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 19, 2024

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Reported by:

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

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M A S T E R   I N D E X

SESSIONS

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M A S T E R   I N D E X

WITNESSES IN CHRONOLOGICAL ORDER

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M A S T E R I N D E X

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IN CHRONOLOGICAL ORDER:

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FRIDAY, JANUARY 19, 2024 - - MORNING SESSION

THE COURT: All right. We're back on record.

It's 2024, January 19, it's a Friday, and it's approximately 8:13 in the morning.

I have been handling some items that were on my mind off record, and now we will begin officially.

This is day what of this proceeding?

(Court Reporter response.)

THE COURT: 47. All right.

And are we -- let's talk on the record about the fact that we will be stopping the proceeding at 3:30 p.m., meaning no further testimony beginning 3:30 p.m., so that we can break down and vacate this room. It's required for a different event.

Is there anything else preliminary to resuming Dr. Velez's testimony? I see nothing.

You may take the witness stand again, Doctor.

Who would like to begin cross-examination? Is there any cross-examination before I turn to the Agricultural Marketing Service?

There is none. I invite the Agricultural Marketing Service questions.

JUAN VELEZ, MV, MS, DIPL. ACT,

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

MS. TAYLOR: Good afternoon.

THE WITNESS: Good after- -- morning.

MS. TAYLOR: Good morning. I'm already thinking about the end of this day. I do want to thank you for coming to testify today, but AMS doesn't have any questions. Thank you.

THE COURT: Wow.

THE WITNESS: You make it early. Get out of here early.

THE COURT: It could be.

Is there anything else that you thought of overnight that you wanted to tell us?

THE WITNESS: Just one comment about balancing in organic. And Ms. Garofolo explained a little bit about how on the list of how Aurora has to balance supply. About point number 4, is that call, to me, the producer, about changing practices to reduce milk production when supply was -- when we were a little bit oversupplied.

And that cost to us, the producer, is very significant when we have to dry cows early, or change the rations that the cows produce less. It has a tremendous economic impact on the producer when processor has to call you and tell you that you the one that have to do the balancing.

And also, when it's the other way around, and we're short, even though some people in the office in utilization think that we do have a switch to turn the cows on and off, that doesn't happen, and they expect me to increase production by 5 or 10% in the next two weeks, and that's not possible.

So it's a frustrating conversation, but we cannot increase the supply and react as fast, so it can be done when you have the inventory of --- in conventional dairies. So for us, it's extremely difficult to do the balancing at the farm levels.

I just wanted to add that. Thank you.

THE COURT: Thank you.

Are there any further questions for Dr. Velez?

CROSS-EXAMINATION (Cont'd)

BY MR. MILTNER:

Q. Ryan Miltner representing Select Milk Producers.

There's another rule of practice that no one can get off the stand without one question being asked.

I would like for you, Dr. Velez, if you could explain a little bit about why balancing, as a producer in organic, is different from conventional, to your last point.

A. Yeah. The supply is not -- is not managed by inventories that could be stored and moved to different places. Drying is not always available. Cheese production is not always available when there's abundance, when there's oversupply.

And when there is undersupply, like I said, we manage a little bit through long shelf life products, investing in storage, cold storage rooms, that are -- that costs millions and millions of dollars, that helps balance a little bit.

But I cannot pick up the phone and call a co-op to give me more milk when I need more. It's not -- it's not available. So, again, we have to go back to the producers and tell them, "Help me balance. How can you reduce your production right now so that you don't have to -- I don't have to dump the excess milk?"

Q. So you were -- your statement in response to Judge Clifton's invitation to -- to add something new, you said that as a farmer there are things that -- that it's difficult for you as a farmer when the plant calls and says "reduce production."

How is that different than what that would be like for a farmer who supplies a conventional plant directly? Because it seems that a lot of that would be very similar to me.

A. Yeah. My perception is that the conventional farmer is always better off producing more hundredweights a day no matter what. There is a contractual obligation for somebody to take that milk. And the same is true, that portion is true in organic, except that I believe that in the conventional world there are ways to divert that milk to other processing plants that could store that product for a longer period of time.

And I don't -- I haven't experienced conventional farmers telling me that they have got the call that they have to do the balance at the farm, but I'm not -- I'm just talking anecdotally.

Q. In your conversations with conventional farmers, have they ever talked about base plans or -- or supply plans that their co-op or -- or handler might have in

place?
A. No, I haven't.
Q. In your experience, have you ever talked with anybody at a cooperative level who might say, "If we have extra milk, it might be marketed at another outlet, but at great costs of transportation or other costs"?
A. Yes, I have heard that. Yes.
Q. Okay. So there -- so there -- some of those balancing costs for the farmer might be similar for a conventional and organic. Would you agree?
A. Not in quantity. Because the outlets are a lot closer, because there's a lot -- it's multiple outlets. For us, for example, to find a way to divert that excess milk, the transportation cost is excessive because we have to go farther out.
Q. Is that a function of your plant location or farm location?
A. It may be a function of both of those things. If we want to go conventional prices, yes. I mean -- and then sometimes like, Ms. Garofolo was explaining yesterday, the cost of that is actually higher than what we get paid for it if we go with the milk to a conventional place.
Q. Right. Okay.
MR. MILTNER: Thank you very much.
THE WITNESS: Thank you.
THE COURT: Thank you so much, Dr. Velez.
THE WITNESS: Thank you.

THE COURT: You are excused. You are welcome to stay.

MR. ENGLISH: Wait, wait, wait.

THE COURT: I forgot -- I forgot that we now have redirect.

MR. ENGLISH: Just a couple questions based upon the questions that were just asked.

REDIRECT EXAMINATION

BY MR. ENGLISH:

Q. I think what you are saying is that versus conventional, for organic there are far fewer options to dispose of surplus milk by the processor. That is to say, there's less drying options, there's less cheese options, correct?

A. That's absolutely right.

Q. And does organic -- does the organic fixed price that you receive on the farm actually keep up with cost of production?

A. Yes, it does.

Q. Thank you.

MR. ENGLISH: Oh, I would move admission -- I have already moved admission. Now I ask for a ruling on 479.

THE COURT: Yes. Is there any objection to the admission into evidence of Exhibit 479, also marked MIG Exhibit 66?

There is none. Exhibit 479 is admitted into evidence.

(Thereafter, Exhibit Number 479 was received into evidence.)

MR. ENGLISH: Thank you, Your Honor.

I do think the witness can now be excused.

THE COURT: Yes. Thank you so much.

MS. VULIN: Your Honor, Ashley Vulin with the Milk Innovation Group. We would call Jed Ellis with Shehadey Family Foods to the stand, please.

And while he gets set up, I will let everyone know we have distributed four documents, and everyone should have copies, but we have extras if needed.

Your Honor, if you are ready, I'll ask that these be marked.

THE COURT: That would be fine. Let's begin. You already have the marking that the -- that's been assigned?

MS. VULIN: I believe so. So Exhibit MIG/Shehadey-24 I believe is Exhibit 480.

THE COURT: And would you just spell Shehadey at this stage?

MS. VULIN: Yes, Your Honor. S-H-E-H-A-D-E-Y.

THE COURT: Thank you.

(Thereafter, Exhibit Number 480 was marked for identification.)

MS. VULIN: Next exhibit is MIG/Shehadey-Exhibit 24A. We ask that that be marked as Exhibit 481.

THE COURT: Yes.

(Thereafter, Exhibit Number 481 was marked for identification.)

MS. VULIN: The next exhibit is MIG/Shehadey-Exhibit 24B. We ask that that be marked as Exhibit 482.
THE COURT: Yes.
(Thereafter, Exhibit Number 482 was marked for identification.)
MS. VULIN: And the last one is MIG Exhibit 24C, we ask that that be marked as Exhibit 483.
THE COURT: Yes.
(Thereafter, Exhibit Number 483 was marked for identification.)
MS. VULIN: And, Mr. Ellis, the first two documents --
THE COURT: Let me swear him in.
MS. VULIN: Yes. Of course. Thank you, Your Honor.
THE COURT: Would you state and spell your name?
THE WITNESS: Jed Ellis, J-E-D, E-L-L-I-S.
THE COURT: And have you previously testified in this proceeding?
THE WITNESS: Yes, I have.
THE COURT: You remain sworn.
MS. VULIN: Thank you, Your Honor.
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JED ELLIS,
Having been previously sworn, was examined
and testified as follows:
DIRECT EXAMINATION
BY MS. VULIN:
Q. Mr. Ellis, the two documents that we first marked, Exhibits 480 and 481, are these two documents your written testimonies for this portion of the proceeding?
A. Yes, they are.
Q. And Exhibit 482 is the PowerPoint presentation that you're going to give in a moment?
A. Yes.
Q. And then Exhibit 483 is a spreadsheet with cow number data on it, correct?
A. Correct.
Q. Thank you.
So if we could bring up the slide show, please. We had it for a moment.
THE COURT: Make sure you're securely connected.
MS. VULIN: Success.
THE COURT: I again applaud Dakota, he's been invaluable. He's worked tirelessly at whatever needed to be fixed.
So, thank you again, Dakota.
MS. VULIN: I second that.
BY MS. VULIN:
Q. So, Mr. Ellis, I know that you have testified previously, but since we have had a fair number of

witnesses, I wanted to refresh everyone as to your background.

Can you remind us of your role at Shehadey Family Foods.

A. Yeah. Currently I'm the director of procurement, basically negotiating for materials, ingredients, packaging. I'm over bulk sales. We sell excess cream, excess condensed skim. And I also help with our milk procurement and acquisition of cream and raw milk and such.

Q. And so when you say "milk procurement," that is obtaining raw milk supplies from suppliers?

A. Correct.

Q. And how long have you been with Shehadey Family Foods?

A. I have been with Shehadey for five years.

Q. And when did you get into the dairy industry?

A. I was kind of born into the dairy industry. My grandpa and my dad were both -- spent their entire careers in the dairy industry. So I grew up, you know, going around with my grandpa to different acquisitions and plant buildings or -- you know, plant builds. And with my dad I grew up, you know, doing store sets and, you know, merchandising, so...

And then I went to -- you know, after high school I started merchandising myself, and as a full-time employee of Dean Foods. And then eventually became a sales rep for about four years before moving into the Dean

Foods area counting center in Salt Lake City. And I was there for a few more years, then moved down to St. George, Utah, and was a production supervisor at their ice cream facility. Eventually moved to Shehadey Foods in their finance and accounting department.

Q. Thank you.

And if you could bring up Slide 2, please. Can you just remind us of some of the products that Shehadey Family Foods manufactures.

A. So primarily we are a Class I fluid company. Our plant in Fresno is primarily Class I. I mean, it does process creams, half and half, you know, other -- you know, other -- ice cream mixes.

Our plant in Fairfield, California is basically all Class I with a little bit of half and half.

Our facility in Reno, Nevada, it is, you know, same thing, pretty much Class I. It does have a little portion packed creamer cups that it runs there, as well as some whipping cream, and a lot of ice cream mix.

Then Umpqua Dairy in Roseburg, Oregon, which is the newest member of the Shehadey Family Food companies, it is Class I mostly, but it does also process ice cream, ice cream mixes, cottage cheese, and sour cream.

Q. Thank you.

And if you want to go to the next slide, this will help orient us to the location of your facilities.

Can you just walk us through again where they all are, please.

A. Yeah. So as I said, we have four facilities that are in three different states: Fresno, California; Fairfield, California; Reno, Nevada; and Roseburg, Oregon.
Now, Fresno was, you know, the first -- the first plant at Shehadey Family Foods, and then we acquired the Fairfield facility, and then we acquired the Model Dairy facility through -- through the Dean Foods bankruptcy, and then it -- and then, lastly, the Roseburg, Oregon, facility.
Q. Thank you.
And can you tell us a little bit about Shehadey's milk supply. Primarily, do you purchase from cooperatives, independent suppliers, a mix of both?
A. Yes. It's a little bit of both. So we buy from -- mainly from cooperatives. Fresno does get about 25 to 30% of its milk supply from the Shehadey Family Foods farm, I guess the -- you know, the -- it's a family farm, right? And Fairfield and Reno and Roseburg are 100% cooperative milk.
THE COURT: Are 100% what?
THE WITNESS: Cooperative milk.
BY MS. VULIN:
Q. Thank you.
And this map has some very helpful circles around Shehadey's plants. Can you explain to us what those indicate.
A. So that is a representation of the radius of our average distance of our milk supplies. So, for example,

in Fresno on average, our milk comes from about 26 miles away from our facility.
Q. So the Fresno facility has a fairly close proximity to its milk supply?
A. Correct.
Q. And let's look at Reno, which I see is kind of a half circle terminating at the border of the state.
Does all of the Reno facilities milk supplies come from within the state of Nevada?
A. Correct. Most of it comes from Washoe and basically Fallon, Nevada.
Q. And looking at the --
THE COURT: I'm sorry, so I caught your "yes" that it comes from Nevada. And Washoe is a county?
THE WITNESS: Yeah, Washoe County is essentially where most of it comes from.
THE COURT: And then what was the other location?
THE WITNESS: And then, you know, where the plant -- you know, that area of Fallon, Nevada.
THE COURT: Fallon. Thank you.
MS. VULIN: Thank you, Your Honor.
BY MS. VULIN:
Q. And then looking to the Fairfield plant, it looks like the milk supply's a little bit further than it is for Fresno; is that right?
A. Correct.
Q. And I see the circle there encompasses the San Francisco area.

Does Shehadey get milk from the San Francisco area?

A. No. None of it comes through the -- none of it comes through San Francisco. These rings are essentially just a radius, but most of the milk from Fairfield will come kind of east and south from -- from Fairfield.

Q. And does -- does any of the Shehadey's raw milk supplies, do they travel through the San Francisco area?

A. They do not -- and I sure hope not, because none of it's coming from anywhere remotely close to San Francisco.

Q. And so then looking at the Roseburg plant, it looks like that might be the furthest milk supply of the four operations.

A. Correct. Roseburg used to primarily get milk from Southern Oregon, from supply even further south than the plant, that essentially if Roseburg didn't take it, it was going to travel up to Portland. And recently there has been a couple loads of milk here and there that has to come from northern -- kind of the Northern Oregon, Southern Washington area, but primarily it still comes from Southern Oregon.

Q. And give us an overview if Shehadey Family Foods needs to bring on new milk, either a new milk supply or expand the milk supply from a current farm, how do you go about doing that?

A. You know, right now we really -- you know, dealing with the cooperatives, it's more or less just, you know,

putting orders in and then the cooperatives determine where is that milk going to come from. We don't tell them what farm, except if there's quality problems from certain farms. But it's just the cooperatives determine what milk we get and where it comes from.
Now, you know, in Fresno and Fairfield, I can tell you that there are numerous other cooperatives that -- you know, that are asking for business. And -- but we have full supply agreements, and so we don't -- you know, we don't real --
(Court Reporter clarification.)
THE WITNESS: Yeah, sorry.
So as I was saying, in Reno and Fairfield there are additional cooperatives or milk suppliers that do ask us to purchase milk from them, but because we have full supply agreements, that's -- that's not an option.
BY MS. VULIN:
Q. And so when deciding essentially what the radius is, other than for Fresno where Shehadey purchases some milk with the associated Shehadey-owned family farm, you don't really decide the distance that the milk travels to get to the plant, that decision is made by your cooperative suppliers?
A. Correct.
Q. So then if we could go to the next slide, please.
Can you tell us just generally from a big picture sense, why does Shehadey Family Foods support Proposal 20?
A. We support Proposal 20 just, you know, we believe

that -- that the best way to -- for a healthy industry, is to keep -- to keep the cost associated with moving raw milk and receiving raw milk negotiated based upon locations and supply and demand, and, you know, other, you know, economic -- you know, kind of the regional economics, right?

And so we feel that that is best kept to negotiations. And -- and we feel that Proposal 20 will help us to determine, you know, what should be the real price of milk, where -- where should it go and help to, you know, help us to innovate.

Q. Why did Shehadey join MIG?

A. We joined the Milk Innovation Group because we felt like, you know, we needed to -- to go on record and to get our voice heard that, you know, Class I is -- is struggling. We need -- we need to be able to come together to -- to be able to change the direction of this industry and change the direction of Class I. Because, you know, we're scared to be another statistic, you know, another plant closure, another -- you know, job losses. We just -- you know, we're concerned that that's the future of -- we don't want to be -- we don't want to be that.

Q. And why do you believe Class I faces -- or do you believe Class I faces regulatory challenges not faced by Classes II, III, and IV?

A. Well, as Shehadey Family Foods, we are -- all of our facilities are well above the 25% threshold. So we are -- you know, we are required to pool. We are required to follow all the guidelines of those that pool, whereas other classes can determine if it's financially, you know, beneficial for them to pool or not pool. And so Class I facilities, we, you know, kind of just -- you know, we don't get a whole -- we don't get decisions on whether or not it's beneficial.

Q. And Proposal 20 would reduce Shehadey's pool obligation by $1.60 per hundredweight, correct?

A. Correct.

Q. And so what impact would the reduction of the $1.60 in Shehadey's pool obligation have on Shehadey's operations?

A. Well, our -- our intention would be to -- you know, our intention would be to pay that $1.60 back to the milk supplier, to --

Q. Why?

A. Because we feel that those who are servicing us should be the ones getting that money, instead of going to a pool and getting diluted by, you know, other processors that -- that were not involved in the transaction or in the supply of Class I milk.

We -- we feel that if the purpose is to incentivize people to do Class I milk, that's -- there's another -- that's a big incentive right there.

Q. So let's start with the Grade A piece.

Are you -- I understand that Shehadey Family Foods also manufactures non-Class I products, correct?

A. Correct.
Q. Are you aware of any non-Class I operation in any of the markets in which you operate that receives Grade B milk?
A. I am not.
Q. Does Shehadey ever accept Grade B milk for its non-Class I products?
A. No, we do not.
Q. And then the second factor, balancing.
What are the ways in which Shehadey contributes to balancing its milk supply?
A. So Shehadey Family Foods, you know, it's kind of a variation based upon our -- our plant and the size of the plant. But we receive milk seven days a week, even when our facilities aren't running. We have increased our silo capacities to receive excess raw milk. We give a quarterly forecast on how many loads of milk we believe we're going to need, which we are only allowed a certain deviation from that. We provide -- going into the week, we provide our -- our firm commitment on what we're going to buy, and therefore, we know exactly what -- what we are and not going to get.
Q. And you also have here, orders are placed in advance with weekly forecast.
Can you tell us just a little bit about that process, please.
A. Yeah. So most of it's based upon historical, right? We -- we go back a year, we go back the last few

weeks, we determine what did we buy, what did we use, what did we make, and we -- you know, we tell -- we tell our providers, suppliers, how many loads we're going to need each day of the week. And I think we're only allowed to -- roughly we can move about -- we can cancel about three loads is all the contract permits in Fresno, for example. And so we -- we -- we're pretty committed to what we tell them going into the week so --

Q. Sorry, say the last part.

A. We're pretty committed to whatever we told them going into the week.

Q. How far in advance are those weekly forecasts set?

A. Like I said, we give them a quarterly forecast, and then as we get closer to the week, it's typically the Wednesday or Thursday before, we -- we send in -- you know, we send in our amounts.

Q. So quarterly kind of foreshadowing of what you expect, and then ongoing communication each week as to how the next week is looking, correct?

A. Correct.

Q. And then you also have here that you already pay a premium to suppliers for balancing.

Can you tell us about that, please.

A. Yeah. So each of our suppliers, we have different premiums and I guess milk overages that we pay. Some are lumped into just a flat premium; others are broken out by different, you know, different pieces of a premium. But to all three cooperative suppliers, there is a -- you know, there is a premium which is either balancing is called out in it or there's -- you know, implied in the premium.

Q. And so there are ways in which Shehadey's suppliers also contribute to balancing; is that right?

A. Correct.

Q. And do all of Shehadey's suppliers set the exact same balancing charge?

A. No, they do not.

Q. And have any of Shehadey's suppliers explained why they are charging Shehadey for balancing costs when the Class I differential supposedly already includes $0.60 for balancing?

A. No, they never explained the dynamics behind it, more or less just that they need to charge it.

Q. And given the increase in -- well, strike that.

Do you -- do you believe that Class I bears a different balancing responsibility to the marketplace as a whole as opposed to Classes II, III, or IV?

A. Well, I think in the sense that there's -- there's already a prebuilt-in balancing charge in our differential that, yeah, there is -- there is some there. We are also charged higher premiums than -- than many, many of the manufacturing classes are. And, you know, milk production has grown where Class I production has decreased. And so the added -- you know, we are being asked to pay for that spread a little bit more, where, you know, we -- we don't control the amount of milk in -- you know, in supply.

Q. And given the low level of Class I utilization, do you believe it's fair that Class I bears the brunt of the balancing costs with suppliers?
A. I think it's -- it's -- it's fair up to the point of paying it for the cost associated to our facility, you know, but, you know, above and beyond, you know, what it costs to get milk to our facilities, we don't believe it's fair.
Q. Not fair that Class I would have some kind of marketplace-wide balancing obligation?
A. Correct. We believe that that should be handled, you know, based upon the individual factors of that plant relative to the milk supply.
Q. And has Shehadey Family Foods ever been told by a supplier, "We're not able to get from you sufficient costs to balance"?
A. No.
Q. And I believe you said that Shehadey Family Foods doesn't decide the source of where its milk comes from within a cooperative vis-à-vis the specific farm that supplies it; is that right?
A. No. Yeah, we do not.
Q. And given that, would you agree that cooperatives have flexibility within the milk contract that you have with them to do their own internal balancing in terms of deciding where milk should be allocated?
A. Yeah. They -- and I believe so. I believe that the cooperatives have the decision to: A, determine which

locations of their farms go to that given plant. They can determine, you know, the -- you know, the -- the historical component test to determine which facility should go to a cheese plant, which should go to a butter plant, which should go to a milk processing facility. You know, they have those abilities to dictate which milk goes where. We just order the milk.

There are examples of when we have quality issues, we can then pass that along to our cooperatives and tell them that, "Hey, these farmers or these loads are having quality issues," and, you know, occasionally you will see milk shipped away from them for a little bit while they figure out what's going on. But primarily, it's just, you know, "Hey, we need -- you know, we need 30 loads this day," and it shows up.

Q. And let's go to the last piece -- the last piece, please, the incentive to serve Class I.

Does Shehadey have a sufficient supply of milk for its operations?

A. Yes, we do.

Q. And has Shehadey ever had a shortage of milk that couldn't be resolved through either phone calls with your cooperatives or spot purchases?

A. No, we have not. Not since I have been here.

Q. Has Shehadey ever had to make spot purchases outside of its agreements with its cooperative suppliers?

A. Not -- not for raw milk, no.

Q. And I understand you mentioned earlier also that

Shehadey acquired a plant from the Dean Foods's bankruptcy, and you have that here as one of the factors that impacts -- or you believe supports that there's plenty of incentive to serve Class I today.

So why is that bankruptcy, or what does -- why is that relevant, or what does it reveal about the state of Class I to you?

A. I -- I think, you know, looking at the industry over the last few years, I think you really see the -- you know, how healthy is Class I, how healthy is the market. And it's -- you know, you look at the Dean Foods bankruptcy as a whole, and the plants that -- I mean, you look at the DFA acquisition of those facilities, right? The average plant went for between 8 to $10 million, if you factor in all the facilities they purchased.

Q. Is that high or low?

A. I mean, that's less than putting in a full line, right? If you were to go in and buy a press and a filler and the equipment needed, that's -- that's more than the whole plant costs.

And the Model Dairy acquisition was purely a -- we needed processing capacity, and that area is difficult to get to on a truck from Fresno to Reno and back. And so we looked at that as a good opportunity to -- to grow our brand, to -- and to be able to move different products to different regions based upon the -- you know, how the plants are built to -- what products they are built to run for. And so I think it speaks to a very fragile Class I industry.

Q. And then your last bullet point you say, "What about consumers?"

How do you think Proposal 20 or the current Class I differential impacts consumers?

A. Well, I think as -- as, you know, especially yesterday, while I was here listening, we really talked about the drivers of consumption and how it's reflective of price. And, you know, we are concerned that as the price of milk rises, the consumption decreases.

And so -- and also, you know, there has been a very -- outside of ESL and aseptic products, there's been very little innovation in Class I milk. And so if -- if we are going to be able to change how milk is perceived in the marketplace, we have to be able to keep the cost: A, low -- cost low, and be able to, you know, have a little bit of margin there to be able to make changes to it.

Q. And there was testimony in the last few days about how the impact of an increased price can be more significant on a branded product than on private label.

Does Shehadey Family Foods make any private label milk or is it all branded?

A. No, we make both. And, you know, you know, the bulk of the business is definitely private label.

Q. And in terms of the impact on both, what has been your experience on, when prices are increased, if there's an impact on the branded or private label products that Shehadey sells?

A. Yeah. So typically when you do a price increase to -- to the retail market, the brand, you know, exponentially increases, because, you know, they're -- they are -- you know, they're marking up your product 30 to 40%, so, you know, a $0.10 increase will generate a, what, 12, 13% increase on the shelf. Whereas private label, that's going to be dictated on the competition.

