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

---o0o---

Carmel, Indiana

October 9, 2023

---o0o---

Reported by:

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

A P P E A R A N C E S:

FOR THE USDA ORDER FORMULATION AND ENFORCEMENT DIVISION, USDA-AMS DAIRY PROGRAM:

Erin Taylor
Todd Wilson
Brian Hill
Michelle McMurtray

FOR THE AMERICAN FARM BUREAU FEDERATION:

Roger Cryan

FOR THE MILK INNOVATION GROUP:

Ashley Vulin
Charles "Chip" English

FOR THE NATIONAL MILK PRODUCERS FEDERATION:

Nicole Hancock
Brad Prowant

FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

Steve Rosenbaum

FOR THE MAINE DAIRY INDUSTRY ASSOCIATION:

Dan Smith

FOR LAMERS DAIRY:

Mark Lamers

---o0o---

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

---o0o---

M A S T E R I N D E X

SESSIONS

---o0o---

M A S T E R I N D E X

WITNESSES IN CHRONOLOGICAL ORDER

---o0o---

M A S T E R I N D E X

INDEX OF EXHIBITS

IN CHRONOLOGICAL ORDER:

---o0o---

MONDAY, OCTOBER 9, 2023 - - MORNING SESSION

THE COURT: Let's go back on record.

We're back on record. It is October 9, 2023. It's a Monday. It's approximately 8:00 in the morning Eastern Time.

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

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

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

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

THE COURT: Thank you.

And you have previously testified?

THE WITNESS: I have not.

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

MARK LAMERS,

Being first duly sworn, was examined and

testified as follows:

THE COURT: Thank you.

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

exhibits.

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

THE COURT: Very good.

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

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

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

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

MS. TAYLOR: Yes, Your Honor.

THE COURT: And that would be 327.

MS. TAYLOR: Yes. 327.

THE COURT: 327. That document is eight pages.

(Thereafter, Exhibit Number 327 was marked for identification.)

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

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

MS. TAYLOR: One second, Your Honor.
THE COURT: Let's go off record for just a moment.
(An off-the-record discussion took place.)
THE COURT: Let's go back on record.
We're back on record at 8:04.
MS. TAYLOR: So let's start this again on a Monday. We had Mr. McAfee testified Friday. He was our last dairy farmer witness. He did have two exhibits. They came in late, so we didn't have copies. I believe we held two numbers for him. So my apologies, 327 and 328. So we can address -- get copies and address that later today once we get copies.
But then I think that would mean Mr. Lamers would be marked 329 for his statement, that's eight pages long, and 330 for his Exhibit 1.
And for those watching on the video stream, those did get posted. They are on the exhibit page, Lamers-1 and Lamers-2, I believe, so people can follow along there as well.
1A, thank you.
THE COURT: Lamers-1 and Lamers-1A.
(Thereafter, Exhibit Numbers 329 and 330 were marked for identification.)
THE COURT: Excellent. All right.
Now, we're ready to proceed with Mr. Lamers' testimony. And would someone like to begin that by asking the usual questions of his business address and so forth, or should we just let him do that?

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

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

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

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

THE WITNESS: I got it written down, slow.

THE COURT: Thank you.

You may proceed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WITNESS: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

Said another way, co-ops that own fluid milk

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

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

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

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

Today, marketing conditions are drastically

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

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

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

THE WITNESS: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

That concludes my testimony.

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

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

And that has been done on the record copy.

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

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

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 8:35.

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

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

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

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

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

Is that what you said?

THE WITNESS: Yes.

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

THE WITNESS: Okay.

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

All right. Good.

I would invite cross-examination.

CROSS-EXAMINATION

BY MS. HANCOCK:

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

A. Good morning, Ms. Hancock.

Q. Thank you for being here.

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

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

A. Yes.

Q. And that's located in Wisconsin?

A. Yes.

Q. Okay. How do you source your milk?

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

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

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

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

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

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

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

A. No. We take all that they produce.

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

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

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

A. That's correct.

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

or does that allow you to fill some needs?

A. No -- well, for our sales capacity, it is now. Our plant capacity, no. We could run much more if we had the money to be able to make the expenditures needed to expand our operation.

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

Q. And are those retail outlets, those customers?

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

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

A. All Class I, yes.

Q. So some retail, some schools.

Anyone else?

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

Q. Okay.

A. And the problem with that is because of their

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

Q. And where did you say they were located?

A. The retailers?

Q. Yeah. And the schools that you said.

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

Q. Okay. In Wisconsin?

A. Yes.

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

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

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

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

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

A. Some of them are, yes.

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

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

Q. Great.

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

A. Not right now, no. No.

Q. Okay. Have you ever encountered that situation?

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

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

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

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

And it's a pretty diverse product mix between your

fluid milk and your manufactured products?
A. Outside of the ice cream mixes, that's the only one we really do, yeah.
Q. Do you do cheeses as well?
A. We do not.
Q. Okay. I saw on your website that you sell some cheeses.
A. We do. We buy some from -- from a local distributor. He private labels it for us. But we do not manufacture cheese.
Q. Okay. And do you have -- the volumes of milk that come in from those six dairies, does it change by day or by week?
A. No. They are pretty consistent --
Q. Okay.
A. -- you know, with what they do.
Q. And has --
THE COURT: Whoa.
THE WITNESS: Yeah. They are pretty consistent in what -- in their production.
BY MS. HANCOCK:
Q. How long have you worked with just those six dairies?
A. Oh, trying to think back who is -- it's probably within the last ten, 12 years. I mean, some of them come and go. We have lost some farms due to just going out of business, you know, nobody taking them over. So we have been able to find younger farm families that -- that we

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. Okay.

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

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

A. Exactly.

Q. -- their operation?

A. Exactly, yes.
Q. Okay. It's hard for new dairy farms to emerge just from scratch, isn't it?
A. It is. It is.
Q. It is very expensive to get it started, get the operation started up, isn't it?
A. I would think it would be, yes.
Q. Okay. If you -- on page 2 of your testimony you are providing your position on National Milk's Proposal 13, which is the higher-of mover that National Milk is putting forth.
A. Uh-huh.
Q. At the bottom there of that page you say, "Using the higher-of would only increase the price of fluid milk to the consumer."

Is it fair to say that one of the reasons why you are opposing National Milk's proposal, to move the Class I price mover to the higher-of is because you think that it would increase the Class I price, which in turn would cause you to have to increase your price to your consumer -- or to your customer?
A. You have to look at the price relationship between the Class III and the Class IV price at the time. Okay? I have seen months in Federal Order 30 where there was a $4 difference per hundredweight between the Class III and Class IV price, where the Class IV price was actually that much higher. Well, in using the higher-of in that situation, that's where that Class I mover gets attached.

Yes, that has to get passed on.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. That's correct. Yes.

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

A. Right.

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

A. We do not, no.

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

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

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

Can you explain that to me?

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

Q. Okay.

THE COURT: If I might interrupt.

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

THE WITNESS: I do not. No.

THE COURT: Thank you.

BY MS. HANCOCK:

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

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

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

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

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

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

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

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

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

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

A. Yes.

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

environment?

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

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

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

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

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

for your business has been able to thrive in that?

A. For us it works, yes. Yeah.

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

Do you see where I'm at there?

A. Yes.

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

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

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

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

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

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

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

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

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

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

A. We do, yes.

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

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

Q. What's the quality level you require?
A. That, typically, I -- when I look at producers' milk, I look at anything pretty much under 10,000, which is 10,000 on the standard plate count. After -- after that level, our producers don't receive any premiums.
Q. What about SCC?
A. I'm sorry?
Q. I don't know -- somatic cell count, sorry.
A. We don't pay any somatic cell premiums. That is something that we have had to compete with in the past. And just the way we would offset that is just changing the scale of our -- of our standard plate count program.
Q. Okay.
MS. HANCOCK: Thank you so much for your time.
THE WITNESS: Thank you.
THE COURT: Mr. Lamers, you mentioned the processing plant that closed. And I believe you said in Pere, Wisconsin?
THE WITNESS: De Pere.
THE COURT: Would you spell that.
THE WITNESS: It's D-E, space, P-E-R-E.
THE COURT: And how do you spell plate counts and what are they?
THE WITNESS: A standard plate count, it's basically a bacterial level in the milk that we look for. When I talk to any of our farmers or customers, to me, buying fluid milk for what we use is kind of like a computer: Garbage in, garbage out. You know, you can

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

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

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

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

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

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

THE WITNESS: We test every pickup.

THE COURT: Oh.

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

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

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

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

THE COURT: Thank you.

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

THE WITNESS: Okay. Thank you.

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

MR. ENGLISH: Good morning, Your Honor.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning, Mr. Lamers.

A. Good morning.

Q. My name is Chip English --

A. Good morning.

Q. -- representing the Milk Innovation Group.

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

A. Yes.
Q. That's especially not a good idea because our wonderful court reporter, who will remind me when I do it, you know, needs to be able to take all these words down.
A. Uh-huh.
Q. So let me start with a few sort of general questions.
Lamers is not a member of the Milk Innovation Group, correct?
A. We are not.
Q. You developed your testimony independent of the Milk Innovation Group, correct?
A. I have, yes.
Q. And also independent of the International Dairy Foods Association, correct?
A. I have, yes.
Q. Other than some courtesy conversations that you and I have had, and maybe some others from the MIG professional team, you have not had any substantive discussions about the testimony or this hearing, correct?
A. That's correct.
Q. So everything you are presenting is based upon your own views, developed in part when you attended several days of the hearing back in September, or where you have been watching online, correct?
A. That's correct, along with the many years that I have observed Federal Order hearings in the past.
Q. So Appleton is in what county in Wisconsin?

A. Outagamie County.
Q. Say again?
A. Outagamie County.
Q. I think you are going to have to spell that for the court reporter.
A. Great. No. It's O-U-T-A-G-A-M-I-E.
Q. And are you aware that in the National Milk Producer Federation proposal, your Class I differential would increase from $1.75 to $3?
A. I am, yes.
Q. Do you have any difficulty obtaining your milk supply?
A. I do not. No.
Q. How much of that increase of $1.25, assuming it were adopted, given the Class I utilization in Order 30, would go to your local dairy farmers? At 5%.
A. Could you restate that again?
Q. So assuming USDA adopted that increase proposed by National Milk of $1.25, that is to say the increase from $1.75 to $3, given a 5% class utilization in Order 30, how much of that would go to those local dairy farmers shipping to your plant?
A. I would think it would be a very small percentage of that.
Q. And did you say you have six farmers?
A. Yes.
Q. And how local is local?
A. Our farthest patron is about 30 miles from the

plant.

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

A. All of them would be.

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

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

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

Which is significantly higher than the national average, correct?

A. Yes.

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

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

A. Yes. That's correct.

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

A. That's correct. Yes.

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

very high significant drop, correct?

A. Correct.

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

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

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

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

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

A. No. I cannot.

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

producer price differential, and I want to discuss a couple different pieses of that.

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

A. Yes.

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

A. That's correct.

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

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

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

A. No, it would not.

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

A. That's correct.

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

THE COURT: Slow down.

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

THE COURT: Yeah. I'm following you, just barely.
BY MR. ENGLISH:
Q. So let me slow down.
I note that in November 2020, there were still 213 million Class I pounds. But when I look at -- and I deliberately looked at a month when schools were still in session -- May 2023, that's down to 162 million, which is right there a drop of 51 or 52 million pounds.
Do you know what happened between November 2020 and May 2023 that would address a 20-some percent decrease in Class I sales in your market?
A. I wouldn't have any information on how that or why that occurred.
Q. Regardless, when you testified that the Class I utilization in the market is closer to 5%, that is thinking of a normal month when that Class III milk is being pooled, correct?
A. That's correct.
Q. Okay. So I'm especially interested in your discussion -- and this ties together with some of the things that had -- counsel for National Milk was discussing with you.
You discuss a couple different things. First, that you sell kosher milk --
A. Yes.
Q. -- correct?
A. Yes.
Q. And that's one of the ways you distinguish

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

A. That's correct.

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

A. Correct.

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

A. That's correct.

Q. What do you mean by that?

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

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

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

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

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

A. That's correct.

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

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

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

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

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

A. Correct.

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

A. That's correct. Yes.

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

In your Order 30 market, with the low Class I utilization, can any remotely rational Class I increase have any impact on depooling?

A. It would have to be set so high, you know, I think, if I understand your question correctly, you know. So, again, I go back to my statement of the way the system is right now picking winners and losers. You know, because distributing plants are obligated to play, and manufacturing plants can jump in and out when it is not to their advantage, how can anybody -- how can anybody win in that scenario, outside of the manufacturing plants that depool?

You know, it's -- to me, again, I can only speak to what is happening in our order in Northeast Wisconsin. When I look at the number of manufacturing plants being built, and the size of those plants, it's not because of the increase in the amount of milk that's supplied there that they need to increase capacity. It's because that's where the money is. And when plants are allowed to depool their milk like that instead of sharing that revenue, like the Class I handlers do, you know, it's hard for a proprietary plant operating just a fluid plant to compete in that arena.

Q. Thank you, sir.

MR. ENGLISH: I have no further questions.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Mr. Lamers.

A. Good morning.

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

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

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

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

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

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

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

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

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

A. Potentially, yes.

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

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

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

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

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

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

THE COURT: Thank you.

BY MR. MILTNER:

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

A. That's correct. Yes.

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

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

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

A. That's correct. Yes.

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

A. That's correct. Yes.

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

A. That's correct. Yes.

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

A. Uh-huh.

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

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

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

suppliers?

A. We do.

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

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

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

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

A. We do not.

Q. When it comes to --

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

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

A. Uh-huh.

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

A. Yes.

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

from the SPC program?

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

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

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

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

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

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

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

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

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

A. Yes.

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

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

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

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

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

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

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

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

A. That is correct.

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

A. Yes. That's correct.

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

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

Q. Okay.

THE COURT: Would you spell Kemps?

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

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

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

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

THE WITNESS: Thank you.

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

We go off record at 9:37.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 9:47.

Who next has questions for Mr. Lamers?

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

CROSS-EXAMINATION

BY MR. SLEPER:

Q. Good morning, Mr. Lamers.

A. Good morning.

Q. How are you this morning?

A. Good.

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

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

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

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

A. Okay.

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

A. It's not a requirement.

Q. Okay.

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

Q. Okay. Very good. Very good.

What about PIs, preliminary incubation counts --

A. Yes.

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

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

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

A. Generally under ten.

Q. Okay. Got you. Very good.

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

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

Q. They are?

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

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

A. That's correct.

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

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

Q. Okay. No -- no issue.

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

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

Q. Got it. Very good.

MR. SLEPER: Thank you, Mr. Lamers.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY DR. CRYAN:

Q. Good morning.

A. Good morning, Dr. Cryan.

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

A. You too.

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

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

MS. TAYLOR: 75. 3.75.

BY DR. CRYAN:

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

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

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

A. Yes, we would.

Q. At 3.75 million?

A. We -- restate the question, please.

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

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

Q. That's for --

A. -- farmers?

Q. -- farmers, right.

A. I am not a farm --

Q. I have a point on this.

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

And farmers --

THE COURT: Now, he acknowledged by nodding yes. Did you want him to confirm that you were correct, or no? You were just telling him?

DR. CRYAN: Yes. Yes.

BY DR. CRYAN:

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

THE COURT: No, no, no. I didn't mean that. Okay. Start again, Dr. Cryan.

BY DR. CRYAN:

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

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

MS. TAYLOR: Gross receipts.

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

BY DR. CRYAN:

Q. Are you above that level in gross receipts?

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

DR. CRYAN: Okay.

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

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

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

MS. TAYLOR: Yes.

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

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

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

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

BY DR. CRYAN:

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

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

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

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

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

BY DR. CRYAN:

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

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

Q. All right. Thank you very much.

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

THE COURT: Thank you.

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

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

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning, Mr. Lamers.

A. Good morning, Ms. Taylor.

Q. Thank you for coming back to testify today.

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

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

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

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

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

A. Yes.

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

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

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

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

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

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

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

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

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

A. Correct.

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

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

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

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

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

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

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

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

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

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

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

Is that -- am I correct in remembering that?

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

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

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

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

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

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

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

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

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

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

A. Yes.

Q. And you pool your milk.

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

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

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

A. No. No, I have not.

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

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

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

THE COURT: I appreciate your testimony.

THE WITNESS: Thank you.

THE COURT: Thank you.

Ms. Hancock.

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

THE COURT: Thank you.

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

There is none. Exhibit 329 is admitted into evidence.

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

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

There is none. Exhibit 330 is admitted into evidence.

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

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

Thank you. Please state and spell your name.

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

THE COURT: You remain sworn.

THE WITNESS: Thank you.
MR. ENGLISH: Good morning again, Your Honor.
JEFFREY SIMS,
Having been previously sworn, was examined
and testified as follows:
(CONTINUED) CROSS-EXAMINATION
BY MR. ENGLISH:
Q. And good morning, Mr. Sims.
A. Good morning.
Q. My name is Chip English with the Milk Innovation Group. And when we broke for the farmer portion of last Friday, I was in the midst of my cross-examination of Mr. Sims.
As we get started, Mr. Sims, have you brought back up with you the Milk Production Disposition and Information -- and Income Summaries that I handed out last week?
A. I don't know. I suspect I did not.
THE COURT: Mr. English, help me with which exhibit numbers I should be looking at.
MR. ENGLISH: Your Honor, I did not ask for them to be exhibit numbers. I was trying to save the record a couple pieces of paper, and I was taking official notice, and I described the documents. They were a cover sheet and one page.
THE COURT: Yes.
MR. ENGLISH: And so either counsel has a copy for the witness. I just thought rather than interrupting in

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

May I approach the witness, Your Honor?

THE COURT: You may, please.

BY MR. ENGLISH:

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

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

A. Correct.

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

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

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

A. Okay. Fine.

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

A. Sure.

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

A. Theoretically.

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

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

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

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

A. Yes.

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

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

A. Roughly. Yes.

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

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

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

Is that correct? Do you remember that?

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

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

A. I would suspect that might be true.

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

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

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

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

Q. Break that down?

A. Yeah.

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

A. Yes.

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

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

Q. Billion?

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

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

THE COURT: Nobody's using Ts.

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

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

MR. ENGLISH: I used trillion.

THE COURT: Oh, my goodness.

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

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

BY MR. ENGLISH:

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

A. There we go. Yes.

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

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

A. Yes.

Q. Okay. Thank you.

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

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

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

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

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

A. Please ask me that again.
Q. Wouldn't you conclude based upon the statistics we just discussed, that for whatever reason, dairy farmers are making decisions to become or to remain Grade A for reasons that have nothing to do with Class I?
A. I don't know that I would agree with that.
Q. Okay. All right. I'm looking at my outline because I promised you I would get to this other requirement issue, and I'll have to come back to my outline.
So you have already both in your testimony and there's Exhibit 3- -- well, now, I'm trying to think -- is it 312 -- it was 37B.
A. 312, yes.
Q. It's 312. Okay.
-- that fluid milk processors are making increasingly -- increasing quality demands from their raw milk providers, correct?
A. That's the implication, yes.
Q. That's not unique to Class I, is it?
A. I think some of these requirements certainly are. I'm unaware of manufacturing plants that require a 180,000 count for somatic cells.
Q. Now, how many -- you gave one example of that. Is that the standard or just one?
A. This exhibit provides a strata, if you will, of our survey -- or the National Milk survey. I didn't do -- conduct this survey. But provides a range of quality,

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

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

A. I don't know.

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

A. I do not know.

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

A. I do not know.

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

A. I do not know.

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

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

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

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

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

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

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

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

A. Yes.

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

A. That's my understanding, yes.

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

A. I would think not.

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

A. It would.

Q. Is that true for direct microscopic count?

A. Yes.

Q. Is that true for preliminary incubation count?

A. Yes.

Q. Is that the same for coliform?

A. Yes.

Q. Is that the same for laboratory pasteurized count?

A. Yes.

Q. Is that the same for acidity?

A. Yes.

Q. Is that the same for temperature?
A. Yes.
Q. And on page 7 of your testimony, which I believe is 310, you stated, "We" -- meaning National Milk Producers Federation, I assume -- "has not quantified the additional cost of producing milk that exceeds the minimum PMO Grade A standards, but such costs undoubtedly exist."
Correct?
A. Could you tell me exactly where you are quoting.
Q. I thought it was page 7?
A. Yes. Which paragraph?
Q. Well, it's been a while since I read the statement.
A. Oh, the very bottom.
Q. Yes.
A. Yes.
Q. Thank you.
While I'm thinking about it, let me return USDA's copies.
All right. I am done with that subject, so I'm going back in my outline. And this is the discussion about inversions.
A. Yes.
Q. I think I understand, but just to be -- so I'm certain, do you have a specific portion of the $2.20 fixed base minimum Class I differential, whatever you want to call it, that constitutes the amount necessary to address the inversions issue that National Milk raises?

