

CERTIFIED
TRANSCRIPT

NATIONAL FEDERAL MILK MARKETING ORDER
PRICING FORMULA HEARING

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

Before the Honorable Jill Clifton, Judge

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Carmel, Indiana

October 10, 2023

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Reported by:

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

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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
Grace Bulger

FOR THE NATIONAL MILK PRODUCERS FEDERATION:

Nicole Hancock
Brad Prowant

FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

Steve Rosenbaum

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

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1 TUESDAY, OCTOBER 10, 2023 - - MORNING SESSION

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

3 We're back on record at 8:06 in the morning on
4 October 10, 2023. While off record we have discussed
5 which exhibits might be dealt with now while this witness
6 is on the stand but not yet finished, and I'd like to
7 begin with what Ms. Hancock suggested while off record.

8 MS. HANCOCK: Your Honor, we would move the
9 admission of Exhibits 310 through 319, with the
10 understanding that Mr. Sims will be back to testify about
11 his specific regional testimony that begins in Part 3 on
12 Exhibit 310. But we have talked about all of the other
13 exhibits at this point and would like to have those
14 admitted.

15 THE COURT: Thank you.

16 Mr. Rosenbaum, I'd like you to explain your
17 position on those things where Mr. Sims has not yet been
18 cross-examined, please.

19 MR. ROSENBAUM: Yes, Your Honor. We have no
20 objection to the admission of the exhibits that National
21 Milk has used, subject to the caveat that National Milk
22 has made the commitment that Mr. Sims will be back. And
23 subject to, you know, that being the commitment, and
24 therefore we have the ability to cross-examine him about
25 the remaining sections of the exhibits, with that caveat,
26 we have no objection to the admission of the exhibits.

27 MR. ENGLISH: Your Honor, we apparently do not
28 have audio on the --



1 THE COURT: Oh, so people who are remote cannot
2 hear what we're doing. Okay. I don't mean okay as in
3 good. I mean I understand.

4 I think we'll keep going.

5 For those of you who are not in the room with us
6 in Carmel, Indiana, we went on record a few minutes ago
7 and did some things. I'll just recap that quickly so that
8 you know what we have been up to while you could not hear.

9 Mr. Rosenbaum.

10 MR. ROSENBAUM: Yes, Your Honor. I was going to
11 move my own exhibits. I don't know if you want to wait
12 until after you admit the National Milk exhibits.

13 THE COURT: You know, yours are quick. I think,
14 Mr. Rosenbaum, that would be an excellent idea.

15 Which exhibits would you like admitted into
16 evidence?

17 MR. ROSENBAUM: Your Honor, I would move the
18 admission of Hearing Exhibits 331, 332, and 333.

19 THE COURT: Is there any objection?

20 MR. HILL: No objection, Your Honor, but just with
21 the caveat, of course, that some of these are counsel's
22 representations within the numbers. So I just want to
23 have that on the record, that some of these are counsel's
24 representations of calculations and so forth.

25 THE COURT: Thank you, and I appreciate that. As
26 with every exhibit, people should prove them to be true
27 themselves. Do the calculations yourselves and see if you
28 agree.



1 Ms. Hancock.

2 MS. HANCOCK: I have nothing further on it, Your
3 Honor, just to complete the admission of those exhibits.

4 THE COURT: Very good.

5 Mr. English.

6 MR. ENGLISH: I think we may have now audio and
7 not video, but let's keep going.

8 So I just wanted to say, because off the record we
9 had this conversation as well, there were two documents
10 that I discussed with the witness, MIG-322 and MIG-323,
11 and we will not be moving admission at this time. We will
12 have a witness to establish the foundation since 322 was
13 derived from 301 but was our work from that, and 323
14 similarly was extracted. So rather than debate that,
15 we'll have a witness who actually did that work testify
16 about that at a later date. I just wanted to the record
17 to reflect that.

18 THE COURT: Very good.

19 MS. HANCOCK: And, Your Honor, with respect to
20 those last exhibits that Mr. English just mentioned, we
21 don't have any objection to the admission of those
22 exhibits if they were modified slightly in their title to
23 reflect that it is MIG's work product or a worksheet or
24 however they wanted to title it, but something that did
25 not attribute it to National Milk. But, otherwise, we
26 don't have any objection to the admission of those
27 exhibits if we just want to complete that now.

28 MR. ENGLISH: With that, we will find a way to



1 resubmit -- they're electronic documents. I think we will
2 resubmit the electronic ones as corrected, and we will
3 make that modification.

4 And so with that, we will then say we would like
5 them to be admitted. Right? Thank you, Your Honor.

6 THE COURT: You're welcome.

7 All right. As you have noted --

8 MR. ENGLISH: You nodded, Your Honor. You didn't
9 say "yes."

10 THE COURT: Yes, Mr. English. Thank you. I love
11 this crowd. It's a tough crowd but very enjoyable.

12 All right. As you know, I'm a little bit fussy
13 about the way I admit the exhibits. I really do like to
14 mention them in their own sentence. So -- and I like to
15 look at them while I'm doing it to make sure I know what
16 I'm doing.

17 All right. I admit into evidence Exhibit 310,
18 3-1-0, which is also Exhibit NMPF-37.

19 (Thereafter, Exhibit Number 310 was received
20 into evidence.)

21 THE COURT: I admit into evidence Exhibit 311,
22 that's 3-1-1, which is also NMPF-37A.

23 (Thereafter, Exhibit Number 311 was received
24 into evidence.)

25 THE COURT: I admit into evidence Exhibit 312,
26 3-1-2, which is also Exhibit NMPF-37B, as in boy.

27 (Thereafter, Exhibit Number 312 was received
28 into evidence.)



1 THE COURT: I admit into evidence Exhibit 313,
2 3-1-3, which is also NMPF -- when these kinds of glitches
3 happen with the very most expert wizard, I feel comforted.

4 All right. I'm proceeding with regard to
5 Exhibit 313. I admit it into evidence. It is also
6 NMPF-37C, like cat.

7 (Thereafter, Exhibit Number 313 was received
8 into evidence.)

9 THE COURT: I admit into evidence Exhibit 314,
10 which is also NMPF-37D, like David.

11 (Thereafter, Exhibit Number 314 was received
12 into evidence.)

13 THE COURT: I admit into evidence Exhibit 315,
14 which is also NMPF-37E, like Eugene.

15 (Thereafter, Exhibit Number 315 was received
16 into evidence.)

17 THE COURT: I admit into evidence Exhibit 316,
18 which is also NMPF-37F, like Frank.

19 (Thereafter, Exhibit Number 316 was received
20 into evidence.)

21 THE COURT: I admit into evidence 37 -- oh, excuse
22 me -- 317, 3-1-7, which is also NMPF-37G, like good.

23 (Thereafter, Exhibit Number 317 was received
24 into evidence.)

25 THE COURT: I admit into evidence Exhibit 318,
26 which is also NMPF-37H, and we have referred to it
27 continually through the testimony of Mr. Sims as his
28 slides.



1 (Thereafter, Exhibit Number 318 was received
2 into evidence.)

3 THE COURT: And I admit into evidence Exhibit 319,
4 which is also NMPF-371 (sic).

5 (Thereafter, Exhibit Number 319 was received
6 into evidence.)

7 THE COURT: I admit into evidence Mr. Rosenbaum's
8 Exhibits 331, Exhibit 332, and Exhibit 333. Those three
9 exhibits are admitted into evidence with the caution that
10 anyone who wants to verify the numbers is wise to do so
11 before utilizing those numbers.

12 (Thereafter, Exhibit Numbers 331, 332, and
13 333 were received into evidence.)

14 THE COURT: Now, I want to go to the exhibits that
15 are 322 and 323.

16 And, Mr. English, I would like you to tell me what
17 you plan to do with regard to those.

18 MR. ENGLISH: Your Honor, after consultations with
19 National Milk Producers' counsel, we will be relabeling
20 them as prepared by MIG, resubmitting them as corrected,
21 and providing four hard copies for the record --

22 THE COURT: Now --

23 MR. ENGLISH: -- because they are Excel
24 spreadsheets.

25 THE COURT: -- I'm looking at 322, which indeed is
26 one of these large Excel spreadsheets, and with that
27 caveat, I do admit into evidence Exhibit 322.

28 (Thereafter, Exhibit Number 322 was received



1 into evidence.)

2 THE COURT: Now refresh me as to what 323 is.

3 MR. ENGLISH: It is a much smaller document, only
4 one page, but it is an extraction of the anchor cities.

5 THE COURT: Oh, yes.

6 Is there any objection to that being admitted into
7 evidence?

8 MR. ENGLISH: I think, again, with my
9 understanding, the caveat is we'll be labeling it prepared
10 by MIG.

11 THE COURT: When you say "prepared by," are you
12 saying "MIG"?

13 MR. ENGLISH: MIG, M-I-G, Milk Innovation Group.
14 They were not prepared by me, I assure you.

15 THE COURT: Is there any objection to the
16 admission into evidence of 323?

17 There is none. Exhibit 323 is admitted into
18 evidence.

19 (Thereafter, Exhibit Number 323 was received
20 into evidence.)

21 MR. ENGLISH: Thank you, Your Honor. And I think
22 that was really good work among counsel.

23 THE COURT: Yes. I applaud you all for making my
24 life way easier by your reasonableness. I appreciate it
25 very much.

26 I also appreciate -- and I want to say that now --
27 the courtesy with which you all give us copies of
28 documents that may have been admitted on the first day of



1 the hearing, so that we can see what you are talking about
2 without digging through these voluminous stacks of the
3 evidence. It's very helpful.

4 All right. We'll resume cross-examination -- oh,
5 no, this is now going to be redirect.

6 Is this correct?

7 MS. HANCOCK: Correct.

8 THE COURT: Redirect of Mr. Sims.

9 Ms. Hancock, you may proceed.

10 MS. HANCOCK: Thank you.

11 JEFFREY SIMS,

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

14 REDIRECT EXAMINATION

15 BY MS. HANCOCK:

16 Q. And I will be very brief. There's just one part
17 of your testimony I want to make sure is clear, Mr. Sims.

18 If you can turn to Exhibit 318, which is your
19 presentation, and I want to talk about the slides of the
20 example that you have that pertain to balancing the milk.
21 And you had talked yesterday about the California example
22 in Order 51, and I want to talk about another example just
23 to make sure that we're clear on what it is that these are
24 indicating. Is that fair?

25 A. Yes.

26 Q. Okay. So if we turn to Exhibit 318, I'm turning
27 to page 47. And I want to look at Federal Order Number 5.

28 A. Can we put this up on the screen?



1 Q. Yeah. Thank you.

2 I know that you explained this yesterday, but this
3 one took me a bit to wrap my mind around, and I thought if
4 you could just maybe say it another time for us, about
5 what -- what these slides are really telling us about
6 balancing milk.

7 A. Okay. The -- the -- this is for all the orders --
8 the existing orders today, for the period of 2008 to --
9 through 2022, inclusive, I basically captured the USDA
10 data on Class I producer milk for each order by month.
11 And then simply for -- divided that number, say, January
12 of 2008, I divided that number by 31, the number of days
13 in the month. In a leap year, I divided February by 29,
14 the other three years by 28.

