

**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

October 9, 2023

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Reported by:

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6 Brian Hill
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18 FOR SELECT MILK PRODUCERS, INC.:

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24 FOR THE MAINE DAIRY INDUSTRY ASSOCIATION:

25 Dan Smith

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27 FOR LAMERS DAIRY:

28 Mark Lamers

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

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1 MONDAY, OCTOBER 9, 2023 - - MORNING SESSION

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

3 We're back on record. It is October 9, 2023.

4 It's a Monday. It's approximately 8:00 in the morning
5 Eastern Time.

6 When we went off the record, we had not yet
7 admitted into evidence two exhibits that were identified
8 during the testimony of the final witness of the day. So
9 do not let me forget those exhibits. I want to admit them
10 into evidence.

11 But in the meantime, we have a witness in the
12 stand, and I'm seeing that I have two more exhibits that
13 will need to be marked.

14 At this time I would like the witness, who is in
15 the stand, to state and spell his name for the record.

16 THE WITNESS: Mark, M-A-R-K, Lamers, L-A-M-E-R-S.

17 THE COURT: Thank you.

18 And you have previously testified?

19 THE WITNESS: I have not.

20 THE COURT: Ah. Would you raise your right hand.
21 I'll swear you in.

22 MARK LAMERS,

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

25 THE COURT: Thank you.

26 And now, while you wait just a moment, I'll see
27 what preliminary matters we might have for right now,
28 including what exhibit numbers we should give Mr. Lamers'



1 exhibits.

2 MS. TAYLOR: Good morning, Your Honor. We'll get
3 those exhibit numbers for you in just a second.

4 THE COURT: Very good.

5 MS. TAYLOR: So for today, on the agenda I have
6 left over from Friday, we have Mr. Lamers speaking first.
7 And then Mr. Sims can return to the stand to finish his
8 cross-examination. After him will be Dr. Eric Erba. And
9 then we also have Peter Vitaliano back, and he still needs
10 to finish his cross-examination. So I believe that will
11 probably take us through the day. And I am unaware of
12 anybody else requesting to testify today.

13 THE COURT: Very good. Well, we're off to a good
14 start.

15 MS. TAYLOR: And I think we are on Exhibit 327,
16 I'm being told.

17 THE COURT: So I have two, and I would presume
18 that the testimony portion would be the first number?

19 MS. TAYLOR: Yes, Your Honor.

20 THE COURT: And that would be 327.

21 MS. TAYLOR: Yes. 327.

22 THE COURT: 327. That document is eight pages.
23 (Thereafter, Exhibit Number 327 was marked
24 for identification.)

25 THE COURT: And then the accompanying document
26 will be marked as Exhibit 328, 328, and it has charts.

27 (Thereafter, Exhibit Number 328 was marked
28 for identification.)



1 MS. TAYLOR: One second, Your Honor.

2 THE COURT: Let's go off record for just a moment.

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

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

5 We're back on record at 8:04.

6 MS. TAYLOR: So let's start this again on a
7 Monday. We had Mr. McAfee testified Friday. He was our
8 last dairy farmer witness. He did have two exhibits.
9 They came in late, so we didn't have copies. I believe we
10 held two numbers for him. So my apologies, 327 and 328.
11 So we can address -- get copies and address that later
12 today once we get copies.

13 But then I think that would mean Mr. Lamers would
14 be marked 329 for his statement, that's eight pages long,
15 and 330 for his Exhibit 1.

16 And for those watching on the video stream, those
17 did get posted. They are on the exhibit page, Lamers-1
18 and Lamers-2, I believe, so people can follow along there
19 as well.

20 1A, thank you.

21 THE COURT: Lamers-1 and Lamers-1A.

22 (Thereafter, Exhibit Numbers 329 and 330 were
23 marked for identification.)

24 THE COURT: Excellent. All right.

25 Now, we're ready to proceed with Mr. Lamers'
26 testimony. And would someone like to begin that by asking
27 the usual questions of his business address and so forth,
28 or should we just let him do that?



1 THE WITNESS: If you don't mind, Your Honor, I
2 would just like to read my testimony into the record.

3 THE COURT: All right. Would you state your
4 business address?

5 THE WITNESS: Sure. It's Lamers Dairy. We're
6 located at N, as in November, 410 Speel School Road,
7 that's S-P-E-E-L, School Road, Appleton, Wisconsin, 54915.

8 THE COURT: All right. Remember the pace at which
9 you did that, which was perfect.

10 THE WITNESS: I got it written down, slow.

11 THE COURT: Thank you.

12 You may proceed.

13 THE WITNESS: My name is Mark Lamers, President,
14 Lamers Dairy. Our business is located at N410 Speel
15 School Road, Appleton, Wisconsin 54915.

16 Lamers Dairy, Incorporated, is a fifth-generation
17 fluid milk processing plant located in Northeast
18 Wisconsin. We have been doing business since my
19 great-grandfather started the family business in 1913. We
20 are currently a fifth-generation operation, employing
21 approximately 32 individuals. We procure our milk from
22 six local farms in Northeast Wisconsin.

23 At Lamers Dairy, we use HTST to process fluid milk
24 in the forms of whole milk, 2% milk, 1% milk, skim milk,
25 chocolate whole milk, 1% chocolate milk, whipping cream,
26 half and half, orange juice, lemonades, and eggnog during
27 the holiday season. We also produce custom made ice cream
28 mixes for local customers, as well as providing kosher



1 milk for the Jewish community in Chicago, Minneapolis, and
2 Detroit.

3 Lamers Dairy is in Federal Order 30 and on the
4 average markets approximately 1.3 million pounds of
5 Class I milk per month. This represents about one-half of
6 1% of the milk marketed in Federal Order 30.

7 THE COURT: Now, you have written "Class I milk."
8 So please just re-read that last sentence.

9 THE WITNESS: -- Federal Order 30 and on average
10 market approximately 1.3 million pounds of Class I milk
11 per month. This represents about one-half of 1% of the
12 Class I milk marketed in Federal Order 30.

13 I am here today in opposition to Proposals 1, 2,
14 13, 16, 17, 18,19 and 21. I am here today in support of
15 Proposals 14, 15, and 20.

16 Lamers Dairy opposes Proposal 1 and 2 in part.
17 Component values should be regional and not a national
18 value, as component levels may be different in different
19 regions of the country as influenced by breed of cows,
20 types of feed, and other factors. Setting component
21 values to the average of the actual level of components
22 within the geographical region is a more equitable system
23 because the producer receives and the buyer pays for the
24 value of what is in that milk. Raising component values
25 to a level higher than what is actual only increases the
26 cost to the consumer. Having a lookback period to see if
27 component levels have changed in a particular market area
28 may merit some consideration.



1 Lamers Dairy also opposes Proposal 13. The
2 problem for using the "higher-of" between the Class III
3 and Class IV for fluid milk handlers is the fact that if
4 the Class IV price exceeds the Class III price to the
5 extent that the value is not in close relationship to each
6 other, effectively, you would have a very small percentage
7 of the milk marketed being the mover for the Class I
8 price.

9 If the price relationship between Class III and
10 Class IV were to remain somewhat constant and in close
11 relationship with each other, using the "higher-of" would
12 make sense. But given the fact that there can be a
13 greater price spread between Class III and Class IV and
14 the potential volatility in those markets, using the
15 "higher-of" would only increase the price of fluid milk to
16 the consumer. Lamers Dairy would support Proposal 14 or
17 Proposal 15. I believe that over time using the
18 "average-of" would --

19 THE COURT: Stop just a moment. I'm missing your
20 page 3. Let me make sure -- it's probably in here. Oh,
21 I'm missing -- so I have 4, but I'm missing page 3.

22 Okay. Now, that's just our written copies here in
23 this room. I presume that page 3 is on the website?

24 MS. HANCOCK: The one I have has a 3 in it.

25 THE COURT: Okay, good. We have got lots of
26 copies in the room with your page 3.

27 Would you start again, ending page 2, and then
28 going over onto page 3 and continue to read.



1 THE WITNESS: Sure.

2 Lamers Dairy would support Proposal 14 or
3 Proposal 15. I believe that over time using the
4 "average-of" would help smooth out the volatility in the
5 pricing of the Class III and Class IV markets.

6 Lamers Dairy opposes Proposals 16, 17, and 18
7 calling for the elimination of advanced pricing. Class I
8 handlers need to know in advance what their milk price is
9 going to be so that they can set wholesale pricing to the
10 retailer. The elimination of the advanced pricing in
11 exchange for the announced pricing would be akin to us
12 having to price products for sale without knowing our
13 actual input cost. If the price were to be higher than
14 what was actually charged to the customer, there is no way
15 for a Class I handler to go back to the retailer and
16 recoup the lost money from being sold at a price that was
17 too low. Advanced pricing is a crucial factor in
18 complying with Wisconsin minimum mark-up requirements.

19 Lamers Dairy strongly opposes National Milk
20 Producers Federation Proposal 19 to increase Class I
21 differentials across the board. It cannot be emphasized
22 enough that one of the purposes of the FMMO and the AMAA
23 of 1937 was to have a sufficient supply of pure and
24 wholesome milk for the consuming public and be in the
25 public's best interest.

26 If the proposed increases in the Class I
27 differentials were to be adopted, proprietary Class I
28 handlers would have no choice but to pass that cost on to



1 the consumer, which is not in the consumer's best
2 interest. There has been much conversation throughout
3 this hearing regarding the effect of higher Class I prices
4 on the consumer as it relates to store brand label versus
5 branded label and the price differences between the two.
6 There is no doubt that retailers utilize fluid milk as a
7 leader to attract customers to their store. Fluid milk
8 handlers who have a branded label on the store shelf next
9 to a lower priced label risk losing market share when
10 passing these price increases on to the consumer.

11 In the case of Lamers Dairy, we are often the
12 third label on the store shelf and typically we are priced
13 at a higher percentage mark-up than the leader brand milk
14 and even the next branded milk. Because of our commitment
15 to local family farms producing fresh milk and supporting
16 local farmers, we have a strong customer base that
17 supports our mission and our business philosophy.
18 Increasing the Class I differentials to the level proposed
19 would only further hinder our ability to remain
20 competitive in the markets we serve. Class.

21 I sales have been on the decline for some time.
22 With competition on the grocers' shelf for fluid milk
23 sales and alternative milk products, increasing Class I
24 differentials would only make it more difficult to regain
25 fluid milk sales.

26 Looking at Federal Order 30 statistics in January
27 2000, there were 29 distributing plants, whereas today
28 there are nine. In January 2000, there was approximately



1 351 million pounds of Class I milk sold compared to August
2 2023 there was about 159 million pounds, which is about a
3 55% decline in fluid milk sales.

4 This trend is not unique to Federal Order 30 as
5 other evidence has been introduced at this hearing that
6 the same can be said for other regions of the country as
7 well. Given these market trends, an increase in Class I
8 differentials to the level proposed would only exacerbate
9 the condition that already exists and would be of no
10 benefit to any proprietary Class I handler or to the
11 consumer.

12 I would be curious to know that of the number of
13 fluid milk plant closures over the last 20 years, how many
14 were proprietary plants versus cooperative owned plants.
15 It is my belief that the FMMO as they are applied today
16 played a significant role in the decline of the
17 proprietary fluid plants in this country. As of today,
18 Wisconsin has only three distributing plants operating in
19 the state.

20 Depooling and Disorderly Marketing: Co-ops which
21 have manufacturing plants and fluid plants have a
22 competitive advantage over proprietary Class I handling
23 plants. Because co-ops are allowed to blend the proceeds
24 between their fluid milk plants and their manufacturing
25 plants, the impact of the Class I differentials on their
26 overall operation is not as significant to them as it is
27 to proprietary plants who operate only fluid plants.

28 Said another way, co-ops that own fluid milk



1 plants and pay monies into the federal order system draw
2 that money back out of the system for manufactured milk
3 pooled on that order. Co-ops are not required to pay
4 their producers the minimum blend price. This gives them
5 a competitive advantage over a proprietary Class I handler
6 competing in the same market.

7 There has been much discussion at this hearing on
8 the practice of depooling milk. The AMAA of 1937 clearly
9 defines the objective of minimum prices paid to producers
10 through the classified pricing structure. Under the
11 Declaration of Policy Section, the Secretary of
12 Agriculture is to establish and maintain such orderly
13 marketing conditions for agricultural commodities in
14 interstate commerce as well as to establish parity prices
15 paid to producers, and to protect the interest of the
16 consumer.

17 Under "Terms -- Milk and Its Products," that
18 section lays out how the classified pricing structure is
19 to be overseen, and part of the language within that
20 section clearly states that the prices paid are to be for
21 milk of the highest use classification, which all handlers
22 shall pay.

23 And I want to emphasize here the language of
24 highest use classification and all handlers. One must
25 remember that when the AMAA was put into law, it was 1937,
26 when most of the milk produced was consumed in the fluid
27 form.

28 Today, marketing conditions are drastically



1 different than in 1937. The manufacturing sector of the
2 industry in some federal orders is now the driving force
3 in the movement of milk within that order. The California
4 order and FMMO 30 are just two examples of that being the
5 case.

6 In FMMO 30, in Northeast Wisconsin, over the past
7 several years, there have been four new manufacturing
8 facilities built. On the flip side of this, FMMO 30 lost
9 20 Class I distributing plants since 2000. Clearly the
10 value and highest use of the relationship between the
11 Class I and Class III market in FMMO 30 is in the
12 manufacturing sector. By allowing depooling in orders
13 that have these types of relationships between the Class I
14 and Class III markets, producers do not receive the
15 minimum blend price -- oh, I'm sorry.

16 THE COURT: Yeah, I -- I -- there -- I see words
17 that you didn't say. So just start again, "on the flip
18 side of this."

19 THE WITNESS: Okay.

20 On the flip side of this, FMMO 30 lost 20 Class I
21 distributing plants since 2000. Clearly the value and
22 highest use in FMMO 30 is in the manufacturing section --
23 I'm sorry, sector. By allowing depooling in orders that
24 have these types of relationships between the Class I and
25 Class III markets, producers do not receive the minimum
26 blend price for the milk they produced in that market.

27 In November of 2020 in FMMO 30, over 2 billion
28 pounds of milk was de-pooled from the market, as reported



1 by the USDA Computation of Producer Price Differential for
2 November 2020. The producer price differential, or PPD,
3 for that month was a negative \$5.43. Lamers Dairy
4 requested from the Market Administrator's office a
5 hypothetical computation of the producer price
6 differential of that same month had all the milk been
7 pooled. I have attached these documents to my written
8 testimony. See Exhibit C, Hypothetical Computation of
9 Producer Price Differential for November 2020.

10 You can see that in the hypothetical computation
11 for the PPD for the month of November 2020, the PPD for
12 the producers would have been a negative \$2.05. That is a
13 difference of \$3.38 per hundredweight, or \$67,600,000
14 producers lost in that month. Clearly, depooling does not
15 achieve the objective of the original intent of the AMAA
16 of 1937.

17 Setting artificially high Class I movers and
18 artificially high Class I differentials to mitigate the
19 practice of depooling is not and should not be a function
20 of the FMMO. It is imperative that we keep in mind the
21 original intent of the AMAA, to achieve unified pricing
22 for producers and ensure a sufficient supply of fluid milk
23 for the consuming public.

24 In the AMAA of 1937, under the heading "Terms
25 Common to All Orders," it states, "In the case of
26 agricultural commodities and the products thereof
27 specified in subsection (2), orders shall contain one or
28 more of the following terms and conditions: (A)



1 Prohibiting unfair methods of competition and unfair trade
2 practices in the handling thereof."

3 Allowing manufactured milk to be depooled from the
4 market is an unfair trade practice. When competing for
5 producer milk, it is common to see over-order premiums
6 being paid to producers to attract milk to a particular
7 plant whether fluid or manufacturing. Fluid plants who
8 pay into the producer settlement fund are competing
9 against their own money when manufacturing plants draw
10 that money out of the pool, use that money to pay their
11 producers.

12 Other Effects of Milk Being Depooled: There are
13 other side effects when milk is allowed to be depooled
14 over a prolonged period of time. FMMO regulations require
15 handlers to pay money into an administrative fund to
16 operate the FMMO that they are in. The administrative
17 assessment is applied only to the milk that is pooled on
18 that order for any given month.

19 During the year of 2020 when there were many
20 consecutive months of milk being depooled, I received a
21 message from the Market Administrator stating that he had
22 to raise the assessment rate because there was not enough
23 money in the administrative fund to operate the offices of
24 the FMMO 30.

25 Again, fluid milk handlers who are obligated to
26 participate in the FMMO system must pay the burden of
27 inadequacies of the FMMO regulatory system and are
28 continually being put at a competitive disadvantage. It



1 is my opinion that continuing to allow manufacturing milk
2 to be depooled is in direct violation of the AMAA of 1937
3 regarding its original intent.

4 Disorderly Marketing: When disorderly marketing
5 is talked about within the FMMO, it is in association with
6 price inversions between Class III and IV and the Class I
7 price. I would contend that it is not the movement of
8 milk within the market that is disrupted during these
9 price inversions, rather it is the disruption of the
10 movement of the money between handlers. If all handlers
11 were to play by the same rules, disorderly marketing would
12 not be a thing.

13 For the same reasons as stated above, Lamers Dairy
14 opposes Proposal 21 submitted by the American Farm Bureau
15 Federation.

16 Lamers Dairy fully supports Proposal 20 submitted
17 by the Milk Innovation Group. Adopting Proposal 20 would
18 help level the playing field between proprietary Class I
19 handlers who operate only fluid milk plants and
20 cooperatives who own both manufacturing and fluid milk
21 processing facilities.

22 I am reminded here of the testimony given by a
23 farmer by the name of H.H. Barlow of Cave City, Kentucky,
24 when he stated in his closing statements regarding how
25 competition was key to everything.

26 As we look at the changes in the fluid milk
27 markets from the time of its inception of the AMAA of 1937
28 to the year 2000 to today, the evidence is clear, we



1 cannot continue to go down the path we are currently on.
2 If AMS does not recommend MIG's Proposal 20, I would
3 recommend the Market Administrators in each of the FMMO,
4 with input from processors within that order, to come up
5 with a set of appropriate levels for the Class I
6 differential as it pertains to the percentage of Class I
7 milk used within that particular order.

8 Conclusion: Where do we go from here? Having
9 spent my entire life working in the dairy industry and
10 seeing the changes that have come about, it is clear and
11 evident that something needs to be done to help ensure the
12 viability of all participants within the dairy segment of
13 agriculture. The FMMO system should not be operated in a
14 manner where there are winners and losers.

15 AMS has asked many participants at this hearing if
16 they qualify as a small business. The standard set for
17 this hearing as it pertains to a small business to satisfy
18 the requirements of the Regulatory Flexibility Act is
19 clearly defined.

20 I would contend, however, that small businesses
21 such as Lamers Dairy would find themselves in a more
22 difficult position to survive if the proposals of the
23 National Milk Producer Federation were adopted. There is
24 a place for very small businesses such as Lamers Dairy,
25 and it would be my wish that special consideration and/or
26 protection be given to small businesses such as ours.

27 National Milk Producers Federation, with its
28 initial request for a hearing, clearly pointed out that it



1 has two-thirds of producer approval for their proposals.
2 The Secretary of Agriculture, the USDA, and AMS have a
3 great challenge in front of them: To do what is right for
4 the industry as a whole and create a fair and equitable
5 system for all.

6 I would like to thank AMS for allowing me to
7 participate in this hearing process, and it is my prayer
8 that whatever the outcome of this hearing is, that it is
9 for a better and stronger dairy industry, one that is
10 equitable for all.

11 That concludes my testimony.

12 THE COURT: Mr. Lamers, this is a remarkable
13 document. Very much appreciated.

14 Before we go on to your Lamers 1A, I want to take
15 a five-minute stretch break. But before we do that, I
16 want to make a correction to the document that is
17 Lamers 1, which is Exhibit 329, as you requested, on
18 page 7. I want to change one word from "could" to
19 "would." It's in the last full paragraph, second line,
20 the third word says "could," and we will strike "could"
21 and write "would," W-O-U-L-D.

22 And that has been done on the record copy.

23 So now I want to take a five-minute stretch break
24 before Mr. Lamers would go into Lamers 1A. You're welcome
25 to leave the room if you are quick to come back.

26 We go off record at 8:30. Be back 8:35.

27 (Whereupon, a break was taken.)

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



1 We're back on record at 8:35.

2 Mr. Lamers, we're now turning to Lamers-1A, which
3 is also Exhibit 330. And you may proceed.

4 THE WITNESS: Yes. This is just a simple document
5 just showing if milk was not allowed to be depooled, it's
6 just mainly showing what the effect of not allowing
7 depooled milk would be on the producer price differential.

8 I understand that during this month there was an
9 extreme month, being the COVID years, but still, it's -- I
10 think it's very evident what the effect of allowing milk
11 to be depooled, what it has on the producers, in
12 particular the ones who have -- are obligated to have
13 their milk pooled based on where the milk supplies goes.

14 Again, I go back to the original intent of the
15 Marketing Agreement Act, that all producers receive the
16 minimum blend price. The minimum blend price cannot
17 happen if milk is allowed to be depooled as it is. So
18 that's just -- the purpose of this document was just to
19 illustrate what the effect of -- is of milk that is
20 depooled in any given month.

21 THE COURT: So at the very end of one of your
22 statements just now, I believe you said, "if milk is
23 allowed to be depooled, which it is."

24 Is that what you said?

25 THE WITNESS: Yes.

26 THE COURT: Okay. You are going to have -- for
27 cross, you are going to have to make sure that your voice
28 is loud --



1 THE WITNESS: Okay.

2 THE COURT: -- so that we all can hear it. And
3 that may require that you scoot your chair toward me so
4 that your mouth is closer to where that microphone is.

5 All right. Good.

6 I would invite cross-examination.

7 CROSS-EXAMINATION

8 BY MS. HANCOCK:

9 Q. Good morning, Mr. Lamers. I'm Nicole Hancock with
10 National Milk.

11 A. Good morning, Ms. Hancock.

12 Q. Thank you for being here.

13 If we take a look at Exhibit 329, just your base
14 testimony, I just want to ask a few questions.

15 You gave us a good overview of your family's
16 operations at Lamers Dairy. Do you just have the one
17 plant?

18 A. Yes.

19 Q. And that's located in Wisconsin?

20 A. Yes.

21 Q. Okay. How do you source your milk?

22 A. We have six local producer milks. I actually go
23 out and solicit that milk myself.

24 Q. Okay. Are they captive producers for you, where
25 they are just exclusively produced for your dairy -- or
26 for your facility?

27 A. Yes. It's through a competition for getting that
28 milk, yes. If we have a need for the milk, for our



1 business model, we feel that it's important that we secure
2 that milk supply from individual producers rather than
3 going through a cooperative.

4 Q. Okay. And then so do you have a contract with
5 them that they produce on an annual basis for you?

6 A. We do not. They are allowed to come and go as
7 they please.

8 Q. Okay. And then do you agree to take all of the
9 milk that they produce or do you just -- are you able to
10 just order what you need?

11 A. No. We take all that they produce.

12 Q. Okay. So is it based on how -- how much you need
13 at your plant at all or you just agree to take everything
14 that they produce regardless of what it is?

15 A. Right now, we take everything they have, and we're
16 actually short. So in today's market, what we're doing,
17 we have a manufacturing plant located near us that
18 actually put a quota on their producers. And a particular
19 farm that's a larger farm where we get our kosher milk
20 from, he is basically acting as the balancing for our
21 plant at this time. So -- so we actually pool his milk on
22 the order.

23 Q. Okay. So you take everything that you can get
24 from the six dairies from whom you buy milk, and then any
25 excess milk that that plant -- the other plant that you
26 can't -- or that they can't take, you use as well?

27 A. That's correct.

28 Q. And between those, does that put you at capacity



1 or does that allow you to fill some needs?

2 A. No -- well, for our sales capacity, it is now.

3 Our plant capacity, no. We could run much more if we had
4 the money to be able to make the expenditures needed to
5 expand our operation.

6 See, in Northeast Wisconsin, in particular,
7 there's a shortage of -- actually shortage isn't the right
8 word. The ability for customers to get the milk delivered
9 to them is -- is -- is harder today because of the number
10 of fluid plants that have gone out of business. So we
11 have gotten calls in the -- within recent months from
12 potential customers looking to get milk distributed to
13 them, but because of their location and where they are at,
14 it just -- it is not feasible to get it up there. And the
15 larger proprietary plants that are cooperative plants,
16 from my understanding, they are at capacity, and they just
17 can't get it, so...

18 Q. And are those retail outlets, those customers?

19 A. Some are retail, some are schools that have a hard
20 time getting it. And if they do get it, the price is
21 extraordinarily high.

22 Q. And that's all Class I fluid milk?

23 A. All Class I, yes.

24 Q. So some retail, some schools.

25 Anyone else?

26 A. It'd just be your standard retailers, yes.

27 Q. Okay.

28 A. And the problem with that is because of their



1 volumes being so low, up in more rural parts of Wisconsin,
2 Lake Beck, it's -- it is -- it's hard for them to get that
3 milk in there at a reasonable price.

4 Q. And where did you say they were located?

5 A. The retailers?

6 Q. Yeah. And the schools that you said.

7 A. Most -- mostly in the northern part of the state.

8 Q. Okay. In Wisconsin?

9 A. Yes.

10 Q. Okay. And how far would that be from your
11 location?

12 A. Well, we generally try to keep our own
13 distribution within about a 50-mile radius of the plant.

14 Q. Okay. So are those the schools and retail outlets
15 that you're saying are not able to supply all of their
16 Class I needs, they are beyond that 50 miles?

17 A. As far as the schools not getting it, that's what
18 we have heard from other dairy people. We typically don't
19 deal a lot in school milk because there's just no margin
20 in it. In order to supply school milk at the rate that
21 it's needed, our plant is just not designed to handle that
22 kind of volume.

23 Q. Okay. And so are they more than 50 miles away; is
24 that what you are saying?

25 A. Some of them are, yes.

26 Q. Okay. And if they were within your area, at least
27 for the retail outlets, you would be -- you would be able
28 to supply them if they were closer in?



1 A. Depending on what their needs were potentially,
2 yes.

3 Q. Great.

4 And then how do you balance -- if you are taking
5 all the milk that comes in from those six dairy farms, do
6 you ever have any times where you have to balance your own
7 milk in your own plant, where you have too much coming in
8 based on your capacity?

9 A. Not right now, no. No.

10 Q. Okay. Have you ever encountered that situation?

11 A. We have in the past where we had -- typically, we
12 used to try to keep about a 10% reserve, you know. So we
13 did work with a manufacturing plant maintaining that
14 balance for us. But we haven't been doing that in the
15 last two or three years.

16 Q. Okay. So you balance your plant by keeping a
17 little bit of capacity so that it can account for any kind
18 of ebbs and flows in the volumes that you are taking in?

19 A. Yeah, I know what you are saying. We have -- in
20 our product mix, we're pretty even seasonally. We don't
21 have some of the bigger flows like some of the big plants
22 do where they have that school milk and you have those
23 fluctuations and seasonal use. With our product mix,
24 we're able to maintain a pretty even volume throughout the
25 year.

26 Q. Okay. And I think you talked about your different
27 product mixes.

28 And it's a pretty diverse product mix between your



1 fluid milk and your manufactured products?

2 A. Outside of the ice cream mixes, that's the only
3 one we really do, yeah.

4 Q. Do you do cheeses as well?

5 A. We do not.

6 Q. Okay. I saw on your website that you sell some
7 cheeses.

8 A. We do. We buy some from -- from a local
9 distributor. He private labels it for us. But we do not
10 manufacture cheese.

11 Q. Okay. And do you have -- the volumes of milk that
12 come in from those six dairies, does it change by day or
13 by week?

14 A. No. They are pretty consistent --

15 Q. Okay.

16 A. -- you know, with what they do.

17 Q. And has --

18 THE COURT: Whoa.

19 THE WITNESS: Yeah. They are pretty consistent in
20 what -- in their production.

21 BY MS. HANCOCK:

22 Q. How long have you worked with just those six
23 dairies?

24 A. Oh, trying to think back who is -- it's probably
25 within the last ten, 12 years. I mean, some of them come
26 and go. We have lost some farms due to just going out of
27 business, you know, nobody taking them over. So we have
28 been able to find younger farm families that -- that we



1 like to support, and it goes back to our -- to our
2 business philosophy of supporting small farmers and local
3 family farms.

4 If I were to look at it strictly from a monetary
5 value, I could tell our six producers, you know what, I
6 can go get it from one big farm. But that's not our
7 philosophy, you know.

8 So, luckily, we have good producer milk. And our
9 standards, we look -- I look for a specific quality of the
10 milk that comes into our plant, you know, and I -- you
11 know, I have worked with farmers in the past. When it
12 comes to soliciting milk, one of the things I do is I look
13 at price comparison, because obviously if a producer is
14 looking at moving from one plant to another, they want to
15 know if it is in their economic best interest to do that.
16 Well, based on our standards of what we have, generally we
17 have to pay a higher premium in order to get that milk to
18 our plant. There are over-order premiums still being paid
19 in Federal Order 30, at least where we are. So we're still
20 if competition for that milk.

21 Q. Okay. And -- and -- and the farms that you have
22 seen go out of business over the past few years, has that
23 been financial pressures that they couldn't absorb in
24 their operations?

25 A. No, I don't think so. I think some of it is they
26 just retired and they were done. I had one -- in
27 particular, there were two brothers that were operating
28 it, and they decided just to retire and be done with it,



1 you know. So -- so, yeah. No, not all of them, so...

2 Q. Not all of them but just some of them?

3 A. Well, for different -- for different various
4 reasons. I mean, it depends on -- when I go back and talk
5 about parity pricing, if you go look at what parity
6 pricing states in the Marketing Agreement Act, it refers
7 back to what it costs to produce that milk on the farm.
8 And in there it -- it states the price of feed and other
9 economic drivers and what it costs to actually produce
10 that milk. Okay. There's nowhere, you know, in our
11 pricing structure where that's even addressed.

12 So I'm continually hearing from producers that
13 their costs -- you know, their input costs are -- are
14 higher than what they used to be. But I also have
15 producers that don't have any overhead, you know.

16 So farming is a businesslike anything else. So
17 you can manage your farm, and you can manage it to be
18 profitable, or you can manage it not to be profitable, you
19 know. So I think it's important to remember that
20 individual farmers run their operations differently than
21 others. You know, some are good at it, and some not so
22 good.

23 Q. When you say that you have some farms that you
24 work with that don't have any overhead, how can that be?

25 A. Well, they have been in the farm for -- farm
26 business for their entire life. They don't owe any money
27 to the banks, you know. So, you know, in that particular
28 situation, it's their -- their operating costs are just



1 what it is to produce that milk. They have -- like I
2 said, they have no debt, so...

3 Q. Okay. So -- so it's easier for a longer existing
4 dairy farm to -- if they have been around for a long time
5 and been able to have an established operation, they might
6 be able to have a system where they are not carrying loans
7 or other things where they're leveraged that would cause
8 them to have a higher overhead; is that fair?

9 A. Well, sure. That's like any business. I mean, I
10 think if you go to expand your operation, no matter what
11 you do or what business you are in, you are going to look
12 at what you can afford and what you can't afford, you
13 know. And that's a business decision that comes down
14 to -- to the individual.

15 Q. And the example of the two gentlemen that you said
16 retired from dairy farming, they weren't able to sell
17 their farm to another dairy farmer who was picking up
18 their farm, right?

19 A. They could not because of what they were asking
20 for it.

21 Q. Okay.

22 A. I mean, everybody's different, and just knowing
23 these two gentlemen, you know, they weren't going to let
24 it go for nothing, you know, so...

25 Q. All right. And so they just chose to retire and
26 close down --

27 A. Exactly.

28 Q. -- their operation?



1 A. Exactly, yes.

2 Q. Okay. It's hard for new dairy farms to emerge
3 just from scratch, isn't it?

4 A. It is. It is.

5 Q. It is very expensive to get it started, get the
6 operation started up, isn't it?

7 A. I would think it would be, yes.

8 Q. Okay. If you -- on page 2 of your testimony you
9 are providing your position on National Milk's
10 Proposal 13, which is the higher-of mover that National
11 Milk is putting forth.

12 A. Uh-huh.

13 Q. At the bottom there of that page you say, "Using
14 the higher-of would only increase the price of fluid milk
15 to the consumer."

16 Is it fair to say that one of the reasons why you
17 are opposing National Milk's proposal, to move the Class I
18 price mover to the higher-of is because you think that it
19 would increase the Class I price, which in turn would
20 cause you to have to increase your price to your
21 consumer -- or to your customer?

22 A. You have to look at the price relationship between
23 the Class III and the Class IV price at the time. Okay?
24 I have seen months in Federal Order 30 where there was a
25 \$4 difference per hundredweight between the Class III and
26 Class IV price, where the Class IV price was actually that
27 much higher. Well, in using the higher-of in that
28 situation, that's where that Class I mover gets attached.



1 Yes, that has to get passed on.

2 And in Federal Order 30, when you are looking at a
3 Class IV market only being about a half a percent of the
4 milk produced, I don't think that's an appropriate way to
5 look at how that Class I price should move on that little
6 bit of volume of milk produced in that market.

7 Now, if -- I will say, like I said in my
8 testimony, if that price relationship remains pretty close
9 to each other, as a Class I bottler, you know, it is one
10 way or the other. But with MIG's proposal on -- using the
11 average-of with the mover, in that scenario, the producer
12 would actually be coming out ahead if those price
13 relationships were in close concert with each other.

14 Q. Help me understand why that would be the case.
15 Why would the -- why would your customer be in a better
16 position?

17 A. Well, no, I think it would just add some stability
18 to the Class I moving structure. My -- my position on the
19 Class I, the higher-of, when you have those big disparity
20 in prices, Class I handlers have no choice -- or Lamers
21 Dairy has no choice but to pass that on. Using the
22 average-of with the multiplier, the same thing is true, we
23 have to pass that on.

24 But earlier in some of the hearings that I have
25 been a part of here where they talked about hedging, you
26 know, I can see how having a more consistent price base,
27 you know, for that Class I mover -- and a particular
28 opinion on hedging is neither here nor there for me -- but



1 the stability in the market, I think, is where that would
2 come out. And like I said, it's the volatility in the
3 market that -- that, in my opinion, you want to try to
4 avoid, you know, so -- and based on the production of the
5 milk within that market as well.

6 Q. So when say "volatility in the market," you are
7 talking about the interface between you and your
8 customers?

9 A. No. I'm talking about the volatility between the
10 Class III and the Class IV price.

11 Q. Okay. So you are talking about what it will do to
12 your pricing that you have to pay to your dairy farmers?

13 A. No. Because the Class I mover attached to that
14 higher-of we have to pass on to the consumer, which in the
15 overall pricing of the system structure, yes, it -- it all
16 works back to whatever the minimum blend price is to the
17 producer.

18 Q. So maybe I'm -- I'm -- I'm just trying to
19 understand your concerns about at what point in your
20 supply chain are you worried about how that volatility in
21 the price movement will impact your business operations.

22 Is it between you and your dairy farmers? Is it
23 between you and your retail outlet?

24 A. It's mostly between us and our customers, yes.

25 Q. Okay. Because you are worried that it will cause
26 some volatility or movement in what you have to charge to
27 your customers for -- or what -- what your customers will
28 have to pay for that milk?



1 A. Right. Because our pool obligation, you know,
2 that's money we just pay out. So the only way we can
3 recoup that is by charging it to the consumer. That's the
4 only way that happens.

5 Q. Okay. And you believe that it will cost you
6 more -- or it will cost your customers more if the
7 higher-of is used versus the average-of?

8 A. Whatever the mechanism that's used for attaching
9 the Class I mover. Okay? I think if you have a more
10 consistent price where that moves between, that would help
11 minimize the impact on what the consumer pays. It's
12 only -- like I stated, it's only in those months where you
13 have a wide disparity between that Class III and Class IV
14 price.