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

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

Am I correct that I have heard that argument?

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

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

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

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

sufficiently limited Class I price inversions for this purpose.

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

A. Correct.

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

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

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

A. Yes.

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

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

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

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

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

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

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

A. That is one of the reasons.

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

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

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

Q. Aren't the two linked?

A. Ask that again?

Q. Aren't the two linked?

A. Aren't the two what?

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

A. They would be.

Q. Thank you.

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

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

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

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

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

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

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

Is that correct?

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

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

that?

A. None.

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

A. 19 of?

Q. Sorry. Of Exhibit 310.

A. Yes.

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

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

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

Q. Do you agree with that?

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

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

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

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

A. That, I can't say.

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

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

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

A. Yes.

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

A. That's correct.

Q. With respect to a proprietary operator, not only

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

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

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

A. Yes.

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

A. Correct.

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

Did you hear that question?

A. I think I did, yes.

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

$0.07 to be returned to the pool, correct?

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

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

A. Yes.

Q. -- at Mr. Lamers' plant.

A. Yes.

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

A. The $1.25 on the Class I times the Class I differential.

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

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

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

A. Not much, not very far.

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

the delivery?

A. Not necessarily.

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

A. Please ask that again.

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

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

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

THE COURT: Discuss what?

MR. ENGLISH: Balancing.

BY MR. ENGLISH:

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

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

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

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

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

A. It is.

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

A. I'm sure it isn't.

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

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

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

A. Yes.

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

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

that that was there.

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

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

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

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

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

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

A. No.

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

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

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

upon various or specific energy of cost indices?
A. Those kinds of fuel surcharge adjustments do exist.
Q. And those surcharges that exist adjust every month, correct?
A. Adjust any month when a change in the fuel price changes.
Q. Okay. And if this question goes to Part 3, let me know and I will circle it and move to Part 3.
You reference the increasing distance between farms and plants. Doesn't the USDS (sic) account for that in its model?
A. At least partially, yes.
Q. Are -- is your testimony going to be -- and if it is Part 3, tell me it's Part 3 -- that it doesn't account for all of it and, therefore, that accounts for some of your modifications?
A. The -- I think we better wait until Part 3. How's that? Yeah, circle that one.
Q. With respect to over-order premiums, you make your comment that it's "important for businesses to know that their competitors have a uniform price," correct?
A. That's something they communicate to us regularly.
Q. Okay. Isn't that the same concern that proprietary operators have about the ability of cooperatives to reblend their proceeds?
A. I don't think those are the same at all.
Q. So I want to go back to your metaphor at the -- I

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

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

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

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

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

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

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

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

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

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

A. Yes.
Q. And National Milk's response was, use the existing $1.60, correct?
A. Correct.
Q. And so then the price surface that USDS (sic) resulted in used that $1.60, correct?
A. Yes.
Q. If it should have been 2.20, wouldn't that have been increased before you did all your modifications, every number throughout your results by $0.60?
A. Again, we're -- we are changing the definition. Our -- you are using the word "base" meaning everybody radiates out of $1.60. We needed the 2.20 for the purposes we described.
Q. But you agree, you asked for the model to be run at $1.60 and it generated model results, correct?
A. Yes.
Q. Wouldn't the simple mathematical response then be, let's add $0.60 because we're going to make the minimum base fixed 2.20 first and then modify from there?
A. Our proposal -- our process was to use the 1.60 as the model existed, using the 1.60 we have today, establish the differentials. When the Western group said they needed 2.20 at that area, that's different than the base. So we used $1.60 base for everywhere, then we established 2.20 as the minimum because it solves these other problems.
Q. So you agree it's two different things?

A. I beg your pardon?
Q. You agree it's two different things. There's $1.60 base, and now there's a 2.20 minimum, they are two different things?
A. Again, I don't know -- I -- the term "base," I don't know how we use that. The model was run at $1.60, and everybody had the same model run, all of which were -- were -- were predicated on the single low point, that one single solitary county in Idaho, which was 1.60, and everybody then worked off of that.
THE COURT: When you say "everybody," you mean in that -- that group that worked on that part of the country?
THE WITNESS: The -- no, ma'am. Every -- all four regions, all four major regions we used across the country to divide up the work, used the model as it was generated with that single one month county in Idaho at the $1.60. Every other price out of that county was higher than that.
BY MR. ENGLISH:
Q. So you took that county to something other than 1.60, and it is not 2.20, I believe. You took it from something other than 1.60, correct?
That county, that county, you raised above 1.60, correct?
A. The minimum differential for the country is 2.20.
THE COURT: No, no, no. Now, your team started with this model number?
THE WITNESS: Yes, ma'am.

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

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

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

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

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

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

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

BY MR. ENGLISH:

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

A. Yes.

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

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

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

which exist in each area.

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

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

Q. Do you agree?

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

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

A. I do.

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

A. No, I don't agree.

Q. -- that you made the slope less?

A. I do not agree with that.

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

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

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

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

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

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

A. At some point perhaps.

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

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

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

A. I think that's -- yes.

Q. We could call those ingredients, right?

A. Yes.

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

A. Ask me that again, please.

Q. We have detailed information from the document

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

A. Yes.

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

A. I beg your pardon?

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

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

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

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

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

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

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

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

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

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

THE COURT: Start again. You had every right?

BY MR. ENGLISH:

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

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

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

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

that?

A. I -- yes, I do.

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

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

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

(Whereupon, a break was taken.)

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

BY MR. ENGLISH:

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

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

MR. ENGLISH: Just 300.

BY MR. ENGLISH:

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

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

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

A. Okay. 69 or --
Q. 69 and -- Row 69 and Row 70.
A. Apache and Cochise.
Q. Yes.
A. Okay.
Q. FIPS code 4001 and 4003.

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

A. Yes.
Q. Okay. And then Column O, which says "Proposed Class I," has $2.90 for Apache and $3.10 for Cochise?
A. O --
Q. Column O.
A. Column O -- or cells O69 and O70?
Q. Yes.
A. 2.90 and 3.10?
Q. Yes.
A. Yes, I agree.
Q. But if you look over --

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

THE WITNESS: And $3.10 per hundredweight, yes.

THE COURT: Thank you.

BY MR. ENGLISH:

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

A. Yes.
Q. Do you know whether the change -- those changes -- let's start with this -- do you know whether those changes from Column O to Column S --
THE COURT: S like Sam.
BY MR. ENGLISH:
Q. -- S as in Sam, were the result of the conversations that you had pre-ex parte with USDA?
A. I can't say specifically regarding these two counties.
What I can say is that the -- our discussions with USDA basically provided two important pieces of information. Number one, there were a few spots where they specifically noted that -- the prices they had some questions about. But more importantly, that we would be responsible for justifying whatever differential proposal we provided. They didn't say, you need to change this, you need to change that. But made it quite clear that we were going to need to justify at a granular level the proposals that we finally put forward.
Q. Okay. Do you know whether the changes on Exhibit 300 from Column O to Column S were all in response to USDA?
A. I do not know.
Q. Okay. If I may give that back to USDA.
A. Yes.
Q. You just talked about the granular level. I have read pretty much all the testimony that's to come, and

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

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

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

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

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

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

Who next has questions for Mr. Sims?

//

//

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Mr. Sims.

A. Good morning.

Q. I'm Ryan Miltner. I represent Select Milk Producers.

So I -- I think Mr. English addressed probably a bunch of the questions that I had. The risk, of course, I run is that as you have broken up your testimony now -- are we in the third day of you being on the stand?

A. I don't think I'm going to be able to count high enough as to how many days this is going to last.

Q. Yeah. Well, I'm hoping that I don't duplicate too many questions, given -- given that we have broken your examination up over several days, but I will do my best.

In preparing Proposal 19, did National Milk Producers look to the 1998, 1999 order reform decision and USDA's explanation as to what constituted the $1.60 base differential?

A. Yes. Yes.

THE COURT: Now, Mr. Miltner, I want to make sure I'm on the right page. You said Exhibit 319?

MR. MILTNER: I wasn't referring to a specific exhibit, Your Honor. I was referring to USDA's order reform decision from 1998 and 1999.

THE COURT: Ah, thank you so much.

MR. MILTNER: You're welcome.

THE WITNESS: The proposed rule and the final rule?

MR. MILTNER: Yes.

THE WITNESS: Yes. We did.

BY MR. MILTNER:

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

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

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

A. It is.

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

A. Yes.

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

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

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

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

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

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

Q. Okay.

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

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

THE COURT: 310.

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

BY MR. MILTNER:

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

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

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

A. Yes.

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

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

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

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

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

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

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

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

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

I may have not answered your question.

Q. No, I think you did.

A. Okay.

Q. But the -- at least $0.60, but pegging a specific number is something that you have not done and you state it would be difficult to do?

A. I would say it -- it -- let me say this: If we came up with an average, the variation from the low to the high would be so wide. For example, the balancing costs at a place like Florida versus perhaps, you know, places0, other places, the average would not be terribly indicative of any one spot.

THE COURT: Of any one?

THE WITNESS: Spot. One area, one market, one region.

BY MR. MILTNER:

Q. Now, within the universe of Class I over-order premiums, an element of that might be what we would call a uniform receiving credit, correct?

A. Correct.

Q. And I can tell you what I think it is, but as you understand it, what is a uniform receiving credit?

A. In my history I'm aware of a couple or three kinds of -- where they -- kind of slots you might fit in. Typical, if there is such a thing as typical when it comes to over-order prices, there is a weekly credit. The gross

charge is -- the over-order price is grossed up by some cents per hundredweight.

And then a Class I plant, if they receive their milk very evenly through the week, that means all seven days, not taking Saturdays and Sundays off, they receive -- and it's -- when they process is not important to the supplier. It's when they receive the milk. It's the milk receiving, not when they process. So if they receive their milk -- their raw milk evenly through the week, they would get all or virtually all of that credit back.

There are also monthly credits which do the same thing, which they often are computed somewhat differently, but to encourage milk plants to buy or to receive their milk evenly through the month. Often those are kind of based on, say, some period of the month, you know, the high four days versus the low four days, and then you can compute some ratio, and they can get part of their -- the gross over-order charge back in the form of a credit to encourage them to -- to receive evenly.

I have never been involved in an agency that has one of these, but I understand there are also some annual credits that some agencies apply.

I can say this, though, whatever it is we -- that the agencies generally set up in these, it's not enough. The cost of balancing almost always exceed the -- our ability to charge and then give credits back. They -- they -- they help, but they don't solve.

Q. And you started to lead into my next set of questions.

In most parts of the country, are over-order premiums established by a marketing agency in common?

A. I don't know about most, but I would think -- I might use the term most, but I can't -- I wouldn't say what percentage. But that's -- it's common to use a common marketing agency.

Q. And could you explain just for our record, I think most of the people in the room know, but for the purpose of the transcript, could you explain what a marketing agency in common is?

A. Yes. The Capper-Volstead Act, which authorizes the establishment of agricultural cooperatives and limited antitrust exemption, also allows cooperatives to form in what I would call a cooperative of cooperatives. Technically within the Capper-Volstead Act it refers to them as marketing agencies in common. That is, in our case, in dairy case -- that's another pun I shouldn't use -- in the case of dairy, it's dairy cooperatives who join a marketing -- and form a marketing agency in common, with the intent of working together to establish a uniform set of over-order prices across some piece of geography or some market.

Q. And then once a marketing agency in common is established for a region, how does the agency establish an over-order premium?

A. That's hard question to answer, too. The elements

that go into establishing an over-order price or premium or service charge, whatever name you want to attach to it, is -- it's based on a number of economic factors.

Number one, something you described or we discussed already, usually they will contain some element or some part of the over-order price or the total over-order price would be to establish the ability to give credits back for those receiving incentives that help save dairy farmers and dairy farmer cooperatives' money. When a milk plant receives their milk evenly through any period, even is gold. If they will take their milk evenly, that really reduces our necessity to balance. So that's usually part of the equation.

The next biggest part of the equation, and I know this sounds kind of odd, but is what are the over-order prices being charged in the neighboring areas. Each agency always looks at what's going on next door, because we can't -- as an agency, you -- you almost have to recognize the -- the interregional flow of milk between agency areas. So you want to make sure that the Class I customers inside, say, our marketing area, quote/unquote, are not put at a competitive disadvantage against milk supplies that might be coming from the next marketing agency in common. So we pay attention to what the relative level of those agency prices are, and you can't really get very far out of line.

Also, as I testified at some point, you know, the over-order prices tend to be quite flat over an agency

area. They -- we -- it's just very difficult to put much price gradient on over-order prices that tweaks further the established Class I differential.

So there's -- there's several things. Sometimes you -- you do have regularly fuel surcharges. Those over-order prices are established at some base level of fuel price that may be adjusted up as fuel goes up. And they adjust back down when fuel comes down. So fuel is an important part of the incentive to -- you know, some charges are or part of the over-order price can be related to some balancing charge. Again, it is always less than the real cost.

But those are some of the elements that a marketing agency in common would normally look at in establishing an over-order price.

Q. When a marketing agency in common establishes an over-order premium, does that usually require the unanimous consent of the members of that agency, in your experience?

A. Yes. The -- if everybody isn't charging that price, then nobody's charging it. How's that? They -- it requires both unanimous approval and unanimous follow-up. They have to do what -- agency members have to do what they said they were going to do in terms of pricing.

Q. And is part of that driven by the fact that Class I handlers would like to know that their milk costs are established in the same manner as their competitors?

A. Absolutely.

Q. Over your career have there been instances where one member of a marketing agency in common has effectively decreased or eliminated over-order premiums because they did not agree with the other members of the marketing agency in common?

A. I don't know if I would put it that way. But I certainly in my career have seen the gamut of effective over-order prices. I have lived through -- in my career, been involved in over-order prices that by most definitions would have been kind of high, you know, $3 or more, which is well above the long-term average.

And I have lived through over-order prices that get down, if they are not zero, they are right next to them. And everything in between. And sometimes that's -- you know, that occurs because of competition from outside the marketing area -- the marketing agency's area.

Q. Now, because the Class I price is a required minimum for Class I handlers, it would go to say that an agency could not offer a uniform receiving credit unless it can offer or extract an over-order premium in at least that amount, correct?

A. Correct.

Q. And so if the over-order premium is zero or close to zero, is there a way to offset the balancing costs associated with non-uniform receiving?

A. I will answer it this way: No matter what the over-order price is, the balancing costs continue.

Q. Mr. English asked you some questions about the fuel surcharges that might be included in an over-order premium, and you mentioned them as well.

A. Yes.

Q. It is not the case that every Class I supply agreement between a cooperative and a handler shifts the hauling costs to the bottler, is it?

A. Would you ask that again? I want to make sure I answer this the right way.

Q. Let me rephrase it then so it's not as convoluted.

Do the Class I handlers always pay the haul from the farm to the plant?

A. No. Quite the opposite. The responsibility of delivering milk to the plant is on the producer side. Federal Milk Order prices are FOB the plant. So they have an established price -- the minimum price is based on the location of the plant, and it's the dairy farmers' responsibility to pay the haul to get the milk from the farm to the plant.

Q. So if there is a fuel surcharge, it is to help offset those hauling costs that belong to the cooperative or to the farmer, correct?

A. Yes.

Q. Are those types of fuel surcharges uniform, in other words, are they included in most or all contracts to supply Class I handlers?

A. I can't say about contracts to supply Class I handlers. I can say that -- I -- it's been my observation

that they are -- they occur regularly in agency pricing and that -- but I can't speak to any contracts.

Q. And, again, if the over-order premium is pressured downward, do those fuel surcharges also face downward pressures?

A. Certainly.

Q. Even when they are in place, do they come close to offsetting the actual cost of the transporting milk in the farm to the plant?

A. No.

Q. So turning again to the 1998 proposed rule from order reform. USDA wrote: "Traditionally, the additional portion of the Class I differential reflects the marketing costs incurred in supplying the Class I market" -- nope. That's the wrong section.

Let's start over. The last part: "Thus, Option 1A establishes an additional competitive factor into the development of the base zone Class I differential. Option 1A values this competitive factor to be worth about $0.60 per hundredweight. This value reflects approximately two-thirds of the actual competitive costs incurred by fluid plants to simply compete with manufacturing plants for a supply of milk."

How did National Milk address this competitive factor when it was compiling or putting together Proposal 19?

A. Again, we basically established a minimum

differential at the 2.20. We did not try to evaluate a replacement for this -- this particular line item in the $1.60. That -- I will say this: It's -- a competitive factor or a need to draw milk away from manufacturing still exists.

Let me just say this: Supplying, say, a cheese plant compared to a Class I plant, a cheese plant's easy. They -- well, none of them are easy, but easier. They take milk much more likely evenly through the week. They -- they don't vary much month to month. They don't vary much within the year. They are much easier a plant to service, simply as a matter of logistics and supply. Class I plants are difficult because they have all this variation, which is driven by they're a consumer-facing product.

So there -- we -- so in order to attract milk out of those manufacturing plants, which quite frankly, are easier to supply, there has to be some value to Class I. And we have embedded that in that value, in that 2.20 minimum differential we are proposing.

Q. So would it be correct to say that while USDA in 1998, or thereabouts, ascribed values to those three elements encompassed in a base differential, National Milk did not necessarily ascribe specific values to those three components, but that collectively they are captured in the concept of a $2.20 base differential?

A. That's a fair statement. I -- I will kind of offer an additional editorial comment. We live in a

substantially different world today than we did in 1998. If fuel costs were the same, if milk location -- milk production locations were the same, if the people were the same -- located in the same place, if the milk plants were all the same, if fuel costs and hauling costs hadn't changed, we probably wouldn't be here.

We have a different world today than it was 25 years ago, and we have to recognize that. And, yes, that's -- we didn't go through this same step-wise, you know, 40 plus 60 plus 60 equals 1.60. But our 2.20, I think, embodies the spirit of these in terms of how we arrived at it and the objective that it's -- that it solves, and that's making the Class I price the highest one.

If you want to try -- you know, I think it is simple. I think we make it -- sometimes we get hung up and forget what we're trying to do. We're trying to get milk to Class I, and the way you do that is make sure that the Class I price for -- as much as possible, as many times as possible, in practicalities, is the top price. That's the way you get milk to move to Class I, make it pay.

Q. Now, scattered among several questions and referenced a few times in your testimony and others, is the concept that the $2.20 base zone should somehow deter or minimize the occurrence of price inversions.

Do you recall those questions and statements?

A. Oh, yes.

Q. And because those questions were spaced out, I would like to just ask quite pointedly and see if we can get the record clear on this point.

Is the $2.20 base zone established to -- for the purpose of minimizing price inversions, or alternatively, is it your assessment that the $2.20 base zone is at a sufficient level that those inversions will not occur?

A. I think I missed something.

Q. You might have. I'll try to rephrase it. Well, let me just -- I'll throw out a wide open question.

How does the $2.20 base zone -- what is -- boy, this is hard.

How does the concept of price inversions apply to the establishment of a $2.20 base differential?

A. Okay. That's a -- I can -- I think I can get us there now.

Q. Thank you.

A. The exhibit, I believe it was marked 311, provides the historical relationship of the Class I mover plus the 1.60 plus our proposal at 2.20, also analyzes what the impact would be at a zero differential. And simply, tests the theory, okay, is $2.20 per hundredweight minimum differential sufficient to -- to almost completely eliminate Class I price inversions? The answer to that is yes.

Additionally, you know, we didn't discard the USDA's precedent of the $0.40 Grade A, $0.60 marketing cost, $0.60 some of us might call that, you know, give-up

or whatever we want to call it, or incentive to supply Class I. We didn't give up all that. We did do the work on the Grade A/Grade B piece. We can say without -- you know, that certainly that marketing costs and balancing costs of Class I continue, probably at least certain parts of the country well more than $0.60.

And the competitive factor, the need to draw milk away from manufacturing plants, which really is, if you think about it, the same question, the way you draw milk away from manufacturing plants is to make the Class I price the ultimate price or the top price. If you want the milk to move to Class I, it seems to me and us, the way you do that is make the Class I price the top price. And at $2.20 it solves all those problems.

So there's how we -- and it solves a price alignment problem in that part of the world where the $2.20 would apply.

Q. Maybe that gets me to a point where I can rephrase my original question better.

A. Okay.

Q. Is it correct that the $2.20 minimum differential is sufficient to address the concerns about price inversions?

A. We believe it is. Under the data we provided, the occurrence of price -- Class I price inversions would be so near zero or near enough to zero to simply say that that's close enough. Without -- honestly, you can't guard against the $8 rise in the Class III price. I mean,

nobody thinks that we want to do that. So we're willing to accept a modest number of inversions for all the other good reasons why you have Advanced Class I pricing, et cetera.

Q. Is it also correct that National Milk, or your working group, arrived at a $2.20 minimum differential independently of a consideration that that number would avoid price inversions?