15 So we were -- that calculation, a pure
16 mathematical calculation, yields the daily average Class I
17 producer milk by month for that however many year period.

18 Q. When you say daily average for the Class I
19 producer milk, you mean daily average that's being
20 delivered at the plant?

21 A. I wouldn't call it that. Producer -- Class I
22 producer milk is how the plants used it. So this is the
23 use of producer milk in Class I each month.

24 Q. Okay. And so -- so you have charted this on the
25 blue line. Let's talk about the blue line first.

26 What is the blue line showing?

27 A. The blue line simply is a graphical representation
28 of that daily average Class I producer milk by month for



1 the -- for the full period, each month of 2008 through
2 2022. So it -- the message here is that Class I producer
3 milk moves up and down. It's dependent on whether schools
4 are in session, whether -- you know, all kinds of weather
5 events, the annual cycle of Class I demand. And so
6 this -- the ups and downs show the variation by month of
7 that statistic. And so the -- you know, what we see here
8 is, again, substantial variation month to month to month
9 in how much milk is used in Class I and pooled on the
10 order. And that's the blue line.

11 And so for each calendar year, for each 12-month
12 period, then I took and said -- compared to, say, for
13 January 2018, and this is Federal Order 5, it looks like
14 very nearly the end of the year, when you look at the red
15 bars at the bottom, there is one space in each calendar
16 year where there is no bar. So that represents the
17 highest month of the year of that calendar year of daily
18 average Class I producer milk.

19 So then for each other month of that calendar
20 year, I compared the actual daily average to that high
21 month. So every other month, if you, you know, pick out
22 the high one, every other month by definition is less than
23 that, and simply graphed in the bars the amount for each
24 calendar year by which each month fell short of the
25 maximum month for that year. And that's what the bars
26 represent.

27 And you will note that in essence the bars and the
28 blue line are mirror images of each other or they are



1 opposites. Where you have dips in the blue line, you have
2 spikes in the red bars.

3 So you simply can infer that for -- in order to
4 maintain the necessary milk to satisfy the single highest
5 month of daily average Class I, all those other months had
6 extra milk that had to be balanced. It had to go some
7 place. In essence, if you want to think about it,
8 awaiting the need for Class I. So this simply is a
9 graphical representation of the monthly variation in
10 Class I producer milk and that -- how that changes into
11 the need to balance those supplies when those Class I
12 needs are not there.

13 Q. So you had given an example early on in your
14 testimony, days ago, that if you were going on a road
15 trip, that you would fill your tank up with gas because
16 you want to make sure that you have more than enough gas
17 to be able get to your destination.

18 Do you remember that example you gave?

19 A. I do.

20 Q. Are the red bars on here, are these the reserves
21 that you were equating to filling up your tank with gas?

22 A. Yes. These would represent the -- for each
23 calendar year, the monthly reserve that was held or had to
24 be held relative to the high month.

25 Q. And, obviously, fluid milk is much more perishable
26 than a tank of gas, and so it adds to the complexities of
27 the balancing when you have time windows within which you
28 have to utilize that milk; is that fair?



1 A. Yes.

2 Q. Okay. And so this is just indicating that when
3 the bars are high, your tank is full, and when the bars --

4 A. Yeah, I --

5 Q. -- are low --

6 A. -- guess that's a fair way to put it, yeah.

7 Q. And when the bars are low, that's when it's time
8 to get to the gas station and refill?

9 A. Fair enough.

10 Q. Okay. Thank you for your time, Mr. Sims.

11 MS. HANCOCK: Your Honor, I have no further
12 questions.

13 THE COURT: Did that examination of Mr. Sims
14 prompt any other questions of Mr. Sims in the nature of
15 cross-examination? I can call it re-cross.

16 No? Excellent.

17 Now, does this conclude this portion of Mr. Sims'
18 testimony?

19 MS. HANCOCK: It does for us, Your Honor.

20 THE COURT: And when do you anticipate, just
21 guessing, that you might call him as a witness again?

22 MS. HANCOCK: I'm hopeful it is in 2023.

23 THE COURT: Good answer.

24 MS. HANCOCK: I'm guessing it will likely be in
25 the November window. It won't be this week.

26 THE COURT: Understood. Thank you so much.

27 Mr. Sims, I thank you. You have worked hard, and
28 I appreciate it.



1 THE WITNESS: Thank you.

2 THE COURT: You may step down.

3 MS. HANCOCK: Your Honor, our next witness is
4 Hunter Jensen with J.D. Heiskell and Company.

5 THE COURT: And would you read into the record,
6 Ms. Hancock, J.D. Heiskell.

7 MS. HANCOCK: Sure. It's initials
8 J-period-D-period, Heiskell, H-E-I-S-K-E-L-L, and Company.

9 THE COURT: Thank you.

10 And the witness is welcome to come to the witness
11 stand and be seated in the witness chair.

12 And I'm looking at two different exhibits that we
13 will need to mark, and I believe they have been
14 distributed.

15 334 is the testimony? 334 is the testimony. 334.
16 And this is also marked Exhibit NMPF-59.

17 (Thereafter, Exhibit Number 334 was marked
18 for identification.)

19 THE COURT: And the other exhibit, which is
20 charts, those -- that will be 335. Exhibit 335. Which is
21 also designated NMPF-59A.

22 (Thereafter, Exhibit Number 335 was marked
23 for identification.)

24 THE COURT: And we're going to take just a minute
25 to set up the connection of the laptop to our screen here.

26 And let's go off record and stretch for five
27 minutes while we do that. We go off record at 8:30.

28 (Whereupon, a break was taken.)



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

2 We're back on record at 8:34.

3 I would like the witness to state and spell his
4 name.

5 THE WITNESS: My name is Hunter Jensen,
6 H-U-N-T-E-R, J-E-N-S-E-N.

7 THE COURT: Have you previously testified in this
8 hearing?

9 THE WITNESS: No.

10 THE COURT: I'd like to swear you in. Would you
11 raise your right hand, please.

12 HUNTER JENSEN,

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

15 THE COURT: Thank you.

16 DIRECT EXAMINATION

17 BY MS. HANCOCK:

18 Q. Good morning, Mr. Jensen. I'm Nicole Hancock with
19 National Milk.

20 Would you please provide the record with your
21 business address? It's your mailing address.

22 A. 17220 Wright Street, W-R-I-G-H-T, Street,
23 Suite 200, Omaha Nebraska 68130.

24 Q. Thank you for that.

25 Mr. Jensen, did you prepare some testimony in
26 support of your -- or did you prepare a statement in
27 support of your testimony today?

28 A. Yes.



1 Q. And we have identified your written statement as
2 Exhibit 334, and then you have some slides that have been
3 identified as Exhibit 335.

4 Could you provide us with your written statement,
5 and just be mindful of the pace of reading it so that our
6 court reporter can capture everything that you are saying.

7 A. Yes.

8 My name is Hunter Jensen, and I'm a market analyst
9 at J.D. Heiskell and Company, also known as JDH.
10 Established over 137 years ago, in 1886, JDH is a
11 privately held company that operates within the
12 agriculture industry. My role at JDH is inside the market
13 research group where I gather data such as USDA reports
14 and other relevant market information, and provide that
15 information to the team at JDH in a clear and concise
16 manner. One of the those items we monitor is local basis
17 data.

18 JDH has a deep history in the agricultural and
19 dairy industries. Our company's legacy is deeply
20 intertwined with the growth and progress of these sectors.
21 JDH is one of the largest dairy feed manufacturers by
22 volume and operates in key dairy shed areas across the
23 United States. Our assets are in California, Colorado,
24 Texas, New Mexico, Idaho, and New York. In each of the
25 regions we serve dairy, cattle, and poultry customers,
26 with the largest end users being dairies. JDH's company
27 core focus is getting the right product to the right place
28 at the right time.



1 Dairy Farmers of America (DFA) asked JDH to
2 provide data on corn basis, soybean meal basis, and DDG
3 (dried distillers grains) price delivered into Colorado
4 and California. All three of the products play a
5 significant role in the typical dairy ration. Soybean
6 meal is a byproduct of the soybean crushing industry where
7 soybeans are processed, resulting in soybean oil and
8 soybean meal. DDG is a byproduct of the ethanol industry
9 where corn is turned into ethanol and the other major
10 product is DDG, which are then dried on site to increase
11 product life and reduce shipping costs. DDG is not a
12 hedged commodity, meaning there is no futures market to
13 hedge against.

14 In the context of feed prices, there are many
15 distinct factors that come into play. The commodity and
16 whether that commodity is hedged are two of those factors.
17 Hedged commodities are priced via a basis plus the
18 "board." The "board" represents the futures price of the
19 specified commodity via the Chicago Board of Trade. The
20 "basis" is the difference between the cash price or local
21 market price and the futures price (board).

22 THE COURT: Now, you have in parentheses "board."
23 Could you just explain why that is significant?

24 THE WITNESS: "Board" just represents the Chicago
25 Board of Trade, which is what these futures are being
26 traded on.

27 THE COURT: Thank you.

28 THE WITNESS: Basis can fluctuate due to several



1 factors, such as local supply and demand conditions,
2 storage costs, transportation expenses, and regional
3 market dynamics. The basis reflects the local market's
4 unique circumstances compared to the broader commodity
5 market, and these circumstances influence the purchase
6 price that producers pay for their feed.

7 To compile the basis data for livestock feed in
8 Colorado and California, JDH utilized a combination of
9 data sources. We track internal contract prices, observe
10 outside market prices, and pull data from industry
11 partners. Additionally, we leveraged our broad network
12 and experience in the feed and grain industry to ensure
13 the accuracy and reliability of our data.

14 Colorado and California are both destination
15 markets. A destination market is where local demand for
16 products is much larger than the local supply for that
17 product. One large component affecting destination market
18 feed prices and local basis prices is transportation
19 costs. Transportation costs over the last 15-20 years
20 have routinely increased.

21 What we observed when we collected our data is
22 that the price difference between origin and destination
23 markets has increased over time.

24 Now I'd like to get the slides up if that's all
25 right.

26 And I refer to slide 1, and this is our title
27 slide. Would it be all right if I -- if that could be
28 slide 0. This is what I really would like to reference.



1 MS. HANCOCK: Just so our record is clear, this is
2 Exhibit 335.

3 THE COURT: Very good. Now, the slide that you
4 are showing us doesn't actually have a number on our
5 printed copy.

6 THE WITNESS: Sure.

7 THE COURT: So identify it by its title and so
8 forth as you proceed.

9 THE WITNESS: Okay. Sure.

10 JDH Observed Corn Basis. We show the corn basis
11 in three different areas: Southwest Iowa, Colorado, and
12 California. In this chart you can see how over time the
13 trend of corn basis has been up, with transportation costs
14 being a contributor.

15 Corn Basis Price Difference Vs. Iowa. We compare
16 corn basis prices delivered into the destination markets
17 of Colorado and California versus the basis price in
18 Southwest Iowa. We do this by taking the basis price for
19 each market and subtracting the price in Southwest Iowa.
20 This chart shows the trend of a faster rate of increase in
21 basis prices in Colorado and California versus Southwest
22 Iowa. The rate of increase was gradual from 2010 to 2020
23 with a more rapid increase from 2020.