15 Q. And how do you set your prices with your
16 customers? Do you do it on an annual basis?

17 A. That's on a month-to-month basis.

18 Q. Okay. So month to month you'd let them know what
19 the upcoming month is going to be for your fluid milk
20 prices?

21 A. That's correct. Yes.

22 Q. Okay. You mentioned in there that hedging is
23 neither here nor there for you, and that's because you're
24 selling HTST?

25 A. Right.

26 Q. Okay. So you don't -- you don't do any hedging or
27 fixed price contracting?

28 A. We do not, no.



1 Q. And on page 3, you have -- the very last sentence
2 of the first full paragraph there, it says, "Advanced
3 pricing is a crucial factor in complying with the
4 Wisconsin minimum markup requirements"?

5 A. Yeah. That -- I don't want to get -- well, that
6 one I talked with my team about our testimony when we were
7 looking at what the price of eliminating the advanced
8 price would be. That was one of the concerns that came
9 up. I don't have any particular knowledge of what that
10 effect could possibly be, but that was one of the concerns
11 that was brought up to me.

12 Q. Okay. I don't know what the minimum -- Wisconsin
13 minimum markup requirements are.

14 Can you explain that to me?

15 A. That's beyond my -- my level of expertise on that.
16 I mean, that's something my office manager would deal
17 with, you know, so -- and...

18 Q. Okay.

19 THE COURT: If I might interrupt.

20 Do you know, Mr. Lamers, of another witness that
21 will speak directly to what you have raised here?

22 THE WITNESS: I do not. No.

23 THE COURT: Thank you.

24 BY MS. HANCOCK:

25 Q. On page 4, you're talking about the decline in
26 fluid milk sales, and you attribute that to the Federal
27 Milk Marketing Order regulations. I'm wondering if you
28 could help me understand how the regulations have -- that



1 you -- how you believe that the regulations have
2 contributed to the decline in fluid milk sales.

3 A. I guess the best way I can say state that is, if
4 you look at proprietary plants that operate just fluid
5 milk bottling facilities. Okay? They have to get the
6 returns from the product that they sell. And if they are
7 competing against co-ops that are -- have manufacturing
8 plants and bottling plants, and they are able to blend
9 their proceeds when it comes in regards to the pooling of
10 that milk, the competition in the marketplace on those --
11 on the Class I sales, particularly on large volume plants,
12 the margins are so slim that I -- it's my opinion and my
13 belief that there just wasn't enough money in that for
14 them to do that.

15 And, again, I can go back to what I have heard in
16 the marketplace. There was a fluid milk plant located in
17 De Pere, Wisconsin, that was a -- years ago was a Foremost
18 plant, and they sold it to, I believe it was DFA. I'm not
19 positive on that. And then that was sold to another
20 investment group. And when the investment group got in
21 there and ran that plant for a short period of time, they
22 saw that there was just no money in fluid milk, so they
23 closed it town.

24 So when you look at the impact of what pooling
25 milk does when the monies that are generated from that
26 Class I sale, the effect that it has on a proprietary
27 plant such as ours, or another proprietary plant that
28 handles just the fluid milk plant, it is very difficult,



1 you know, to remain competitive in those -- in that
2 market, so...

3 Q. So are you talking about the cooperative's ability
4 to depool and to blend prices?

5 A. Yes. Yeah. Because, you know, I go back -- it
6 all goes back to Marketing Agreement Act. If we're
7 talking about farmers, everybody wants it to be in the
8 farmer's best interest, right? That's what we always say,
9 right? How can it be in the farmer's best interest when
10 milk can be allowed to move in and out of the pool like
11 that?

12 So if Class I bottlers always have to pay in, and
13 they are always paying in, always paying in, and then when
14 the manufacturing segment, it's moved to the point where
15 it becomes a higher price than what the fluid milk is,
16 depending on the demand of that product, and how much that
17 product is used, back to the Marketing Agreement Act,
18 should -- my question is, in my mind, how come that isn't
19 being used to achieve the minimum blend price back to the
20 producer? It can't. So the regulations as they are
21 applied today hampers that from happening, so...

22 Q. And how have you -- I mean, when I look at your
23 business, it looks like you guys -- at Lamers Dairy have
24 been -- for five generations been successful in creating
25 the structure that --

26 A. Yes.

27 Q. -- you have. What have you done to be able to
28 have your competitive nature be so successful in this



1 environment?

2 A. To be honest with you, it is by the grace of God.
3 You know, our commitment to local family farms in our
4 area, producing the high quality milk that we produce,
5 that means something to our customers, and they support us
6 for that, you know.

7 So, like I said, that's -- in today's climate, you
8 know, for fluid milk, there's no way we should be in
9 business, you know. It becomes a passion. It's no
10 different than farming, for my family and some of the
11 farmers. And that's the connection we have with our
12 producers, you know. And they support that, and our
13 customers support that.

14 You know, we learned a long time ago not to get
15 into high volume/low margin business because you can't
16 survive in that arena being a proprietary plant like us.
17 You know, so we have to pick and choose, you know, what
18 works for us and what doesn't, you know.

19 Our goal in this whole thing is to supply a good
20 healthy product for our neighbors, you know, and to
21 survive -- and to provide a livelihood for our employees.
22 You know, when -- when the conditions are the way they
23 are, right now, you know, it's -- it's -- there's no way
24 you should be in business doing what we're doing, you
25 know. But I believe we do it the right way.

26 Q. Okay. So through your brand and your reputation
27 and your quality, and then your commitment to the
28 community, you have created a business model that for --



1 for your business has been able to thrive in that?

2 A. For us it works, yes. Yeah.

3 Q. On your page 7 of your testimony you have a
4 "Disorderly Marketing" header there. And you talk about
5 some the price surface discussion at the bottom. And you
6 said, if AMS doesn't recommend MIG's Proposal 20, that you
7 would like to see each Federal Milk Marketing Order set
8 their own Class I differentials.

9 Do you see where I'm at there?

10 A. Yes.

11 Q. I'm wondering, if that were the case, that it was
12 done on an individual order basis, what factors would you
13 want to have those Market Administrators look at in order
14 to consider where the price differential should be set?

15 A. Okay. What I would envision happening there is,
16 like I said in my testimony, that it would be between the
17 Market Administrator and the processors and to look at the
18 regulatory language of the Agricultural Marketing
19 Agreement Act and looking at the use classification within
20 that marketing order.

21 Now -- and I understand that in different parts of
22 the country it is different. I can really only speak to
23 Federal Order 30, which we're a part of. But when you
24 have only 5% of the milk being produced in Federal
25 Order 30 going into fluid -- again, this is my opinion --
26 there's no way it warrants a \$3 a hundredweight Class I
27 differential to move that milk. You don't need it, you
28 know. So that's -- that's my basis for all of that.



1 But I do think, as a whole, it could be a good
2 tool if it was used the right way, if it was done on an
3 order-by-order basis.

4 Q. So it sounds like movement considerations is one
5 factor that you think should be included in setting price
6 differentials or the need to move or no need to move?

7 A. Well, the availability of the milk, you know. I
8 just -- it's -- the milk is going to move where it needs
9 to move, and it always has.

10 Q. Are there any other factors that you think should
11 be taken into account in setting those price
12 differentials?

13 A. I would simply go back to an adequate supply. The
14 language says adequate supply. That's a hard one to
15 define I guess.

16 Q. And then you said that quality for you is -- is
17 important for your brand and your business.

18 Do you have any special requirements for the milk
19 that you purchase from your dairy farmers?

20 A. We do, yes.

21 Q. Would you be willing to share what attributes
22 those are?

23 A. We pay premiums in the way of plate counts. We
24 charge a minimal hauling, only from the standpoint is we
25 consider that part of the over-order premium pricing.
26 So -- but, yeah, it's -- so our program is set that the
27 cleaner the milk, the higher quality the milk there is,
28 you know, the higher premium they receive.



1 Q. What's the quality level you require?

2 A. That, typically, I -- when I look at producers'
3 milk, I look at anything pretty much under 10,000, which
4 is 10,000 on the standard plate count. After -- after
5 that level, our producers don't receive any premiums.

6 Q. What about SCC?

7 A. I'm sorry?

8 Q. I don't know -- somatic cell count, sorry.

9 A. We don't pay any somatic cell premiums. That is
10 something that we have had to compete with in the past.
11 And just the way we would offset that is just changing the
12 scale of our -- of our standard plate count program.

13 Q. Okay.

14 MS. HANCOCK: Thank you so much for your time.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Lamers, you mentioned the
17 processing plant that closed. And I believe you said in
18 Pere, Wisconsin?

19 THE WITNESS: De Pere.

20 THE COURT: Would you spell that.

21 THE WITNESS: It's D-E, space, P-E-R-E.

22 THE COURT: And how do you spell plate counts and
23 what are they?

24 THE WITNESS: A standard plate count, it's
25 basically a bacterial level in the milk that we look for.
26 When I talk to any of our farmers or customers, to me,
27 buying fluid milk for what we use is kind of like a
28 computer: Garbage in, garbage out. You know, you can



1 only do so much with that, you know. So I think Grade A
2 standards are pretty laxed as far as what's Grade A milk.

3 But, in an example, I was just working with a
4 producer, considering putting him on. He was only having
5 one plate count a month taken to see where his quality
6 level was for his farm. It's hard for a producer, you
7 know, to know exactly what's going on with the quality of
8 its milk when that's all that's being pulled, you know.
9 Consequently, too, that producer wasn't even getting
10 minimum blend price from his plant that he was shipping
11 to, so...

12 But that's just a standard, we look in the
13 standard we set for what we need for our customers, you
14 know. So one of the things we hear from our customers is,
15 what do you do so different with your milk? It seems so
16 much better than the competition. It all goes back to the
17 farm. You know, if it doesn't come in good from the farm,
18 it's kind of hard to make it last. So that's the main
19 benefit for us procuring our own milk.

20 THE COURT: And is plate just spelled P-L-A-T-E?

21 THE WITNESS: It's actually a standard plate count
22 is what it is. Yes, P-L-A-T-E. Yes.

23 THE COURT: All right. And do you have a standard
24 as to how often your producers should be testing for that?

25 THE WITNESS: We test every pickup.

26 THE COURT: Oh.

27 THE WITNESS: Every pickup that comes into our
28 plant is -- we run components, bacteria levels, and the



1 whole thing. And the reason we do that is we need to know
2 as soon as possible if there's something going on at the
3 farm level that could affect what we do in the end.

4 THE COURT: Now, was -- before the next person
5 comes to ask you questions, was there anything else that
6 Ms. Hancock raised with you that you need to explain to
7 all of us?

8 THE WITNESS: You know, I don't think -- I don't
9 think there is, no.

10 THE COURT: Thank you.

11 Now, again, you need to just pause a little bit to
12 make sure that the questioner's voice has died down before
13 you begin your answer.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: The next person may come to the
16 podium.

17 MR. ENGLISH: Good morning, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. ENGLISH:

20 Q. Good morning, Mr. Lamers.

21 A. Good morning.

22 Q. My name is Chip English --

23 A. Good morning.

24 Q. -- representing the Milk Innovation Group.

25 And just as the judge just said, there is a
26 tendency -- by the way, you have -- I think you have
27 actually been here for part of the hearing. I think it is
28 a natural tendency to start talking over each other.



1 A. Yes.

2 Q. That's especially not a good idea because our
3 wonderful court reporter, who will remind me when I do it,
4 you know, needs to be able to take all these words down.

5 A. Uh-huh.

6 Q. So let me start with a few sort of general
7 questions.

8 Lamers is not a member of the Milk Innovation
9 Group, correct?

10 A. We are not.

11 Q. You developed your testimony independent of the
12 Milk Innovation Group, correct?

13 A. I have, yes.

14 Q. And also independent of the International Dairy
15 Foods Association, correct?

16 A. I have, yes.

17 Q. Other than some courtesy conversations that you
18 and I have had, and maybe some others from the MIG
19 professional team, you have not had any substantive
20 discussions about the testimony or this hearing, correct?

21 A. That's correct.

22 Q. So everything you are presenting is based upon
23 your own views, developed in part when you attended
24 several days of the hearing back in September, or where
25 you have been watching online, correct?

26 A. That's correct, along with the many years that I
27 have observed Federal Order hearings in the past.

28 Q. So Appleton is in what county in Wisconsin?



1 A. Outagamie County.

2 Q. Say again?

3 A. Outagamie County.

4 Q. I think you are going to have to spell that for
5 the court reporter.

6 A. Great. No. It's O-U-T-A-G-A-M-I-E.

7 Q. And are you aware that in the National Milk
8 Producer Federation proposal, your Class I differential
9 would increase from \$1.75 to \$3?

10 A. I am, yes.

11 Q. Do you have any difficulty obtaining your milk
12 supply?

13 A. I do not. No.

14 Q. How much of that increase of \$1.25, assuming it
15 were adopted, given the Class I utilization in Order 30,
16 would go to your local dairy farmers? At 5%.

17 A. Could you restate that again?

18 Q. So assuming USDA adopted that increase proposed by
19 National Milk of \$1.25, that is to say the increase from
20 \$1.75 to \$3, given a 5% class utilization in Order 30, how
21 much of that would go to those local dairy farmers
22 shipping to your plant?

23 A. I would think it would be a very small percentage
24 of that.

25 Q. And did you say you have six farmers?

26 A. Yes.

27 Q. And how local is local?

28 A. Our farthest patron is about 30 miles from the



1 plant.

2 Q. And do you know whether, and if so, how many of
3 those local dairy farms would be small businesses under
4 the SBA, Small Business Administration, definition?

5 A. All of them would be.

6 Q. If MIG 20 were adopted, in whole or in part, thus
7 reducing the fixed Class I differential portion of the
8 Class I differential, would that then mean you could
9 compensate your local dairy farmers shipping to your
10 facility by providing them more money that is presently
11 broad -- shared more broadly with other dairy farmers?

12 A. Yes. That would be the desired outcome, yes.

13 Q. So turning to your discussion about Class I sales
14 in your market. And I must say that, from my perspective,
15 I was surprised by the statistics you were providing,
16 considering the decrease since 2000.

17 Which is significantly higher than the national
18 average, correct?

19 A. Yes.

20 Q. What happened when let -- me back up.

21 You talk about the fact that there are now 20
22 fewer fluid distributing plants in Order 30, correct -- or
23 regulated by Order 30, correct?

24 A. Yes. That's correct.

25 Q. And normally when plants close, others pick up
26 most of that volume, correct?

27 A. That's correct. Yes.

28 Q. But what we're seeing here is an absolute drop, a



1 very high significant drop, correct?

2 A. Correct.

3 Q. Did that mean that sales from Order 30 plants,
4 in -- in addition to losing sales inside Order 30, that
5 they lost sales when they were going further south or east
6 into other orders? Do you know?

7 A. That, I don't know, but I would think that maybe
8 that would be the case.

9 Q. Regardless, does it make any sense to you as a
10 businessman for USDA to further increase Class I
11 differentials in light of that significant drop in
12 Order 30?

13 A. No, it -- it doesn't. Because when I look at the
14 proposed changes, okay, in my mind I think, are we going
15 to be back here in ten years again talking about the same
16 thing? You know, because now the increased Class I
17 differential being proposed today, when is that not going
18 to be enough? You know, at some point you have to go back
19 to the original intent of the law, and the original intent
20 of the law is that all producers receive the minimum blend
21 price for that milk in the market. That cannot happen if
22 everybody's not playing by the same set of rules.

23 Q. Can you name any other commodity where the
24 response to such a shrinking market is to say, hey, let's
25 raise the price?

26 A. No. I cannot.

27 Q. I want to turn for a moment to your exhibit. And
28 you chose November 2020 I think in part to discuss the



1 producer price differential, and I want to discuss a
2 couple different pieces of that.

3 First, you asked the Market Administrator to
4 assist you, correct?

5 A. Yes.

6 Q. And in doing so, you asked that he increase the
7 Class III pounds in the pool by 2 billion pounds, correct?

8 A. That's correct.

9 Q. And that's not a random number you picked out of
10 the air, is it?

11 A. That is not. That's about on average what milk is
12 pooled on Order 30 in Class III.

13 Q. And so, for instance, if one were to look at the
14 May 2023 producer price differential -- I know you don't
15 have it in front of you, but if you'll accept this -- if
16 you looked at it and you saw that there was 2.578 billion
17 pounds, that would not surprise you, correct?

18 A. No, it would not.

19 Q. Okay. In fact, that is more pounds than what you
20 had in the suggestion for November, correct?

21 A. That's correct.

22 Q. Okay. Now, I also note that for November 2020,
23 there were -- I mean, so the -- going back to the actual
24 rather than the depool -- or the milk on -- that's pooled
25 --

26 THE COURT: Slow down.

27 MR. ENGLISH: Thank you, Your Honor. I need more
28 water.



1 THE COURT: Yeah. I'm following you, just barely.

2 BY MR. ENGLISH:

3 Q. So let me slow down.

4 I note that in November 2020, there were still
5 213 million Class I pounds. But when I look at -- and I
6 deliberately looked at a month when schools were still in
7 session -- May 2023, that's down to 162 million, which is
8 right there a drop of 51 or 52 million pounds.

9 Do you know what happened between November 2020
10 and May 2023 that would address a 20-some percent decrease
11 in Class I sales in your market?

12 A. I wouldn't have any information on how that or why
13 that occurred.

14 Q. Regardless, when you testified that the Class I
15 utilization in the market is closer to 5%, that is
16 thinking of a normal month when that Class III milk is
17 being pooled, correct?

18 A. That's correct.

19 Q. Okay. So I'm especially interested in your
20 discussion -- and this ties together with some of the
21 things that had -- counsel for National Milk was
22 discussing with you.

23 You discuss a couple different things. First,
24 that you sell kosher milk --

25 A. Yes.

26 Q. -- correct?

27 A. Yes.

28 Q. And that's one of the ways you distinguish



1 yourself in the market in order to, as a small business,
2 stay in business, correct?

3 A. That's correct.

4 Q. You also discussed the fact that you have a brand,
5 correct?

6 A. Correct.

7 Q. And you mentioned that there's the brand, your
8 brand, there's the private label, and then you said, we
9 are normally the third label in the store.

10 A. That's correct.

11 Q. What do you mean by that?

12 A. In our market, in some of the retailers we supply,
13 they have their store brand label. Generally the next
14 priced label on there would be Kemps or Prairie Farms.
15 And then typically we're the third label.

16 And like I said in my testimony, we're -- they put
17 a higher percentage of markup on our product than the
18 others. And when we ask the dairy managers and the store
19 owners why that is, they said, well, we have to make up
20 for the money we're losing on our other milks.

21 So we cannot play that game, and we are not in a
22 position to play that game, nor do we want to get into
23 that arena. We had tried that several years back with an
24 independent grocery store. He had two stores at the time,
25 and we looked -- we worked on pricing and what we could
26 achieve with them to do their branded milk along with our
27 brand. And as soon as the competition got wind of that,
28 they dropped the price by I believe it was around 25 to



1 \$0.50 a gallon, just like that, in order to keep that from
2 happening.

3 Q. And that puts pressure on your sales, correct?

4 A. That's correct.

5 Q. And so when Class I prices rise, do you see that
6 private label price, or the second label, whether Kemps or
7 Prairie Farms, put additional pressure on your branded
8 label?

9 A. Can you state that again for me, please?

10 Q. So when Class I prices increase, maybe more than
11 usual, do you see an impact on your ability to move your
12 label up consistent with that when you are facing that
13 competition from the private label and the other brand?

14 A. Yes, we do. And it's -- that's one of the things
15 we always are talking about is we cannot let that spread
16 between our label and the next labels below us get too
17 wide because, at some point, the consumer's going to look
18 at it and just say, I mean, I like their philosophy, I
19 like the milk, but I'm just not going to pay the
20 difference.

21 Q. And so if you lose margin on your branded label,
22 that has a negative impact on your bottom line, correct?

23 A. Correct.

24 Q. And that would have a negative impact ultimately
25 on the local farms who supply your milk, correct?

26 A. That's correct. Yes.

27 Q. So there's been a fair bit of discussion, and you
28 yourself refer to it, about inversions and depooling.



1 A. Good morning.

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

4 You were asked some questions by Ms. Hancock about
5 the quality of the milk that comes into your plant. And I
6 was wondering if other than PMO requirements, if you have
7 any set standards that you require your patrons to meet
8 with respect to somatic cell count?

9 A. We do not. We look at somatic cell as generally
10 the overall operation of the farm because, generally, if
11 those somatic sells are low, to me that means the farmer
12 is doing a really good job on taking care of his cows, and
13 typically when you see that, the quality falls in line
14 with that number. Yes.

15 Q. Do you require that your patrons have an average
16 somatic count of below 400,000 or anything like that?

17 A. No, we don't require that. But when we do see
18 that, I -- you know, I point out to them -- because what
19 we have seen with our testing, because we do it every day,
20 in every load, generally, when we see higher somatic cell
21 count milk coming in, it's not uncommon to see that
22 standard plate count rise. So, again, the reason we do
23 the testing so frequently is so we can stem off those
24 occurrences.

25 Q. What would you consider to be a high somatic cell
26 count that would, you know, raise concerns for you?

27 A. Well, generally, if it's -- for us, we start
28 talking to our producers if it starts to get around that



1 300 mark. Yes. Because -- only from the standpoint that
2 it's hurting them, you know, that there's something going
3 on that they need to be looking at.

4 Q. Would it -- would it also hurt you because it
5 would affect, for instance, the shelf life of your milk?

6 A. Potentially, yes.

7 Q. And do you find that higher somatic cell counts
8 negatively impact the flavor of your milk?

9 A. I have not seen that. But there, again, I'm not
10 a -- you know, to answer that question in -- I don't know
11 how that would relate as far as flavor.

12 Q. Now, with respect to the SPC count, the standard
13 plate count, did you state that you do have a limit on
14 that that you accept?

15 A. Generally, we like to see that plate count staying
16 under 10,000, yes.

17 THE COURT: If I could interrupt, Mr. Miltner.
18 When you say that around 300 or below 300, could you be
19 more specific for me?

20 THE WITNESS: Yes, if you -- if you look at the
21 pricing system with -- as it pertains to somatic cell, the
22 350 is like the zero value number. So every month there
23 is an adjuster rate attached to that somatic cell number.
24 So if a producer's average somatic cell count goes above
25 that 350, that generally winds up to be a negative on his
26 producer check. Conversely, the lower that number is,
27 that's more return for the producer. So, yes.

28 THE COURT: Thank you.



1 BY MR. MILTNER:

2 Q. And the Grade A cap, Grade A upper limit for
3 somatic cell count, is 750,000, correct?

4 A. That's correct. Yes.

5 Q. Now, as far as temperature, do you have a required
6 temperature for milk coming into the plant?

7 A. It is not -- generally speaking, it has to be
8 under 40 degrees. Yes.

9 Q. And the Grade A upper limit is 45 degrees,
10 correct?

11 A. That's correct. Yes.

12 Q. And, again, you're looking for a lower temperature
13 because that helps with your ability to deliver milk to
14 your customers that has a longer shelf life?

15 A. That's correct. Yes.

16 Q. And that whole cold chain, keeping that milk cold
17 from the farm to the plant to the store, is important to
18 maintaining code dates and milk quality?

19 A. That's correct. Yes.

20 Q. Now, in your statement you talk about over-order
21 premiums.

22 A. Uh-huh.

23 Q. And you mention that at least in Order 30,
24 over-order premiums are common for both fluid and
25 manufacturing plants, correct?

26 A. That's what we're seeing in some. Not all but
27 some, yes.

28 Q. Do you pay an over-order premium to your



1 suppliers?

2 A. We do.

3 Q. Is that over-order premium standard among Class I
4 handlers in Wisconsin?

5 A. That, I don't know. Typically because of
6 Wisconsin being more a manufacturing market, we have had
7 to compete in the past with somatic cell premiums and
8 protein premiums.

9 Well, for the fluid end, that really doesn't help
10 us per se. So the only way we can, for lack of a better
11 term, combat that or compete with that is we look at
12 what's important to us, you know. So that's where we came
13 up with the standard plate count pricing for our
14 producers. So the lower the standard plate count, the
15 higher their premium. So it gives the producer complete
16 control of maximizing his premiums that he could achieve.

17 Q. Do you pay any premiums to your suppliers that are
18 separate from your SPC program?

19 A. We do not.

20 Q. When it comes to --

21 A. I'm sorry. Can you rephrase that question?

22 Q. Sure. In terms of an over-order premium --

23 A. Uh-huh.

24 Q. -- is your SPC program part of what you're calling
25 an over-order premium?

26 A. Yes.

27 Q. Okay. And so if a farm is supplying Lamers dairy,
28 do you pay them an over-order premium that is separate



1 from the SPC program?

2 A. The -- as I stated in, I think -- I'm not sure if
3 Ms. Hancock asked that, but we do have one other farmer
4 that supplies our kosher milk. And so they receive an
5 extra premium for that kosher milk. But -- but that's
6 more on the rabbinical side of that whole process. So the
7 other milk that we are balancing from that farm, we are
8 matching the premiums that he's receiving.

9 Q. Okay. Do you have any information as to what a
10 typical range of Class I over-order premiums would be in
11 Wisconsin? And I'm not asking about yours specifically.

12 A. Yeah, that, I do not because there's only three of
13 us left, you know, so it's -- you know, I wouldn't have
14 any comparison on what other plants are doing.

15 Q. Do you have any information about the range of
16 over-order premiums for cheese plants in Wisconsin?

17 A. The only experience I have with that is when I'm
18 soliciting producers for Lamers dairy, and I have seen it
19 from below the minimum blend price, no premiums, to -- and
20 generally we're the highest because we have to be in order
21 to get that milk to our plant, so...

22 Q. So at least in terms of the overall pricing
23 structure, Class I milk in Wisconsin still commands the
24 highest price generally?

25 A. It all depends, I guess. It depends on who is
26 moving the milk and where it is moving to. You know, if
27 it's a cooperative-owned plant, fluid plant, and that milk
28 is moving from his cooperative members, you know, are they



1 or aren't they getting the higher premium for that milk
2 going there? I don't know how they pay their producers
3 that way. So I can only speak to what we do at Lamers
4 dairy.

5 Q. Did I hear you correctly that you, in procuring
6 milk for your plant, you're usually paying the highest
7 priced in the area? Did I hear you correctly?

8 A. Yes.

9 Q. Okay. On page 4 of your statement, you stated
10 toward the bottom, "Because co-ops are allowed to blend
11 the proceeds between their fluid milk plants and their
12 manufacturing plants, the impact of the Class I
13 differentials on their overall operation is not as
14 significant to them as it is to proprietary plants who
15 operate only fluid plants."

16 And I wondered if you could explain what you
17 are -- what you mean there a little more.

18 A. Well, on the -- when they do the producer price
19 differential, they look at the milk that is pooled on the
20 order. And if you have a proprietary plant that is only
21 strictly fluid, okay, they are going to pay whatever that
22 pricing mechanism is for that Class I milk, and their pool
23 obligation is reflected in that. In the case of a co-op
24 that manufactures milk and has a fluid operation, that
25 volume of milk being pooled is pooled at the value that
26 it's classified with.

27 So I'll basically -- it's my understanding that if
28 the Class I plant pays money into that pool, okay, the



1 manufacturing side, which draws money out of the pool,
2 essentially you would have money going from one pocket
3 right back into another. So that's what I mean by
4 overall, on the co-op operation as a whole, the impact
5 isn't as great in my opinion.

6 Q. In Order 30, which co-ops have both fluid plants
7 and manufacturing plants?

8 A. Prairie Farms, I believe. And then I believe it's
9 Kemps DFA, if I'm understanding right. Those are the two.

10 Q. Okay. And if you were -- if you had two plants,
11 both proprietary, with separate owners, the mechanism
12 would still work the same, correct? The one proprietary
13 plant at Class I would in most instances pay into the
14 pool, and the Class III proprietary plant, in most
15 instances, would draw from the pool; is that correct?

16 A. That is correct.

17 Q. But because the cooperative owns both of those
18 plants, there's some netting out of those obligations; is
19 that what you are driving at?

20 A. Yes. That's correct.

21 Q. Okay. Now, if a proprietary business happened to
22 own a fluid plant and a manufacturing plant, that netting
23 would be the same, correct?

24 A. Yes. I believe it would be, yes.

25 Q. Okay.

26 THE COURT: Would you spell Kemps?

27 THE WITNESS: Kemps? K-E-M-P-S.

28 THE COURT: K-E-M-P-S. And you said Kemps DFA?



1 THE WITNESS: Yes, I believe that is correct.

2 Yes.

3 MR. MILTNER: I don't think I have any other
4 questions. I appreciate your answers, sir.

5 THE WITNESS: Thank you.

6 THE COURT: I'm going to interrupt
7 cross-examination of this witness for a ten-minute break.
8 Please be back and ready to go at 9:47.

9 We go off record at 9:37.

10 (Whereupon, a break was taken.)

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

12 We're back on record at 9:47.

13 Who next has questions for Mr. Lamers?

14 MR. SLEPER: Good morning, Judge. Jim Sleper,
15 Sleper Consulting, S-L-E-P-E-R.

16 CROSS-EXAMINATION

17 BY MR. SLEPER:

18 Q. Good morning, Mr. Lamers.

19 A. Good morning.

20 Q. How are you this morning?

21 A. Good.

22 Q. Just got a couple follow-ups, a little bit from a
23 couple of the previous entities who were giving you some
24 cross-examination.

25 When you talk about standard plate counts, do you
26 know what the Grade A requirements are for standard
27 plates?

28 A. I believe it is 150,000, if I remember right.



1 Q. Okay. I believe it is 100,000. But the point of
2 it --

3 A. Okay.

4 Q. -- is you are requiring 10,000, correct? And
5 you're testing -- you are requiring testing every day?

6 A. It's not a requirement.

7 Q. Okay.

8 A. It's what I look for. When I put on a solicit
9 producer milk, that's what I look for. And typically what
10 we would do is before we sign a new producer on, we will
11 pull samples on a -- a few throughout the week to see if
12 it is what we feel is sufficient for what we need.

13 Q. Okay. Very good. Very good.

14 What about PIs, preliminary incubation counts --

15 A. Yes.

16 Q. -- have you done anything on that one?

17 A. We do. It's not part of our pricing structure.
18 But that is a number we look at, yes.

19 Q. Okay. And what sort of number do you look at on
20 that one, Mr. Lamers?

21 A. Generally under ten.

22 Q. Okay. Got you. Very good.

23 What about hauling costs, you mentioned I think
24 something like the -- some of the producers, maybe the
25 furthest was like 30 miles away, give or take. What kind
26 of hauling costs are the producers incurring?

27 A. All our producers all pay the same hauling costs.

28 Q. They are?



1 A. Yes. Like I mentioned in my testimony, even
2 though -- we view that as kind of our -- what's the word
3 I'm looking for -- premium structure in our package, you
4 know, so -- what we charge for hauling does not cover our
5 hauling costs.

6 Q. Okay. But one of your -- of the six dairy
7 farmers, they're being charged the same rate is what I'm
8 hearing, correct?

9 A. That's correct.

10 Q. And do you happen to know what that number is?

11 A. I do know what it is, but it is proprietary.

12 Q. Okay. No -- no issue.

13 I think Mr. English was asking you a question
14 something to the effect of, are you aware of any other
15 commodity in which the prices increase in a shrinking
16 market, or something of that nature. I can think of a
17 couple other areas, but rather than quibble over that one,
18 are you aware if Federal Order 30 has had the same Class I
19 differential for the last 23 years?

20 A. I believe that's -- you know, 23 -- yes, since
21 order reform, yes.

22 Q. Got it. Very good.

23 MR. SLEPER: Thank you, Mr. Lamers.

24 THE WITNESS: Thank you.

25 CROSS-EXAMINATION

26 BY DR. CRYAN:

27 Q. Good morning.

28 A. Good morning, Dr. Cryan.



1 Q. Nice to see you, Mr. Lamers. Thank you for coming
2 to testify.

3 A. You too.

4 Q. I'm Roger Cryan with the American Farm Bureau
5 Federation. I have a couple questions.

6 The cutoff for Small Business for dairy farmers is
7 3.7 million --

8 MS. TAYLOR: 75. 3.75.

9 BY DR. CRYAN:

10 Q. -- 3.75 million. Would you qualify under that
11 standard as a small business?

12 A. Absolutely not -- oh, I'm sorry. Restate your
13 question?

14 Q. If you were -- if that was the cutoff, would you
15 qualify as a small business?

16 A. Yes, we would.

17 Q. At 3.75 million?

18 A. We -- restate the question, please.

19 Q. Are you under 3.75 million in revenue each year?

20 A. No, we're not, but it's -- isn't that pertaining
21 to --

22 Q. That's for --

23 A. -- farmers?

24 Q. -- farmers, right.

25 A. I am not a farm --

26 Q. I have a point on this.

27 Farmers, though -- a farmer who is under that is
28 considered a small business.



1 And farmers --

2 THE COURT: Now, he acknowledged by nodding yes.

3 Did you want him to confirm that you were correct, or no?

4 You were just telling him?

5 DR. CRYAN: Yes. Yes.

6 BY DR. CRYAN:

7 Q. Are you under three -- is your revenue under --

8 THE COURT: No, no, no. I didn't mean that.

9 Okay. Start again, Dr. Cryan.

10 BY DR. CRYAN:

11 Q. The Small Business definition for a farmer is
12 revenue under \$3.75 million per year.

13 THE COURT: Is it revenue or gross receipts? What
14 is it?

15 MS. TAYLOR: Gross receipts.

16 DR. CRYAN: Gross receipts under 3.75 million per
17 year.

18 BY DR. CRYAN:

19 Q. Are you above that level in gross receipts?

20 THE COURT: I -- I do have -- I'm having a problem
21 with why you are asking him that since --

22 DR. CRYAN: Okay.

23 THE COURT: -- it wouldn't apply to him.

24 DR. CRYAN: That's fine. He doesn't have to
25 answer the question but --

26 THE COURT: Is there a Small Business number that
27 would apply to a processor?

28 MS. TAYLOR: Yes.



1 DR. CRYAN: Yes, there is. And that's --
2 that's --

3 THE COURT: You don't want to use that? You want
4 to use --

5 DR. CRYAN: I think that's either been established
6 or will be established. This is -- this is relevant to
7 risk management and size and the tools that are available,
8 so --

9 THE COURT: I don't think it's helpful.

10 BY DR. CRYAN:

11 Q. I will presume -- I will presume that you are over
12 that size. I would -- I would put to you that many
13 farmers don't know the prices they are going to get for
14 what they receive. Many farmers face volatility in their
15 input costs, and they manage their input costs through
16 hedging, the use of futures and options, at that size and
17 below.

18 Could you -- could you talk -- could you talk
19 about the special challenges that you face that -- that
20 farmers don't face when they are trying to manage those --
21 those risks, trying to hedge their prices going -- looking
22 forward?

23 A. We don't do any hedging on anything. You know,
24 our input costs are what they are. You know, our supplies
25 of goods or whatever that may be, you know, that's --
26 that's what we have to use.

27 Q. You haven't had to use it in the past, so you
28 haven't --



1 THE COURT: Dr. Cryan, I can't understand what you
2 are saying.

3 BY DR. CRYAN:

4 Q. So you have not had -- under the current
5 regulatory system, you have not had to hedge those risks,
6 so you have not done so?

7 A. No. We're too small of an operation to even
8 consider anything like that.

9 Q. All right. Thank you very much.

10 DR. CRYAN: That's it. Thank you.

11 THE COURT: Thank you.

12 Are there any other questions before I turn to the
13 Agricultural Marketing Service for questions?

14 There are none. I now invite the Agricultural
15 Marketing Service to ask questions.

16 CROSS-EXAMINATION

17 BY MS. TAYLOR:

18 Q. Good morning, Mr. Lamers.

19 A. Good morning, Ms. Taylor.

20 Q. Thank you for coming back to testify today.

21 Just some questions. We just looked it up, and
22 for a fluid milk processor, the Small Business definition
23 is those with employees under 1,150 employees.