A. I think we came to that -- the -- there were several simultaneous what they call them lines of inquiry. Right? What does it take to -- to solve a price alignment problem? What does it take to answer the Grade A/Grade B question? What does it take to minimize inversions? And they all point to $2.20.

Q. I wanted to ask a few questions about your written statement, Exhibit 310.

A. Yes.

Q. And I'm looking first at page 17.

A. Yes.

Q. The first paragraph, the last two sentences. It reads: "Therefore, comparing the proposed" --

A. Wait, wait, wait. I'm missing something. What -- where did you say on page 17?

Q. Page 17.

A. Which paragraph?

Q. Top paragraph. Begins "as mentioned"?

A. I'm not --

THE COURT: The first words of that paragraph

begin --

THE WITNESS: Oh, I'm sorry. I thought you said at the end of that paragraph. At the beginning of the paragraph.

BY MR. MILTNER:

Q. That is the paragraph.

A. Okay.

Q. And then about -- it is the last two sentences, and it begins -- it's about halfway through. It begins "therefore"?

A. Yes.

Q. Okay. So: "Therefore, comparing the proposed increases in Make Allowances by NMPF to the make costs included in the orders over 23 years ago, the percentage increases are," and you then state them.

A. Uh-huh.

Q. "Considering these changes in dairy product manufacturing costs from the same period, NMPF's proposal for increasing Class I differentials, which have remained unchanged for 23 years, is quite reasonable."

And I would like to -- I just want to get some more thoughts from you on what you are driving at there.

A. Yes. I think there is a -- one of the exhibits or sub exhibits might be helpful. If I can find it.

Q. I think in the next paragraph you reference NMPF-37E.

A. Yeah. I wish I knew where it was.

THE COURT: Let's go off record just a moment at

12:01 p.m.

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

THE COURT: We're back on record at 12:02. I'm looking at Exhibit 315, also shown as NMPF-37E.

And what did you want to add?

THE WITNESS: Yes. There is a table in the PowerPoint that was my initial testimony, and that is Exhibit 318, NMPF-37H, that's the PowerPoint. And it's page 32.

BY MR. MILTNER:

Q. Okay. I have got that.

A. Okay. So should I explain them?

Q. Yes, please.

A. Okay. It's -- I think it's maybe easier to go from the page 32 of Exhibit NMPF-37H, H as in Harry. Again, that's numbered 318.

That data or those percentage increases there in that text, that statement that you referenced, are provided mathematically -- or in tabular form on, again, this page 32. So I just simply listed for butter, nonfat dry milk, dry whey, and cheese, what the National Milk Producers Federation Make Allowance Proposal Number 7 per pound Make Allowance proposal is for those four products. And then I just went back to the final rule, year 2000 or when it was published, 1999, and what were the original Make Allowances in the final rule that the Department proposed.

And those were, as listed here, $0.1140 per pound,

$0.137 per pound for nonfat, dry whey $0.137 per pound, and $0.1702 per pound for cheese. So I simply made a mathematical comparison of how the National Milk proposal, Proposal Number 7, Make Allowances, compared to the Make Allowances which were included in the original year 2000 final rule.

Q. And is the purpose of that comparison to illustrate the reasonableness of Proposal 19 or to provide justification for the specific numbers?

A. Oh, it's not a justification of the specific numbers. Simply that -- well, let me say this, that the Proposal 19 provides an across-the-board to generally increase differentials. There's no argument about that. Our Proposal 19 increases differentials.

And if you take the weighted average differential across the entire country, that increases those differentials about 56% from the -- now, that's just the differential. That's just the weighted average across the country differential, roughly 2.63 today, to roughly $4.10 under our proposal. That's about a 56% increase.

And I'm simply saying if you look at the history of Make Allowance proposals from what they were when the Make Allowances were initially installed in order reform to today, or to today's National Milk proposal, those percentage increases actually line up pretty well with a 56% increase in Class I differentials.

And we need to remember that except for Orders 5, 6, and 7, the differentials in no place in the country

have changed since 2000. So it's appropriate to go back and compare our proposal today, if we're looking at simply, you know -- and I have couched this that Class I differentials and Make Allowances are basically the same issue. Economically they are the same.

Class I -- you know, dairy farmers make economic decisions based on the relative price between two points. Processing plants determine whether to operate or not based on, you know, the cost of -- or the included Make Allowance in the orders. These are the same issues. They are sending economic signals. They are compensating those parties for economic activity.

And so our -- the purpose here is simply to say that a 56% increase in Class I differentials over the country, while it sounds like a lot, compared to how much the -- you know, the proposals are to increase Make Allowances versus what they were in the year 2000 is -- they are reasonable.

MR. MILTNER: Your Honor, I see it's 12:07. I'm probably halfway through with my questioning, and this would be a logical time for me to stop for us to take lunch, but I'll continue if that's everyone else's prerogative.

THE COURT: I'm going to turn to the Agricultural Marketing Service.

Do you want to break now? Yes.

Mr. Miltner, thank you.

We'll go off record at 12:08. Please be back and

ready to go at 1:10 p.m. 1:10 p.m.

(Whereupon, a luncheon break was taken.)

MONDAY, OCTOBER 9, 2023 - - AFTERNOON SESSION

THE COURT: Let's go back on record. We're back on record at 1:11 p.m.

MR. MILTNER: Thank you, Judge Clifton. Still Ryan Miltner, representing Select Milk Producers.

BY MR. MILTNER:

Q. And, Mr. Sims, I wanted to ask questions now based on Exhibit 318, the slides that you used in your presentation.

A. Yes.

Q. I wanted to start with page 5, and this is a graph sourced from I think your statement. I just wondered if you would explain for the record what this index exactly is.

A. Yes. There is a company Cass Logistics or -- if I remember their full name, what is it -- Cass Information Systems. They provide services to the freight hauling industry. They do billing and also handle invoices for -- actually shippers to people that -- that want the product moved. And they monthly announce or release an index of their -- what they call their line haul index.

And this is a month-to-month or year-over-year, year-over-base-period, like Mr. Vitaliano described the other -- you know, recently about the versus 100, versus January 2005, what the base-haul rate is. And this is all kinds of freight, but this is a base-haul rate before the application of any fuel surcharges. It simply just shows that for the last 15, 16, 17, 18 years hauling costs --

and this, again, this is all kinds of freight, dry freight, tarped freight, boxed freight, liquid freight -- is on a pretty straight-line increase.

Q. And so when you say it represents the cost of hauling, that would include all costs, it's not -- well, includes all hauling costs?

A. This is an index of what's paid. They take the invoices, and they -- that they handle -- and, again, I -- I kind of use ADP, who does a lot of employee payrolls for companies, a contract payroll company. Occasionally you will notice they issue an employment report. They handle so many employee payrolls for so many companies, they represent a reasonable trend in employment. And Cass does a similar thing for -- for freight hauling. And, again, this is the base rate, exclusive of any added fuel surcharges. So it's actually billing, it's not, you know, the cost, if you will.

Q. Okay. Thank you.

A. I guess it is the cost to the shipper, if you could say that.

THE COURT: And just for the record, will you spell Cass out?

THE WITNESS: C-A-S-S.

THE COURT: Thank you.

BY MR. MILTNER:

Q. Okay. I'm now looking at slide 8. And we -- when we were doing our Q&A before lunch, we talked about some balancing costs and the differences of those.

Today, if a cooperative is going to negotiate a Class I supply agreement, they are able to point to USDA's 1998 decision and say, well, the Class I premium includes this factor for balancing costs and --

A. Well, you said "Class I premium"?

Q. Class I differential. Thank you. Yes.

They are able to do that. And so in those negotiations, if the cooperative can quantify its balancing, actual balancing cost, that's a -- a data point they can use to negotiate an over-order premium or whatnot.

And so with the 2.20 base differential that National Milk has come up with, how -- how do you think that will affect the ability to negotiate with Class I handlers about an over-order balancing premium?

A. I would say it certainly limits the upside that you could include in a -- if you need -- if you have to provide to your customer some schedule of, here's what we're charging in our over-order price, they certainly would have cause to say, okay, you have raised the -- the minimum differential, so that may or may not impact the amount of balancing. But it certainly would be a point from a customer standpoint to argue with you as you were sitting down to negotiate an over-order price.

Q. And of course, if it's an over-order premium, that is retained by the seller of the milk, correct?

A. Yes.

Q. Whereas if it's in the differential, that's pooled

among all producers, correct?

A. Correct.

Q. Now, the balancing that you talk about on page 8 and page 9 of your slides, I interpret those as balancing costs to the milk supplier and not so much to the pool.

Would you agree?

A. Absolutely.

Q. So is there a risk that increasing the differential, the base differential, without specifically quantifying the elements of that that's balancing, could actually harm those co-ops that are supplying milk to Class I handlers?

A. Ask that again, please.

Q. Sure. If you're increasing the base differential, and we can't specifically point to the components of that base differential that's attributable to balancing, and it's harder than to extract an over-order premium for balancing costs, doesn't that actually harm those co-ops that are trying to supply the Class I market?

A. I would say perhaps there is a trade-off there.

Q. Okay.

A. That one of the things that is inherent in over-order prices, or over-order premiums if you prefer that term, is that they always can go down. So perhaps where -- you know, if that -- if your premise is correct, that that -- if this embodies some value of a balancing in the 2.20 and that becomes a negotiation point, there would be a trade-off between what's assured in the Federal Order

price and what's possible or risky in the over-order price.

Q. And on a similar point -- were you here for Mr. Lamer's testimony this morning?

A. I was.

Q. And there was a question asked that, if he didn't -- essentially, if he didn't have to pay a Class I differential, could he pay his supplying farms more, and he answered, yes.

Do you recall that exchange?

A. Yes, I do.

Q. And I suppose that that is theoretically possible, and I trust Mr. Lamers on his word.

But in your experience, what do you think the likelihood is of a reduction in the differential being passed through directly to producers?

A. I think the operative word is "can" you pass it on to your producers. And if it's not -- you know, if it's simply a reduction in the Class I differential, which reduces the Class I price, which reduces the blend, and there's no requirement that those be passed on, then certainly -- then basically you are swapping regulated price with an unregulated price, and you bring into the -- into doubt whether that -- those savings that that plant experiences from a lower price get passed on to the dairy farmer. If it's a "can," it doesn't mean "will."

Q. And would you agree that there's a difference between reducing an already existing differential and

increasing an already existing differential in terms of what a handler's response to its member suppliers might be?

A. Certainly.

Q. Okay. On page 11 of your slides, can you just address what you are driving at here, just so I'm clear on what you are trying to convey?

A. Yes. That there are peaks and valleys in Class I demand. As we have talked, there's weekly peaks; there's weekly valleys. There's monthly peaks; there's monthly valleys. There's annual peaks; there's annual valleys. And carrying those reserve supplies to meet those peak demands, no matter what time period you focus in on, if there's a peak, there's a valley, and that difference between the peak and the valley represent the reserve required to meet those peak demands. You know, if you are going to meet the peak, you have to have -- you got to have balance -- the difference between the peak and the valley, and those costs are substantial.

Q. On the slide you state that temporarily shuttering or cutting back throughput at manufacturing plants when Class I demand bounces back lowers earnings at the manufacturing plants.

And what you are describing there is a classic balancing plant issue, correct?

A. Absolutely.

Q. Now, here's my question, and I'm trying to figure this out.

In the Make Allowance calculations, all of the overhead of a manufacturing plant is spread across the volume of product it produces, correct?

A. I believe that's true, yes.

Q. And so a balancing plant, that's a true balancing plant, will likely have a higher cost of make than a manufacturing plant that's a demand plant, correct?

A. I would put it this way: If you reduce the throughput of that balancing plant, the fixed costs remain, so you are spreading that fixed cost over a reduced quantity of throughput. So per unit of output, the fixed costs on a balancing plant are higher than a plant that runs full all the time.

Q. And these classic balancing plants that we're talking about, those are traditionally cooperative-owned facilities, correct?

A. Quite often, yes.

Q. So if we're already allocating those fixed costs across the actual product produced at a balancing plant, are we -- are we kind of double dipping if we now try to say that there's an additional balancing cost there to incorporate in a Class I differential?

A. I think it's the opposite.

Q. Okay. Explain.

A. I don't think that if we -- if we -- if you apply a Make Allowance based on some presumed throughput when that -- per pound of output, when you reduce that throughput in a balancing plant, that plant's going to

have a higher Make Allowance than -- its own internal Make Allowance will be higher than the -- what's established in the order; therefore, they have to be compensated in addition to whatever makes its way into the Class I differential.

Q. Thank you.

On page 12, you're continuing to talk about the need for reserve milk supplies, and you describe a situation where a plant has cancelled on order for milk, resulting in it having to be rerouted, or re-rerouted as you point out.

A. Yes.

Q. Are you familiar with take or pay provisions in milk supply contracts?

A. I am.

Q. And can you explain why those take or pay provisions don't address the concern you have laid out here?

A. Because, number one, that only occurs if their orders drop below the minimum take provision. I don't like to call them take and pay. I prefer to think of them as -- as minimum purchase requirements. But if -- those only kick in if they drop below the minimum contracted purchase. It doesn't mean they can't go above. And they might order a load over a -- in excess of the minimum purchase requirement, and then if they cut that load, then you still got the same cost. So that only -- the take or pay, as you called it, only applies when you get down to

the minimum, not anything above the minimum. And that still requires balancing over and above the minimum.

Q. And on the following slide, page 13, at the very end, you state: "If the market is one truck load short, then there wasn't sufficient supply. This occurs with some regularity."

And I wondered if you could comment on what you mean by "regularity" in that context and when that occurs?

A. Yes. The classic example, certainly, is when milk is rationed around -- it depends on the part of the world, but in our world in the South and Southeast, Southwest and Southeast, middle of August, their schools start back up and there's an enormous immediate surge in Class I need because all the plants that have been idle or have part of their processing idled in the summer when schools are out, all of a sudden crank right back up to supply the school sales.

And so oftentimes -- I'm going to say it's often -- or regularly, we actually have to ration milk during that surge, and somebody doesn't get what they want when they want it. That sometimes it's -- you know, you may be able to supply it over the course of the week, but they want it on Tuesday, and believe me, they get hot if it only gets there until -- on Thursday. So milk is sometimes rationed, that time period, particularly.

Sometimes it's a matter of economics, that it's possible to, you know, ration by zero, that you -- someone calls up and wants a load of -- or some number of loads of

spot milk in that period of time because they don't have enough, and we run the numbers and say, here's what it -- you know, here's what they are offering, here's what -- you know, what it will cost us to get it there, and we say, no, that the Class I money is just simply not enough to shake it loose.

So rationing happens.

Q. And in those instances, the sellers of milk are not able to command an over-order price sufficient to supply those plants on a spot basis for those handful of days per year?

A. Sometimes it is more than a handful. I mean, this crunch time, we normally think of, at least when we're planning for Lone Star's demand surge, we think about August the 15th usually through October, that this is demand crunch time. So sometimes the over-order prices simply aren't enough.

Q. And so what you are describing here, is that Lone Star's experience? Is that limited to Lone Star's experience?

A. I think -- I do not think that we stand alone in this experience.

Q. And you mentioned both the Southeast and the Southwest, is this experience occurring in both of those orders, say, Order 7 and Order 126?

A. Yes.

Q. There have been questions asked in the hearing about call provisions and making calls for milk.

Are those options available in those two orders?

A. No.

Q. On page 18, you're -- or it begins on page 17 -- you are talking about comments on over-order prices.

A. Yes.

Q. I asked you before lunch about the difficulty of maintaining over-order premiums through a marketing agency in common.

Do you recall those questions?

A. You will refresh my memory if I don't, but generally, yes.

Q. Well, I was trying to ask about whether unanimity among the members of a marketing agency in common is a prerequisite to being able to hold those premiums?

A. In a practical sense, absolutely.

Q. And so I guess my -- I guess my question is, is the trade-off between attempting to hold an over-order premium and increasing the differential, you're trading off the ability to capture that market value for yourself versus sharing it in a pool?

A. If you look at it that narrow way, I guess that's true. I may -- I have got a lot of experience when it comes to over-order pricing agencies, and that's the life I have lived for a long time, or did live in another life.

But I will say this: I would trade regulated pricing that is sure and certain for the hope of over-order prices, just about any day.

Q. Would you trade an over-order premium of $1 today

for an increase of $0.60 in the regulated price tomorrow?

A. Me, personally? I might very well make that trade because that dollar is not sure. That dollar can just as easily go to zero as it goes down $0.40 or $0.60 or whatever the number is. Surety in -- in the value of the Federal Order pools is important. Over-order prices have their place, I'm not saying we need to, you know, erase them. But I'm simply saying, if you are -- if you are -- if you are trying to manage your risk regarding dairy farmers and the price that they get paid, the best mitigation of the risk is that those values be in the pool.

Q. Does your answer to that question change if you're operating in an order with a 25% Class I utilization versus one with an 80% Class I utilization?

A. I don't think so because the Class I plants pay their over-order premium based on the individual plant utilization, not the pool utilization. So if I'm charging an over-order price to a Class I plant in Order 7 versus Order 126, you know, just hypothetically, I get to keep the same money -- if those two over-order price rates are the same in Order 7 as they are in 126, my revenue is the same because it's -- those numbers, those values are not dependent on the Federal Order Class I utilization. I get to keep 100% of it on either -- in either case.

Q. I think your analysis assumes that the cooperative's utilization is the same as the order?

A. I'm saying that the dollars that I -- if there's a

ten-load-a-day plant, Class I plant, in Order 7, a ten-load-a-day Class I plant in Order 126, if I charge them each $1 per hundredweight on a -- as a Class I premium, my revenue is the same, no matter where -- where either of those plants sit. My dollars of revenue are the same.

Q. You are stating your -- as a cooperative, your revenue is the same whether you charge a Class I plant an over-order premium of $1, which you retain, or an over- -- or they have to pay $1 higher in a Class I price which is pooled?

A. Oh, I'm sorry. I misunderstood your question. I thought your question was what's your revenue -- is the revenue that you get from those plants the same or different depending on the Class I utilization in the pool. I would agree that there could be a difference in terms of how much you draw out of the pool based on whether or not -- based on the utilization in -- the total utilization of milk Class I milk within the Federal Order pool.

Q. Okay. So on page 33 of your slides, you provide an example of milk sales from the Texas Panhandle down to the Gulf Coast.

A. Yes. Or Dallas.

Q. Or Dallas.

Is this an issue that will be explored more when you talk specifically about the Southeast and Southwest, or should I ask questions about this now?

A. As long as we don't get off into what the differential ought to be or what our recommendation on the differential for these places is, as a matter of illustration, we certainly can talk about this now.

Q. Well, I guess maybe there will be a little bit of both.

My question is: The 400-mile haul from Hereford to Dallas and the 600-mile haul from Hereford to Houston, in your experience, is that an everyday supply of milk from that milk shed to those plants?

A. Absolutely.

Q. So the regular supply agreement for those plants contemplates that milk traveling that distance, not just a top-off load or a spot load?

A. Well, I'm not -- I can't comment about the agreement between a plant and a -- and the supplier. But I'm saying that milk moves from the Panhandle to Dallas, or the Panhandle to Houston or Conroe on the Gulf Coast every day.

Q. And your illustration shows that even with some of the changes that the Proposal 19 makes, that's still a loss on the shipment?

A. Yes, it is.

Q. So why wouldn't that producer ship to the New Faria plant, or some other plant in the Panhandle still?

A. The only reason they wouldn't is that there's no room at those plants, under the current pricing structure. If a producer can get the Class III price or the Class IV

price in the Panhandle, they eventually -- and if -- and that of course that "get" means they can supply that plant. But based on the pure economics, today, they would opt to keep their milk at home and supply Class III or Class IV and say, we don't really care about the pool.

This -- we're boiling this down -- here's the -- here's the crux of this question. In this part of the world, dairy farmers are going to be faced with an investment decision. They are going to have to decide -- or we'll be deciding -- whether they build plants that make Class IV or Class III products, whether they invest the money, use their resources to invest in brick, mortar, and stainless steel where the milk sits, or invest in trucks and trailers to get it to where the people are.

And today the numbers say, you ought to be building plants in the Panhandle, and you ought -- and so -- and like I said, I said this before, we have a generation of dairy farmers now who don't buy into Class I comes first. They don't get that. They don't buy into that paradigm. They say, why am I doing that? Why are we doing that? And the answer sometimes is, well, there's not enough manufacturing capacity in the Panhandle to handle all that -- pardon the double use of that word -- but long-term, if this is the kind of economic decision that they are faced with, the answer is clear, they are going to build plants.

And, like I said, if you want a picture of a threat to Class I supplies or -- this is it. I mean...