And so as the spread continues to happen between branded and private label, it gets difficult to have margin to reinvest into your facility, you know. And especially as many of the large grocers now are moving away from branded products, it gets very difficult to make enough money to be able to turn around and invest money to keep your plant running -- you know, running safe, running with high quality. And so as milk gets more expensive, it gets -- it squeezes brand out to where now retailers are like, "Hey, do we even need it?"

Q. It becomes more of a pure commodity product?

A. Correct.

Q. And why as an industry should we care about that? Why should we care about the sale of branded products and the health of the sale of branded products over private label or more commodity-type products?

A. Well, I think that's -- you know, I think branded sales will -- you know, will indicate a healthier market. It helps to, you know, as I said, reinvest in the facilities. That is a large problem with Class I plants right now, is a lot of them are in very bad shape, in very bad condition, because we have operated so long on just, you know, trying to keep the lights on with our pricing, to get more business and volume and grow volume, that, you know, we just haven't been able to keep our facilities, you know, up to date.

And so if we can grow brand, if we can get brand to sell, it's more -- you know, we can pay our suppliers more, we can pay our employees more, and we can grow Class I.

Q. And when we talk about innovation, would an innovative dairy product or a new dairy product be more likely to come out as a branded product or as a private label product?

A. Branded.

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

So closing out our discussion of Proposal 20, I'd like to talk about the related Proposal 19.

I see you have four counties listed on this table; Fresno, Solano, Washoe -- Washoe, and Douglas, correct?

A. Correct.

Q. And are these the counties in which Shehadey's four plants are located?

A. Yes.

Q. So let's start with Fresno. Why don't you walk us through the current differential and the impact of Proposal 19 on that facility.

A. Okay. So Fresno is -- you know, that's where the Producers Dairy plant is located. It's our main facility.

Currently the differential is $1.60.
Q. And that means that the location differential is zero today, correct?
A. Yes. Yes.
Q. And remind us how close Shehadey's milk supply is to its Fresno facility.
A. So all of our milk comes from within 26 miles on average.
Q. Thank you. Please continue.
A. Yeah. So the current is $1.60. And based upon the model, the minimum was $1.90, and the average was $1.90. And Proposal 19 suggests $2.50, which is $0.60 above the model average and the model minimum.
Q. And given Shehadey's experience in the Fresno area, do you believe that an increase in the differential is necessary to attract sufficient supplies of milk to that area?
A. I don't. The Central Valley of California is where 88% of all supply of California milk comes from, and Fresno is right in the heart of it. And, you know, furthermore, the region's balancing plant is less than two -- it's like 2.1 miles from our facility. All right? And so the incentive to travel two miles, we believe, is already captured in Class I pricing.
Q. And do you believe there's any need to encourage additional milk production in the Fresno area?
A. No.
Q. Then let's talk about Solano County next, please.

A. So Solano County is on the outskirts of the Bay Area. That's where, you know, we also have a Producers Dairy plant there. The current differential is $1.80, the model minimum was $1.90, and the average was $2, and the proposal from National Milk was $2.90. So a $1 increase above the model minimum and $0.90 above the model average.

Q. And similarly, for Solano County, what's your experience with the abundance, or lack thereof, of milk supply in that area?

A. So -- so the milk supply for Fairfield is -- for Solano County, you know, it is further than Fresno, right? It's not in the heart of the Central Valley. But the milk supply is very close, and it is abundant. We don't have issues receiving raw -- to getting raw milk in Fairfield. And it is on the very outskirts of the Bay Area, so to -- to say that milk has to -- you know, to say that it's going through San Francisco, as has been suggested in other testimony, is inaccurate. It is right off the major highway. It is -- you know, it doesn't -- and the milk comes from the central -- you know, central inner parts of California to get to get to Fairfield.

Q. And how does the increase that NMPF Proposal 19 proposes for Solano County compare to, for example, Los Angeles County?

A. So Los Angeles County, for example, today their current differential is $2.10, the model average was $2.25, and the proposal was $3. So, therefore, it's $0.75 above the average and $0.80 above the minimum. So you got

Fairfield, which is $1 above the minimum and $0.90 above the average, and so, you know, basically a $0.20 -- the proposal is that Fairfield would go up $0.20 higher than Los Angeles County. There's not a drop of milk in Los Angeles County, and there's far more traffic in Los Angeles County than the outskirts of the Bay Area. So we have a very hard time reconciling why Fairfield would be increasing $0.20 more than Los Angeles County.

Q. Say again for me what's the differential proposed in Proposal 19 for Los Angeles County?

A. $3.

Q. $3.

And for Fairfield County it's $2.90?

A. Correct.

Q. So more or less, Proposal 19 suggests that it's equally difficult to acquire milk in L.A. County as it is in Solano County?

A. Correct.

Q. And as you said, that is not at all your experience?

A. No.

Q. Similarly, if you could also please talk to the Nevada and Oregon county differentials.

A. Yeah. So today our plant in Washoe County, Nevada, is $1.70. The model minimum and average are both $1.90. The proposal from National Milk is $2.50, which is $0.60 above the minimum and the average.

Reno is very similar to Fresno where there's abundant supply of milk in the region. It's very close to the balancing plant to there.

Roseburg, Oregon, I guess in Douglas County, currently today it's $1.90, the minimum was $2, and the average was $2, and the proposal from National Milk was $3, which, I believe the $1 is the largest increase in the nation. And the milk that -- you know, most of the milk that goes to our Umpqua Dairy facility in Roseburg, Oregon, comes from below them. And as I said a minute ago, if it didn't go to our facility in Roseburg, it would have to go up to Portland.

Q. How far is that, the distance between Roseburg and Portland?

A. About four hours by car.

Q. And so if the price of milk in Douglas, Oregon, became just too expensive for the Roseburg facility, do you think that would serve farmers to then have fewer options to sell their milk in that region?

A. It would not.

Q. And do you believe that Shehadey Family Foods needs to pay an additional $1 per hundredweight for milk in that -- in order to attract sufficient milk to its Roseburg facility?

A. I don't. Because in Roseburg, Oregon, the premiums that we are paying our supplier there are substantially higher than any of our other facilities. And so we already are paying a higher premium, we're paying a delivery charge, we're paying a fuel surcharge, and we're still paying an rBST-free premium. So the premium is far and away higher than the other areas, and so we feel like that's already been accounted for.

Q. And if the differential were to increase by a significant amount, would Shehadey have to rethink the premiums it pays its suppliers?

A. Yeah. We would have to rethink our entire milk supply up there. It's -- it's -- you know, it's gotten to -- what's difficult now as a Class I processor is we are also directly competing against our milk suppliers, right? Our milk suppliers are also our competitors on the bottling side. And so it -- it is very difficult to kind of maneuver.

Q. And does Shehadey Family Foods have a preference about whether or not it would prefer to pay more money in an over-order premium directly to its suppliers versus into a pool to be shared amongst all producers?

A. Yeah, we'd rather pay our suppliers. A, I think it helps us account for the economics of the region, the -- it allows you to adapt to changes, right? I mean, for example, fuel surcharge. No -- well, I shouldn't say no.

For our three facilities, the two in California and the one in Nevada, we didn't pay a fuel surcharge. And then when milk -- when fuel skyrocketed, it's -- we're now paying it to all -- all three facilities are now paying a fuel surcharge. And so it allows us to adapt to changes in -- in the market.

Q. And if the cost of fuel were to decrease dramatically, which is possible, right?
A. Yeah.
Q. If it were to decrease dramatically, the cost of fuel, Shehadey Family Foods and its suppliers could adapt through adjusting their over-order premium, correct?
A. Correct.
Q. But if the cost of fuel were to be reduced dramatically and that was built into the differential, Shehadey Family Foods would have no way to adjust that factor?
A. Correct.
Q. If we could go to the next slide, please.
So first, can you just tell us what is the data being displayed here?
A. So this is the NASS livestock inventory for milk cattle.
Q. Can you tell us, what does NASS stand for?
A. The National -- I may need help with that.
Q. That's all right. We have had a lot of acronyms.
How about, tell us generally, what is NASS? Where did you get the data?
A. So this is on a government site. NASS.gov, there's -- there's a link in there that you can go. You select what you are looking for. So in this case, I selected California, milk cattle, and then total inventory. And this tells you, essentially, what is the believed milk cattle inventory by county in California.

Q. And then you -- these categories here, region, are those something that are developed within the data or is that -- are those categories that you developed?
A. I developed those. You know, trying to fit this onto a nice little screenshot was a little difficult, so I -- I essentially assigned kind of regional. Central California is essentially that, Central California. Inland Desert, that's going to be your San Bernardino area. Northern California, which is kind of the area north of San Francisco. Bay Area is the Bay Area. Kind of your North Central is kind of the -- just above the Central Valley of California. And then Southern California is everything -- everything south of the Grapevine and west of kind of that San Bernardino area.
Q. And I believe that the source of this data is found in Exhibit 24C, which is marked as Exhibit 483, correct?
A. Correct.
Q. And so what does this data show about the concentration of milk supplies in California?
A. So -- so what this table does on my slide show is it shows you the differences between 2020 and 2022. And it shows by region what the -- what the inventory of milk cattle is. And so it tells us that in the two years in the state of California there's been an estimated decrease of 5,000 milk cows.
Q. Is that a large number for cattle to decrease by or fairly small?

A. Fairly small. I mean, it ebbs and flows.
Q. And tell us about the -- in addition to the consistency of total cows in the state of California over this two-year period, tell us about the geographic concentration of the cattle as well, please.
A. So in both years analyzed, 88% of the milk supply is in the Central California. And that is, you know, like I said, in our plant in Fresno is right in the heart of that, and our facility in Fairfield, California, is just kind of on the outskirts of that.
Q. And why does this consistency of cattle location matter to setting Class I differentials?
A. Well, as -- you know, as we've discussed this -- this topic, right? It's been -- it's been said numerous times that Class I facilities are just not in convenient locations to the farm, that the hauling to get to them has gotten harder because they have to go further as plants have closed and as farms have closed down. And I think this graphic here shows us that, you know, our facility in Fresno is not in an inconvenient location to the farm. It is not in an inconvenient location to haul to.
Q. Can you describe for us, you can show with the mouse, but please also describe with your words which county in your map is Fresno County?
A. Fresno is right here (indicating). It looks like a little dog bone.
Q. It is 98,000 cattle, correct?
A. Correct.

Q. And there's a county that's shaded the darkest color, yellow/orange, with 490,000 cattle.
What county is that?
A. Tulare. There's more cows than people in Tulare County. And you can -- you can smell it when you drive through it.
Q. I have heard the same about Twin Falls, my hometown.
In your experience in the five years prior to 2020, was there a similar consistency in the concentration of cattle in California in the Central Valley?
A. Yes, there was. And, you know, five years prior to that I was actually the cost accountant for Dean Foods for Alta Dena, their two facilities in Southern California. And all of our milk either came from the Central Valley, or in moments of desperation, Arizona. And so it hasn't changed to where milk -- milk is getting supply from.
Q. And do you have any concerns that reducing the Class I differential by $1.60 will contract the ability or the number of Class I suppliers within the state of California? Will reducing the Class I -- strike that, I'm going to start that again.
Will reducing the Class I differential by $1.60 make it more difficult for Shehadey to attract the milk supplies that it needs?
A. I don't believe it will. Just -- just relative to our location. We believe that there's already enough

incentive to come to our facility, especially there in Fresno where the milk is around us. You know, we're so close to the balancing plants, and as I said earlier, our intention would be to -- you know, to pay our supplier that difference.

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

Walk us through why you believe Proposal 19 will not help Class I suppliers.

A. So -- so I can speak to the markets that -- that Shehadey Family Foods is part of. Very low Class I utilization. In California, this last month, for example, Class I was 20% utilization, and that was with next to no pooling done by Class III facilities. All right? So in months where everybody pools, Class I's down 12%. And so this increase gets so diluted by the time it actually gets paid out to those who -- you know, those who are pooling as manufacturers, that we don't believe it's going to be a lasting solution.

Q. And you also note that Class I processors do not control cooperative members pay.

Why do you think that's relevant to Proposal 19?

A. You know, as we -- as we've had discussions with farmers, many of them have reached out to us, and they have discussed that, you know, they are concerned that they see the -- the uniform price, and they see what their paychecks are for, and they are -- they are really concerned as to why is there such a gap between the uniform price and their take-home pay.

And for us, you know, our struggle is that we don't even know if these increases are going to make it to the farmer, right? Because we're paying premiums, we're paying delivery, we're paying all these things today, and it's -- you know, there's still deductions below the uniform price.

Q. And if Shehadey Family Foods does find itself in a situation where milk supplies are tight, do you believe that you could sufficiently solve that through over-order premiums?

A. Yeah. Yeah. I mean, you know, I mean, it's essentially going -- you know, if there's no milk, you go to the spot market, you are paying a higher premium, just the same way if we can't get a contract, we raise our premiums to be able to supply -- to get the supply.

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

Can you tell us why Shehadey Family -- actually, before you get into that, can you remind us, please, what Class II products Shehadey manufactures.

A. So creams, half and half, ice cream, ice cream mix, cottage cheese, sour cream. Then we also provide bulk items to Class II facilities, so we make totes of whole milk and we sell them to ice cream plants, and so it gets classified as Class II.

Q. And you say here that all four of your facilities are over 25% Class I.

So does that mean when Shehadey Family Foods manufactures Class II products, it has to pool those, that

milk?
A. Correct.
Q. And can you walk us through then, why Shehadey opposes Proposal 21?
A. So Proposal 21 would impact those that pool. All right? The differential -- the differential for those facilities would increase. For those that are non-pooled facilities, wouldn't -- wouldn't bear that same increase. And so you are taking two facilities that make the exact same product, now one of them has to pay more and one of them doesn't. And it -- it doesn't -- you know, kind of feels a little bit of an uncompetitive advantage -- disadvantage.
Q. And, again, do you believe that Class I processors would be disadvantaged in yet another way to all of the other classes?
A. I do.
Q. So in closing, can you tell us what you hope USDA will takeaway from your testimony as either the key facts or kind of the key issues that they should consider when setting Class I differentials?
A. Yeah. I think the takeaway for me is just, you know, I can speak to Shehadey Family Foods. So we -- we truly value our relationship to -- with our suppliers and the farmers. And -- and we want -- we want them to succeed. We want this industry to succeed. And we -- we feel that the best way to get there is to do it direct, to take -- to take the money that goes and gets diluted and

spread around, you know, other manufacturers that don't even do Class I, to take that out and to pay directly to our suppliers for the hard work they are doing is the best way to get there. And I think we can do that together.

Q. Thank you very much, Mr. Ellis.

MS. VULIN: Your Honor, pending cross-examination, I move admission of Exhibits 480, 481, 482, and 483, please. And I make the witness available for cross-examination, although we may be due for a break.

THE COURT: That was a popular idea, Ms. Vulin.

MS. VULIN: I'm very popular.

THE COURT: All right. Let's do take a break. Please be back and ready to go at 9:30.

And, Mr. Ellis, you, of course, are free to walk around the building.

(Whereupon, a break was taken.)

THE COURT: We are back on record at 9:30.

I do have one preliminary matter. We have had a caution about where we're parked. You saw how busy this parking lot is with this other event in the Event Centre. We're not to park in front of the doughnut place. If you have parked in the space where the customers would likely want to be parked to reach those businesses, you may want to move. How would they know? I mean --

All right. Now, cross-examination, please.

MS. HANCOCK: Thanks, Your Honor.

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CROSS-EXAMINATION

BY MS. HANCOCK:

Q. I'm Nicole Hancock with National Milk.

Good morning. I just have a few questions. I am on your testimony, the PowerPoint in Exhibit 482. If you turn to page 3, this is just the map just to orient us. It's not specific to this, it's just because I like to have an anchor page to reference from.

Since the California promulgation hearing, the Shehadey Family Foods business has expanded three times; is that right?

A. Correct.

Q. And if we look -- well, I guess I should ask. The Reno plant that was acquired through the Dean Foods bankruptcy, I have heard rumors that the amount that was paid for that was $7,777,777.

A. That was our offer for Las Vegas.

Q. Oh, okay.

A. That was rejected.

Q. Okay.

A. Based on public data, the information for Reno was -- was well below that amount.

Q. Okay. I was just more curious for the fun of that number --

A. We thought it would be funny to bid all 7s for Las Vegas, and we weren't lucky, though.

Q. All right. So in your written testimony -- well, maybe I should clarify the timing on that.

When -- when, did the Shehadey Family Foods acquire the Reno facility?
A. That would have been May of -- May of 2020? '19?
THE COURT: Is it in your written testimony, do you think?
THE WITNESS: It might be.
THE COURT: You're welcome to reference it to see.
MS. HANCOCK: I didn't see the date, but maybe it is.
THE WITNESS: Yeah, it might not be. Yeah, whenever the bankruptcy closed.
BY MS. HANCOCK:
Q. Okay. So somewhere in that 2019-2020 timeframe?
A. Yeah. It's been an eventful few years, so --
Q. It was after you had joined the Shehadey Family Foods business?
A. Yes.
Q. So within the last five years?
A. Yes.
Q. And then how about the Roseburg facility?
A. Roseburg would have been essentially two years ago.
Q. And any expansions or growth since you have been with the Shehadey Family Foods in California?
A. No.
Q. So the growth has gone outside of California to expand into the region; is that fair?
A. I mean, I would say the acquisitions, yes. You

know, our facilities in California are processing a lot more than what they were five years ago. You know, mainly, a lot of that is through the Berkeley Farms closure, one of the facilities not purchased through the Dean Foods bankruptcy. You know, so -- you know, so I think, you know, a lot of growth has happened in California, too.
Q. Okay. So you didn't expand the facilities, but there's been a lot of growth that's happened within California?
A. Yeah, excess capacity.
Q. Okay. Within your existing facilities, you have been able to expand in California as well?
A. Yes.
Q. And in total, it's about three times since 2016?
A. Three occurrences. Reno -- Reno's volume is what Fresno can produce in, like, two days for a month. So it is not big facilities that we acquired.
Q. Okay. And in your -- in your written testimony on page 8, under your conclusion, so it's in Exhibit 480, your first sentence under the conclusion says that you feel like you are just fighting an uphill battle just to survive; is that right?
A. Yeah.
Q. But yet, even though you are fighting this uphill battle to survive, you have been able to close on all of these expansion efforts; is that accurate?
A. We have -- yes, we have acquired. As I mentioned

earlier, I mean, we -- we purchased Reno for less than what a new press would cost us, and so --

THE COURT: A new?

THE WITNESS: A new press, a new HTST system.

And so, you know, that's -- it's fair, yes, we have acquired and we have grown. But they have not been -- you know, they have not been anywhere near what you are hearing these new, you know, other manufacturing plants getting built for. They are not anywhere in the realm of those economic impacts.

BY MS. HANCOCK:

Q. It's fair to say that the Shehadey Family Foods business is a successful endeavor?

A. Yeah. I mean, we -- we make money, yes.

Q. And do you know what the Class I utilization is for the Shehadey Family Foods business?

A. In total, it's over 90%.

Q. Okay. So that success has been able to be achieved even though -- even though almost the entirety of the business is within the Class I --

A. Yes.

Q. -- area? Okay.

And then I think that you said that your position is, is that -- well, strike that. Let me back up.

Does the Shehadey Family Foods pay an over-order premium today?

A. Yes, to everybody.

Q. Every day of the year that you receive milk?

A. Yes.
Q. And do you know, can you give me, do you feel comfortable sharing what that range of the over-order premium is?
A. I mean, I can talk in generalities. I mean, they are -- on average, I mean, it goes from -- I mean, I can speak to the high, which is close to -- you know, we're talking dollars, right? We're not talking $0.25 or -- or whatever. I mean, there's dollars of premiums in general, of some more, some less.
Q. $2? You said on average, I'm just trying to get a range.
A. I'm not comfortable speaking of specifics because there is a very wide range, and pretty easy to know where is where in that range. But it's -- on average, it's well over -- it's probably close to $2.
Q. Okay. And so let's just -- for our discussion purposes, let's say your over-order premium is $2.
And your position is, is that you would like to have $1.60 removed from the base differential; is that right?
A. Yes.
Q. And so I think that your words were, at least I wrote in my notes, that you intend that if you could achieve that goal of removing that base differential of $1.60, that you would put that into an over-order premium that you could pay to your producers as well; is that right?

A. Correct.
Q. And so is it -- are you saying today that if your current over-order premium is $2 that you pay today, and if you were able to achieve that base differential savings of $1.60, that going forward you would be paying at least that $3.60 as an over-order premium?
A. We would intend to pass along that amount to our suppliers. I can't speak to the specifics of what everybody would do, but for Shehadey Family Foods, we would intend to pay that to the farmers -- or to the cooperatives. Right?
Q. And I have worked with the family business, and so I know they are very genuine and honorable family members that run that business, and I have no doubt that they would take good care of their producers.
My question is, though, is -- you are not saying that you would guarantee that -- that going forward, if you were able to remove that base differential, that you would pay no less than $3.60 a hundredweight in an over-order premium if you were able to achieve that goal of removing the base differential?
A. I won't say that we -- in every scenario that we would, because I think we would go renegotiate every contract. But I would feel very comfortable in saying that I believe so.
Q. Okay. And -- and that's because at the end of the day, the Shehadey Family Foods is still a business; is that right?

A. Yeah, they are.
Q. And where there's opportunities to achieve expense savings, you have duties to the people that own the business to try and get those savings; is that fair?
A. Well, I think for us, you know, I think Ashley and Sally kind of brought that statement up, that, you know, a member of MIG group said we're not necessarily looking for a reduction, we're looking just that we want to pay it directly. And that's something, you know, I have said from the get-go.
We're not looking necessarily for a reduction in price. We just -- I truly believe the best way to benefit the farmers is for me to pay you, not to pay it to a pool that gets -- gets diluted.
So I don't -- we don't necessarily intend for this to be some monumental savings to the company, it's just that we want to redirect where it's going.
Q. If you can turn to page 5 of your PowerPoint presentation in Exhibit 482.
A. Okay.
Q. And the purpose of you putting together page 5 was to show what -- that there are current relationships between the different counties that are not preserved by National Milk's proposal; is that accurate?
A. Correct.
Q. And I think that what you described was, is that you have concerns about one of your plants having a different cost than a competing plant that might be in a

different jurisdiction; is that right?
A. I mean, I guess same -- same order, just different location, yeah. I mean, both. You know, one of my big -- one of my big issues with this is that our facility in Solano County is increasing -- proposing to increase 15 to $0.20 more than a plant in Los Angeles County, and the traffic is nowhere near Los Angeles County, the supply is much closer than Los Angeles County, and so it's -- it's very difficult to look at that and say, yeah, that makes sense, because it doesn't.
Q. Do you agree that Los Angeles County should have a higher differential?
A. I believe it should be doing at least what Solano County is doing. If I was -- if I was looking at it as a perspective of what makes sense, it -- it would, for sure, be increasing at least what Solano County did.
Q. And that's because of things like distance from the farm and traffic concerns?
A. Yeah. And the fact that it has to go up and over a steep terrain, and, you know, Solano County doesn't have to.
Q. Okay. Some of those factors that the model doesn't take into account?
A. Correct.
Q. Okay. And so currently, when you are paying an over-order premium, you don't know what your competitors are paying in over-order premium; is that right?
A. We don't know specifically, no. I think, you

know, the market has ideas that we certainly see -- you know, I mean, there's certain retailers you can go to and have an idea what -- what -- you know, what costs are and prices are. You know, we -- we don't know. But I think we all kind of have rough ideas where -- where different geographical regions are at.
Q. Okay. You can kind of ballpark it --
A. Yeah.
Q. -- is that fair?
A. Yeah.
Q. Do you know what your error rate would be in that ballparking? Like, $0.50 here or there?
A. Yeah, I think a little less than $0.50.
Q. $0.25?
A. Yeah, maybe.
Q. Okay. So give or take $0.25 positive or negative, you kind of know the -- the general amount that -- that the competitors are paying based on what your retailers are telling you?
A. Yeah.
Q. Okay. And -- and if you were to remove that $1.60 from the base differentials and put that into your -- into your pool that -- from which you could bargain for with your producers a negotiated over-order premium price, that process wouldn't give you any greater visibility or insight into what your competitors were doing, would it?
A. No.
Q. In fact, it would take what is currently now maybe

on average $2, and it would increase it to -- to at least 3.60 or maybe higher; is that right?

A. Yeah.

Q. And so would you expect that that ballparking range, your error rate of $0.25 positive or potentially negative that you could be off on what your competitors are paying, proportionately that error range could increase as well; is that right?

A. I mean, it could. I guess, as I have stated, you know, I believe that at least for independents, I can't speak for what, you know, DFA would charge themselves, right? I don't -- that's all, you know, left pocket, right pocket in that case. But to us and to the independents, I believe that for the most part, we would -- we would be tasked with that all getting added as an over-order premium.