24 Would you be a small business as it pertains to
25 fluid milk processors?

26 A. I believe 32 is underneath that number, yes.

27 Q. Even on a Monday morning, I knew that math was
28 correct. Okay.



1 You're opposing Proposal 1 and 2 on components,
2 changing component values.

3 A. Yes.

4 Q. What -- and you say you would be open to component
5 changes if they were more regional based.

6 So what is the average components of the milk that
7 you receive into your plant?

8 A. Yeah. Right now, on our producer milk that comes
9 in, we're at -- on the butterfat, we're at about a 3.8,
10 our protein is about a 3.1, and our other solids is
11 running about a 5.75.

12 Q. Great. And you mentioned you support Proposals 14
13 or 15, but I don't think a lot of your testimony in
14 written form got into those specifically.

15 So could you expand for the record why you
16 might -- why you support those particular proposals, which
17 are changing the Class I skim price mover to some sort of
18 average plus a different adjuster.

19 A. I -- I think I stated I believe, you know, for
20 looking at the average of between the III and the IV would
21 help smooth out any volatility within that market. I did
22 some preliminary looking back on the effect it would have
23 on our business as far as the pricing. And whether we
24 were using the last two years or the higher-of, there were
25 months that we -- it -- the price was higher than it would
26 have been and it was priced when it was under what it
27 would have been.

28 But I think, just my opinion, that some of the



1 other testimony within this hearing relative to hedging,
2 which we don't make any use of that or -- it seemed to me
3 that it would be more of a stabilizing factor using the
4 average-of with some kind of multiplier.

5 Q. Okay. And from your testimony, I gather -- and
6 from some cross-examination, since you don't do hedging
7 and you're an HTST plant, what's important to you is to
8 keep advanced pricing?

9 A. Correct.

10 Q. You were talking about -- and I'm on page 4 of
11 your statement -- an increase in the middle of the page --
12 and I'll read the sentence. "Given these market trends,
13 an increase in Class I differentials to the level proposed
14 would only exacerbate the condition that already exists
15 and would be of no benefit to any proprietary Class I
16 handler or to the consumer."

17 And I wanted to ask what -- what do you see as the
18 role of Class I differentials are?

19 A. Again, when I look at the system as it was
20 intended, okay, we have to remember the fact that
21 marketing conditions today versus 1937 are extremely
22 different. Okay? In its inception, it made sense to have
23 those differentials in order to effect the policy of
24 Congress at the time.

25 So following that logic, you know, it would only
26 seem appropriate that in order to follow the original
27 intent of the Act, is that all milk in all classifications
28 be considered in that minimum blend price.



1 Q. Right. And that's -- I see you are talking about
2 blending all utilizations, but I'm talking specifically
3 about Class I differentials and how do you see those --
4 you know, you are talking about the impact of increasing
5 them, and you are talking about the impact to proprietary
6 Class I handlers, to yourself or consumers. And the Act
7 talks about, of course, processors and consumers. It also
8 talked about dairy farmers.

9 So I just wanted to get your opinion of what is
10 the role you see as the purpose of Class I differentials
11 in the system? What do they seek to do?

12 A. Right. Again, I go back to the Act saying a
13 sufficient supply. How do we define "sufficient"? That's
14 the challenge, right?

15 So, obviously, in other parts of the country, you
16 are going to have more of a challenge. I mean, I think
17 that's obvious by some of the information that's come out
18 in this hearing. Other parts of the country it's not, you
19 know.

20 So there -- in the appropriate price relationship
21 between Class I and Class III markets, where there's a
22 higher Class I utilization, you know, then the Class I
23 differential, in order to supply that milk, that's the
24 intended use, and that would fit the model of what the
25 Agricultural Marketing Agreement Act was intended to do.

26 So that's why I said it's different. You know, to
27 me, if you looked at it by order, you know, that might
28 make a more sense to me but...



1 Q. Okay. And so I'm thinking back to your
2 conversation, I think you had with Ms. Hancock, about some
3 customers that had called looking for milk. They were
4 outside your radius of, I think, 50 miles, so, you know,
5 you weren't going to serve them, but they were having
6 trouble getting packaged milk.

7 Is that -- am I correct in remembering that?

8 A. Yes. We have -- we have received phone calls to
9 that effect, yes.

10 Q. Okay. And do you think increasing differentials
11 would help move milk to those places at all?

12 A. No, because it -- I think it's the competition in
13 the marketplace. Because in Order 30 -- I can only speak
14 to Order 30 because of my position here. The other major
15 suppliers of Class I milk is going to be in Southern
16 Wisconsin and Northern Illinois and Iowa. So that milk is
17 having to travel a greater distance. Okay?

18 Just from what we have heard within the industry
19 up by us is that those plants are already at capacity, you
20 know. Because if you look at the number of plants in
21 Federal Order 30 that have closed, that would make sense.
22 I mean, I had a conversation with our own Market
23 Administrator wondering if we can handle more because we
24 just can't get it moved, you know.

25 So there's limitations to how much you can really
26 do, you know. In the end, the impact is going to be to
27 the consumer. You know, the farther out -- the way
28 they -- the farther away they are to -- from a major



1 metropolitan area, the cost is just going to be higher.
2 You know, the transportation costs and everything else to
3 get it there is that much higher.

4 Q. Okay. So a question on your -- we have been under
5 the average of \$0.74 for I guess four years.

6 Did your pricing strategy change at all once we
7 moved from the higher-of to the average, and did you see
8 any change in your sales?

9 A. No, not -- not particularly. I mean, we have seen
10 some sales growth over the last couple of years, but that
11 was only due to the number of plants closing around us.

12 Q. Okay. And then you are required to be regulated
13 by a Federal Order 30.

14 A. Yes.

15 Q. And you pool your milk.

16 Do you pool the milk of -- do you pool diversions
17 since that is something that fluid processors are entitled
18 to do?

19 A. When we have had them in the past, in the -- with
20 price inversions, we have depooled that milk. But we
21 haven't had Class III milk sales, I don't think, in the
22 last three years.

23 Q. You haven't had any of that on your pool report?

24 A. No. No, I have not.

25 MS. TAYLOR: I think that's all I have. Thank you
26 so much.

27 THE COURT: Is there anything you would like to
28 add before you step down from the witness stand?



1 THE WITNESS: How much time do you have? No. No,
2 I don't, Your Honor. I think I have said everything I
3 needed to say. Thank you.

4 THE COURT: I appreciate your testimony.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 Ms. Hancock.

8 MS. HANCOCK: Do we want to admit his exhibit?

9 THE COURT: Thank you.

10 Is there any objection to the admission into
11 evidence of Exhibit 329, also marked Lamers 1?

12 There is none. Exhibit 329 is admitted into
13 evidence.

14 (Thereafter, Exhibit Number 329 was received
15 into evidence.)

16 THE COURT: Is there any objection to the
17 admission into evidence of Lamers 1A, which is
18 Exhibit 330?

19 There is none. Exhibit 330 is admitted into
20 evidence.

21 (Thereafter, Exhibit Number 330 was received
22 into evidence.)

23 THE COURT: Shall I ask Mr. Sims to sit in the
24 witness chair?

25 Thank you. Please state and spell your name.

26 THE WITNESS: Jeffrey, J-E-F-F-R-E-Y, Sims,
27 S-I-M-S.

28 THE COURT: You remain sworn.



1 THE WITNESS: Thank you.

2 MR. ENGLISH: Good morning again, Your Honor.

3 JEFFREY SIMS,

4 Having been previously sworn, was examined

5 and testified as follows:

6 (CONTINUED) CROSS-EXAMINATION

7 BY MR. ENGLISH:

8 Q. And good morning, Mr. Sims.

9 A. Good morning.

10 Q. My name is Chip English with the Milk Innovation
11 Group. And when we broke for the farmer portion of last
12 Friday, I was in the midst of my cross-examination of
13 Mr. Sims.

14 As we get started, Mr. Sims, have you brought back
15 up with you the Milk Production Disposition and
16 Information -- and Income Summaries that I handed out last
17 week?

18 A. I don't know. I suspect I did not.

19 THE COURT: Mr. English, help me with which
20 exhibit numbers I should be looking at.

21 MR. ENGLISH: Your Honor, I did not ask for them
22 to be exhibit numbers. I was trying to save the record a
23 couple pieces of paper, and I was taking official notice,
24 and I described the documents. They were a cover sheet
25 and one page.

26 THE COURT: Yes.

27 MR. ENGLISH: And so either counsel has a copy for
28 the witness. I just thought rather than interrupting in



1 the middle of what I'm doing, it would make sense -- do we
2 have one that he can see and then --

3 May I approach the witness, Your Honor?

4 THE COURT: You may, please.

5 BY MR. ENGLISH:

6 Q. So when we broke, we were partly done, but not
7 completely done, discussing Grade A. And also, I promised
8 to get there, you mentioned just before we took the break,
9 an issue about other requirements of Class I handlers. I
10 want to make sure you know I'm going to get there. I
11 promise to get there.

12 But -- so let's go back to the discussion of this
13 Grade A issue. And let's be clear: Under Federal Milk
14 Marketing Orders, milk, in order to be producer milk, is
15 defined in paragraph 12 of each order as being Grade A,
16 correct?

17 A. Correct.

18 Q. And so with 28% Federal Milk Order Class I
19 utilization, you are nonetheless contending that we still
20 need to maintain Grade A within the Class I price buildup,
21 correct?

22 A. I'm saying that the opportunity for dairy farmers
23 to opt between Grade A and Grade B is a real opportunity,
24 if the -- if sufficient incentive does not exist to supply
25 Grade A -- or Class I. Also, there is the problem, as I
26 mentioned, of the difference between the requirements for
27 Class I plants that they have, which exceed the Grade A
28 requirement.



1 Q. And I promise I'm going to get there, but if I can
2 focus on Grade A. If you really want to go down that
3 line, I'm going to have to skip four pages and come back.

4 A. Okay. Fine.

5 Q. Okay. I promise we'll get there. So let's focus
6 on Grade A for now, if that's okay with you.

7 A. Sure.

8 Q. A producer who ships to Grade B, leaving aside
9 California for a moment, is going to get paid less for his
10 milk, isn't he?

11 A. Theoretically.

12 Q. And I know you said last Friday that you know of
13 cases where people have reverted.

14 But do you have actual evidence of a significant
15 volume of reversion to Grade B?

16 A. A significant volume? Other than the example from
17 California where individuals converted back to Grade B to
18 avoid a base assessment, I -- I would say that my
19 experience regarding of a significant amount, I personally
20 don't have that knowledge of a significant amount. It
21 depends on, I guess, who is buying your milk, and that
22 dairy farm -- to that dairy farm, it must have been
23 significant.

24 Q. But nonetheless -- and you corrected me, I thank
25 you, with the decimal point -- nonetheless there's
26 225 billion pounds of milk, of which something less than
27 1% is Grade B, correct --

28 A. Yes.



1 Q. -- if you look at the -- okay.

2 And if you look at the two documents, the 2003
3 summary issued in April 2004, and the 2022 summary issued
4 in April 2023, and just look at the U.S. totals, under the
5 total quantity column, the difference between those two
6 numbers, for total quantity of milk produced, has gone up
7 more than 56 billion pounds?

8 A. Roughly. Yes.

9 Q. Yes. And during that same timeframe, Class I use
10 is declining, correct?

11 A. Please let's -- Class I use, Class I percentage,
12 Class I sales, Class I producer milk. Which?

13 Q. So from 2004 to 2010, I think we heard testimony
14 that because of growth in population, while there was a
15 drop in per capita consumption, Class I sales were holding
16 constant in a total volume.

17 Is that correct? Do you remember that?

18 A. I did not witness that testimony personally. I
19 wasn't -- I either wasn't here or wasn't in the room or
20 wasn't paying -- wasn't watching online whenever that
21 testimony occurred.

22 Q. And would you agree that since 2010, that as an
23 absolute number, as well as a percentage of Federal
24 Orders, the quantity of fluid milk -- of milk being sold
25 in Class I has been declining, correct?

26 A. I would suspect that might be true.

27 Q. Well, you were here moments ago for the testimony
28 Mr. Lamers regarding just Order 30, correct?



1 A. I -- the testimony I thought he gave was that
2 Class I producer milk in Order 30 declined. I don't know
3 that that represents necessarily a decline in the Class I
4 route disposition inside Order 30. But I would agree the
5 producer milk pooled on the order declined.

6 Q. So according to your testimony and the testimony
7 of the witness who will follow you about Grade A,
8 Dr. Erba, dairy farmers had a choice whether to produce
9 more expensive Grade A or Grade B, and even though that
10 increased volume of 56 billion pounds went elsewhere than
11 Class I, they chose to go Grade A, didn't they?

12 A. I'm sorry. You are going to have to --

13 Q. Break that down?

14 A. Yeah.

15 Q. Okay. National Milk's contention is that it costs
16 more for dairy farmers to comply with Grade A
17 requirements, correct?

18 A. Yes.

19 Q. And even though dairy farmers incur more costs to
20 achieve more expensive Grade A requirements, in the
21 intervening 19 years from 2003 to 2022, dairy farmers
22 produced that 56 billion more pounds of milk, 99% of which
23 is Grade A, correct?

24 A. I think that's an improper interpretation of the
25 data. The amount of increase in the milk production was
26 approximately 56 million but --

27 Q. Billion?

28 A. Excuse me. You're right. I stand corrected now.



1 We get our Ts and our Bs and our Ms mixed up, don't we?
2 Billion, yes.

3 THE COURT: Nobody's using Ts.

4 MR. ENGLISH: I used them last Friday, and it was
5 my error. But that's why we're now --

6 THE COURT: You didn't use trillion, did you?

7 MR. ENGLISH: I used trillion.

8 THE COURT: Oh, my goodness.

9 MR. ENGLISH: I moved the decimal place last
10 Friday, and Mr. Sims corrected me.

11 THE WITNESS: And turnabout is fair play. I used
12 M, and I should have used B.

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1 BY MR. ENGLISH:

2 Q. So we're even. So let's start over.

3 A. There we go. Yes.

4 I think that interpretation I would disagree with
5 statistically. Yes. Total milk production increased
6 56 billion pounds, but in the prior period it was 98%
7 Grade A. In the current period it says 99. To say that
8 that whole 56 million -- billion -- 56 billion pounds was
9 Grade A may or may not be correct.

10 Q. And I get that. But almost all of it was,
11 correct? I mean, statistically, if you went from 98% to
12 99%, and the number went up, a whole lot of that
13 56 billion had to be Grade A, correct?

14 A. Yes.

15 Q. Okay. Thank you.

16 And dairy farmers made that choice to produce that
17 additional quantity of more expensive Grade A milk in the
18 face of declining Class I sales, correct?

19 A. I don't know that that's the logical conclusion
20 they drew, but they did increase production.

21 Q. You're merely going to agree that whatever they
22 thought, it's what actually happened, correct?

23 A. Milk production increased. Class I sales have
24 been challenged.

25 Q. Wouldn't you logically conclude that dairy farmers
26 are making the choice to either become Grade A or remain
27 Grade A for reasons outside of meeting Class I fluid milk
28 needs?



1 A. Please ask me that again.

2 Q. Wouldn't you conclude based upon the statistics we
3 just discussed, that for whatever reason, dairy farmers
4 are making decisions to become or to remain Grade A for
5 reasons that have nothing to do with Class I?

6 A. I don't know that I would agree with that.

7 Q. Okay. All right. I'm looking at my outline
8 because I promised you I would get to this other
9 requirement issue, and I'll have to come back to my
10 outline.

11 So you have already both in your testimony and
12 there's Exhibit 3- -- well, now, I'm trying to think -- is
13 it 312 -- it was 37B.

14 A. 312, yes.

15 Q. It's 312. Okay.

16 -- that fluid milk processors are making
17 increasingly -- increasing quality demands from their raw
18 milk providers, correct?

19 A. That's the implication, yes.

20 Q. That's not unique to Class I, is it?

21 A. I think some of these requirements certainly are.
22 I'm unaware of manufacturing plants that require a 180,000
23 count for somatic cells.

24 Q. Now, how many -- you gave one example of that. Is
25 that the standard or just one?

26 A. This exhibit provides a strata, if you will, of
27 our survey -- or the National Milk survey. I didn't do --
28 conduct this survey. But provides a range of quality,



1 what colloquially we would refer to as quality
2 requirements, as little as 180,000 for somatic cells, 250.
3 Certainly, these are requirements that substantially
4 exceed the quality requirements of the -- to meet the
5 Grade A licensure requirement.

6 Q. Well, let's start with how many samples were in
7 this range at 180,000.

8 A. I don't know.

9 Q. How many samples in this range were 250,000?

10 A. I do not know.

11 Q. How many samples in this range were 350,000?

12 A. I do not know.

13 Q. How many samples in the range were 400,000?

14 A. I do not know.

15 Q. When you asked for the range, did you ask does the
16 entity or entities, since we don't know how many, that are
17 going for 180,000, pay a premium for that?

18 A. Sorry, you need to -- I'm sorry. Could you slow
19 down to --

20 Q. Assuming there was one, since you don't know how
21 many plants, with a 180,000 somatic cell count, did you
22 ask whether that operation was paying a premium to its
23 dairy farmers for achieving that?

24 A. I -- we did not ask that question.

25 Q. And if I asked that for the other three entries,
26 250,000, 350,000, 400,000, would your answer be the same?

27 A. My answer would be we did not ask that question.
28 But I don't know of a single grade Class I plant whose



1 somatic cell counts are less than -- are greater than
2 400,000.

3 Q. Well -- and isn't there another reason why 400,000
4 has become generally accepted other than the PMO?

5 A. Yes.

6 Q. Okay. And that's because that's the requirement
7 for products being exported, by and large, correct?

8 A. That's my understanding, yes.

9 Q. And most of those products are not Class I
10 products, are they?

11 A. I would think not.

12 Q. So I don't want to belabor the point, but similar
13 to somatic cell counts and going to the top line for
14 standard plate count, if I asked the same questions about
15 somatic cell count as to the number of observations and
16 whether or not you acquired order premiums being paid,
17 would your answer be the same?

18 A. It would.

19 Q. Is that true for direct microscopic count?

20 A. Yes.

21 Q. Is that true for preliminary incubation count?

22 A. Yes.

23 Q. Is that the same for coliform?

24 A. Yes.

25 Q. Is that the same for laboratory pasteurized count?

26 A. Yes.

27 Q. Is that the same for acidity?

28 A. Yes.



1 Q. Is that the same for temperature?

2 A. Yes.

3 Q. And on page 7 of your testimony, which I believe
4 is 310, you stated, "We" -- meaning National Milk
5 Producers Federation, I assume -- "has not quantified the
6 additional cost of producing milk that exceeds the minimum
7 PMO Grade A standards, but such costs undoubtedly exist."

8 Correct?

9 A. Could you tell me exactly where you are quoting.

10 Q. I thought it was page 7?

11 A. Yes. Which paragraph?

12 Q. Well, it's been a while since I read the
13 statement.

14 A. Oh, the very bottom.

15 Q. Yes.

16 A. Yes.

17 Q. Thank you.

18 While I'm thinking about it, let me return USDA's
19 copies.

20 All right. I am done with that subject, so I'm
21 going back in my outline. And this is the discussion
22 about inversions.

23 A. Yes.

24 Q. I think I understand, but just to be -- so I'm
25 certain, do you have a specific portion of the \$2.20 fixed
26 base minimum Class I differential, whatever you want to
27 call it, that constitutes the amount necessary to address
28 the inversions issue that National Milk raises?



1 A. My answer to that is the 2.20 addresses we believe
2 the issue of Class inversions at a significant enough
3 level to warrant its adoption as the minimum Class I
4 differential.

5 Q. Now, in our seventh week, 26th day, whatever, we
6 have previously heard, at least I thought I heard, the
7 issue about price inversions being raised also with
8 respect to the need to make the modifications for
9 component pricing in Proposal 1, and also with respect to
10 switching from the average to the higher-of.

11 Am I correct that I have heard that argument?

12 A. I believe that's probably true, yes.

13 Q. Okay. So has National Milk or does National Milk
14 intend to provide testimony of an analysis of how those
15 three come together? We don't concede that all three
16 should be granted. But if, for instance, by example,
17 Proposal 1 and Proposal 13 is adopted, how much do those
18 together add up to addressing the inversions issue?

19 A. The first thing I would answer is I don't know
20 about the -- that analysis. This analysis was the -- what
21 has been marked 311, which is the data which drove the
22 testimony -- took the Class I mover as -- at whatever it
23 was announced, whether it was the previous higher-of or
24 the current average-of plus 74. I didn't make any value
25 judgment as to what the mover might be. I took it as it
26 was.

27 So based on the actual history of the Class I
28 mover, using both forms, 2.20 was a number which



1 sufficiently limited Class I price inversions for this
2 purpose.

3 Q. So if Proposal 1 were adopted, and, you know, you
4 were not includ- -- you are saying the actual, so by
5 definition, Proposal 1 results are not included, correct?

6 A. Correct.

7 Q. And for the purposes of the mover and Proposal 13,
8 starting in, I think, April or May of 2019, that would not
9 be included, correct?

10 A. I'm sorry. I slipped a number there somewhere in
11 your --

12 Q. All right. So we had the higher-of up through the
13 spring of 2019, correct?

14 A. Yes.

15 Q. Okay. Post USDA implementing the average-of, your
16 analysis is using the average-of and, therefore, does not
17 consider the impacts had Proposal 13 been adopted at that
18 time, correct?

19 A. It -- it uses the mover as it was announced,
20 whatever formula was in place.

21 Q. Okay. Is it National Milk Producers Federation's
22 contention that depooling can be addressed by raising
23 Class I prices?

24 A. It is obvious that -- it's obvious that at a --
25 from the data, that a minimum Class I differential of 2.20
26 based on the history will minimize, although it doesn't
27 eliminate -- I don't think you can completely eliminate
28 Class I price inversions, nor should we set in place a



1 system that -- well, the only way you do that is with
2 eliminating advanced pricing, and we do not support that.

3 But these data suggest -- not just suggest, they
4 say straight up that at 2.20 the occur- -- the occurrence,
5 the incidences of class price inversions, Class I price
6 inversions, are minimized at an acceptable level. A very
7 small percentage of the time.

8 Q. And a reason why you want to minimize inversions
9 is to reduce depooling, correct?

10 A. That is one of the reasons.

11 Q. Did you see the example of Mr. Schuelke for
12 Crystal Creamery showing that in California the Class I
13 price for July would have had to go from roughly \$18 to
14 \$37 in order for there to be enough Class I money in the
15 pool to impact depooling in California?

16 A. Sir, I think you were -- number one, I did not see
17 that analysis.

18 Number two, that's a different analysis. I
19 believe that -- if I understood your description, that's a
20 blend price analysis. This is a class price analysis.

21 Q. Aren't the two linked?

22 A. Ask that again?

23 Q. Aren't the two linked?

24 A. Aren't the two what?

25 Q. The Class I price and the Class I utilization,
26 aren't they linked when you have to do an analysis of the
27 impact on what actually happens to the pool?

28 A. They would be.



1 Q. Thank you.

2 So I'm going to try to shorten both your
3 examination and the examination of future witnesses maybe.

4 There has been a fair bit of testimony already
5 given, or to be given, with respect to the issue of
6 hauling costs.

7 Is National Milk Producers Federation using
8 hauling costs as a basis for making any of its
9 modifications to the USDSS model?

10 A. Yes. I can only speak to the Southeast/Southwest,
11 but the answer would be yes.

12 Q. Okay. Because you haven't yet given Part 3 of
13 your testimony, and I don't -- and I want to reserve the
14 right to do that, should I go there then after you have
15 given that testimony?

16 A. I would think that would be the appropriate time.

17 Q. Now, I do think I understood last Wednesday that
18 Dr. Vitaliano's testimony was that hauling costs are not
19 part of your calculation for the \$2.20 fixed base or
20 minimum Class I differential.

21 Is that correct?

22 A. I can't recall exactly what Dr. Vitaliano said,
23 but I will say this: In this testimony, this analysis
24 says that at a 2.20 minimum differential, that eliminates
25 at a -- or reduces to an acceptable level the incidence of
26 Class I price inversions versus any of the other three
27 classes and their price.

28 Q. And what role, if any, does hauling costs play in



1 that?

2 A. None.

3 Q. Turn to page 19. I need to find the precise
4 place.

5 A. 19 of?

6 Q. Sorry. Of Exhibit 310.

7 A. Yes.

8 Q. All right. So the third paragraph, you state:
9 "This increased concentration in Class I processing has
10 resulted in greater distances for milk delivery - as we
11 previously testified, has increased the market influence
12 of Class I processors, and created larger route
13 disposition footprints per plant."

14 Have you been here for testimony that more than
15 50% of Class I milk is processed by cooperative-owned
16 plants?

17 A. I was not here for that testimony, no.

18 Q. Do you agree with that?

19 A. I have no reason to disagree with it. I don't
20 know that it's accurate or precise. But I will accept it
21 as stated.

22 Q. If that's the case, has the market influence of
23 proprietary Class I plants gone up?

24 A. The size of pool distributing plants, Class I
25 plants, the market influence of the area that they serve
26 has, thus, increased their influence over the price
27 because they simply exist and provide milk over a greater
28 geography.



1 Q. Has that concentration also -- not also occurred
2 with respect to Class III and Class IV operations?

3 A. That, I can't say.

4 Q. And cooperative plants can, by the right to
5 reblend, pay their own members more or less for their
6 milk, correct, than proprietary operations? They have
7 that legal opportunity?

8 A. The process that the Market Administrators use is
9 not material with regard to who owns a milk plant. Every
10 plant, regardless of ownership, settles with the producer
11 settlement fund based on the difference between that
12 plant's classified use and the order uniform prices.
13 Those -- that's the same without regard to any ownership.
14 Market Administrators require that those plants pay into
15 the pool, settle with the pool, and pay those members, or
16 pay the uniform price to the supplier without regard to
17 who the supplier is.

18 Q. And if the supplier is a cooperative, it is deemed
19 to be the producer for purposes of Federal Order
20 compliance, correct?

21 A. Yes.

22 Q. So the role of the Market Administrator with
23 respect to a cooperative, yes, they have got to pay the
24 pool obligation, and then it has to show that it paid
25 itself, the rest, and at that point, the Market
26 Administrator's role ends, correct?

27 A. That's correct.

28 Q. With respect to a proprietary operator, not only



1 do they have to settle with the pool, but to the extent
2 they pay producers, whether individual or cooperatives,
3 they have to prove they paid them the minimum prices,
4 correct?

5 A. Yes. And, like I said, that's the same both ways.
6 The plant has to prove they paid the cooperative, whether
7 it is themselves or not, the uniform price. That's true
8 for proprietary-owned plants and cooperative-owned plants.
9 Immaterial.

10 Q. But the difference is that the Market
11 Administrator, for individual producers, will follow all
12 the way to the individual producer, correct?

13 A. Yes.

14 Q. And cooperatives, it ends with treating the
15 cooperative as the producer, correct?

16 A. Correct.

17 Q. The previous witness, Mr. Lamers, from Northeast
18 Wisconsin, provided some testimony, and then between two
19 sets of questions from National Milk, the question was
20 asked -- I apologize, it was not National Milk. I believe
21 the question may have come from USDA, which was the
22 question was asked: If you increase the Class I
23 differential, will that help get more milk to that plant.

24 Did you hear that question?

25 A. I think I did, yes.

26 Q. Okay. In a 5% Class I utilization market, if you
27 increase the Class I differential, per my discussion with
28 Mr. Lamers and his plant, by \$1.25, it is something like



1 \$0.07 to be returned to the pool, correct?

2 A. You might want to rephrase that statement -- that
3 question. I don't think you asked it like you want to.

4 Q. Right. Assume for me that there's \$1.25 increase
5 in the Class I differential --

6 A. Yes.

7 Q. -- at Mr. Lamers' plant.

8 A. Yes.

9 Q. At a 5% utilization, how much will be returned to
10 the pool?

11 A. The \$1.25 on the Class I times the Class I
12 differential.

13 Q. Okay. But how much will it actually blend out on
14 the pool? Which may be the thing you were trying to get
15 me to say.

16 A. Yes. I would agree that, in all things being
17 equal, which is a tough given, that it would increase,
18 theoretically, the uniform price -- or the producer price
19 differential at the base zone actually, increase it the
20 \$1.25 plus the increase in the -- the theoretical increase
21 in the blend, which would be roughly \$0.07, yes.

22 Q. How much milk can you move for \$0.07, per
23 hundredweight?

24 A. Not much, not very far.

25 Q. So wouldn't it make more sense if what you are
26 actually trying to do is get milk to those Class I plants,
27 to target a portion of any Class I price -- Class I
28 differential to the dairy farmers who specifically make



1 the delivery?

2 A. Not necessarily.

3 Q. If you took 50% of that increase and put it in the
4 pool and 50% of the increase, or \$0.625, and allowed or
5 required the processor to pay it to his dairy farmers, you
6 are going to move more milk than at \$0.07, correct?

7 A. Please ask that again.

8 Q. In the example of Mr. Lamers, with \$1.25 increase,
9 the Class I at his location, if instead of basically
10 sharing all \$1.25 across the whole pool, assuming a 5%,
11 everything being equal, so that \$0.625 went into the pool
12 and \$0.625 would by regulation be required by Mr. --
13 Lamers Dairy to be paid to the six local shippers, you are
14 going to move more milk at that \$0.625 than at the \$0.07,
15 correct?

16 A. I will agree that \$0.625 is more than \$0.07.

17 Q. Now, turning back to Exhibit 318, there is --
18 and -- well, the 318, which is your PowerPoint summary.
19 And starting from page 7, you discuss balancing.

20 THE COURT: Discuss what?

21 MR. ENGLISH: Balancing.

22 BY MR. ENGLISH:

23 Q. Is National Milk arguing that balancing costs have
24 changed and is also part of the justification for going
25 from \$1.60 for the base fix or minimum Class I
26 differential to \$2.20?

27 A. The \$2.20 would include -- or would recognize an
28 increase from the dollar -- let me say it this way. An



1 increase from the \$1.60 to 2.20 would help recognize,
2 although there are compelling reasons for the 2.20 as a
3 standalone number, certainly increases in balancing costs
4 would help -- would be inherent or -- I'm saying this
5 poorly. Let me stop.

6 Balancing costs have increased. No doubt.
7 Increasing the minimum level of differential from 1.60 to
8 2.20 certainly would recognize that cost trend.

9 Q. But I think you said that that number is hard to
10 quantify, correct?

11 A. It is.

12 Q. And it's not uniform across the country, correct?

13 A. I'm sure it isn't.

14 Q. And I don't see, other than your it would help
15 justify it, a specific quantification in your testimony;
16 am I correct?

17 A. This testimony does not contain a specific number
18 or range of numbers that balancing falls into.

19 Q. And in your portion of your testimony on pages 11
20 through 13 of Exhibit 318, you highlight the word "need
21 for reserve milk supplies," correct?

22 A. Yes.

23 Q. Are you aware that after another national hearing
24 like this that went 43 days, that in the decision in 1993,
25 USDA said at that time that reserve milk supplies equal to
26 about 30% of the total milk in the market is needed for
27 Class I?

28 A. I don't recall that, but I'll take it on faith



1 that that was there.

2 Q. I'm quoting from 58 Federal Register 12646, dated
3 March 5, 1993. So if you accept my representation that I
4 have quoted correctly, furthermore, USDA said, "The views
5 on this point varied from 15 percent to 40 percent, with a
6 fairly persuasive argument for at least 30 percent. Thus,
7 a reserve milk supply equal to 30 to 35 percent of total
8 milk in the market appears to be a reasonable reserve
9 requirement."

10 Do you, or to your knowledge any future witness
11 from National Milk, intend to provide specifics about what
12 a reasonable reserve requirement is in 2023?

13 A. I'm not aware of any testimony providing a
14 specific number as to what the appropriate percent of
15 Class I as a reserve requirement would be.

16 Q. But if I recall correctly, on Thursday, you said
17 the only way to have enough milk is to have too much?

18 A. Yes. That's what the reserve requirement is.

19 Q. But you are not providing testimony now of what
20 that too much is?

21 A. No.

22 Q. When it comes to hauling, isn't it true that
23 cooperatives such as Lone Star charge processors for
24 hauling fees, over and above the Federal Order minimum?

25 A. Some -- some can; some do; some -- I can't speak
26 universally.

27 Q. And in those cases where they can, they have
28 standard fuel surcharges that change every month based



1 upon various or specific energy or cost indices?

2 A. Those kinds of fuel surcharge adjustments do
3 exist.

4 Q. And those surcharges that exist adjust every
5 month, correct?

6 A. Adjust any month when a change in the fuel price
7 changes.

8 Q. Okay. And if this question goes to Part 3, let me
9 know and I will circle it and move to Part 3.

10 You reference the increasing distance between
11 farms and plants. Doesn't the USDS (sic) account for that
12 in its model?

13 A. At least partially, yes.

14 Q. Are -- is your testimony going to be -- and if it
15 is Part 3, tell me it's Part 3 -- that it doesn't account
16 for all of it and, therefore, that accounts for some of
17 your modifications?

18 A. The -- I think we better wait until Part 3. How's
19 that? Yeah, circle that one.

20 Q. With respect to over-order premiums, you make your
21 comment that it's "important for businesses to know that
22 their competitors have a uniform price," correct?

23 A. That's something they communicate to us regularly.

24 Q. Okay. Isn't that the same concern that
25 proprietary operators have about the ability of
26 cooperatives to reblend their proceeds?

27 A. I don't think those are the same at all.

28 Q. So I want to go back to your metaphor at the -- I



1 think it was the end of the day Wednesday. I'm sorry,
2 Thursday. I'm losing track of time.

3 And this is the metaphor about the recipe and the
4 cake. As I heard you say, let's go straight to the cake.
5 Is that correct?

6 A. I think we -- I -- let me say it this way, that
7 it's important to analyze these provisions by their
8 objective.

9 Q. So the problem I'm having is that by your own
10 testimony, your group in the Southeast did not
11 specifically add \$0.60. That is to say you -- you did not
12 go in and add \$0.60, which would basically take the 1.60
13 to \$2.20. You instead say you included that in the
14 minimum Class I, correct?

15 A. Our proposal is that the \$2.20 per hundredweight
16 is the minimum differential.

17 Q. But then others, particularly in the West, and
18 perhaps in Idaho, determined that in order to have a
19 minimum, it needed to be 2.20, correct?

20 A. They agreed -- they -- we -- let me say this: The
21 2.20 minimum applies anywhere.

22 Q. But in their case applying the 2.20 minimum
23 actually increased the model results, correct?

24 A. You'll have to ask them how they arrived at their
25 prices by region, by area, by zone.

26 Q. National Milk was asked by the University of
27 Wisconsin to provide what that base differential was,
28 correct?



1 A. Yes.

2 Q. And National Milk's response was, use the existing
3 \$1.60, correct?

4 A. Correct.

5 Q. And so then the price surface that USDS (sic)
6 resulted in used that \$1.60, correct?

7 A. Yes.

8 Q. If it should have been 2.20, wouldn't that have
9 been increased before you did all your modifications,
10 every number throughout your results by \$0.60?

11 A. Again, we're -- we are changing the definition.
12 Our -- you are using the word "base" meaning everybody
13 radiates out of \$1.60. We needed the 2.20 for the
14 purposes we described.

15 Q. But you agree, you asked for the model to be run
16 at \$1.60 and it generated model results, correct?

17 A. Yes.

18 Q. Wouldn't the simple mathematical response then be,
19 let's add \$0.60 because we're going to make the minimum
20 base fixed 2.20 first and then modify from there?

21 A. Our proposal -- our process was to use the 1.60 as
22 the model existed, using the 1.60 we have today, establish
23 the differentials. When the Western group said they
24 needed 2.20 at that area, that's different than the base.
25 So we used \$1.60 base for everywhere, then we established
26 2.20 as the minimum because it solves these other
27 problems.

28 Q. So you agree it's two different things?



1 A. I beg your pardon?

2 Q. You agree it's two different things. There's
3 \$1.60 base, and now there's a 2.20 minimum, they are two
4 different things?