Q. This is not meant to be a pointed question at the proposal, but a practical one. If the rational economic decision for the producer in the Panhandle is to invest in manufacturing because there's a market for the products coming out of that plant, and it returns more -- that's their highest return, if that is what economics say, why should they not do that and tell the Class I plant, if you want the milk, you are going to pay $6 in freight to get it there, otherwise I'm not sending it?

Why do we need to change the formulas and the differentials to make that happen? I mean, that's a fundamental question about why the over-order premium component of this will not work.

A. That's the -- that is the question before us. We have -- we have proposed raising the differentials to mitigate some of this, but it probably doesn't mitigate -- not probably -- it doesn't mitigate all of it. It's certainly a step in the right direction.

But your point is well taken. The -- the issue is that today, certainly, the economic signal is, you are absolutely right, those -- those Class I plants where all those people are in the east side of Texas are going to have to pay to shake the milk loose of manufacturing, eventually.

THE COURT: Mr. Sims, did you mention a place named Conroe?

THE WITNESS: Yes. I'm sorry.

THE COURT: What is that?

THE WITNESS: Conroe is a town slightly north and east of Houston. There's a -- a Class I plant in that -- in that county. I forget which the county name is. But Conroe, C-O-N-R-O-E. It is a city in Texas. It is an adjacent county to Houston, but slightly shorter haul than going all the way to Houston.

THE COURT: Thank you.

BY MR. MILTNER:

Q. On page 44, I think Mr. English asked you to name everybody on the committees, and you did what you could. And I'm not going to -- I won't try to fill in the gaps. But I was hoping that you would be able to let us know who is going to deliver testimony on the -- on each of the areas.

So for the first group -- well, let me just -- let's go through each order.

For the Northeast, do you know who is going to be presenting the testimony on that?

A. Ms. Ryll -- let me -- let me be sure and be accurate. There will be at least one what I would call primary witness in each of these regions, and then there will be several regional -- I guess we could call them support witnesses that will add some flavor or some additional reasoning behind how we came up with the various differentials. If you want to -- if -- the best way to find out who it is, is simply look at the list of exhibits that have been provided.

But Ms. Ryll I believe will be the primary witness

for the Northeast.

Q. Okay. I have the list here. I'll be frank, I've not read all 20 of them yet, but maybe that's -- the best way is to go through this.

Will Mr. Erba be -- or Dr. Erba be talking about any order in particular?

A. Generally the Mideast.

Q. Mr. Vandenheuvel will do California, I assume.

Mr. Hoeger?

A. Generally the Upper Midwest and somewhat down into the Central part of the country, and the Southeast and Southwest.

Q. He'll be busy.

Mr. John?

A. Supporting testimony for what I would call the Middle Atlantic and the Eastern side of Order 5.

Q. You would be one of the supporting witnesses that you mentioned?

A. Yes.

Q. Okay. I hope I get the name right, Werme?

A. Werme.

Q. Werme.

A. Northeast.

THE COURT: I didn't get the name?

THE WITNESS: Werme, W-E-R-M-E. And it's pronounced Werme.

BY MR. MILTNER:

Q. And Ms. Ryll who you mentioned earlier is spelled

R-Y-L-L, I believe?

A. I believe that's correct. Yes.

Q. Mr. Covington will be talking about Florida, I presume?

A. Generally.

Q. I assume it's Mr. Parks from MMPA will be Order 33?

A. Yes.

Q. Butcher from UDA. That's Arizona. That's easy.

Mr. Schilter will be 126 -- or 124?

A. Yes.

Q. Okay. Mr. Herting from DFA?

A. Parts of Order 7.

Q. Mr. Kang from DFA?

A. Order 126.

Q. Mr. Brinker from DFA?

A. Midwest. Upper Midwest.

Q. Mr. Stout from DFA?

A. Whom?

Q. Stout, I believe?

A. Colorado.

THE COURT: May I stop you there? Mr. Miltner, you may keep going, but I have got a lot of spellings I need.

So I have Ms. Ryll, R-Y-L-L.

We know Dr. Erba.

I think we know Vandenheuvel.

MR. MILTNER: Yes, he's appeared in the hearing.

THE COURT: Hoeger?
MR. MILTNER: Mr. Hoeger has appeared in the hearing, and I believe it is H-O-E-G-E-R.
THE COURT: Okay. Good. Thank you.
And Mr. John, J-O-N?
MR. MILTNER: J-O-H-N.
THE COURT: Oh, it's J-O-H-N. Okay.
And we already have the spelling of Werme.
And then Covington we know.
Was the next one Parks?
MR. MILTNER: Yes.
THE COURT: And the next one Butcher?
MR. MILTNER: Yes.
THE COURT: And then what was that --
MR. MILTNER: Schilter, S-C-H-I-L-T-E-R.
THE COURT: All right. Was the next one Herting?
MR. MILTNER: Herting, H-E-R-T-I-N-G.
THE COURT: Okay. Was the next one Kang?
MR. MILTNER: Kang, I believe. That's K-A-N-G?
THE WITNESS: K-A-N-G, Kang.
THE COURT: And who was Colorado?
MR. MILTNER: Mr. Stout.
THE COURT: Is that right? Spelled?
MR. MILTNER: S-T-O-U-T, I believe.
THE COURT: Thank you. And you may proceed with what you were doing.
MR. MILTNER: Thank you.
///

BY MR. MILTNER:

Q. Okay. The next is Mr. Gallagher who has appeared in the hearing already, I believe. Would that be Order 1 or --

A. He -- I think he may have multiple comments, but also, Colorado.

Q. Mr. Hiramoto from DFA, is that California?

A. Yes.

Q. And that's H-I-R-A-M-O-T-O.

Mr. Edmiston from Land O'Lakes, who's appeared in the hearing?

A. Upper Midwest.

Q. I believe there's a witness Heiskell, H-E-I-S-K-E --

A. That's a consultant regarding certain feed costs.

Q. Great.

MR. MILTNER: I think I'm contractually obligated to make us get out one of the large exhibits.

THE COURT: I appreciate your remorse.

MR. MILTNER: This is MIG-30, and I don't have the exhibit number in front of me. I didn't bring up my paper copy.

322? Thank you, Mr. English.

THE COURT: Yes. MIG-30, Exhibit 322, thank you.

Does the witness need one?

THE WITNESS: The witness needs one.

BY MR. MILTNER:

Q. Okay. Because I am not looking off the paper copy

but the Excel sheet, I'm looking at Row 83, Yuma County, Arizona.

A. Yes.

Q. So on Column L, the average from the model is $2.15.

Do you see that?

A. I do.

Q. Now, as I understand it, that means that the model assumes that there is a $0.55 additional location value in Yuma County over the $1.60 base differential.

Do you agree with that?

A. Let's -- if you would ask that again. I...

Q. Sure. The model's result of $2.15 average, as I understand Dr. Nicholson's testimony, means that there is $0.55 in additional location value in Yuma County above the $1.60 base differential.

Do you agree with that?

A. Yes. $2.15 exceeds $1.60 by $0.55, yes.

Q. Aside from the arithmetic --

A. Yes.

Q. -- do you agree --

A. Yes.

Q. -- with that --

A. Yes.

Q. -- understanding?

A. Yes.

Q. Okay.

(Court Reporter clarification.)

THE WITNESS: I might add, approximately $0.55, knowing that the -- that there's some -- some additional play in the model other than that. But the model would suggest $2.15, yes.

BY MR. MILTNER:

Q. Okay. Thank you.

Now, the base differential that National Milk has proposed is $2.20?

A. The minimum differential we proposed is $2.20, yes.

Q. And so the proposed differential for Yuma County in Proposal 19 is $2.90, correct?

A. According to this sheet, yes.

Q. So what accounts for the additional $0.15 between $2.20 plus $0.55?

A. Again, these are questions you will need to ask the regional witness to describe how they arrived -- arrived at $2.90. What local circumstances they applied to justify the recommendation of $2.90.

Q. Okay. Let's jump ahead then to --

THE COURT: And just so you keep me straight, $2.90?

THE WITNESS: $2.90 per hundredweight, yes.

BY MR. MILTNER:

Q. Let's jump ahead to Lubbock County, Texas, Row 2642.

A. Yes.

Q. And if we go through the same analysis, Column L

shows an average differential of $2.85, which would reflect $1.25 above the $1.60 base zone in that model, correct?

A. Just a minute. You are comparing $2.85 per hundredweight from Column L, cell -- Row 2642, to $2.20?

Q. To $1.60.

A. Oh, I'm sorry.

Q. That's okay.

THE COURT: Ask again, if you will, Mr. Miltner. It took me a little while to get to page 43 of my hard copy.

MR. MILTNER: Of course.

BY MR. MILTNER:

Q. In Column L and Row 2642, the Wisconsin model shows an average differential of $2.85. If you deduct $1.60 for the base differential in the Wisconsin model, you get $1.25, correct?

A. Yes.

Q. We understand that that represents the additional location value of milk in Lubbock County, Texas, under the Wisconsin model?

A. Yes.

Q. Now, if I take that $1.25 in addition -- of location value and I add it to -- I add $2.20 to it, I get $3.45.

A. I'm sorry.

Q. $1.25 plus $2.20.

A. I think you have double counted something there.

Q. What did I double count?
A. Wait a minute. Okay. So what you are saying is, okay, remove the 1.60 out of 2.80 -- I'm sorry -- subtract from $2.85 a hundredweight, $1.60 --
Q. Correct.
A. -- model minimum base differential --
Q. Yes.
A. -- leaving a location value of $1.25 per hundredweight versus that -- whatever area that base zone is, the $1.60, wherever the $1.60 applies?
Q. Yes.
A. And so now you are saying, okay, using that location value of $1.25 per hundredweight, $1.25 per hundredweight, plus $2.20 per hundredweight, you are saying that that would yield $3.45 per hundredweight?
Q. Correct.
A. Yes.
Q. Okay. Now, the proposed differential for Lubbock County, Texas, under Proposal 19 is $3, correct?
A. Yes.
Q. So what -- you worked on the Southwest pencil crew, correct?
A. Yes.
Q. What accounts for the $0.45 different?
A. First off, we did not start with the $2.20 as we have indicated. We started with the $1.60. The model called for -- applied the $1.60. So the real difference between the model and what we finally proposed was only

$0.15 higher.

Q. What accounts for the $0.15?

A. The local -- the need to attract a local supply, price alignment with other plants in the area -- or not need to attract local supply. Actually in that case it's mostly price alignment with the other plants around to make sure that the price alignment from the Panhandle to Dallas and Dallas to Houston or Panhandle to Houston lines up correctly.

Q. Was that simply a matter of creating a slope between those points?

A. That price alignment is -- does take into account the need to have a slope between the Panhandle and those destination cities with the Class I plants.

Q. Can you speak with any more specificity about those particular competitive issues or price alignment issues that -- that led to that $0.15 adjustment in Lubbock County?

A. We can do it now or we can do it when I do my -- the Southeast/Southwest total.

Q. Well, if those issues are going to be addressed in your other -- in your later statement, we can wait.

A. They will.

Q. So let's flip back to Ada County, Idaho, which is Row 519.

A. Yes.

Q. This was I believe the only county in the model that showed $1.60 reflecting that there was no additional

location value or minimal additional location value to milk in that county, correct?

A. I believe what the model suggests is the next hundred pounds, no one would be willing to pay any more for the next hundred pounds than they paid for anything before. So there still is value to the milk there, it's just there's no additional value. No one would desire to demand any more milk there.

Q. And do you accept the model's conclusion that there's no demand for additional milk there?

A. I think the model says if there is demand, they will pay no more for it. I don't know that that means there's no more demand. It simply says they won't be -- they have no desire to pay any more to get any more.

Q. Okay. So when National Milk said -- established a $2.20, I'll use your term, minimum differential, if the model suggests that there is essentially no additional demand or minimal value for the next hundred pounds of milk there, and the minimum differential is $2.20, what accounts for the additional $0.25 between the minimum differential and the $2.55 proposed for Ada County?

A. The regional committee must have determined there was some -- some other issues, perhaps distance to the next plants, the milk that draws -- was drawn out there, price alignment. There's distance -- distance issues, time on the road issues, if you have to go through a city to the next place. Those kinds of things.

MR. MILTNER: Okay. That's all I have. Thank

you, Mr. Sims.

THE COURT: Mr. Miltner, thank you. I always appreciate the clarity of your questions.

MR. MILTNER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods Association.

I'd like to start my examination by continuing a discussion about the movement of milk in the Texas Panhandle to Houston and Dallas. Okay?

A. Yes, sir.

Q. I'm actually from east of Houston, so it is a -- I know all the names. Went to Boy Scout camp in Conroe, Texas.

So in any event, on page 15 of Exhibit 310, which is your written testimony -- if you could get that.

A. Page what again?

Q. 15.

A. Yes, sir.

Q. You make the statement there, I'm just trying to orient ourselves, quote: "By comparing the returns" --

A. Which paragraph?

Q. It's the first full paragraph -- well, actually I guess it is the carryover paragraph, actually.

A. Okay.

Q. Quote: "By comparing the returns after deducting hauling costs for delivering milk to hard product

manufacturing plants at the Class III and Class IV prices in Amarillo, Texas, versus delivering to pool distributing plants in Dallas or Houston and collecting the Order blend, the choice becomes abundantly clear: It is more advantageous for farmers to keep their milk local and forego the order pool. Over the past four and a half years, there has not been a single month where the minimum blend price as announced by Order 126 incentivized delivering milk to Dallas or Houston versus the Class III price. Texas Panhandle producers have incurred substantial net losses when delivering milk to these cities," end quote. I'll stop there.

And that's -- that's the point you have been making, correct?

A. Yes.

Q. And you have -- and if we look at your PowerPoints, HE 318, and turn to page 34, this is your illustration of the point that we just got through quoting, correct?

A. Yes.

Q. And you have two pages. Page 34 is Class III milk, and page 35 is Class IV milk, correct?

A. Yes.

Q. And you've decided to use June 2023 as your example, correct?

A. Yes. But if -- the next -- the succeeding two pages use the averages from January 2018 through June 2023.

Q. Okay.
A. I readily admit that the recent month was a somewhat anomaly month in terms of class prices.
Q. Well, I'm going to use June 2023 for my questioning, at least at the moment. So -- and I just want to make sure we're all oriented the same way.
So the milk here is located in Hereford, Texas, correct?
A. Yes, theoretically.
Q. Theoretically. Yes, this is a theoretical example.
But nonetheless, one -- and it is 48 miles from Hereford to Amarillo, correct?
A. Yes.
Q. And you've determined that the hauling cost is $0.41 a hundredweight to get from Hereford to Amarillo, correct?
A. In this month, yes.
Q. Yes. Okay.
And the Class III price in that month was -- that's a real number -- $14.91, correct?
A. Yes.
Q. And so you have shown that a farmer located in Hereford would net $14.50 by hauling his or her milk to Amarillo, at a cost of $0.41 of hauling costs, and getting $14.91 selling to a Class III handler, correct?
A. Yes.
Q. All right. And then you compare that to two other

options. One is that farmer hauls the milk from Hereford to Dallas, a distance of 407 miles, correct?

A. Yes.

Q. And that hauling cost would be $4.21, correct?

A. Yes.

Q. The statistical uniform price at Dallas that month was $17.25, correct?

A. Yes.

Q. And so you are saying that that producer that took the milk to Dallas would net $13.04, correct?

A. Yes.

Q. Which is $1.46 less than the net you have calculated had that farmer instead took his or her milk to Amarillo, correct?

A. Yes.

Q. And that's why it's a negative $1.46, correct?

A. Yes.

Q. By the way, the Class I differential in Dallas is $3, correct?

A. Yes, $3.

Q. Okay. The other option you look at is hauling the milk not from Hereford to Dallas, but rather from Hereford to Houston, which is a longer distance, 635 miles, correct?

A. Yes.

Q. And that hauling cost you determined to be $6.57, correct?

A. Yes.

Q. And the statistical uniform price in Houston in June 2023 was, in fact, $17.85, correct?

A. Yes. $0.60 more than Dallas.

Q. And indicating that the Class I differential in Houston is $3.60, correct?

A. Correct.

Q. And you have shown that the statistical uniform -- excuse me -- you have -- start that question again.

You have shown that that farmer, by taking his or her milk to Houston to a Class I plant, netted $11.28, reflecting the $17.85 statistical uniform price minus the $6.57 hauling cost, correct?

A. Yes.

Q. And you are showing that that return to that farmer, $3.22 less than he or she would have received had she simply taken his or her milk to the Class III plant in Amarillo, correct?

A. Yes.

Q. Okay.

MR. ROSENBAUM: Now, I'd like to mark as an exhibit the data provided by the Southwest order for that month.

THE WITNESS: Okay.

MR. ROSENBAUM: And I'll ask this be marked as an exhibit.

THE COURT: Let's go off record while we handle the paperwork. We're off record at 2:08.

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

THE COURT: Let's go back on record.

We're back on record at 2:08 p.m.

Now, I believe the last number was to Mr. Lamers' 1A which was 330. Am I correct?

So this document will be 331. 331.

(Thereafter, Exhibit Number 331 was marked for identification.)

BY MR. ROSENBAUM:

Q. Now, I've handed the witness a copy of Hearing Exhibit 331, and I -- it's front and back and -- on one page. And what I'm interested in is the information on the sheet that has the words "Southwest Marketing Order Price Data, June 2023."

Do you have that side of it?

A. Yes.

Q. Okay. And do you see that -- and I'm using this just to provide some additional information regarding this same month of June 2023, which is the month you chose as your example month, correct?

A. I chose the most recent one in the dataset, but the -- again, the dataset includes 50-some-odd months, I think.

Q. All right. Well, thankfully I'm not going to go through 50 examples. I'm going to stick with June 2023.

And do you see, for example, that it lists the Class III price as being $14.91? Do you see that?

A. I do.

Q. And that's the same, as you used in your example,

which appears on page 34 of page -- of Hearing Exhibit 318, correct?

A. Yes.

Q. And similarly, you see that it shows the statistical uniform price of milk at 3.5% butterfat in Dallas was $17.25.

Do you see that?

A. I do.

Q. And that, once again, is the same number that you used in your example, correct?

A. Yes.

Q. Now, information that does not appear in your example -- and I'm not saying it should, I'm just saying it doesn't -- that does appear in the document in front of you, is, in fact, for that month, what the producer milk utilization percentages were for Classes I, II, III, and IV in the order, correct?

A. Yes.

Q. And it shows, for example, that the Class I milk -- that pooled Class I milk was 285,594,250 pounds?

Do you see that?

A. I do.

Q. And that represented 26.67% of total pooled milk.

Do you see that?

A. Yes.

Q. And Class II was 73,590,254 pounds, representing 6.87% of pooled milk.

Do you see that?

A. Yes.
Q. Class III was 702,600,428 pounds, representing 65.61%, correct?
A. Yes.
Q. Class IV was 9,085,557 pounds, representing .85%, correct?
A. Yes.
Q. It is -- we'll get back to this in a minute, but essentially Class IV had depooled that month, correct?
A. Yes.
Q. And the total pooled milk was 1,070,870,489 pounds, correct?
A. Yes.
MR. ROSENBAUM: Okay. I'd like to mark the next exhibit.
THE COURT: Let's go off record while we do more paperwork. It is 2:12 p.m.
(An off-the-record discussion took place.)
THE COURT: We're back on record at 2:13.
Mr. Rosenbaum.
MR. ROSENBAUM: Your Honor, I would ask that the document that I have distributed as well as given to Your Honor and the witness, the top of which is entitled "Comparison of Individual Producer vs. Pooled Cooperative Returns," be marked as Hearing Exhibit 332.
THE COURT: It shall be.
(Thereafter, Exhibit Number 332 was marked for identification.)

BY MR. ROSENBAUM:

Q. So this is a document that we have created to analyze your analysis a little further.

So, first of all, in the box at the top, do you see that on the left-hand side we have for the month of June 2023 indicated the statistical uniform price for Dallas and for Houston -- which were already included in your exhibit, correct?

A. Yes.

Q. We have included the Class III and IV price, which was already included on page 34 of your Exhibit 318 with respect to the Class III price of $14.91, and on page 35 of your Hearing Exhibit 318 with respect to the Class IV price being $18.26.

Do you see that?

A. I do.

Q. And then on the right-hand side of the top box we have copied the information that I read into the record a minute ago with respect to the total amount of pooled milk in Order 126 during June 2023, as well as how much of that fell into each of the four classes.

Do you see that?

A. Yes.

Q. So -- and we have indicated what percentage of that was Class I, namely 26.67%.

Do you see that?

A. I do.

Q. Okay. So the next box is basically -- which is

called "Non-Pooled Amarillo Class III Plant," the -- it has two columns in it, in addition to the sort of heading. One is called "Single Producer" and one is called "Cooperative."

Do you see that?

A. Yes.

Q. And do you see that in that box we have simply replicated your analysis of the economics of selling all the milk at the nearby Amarillo plant? Do you see that?