Q. Yeah. And you --

THE COURT: All getting added into what?

THE WITNESS: An over-order premium.

Sorry, my lips are sticking together.

BY MS. HANCOCK:

Q. And you just referenced DFA having its -- its own farms from which it can negotiate that acquisition of milk, but the Shehadey Family Foods also has its own farms as well; is that right?

A. We got one that does about 10% of our entire company's volume.

Q. It used to do a much larger percentage of the

company's volume; is that right?
A. Yeah.
Q. Before it --
A. It only had one facility, yeah.
Q. Sorry.
A. We only had one facility, yes.
Q. Before the expansion?
A. Uh-huh.
Q. You have to answer audibly.
A. Yes.
Q. Okay.
MS. HANCOCK: That's all I have. Thank you so much for your time.

CROSS-EXAMINATION

BY MR. ROSENBAUM:
Q. Steve Rosenbaum for the International Dairy Foods Association.
Good morning.
A. Good morning.
Q. So you testified a little bit about the Dean Foods bankruptcy, and I'd just like to follow up with a few questions relating to that.
Now, you actually worked for Dean Foods as I understand it, correct?
A. Yeah, I did, up until 2018, yeah.
Q. Okay. So when -- now -- and by the way, to jog your memory, according to the News Reports, the closure of the Dean Foods bankruptcy was in April 2020.

Does that help orient you as to --
A. Yeah, it does.
Q. -- as to when you -- when your company acquired the Reno facility out of the bankruptcy?
A. Yes.
Q. Okay. And that -- so the year would have been 2020, correct?
A. Yeah.
Q. And the published report, because this went through a bankruptcy, obviously the sale prices were all revealed publicly, and at least the report was that that purchase was for $3.7 million; is that correct?
A. Correct.
Q. And --
THE COURT: Now, "that purchase," you are talking about Reno?
MR. ROSENBAUM: Yes. The purchase by Shehadey of the Reno facility that had previously been owned by Dean Foods, that was the purchase price of $3.7 million, correct?
THE WITNESS: I believe so, yes.
THE COURT: And I need more volume on Mr. Rosenbaum's mic, please.
MR. ROSENBAUM: I will speak more closely into it as well.
THE COURT: That also helps.
BY MR. ROSENBAUM:
Q. And can you just tell us, once again, what the

comparison is of $3.7 million to purchase an entire facility versus what it would cost to install one production line?

A. Yeah. So I mean, you are looking at a production line north of $10 million. I mean, that -- that's -- that's -- that's just for, you know, a filler and -- and, you know, a smaller HTST. I mean, if you are needing to put piping and cooling and -- and those types of, you know, additions in your facility, it will be well -- well above $10 million.

Q. And -- and when we're talking about Proposal 19, Proposal 20, we're talking about how much Class I handlers should have to pay for milk, right? The minimum milk price, correct?

A. Correct.

Q. And, you know, what -- and I take it the -- from what I know about bankruptcy law, there was some sort of public auction or public opportunity of people to make bids for the various Dean Foods facilities; is that correct?

A. Yes.

Q. And Dean Foods, at the time, was the largest Class I handler in the country, correct?

A. Yes.

Q. At the time they declared bankruptcy, correct?

A. Yes.

Q. Are you aware that Bordens also declared bankruptcy roughly the same time?

A. Yeah. Yeah, shortly thereafter.
Q. And they were also quite a substantial Class I handler, correct?
A. I believe so. I believe that at the time it was, what, 11 -- 11 facilities that Borden owned, and I think they are down to, what, four or five now?
Q. And so, you know, when -- so you are looking at -- in Proposal 19, you are looking at a material increase in what Class I handlers would have to pay, correct?
A. Correct.
Q. And, you know, what is it -- and we obviously have the statistics all in front of us as to what the decline has been in Class I consumption, correct?
A. Correct.
Q. And so what -- you know, what lesson do you draw regarding the desirability or the legitimacy of a proposed material increase in the raw milk costs for Class I handlers in a scenario in which in the last three and a half years or so, not only have the two -- two of the largest, perhaps the two largest, proprietary handlers in the country went bankrupt, and potential buyers were so unenamored of the opportunities presented, that they were only willing to pay, and through competition only had to pay, less to acquire, on average, entire facilities than it would cost to build one single line of production?
A. Yeah. I think, you know, the -- obviously the abilities to continue to absorb these increases with the falling demand will just continue that decline. And, you

know, as I said in my testimony, I think those types of bankruptcies and the things that have happened in the market are very indicative of the health of the Class I industry right now.

They -- I mean, as I told Ms. Hancock, we are -- yeah, we're successful, we're making money, but it's not -- I mean, it's not enough to go build these massive facilities that you are seeing get built today. We -- we are able to invest into our facilities to keep it running, and beyond that, there's -- there's very little margin to go do those types of -- types of activities.

Q. And in that scenario, how do you react to the kind of proposed increases in the Class I differentials that are applicable to your facilities were Proposal 19 to be adopted?

A. So the -- you know, the reaction obviously is -- I mean, we just -- we have to brace for more declines, for branded sales to continue to decrease. We will have to figure out where to shed costs and -- in our facilities to be able to try to keep the prices low.

MR. ROSENBAUM: That's all I have. Thank you.

THE COURT: Is there other cross-examination before I invite questions from the Agricultural Marketing Service?

There are no other cross-examination questions. I do invite the Agricultural Marketing Service to ask questions.

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CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. Thank you so much for coming back to testify.

A. Nowhere else I would rather be.

Q. You mentioned that 90% of Shehadey's utilization is Class I as an entire business, approximately?

A. Yeah. And that's a very rough guess, right?

Q. Sure.

Do you have HTST and ESL?

A. We are 100% HTST, except for in Reno, Nevada, we have an ESL little portion pack creamer cup line. That is it.

Q. For your Class II products?

A. Yes.

Q. Yes. We wanted that on record, just to be sure.

The milk that you get into your farms, do you know what the component level is of that milk, roughly?

A. So, I mean, I don't have that in front of me. That's what I previously was here to testify about. I know that we are -- based on the current formulas, we are -- it's higher on butterfat, and on the other components it's at or below the -- the current formulations.

Q. Okay. And so you talked about -- and I'm in statement Exhibit 480, and you mention that you buy milk from your Shehadey Family Farms -- or Bar 20 Dairy, I

should say --
A. Bar 20 Dairy, yes.
Q. -- to be specific.
And then the rest you buy from cooperatives; is that correct?
A. Yes.
Q. Okay. And so is it that you buy all the milk from Bar 20 and then whatever additional supplies you need you purchase from the cooperative?
A. Yes. The cooperative is our main supplier, though. Bar 20 is 20, 25% of our supply in Fresno, and then so our cooperative is 70, 75% of our supply.
Q. Okay. And you talked about how you worked to balance that supply through your orders for the co-op, and you try to forecast, and you receive credits for -- I think you receive credits, you know, universal receiving credits.
A. We receive those at two locations.
Q. Okay.
A. Two of the others, we do not.
Q. Okay. So I wanted just to talk a little bit more about that, then.
So I can understand -- then that's based on, like, day-to-day receipts or a week?
A. So typically it's based upon a week, and it's both -- both cooperatives that offer that discount to us calculate it differently.
Q. Okay. And so then how does that work for the two

facilities you say you don't receive credits?
A. I mean, it -- it doesn't really change anything. I mean, the facility, one of them that we don't get credits for, we receive milk seven days a week, and, you know, we process milk every day.
Q. And so do your -- does your needs differ? Do you see your needs differing seasonally, and so your orders during a certain season might be more that the co-op needs to supply versus a different time of the year?
A. The -- the seasonality is pretty much just indicative of schools. When schools are out, our demand goes down a little bit. But, you know, some of that gets replaced with a little bit of higher retail volumes when schools are out. But it does -- it does taper off during the summer.
Q. Okay.
A. And, you know, during the summer is when we're primarily purchasing, you know, cream and other products out on the spot market for, you know, ice cream season.
Q. Uh-huh.
In your statement 24, on page 7, towards the bottom, you talk about the only way for Shehadey to address farmer pay is to pay more money to our direct ships.
But I'm gathering from your -- our conversation that you have one direct ship supplier, the rest would be --
A. Yeah. And that I guess I meant those who are

directly serving our facilities. I shouldn't say direct ships. It should be those supplying our facilities.

Q. So instead, for example, of paying the differential into the pool, you would just pay that differential to either your own farm, Bar 20, or to the cooperative directly who is supplying you?

A. Correct.

Q. Okay.

THE COURT: Where is that direct ship phrase?

MS. TAYLOR: Oh, I'm sorry. Towards the bottom of page 7. It's the third line from the bottom.

THE COURT: Do you actually want us to change that on the record copy?

THE WITNESS: I think it should just say "direct suppliers."

THE COURT: "Direct suppliers" rather than "direct ship farmers"?

THE WITNESS: Yeah.

THE COURT: Let's make that change. This would be in Exhibit 480, page 7, third line up from the bottom, the sentence ends with "our direct ship farmers."

And, Mr. Ellis, how should it end?

THE WITNESS: "Our direct suppliers."

THE COURT: So we just strike "direct ship farmers" and insert "direct suppliers." Thank you.

THE WITNESS: Yep.

BY MS. TAYLOR:

Q. Okay. I'm going to move to Exhibit 481, and I'm on page 4, just for -- to anchor us, as Ms. Hancock likes to say?

In Table 2 you have the locations of where your plants are. But in Table 1 -- excuse me -- the previous page you kind of talk about how it puts you at a competitive disadvantage, the increases, the proposed increases in National Milk's Number 19.

And I -- I wanted to ask, since you don't have, to my knowledge, the location -- let me put it this way: Where are your direct competitors located? Because I don't see those locations and differentials in this chart.

A. So, you know, in terms of our direct competitors in the dairy market, right? I mean, we have got -- we have got direct competitors to the south in Los Angeles County. We have got a -- you know, we've got direct competitors north of us in, you know, the Sacramento area. We have got, you know, a lot of extended shelf life competition that's all over the nation, including, you know, right in the Central Valley.

Q. And when you mention that, their ESL competes with your HTST products?

A. Correct.

Q. Okay.

A. And, you know, just as -- as others have mentioned, we -- there's a lot of competition now that's just non-dairy. I mean, we are competing against anything that has to go in the refrigerator.

Q. And when you talk about particularly, I think,

your Fairfield plant and the change in -- proposed change in differential versus the changes to L.A. County specifically, does that Fairfield plant ship milk down to L.A.?
A. Near. It -- it gets -- gets fairly close there. Something equivalent to down that far, yes, but the other side of the -- the other side of the valley.
Q. Okay. So like around Bakersfield or --
A. So, no, more the coastal areas.
Q. Oh, that side.
A. But as far south, yes.
Q. Okay. I have to relearn my California geography that I knew during the California hearing.
And then on page 5 of this statement, in the second half of the page, you mentioned that your Fresno facility is two miles away from the region's cooperative balancing plant. And you say that it doesn't make sense, Proposal 19 doesn't make sense when you look at Shehadey's facility relative to the milk shed, the population, as well as the balancing facilities.
And I wondered if you could just expand on that balancing facilities part, why that's important to you, if milk comes from that balancing facility to supply your plants sometimes, or kind of how that fits into the equation for you in particular?
A. Well, I think as we look at the Class I differential, we talk about incentives to deliver a Class I facility, I think being that close to the

balancing plant, I think there's plenty of incentive that, you know, the Class I milk price is already higher, there's a differential, there's over-order premiums, and we're -- you know, if it's not coming to us, it's going to go to them, right? And we're -- we're two miles away, so I have -- it just -- it feels like all the incentive's already -- already built in.

Q. That they would ship it to that manufacturing facility regardless?

A. Get turned into powder or butter.

Q. On the next page you are talking about your -- you talk about your Fairfield plant and the premiums you need to pay there versus pooling milk from Arizona.

Is it that you pay premiums in some -- for some of your plants and not for others?

A. No. So we pay premiums at all of them. The Arizona piece was -- was me discussing facilities in Southern California as compared to the supply in Northern California. In Northern California, our supply first comes to Northern California, then from Central California. And then as you go further south, it comes from Central California, and then if they can't get it there, it comes out of Arizona.

We're just trying to say the secondary supply in Fairfield is still very close. It's -- it's a couple hours away and it is flat.

Q. And you pay premiums in your Fairfield plant?

A. Yeah, we pay premiums in all four.

Q. Okay. And those premiums you pay, kind of what's your understanding of what costs those are supposed to be recovering for whoever your supplier is?
A. Administrative costs, hauling fuel, balancing, so that's -- I guess that's where we -- we assume it covers.
Q. And when you -- how often are those negotiated?
A. It's usually every two to three years --
Q. Okay.
A. -- initially. And then, you know, typically there's yearly rollovers, or you know, something that triggers some type of a -- you know, a date to propose a change either direction. Like, we can propose -- they can propose at certain periods. But typically, initially it's a two-year -- two-year contract.
Q. So if Proposal 20 was adopted and the base differential went to zero, and you had indicated that you would -- it would be the business's goal to pay that money out to your direct suppliers, are you concerned that your competitors not also pay that full amount?
A. Yeah. I mean, obviously that's a possibility. I think that's -- you know, that's something that, you know, we would -- we would hope that, you know, people would take that proposal and determine: A, either we need to benefit the farmers out of this; or B, you know, how can we -- how can we better the Class I industry. But I would -- I'd hope that we would -- we would direct money back to where it should be.
Q. And if that didn't happen, what would be the

impact to your business? What could be the impact to your business?
A. The impact could be, you know, obviously getting outbid for cheaper prices to some of our -- you know, to some of our retailers. And there's always -- you know, there's obviously that possibility. You know, the $1.60, I feel, belongs to -- to who is servicing our facility.
Q. Two more questions that I realize I wrote down a long time ago. I'm sorry. These are probably out of the blue.
A. No, you are fine.
Q. On your -- your Class I products, what's the shelf life on those products generally?
A. 18 to 21 days. Depends on what filler and what line and what plant.
Q. And then in talking about getting your milk supply in, are there times that you all reject a load for a various reason?
A. There are a few instances of that happening, very, very irregularly. And that's typically due to temperature or bacteria counts. But not -- not common enough to -- you know, for it to be, you know, much of a discussion.
Q. And then -- but when that happens, does your supplier backfill to get you whole to what you expected to get in, or you just kind of don't process as much as you anticipated?
A. Yeah, I mean, we would -- we would -- I mean, in -- in a specific example, it was our own supply that

did it, and because it was -- the trailer was -- the milk was too hot. And so, you know, we just -- we just got an extra load the next week.

We don't typically carry -- you know, we buy above our emergency amount, right? So, like, we can -- especially in Fresno, we can absorb a tanker here and there that didn't show up.

Q. Okay.

A. Because we have -- we have -- we have a lot of silos and a lot of milk storage there. So one -- one tanker wouldn't -- probably wouldn't impact our day's production.

Q. Okay.

MS. TAYLOR: I think that's it from AMS. Thank you so much for your time.

THE WITNESS: Yep.

THE COURT: Are there any other cross-exam questions for Mr. Ellis before I invite redirect?

There are none. Redirect.

REDIRECT EXAMINATION

BY MS. VULIN:

Q. Mr. Ellis, I want to start where Ms. Taylor left off.

If Shehadey Family Foods is paying this $1.60, or part of the $1.60, as an over-order premium to its suppliers, assuming Proposal 20 was adopted, wouldn't that make Shehadey a more attractive place for suppliers to sell their milk?

A. Yes, it would. And I guess that's -- that's really what, you know, my thoughts are in regards to incentive to serve Class I. That gives an increased incentive to serve Class I.

Q. And so to the extent Shehadey's competitors aren't redirecting that $1.60, or as much of it as Shehadey is to their suppliers, really that's just a competitive advantage that Shehadey could use to attract more milk, if needed?

A. Correct.

Q. Or attract higher quality supplies of milk, if needed?

A. Yes.

Q. And is it fair to assume that whatever portion of the $1.60 is redirected to farmers versus used for internal innovation, plant repairs, and improvements, that will be driven by competitive factors, correct?

A. Correct.

Q. If Shehadey needs more milk, it can direct more of the $1.60 to its suppliers, correct?

A. Yes.

Q. Or if Shehadey wants to try and grow its sales, would that benefit its suppliers as well?

A. Yeah, it would.

Q. And so if Shehadey uses some portion of the $1.60 to develop a new or innovative product, that would be another way to utilize that money in benefit of Shehadey's suppliers, correct?

A. Yes, it would.
Q. Okay. And likely across the industry, every processor would make that individual calculation about where that $1.60 can best serve its operations?
A. Yeah.
Q. And to the extent Shehadey was utilizing that $1.60 to pay its suppliers more money, that -- that would be something that it could -- that wouldn't necessarily be a secret, correct? Shehadey could put out there publicly that it was trying to attract more suppliers by using that $1.60 that way?
A. Yeah.
Q. And in discussing the balancing and the issue of attracting milk to Shehadey's Fresno facility that's located so closely geographically to that balancing plant, do you recall that discussion?
A. Yes.
Q. So Class I vis-à-vis that balancing plant is going to typically have the highest price within the FMMO system, correct?
A. Yes.
THE COURT: A little closer to the mic. Thank you.
BY MS. VULIN:
Q. And you received some questions from Ms. Hancock on Shehadey's ability to extrapolate its competitors' prices based on having a larger portion of the price as a fixed price within the FMMO system, as the base Class I

differential, versus more of the price determined by competitive factors and over-order premiums.
Do you recall that discussion?
A. Yes.
Q. And would Shehadey be more interested in being able to control the competitive factors of its milk supply through freeing up that money or having more certainty as to higher but base Class I price?
A. We -- we are much more interested in having those discussions be part of an over-order premium. We view the minimum milk price as that, it's the minimum price. And then the locational or regional economic factors would go into determining what the price of milk should cost at the receiving facility.
Q. Does Shehadey have any fears about what would happen if it was able to negotiate and manage its milk supply using market factors and standard economic forces, much like most other industries do?
A. I think, you know, obviously, there's risk in every -- in any decision you make in any direction you go with it. But I think the benefit of having those factors outside of the pricing formula is it allows quicker adaptions to changes, right? Similar to the fuel example I gave you: Fuel went up, charges came in.
And if -- if there's, you know, massive changes to, you know, inflation, or there's economic factors that -- that are out -- you know, unforeseen, you are able to adapt to those things a lot better. And it -- it can

create long-term contracts with -- with escalators and de-escalators based upon certain -- you know, certain things that you -- you know, you use as a base.
Q. And that ability to adapt quickly to market circumstances would be a benefit to processors; is that right?
A. Benefit to the processors, and I believe it would be a benefit to suppliers as well to know that, hey, for the next five years or seven years, you -- I have got this contract with this processor, and here's what can make my price go up or down based upon -- you know, the different factors out there.
But today, no one wants to sign anything more than a couple of years because we don't -- we don't know what's -- what the world's going to be like in two years. You know, that's just -- so I think -- I think there's benefits to both.
Q. Okay. To both processors and also suppliers?
A. Correct.
Q. Thank you.
MS. VULIN: Nothing further, Your Honor.
THE COURT: Mr. Ellis, you have had an amazing career with so many exciting things happen. I don't know whether you were just in the right place or whatever, but I applaud you for having taken on so much responsibility.
THE WITNESS: Thank you. I have enjoyed those I have worked with, and it's been -- you know, it's a great industry.

THE COURT: Great.

MS. VULIN: Your Honor, I would move admission of Exhibits 480, 481, 482, and 483, please.

THE COURT: Is there any objection to admission into evidence of Exhibit 480, also marked MIG/Shehadey-24?

There is none. Exhibit 480 is admitted into evidence.

(Thereafter, Exhibit Number 480 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 481, also marked MIG/Shehadey Exhibit 24A?

There is none. Exhibit 481 is admitted into evidence.

(Thereafter, Exhibit Number 481 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 482, also marked MIG/Shehadey Exhibit 24B, like boy?

There is none. Exhibit 482 is admitted into evidence.

(Thereafter, Exhibit Number 482 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 483, also marked MIG/Shehadey Exhibit 24C, like cat?

There is none. Exhibit 483 is admitted into evidence.

(Thereafter, Exhibit Number 483 was received into evidence.)

MS. VULIN: Thank you, Your Honor. I believe that concludes the testimony of Mr. Ellis.

The Milk Innovation Group would next call Jacob Schuelke with Crystal Creamery. We have some exhibits we need to distribute, and he will need to get his PowerPoint set up as well, so maybe five minutes off the record to take care of those administrative tasks?

THE COURT: Let's take ten.

Everyone, please be back and ready to go at 10:30.

MS. VULIN: Thank you, Your Honor.

THE COURT: Thank you, Mr. Ellis.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 10:31.

I'm first turning to the gentleman in the witness chair.

Please state and spell your name.

THE WITNESS: My name is Jacob Schuelke, last name, S-C-H-U-E-L-K-E.

THE COURT: You have previously testified in this proceeding; is that correct?

THE WITNESS: Yes, and a few points in between.

THE COURT: You remain sworn.

JACOB SCHUELKE,

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

MS. VULIN: Your Honor, everyone should have three documents in front of them.
THE COURT: And, Ms. Vulin, we have got a new witness, so I would like your name again, please.
MS. VULIN: Thank you. Ashley Vulin with the Milk Innovation Group.
THE COURT: Thank you.
MS. VULIN: So first, we have Exhibit MIG/Crystal-19, and we ask that that be marked as Exhibit 484.
THE COURT: Yes.
(Thereafter, Exhibit Number 484 was marked for identification.)
MS. VULIN: Second we have MIG/Crystal Exhibit 19A, and we ask that that be marked as Exhibit 485.
THE COURT: Yes.
(Thereafter, Exhibit Number 485 was marked for identification.)
MS. VULIN: Finally, we have MIG Exhibit Crystal -- MIG/Crystal Exhibit 19B, and we ask that that be marked as Exhibit 486.
THE COURT: Yes.
(Thereafter, Exhibit Number 486 was marked for identification.)
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DIRECT EXAMINATION
BY MS. VULIN:
Q. And, Mr. Schuelke, the first two documents, Exhibits 484 and 485, are your written testimony for Proposal 20 and your opposition testimony, correct?
A. Yes.
Q. And Exhibit 486 is your PowerPoint presentation you are going to give here today?
A. Yes.
Q. And if we could please pull up the PowerPoint presentation.
So, Mr. Schuelke, I know you have testified previously, but can you please remind us about your role at Crystal.
A. I am the CFO at Crystal Creamery. I'm also in charge of milk procurement and commodities.
Q. And can you give us just a brief summary of your background in the dairy industry.
A. I very much grew up in the dairy industry, growing up on a dairy farm in New York. Both of my academic degrees are in dairy business-related fields.
Q. What are those degrees?
A. An undergraduate degree in agricultural business from Cornell University, primarily focused on dairy farm business management, and a master's degree from the University of Wisconsin, focused on dairy economics.
Q. Thank you.
A. And since then, my career initially started with

the University Extension Service as an agricultural business management educator, and since then I have been working in the private sector for a variety of companies in agricultural economics and finance-related positions.
Q. In finance-related positions?
A. Yes.
Q. How long have you been at Crystal?
A. Three and a half years.
Q. And if we could -- I was going to say the next slide, but we're there.
Can you please remind us what products Crystal makes.
A. Crystal Creamery is the number one brand of milk in Northern California. We are primarily known as a fluid plant. We are also a very large producer of Class II products, ice cream, and cottage cheese, and we have Class IV powder drying facilities.
Q. I like how Mr. Ellis referred to summer as ice cream season. I'm going to start doing that, I think.
A. Every day at Crystal Creamery is ice cream season.
Q. I like that even better.
Where are Crystal's plants located?
A. We have two facilities. Our main facility is in Modesto, California. That is where the bulk of our production takes place. And we have a much smaller facility in Humboldt, California, that is primarily focused on organic and ice cream production.
Q. And at the Modesto facility, what is the breakdown

for this plant of Class I products versus other class products?
A. We probably are 40% Class I and the remainder equally split between Class II and Class IV.
Q. And the Humboldt plant, similar question, what is the breakdown between Class I products manufactured there and other classes?
A. The Humboldt plant is primarily an ice cream plant. I don't know the percentages. And we do a lot of powder manufacturing up there. We have a tiny bottling operation. And by that, I mean one to two trucks a week of organic milk we might bottle up there.
Q. So does the Humboldt milk have enough Class I that it has to be pooled?
A. No.
Q. And if you could go to the next slide, please.
I'm sorry, one more question.
Your Class I that you manufacture at your Modesto plant, is that HTST, ESL?
A. HTST.
Q. Thank you.
So we can go to the next slide now.
I know when you previously testified you spoke passionately about supporting direct ship farmers.
How do you think FMMOs are failing Class I direct ship farmers?
A. Well, what I have here on this slide is a graph that Phil Plourd, who is an economist, did at a California

Creamery operators meeting showing the history of PPDs that the Federal Order system has been generating since 1970.