24 THE COURT: Now, I didn't mean for you not to say
25 slide 2 --

26 THE WITNESS: Oh, sure.

27 THE COURT: -- or slide 3. I just meant for you
28 to make sure we also had the title.



1 THE WITNESS: Okay. Sure.

2 So this was slide 1, JDH Observed Corn Basis.

3 That's slide 2, Corn Basis Price Difference Vs.
4 Iowa.

5 JDH Observed Soybean Meal Basis. Slide 3 shows
6 the soybean meal basis in three different areas: Western
7 Iowa, Colorado, and California. In this chart you can see
8 how over time the trend of soybean meal basis has been up.
9 Data for these markets was less readily available
10 internally, with Colorado and California only going back
11 to 2016.

12 Soybean Meal Basis Price Difference Vs. Iowa.
13 Slide 4, we compare soybean meal basis prices delivered
14 into the destination markets of Colorado and California
15 versus the basis price in Western Iowa. We do this by
16 taking the basis price for each market and subtracting the
17 price in Western Iowa. This chart shows the trend of a
18 faster rate of increase in basis prices in Colorado and
19 California versus Western Iowa. Since 2020, the basis
20 prices in Colorado and California have increased at an
21 even faster rate.

22 JDH Observed DDG Prices. Slide 5, we compare DDG
23 prices (non-hedgeable) in each of the markets: Southwest
24 Iowa, Colorado, and California. Because DDG is not a
25 hedgeable commodity, the chart illustrates the all-in
26 price of DDG, which can fluctuate more due to the broader
27 market circumstances.

28 DDG Price Difference Vs. Iowa. Slide 6 shows the



1 DDG price delivered into Colorado and California versus
2 the price in Southwest Iowa. In this chart you can see
3 the trend for California is an increase in price versus
4 Southwest Iowa at a consistent rate year over year, with
5 many spikes due to the transportation issues in the last
6 few years. Additionally, Colorado has seen only a gradual
7 increase in DDG costs compared to Southwest Iowa.

8 Corn Grain and Silage & Hay Acres Harvested,
9 California. And here I'm referencing slides 7 and 8,
10 which will be both this and corn grain and silage and hay
11 acres harvested, Colorado.

12 Slide 7 and 8, USDA NASS (National Agricultural
13 Statistic Service) data detailing the decreasing acreage
14 of corn, silage, and hay in both California and Colorado
15 over time. In California, many of the acres have switched
16 to tree nuts or vegetables while also losing acreage to
17 increasing population areas. Colorado has also lost
18 acreage as population dense areas have increased and land
19 has become more valuable, being repurposed away from
20 agricultural production. This has also contributed to the
21 increase in local prices over time in Colorado and
22 California.

23 Transportation Costs, Central Nebraska to Central
24 San Joaquin Valley, California. Slide 9 shows
25 transportation costs from Central Nebraska to Central San
26 Joaquin Valley, California. This chart shows the steady
27 freight rate increases. Since 2016, transportation costs
28 have increased over 18%.



1 In summary, California and Colorado are both
2 destination markets for corn, soybean meal, and DDG,
3 bringing in most of their consumption used in dairy feed
4 from other states. Based on the data that we were able to
5 gather, local feed prices in California and Colorado have
6 increased at a more rapid rate compared to Western and
7 Southwest Iowa due to an increase in transportation costs,
8 as well as a decrease in localized supply in California
9 and Colorado.

10 MS. HANCOCK: Thank you, Mr. Jensen.

11 Your Honor, we would make him available for
12 cross-examination at this time.

13 THE COURT: Thank you.

14 CROSS-EXAMINATION

15 BY MS. VULIN:

16 Q. Good morning, Mr. Jensen. How are you?

17 A. Good.

18 Q. Good. My name is Ashley Vulin. I'm an attorney.
19 I represent the Milk Innovation Group. Thank you for
20 being here with us.

21 So are you familiar with Federal Milk Marketing
22 Orders?

23 A. No. I can't say that I am.

24 Q. Do you know what "Class I" means?

25 A. Somewhat. I have a general understanding that it
26 is milk. Fluid milk, I believe.

27 Q. "Class III," do you know what that means?

28 A. No.



1 Q. Okay. That's all right. Not a quiz. Just trying
2 to get the scope of your expertise and understanding.

3 A. Sure.

4 Q. So you're here to testify about the cost of feed,
5 right?

6 A. Yes.

7 Q. Is there anything in particular that you want USDA
8 to do with that information?

9 A. No.

10 Q. And so you're not here to advocate that USDA
11 change prices in any way to reflect changes in costs of
12 feed?

13 A. No.

14 Q. And you compare the feed costs in Colorado and
15 California and then compare those to different parts of
16 Iowa, correct?

17 A. Yes.

18 Q. How did you select those states to compare?

19 A. JDH was asked by DFA to bring basis data for
20 Colorado and California, and Iowa was at the
21 recommendation of JDH, as that's a state we have
22 experience trading out of.

23 Q. Okay. And why did you recommend Iowa?

24 A. JDH has -- we ship a lot of corn, DDG, and soybean
25 meal out of Iowa.

26 Q. All right. So it was selected not necessarily
27 because it was a comparator, but because you had a wealth
28 of information?



1 A. And it's also an origin market, and here we're
2 comparing origin markets -- at the origin market of Iowa
3 to destination markets of Colorado and California. And so
4 that was part of it as well.

5 Q. So Colorado and California were selected by DFA
6 as -- and you were requested to look at those.

7 And did they request that you look also then at an
8 origination market?

9 A. I can't say for certain. I don't recall. I know
10 that Iowa was put forth by JDH at JDH's recommendation.
11 But that was requested by DFA.

12 Q. That there be another state that is an origination
13 state that could act as a comparator?

14 A. Yes.

15 Q. And I believe that you are not actually comparing
16 pure costs between the states; is that right? You are
17 looking at basis?

18 A. Basis prices. Yes.

19 Q. And tell me one more time when you mean by basis
20 prices or how those are different than kind of the price
21 at which you would purchase this product on the open
22 market?

23 A. Sure. So the board represents the futures price
24 of the specified commodity via the Chicago Board of Trade,
25 and the basis is the difference between the cash price, or
26 local market price, and the futures price.

27 Q. And why is that more relevant to consider as
28 opposed to the market price? Why did you select that



1 metric?

2 A. It fluctuates due to several factors, including
3 local supply and demand conditions, storage costs,
4 transportation expenses, and regional market dynamics. It
5 takes these things into account in the local market.

6 Q. So looking at basis kind of makes it more of an
7 apples-to-apples comparison?

8 A. Apples to apples, I -- can you rephrase that? I
9 don't quite understand.

10 Q. Yeah. What I'm really getting at is I'm just
11 trying to understand the methodology of why you would look
12 at the prices and compare them to the CME futures price as
13 opposed to just saying, this is how much, you know, a
14 bushel of hay costs in California, and it's \$5 higher than
15 if you purchase it in Iowa.

16 A. Basis I believe is a good representation of the
17 local prices, what those commodities are trading for in
18 the local market.

19 Q. As opposed to just the purchase price?

20 A. Yes.

21 Q. And we have learned a little bit about hedging in
22 this proceeding.

23 So when you are talking about CME or the basis,
24 you are looking at if someone wanted to hedge these
25 products, what is the price on the open market for that?
26 Is that a fair way to describe that?

27 A. Can you repeat the question?

28 Q. Yeah. When you are talking about comparing it to



1 basis based on the futures market, right, in the CME?

2 A. Yes.

3 Q. Then you are comparing it to, if I wanted to buy a
4 futures contract on the open market, what is the open
5 market valuing that at for six months out or something
6 like that; is that --

7 A. Yes.

8 Q. -- is that accurate?

9 A. Yes.

10 Q. Okay.

11 A. The "open market" being the Chicago Board of
12 Trade.

13 Q. Great. Thank you.

14 And so in your experience is -- is hedging on the
15 CME an important part of managing feed costs for farmers?

16 A. I -- I can't speak to that. I don't have any
17 experience with that.

18 Q. And so when we're talking about the prices
19 compared to the basis, really what we're talking about is
20 the difference, right? So these aren't absolute prices,
21 these are the difference in the prices vis-à-vis what the
22 basis price is?

23 A. What does "vis-à-vis" mean? I don't --

24 Q. I can rephrase.

25 A. Sure.

26 Q. So when I'm looking at your charts, for example,
27 the first page, "JDH Observed Corn Basis." Obviously
28 since it is negative, this is not reflecting the actual



1 price for the corn, this is reflecting the difference in
2 the price offered in Iowa, Colorado, or California in
3 comparison to the CME price?

4 A. Yes.

5 Q. Okay. And you described certain market forces
6 that cause the price of feed to change in Colorado and
7 California.

8 Can you go through those for me again, please?

9 A. Local supply and demand conditions, storage costs,
10 transportation expenses, and regional market dynamics.

11 Q. And then you say, based on that data, that the
12 California and Colorado prices have increased at a more
13 rapid rate compared to parts of Iowa; is that right?

14 A. Based on what data? Based on the data -- based on
15 what data? I guess I'm not allowed to ask questions, I'm
16 sure. Can you explain what you mean by that?

17 THE COURT: Actually, here you are.

18 THE WITNESS: Okay.

19 THE COURT: We're not formal. We just want to
20 understand.

21 THE WITNESS: Okay. Sure.

22 BY MS. VULIN:

23 Q. Yeah. So if I ask you something that you don't
24 understand or that's not making sense, and you have done a
25 good job so far, you can ask me to rephrase it or clarify.

26 A. Okay. Sure.

27 Q. So really what I'm just trying to confirm is that
28 you believe these local market forces have caused the



1 price of feed to increase more rapidly in Colorado and
2 California than in Iowa?

3 A. Yes.

4 Q. And your conclusions here are just limited to
5 California and Colorado, correct?

6 A. Yes.

7 Q. And even those, you are not providing kind of an
8 independent or isolated analysis of those states, it is
9 just a comparison to how the prices changed in Iowa; is
10 that right?

11 A. We do provide independent basis prices from both
12 Colorado and California independent from Iowa prices, in
13 slide 1, in slide 3, and slide 5.

14 Q. And those are, though, also only in comparison to
15 the CME, correct?

16 A. In comparison to the CME, yes.

17 Q. And you're not offering any conclusions about a
18 nationwide cost of feed for farmers, correct?

19 A. No.

20 Q. Or any nationwide change in the cost of feed for
21 farmers over time?

22 A. We talk about some of the factors that play into
23 basis prices, transportation costs being one of them.
24 Transportation costs have gone up, I'm sure, across more
25 than just Colorado and California. And so although it
26 would affect those states, I'm making claims about
27 California and Colorado.

28 Q. But you don't have any data in here that shows



1 that the basis price has gone up over time, correct?

2 A. No.

3 Q. And you are not --

4 THE COURT: Because of the double negative, I want
5 to make sure I know what he just said. So would you ask
6 him again?