A. Yes.

Q. And such that you're netting $14.50.

Do you see that?

A. Yes.

Q. And then in the right-hand most column, we have the exact same numbers, but we have it under the heading "Cooperative."

Do you see that?

A. Yes.

Q. And that indication is that if you, in fact -- the supplier here was not a single producer but a cooperative, if nonetheless, they, in that month, delivered the milk to a non-pool plant in Amarillo, the economics for them would be the same, correct? They would net $14.50, right?

A. Yes.

Q. Okay. Now let's go on to the Dallas Class I plant. Now, on the -- we have two columns, once again, one called "Simple Producer" (sic) and one called "Cooperative."

Do you see that?

A. I'm sorry. You might say that again?

Q. Yes. So we're -- start -- let me start again.

A. Did you say "simple producer" or "single"?

Q. If I said simple, I said it wrong, and I appreciate the correction. Let me just start -- take a step back, start my whole line of question again.

We have a box called "Dallas Class I Plant."

Do you see that?

A. Yes.

Q. And we have a -- two columns thereafter, one called "Single Producer" and one called "Cooperative."

Do you see that?

A. Yes.

Q. So -- and under "Single Producer," we have now simply replicated your analysis of the economics if that producer, instead of delivering all of his or her milk to the Amarillo plant, instead is delivering all of his or her plant to the Dallas Class I plant.

Do you see that?

A. You better go through that again.

Q. Sure. In your Exhibit 318 on page 34, you had an analysis of what the economics were if that producer shipped its milk to a Class I plant in Dallas as opposed to having shipped its milk to Amarillo, correct?

A. Yes.

Q. And what you showed was that producer would, after paying for hauling costs, net $13.04, correct?

A. Yes.
Q. And that the -- when you compared that $13.04 net to the $14.50 net it would have gotten had it delivered its milk to Amarillo, it would have gotten $1.46 less by going to Dallas, correct?
A. Yes.
Q. That's your analysis. Okay.
So now let's go to the right-hand column under "Cooperative." And now this is our analysis, but I'm going to see whether you agree that I'm right.
So now it's a cooperative with a lot of milk.
THE COURT: With a what?
MR. ROSENBAUM: "A lot of milk."
BY MR. ROSENBAUM:
Q. And it can ship some of it to Dallas and some of it to Amarillo if it so chooses, correct?
A. Yes.
Q. So let's assume that it ships 26.67% of its milk to Dallas. Okay?
A. Yes.
Q. Now, that is, in fact, exactly what the Class I share was of pooled milk in that month.
Do you see that?
A. I do.
Q. So with respect to that 26.67% of its milk, it's going to have to pay $4.21 to ship it, correct?
A. Yes.
Q. It is -- the uniform price in Dallas is $17.25 as

you have calculated. And so the net amount it gets for delivering that milk to Dallas is $13.04, correct?

A. Okay.

Q. Which is exactly the same as you had calculated for the economics of shipping to Dallas, correct?

A. Yes.

Q. Okay. But it's going to ship -- now we're going to the next box, which is called "Share of Pooled Manufacturing Milk Delivered to Amarillo." So let's assume that that cooperative is shipping the remainder of its milk, namely the 73.33% of its milk, to Amarillo. Okay?

A. Okay.

Q. And it's going to cost $0.41 to do so, correct?

A. Yes.

Q. Okay. But having shipped 26.67% of its milk to Dallas, it gets to pool all of its milk, right? All 100% of its milk is now eligible to be pooled.

A. Well, I can't say that absolutely.

Q. Well, but --

A. But --

Q. -- we know in that month that 26.67% of milk was pooled as Class I milk, and we know that 702 million pounds of Class III milk qualified for pooling, correct?

A. If we -- if under the presumption that you have made, that this cooperative's Class I utilization is identical to the order Class I utilization, yes.

Q. Okay.

A. A -- a strong presumption. But go ahead.
Q. Okay. And so as a result of that, it is -- that co-op is no longer receiving a mere $14.91 for its milk shipped to Amarillo, which was the Class III price, rather, it will receive $16.65 for all of that milk because that is the statistical uniform price in Amarillo.
A. $16.65 on the 73%?
Q. Yes.
A. Okay.
Q. Do you agree with that? That's how it works?
A. Yes.
Q. That is how it works?
A. Yes.
Q. All right. So now let's figure out what the true economics are here. We have got a weighted average hauling cost of $1.42.

Let me tell you how I got there. You take the 26.67% of your milk that went to Amarillo -- start -- let me start that again. I messed that up. Start it again.

The weighted average hauling cost is shown as $1.42. That is 26.67% times $4.21, which is the cost it took you to get 26.67% of your milk to Dallas, plus 73.33% times 0.41. That's the cost of getting 73.33% of your milk to Amarillo. Those two come to $1.42. I'm going to ask you to accept that number for present purposes. Anybody who wants to can check it, simple math.

So now we get to the weighted average statistical uniform price, which we show is $16.81. That is 26.67%

times the $17.25 for delivering the milk to Dallas, because that's the statistical uniform price there, plus 73.33% times the $16.65 that you get for the milk delivered to Amarillo. Those two come to $16.81. And when you subtract the $1.41 hauling cost from the 16.81, you get a net of $15.39.

Do you see that?

A. Yes.

Q. You have earned $0.89 more than you would have earned, per hundredweight, by doing what I have just described and fulfilling the needs of the Class I milk in Dallas, as compared to what you would have gotten had you sold that milk in Amarillo at Class III, right?

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

THE COURT: So take a minute. Let him -- he's doing numbers. Let him do that.

THE WITNESS: You will have to take me through how you get to the 16.81 on weighted average statistical uniform price.

BY MR. ROSENBAUM:

Q. It is --

A. Is that 73% at 16 --

Q. It's 73.33 -- start that again.

A. Of $16.65 --

Q. Yes.

A. -- 27-roughly percent on --

Q. The Judge is going to get upset at us because we're giving numbers without explaining what they mean.

It is 73.33% times $16.65, plus 26.67% times $17.25.

A. Okay.

Q. I mean, to simplify what's going on here, by shipping milk to a Class I handler --

A. Uh-huh.

Q. -- you have qualified for a share of the uniform -- statistical uniform price for 100% of your milk?

A. I think that that's an improper comparison. If you are going to do that comparison, then you need to compare the blend price on the single producer at Amarillo versus what they have to pay to get to Dallas. There's a $0.60 difference between the blend price at Amarillo. So if you are going to compare apples to apples, you have to have the blend price revenue for the single producer at Amarillo and compare that to what they get once they get to Dallas.

Q. Sir, your comparison on page 34 was between selling 100% of your milk for Class III versus instead shipping your milk to Houston.

A. Right. It gets worse, the comparison is worse, if you use the blend price at Amarillo because you only get $0.60 to go from Amarillo to Dallas. You only get $1.20 when you use the blend to go to Houston. So the comparison looks worse when you do it at blends because you've got a -- you've got a 400-mile haul and the difference in the blends is only $0.60.

Q. You have earned 89 extra cents, sir.

A. I am telling you that this is not a valid comparison. When you use the single producer here, you need to back up and do that one by -- at blend, not Class III. I made this as attractive as possible in this comparison, that you look at the Class III price or the Class IV price at Amarillo rather than the blend. This is the best case scenario I provided.

Q. You did nothing to provide for the ability to send most of your milk to Amarillo, but enough milk to a Class I milk plant so that your milk in Amarillo would qualify to be paid $16.65 rather than $14.91. That's what you have lost.

A. I am simply saying, if you are going to do that on one side, compare blends, you got to do it on both sides.

Q. I have done it for you on the cooperative side --

A. Well, sir, I'm saying that you haven't done it on the single producer side.

Q. Well, because single producers aren't the ones shipping milk to begin with. How many single producers are shipping milk to Houston for a Class I plant? It is zero.

A. I don't know that that number is zero. And I can say for sure that -- that there are single producers who ship their milk from the Panhandle to Dallas.

Q. What percentage of Class I milk comes from single producers that ship from the Panhandle to Houston or Dallas for --

A. I don't know --

Q. -- Class I milk?
A. -- what percentage it is, but people are making this economic decision. That's the important question.
Q. I mean, you are the one who is doing -- I mean, this is very familiar. You are the one who is doing the shipping. You are Lone Star, right? You are the supply plant that month?
A. Yes.
Q. One of the two supply plants that month?
A. Probably.
Q. Okay. I mean, the only reason you can be a supply plant is if you were supplying Class I milk to Dallas or Houston or Austin or somewhere like that, right?
A. Yes, there's an obvious Class I requirement to qualify a supply plant.
Q. And there were two of you.
You were one of the two in that month, correct?
A. I don't -- I mean, let me look.
Yes.
Q. Okay. Now, isn't it true that notwithstanding what you say on page 15 of Hearing Exhibit 310, in fact, the minimum blend price announced by Order 126 does incentivize delivering milk to Dallas and Houston versus the Class III price?
A. Not enough incentive. It is higher, agreed. The blend price in Dallas is higher than the Class III price in Amarillo, or anywhere else for that matter, anywhere else on earth. Or at least anywhere else in the United

States --

Q. And when you net it all out --

THE COURT: I don't think he had quite finished.

MR. ROSENBAUM: I'm sorry.

BY MR. ROSENBAUM:

Q. I thought you were finished. If not, please, go ahead.

A. I'm simply saying, that if you look at it from a producer standpoint, my calculations here are straightforward, comparing to Class III and Class IV at Amarillo. Also, we did -- we took out the anomaly months by using in the next two pages the average of several -- of more than four years of data.

But from a producer standpoint, if they can get the blend in Amarillo, which is you are saying what they -- you know, when you pool it, you can. That's true.

But the incentive to milk out of the Panhandle to Dallas is only $0.60 compared -- when you compare the blends, and it is a $4 haul -- or over a $4 per hundredweight haul. I'm sorry, but when you pay $4 and net 60 more cents, yes, there is an incentive to move it, but it's an insufficient incentive.

Q. Okay. To be clear, under this calculation, the incentive to move 26.67% of your milk to Dallas is $0.89 per hundredweight. That's how much better off you are with respect to 100% of your milk, not just the milk you sent to Dallas, 100% of your milk. That's how much better off you are than if you had sent all your milk to a -- to

a plant that simply paid you the Class III price in Amarillo, correct?

A. Yes. But if you are going to do that, then you've got to compare the blends.

Q. Okay. Well, Houston, as you can see, it's a -- is the last box. And, now, I'm not going to take you through all the calculations. They are identical.

Houston is farther away, correct?

A. Yes.

Q. The Class I price is higher, so the blend price is -- the statistical uniform price is higher in Houston, correct?

A. By $0.60 more than Dallas, $1.20 per hundredweight more than Amarillo.

Q. And doing the exact same math, if you are choosing as a cooperative, should I be shipping my milk 48 miles to an Amarillo plant that's not pooled, or shipping enough of my milk to Houston to a Class I plant so I can pool my milk, in the end, I will net an extra $0.42, correct?

A. Well, I haven't worked through the math. On the presumption that your math is correct, I still point out that these are not fair comparisons.

And I also would note that that certain 89% -- $0.89 per hundredweight or $0.42 per hundredweight certainly is not enough to pay for the balancing of that Class I plant in Dallas or Houston. Even for sake of argument, if the -- if the price gain is that, it's chewed up by the balancing on those plants in Dallas and Houston.

Q. All right. But let's -- let's -- I don't know if we want to take a -- have we been going long enough to take a break or --

THE COURT: Now is good, yes. So help me remember, Mr. Rosenbaum, when we get to the right point to admit these exhibits, if you want them admitted.

But right now, let's take a ten-minute break. Please be back and ready to go at 2:45. We go off record at 2:35 p.m.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 2:45. And all we need is a witness, and then, Mr. Rosenbaum, you may proceed.

MR. HILL: So while we're waiting for a witness -- Your Honor, I was going to say -- if you don't want me to do this now, that's fine -- but I was going to say, we do have copies of Mr. McAfee's testimony, and I was going to ask if we could go ahead and admit them into evidence, if you are ready to do so.

THE COURT: I think that's a good thing to do right now.

And so I'm looking at what is marked as Exhibit 327. It is the testimony of Mark McAfee.

And are there any objections to that document being admitted into evidence?

There are none. So Exhibit 327 is admitted into evidence.

(Thereafter, Exhibit Number 327 was received

into evidence.)

THE COURT: I'm now looking at Exhibit 328, which is the slides, and that's what I believe we spent the majority of our time looking at during Mr. McAfee's testimony.

Is there any objection to the admission into evidence of Exhibit 328?

There is none. Exhibit 328 is admitted into evidence.

(Thereafter, Exhibit Number 328 was received into evidence.)

THE COURT: Thank you for that, Mr. Hill.

And now, Mr. Rosenbaum, you may proceed.

BY MR. ROSENBAUM:

Q. Mr. Sims, if you would turn to the next page of Hearing Exhibit 318, which was your PowerPoint presentation, so that we're now on page 35. This is the page where you make similar analysis with respect to the choice of shipping from Hereford to Amarillo versus Hereford to Houston or Dallas, but this time, you are addressing a situation in which the Amarillo plant is a Class IV plant, correct?

A. Yes.

Q. All right.

MR. ROSENBAUM: Your Honor, I would like to mark the exhibit.

THE COURT: Yes. This will be Exhibit 333, and we will go off record while this is distributed.

(An off-the-record discussion took place.)
(Thereafter, Exhibit Number 333 was marked for identification.)
THE COURT: Let's go back on record.
We're back on record at 2:49.
Mr. Rosenbaum.
BY MR. ROSENBAUM:
Q. So I'm now showing you the document that we have created, Hearing Exhibit 333. It is the same kind of analysis as 332, except that 333 relates to Class IV, milk whereas 332 related to Class III milk, and the title so indicates the difference.
So the first box is identical to the first box on Hearing Exhibit 332. That's just a recitation of milk pooled by class, by total, as well as all of the statistical uniform prices for Dallas and Houston as well as the Class III and IV price, in Order 126.
The box "Non-Pooled Amarillo Class IV Plant" is now a repetition, so to speak, of the analysis you did on page 35 of Hearing Exhibit 318. We are now using the Class IV price of $18.26 in place of the Class III price of $14.91, so that the net return to someone shipping their milk to Amarillo is $17.85.
Do you see that?
A. Sorry?
Q. The net return of someone shipping their milk to Amarillo is $17.85?
A. Yes.

Q. And that's your number as well, correct?
A. Yes.
Q. All right. And then in the third box called "Dallas Class I Plant," we are -- on the left-hand column, the one called "Single Producer," once again, simply replicating your analysis that shows that the net to someone shipping milk to Dallas would receive $13.04 as you previously calculated, and the loss for doing so as compared to supplying the Amarillo plant is $4.81 per hundredweight, correct?
A. Yes.
Q. Once again, that's simply a replication of your own analysis, correct?
A. Appears to be, yes.
Q. And then on the right-hand side under "Cooperative," we have done the exact same analysis that we did in the corresponding box in Hearing Exhibit 332, except this time we are substituting the -- as the very last item, the gain or loss, based not upon what the Class III price at Amarillo was, which is what we had been using in Hearing Exhibit 332, but rather based upon the $17.85 value of Class IV milk in Amarillo that month.
Do you see that?
A. Yes.
Q. So in other words, there are about ten entries in a row that are identical between Hearing Exhibit 333 and 332. That's the one that's calculating doing one versus the other.

But the difference is that we're now using the Class IV price, and with the result that if you were to ship to Dallas, to the Class I plant, you would net lose $2.46, having shipped 73.33% of your milk to Amarillo and 26.67% to Dallas, correct?

A. Well, that's what your calculation shows.

Q. Okay. And similarly, for Houston, once again, all the numbers under "Single Producer" are the same as in your calculation, correct?

A. Appear to be.

Q. And under "Cooperative," all of the calculations in the "Houston Class I Plant" box are identical to the calculations in the "Houston Class I Plant" box for Hearing Exhibit 332, except that now we're comparing the $14.92 that you net against the $17.85 you would have netted had you sold it all to Class IV.

Do you see that?

A. I do.

Q. And --

A. Just a moment --

Q. Okay.

A. -- please.

Q. Sure.

A. I'm going to point out a problem with your exhibits.

Q. Okay.

A. Although it -- it may or may not change the calculation. In the "Houston Class I Plant" box, the

fourth -- what you have described as the fourth box, in each of these two?

Q. Yes.

A. You have listed the miles from Hereford to Houston as 407. I don't believe that's correct.

Q. Ah. Okay. You are obviously right about that. So...

A. I will go ahead and say, it looks like you did replicate my haul costs, so...

Q. Okay. So let's -- I -- you are quite right, and let's make sure the correction -- in terms of our actual calculation of the hauling costs to Houston, we did use the correct number of $6.57, in both Hearing Exhibit 332 and 333, correct?

A. Yes.

Q. However, in the first line under "Houston Class I Plant," where it says "Miles Hereford to Houston," in both Hearing Exhibit 332 and 333, we mistakenly put in 407 miles, correct?

A. Yes.

MR. ROSENBAUM: So, Your Honor, I would ask that Hearing Exhibit 332 and 333 both be corrected so that in the "Houston Class I Plant" box where it says "Miles Hereford to Houston," the number "407" is replaced with "635," in both under the "Single Producer" and under "Cooperative."

THE COURT: Yes, we'll do that right now. I'm looking at Exhibit 332. We're going to change two

numbers. They are in the bottom box. We're going to find "407" miles. We're going to strike "407" and insert "635," 635 miles, twice, once under "Single Producer" and once under "Cooperative."

We're doing the same thing on Exhibit 333. We're changing the miles. We're striking "407" and writing in "635," 635 miles, both under "Single Producer" and under "Cooperative."

BY MR. ROSENBAUM:

Q. And just to confirm, your calculation of the hauling costs from Hereford to Houston on page 35 was correctly based upon 635 miles, and that came to a total cost of $6.57, correct?

A. Yes.

Q. And in our Exhibit 632 and -- start that question again.

In our Exhibits 332 and 333, we had used the correct hauling cost of $6.57 in both cases, correct?

A. Yes.

Q. Okay. So back to Hearing Exhibit 333.

Obviously, this is not an attractive choice to ship Class -- to ship Class I milk to Houston or Dallas instead of shipping to a Class IV plant, correct?

A. That's -- yeah, I -- again, I'm not quite sure I agree with your methodology. But the red numerals there suggest certainly that this is not an attractive choice.

Q. And of course in the real world, in fact, what happened was, everybody who could depool, did depool, with

respect to Class IV milk this month, correct?

A. Appeared to be, yes.

Q. For example, in June 2023, there is seven -- over 702 million pounds of Class III milk, but only 9 million pounds of Class IV milk, correct?

A. Yes.

Q. And by comparison, if I pull up the January 2021 report that USDA puts out for the Southwest order, in that month, they showed there were 555,609,231 pounds of Class IV milk pooled on that order that month.

That -- that wouldn't surprise you, I take it?

A. Probably not.

Q. Okay.

A. But what was the Class III?

Q. In that particular month, Class III was 26,186,549 pounds.

So is it fair to say that in January 2021, it was Class IV milk that got pooled and Class III milk that largely was depooled, correct?

A. Yes.

Q. So in the real world, an example like Hearing Exhibit 333, no one's going to -- no one's going to take Class IV milk and pool it in a Class I plant when they can get $18.26 for it by depooling, correct?

A. I'm sorry. I don't understand the concept of delivering Class IV milk to a Class I plant.

Q. Okay. No one is going to pool their Class IV milk -- start that again.

No one is going to pool the majority of their Class IV milk and send some -- the rest of it to Class I milk facilities in order to be able to pool the whole thing, right?

A. Well, sir, you are presuming that -- which I -- if you -- you are the one that mentioned "in the real world"? In the real world, you serve your Class I, sir, and then you decide how to pool after that.

Q. In the real world, what happened in June 2023 is people pooled their Class III milk, and that's how they qualified -- strike that.

In the real world, people shipped milk to Houston and Dallas for Class I purposes and pooled the rest of their milk as Class III, correct?

A. Up to whatever limit they were able to pool.

Oh, and just a matter of context on these two, the diversion privilege does not just extend to cooperatives. It also -- they are also -- you can -- a handler can also pool a single non-member.

Q. All right. So -- okay. And what I'm about to say is not intended to be a criticism. I'm just stating the reality. When confronted with a Class IV price of $18.26, everybody depooled from Class IV, and they got the $18.26 price or whatever -- assuming that was reflective of the market value, and they pooled -- they pooled Class III milk and shipped enough milk to Class I facilities to qualify for pooling that Class III milk, and as a result they got the statistical uniform price for both the

Class I milk and the Class III milk, correct?