For those of you reading the transcript, what you will note is that from the period of 1970 to the year 2000, the system very stably was able to generate about the manufacturing class price plus $1 per hundredweight. These -- the manufacturing class price used here is Class III. A better proxy for what the system should be able to generate in a California order would probably be the average of Class III and Class IV, because that is the local manufacturing base.

Q.   So let me stop you there.

When you say that the system was able to generate about $1 above the PPD, what does that mean for direct ship farmers? How -- how are they impacted by that?

A.   What this means is that there is an incentive to move milk to fluid plants. They are able to generate a pay price that is above the local manufacturing price.

Q.   In other words, if a local manufacturing plant did depool or could depool, it would still be beneficial for the farmer to choose the Class I plant over that Class III plant?

A.   Yes.

Q.   Thank you.

So then what happens after the year 2000?

A.   In the year 2000, as the market started off, you will initially note some stability for the -- or volatility for the period of 2000 to 2005, but it was still achieving very good pay prices that were above the manufacturing price.

Over the period of 2005 to 2015, you would see a gradual decline in the average PPDs that the system was able to generate. I would generally attribute this to declining Class I sales and a growing manufacturing base to where the system was no longer able to generate dollars and spread it the same way across the manufacturing base.

Q. And so once that PPD crosses the threshold of $0, once it's down in the negative range, what does that mean for a supplier who chooses to supply a Class I processor versus a Class III processor who can depool?

A. There is now no incentive to supply milk to a Class I plant. If you were equidistant from a Class I plant and a manufacturing plant, you would now have no incentive to supply the Class I plant.

Q. And you said you think there are two contributing factors that are causing this disincentive to service Class I, and that's: One, the declining utilization of Class I and the marketplace; and two, the increasing prominence of manufacturing classes in the marketplace; is that right?

A. Yes. And that's what you would see in the period going forward of the last years where you have a double impact from depooling of manufacturing milk and also a continually declining Class I market. So now you have the impact where there's even less Class I revenue in the system, and the manufacturing base is now a Class III and Class IV split, so it does not contribute equally anymore as well. What you will see is that over the last five years, the average pay price generated is now the manufacturing price minus $1.

Q. In these conditions, the low Class I utilization and the increasing role of manufacturing classes, do you expect those conditions to either continue or grow in the future, or do you think that there is potential recovery from this scenario?

A. Under the current set of rules, this negative trend that we have seen over the last five years is likely to get worse.

What I would like to share is a personal story. My employer used to be a very large dairy farm in the state of California. I cannot testify here as a dairy farmer, so I must do so post-humorously (sic).

But our experience with this pay price over the last five years was simply untenable. My dairy farm management background began with my undergraduate degree, where I was -- my faculty advisor was Wayne Knoblauch, who I would consider the preeminent professor on dairy farm business economics. He ran a program called the Cornell Dairy Farm Business Summary. And in that program we would go out and collect data from dairy farms and analyze them, look at their production practices, and then come up with trends, and say, successful dairy farms tend to do these things, unsuccessful dairy farms tend to do these things.

I want to share the story of the dairy farm that we had.

The dairy farm that we had was about 6,000 cows. The dairy barn that they were in was finished construction in the year 2015 at a cost of $15 million. It was the most modern, advanced, beautiful, efficient dairy farm in the county. The cows on that farm were producing over 100 pounds of milk per day. We were the DHIA -- which stands for Dairy Herd Improvement Association, and it's an agency that independently audits your records and shows you how you are doing. We were the top dairy farm in Stanislaus County, California, which is saying something. We had a somatic cell count of 150,000, and the bacterial counts on our milk were nonexistent. This was a top dairy farm.

Under this pay price they asked me, what should we do? And I said, you got to ride out the next high price cycle and sell out. Because if your pay price is the manufacturing price minus $1, you got to go. You will not survive the next downturn. And that's what we did.

The pain did not end there. We thought that we could sell that farm, being such a great facility. However, the number one question when your dairy farm assets are for sale is not what condition of barn it is, it's what kind of milk contract comes with this farm? That milk contract was the best contract in the state. Correct? It had no caps. You could make as much milk as you want and you were guaranteed the blend price.

So when we put this farm for sale on the market, what do you think happened? Every single farmer in the area knew what that contract was and they passed on the facility.

Q. Because the contract was with a Class I processor?

A. That was the only one you can get. You are not able to ship to other handlers, they are currently closed in the state. So that farm sits vacant, and it will probably be bulldozed.

THE COURT: That is stunning.

This is trivial compared to what you just told us. I need the spelling of your professor, the excellent agricultural professor.

THE WITNESS: Oh, God. It's like the German word for garlic. K-N-O -- no -- I can't even buy a vowel. You are going to have to Google it.

MS. VULIN: I'm sure we can provide it to the court reporter at a break.

THE COURT: All right. And this was a professor at what --

THE WITNESS: Cornell University.

THE COURT: At Cornell. All right.

THE WITNESS: And so he trained me on how to analyze dairy farm profitability.

THE COURT: Thank you.

BY MS. VULIN:

Q. I appreciate that story.

And, Mr. Schuelke, I know that you have also prepared an example to demonstrate through -- numerically, on what that experience is like for a Class I supplier in the new world we have within the Federal Order system. I know you presented a similar example, but I want to reorient all of us.

So just to start with, can you tell us what each column represents so we know what data we're looking at.

A. The -- what I have here is a simple pool class model with three participants: A Class III participant, a Class IV participant, and a Class I participant, in an order like California, where the end use utilization is typically 45% Class III, 45% Class IV, 10% Class I.

And if all participants -- an example of, if the Class III price is $20 --

Q. Sorry, I just want to -- a couple of questions about the meaning of the data really quick.

So we have three examples here is my understanding.

One is a point in time, a month that cheese manufacturers are incentivized to depool, correct?

A. Yes. That would be because the cheese price is $20, the Class IV price is $15, and the Class I price is $19.94.

Q. Okay. And just before we dig into the numbers, sorry, I just want to orient our columns.

So we have one example that is a cheese depool month, correct?

A. Yes.

Q. And then we have a second example that the inverse

is true, that powder is incentivized to depool, correct?
A. Yes.
Q. And then you looked at what the average would be if you have both of those months happening equally throughout the year, correct?
A. Yes, or any period of time, a five-year average.
Q. Excellent. Thank you.
So we'll go back to the cheese depool month.
So explain to us what those columns, perception and reality, are for those prices, please.
A. So, yeah. I also wanted to show the Class I price in this example is $19.94, because it's the current formula. The average of the Class III and IV price, plus my plant, which is a 1.70 differential, plus $0.74, so that's why it's 19.94.
Q. And 19.94 would be the minimum Class I price under the Federal Order formula, correct?
A. Yes.
Q. Thank you.
THE COURT: Okay. That's $19.94?
THE WITNESS: Yes.
THE COURT: Thank you.
BY MS. VULIN:
Q. Okay. So then tell us, what are the Class III and IV prices? Are those also the announced minimum Class III and IV prices?
A. Yes, in this hypothetical month.
Q. And the announced Class III price is $20, and the

announced Class IV price is $15, correct?
A. Yes.
Q. Okay. So then let's move down to the next rows, utilization.
Can you walk us through what those are, please.
A. So these would be where milk is sold would be -- your perception if everything was blended, and in the next column would be if the Class III participants were to depool.
Q. And in this scenario, when Class III is $20 and Class I is $19.94, Class III would have to pay into the pool if they chose to pool, correct?
A. Yes, they would.
Q. And so in this scenario, even though Class III seemingly should make up 45% of the pool, they have chosen to depool because that's economically advantageous, correct?
A. Yes.
Q. Great. Thank you.
So walk us through then, how we get the blend in each of those scenarios.
A. So the blend is a simple range average. If everyone pooled, everyone would get $17.74. If cheese depooled, the -- you would only have Class IV and Class I in the pool, now everyone gets 15.49.
THE COURT: That's $15.49?
THE WITNESS: Yes.
///

BY MS. VULIN:
Q. And so then looking at the pay price, walk us through what the pay price would be if everyone pooled and what the pay price is for a supplier to each of these classes in reality.
A. So, yes. In reality, in the pay price to the person who supplied the Class III plant would be the $20, and the pay price to both the Class IV and Class I participant is the blend, which is $15.49.
Q. So for a supplier, it's equally advantageous to ship to a Class IV or a Class I supplier in this month because they both receive the same uniform price, correct?
A. Yes.
Q. But if you are a supplier shipping to Class III, you have gained an advantage over Class I for a cheese depool month, because your processor did not have to participate in the pool, correct?
A. Yes.
Q. Thank you.
So the powder depool month, as I understand it, is the exact same example, just the inverse when powder is at a higher price than the blend; is that right?
A. That is correct.
And I would just say, the next one -- column is the average, and what this is, is the average-of both columns cheese and powder. So as you look at that column, you want to average all of the columns before, and that's the result that you are going to get.

And for -- the points to point out in this is that sometimes we can't see the forest through the trees. When we see this happening in any one month, someone is going to look at this and complain, and say, "Hey, do you remember that one month where the Class I price was $0.06 below the Class III price? Boy, that made me mad."

I want everyone to take a step back and look at the five-year average. On average, the Class III and IV participants paid $17.50 into the pool, I paid $19.94. On average, the shippers to the manufacturing plants got $17.75, and my farmers got $15.49.

Q. And so in other words, when you supply to Class I, you might be tied for last place, but over time you will always be in last place?

A. Yes.

Q. And is this example why you believe the FMMO system is actually disincentivizing service of Class I processors?

A. Yes.

Q. And that was your list example with Crystal's farm, correct?

A. Yes.

Q. Okay. Anything else you would like to add on this chart?

A. That -- that's fine.

Q. I think that's quite a lot for all of us to digest, certainly.

So the next slide, can you tell us just generally

why Crystal supports Proposal 20.
A. The general thing I want to say, first and foremost, is that I would like to take the base payment and turn it into a credit. If the current system is paying farmers an average of the manufacturing price minus $1, if we all of a sudden turn it into $1.60 credit, now it pays those shippers the manufacturing price plus $0.60. We fix the problem.
Q. And Milk Innovation Group did propose some proposals that would have worked somewhat similarly to that concept, correct?
A. Correct. It guarantees payment to the farmers that's fair and equitable. It also guarantees stability in the system. If we want to ride this system down with Class I utilization, I think we know where it all ends. If we can find a stable solution to where now people want to ship to Class I, we now innovate. We provide incentives. People want to build new plants to develop new products to chase this credit. And now we have a system that -- where the USDA can be firmly founded, and now we can grow out the marketing services that the manufacturing sector really needs, particularly milk price check transparency.
People need to know what everyone's paying. We hear that in this order all the time. Okay. That person depooled, what's their farmer getting paid? We don't have to disclose that, but we can add information to help our dairy farmers market. That's where I want to grow. I

want to grow with USDA.
Q. And we have heard questions to various witnesses on, what would you do with that $1.60 if it was taken out of your pool obligation?
Do you have anything to share there for Crystal?
A. Well, again, there's carrots, and there's sticks. If we use the carrot of a credit, I think we can all walk in here unlikely friends. If all -- USDA doesn't want to hear that and the only tool I have in my hand is a stick or a hammer, all of a sudden everything starts to look like a nail. Do I want to grow the base? No, it's killing my farmers.
So my results -- or economic analysis is identical to Dr. Mark Stephenson's. If you want to give me a number within a range, that number is zero. And that'll kick everyone out of the pool. You are not going to like it, but it's going to be a more equitable outcome than what we have today.
Q. And so thinking about the ways in which Crystal could innovate with that $1.60, I know that you have said it's really about supporting the farmers for Crystal?
A. Yes.
Q. And that supports Crystal, right? It is not altruistic purely, because you want to have a solid quality milk supply for your plant?
A. Absolutely.
Q. So now let's get into the factors.
A. Yes.

Q. The first is Grade A milk. And I won't ask you the same questions we have asked everyone else, which is do you have any Grade B milk? Where do you find it?
But I know you do have some interesting insight to share about a creditor incentive that the state of California put in place that really didn't have much of an impact in generating Grade B. So can you tell us about that.
A. Yeah. First, I would like to share a comment on Grade B milk. As someone who's spent a lot of time looking at dairy farm profitability, the absolute worst thing you could ever do to a dairy farm is say, "I think I'm going to save money by trying to manage my dairy farm to Grade B standards."
If you --
Q. Why?
A. If you want to have a profitable dairy farm, you need to spend money. You need to invest. You need to spend money on quality. You need to spend money on sanitation. You need to spend money on cow comfort. And if you take care of your cows, your cows will take care of you.
There is no reason to incentivize dairy farmers to put their somatic cell count below 750,000. We had our farm at 150,000, and if we were to be in business, I would have told my operators, "You need to lower that 5,000 every year into perpetuity, because I know there's a farm five miles away, the same size, at 100,000 somatic cell

count, on the same cows. If we want to be viable and in business, we got to be there, too."

Q. And I certainly wouldn't presume to know as much as you or Dr. Velez or anyone else here, but my understanding is, healthier cows make more and better milk.

Is that a fair way to summarize it?

A. Yes. So that said, no one in California ever produced true Grade B milk within the last ten years. The Grade B programs were loopholes of legacy regulation to avoid pooling regulations and taxation, nothing more.

In fact, I worked at one of the handlers, and we used to have a quality report. Our Grade B shippers used to ship higher quality milk than the Grade A shippers. It was just that. No one ever made Grade B milk. It -- there's no incentive to. It does not make sense. But that -- it did avoid a tax.

However, despite a tax avoidance, it ultimately became unmanageable to have a Grade B milk supply in a Grade A world, because if you operate a dairy plant, your creams, your spot milks, your products were unmarketable, and it just couldn't manage despite the fact you could do it to avoid a tax.

Q. And that's -- California -- just so I understand and for the record -- California had established a $0.40 economic incentive that would be paid to farmers who were Grade B; is that right?

A. No. There was a tax that the state found they

could only levy on Grade A milk, so you could go Grade B with your Grade A dairy and avoid paying the tax.
Q. A reduction in your tax, not a payment?
A. Yes.
Q. Thank you for clarifying that for me.
And even with that $0.40 per hundredweight incentive, there were very few, if any, farms that you said that took advantage because it was so unattractive to processors?
A. The processors who offered it as a procurement tool found out that it wasn't worth it. The costs of trying to be Grade B in a Grade A world were greater than $0.40 per hundredweight.
Q. And these were all manufacturing class processors, correct?
A. Yes.
Q. So now let's talk about balancing.
What are the ways in which Crystal balances its milk supply?
A. The primary way that we balance our milk supply is with our powder plant. There are ten major powder plant dryers in the state of California, and our Modesto facility is one of them. It provides balancing services, both to our direct ship supply, our plant, and the greater industry in general.
Q. And can you remind me, is Crystal's milk supply, is it all independent farmer direct ship, is it all cooperatives, or some mix of those?

A. It used to be much larger direct ship, upwards of 50 loads a day direct ship. It is now down to about 20, and we have backfilled in with primarily cooperatives and manufacturers.

So what I would like to say about that, is that operating the only regulated and mandatory pooled powder plant in the state of California is extremely difficult. When my plant goes down and I need to sell spot milk to avoid it from going on the ground, oftentimes people will say, "No problem, how about class minus five?"

However, when my neighbors break down and they ask me for help, it's always, "Sell it to Jacob because he can't pay you less."

So I do help out, even though the Make Allowances don't cover it, and even though I'm in California, meaning that when I go to sell my finished products, I'm going to take a $0.05 per pound discount on my powder and my butter on top of what NASS reports, that's the CME standard discount, I'll still run it. But it's extremely difficult to compete in a world when all of your competitors can buy milk at such a lower price.

Dairy farmers oftentimes share their milk checks with me from farms who ship to the other nine powder plants in the state. Based on those checks, you can infer that they are not paying Class IV for milk. I have the only powder plant in the state of California that has ever paid fully Class IV and pooled it on every drop of milk that's ever entered it.

Q. And that's because of its association with your Class I plant?
A. Yes. It is a large disadvantage for me.
Q. And do Crystal suppliers ever undertake any balancing efforts?
A. As I mentioned before, our suppliers might not, but if something's wrong, I might tell my direct ship farmer, "We have four-hour waits to unload today, so I'm going to tell you to go unload over here and I'll settle up with that handler." I'll take care of my direct ship farmers.
And, similarly, like I said, I still provide that service to the industry. If somebody else's plants goes down, I will help them out. If my plant goes down, they will help me out, but not on equal terms.
Q. And does Crystal pay its farmers -- or excuse me -- its suppliers any over-order premiums?
A. Yes, we do.
Q. Can you tell us a little bit about those? Do they include balancing? Is that ever part of the discussion?
A. No. All of our contracts with dairy farmers, you can ship me everything, and we pay a base premium plus a quality premium on top of that. And most of our contracts with the cooperatives and manufacturers are fixed volume, very steady volumes that align with their milk supply, and they know that I know how to manage it.
Q. So you have heard previous testimony, it sounds like over-order premiums operate somewhat differently in

every relationship between a supplier and a processor.
Is that about fair?
A. Yes.
Q. And lastly, on Proposal 20, and just to kind of tie up your previous testimony, do you think that the $1.60 being paid into the pool helps incentivize service of your Class I operation?
A. No.
Q. In fact, the opposite --
A. Yes.
Q. -- is that right?
A. 90% of the money goes to the manufacturing base, and I often feel that it is used against my direct shippers, not for them.
Q. Let's go to the next slide, please.
So I understand Crystal opposes Proposal 19. Can you tell us a little bit about the milk supply around your operations.
A. Certainly. I also want to start off about the model. When I was at Cornell, my favorite professor, and the only one who I ever got an A-plus in, was Jim Pratt. Jim Pratt did a lot of the initial work on the location differential model, and is what probably inspired me to go on to Wisconsin to get a degree in agricultural economics. So I just wanted to say I'm very familiar with this model and how it works.
But specific to California, I wanted to highlight that when we talk about regional changes, no other change

has happened more in the last 20 years than in Southern California. Southern California has lost almost 80% of its milk supply in 80 years. We have gone from a robust manufacturing sector to one that now imports milk from 100 miles away, yet, no one noticed, because over-order premiums work.

However, if people want to come up here on this stand and say, "My region lost milk, therefore," how come Tulare doesn't get a bonus? It just doesn't flow.

Similarly, I want to talk about Humboldt. And this is not a fault of the model, but the changes to Humboldt show that that area now needs to export milk based on its new differential slope, which is a chuckle. Because if you believe that, the agricultural products that you have been consuming from Humboldt are not dairy-based. There are zero conventional cows in that region. All of the cows up there are organic, and we are the primary seller of milk up there. All of that milk is bottled in Modesto and trucked up.

So while here I'm not picking on the model, I'm just saying, I know what happened. Somebody thought that there were 16,000 conventional cows up there. Well, there aren't, and that's not how milk moves up there.

Overall, though, I do want to say to L.A., in the model, we're talking about a $0.90 increase. And what's the consumer getting for that? They are not getting a greater incentive to move milk into their area, which is the largest newly deficit area in the country. I don't --

I don't understand this.
Q. Thank you. We can go to the next slide, please.
So now let's talk about Proposal 21. Remind us what Class II products Crystal manufactures, please.
A. We are a large manufacturer of ice cream, cottage cheese, buttermilk, pretty much everything under the sun.
Q. Because Crystal is a Class I facility, is Crystal able to depool any of its Class II milk?
A. No, we are not.
Q. So walk us through then why you believe that Proposal 21 should be rejected.
A. Here it just raises the Class II price. And as we all know, that's a market where manufacturers have options. In fact, I have one customer with an annual supply contract, and written into their contract is, every month I can choose to buy either condensed or powder, based on what I feel is the better price, and I supply them whatever.
But under this proposal, I feel that the rewetting of powder is going to happen a lot more, and that's a bad thing.
Q. Why is that a bad thing?
A. It, obviously, offers lower payments to the farmer. If I'm buying Class IV milk, drying it, and then rewetting it instead of just using it fresh out of the cow, there's a lower payment to the farmer and a lot of wasted costs, which are environmentally unsound.
Q. And have you -- do you have any observations on

whether or not consumers would prefer a product coming from fluid milk as opposed to rewetted powder?

A. I don't think they would notice. You would not know from reading the label, but after they ate it, they might notice it doesn't taste the same. And you would then say, "Greek yogurt used to be different. I don't buy that brand anymore." But given the added cost, I feel manufacturers would be forced to do so, and it doesn't represent our products well as an industry.

Q. And given that Crystal cannot depool its Class II products, does it feel like it would be unfairly impacted by this change, even though it's selling products that are identical to standalone Class II facilities?

A. Yes. We at Crystal would never rewet powder to make our Class II products. We are a premium brand. But at the end of the day, the consumer is simply going to pay more for the same product. And on average, they are going to pay more for a lower quality product.

Q. And you -- I believe you have heard previous testimony on elasticity and the impact of price increases on purchases and consumption.

In your personal experience, when Crystal raises prices on its premium branded products, what happens to sales?

A. They -- they drop, and people try to substitute to other brands or other products.

Q. And does Crystal make any private label products in addition to branded?

A. Yes.
Q. And do you have anything to share about whether or not Crystal is better off when it makes branded products versus private label? Any --
A. We're just happy to be there. We'll -- we'll make whatever. The customer is always right.
Q. I like that answer.
So let's go to the next slide, please.
Can you tell us, just before you get into analyzing the data, what is the data on this chart?
A. The data on this chart is the Class II SNF price since the year 2000.
Q. And where did you get this data?
A. I downloaded it from -- I think it's on one of the Federal Order websites. They have an Excel file that's great. It's full of every price you ever wanted to know.
Q. And so this is the Class II SNF price since 2000, correct?
A. Yes.
Q. So walk us through what this data shows or demonstrates about the Class II price, please.
A. What I wanted to point out here is that when these formulas were developed, the market was very stable. If you are a dairy dork, you will look at the stable line at the beginning of this and remember a thing called the butter-powder tilt. The government set the price for powder so there was very stable markets. Since then, however, we have become a global exporter, and our

Class IV market is driven by global factors, which introduces high volatility.

Q. And do you see a lot of volatility over time in this chart?

A. There are very volatile. You see swings of the price in the magnitude of 100% in just a 12-month period, and then back down again. And it's a normal occurrence.

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

So, again, before you analyze the chart for us, can you please just walk us through what data each colored line represents.

A. Okay. So the lines here, the orange line would be the current Class II SNF price, and the period that we're looking at is 2021 to 2023. And this is the most recent up-and-down price cycle for Class IV. So let's track these prices over this.

Q. Sorry, what does the blue line represent?

A. The blue line is the CME nonfat dry milk spot price. So this is what I have into my contract with my Class II manufacturer. Do you want to buy CME previous week's average powder this week, or do you want to buy current month's Class II SNF condensed skim this week?

Q. And so let's stick with just the blue and the orange line for now. So just to summarize, this is the comparative price between Class II and Class IV, the portion of those prices that's the calculus between, does it make more sense to use powder and rewet it or to use Class II fluid; is that fair?

A. That is correct. And what you will notice is that when markets are moving up, you are going to want to use conventional Class II SNF. However, when markets are declining, class spot powder may be a better, a cheaper price.

Q. Why is that? Just curious. Why does powder decline on the way down?

A. It has to do with the price lags. So the CME sets the price, then NDPSR reports the price three months later, and then AMS reports the Class II price -- or a couple weeks later, so there's -- there's an inherent four- to six-week price lag here of the same price.

Q. So then tell us, what does the gray line represent?

A. The gray line represents what the Class II price would be under the proposed formula increase. And what you see in the analysis I showed was in a downward price cycle like this (indicating), the current formula offered opportunity to lower your product cost by using spot powder 20% of the time, however --

Q. Sorry, just to stop you there.

So 20% of the time the blue line went below the orange line?

A. Yes.

Q. Meaning powder was cheaper than Class II?

A. Yes.

Q. And now we're comparing the blue line and the gray line to see when powder would be cheaper than Class II

under Proposal 21?
A. Yes.
And what you will notice is, under this price increase, the spot powder is now cheaper 50% of the time, so it will -- it will cause this (indicating) to happen more.
Q. And when you say "this," this volatility between the Class II and IV price inverting between each other, what does that mean for a Class II processor?
A. What this means to a Class II processor is that with this change, you need to rethink your procurement strategy. You might say now, 20% of the time it makes sense to use powder, so maybe. But now you have got an incentive where 50% of the time it might make sense to use powder, so you're probably going to reorient your milk procurement buying to buy more powder in the future to take advantage of this.
Q. So under prices today, there are still moments in time where powder is cheaper than Class II, correct?
A. Yes.
Q. But you are saying those are infrequent enough that an operation that is using Class II can absorb those periods of time, correct?
A. Yes.
Q. But if the Class II price were to increase, it would be much more difficult to absorb those price inversions when powder is cheaper than Class II, correct?
A. Yes. Or the -- the incentive to use the other

product is much greater now.

Q. Thank you.

If we could go to the next slide, please.

Lastly, I would like to talk about Proposals 1 and 2. I know we heard a little bit back in -- long ago, from Mr. Ellis with Shehadey, about the California fortification requirements.