5 A. Again, I don't know -- I -- the term "base," I
6 don't know how we use that. The model was run at \$1.60,
7 and everybody had the same model run, all of which were --
8 were -- were predicated on the single low point, that one
9 single solitary county in Idaho, which was 1.60, and
10 everybody then worked off of that.

11 THE COURT: When you say "everybody," you mean in
12 that -- that group that worked on that part of the
13 country?

14 THE WITNESS: The -- no, ma'am. Every -- all four
15 regions, all four major regions we used across the country
16 to divide up the work, used the model as it was generated
17 with that single one month county in Idaho at the \$1.60.
18 Every other price out of that county was higher than that.

19 BY MR. ENGLISH:

20 Q. So you took that county to something other than
21 1.60, and it is not 2.20, I believe. You took it from
22 something other than 1.60, correct?

23 That county, that county, you raised above 1.60,
24 correct?

25 A. The minimum differential for the country is 2.20.

26 THE COURT: No, no, no. Now, your team started
27 with this model number?

28 THE WITNESS: Yes, ma'am.



1 THE COURT: And then what happened regarding
2 utilizing that one county in Idaho as something?

3 THE WITNESS: Yes. The way the model generates
4 the numbers, it will pick one spot, one -- or maybe -- it
5 may be one county, maybe an area of counties, maybe
6 multiple places around the country, that it sets a -- as
7 the low point.

8 And the model doesn't tell us what that low point
9 number should be. The Wisconsin folks, the University of
10 Wisconsin folks say, we need to have a number to assign to
11 that low point, and then that raises all the differentials
12 everywhere -- the suggested differentials from the model
13 out of that low point.

14 What I'm saying is there was only one county in
15 Idaho, and of the two months we ran, May and October, only
16 one of them came back at \$1.60 because it was forced into
17 \$1.60. That was the low point. Every other county for
18 the rest of the country was higher than that.

19 We took that model, worked -- worked through our
20 process of defining the differentials, comparing what we
21 felt like they needed to be versus what the model
22 suggested, knowing that the model-suggested numbers are
23 incomplete, don't have the full information about the
24 local market knowledge.

25 Then came back and realized that in order to make
26 price alignment work in the West, in order to recognize
27 the Grade A, Grade B cost difference, in order to provide
28 a system of prices, which a predominant amount of the



1 months in history, \$2.20, reduces to a realistic and
2 acceptable level, the inver- -- in the occurrence of
3 Class I price inversions. That's how we got to the 2.20,
4 and that's why we call it a minimum differential.

5 BY MR. ENGLISH:

6 Q. Wasn't one of the key conclusions from
7 Dr. Nicholson and Dr. Stephenson working together, that
8 their analysis for the University of Wisconsin, from the
9 University of Wisconsin privately, suggested that there
10 are considerable differences between the values of milk at
11 fluid plants derived from spatial economic modeling and
12 the current values of Class I differentials, differences
13 as large as \$3 per hundredweight?

14 A. Yes.

15 Q. And isn't that the point of the model, to show us
16 what those differences in values are in 2023 versus
17 Federal Order reform?

18 A. I disagree with the way you worded that. It
19 suggests differences in the values. It doesn't tell us
20 absolutely what those differences in values are. It
21 suggests levels of difference.

22 And in their testimony, or certainly
23 Dr. Nicholson's, he goes on to point out that the model
24 results, as it spits out of the computer, are not usable
25 to provide -- or to build a Class I price surface. You
26 have to go to that next step, which tweaks those, adjusts
27 those suggested differentials or suggested ranges in
28 differentials to the real life, real milk marketing facts



1 which exist in each area.

2 Q. Nonetheless, the results showed a much steeper
3 increase in those differentials as you moved east and
4 south, correct?

5 A. The -- the model suggests that the current slope
6 of differentials is insufficient.

7 Q. Do you agree?

8 A. I agree that the model suggests that the current
9 slope of differentials is insufficient and that that slope
10 should be increased.

11 Q. Okay. So that's what I'm getting at. Do you
12 agree the slope should be increased?

13 A. I do.

14 Q. Don't you think that by using 2.20 in Idaho but --
15 which effectively added \$0.60 to the \$1.60, but not using
16 \$0.60 in the Southeast, did just the exact opposite --

17 A. No, I don't agree.

18 Q. -- that you made the slope less?

19 A. I do not agree with that.

20 Q. You made the slope less than what the model
21 results were.

22 A. The -- if you -- only -- only if you consider the
23 area where the 2.20 would apply. That's not a practical
24 source of supply for the Southeast. We don't haul milk
25 from Ada County, Idaho, to Atlanta. Never. And so you
26 have to consider where the real likely source of
27 supplemental supplies are going to come from, and they are
28 not from Idaho for the Southeast. So the important part



1 is the -- is other places where those supplemental milk
2 movements are likely to occur.

3 Q. And isn't it true that because you raised the
4 differential whether in Ada or in Minneapolis or in New
5 Mexico, you necessarily reduced the slope of model for the
6 Southeast?

7 A. The slope may have been changed versus the model,
8 but we -- the net effect was an increase in the slope.

9 Q. But -- but less than the model suggested, correct?

10 A. At some point perhaps.

11 Q. Why of all places, given everything we have heard
12 from day one of this hearing, would the slope be decreased
13 to the Southeast from the model?

14 A. The model results were appropriate. We reviewed
15 them. We tweaked them where they were necessary. And we
16 came up with a price surface that we believe will
17 encourage milk to move to the Southeast, or certainly
18 better the encouragement as exists today.

19 Q. So the model has millions of inputs, correct?

20 A. I think that's -- yes.

21 Q. We could call those ingredients, right?

22 A. Yes.

23 Q. Okay. The model provided transparent and clear
24 recipe as to what is input, correct, in the model? All
25 the things that are in the model, we can learn from 97-09,
26 from Dr. Nicholson's testimony, correct?

27 A. Ask me that again, please.

28 Q. We have detailed information from the document



1 that was titled 97-09 from Dr. Nicholson's testimony as to
2 all the millions of items and how they are put together to
3 reach the conclusions of the model, correct?

4 A. Yes.

5 Q. Okay. I suggest to you, sir, that the University
6 of Wisconsin served you up a really nice cake; isn't that
7 true?

8 A. I beg your pardon?

9 Q. You used the metaphor "cake" last Thursday. And I
10 suggest to you that the University of Wisconsin served up
11 to you a very nice cake, didn't they?

12 A. The model results are the model results, sir.

13 Q. And your job, perhaps involving others, including
14 IDFA members, MIG members, USDA, was to put some really
15 nice icing on that cake, wasn't it?

16 A. I'm sorry. I don't think we're -- I don't think
17 our metaphors are matching up here.

18 Q. And that's because you are not going to like where
19 I'm going.

20 You know, the reality is you said last Thursday,
21 let's skip the recipe, let's go to the cake, and so now I
22 want to talk about the cake. And you said, look, even
23 Dr. Nicholson said we need to add things to the cake, and
24 I'm suggesting that adding to the cake was like the icing.
25 Okay?

26 A. Oh. That would assume that all the adjustments
27 that were made to the model increased the prices. If you
28 are referring to adding icing, that that implies something



1 more. These -- this model was -- was -- was used as the
2 basis. We worked in our committees to establish a price
3 surface. We conferred with USDA long before the ex parte
4 period about their issues with our -- you know, any draft
5 or any early results of our work. They made some
6 suggestions. We followed those suggestions at one level
7 or another.

8 We provided what I believe is a very appropriate,
9 very reasonable, very defensible Class I price surface
10 using the system that USDA laid out for us 25 years ago,
11 take the model, adjust it for real life, real on the --
12 you know, boots-on-the-ground kind of milk marketing
13 knowledge. And that's what we did.

14 Q. Okay. So thank you for answering a question that
15 has puzzled me. And you had every right to talk to USDA.
16 I want to emphasize that. Okay?

17 THE COURT: Start again. You had every right?

18 BY MR. ENGLISH:

19 Q. Every right to talk to USDA prior to the ex parte
20 period. Okay? And that was part of my question.

21 You didn't talk to Select Milk Producers or Edge
22 or fluid milk processors other than those owned by
23 cooperatives, correct?

24 A. That's correct. But I don't recall getting an
25 invitation to the MIG meetings either.

26 Q. Your discussion about getting input from USDA,
27 would it be fair to say that if you look at Exhibit 300,
28 which is the submission in May -- do you need a copy of



1 that?

2 A. I -- yes, I do.

3 THE COURT: Let's go off record for just a minute
4 while we all pull out our big exhibits. At 11:06.

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

6 THE COURT: Let's go back on record just to go
7 off. We're back on record at 11:07. We're going to take
8 a ten-minute break. Please be back and ready to go at
9 11:18. 11:18.

10 (Whereupon, a break was taken.)

11 THE COURT: Let's go back on record. We're back
12 on record at 11:18.

13 BY MR. ENGLISH:

14 Q. Mr. Sims, did somebody get you Exhibit 300 while
15 we were on break?

16 A. No, I seem to always be the last.

17 MR. ENGLISH: Just 300.

18 BY MR. ENGLISH:

19 Q. And partly because it comes first alphabetically
20 for this question, and partly because I think you now live
21 in Arizona, let's turn to page 2, Rows 69 and 70.

22 And my predicate for the questions is, just before
23 the break, you mentioned that you did have some input,
24 prior to ex parte rules kicking in with USDA, with respect
25 to some of the work you have done.

26 And what I want to ask is, when I look at Rows 69
27 and 70, and I look across, will you agree with me that
28 Column L, the model results --



1 A. Okay. 69 or --

2 Q. 69 and -- Row 69 and Row 70.

3 A. Apache and Cochise.

4 Q. Yes.

5 A. Okay.

6 Q. FIPS code 4001 and 4003.

7 And would you agree with me, looking at those,
8 that the model runs in Column L show \$2.35 for Apache and
9 \$2.45 for Cochise?

10 A. Yes.

11 Q. Okay. And then Column O, which says "Proposed
12 Class I," has \$2.90 for Apache and \$3.10 for Cochise?

13 A. O --

14 Q. Column O.

15 A. Column O -- or cells O69 and O70?

16 Q. Yes.

17 A. 2.90 and 3.10?

18 Q. Yes.

19 A. Yes, I agree.

20 Q. But if you look over --

21 THE COURT: Just so it's clear, you are talking
22 \$2.90 per hundredweight?

23 THE WITNESS: And \$3.10 per hundredweight, yes.

24 THE COURT: Thank you.

25 BY MR. ENGLISH:

26 Q. Okay. And so if we go over to Column S, so
27 cell 68S, 69S, both are the -- now at \$2.80 per
28 hundredweight, correct?



1 A. Yes.

2 Q. Do you know whether the change -- those changes --
3 let's start with this -- do you know whether those changes
4 from Column O to Column S --

5 THE COURT: S like Sam.

6 BY MR. ENGLISH:

7 Q. -- S as in Sam, were the result of the
8 conversations that you had pre-ex parte with USDA?

9 A. I can't say specifically regarding these two
10 counties.

11 What I can say is that the -- our discussions with
12 USDA basically provided two important pieces of
13 information. Number one, there were a few spots where
14 they specifically noted that -- the prices they had some
15 questions about. But more importantly, that we would be
16 responsible for justifying whatever differential proposal
17 we provided. They didn't say, you need to change this,
18 you need to change that. But made it quite clear that we
19 were going to need to justify at a granular level the
20 proposals that we finally put forward.

21 Q. Okay. Do you know whether the changes on
22 Exhibit 300 from Column O to Column S were all in response
23 to USDA?

24 A. I do not know.

25 Q. Okay. If I may give that back to USDA.

26 A. Yes.

27 Q. You just talked about the granular level. I have
28 read pretty much all the testimony that's to come, and



1 while I see anchor cities and I see some pairing, I don't
2 see the granular level that would suggest the need to
3 modify approximately 2,900 of the University of Wisconsin
4 numbers.

5 I ask you, sir, having been served up a perfectly
6 good cake by the University of Wisconsin, why did you burn
7 it down?

8 A. I disagree with that characterization. I think
9 that's absolutely improper. We did what USDA's history
10 suggested, that you take the model, you take what the
11 folks that are the caretakers of the model say you need to
12 do, and we did it. I'm not going to sit here and defend
13 our process other than to say we did exactly what -- or --
14 "exactly," I use that word wrong.

15 We followed the precedent that USDA followed in
16 order reform, taking a model result and tweaking it where
17 it needed to be tweaked based on local knowledge. We did
18 that. I'm not going to say we didn't, but we did. And I
19 think we have a fine defensible Class I price surface.

20 MR. ENGLISH: I have no further questions. Thank
21 you.

22 THE COURT: I love hearing the two of you exchange
23 information, because you are both so experienced and have
24 such a historical knowledge and understanding. I
25 appreciate it very much.

26 Who next has questions for Mr. Sims?

27 //

28 //



1 CROSS-EXAMINATION

2 BY MR. MILTNER:

3 Q. Good morning, Mr. Sims.

4 A. Good morning.

5 Q. I'm Ryan Miltner. I represent Select Milk
6 Producers.7 So I -- I think Mr. English addressed probably a
8 bunch of the questions that I had. The risk, of course, I
9 run is that as you have broken up your testimony now --
10 are we in the third day of you being on the stand?11 A. I don't think I'm going to be able to count high
12 enough as to how many days this is going to last.13 Q. Yeah. Well, I'm hoping that I don't duplicate
14 too many questions, given -- given that we have broken
15 your examination up over several days, but I will do my
16 best.17 In preparing Proposal 19, did National Milk
18 Producers look to the 1998, 1999 order reform decision and
19 USDA's explanation as to what constituted the \$1.60 base
20 differential?

21 A. Yes. Yes.

22 THE COURT: Now, Mr. Miltner, I want to make sure
23 I'm on the right page. You said Exhibit 319?24 MR. MILTNER: I wasn't referring to a specific
25 exhibit, Your Honor. I was referring to USDA's order
26 reform decision from 1998 and 1999.

27 THE COURT: Ah, thank you so much.

28 MR. MILTNER: You're welcome.



1 THE WITNESS: The proposed rule and the final
2 rule?

3 MR. MILTNER: Yes.

4 THE WITNESS: Yes. We did.

5 BY MR. MILTNER:

6 Q. And I believe it was in the proposed rule where
7 USDA explained that -- and I'm going to quote this. And
8 for the record the citation is, 63 Fed. Reg. 4802 at 4908,
9 January 30th, 1998.

10 And the quotation is: "After achieving Grade A
11 status, producers must maintain the required equipment and
12 facilities and adhere to certain management practices.
13 Often, this will require additional labor, resources, and
14 utility expenses. It has been estimated that this value
15 may be worth approximately \$0.40 per hundredweight."

16 And so that \$0.40 is encompassed in the \$1.60 base
17 zone; is that your understanding?

18 A. It is.

19 Q. And so in your testimony, both in your full
20 statement and the PowerPoint slides, you refer to some of
21 those costs of maintaining Grade A status, correct?

22 A. Yes.

23 Q. So I'm looking at page 4 of Exhibit 310, and I
24 guess I'm asking, at the bottom of that page, where you
25 refer to the ongoing difference in production costs
26 between Grade A milk and Grade B milk amounting to \$1.36
27 per hundredweight, and then additionally, the non-cash
28 cost of depreciation for the equipment and improvements to



1 the farm for Grade A licensure adding \$1.30 per
2 hundredweight.

3 Would I be correct to take that \$1.36 and \$1.30
4 and suggest that National Milk believes it is \$2.66 per
5 hundredweight today to maintain Grade A status?

6 A. Yes, that's what my testimony says.

7 I'm going to say that there's going to be some
8 substantial testimony shortly about how those were arrived
9 at, and I want to make sure that my numbers are -- agree
10 with theirs.

11 But, in general, there is a -- both a cost of
12 attaining Grade A status and there certainly is a cost of
13 maintaining Grade A status. That testimony will -- will
14 bring out the actuals. Again, I think I got those --
15 quoted those numbers right. But, yes.

16 Q. Okay.

17 THE COURT: And, Mr. Miltner, I don't think I
18 wrote down the exhibit number correctly. What did you
19 tell me?

20 MR. MILTNER: I believe that I have this as
21 Exhibit 310.

22 THE COURT: 310.

23 MR. MILTNER: Yes. It's National Milk
24 Exhibit Number 37.

25 BY MR. MILTNER:

26 Q. Now, if -- I'm looking now again back at the 1998
27 proposed rule from order reform. And after USDA talked
28 about the expense of Grade A status, they turned to



1 discussing marketing costs incurred in supplying the
2 Class I markets. And the quotation there is: "These
3 marketing costs include such things as seasonal and daily
4 reserve balancing of milk supplies, transportation to more
5 distant processing plants, shrinkage, administrative
6 costs, and opportunity or give-up charges at manufacturing
7 milk plants that service the fluid Class I markets. This
8 value has typically represented approximately \$0.60 per
9 hundredweight."

10 Your testimony talks a good deal about
11 transportation costs and that inflation.

12 A. Yes.

13 Q. I didn't see a whole lot of your written testimony
14 about balancing.

15 Did you -- I wondered if you could comment on the
16 impacts of balancing and those costs and how they apply to
17 the base differential.

18 A. Well, again, the cost of balancing is a hard
19 number to come up -- -it's a hard number to come up
20 with a hard number for. But I would argue that certainly
21 the \$0.60 is the bare minimum in many markets. There's
22 a great lot of balancing that goes on with regard to
23 Class I plants. We discussed or one of the exhibits
24 shows the month-to-month balancing that is required.

25 Within the week for Class I plants there's a
26 substantial amount of balancing. Class I plants kind of
27 follow the consumer in terms of when they package milk,
28 and they -- if you think about when many consumers go to



1 the grocery store, it is often Fridays or pay days and
2 Saturdays and sometimes Sundays, so -- but that milk has
3 to be in the store before those consumers get there. So
4 milk plants often run heavy two or three days before the
5 weekend in order to make sure they've got enough packaged
6 milk they can distribute to their customers, who get it on
7 the store shelves.

8 So there's a lot of intra-week balancing because
9 plants don't often run an equal number of -- you know, an
10 equal amount every day. Those Class I plants have to kind
11 of follow the consumer demand. It is a perishable
12 product, and they have to have it in the store shelves
13 before the consumer gets to the store. So there's a lot
14 of intra-week balancing.

15 There is some evidence that there's intra-month
16 balancing that -- within the month, the Class I sales can
17 vary. Oftentimes we think of Class I sales being slightly
18 heavier the first part of the month, so -- although it's
19 hard to quantify that because every market's different. I
20 don't think it could be -- you could -- I think you
21 certainly could make the case it's at least \$0.60 and
22 probably more. And the more -- the farther away the
23 supply is from -- the milk supply -- excuse me. I better
24 say this more specifically.

25 The farther away a raw milk supply is from the
26 Class I plants, the more that balancing gets costly
27 because the more -- the longer distance the milk has to
28 move, and so the balancing gets more -- more expensive



1 when they have to divert that. It's -- it's an expensive
2 process.

3 I may have not answered your question.

4 Q. No, I think you did.

5 A. Okay.

6 Q. But the -- at least \$0.60, but pegging a specific
7 number is something that you have not done and you state
8 it would be difficult to do?

9 A. I would say it -- it -- let me say this: If we
10 came up with an average, the variation from the low to the
11 high would be so wide. For example, the balancing costs
12 at a place like Florida versus perhaps, you know, places,
13 other places, the average would not be terribly indicative
14 of any one spot.

15 THE COURT: Of any one?

16 THE WITNESS: Spot. One area, one market, one
17 region.

18 BY MR. MILTNER:

19 Q. Now, within the universe of Class I over-order
20 premiums, an element of that might be what we would call a
21 uniform receiving credit, correct?

22 A. Correct.

23 Q. And I can tell you what I think it is, but as you
24 understand it, what is a uniform receiving credit?

25 A. In my history I'm aware of a couple or three kinds
26 of -- where they -- kind of slots you might fit in.
27 Typical, if there is such a thing as typical when it comes
28 to over-order prices, there is a weekly credit. The gross



1 charge is -- the over-order price is grossed up by some
2 cents per hundredweight.

3 And then a Class I plant, if they receive their
4 milk very evenly through the week, that means all seven
5 days, not taking Saturdays and Sundays off, they
6 receive -- and it's -- when they process is not important
7 to the supplier. It's when they receive the milk. It's
8 the milk receiving, not when they process. So if they
9 receive their milk -- their raw milk evenly through the
10 week, they would get all or virtually all of that credit
11 back.

12 There are also monthly credits which do the same
13 thing, which they often are computed somewhat differently,
14 but to encourage milk plants to buy or to receive their
15 milk evenly through the month. Often those are kind of
16 based on, say, some period of the month, you know, the
17 high four days versus the low four days, and then you can
18 compute some ratio, and they can get part of their -- the
19 gross over-order charge back in the form of a credit to
20 encourage them to -- to receive evenly.

21 I have never been involved in an agency that has
22 one of these, but I understand there are also some annual
23 credits that some agencies apply.

24 I can say this, though, whatever it is we -- that
25 the agencies generally set up in these, it's not enough.
26 The cost of balancing almost always exceed the -- our
27 ability to charge and then give credits back. They --
28 they -- they help, but they don't solve.



1 Q. And you started to lead into my next set of
2 questions.

3 In most parts of the country, are over-order
4 premiums established by a marketing agency in common?

5 A. I don't know about most, but I would think -- I
6 might use the term most, but I can't -- I wouldn't say
7 what percentage. But that's -- it's common to use a
8 common marketing agency.

9 Q. And could you explain just for our record, I think
10 most of the people in the room know, but for the purpose
11 of the transcript, could you explain what a marketing
12 agency in common is?

13 A. Yes. The Capper-Volstead Act, which authorizes
14 the establishment of agricultural cooperatives and limited
15 antitrust exemption, also allows cooperatives to form in
16 what I would call a cooperative of cooperatives.
17 Technically within the Capper-Volstead Act it refers to
18 them as marketing agencies in common. That is, in our
19 case, in dairy case -- that's another pun I shouldn't
20 use -- in the case of dairy, it's dairy cooperatives who
21 join a marketing -- and form a marketing agency in common,
22 with the intent of working together to establish a uniform
23 set of over-order prices across some piece of geography or
24 some market.

25 Q. And then once a marketing agency in common is
26 established for a region, how does the agency establish an
27 over-order premium?

28 A. That's hard question to answer, too. The elements



1 that go into establishing an over-order price or premium
2 or service charge, whatever name you want to attach to it,
3 is -- it's based on a number of economic factors.

4 Number one, something you described or we
5 discussed already, usually they will contain some element
6 or some part of the over-order price or the total
7 over-order price would be to establish the ability to give
8 credits back for those receiving incentives that help save
9 dairy farmers and dairy farmer cooperatives' money. When
10 a milk plant receives their milk evenly through any
11 period, even is gold. If they will take their milk
12 evenly, that really reduces our necessity to balance. So
13 that's usually part of the equation.

14 The next biggest part of the equation, and I know
15 this sounds kind of odd, but is what are the over-order
16 prices being charged in the neighboring areas. Each
17 agency always looks at what's going on next door, because
18 we can't -- as an agency, you -- you almost have to
19 recognize the -- the interregional flow of milk between
20 agency areas. So you want to make sure that the Class I
21 customers inside, say, our marketing area, quote/unquote,
22 are not put at a competitive disadvantage against milk
23 supplies that might be coming from the next marketing
24 agency in common. So we pay attention to what the
25 relative level of those agency prices are, and you can't
26 really get very far out of line.

27 Also, as I testified at some point, you know, the
28 over-order prices tend to be quite flat over an agency



1 area. They -- we -- it's just very difficult to put much
2 price gradient on over-order prices that tweaks further
3 the established Class I differential.

4 So there's -- there's several things. Sometimes
5 you -- you do have regularly fuel surcharges. Those
6 over-order prices are established at some base level of
7 fuel price that may be adjusted up as fuel goes up. And
8 they adjust back down when fuel comes down. So fuel is an
9 important part of the incentive to -- you know, some
10 charges are or part of the over-order price can be related
11 to some balancing charge. Again, it is always less than
12 the real cost.

13 But those are some of the elements that a
14 marketing agency in common would normally look at in
15 establishing an over-order price.

16 Q. When a marketing agency in common establishes an
17 over-order premium, does that usually require the
18 unanimous consent of the members of that agency, in your
19 experience?

20 A. Yes. The -- if everybody isn't charging that
21 price, then nobody's charging it. How's that? They -- it
22 requires both unanimous approval and unanimous follow-up.
23 They have to do what -- agency members have to do what
24 they said they were going to do in terms of pricing.

25 Q. And is part of that driven by the fact that
26 Class I handlers would like to know that their milk costs
27 are established in the same manner as their competitors?

28 A. Absolutely.



1 Q. Over your career have there been instances where
2 one member of a marketing agency in common has effectively
3 decreased or eliminated over-order premiums because they
4 did not agree with the other members of the marketing
5 agency in common?

6 A. I don't know if I would put it that way. But I
7 certainly in my career have seen the gamut of effective
8 over-order prices. I have lived through -- in my career,
9 been involved in over-order prices that by most
10 definitions would have been kind of high, you know, \$3 or
11 more, which is well above the long-term average.

12 And I have lived through over-order prices
13 that get down, if they are not zero, they are right next
14 to them. And everything in between. And sometimes
15 that's -- you know, that occurs because of competition
16 from outside the marketing area -- the marketing agency's
17 area.

18 Q. Now, because the Class I price is a required
19 minimum for Class I handlers, it would go to say that an
20 agency could not offer a uniform receiving credit unless
21 it can offer or extract an over-order premium in at least
22 that amount, correct?

23 A. Correct.

24 Q. And so if the over-order premium is zero or close
25 to zero, is there a way to offset the balancing costs
26 associated with non-uniform receiving?

27 A. I will answer it this way: No matter what the
28 over-order price is, the balancing costs continue.



1 Q. Mr. English asked you some questions about the
2 fuel surcharges that might be included in an over-order
3 premium, and you mentioned them as well.

4 A. Yes.

5 Q. It is not the case that every Class I supply
6 agreement between a cooperative and a handler shifts the
7 hauling costs to the bottler, is it?

8 A. Would you ask that again? I want to make sure I
9 answer this the right way.

10 Q. Let me rephrase it then so it's not as convoluted.
11 Do the Class I handlers always pay the haul from
12 the farm to the plant?

13 A. No. Quite the opposite. The responsibility of
14 delivering milk to the plant is on the producer side.
15 Federal Milk Order prices are FOB the plant. So they have
16 an established price -- the minimum price is based on the
17 location of the plant, and it's the dairy farmers'
18 responsibility to pay the haul to get the milk from the
19 farm to the plant.

20 Q. So if there is a fuel surcharge, it is to help
21 offset those hauling costs that belong to the cooperative
22 or to the farmer, correct?

23 A. Yes.

24 Q. Are those types of fuel surcharges uniform, in
25 other words, are they included in most or all contracts to
26 supply Class I handlers?

27 A. I can't say about contracts to supply Class I
28 handlers. I can say that -- I -- it's been my observation



1 that they are -- they occur regularly in agency pricing
2 and that -- but I can't speak to any contracts.

3 Q. And, again, if the over-order premium is pressured
4 downward, do those fuel surcharges also face downward
5 pressures?

6 A. Certainly.

7 Q. Even when they are in place, do they come close to
8 offsetting the actual cost of the transporting milk in the
9 farm to the plant?

10 A. No.

11 Q. So turning again to the 1998 proposed rule from
12 order reform. USDA wrote: "Traditionally, the additional
13 portion of the Class I differential reflects the marketing
14 costs incurred in supplying the Class I market" -- nope.
15 That's the wrong section.

16 Let's start over. The last part: "Thus,
17 Option 1A establishes an additional competitive factor
18 into the development of the base zone Class I
19 differential. Option 1A values this competitive factor
20 to be worth about \$0.60 per hundredweight. This
21 value reflects approximately two-thirds of the actual
22 competitive costs incurred by fluid plants to
23 simply compete with manufacturing plants for a supply of
24 milk."

25 How did National Milk address this competitive
26 factor when it was compiling or putting together
27 Proposal 19?

28 A. Again, we basically established a minimum



1 differential at the 2.20. We did not try to evaluate a
2 replacement for this -- this particular line item in the
3 \$1.60. That -- I will say this: It's -- a competitive
4 factor or a need to draw milk away from manufacturing
5 still exists.

6 Let me just say this: Supplying, say, a cheese
7 plant compared to a Class I plant, a cheese plant's easy.
8 They -- well, none of them are easy, but easier. They
9 take milk much more likely evenly through the week.
10 They -- they don't vary much month to month. They don't
11 vary much within the year. They are much easier a plant
12 to service, simply as a matter of logistics and supply.
13 Class I plants are difficult because they have all this
14 variation, which is driven by they're a consumer-facing
15 product.

16 So there -- we -- so in order to attract milk out
17 of those manufacturing plants, which quite frankly, are
18 easier to supply, there has to be some value to Class I.
19 And we have embedded that in that value, in that 2.20
20 minimum differential we are proposing.

21 Q. So would it be correct to say that while USDA in
22 1998, or thereabouts, ascribed values to those three
23 elements encompassed in a base differential, National Milk
24 did not necessarily ascribe specific values to those three
25 components, but that collectively they are captured in the
26 concept of a \$2.20 base differential?

27 A. That's a fair statement. I -- I will kind of
28 offer an additional editorial comment. We live in a



1 substantially different world today than we did in 1998.
2 If fuel costs were the same, if milk location -- milk
3 production locations were the same, if the people were the
4 same -- located in the same place, if the milk plants were
5 all the same, if fuel costs and hauling costs hadn't
6 changed, we probably wouldn't be here.

7 We have a different world today than it was
8 25 years ago, and we have to recognize that. And, yes,
9 that's -- we didn't go through this same step-wise, you
10 know, 40 plus 60 plus 60 equals 1.60. But our 2.20, I
11 think, embodies the spirit of these in terms of how we
12 arrived at it and the objective that it's -- that it
13 solves, and that's making the Class I price the highest
14 one.

15 If you want to try -- you know, I think it is
16 simple. I think we make it -- sometimes we get hung up
17 and forget what we're trying to do. We're trying to get
18 milk to Class I, and the way you do that is make sure that
19 the Class I price for -- as much as possible, as many
20 times as possible, in practicalities, is the top price.
21 That's the way you get milk to move to Class I, make it
22 pay.

23 Q. Now, scattered among several questions and
24 referenced a few times in your testimony and others, is
25 the concept that the \$2.20 base zone should somehow deter
26 or minimize the occurrence of price inversions.

27 Do you recall those questions and statements?

28 A. Oh, yes.



1 Q. And because those questions were spaced out, I
2 would like to just ask quite pointedly and see if we can
3 get the record clear on this point.

4 Is the \$2.20 base zone established to -- for the
5 purpose of minimizing price inversions, or alternatively,
6 is it your assessment that the \$2.20 base zone is at a
7 sufficient level that those inversions will not occur?

8 A. I think I missed something.

9 Q. You might have. I'll try to rephrase it. Well,
10 let me just -- I'll throw out a wide open question.

11 How does the \$2.20 base zone -- what is -- boy,
12 this is hard.

13 How does the concept of price inversions apply to
14 the establishment of a \$2.20 base differential?

15 A. Okay. That's a -- I can -- I think I can get us
16 there now.

17 Q. Thank you.

18 A. The exhibit, I believe it was marked 311, provides
19 the historical relationship of the Class I mover plus the
20 1.60 plus our proposal at 2.20, also analyzes what the
21 impact would be at a zero differential. And simply, tests
22 the theory, okay, is \$2.20 per hundredweight minimum
23 differential sufficient to -- to almost completely
24 eliminate Class I price inversions? The answer to that is
25 yes.

26 Additionally, you know, we didn't discard the
27 USDA's precedent of the \$0.40 Grade A, \$0.60 marketing
28 cost, \$0.60 some of us might call that, you know, give-up



1 or whatever we want to call it, or incentive to supply
2 Class I. We didn't give up all that. We did do the work
3 on the Grade A/Grade B piece. We can say without -- you
4 know, that certainly that marketing costs and balancing
5 costs of Class I continue, probably at least certain parts
6 of the country well more than \$0.60.

7 And the competitive factor, the need to draw milk
8 away from manufacturing plants, which really is, if you
9 think about it, the same question, the way you draw milk
10 away from manufacturing plants is to make the Class I
11 price the ultimate price or the top price. If you want
12 the milk to move to Class I, it seems to me and us, the
13 way you do that is make the Class I price the top price.
14 And at \$2.20 it solves all those problems.

15 So there's how we -- and it solves a price
16 alignment problem in that part of the world where the
17 \$2.20 would apply.

18 Q. Maybe that gets me to a point where I can rephrase
19 my original question better.

20 A. Okay.

21 Q. Is it correct that the \$2.20 minimum differential
22 is sufficient to address the concerns about price
23 inversions?

24 A. We believe it is. Under the data we provided, the
25 occurrence of price -- Class I price inversions would be
26 so near zero or near enough to zero to simply say that
27 that's close enough. Without -- honestly, you can't guard
28 against the \$8 rise in the Class III price. I mean,



1 nobody thinks that we want to do that. So we're willing
2 to accept a modest number of inversions for all the other
3 good reasons why you have Advanced Class I pricing,
4 et cetera.

5 Q. Is it also correct that National Milk, or your
6 working group, arrived at a \$2.20 minimum differential
7 independently of a consideration that that number would
8 avoid price inversions?

9 A. I think we came to that -- the -- there were
10 several simultaneous what they call them lines of inquiry.
11 Right? What does it take to -- to solve a price alignment
12 problem? What does it take to answer the Grade A/Grade B
13 question? What does it take to minimize inversions? And
14 they all point to \$2.20.

15 Q. I wanted to ask a few questions about your written
16 statement, Exhibit 310.

17 A. Yes.

18 Q. And I'm looking first at page 17.

19 A. Yes.

20 Q. The first paragraph, the last two sentences. It
21 reads: "Therefore, comparing the proposed" --

22 A. Wait, wait, wait. I'm missing something. What --
23 where did you say on page 17?

24 Q. Page 17.

25 A. Which paragraph?

26 Q. Top paragraph. Begins "as mentioned"?

27 A. I'm not --

28 THE COURT: The first words of that paragraph



1 begin --

2 THE WITNESS: Oh, I'm sorry. I thought you said
3 at the end of that paragraph. At the beginning of the
4 paragraph.

5 BY MR. MILTNER:

6 Q. That is the paragraph.

7 A. Okay.

8 Q. And then about -- it is the last two sentences,
9 and it begins -- it's about halfway through. It begins
10 "therefore"?

11 A. Yes.

12 Q. Okay. So: "Therefore, comparing the proposed
13 increases in Make Allowances by NMPF to the make costs
14 included in the orders over 23 years ago, the percentage
15 increases are," and you then state them.

16 A. Uh-huh.

17 Q. "Considering these changes in dairy product
18 manufacturing costs from the same period, NMPF's proposal
19 for increasing Class I differentials, which have remained
20 unchanged for 23 years, is quite reasonable."

21 And I would like to -- I just want to get some
22 more thoughts from you on what you are driving at there.

23 A. Yes. I think there is a -- one of the exhibits or
24 sub exhibits might be helpful. If I can find it.

25 Q. I think in the next paragraph you reference
26 NMPF-37E.

27 A. Yeah. I wish I knew where it was.

28 THE COURT: Let's go off record just a moment at



1 12:01 p.m.

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

3 THE COURT: We're back on record at 12:02. I'm
4 looking at Exhibit 315, also shown as NMPF-37E.

5 And what did you want to add?

6 THE WITNESS: Yes. There is a table in the
7 PowerPoint that was my initial testimony, and that is
8 Exhibit 318, NMPF-37H, that's the PowerPoint. And it's
9 page 32.

10 BY MR. MILTNER:

11 Q. Okay. I have got that.

12 A. Okay. So should I explain them?

13 Q. Yes, please.

14 A. Okay. It's -- I think it's maybe easier to go
15 from the page 32 of Exhibit NMPF-37H, H as in Harry.
16 Again, that's numbered 318.