A. Yes. That's the same -- again, that diversion privilege also extends to non-members. And one of the reasons we -- we used as many months in this analysis as we did is to take out those anomaly months where, you know, those prices were particularly -- there's a particular difference between the Class III and Class IV price. And the next two pages in that exhibit use those average prices, which provide a broader picture of that incentive or disincentive to ship milk.

Q. And do you know whether, in fact, when Class III and IV are similar to each other, both of them become attractive to pool Class I milk?

A. Sir, you are -- you're looking at it backwards. There's -- it's not -- you don't -- that's not the way the world works. You -- you -- in order to -- to qualify manufacturing milk, you have to deliver to the Class I, so...

Q. Right.

A. And I would point out that for Order 126, this 26% Class I utilization is pretty close to the average, whether there is depooling or not. It is just which class gets pooled.

Q. Right. And obviously, by pooling, you benefit from the fact that the Class I milk has a minimum regulated price $3 higher in Dallas and $3.60 higher in Houston, right?

A. Versus the class price? Well, if you compare

blends, it is only $0.60 between the Panhandle and Dallas and the Panhandle and Houston is $1.20 per hundredweight.

Q. Yes. But it is a question of what -- you can cover the cost of getting milk to Houston and Dallas because you're only sending so much of your milk there, but all of your milk will now qualify for the uniform price?

A. No.

Q. That's what happened in the -- that's what happened --

A. No, sir, you said "all" of the milk. You can only divert up to the limit. And so I believe that there is milk which exists in that region, which is not -- would not meet the producer milk definition because it exceeds the limits required in the order. So "all" is not correct.

Q. Okay. I stand corrected. And there may well be more milk than that in that area of the world. I think probably there is.

But, nonetheless, we do know that a billion pounds of milk were pooled -- start that question again.

We do know that 1,720,870,489 pounds of milk were pooled on Order 126 in June 2023 as a result of 285,594,250 pounds of milk being supplied for Class I purposes, correct?

A. I'm sorry. That -- number one, that's also an incorrect presumption. That's the amount of Class I milk on the pool. The amount actually delivered to pool

distributing plants would be -- would exceed that number since no Class -- no pool distributing plant is ever 100% Class I.

Q. I stand corrected. Let me be more precise in my question.

285,594,250 pounds of Class I milk was pooled on the order in June 2023, and 1,070,870,489 pounds were pooled and received the applicable statistical uniform price --

A. At location.

Q. -- is that correct?

A. At location.

Q. At location. Is that correct?

A. Yes. That would be the proper interpretation.

Q. So with respect to the big printouts, Hearing Exhibits 300 and 301 --

A. Oh, I was hoping for this.

Q. I know you were. And I --

A. I'm sorry, but I'm going to need a couple of copies back. They walk over here, and then they walk away.

Q. So my question is: Are you the person who created these documents in the first instance?

A. I beg your -- which document?

Q. Hearing Exhibit 300 and 301?

A. No.

Q. You haven't -- can you -- if that's true, why is -- does your name appear as the author of these

documents in their electronic --

A. I didn't know that it did. I -- I don't recall seeing these. They -- okay. Let's answer that question logically.

When you create a document, it carries the first person that ever touched it as the -- as the author. And then anything that happens after that, it retains that first. These could have been built on a spreadsheet that I had from several, several, several iterations previous, and it would still carry my name. But I did not actually create this document as it sits today.

Q. Did you create the -- and I -- I appreciate that explanation, which I believe to be fully accurate in terms of how Excel tracks things once they are created.

But did you -- do you recall what the first version of this document looked like, which you apparently did create?

A. I don't recall. But if it did, it probably stopped with something around Column L.

THE COURT: Column which?

THE WITNESS: Column L, L as in lion.

Or perhaps M. I know I did -- I don't recall ever putting together a spreadsheet that had the order numbers in there. But they -- this could have been copied from other spreadsheets well, well long ago. So that is all I can say, is in this -- in its form here, I did not create this document as it sits here.

BY MR. ROSENBAUM:

Q. All right. And you were asked a question by Mr. English about the reasons for the changes in a couple of entries for counties in Arizona --

A. Yes.

Q. -- between Column O, which is "Proposed Class I," and Column S, "New Proposal."

Do you recall that?

A. Yes.

Q. I'm not asking you to look at those particular counties again. I'm just asking the question, you did not know the answer to why that changed had been made. Can you identify who is the most likely person who would know the answer?

A. I would say that someone on the Western regional Class I surface committee. There may be more than one who collaborated on that. But someone on that -- on that committee would be capable of answering that question specifically.

Q. All right. Let's switch to another topic.

THE COURT: I would like the record copy to be retrieved from the witness. I just don't want to lose track of these two.

THE WITNESS: Your Honor, there's not going to be any print left on these pages.

BY MR. ROSENBAUM:

Q. Could we go back to Hearing Exhibit 318, which is your PowerPoint presentation.

A. Yes.

Q. And to page 25 where you talk about incidents of Class I price inversions.

Do you see that?

A. I do.

Q. Now -- and looking specifically at page 26 again. You have data there for Class III in the two boxes to the left, Class -- I meant to say -- did I say Class II?

A. No, you did not.

Q. Then I'll start again.

On page 26, you have information relating to Class II in the left-most boxes, and Class III in the middle boxes, and Class IV in the right-hand boxes, correct?

A. Yes.

Q. And for each of those you then have bar charts that reflect a minimum differential of $1.60, a minimum differential of 2.20, and a minimum differential of zero, correct?

A. Yes.

Q. And the percentages reflect how many times during that 282-month period the Class II price was higher than the Class I price in the first box, the Class III price was higher than the Class I price in the second box, and then how many times the Class IV price was higher than the Class I price in the third box, correct?

A. Right. And that's the Class I price, which would have been effective at those three differential rates.

Q. And we all know the mover did not -- has changed

over time, and you used whatever mover was actually in the effect at the time?

A. Yes. I did not make any presumptions about changing the mover. Whatever was announced is what I used.

Q. Okay. Now, just working backwards a bit, what is -- what was your reason for including an analysis based upon the minimum differential being zero?

A. Proposal Number 20.

Q. And is that the sole reason?

A. That's certainly enough reason for me, yes.

Q. I'm just asking whether it addresses any other issues than that proposal.

A. No. There would be some large slice of the country who would have an effective zero differential. In other words, the mover and the Class I price would be the same under that proposal at a zero differential, so we felt it was appropriate to compare that also.

Q. Okay. And in putting these charts together -- and let's just start with the Class II one since that's the one on the left.

I take it you started by simply looking at what the announced Class II price was, correct?

A. Yes. Simply compared the mover and to the Class -- the final announced Class II price and then -- which would be, of course, the Class I price at a zero zone; and then the mover plus $1.60, which would be the Class I price at $1.60 zone; and the mover price plus

2.20, which would be the minimum Class I price that -- that we are providing in Proposal 19.

Q. Okay. And but -- is there anywhere -- is there anywhere where the Class I differential actually is $1.60?

A. I believe there is.

Q. Is there anywhere where there is a Class I plant where the Class I differential is $1.60?

A. That, I don't know.

Q. I mean, because you are comparing a -- the real Class II, Class III, and Class IV prices to a hypothetical Class I price based upon $1.60 differential, correct?

A. Yes. But on Federal Order price announcements, there certainly are zones where the Class I price is the mover plus $1.60. As to whether or not there are Class I plants there, I don't know. But at those zones, with the current $1.60, you certainly would have a Class I price inversion at that zone, whether there's a Class I price there -- excuse me -- whether there's a Class I plant there or not.

Q. But in terms if you wanted to look at, you know, how many dollars would actually be contributed by the Class I sales in that order, you wouldn't use $1.60, would you?

A. No, sir. But I certainly can say that there seems to be a lot of plants in one -- as to whether or not there's any Class I plants in $1.60 zones, that's not part of the world I work in, so I can't say for sure. But there certainly are Class I plants in zones of, say, $1.70

or $1.80. So those numbers in that first column would be very, very close for those plants. So certainly there are Class I plants whose Class I differential is near or just slightly above $1.60, who certainly would be impacted by this question.

Q. But in the end -- and maybe I confused things by talking about particular plants. In the end, isn't the number that really counts the market average Class I differential for determining whether or not there is a price inversion or not?

A. The market average differential?

Q. Yes.

A. I don't agree with that at all. Every plant has its own Class I differential, and every plant needs to -- we have to -- would evaluate whether there -- and whether there's pooling. And the truth is that this question is as much about the location adjustment at manufacturing plants and their ability to depool when these circumstances occur. It's less about Class I plants. It's more about manufacturing plants. It is -- in fact, it's entirely about manufacturing plants.

Q. Well, I understand that. But you -- you appear to think that the relationship between the Class II price and the Class I price in terms of whether the Class II price is higher than the Class I price, you know, that that's a relevant inquiry. That's why you prepared this document, right?

A. Certainly it is a relative -- a relevant inquiry.

Q. And --
A. Determines whether that plant is going to want to pool or not.
Q. And when I use the term "market average Class I differential," I probably should have been more explicit. But I meant the market average Class I differential in each order. Isn't that what's going to be the relevant consideration for the inquiry you are making here?
A. No.
Q. Why not?
A. Because when -- the issue here is pooling decisions, and the decision to pool or depool. So the relationship of a plant's differential, whether it's a manufacturing plant for Class II, Class III, or Class IV, their question on whether they pool will depend on how they relate to the plant -- the Class I or the blend price.
Q. Let me hand out a copy of Hearing Exhibit 46. This is all already in the record, but this is a document that was prepared by USDA, I believe at the request of National Milk Producers Federation. But in any event, it, for this particular month, May 2022, included information regarding what USDA terms the "Market Average Class I Differential."
Do you see that?
A. I do.
Q. And it shows an actual, it shows what it would be under National Milk's proposal, and what the difference

is.

Do you see that?

A. In the columns -- the eighth column from the left, "Actual," "Under NMPF Proposal," "Difference," under "Market Average Class I Differential"?

Q. Yes. It would be the eighth, ninth, and tenth columns.

A. Yes, I see those.

Q. Okay. So no order had a -- a market average Class I differential of $1.60, correct?

A. Correct.

Q. And the weighted average of all orders is a Class I differential of $2.62.

Do you see that?

A. I do.

Q. So if you could just pull out Hearing Exhibit 311, please.

A. Okay.

Q. Which is --

A. I have got it.

Q. -- your document.

And I believe you testified already that this is the document that underlies the tables on page 26 of Hearing Exhibit 318, correct?

A. The bar graphs for pages 26 and 27, yes, of Exhibit 318.

Q. Okay. And so just to orient ourselves a little bit into Hearing Exhibit 311, you have rows for every

month from January 2000 through June of 2023, correct?
A. I do.
Q. Which corresponds to what you indicated in your PowerPoint you're addressing, correct?
A. Yes.
Q. And for every month you list what the Class I mover was, correct?
A. Yes.
Q. The final Class II price?
A. Yes.
Q. You compare the Class II to the mover and calculate what the difference is, correct?
A. Yes. And as a matter of explanation in that -- what really is the fourth column, the third column of numerals, if that number is positive, greater than zero, that indicates that the Class II price was -- exceeded the mover, which would be the Class I price at a zero location --
Q. Okay.
A. -- and by how much. If it is positive, there was inversion; if it's negative, there is no inversion.
Q. Okay. And -- and in -- so if we keep moving to the right, you have the fourth and fifth columns -- I'm ignoring the dates, not treating them as a column.
A. Yes.
Q. In the fourth and fifth column, that's where you did your analysis of what you are calling inversions under the assumption that Class I differentials were reduced to

zero, correct?

A. Yes.

Q. And then next to that in what would be column 6 and 7, ignoring the dates to the very far left, that's where you are doing your analysis of the number of inversions if the Class I differential were $1.60, correct?

A. Yes.

Q. And then finally in what I'll call columns 8 and 9, that's where you do your analysis of the number of inversions if the Class I differential were $2.20, correct?

A. Yes.

Q. And there are a number of entries in column 7, which is the one I'm going to focus on, the one that deals with $1.60, where zero is represented, correct?

A. Yes.

Q. And that is the situation in which where the Class I differential of $1.60, the Class I price would be higher than the Class II price, correct?

A. Yes.

Q. And for some months, there's a number one in column 7, correct?

A. Yes.

Q. And those are the instances in which the Class II price would be higher than the Class I price, correct?

A. Yes, at the $1.60 zone.

Q. And, for example, the very first one of those we

see is November of 2000. There's a number "1" in column 7, and in column 6 is the number $0.26, correct?

A. Yes.

Q. And that is -- the $0.26 represents the excess of the Class II price over the Class I price, assuming a Class I differential of $1.60; is that correct?

A. Let me -- may I say it my way?

Q. You can. There are different ways to come to that statement, and I may have given you the most complicated one.

A. $0.26 represents the -- if you will, the amount of Class II price inversion versus the Class I price which would have been announced at $1.60 zone. So the difference between Class II and the Class I mover was $1.86. So when you take the $1.60 away from that, you still have a $0.26 price inversion on Class II in that month.

Q. Another way to say it is that assuming $1.60 Class I differential, the total Class I price is $0.26 less than the Class II price?

A. Yes. Presuming the $1.60 differential, that's correct. There's still a Class II price inversion.

Q. Okay. And if we turn to page 7 of Hearing Exhibit 311, and still sticking with column 6 and 7, there is something that you call a count of months?

A. Yes.

Q. Which is 15.

Do you see that?

A. Just -- I need to catch up here.
Yes.
Q. And underneath that is 5%.
Do you see that?
A. Yes.
Q. And does that correspond to the 5% that appears in the -- in Hearing Exhibit 318 --
A. Yes.
Q. -- under the Class II box --
A. Yes.
Q. -- under the assumption of $1.60 minimum differential, correct?
A. Yes.
Q. And so that means there were 15 months out of 282?
A. Yes.
Q. At which there was an inversion assuming $1.60 Class I differential, correct?
A. Correct.
Q. And that 15 corresponds to 5%, and that's why you have a 5% number?
A. I hope that's right. Should be 15% of 282. Is that right?
Q. 15 should be 5% of 282, if you did it right.
A. Yes. Actually slightly above 5%. But, yes.
Q. There's one entry that's called average, and I wasn't actually entirely sure what that means.
A. Okay.
Q. This is on page 7 --

A. Yes.
Q. -- of Hearing Exhibit 311.
A. If the -- the column -- the row that says "average," the first entry there, the one that says "Final Class II Difference to Mover," that's the -- that's just the gross average, the sum of all the dollar per hundredweight figures in what we have been calling the third column of numerals, divided by 282. The number -- that number in four would be the same number. So there -- a zero differential, there would have been an average Class II inversion of $0.83.
Q. Assuming a zero --
A. Assuming a zero differential, yes.
Q. Class I differential?
A. Class I differential, yes.
Q. And so what does the $0.03 represent, that's under the assumption of the Class I differential being $0.03?
A. The average -- the average inversion would have been $0.03 in those months when there was an inversion.
Q. Okay. So at $1.60 Class I differential --
A. Uh-huh.
Q. -- there were -- 5% of the time there was an inversion, and the average inversion was $0.03; is that what that means?
A. That would be correct, yes.
Q. And this is going to be I think -- I don't know what the right word is. But if you used as your assumption in doing this calculation, not $1.60 but rather

the $2.62, which is the actual weighted average Class I differential -- in May 2022, I'm picking it as an example -- then obviously the number of inversions would drop because you would be dealing with a higher Class I price, correct?

A. Yes. The higher the differential, no matter what, the incidence of inversions declines.

Q. Okay. And the -- we have walked through pages 1 through 7 of Hearing Exhibit 311. I certainly don't want to take everyone through the rest of them.

But let's just make sure I'm right in understanding that pages 8 through 14 provide the same analysis, except this time for Class III, correct?

A. Correct.

Q. And methodologically it is the same?

A. Right, the method and the formulas are identical.

Q. And similarly, pages 15 through 21 are methodologically the same except this relates to Class IV?

A. Correct.

Q. And then pages 22 through 29 basically combines the information from Classes I, II, and III, and IV; is that right?

A. It -- it -- yes, pages 22 and following are the same kinds of calculations but limited to zero location areas.

Q. I see.

A. So everything in 22 and beyond refers to what happens and -- in locations that might have under

Proposal 20 a zero differential. And then it goes a little further and does calculations as to how many classes would be affected by an inversion in a particular month. And that builds the bar graphs in page 27 of Exhibit 318.

Q. Okay. So appreciate the clarification.

So pages 22 through 29 are really -- are entirely devoted to the Proposal 20?

A. To -- to a zero differential zone.

MR. ROSENBAUM: Okay. That's all I have.

THE COURT: Are there other cross-examinations of Mr. Sims?

MR. SMITH: Good afternoon, Judge Clifton. My name is Dan Smith. I represent the Maine Dairy Industry Association. I entered an appearance at the beginning of the hearing. And it's nice to see you.

THE COURT: It is good to see you.

CROSS-EXAMINATION

BY MR. SMITH:

Q. Mr. Sims, good afternoon as well.

A. Good afternoon to you.

Q. I'm -- I have a series of questions related to your correlation between the proposal to raise Make Allowances and the proposal to increase the Class I differentials.

A. Yes.

Q. Pretty much limited to that question. More specifically, I have questions about your PowerPoint,

which was Exhibit 318 --

A. Yes.

Q. -- and NMPF-37H.

And if you will recall, in your testimony you kind of went through pages 38 and 39 pretty quickly, I think as a matter of time. So I just want to go back to that and fill out your testimony with some reference to your statements in your Exhibit 310.

A. Yes.

Q. Okay. Also fill out a little bit of the questions that Mr. Miltner asked you with regard to the function of that testimony.

A. Yes.

Q. While you are pawing I can keep talking, but I think we're about there.

A. We're on 38?

Q. Pages 38 and 39.

A. Okay.

Q. Okay. Having talked, I have to get there. I have gone paperless.

A. I have not.

Q. It is an interesting experience, I will grant you.

Okay. Are you with me to page 39?

A. Yes.

Q. Okay. So 38 and 39 is kind of the summary of what you had in your statement. I'm going to work backwards a little bit starting with page 39.

The last bullet point you make two statements.

First: "Updating Make Allowances and updating Class I differentials are two sides of the same coin."

And then -- and really to the point of my question, the second you say that "updating either one, but not both, about reek havoc on dairy markets and threaten the adequate supply of milk."

A. Yes.

Q. So what I'm trying to get to is whether -- a greater understanding of what you are saying and really, ultimately, whether that's become an issue of purpose for Class I differentials at this point, or really it's an impact analysis, because in your statement, that the greater explanation is in the impact analysis. But that is kind of the ultimate purpose, is to explore your reasoning a little bit.

So just working backwards, by way of explanation you indicate that Make Allowances "reflect the costs of product utility conversion," just right above the previous bullets?

A. Yes.

Q. And the Class I differentials "reflect the costs of time and place utility conversion"?

A. Yes.

Q. A matter of economics.

In your green on page 38 you say the issues of updating Class I differentials is "economically no different than updating Federal Order Make Allowances."

If you could just explain -- it's in your

statement, but if you could just explain a little bit more what you are referring to with regard to cost of product utility conversion for Make Allowances and cost of time and place utility conversion for Class I differentials?

A. Certainly. My point here is that the Federal Orders reflect two kinds of important costs, and then if those costs aren't properly aligned or properly accounted for at some level, they will cause economic decision-making.

That I believe Mr. Brown had a quote in his testimony -- could we put something up on the board here?

There we go. We won't go through all five of these, but I think these give a good -- actually a good representation of what I'm trying to -- the analysis I'm trying to draw and the economic decision-making which -- which I'm trying to reflect.

Let's just do this and make it a little bigger.

There we go.

Q. If I could just interrupt you for one second.

You are making reference to what's marked Exhibit 319?

A. 214.

Oh, I'm sorry. The -- yes, my exhibit --

Q. Your exhibit is 3- -- 37I?

A. 3 -- my Exhibit 319, and the IDFA exhibit was Number 214. And I don't recall what their -- so the question that I'm trying to --

THE COURT: Before you go on, I want to write down

Mike Brown's number, and I thought I saw it before you made it bigger.

THE WITNESS: No, that -- hang on, maybe I can -- this is IDFA Exhibit 6.

THE COURT: IDFA Exhibit 6.

THE WITNESS: And I honestly -- oh. So the preceding exhibit is Number 214, and this is page -- from page 7.

I will preface this by saying, I certainly don't agree with the values and the process that IDFA used to develop their Make Allowance proposals, but Mr. Brown actually did a great job here of encapsulating the economic decision-making that goes into this issue.

And so from this -- his quote, from page 7 of Exhibit 214 -- again, that's IDFA Exhibit 6: "Thus, current Make Allowances are based on cost data submitted more than 16 years ago. Unless those Make Allowances are adjusted to changes in industry costs, manufacturers are trapped in either losing money on every pound of product produced or stopping production entirely."