7 MS. VULIN: Yes.

8 BY MS. VULIN:

9 Q. I didn't see any data in here that reflects any
10 evidence or information about any change in the basis risk
11 over time. Is that right?

12 MS. VULIN: Did I double negative again?

13 THE COURT: No. You did good.

14 THE WITNESS: The evidence for basis risk over
15 time in -- outside of Colorado and California; is that
16 right?

17 BY MS. VULIN:

18 Q. Yes.

19 A. Yeah. That's correct.

20 Q. And is the cost of feed uniform across the
21 country?

22 A. No.

23 Q. And is the cost of feed uniform for all farmers in
24 one geographic region?

25 A. No.

26 Q. And you would agree with me that Colorado and
27 California are very different marketplaces than Iowa,
28 correct?



1 A. Yes.

2 Q. So you weren't surprised in any way that the cost
3 of feed was more expensive in California than in Iowa?

4 A. I wasn't surprised that it was different than
5 Iowa.

6 Q. You were?

7 A. Weren't.

8 Q. You were not.

9 A. Were not.

10 Q. And you are not here offering any conclusions
11 about the cost of feed in Idaho or Pennsylvania or
12 Florida, correct?

13 A. No.

14 Q. Were you asked to look at any of those states?

15 THE COURT: When she said correct, and you said
16 no --

17 THE WITNESS: Oh.

18 THE COURT: -- I -- yes. So --

19 THE WITNESS: Correct.

20 THE COURT: Correct. Good. Thank you.

21 BY MS. VULIN:

22 Q. Were you asked to look at any of those states?

23 A. No.

24 Q. And the conclusions that you have here, did you
25 develop those just for this hearing or were those
26 developed to your understanding to support the proposal
27 development of the proposals discussed at the hearing?

28 A. Can you rephrase that?



1 Q. Yeah. We have -- we're here, right, discussing
2 certain proposals to change the price of -- the formulas
3 that regulate the price of milk.

4 A. Yes.

5 Q. And what I want to know is was this data developed
6 only -- well, maybe let's start here. When did you do
7 this analysis?

8 A. About four or five months ago at the request of Ed
9 Gallagher from DFA.

10 Q. And to your knowledge, was this data developed in
11 order to be used in the development of proposals here or
12 just for the hearing that you are testifying at today?

13 A. I'm -- I'm still not quite sure. I -- I'm not
14 sure. I am here to present basis data. That's what I
15 know.

16 Q. Okay. And are you aware if NMPF used any of this
17 data in the development of the proposals they submitted to
18 USDA?

19 A. I'm not aware.

20 Q. And are you aware of Federal Order prices ever
21 taking into consideration the cost of feed in the Class I
22 minimum price?

23 A. Can you repeat the question?

24 Q. Sure. Are you aware of Federal Order prices ever
25 taking into consideration feed costs in the Class I
26 minimum price?

27 A. I'm not familiar with --with the milk pricing or
28 any of that.



1 Q. So you have no knowledge of that being done
2 before?

3 A. I would assume it -- it would -- feed costs are --
4 play into milk pricing, sure. But I don't have any
5 knowledge of the -- of milk pricing, no.

6 Q. And are you -- in your experience in the feed
7 industry, are you aware of there being any substantive
8 differences in the types of feed dairy cows would eat when
9 their milk is being used for cheese as opposed to fluid
10 milk?

11 A. I'm not aware.

12 Q. You are not aware of any differences?

13 A. No.

14 Q. So in your experience, are you aware of the
15 ultimate use of the milk, you know, setting aside organic,
16 right, because we know that would impact the type of feed,
17 or grass fed or things like that. But in terms of the use
18 for cheese or yogurt or fluid milk, are you aware of there
19 being a different kind of feed that farmers would use
20 depending on the ultimate use of their milk?

21 A. I'm aware that there's a difference. As to the
22 specifics of what that dairy ration would be, no.

23 Q. And so if a certain price is sufficient to cover
24 the cost of feed for an operation whose milk is used for
25 cheese, you would presume that price would also be
26 sufficient to cover the cost of feed for an operation
27 whose milk is used for fluid milk?

28 A. I can't speak to dairy farmers or how they



1 operate. I understand the feed basis prices a lot better
2 than that.

3 Q. So you are not aware in your experience in the
4 dairy feed industry of there being a difference in how the
5 feed is used depending on the ultimate use of the milk?

6 A. No.

7 MS. VULIN: Nothing further. Thank you.

8 THE COURT: Are there other cross-examination
9 questions? I will be turning to the Agricultural
10 Marketing Service if no one else wants to go first.

11 I see no other questions, so I invite the
12 Agricultural Marketing Service questions.

13 MS. TAYLOR: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. Good morning.

17 A. Good morning.

18 Q. Just a few questions. On your charts, for most of
19 them you compared California and Colorado to Southwest
20 Iowa prices, and you say the trend is faster than -- in
21 those states than in Iowa.

22 So I'm just trying to take that one step further
23 about what's the take-away from that, which I don't think
24 is covered in your written testimony.

25 A. You are asking why we're comparing to Iowa or --

26 Q. Right. So if you are looking at basis, what I
27 take from your charts are the basis in California and in
28 Colorado is increasing at a faster rate than the basis in



1 Iowa.

2 A. Yes.

3 Q. And so I want to take that kind of one step
4 further to say kind of, then, what is the take-away from
5 that that we should see through that information?

6 A. These basis prices have gone up more rapidly than
7 Iowa, meaning there have been more costs, higher costs,
8 playing into the basis prices in those two states,
9 including, as we say, transportation costs. The
10 transportation cost to get from Iowa to Colorado and
11 California have increased over time.

12 Q. So I know you in questioning from Ms. Vulin said
13 that you picked Iowa because it's an origin --

14 A. Yes.

15 Q. -- location.

16 And I just -- so is that an actual origin location
17 from where feed goes to Colorado and California?

18 A. Yes. JDH ships corn, DDG, and soybean meal to
19 Colorado and California.

20 Q. From Iowa?

21 A. Yes.

22 Q. Okay. And in some places you used Southwest Iowa;
23 in other places it's Western Iowa, for example, in the
24 soybean meal price. I don't operate in the grain world,
25 so can you just explain why there are kind of different
26 locations that you are using.

27 A. It was because of the availability of data, where
28 we collected the data from. We have some partners in Iowa



1 where it was easy to collect from, and sometimes it was
2 not as easy to collect the data for that timeframe.

3 Q. Okay. And when you say "partners," can you
4 just -- I don't want to know who necessarily, that's
5 confidential, but just explain who those partners are
6 generally.

7 A. I'm not sure if I can answer that without giving
8 away anything. Processors, suppliers, customers, people
9 that we -- that we deal with. These are traded prices.

10 Q. Okay. And so the basis data you are looking at in
11 here is a combination of that with your own JDH data?

12 A. Yes.

13 Q. Okay. You mentioned under slide 5, which is the
14 DDG price, an all-in price of DDG. Can you explain what
15 that is, and why it's different than the other ones we're
16 looking at?

17 A. The input costs associated with the all-in price
18 of DDG include cost of corn, natural gas, enzymes,
19 electricity, labor, water. And it's a lot more -- there
20 are a lot more things that play into the all-in price of
21 DDG versus the basis price. The basis price is more
22 closely related to the local market.

23 Q. Okay. And you mention DDG is not hedgeable,
24 doesn't have anything to hedge against.

25 A. Yes.

26 Q. So -- okay, now I -- it's more like a total cost
27 rather than just the variable local cost --

28 A. Yes.



1 Q. -- that's the basis -- okay.

2 I wanted to turn to your last slide 9, the
3 transportation costs. Yeah.

4 My first question is this -- on the Y axis has
5 dollars. But is this dollars for tonnage? Like, what are
6 we looking at here?

7 A. That's dollars per rail car.

8 Q. Per rail car.

9 And that's typically how feed is moved?

10 A. Typically. There's trucking as well. And barges.

11 Q. And how come in this instance we have Central
12 Nebraska to Central San Joaquin Valley?

13 A. That was also due to the data being more readily
14 available for those locations.

15 Q. Okay. But Central Nebraska is another kind of
16 origin location?

17 A. Yes.

18 Q. Okay. I think at the end you are saying that most
19 of this variability in cost is due increased
20 transportation costs and decrease in localized supply,
21 which is I think what the acreage chart was telling us.

22 Can you talk a little bit about transportation
23 costs and kind of what goes into why that is so variable
24 lately?

25 A. There's been a lot of different factors that play
26 into transportation costs. I can't say for certain.

27 MS. TAYLOR: That's it from AMS. Thank you.

28 THE COURT: Are there any other questions for



1 Mr. Jensen that were prompted by the questions from the
2 Agricultural Marketing Service?

3 I see none.

4 MS. HANCOCK: Your Honor, I have no further
5 questions at this time. We would move for admission of
6 Exhibits 334 and 335.

7 THE COURT: Is there any objection to the
8 admission into evidence of Exhibit 334?

9 There is none. Exhibit 334 is admitted into
10 evidence.

11 (Thereafter, Exhibit Number 334 was received
12 into evidence.)

13 THE COURT: Is there any objection to the
14 admission into evidence of Exhibit 335?

15 There is none. Exhibit 335 is admitted into
16 evidence.

17 (Thereafter, Exhibit Number 335 was received
18 into evidence.)

19 MS. HANCOCK: Thank you so much for your time
20 today.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you very much, Mr. Jensen. This
23 is a new look for me. Thank you.

24 MS. HANCOCK: Your Honor, our next witness will be
25 Dr. Eric Erba.

26 THE COURT: Let us mark those exhibits, and then
27 we'll take a ten-minute break before we actually take his
28 testimony.



1 I'm looking at Exhibit NMPF-38 Amended and
2 NMPF-38A and NMPF-38B. So our next number would be 336.
3 I'm going to assign 336 to -- which one would you like,
4 Ms. Hancock?

5 MS. HANCOCK: Amended NMPF-38, which is the
6 written testimony.

7 THE COURT: Good. So that will be 336.

8 (Thereafter, Exhibit Number 336 was marked
9 for identification.)

10 THE COURT: And then the next one would be the
11 38A; is that correct?

12 MS. HANCOCK: Yes.

13 THE COURT: That will be 337. 337 is the 38A.

14 (Thereafter, Exhibit Number 337 was marked
15 for identification.)

16 THE COURT: And 338 is the 38B.

17 (Thereafter, Exhibit Number 338 was marked
18 for identification.)

19 MS. HANCOCK: Your Honor, we also have a
20 demonstrative map that shows National Milk's proposed
21 price differentials. This was already admitted into
22 Dr. Vitaliano -- or I guess it hasn't been admitted yet
23 because we haven't concluded his testimony. But it's in
24 Dr. Vitaliano's testimony, and then it also includes the
25 current Class I differentials. I don't know if for ease
26 of reference if we should just mark it as a number or if
27 we just want to refer to it.

28 THE COURT: So he -- he referred to it, but we



1 didn't give it a number?