17 That data or those percentage increases there in
18 that text, that statement that you referenced, are
19 provided mathematically -- or in tabular form on, again,
20 this page 32. So I just simply listed for butter, nonfat
21 dry milk, dry whey, and cheese, what the National Milk
22 Producers Federation Make Allowance Proposal Number 7 per
23 pound Make Allowance proposal is for those four products.
24 And then I just went back to the final rule, year 2000 or
25 when it was published, 1999, and what were the original
26 Make Allowances in the final rule that the Department
27 proposed.

28 And those were, as listed here, \$0.1140 per pound,



1 \$0.137 per pound for nonfat, dry whey \$0.137 per pound,
2 and \$0.1702 per pound for cheese. So I simply made a
3 mathematical comparison of how the National Milk proposal,
4 Proposal Number 7, Make Allowances, compared to the
5 Make Allowances which were included in the original year
6 2000 final rule.

7 Q. And is the purpose of that comparison to
8 illustrate the reasonableness of Proposal 19 or to provide
9 justification for the specific numbers?

10 A. Oh, it's not a justification of the specific
11 numbers. Simply that -- well, let me say this, that the
12 Proposal 19 provides an across-the-board to generally
13 increase differentials. There's no argument about that.
14 Our Proposal 19 increases differentials.

15 And if you take the weighted average differential
16 across the entire country, that increases those
17 differentials about 56% from the -- now, that's just the
18 differential. That's just the weighted average across the
19 country differential, roughly 2.63 today, to roughly \$4.10
20 under our proposal. That's about a 56% increase.

21 And I'm simply saying if you look at the history
22 of Make Allowance proposals from what they were when the
23 Make Allowances were initially installed in order reform
24 to today, or to today's National Milk proposal, those
25 percentage increases actually line up pretty well with a
26 56% increase in Class I differentials.

27 And we need to remember that except for Orders 5,
28 6, and 7, the differentials in no place in the country



1 have changed since 2000. So it's appropriate to go back
2 and compare our proposal today, if we're looking at
3 simply, you know -- and I have couched this that Class I
4 differentials and Make Allowances are basically the same
5 issue. Economically they are the same.

6 Class I -- you know, dairy farmers make economic
7 decisions based on the relative price between two points.
8 Processing plants determine whether to operate or not
9 based on, you know, the cost of -- or the included
10 Make Allowance in the orders. These are the same issues.
11 They are sending economic signals. They are compensating
12 those parties for economic activity.

13 And so our -- the purpose here is simply to say
14 that a 56% increase in Class I differentials over the
15 country, while it sounds like a lot, compared to how much
16 the -- you know, the proposals are to increase
17 Make Allowances versus what they were in the year 2000
18 is -- they are reasonable.

19 MR. MILTNER: Your Honor, I see it's 12:07. I'm
20 probably halfway through with my questioning, and this
21 would be a logical time for me to stop for us to take
22 lunch, but I'll continue if that's everyone else's
23 prerogative.

24 THE COURT: I'm going to turn to the Agricultural
25 Marketing Service.

26 Do you want to break now? Yes.

27 Mr. Miltner, thank you.

28 We'll go off record at 12:08. Please be back and



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ready to go at 1:10 p.m. 1:10 p.m.
(Whereupon, a luncheon break was taken.)



1 MONDAY, OCTOBER 9, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's go back on record. We're back
3 on record at 1:11 p.m.

4 MR. MILTNER: Thank you, Judge Clifton. Still
5 Ryan Miltner, representing Select Milk Producers.

6 BY MR. MILTNER:

7 Q. And, Mr. Sims, I wanted to ask questions now based
8 on Exhibit 318, the slides that you used in your
9 presentation.

10 A. Yes.

11 Q. I wanted to start with page 5, and this is a graph
12 sourced from I think your statement. I just wondered if
13 you would explain for the record what this index exactly
14 is.

15 A. Yes. There is a company Cass Logistics or -- if I
16 remember their full name, what is it -- Cass Information
17 Systems. They provide services to the freight hauling
18 industry. They do billing and also handle invoices for --
19 actually shippers to people that -- that want the product
20 moved. And they monthly announce or release an index of
21 their -- what they call their line haul index.

22 And this is a month-to-month or year-over-year,
23 year-over-base-period, like Mr. Vitaliano described the
24 other -- you know, recently about the versus 100, versus
25 January 2005, what the base-haul rate is. And this is all
26 kinds of freight, but this is a base-haul rate before the
27 application of any fuel surcharges. It simply just shows
28 that for the last 15, 16, 17, 18 years hauling costs --



1 and this, again, this is all kinds of freight, dry
2 freight, tarped freight, boxed freight, liquid freight --
3 is on a pretty straight-line increase.

4 Q. And so when you say it represents the cost of
5 hauling, that would include all costs, it's not -- well,
6 includes all hauling costs?

7 A. This is an index of what's paid. They take the
8 invoices, and they -- that they handle -- and, again, I --
9 I kind of use ADP, who does a lot of employee payrolls for
10 companies, a contract payroll company. Occasionally you
11 will notice they issue an employment report. They handle
12 so many employee payrolls for so many companies, they
13 represent a reasonable trend in employment. And Cass does
14 a similar thing for -- for freight hauling. And, again,
15 this is the base rate, exclusive of any added fuel
16 surcharges. So it's actually billing, it's not, you know,
17 the cost, if you will.

18 Q. Okay. Thank you.

19 A. I guess it is the cost to the shipper, if you
20 could say that.

21 THE COURT: And just for the record, will you
22 spell Cass out?

23 THE WITNESS: C-A-S-S.

24 THE COURT: Thank you.

25 BY MR. MILTNER:

26 Q. Okay. I'm now looking at slide 8. And we -- when
27 we were doing our Q&A before lunch, we talked about some
28 balancing costs and the differences of those.



1 Today, if a cooperative is going to negotiate a
2 Class I supply agreement, they are able to point to USDA's
3 1998 decision and say, well, the Class I premium includes
4 this factor for balancing costs and --

5 A. Well, you said "Class I premium"?

6 Q. Class I differential. Thank you. Yes.

7 They are able to do that. And so in those
8 negotiations, if the cooperative can quantify its
9 balancing, actual balancing cost, that's a -- a data point
10 they can use to negotiate an over-order premium or
11 whatnot.

12 And so with the 2.20 base differential that
13 National Milk has come up with, how -- how do you think
14 that will affect the ability to negotiate with Class I
15 handlers about an over-order balancing premium?

16 A. I would say it certainly limits the upside that
17 you could include in a -- if you need -- if you have to
18 provide to your customer some schedule of, here's what
19 we're charging in our over-order price, they certainly
20 would have cause to say, okay, you have raised the -- the
21 minimum differential, so that may or may not impact the
22 amount of balancing. But it certainly would be a point
23 from a customer standpoint to argue with you as you were
24 sitting down to negotiate an over-order price.

25 Q. And of course, if it's an over-order premium, that
26 is retained by the seller of the milk, correct?

27 A. Yes.

28 Q. Whereas if it's in the differential, that's pooled



1 among all producers, correct?

2 A. Correct.

3 Q. Now, the balancing that you talk about on page 8
4 and page 9 of your slides, I interpret those as balancing
5 costs to the milk supplier and not so much to the pool.

6 Would you agree?

7 A. Absolutely.

8 Q. So is there a risk that increasing the
9 differential, the base differential, without specifically
10 quantifying the elements of that that's balancing, could
11 actually harm those co-ops that are supplying milk to
12 Class I handlers?

13 A. Ask that again, please.

14 Q. Sure. If you're increasing the base differential,
15 and we can't specifically point to the components of that
16 base differential that's attributable to balancing, and
17 it's harder than to extract an over-order premium for
18 balancing costs, doesn't that actually harm those co-ops
19 that are trying to supply the Class I market?

20 A. I would say perhaps there is a trade-off there.

21 Q. Okay.

22 A. That one of the things that is inherent in
23 over-order prices, or over-order premiums if you prefer
24 that term, is that they always can go down. So perhaps
25 where -- you know, if that -- if your premise is correct,
26 that that -- if this embodies some value of a balancing in
27 the 2.20 and that becomes a negotiation point, there would
28 be a trade-off between what's assured in the Federal Order



1 price and what's possible or risky in the over-order
2 price.

3 Q. And on a similar point -- were you here for
4 Mr. Lamer's testimony this morning?

5 A. I was.

6 Q. And there was a question asked that, if he
7 didn't -- essentially, if he didn't have to pay a Class I
8 differential, could he pay his supplying farms more, and
9 he answered, yes.

10 Do you recall that exchange?

11 A. Yes, I do.

12 Q. And I suppose that that is theoretically possible,
13 and I trust Mr. Lamers on his word.

14 But in your experience, what do you think the
15 likelihood is of a reduction in the differential being
16 passed through directly to producers?

17 A. I think the operative word is "can" you pass it on
18 to your producers. And if it's not -- you know, if it's
19 simply a reduction in the Class I differential, which
20 reduces the Class I price, which reduces the blend, and
21 there's no requirement that those be passed on, then
22 certainly -- then basically you are swapping regulated
23 price with an unregulated price, and you bring into the --
24 into doubt whether that -- those savings that that plant
25 experiences from a lower price get passed on to the dairy
26 farmer. If it's a "can," it doesn't mean "will."

27 Q. And would you agree that there's a difference
28 between reducing an already existing differential and



1 increasing an already existing differential in terms of
2 what a handler's response to its member suppliers might
3 be?

4 A. Certainly.

5 Q. Okay. On page 11 of your slides, can you just
6 address what you are driving at here, just so I'm clear on
7 what you are trying to convey?

8 A. Yes. That there are peaks and valleys in Class I
9 demand. As we have talked, there's weekly peaks; there's
10 weekly valleys. There's monthly peaks; there's monthly
11 valleys. There's annual peaks; there's annual valleys.
12 And carrying those reserve supplies to meet those peak
13 demands, no matter what time period you focus in on, if
14 there's a peak, there's a valley, and that difference
15 between the peak and the valley represent the reserve
16 required to meet those peak demands. You know, if you are
17 going to meet the peak, you have to have -- you got to
18 have balance -- the difference between the peak and the
19 valley, and those costs are substantial.

20 Q. On the slide you state that temporarily shuttering
21 or cutting back throughput at manufacturing plants when
22 Class I demand bounces back lowers earnings at the
23 manufacturing plants.

24 And what you are describing there is a classic
25 balancing plant issue, correct?

26 A. Absolutely.

27 Q. Now, here's my question, and I'm trying to figure
28 this out.



1 In the Make Allowance calculations, all of the
2 overhead of a manufacturing plant is spread across the
3 volume of product it produces, correct?

4 A. I believe that's true, yes.

5 Q. And so a balancing plant, that's a true balancing
6 plant, will likely have a higher cost of make than a
7 manufacturing plant that's a demand plant, correct?

8 A. I would put it this way: If you reduce the
9 throughput of that balancing plant, the fixed costs
10 remain, so you are spreading that fixed cost over a
11 reduced quantity of throughput. So per unit of output,
12 the fixed costs on a balancing plant are higher than a
13 plant that runs full all the time.

14 Q. And these classic balancing plants that we're
15 talking about, those are traditionally cooperative-owned
16 facilities, correct?

17 A. Quite often, yes.

18 Q. So if we're already allocating those fixed costs
19 across the actual product produced at a balancing plant,
20 are we -- are we kind of double dipping if we now try to
21 say that there's an additional balancing cost there to
22 incorporate in a Class I differential?

23 A. I think it's the opposite.

24 Q. Okay. Explain.

25 A. I don't think that if we -- if we -- if you apply
26 a Make Allowance based on some presumed throughput when
27 that -- per pound of output, when you reduce that
28 throughput in a balancing plant, that plant's going to



1 have a higher Make Allowance than -- its own internal
2 Make Allowance will be higher than the -- what's
3 established in the order; therefore, they have to be
4 compensated in addition to whatever makes its way into the
5 Class I differential.

6 Q. Thank you.

7 On page 12, you're continuing to talk about the
8 need for reserve milk supplies, and you describe a
9 situation where a plant has cancelled an order for milk,
10 resulting in it having to be rerouted, or re-rerouted as
11 you point out.

12 A. Yes.

13 Q. Are you familiar with take or pay provisions in
14 milk supply contracts?

15 A. I am.

16 Q. And can you explain why those take or pay
17 provisions don't address the concern you have laid out
18 here?

19 A. Because, number one, that only occurs if their
20 orders drop below the minimum take provision. I don't
21 like to call them take and pay. I prefer to think of them
22 as -- as minimum purchase requirements. But if -- those
23 only kick in if they drop below the minimum contracted
24 purchase. It doesn't mean they can't go above. And they
25 might order a load over a -- in excess of the minimum
26 purchase requirement, and then if they cut that load, then
27 you still got the same cost. So that only -- the take or
28 pay, as you called it, only applies when you get down to



1 the minimum, not anything above the minimum. And that
2 still requires balancing over and above the minimum.

3 Q. And on the following slide, page 13, at the very
4 end, you state: "If the market is one truck load short,
5 then there wasn't sufficient supply. This occurs with
6 some regularity."

7 And I wondered if you could comment on what you
8 mean by "regularity" in that context and when that occurs?

9 A. Yes. The classic example, certainly, is when milk
10 is rationed around -- it depends on the part of the world,
11 but in our world in the South and Southeast, Southwest and
12 Southeast, middle of August, their schools start back up
13 and there's an enormous immediate surge in Class I need
14 because all the plants that have been idle or have part of
15 their processing idled in the summer when schools are out,
16 all of a sudden crank right back up to supply the school
17 sales.

18 And so oftentimes -- I'm going to say it's
19 often -- or regularly, we actually have to ration milk
20 during that surge, and somebody doesn't get what they want
21 when they want it. That sometimes it's -- you know, you
22 may be able to supply it over the course of the week, but
23 they want it on Tuesday, and believe me, they get hot if
24 it only gets there until -- on Thursday. So milk is
25 sometimes rationed, that time period, particularly.

26 Sometimes it's a matter of economics, that it's
27 possible to, you know, ration by zero, that you -- someone
28 calls up and wants a load of -- or some number of loads of



1 spot milk in that period of time because they don't have
2 enough, and we run the numbers and say, here's what it --
3 you know, here's what they are offering, here's what --
4 you know, what it will cost us to get it there, and we
5 say, no, that the Class I money is just simply not enough
6 to shake it loose.

7 So rationing happens.

8 Q. And in those instances, the sellers of milk are
9 not able to command an over-order price sufficient to
10 supply those plants on a spot basis for those handful of
11 days per year?

12 A. Sometimes it is more than a handful. I mean, this
13 crunch time, we normally think of, at least when we're
14 planning for Lone Star's demand surge, we think about
15 August the 15th usually through October, that this is
16 demand crunch time. So sometimes the over-order prices
17 simply aren't enough.

18 Q. And so what you are describing here, is that Lone
19 Star's experience? Is that limited to Lone Star's
20 experience?

21 A. I think -- I do not think that we stand alone in
22 this experience.

23 Q. And you mentioned both the Southeast and the
24 Southwest, is this experience occurring in both of those
25 orders, say, Order 7 and Order 126?

26 A. Yes.

27 Q. There have been questions asked in the hearing
28 about call provisions and making calls for milk.



1 Are those options available in those two orders?

2 A. No.

3 Q. On page 18, you're -- or it begins on page 17 --
4 you are talking about comments on over-order prices.

5 A. Yes.

6 Q. I asked you before lunch about the difficulty of
7 maintaining over-order premiums through a marketing agency
8 in common.

9 Do you recall those questions?

10 A. You will refresh my memory if I don't, but
11 generally, yes.

12 Q. Well, I was trying to ask about whether unanimity
13 among the members of a marketing agency in common is a
14 prerequisite to being able to hold those premiums?

15 A. In a practical sense, absolutely.

16 Q. And so I guess my -- I guess my question is, is
17 the trade-off between attempting to hold an over-order
18 premium and increasing the differential, you're trading
19 off the ability to capture that market value for yourself
20 versus sharing it in a pool?

21 A. If you look at it that narrow way, I guess that's
22 true. I may -- I have got a lot of experience when it
23 comes to over-order pricing agencies, and that's the life
24 I have lived for a long time, or did live in another life.

25 But I will say this: I would trade regulated
26 pricing that is sure and certain for the hope of
27 over-order prices, just about any day.

28 Q. Would you trade an over-order premium of \$1 today



1 for an increase of \$0.60 in the regulated price tomorrow?

2 A. Me, personally? I might very well make that trade
3 because that dollar is not sure. That dollar can just as
4 easily go to zero as it goes down \$0.40 or \$0.60 or
5 whatever the number is. Surety in -- in the value of the
6 Federal Order pools is important. Over-order prices have
7 their place, I'm not saying we need to, you know, erase
8 them. But I'm simply saying, if you are -- if you are --
9 if you are trying to manage your risk regarding dairy
10 farmers and the price that they get paid, the best
11 mitigation of the risk is that those values be in the
12 pool.

13 Q. Does your answer to that question change if you're
14 operating in an order with a 25% Class I utilization
15 versus one with an 80% Class I utilization?

16 A. I don't think so because the Class I plants pay
17 their over-order premium based on the individual plant
18 utilization, not the pool utilization. So if I'm charging
19 an over-order price to a Class I plant in Order 7 versus
20 Order 126, you know, just hypothetically, I get to keep
21 the same money -- if those two over-order price rates are
22 the same in Order 7 as they are in 126, my revenue is the
23 same because it's -- those numbers, those values are not
24 dependent on the Federal Order Class I utilization. I get
25 to keep 100% of it on either -- in either case.

26 Q. I think your analysis assumes that the
27 cooperative's utilization is the same as the order?

28 A. I'm saying that the dollars that I -- if there's a



1 ten-load-a-day plant, Class I plant, in Order 7, a
2 ten-load-a-day Class I plant in Order 126, if I charge
3 them each \$1 per hundredweight on a -- as a Class I
4 premium, my revenue is the same, no matter where -- where
5 either of those plants sit. My dollars of revenue are the
6 same.

7 Q. You are stating your -- as a cooperative, your
8 revenue is the same whether you charge a Class I plant an
9 over-order premium of \$1, which you retain, or an over- --
10 or they have to pay \$1 higher in a Class I price which is
11 pooled?

12 A. Oh, I'm sorry. I misunderstood your question. I
13 thought your question was what's your revenue -- is the
14 revenue that you get from those plants the same or
15 different depending on the Class I utilization in the
16 pool. I would agree that there could be a difference in
17 terms of how much you draw out of the pool based on
18 whether or not -- based on the utilization in -- the total
19 utilization of milk Class I milk within the Federal Order
20 pool.

21 Q. Okay. So on page 33 of your slides, you provide
22 an example of milk sales from the Texas Panhandle down to
23 the Gulf Coast.

24 A. Yes. Or Dallas.

25 Q. Or Dallas.

26 Is this an issue that will be explored more when
27 you talk specifically about the Southeast and Southwest,
28 or should I ask questions about this now?



1 A. As long as we don't get off into what the
2 differential ought to be or what our recommendation on the
3 differential for these places is, as a matter of
4 illustration, we certainly can talk about this now.

5 Q. Well, I guess maybe there will be a little bit of
6 both.

7 My question is: The 400-mile haul from Hereford
8 to Dallas and the 600-mile haul from Hereford to Houston,
9 in your experience, is that an everyday supply of milk
10 from that milk shed to those plants?

11 A. Absolutely.

12 Q. So the regular supply agreement for those plants
13 contemplates that milk traveling that distance, not just a
14 top-off load or a spot load?

15 A. Well, I'm not -- I can't comment about the
16 agreement between a plant and a -- and the supplier. But
17 I'm saying that milk moves from the Panhandle to Dallas,
18 or the Panhandle to Houston or Conroe on the Gulf Coast
19 every day.

20 Q. And your illustration shows that even with some of
21 the changes that the Proposal 19 makes, that's still a
22 loss on the shipment?

23 A. Yes, it is.

24 Q. So why wouldn't that producer ship to the New
25 Faria plant, or some other plant in the Panhandle still?

26 A. The only reason they wouldn't is that there's no
27 room at those plants, under the current pricing structure.
28 If a producer can get the Class III price or the Class IV



1 price in the Panhandle, they eventually -- and if -- and
2 that of course that "get" means they can supply that
3 plant. But based on the pure economics, today, they would
4 opt to keep their milk at home and supply Class III or
5 Class IV and say, we don't really care about the pool.

6 This -- we're boiling this down -- here's the --
7 here's the crux of this question. In this part of the
8 world, dairy farmers are going to be faced with an
9 investment decision. They are going to have to decide --
10 or we'll be deciding -- whether they build plants that
11 make Class IV or Class III products, whether they invest
12 the money, use their resources to invest in brick, mortar,
13 and stainless steel where the milk sits, or invest in
14 trucks and trailers to get it to where the people are.

15 And today the numbers say, you ought to be
16 building plants in the Panhandle, and you ought -- and
17 so -- and like I said, I said this before, we have a
18 generation of dairy farmers now who don't buy into Class I
19 comes first. They don't get that. They don't buy into
20 that paradigm. They say, why am I doing that? Why are we
21 doing that? And the answer sometimes is, well, there's
22 not enough manufacturing capacity in the Panhandle to
23 handle all that -- pardon the double use of that word --
24 but long-term, if this is the kind of economic decision
25 that they are faced with, the answer is clear, they are
26 going to build plants.

27 And, like I said, if you want a picture of a
28 threat to Class I supplies or -- this is it. I mean...



1 Q. This is not meant to be a pointed question at the
2 proposal, but a practical one. If the rational economic
3 decision for the producer in the Panhandle is to invest in
4 manufacturing because there's a market for the products
5 coming out of that plant, and it returns more -- that's
6 their highest return, if that is what economics say, why
7 should they not do that and tell the Class I plant, if you
8 want the milk, you are going to pay \$6 in freight to get
9 it there, otherwise I'm not sending it?

10 Why do we need to change the formulas and the
11 differentials to make that happen? I mean, that's a
12 fundamental question about why the over-order premium
13 component of this will not work.

14 A. That's the -- that is the question before us. We
15 have -- we have proposed raising the differentials to
16 mitigate some of this, but it probably doesn't mitigate --
17 not probably -- it doesn't mitigate all of it. It's
18 certainly a step in the right direction.

19 But your point is well taken. The -- the issue is
20 that today, certainly, the economic signal is, you are
21 absolutely right, those -- those Class I plants where all
22 those people are in the east side of Texas are going to
23 have to pay to shake the milk loose of manufacturing,
24 eventually.

25 THE COURT: Mr. Sims, did you mention a place
26 named Conroe?

27 THE WITNESS: Yes. I'm sorry.

28 THE COURT: What is that?



1 THE WITNESS: Conroe is a town slightly north and
2 east of Houston. There's a -- a Class I plant in that --
3 in that county. I forget which the county name is. But
4 Conroe, C-O-N-R-O-E. It is a city in Texas. It is an
5 adjacent county to Houston, but slightly shorter haul than
6 going all the way to Houston.

7 THE COURT: Thank you.

8 BY MR. MILTNER:

9 Q. On page 44, I think Mr. English asked you to name
10 everybody on the committees, and you did what you could.
11 And I'm not going to -- I won't try to fill in the gaps.
12 But I was hoping that you would be able to let us know who
13 is going to deliver testimony on the -- on each of the
14 areas.

15 So for the first group -- well, let me just --
16 let's go through each order.

17 For the Northeast, do you know who is going to be
18 presenting the testimony on that?

19 A. Ms. Ryll -- let me -- let me be sure and be
20 accurate. There will be at least one what I would call
21 primary witness in each of these regions, and then there
22 will be several regional -- I guess we could call them
23 support witnesses that will add some flavor or some
24 additional reasoning behind how we came up with the
25 various differentials. If you want to -- if -- the best
26 way to find out who it is, is simply look at the list of
27 exhibits that have been provided.

28 But Ms. Ryll I believe will be the primary witness



1 for the Northeast.

2 Q. Okay. I have the list here. I'll be frank, I've
3 not read all 20 of them yet, but maybe that's -- the best
4 way is to go through this.

5 Will Mr. Erba be -- or Dr. Erba be talking about
6 any order in particular?

7 A. Generally the Mideast.

8 Q. Mr. Vandenheuvel will do California, I assume.
9 Mr. Hoeger?

10 A. Generally the Upper Midwest and somewhat down into
11 the Central part of the country, and the Southeast and
12 Southwest.

13 Q. He'll be busy.

14 Mr. John?

15 A. Supporting testimony for what I would call the
16 Middle Atlantic and the Eastern side of Order 5.

17 Q. You would be one of the supporting witnesses that
18 you mentioned?

19 A. Yes.

20 Q. Okay. I hope I get the name right, Werme?

21 A. Werme.

22 Q. Werme.

23 A. Northeast.

24 THE COURT: I didn't get the name?

25 THE WITNESS: Werme, W-E-R-M-E. And it's
26 pronounced Werme.

27 BY MR. MILTNER:

28 Q. And Ms. Ryll who you mentioned earlier is spelled



1 R-Y-L-L, I believe?

2 A. I believe that's correct. Yes.

3 Q. Mr. Covington will be talking about Florida, I
4 presume?

5 A. Generally.

6 Q. I assume it's Mr. Parks from MMPA will be
7 Order 33?

8 A. Yes.

9 Q. Butcher from UDA. That's Arizona. That's easy.
10 Mr. Schilter will be 126 -- or 124?

11 A. Yes.

12 Q. Okay. Mr. Herting from DFA?

13 A. Parts of Order 7.

14 Q. Mr. Kang from DFA?

15 A. Order 126.

16 Q. Mr. Brinker from DFA?

17 A. Midwest. Upper Midwest.

18 Q. Mr. Stout from DFA?

19 A. Whom?

20 Q. Stout, I believe?

21 A. Colorado.

22 THE COURT: May I stop you there? Mr. Miltner,
23 you may keep going, but I have got a lot of spellings I
24 need.

25 So I have Ms. Ryll, R-Y-L-L.

26 We know Dr. Erba.

27 I think we know Vandenheuvel.

28 MR. MILTNER: Yes, he's appeared in the hearing.



1 THE COURT: Hoeger?

2 MR. MILTNER: Mr. Hoeger has appeared in the
3 hearing, and I believe it is H-O-E-G-E-R.

4 THE COURT: Okay. Good. Thank you.

5 And Mr. John, J-O-N?

6 MR. MILTNER: J-O-H-N.

7 THE COURT: Oh, it's J-O-H-N. Okay.

8 And we already have the spelling of Werme.

9 And then Covington we know.

10 Was the next one Parks?

11 MR. MILTNER: Yes.

12 THE COURT: And the next one Butcher?

13 MR. MILTNER: Yes.

14 THE COURT: And then what was that --

15 MR. MILTNER: Schilter, S-C-H-I-L-T-E-R.

16 THE COURT: All right. Was the next one Herting?

17 MR. MILTNER: Herting, H-E-R-T-I-N-G.

18 THE COURT: Okay. Was the next one Kang?

19 MR. MILTNER: Kang, I believe. That's K-A-N-G?

20 THE WITNESS: K-A-N-G, Kang.

21 THE COURT: And who was Colorado?

22 MR. MILTNER: Mr. Stout.

23 THE COURT: Is that right? Spelled?

24 MR. MILTNER: S-T-O-U-T, I believe.

25 THE COURT: Thank you. And you may proceed with
26 what you were doing.

27 MR. MILTNER: Thank you.

28 ///



1 BY MR. MILTNER:

2 Q. Okay. The next is Mr. Gallagher who has appeared
3 in the hearing already, I believe. Would that be Order 1
4 or --

5 A. He -- I think he may have multiple comments, but
6 also, Colorado.

7 Q. Mr. Hiramoto from DFA, is that California?

8 A. Yes.

9 Q. And that's H-I-R-A-M-O-T-O.

10 Mr. Edmiston from Land O'Lakes, who's appeared in
11 the hearing?

12 A. Upper Midwest.

13 Q. I believe there's a witness Heiskell,
14 H-E-I-S-K-E --

15 A. That's a consultant regarding certain feed costs.

16 Q. Great.

17 MR. MILTNER: I think I'm contractually obligated
18 to make us get out one of the large exhibits.

19 THE COURT: I appreciate your remorse.

20 MR. MILTNER: This is MIG-30, and I don't have the
21 exhibit number in front of me. I didn't bring up my paper
22 copy.

23 322? Thank you, Mr. English.

24 THE COURT: Yes. MIG-30, Exhibit 322, thank you.

25 Does the witness need one?

26 THE WITNESS: The witness needs one.

27 BY MR. MILTNER:

28 Q. Okay. Because I am not looking off the paper copy



1 but the Excel sheet, I'm looking at Row 83, Yuma County,
2 Arizona.

3 A. Yes.

4 Q. So on Column L, the average from the model is
5 \$2.15.

6 Do you see that?

7 A. I do.

8 Q. Now, as I understand it, that means that the model
9 assumes that there is a \$0.55 additional location value in
10 Yuma County over the \$1.60 base differential.

11 Do you agree with that?

12 A. Let's -- if you would ask that again. I...

13 Q. Sure. The model's result of \$2.15 average, as I
14 understand Dr. Nicholson's testimony, means that there is
15 \$0.55 in additional location value in Yuma County above
16 the \$1.60 base differential.

17 Do you agree with that?

18 A. Yes. \$2.15 exceeds \$1.60 by \$0.55, yes.

19 Q. Aside from the arithmetic --

20 A. Yes.

21 Q. -- do you agree --

22 A. Yes.

23 Q. -- with that --

24 A. Yes.

25 Q. -- understanding?

26 A. Yes.

27 Q. Okay.

28 (Court Reporter clarification.)



1 THE WITNESS: I might add, approximately \$0.55,
2 knowing that the -- that there's some -- some additional
3 play in the model other than that. But the model would
4 suggest \$2.15, yes.

5 BY MR. MILTNER:

6 Q. Okay. Thank you.

7 Now, the base differential that National Milk has
8 proposed is \$2.20?

9 A. The minimum differential we proposed is \$2.20,
10 yes.

11 Q. And so the proposed differential for Yuma County
12 in Proposal 19 is \$2.90, correct?

13 A. According to this sheet, yes.

14 Q. So what accounts for the additional \$0.15 between
15 \$2.20 plus \$0.55?

16 A. Again, these are questions you will need to ask
17 the regional witness to describe how they arrived --
18 arrived at \$2.90. What local circumstances they applied
19 to justify the recommendation of \$2.90.

20 Q. Okay. Let's jump ahead then to --

21 THE COURT: And just so you keep me straight,
22 \$2.90?

23 THE WITNESS: \$2.90 per hundredweight, yes.

24 BY MR. MILTNER:

25 Q. Let's jump ahead to Lubbock County, Texas,
26 Row 2642.

27 A. Yes.

28 Q. And if we go through the same analysis, Column L



1 shows an average differential of \$2.85, which would
2 reflect \$1.25 above the \$1.60 base zone in that model,
3 correct?

4 A. Just a minute. You are comparing \$2.85 per
5 hundredweight from Column L, cell -- Row 2642, to \$2.20?

6 Q. To \$1.60.

7 A. Oh, I'm sorry.

8 Q. That's okay.

9 THE COURT: Ask again, if you will, Mr. Miltner.
10 It took me a little while to get to page 43 of my hard
11 copy.

12 MR. MILTNER: Of course.

13 BY MR. MILTNER:

14 Q. In Column L and Row 2642, the Wisconsin model
15 shows an average differential of \$2.85. If you deduct
16 \$1.60 for the base differential in the Wisconsin model,
17 you get \$1.25, correct?

18 A. Yes.

19 Q. We understand that that represents the additional
20 location value of milk in Lubbock County, Texas, under the
21 Wisconsin model?

22 A. Yes.

23 Q. Now, if I take that \$1.25 in addition -- of
24 location value and I add it to -- I add \$2.20 to it, I get
25 \$3.45.

26 A. I'm sorry.

27 Q. \$1.25 plus \$2.20.

28 A. I think you have double counted something there.



1 Q. What did I double count?

2 A. Wait a minute. Okay. So what you are saying is,
3 okay, remove the 1.60 out of 2.80 -- I'm sorry -- subtract
4 from \$2.85 a hundredweight, \$1.60 --

5 Q. Correct.

6 A. -- model minimum base differential --

7 Q. Yes.

8 A. -- leaving a location value of \$1.25 per
9 hundredweight versus that -- whatever area that base zone
10 is, the \$1.60, wherever the \$1.60 applies?

11 Q. Yes.

12 A. And so now you are saying, okay, using that
13 location value of \$1.25 per hundredweight, \$1.25 per
14 hundredweight, plus \$2.20 per hundredweight, you are
15 saying that that would yield \$3.45 per hundredweight?

16 Q. Correct.

17 A. Yes.

18 Q. Okay. Now, the proposed differential for Lubbock
19 County, Texas, under Proposal 19 is \$3, correct?

20 A. Yes.

21 Q. So what -- you worked on the Southwest pencil
22 crew, correct?

23 A. Yes.

24 Q. What accounts for the \$0.45 different?

25 A. First off, we did not start with the \$2.20 as we
26 have indicated. We started with the \$1.60. The model
27 called for -- applied the \$1.60. So the real difference
28 between the model and what we finally proposed was only



1 \$0.15 higher.

2 Q. What accounts for the \$0.15?

3 A. The local -- the need to attract a local supply,
4 price alignment with other plants in the area -- or not
5 need to attract local supply. Actually in that case it's
6 mostly price alignment with the other plants around to
7 make sure that the price alignment from the Panhandle to
8 Dallas and Dallas to Houston or Panhandle to Houston lines
9 up correctly.

10 Q. Was that simply a matter of creating a slope
11 between those points?

12 A. That price alignment is -- does take into account
13 the need to have a slope between the Panhandle and those
14 destination cities with the Class I plants.

15 Q. Can you speak with any more specificity about
16 those particular competitive issues or price alignment
17 issues that -- that led to that \$0.15 adjustment in
18 Lubbock County?

19 A. We can do it now or we can do it when I do my --
20 the Southeast/Southwest total.

21 Q. Well, if those issues are going to be addressed in
22 your other -- in your later statement, we can wait.

23 A. They will.

24 Q. So let's flip back to Ada County, Idaho, which is
25 Row 519.

26 A. Yes.

27 Q. This was I believe the only county in the model
28 that showed \$1.60 reflecting that there was no additional



1 location value or minimal additional location value to
2 milk in that county, correct?

3 A. I believe what the model suggests is the next
4 hundred pounds, no one would be willing to pay any more
5 for the next hundred pounds than they paid for anything
6 before. So there still is value to the milk there, it's
7 just there's no additional value. No one would desire to
8 demand any more milk there.

9 Q. And do you accept the model's conclusion that
10 there's no demand for additional milk there?

11 A. I think the model says if there is demand, they
12 will pay no more for it. I don't know that that means
13 there's no more demand. It simply says they won't be --
14 they have no desire to pay any more to get any more.

15 Q. Okay. So when National Milk said -- established a
16 \$2.20, I'll use your term, minimum differential, if the
17 model suggests that there is essentially no additional
18 demand or minimal value for the next hundred pounds of
19 milk there, and the minimum differential is \$2.20, what
20 accounts for the additional \$0.25 between the minimum
21 differential and the \$2.55 proposed for Ada County?

22 A. The regional committee must have determined there
23 was some -- some other issues, perhaps distance to the
24 next plants, the milk that draws -- was drawn out there,
25 price alignment. There's distance -- distance issues,
26 time on the road issues, if you have to go through a city
27 to the next place. Those kinds of things.

28 MR. MILTNER: Okay. That's all I have. Thank



1 you, Mr. Sims.

2 THE COURT: Mr. Miltner, thank you. I always
3 appreciate the clarity of your questions.

4 MR. MILTNER: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. ROSENBAUM:

7 Q. Steve Rosenbaum for the International Dairy Foods
8 Association.

9 I'd like to start my examination by continuing a
10 discussion about the movement of milk in the Texas
11 Panhandle to Houston and Dallas. Okay?