Now, as a matter purely of economics, this is a straightforward statement, that if they can't -- if those resources that are used to manufacture hard products don't -- you know, if those resources don't return a reasonable return, if they don't generate a reasonable return, the owners of those assets, that capital, will be eventually redeployed into some other enterprise. They will quit making those hard products or they will shift to

another product or those resources will go someplace else. This is a straightforward economic premise. And I agree, purely for this purpose, that that's correct. That is the proper economic decision-making. If those assets are not returning a reasonable return on their -- on their existence, on their use, they will be eventually redeployed.

So at this point let's take one step back or so in the marketing chain and let's look at this from the eyes of a dairy farmer or the eyes of a cooperative association. Same quote, but we're going to do a little bit of substitution in terms of the nouns and the verbs. And this is what a dairy farmer would say when faced with supplying Class I, particularly distant Class I plants. And, again, these are just substituting nouns and verbs in Mr. Brown's statement: "Thus, the current Class I differentials are based on hauling data determined more than 25 years ago. Unless the Class I differentials are adjusted to changes in hauling costs, dairy farmers are trapped in either losing money on every mile milk is hauled or stopping milk deliveries to distant plants entirely."

Same economic decision-making. If there's not sufficient returns for that economic activity, the economic theory of the firm, F-I-R-M, says that if you don't make a reasonable return, you will eventually redeploy those assets. So if dairy farmers are faced with shipping milk to Class I plants that don't pay, they

eventually will stop. They will either go out of business and divert those assets to another farming or other enterprise, or they'll simply do what we fear, which is they will simply keep their milk in manufacturing and they just won't let it go for Class I.

Again, this is a picture of a threat to the supply to Class I. If we don't get these right: A, milk -- on Make Allowances, milk plants are going to start doing something different, processing plants; if we don't get differentials right, dairy farmers are going to stop delivering to Class I. It is a straightforward economic comparison in both cases, and the economic decision-making, the decision-making at the firm level, is the same.

Q. If I could just recharacterize your correlation, referring back to your cost of product utility conversion and cost of time and place utility conversion. If I understand what you are saying, in essence, putting two and two together, is that the gist of the proposal to raise the differentials is that in order for a plant to make the economically rational decision to buy and utilize the milk, the cost of product utility conversion would have to be fully accounted for?

A. Okay. Let's make sure that we put the right economic activity with the right cost.

Q. That's why I'm asking --

A. I think you said Make Allowances and -- let's start over. How about that?

Okay. The Make Allowance question --

Q. I'm trying to ask you to back up a little bit --

A. Yeah.

Q. -- to get back to here.

A. The Make Allowance question is one at the plant level. If they cannot -- if the Make Allowances or whatever the economic circumstances that exist don't allow them to make a normal return, and a normal return on investment, they will eventually redeploy those assets. That capital will move to some other enterprise, either another dairy product or those -- those -- that capital will shift to another industry. But if you lose money long enough at one industry, you will start looking for another one. Okay?

At the dairy farmer level, if the Class I differentials, if the spatial price surface is insufficient to encourage dairy farmers or properly compensate them for the delivery of milk, particularly to distant Class I plants, because, again, the dairy farms themselves and the people are far apart, they have moved farther apart, and they are going to continue to move farther apart. If those Class I differentials are not sufficient to encourage that milk or to provide a reasonable return on that business activity, meaning delivering milk to Class I, they will stop doing it, either the farms will go out of business or they will divert that milk to a manufacturing plant where the return is higher.

These are straightforward cause-and-effect economic issues.

Q. So let me refer you again back to page 39 of Exhibit 318.

A. Yes.

Q. So the equations that if -- it's probably the wrong technical term, but the more specific explanation that you provided is that the Make Allowance -- quote, "Make Allowances in Federal Milk Orders reflect the costs of product utility conversion" --

A. Yes.

Q. -- that's what needs to be covered through the Make Allowance, correct?

A. Some reasonable portion of it.

Q. Fair enough.

And similarly, the Class I differentials reflect the cost of time and place utility, which is getting the product from here to the plant, correct?

A. Yeah. In the case of a Make Allowance, it is taking a raw product and converting it into a usable or storable dairy product. Raw milk in its native form isn't -- you know, doesn't have a lot of utility. And so we make an economic decision to convert it to a product that is usable. When it comes to Class I differentials or dairy farmer shipping milk, that's a raw material in the wrong place and the cost to get it to the right place.

So these are basically the same economic decisions. They are -- you know, the drivers of each

is -- are a little bit different, but the plain economics, the cause and effect, are identical.

Q. That's, back to your point, two sides of the same --

A. Yes.

Q. Okay. So now I would just back up one step further. Is it reasonable to say that the function of Class I differentials to reflect the cost of time and place utility conversion has been the historic function, basic function of Class I differentials, dating back to the MW.

Is that a fair statement?

A. I would say that one of the -- one of the functions certainly of Class I differentials is to send the economic signal that there is places where milk is needed, and there's places where milk is, and that we need some structured system for incentivizing that movement.

Q. And that incentivization dates back to the MW at least, would you say, in the Class I differential?

A. Put it this way, in my 40 years of -- nearly 40 years of history, there's always been some sort of recognition of the relationship between reserve supply areas with a lower differential and areas of need with a higher differential.

Q. Okay. And would -- would you say that that basic calculation was true through the 2000 reform, that that remained a consistent function of differentials?

A. I think that remains today, that those

differentials are designed to send a straightforward economic signal that the milk needs to move from reserve supply areas to areas of need.

Q. Now, at the same time, is it fair to say on the other hand, I suppose -- not at the same time, on the other hand, with the 2000 reform, the introduction of Make Allowances is a new concept?

A. It was.

Q. Okay. So we have now, getting back here, and getting -- now getting to your -- the second part of your statement -- let's go back to page 39 again. This is really where I'm trying to get to question-wise.

You make the point that "updating either one, but not both, will reek havoc on dairy markets and threaten the adequate supply of milk."

So is it fair to say that the dynamic after -- between the two is a new dynamic, after 2000 reform? You now have Make Allowances, which we didn't have before and have now, and we have Class I differentials, which we have had all the way through. So you're -- you're -- is it fair to say that if the Class I differentials are not updated and the Make Allowances are, putting two and two together, aren't you going to increase the dislocation that's involved in that dynamic of incentives for the movement of milk?

A. You certainly don't improve it. If you imply -- if you install -- or increase Make Allowances, that will lower the prices for Class -- you know, it will lower all

the class prices and doesn't change the slope or the incentive to move milk to Class I.

Q. But you have -- if the Make Allowances are adopted, then the capability of plants to receive the milk has been -- that -- increased, correct?

A. That's theoretically correct, yes.

Q. And if you haven't increased the Make Allowances, you have decreased the capability of those plants to purchase the milk from farmers because they will be less likely to want to move the milk to the plants, correct?

A. Fair enough.

Q. So the -- what -- that's all -- I basically just kind of teased out what was in your statement to get to what you summarized in your PowerPoint. But the one piece that's not there, it is almost there. Does that mean that the Class I differentials have assumed a role -- back up one step.

There's been a lot of discussion back and forth that the Class I differentials have now taken on the role of price alignment and to try to prevent price inversions, correct?

A. I simply say that Proposal 19 at $2.20 minimum differential, that also satisfies the objective of reducing the incidents of class price inversions. Again, back to my original point, if we want to get milk to Class I, let's make Class I the highest price class. If we want to incentivize deliveries to Class I, the best signal to send is that Class I is the highest price class.

Q. Fair enough.

But would you say that that dynamic of Class I serving that function really is a relatively recent occurrence, didn't exist before 2000? Where there price inversions in the marketplace before the 2000 changes?

A. I believe that there were, but they were quite rare.

Q. Quite rare.

A. That -- maybe "quite" isn't the right -- I -- I can't -- I have no data in front of me on the -- the incidence of inversions pre-2000. But they did exist, but I believe that they were less prevalent.

Q. Fair enough.

But without question, the -- is -- is it -- will it work in economic terms to speak of the relationship between Class I differentials now and the Make Allowance, the two sides of the same coin? Does that reflect the price alignment, or misalignment, in similar terms? Is that --

A. I don't think I understand where you are -- what -- the question you are asking.

Q. It's because I'm -- I'm reaching to speak in economic terms, and my only training is my father was an economist and I learned --

A. Well, you are close enough -- close enough that you need to be. I highly recommend you stay far away from it. How is that?

Q. I'm in --

A. I speak from experience.
Q. -- the little-bit-of-information-is-dangerous category.
But if -- if we -- your statement makes a compelling case that if the Class I differentials are not increased, that the market dislocation that will move will tend to incentivize the movement of milk to manufacturing plants will be exacerbated? Yes?
A. If you say that moving away from Class I toward manufacturing is a problem --
Q. Yes.
A. -- it would exacerbate it, yes.
Q. Okay. So is there some, thereby, economic alignment now between the Class I differentials and the Make Allowances?
A. Again, I would say that they represent two forms of economic utility conversion. One is -- and so if that -- if your word is "alignment" for that, I can say, yes. I'm simply saying that, you know, they both represent the economic signal or the proper allocation of cost to incentivize what needs to happen in the marketplace.
Q. Okay. Thank you very much.
MR. SMITH: That's what I have.
THE COURT: Thank you very much, Mr. Smith.
Dr. Cryan is coming.
MS. TAYLOR: Can we take a break for our court reporter?

THE COURT: Okay. Dr. Cryan, you're next up.

Let's take ten minutes. 4 o'clock. Please be back at 4:10.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 4:10.

CROSS-EXAMINATION

BY DR. CRYAN:

Q. Good afternoon, Mr. Sims.

A. And good afternoon to you, Dr. Cryan.

Q. It's nice to see you. I am Roger Cryan for the American Farm Bureau Federation, for the record.

As I hear you present and as I read the proposals from National Milk with respect to the Class I differentials, they seem to me rather moderate. You documented a clear need for the $2.20 minimum -- what do you call it, the lowest?

A. Minimum differential.

Q. -- minimum differential, which seems could be legitimately applied to the traditional definition of the Class I differential be divided between a minimum and location differentials.

It seems, does it -- doesn't it seem like you could have justified adding $0.60 across the board?

A. I don't know about -- I don't know if I used -- would agree with that characterization. But we are proposing what we proposed.

Q. Right. And I understand that -- that a lot of

these -- there's a lot of adjustments that need to be made to the model, as you said, to operationalize it, as was done in 1999, and that one example of that is to raise those -- some of those regions up to 2.20 to meet that need. That was an example of operationalizing at the local level --

A. Yes.

Q. -- right?

A. Yes. That was part of the reason, yes.

Q. Do you anticipate that the presentation overall will involve -- from National Milk overall, will involve a county-by-county overview of -- county-by-county detail on justifications for the changes for the adjustments?

A. I don't know that I'd go all the way down to the county level, but certainly, the notable plant locations will be discussed with substantial detail.

Q. Fantastic.

Okay. And the starting point for your proposed numbers, at least as it's presented in the spreadsheets, is the average of the May and October model results.

A. Well, that's what that spreadsheet says. Each individual working group, regional working group, would have looked at the high month, the low month, the average, and how those actually work in real life. So I will just simply say we -- I think everyone started -- I don't think everyone -- I know everyone started with the model output. But as to whether or not everybody always honed in first on the average, I don't know that that's completely

accurate.

Q. Okay. Does it seem, though, in the Southeast where the challenges are in meeting the supply requirements of fluid plants in the short months, particularly, that -- that it would have been justifiable if you had chosen to use the October results as a starting point?

A. We might have at certain places. I'm not going to say that we -- that every place we pegged against the average. We -- every spot was analyzed on its own merits. We had the model results. As to whether or not we determined the average or the high or the low was appropriate, every place we drilled down and took a look at the model, we took a look at the real world movements of milk and made a decision.

Q. Okay. So there was some discussion with I think it was Mr. English about dairy farms have produced Grade A milk, and they have expanded Grade A milk production and started new Grade A farms. And the suggestion in -- from the questioner was that they are doing this for reasons other than the Class I differential in the Federal Order system.

But those -- those have happened within a world where Federal Orders exist. Would you say that the Federal Orders and the Federal Order pricing and the requirement to meet the Grade A standards in order to pool have had some influence in incentivizing Grade A production?

A. I would think they would have to.

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

THE COURT: Thank you, Dr. Cryan.

Does anyone else have cross-examination questions of Mr. Sims before I turn to the Agricultural Marketing Service?

I see none. I now turn to the Agricultural Marketing Service for questions for Mr. Sims.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Afternoon.

Q. That's fair. I was glad to see you came back after the weekend.

A. Yeah, I'm not as bright as I look, am I?

Q. Maybe we'll get you finished today.

A. Maybe.

Q. Maybe.

A. I think I know who determines that. Go ahead.

Q. That's probably not me.

Okay. Some questions I think we still wanted to discuss with you. I'm going to start going through your statement first.

A. Yes.

Q. I'm going to try to go in order.

So on page 4, so you are talking about Grade B farms --

A. Yes.

Q. -- and the percentage of Grade B farms that are out there.

Do you have any information on how much cheese production in the U.S. requires Grade A milk? You know, you can use B in cheese. But are there some manufacturing plants don't allow that either?

A. I'm sorry. Could you repeat that? I think I have an answer, but I want to make sure I answer the question you asked.

Q. Sure. You only need to be Grade A to ship to a fluid distributing plant, but that's -- but are there cheese plants that require milk being Grade A to be shipped to them, and the converse of that is the amount of plants that will accept -- manufacturing plants that will still accept Grade B milk? Do you have any information on that?

A. I have no information on the ratio or -- I -- we will admit, there are cheese plants that require Grade A licensure. But, obviously, this Grade B milk is going someplace. Somebody's buying it. At what ratio the cheese industry is buying this Grade A versus Grade B for cheese, I can't answer.

Q. Okay. And below on the page you have some -- an analysis that National Milk did to determine the difference between Grade A and Grade B milk. You have $1.36 per hundredweight for the difference in production cost and $1.38 per hundredweight for the non-cash cost of

depreciation for equipment and improvements on the farm, et cetera.

Is there going to be a witness later that walks through that analysis?

A. In fine detail, yes.

Q. Okay. And then on the top of 5, the first full paragraph, and here's where you are talking about price inversions. I want to read the sentence: "Another critical aspect necessitating the application of a base level of Class I differential is the Department's own policy regarding Class I prices which mandate setting them at a level high enough to prevent regular class price inversions."

I was wondering if you could further explain this statement and your interpretation of what the Department's policy is?

A. Yes. We -- let me say this. We had to scour back at the -- for the 1999 proposed rule and final rule, and did find a reference in there, when discussing what I think y'all have basically referred to as the base differential. And one element of that, I believe -- I think I'm right -- mentioned class price inversions. So that's where we got this statement that -- where -- it may not have been in the amount of the $1.60, which is dedicated to preventing Class I price inversions, I don't think was listed, but it was an element of why a base level differential was necessary. I believe it says that. I hope I didn't perjure myself.

Q. On the bottom of page 7, you talk about -- well, the page kind of talks about how there's certain PMO requirements, but many processors and manufacturers require quality above that.

A. Yes.

Q. In excess of that I should say.

A. Quality -- that is less than for most of these, bacteria and somatic cell counts less than is allowed for Grade A licensure.

Q. Thank you. That's a more apt description.

And it says, "We have not quantified the additional cost of producing milk that exceeds these standards, but they exist."

And I wanted to know if you had an idea of what someone would look at if they did want to quantify that cost?

A. Oh. Certainly, the animal health aspects of maintaining low bacteria counts in the milk. The animal health aspects, animal husbandry of maintaining low somatic cells. Often bacteria issues on a farm are sanitation issues. So the use of a sufficient amount of sanitation equipment or sanitation chemicals to keep your barn nice and clean certainly would -- could cause an increase in cost versus simply having to meet the Grade A requirement to meet those higher Class I installed requirement, I guess. Those would be some -- some of those. Yes.

Q. Okay.

A. And it could be certain equipment that is of higher quality.

Q. I want to turn to page 9 in here. We're on your transportation analysis, cost of hauling.

In the middle of that first paragraph you have a sentence that says, "Today's roughly $4.50 cost of trucking per loaded mile equivalent reported by the ATRI is highly consistent with the rate we will quote of milk hauling, when other costs items are also considered."

A. Okay. I'm sorry, I'm -- you are -- you will have to point to where that page is.

Q. Page 9.

A. Yes.

Q. The top paragraph.

A. Oh, okay.

Q. Kind of right in the middle --

A. Okay, yes.

Q. -- and the sentence starts "today's roughly."

A. Yes.

Q. And you talk about how the milk hauling analysis you all did is in line with this $4.50 rate --

A. Yes.

Q. -- $4.50 rate, "when other cost items are also considered."

I was wondering if you could elaborate on what the other cost items are you're --

A. Certainly. Fuel costs. The cost of the tanker is more than the cost of a milk tanker because its insulation

is more expensive than just simply a dry box trailer, or probably more expensive than a -- than a refrigerated box trailer. That is certainly one.

Also, the -- you know, this is kind of, I don't know, esoteric, but not every truck driver, although they may have a commercial driver's license, wants to haul fluid. It -- we are told that there's a certain sloshing that goes on in hauling milk or a liquid, and not every driver gets used to that. So there's actually a subset of truck drivers who are willing to do that work because it's a little bit different than hauling grapefruits, for example.

Q. On page 10, under the "Hauling Structure" --

A. Yes.

Q. -- heading. This is sort of probably goes in line with what you were just talking about, but in the sentence in the middle of that first paragraph there, it says, "Fuel prices, labor costs, equipment and maintenance expenses, insurance and overhead costs, and the costs associated with the installation of new technology in vehicles have all risen."

Can you expand on the new technology you are referencing?

A. Yes. Every truck now has to have an electronic log device, I believe that -- it is ELD, and I believe that stands for electronic log device.

In the old days, a driver got into a truck. He had a piece of paper. He wrote down the time he started

on a piece of paper with a pencil or a pen. When he took a break, he wrote that down. When he started back -- when he got off of break, he wrote down his startup time. That no longer is allowed.

There actually are displays in the truck, and the driver has to log in with the time they start driving, and the electronic log keeps the time that the driver is moving, the time he's -- the truck may be sitting at a rest stop. And in order to make sure that that -- how can I put this -- to make sure that the time in the driver's seat is accurate and not subject to the error which might occur if you used paper logs.

These ELDs, they are not cheap, and they create a lot of data. And so those are the kinds of electronic devices.

And anybody that is running a fleet is going to have GPS trackers on their trailers, probably on their trucks also. All that -- I can say this, Lone Star Milk Producers, we are a little bit different than many co-ops. We actually own our own fleet of trailers. We don't own any trucks, but we own our trailers. Every trailer has a GPS device on it. And it is really quite fascinating.

The dispatchers, you go in, and they can pull up a screen, and it looks like the pictures in the movies of the air traffic controllers. They can pull up a map that shows where all the trailers are. It is actually kind of fascinating technology.

Q. Okay. So I wanted to turn to page 12. In that

first -- below the graph -- well, we were trying to work through some of your numbers came from in these two paragraphs. And I guess maybe what I want to start, because I think it feeds in here and you talk about it a couple of times, is if you can define what you consider a base-haul rate --

A. Okay.

Q. -- and what's in that.

A. Yes. Most hauling contracts call for I'd say a two-level rate. There is a base rate, which is, say, some number with a -- at a diesel price of another number. The ones I'm familiar with, $2 is not an uncommon, you know, base rate at -- and, again, we're talking about per loaded mile. So let's just say $3 per loaded mile is the base rate. And then the fuel adjusters are pegged against a standard diesel fuel rate for whatever geography. And then the fuel adjuster is actually, rather than per mile, it is often a percentage based on a schedule that as diesel moves up above, say, what the $2 or whatever it is, there is a percentage of the base rate which is tacked on as fuel.

So if the base rate is $3, and those -- and I will simply say today, in today's diesel costs, the factor is probably about 1.6. So if you take $3 and multiply by 1.6, you will get about $4.80 per loaded mile. That's how they work. And it's a percentage of the base rate is how they -- the base -- the haul rate is adjusted, not a straight gallons or miles or anything. It is a

percentage.

So as fuel costs go up, it represents more than just simply the impact of the fuel, but also represents the impact of all the other things that petroleum -- where it drives the costs: Belts, hoses, tires, all that stuff. So the fuel adjuster is probably misnamed. It's actually -- yes, it's based on the price of fuel, but it encapsulates other variable costs associated with things made from petroleum generally.

Q. Okay. So I appreciate that description.

So then if we can go to the text under the chart.

A. Yes.

Q. Okay. So -- and I think that's what you are talking about here, additional costs that normally follow energy prices includes things like tires, hoses, belts, all petroleum-based products.