But can you just give us a quick high-level overview of those again, please.

A. In California we have a fortification standard in that when you make certain products, you must add nonfat solids to them to hit specific finished product targets.

So what happens today is we receive components that are nowhere near achieving that target, so we must fortify. We buy -- I would add condensed to my products in order to meet those finished product targets. And our primary objection to this is that the components we receive now in -- are well below the new proposed standard. So due to the California fortification standard, I would have to pay twice for these products: One, I would buy products to get up to the level that I paid for, and then, next buy them again to get to the California finished product standard.

Q. And the components that Crystal Creamery receives today on average for its products, are those above or below the average components in the state of California?

A. In the state of California we are always below. How much below is going to vary. When it's the cheese people in the pool, they tend to have higher components, so I'm a lot lower. When it's the powder people in the pool, it's closer. But I'm still always below in most market report months.

Q. And you say here, "Higher components mean more costs for processors from desludging."

Can you tell us first, what is desludging?

A. Desludging is the primary source of loss in a dairy plant. It's when you run raw milk through a milk separator, and it separates out the cream and skim portions. No -- I don't care what you tell me -- no separator is going to run for more than an hour, and everyone runs them at 30 minutes or less before you have to desludge.

And desludge means you stop milk, and you do a quick wash with water to clean it out, and then get it going again. Because as these separators run, they lose efficiency. It might start out skimming out almost all the fat, but over time, that's going to creep up and you are going to have to stop, clean, start over, in order to maintain your finished product target level.

If you move from 3.5% fat milk to 4% fat milk, that is not a half a percent increase. That means there's 14% more fat in that milk. I'm now going to have to remove 14% more cream from that milk, and I'm going to do a lot more desludging to make that happen.

Q. And explain to us again, the loss of product and the frequent desludging is because when you wash out the line, there is product loss in having to do so; is that accurate?

A. Yes. We are not going to mix milk and water, so everything goes to the drain when we do this.

Q. And with the increased cream causing increased desludging, won't Crystal also be obtaining more cream that it can then use or sell otherwise?

A. Yes, it will. I would say for my competitors, that's a problem. The average Class I plant exports cream or sells it at a loss to their raw procurement milk cost. So if I'm going to generate now, 14% more cream, I'm going to have to procure more initial raw milk to do that. And we hear people tossing out premiums, $2, plus, plus, plus. You are not going to sell your cream on the back end for those kind of premiums, so they are going to have losses.

The main point here is, as components increase and finished product target levels stay the same, it gets harder and harder to process them, our costs go up. If the customer were demanding it, that's great. But if not, it gets costly.

Q. And if we could go back to the last slide.

This issue of consumers or customers preferring or demanding more components, we have heard claims of that in support of Proposals 1 and 2.

But in your experience, is it consumer demand that has driven component increases in recent years or something else?

A. No. What I wanted to talk about there is, I have always been a proponent of trying to attain higher components on your dairy farm. I felt it was a profitable thing to do.

When we first switched over to the Federal Order, a lot of places in New York were now switching over from an SNF or skim pricing to now multiple component pricing.

Q. When you say "multiple people," are you talking about the order or just agreements between individual processors and suppliers?

A. Yeah. The order was changing, so the standards upon which we buy and sell our milk changed. And when that happened, I remember I was an intern for the local extension agent, Zaid Kurdah -- Z-A-I-D, K-U-R-D-A-H -- and that was where I developed my first extension program.

We went to Cornell one day, and we talked to Mark and Andy, and they explained all this to us. And we developed a program talking about the new order, the economic incentives, what it means to you, and we delivered those programs across Central New York State. I always thought it was a great thing for the farmers to do, because now the system was paying you for it.

Similarly, when I moved to California, I worked for a processor whose whole economic model was to pay based on protein in an SNF market. And I thought it was great. If your customer is willing to pay you for it, you should do it.

But what's happening now is not that. It's that base plans are in place --

Q. What is a base plan?
A. A base plan means that processors logically can only process so much milk, so you as a dairy farmer can't just make whatever you want and throw it at them. It makes sense.
But what happens is a farmer --
Q. Sorry, just to close the loop there.
So a base plan is a limit on how much a certain farm can produce?
A. Yes.
Q. And do processors or cooperatives put in place those base plans, typically?
A. Both. Proprietary and co-ops, almost everyone in the country, besides Crystal Creamery, has a base plan who says, "You can't just ship me whatever you want, you can only ship me one load a day of milk."
Q. And how did that drive component increases?
A. Because now they've finally read my extension presentations. They realized, "If I can only ship one day of milk, the best way to do it is with higher component milk." And so that's what they are doing.
Q. They are realizing that if you can only ship one load, you can get more money for that one load if there are higher components.
A. Yes. And what I would like to say is if you are a cheese plant or something else like that where you're deriving value from the marketplace, that's great. But I don't feel that's what's happening, and we're causing the

fluid consumer to pay for this in this policy outcome.
Q. Thank you.
So just in closing, any final thoughts for USDA as they consider changes to the FMMO system and changes to pay prices and Class I in particular?
A. My just final thoughts are, first and foremost, we need to generate a system that generates fair pay prices to the dairy farmers who we force into it. To force or to have the majority in the order vote in place a bunch of rules on the minority, and the majority can opt in and out, but the minority can't, and then the system systematically pays them a lower price than people making the rules, is just a non-starter for me.
No matter what we do going forward, we need to fix the pay price. A direct shipper should want to ship to my plant. I should have a wait list like everyone else does. I'm the fluid plant. You get the blend, it's guaranteed. If I don't pay you that, the Sheriff comes to my plant and repossesses my plant. It's what you want to be.
So I mean, that's -- we got to fix that. If we can't fix that, it's going to blow up.
And the next thing I want to say is, we love the USDA. The marketing services provided are great. You haven't heard one objection to that.
And we have heard countlessly people saying, "Well, what's this person paying? What's that person paying?" You guys have that information. It's the mailbox report. Sure, we might need to audit it. Sure,

we might need to do this and that. Farmers would love to know what's the range of pay prices in my order. Let's build it. Let's grow together. Let's help the manufacturing sector grow.

That is -- you want to use the Class I market as a revenue source to do that, but that's where we want to be. We're -- 20 years from now we're going to be a global exporter. You have never had a greater opportunity in your life.

Europe's shooting themselves in the foot. Oceana is out of land. China still can't feed itself. The next marginal supplier is us. But we got to get with the times.

And we're a bad supplier, because we are -- one day the butter price is world low, let's export; now it's world high, let's stop exports and import from New Zealand. We're a bad supplier. Let's fix it and grow.

So, yeah, that's -- that's where we want to be.

MS. VULIN: Thank you very much.

Nothing further, Your Honor.

I would preliminarily move admission of Exhibits 484, 485, and 486, with a minute-30 left.

THE COURT: Wow. That time went very quickly. It was very dynamic. I need a break.

So if I take a break now, we come back, it's only about ten minutes to lunch, but I think that's okay if I do that.

So please come back ready to go at -- at 11:48.

Come back ready to go at 11:48.

We go off record.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

Back on record at 11:48.

I invite cross-examination.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Mr. Schuelke.

A. Good morning.

Q. My name is Ryan Miltner. I represent Select Milk Producers.

I have some questions for you, and I'm looking at Exhibit 485, which is MIG Exhibit 19A.

Do you have a copy of that in front of you?

A. Yeah. What page are you on?

Q. It will be page 9.

Now, you noted that your company has Class IV processing. I believe you didn't state so, but I understood that to mean you have no Class III operations.

A. We do not have Class III operations, but at times I sell condensed milk to cheese plants, so I will have Class III utilization.

Q. Okay. Does Crystal Creamery have a position on any of the proposals in this hearing that change Make Allowances?

A. We are a manufacturer of Class IV, and we're the only one who is pooled. Our position is that those current Make Allowances are unattainable by our own plant, and based on the data that other farmers share with me, I don't feel that others are able to successfully operate their plants paying those prices for milk.

So we want a Make Allowance update, a reasonable one, and quickly. And we feel it's even more important for us because we're the only one out of the ten plants in California, we're mandatorily pooled, so it really means something for us, to where everyone else it's kind of a joke.

Q. Okay. So I'm going to interpret that as, yes, you support the proposals to increase Make Allowances?

A. Yes.

Q. And, of course, that would also lower your -- the prices for your Class I purchasers, correct?

A. The lower Make Allowances?

Q. Yes.

A. Based on the formulas.

Q. Okay. So you agree with that, that lower increases in the Make Allowance will in turn lower your Class I regulated price?

A. Yes.

Q. Okay. Do you think that the data supporting the proposed increases to Make Allowances is sufficient even without a comprehensive survey of plant manufacturing costs?

A. I would like a comprehensive survey, but I'll tell you, you know, how this process works. I'll take what I

can get. And we -- I don't know why it is so hard to do. In California it wasn't a mandatory survey, it was, if you want to pool milk, you will participate. The same rule could probably apply here, too.
Q. So I understand your answer to mean that you would like a comprehensive survey, but it's not a requirement for you to support the proposed increase to Make Allowances?
A. Yes.
Q. So on page 9 of your statement, you state your opposition to Proposals 10, 11, and 12, and you suggest that there needs to be a comprehensive analysis of plant yields before making those adjustments.
I'm curious as to why you're okay with changes to Make Allowances without a comprehensive study, but these changes you are -- you won't support without a comprehensive study?
A. Because I'm at a functional economic disadvantage right now. I can't use my plant assets on equal terms as my competitors. So if we're going to do it, let's do it right. But I need some immediate relief because I'm dying here.
Q. And so it's simply an economic consideration for you?
A. Yeah. I want to do it right, but I'll take what I can get.
Q. When it -- when it's to your economic benefit?
A. Can your plants pay Class IV on all their milk?

Q. I don't have any plants.
A. Okay. Do you believe that they would?
Q. The nice thing about being over here is I get to ask questions.
A. I'm just saying. I don't believe it's an attainable standard to anyone, especially in California, at current levels.
Q. Okay. Do you measure the farm-to-plant shrink from your suppliers to your plant?
A. I buy everything off of my scale.
Q. Off of your scale?
A. Yeah.
Q. Okay.
A. Well, I'll buy -- we have a range, a formula. I'll take your farm weight, but if it varies from my scale, we go to scale.
Q. Do you measure any observed variances to know that, you know, the farm weight and your plant weight average a certain discrepancy or difference?
A. Yes.
Q. Are you willing to share that?
A. They normally average out to zero. And if they don't, I say to calibrate your tank.
Q. Okay. So it's normally zero, the difference between farm and plant weights for you?
A. Well, I'm also -- under that methodology, I'm calibrating my farmers' tanks to my certified scale, basically.

Q. Okay. Does your Class IV operation make any buttermilk powder?
A. Yes.
Q. And do you -- do you sell your buttermilk powder or do you utilize it in your operations?
A. We sell it.
Q. Do you also sell nonfat dry milk powder?
A. A lot.
Q. Do you track the correlations between those two prices for buttermilk powder and nonfat dry milk powder?
A. No. Because I -- I -- I sell all my buttermilk powder to one customer on a take-all agreement. So my -- I don't track what the public price is, all I track is what my formula price is.
Q. Is your formula price pegged to the nonfat dry milk price?
A. No.
Q. You make reference on page 9 of your statement to the Midwest cheese plant in Michigan.
A. Uh-huh.
Q. And also the Southwest cheese plant in New Mexico.
Are you aware of the actual operations of those plants?
A. I'm aware that they exist, and I Googled their press releases on how much the plant cost in my analysis.
Q. Are you aware as to -- you described them as similar plants.
Are you aware as to whether they correlate in

terms of size?
A. The original -- I -- I don't know enough about them to talk.
Q. Okay. So you don't know if the plant in Michigan is larger or smaller than the plant built in New Mexico 17 years prior?
A. I -- I can't comment on that. I just -- I'm reporting what I read in the press release.
Q. Okay. Do you have any knowledge of the butterfat recoveries of those two plants?
A. No.
Q. Do you have any knowledge of butterfat recoveries for commodity cheddar plants in general?
A. Yes. I have worked for a few commodity cheddar plants.
Q. When was the last time you worked for a commodity cheddar plant?
A. Five years ago, more than that. Five to ten years ago.
Q. Was that the Hilmar plant you reference in your testimony?
A. Where is that?
Q. "My career in the private sector started with Hilmar cheese where I was their dairy economist."
A. Uh-huh.
Q. Is that the cheese plant you are referring to?
A. I have worked there and Gallo Cheese would be the two cheese manufacturers that I have worked for.

Q. Do you believe that a 90% butterfat retention is still appropriate for a modern cheese plant?
A. I -- for a modern cheese plant? It -- when you run so many different products and do so many different things, and I also believe that the Class III price is way too high to ever operate any of these plants. So all in, I don't know. I -- I just -- do you think -- I guess restate the question.
Q. Do you believe that 90% butterfat retention is still appropriate for a modern cheese plant?
A. For a modern cheese plant?
Q. That's the second time I have asked it, yes.
A. Okay. A modern cheese plant that costs $100 million or a modern cheese plant that costs half a million dollars?
Q. Let's go with the $100 million plant.
A. I believe that might be attainable if you are using old used junk equipment because you bought a used plant for $100 million. The press releases on what new cheese plants cost are approaching a billion dollars now.
Q. Okay. So do you have an opinion as to what an appropriate butterfat retention would be for a cheese plant of that scale?
A. No. And I also believe in this setting, the -- what we're using is a political outcome.
Q. I'm sorry?
A. What we're using is a political outcome. It's not a surveyed product analysis like what we did in

California.
Q. Okay. Thanks.
MR. MILTNER: I don't have any other questions.
THE COURT: Who else has cross-examination for this witness?
I'm going to invite the Agricultural Marketing Service to ask questions.

CROSS-EXAMINATION

BY MR. WILSON:
Q. Good morning. Todd Wilson, USDA.
Good to have you back, Jacob.
A. Thank you.
Q. Thanks for coming back. It's a little cooler this week than it was I think the last time you were here.
Also -- also just express our sympathy on the loss of your dairy farm, for closing that. We certainly don't like to see that.
A. Yeah. And I also -- people always ask, "Why did you close that farm?" I -- the story, it's not comfortable to tell, and I don't think the owners necessarily wanted me to tell it, but the room needed to hear it.
Q. Understood.
Try to organize this so that we can get through this before we break for lunch maybe.
On your Exhibit MIG-19, on page 4, it's also in the PowerPoint presentation, but it's the chart. I would like to know if you could maybe explain maybe the math

behind this.
A. Uh-huh.
Q. Give us some more insight to what -- what this is we're looking at.
A. This is an analysis done by Phil Plourd, and it was presented at the California Creamery Operators Association meeting in Tahoe, California, and he was part of a panel when he presented it. And what he did is used his data and insights, primarily USDA data, and tried to reconstruct what he felt was -- what the blend price has been paying farmers over time in the system.
Q. Do you know what USDA data he was using?
A. I do not. I would assume some sort of generally public available report, but I do not know. And I would -- you know, this is going to, I feel it tracks some sort of average PPD over time for the Upper Midwest order as I --
Q. So --
A. Given location differentials for what a true manufacturing --
Q. Maybe I missed that. Is this a graph of only the Upper Midwest orders?
A. I took it to mean that, that it wasn't some sort of national average. It was, if I live in some sort of part of Northern Wisconsin, what's the pay price, is what I took it to mean.
Q. Okay. Thank you.
On page 4, on the next -- the second paragraph,

you talk about assumptions on FMMOs not holding.
I was wondering if you might expand on that a little bit.
A. The main assumption is of pooling, and I referenced a pamphlet somewheres where the general idea is that fluid plants always pay more than manufacturing plants, and we pool and get the same price.
But in reality, that's not what happens, especially when you have two now large manufacturing classes and volatility. Those -- it just doesn't work anymore. We have added new variables, and it doesn't work the same like it did in 1970 when you had a government price support cheese program that drove everything.
Q. So do you feel like it's the pay price that's the assumed -- the assumption that the Federal Milk Orders are not holding?
A. Yeah. I feel that if you are going to force farmers into this system, you can't just say, "Well, you got the blend." Because you have the mailbox data. The blend isn't what everyone's getting paid in the order. And my farmers are getting a lower pay price because of it. I need -- I need a real competitive pay price if you are going to force me into this system.
Q. On page 7, middle paragraph, you talk about -- this is on your support for MIG-20 base differential -- you describe that the base differentials don't move milk in our system, there's only three ways to move milk: Over-order premiums, location adjustments, and credits.

I was wanting to know if you could expand a little on how credits are moving milk.
A. Well, the number one credit would be the Southeast transportation credit. That moves a lot of milk. Assembly credits would do the same thing. You could come up with any sort of credit. We also have Class I mandatory over-order premiums in some orders, I believe, where we take money and then we pay it out in a dedicated way. I don't care what you call it, I just -- I just want to get something in my farmers' hands. We can call it a credit, we can call it a whatever. I just -- I want to -- I want to put money in my farmer's hands. I don't want to generate money and then pay 90% out to the people who are already making more money than me.
Q. I understand that. There's been a lot of talk about receiving credits, and I took that as meaning something from that.
A. Yeah. Anything, call it a credit, call it a direct payment, I don't know. Whatever -- whatever --
Q. Continuing with that same exhibit to page 9.
You talk about the Humboldt plant, Humboldt facility. And does that facility -- it serves a geographic area, you talked about that to some extent, and how that area of milk has transitioned over 30 or 40 years or whatever.
And I was -- we were wanting to know if -- does that plant serve as a balancing function to that -- to that area and how?

A. So it serves a balancing function to the entire states of Oregon, California. And you heard it from other people, any time they think they can get a truck there for the freight. So sometimes we receive milk from Colorado.

And that's -- if you sell organic milk to -- Organic Valley testified that they don't own many bottling plants. What they do is they buy tolling time. In order to do that in a plant, what you need to do is stack 15 trucks end to end, unload them all at once, build up a big slug of milk, start up your plant on the organic milk that morning, and then you can switch over to conventional, because you try to get the highest amount of milk.

So if I put -- if you tried to send one plant of fluid milk to a bottling plant, you couldn't even get the pipes wet before it hit the filler. You got to get a big slug.

So what happens in organic is you might have 15 trucks a day of milk in one area, so one day you will send all 15 trucks to the fluid plant, the next day you will send them all here, you will send them here, there, and the other. No one wants them on the weekend or whatever. So whenever you need an extra, you have spare milk, you can send it to me. And you might not like my tolling rate, but you are really not going to like the conventional price. So that's what happens.

Q. So I take it it's kind of hard to get milk to that part of the state?

A. Yeah, it is. Yes. It is very hard. A lot of the milk is 300 miles away, but if it's an organic farm 300 miles away, it's probably worth it to them to make the trip.

Q. Switching gears to Exhibit 19A-MIG.

On page 6, this is discussing your opposition to Proposals 1 and 2. I know you -- you referenced the state of California, the Federal Order 51 components, I think, in your direct exam.

A. Uh-huh.

Q. How does -- and you did explain that it was, you know, lower most of the time. I was wondering if you might know what those -- what those components are to our current system and how those factors are for components in our current system versus -- and if you want to express, you know, are they higher or lower, if you know the number or whatever?

A. Our components, I guess I could share, they are almost always lower than the California pool average. As I lose my direct ship farmers and I procure more and more from cheese plants and other areas, they are rising, just because that's the only place where I can get milk. So I would say the -- my milk supply is now reflective of the order, not my direct ship. So it's -- it is changing with that.

Q. Okay. All right. Thank you. Okay.

Over on your PowerPoint presentation, page 6, you discussed -- this is going back to the opposing Proposal 19. One of the bullets you talked about how the

USDSS does not consider organic milk, specifically Humboldt.
In what ways can you -- can you explain how it doesn't consider it?
A. Because it considers -- the change in the two models, where before Humboldt, California, had a same location differential as Marin, Sonoma, the other coastal counties. And then under the new model it had more of a tiered structure, which is what you see in milk sheds, where at the center of the milk it's now lower and surrounding it's higher, which means the model is saying, you got too much milk here, let's export. And there's no conventional milk to export there. All the milk sold there is bottled in Modesto and imported. As other people called it, it's a conventional milk desert. It's -- there's no conventional milk there, but the model thinks there is.
Q. So when you mention that it doesn't consider it, the Humboldt plant, let's say, you are not saying that the model doesn't have Humboldt in the model --
A. Oh, it has Humboldt in the model --
Q. Okay.
A. -- but it thinks the milk's conventional when it's not.
Q. And the production area of that area is also in the model, just not representation to the -- to what you know as real world experiences that it's organic?
A. Yes.

Q. Thank you. I think that's all of my questions on the exhibits. There's a few that we been kind of asking several people as they testify.

Do any of your products -- are any of those ESL products --

A. No.

Q. -- in either one of your plants?

And I think you already answered that one as well.

MR. WILSON: I think that's all the USDA wants to ask at this time. Thank you very much, Mr. Schuelke. Appreciate your time here.

THE WITNESS: Thank you.

THE COURT: Are there any other questions before we have redirect?

There are none. Ms. Vulin, you may return.

MS. VULIN: Your Honor, no redirect, just moving admission of Exhibits 484, 485, and 486, please.

THE COURT: Is there any objection to the admission into evidence of Exhibit 484, also MIG/Crystal-19?

There are none. Exhibit 484 is admitted into evidence.

(Thereafter, Exhibit Number 484 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 485, also MIG/Crystal-19A?

There are none. Exhibit 485 is admitted into evidence.

(Thereafter, Exhibit Number 485 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 486, also MIG/Crystal-19B, like boy?

There are none. Exhibit 486 is admitted into evidence.

(Thereafter, Exhibit Number 486 was received into evidence.)

MS. VULIN: Thank you, Your Honor. Nothing further for this witness.

THE COURT: Mr. Schuelke, it's been a delight to hear you. Thank you.

THE WITNESS: Thank you.

THE COURT: And I think it's appropriate for us to break for lunch. It's 12:15. Please be ready to go at 1:15.

(Whereupon, the luncheon recess was taken.)

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FRIDAY, JANUARY 19, 2024 - - AFTERNOON SESSION

THE COURT: Let's go back on record.

We're back on record at 3:17 [sic].

Mr. English?

MR. ENGLISH: Good afternoon, Your Honor. Chip English for the Milk Innovation Group.

THE COURT: I'm sorry, 1:17. I said 3:17 because I was looking at military time, 1317.

1:17.

Mr. English.

MR. ENGLISH: Thank you, Your Honor.

On behalf of the Milk Innovation Group, we recall to the stand Mr. Tim Doelman for fa!rlife.

And while he's coming to the stand, we have distributed previously submitted testimony, Exhibit MIG/fa!rlife-26 and Exhibit MIG/fa!rlife-26A.

And I believe Exhibit MIG/fa!rlife-26 should be marked 487.

THE COURT: Yes.

(Thereafter, Exhibit Number 487 was marked for identification.)

MR. ENGLISH: And Exhibit MIG/fa!rlife-26A should be marked as 488.

THE COURT: Yes.

(Thereafter, Exhibit Number 488 was marked for identification.)

THE COURT: Mr. Doelman, when you are satisfied with your comfort level with your microphone, please state

and spell your first and last name.
THE WITNESS: Tim Doelman, T-I-M, D-O-E-L-M-A-N.
THE COURT: Thank you.
You have previously testified in this proceeding, correct?
THE WITNESS: Yes.
THE COURT: You remain sworn.
THE WITNESS: Thank you.

TIM DOELMAN,
Having been previously sworn, was examined
and testified as follows:

MR. ENGLISH: And for the benefit of the court reporter, "fa!rlife" is not capitalized. Lower case "f" a!rlife, so there is no capitalization in fa!rlife.
(Court Reporter response.)
THE COURT: You know, that's what I hate about everything in all caps, how is a person to know? You may proceed.
MR. ENGLISH: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ENGLISH:
Q. So, Mr. Doelman, you have appeared before, but it's been several months, and so a few quick reminder questions before we get into your testimony.
What is your position with fa!rlife?
A. CEO.
THE COURT: Is that CEO?
THE WITNESS: Chief executive officer.

THE COURT: Thank you.
BY MR. ENGLISH:
Q. Tell us again about how you started fa!rlife.
A. So a good group of us about 25 years ago that started down a journey believing that we could innovate new products. So we actually, it was myself, a partner, Select Milk, a few others, invested into a group that at the time was called Innovative Dairy Products. And the idea was we were going to innovate in the dairy industry to help grow it and realize the value in the milk, so that set off a journey.
Ryan Miltner, one of our counselors along the way, just gave me a stamp from 2000 that says "The Good Cow Company." We quickly realized Innovative Dairy Products was not a very sexy name, and we changed it to The Good Cow Company.
And so then we began marketing our product, working through much innovation to really create value in the space. We toiled for ten years as The Good Cow Company to bring these innovative products to the marketplace. Ultimately, we were able to get some products launched, one of which is today our Core Power product, and it was very successful. Along that journey we created a JV with the Coca-Cola Company, and then grew a business together to what is fa!rlife today.
So in 2020 Coca-Cola took over control of the business, and today runs it, or essentially owns the business as we continue to operate and -- continue to try

to innovate great dairy products.