2 MS. HANCOCK: It's embedded in Dr. Vitaliano's
3 written testimony.

4 THE COURT: I think we should give it a number.

5 MS. HANCOCK: Dr. Vitaliano's testimony is
6 Exhibit 299. So I guess if we're going to mark -- we just
7 pulled out a bigger map of it. It is Exhibit 339 then?

8 THE COURT: Yes, let's do that. We'll highlight a
9 portion of Exhibit 299 by giving it its own number, and it
10 will be Exhibit 339.

11 (Thereafter, Exhibit Number 339 was marked
12 for identification.)

13 THE COURT: Good. Let's take a ten-minute break.
14 Please be back at 9:25. We go off record at 9:13.

15 (Whereupon, a break was taken.)

16 THE COURT: Please come to order. Let's go back
17 on record.

18 We're back on record at 9:25.

19 The witness is in the stand. I'd like to have you
20 state and spell your name.

21 THE WITNESS: Eric Erba, E-R-I-C, E-R-B-A.

22 THE COURT: And your doctorate is in what field?

23 THE WITNESS: Agricultural economics.

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

26 THE WITNESS: I have not.

27 THE COURT: I would like to swear you in. Would
28 you raise your right hand, please.



1 ERIC ERBA, Ph.D.,

2 Being first duly sworn, was examined and

3 testified as follows:

4 DIRECT EXAMINATION

5 BY MS. HANCOCK:

6 Q. Good morning, Dr. Erba. Thank you for patiently
7 waiting so long to get on the stand.

8 Could you provide your business address for the
9 record, please?

10 A. 1035 Medina Road. That's spelled M-E-D-I-N-A.
11 That's in Medina, Ohio, again, M-E-D-I-N-A, 44256.

12 Q. And we have already marked as exhibits your
13 testimony as Exhibit 336.

14 That's what you prepared in support -- that's the
15 written statement that you prepared in support of your
16 testimony?

17 A. Yes.

18 Q. And then Exhibit 337, that's titled "Cost Factors
19 For Farm Buildings," what is that document?

20 A. The -- that document, plus the one that's similar
21 to it, are two documents put out by entities that helped
22 us think through what kinds of things we need to consider,
23 physical asset-wise, when you convert from a Grade B dairy
24 to a Grade A dairy. So they are both just guideline
25 documents to make sure that we're on the right track and
26 we are capturing all the right assets that need to be
27 constructed or acquired.

28 Q. Okay. So Exhibit 337 is the one that's titled



1 "Cost Factors For Farm Building, 2009 Edition"; is that
2 right?

3 A. That's right.

4 Q. And then the second one you are referring to is
5 Exhibit 338 titled "Dairy Modernization," from the
6 University of Wisconsin-Extension Dairy Team?

7 A. Correct.

8 Q. And then the last exhibit that we have identified
9 as Exhibit 339, the first page is just a map of the
10 current price differentials from USDA's website; is that
11 right?

12 A. That's correct.

13 Q. And then the second page is just the map of what
14 National Milk is proposing under Proposal 19?

15 A. Correct.

16 Q. Okay. Would you provide us with an overview of
17 your educational background, please.

18 A. Certainly. I have a Bachelor's and Master's
19 degree in animal science from University of California
20 Davis, and a Ph.D. in agricultural economics from Cornell
21 University.

22 Q. When did you obtain your Ph.D.?

23 A. 1997.

24 Q. And after obtaining your Ph.D., can you give us an
25 overview of your professional -- of your professional
26 work?

27 A. Certainly. I -- after I finished my Ph.D. work at
28 Cornell University, I worked for ten years for the



1 Department of Food and Agriculture in California as a
2 dairy economist. And then moved to California Dairies,
3 Inc., a milk marketing cooperative based in California. I
4 spent ten years there as a senior vice president of --
5 sorry -- chief strategy officer and senior vice president.
6 And then, in 2017, started with Dairy Farmers of America
7 out of the Mideast Area, based in Ohio.

8 Q. Okay. And throughout the course of your career,
9 have you written any publications or been involved in any
10 kind of additional work in the industry other than just
11 the normal course of your -- of your employment?

12 A. Yes. When I was at Cornell University, I wrote
13 a -- authored or co-authored a number of articles, so --
14 which have been referenced in this hearing. I'm the
15 United States Dairy Sector assimilator. I also did some
16 work with farm management, in that case looking at excess
17 capacity milking parlor and how you might use that most
18 effectively. I have done some work with milk hauling
19 costs, some work with fluid milk plant costs, all coming
20 from Cornell University.

21 Q. Okay. And so the work that you did on the USDSS
22 modeling, can you tell us about that?

23 A. Sure. That was a large part of my dissertation
24 work, and as has been spoken to many, many times here,
25 that is a -- very much an iterative process. So with each
26 iteration, something is improved, something is better.

27 And part of what I did was put in the -- what was
28 previously the hauling costs were just a straight line



1 linear function. I improved that by putting in a
2 curvilinear function, which is more representative of what
3 hauling costs really are.

4 I also did some work with the gross vehicle
5 weights on -- by state by state to make sure that you
6 could haul the biggest loads possible. And then, of
7 course, with each iteration, we added more -- more nodes,
8 more arcs, which required cities and mileages and trying
9 to link everything together. So good graduate student
10 type work.

11 Q. You were here when Dr. Nicholson testified about
12 the modeling that he performed on behalf of National Milk?

13 A. I'm sorry. Could you say that again?

14 Q. Sure. Were you here when Dr. Nicholson testified
15 about the modeling that he performed on behalf of National
16 Milk?

17 A. Yes.

18 Q. And he talked at some point in his testimony about
19 how the model had improved, and I think he specifically
20 referenced the improvements in the transportation modeling
21 information that was included in that -- the arc of
22 transportation.

23 Is that the work that you did as part of your
24 Ph.D.?

25 A. I would say my work was a precursor to what's been
26 done. Keep in mind my dissertation was done 25-ish years
27 ago, and they have made improvements since then. So I
28 would say it was a step along the way, but I don't have



1 any illusions that what I did is still there.

2 Q. Okay. Because you understand that they just
3 continued to improve on that the best that they can?

4 A. Yes. Absolutely.

5 Q. Okay. And -- and you participated in and
6 co-authored some of the publications that supported the
7 USDSS modeling?

8 A. Yes.

9 Q. Okay. So you have -- your Ph.D. level of
10 experience was based on the work that you did in that --
11 in that modeling back in 1997?

12 A. Yes. That was a -- a large piece of what I did
13 was -- in my dissertation was gather all of the individual
14 studies and work that I did, and compile them, and
15 basically those were separate chapters in what eventually
16 became my dissertation.

17 MS. HANCOCK: Your Honor, at this time we would
18 ask to qualify Dr. Erba as an agricultural economist as
19 well as a transshipment model expert with the USDSS
20 modeling.

21 THE COURT: Tell me again the letters for the
22 modeling?

23 MS. HANCOCK: U-S-D, like David, S-S.

24 THE COURT: Someone coughed. U-S-D --

25 MS. HANCOCK: -- S-S.

26 THE COURT: S-F.

27 THE WITNESS: S-S.

28 THE COURT: S-S. U-S-D-S-S.



1 THE WITNESS: United States Dairy Sector
2 Simulator.

3 THE COURT: Does anyone wish to voir dire Dr. Erba
4 with regard to his qualifications as an expert in those
5 fields?

6 No one does.

7 Does anyone object to my accepting Dr. Erba as an
8 expert in those fields?

9 No one does.

10 I do accept Dr. Erba as an expert in the field of
11 agricultural economics and as an expert in trans --
12 transportation -- no --

13 THE WITNESS: Transshipment.

14 THE COURT: -- transshipment with the USDSS model.

15 Is there any other area of expertise, Dr. Erba,
16 that you want me to be particularly aware of?

17 THE WITNESS: Not at this time, no.

18 THE COURT: Thank you.

19 You may proceed.

20 MS. HANCOCK: Thank you.

21 BY MS. HANCOCK:

22 Q. Dr. Erba, would you please provide us with your
23 statement?

24 A. My name is Eric Erba. This testimony is presented
25 in support of Proposal 19, update the Class I
26 differentials throughout the United States, as proposed by
27 National Milk Producers Federation. I am representing the
28 Mideast Area of Dairy Farmers of America, a



1 Capper-Volstead, nationwide milk marketing and milk
2 processing cooperative.

3 DFA is comprised of seven milk marketing areas
4 across the U.S. DFA's Mideast Area supplies the raw milk
5 and intermediate dairy product needs for pool and non-pool
6 plants located Michigan, Ohio, and Indiana, as well as
7 parts of Kentucky, Pennsylvania, and West Virginia. As of
8 June 2023, DFA's Mideast Area had 828 member farms located
9 in the six aforementioned states, producing about
10 20 million pounds of milk per day.

11 I'm going to skip my education and experience
12 section since we already covered that, and I'll go right
13 into a description of the Mideast Area.

14 THE COURT: So we're now on page 2?

15 THE WITNESS: We are on page 2, correct.

16 The geographic boundaries of the Mideast Area
17 roughly match those of Federal Milk Marketing Order Number
18 33 and a small portion of Federal Milk Marketing Order
19 Number 5. It is comprised of six states, in whole or in
20 part: Michigan, Ohio, Indiana, Kentucky, Pennsylvania,
21 and West Virginia. The principal milk supplies of the
22 Mideast Area are found in Central and Northeast Michigan,
23 Northern Indiana, and Northwestern Ohio. Class I plants
24 are scattered throughout the Mideast Area but are
25 typically close to large cities, for example, Detroit,
26 Grand Rapids, Indianapolis, Columbus, and Pittsburgh.

27 The Mideast Area also has many small- to
28 medium-sized cheese plants in Northeast Ohio, two large



1 cheese plants in Central and Western Michigan, and one
2 large cheese plant in Eastern Pennsylvania.

3 Sorry, that should be Western Pennsylvania.

4 THE COURT: Let us take a moment just to tend to
5 that right now. We're on Exhibit 336. We're going to
6 make a correction on page 2. It's within the first full
7 paragraph, three lines up from the bottom of that
8 paragraph. I'm going to strike the word "Eastern" and
9 replace it with "Western."

10 And so would you, Dr. Erba, just read that line
11 beginning with "plant."

12 THE WITNESS: "Plant in Western Pennsylvania."

13 THE COURT: Thank you.

14 THE WITNESS: You would never know I have read
15 this 15 times.

16 THE COURT: Your brain knew what it was supposed
17 to say. It is a -- I don't know, it's a failing.

18 THE WITNESS: It is a failing. I agree with that.

19 Milk powder plants and milk condensing plants are
20 more numerous in north and west of the Mideast Area. Over
21 the last 25 years, the market has become increasingly milk
22 deficit to the south (toward Kentucky) and to the east
23 (toward Pennsylvania).

24 Regions with established dairy industries tend to
25 evolve steadily, and the Mideast Area is no exception.
26 While the Mideast Area shares much of the same geography
27 with Federal Milk Marketing Order Number 33 plus a small
28 portion of Federal Order Number 5, I will use Federal



1 Order Number 33 published statistics to describe the
2 Mideast Area.

3 And if I could get you to show the tables.
4 Perfect.

5 Over the past 23 years, the Mideast Area has
6 realized a 20% increase in milk produced but shipped from
7 66% fewer dairy farms. There are fewer supply and
8 distributing plants operating in the Mideast Area. The
9 average Class I utilization has decreased, as has the
10 average producer price differential. The average uniform
11 price has nearly doubled since 2000.