A. Yes.

Q. Okay.

A. There may be other variable costs, but it is based purely -- it's based on the price of diesel, but it is not just designed to capture only the impact of a -- of a flat distance haul cost per mile. It doesn't just move the -- you know, it's not a per gallon thing or -- you know, per gallon divided by 6.2 or some miles per gallon. It is a percentage thing, so it encapsulates and captures more variable costs than just fuel.

Q. So they are in -- they are like a multiplier?

A. Yeah. That would be one way to put it.

Q. And so they are based off of -- I want to summarize what I just heard. They are based off a percentage of the base-haul rate. So they're percentage based, but their impact is on the -- correspond to per loaded mile?

A. Yes. The resultant product of the base rate times the percentage adjuster, or multiplier if you want to use your word, then generates a final per loaded mile rate.

Q. So in your example, you say, "Therefore, it is not uncommon for fuel adjusters to add $1 to $1.50 per mile to the hauling rate."

So that's in addition to the base rate --

A. Uh-huh.

Q. -- you would add that much?

A. So in my example, at $3 base rate, if the fuel adjuster is 5%, then you get $4.50 as a rate, so that's a 50% increase in the -- in the -- or $1.50 increase in the rate per -- the effective rate per loaded mile. And at diesel like it is today, in the middle fours, you are seeing fuel adjusters in the 55 to 65% range.

Q. Okay.

A. The multiplier.

Q. Okay. I had another question. It just slipped my mind.

Well, the next sentence down, you talk about, "In 1998, the base cost of hauling was approximately $1.60 to $1.75 per loaded mile based on the fuel diesel price of $1."

Where did the $1.60 and $1.75 come from?

A. My memory.

Q. Okay.

A. But that -- I -- I'm confident that those are roughly the numbers. Diesel -- the hauling rates didn't change very much from, say, the middle '90s through the late '90s. The -- they were fairly stable. You know, they were up and down a nickel here and there, a dime per loaded mile. But diesel prices, if you'll look at the graph, really late in the '90s was when the diesel prices started escalating. They had been roughly $1 a gallon for a fair little piece of time, leading up to when this most recent run-up -- or long-term run-up of diesel prices occurred.

Q. And so I think you -- your testimony said that those fuel adjusters are regional based on regional diesel costs?

A. Often, yes.

Q. And do you know if the USDSS model that Dr. Nicholson ran accounted for that?

A. I -- my understanding is they have a -- kind of a national diesel -- or national hauling rate that has some regional adjustments, but the amount of regional adjustment may or may not be truly reflective of the -- of any -- of the cost of haul at any one point or any one point in time.

Q. Okay. And do you see that -- are these adjusters different on longer routes as opposed to shorter routes?

A. Generally, no.
Q. Okay.
A. But I will say this, the rate might not be the same, but the problem is the amount of rolling stock that is required when you're going long distances. Because of the time in service limits, the rest time limits, when you start going a long way, let's just say from Hereford to Houston, that's at best a two-day roundtrip or three-day roundtrip really. Nobody can make it in one, two days.

So it's -- so to take ten loads of milk to Houston, you have got to -- on any one day, ten loads going to start the day. You've got to start the next ten loads the next day. So you've got 20 loads full going towards Houston, and you've got 20 empty trailers and trucks coming back. In the best circumstance, you have got 40 trucks on the road to deliver ten loads per day.

You have to account for that difference in -- or that capital cost. And so some of that capital cost on long hauls might actually -- well, let me say this: You -- if you secure a hauler for long hauls, and you have to do this -- you have to secure them. You have to tie them up. And generally, you have to -- I think -- I can't remember what Mr. Miltner's term was, but if you -- you must guarantee them at least a minimum number of loads per day for some period of time, or if you don't want to move it, you have to pay them what amounts to a go-away. So even if they are not moving --

Q. Did you say "go away"?

A. Go -- G-O, A-W-A-Y, go away. A term of art in the milk business, a go-away cost.

So you tie them up for -- because not every hauler has the capital and the number of trucks necessary to haul milk six, seven, eight, nine hundred miles, a thousand miles. You have to tie those people up and promise them a -- a reasonable number of loads to haul or they are just not interested.

Q. Okay. On the top of 13 you are talking about the cost of buying a tanker?

A. Yes.

Q. Which has increased according to your information.

How long does a tanker last? What's the turnover?

A. The depreciation on them is about 20 years. They actually can live a little longer than that if you take care of them. But they almost never make it that long because they get wrecked, they get turned over, they get -- somebody forgets to open a valve and they get sucked and crushed, or they back into something, they run into something. Their life is -- their practical life is almost always less than their useful life because after 20 years, something happens to them.

Q. Okay. Down in that page you say, "The typical base rate for hauling milk stands at around $3.45 per loaded mile."

A. Yes.

Q. With a benchmark in that number of a $2 per gallon diesel price?

A. Yes.
Q. So can you talk about where you got the $3.45 from?
A. My industry knowledge. I can -- that is -- now, that is a truck and a trailer. If you -- if like Lone Star, if we only -- if we provide all the trailers, our base rate is less than this because, obviously, there's a cost associated with acquiring the trailers, maintaining the trailers. So $3.45 is I think a reasonable statement of kind of average base rates at the moment.
Q. And is that for the Southwest/Southeast area of the country or --
A. I would say that my knowledge extends to the Southeast/Southwest, but I -- I don't know how -- other places probably might have different costs. I'm sure some of the industrialized cities that may be -- may be cheap, they may have to pay more. In fact, I don't doubt it. If they are sitting -- some of the issues are not just the number of miles, it is the number of hours. That if you are -- if you are stuck in traffic in Los Angeles or Dallas/Fort Worth or Atlanta, anybody that's experienced that, when that truck is sitting still stuck in traffic, it's not generating any mile revenue for that truck and trailer owner.

So sometimes it's just hours, and that, in fact, increases the effective rate because you might have to pay -- you have to account for that extra time it gets to somewhere before you run out of the hours of service.

Q. Okay. On the next sentence below that $3.45, you say, "Accounting for today's improved truck fuel economy, this translates to a base rate of approximately $3.34 per gallon at a $2 per gallon" --

A. Oh, I'm sorry.

Q. And I think that might be --

A. That probably should be mile.

Q. Okay. So --

A. I'm sorry. In the third line, the next to the last word, instead of "per gallon" should be "per mile." And that actually is per loaded mile.

Q. Which would you like it to say?

A. "Per loaded mile." Sometimes --

Q. So that's on page 13. We're going to look at the third paragraph on the page, third line down -- let everybody get this -- from where we have a number $3.34. It says "per gallon." It should be -- it should say per loaded mile?

A. Yes.

Q. Okay.

A. So what I'm trying to do here is show what the -- because of increased fuel economy in -- in trucks, back in the early part of this -- this century, I guess we could say, the typical miles per gallon on a diesel truck for hauling a load of milk would have been in the middle fives per gallon, 5.5, 5.6 if you are lucky. Today it's more like 6.2, give or take. So just that has actually decreased the cost per mile, but I have tried to relate

that to what the base rate would have been adjusting for that 20 years ago when the -- when diesel was about $1 per gallon, just as a kind of a reference.

Q. So that's like taking it back to 1998 cost --

A. Roughly --

Q. -- based --

A. Yes.

Q. -- on a different --

A. Give or take.

Q. -- miles per gallon?

A. Yes. Yes.

THE COURT: Don't talk over her.

THE WITNESS: I'm sorry.

THE COURT: I want to make sure we've got that record copy changed. So we're in Exhibit 310. We're on page 13, third line down, in the third paragraph. And you have done it already, haven't you? Thank you.

BY MS. TAYLOR:

Q. So on the last sentence, the last paragraph on that page, you talk about considering fuel cost increases, base-haul rate increases, the typical hauling rate, even with today's improved truck fuel economy, reaches close to $4.50 per loaded mile.

Again, I just want to make sure we're clear. That's kind of based on your experience. We don't necessarily have that analysis in this record?

A. That's correct. I believe Mr. Zalar's data that was on hauling costs, that was in -- that was admitted

last week, is quite similar.

Q. And this is both the base-haul rate and any fuel adjuster is incorporated in that --

A. Yes.

Q. -- 4.50?

A. Yes. So basically that's -- in fact, I'm probably conservative there. A $3 base rate at 150% fuel adjuster gets you to 4.50. That probably is -- and I'm just going to say not probably -- that certainly is conservative. The real rate for a truck and a trailer today is closer to 3.30, 3.35 per mile, the base rate for a truck and trailer, prior to the application of a fuel surcharge. So five -- five-ish.

THE COURT: So you say five-ish dollars?

THE WITNESS: Yes, per loaded mile would be something like that today. If you are going to -- if you are going to figure -- in the -- on the -- off the top of your head how much it costs to haul milk, $5 a loaded mile is a pretty good thumb rule. That translates to $1 per hundredweight per hundred miles. And that's pretty much what it is.

BY MS. TAYLOR:

Q. Are there any public sources for base-haul rates or fuel adjusters that one could look to to kind of compare?

A. Yeah. The -- I think the Cass line haul numbers those -- that index provides I think some of that data. You can infer some of it from the ATRI numbers.

There's -- there's unfortunately no place where you can just simply go and say, today's haul rates are, because the haul rates are very based on the product. Right? Again, you know, the -- some of these broad-based indices or data represent a cross-section of the type of haul. You get a different number if it's, again, a dry box or a refrigerated box or a lowboy or, you know, fluid.

So there's -- unfortunately, there's not a lot of, here's how much people are paying today for the cost for milk hauling. That's -- I have searched, and if it is out there, I haven't found it.

Q. Okay. I want to move to page 16. Let's see. In here you are talking about, at the bottom, under "Impact Analysis," that the National Milk proposed differentials would increase total Class I revenues approximately 56%, just from the differential piece; is that correct?

A. The -- purely the differential --

Q. Just the differential section.

A. -- section, yes. If you look at the exhibit somebody just put in front of me, I think, the IDFA attorney, Mr. Rosenbaum, if you look at the market average Class I differential from -- this is Exhibit 46, I think USDA --

Q. I think it was 2.62 or 2.63, something like that?

A. I'll certainly trust you on that.

Q. Uh-huh.

A. If you look at the weighted average differential across all markets, it was 2.62. Under our proposal 408,

the difference in those is roughly 56%.

Q. Okay. Later on you say that even with the increase, this increase as proposed, it won't cover the cost of hauling?

A. It will not.

Q. Okay. Does National Milk have a position of what piece of hauling the differential should cover?

A. I don't think we have -- we have enumerated a factor, per se. We have trusted the model in much -- in many spots to kind of lead us where we needed to go on -- on some of that information.

Q. And I think you spoke earlier today that in your personal opinion, you would rather see an increase in the differentials rather than hoping to rely on old over-order premiums; is that correct, to recoup some of that cost?

A. Yes.

Q. And so I take -- combine that with what you just say, is that cooperatives and those supplying Class I plants will still have to find ways to recoup all of their hauling costs --

A. We --

Q. -- through --

A. The proposal will not erase all the difference between what it really costs to haul and what the differentials would pay. So, yes, there will still continue to be some need for over-order values, although they should be somewhat less. But we are -- our proposal is as we have submitted it.

Q. I know you put on some analysis looking at hauling charges between Houston and Dallas and Amarillo, Texas?

A. Yes.

Q. Do you know if there will be other analysis put on for the different regions to discuss kind of those factors and how they played a role in -- regionally how the differentials were chosen?

A. I think there is mention of hauling costs in a number of the -- of the regional testimonies.

Q. Okay. I want to turn to your PowerPoint presentation, which is Exhibit 318. I might still have a few questions on this.

I want to start on slide 9 -- or page 9.

A. Yes.

Q. I was wondering if you could just like pick a month and use as an example and explain to me again what this chart is showing.

A. Okay. Fair enough.

Q. Or maybe pick two months --

A. Sure.

Q. -- one when there's nothing -- no red bar and then pick a red bar.

A. Cool. We can do that.

Obviously, again, this is the California order, and we put it in this slot in the presentation because it's not as -- you know, there's not as many years. So, again, you can see the texture of the issue we're trying to describe here because there's -- the scale doesn't get

so compressed.

What we did here was we took each 12 month -- 12 calendar -- you know, each 12-month calendar year, and for each month within that calendar year, we simply divided the Class I producer milk for that month by the number of days in the month to generate a daily average Class I producer milk for each month.

Then we said, okay, now let's block the world off into calendar years and say, okay, of those 12 different daily average Class I producer milk, one of them is going to be the highest. One of them is going to have the greatest Class I daily average producer milk. And so that represents in -- you know, in country boy terms, that's the peak Class I demand on a daily basis for the year.

Often, I note in Order 51, it looks like that often November is kind of the peak Class I month. So if you think about the blue line as the -- as the Class I daily average delivery or the daily average producer milk, then the corresponding red bar is in essence the inverse of that. So I took the daily average delivery for each of the 12 months and compared it to the high month. So one of those months, the comparison of the high month is to the high month, so that's zero. There's no reserve necessary for that month, or there was no reserve, because we -- we are comparing the peak month to every other month.

So, you know, in this case, looks like, again, if you look at 2022, it looks like November probably was the

peak month. So -- so there is no difference between the peak month number and the peak month number. So every other month other than November 2022, there was reserve supplies that had to be balanced awaiting the peak month.

So the -- again, you will see the red bars are in essence the inverse of the blue line. When you see a dip in the blue line, you will see a peak in the red bar. So each of those represents then the amount of reserve that was carried in each month compared to the peak month of Class I demand per day that calendar year.

Q. Okay. That is helpful. Thank you.

A. And the other ten orders are in the appendix part of this PowerPoint.

Q. Okay. If you can flip to page 17.

A. Yes.

Q. In that first bullet, and you are talking about over-order prices, you say, "Those that do not understand over-order prices, their functions, benefits, and limitations."

A. Yes.

Q. And you're talking about there's two camps. So there's one that doesn't understand their functions, benefits, and limitations.

And I was wondering if you could just summarize what you think are the functions, benefits, and limitations of over-order pricing.

A. Certainly. One of the functions is to provide a little bit of head space above the minimum prices to give

room to, as someone asked me, some adjustments for to encourage certain activity on the part of the Class I plants, to incentivize their level receiving through the week. Again, as a co-op, I don't care when plants bottle their milk, but I do care a lot about what days of the week and how much each day they actually pump into their plant. It's from a co-op standpoint, when they bottle is not -- you know, that's their own business, but how they receive the milk, that's the important question.

So over-order prices provide a mechanism or a provide some funds there which we can incentivize plants to level their receiving, both within a week, within a month. And, again, some places I have never been involved in an agency that does this, but there are even annual receiving credits. That's one function.

Another function is to help defray some of those costs that obviously aren't captured in the Federal Order prices. Obviously, you know, there is never -- in my history, we have never had differentials which covered completely the cost of hauling. So this over-order -- these over-order prices provide some additional funds to help move the milk over and above the Federal Order Class I differential surface. There is -- to cover some balancing costs, and maybe that are over and above the balancing costs that are generated on a weekly or monthly basis. So those are some of the functions and their purpose and why we have them.

Their limitations are that they can't do it all.

They are always one breath away from falling or going away completely. Again, I have experienced everything, high ones, zero ones. And so there's always the concern that some internal or external force will force premiums down.

Often it is external, what's happening somewhere else can impact the level of over-order price in a marketplace. Some other area has a temporary surplus of milk, and they are looking for homes. Sometimes that can force prices down, over-order prices down, simply the threat that milk may flow from a reserve supply area to another area, simply because it needs a home and they are willing to take lower prices for it to -- to just get rid of it or just to balance it.

So there's always the possibility that over-order prices can fail. And, again, I have experienced it all. We have seen them high, and we have seen them low, and we have seen them zero.

And so there's their lim- -- their basic limitation is that they do not replace the surety of the prices and the price transmission which comes from Federal Order regulated prices.

Q. Okay. Another comment you had on over-order prices, which is on page 21, you say the prices "tend to be flat over large expanses of geography."

A. Yes.

Q. Wondering if you could expand on that a little bit.

A. Certainly.

Q. I think this also -- I had another note at the bottom of that slide, your paragraph that talks about, "As distributing plants have increased throughput, and their Class I sales area footprint, and with the rise of national and multi-regional retailers, this issue has taken on even more significance."

And I guess what I -- big picture I'm looking, if I tie those two things together, right, basically, there's been a lot of consolidation since reform. We consolidated however many orders into 11 at that time, so we got orders that were bigger in geography. You have retailers whose footprints are bigger in geography is what you are saying on this slide.

So how has that impacted over-order prices and your comment that they are flat over these large geographic areas?

A. Yeah. Those are very fair questions.

The Class I processing industry, I'm going to generalize, basically uses the Federal Order class price surface as the slope or the adjustments for location plant to plant. They generally don't like over-order prices, which try to tweak or change the slope very much of those established Federal Order Class I differentials. If -- you know, the industry basically accepts that whatever the order comes out in, in terms of the relationship of location values, is pretty much it.

So in order to maintain a competitive situation that plants want, they want to be -- to know they're

competitive against their neighboring plant, and they say, okay, I accept that my plant is $0.10, $0.15, $0.30 higher than my competitor, or lower, I accept that. In order to make sure that they can -- they'll live with or accept that difference, the over-order price has to be pretty flat so that you don't disrupt that $0.30 difference, which is established under the Federal Order Class I differential structure.

So that's why they tend to be flat over large areas because you don't want -- the competitive structure on the -- out in the country or on the street recognizes difference in -- differences in order Class I differentials as the difference in price. If you try to tweak that zone difference or that relative differential difference, you -- you can get in a position where your customer says, well, you just raised my price more than you raised that price up there, I don't like that.

So they tend to be flat because that way you maintain if it's $0.30 between two plants under the order differential, when you raise both of them or apply a flat Class I differential across -- or excuse me -- a flat Class I over-order price to both of them, you still maintain that $0.30 difference.

The issue of the consolidation or -- particularly at retail level, and somewhat at the Class I price level -- or Class I plant level, you are -- you know, these plants have gotten bigger. They serve bigger pieces of geography, which means they serve more stores. And so

many of the stores are owned by national or regional chains that don't necessarily match the regions of a Federal Order or certainly don't match -- necessarily match a region of a marketing agency in common.

But they look -- you know, a national retailer who operates across much of the country knows what the over-order price is in a long way away, and they ask a very hard question, well, why are you charging me more here than you are out there, that ought to be the number everywhere. And whether or not that's right or wrong, that's the reality.

Q. I have one last hopefully quick question.

On your Exhibit 314, which -- and I'm not trying to beat a dead horse. I just had a quick data question.

A. Yes.

Q. You have on here your approximate hauling costs.

A. Yes.

Q. And I'm just wondering where those numbers came from.

A. To be honest, I used a composite of base-haul costs that I believe existed in each of those periods. They -- they -- honestly, the base-haul rates in -- in this part of the world, the base-haul rates have -- have -- have been fairly consistent with some increase over time. And then I adjusted it for the fuel costs that existed in that month. Fuel adjusters on hauling are a month-based thing, and so I -- I basically went back and calculated what the haul cost would have been at a

composite base-haul rate adjusted for fuel, as I under- -- as I am aware are charged in that region.

Q. Okay. And this is the Southwest, so this is what you are familiar with?

A. Yes.

Q. Okay.

MS. TAYLOR: It's 5:04, and AMS is finished. Thank you.

THE COURT: It's 5:04, yes. And so any exhibits that need to be moved into evidence, I don't know whether you want to wait on that? We should do it tomorrow. Is that okay?

MS. HANCOCK: Your Honor, I would recommend that we do it tomorrow. I'll have a little bit of redirect, and I think that our discussion about exhibits might be more substantive than what we have time for today.

THE COURT: Excellent.

And same with you, Mr. Rosenbaum?

MR. ROSENBAUM: We can wait until tomorrow.

THE COURT: Excellent.

So can you give us a quick preview for tomorrow? Will we start with Dr. Erba? Well, after we're done with Mr. Sims, will we then have Dr. Erba?

MS. HANCOCK: Your Honor, we do have a couple of witness scheduling issues. So we have Hunter Jensen from J.D. Heiskell that will be here tomorrow that needs to get off, so we thought we would start with him. And then Dr. Erba and Calvin Covington. And we have Dr. Vitaliano

and Rob Vandenheuvel that will take us through the rest of this week in some combination.

But we might have to do some jockeying around because I think Mr. Covington needs to be finished by Wednesday because he won't be able to be here in November, and so we'll need to get him completed before the end of the week.

THE COURT: Good. Thank you. That -- that gives us an idea.

How do you spell Hunter Jensen, if you know?

MS. HANCOCK: H-U-N-T-E-R, J-E-N-S-E-N.

THE COURT: Okay. Good.

All right. Tomorrow morning, 8 o'clock, I look forward to seeing you that can return. We now go off record at 5:06 p.m.

(Whereupon, the proceedings concluded.)

---o0o---

STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: December 12, 2023

FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613