So a little bit of a journey, but a 25-year process.

Q. So tell me a little about the types of those innovative products that fa!rlife manufactures.

A. So we have actually tried a lot of different things over the years. But the products that most people are aware of today are our ultrafiltered milk, which is kind of the namesake fa!rlife milk out there. It's, you know, brought a lot of innovation into this Class I space, a lot of innovative aspects about the product. And it's been very successful in the marketplace, and well received, and sold all over the United States, in all 50 states, and even though other places.

I was on vacation a year ago or so in one of the Bahama Islands, and they had fa!rlife milk. I didn't realize we were selling milk there. So it finds its way all around the world. And so it's really a neat thing to see after many years of trying to create innovation in the space.

So the other product I mentioned was Core Power, kind of another more nutritional drink type of space. We go after kind of the recovery occasion. We continue to try to grow that category so it's not just sports-focused, you know, diehards that are just, you know, lifting weights, but also moms on the run and a lot more uses. And we have done a great job broadening that category, and that product has had incredible success, too, over the last ten years.

And we have a third product that's -- people may know it as a fa!rlife shake. It -- it's actually called fa!rlife Nutrition Plan, and it's sold through a couple different channels, mostly club, and is also highly successful also.

So all of these products, what they have in common, starts with great milk. We have a really neat proprietary filtration process, fantastic packaging equipment, and we deliver and innovate around the formulation side so the consumer ultimately gets a great experience with these products.

So there's a common thread between them all. They are higher in protein. We manufacture them where they are all lactose-free, and we make them very convenient for the consumer.

Q. Thank you.

How many employees does fa!rlife have?

A. We have grown to just -- just about 850 employees now.

Q. Where are fa!rlife's manufacturing facilities located?

A. Our first plant we'll say is Dexter, New Mexico, where we did a lot of the filtration work to understand how to do it. We have a plant in Coopersville, Michigan. We have a plant in Goodyear, Arizona. And we're building another facility in Rochester, New York, just outside of Rochester -- Webster specifically.

Q. Can you give us a breakdown of which plants manufacture only Class I products, or what other products are manufactured at each site?
A. All plants manufacture all Class I products, as well as Class II and some Class IV.
Q. What kind of milk supply does fa!rlife have as between independent and cooperative supply?
A. Yeah. From a philosophy perspective, again, our -- from the outset, one of the founding groups is Select Milk Producers, so we're very much on the cooperative supportive side of things, and we continue to source all our milk through cooperatives.
Q. Please characterize your milk supply in terms of how far it is from your plants.
A. You know, each location, slightly different. But in all of them, within a hundred-mile radius typically is what we try to achieve. Sometimes milk may come from a little further than that, but in general, each site tries to bring milk in from a hundred miles. It's very -- as you can imagine, freight's very expensive, so it makes sense to put your plant where the milk is, and that's the strategy we have taken from the very beginning.
Q. Does fa!rlife pay its suppliers over-order premiums?
A. Yes, we do.
Q. In these negotiations, did fa!rlife suppliers explain what drives their need for the over-order premiums?

A. Yeah, there's -- there's general costs associated with the business to run. There's certain product attributes that we're going to want. There are certain services that we'll want as far as when and how much kind of flexibility you will have around scheduling, things of that nature. And then, of course, there's competitive pressures. All of those things result in over-order premiums that exist in the marketplace.
Q. Why did fa!rlife join the Milk Innovation Group?
A. When we knew there was some change coming in regards to the -- or potential change, I should say, in regards to the Federal Milk Marketing Order, you know, obviously we were curious as to what the change would be. And what we had heard through the grapevine was that there were a lot of potential cost increases associated with it, or changes to the differentials, maybe changes with the general classification programs, things of that nature. So we had interest to pay attention to what might be driving our future costs.
Q. Was fai!rlife a founding member of Milk Innovation Group?
A. We joined early, so I'm not 100% sure who was first, but I would say yes.
Q. Does fa!rlife support MIG's proposals?
A. Yes.
Q. Why?
A. At the end of the day, fa!rlife is supportive of an FMMO system and having an appropriate way to make sure

we can all market the milk correctly. At the same time, we want to make sure that we continue to modernize what we have.

The current system is built really off of a system from over a hundred years ago, or near a hundred years, and I think it limits some opportunities for the industry. So we have interests collectively with MIG, as well as with the entire industry, to be able to move this process forward.

Q. I know that we have had all -- you're now the final MIG member -- testify on Proposals 19 and 20.

Are you aware of their testimony?

A. I'm aware -- I listened to some of it. I know some of what was going into it. I didn't listen to all of it.

Q. But rather than duplicate the points that they have made, I understand that you are going to summarize -- well, 488, which is 26A -- as opposed to reading those statements into the record, correct?

A. Correct.

Q. So would you now give us your summary rather than reading 488.

A. Rather than read, which would put you all to sleep, because I think I put my kids to sleep when I used to read, so I will go through kind of a chronological thought process here, so be patient as I go through it. And then very welcome to questions afterwards, of course. Not that I have a choice in that matter, but thank you.

First and foremost, around the differentials in general, and -- and the basis of the differentials, and what the Federal Milk Marketing Order does using manufacturing class as a basis to discover price, I think personally it makes a lot of sense that the manufacturing side of it helps establish a price. I don't know that's the only way it can be done. Obviously there's other ways done around the world, but I think it is a reasonable approach to take and certainly can support it.

Those Make Allowances are up in the air right now are being discussed. Obviously costs have increased. I would just make sure everyone understands those same cost pressures also have increased for us. Our manufacturing of a Class I product and a Class II product has also gone up. So it's just -- just -- I understand the potential need for a change here, at the same time realize Class I and Class II are also under those same kind of cost pressures.

From my perspective relative to differentials, I believe it would be best to not interfere with them or make significant changes on the upside of things, because I believe the marketplace will adjust, and has adjusted, for what the purpose of those differentials were. I -- I believe a -- a free marketplace will determine the appropriate value for things, as opposed to some kind of an interpretation of formulas that will get outdated, that will miss facts. There are many factors associated with it. But good negotiations between partners and competitive players will ultimately get the pricing right, and at the end, the consumer will benefit the most.

I think, you know, if we already have a program, I very much support it be a minimum price program as opposed to the actual price.

We have not had an issue at our facilities sourcing milk for Class I, nor Class II. There is an ample supply of milk in the marketplace. When we look at where to put a plant, we look at a variety of factors, and really three main drivers ultimately, and that is: What's the price of the milk and how available it is? How big is my plant going to be? What size? What kind of scale? How many cases can I get through it? Because ultimately I have to divide cost structure, so that size of the plant really matters. And the distance to the market ultimately in the finished product matters.

So as we consider, do we need five plants to execute our business plan, or two -- two plants, or ten plants, those three factors ultimately dictate what kind of decision we'll make.

For us, having another potential cost structure change along the way while we're making these decisions, such as these differentials that we're talking about, is very undermining to a formula that would drive, ultimately, to the least cost structure.

So, again, we look at that milk availability and the price associated with it, the size of the facility that we're going to build, as well as the distance.

Ultimately, if we get it wrong or things change on that or cause us to be less efficient, the consumer will be the one who ultimately gets less because we'll end up having a higher price associated with things.

So the market is better when we allow ourselves to make those decisions around how big, what location, what price we're going to pay, we negotiate that with our competitors, and ultimately we'll make the best decision for us and the consumer.

How do we accomplish that with the current system? We pay over-order premiums. Our over-order premiums help dictate what special attributes we need in our milk. They -- we deal with situations around fuel that just came up, you know, an over-order -- or a class differential program certainly in Class I that looks at freight rates and all this, so you don't have arbitrage situations and all the other things that go with it, gets outdated so quickly. We can deal in realtime with the marketplace because we deal in this over-order premium structure.

We deal with -- even receiving is costly to have a plant go up and down. We recognize that. We're a buyer. We can cause plants to go up and down. We deal with it through our negotiations with our suppliers around this over-order premium. So there's a methodology that's out there to be able to determine what's right around the pricing. If we get it wrong, we won't have a milk supply, so we understand that. But what we don't necessarily need is someone else to tell us how much it costs to do even receiving and everything else from a government perspective. So hence the reason why we have so much opposition towards a mandated kind of price structure associated with this, or a change to what we have.

And then the last thing I'll just say on that part is, when we deal with over-order premiums and things of that nature, we can actually ask for very specific characteristics to the milk we want, and I think that creates a lot of freedom.

So I guess my perspective on this, to sum up and say, the marketplace works. We can go to a customer to ask for certain attributes. Whether or not it's specific to the milk or a service or some other characteristic about the relationship, we can negotiate that. And I think that is the best thing ultimately for the consumer and for the industry to develop the right price scheme for that, or price structure.

Going on. In regards to these class differentials. If the class differentials increase, it's significant in relationship to our current contracts that we have. We have contracts that last two years, five years. Sometimes it's one year on the short side, but many times it's longer. So any change would significantly alter what has been negotiated between the parties, us and our vendors, suppliers, so I think that needs to be certainly considered.

In regards to, again, increasing class differentials, as if that's going to move milk to one place or another, more and more so, as you all know, Class I represents much less of the overall milk production in the United States. Since 1975 we have gone from 50% of Class I to less than 18%. That is a dramatic drop. And I would say over the next ten years it will continue and potentially accelerate, which makes the pool of dollars you are trying to raise for the -- for our program very -- well, less consequential. And two, the rate of change in decrease makes it very difficult to kind of get the formula right. So from my perspective, we're better off, again, letting the marketplace work.

When we talk about the over-order premiums, what I like best about them, it goes directly to the people we're interacting with or dealing with, our supplier. It doesn't necessarily go to a group that really has no accountability for the service or the product attributes that we're looking for, and I think that ultimately essentially just creates a cost without a benefit. So I think that's an added cost that doesn't really help the industry figure out a way forward, with better products, innovative products, and innovative services.

The other element that I'll mention, too, around kind of -- I mentioned the three, how much milk supply, what's the cost of it, how big are these plants do we build, how far are these plants away from the location that we're trying to serve. Making changes to the current structure that you have from a cost increase side of it certainly will create winners and losers.

I -- we'd like to build a very large facility in Rochester, New York. It's a huge investment. Lots of dollars to process lots of milk. Having the basis of your price structure now shift underneath you is very significant. It would cause to us reconsider the scale of the plant we build. Should we shrink it? Should we move, make a less-efficient plant somewhere else because the formula is telling us that you have to pay more for your milk now here?

Which, to me, doesn't even make sense because we deliberately go out -- and by the way, the formulas I have seen proposed do tell us we need to pay significantly more -- when we have made a point to conscientiously put these plants where there's excess milk, or has the opportunity to be excess milk. We are not building these plants in the middle of New York City, we are putting them where it makes sense to grow.

So we should not be undermining this effort to grow and innovate in the dairy industry. It makes it very difficult for someone to lean into the industry and invest as much as we have over the last, call it ten years, in our facilities. So I think that's something to very much consider. If we want to grow our facilities, if we want to grow our infrastructure as an industry, to continue to move forward and progress.

And I really -- again, if you look and you try to find outside capital, money that's not coming from a cooperative, or from the farmers themselves, we need to make sure we have a secure milk source and a pricing system that's very clear and understandable and the ground isn't shifting.

If a change were to be made with Class I and Class II, I would advocate that the change essentially take the funds that are there and put those directly towards people servicing these accounts.

Again, I mentioned earlier, I think when it goes into a pool, all the extra services we're asking for, everyone -- not everyone's participating in that cost structure, but everyone's participating in the extra money there. And I don't think that's necessarily a smart way to move forward, to be able to nurture the right relationships, ultimately be the most competitive in the marketplace for all parties involved, and ultimately grow the industry.

Specific to Class II and Proposal 21, and Jacob did a fantastic job I think explaining this earlier, which is, if you start increasing Class II, absolutely people will look more to just use Class IV, and that's a huge negative for the industry. We are a very large Class II user and pride ourselves in being able to create the space. Our products last over a year, in many ways have the exact same attribute as a powder product.

Why don't we classify ourselves as Class IV? It's a good question. There's a lot of potential dialogue around that space. We're okay with where it's at, but an increase in it, you are going to force us to look at using

Class IV. And even more so, my competitors are mostly in Class IV today. You are going to keep people from even considering looking at Class II if you start to change this also. Because it takes a lot of money and infrastructure to build these facilities, to then add an additional cost to it where you're going to be competitively disadvantaged to those that go the route of using powder products.

I have an example over the last ten years, I won't share the exact brands, but I was involved with a project that sells a beverage -- call it a dairy beverage, as much regulation in this industry, so I think it is officially called a dairy beverage. When it was first formulated, it was formulated by a group that maybe didn't know the dairy industry super well, so of course they used about 90% milk in it. And there was some other products with it, from a flavor side of it. And it was a fantastic tasting product.

So as we went through the cost -- and actually went to market with it and had really good success.

But as they got to understand the cost structure better, they realized, wow, if I can get this down to where I'm only around 48%, 47% milk in this, I can be Class IV. And so that's precisely what the group did. They spent the next six months figuring out how to take milk out of the product.

And the competing products in its place do the exact same thing. They make sure they don't put any more milk in, not that it makes a better product, in fact, it makes a less superior product, but it is exactly what they did.

So this is the downside with -- with playing around with the price in Class II. You are going to -- you are going to continue to push products into the IV space.

So in conclusion, from my perspective, first off, hats off to all of you for being here for the last six months. Nothing but respect for this industry and all those involved. And I mean that. I know many of you, and I'm proud to be a part of it. And I'm glad in the role that I have been able to play. I have no desire to have this industry go backwards. My whole life's work is to be able to move this industry forward.

And I look at the tools that USDA kind of creates for the industry, the survey, you know, order, a back -- a backstop in price. I think those are all very good things, and we need to be very thoughtful with them as, you know, moving forward.

I also know that Class I certainly, and Class II, has been flat, not necessarily growing. Cheese and powder will continue to grow and be a much more dominant portion of the industry, it just will be. We're going to be a big exporter, as Jacob mentioned, the opportunity is here, as long as we do it right and set it up to succeed correctly.

So the Class I will continue to be a smaller piece of the puzzle. We would like to continue to innovate in this area, as well as Class II, to create more demand for these products. And we're going to have to continue to negotiate with the suppliers of that and the competing uses for milk, successfully. And I think we can do that through the marketplace with our over-order premiums and negotiations with the competitive set that's there.

Ultimately, when we do that, we're able to help drive the right attributes for the product, the raw milk source that we want, the services that we need, and ultimately, that's better for us, and it's better for our supplier, and we want to pay them directly for it.

So from my perspective, I would love the industry to consider a step towards modernizing this industry at -- and at minimum, don't go the other direction to where it -- it potentially puts more controls and limitations on the industry.

I was sharing earlier a story about fa!rlife and kind of what it took to get going, and it's -- there's really two elements of regulations in this industry. There's the foodservice -- or excuse me -- the food safety aspect of regulation, and there's this pricing aspect of regulation.

And, again, not against regulation, they have a purpose and a place. Sometimes that purpose changes over time and we need to adapt it.

When we started with fa!rlife, we had so much difficulty figuring out how to be able to sell this product, get through the laws, and the rules, and the regulations. We ultimately fought to get through it, and it took many years. But now we can sell our products freely, and I think it's been a very big success for the consumer, a big success for the dairy industry, and I strongly believe we're just starting.

I think the same mentality exists for pricing regulations. I believe we have a complicated system. There's reasons why it existed, and I think we need to look at it in earnest to figure out how we can simplify it and enable more innovation in the space. I think as a result, the entire industry will be better off.

Thank you.

Q. Thank you, Mr. Doelman.

I just -- I think as a follow-up to that, and you may have already effectively answered this, but just in case, what is your position on Federal Milk Marketing Orders?

A. I support them. I would like with that -- I support them if we can update them. I do not support a price increase on these differentials.

MR. ENGLISH: Your Honor, at this time the witness will be available for examination after I move, subject to ruling after examination, for the admission of Exhibits 487 and 488.

And the witness is, I think, available for further examination.

THE COURT: Thank you, Mr. English.

Who would like to begin cross-examination.

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Good afternoon, Mr. Doelman. I'm Nicole Hancock with National Milk.

You understand that the Federal Order system was implemented because natural market forces didn't allow for the proper movement of milk in a fair and equitable manner?

A. I -- I don't know how long ago that was, so I don't know necessarily that -- how many years ago was that. I don't know the answer. I think it was, but I believe if I recall, it was close to 80 years ago, maybe a little longer than that.

Q. I take from your answer that you believe that that's no longer a factor for concern?

A. That is correct. I believe the marketplace will allow milk to flow appropriately from one place to the next, equitably and competitively.

Q. And it's fair to say that all of your experience in the industry has been under a time when there was a Federal Order that governed that movement of milk?

A. I would agree. I think one reason we're here is because we're talking about updating it because we think there are some elements that are outdated. So the industry has evolved to be able to address what the Federal Order was becoming outdated against.

So from that perspective, the same way it adapted to make sure we could get milk in the right place today, I think would exist without an increase or change in that significance of the Federal Milk Order.

I do believe there's a value in how you -- an underlying value in how the manufacturing grade manufactured products -- cheese, butter, powder -- is established. I think there's alternative ways. But I do see value in what's there today.

Q. And you talked about over-order premiums that fa!rlife pays to its suppliers.

Are you comfortable sharing what the range or averages are that you pay on over-order premiums for the acquisition of your milk?

A. No, I won't share that.

Q. Okay. Not even in a general or aggregate way?

A. No.

Q. Okay. Can you share if you pay them to all of your suppliers?

A. Yes, we do.

Q. Okay. And in your testimony you talk about some of the value-add items that you believe that you're paying for in those over-order premiums; is that fair?

A. That's fair, yes.

Q. And can you summarize what -- what those attributes are that -- that you are paying for with those over-order premiums?

A. I'll group them up more in kind of a bigger grouping as opposed to every detail. But there's a variety of quality-related attributes. There's a variety of composition attributes associated with that. So you have kind of a food safety quality element of it. You have an attribute element of it. You have service -- a service side of it.

Again, we talked about how consistent you can be as an operator to make sure you have a constant supply of milk come in, realizing and recognizing that cows produce about the same amount of milk every day, with the exceptions of course of your different seasons where you have some highs and lows, to understand that effectively. There's a service around if we were to take the plant down for any significant amount of time, so there's some elements around that also that we address.

Those are probably the good four -- four groupings for you to get a sense of the different characteristics that we're looking for.

Q. Is plant downtime of the fourth category?

A. Yes.

Q. Okay. And so that would be balancing?

A. It's an element of balancing.

Q. There's other ways in which you balance as well?

A. There's other elements balancing, too, yes. In regards to your consistency of supply, changing of orders, all that -- all that matters.

Q. And then within each one of those kind of four buckets are lots of smaller nuances that kind of fall under that; is that fair?

A. That is absolutely correct.

Q. So, for example, under quality, what kind of quality elements do you include?
A. Again, I'm -- I won't go through all the details because it's, you know, part of our relationship we have and what specific things we ask for. But think bacteriologically, for instance, that might be an aspect of it.
Q. Limits on the amount of bacteria that can be present in the milk?
A. Yeah.
THE COURT: That answer was "yes"?
THE WITNESS: Yes.
THE COURT: Thank you.
BY MS. HANCOCK:
Q. In your testimony, you -- I wrote down in my notes you said you want to pay your suppliers directly rather than have the base differential of $1.60 included in Class I differentials because you want to pay the supplier who is responsible for delivering you the attributes that you want.
A. And the service. Yeah. So, yeah, the total including service. The balancing, all the other work that goes with it, yes, that's correct.
Q. Okay. And -- and so are there -- are there attributes to your Class I fluid milk that are unique to what your requirements are from your suppliers that you want to pay those suppliers directly for?
A. Yeah. For sure. I think every processor has a

different way of running their business, and so you can't group them all the same. The fluid milk plants, just like the next fluid milk plant, there's different services they may need. Frequency of -- of -- of receiving. Different times of day you receive. Are you consistent every day of the year? How fast do you receive? Do you wash? There's -- there's so many attributes that you can kind of go into to distinguish how the business actually runs. They are just not all the same.

So I think we run our business one way, and, you know, Jacob and his group might run it slightly differently, and there's all kinds of differences in the marketplace that way. And that's something that, I believe, you want to determine what's the value for people in regards to that. So -- and you do that with your supplier, you don't do it with a pool.

Q. And you are willing to -- to pay for those attributes for the extra services and attributes that you want for your Class I fluid milk over that which you want for your manufacturing products?

A. Well, yes, ultimately. I don't even want to distinguish the difference in Class I or Class II at this point, but I would just say for -- put them both together and say, yes, we -- we pay for extra attributes associated with that.

There's really not a big distinction between the attributes we ask for between a Class I and a Class II. There really is no distinction. Which to me is another

reason why, why is there a distinction? I can still get the milk, and it's the same.
But we do ultimately want to be able to pay that group of suppliers to us a price that works for them in totality.
Q. And you said that when we deal -- when we have the ability to use our over-order premiums, we can ask for those certain attributes from those specific suppliers?
A. Correct.
Q. Does that -- and you have cooperatives with whom you contract for milk?
A. Uh-huh. Correct.
Q. And so are you able to do that with your cooperative suppliers as well?
A. Correct. Yes.
Q. And -- and in your contracts, you direct those cooperatives as to what attributes that you want that are unique to service whatever business model you have that you are trying to service the Class I fluid milk market; is that correct?
A. I wouldn't use "direct" because -- I'd love to be able to direct them -- but we negotiate what that is worth to us, and then we ask for it, certainly.
Q. And to the extent that you get that in your contract, that's a directive that you can enforce upon them?
A. They don't have to accept a contract with us. So it is an ask. It is a negotiation back and forth. We

don't direct anything. I wish it were that simple.
Q. Right. And so when I said to the extent that you are able to negotiate that into the contract, that presumes that there's an agreement on the other side, and once the agreement is in place, that becomes the directive against which you can hold them accountable?
A. Yes, of course. We have to pay them a certain price, and they have to deliver a certain element of what we asked for.
Q. And does fa!rlife require, in its contracts from its suppliers, that the farms that supply it are of a certain size?
A. It's not so much always about the size as much as we need a certain volume of milk. So we do have an element associated with that.
Q. Okay. And that might require that each farm that supplies fa!rlife has to supply at least one load per day?
A. Yeah. We ask for one tanker a day to make sure we have got a fresh supply of milk coming in from the farm. We don't -- we do not want, because we're looking for certain quality attributes, the milk to sit on the farm more than 24 hours.
Q. And have you been able to negotiate that in all of your supplier contracts?
A. Yes.
Q. And so to the extent that you have been able to negotiate that in the contracts, it's fair to say that that becomes a directive against which you can hold your

suppliers accountable?
A. I -- I don't know why you want to call it a directive, per se, because it's -- it's agreed to. So we have agreed that that is what they will supply us, and we will pay them for that.
Q. Okay. It becomes a contract term?
A. Yes. Yep.
Q. A better word, maybe?
A. Yeah. I'm not a lawyer, so I don't -- I don't know why you want to use that term but --
Q. There's no trick, I can assure you.
A. Okay. All right. Very good.
Q. And so one load a day or a tanker a day on a farm, do you know how many cows it takes to fill up one tanker?
A. If you got really good cows, about 500 milking cows. If you are not quite as good, maybe 600, maybe 700. It depends. It's in that range.
Q. So it's fair to say that you don't source any of your milk from what would qualify as a small business in the Federal Order system?
A. I do not know the breakdown on where that is.
Q. Okay. If I were to tell you that it's probably 400 cows, would you agree with me?
A. I would agree then, yes.
Q. Okay. Do any of your contracts have a mid-max term in them?
A. Just that, in regard -- you -- that is a very open-ended question, so I really don't know how to answer

that, quite honestly, as I started thinking through that. So could you clarify what you mean by that?
Q. Do you allow for a range of volume deliveries where you have set a minimum and a maximum amount?
A. The minimum is that you have a farm turn over their milk every 24 hours, so that would be the requirement. But that's it. After that, if you are talking about in relationship to the size of a farm or -- and I think that's what you are -- what I'm assuming.
Q. Did the cooperatives, then, assume the responsibility of balancing any of the variabilities that happen within that range?
A. Yeah. They will find milk that complies with that size.
Q. Are you able to build inventory from the spring flush in order to help your demand in the fall?
A. We, again, have a long shelf life product. We'd love to be able to do that, to take advantage of it. The reality is, our business has grown significantly over the last ten years, and we don't know that we'll ever get there. I mean, we make it and we sell it. So some day possibly.
Q. Well, congratulations to you --
A. Thank you.
Q. -- if you can't make it fast enough to sell.
A. Thank you.
Q. You can agree with me, then, that that's a good problem to have in your business; is that fair?

A. We feel very fortunate that we have been able to innovate in the space and consumers very much love the product.

MS. HANCOCK: Thank you so much for your time. I appreciate it.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon, Tim.