12 The Mideast Area milk supply has grown
13 substantially since 2000, particularly in Michigan,
14 Northwestern Ohio, and Northern Indiana. At the same
15 time, the milk supply has decreased significantly along
16 its southern and eastern edges. Even a casual observer
17 can confirm that the milk sheds and the milk processing
18 locations are growing more distant from each other.
19 Processing plants that were at one time located in the
20 middle of significant milk sheds have found themselves
21 with diminishing abilities to attract enough local milk to
22 satisfy their daily, weekly, monthly, and seasonal needs.
23 Also, milk processing locations in the southern and
24 eastern parts of the Mideast Area have expanded,
25 compounding the problem of being able to attract an
26 adequate supply of local milk.

27 Within the last ten years, two grocery store
28 chains have built Class I plants in Tipp City, Ohio (west



1 central Ohio) and Fort Wayne, Indiana (northeast Indiana).
2 The addition of these plants may have contributed to the
3 closure of two Michigan Class I plants in Ewart and
4 Livonia. The Michigan plants were located closer to milk
5 supplies, but the Tipp City, Ohio, and Fort Wayne, Indiana
6 Class I plants are located more strategically, being
7 closer to population centers.

8 The implication with the more strategic
9 positioning of the plants is that bulk raw milk must
10 travel further from supply points to reach these plants.
11 The mileage difference is significant. Tipp City is 350
12 miles south of Ewart and 200 miles southwest of Livonia,
13 and Fort Wayne is 250 miles south of Ewart and 165 miles
14 southwest of Livonia.

15 Construction of a cultured dairy product plant in
16 Wooster, Ohio (Northeast Ohio), the expansion of a
17 Class II processing plant in West Central Ohio, and the
18 expansion of a Class I plant in Northeast Ohio, have also
19 contributed to the widening gap between the locations of
20 milk supplies and locations of milk processing plants
21 within the Mideast Area. The recent addition of a large
22 cheese plant in Central Michigan (started production in
23 October 2020) has provided a local outlet for Michigan
24 milk, making it more challenging to encourage milk to
25 leave the state and move long distances to demand points
26 to the south and to the east.

27 I'm going to take a little break here and explain
28 that Steve Zalar and I collaborated on Tables 3 and 4



1 before he was asked to participate as a witness. He's
2 covered these tables, albeit he used a 300-mile route and
3 I used 100-mile route. But the data came from the same
4 source, and he's already spoken to that. So I'm going to
5 skip ahead to page 6. And I'll start at the top of
6 page 6.

7 Current Class I pricing zones in the Mideast Area
8 are too large geographically and do not reflect today's
9 cost of moving bulk milk, a cost which is borne by
10 producers. When attempting to move milk to satisfy
11 Class I customers order requirements, Class I
12 differentials are the main regulatory tool available to
13 incentivize milk movements. Clearly, they must be set at
14 levels high enough to encourage milk to move, at times,
15 significant distances. The current Class I differentials
16 fail this basic test. Simply, there is not enough of a
17 "slope" or price difference to encourage or to facilitate
18 movement of milk from supply sources to receiving points.

19 A good example of the lack of slope is the \$1.80
20 per hundredweight pricing zone that stretches an
21 incredible 550 miles from Marquette, Michigan to
22 Huntington, Indiana. The implication is that the milk in
23 Marquette, Michigan, has the same relative value as milk
24 in Huntington, Indiana. This makes no sense in today's
25 milk marketing world. When Class I differentials are set
26 too low, as they are currently, the responsibility and
27 costs to supply milk to customers distant from milk sheds
28 shifts to cooperatives and their farmer-owners.



1 I want to describe the process that we used in the
2 Mideast Area to develop the Class I differential surface.

3 My colleague, Jeff Sims, provided an extensive
4 recounting of the process used to establish Class I
5 differentials across the U.S. I will reference that
6 process briefly to segue to the process used in the
7 Mideast Area specifically. The foundation of the process
8 to assess Class I differentials came from work done by
9 Drs. Mark Stephenson and Chuck Nicholson at the University
10 of Wisconsin. Their dairy transshipment model, the United
11 States Dairy Sector Simulator (USDSS), solves the problem
12 of efficiently moving milk from supply points to
13 processing plants and then moving finished dairy products
14 to demand points.

15 A secondary output generated by USDSS is a list of
16 relative values for milk at specific locations. As such,
17 the relative incremental value of milk for Class I usage
18 can be used to develop a Class I price surface covering
19 the entire U.S. By request, Drs. Stephenson and Nicholson
20 used May and October 2021 input data to generate the
21 baseline of relative Class I values.

22 Because the group of milk marketers collaborating
23 on the project were local as opposed to global experts, we
24 needed a process to synchronize and harmonize our
25 thoughts. We created a spine of 19 strategically chosen
26 anchor cities extending across the U.S. These anchor
27 cities established the relative level from which regional
28 subgroups could branch out and discuss increasing or



1 decreasing the USDSS-generated Class I values using
2 knowledge of specific local challenges.

3 I want to make a small correction in this next
4 statement. I talk about Miami, Orlando, and Atlanta as
5 part of the 19 anchor cities. They were not officially
6 part of those 19 cities, but we did talk about them. So I
7 will read the statement now, now that I have the
8 qualification there.

9 We assigned relative Class I values for the 19
10 anchor cities starting with Miami, Florida, then moving
11 north to Orlando, Florida; Atlanta, Georgia; Asheville,
12 North Carolina; and so forth. The Mideast Area was based
13 off of values established for two anchor cities, Verona,
14 Virginia, and Charleston, West Virginia. Furthermore,
15 there is general agreement that the Class I differential
16 in Western Michigan should be reasonably similar to the
17 Class I differential established for Chicago, Illinois.

18 Using this framework, the Mideast Area subgroup
19 developed its own anchor points focusing on the larger
20 cities initially. We used Charleston, West Virginia, at
21 \$4.70 per hundredweight as the reference standard to
22 preserve the relative pricing relationships with the
23 Northeast and Southeast subgroups.

24 From Charleston, West Virginia, we established
25 values at other significant milk processing cities by
26 moving north to Sharpsville, Pennsylvania; moving west to
27 Winchester, Kentucky; moving southwest to Nashville,
28 Tennessee; moving west to Indianapolis, Indiana; and



1 moving far north to Grand Rapids, Michigan.

2 To begin the process of assigning values to the
3 interior anchor points, we developed ten two-city
4 pairings. As such, the process allowed the subgroup to
5 discuss and to debate the relative value differences and
6 the rationale for the differences. The objective was
7 consistent in each of the pairings, that is to say, to
8 determine what value difference was needed to encourage
9 milk to move from milk supply areas located in the north
10 and in the west of the Mideast Area to the areas of
11 demand.

12 Relative Class I value differences were decided by
13 an independent assessment of staff representing four NMPF
14 milk cooperative -- cooperatives marketing milk in the
15 Mideast Area, that would be DFA, Michigan Milk Producers
16 Association, Foremost Farms USA, and Prairie Farms. After
17 the individual assessments, differences were resolved by
18 discussing specific milk marketing challenges faced as
19 described below.

20 Before I talk about the pairings, I do want to
21 impress upon you that the cities represent basing points
22 for setting up pricing zones, and we are not necessarily
23 moving milk between any of those two cities, although we
24 could.

25 In the first pairing we looked at Chicago,
26 Illinois, and Grand Rapids, Michigan, separated by a
27 distance of 180 miles. There is ample milk production
28 around Chicago and around Grand Rapids, and there are no



1 longer any fluid milk processing plants operating in the
2 Chicago metropolitan area. All of the packaged product in
3 the Chicago area is brought in from Grand Rapids,
4 Michigan; Cedarburg, Wisconsin; Rockford, Illinois; or
5 Dubuque, Iowa. To maintain Class I value continuity, the
6 Class I differential in Chicago should be aligned with the
7 prices at these other locations supplying packaged milk to
8 Chicago. The recommendation was to set the Chicago
9 Class I differential (Cook County) at \$3.10 per
10 hundredweight and the Grand Rapids Class I differential
11 (Kent County) at \$3.10 per hundredweight.

12 In the second pairing we looked at Grand Rapids,
13 Michigan, and Marquette, Michigan, separated by a distance
14 of 400 miles. Marquette has a small population and an
15 adequate milk supply to cover the needs of Michigan's
16 Upper Peninsula. Milk does not need to move far in the
17 Upper Peninsula to get to the local Class I plant, and
18 Upper Peninsula milk tends to stay local; it would not
19 typically move south to other processing locations in
20 Michigan. The recommendation is to set the Grand Rapids
21 Class I differential (Kent County) at \$3.10 per
22 hundredweight and the Marquette Class I differential
23 (Marquette County) at \$2.80 per hundredweight. The
24 relative difference of \$0.30 per hundredweight places more
25 value on the location further south, which is closer to a
26 larger population center and closer to more processing
27 plants.

28 In the third pairing we looked at Grand Rapids,



1 Michigan, and Elkhart, Indiana, separated by a distance of
2 100 miles. There's only a short distance separating the
3 two locations, and milk production is ample around both
4 cities. There is no need to encourage milk to move
5 between the two locations; milk should have the same
6 relative value at Grand Rapids and at Elkhart. The
7 recommendation is to set the Grand Rapids Class I
8 differential (Kent County) at \$3.10 per hundredweight and
9 the Elkhart Class I differential (Elkhart County) at \$3.10
10 per hundredweight.

11 In the fourth pairing we looked at Elkhart,
12 Indiana, and Indianapolis, Indiana, separated by a
13 distance of 160 miles. Indianapolis is a large
14 metropolitan area with a large population. There are
15 several Class I plants in and around the Indianapolis
16 metropolitan area. However, there is not much local milk
17 near Indianapolis, so milk from supply locations to the
18 north needs to be encouraged to move south toward
19 Indianapolis. The recommendation is to set the Elkhart
20 Class I differential (Elkhart County) at \$3.10 per
21 hundredweight and the Indianapolis Class I differential
22 (Marion County) at \$3.70 per hundredweight. The
23 difference of \$0.60 per hundredweight places more value on
24 the location further south and east and located more
25 distant from the milk supply.

26 In the fifth pairing we looked at Indianapolis,
27 Indiana, and Columbus, Ohio, separated by a distance of
28 175 miles. Both cities have significant populations, but



1 neither city is close to a milk supply. Logistically, it
2 is easier to move milk into Indianapolis from Northern
3 Indiana than to get milk into Columbus. The natural flow
4 of milk is from north to south and from west to east.
5 However, milk still needs financial encouragement to move,
6 especially west to east. The recommendation is to set the
7 Indianapolis Class I differential (Marion County) at \$3.70
8 per hundredweight and the Columbus Class I differential
9 (Franklin County) at \$4.00 per hundredweight. The
10 difference of \$0.30 per hundredweight places more value on
11 locations further to the east.

