13 THE COURT: Ah. Thank you. That is helpful to  
14 know.

15 All right. Off record at 5:07.

16 (Whereupon, the proceeding concluded.)

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1 STATE OF CALIFORNIA )  
 ) SS  
 2 COUNTY OF FRESNO )

3

4 I, MYRA A. PISH, Certified Shorthand Reporter, do  
 5 hereby certify that the foregoing pages comprise a full,  
 6 true and correct transcript of my shorthand notes, and a  
 7 full, true and correct statement of the proceedings held  
 8 at the time and place heretofore stated.

9

10 DATED: February 15, 2024

11 FRESNO, CALIFORNIA

12

13



14

15

16 MYRA A. PISH, RPR CSR  
 17 Certificate No. 11613

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<u>\$</u>	<b>\$310</b> 11173:24	<b>11%</b> 11136:6	<b>19</b> 10918:2 10971:12
<b>\$0.025</b> 10976:17	<b>\$34</b> 11023:16 11035:28	<b>11:01</b> 11010:13	10972:7 10974:21 10976:1
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