12 A. Yes, sir.

13 Q. I'm actually from east of Houston, so it is a -- I
14 know all the names. Went to Boy Scout camp in Conroe,
15 Texas.

16 So in any event, on page 15 of Exhibit 310, which
17 is your written testimony -- if you could get that.

18 A. Page what again?

19 Q. 15.

20 A. Yes, sir.

21 Q. You make the statement there, I'm just trying to
22 orient ourselves, quote: "By comparing the returns" --

23 A. Which paragraph?

24 Q. It's the first full paragraph -- well, actually I
25 guess it is the carryover paragraph, actually.

26 A. Okay.

27 Q. Quote: "By comparing the returns after deducting
28 hauling costs for delivering milk to hard product



1 manufacturing plants at the Class III and Class IV prices
2 in Amarillo, Texas, versus delivering to pool distributing
3 plants in Dallas or Houston and collecting the Order
4 blend, the choice becomes abundantly clear: It is more
5 advantageous for farmers to keep their milk local and
6 forego the order pool. Over the past four and a half
7 years, there has not been a single month where the minimum
8 blend price as announced by Order 126 incentivized
9 delivering milk to Dallas or Houston versus the Class III
10 price. Texas Panhandle producers have incurred
11 substantial net losses when delivering milk to these
12 cities," end quote. I'll stop there.

13 And that's -- that's the point you have been
14 making, correct?

15 A. Yes.

16 Q. And you have -- and if we look at your
17 PowerPoints, HE 318, and turn to page 34, this is your
18 illustration of the point that we just got through
19 quoting, correct?

20 A. Yes.

21 Q. And you have two pages. Page 34 is Class III
22 milk, and page 35 is Class IV milk, correct?

23 A. Yes.

24 Q. And you've decided to use June 2023 as your
25 example, correct?

26 A. Yes. But if -- the next -- the succeeding two
27 pages use the averages from January 2018 through
28 June 2023.



1 Q. Okay.

2 A. I readily admit that the recent month was a
3 somewhat anomaly month in terms of class prices.

4 Q. Well, I'm going to use June 2023 for my
5 questioning, at least at the moment. So -- and I just
6 want to make sure we're all oriented the same way.

7 So the milk here is located in Hereford, Texas,
8 correct?

9 A. Yes, theoretically.

10 Q. Theoretically. Yes, this is a theoretical
11 example.

12 But nonetheless, one -- and it is 48 miles from
13 Hereford to Amarillo, correct?

14 A. Yes.

15 Q. And you've determined that the hauling cost is
16 \$0.41 a hundredweight to get from Hereford to Amarillo,
17 correct?

18 A. In this month, yes.

19 Q. Yes. Okay.

20 And the Class III price in that month was --
21 that's a real number -- \$14.91, correct?

22 A. Yes.

23 Q. And so you have shown that a farmer located in
24 Hereford would net \$14.50 by hauling his or her milk to
25 Amarillo, at a cost of \$0.41 of hauling costs, and getting
26 \$14.91 selling to a Class III handler, correct?

27 A. Yes.

28 Q. All right. And then you compare that to two other



1 options. One is that farmer hauls the milk from Hereford
2 to Dallas, a distance of 407 miles, correct?

3 A. Yes.

4 Q. And that hauling cost would be \$4.21, correct?

5 A. Yes.

6 Q. The statistical uniform price at Dallas that month
7 was \$17.25, correct?

8 A. Yes.

9 Q. And so you are saying that that producer that took
10 the milk to Dallas would net \$13.04, correct?

11 A. Yes.

12 Q. Which is \$1.46 less than the net you have
13 calculated had that farmer instead took his or her milk to
14 Amarillo, correct?

15 A. Yes.

16 Q. And that's why it's a negative \$1.46, correct?

17 A. Yes.

18 Q. By the way, the Class I differential in Dallas is
19 \$3, correct?

20 A. Yes, \$3.

21 Q. Okay. The other option you look at is hauling the
22 milk not from Hereford to Dallas, but rather from Hereford
23 to Houston, which is a longer distance, 635 miles,
24 correct?

25 A. Yes.

26 Q. And that hauling cost you determined to be \$6.57,
27 correct?

28 A. Yes.



1 Q. And the statistical uniform price in Houston in
2 June 2023 was, in fact, \$17.85, correct?

3 A. Yes. \$0.60 more than Dallas.

4 Q. And indicating that the Class I differential in
5 Houston is \$3.60, correct?

6 A. Correct.

7 Q. And you have shown that the statistical uniform --
8 excuse me -- you have -- start that question again.

9 You have shown that that farmer, by taking his or
10 her milk to Houston to a Class I plant, netted \$11.28,
11 reflecting the \$17.85 statistical uniform price minus the
12 \$6.57 hauling cost, correct?

13 A. Yes.

14 Q. And you are showing that that return to that
15 farmer, \$3.22 less than he or she would have received had
16 she simply taken his or her milk to the Class III plant in
17 Amarillo, correct?

18 A. Yes.

19 Q. Okay.

20 MR. ROSENBAUM: Now, I'd like to mark as an
21 exhibit the data provided by the Southwest order for that
22 month.

23 THE WITNESS: Okay.

24 MR. ROSENBAUM: And I'll ask this be marked as an
25 exhibit.

26 THE COURT: Let's go off record while we handle
27 the paperwork. We're off record at 2:08.

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



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

2 We're back on record at 2:08 p.m.

3 Now, I believe the last number was to

4 Mr. Lamers' 1A which was 330. Am I correct?

5 So this document will be 331. 331.

6 (Thereafter, Exhibit Number 331 was marked
7 for identification.)

8 BY MR. ROSENBAUM:

9 Q. Now, I've handed the witness a copy of Hearing
10 Exhibit 331, and I -- it's front and back and -- on one
11 page. And what I'm interested in is the information on
12 the sheet that has the words "Southwest Marketing Order
13 Price Data, June 2023."

14 Do you have that side of it?

15 A. Yes.

16 Q. Okay. And do you see that -- and I'm using this
17 just to provide some additional information regarding this
18 same month of June 2023, which is the month you chose as
19 your example month, correct?

20 A. I chose the most recent one in the dataset, but
21 the -- again, the dataset includes 50-some-odd months, I
22 think.

23 Q. All right. Well, thankfully I'm not going to go
24 through 50 examples. I'm going to stick with June 2023.

25 And do you see, for example, that it lists the
26 Class III price as being \$14.91? Do you see that?

27 A. I do.

28 Q. And that's the same, as you used in your example,



1 which appears on page 34 of page -- of Hearing
2 Exhibit 318, correct?

3 A. Yes.

4 Q. And similarly, you see that it shows the
5 statistical uniform price of milk at 3.5% butterfat in
6 Dallas was \$17.25.

7 Do you see that?

8 A. I do.

9 Q. And that, once again, is the same number that you
10 used in your example, correct?

11 A. Yes.

12 Q. Now, information that does not appear in your
13 example -- and I'm not saying it should, I'm just saying
14 it doesn't -- that does appear in the document in front of
15 you, is, in fact, for that month, what the producer milk
16 utilization percentages were for Classes I, II, III, and
17 IV in the order, correct?

18 A. Yes.

19 Q. And it shows, for example, that the Class I
20 milk -- that pooled Class I milk was 285,594,250 pounds?

21 Do you see that?

22 A. I do.

23 Q. And that represented 26.67% of total pooled milk.

24 Do you see that?

25 A. Yes.

26 Q. And Class II was 73,590,254 pounds, representing
27 6.87% of pooled milk.

28 Do you see that?



1 A. Yes.

2 Q. Class III was 702,600,428 pounds, representing
3 65.61%, correct?

4 A. Yes.

5 Q. Class IV was 9,085,557 pounds, representing .85%,
6 correct?

7 A. Yes.

8 Q. It is -- we'll get back to this in a minute, but
9 essentially Class IV had depooled that month, correct?

10 A. Yes.

11 Q. And the total pooled milk was
12 1,070,870,489 pounds, correct?

13 A. Yes.

14 MR. ROSENBAUM: Okay. I'd like to mark the next
15 exhibit.

16 THE COURT: Let's go off record while we do more
17 paperwork. It is 2:12 p.m.

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

19 THE COURT: We're back on record at 2:13.

20 Mr. Rosenbaum.

21 MR. ROSENBAUM: Your Honor, I would ask that the
22 document that I have distributed as well as given to Your
23 Honor and the witness, the top of which is entitled
24 "Comparison of Individual Producer vs. Pooled Cooperative
25 Returns," be marked as Hearing Exhibit 332.

26 THE COURT: It shall be.

27 (Thereafter, Exhibit Number 332 was marked
28 for identification.)



1 BY MR. ROSENBAUM:

2 Q. So this is a document that we have created to
3 analyze your analysis a little further.

4 So, first of all, in the box at the top, do you
5 see that on the left-hand side we have for the month of
6 June 2023 indicated the statistical uniform price for
7 Dallas and for Houston -- which were already included in
8 your exhibit, correct?

9 A. Yes.

10 Q. We have included the Class III and IV price, which
11 was already included on page 34 of your Exhibit 318 with
12 respect to the Class III price of \$14.91, and on page 35
13 of your Hearing Exhibit 318 with respect to the Class IV
14 price being \$18.26.

15 Do you see that?

16 A. I do.

17 Q. And then on the right-hand side of the top box we
18 have copied the information that I read into the record a
19 minute ago with respect to the total amount of pooled milk
20 in Order 126 during June 2023, as well as how much of that
21 fell into each of the four classes.

22 Do you see that?

23 A. Yes.

24 Q. So -- and we have indicated what percentage of
25 that was Class I, namely 26.67%.

26 Do you see that?

27 A. I do.

28 Q. Okay. So the next box is basically -- which is



1 called "Non-Pooled Amarillo Class III Plant," the -- it
2 has two columns in it, in addition to the sort of heading.
3 One is called "Single Producer" and one is called
4 "Cooperative."

5 Do you see that?

6 A. Yes.

7 Q. And do you see that in that box we have simply
8 replicated your analysis of the economics of selling all
9 the milk at the nearby Amarillo plant? Do you see that?

10 A. Yes.

11 Q. And such that you're netting \$14.50.

12 Do you see that?

13 A. Yes.

14 Q. And then in the right-hand most column, we have
15 the exact same numbers, but we have it under the heading
16 "Cooperative."

17 Do you see that?

18 A. Yes.

19 Q. And that indication is that if you, in fact -- the
20 supplier here was not a single producer but a cooperative,
21 if nonetheless, they, in that month, delivered the milk to
22 a non-pool plant in Amarillo, the economics for them would
23 be the same, correct? They would net \$14.50, right?

24 A. Yes.

25 Q. Okay. Now let's go on to the Dallas Class I
26 plant. Now, on the -- we have two columns, once again,
27 one called "Simple Producer" (sic) and one called
28 "Cooperative."



1 Do you see that?

2 A. I'm sorry. You might say that again?

3 Q. Yes. So we're -- start -- let me start again.

4 A. Did you say "simple producer" or "single"?

5 Q. If I said simple, I said it wrong, and I
6 appreciate the correction. Let me just start -- take a
7 step back, start my whole line of question again.

8 We have a box called "Dallas Class I Plant."

9 Do you see that?

10 A. Yes.

11 Q. And we have a -- two columns thereafter, one
12 called "Single Producer" and one called "Cooperative."

13 Do you see that?

14 A. Yes.

15 Q. So -- and under "Single Producer," we have now
16 simply replicated your analysis of the economics if that
17 producer, instead of delivering all of his or her milk to
18 the Amarillo plant, instead is delivering all of his or
19 her plant to the Dallas Class I plant.

20 Do you see that?

21 A. You better go through that again.

22 Q. Sure. In your Exhibit 318 on page 34, you had an
23 analysis of what the economics were if that producer
24 shipped its milk to a Class I plant in Dallas as opposed
25 to having shipped its milk to Amarillo, correct?

26 A. Yes.

27 Q. And what you showed was that producer would, after
28 paying for hauling costs, net \$13.04, correct?



1 A. Yes.

2 Q. And that the -- when you compared that \$13.04 net
3 to the \$14.50 net it would have gotten had it delivered
4 its milk to Amarillo, it would have gotten \$1.46 less by
5 going to Dallas, correct?

6 A. Yes.

7 Q. That's your analysis. Okay.

8 So now let's go to the right-hand column under
9 "Cooperative." And now this is our analysis, but I'm
10 going to see whether you agree that I'm right.

11 So now it's a cooperative with a lot of milk.

12 THE COURT: With a what?

13 MR. ROSENBAUM: "A lot of milk."

14 BY MR. ROSENBAUM:

15 Q. And it can ship some of it to Dallas and some of
16 it to Amarillo if it so chooses, correct?

17 A. Yes.

18 Q. So let's assume that it ships 26.67% of its milk
19 to Dallas. Okay?

20 A. Yes.

21 Q. Now, that is, in fact, exactly what the Class I
22 share was of pooled milk in that month.

23 Do you see that?

24 A. I do.

25 Q. So with respect to that 26.67% of its milk, it's
26 going to have to pay \$4.21 to ship it, correct?

27 A. Yes.

28 Q. It is -- the uniform price in Dallas is \$17.25 as



1 you have calculated. And so the net amount it gets for
2 delivering that milk to Dallas is \$13.04, correct?

3 A. Okay.

4 Q. Which is exactly the same as you had calculated
5 for the economics of shipping to Dallas, correct?

6 A. Yes.

7 Q. Okay. But it's going to ship -- now we're going
8 to the next box, which is called "Share of Pooled
9 Manufacturing Milk Delivered to Amarillo." So let's
10 assume that that cooperative is shipping the remainder of
11 its milk, namely the 73.33% of its milk, to Amarillo.
12 Okay?

13 A. Okay.

14 Q. And it's going to cost \$0.41 to do so, correct?

15 A. Yes.

16 Q. Okay. But having shipped 26.67% of its milk to
17 Dallas, it gets to pool all of its milk, right? All 100%
18 of its milk is now eligible to be pooled.

19 A. Well, I can't say that absolutely.

20 Q. Well, but --

21 A. But --

22 Q. -- we know in that month that 26.67% of milk was
23 pooled as Class I milk, and we know that 702 million
24 pounds of Class III milk qualified for pooling, correct?

25 A. If we -- if under the presumption that you have
26 made, that this cooperative's Class I utilization is
27 identical to the order Class I utilization, yes.

28 Q. Okay.



1 A. A -- a strong presumption. But go ahead.

2 Q. Okay. And so as a result of that, it is -- that
3 co-op is no longer receiving a mere \$14.91 for its milk
4 shipped to Amarillo, which was the Class III price,
5 rather, it will receive \$16.65 for all of that milk
6 because that is the statistical uniform price in Amarillo.

7 A. \$16.65 on the 73%?

8 Q. Yes.

9 A. Okay.

10 Q. Do you agree with that? That's how it works?

11 A. Yes.

12 Q. That is how it works?

13 A. Yes.

14 Q. All right. So now let's figure out what the true
15 economics are here. We have got a weighted average
16 hauling cost of \$1.42.

17 Let me tell you how I got there. You take the
18 26.67% of your milk that went to Amarillo -- start -- let
19 me start that again. I messed that up. Start it again.

20 The weighted average hauling cost is shown as
21 \$1.42. That is 26.67% times \$4.21, which is the cost it
22 took you to get 26.67% of your milk to Dallas, plus 73.33%
23 times 0.41. That's the cost of getting 73.33% of your
24 milk to Amarillo. Those two come to \$1.42. I'm going to
25 ask you to accept that number for present purposes.
26 Anybody who wants to can check it, simple math.

27 So now we get to the weighted average statistical
28 uniform price, which we show is \$16.81. That is 26.67%



1 times the \$17.25 for delivering the milk to Dallas,
2 because that's the statistical uniform price there, plus
3 73.33% times the \$16.65 that you get for the milk
4 delivered to Amarillo. Those two come to \$16.81. And
5 when you subtract the \$1.41 hauling cost from the 16.81,
6 you get a net of \$15.39.

7 Do you see that?

8 A. Yes.

9 Q. You have earned \$0.89 more than you would have
10 earned, per hundredweight, by doing what I have just
11 described and fulfilling the needs of the Class I milk in
12 Dallas, as compared to what you would have gotten had you
13 sold that milk in Amarillo at Class III, right?

14 A. I don't know I agree with that.

15 THE COURT: So take a minute. Let him -- he's
16 doing numbers. Let him do that.

17 THE WITNESS: You will have to take me through how
18 you get to the 16.81 on weighted average statistical
19 uniform price.

20 BY MR. ROSENBAUM:

21 Q. It is --

22 A. Is that 73% at 16 --

23 Q. It's 73.33 -- start that again.

24 A. Of \$16.65 --

25 Q. Yes.

26 A. -- 27-roughly percent on --

27 Q. The Judge is going to get upset at us because
28 we're giving numbers without explaining what they mean.



1 It is 73.33% times \$16.65, plus 26.67% times \$17.25.

2 A. Okay.

3 Q. I mean, to simplify what's going on here, by
4 shipping milk to a Class I handler --

5 A. Uh-huh.

6 Q. -- you have qualified for a share of the
7 uniform -- statistical uniform price for 100% of your
8 milk?

9 A. I think that that's an improper comparison. If
10 you are going to do that comparison, then you need to
11 compare the blend price on the single producer at Amarillo
12 versus what they have to pay to get to Dallas. There's a
13 \$0.60 difference between the blend price at Amarillo. So
14 if you are going to compare apples to apples, you have to
15 have the blend price revenue for the single producer at
16 Amarillo and compare that to what they get once they get
17 to Dallas.

18 Q. Sir, your comparison on page 34 was between
19 selling 100% of your milk for Class III versus instead
20 shipping your milk to Houston.

21 A. Right. It gets worse, the comparison is worse, if
22 you use the blend price at Amarillo because you only get
23 \$0.60 to go from Amarillo to Dallas. You only get \$1.20
24 when you use the blend to go to Houston. So the
25 comparison looks worse when you do it at blends because
26 you've got a -- you've got a 400-mile haul and the
27 difference in the blends is only \$0.60.

28 Q. You have earned 89 extra cents, sir.



1 A. I am telling you that this is not a valid
2 comparison. When you use the single producer here, you
3 need to back up and do that one by -- at blend, not
4 Class III. I made this as attractive as possible in this
5 comparison, that you look at the Class III price or the
6 Class IV price at Amarillo rather than the blend. This is
7 the best case scenario I provided.

8 Q. You did nothing to provide for the ability to send
9 most of your milk to Amarillo, but enough milk to a
10 Class I milk plant so that your milk in Amarillo would
11 qualify to be paid \$16.65 rather than \$14.91. That's what
12 you have lost.

13 A. I am simply saying, if you are going to do that on
14 one side, compare blends, you got to do it on both sides.

15 Q. I have done it for you on the cooperative side --

16 A. Well, sir, I'm saying that you haven't done it on
17 the single producer side.

18 Q. Well, because single producers aren't the ones
19 shipping milk to begin with. How many single producers
20 are shipping milk to Houston for a Class I plant? It is
21 zero.

22 A. I don't know that that number is zero. And I can
23 say for sure that -- that there are single producers who
24 ship their milk from the Panhandle to Dallas.

25 Q. What percentage of Class I milk comes from single
26 producers that ship from the Panhandle to Houston or
27 Dallas for --

28 A. I don't know --



1 Q. -- Class I milk?

2 A. -- what percentage it is, but people are making
3 this economic decision. That's the important question.

4 Q. I mean, you are the one who is doing -- I mean,
5 this is very familiar. You are the one who is doing the
6 shipping. You are Lone Star, right? You are the supply
7 plant that month?

8 A. Yes.

9 Q. One of the two supply plants that month?

10 A. Probably.

11 Q. Okay. I mean, the only reason you can be a supply
12 plant is if you were supplying Class I milk to Dallas or
13 Houston or Austin or somewhere like that, right?

14 A. Yes, there's an obvious Class I requirement to
15 qualify a supply plant.

16 Q. And there were two of you.

17 You were one of the two in that month, correct?

18 A. I don't -- I mean, let me look.

19 Yes.

20 Q. Okay. Now, isn't it true that notwithstanding
21 what you say on page 15 of Hearing Exhibit 310, in fact,
22 the minimum blend price announced by Order 126 does
23 incentivize delivering milk to Dallas and Houston versus
24 the Class III price?

25 A. Not enough incentive. It is higher, agreed. The
26 blend price in Dallas is higher than the Class III price
27 in Amarillo, or anywhere else for that matter, anywhere
28 else on earth. Or at least anywhere else in the United



1 States --

2 Q. And when you net it all out --

3 THE COURT: I don't think he had quite finished.

4 MR. ROSENBAUM: I'm sorry.

5 BY MR. ROSENBAUM:

6 Q. I thought you were finished. If not, please, go
7 ahead.

8 A. I'm simply saying, that if you look at it from a
9 producer standpoint, my calculations here are
10 straightforward, comparing to Class III and Class IV at
11 Amarillo. Also, we did -- we took out the anomaly months
12 by using in the next two pages the average of several --
13 of more than four years of data.

14 But from a producer standpoint, if they can get
15 the blend in Amarillo, which is you are saying what
16 they -- you know, when you pool it, you can. That's true.

17 But the incentive to milk out of the Panhandle to
18 Dallas is only \$0.60 compared -- when you compare the
19 blends, and it is a \$4 haul -- or over a \$4 per
20 hundredweight haul. I'm sorry, but when you pay \$4 and
21 net 60 more cents, yes, there is an incentive to move it,
22 but it's an insufficient incentive.

23 Q. Okay. To be clear, under this calculation, the
24 incentive to move 26.67% of your milk to Dallas is \$0.89
25 per hundredweight. That's how much better off you are
26 with respect to 100% of your milk, not just the milk you
27 sent to Dallas, 100% of your milk. That's how much better
28 off you are than if you had sent all your milk to a -- to



1 a plant that simply paid you the Class III price in
2 Amarillo, correct?

3 A. Yes. But if you are going to do that, then you've
4 got to compare the blends.

5 Q. Okay. Well, Houston, as you can see, it's a -- is
6 the last box. And, now, I'm not going to take you through
7 all the calculations. They are identical.

8 Houston is farther away, correct?

9 A. Yes.

10 Q. The Class I price is higher, so the blend price
11 is -- the statistical uniform price is higher in Houston,
12 correct?

13 A. By \$0.60 more than Dallas, \$1.20 per hundredweight
14 more than Amarillo.

15 Q. And doing the exact same math, if you are choosing
16 as a cooperative, should I be shipping my milk 48 miles to
17 an Amarillo plant that's not pooled, or shipping enough of
18 my milk to Houston to a Class I plant so I can pool my
19 milk, in the end, I will net an extra \$0.42, correct?

20 A. Well, I haven't worked through the math. On the
21 presumption that your math is correct, I still point out
22 that these are not fair comparisons.

23 And I also would note that that certain 89% --
24 \$0.89 per hundredweight or \$0.42 per hundredweight
25 certainly is not enough to pay for the balancing of that
26 Class I plant in Dallas or Houston. Even for sake of
27 argument, if the -- if the price gain is that, it's chewed
28 up by the balancing on those plants in Dallas and Houston.



1 Q. All right. But let's -- let's -- I don't know if
2 we want to take a -- have we been going long enough to
3 take a break or --

4 THE COURT: Now is good, yes. So help me
5 remember, Mr. Rosenbaum, when we get to the right point to
6 admit these exhibits, if you want them admitted.

7 But right now, let's take a ten-minute break.
8 Please be back and ready to go at 2:45. We go off record
9 at 2:35 p.m.

10 (Whereupon, a break was taken.)

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

12 We're back on record at 2:45. And all we need is
13 a witness, and then, Mr. Rosenbaum, you may proceed.

14 MR. HILL: So while we're waiting for a witness --
15 Your Honor, I was going to say -- if you don't want me to
16 do this now, that's fine -- but I was going to say, we do
17 have copies of Mr. McAfee's testimony, and I was going to
18 ask if we could go ahead and admit them into evidence, if
19 you are ready to do so.

20 THE COURT: I think that's a good thing to do
21 right now.

22 And so I'm looking at what is marked as
23 Exhibit 327. It is the testimony of Mark McAfee.

24 And are there any objections to that document
25 being admitted into evidence?

26 There are none. So Exhibit 327 is admitted into
27 evidence.

28 (Thereafter, Exhibit Number 327 was received



1 into evidence.)

2 THE COURT: I'm now looking at Exhibit 328, which
3 is the slides, and that's what I believe we spent the
4 majority of our time looking at during Mr. McAfee's
5 testimony.

6 Is there any objection to the admission into
7 evidence of Exhibit 328?

8 There is none. Exhibit 328 is admitted into
9 evidence.

10 (Thereafter, Exhibit Number 328 was received
11 into evidence.)

12 THE COURT: Thank you for that, Mr. Hill.

13 And now, Mr. Rosenbaum, you may proceed.

14 BY MR. ROSENBAUM:

15 Q. Mr. Sims, if you would turn to the next page of
16 Hearing Exhibit 318, which was your PowerPoint
17 presentation, so that we're now on page 35. This is the
18 page where you make similar analysis with respect to the
19 choice of shipping from Hereford to Amarillo versus
20 Hereford to Houston or Dallas, but this time, you are
21 addressing a situation in which the Amarillo plant is a
22 Class IV plant, correct?

23 A. Yes.

24 Q. All right.

25 MR. ROSENBAUM: Your Honor, I would like to mark
26 the exhibit.

27 THE COURT: Yes. This will be Exhibit 333, and we
28 will go off record while this is distributed.



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

2 (Thereafter, Exhibit Number 333 was marked
3 for identification.)

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

5 We're back on record at 2:49.

6 Mr. Rosenbaum.

7 BY MR. ROSENBAUM:

8 Q. So I'm now showing you the document that we have
9 created, Hearing Exhibit 333. It is the same kind of
10 analysis as 332, except that 333 relates to Class IV, milk
11 whereas 332 related to Class III milk, and the title so
12 indicates the difference.

13 So the first box is identical to the first box on
14 Hearing Exhibit 332. That's just a recitation of milk
15 pooled by class, by total, as well as all of the
16 statistical uniform prices for Dallas and Houston as well
17 as the Class III and IV price, in Order 126.

18 The box "Non-Pooled Amarillo Class IV Plant" is
19 now a repetition, so to speak, of the analysis you did on
20 page 35 of Hearing Exhibit 318. We are now using the
21 Class IV price of \$18.26 in place of the Class III price
22 of \$14.91, so that the net return to someone shipping
23 their milk to Amarillo is \$17.85.

24 Do you see that?

25 A. Sorry?

26 Q. The net return of someone shipping their milk to
27 Amarillo is \$17.85?

28 A. Yes.



1 Q. And that's your number as well, correct?

2 A. Yes.

3 Q. All right. And then in the third box called
4 "Dallas Class I Plant," we are -- on the left-hand column,
5 the one called "Single Producer," once again, simply
6 replicating your analysis that shows that the net to
7 someone shipping milk to Dallas would receive \$13.04 as
8 you previously calculated, and the loss for doing so as
9 compared to supplying the Amarillo plant is \$4.81 per
10 hundredweight, correct?

11 A. Yes.

12 Q. Once again, that's simply a replication of your
13 own analysis, correct?

14 A. Appears to be, yes.

15 Q. And then on the right-hand side under
16 "Cooperative," we have done the exact same analysis that
17 we did in the corresponding box in Hearing Exhibit 332,
18 except this time we are substituting the -- as the very
19 last item, the gain or loss, based not upon what the
20 Class III price at Amarillo was, which is what we had been
21 using in Hearing Exhibit 332, but rather based upon the
22 \$17.85 value of Class IV milk in Amarillo that month.

23 Do you see that?

24 A. Yes.

25 Q. So in other words, there are about ten entries in
26 a row that are identical between Hearing Exhibit 333 and
27 332. That's the one that's calculating doing one versus
28 the other.



1 But the difference is that we're now using the
2 Class IV price, and with the result that if you were to
3 ship to Dallas, to the Class I plant, you would net lose
4 \$2.46, having shipped 73.33% of your milk to Amarillo and
5 26.67% to Dallas, correct?

6 A. Well, that's what your calculation shows.

7 Q. Okay. And similarly, for Houston, once again, all
8 the numbers under "Single Producer" are the same as in
9 your calculation, correct?

10 A. Appear to be.

11 Q. And under "Cooperative," all of the calculations
12 in the "Houston Class I Plant" box are identical to the
13 calculations in the "Houston Class I Plant" box for
14 Hearing Exhibit 332, except that now we're comparing the
15 \$14.92 that you net against the \$17.85 you would have
16 netted had you sold it all to Class IV.

17 Do you see that?

18 A. I do.

19 Q. And --

20 A. Just a moment --

21 Q. Okay.

22 A. -- please.

23 Q. Sure.

24 A. I'm going to point out a problem with your
25 exhibits.

26 Q. Okay.

27 A. Although it -- it may or may not change the
28 calculation. In the "Houston Class I Plant" box, the



1 fourth -- what you have described as the fourth box, in
2 each of these two?

3 Q. Yes.

4 A. You have listed the miles from Hereford to Houston
5 as 407. I don't believe that's correct.

6 Q. Ah. Okay. You are obviously right about that.
7 So...

8 A. I will go ahead and say, it looks like you did
9 replicate my haul costs, so...

10 Q. Okay. So let's -- I -- you are quite right, and
11 let's make sure the correction -- in terms of our actual
12 calculation of the hauling costs to Houston, we did use
13 the correct number of \$6.57, in both Hearing Exhibit 332
14 and 333, correct?

15 A. Yes.

16 Q. However, in the first line under "Houston Class I
17 Plant," where it says "Miles Hereford to Houston," in both
18 Hearing Exhibit 332 and 333, we mistakenly put in
19 407 miles, correct?

20 A. Yes.

21 MR. ROSENBAUM: So, Your Honor, I would ask that
22 Hearing Exhibit 332 and 333 both be corrected so that in
23 the "Houston Class I Plant" box where it says "Miles
24 Hereford to Houston," the number "407" is replaced with
25 "635," in both under the "Single Producer" and under
26 "Cooperative."

27 THE COURT: Yes, we'll do that right now. I'm
28 looking at Exhibit 332. We're going to change two



1 numbers. They are in the bottom box. We're going to find
2 "407" miles. We're going to strike "407" and insert
3 "635," 635 miles, twice, once under "Single Producer" and
4 once under "Cooperative."

5 We're doing the same thing on Exhibit 333. We're
6 changing the miles. We're striking "407" and writing in
7 "635," 635 miles, both under "Single Producer" and under
8 "Cooperative."

9 BY MR. ROSENBAUM:

10 Q. And just to confirm, your calculation of the
11 hauling costs from Hereford to Houston on page 35 was
12 correctly based upon 635 miles, and that came to a total
13 cost of \$6.57, correct?

14 A. Yes.

15 Q. And in our Exhibit 632 and -- start that question
16 again.

17 In our Exhibits 332 and 333, we had used the
18 correct hauling cost of \$6.57 in both cases, correct?

19 A. Yes.

20 Q. Okay. So back to Hearing Exhibit 333.

21 Obviously, this is not an attractive choice to
22 ship Class -- to ship Class I milk to Houston or Dallas
23 instead of shipping to a Class IV plant, correct?

24 A. That's -- yeah, I -- again, I'm not quite sure I
25 agree with your methodology. But the red numerals there
26 suggest certainly that this is not an attractive choice.

27 Q. And of course in the real world, in fact, what
28 happened was, everybody who could depool, did depool, with



1 respect to Class IV milk this month, correct?

2 A. Appeared to be, yes.

3 Q. For example, in June 2023, there is seven -- over
4 702 million pounds of Class III milk, but only 9 million
5 pounds of Class IV milk, correct?

6 A. Yes.

7 Q. And by comparison, if I pull up the January 2021
8 report that USDA puts out for the Southwest order, in that
9 month, they showed there were 555,609,231 pounds of
10 Class IV milk pooled on that order that month.

11 That -- that wouldn't surprise you, I take it?

12 A. Probably not.

13 Q. Okay.

14 A. But what was the Class III?

15 Q. In that particular month, Class III was
16 26,186,549 pounds.

17 So is it fair to say that in January 2021, it was
18 Class IV milk that got pooled and Class III milk that
19 largely was depooled, correct?

20 A. Yes.

21 Q. So in the real world, an example like Hearing
22 Exhibit 333, no one's going to -- no one's going to take
23 Class IV milk and pool it in a Class I plant when they can
24 get \$18.26 for it by depooling, correct?

25 A. I'm sorry. I don't understand the concept of
26 delivering Class IV milk to a Class I plant.

27 Q. Okay. No one is going to pool their Class IV
28 milk -- start that again.



1 No one is going to pool the majority of their
2 Class IV milk and send some -- the rest of it to Class I
3 milk facilities in order to be able to pool the whole
4 thing, right?

5 A. Well, sir, you are presuming that -- which I -- if
6 you -- you are the one that mentioned "in the real world"?
7 In the real world, you serve your Class I, sir, and then
8 you decide how to pool after that.

9 Q. In the real world, what happened in June 2023 is
10 people pooled their Class III milk, and that's how they
11 qualified -- strike that.

12 In the real world, people shipped milk to Houston
13 and Dallas for Class I purposes and pooled the rest of
14 their milk as Class III, correct?

15 A. Up to whatever limit they were able to pool.

16 Oh, and just a matter of context on these two, the
17 diversion privilege does not just extend to cooperatives.
18 It also -- they are also -- you can -- a handler can also
19 pool a single non-member.

20 Q. All right. So -- okay. And what I'm about to say
21 is not intended to be a criticism. I'm just stating the
22 reality. When confronted with a Class IV price of \$18.26,
23 everybody depooled from Class IV, and they got the \$18.26
24 price or whatever -- assuming that was reflective of the
25 market value, and they pooled -- they pooled Class III
26 milk and shipped enough milk to Class I facilities to
27 qualify for pooling that Class III milk, and as a result
28 they got the statistical uniform price for both the



1 Class I milk and the Class III milk, correct?

2 A. Yes. That's the same -- again, that diversion
3 privilege also extends to non-members. And one of the
4 reasons we -- we used as many months in this analysis as
5 we did is to take out those anomaly months where, you
6 know, those prices were particularly -- there's a
7 particular difference between the Class III and Class IV
8 price. And the next two pages in that exhibit use those
9 average prices, which provide a broader picture of that
10 incentive or disincentive to ship milk.

11 Q. And do you know whether, in fact, when Class III
12 and IV are similar to each other, both of them become
13 attractive to pool Class I milk?

14 A. Sir, you are -- you're looking at it backwards.
15 There's -- it's not -- you don't -- that's not the way the
16 world works. You -- you -- in order to -- to qualify
17 manufacturing milk, you have to deliver to the Class I,
18 so...

19 Q. Right.

20 A. And I would point out that for Order 126, this 26%
21 Class I utilization is pretty close to the average,
22 whether there is depooling or not. It is just which class
23 gets pooled.

24 Q. Right. And obviously, by pooling, you benefit
25 from the fact that the Class I milk has a minimum
26 regulated price \$3 higher in Dallas and \$3.60 higher in
27 Houston, right?

28 A. Versus the class price? Well, if you compare



1 blends, it is only \$0.60 between the Panhandle and Dallas
2 and the Panhandle and Houston is \$1.20 per hundredweight.

3 Q. Yes. But it is a question of what -- you can
4 cover the cost of getting milk to Houston and Dallas
5 because you're only sending so much of your milk there,
6 but all of your milk will now qualify for the uniform
7 price?

8 A. No.

9 Q. That's what happened in the -- that's what
10 happened --

11 A. No, sir, you said "all" of the milk. You can only
12 divert up to the limit. And so I believe that there is
13 milk which exists in that region, which is not -- would
14 not meet the producer milk definition because it exceeds
15 the limits required in the order. So "all" is not
16 correct.

17 Q. Okay. I stand corrected. And there may well be
18 more milk than that in that area of the world. I think
19 probably there is.