12 In the sixth pairing we looked at Columbus, Ohio,
13 and Cleveland, Ohio, separated by a distance of 150 miles.
14 Logistically, it is relatively easy to get milk from
15 Michigan into Cleveland via Interstate 90. The mileage is
16 not insignificant, but they are relatively easy miles on
17 interstate highways. The Cleveland Class I differential
18 should be lower than Columbus and about the same as
19 Indianapolis. The recommendation is to set the Columbus
20 Class I differential (Franklin County) at \$4.00 per
21 hundredweight and the Cleveland Class I differential
22 (Cuyahoga County) at \$3.70 per hundredweight. The
23 difference of \$0.30 per hundredweight places more value on
24 the location further south.

25 THE COURT: Just re-read that sentence for us,
26 again.

27 THE WITNESS: The last sentence?

28 THE COURT: Yes.



1 THE WITNESS: The difference of \$0.30 per
2 hundredweight places more value on the location further
3 south.

4 THE COURT: Thank you.

5 THE WITNESS: Okay.

6 In the seventh pairing, we looked at Columbus,
7 Ohio, and Sharpsville, Pennsylvania, separated by a
8 distance of 195 miles. Western Pennsylvania has a large
9 cheese plant and a large Class I plant within 50 miles of
10 each other with little local supply. Being a milk deficit
11 area already and becoming more milk deficit each year,
12 milk needs to move into the area from supply points
13 located to the west. Milk needs financial encouragement
14 to move to the Class I plant instead of moving to the
15 local cheese plant.

16 Milk haulers are challenged by long distance hauls
17 from the Mideast Area's supply locations and are reluctant
18 to move milk from Michigan or from Northern Indiana that
19 far to the east because of the strain on drivers, who are
20 increasingly difficult to hire and to retain. There are
21 also concerns about violating Department of Transportation
22 driver hours of operation regulations.

23 The best opportunity to get milk to the east is to
24 staircase milk by pulling milk from Eastern Ohio and
25 backfilling with milk from Western Ohio, Northern Indiana,
26 or from Michigan. Eastern Ohio is already milk deficit
27 because of the abundance of milk processing plants in the
28 region. Both Columbus and Sharpsville have similar



1 challenges for milk movements. As such, their Class I
2 differentials should be aligned. The recommendation is to
3 set the Columbus Class I differential (Franklin County) at
4 \$4.00 per hundredweight and the Sharpsville Class I
5 differential (Mercer County) at \$4.00 per hundredweight.

6 In the eighth pairing we looked at Columbus, Ohio,
7 and Cincinnati, Ohio, separated by a distance of
8 110 miles. There is not much milk in Southern Ohio or
9 Southern Indiana. Milk does not move north out of
10 Kentucky to Cincinnati because Kentucky is already milk
11 deficit. To service customers consistently, milk must
12 move from the northern part of the Midwest Area to the
13 south. Both locations have similar challenges for milk
14 movements. Once milk gets to Columbus, it is relatively
15 easy to get the milk into Cincinnati on I-71. The
16 recommendation is to set the Columbus Class I differential
17 (Franklin County) at \$4.00 per hundredweight and the
18 Cincinnati Class I differential (Hamilton County) at \$4.00
19 per hundredweight.

20 In the ninth pairing we looked at Cincinnati,
21 Ohio, and Winchester, Kentucky, separated by a distance of
22 100 miles. There is not much local supply in Central
23 Kentucky; it is a milk deficit state. Most of the local
24 Kentucky milk is shipped to a large Class I plant in
25 Winchester, Kentucky. However, there is not enough nearby
26 milk to supply the plant's milk needs. Logistically, the
27 distance and driver time are limiting factors to get milk
28 to move that far south in the Midwest Area. Also, terrain



1 and road quality are not as conducive to hauling milk in
2 Kentucky. There must be incentives in place to encourage
3 milk to move out of Northern Indiana, Northwest Ohio, or
4 Michigan, and into Kentucky. The recommendation is to set
5 the Cincinnati Class I differential (Hamilton County) at
6 \$4.00 per hundredweight and the Winchester Class I
7 differential (Clark County) at \$4.60 per hundredweight.
8 The difference of \$0.60 per hundredweight places more
9 value on the location further south.

10 In the tenth and final pairing, comparing
11 Cincinnati, Ohio, and Charleston, West Virginia, separated
12 by a distance of 210 miles. West Virginia is a milk
13 deficit area that is getting more deficit as dairy farms
14 exit the dairy business. To supply customers, milk must
15 move from northern and western supply locations. Terrain
16 and road quality are not as conducive to hauling milk in
17 West Virginia. The best opportunity to get milk moved to
18 the east is to staircase milk by pulling milk from Eastern
19 Ohio and backfilling with milk from Northwestern Ohio,
20 Northern Indiana, or Michigan. The recommendation is to
21 set the Cincinnati Class I differential (Hamilton County)
22 at \$4.00 per hundredweight and the Charleston Class I
23 differential (Kanawha County) at \$4.70 per hundredweight.

24 THE COURT: Would you read into the record the
25 spelling of that county?

26 THE WITNESS: I think I have misspelled it, but I
27 think it is K-N-N-A-W-H-A (sic). I think I put an extra
28 "A" in there.



1 THE COURT: Say it again?

2 THE WITNESS: Kanawha.

3 THE COURT: And spell it again?

4 THE WITNESS: K-A-N-A-W-H-A.

5 THE COURT: Thank you.

6 THE WITNESS: I'm going to read that sentence
7 again since I botched that piece of it.

8 The recommendation is to set the Cincinnati
9 Class I differential (Hamilton County) at \$4.00 per
10 hundredweight and the Charleston Class I differential
11 (Kanawha County) at \$4.70 per hundredweight. The
12 difference of \$0.70 per hundredweight places more value on
13 the location further east.

14 After the relative value differences among the ten
15 two-city pairings were established, we expanded the
16 analysis to include additional cities. The 29 cities
17 selected represent locations of pool distributing plants
18 and major milk processing plants categorized as Class I,
19 Class II, Class III, or Class IV.

20 And if you could show the next slide, please.

21 Yes, thank you.

22 Chicago was included as a reference point among
23 the 29 cities but is not a city located within the Mideast
24 Area. Referencing Table 5, which is showed on the screen
25 behind me, the lowest proposed Class I differential is
26 \$2.80 per hundredweight in Marquette County, Michigan, and
27 the highest is found in Laurel County, Kentucky, at \$4.85
28 per hundredweight.



1 On average, the National Milk Producers Federation
2 Class I differentials proposed for the 29 cities are \$1.65
3 per hundredweight higher than the current values.
4 Qualitatively, Table 5 reveals the NMPF proposal
5 recommends lower Class I differentials in Michigan than
6 obtained from the USDSS model output.

7 THE COURT: I'm going to stop you there, Dr. Erba.
8 This is wonderful, and very dense, and I want a
9 five-minute stretch break. If you must leave the room,
10 do, but we're just going to take a five-minute break.
11 Please be back and ready to go at 10:10.

12 We go off record at 10:03.

13 (Whereupon, a break was taken.)

14 THE COURT: Let's go back on record. We're back
15 on record at 10:10.

16 Dr. Erba, I'm going to have you back up just a
17 little bit to page 12 of Exhibit 336, and just read me the
18 name of Table 5.

19 THE WITNESS: Yes, of course.

20 And if we could get that to show up on the screen,
21 please. Great.

22 Table 5 is the "Comparison of current and proposed
23 Class I differentials in 29 cities relevant to the Mideast
24 Area."

25 THE COURT: All right. Thank you.

26 And then go over where you had been on page 13 and
27 just start from the very top of page 13 for us.

28 THE WITNESS: Certainly.



1 On average, the NMPF Class I differentials
2 proposed for the 29 cities are \$1.65 per hundredweight
3 higher than the current values. Qualitatively, Table 5
4 reveals that the NMPF proposal recommends lower Class I
5 differentials in Michigan than obtained from the USDSS
6 model output. We also see that Class I differentials grow
7 increasingly larger when moving to the south and to the
8 east, that is to say, higher Class I differentials are
9 found in Ohio, Indiana, Central Kentucky, and Western
10 Pennsylvania. In other words, the NMPF proposal provides
11 a greater slope or additional financial incentives to
12 encourage milk to move south and east out of the milk
13 surplus regions located in Northern Indiana and in
14 Michigan.

15 The Mideast Area shares touchpoints with the
16 Midwest, Southeast, and Northeast regions, and some of the
17 additional discussions with representatives from those
18 regions were necessary to ensure the seams where the
19 regions join were consistent.

20 Comparing notes with other cooperative
21 representatives, we identified areas within the Mideast
22 where consolidating two or more pricing zones made sense.
23 For example, the original exercise left a small pocket of
24 higher Class I differentials around Columbus, Ohio, which
25 was later consolidated with an adjacent geographically
26 larger zone that dovetailed well with the zones proposed
27 for the Northeast region. Similarly, differences for
28 counties along the seams were resolved through discussions



1 with staff representing the Northeast, Southeast, and
2 Midwest Areas.

3 To finalize the Class I differentials proposed for
4 the Mideast Area, some fine tuning was necessary after
5 adjustments were made after consulting with cooperative
6 staff representing surrounding regions. Because input and
7 suggestions were taken from many sources and resulting
8 compromises were made to develop an explainable and
9 contiguous Class I differential surface, a final check
10 seemed like a logical next step before concluding the
11 process.

12 Pool plants reported for Federal Orders Number 33
13 and Number 5 in 2022 were plotted on a map of the proposed
14 Class I differentials to determine if any inconsistencies
15 persisted. A few such inconsistencies were identified,
16 and I will detail the specifics of two of them. However,
17 the process involved to resolve the pricing
18 inconsistencies was the same for each instance
19 encountered.

20 First, in Western Pennsylvania, there are several
21 Class I plants around the Pittsburgh area. Some of them
22 compete for business in that market, but not all were in
23 the same pricing zone:

24 A Class I plant located in Mercer County was in
25 the \$4.00 per hundredweight zone; a Class I plant located
26 in Butler County was in the \$4.20 per hundredweight zone;
27 a Class I plant located in Fayette County and two Class I
28 plants located in Allegheny County were in the \$4.40 per



1 hundredweight zone.

2 The solution was to move Allegheny County (where
3 Pittsburgh is located) to the \$4.20 per hundredweight zone
4 because plants located in Allegheny County compete for
5 Pittsburgh area business.

6 Now, I realize that I said this is a \$4.20 per
7 hundredweight zone, but the Excel spreadsheet we submitted
8 still says \$4.40. So that really should be \$4.20.

9 THE COURT: The Excel spreadsheet should say
10 \$4.20?

11 THE WITNESS: Yes. It still says \$4.40. That
12 would be incorrect. It should say \$4.20. That's
13 Allegheny County, Pennsylvania.

14 MS. HANCOCK: Your Honor, just for our record, so
15 it is clear, it is Exhibit 299 where we have the county
16 noted. So when we make that correction, we'll need to
17 make it in Exhibit 299.