A. Good afternoon, Ryan.

Q. For the record, I'm Ryan Miltner. I represent Select Milk Producers.

In one of your written statements, and I -- you don't need to pull it out -- you seem to indicate that your preference would be that all milk would be priced with a manufacturing price as a minimum with no Class I differential.

Is that the intent of what you were trying to state?

A. It's not my intention today that that would occur, Ryan. It would -- I'm urging the industry to consider how to minimize regulation around the Class I and Class II space, so --

Q. And so your support for Proposal 20 would reduce your pool obligation by $1.60, correct?

A. Correct.

Q. And would that also reduce your overall milk cost by $1.60?

A. Initially. But I would -- I will add this. If something like that -- if 20 were to be adopted, and I mentioned we have got contracts two years, five years, they were built under a certain premise. Whether or not we were good enough to get it in -- the right language in the contract that says, if this occurs, you will do this; if this occurs, you will do this, we will have to adjust accordingly, and very clear from my perspective as the buyer, the premise in which we went into the contract. So if we were to turn around here tomorrow and eliminate the $1.60, I would go back to every one of my vendors and say, "We recognize there's a change here, we need to make sure you are whole while we work through to get to a new contract." And that's my -- that's how I would manage the process.

Q. And I think some other handlers that have testified on Proposal 20 have suggested something similar, that at least a portion of what would not be paid in a differential, they would seek to return to their farmer suppliers.

Is that kind of what you are trying to convey there?

A. I don't even know that I would call it a portion, I might give it all to them. That would be more my take. Again, based upon certain premises. Until you get to another point to where you can negotiate appropriately.

MR. MILTNER: Thanks very much.

THE WITNESS: Yep. Thank you, Ryan.

THE COURT: Is there other cross-examination before I call on the Agricultural Marketing Service for questions?

There is none. I call on the Agricultural Marketing Service for their questions.

MR. WILSON: Todd Wilson, AMS.

CROSS-EXAMINATION

BY MR. WILSON:

Q. Good afternoon, Mr. Doelman.

It's good to have you back.

A. Thank you.

Q. I -- I'm going to say the same thing Ms. Taylor's been saying in the past. Thank you, Ms. Hancock and Mr. Miltner, for some of the questions, because they -- they have shortened mine some.

So specifically on Exhibit 26A, I'm going to jump to page 3, the top of that paragraph you talk about paying for services and goods beyond the base milk.

Could you expand on what you mean by "base milk"?

A. Yeah. I think, for me, I use the term "base milk" as kind of a general reference to what an average buyer might want. And an average buyer might just want everyday milk that's being produced in the marketplace, delivered kind of when they want it.

And as some of the cross-examination was pointing out earlier, we have certain needs. Whether or not it's a full tank, certain quality attributes, bacterial attributes, temperature, even things related to animal welfare. I mean, things that are, like, different than how would you just think about buying milk in the marketplace. To me, a general spot you might purchase in the marketplace, call that base milk. And what I'm buying is much more detailed than just picking up a commodity milk in the marketplace. So that's what that's referring to.

Q. Okay. It's not necessarily a value you are associating --

A. No, no, not at all.

Q. -- like a minimum value --

A. I probably could have used a better term because I know we used the term "base." I apologize for that.

Q. Just trying to clarify the record. Thank you.

In that list you have receiving disruptions, and maybe you answered that through another question, but I think I missed it in my mind.

Could you expand a little bit on what you mean by "receiving disruptions"?

A. Yeah, where -- where we basically shut a plant down and don't operate for three days. That's significant. And we recognize that.

Q. So are you paying for the undelivered milk?

A. Correct.

Q. Okay. What -- would you be willing to say what kind of value when --

A. I'm not going to go into the specific --

Q. Yeah. Okay. All right.

A. -- values of -- of these items.
(Court Reporter clarification.)
THE COURT: But it would be good if he could have finished his question. We get your drift.
THE WITNESS: And I get yours. Thank you.
MR. WILSON: And I'm not used to this, so I think I walked over Mr. Doelman as well on my questions.
BY MR. WILSON:
Q. I think Mr. Miltner covered that one for me.
So one of the -- one of the -- the center paragraph of that you talked about your contracts and how any change in differentials would kind of upset the apple cart, or upset the market, so to speak.
That's the same to be said on all the proposals, correct?
A. Yes. You are 100% correct.
Q. The only thing that wouldn't is to keep the same differentials that we have today.
And so my question is, do you have a -- do you oppose that?
A. I -- I personally do not. My -- it's not so much about opposition. I think I was asked a question that -- Ryan asked it, well, what would you like to see?
I would just -- I think it behooves the industry to figure out how to minimize -- I don't want to call them unnatural, but not marketplace drivers to costs, so that's -- that's -- that's why -- you know, that's why I'm here testifying. That's why I'm in MIG.

Q. So going into the next page, you talk about the tools that have been used in the past and how, you know, you would like to see the industry, you know, kind of change and things like that.

So the marketplace has always offered the opportunities to negotiate for any real value that they feel like needs to be different than what the minimum price is.

Has that always -- has this criticism of -- of what the marketplace is trying to drive to versus what regulation is driving, has that always been a criticism in the industry in the way of differentials?

And kind of to -- to say this another way, is the over-order premiums that exist in the industry and the Federal Order differentials, they have co-existed for a long time. Are we -- are we at a time and place where you see that those can't any longer co-exist?

A. There -- it probably could co-exist. My concern is -- and, again, I mentioned this around the -- kind of the investment side of it. We're putting a very large investment in -- in Upstate New York. Based upon the three kind of principles: How big does the plant need to be? Is the milk available? What's it going to cost? And how far away from the market is it? And to have it potentially change dramatically what my cost structure is, really is a disincentive to make investments like that, because it changes it.

And, again, I shared with you, appropriately asked, what would you do if all of a sudden you got a $1.60 more, you know, that you are not spending? I would give it back.

But there's no -- on the flip side, for me, depending upon how my contracts are written, I may not be able to do that, and I may really have a less competitive plant now, because I can't pick up the plant and move it, I mean, and that is a massive infrastructure spend.

So I -- what I don't like is the fear of costs changing dramatically that prevent us from, you know, considering those kinds of investments.

So that -- so I think it could exist. The change and the fear of change is -- is sometimes the scariest thing. So to me, from a direction, I would want to head the direction of removing risks of change.

Q. Okay. Thank you.

Last page, last paragraph. In your conclusion you are urging to let the marketplace determine the value of Class I and II milk, so -- and you have also talked about the value of the Federal Milk Order, and I think you are trying to bring some of that back into this statement. But I'd like to maybe -- you say, using survey prices and things of that nature.

Can you talk a little bit more about what you are trying to say in that paragraph?

A. I -- I think the Federal Market Order certainly serves a -- a -- a great service to the industry for many other -- for many aspects of it. And -- and I -- I could try to go through a list, and I know I'll miss, you know, 80 of them, you know.

But having a way in which we do price discovery, again, and I think based upon the manufacturing side of it, is a huge benefit to the industry. From a -- the survey perspective, I think, you know, making sure the farmer gets paid, you know, immediately for their milk, you don't end up negotiating some interesting terms where they -- you know, they are held over a barrel. Ensuring that that information is shared across the industry so that people have visibility into it and transparency, I think matters.

When it comes to the specific details around why I say Class I and Class II, because they have always been treated a little differently than that base manufacturing footprint. And I think it's one reason why there's no innovation in the space, and I -- I shouldn't say "no" because there is some in Class II. But there is a lack of innovation in the space because there's so many rules around how it's going to be priced.

And so no one's going to make an investment in figuring out how to bottle milk better one way or another when the industry is geared to basically deliver a certain jug milk. And I think that's where it's -- the opportunity is.

So -- and, again, I don't have a perfect answer. I don't have a solution on what you keep and what you get rid of if you move down the road. I just, again, inherently know that the -- if you can remove some restrictions, you are going to allow the opportunity for innovation.

And I -- I mentioned it on the food safety side of things that I went through, and absolutely it's true that if I can remove some of those restrictions, the industry is going to be better off. We're going to innovate better products. And I strongly believe that on the milk kind of pricing side of it, too. You will free up areas of the country, potentially.

I looked at -- for instance, we looked at an area to go manufacture down in Georgia, and Walmart just announced they are going to build a big plant there.

We are a mix of Class I and Class II. And just the way it was structured, I really couldn't move forward because there was too many rules around the price of both Class I and Class II where I really couldn't have the -- it wasn't easy for me to have the right conversation with the group of farmers that I would like to potentially have.

What I'd like to see -- what I'd like to be able to do is go into there and have a much more white paper, to be able to figure out what's going to work for them long-term and what's going to work for us long-term versus having a dictated kind of price structure. That's really -- so there's all kinds of elements that the FMMO does that brings all kinds of value, I would want to maintain those, from my perspective, as we move towards that general direction.

Q. You made a comment to -- on your cross with someone, I don't recall, but you -- you said the word phrase, FMMOs need to provide a backstop, or wanting to provide a backstop.

Can you talk about that a little bit more.

A. I think there's value in the kind of a minimum price scheme. Again, a farmer is not held over a barrel, visibility, I consider all those kind of backstops.

If -- if -- you know, I mean, I certainly can understand the situation if someone were to, I don't know -- I don't know -- I don't even know the exact situation, because it goes both ways. I mean, you could say, you know, the plant's got all the power, or the farmer's got all the power. I don't know who's got all the power. I know when you are in that situation, you both need each other typically. So -- but having -- having a -- a FMMO system I think does create some stability for the industry.

So, again, I -- I don't have all the answers. I don't know all the details there, Mr. Wilson. But I know there's a bunch of details there that I'm sure would be advantageous.

Q. Thank you, Mr. Doelman.

A few questions that we have been asking several of the participant witnesses, and maybe you have answered this.

We have asked people about their Class I products

as far as ESL, HTST, 100%?
A. What's the question, I'm sorry?
Q. What level of percentage of your product in Class I is one or the other?
A. 100% ESL.
Q. The code date, code life, if you will, of that product, we have heard 70-something? Higher than that?
A. We're even higher than that.
Q. Into that range.
A. And because of the extra infrastructure and spend around technology we have made into that space.
Q. I know you have been here in the past, and we might have asked this question. If we did, please let me know. You probably know better. We asked about the components of milk on -- as they relate to Proposals 1 and 2, in that grouping.
Are you aware of your own receipts in your four plants, are they -- would you speak to that as far as your component levels?
A. As far as solids and butterfat?
Q. Protein and other solids.
A. I'm going to -- you can correct me if I'm wrong -- I'm assuming the question is more around protein, but I could be wrong.
Butterfat, I think we range anywhere between 3.5 on the low, depending on time of year, to 4, sometimes 4.2, depending upon, again, time of year, which herds, and some general fluctuations that can occur.

On the SNF, to be honest, I don't even pay attention to SNF, so -- because I sell protein.

So I do pay attention to protein. Protein can range from 3.1 to 3.4. You know, it can be somewhere in that space, also.

Q. Okay.

MR. WILSON: Thank you. I think that's all I have. Thank you.

THE COURT: Are there any other cross-examination questions before I turn to redirect?

There are none.

Redirect.

MR. ENGLISH: Chip English, Your Honor.

REDIRECT EXAMINATION

BY MR. ENGLISH:

Q. I just have one quick follow-up to the questions from USDA, and I don't want to -- I'm not asking for details, obviously.

But is protein one of those attributes that you compensate your supplier for in the over-order premium?

A. Yes.

MR. ENGLISH: Your Honor, I have no further questions for this witness. I now ask for your ruling on my prior motion to admit Exhibits 487 and 488.

THE COURT: Is there any objection to the admission into evidence of Exhibit 487, also marked MIG/fa!rlife -- all lower case -- -26?

There are none. Exhibit 487 is admitted into evidence.

(Thereafter, Exhibit Number 487 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 488, also marked MIG/fa!rlife -- all lower case -- 26A?

There are none. Exhibit 488 is admitted into evidence.

(Thereafter, Exhibit Number 488 was received into evidence.)

MR. ENGLISH: Your Honor, I believe this witness may be excused. I note that this is our last fact witness on MIG's Proposal 20.

We do anticipate, and I think Ms. Vulin will summarize later, but we do anticipate that when we return on January 29th, Dr. Stephenson will return to respond to the questions asked of him earlier this week.

And otherwise, MIG does not have any further testimony on what is called Proposal 20. We do anticipate, at the end of the hearing, a witness on opposing Proposal 21.

THE COURT: Thank you, Mr. English.

MR. ENGLISH: That concludes my examinations.

THE COURT: It gives you a good feeling, doesn't it? That was a lot of work.

Mr. Doelman, it's always a pleasure to hear from you. And I thank you for being here not just once, but again.

THE WITNESS: Thank you.
THE COURT: You're welcome. You may step down.
How much preparation do we need before the next witness? Will we be distributing documents?
MR. ROSENBAUM: Yes, Your Honor.
THE COURT: Let's take a break. I'll entertain -- oh, no. I'll just say ten minutes. Please be back and ready to go at 2:33.
(Whereupon, a break was taken.)
THE COURT: Let's go back on record.
We're back on record at 2:33.
I'd like the gentleman in the witness chair to state and spell his name.
THE WITNESS: My name is Mike Brown, M-I-K-E, B-R-O-W-N.
THE COURT: Good to see you on the witness chair again.
THE WITNESS: Thank you, Your Honor.
THE COURT: You remain sworn.
THE WITNESS: Yes.
MIKE BROWN,
Having been previously sworn, was examined
and testified as follows:
MR. ROSENBAUM: Good afternoon. Steve Rosenbaum for the International Dairy Foods Association.
I have circulated a copy of IDFA Exhibit 64, which I would ask be marked with the next Hearing Exhibit number, which I believe is Hearing Exhibit 489.

THE COURT: Yes.

(Thereafter, Exhibit Number 489 was marked for identification.)

DIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Mr. Brown, showing you Hearing Exhibit 489.

Is this a copy of your written testimony regarding Proposal 21, which is a proposal to increase the Class II differential?

A. Yes, it is.

Q. Okay. And --

THE COURT: And just so that that was clear, that's Exhibit 489.

BY MR. ROSENBAUM:

Q. And is -- is your testimony here testimony in opposition to that proposal?

A. Yes.

Q. Okay. Mr. Brown, I'm not going to ask you to read the entirety of your testimony into the record, but I'm going to take you through some highlights, I believe, if I could.

And so is it fair to say that you have set forth four main reasons why you and the International Dairy Foods Association are against this proposal?

A. Yes.

Q. So let's flip to page 3.

And can you just read -- each of these reasons is one of the headings, A, B, C, D. So could you start by

reading heading A.
A. Class I -- Class II, excuse me -- Class II differentials should not be raised in light of the more than adequate milk supply.
Q. Okay. So we have heard the statistic many times.
What's the percentage of milk pooled on the Federal Orders that's Class I?
A. Class I is approximately 27, 28%.
Q. And what is the percentage of Class I fluid milk of the milk supply as a whole, not merely Federal Order milk?
A. About 20%, slightly less.
Q. And what is the percentage that Class II is of the Federal Order system?
A. 9%.
Q. Okay. Now, combined, therefore, you have got at the maximum, just at the Federal Order level, roughly 36% of the milk being Class I or Class II combined, correct?
A. Correct.
Q. Which means, by definition, you have got 64% that is Class III or IV, correct?
A. Yes.
Q. And is there -- and is -- is that milk sometimes referred to as the reserve supply?
A. Yes, it is.
Q. That's the milk that's going to manufactured purposes, correct?
A. Correct.

Q. And do we have guidance from USDA as to what an adequate reserve supply is?
A. Yes.
Q. And what's that percentage?
A. USDA has deemed 30 to 35% as an adequate reserve supply.
Q. An adequate supply?
A. Yes.
Q. Okay. And in that context then, what conclusion do you reach as to whether the current milk supply is sufficient to meet Class I and II needs?
A. It's almost double the amount percentage-wise that you would need to meet I and II, and it is double if you include all milk, not just pooled milk.
Q. And so if the question is, do we need to be raising Class II differentials in order to attract more milk production in order to meet Class I and Class II needs, is there -- do you view that as a legitimate reason?
A. We do not need it. And I would like to just --
THE COURT: I need more volume, either come closer --
THE WITNESS: Okay. I'll move it. There you go.
We don't -- we don't need it. The reason is, Class II -- and we have heard it a couple of times -- is pretty unique, because it is the one class where you can manufacture most of the products in that class from fresh milk and also from dried ingredients. So it has actually

a very large reserve supply available.
BY MR. ROSENBAUM:
Q. Okay. Now, has USDA, in fact, looked to the adequacy of the milk supply in the past in determining whether or not the Class II differential should be raised?
A. Yes, they have.
Q. And is -- and on pages 4 and 5, do you, in fact, summarize that history in discussing a national hearing that was held back in 1993 where there were several proposals to raise the Class II differential and -- and so USDA was confronted with this question, correct?
A. Yes, they did. I mean, they acknowledge there are some unique properties, but there was no reason to raise the differentials.
Q. Okay. And if you turn to page 5, the first full paragraph that starts with a "nonetheless," the word "nonetheless." The "nonetheless" follows a discussion of the various reasons the proponents have given for increasing the Class II differentials.
Can you now just read what it is that USDA had to say?
A. And I'll read that. I'll read that from the beginning: "Nonetheless, none of this was enough to convince USDA, which rejected all of the proposals, to increase Class II differentials. USDA's reasoning was telling and remains highly relevant today. In rejecting the proposals to increase Class II differentials, USDA focused on the fact that over-order premiums 'in

conjunction with Class I prices are generating adequate supplies of Grade A milk for both Class I and Class II needs.' Accordingly -- "

THE COURT: That last word is, within the quotes?

THE WITNESS: "Needs."

THE COURT: So I have got "uses" on my copy. I don't know which is accurate.

MR. ROSENBAUM: Mine says "uses" as well.

THE WITNESS: Okay. "Uses" is it. Because you have the official transcript copy.

"Accordingly, USDA 'concluded that an increase in Class I differentials' -- 'in Class II differentials under all orders is not needed.'"

BY MR. ROSENBAUM:

Q. Okay. I think you ended up skipping -- I'm sorry, one of the sentences, and maybe that's what happened the first time around, too.

A. I -- I finished with "uses." I had not completed the last sentence --

THE COURT: Oh, there's one that says "uses" and there's one that says "needs."

So would you just start again with "USDA focused on the fact that."

THE WITNESS: "USDA focused on the fact that over-order premiums 'in conjunction with Class II' -- 'Class I prices are generating adequate supplies of Grade A milk for both Class I and Class II uses.' Specifically, 'an analysis of supply and demand conditions under the orders indicates that there are adequate reserves of Class III milk to balance both Class I and Class II uses'" -- good Lord. I give up. It's a long week.

THE COURT: All right. And so you have just read the Class I and Class II "needs."

THE WITNESS: "Needs."

THE COURT: And you have ended the quote there, but you're about to say a little bit more. Keep going.

THE WITNESS: "Accordingly, USDA 'concluded that an increase in Class II differentials under all orders is not needed.'"

BY MR. ROSENBAUM:

Q. And that's fine.

And just for clarification, there's a reference there to Class -- that there were adequate reserves of Class III milk.

Do you see that?

A. Yes. There was no Class IV when this was written.

Q. Okay. So when this decision was written in 1993, Class III encompassed what is now both Class III and Class IV, correct?

A. That is correct.

Q. Okay. All right.

So let's go ahead and move then to the second rationale you provide as to why you and IDFA are opposed to Proposal 21. And if you could read the title of Number B on page 6.

A. Yes. B is: Proposal 21 would cause Class II handlers to switch to Class IV products, reducing farmer revenues.

Q. Okay. Now, let's just start by something you alluded to before, which is that Class II products can often be made either from fresh farm milk or from dry milk products, correct?

A. Correct.

Q. Okay. And if it's -- just to orient ourselves, if it's made for -- from fresh farm milk, then it's -- the milk is priced at Class II, correct?

A. Correct.

Q. If it's made from dry products, it's Class IV, correct?

A. Yes. It's nonfat dry milk and buttermilk are Class IV.

Q. So right now, the Class II price is the Class -- under the current regulation, is the Class IV price plus $0.70, correct?

A. It's the Advanced Class IV price plus $0.70.

Q. So if one were to provide an economic incentive for Class II handlers, or handlers, people making Class II products, to make their milk from dry milk products rather than fresh milk, that reduces what farmers get paid for the milk by $0.70, correct?

A. On that milk, yes.

Q. Okay. So that would be the downside of Proposal 21 from a farmer perspective, if the effect of

Proposal 21 was to encourage the substitution of dry milk powder for fluid milk, correct?
A. That is the most important concern.
Q. Okay. And have -- have you performed an analysis that -- with hard numbers, as to whether the $0.86 increase in the Class II differential that Proposal 21 would put in place, would, in fact, provide a substantial economic incentive for Class II handlers to switch from using fresh farm milk to instead using dry milk powder?
A. Yes. It's the table on top of page 8.
Q. Okay. So, please, since this is an important part of your testimony, just walk us through that table on the top of page 8, if you would, please.
A. Just for premise, most of you know I spent time sourcing milk and dry products for manufacturing. This is exactly the kind of analysis that we would do to determine what to buy or to source a plant.
Q. You are referring to your time at Kroger?
A. Yes. Yes.
Q. Okay.
A. And so this is a market-based cost comparison. What that -- for delivered Class II skim solids. What that means is I pulled industry, pulled big uses of dry milk in Class II plants --
THE COURT: Slow down, please, Mr. Brown.
THE WITNESS: Yeah.
THE COURT: Yes. You have got the time.
THE WITNESS: -- in Class II plants, to get their

actual current costs, both for fresh milk as well as for nonfat dry milk.

So what I did was look at three examples: One where they would purchase nonfat dry milk, one where they would use farm milk as a current Class II differential, and one, what farm milk would cost at the proposed Class II differential.

So to walk through the purchase example. For consistency, because there are lags in different nonfat dry milk price series, I used the same one for all three examples. I used the 2023 NDPSR advanced nonfat dry milk price, which is $1.2181, and that was the 2023 average. I added to that --

THE COURT: I still need you to slow down. Because you are dealing with numbers, and we're looking at your chart, but typing all this and capturing everything you say is not easy.

THE WITNESS: Yeah, I -- I -- numbers excite me, that's the problem. I like this part.

So I added to that the delivery cost, and this includes any premium or surcharge for that nonfat dry milk, plus transportation costs delivered into those three plants, the average.

BY MR. ROSENBAUM:

Q. And how much is that?

A. That is $0.0375 per pound.

Q. Okay.

A. I then -- I then -- so the delivered cost, adding

the delivery cost and the advanced price, was $1.2556 per pound.
Q. So the third, just so we're clear, the third entry is simply adding the first two entries together; is that right?
A. Yes. That is what we call the landed or delivered cost of nonfat dry milk.
Q. And that's $1.2556.
A. Correct.
The final line, because nonfat dry milk is 97% solids and 3% water, to compare it to solids nonfat price, you have to adjust for that. So you take that 1.2556, you divide it by .97, and so you get a delivered nonfat solids cost per pound on nonfat dry milk of $1.2944.
Q. And so that -- that's the key number. That's --
A. Yes.
Q. -- that's what it's going to cost you to get the nonfat solids delivered to your actual processing facility --
A. Correct.
Q. -- if you are using nonfat dry milk, correct?
A. That is correct.
Q. Let's go to the -- let's do the next comparison, then, which is, as you said, what's it going to cost you if instead you use -- well --
A. If you use Class II skim.
Q. Right.
A. And that Class II -- that Class II skim price,

again, the base price of that is the advanced nonfat dry milk price that's surveyed by NDPSR. And -- and the Class IV SNF price per pound was $1.398 [sic], and that is the -- again, that is -- that's using the yield formula to calculate the SNF price under the Federal Order for Advanced Class IV.
Q. Okay. Just so we're clear about this, what you are doing is you're stepping through the formula in the Federal Order --
A. Right.
Q. -- for how you get to the Class II price --
A. Right.
Q. -- correct?
A. It's the price calculation, that is correct.
Q. And it's based off the Class IV price. That's why you are repeating the Class IV --
A. Right.
Q. -- price as the first entry in this calculation?
A. That's right. They start at the same number.
Q. Yes. And now you have taken us through the yield factor and the Make Allowance, that's what the second --
A. Right.
Q. -- adjustment is? Okay.
A. And then --
THE COURT: I need to stop you, Mr. Brown. You read $1.398, which when you don't tell me where the decimal point is, I might get confused and think it's a $1.30 instead of a $1.03.