20 But, nonetheless, we do know that a billion pounds
21 of milk were pooled -- start that question again.

22 We do know that 1,720,870,489 pounds of milk were
23 pooled on Order 126 in June 2023 as a result of
24 285,594,250 pounds of milk being supplied for Class I
25 purposes, correct?

26 A. I'm sorry. That -- number one, that's also an
27 incorrect presumption. That's the amount of Class I milk
28 on the pool. The amount actually delivered to pool



1 distributing plants would be -- would exceed that number
2 since no Class -- no pool distributing plant is ever 100%
3 Class I.

4 Q. I stand corrected. Let me be more precise in my
5 question.

6 285,594,250 pounds of Class I milk was pooled on
7 the order in June 2023, and 1,070,870,489 pounds were
8 pooled and received the applicable statistical uniform
9 price --

10 A. At location.

11 Q. -- is that correct?

12 A. At location.

13 Q. At location. Is that correct?

14 A. Yes. That would be the proper interpretation.

15 Q. So with respect to the big printouts, Hearing
16 Exhibits 300 and 301 --

17 A. Oh, I was hoping for this.

18 Q. I know you were. And I --

19 A. I'm sorry, but I'm going to need a couple of
20 copies back. They walk over here, and then they walk
21 away.

22 Q. So my question is: Are you the person who created
23 these documents in the first instance?

24 A. I beg your -- which document?

25 Q. Hearing Exhibit 300 and 301?

26 A. No.

27 Q. You haven't -- can you -- if that's true, why
28 is -- does your name appear as the author of these



1 documents in their electronic --

2 A. I didn't know that it did. I -- I don't recall
3 seeing these. They -- okay. Let's answer that question
4 logically.

5 When you create a document, it carries the first
6 person that ever touched it as the -- as the author. And
7 then anything that happens after that, it retains that
8 first. These could have been built on a spreadsheet that
9 I had from several, several, several iterations previous,
10 and it would still carry my name. But I did not actually
11 create this document as it sits today.

12 Q. Did you create the -- and I -- I appreciate that
13 explanation, which I believe to be fully accurate in terms
14 of how Excel tracks things once they are created.

15 But did you -- do you recall what the first
16 version of this document looked like, which you apparently
17 did create?

18 A. I don't recall. But if it did, it probably
19 stopped with something around Column L.

20 THE COURT: Column which?

21 THE WITNESS: Column L, L as in lion.

22 Or perhaps M. I know I did -- I don't recall ever
23 putting together a spreadsheet that had the order numbers
24 in there. But they -- this could have been copied from
25 other spreadsheets well, well long ago. So that is all I
26 can say, is in this -- in its form here, I did not create
27 this document as it sits here.

28 BY MR. ROSENBAUM:



1 Q. All right. And you were asked a question by
2 Mr. English about the reasons for the changes in a couple
3 of entries for counties in Arizona --

4 A. Yes.

5 Q. -- between Column O, which is "Proposed Class I,"
6 and Column S, "New Proposal."

7 Do you recall that?

8 A. Yes.

9 Q. I'm not asking you to look at those particular
10 counties again. I'm just asking the question, you did not
11 know the answer to why that changed had been made. Can
12 you identify who is the most likely person who would know
13 the answer?

14 A. I would say that someone on the Western regional
15 Class I surface committee. There may be more than one who
16 collaborated on that. But someone on that -- on that
17 committee would be capable of answering that question
18 specifically.

19 Q. All right. Let's switch to another topic.

20 THE COURT: I would like the record copy to be
21 retrieved from the witness. I just don't want to lose
22 track of these two.

23 THE WITNESS: Your Honor, there's not going to be
24 any print left on these pages.

25 BY MR. ROSENBAUM:

26 Q. Could we go back to Hearing Exhibit 318, which is
27 your PowerPoint presentation.

28 A. Yes.



1 Q. And to page 25 where you talk about incidents of
2 Class I price inversions.

3 Do you see that?

4 A. I do.

5 Q. Now -- and looking specifically at page 26 again.
6 You have data there for Class III in the two boxes to the
7 left, Class -- I meant to say -- did I say Class II?

8 A. No, you did not.

9 Q. Then I'll start again.

10 On page 26, you have information relating to
11 Class II in the left-most boxes, and Class III in the
12 middle boxes, and Class IV in the right-hand boxes,
13 correct?

14 A. Yes.

15 Q. And for each of those you then have bar charts
16 that reflect a minimum differential of \$1.60, a minimum
17 differential of 2.20, and a minimum differential of zero,
18 correct?

19 A. Yes.

20 Q. And the percentages reflect how many times during
21 that 282-month period the Class II price was higher than
22 the Class I price in the first box, the Class III price
23 was higher than the Class I price in the second box, and
24 then how many times the Class IV price was higher than the
25 Class I price in the third box, correct?

26 A. Right. And that's the Class I price, which would
27 have been effective at those three differential rates.

28 Q. And we all know the mover did not -- has changed



1 over time, and you used whatever mover was actually in the
2 effect at the time?

3 A. Yes. I did not make any presumptions about
4 changing the mover. Whatever was announced is what I
5 used.

6 Q. Okay. Now, just working backwards a bit, what
7 is -- what was your reason for including an analysis based
8 upon the minimum differential being zero?

9 A. Proposal Number 20.

10 Q. And is that the sole reason?

11 A. That's certainly enough reason for me, yes.

12 Q. I'm just asking whether it addresses any other
13 issues than that proposal.

14 A. No. There would be some large slice of the
15 country who would have an effective zero differential. In
16 other words, the mover and the Class I price would be the
17 same under that proposal at a zero differential, so we
18 felt it was appropriate to compare that also.

19 Q. Okay. And in putting these charts together -- and
20 let's just start with the Class II one since that's the
21 one on the left.

22 I take it you started by simply looking at what
23 the announced Class II price was, correct?

24 A. Yes. Simply compared the mover and to the
25 Class -- the final announced Class II price and then --
26 which would be, of course, the Class I price at a zero
27 zone; and then the mover plus \$1.60, which would be the
28 Class I price at \$1.60 zone; and the mover price plus



1 2.20, which would be the minimum Class I price that --
2 that we are providing in Proposal 19.

3 Q. Okay. And but -- is there anywhere -- is there
4 anywhere where the Class I differential actually is \$1.60?

5 A. I believe there is.

6 Q. Is there anywhere where there is a Class I plant
7 where the Class I differential is \$1.60?

8 A. That, I don't know.

9 Q. I mean, because you are comparing a -- the real
10 Class II, Class III, and Class IV prices to a hypothetical
11 Class I price based upon \$1.60 differential, correct?

12 A. Yes. But on Federal Order price announcements,
13 there certainly are zones where the Class I price is the
14 mover plus \$1.60. As to whether or not there are Class I
15 plants there, I don't know. But at those zones, with the
16 current \$1.60, you certainly would have a Class I price
17 inversion at that zone, whether there's a Class I price
18 there -- excuse me -- whether there's a Class I plant
19 there or not.

20 Q. But in terms if you wanted to look at, you know,
21 how many dollars would actually be contributed by the
22 Class I sales in that order, you wouldn't use \$1.60, would
23 you?

24 A. No, sir. But I certainly can say that there seems
25 to be a lot of plants in one -- as to whether or not
26 there's any Class I plants in \$1.60 zones, that's not part
27 of the world I work in, so I can't say for sure. But
28 there certainly are Class I plants in zones of, say, \$1.70



1 or \$1.80. So those numbers in that first column would be
2 very, very close for those plants. So certainly there are
3 Class I plants whose Class I differential is near or just
4 slightly above \$1.60, who certainly would be impacted by
5 this question.

6 Q. But in the end -- and maybe I confused things by
7 talking about particular plants. In the end, isn't the
8 number that really counts the market average Class I
9 differential for determining whether or not there is a
10 price inversion or not?

11 A. The market average differential?

12 Q. Yes.

13 A. I don't agree with that at all. Every plant has
14 its own Class I differential, and every plant needs to --
15 we have to -- would evaluate whether there -- and whether
16 there's pooling. And the truth is that this question is
17 as much about the location adjustment at manufacturing
18 plants and their ability to depool when these
19 circumstances occur. It's less about Class I plants.
20 It's more about manufacturing plants. It is -- in fact,
21 it's entirely about manufacturing plants.

22 Q. Well, I understand that. But you -- you appear to
23 think that the relationship between the Class II price and
24 the Class I price in terms of whether the Class II price
25 is higher than the Class I price, you know, that that's a
26 relevant inquiry. That's why you prepared this document,
27 right?

28 A. Certainly it is a relative -- a relevant inquiry.



1 Q. And --

2 A. Determines whether that plant is going to want to
3 pool or not.

4 Q. And when I use the term "market average Class I
5 differential," I probably should have been more explicit.
6 But I meant the market average Class I differential in
7 each order. Isn't that what's going to be the relevant
8 consideration for the inquiry you are making here?

9 A. No.

10 Q. Why not?

11 A. Because when -- the issue here is pooling
12 decisions, and the decision to pool or depool. So the
13 relationship of a plant's differential, whether it's a
14 manufacturing plant for Class II, Class III, or Class IV,
15 their question on whether they pool will depend on how
16 they relate to the plant -- the Class I or the blend
17 price.

18 Q. Let me hand out a copy of Hearing Exhibit 46.
19 This is all already in the record, but this is a document
20 that was prepared by USDA, I believe at the request of
21 National Milk Producers Federation. But in any event, it,
22 for this particular month, May 2022, included information
23 regarding what USDA terms the "Market Average Class I
24 Differential."

25 Do you see that?

26 A. I do.

27 Q. And it shows an actual, it shows what it would be
28 under National Milk's proposal, and what the difference



1 is.

2 Do you see that?

3 A. In the columns -- the eighth column from the left,
4 "Actual," "Under NMPF Proposal," "Difference," under
5 "Market Average Class I Differential"?

6 Q. Yes. It would be the eighth, ninth, and tenth
7 columns.

8 A. Yes, I see those.

9 Q. Okay. So no order had a -- a market average
10 Class I differential of \$1.60, correct?

11 A. Correct.

12 Q. And the weighted average of all orders is a
13 Class I differential of \$2.62.

14 Do you see that?

15 A. I do.

16 Q. So if you could just pull out Hearing Exhibit 311,
17 please.

18 A. Okay.

19 Q. Which is --

20 A. I have got it.

21 Q. -- your document.

22 And I believe you testified already that this is
23 the document that underlies the tables on page 26 of
24 Hearing Exhibit 318, correct?

25 A. The bar graphs for pages 26 and 27, yes, of
26 Exhibit 318.

27 Q. Okay. And so just to orient ourselves a little
28 bit into Hearing Exhibit 311, you have rows for every



1 month from January 2000 through June of 2023, correct?

2 A. I do.

3 Q. Which corresponds to what you indicated in your
4 PowerPoint you're addressing, correct?

5 A. Yes.

6 Q. And for every month you list what the Class I
7 mover was, correct?

8 A. Yes.

9 Q. The final Class II price?

10 A. Yes.

11 Q. You compare the Class II to the mover and
12 calculate what the difference is, correct?

13 A. Yes. And as a matter of explanation in that --
14 what really is the fourth column, the third column of
15 numerals, if that number is positive, greater than zero,
16 that indicates that the Class II price was -- exceeded the
17 mover, which would be the Class I price at a zero
18 location --

19 Q. Okay.

20 A. -- and by how much. If it is positive, there was
21 inversion; if it's negative, there is no inversion.

22 Q. Okay. And -- and in -- so if we keep moving to
23 the right, you have the fourth and fifth columns -- I'm
24 ignoring the dates, not treating them as a column.

25 A. Yes.

26 Q. In the fourth and fifth column, that's where you
27 did your analysis of what you are calling inversions under
28 the assumption that Class I differentials were reduced to



1 zero, correct?

2 A. Yes.

3 Q. And then next to that in what would be column 6
4 and 7, ignoring the dates to the very far left, that's
5 where you are doing your analysis of the number of
6 inversions if the Class I differential were \$1.60,
7 correct?

8 A. Yes.

9 Q. And then finally in what I'll call columns 8 and
10 9, that's where you do your analysis of the number of
11 inversions if the Class I differential were \$2.20,
12 correct?

13 A. Yes.

14 Q. And there are a number of entries in column 7,
15 which is the one I'm going to focus on, the one that deals
16 with \$1.60, where zero is represented, correct?

17 A. Yes.

18 Q. And that is the situation in which where the
19 Class I differential of \$1.60, the Class I price would be
20 higher than the Class II price, correct?

21 A. Yes.

22 Q. And for some months, there's a number one in
23 column 7, correct?

24 A. Yes.

25 Q. And those are the instances in which the Class II
26 price would be higher than the Class I price, correct?

27 A. Yes, at the \$1.60 zone.

28 Q. And, for example, the very first one of those we



1 see is November of 2000. There's a number "1" in
2 column 7, and in column 6 is the number \$0.26, correct?

3 A. Yes.

4 Q. And that is -- the \$0.26 represents the excess of
5 the Class II price over the Class I price, assuming a
6 Class I differential of \$1.60; is that correct?

7 A. Let me -- may I say it my way?

8 Q. You can. There are different ways to come to that
9 statement, and I may have given you the most complicated
10 one.

11 A. \$0.26 represents the -- if you will, the amount of
12 Class II price inversion versus the Class I price which
13 would have been announced at \$1.60 zone. So the
14 difference between Class II and the Class I mover was
15 \$1.86. So when you take the \$1.60 away from that, you
16 still have a \$0.26 price inversion on Class II in that
17 month.

18 Q. Another way to say it is that assuming \$1.60
19 Class I differential, the total Class I price is \$0.26
20 less than the Class II price?

21 A. Yes. Presuming the \$1.60 differential, that's
22 correct. There's still a Class II price inversion.

23 Q. Okay. And if we turn to page 7 of Hearing
24 Exhibit 311, and still sticking with column 6 and 7, there
25 is something that you call a count of months?

26 A. Yes.

27 Q. Which is 15.

28 Do you see that?



1 A. Just -- I need to catch up here.

2 Yes.

3 Q. And underneath that is 5%.

4 Do you see that?

5 A. Yes.

6 Q. And does that correspond to the 5% that appears in
7 the -- in Hearing Exhibit 318 --

8 A. Yes.

9 Q. -- under the Class II box --

10 A. Yes.

11 Q. -- under the assumption of \$1.60 minimum
12 differential, correct?

13 A. Yes.

14 Q. And so that means there were 15 months out of 282?

15 A. Yes.

16 Q. At which there was an inversion assuming \$1.60
17 Class I differential, correct?

18 A. Correct.

19 Q. And that 15 corresponds to 5%, and that's why you
20 have a 5% number?

21 A. I hope that's right. Should be 15% of 282. Is
22 that right?

23 Q. 15 should be 5% of 282, if you did it right.

24 A. Yes. Actually slightly above 5%. But, yes.

25 Q. There's one entry that's called average, and I
26 wasn't actually entirely sure what that means.

27 A. Okay.

28 Q. This is on page 7 --



1 A. Yes.

2 Q. -- of Hearing Exhibit 311.

3 A. If the -- the column -- the row that says
4 "average," the first entry there, the one that says "Final
5 Class II Difference to Mover," that's the -- that's just
6 the gross average, the sum of all the dollar per
7 hundredweight figures in what we have been calling the
8 third column of numerals, divided by 282. The number --
9 that number in four would be the same number. So there --
10 a zero differential, there would have been an average
11 Class II inversion of \$0.83.

12 Q. Assuming a zero --

13 A. Assuming a zero differential, yes.

14 Q. Class I differential?

15 A. Class I differential, yes.

16 Q. And so what does the \$0.03 represent, that's under
17 the assumption of the Class I differential being \$0.03?

18 A. The average -- the average inversion would have
19 been \$0.03 in those months when there was an inversion.

20 Q. Okay. So at \$1.60 Class I differential --

21 A. Uh-huh.

22 Q. -- there were -- 5% of the time there was an
23 inversion, and the average inversion was \$0.03; is that
24 what that means?

25 A. That would be correct, yes.

26 Q. And this is going to be I think -- I don't know
27 what the right word is. But if you used as your
28 assumption in doing this calculation, not \$1.60 but rather



1 the \$2.62, which is the actual weighted average Class I
2 differential -- in May 2022, I'm picking it as an
3 example -- then obviously the number of inversions would
4 drop because you would be dealing with a higher Class I
5 price, correct?

6 A. Yes. The higher the differential, no matter what,
7 the incidence of inversions declines.

8 Q. Okay. And the -- we have walked through pages 1
9 through 7 of Hearing Exhibit 311. I certainly don't want
10 to take everyone through the rest of them.

11 But let's just make sure I'm right in
12 understanding that pages 8 through 14 provide the same
13 analysis, except this time for Class III, correct?

14 A. Correct.

15 Q. And methodologically it is the same?

16 A. Right, the method and the formulas are identical.

17 Q. And similarly, pages 15 through 21 are
18 methodologically the same except this relates to Class IV?

19 A. Correct.

20 Q. And then pages 22 through 29 basically combines
21 the information from Classes I, II, and III, and IV; is
22 that right?

23 A. It -- it -- yes, pages 22 and following are the
24 same kinds of calculations but limited to zero location
25 areas.

26 Q. I see.

27 A. So everything in 22 and beyond refers to what
28 happens and -- in locations that might have under



1 Proposal 20 a zero differential. And then it goes a
2 little further and does calculations as to how many
3 classes would be affected by an inversion in a particular
4 month. And that builds the bar graphs in page 27 of
5 Exhibit 318.

6 Q. Okay. So appreciate the clarification.

7 So pages 22 through 29 are really -- are entirely
8 devoted to the Proposal 20?

9 A. To -- to a zero differential zone.

10 MR. ROSENBAUM: Okay. That's all I have.

11 THE COURT: Are there other cross-examinations of
12 Mr. Sims?

13 MR. SMITH: Good afternoon, Judge Clifton. My
14 name is Dan Smith. I represent the Maine Dairy Industry
15 Association. I entered an appearance at the beginning of
16 the hearing. And it's nice to see you.

17 THE COURT: It is good to see you.

18 CROSS-EXAMINATION

19 BY MR. SMITH:

20 Q. Mr. Sims, good afternoon as well.

21 A. Good afternoon to you.

22 Q. I'm -- I have a series of questions related to
23 your correlation between the proposal to raise
24 Make Allowances and the proposal to increase the Class I
25 differentials.

26 A. Yes.

27 Q. Pretty much limited to that question. More
28 specifically, I have questions about your PowerPoint,



1 which was Exhibit 318 --

2 A. Yes.

3 Q. -- and NMPF-37H.

4 And if you will recall, in your testimony you kind
5 of went through pages 38 and 39 pretty quickly, I think as
6 a matter of time. So I just want to go back to that and
7 fill out your testimony with some reference to your
8 statements in your Exhibit 310.

9 A. Yes.

10 Q. Okay. Also fill out a little bit of the questions
11 that Mr. Miltner asked you with regard to the function of
12 that testimony.

13 A. Yes.

14 Q. While you are pawing I can keep talking, but I
15 think we're about there.

16 A. We're on 38?

17 Q. Pages 38 and 39.

18 A. Okay.

19 Q. Okay. Having talked, I have to get there. I have
20 gone paperless.

21 A. I have not.

22 Q. It is an interesting experience, I will grant you.
23 Okay. Are you with me to page 39?

24 A. Yes.

25 Q. Okay. So 38 and 39 is kind of the summary of what
26 you had in your statement. I'm going to work backwards a
27 little bit starting with page 39.

28 The last bullet point you make two statements.



1 First: "Updating Make Allowances and updating Class I
2 differentials are two sides of the same coin."

3 And then -- and really to the point of my
4 question, the second you say that "updating either one,
5 but not both, about reek havoc on dairy markets and
6 threaten the adequate supply of milk."

7 A. Yes.

8 Q. So what I'm trying to get to is whether -- a
9 greater understanding of what you are saying and really,
10 ultimately, whether that's become an issue of purpose for
11 Class I differentials at this point, or really it's an
12 impact analysis, because in your statement, that the
13 greater explanation is in the impact analysis. But that
14 is kind of the ultimate purpose, is to explore your
15 reasoning a little bit.

16 So just working backwards, by way of explanation
17 you indicate that Make Allowances "reflect the costs of
18 product utility conversion," just right above the previous
19 bullets?

20 A. Yes.

21 Q. And the Class I differentials "reflect the costs
22 of time and place utility conversion"?

23 A. Yes.

24 Q. A matter of economics.

25 In your green on page 38 you say the issues of
26 updating Class I differentials is "economically no
27 different than updating Federal Order Make Allowances."

28 If you could just explain -- it's in your



1 statement, but if you could just explain a little bit more
2 what you are referring to with regard to cost of product
3 utility conversion for Make Allowances and cost of time
4 and place utility conversion for Class I differentials?

5 A. Certainly. My point here is that the Federal
6 Orders reflect two kinds of important costs, and then if
7 those costs aren't properly aligned or properly accounted
8 for at some level, they will cause economic
9 decision-making.

10 That I believe Mr. Brown had a quote in his
11 testimony -- could we put something up on the board here?

12 There we go. We won't go through all five of
13 these, but I think these give a good -- actually a good
14 representation of what I'm trying to -- the analysis I'm
15 trying to draw and the economic decision-making which --
16 which I'm trying to reflect.

17 Let's just do this and make it a little bigger.

18 There we go.

19 Q. If I could just interrupt you for one second.

20 You are making reference to what's marked

21 Exhibit 319?

22 A. 214.

23 Oh, I'm sorry. The -- yes, my exhibit --

24 Q. Your exhibit is 3- -- 37I?

25 A. 3 -- my Exhibit 319, and the IDFA exhibit was
26 Number 214. And I don't recall what their -- so the
27 question that I'm trying to --

28 THE COURT: Before you go on, I want to write down



1 Mike Brown's number, and I thought I saw it before you
2 made it bigger.

3 THE WITNESS: No, that -- hang on, maybe I can --
4 this is IDFA Exhibit 6.

5 THE COURT: IDFA Exhibit 6.

6 THE WITNESS: And I honestly -- oh. So the
7 preceding exhibit is Number 214, and this is page -- from
8 page 7.

9 I will preface this by saying, I certainly don't
10 agree with the values and the process that IDFA used to
11 develop their Make Allowance proposals, but Mr. Brown
12 actually did a great job here of encapsulating the
13 economic decision-making that goes into this issue.

14 And so from this -- his quote, from page 7 of
15 Exhibit 214 -- again, that's IDFA Exhibit 6: "Thus,
16 current Make Allowances are based on cost data submitted
17 more than 16 years ago. Unless those Make Allowances are
18 adjusted to changes in industry costs, manufacturers are
19 trapped in either losing money on every pound of product
20 produced or stopping production entirely."

21 Now, as a matter purely of economics, this is a
22 straightforward statement, that if they can't -- if those
23 resources that are used to manufacture hard products
24 don't -- you know, if those resources don't return a
25 reasonable return, if they don't generate a reasonable
26 return, the owners of those assets, that capital, will be
27 eventually redeployed into some other enterprise. They
28 will quit making those hard products or they will shift to



1 another product or those resources will go someplace else.
2 This is a straightforward economic premise. And I agree,
3 purely for this purpose, that that's correct. That is the
4 proper economic decision-making. If those assets are not
5 returning a reasonable return on their -- on their
6 existence, on their use, they will be eventually
7 redeployed.

8 So at this point let's take one step back or so in
9 the marketing chain and let's look at this from the eyes
10 of a dairy farmer or the eyes of a cooperative
11 association. Same quote, but we're going to do a little
12 bit of substitution in terms of the nouns and the verbs.
13 And this is what a dairy farmer would say when faced with
14 supplying Class I, particularly distant Class I plants.
15 And, again, these are just substituting nouns and verbs in
16 Mr. Brown's statement: "Thus, the current Class I
17 differentials are based on hauling data determined more
18 than 25 years ago. Unless the Class I differentials are
19 adjusted to changes in hauling costs, dairy farmers are
20 trapped in either losing money on every mile milk is
21 hauled or stopping milk deliveries to distant plants
22 entirely."

23 Same economic decision-making. If there's not
24 sufficient returns for that economic activity, the
25 economic theory of the firm, F-I-R-M, says that if you
26 don't make a reasonable return, you will eventually
27 redeploy those assets. So if dairy farmers are faced with
28 shipping milk to Class I plants that don't pay, they



1 eventually will stop. They will either go out of business
2 and divert those assets to another farming or other
3 enterprise, or they'll simply do what we fear, which is
4 they will simply keep their milk in manufacturing and they
5 just won't let it go for Class I.

6 Again, this is a picture of a threat to the supply
7 to Class I. If we don't get these right: A, milk -- on
8 Make Allowances, milk plants are going to start doing
9 something different, processing plants; if we don't get
10 differentials right, dairy farmers are going to stop
11 delivering to Class I. It is a straightforward economic
12 comparison in both cases, and the economic
13 decision-making, the decision-making at the firm level, is
14 the same.

15 Q. If I could just recharacterize your correlation,
16 referring back to your cost of product utility conversion
17 and cost of time and place utility conversion. If I
18 understand what you are saying, in essence, putting two
19 and two together, is that the gist of the proposal to
20 raise the differentials is that in order for a plant to
21 make the economically rational decision to buy and utilize
22 the milk, the cost of product utility conversion would
23 have to be fully accounted for?

24 A. Okay. Let's make sure that we put the right
25 economic activity with the right cost.

26 Q. That's why I'm asking --

27 A. I think you said Make Allowances and -- let's
28 start over. How about that?



1 Okay. The Make Allowance question --

2 Q. I'm trying to ask you to back up a little bit --

3 A. Yeah.

4 Q. -- to get back to here.

5 A. The Make Allowance question is one at the plant
6 level. If they cannot -- if the Make Allowances or
7 whatever the economic circumstances that exist don't allow
8 them to make a normal return, and a normal return on
9 investment, they will eventually redeploy those assets.
10 That capital will move to some other enterprise, either
11 another dairy product or those -- those -- that capital
12 will shift to another industry. But if you lose money
13 long enough at one industry, you will start looking for
14 another one. Okay?

15 At the dairy farmer level, if the Class I
16 differentials, if the spatial price surface is
17 insufficient to encourage dairy farmers or properly
18 compensate them for the delivery of milk, particularly to
19 distant Class I plants, because, again, the dairy farms
20 themselves and the people are far apart, they have moved
21 farther apart, and they are going to continue to move
22 farther apart. If those Class I differentials are not
23 sufficient to encourage that milk or to provide a
24 reasonable return on that business activity, meaning
25 delivering milk to Class I, they will stop doing it,
26 either the farms will go out of business or they will
27 divert that milk to a manufacturing plant where the return
28 is higher.



1 These are straightforward cause-and-effect
2 economic issues.

3 Q. So let me refer you again back to page 39 of
4 Exhibit 318.

5 A. Yes.

6 Q. So the equations that if -- it's probably the
7 wrong technical term, but the more specific explanation
8 that you provided is that the Make Allowance -- quote,
9 "Make Allowances in Federal Milk Orders reflect the costs
10 of product utility conversion" --

11 A. Yes.

12 Q. -- that's what needs to be covered through the
13 Make Allowance, correct?

14 A. Some reasonable portion of it.

15 Q. Fair enough.

16 And similarly, the Class I differentials reflect
17 the cost of time and place utility, which is getting the
18 product from here to the plant, correct?

19 A. Yeah. In the case of a Make Allowance, it is
20 taking a raw product and converting it into a usable or
21 storable dairy product. Raw milk in its native form
22 isn't -- you know, doesn't have a lot of utility. And so
23 we make an economic decision to convert it to a product
24 that is usable. When it comes to Class I differentials or
25 dairy farmer shipping milk, that's a raw material in the
26 wrong place and the cost to get it to the right place.

27 So these are basically the same economic
28 decisions. They are -- you know, the drivers of each



1 is -- are a little bit different, but the plain economics,
2 the cause and effect, are identical.

3 Q. That's, back to your point, two sides of the
4 same --

5 A. Yes.

6 Q. Okay. So now I would just back up one step
7 further. Is it reasonable to say that the function of
8 Class I differentials to reflect the cost of time and
9 place utility conversion has been the historic function,
10 basic function of Class I differentials, dating back to
11 the MW.

12 Is that a fair statement?

13 A. I would say that one of the -- one of the
14 functions certainly of Class I differentials is to send
15 the economic signal that there is places where milk is
16 needed, and there's places where milk is, and that we need
17 some structured system for incentivizing that movement.

18 Q. And that incentivization dates back to the MW at
19 least, would you say, in the Class I differential?

20 A. Put it this way, in my 40 years of -- nearly
21 40 years of history, there's always been some sort of
22 recognition of the relationship between reserve supply
23 areas with a lower differential and areas of need with a
24 higher differential.

25 Q. Okay. And would -- would you say that that basic
26 calculation was true through the 2000 reform, that that
27 remained a consistent function of differentials?

28 A. I think that remains today, that those



1 differentials are designed to send a straightforward
2 economic signal that the milk needs to move from reserve
3 supply areas to areas of need.

4 Q. Now, at the same time, is it fair to say on the
5 other hand, I suppose -- not at the same time, on the
6 other hand, with the 2000 reform, the introduction of
7 Make Allowances is a new concept?

8 A. It was.

9 Q. Okay. So we have now, getting back here, and
10 getting -- now getting to your -- the second part of your
11 statement -- let's go back to page 39 again. This is
12 really where I'm trying to get to question-wise.

13 You make the point that "updating either one, but
14 not both, will reek havoc on dairy markets and threaten
15 the adequate supply of milk."

16 So is it fair to say that the dynamic after --
17 between the two is a new dynamic, after 2000 reform? You
18 now have Make Allowances, which we didn't have before and
19 have now, and we have Class I differentials, which we have
20 had all the way through. So you're -- you're -- is it
21 fair to say that if the Class I differentials are not
22 updated and the Make Allowances are, putting two and two
23 together, aren't you going to increase the dislocation
24 that's involved in that dynamic of incentives for the
25 movement of milk?

26 A. You certainly don't improve it. If you imply --
27 if you install -- or increase Make Allowances, that will
28 lower the prices for Class -- you know, it will lower all



1 the class prices and doesn't change the slope or the
2 incentive to move milk to Class I.

3 Q. But you have -- if the Make Allowances are
4 adopted, then the capability of plants to receive the milk
5 has been -- that -- increased, correct?

6 A. That's theoretically correct, yes.

7 Q. And if you haven't increased the Make Allowances,
8 you have decreased the capability of those plants to
9 purchase the milk from farmers because they will be less
10 likely to want to move the milk to the plants, correct?

11 A. Fair enough.

12 Q. So the -- what -- that's all -- I basically just
13 kind of teased out what was in your statement to get to
14 what you summarized in your PowerPoint. But the one piece
15 that's not there, it is almost there. Does that mean that
16 the Class I differentials have assumed a role -- back up
17 one step.

18 There's been a lot of discussion back and forth
19 that the Class I differentials have now taken on the role
20 of price alignment and to try to prevent price inversions,
21 correct?

22 A. I simply say that Proposal 19 at \$2.20 minimum
23 differential, that also satisfies the objective of
24 reducing the incidents of class price inversions. Again,
25 back to my original point, if we want to get milk to
26 Class I, let's make Class I the highest price class. If
27 we want to incentivize deliveries to Class I, the best
28 signal to send is that Class I is the highest price class.



1 Q. Fair enough.

2 But would you say that that dynamic of Class I
3 serving that function really is a relatively recent
4 occurrence, didn't exist before 2000? Where there price
5 inversions in the marketplace before the 2000 changes?

6 A. I believe that there were, but they were quite
7 rare.

8 Q. Quite rare.

9 A. That -- maybe "quite" isn't the right -- I -- I
10 can't -- I have no data in front of me on the -- the
11 incidence of inversions pre-2000. But they did exist, but
12 I believe that they were less prevalent.

13 Q. Fair enough.

14 But without question, the -- is -- is it -- will
15 it work in economic terms to speak of the relationship
16 between Class I differentials now and the Make Allowance,
17 the two sides of the same coin? Does that reflect the
18 price alignment, or misalignment, in similar terms? Is
19 that --

20 A. I don't think I understand where you are --
21 what -- the question you are asking.

22 Q. It's because I'm -- I'm reaching to speak in
23 economic terms, and my only training is my father was an
24 economist and I learned --

25 A. Well, you are close enough -- close enough that
26 you need to be. I highly recommend you stay far away from
27 it. How is that?

28 Q. I'm in --



1 A. I speak from experience.

2 Q. -- the little-bit-of-information-is-dangerous
3 category.

4 But if -- if we -- your statement makes a
5 compelling case that if the Class I differentials are not
6 increased, that the market dislocation that will move will
7 tend to incentivize the movement of milk to manufacturing
8 plants will be exacerbated? Yes?

9 A. If you say that moving away from Class I toward
10 manufacturing is a problem --

11 Q. Yes.

12 A. -- it would exacerbate it, yes.

13 Q. Okay. So is there some, thereby, economic
14 alignment now between the Class I differentials and the
15 Make Allowances?

16 A. Again, I would say that they represent two forms
17 of economic utility conversion. One is -- and so if
18 that -- if your word is "alignment" for that, I can say,
19 yes. I'm simply saying that, you know, they both
20 represent the economic signal or the proper allocation of
21 cost to incentivize what needs to happen in the
22 marketplace.

23 Q. Okay. Thank you very much.

24 MR. SMITH: That's what I have.

25 THE COURT: Thank you very much, Mr. Smith.

26 Dr. Cryan is coming.

27 MS. TAYLOR: Can we take a break for our court
28 reporter?



1 THE COURT: Okay. Dr. Cryan, you're next up.
2 Let's take ten minutes. 4 o'clock. Please be
3 back at 4:10.

4 (Whereupon, a break was taken.)

5 THE COURT: Let's go back on record.
6 We're back on record at 4:10.

7 CROSS-EXAMINATION

8 BY DR. CRYAN:

9 Q. Good afternoon, Mr. Sims.

10 A. And good afternoon to you, Dr. Cryan.

11 Q. It's nice to see you. I am Roger Cryan for the
12 American Farm Bureau Federation, for the record.

13 As I hear you present and as I read the proposals
14 from National Milk with respect to the Class I
15 differentials, they seem to me rather moderate. You
16 documented a clear need for the \$2.20 minimum -- what do
17 you call it, the lowest?

18 A. Minimum differential.

19 Q. -- minimum differential, which seems could be
20 legitimately applied to the traditional definition of the
21 Class I differential be divided between a minimum and
22 location differentials.

23 It seems, does it -- doesn't it seem like you
24 could have justified adding \$0.60 across the board?

25 A. I don't know about -- I don't know if I used --
26 would agree with that characterization. But we are
27 proposing what we proposed.

28 Q. Right. And I understand that -- that a lot of



1 these -- there's a lot of adjustments that need to be made
2 to the model, as you said, to operationalize it, as was
3 done in 1999, and that one example of that is to raise
4 those -- some of those regions up to 2.20 to meet that
5 need. That was an example of operationalizing at the
6 local level --

7 A. Yes.

8 Q. -- right?

9 A. Yes. That was part of the reason, yes.

10 Q. Do you anticipate that the presentation overall
11 will involve -- from National Milk overall, will involve a
12 county-by-county overview of -- county-by-county detail on
13 justifications for the changes for the adjustments?

14 A. I don't know that I'd go all the way down to the
15 county level, but certainly, the notable plant locations
16 will be discussed with substantial detail.

17 Q. Fantastic.

18 Okay. And the starting point for your proposed
19 numbers, at least as it's presented in the spreadsheets,
20 is the average of the May and October model results.

21 A. Well, that's what that spreadsheet says. Each
22 individual working group, regional working group, would
23 have looked at the high month, the low month, the average,
24 and how those actually work in real life. So I will just
25 simply say we -- I think everyone started -- I don't think
26 everyone -- I know everyone started with the model output.
27 But as to whether or not everybody always honed in first
28 on the average, I don't know that that's completely



1 accurate.