THE WITNESS: It is 1.0398.
THE COURT: Good.
THE WITNESS: To convert that into a Class II solids not -- solids nonfat price per hundredweight, you multiply that Class IV price, 1.0398, times nine, add $0.70, to get $10.06.
BY MR. ROSENBAUM:
Q. Okay. So what you have done there is you have added -- you have added the current Class II differential --
A. Yes.
Q. -- of $0.70, correct?
A. Right.
Q. Keep going, please.
A. Once you do -- once you do that, the next line, again, was the delivery cost, premium delivery cost to move that -- that Class II SNF into these same plants, and it averaged $1.30 per hundredweight. So your total cost on a hundredweight basis would be the 10.06 -- 10.06 -- plus 1.3000, gives you a delivered Class II skim price per hundredweight of $11.36. Again, there's nine pounds of SNF in 100 pounds of Class II skim, so your delivered nonfat solids cost per pound is 1.2620.
Q. All right. So bottom line, under today's --
THE COURT: Mr. Rosenbaum, just to be clear, express that bottom line in dollars and cents, please, Mr. Brown.
THE WITNESS: I don't use a point?

THE COURT: Yeah, you do, but start with $1.
THE WITNESS: $1.2620.
THE COURT: Thank you.
BY MR. ROSENBAUM:
Q. So the bottom line is, under the current regime, if you are comparing these two choices, using fresh milk is slightly cheaper than using nonfat dry milk, correct?
A. That is correct.
Q. Okay. Nonfat dry milk, the cost is $1.2944; under the current regime using fresh milk, the price is $1.2620. Correct?
A. Correct.
Q. So now let's move on to what happens if Proposal 21 were to be adopted.
A. Proposal 21, just for your own reference, the only difference in these numbers is that the -- you change the current differential of $0.70 to Proposal 21's proposed differential, which is $1.56.
So just to -- so if you would go to the Class II SNF line per hundredweight, you will see it is $10.92 compared to $10.06 under the current formulas.
Q. And what's the -- what's the bottom line number, then?
A. The bottom line is, when you -- everything else again's the same, $1.3576, $1.3576 is the delivered skim cost per pound for nonfat dry milk.
Q. So you have got --
A. I meant, nonfat milk solids, excuse me.

Q. You have got the actual difference in the paragraphs below.
So just in reading, am I understanding this correctly, that were Proposal 21 to go into effect, it would be $0.0632 cents per pound cheaper to use nonfat dry milk on a delivered cost basis as compared to using fresh milk?
A. That is correct.
Q. And is this -- and is -- I mean, when you were at Kroger, you were buying milk for -- to make Class II products, correct?
A. Yeah. We did these calculations monthly.
Q. So this -- this -- and you were deciding which to use month to month, correct?
A. Correct, because we used a combination of both.
Q. And this is -- so this is not theoretical, this is real world?
A. No, this is business math. Yes.
Q. This is?
A. Business math.
Q. Business math? I like that.
Okay. So, you know, go to the next page and talk a little bit about -- I mean, how common is it already for people to use nonfat dry milk versus skim milk to make Class II products?
A. It's -- it's very common. And you can -- you can make the decision for several reasons. It's easy to buy and store nonfat dry milk. So if you think you can buy at

a favorable price, you can lock in your solids price for your Class II products. It's very storable. There is no 72- or 96-hour limit on storage of -- like there is with fluid milk for Grade A. And so it can give you flexibility over using fresh skim. And for that reason, a lot of people either use it for all or part of their nonfat dry milk needs.

Q. Even under today -- even under today -- today's regime; is that correct?

A. Absolutely. Yes.

Q. Because, I mean, how long can you store nonfat dry milk?

A. Well, most companies say you have to use it within a year of date of manufacture, but if you go to a lot of foreign countries, they say two. It really -- if you keep it in a dry, cool, not refrigerated, place, it will keep a long, long time.

Q. Okay. So what is your -- you know, what is your conclusion as to whether the addition -- well, let me put it a little differently.

The math suggests that Proposal 21 would represent a roughly 12 -- a $0.10 swing in the relative value of skim versus nonfat dry milk from skim currently being roughly $0.03 cheaper --

A. Right.

Q. -- to skim now being $0.063 more expensive per pound, correct?

A. Correct. And as we have discussed before, decisions are made on halves or quarters or tenths of pennies, so that's a very --

(Court Reporter clarification.)

THE WITNESS: Yes. I apologize.

And what you have heard many times before, decisions on purchasing are often made on halves or a quarter or a tenth of a penny. So that's a very significant difference.

THE COURT: All right. And just to be sure we're clear, that $0.0632 higher is per pound?

THE WITNESS: Per pound of solids non- -- or nonfat solids -- per pound nonfat solids, yes.

THE COURT: Thank you.

BY MR. ROSENBAUM:

Q. One moment.

Okay. You now have a section that addresses Section C.

Could you please describe what that issue is about.

A. Proposal 21 also creates a significant disadvantage for Class I processors that also manufacture Class II products in their Class I distributing plant.

I had the discussion with the dairy plant controller from Kroger, who I -- as you can imagine, I know very well. Kroger runs 15 dairy plants. One is a Class II; the others are combinations of Class I and II. About -- about using powder and how it affects it. And he says, well, in general, what it -- when you buy Class IV base solids and use it in Class II products, it's going to be upgraded in cost.

So compared to a standalone plant which doesn't have to be pooled, so they do not have to claim any pool correction to a Class II price, so they have the ability, compared to a plant that's a distributing plant, to -- to -- to not -- not have to worry about any upcharge or any adjustment to pool obligations because they are a non-pool plant.

So the very large Class II plants can have a competitive advantage on cost. And as we all know, there's more and more of those large Class II standalone plants being built.

Q. Okay. And now let's go to the last section, D -- okay, actually, before we do that, I believe there's a paragraph that got deleted somehow.

Let's just talk through the comparisons you did regarding how many months it would be that it would be more advantageous to purchase nonfat dry milk rather than using skim --

A. Yes.

Q. -- from -- from a farmer milk.

You have an appendix where you make a comparison of the choice between the two. Can you just talk us through what it is you did there.

And I will just mention that the appendices are -- have small lettering, but they are all an Excel spreadsheet, which was posted to the website together with the testimony itself.

So just talk us through what that analysis showed, please.

A. Certainly. What -- what we looked at was just frequency using actual price data back to the beginning of the NDPSR price report, which was in basically spring of 2012 to current. We looked at monthly, end of month, full month, nonfat dry milk price, because that's the reference price you would use to buy the product. The Advanced Class IV price, which was used to calculate both the current and the proposed under Farm Bureau Class II nonfat solids price, and then ran it for that entire period of time.

One of the things that we did, when you do this, is you recognize -- and we all know this -- that there is a lag between the Class II advanced price and the actual powder price of basically six to eight weeks. So you can get some variations from month to month, particularly when markets are volatile.

But what we found over time was that compared to Proposal 21, in the 111 out of 134 months, buying nonfat dry milk at the delivered cost I used would be less expensive than buying Class II nonfat solids. And what was particularly interesting is when you looked at -- say I'm going to put together a plan, I'm going to buy nonfat dry milk for six months, every six months, and buy that. And I didn't pick a particular month, but, again, over 82% of the time, the purchase from -- of nonfat dry milk was

less expensive than Class II skim under Proposal 21.
Q. And if I could just take you, have you look at page 17, which is Appendix 1.
Now, is that -- is that the chart where you have done this -- this comparison?
A. Yes.
Q. And so what you have done is you have gone month to month, all the way back to, is it 2016; is that correct?
A. Well, actually it's -- it's --
Q. 2018?
A. It should be 2012.
Q. 2012?
A. The spreadsheet in the Excel is back to 2012.
Q. Okay. I'm sorry, there's two pages. That's what I'm missing. It's pages 16 and 17.
And so you have gone month to month, every month, from January 2012 to December of 2000- -- well -- well, through at least, what, July of 2023?
A. Well, December '23 where there's data available.
Q. Okay.
A. Because there's not six-month averages for December of '23, because these are forward averages.
Q. Okay. And you have done month to month, the very examination you took us through previously, to determine would it be better to buy skim milk, farmer milk, or would it be better to buy nonfat dry milk, correct?
A. That is correct.

Q. And there were 100 -- and if you look in the bottom right-hand corner of page 17, there were 134 months that you were covering, correct?
A. Correct.
Q. And it's cheaper to buy nonfat dry milk.
Under Proposal 21, it would be more advantageous to buy nonfat dry milk 111 of those 134 months; is that right?
A. That is correct.
Q. And what percentage does that represent?
A. 82.8%.
Q. Okay. So if you are a Mike Brown at Kroger, or Mike Brown's equivalent somewhere else, what -- you know, what would that tell you about what choice you ought to be making for making your Class II products?
A. It tells you consistently and over the long-term buying nonfat dry milk under the Proposal 21 would be a better -- much better cost option than buying Class II skim.
Q. All right. Let's look now -- we have covered orally what was in the missing paragraph of the written testimony.
So let's go on, then, to your last section of your testimony on page 11, heading D. So --
A. We want to touch on C quickly, I think, or did we? I think we kind of did. We're good there.
Q. So let's do D.
A. Okay. Class II is a uniquely dynamic market that

is functioning well and does not warrant a higher differential.

Q. Actually, before I take you on to that, let me just mention, there were some calculations done by the witness from Crystal Creamery who testified this morning --

A. Yes.

Q. -- that was also taking a look at the choice between nonfat dry milk and -- and fluid milk for making Class II products. He had a percentage number that was a little different than the 82% that you have provided.

Could you tell us your understanding as to why those numbers are different?

A. Those are FOB plant, or farm costs. They weren't delivered costs. When you -- it didn't include service charges and delivery costs.

It is more efficient, as you might imagine, to move nonfat dry milk, which is 97% dry -- dry solids, versus fresh Class II milk, which is, on the skim side, is about 91% water. So it's just a function of the efficiency of transportation is the main thing.

Q. Okay. So once -- so you had a higher percentage of months where it would be better to buy --

A. Yes.

Q. -- nonfat dry milk than he did, correct?

A. Right.

Q. But that's because you have not stopped at the -- because -- that's because you have included the cost to

actually take it to get the -- get the product to your doorstep as a Class II manufacturer, be it in fluid form or alternatively as a dry product, correct?
A. That is -- that is correct. And that's the step that is so important when you are looking at purchasing commodities, because it's landed cost in the plant, and the form of that product that can make a huge difference.
Q. So in that sense, his number was scary, but your number is scarier, and you think more -- you think more inclusive?
A. Yeah. Transportation efficiency is the reason.
Q. So tell us -- let's go to -- tell us about section -- the topic that's covered in Section D.
A. Okay. Class II is unique -- is a uniquely dynamic market, as we just said, and there's several reasons why you need to consider raising that Class II differential.
As we have mentioned earlier, it's the smallest class. It is based off of supply and demand for Class IV, which isn't -- although the ingredients are the same, the products are different, so the supply/demand functions can be different.
And as we mentioned earlier, most Class II products can be made with dry products, they don't require fresh milk, for example, like Class I milk does. So those are some of the -- some of the main things.
And I think another thing is farmers aren't incentivized to serve Class II needs in the way they are to serve Class I needs, because it isn't required to serve

that market to pool or to share in the pool. So a farmer or a milk organization, co-op or otherwise, could elect not to serve that market and still participate in the pool, like other manufacturing classes.

And the other thing, like other manufacturing classes, the price is uniform across all markets. And because it's uniform across all markets, local supply/demand conditions really aren't -- they are not part of the regulated price, and the market provides those incentives and those signals. And they're both regional and seasonal.

Q. Is that a reason why the minimum price should really be a -- strike that.

Is that a reason why, in your view, the regulated price should truly be a minimum price?

A. Yes, it is. And simply because we -- there is an advantage to farmers selling Class II milk, but if the regulated price isn't attractive, as we have just discussed in detail, it won't be purchased, they will purchase dry products instead.

Q. Okay. You have got -- you have got a table on page 13, and tell us what it shows and why you think this is relevant.

A. We are going to have two tables. This is the first one. These are from Dairy Market News reports on cream and condensed skim prices.

The first chart compares the difference between Midwest and Northeast cream prices per pound butterfat from -- for five years, January '19 through December 2023. And you can see there's a huge variation in what those values are. And keep in mind, again, cream can be substituted for Class II fat from farm milk, so -- and it often is. So these opportunities, these differences, a buyer is going to be watching those and -- and I know more than one cream buyer, particularly, for -- who relies on some of the spot market cream because of the variation in price.

But you can see, basically the price in the Midwest, there's a $0.55 range between high and low in the differences between these prices. Which means, again, that's per pound fat. That's a big number. On 3.5 milk, that would be $1.80, so it's a very big number.

So it's important to recognize that even though we have a minimum price, the market provides a lot of incentives on price over time and it varies by region. And -- and this allows market to provide that incentive, which it does very, very well.

Q. Okay. All right. And now let's look at your next chart.

Now you are looking at another Class II product, condensed skim milk. Tell us what that's showing.

A. This chart uses the, again, Dairy Market News Northeast Class II condensed skim milk price and compares it to the Federal Order Class II nonfat solids price. And both of these prices are based on the nonfat solids basis, and they are compared.

And, again, while we have had reasonable stability over the last couple of years, we have seen huge volatility. And, again, these price relationships over time, if you go back further, you would see that as well. A lot of it has to do when new plants open, particularly manufacturing plants, that -- that provide -- make supply tighter, you will get better premiums, which you see for the last two years of those blue lines, value over Class II skim -- Class II solids not fat.

But other times, when you have plants, again, and a lot of times when new plants open, cooperatives or farmers that plan to supply those plants are building a milk supply to fill that plant's needs once it opens or if things happen. Really good weather, so you have extra milk, or in the other case, a plant may be delaying its opening. So you have spot -- you have spot skim without a home. And if it gets really long, you will have spot skim, which you would normally put into nonfat dry milk, but if your nonfat dry milk capacity is already full because there's plenty of milk around, the only step you can take is the condensing, and then that goes on the market.

And, again, this is a product that -- huge volatility in price. Again, from my experience, you know it's getting tough when brokers start to call you with really cheap condensed skim milk.

Q. So bottom line, given that the Class II price is a national price with no variability in the formula, and you see this kind of movement as shown in the page 14 condensed skim milk discussion, and the regional differences as shown on page 13, which varies substantially over time between, for example, the Midwest and Northeast cream price, what does that tell you about how USDA ought to view setting the Class II price?

A. The Class II price is not a regional price. It is -- it is -- it is not the only option for people making most Class II products. So you could -- if you make that regulated price too high, people will move away from using fresh milk and they will use other -- other products, including, of course, nonfat dry milk.

And so I think it's important to maintain that market, to remain a healthy condensed skim market, so that your costs of condensed skim, which, again, is more expensive to condense skim than it is to just sell fresh milk, remains -- remains the most competitive alternative to nonfat dry milk. So people still want to use the farm milk so farmers can benefit from that price.

And quite honestly, from the standpoint of a plant, it's easier if you don't have to switch back and forth, but for money, people will -- they will hire someone to watch that market for them. I have done it myself for a living for a little while with one company.

So it's just -- it's just going to create, I think, destruction. It's going to create, I think, inconsistency in demand for -- for condensed skim, which, again, makes it difficult for a plant that's trying to supply that market if their demand goes up and down every month. Not because of demand for making products, but being substituted by nonfat dry milk. So -- and in our minds, it just makes things actually more difficult.

And because it's a lower value milk that replaces the Class II, we think overall it could very well lower the average blend price for a farmer.

Q. Okay. Anything else would you like to add, Mr. Brown?

A. No. Thank you for letting me do an exercise, I feel like I'm back at Kroger working but -- no. At this time, I think it's just really important that we keep that price at a level that allows the market to move products where they need to move and doesn't incentivize use of Class IV products over Class II milk.

MR. ROSENBAUM: Your Honor, I would move Exhibit 489 into evidence. I recognize you will defer that until after the cross-examinations are completed, and Mr. Brown's available.

THE COURT: Thank you, Mr. Rosenbaum.

Who would begin cross-examination of Mr. Brown?

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon, Mr. Brown.

A. Good afternoon.

Q. Ryan Miltner representing Select Milk Producers.

I hope I have just a couple of quick questions.

On page 8 of your statement where you provide some

analysis of different options, where you pull a -- what I assume is essentially a Class II over-order premium, you call it a service charge, that $1.30, does that come from your experience or is there a source for that that you can reference?
A. It came from a survey of Class II ice cream plants.
Q. Okay.
THE COURT: A survey of Class II what?
THE WITNESS: Ice cream plants.
THE COURT: Ice cream plants.
BY MR. MILTNER:
Q. Similarly, this is in the fourth line, the final line under purchased nonfat dry milk, 97% solids.
That would be the solids content of nonfat dry milk?
A. Yes. That's not the yield formula. That's the -- it's generally viewed between 97 and 98. I used 97.
Q. Okay.
A. Which made the cost slightly higher, if anything.
Q. Okay. And then when you did the analysis in your larger spreadsheet, which is on pages 15 and 16, did you include the $1.30 over-order premium in that analysis, too?
A. Yes.
Q. Okay.
MR. MILTNER: That's all I had. Appreciate it.
THE WITNESS: Thank you.

THE COURT: Who next will cross-examine Mr. Brown? I see no one. I invite the Agricultural Marketing Service questions for Mr. Brown.

CROSS-EXAMINATION

BY MR. WILSON:

Q. Todd Wilson AMS. This is certainly a pleasant surprise.

A. That forebodes for a friendly session.

Q. Always.

A. Thank you.

Q. A few questions on your page 7.

Second paragraph, you talked about the relationship between Class II and Class IV prices, and I want to concentrate on the last part of that sentence: "But rather than" -- "that this relationship should be viewed as at most an upper bounds on where the Class II differential can be set."

Can you expand a little bit on what that means.

A. That -- what that means -- excuse me, my voice is going, as it always does when I do these conversations, my voice goes.

What -- what that -- what that means is, that when you look at the opportunity to use those dried solids, that opportunity would be the absolute upper bounds which the Class II price should represent. You don't want to create an opportunity to use dry solids in replace of Class II nonfat solids.

Q. So the Class IV, that's the upper bounds --

A. Upper bound is that value, that is correct.
Q. Okay. Thank you.
A. The example I gave kind of walks through how that would work, yes.
Q. Page 8 on your calculation, you identify the source, "USDA Announcement of Advanced Prices and Pricing Factors, November 23rd, 2023."
In the middle of that document you have a delivered service charge Class II of $1.30.
A. Yes.
Q. What is the source of that? Where does that information come from?
A. Ryan asked the same question. I surveyed ice cream plants, both distributing plants that are ice cream as well as standalones.
Q. Thank you. Sorry about that.
On page 9 -- and I think this kind of goes into your appendices as well, six months -- is there -- is there a significance to the six months? I know you said you didn't pick any particular comparison.
Is that range, is that six-month range --
A. Powder, if you forward -- if you buy powder in groups of months, from my experience, it's usually three, six, or 12, so I took the middle.
And just for all you know, I also included a carry cost for storing that powder in the calculations. So that number is also including the cost.
Q. Okay. The last paragraph on that page you

reference a testimony by a Mr. Galloway, Hearing Exhibit 439, IDFA Exhibit 63.
What part of that paragraph is in reference to his testimony? Is it all of it?
A. Up to, and in the fifth line from the bottom, "one of my duties" -- actually, the next line, "I worked for a consulting firm," is where it changes. That's from my experience telling someone whether they should buy powder or Class II milk.
So the rest of it was in his -- was in his conversation, in his -- it wasn't necessarily in his testimony. It was certainly in his -- I mean, it wasn't necessarily in his written testimony, but he -- it was in -- it was -- he brought it up in questions. He did actually name companies; we left the names out.
Q. So the "I" and the "my" in the next sentence is Mr. Brown?
A. That's me, yes. Should have had a paragraph change there. Sorry about that.
Q. No problem.
Next, page 10, bottom of the paragraph, you talk about a growing number of large standalone plants. I wondered if you had any data on this. I don't know that we have had any testify about this. What's growing? The numbers? That sort of thing.
A. Sour cream, cottage cheese, standalone capacity is growing. Ice cream continues to grow. Certainly yogurt, although that market has flattened. There's a lot of

standalone yogurt plants, and a lot of them don't pool. That's one of the reasons that they have not. They moved -- in some cases, moved their Class II out of the distributing plant because it made it more flexible to serve two products.

Q. Thank you.

I want to go to these charts you mentioned on page 13 and 14. And thank you for going through that. It answered a few questions. I just want to make sure that the record is clear.

The difference in colors between the red and the blue, the blue would be when the Midwest is greater than Northeast?

A. Correct.

Q. And the red, vice versa?

A. Is when Midwest is lower than Northeast, yes.

Q. Do you have any opinion about what happens -- what happened first part of 2022? There seems to be a lot more that the Northeast is greater than the Midwest.

A. I think your supply/demand balance changed some. I also think there was some sourcing strategy on fresh cream by a large manufacturer that significantly changed. They went from buying cream and churning butter into buying inventory butter, bulk butter. And as a result, that really changed that market in a big hurry.

And you have had a little bit of growth in mozzarella manufacturing in that market, particularly some in South Dakota. That also loosened up the cream market.

Q. Same kind of question on the next chart.
Red being the FMMO Class II skim price is greater?
A. Red means the Class II skim price is lower, and in blue means the announced nonfat solids price is higher -- I mean is lower, excuse me.
We subtracted the Class II SNF price from the condensed skim place. So when it's negative, that means the SNF price was higher than the condensed skim price on a solids basis. When it's blue, that means that the condensed skim price was higher than the SNF price.
Q. Thank you.
A. Yeah.
Q. And, again, the same kind of thing, is -- are you thinking that your same answer on the 2022 range, that it's almost blue, it's pretty much constant, something -- something structurally changed in the market, in the industry, in the marketplace, and is that the same answer as what you had on the previous chart?
A. It's -- on the skim solids side, yes, demand for skim solids was stronger. Again, this is Northeast. This isn't the caring regions, and so it was able to maintain a more stable premium.
When you see that stable premium, that generally means milk's being sold at contract, there isn't a lot of spot market activity. There isn't a lot of spot market activity that makes that line very volatile. Because if you are selling SNF Class II, you are going to base it off the price of Class II SNF, you are not going to base it

off the spot. But if you don't have those contracted sales, you get some of the craziness we've seen in previous years.

MR. WILSON: I think that's all of our questions from AMS. Thank you.

THE WITNESS: Thank you.

THE COURT: Redirect?

MR. ROSENBAUM: Steve Rosenbaum for the International Dairy Foods Association.

I actually just have a clarification. It appears I am the only person in the room whose copy of this -- of this exhibit was missing page 10. And so when I said there's a paragraph missing, it was because I didn't have page 10 in my copy, and that's what was missing. But I can tell that USDA has it, because USDA was asking questions off of page 10.

So I just want to clarify that, in fact, there -- in the official copy, there is nothing -- there is no missing paragraph, it was just in my copy.

So with that, Your Honor, I will ask that the official copy of Hearing Exhibit 489 be entered into evidence.

THE WITNESS: I would observe that's what happens when you have to manually collate because you don't have an expensive rented copier.

THE COURT: Is there any objection to the admission into evidence of Exhibit 489, also marked IDFA-64?

There is none. Exhibit 489, with each page, 1 through 19, is admitted into evidence.

(Thereafter, Exhibit Number 489 was received into evidence.)

THE COURT: Mr. Brown, you -- you are an amazing source of information, and this is an extensive piece of work that is very valuable. And I thank you.

THE WITNESS: It was -- it was my pleasure. It's in my wheelhouse. This was a fun one to do the cost comparisons.

THE COURT: Wonderful. Thank you.

I believe we have a minute to go. To some extent, Mr. English gave us a preview of what he intends to do when we return, or what his team intends to do when we return for the last week of this hearing.

Would anyone else like to give us a preview of what you would like to do?

MS. HANCOCK: Your Honor, Nicole Hancock with National Milk.

We'll have two witnesses. I -- I -- I believe that MIG is done putting on its witnesses for Proposal 20, other than Dr. Stephenson returning.

We'll have Jeff Sims and Carl Rasch as both rebuttal witnesses. And I would propose that Mr. Sims go on other than the -- to the extent that Dr. Stephenson is coming back, I would propose that Mr. Sims goes on first thing in the morning on January 29th.

MR. MILTNER: Your Honor, we will have one of our producer members, Jonathan Vander Dussen, which is spelled V-A-N-D-E-R, D-U-S-S-E-N, on Monday. And I think it would make sense for him to testify after lunch on Monday.

THE COURT: Does anyone else have a preview?

Mr. Rosenbaum.

MR. ROSENBAUM: Your Honor, we will have two witnesses in opposition to Proposal 21, two additional witnesses. It's Mr. Galbraith and Mr. Powell.

THE COURT: Mr. Galbraith and Mr. Powell?

MR. ROSENBAUM: Yes, Your Honor.

I should say, I think one of them also will cover Proposal 19. Oh, I'm sorry, I left one out, Mr. Giles.

THE WITNESS: Yes.

THE COURT: And Mr. Giles will do what?

MR. ROSENBAUM: I believe it's 19 -- opposition to Proposal 19.

THE COURT: Is there anything else before we go off record, planning to return on January 29th at the same location at 8:00 a.m.?

There is nothing.

We now go off record at 3:32.

(Whereupon, the proceedings were concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: February 17, 2024
FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613

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