2 Q. Okay. Does it seem, though, in the Southeast
3 where the challenges are in meeting the supply
4 requirements of fluid plants in the short months,
5 particularly, that -- that it would have been justifiable
6 if you had chosen to use the October results as a starting
7 point?

8 A. We might have at certain places. I'm not going to
9 say that we -- that every place we pegged against the
10 average. We -- every spot was analyzed on its own merits.
11 We had the model results. As to whether or not we
12 determined the average or the high or the low was
13 appropriate, every place we drilled down and took a look
14 at the model, we took a look at the real world movements
15 of milk and made a decision.

16 Q. Okay. So there was some discussion with I think
17 it was Mr. English about dairy farms have produced Grade A
18 milk, and they have expanded Grade A milk production and
19 started new Grade A farms. And the suggestion in -- from
20 the questioner was that they are doing this for reasons
21 other than the Class I differential in the Federal Order
22 system.

23 But those -- those have happened within a world
24 where Federal Orders exist. Would you say that the
25 Federal Orders and the Federal Order pricing and the
26 requirement to meet the Grade A standards in order to pool
27 have had some influence in incentivizing Grade A
28 production?



1 A. I would think they would have to.

2 DR. CRYAN: That's all I have. Thank you very
3 much.

4 THE COURT: Thank you, Dr. Cryan.

5 Does anyone else have cross-examination questions
6 of Mr. Sims before I turn to the Agricultural Marketing
7 Service?

8 I see none. I now turn to the Agricultural
9 Marketing Service for questions for Mr. Sims.

10 CROSS-EXAMINATION

11 BY MS. TAYLOR:

12 Q. Good afternoon.

13 A. Afternoon.

14 Q. That's fair. I was glad to see you came back
15 after the weekend.

16 A. Yeah, I'm not as bright as I look, am I?

17 Q. Maybe we'll get you finished today.

18 A. Maybe.

19 Q. Maybe.

20 A. I think I know who determines that. Go ahead.

21 Q. That's probably not me.

22 Okay. Some questions I think we still wanted to
23 discuss with you. I'm going to start going through your
24 statement first.

25 A. Yes.

26 Q. I'm going to try to go in order.

27 So on page 4, so you are talking about Grade B
28 farms --



1 A. Yes.

2 Q. -- and the percentage of Grade B farms that are
3 out there.

4 Do you have any information on how much cheese
5 production in the U.S. requires Grade A milk? You know,
6 you can use B in cheese. But are there some manufacturing
7 plants don't allow that either?

8 A. I'm sorry. Could you repeat that? I think I have
9 an answer, but I want to make sure I answer the question
10 you asked.

11 Q. Sure. You only need to be Grade A to ship to a
12 fluid distributing plant, but that's -- but are there
13 cheese plants that require milk being Grade A to be
14 shipped to them, and the converse of that is the amount of
15 plants that will accept -- manufacturing plants that will
16 still accept Grade B milk? Do you have any information on
17 that?

18 A. I have no information on the ratio or -- I -- we
19 will admit, there are cheese plants that require Grade A
20 licensure. But, obviously, this Grade B milk is going
21 someplace. Somebody's buying it. At what ratio the
22 cheese industry is buying this Grade A versus Grade B for
23 cheese, I can't answer.

24 Q. Okay. And below on the page you have some -- an
25 analysis that National Milk did to determine the
26 difference between Grade A and Grade B milk. You have
27 \$1.36 per hundredweight for the difference in production
28 cost and \$1.38 per hundredweight for the non-cash cost of



1 depreciation for equipment and improvements on the farm,
2 et cetera.

3 Is there going to be a witness later that walks
4 through that analysis?

5 A. In fine detail, yes.

6 Q. Okay. And then on the top of 5, the first full
7 paragraph, and here's where you are talking about price
8 inversions. I want to read the sentence: "Another
9 critical aspect necessitating the application of a base
10 level of Class I differential is the Department's own
11 policy regarding Class I prices which mandate setting them
12 at a level high enough to prevent regular class price
13 inversions."

14 I was wondering if you could further explain this
15 statement and your interpretation of what the Department's
16 policy is?

17 A. Yes. We -- let me say this. We had to scour back
18 at the -- for the 1999 proposed rule and final rule, and
19 did find a reference in there, when discussing what I
20 think y'all have basically referred to as the base
21 differential. And one element of that, I believe -- I
22 think I'm right -- mentioned class price inversions. So
23 that's where we got this statement that -- where -- it may
24 not have been in the amount of the \$1.60, which is
25 dedicated to preventing Class I price inversions, I don't
26 think was listed, but it was an element of why a base
27 level differential was necessary. I believe it says that.
28 I hope I didn't perjure myself.



1 Q. On the bottom of page 7, you talk about -- well,
2 the page kind of talks about how there's certain PMO
3 requirements, but many processors and manufacturers
4 require quality above that.

5 A. Yes.

6 Q. In excess of that I should say.

7 A. Quality -- that is less than for most of these,
8 bacteria and somatic cell counts less than is allowed for
9 Grade A licensure.

10 Q. Thank you. That's a more apt description.

11 And it says, "We have not quantified the
12 additional cost of producing milk that exceeds these
13 standards, but they exist."

14 And I wanted to know if you had an idea of what
15 someone would look at if they did want to quantify that
16 cost?

17 A. Oh. Certainly, the animal health aspects of
18 maintaining low bacteria counts in the milk. The animal
19 health aspects, animal husbandry of maintaining low
20 somatic cells. Often bacteria issues on a farm are
21 sanitation issues. So the use of a sufficient amount of
22 sanitation equipment or sanitation chemicals to keep your
23 barn nice and clean certainly would -- could cause an
24 increase in cost versus simply having to meet the Grade A
25 requirement to meet those higher Class I installed
26 requirement, I guess. Those would be some -- some of
27 those. Yes.

28 Q. Okay.



1 A. And it could be certain equipment that is of
2 higher quality.

3 Q. I want to turn to page 9 in here. We're on your
4 transportation analysis, cost of hauling.

5 In the middle of that first paragraph you have a
6 sentence that says, "Today's roughly \$4.50 cost of
7 trucking per loaded mile equivalent reported by the ATRI
8 is highly consistent with the rate we will quote of milk
9 hauling, when other costs items are also considered."

10 A. Okay. I'm sorry, I'm -- you are -- you will have
11 to point to where that page is.

12 Q. Page 9.

13 A. Yes.

14 Q. The top paragraph.

15 A. Oh, okay.

16 Q. Kind of right in the middle --

17 A. Okay, yes.

18 Q. -- and the sentence starts "today's roughly."

19 A. Yes.

20 Q. And you talk about how the milk hauling analysis
21 you all did is in line with this \$4.50 rate --

22 A. Yes.

23 Q. -- \$4.50 rate, "when other cost items are also
24 considered."

25 I was wondering if you could elaborate on what the
26 other cost items are you're --

27 A. Certainly. Fuel costs. The cost of the tanker is
28 more than the cost of a milk tanker because its insulation



1 is more expensive than just simply a dry box trailer, or
2 probably more expensive than a -- than a refrigerated box
3 trailer. That is certainly one.

4 Also, the -- you know, this is kind of, I don't
5 know, esoteric, but not every truck driver, although they
6 may have a commercial driver's license, wants to haul
7 fluid. It -- we are told that there's a certain sloshing
8 that goes on in hauling milk or a liquid, and not every
9 driver gets used to that. So there's actually a subset of
10 truck drivers who are willing to do that work because it's
11 a little bit different than hauling grapefruits, for
12 example.

13 Q. On page 10, under the "Hauling Structure" --

14 A. Yes.

15 Q. -- heading. This is sort of probably goes in line
16 with what you were just talking about, but in the sentence
17 in the middle of that first paragraph there, it says,
18 "Fuel prices, labor costs, equipment and maintenance
19 expenses, insurance and overhead costs, and the costs
20 associated with the installation of new technology in
21 vehicles have all risen."

22 Can you expand on the new technology you are
23 referencing?

24 A. Yes. Every truck now has to have an electronic
25 log device, I believe that -- it is ELD, and I believe
26 that stands for electronic log device.

27 In the old days, a driver got into a truck. He
28 had a piece of paper. He wrote down the time he started



1 on a piece of paper with a pencil or a pen. When he took
2 a break, he wrote that down. When he started back -- when
3 he got off of break, he wrote down his startup time. That
4 no longer is allowed.

5 There actually are displays in the truck, and the
6 driver has to log in with the time they start driving, and
7 the electronic log keeps the time that the driver is
8 moving, the time he's -- the truck may be sitting at a
9 rest stop. And in order to make sure that that -- how can
10 I put this -- to make sure that the time in the driver's
11 seat is accurate and not subject to the error which might
12 occur if you used paper logs.

13 These ELDs, they are not cheap, and they create a
14 lot of data. And so those are the kinds of electronic
15 devices.

16 And anybody that is running a fleet is going to
17 have GPS trackers on their trailers, probably on their
18 trucks also. All that -- I can say this, Lone Star Milk
19 Producers, we are a little bit different than many co-ops.
20 We actually own our own fleet of trailers. We don't own
21 any trucks, but we own our trailers. Every trailer has a
22 GPS device on it. And it is really quite fascinating.

23 The dispatchers, you go in, and they can pull up a
24 screen, and it looks like the pictures in the movies of
25 the air traffic controllers. They can pull up a map that
26 shows where all the trailers are. It is actually kind of
27 fascinating technology.

28 Q. Okay. So I wanted to turn to page 12. In that



1 first -- below the graph -- well, we were trying to work
2 through some of your numbers came from in these two
3 paragraphs. And I guess maybe what I want to start,
4 because I think it feeds in here and you talk about it a
5 couple of times, is if you can define what you consider a
6 base-haul rate --

7 A. Okay.

8 Q. -- and what's in that.

9 A. Yes. Most hauling contracts call for I'd say a
10 two-level rate. There is a base rate, which is, say, some
11 number with a -- at a diesel price of another number. The
12 ones I'm familiar with, \$2 is not an uncommon, you know,
13 base rate at -- and, again, we're talking about per loaded
14 mile. So let's just say \$3 per loaded mile is the base
15 rate. And then the fuel adjusters are pegged against a
16 standard diesel fuel rate for whatever geography. And
17 then the fuel adjuster is actually, rather than per mile,
18 it is often a percentage based on a schedule that as
19 diesel moves up above, say, what the \$2 or whatever it is,
20 there is a percentage of the base rate which is tacked on
21 as fuel.

22 So if the base rate is \$3, and those -- and I will
23 simply say today, in today's diesel costs, the factor is
24 probably about 1.6. So if you take \$3 and multiply by
25 1.6, you will get about \$4.80 per loaded mile. That's how
26 they work. And it's a percentage of the base rate is how
27 they -- the base -- the haul rate is adjusted, not a
28 straight gallons or miles or anything. It is a



1 percentage.

2 So as fuel costs go up, it represents more than
3 just simply the impact of the fuel, but also represents
4 the impact of all the other things that petroleum -- where
5 it drives the costs: Belts, hoses, tires, all that stuff.
6 So the fuel adjuster is probably misnamed. It's
7 actually -- yes, it's based on the price of fuel, but it
8 encapsulates other variable costs associated with things
9 made from petroleum generally.

10 Q. Okay. So I appreciate that description.

11 So then if we can go to the text under the chart.

12 A. Yes.

13 Q. Okay. So -- and I think that's what you are
14 talking about here, additional costs that normally follow
15 energy prices includes things like tires, hoses, belts,
16 all petroleum-based products.

17 A. Yes.

18 Q. Okay.

19 A. There may be other variable costs, but it is based
20 purely -- it's based on the price of diesel, but it is not
21 just designed to capture only the impact of a -- of a flat
22 distance haul cost per mile. It doesn't just move the --
23 you know, it's not a per gallon thing or -- you know, per
24 gallon divided by 6.2 or some miles per gallon. It is a
25 percentage thing, so it encapsulates and captures more
26 variable costs than just fuel.

27 Q. So they are in -- they are like a multiplier?

28 A. Yeah. That would be one way to put it.



1 Q. And so they are based off of -- I want to
2 summarize what I just heard. They are based off a
3 percentage of the base-haul rate. So they're percentage
4 based, but their impact is on the -- correspond to per
5 loaded mile?

6 A. Yes. The resultant product of the base rate times
7 the percentage adjuster, or multiplier if you want to use
8 your word, then generates a final per loaded mile rate.

9 Q. So in your example, you say, "Therefore, it is not
10 uncommon for fuel adjusters to add \$1 to \$1.50 per mile to
11 the hauling rate."

12 So that's in addition to the base rate --

13 A. Uh-huh.

14 Q. -- you would add that much?

15 A. So in my example, at \$3 base rate, if the fuel
16 adjuster is 5%, then you get \$4.50 as a rate, so that's a
17 50% increase in the -- in the -- or \$1.50 increase in the
18 rate per -- the effective rate per loaded mile. And at
19 diesel like it is today, in the middle fours, you are
20 seeing fuel adjusters in the 55 to 65% range.

21 Q. Okay.

22 A. The multiplier.

23 Q. Okay. I had another question. It just slipped my
24 mind.

25 Well, the next sentence down, you talk about, "In
26 1998, the base cost of hauling was approximately \$1.60 to
27 \$1.75 per loaded mile based on the fuel diesel price of
28 \$1."



1 Where did the \$1.60 and \$1.75 come from?

2 A. My memory.

3 Q. Okay.

4 A. But that -- I -- I'm confident that those are
5 roughly the numbers. Diesel -- the hauling rates didn't
6 change very much from, say, the middle '90s through the
7 late '90s. The -- they were fairly stable. You know,
8 they were up and down a nickel here and there, a dime per
9 loaded mile. But diesel prices, if you'll look at the
10 graph, really late in the '90s was when the diesel prices
11 started escalating. They had been roughly \$1 a gallon for
12 a fair little piece of time, leading up to when this most
13 recent run-up -- or long-term run-up of diesel prices
14 occurred.

15 Q. And so I think you -- your testimony said that
16 those fuel adjusters are regional based on regional diesel
17 costs?

18 A. Often, yes.

19 Q. And do you know if the USDSS model that
20 Dr. Nicholson ran accounted for that?

21 A. I -- my understanding is they have a -- kind of a
22 national diesel -- or national hauling rate that has some
23 regional adjustments, but the amount of regional
24 adjustment may or may not be truly reflective of the -- of
25 any -- of the cost of haul at any one point or any one
26 point in time.

27 Q. Okay. And do you see that -- are these adjusters
28 different on longer routes as opposed to shorter routes?



1 A. Generally, no.

2 Q. Okay.

3 A. But I will say this, the rate might not be the
4 same, but the problem is the amount of rolling stock that
5 is required when you're going long distances. Because of
6 the time in service limits, the rest time limits, when you
7 start going a long way, let's just say from Hereford to
8 Houston, that's at best a two-day roundtrip or three-day
9 roundtrip really. Nobody can make it in one, two days.

10 So it's -- so to take ten loads of milk to
11 Houston, you have got to -- on any one day, ten loads
12 going to start the day. You've got to start the next ten
13 loads the next day. So you've got 20 loads full going
14 towards Houston, and you've got 20 empty trailers and
15 trucks coming back. In the best circumstance, you have
16 got 40 trucks on the road to deliver ten loads per day.

17 You have to account for that difference in -- or
18 that capital cost. And so some of that capital cost on
19 long hauls might actually -- well, let me say this:
20 You -- if you secure a hauler for long hauls, and you have
21 to do this -- you have to secure them. You have to tie
22 them up. And generally, you have to -- I think -- I can't
23 remember what Mr. Miltner's term was, but if you -- you
24 must guarantee them at least a minimum number of loads per
25 day for some period of time, or if you don't want to move
26 it, you have to pay them what amounts to a go-away. So
27 even if they are not moving --

28 Q. Did you say "go away"?



1 A. Go -- G-O, A-W-A-Y, go away. A term of art in the
2 milk business, a go-away cost.

3 So you tie them up for -- because not every hauler
4 has the capital and the number of trucks necessary to haul
5 milk six, seven, eight, nine hundred miles, a thousand
6 miles. You have to tie those people up and promise them
7 a -- a reasonable number of loads to haul or they are just
8 not interested.

9 Q. Okay. On the top of 13 you are talking about the
10 cost of buying a tanker?

11 A. Yes.

12 Q. Which has increased according to your information.
13 How long does a tanker last? What's the turnover?

14 A. The depreciation on them is about 20 years. They
15 actually can live a little longer than that if you take
16 care of them. But they almost never make it that long
17 because they get wrecked, they get turned over, they
18 get -- somebody forgets to open a valve and they get
19 sucked and crushed, or they back into something, they run
20 into something. Their life is -- their practical life is
21 almost always less than their useful life because after
22 20 years, something happens to them.

23 Q. Okay. Down in that page you say, "The typical
24 base rate for hauling milk stands at around \$3.45 per
25 loaded mile."

26 A. Yes.

27 Q. With a benchmark in that number of a \$2 per gallon
28 diesel price?



1 A. Yes.

2 Q. So can you talk about where you got the \$3.45
3 from?

4 A. My industry knowledge. I can -- that is -- now,
5 that is a truck and a trailer. If you -- if like Lone
6 Star, if we only -- if we provide all the trailers, our
7 base rate is less than this because, obviously, there's a
8 cost associated with acquiring the trailers, maintaining
9 the trailers. So \$3.45 is I think a reasonable statement
10 of kind of average base rates at the moment.

11 Q. And is that for the Southwest/Southeast area of
12 the country or --

13 A. I would say that my knowledge extends to the
14 Southeast/Southwest, but I -- I don't know how -- other
15 places probably might have different costs. I'm sure some
16 of the industrialized cities that may be -- may be cheap,
17 they may have to pay more. In fact, I don't doubt it. If
18 they are sitting -- some of the issues are not just the
19 number of miles, it is the number of hours. That if you
20 are -- if you are stuck in traffic in Los Angeles or
21 Dallas/Fort Worth or Atlanta, anybody that's experienced
22 that, when that truck is sitting still stuck in traffic,
23 it's not generating any mile revenue for that truck and
24 trailer owner.

25 So sometimes it's just hours, and that, in fact,
26 increases the effective rate because you might have to
27 pay -- you have to account for that extra time it gets to
28 somewhere before you run out of the hours of service.



1 Q. Okay. On the next sentence below that \$3.45, you
2 say, "Accounting for today's improved truck fuel economy,
3 this translates to a base rate of approximately \$3.34 per
4 gallon at a \$2 per gallon" --

5 A. Oh, I'm sorry.

6 Q. And I think that might be --

7 A. That probably should be mile.

8 Q. Okay. So --

9 A. I'm sorry. In the third line, the next to the
10 last word, instead of "per gallon" should be "per mile."
11 And that actually is per loaded mile.

12 Q. Which would you like it to say?

13 A. "Per loaded mile." Sometimes --

14 Q. So that's on page 13. We're going to look at the
15 third paragraph on the page, third line down -- let
16 everybody get this -- from where we have a number \$3.34.
17 It says "per gallon." It should be -- it should say
18 per loaded mile?

19 A. Yes.

20 Q. Okay.

21 A. So what I'm trying to do here is show what the --
22 because of increased fuel economy in -- in trucks, back in
23 the early part of this -- this century, I guess we could
24 say, the typical miles per gallon on a diesel truck for
25 hauling a load of milk would have been in the middle fives
26 per gallon, 5.5, 5.6 if you are lucky. Today it's more
27 like 6.2, give or take. So just that has actually
28 decreased the cost per mile, but I have tried to relate



1 that to what the base rate would have been adjusting for
2 that 20 years ago when the -- when diesel was about \$1 per
3 gallon, just as a kind of a reference.

4 Q. So that's like taking it back to 1998 cost --

5 A. Roughly --

6 Q. -- based --

7 A. Yes.

8 Q. -- on a different --

9 A. Give or take.

10 Q. -- miles per gallon?

11 A. Yes. Yes.

12 THE COURT: Don't talk over her.

13 THE WITNESS: I'm sorry.

14 THE COURT: I want to make sure we've got that
15 record copy changed. So we're in Exhibit 310. We're on
16 page 13, third line down, in the third paragraph. And you
17 have done it already, haven't you? Thank you.

18 BY MS. TAYLOR:

19 Q. So on the last sentence, the last paragraph on
20 that page, you talk about considering fuel cost increases,
21 base-haul rate increases, the typical hauling rate, even
22 with today's improved truck fuel economy, reaches close to
23 \$4.50 per loaded mile.

24 Again, I just want to make sure we're clear.
25 That's kind of based on your experience. We don't
26 necessarily have that analysis in this record?

27 A. That's correct. I believe Mr. Zalar's data that
28 was on hauling costs, that was in -- that was admitted



1 last week, is quite similar.

2 Q. And this is both the base-haul rate and any fuel
3 adjuster is incorporated in that --

4 A. Yes.

5 Q. -- 4.50?

6 A. Yes. So basically that's -- in fact, I'm probably
7 conservative there. A \$3 base rate at 150% fuel adjuster
8 gets you to 4.50. That probably is -- and I'm just going
9 to say not probably -- that certainly is conservative.
10 The real rate for a truck and a trailer today is closer to
11 3.30, 3.35 per mile, the base rate for a truck and
12 trailer, prior to the application of a fuel surcharge. So
13 five -- five-ish.

14 THE COURT: So you say five-ish dollars?

15 THE WITNESS: Yes, per loaded mile would be
16 something like that today. If you are going to -- if you
17 are going to figure -- in the -- on the -- off the top of
18 your head how much it costs to haul milk, \$5 a loaded mile
19 is a pretty good thumb rule. That translates to \$1 per
20 hundredweight per hundred miles. And that's pretty much
21 what it is.

22 BY MS. TAYLOR:

23 Q. Are there any public sources for base-haul rates
24 or fuel adjusters that one could look to to kind of
25 compare?

26 A. Yeah. The -- I think the Cass line haul numbers
27 those -- that index provides I think some of that data.
28 You can infer some of it from the ATRI numbers.



1 There's -- there's unfortunately no place where you can
2 just simply go and say, today's haul rates are, because
3 the haul rates are very based on the product. Right?
4 Again, you know, the -- some of these broad-based indices
5 or data represent a cross-section of the type of haul.
6 You get a different number if it's, again, a dry box or a
7 refrigerated box or a lowboy or, you know, fluid.

8 So there's -- unfortunately, there's not a lot of,
9 here's how much people are paying today for the cost for
10 milk hauling. That's -- I have searched, and if it is out
11 there, I haven't found it.

12 Q. Okay. I want to move to page 16. Let's see. In
13 here you are talking about, at the bottom, under "Impact
14 Analysis," that the National Milk proposed differentials
15 would increase total Class I revenues approximately 56%,
16 just from the differential piece; is that correct?

17 A. The -- purely the differential --

18 Q. Just the differential section.

19 A. -- section, yes. If you look at the exhibit
20 somebody just put in front of me, I think, the IDFA
21 attorney, Mr. Rosenbaum, if you look at the market average
22 Class I differential from -- this is Exhibit 46, I think
23 USDA --

24 Q. I think it was 2.62 or 2.63, something like that?

25 A. I'll certainly trust you on that.

26 Q. Uh-huh.

27 A. If you look at the weighted average differential
28 across all markets, it was 2.62. Under our proposal 408,



1 the difference in those is roughly 56%.

2 Q. Okay. Later on you say that even with the
3 increase, this increase as proposed, it won't cover the
4 cost of hauling?

5 A. It will not.

6 Q. Okay. Does National Milk have a position of what
7 piece of hauling the differential should cover?

8 A. I don't think we have -- we have enumerated a
9 factor, per se. We have trusted the model in much -- in
10 many spots to kind of lead us where we needed to go on --
11 on some of that information.

12 Q. And I think you spoke earlier today that in your
13 personal opinion, you would rather see an increase in the
14 differentials rather than hoping to rely on old over-order
15 premiums; is that correct, to recoup some of that cost?

16 A. Yes.

17 Q. And so I take -- combine that with what you just
18 say, is that cooperatives and those supplying Class I
19 plants will still have to find ways to recoup all of their
20 hauling costs --

21 A. We --

22 Q. -- through --

23 A. The proposal will not erase all the difference
24 between what it really costs to haul and what the
25 differentials would pay. So, yes, there will still
26 continue to be some need for over-order values, although
27 they should be somewhat less. But we are -- our proposal
28 is as we have submitted it.



1 Q. I know you put on some analysis looking at hauling
2 charges between Houston and Dallas and Amarillo, Texas?

3 A. Yes.

4 Q. Do you know if there will be other analysis put on
5 for the different regions to discuss kind of those factors
6 and how they played a role in -- regionally how the
7 differentials were chosen?

8 A. I think there is mention of hauling costs in a
9 number of the -- of the regional testimonies.

10 Q. Okay. I want to turn to your PowerPoint
11 presentation, which is Exhibit 318. I might still have a
12 few questions on this.

13 I want to start on slide 9 -- or page 9.

14 A. Yes.

15 Q. I was wondering if you could just like pick a
16 month and use as an example and explain to me again what
17 this chart is showing.

18 A. Okay. Fair enough.

19 Q. Or maybe pick two months --

20 A. Sure.

21 Q. -- one when there's nothing -- no red bar and then
22 pick a red bar.

23 A. Cool. We can do that.

24 Obviously, again, this is the California order,
25 and we put it in this slot in the presentation because
26 it's not as -- you know, there's not as many years. So,
27 again, you can see the texture of the issue we're trying
28 to describe here because there's -- the scale doesn't get



1 so compressed.

2 What we did here was we took each 12 month -- 12
3 calendar -- you know, each 12-month calendar year, and for
4 each month within that calendar year, we simply divided
5 the Class I producer milk for that month by the number of
6 days in the month to generate a daily average Class I
7 producer milk for each month.

8 Then we said, okay, now let's block the world off
9 into calendar years and say, okay, of those 12 different
10 daily average Class I producer milk, one of them is going
11 to be the highest. One of them is going to have the
12 greatest Class I daily average producer milk. And so that
13 represents in -- you know, in country boy terms, that's
14 the peak Class I demand on a daily basis for the year.

15 Often, I note in Order 51, it looks like that
16 often November is kind of the peak Class I month. So if
17 you think about the blue line as the -- as the Class I
18 daily average delivery or the daily average producer milk,
19 then the corresponding red bar is in essence the inverse
20 of that. So I took the daily average delivery for each of
21 the 12 months and compared it to the high month. So one
22 of those months, the comparison of the high month is to
23 the high month, so that's zero. There's no reserve
24 necessary for that month, or there was no reserve, because
25 we -- we are comparing the peak month to every other
26 month.

27 So, you know, in this case, looks like, again, if
28 you look at 2022, it looks like November probably was the



1 peak month. So -- so there is no difference between the
2 peak month number and the peak month number. So every
3 other month other than November 2022, there was reserve
4 supplies that had to be balanced awaiting the peak month.

5 So the -- again, you will see the red bars are in
6 essence the inverse of the blue line. When you see a dip
7 in the blue line, you will see a peak in the red bar. So
8 each of those represents then the amount of reserve that
9 was carried in each month compared to the peak month of
10 Class I demand per day that calendar year.

11 Q. Okay. That is helpful. Thank you.

12 A. And the other ten orders are in the appendix part
13 of this PowerPoint.

14 Q. Okay. If you can flip to page 17.

15 A. Yes.

16 Q. In that first bullet, and you are talking about
17 over-order prices, you say, "Those that do not understand
18 over-order prices, their functions, benefits, and
19 limitations."

20 A. Yes.

21 Q. And you're talking about there's two camps. So
22 there's one that doesn't understand their functions,
23 benefits, and limitations.

24 And I was wondering if you could just summarize
25 what you think are the functions, benefits, and
26 limitations of over-order pricing.

27 A. Certainly. One of the functions is to provide a
28 little bit of head space above the minimum prices to give



1 room to, as someone asked me, some adjustments for to
2 encourage certain activity on the part of the Class I
3 plants, to incentivize their level receiving through the
4 week. Again, as a co-op, I don't care when plants bottle
5 their milk, but I do care a lot about what days of the
6 week and how much each day they actually pump into their
7 plant. It's from a co-op standpoint, when they bottle is
8 not -- you know, that's their own business, but how they
9 receive the milk, that's the important question.

10 So over-order prices provide a mechanism or a
11 provide some funds there which we can incentivize plants
12 to level their receiving, both within a week, within a
13 month. And, again, some places I have never been involved
14 in an agency that does this, but there are even annual
15 receiving credits. That's one function.

16 Another function is to help defray some of those
17 costs that obviously aren't captured in the Federal Order
18 prices. Obviously, you know, there is never -- in my
19 history, we have never had differentials which covered
20 completely the cost of hauling. So this over-order --
21 these over-order prices provide some additional funds to
22 help move the milk over and above the Federal Order
23 Class I differential surface. There is -- to cover some
24 balancing costs, and maybe that are over and above the
25 balancing costs that are generated on a weekly or monthly
26 basis. So those are some of the functions and their
27 purpose and why we have them.

28 Their limitations are that they can't do it all.



1 They are always one breath away from falling or going away
2 completely. Again, I have experienced everything, high
3 ones, zero ones. And so there's always the concern that
4 some internal or external force will force premiums down.

5 Often it is external, what's happening somewhere
6 else can impact the level of over-order price in a
7 marketplace. Some other area has a temporary surplus of
8 milk, and they are looking for homes. Sometimes that can
9 force prices down, over-order prices down, simply the
10 threat that milk may flow from a reserve supply area to
11 another area, simply because it needs a home and they are
12 willing to take lower prices for it to -- to just get rid
13 of it or just to balance it.

14 So there's always the possibility that over-order
15 prices can fail. And, again, I have experienced it all.
16 We have seen them high, and we have seen them low, and we
17 have seen them zero.

18 And so there's their lim- -- their basic
19 limitation is that they do not replace the surety of the
20 prices and the price transmission which comes from Federal
21 Order regulated prices.

22 Q. Okay. Another comment you had on over-order
23 prices, which is on page 21, you say the prices "tend to
24 be flat over large expanses of geography."

25 A. Yes.

26 Q. Wondering if you could expand on that a little
27 bit.

28 A. Certainly.



1 Q. I think this also -- I had another note at the
2 bottom of that slide, your paragraph that talks about, "As
3 distributing plants have increased throughput, and their
4 Class I sales area footprint, and with the rise of
5 national and multi-regional retailers, this issue has
6 taken on even more significance."

7 And I guess what I -- big picture I'm looking, if
8 I tie those two things together, right, basically, there's
9 been a lot of consolidation since reform. We consolidated
10 however many orders into 11 at that time, so we got orders
11 that were bigger in geography. You have retailers whose
12 footprints are bigger in geography is what you are saying
13 on this slide.

14 So how has that impacted over-order prices and
15 your comment that they are flat over these large
16 geographic areas?

17 A. Yeah. Those are very fair questions.

18 The Class I processing industry, I'm going to
19 generalize, basically uses the Federal Order class price
20 surface as the slope or the adjustments for location plant
21 to plant. They generally don't like over-order prices,
22 which try to tweak or change the slope very much of those
23 established Federal Order Class I differentials. If --
24 you know, the industry basically accepts that whatever the
25 order comes out in, in terms of the relationship of
26 location values, is pretty much it.

27 So in order to maintain a competitive situation
28 that plants want, they want to be -- to know they're



1 competitive against their neighboring plant, and they say,
2 okay, I accept that my plant is \$0.10, \$0.15, \$0.30 higher
3 than my competitor, or lower, I accept that. In order to
4 make sure that they can -- they'll live with or accept
5 that difference, the over-order price has to be pretty
6 flat so that you don't disrupt that \$0.30 difference,
7 which is established under the Federal Order Class I
8 differential structure.

9 So that's why they tend to be flat over large
10 areas because you don't want -- the competitive structure
11 on the -- out in the country or on the street recognizes
12 difference in -- differences in order Class I
13 differentials as the difference in price. If you try to
14 tweak that zone difference or that relative differential
15 difference, you -- you can get in a position where your
16 customer says, well, you just raised my price more than
17 you raised that price up there, I don't like that.

18 So they tend to be flat because that way you
19 maintain if it's \$0.30 between two plants under the order
20 differential, when you raise both of them or apply a flat
21 Class I differential across -- or excuse me -- a flat
22 Class I over-order price to both of them, you still
23 maintain that \$0.30 difference.

24 The issue of the consolidation or -- particularly
25 at retail level, and somewhat at the Class I price
26 level -- or Class I plant level, you are -- you know,
27 these plants have gotten bigger. They serve bigger pieces
28 of geography, which means they serve more stores. And so



1 many of the stores are owned by national or regional
2 chains that don't necessarily match the regions of a
3 Federal Order or certainly don't match -- necessarily
4 match a region of a marketing agency in common.

5 But they look -- you know, a national retailer who
6 operates across much of the country knows what the
7 over-order price is in a long way away, and they ask a
8 very hard question, well, why are you charging me more
9 here than you are out there, that ought to be the number
10 everywhere. And whether or not that's right or wrong,
11 that's the reality.

12 Q. I have one last hopefully quick question.

13 On your Exhibit 314, which -- and I'm not trying
14 to beat a dead horse. I just had a quick data question.

15 A. Yes.

16 Q. You have on here your approximate hauling costs.

17 A. Yes.

18 Q. And I'm just wondering where those numbers came
19 from.

20 A. To be honest, I used a composite of base-haul
21 costs that I believe existed in each of those periods.
22 They -- they -- honestly, the base-haul rates in -- in
23 this part of the world, the base-haul rates have --
24 have -- have been fairly consistent with some increase
25 over time. And then I adjusted it for the fuel costs that
26 existed in that month. Fuel adjusters on hauling are a
27 month-based thing, and so I -- I basically went back and
28 calculated what the haul cost would have been at a



1 composite base-haul rate adjusted for fuel, as I under- --
2 as I am aware are charged in that region.

3 Q. Okay. And this is the Southwest, so this is what
4 you are familiar with?

5 A. Yes.

6 Q. Okay.

7 MS. TAYLOR: It's 5:04, and AMS is finished.

8 Thank you.

9 THE COURT: It's 5:04, yes. And so any exhibits
10 that need to be moved into evidence, I don't know whether
11 you want to wait on that? We should do it tomorrow. Is
12 that okay?

13 MS. HANCOCK: Your Honor, I would recommend that
14 we do it tomorrow. I'll have a little bit of redirect,
15 and I think that our discussion about exhibits might be
16 more substantive than what we have time for today.

17 THE COURT: Excellent.

18 And same with you, Mr. Rosenbaum?

19 MR. ROSENBAUM: We can wait until tomorrow.

20 THE COURT: Excellent.

21 So can you give us a quick preview for tomorrow?
22 Will we start with Dr. Erba? Well, after we're done with
23 Mr. Sims, will we then have Dr. Erba?

24 MS. HANCOCK: Your Honor, we do have a couple of
25 witness scheduling issues. So we have Hunter Jensen from
26 J.D. Heiskell that will be here tomorrow that needs to get
27 off, so we thought we would start with him. And then
28 Dr. Erba and Calvin Covington. And we have Dr. Vitaliano



1 and Rob Vandenheuvel that will take us through the rest of
2 this week in some combination.

3 But we might have to do some jockeying around
4 because I think Mr. Covington needs to be finished by
5 Wednesday because he won't be able to be here in November,
6 and so we'll need to get him completed before the end of
7 the week.

8 THE COURT: Good. Thank you. That -- that gives
9 us an idea.

10 How do you spell Hunter Jensen, if you know?

11 MS. HANCOCK: H-U-N-T-E-R, J-E-N-S-E-N.

12 THE COURT: Okay. Good.

13 All right. Tomorrow morning, 8 o'clock, I look
14 forward to seeing you that can return. We now go off
15 record at 5:06 p.m.

16 (Whereupon, the proceedings concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

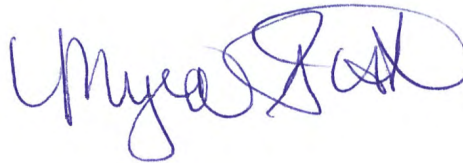
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10 DATED: December 12, 2023

11 FRESNO, CALIFORNIA

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