18 THE COURT: Thank you. I've made my notes, and
19 we'll deal with that correction, not now, but soon.

20 And you may, again, resume your testimony, but
21 start again with the sentence that says, "The solution was
22 to move Allegheny County."

23 THE WITNESS: Okay.

24 The solution was to move Allegheny County (where
25 Pittsburgh is located) to the \$4.20 per hundredweight zone
26 because plants located in Allegheny County compete for
27 Pittsburgh area business. The plant located in Mercer
28 County is more distant from the Pittsburgh market and does



1 not compete directly with the other smaller independently
2 owned Class I plants. The same sentiment applies to the
3 plant located in Fayette County, as it is located further
4 south of the Pittsburgh market.

5 The second case involves Class I plants in
6 Southwest Ohio and in Eastern Indiana:

7 A Class I plant located in Clark County, Ohio was
8 in the \$4.00 per hundredweight zone; a multi-use plant
9 located in Wayne County, Indiana, was in the \$3.70 per
10 hundredweight zone; a Class I plant located in Miami
11 County, Ohio, was in the \$3.70 per hundredweight zone; and
12 a Class I plant located in Marion County, Indiana, was in
13 the \$3.70 per hundredweight zone.

14 Again, there are several plants within a
15 relatively small geography that are all likely competing
16 for the same business around Columbus, Dayton, and
17 Cincinnati. The solution to equalize raw product costs
18 was to move Clark County, Ohio, to the \$3.70 per
19 hundredweight zone.

20 And, again, I'm sorry, I have to make another
21 correction. The -- that same spreadsheet still shows \$4
22 per hundredweight. It should be \$3.70 per hundredweight
23 for Clark County, Ohio.

24 THE COURT: Excellent. We'll make that change
25 when we make the previous one.

26 THE WITNESS: If I could -- oh, perfect, it is up.

27 Figure 1 shows the NMPF proposal for Class I
28 differentials among the counties in the six states



1 comprising the Mideast Area. Compared to current Class I
2 differentials (Figure 2), NMPF proposes higher Class I
3 differentials in the Mideast Area as well as more zones or
4 bands of differentials. The zones or bands tend to be
5 oriented southwest to northeast, reflecting the increase
6 in relative location value of milk when moving to the
7 south and to the east. Figure 3 reveals the differences
8 by county of the NMPF proposed Class I differentials and
9 the current Class I differentials.

10 In addition to more pricing zones and higher
11 values at each location, the NMPF proposal for the Mideast
12 Area also adds more of a pricing slope by placing a higher
13 value on the locations to the south and to the east than
14 the current Class I differentials. The increased slope
15 addresses the difficulties of moving milk from areas of
16 surplus milk supplies, that is to say, Michigan, Northern
17 Indiana, and Northwestern Ohio, to the milk deficit areas
18 located to the south and to the east.

19 The NMPF proposal for Class I differentials in the
20 Mideast Area is mostly in line with the results obtained
21 from the USDSS. There are 406 counties contained in
22 Federal Order 33 and in the north central portion of
23 Federal Order Number 5 (that is to say, Central Kentucky
24 and Southern Indiana).

25 In the NMPF proposal for the Mideast Area, just 18
26 counties (4%) are more than \$0.25 per hundredweight higher
27 than what is suggested by the USDSS. Those counties are
28 found in Central West Virginia, Southeast Ohio, and



1 Central Kentucky. The largest upside departure from the
2 USDSS results is found in Central Kentucky at a plus \$0.40
3 per hundredweight.

4 Conversely, there are 97 counties (24%) that are
5 more than \$0.25 per hundredweight lower than the USDSS
6 results. These are found primarily in Northern Michigan,
7 Northern Indiana, and Northern Ohio. The largest downside
8 departure from the USDSS results is found in Northern
9 Michigan at minus \$0.70 per hundredweight. Across the
10 entire Mideast Area, the NMPF proposal averages -- here's
11 another mistake -- minus \$0.10 per hundredweight compared
12 to the USDSS output.

13 So that minus sign is missing off that \$0.10 per
14 hundredweight.

15 THE COURT: And let's make that change right now.
16 We are in Exhibit 336, page 17. We are going to the last
17 line that comes before the heading "Justifying the Base
18 Price for Class I Differentials."

19 So in that line, Dr. Erba, what do we change?

20 THE WITNESS: The -- there's a minus sign missing
21 in front of the \$0.10 per hundredweight. So the sentence
22 should read: "Across the entire Mideast Area, the NMPF
23 proposal averages minus \$0.10 per hundredweight compared
24 to the USDSS output."

25 THE COURT: We have made that change. Thank you.

26 THE WITNESS: Correct. Fantastic.

27 During Federal Order Reform, USDA cited nine
28 performance criteria to evaluate Class I pricing options



1 (See Federal Register, Vol. 54, No. 63/Friday, April 2nd,
2 1999; pages 16109 to 16112). The nine criteria were based
3 upon regulatory objectives and requirements of the
4 Agricultural Marketing Agreement Act of 1937. One of the
5 criteria cited by USDA was to recognize the quality value
6 of milk, as Grade A milk is required for fluid use. USDA
7 further noted that dairy farms incur costs of obtaining
8 and maintaining Grade A licenses and those costs need to
9 be reflected in Class I prices. At the time of statement,
10 USDA determined that the appropriate minimum value for
11 Class I differentials should be \$1.60 per hundredweight.

12 "Option 1A recognizes the quality value (Grade A)
13 of milk through the addition of a differential that begins
14 at \$1.60 per hundredweight in the base zone. The \$1.60
15 per hundredweight differential level is used because it
16 would ensure a sufficient supply of milk for fluid uses in
17 the most surplus regions."

18 Similarly, in the Proposed Rules published during
19 Federal Order Reform, USDA described the costs considered
20 in the build-up to the \$1.60 per hundredweight base
21 Class I differential (See Federal Register, Vol. 63, No.
22 20/Friday, January 30th, 1998; pages 4907 to 4909).

23 In summary, \$0.40 per hundredweight was
24 established for the maintenance cost associated with
25 Grade A license for a dairy farm, \$0.60 per hundredweight
26 was established for the cost of balancing for Class I
27 plants, and \$0.60 per hundredweight was established for
28 the incentives to encourage deliveries to Class I plants



1 for a total of \$1.60 per hundredweight.

2 While USDA recognized there was a cost associated
3 with the conversion from a Grade B dairy to a Grade A
4 dairy, those conversion costs were not considered; only
5 the costs of the dairy maintaining its Grade A license was
6 considered.

7 USDA stated, "...a portion of the Class I
8 differential must reflect the value associated with
9 maintaining Grade A milk supplies since this is the only
10 milk available for fluid use. Originally, the
11 differential needed to be established at a level that
12 would encourage conversion from Grade B to Grade A status.
13 With approximately 96% of all milk already converted to
14 Grade A, this value now needs to reflect the cost of
15 maintaining Grade A milk supplies."

16 USDA further stated that it is difficult to
17 quantify the cost of maintaining the Grade A status on a
18 dairy farm, although USDA did cite a number of
19 requirements that would need to be met, including an
20 approved water system, specific facility construction and
21 plumbing requirements, specific equipment, and appearance
22 of facility.

23 Perhaps a reason USDA had difficulty specifying a
24 dairy farm's maintenance cost is that the detailed list of
25 costs encountered while converting from Grade B to Grade A
26 was omitted, and some of those conversion costs would be
27 ongoing costs that could be used to estimate a maintenance
28 cost. For this reason, I want to revisit the issue of



1 cost of converting a Grade B dairy to a Grade A.

2 This analysis tracks the increased sanitary
3 requirements for a Grade A dairy facility as imposed by
4 state health departments and the Food and Drug
5 Administration's Grade A Pasteurized Milk Ordinance (PMO)
6 and estimates a cost of compliance to convert the facility
7 from Grade B to Grade A. The PMO sets forth the specific
8 requirements that must be met to attain a Grade A license
9 for dairy farms (PMO - Items 1r through 19r).

10 Generally speaking, the infrastructure for a
11 Grade A facility, especially the milk room, milking
12 parlor, vestibules, storage rooms, and so forth, must be
13 maintained at a higher sanitary standard. The Grade A
14 facility should provide a clean, well-lit, well-ventilated
15 environment in good repair.

16 I'm going to skip the next section which simply
17 describes the qualitative requirements for a Grade A dairy
18 and start at the bottom of page 20, which uses an example,
19 and I'll use this example throughout, of the cost
20 converting from Grade B to Grade A.

21 Starting at the bottom of page 20.

22 To put the cost of conversion from a Grade B
23 facility to a Grade A facility, I will use an example
24 dairy of representative size. Grade B dairies tend to be
25 smaller, so for this example, I will assume a 100-cow
26 dairy farm, producing an average of 70 pounds of milk per
27 cow per day. A dairy of that size with the specified
28 daily production would produce 2.55 million pounds of milk



1 per year.

2 I will describe each of the required improvements
3 and estimate an associated cost of compliance. Costs of
4 compliance were estimated using input from cooperative
5 field representatives in the Mideast Area, a 2009 document
6 published by the Oregon Department of Revenue on cost
7 factors for farm buildings (Exhibit NMPF-38A), and a 2015
8 University of Wisconsin Extension publication summarizing
9 the costs involved with modernizing a dairy farm (Exhibit
10 NMPF-38B).

11 Item 1: Remodel or build milk house and milking
12 parlor. The estimated cost is \$250,000 for a simple
13 structure meeting PMO requirements for impervious
14 surfaces, lighting, air circulation, and animal
15 distribution and so forth. This would include a
16 double-four herringbone parlor arrangement, figure that it
17 has a 20-year depreciation, and a 10% salvage value, which
18 works out to \$0.44 per hundredweight for this size farm.

19 Item 2: Install a toilet facility. Estimate
20 \$15,000 for the groundwork, plumbing, supplies, and labor,
21 20-year depreciation. Works out to \$0.03 per
22 hundredweight for this size farm.

23 Item 3: Construct a liquid and solid waste
24 holding structure (lagoon), with a clay liner. Estimate
25 \$100,000 in design permitting and construction costs, a
26 20-year depreciation. Works out to \$0.20 per
27 hundredweight for this size farm.

28 Item 4: Develop a Grade A water supply. Estimate



1 \$25,000 for permitting, drilling, grading land,
2 construction around the well head, and water testing.
3 20-year depreciation, which works out to \$0.05 per
4 hundredweight for this size farm.

5 Item 5: Acquire and install and plumb a stainless
6 steel 2,000-gallon bulk milk tank, estimated price of
7 purchase is \$35,000, with a 20-year depreciation and a 25%
8 salvage value. This works out to \$0.05 per hundredweight
9 for this size farm.

10 Item 6: Construct a cow yard and cow housing
11 area, fully equipped, free stall barn with fans, waterers,
12 scrape alleys, and so forth. Estimate \$300,000 to design,
13 permit, and construct a 100-cow stall barn at \$300 per
14 stall, 20-year depreciation and a 10% salvage value. It
15 works out to \$0.53 per hundredweight for this size farm.

16 MR. HILL: Dr. Erba?

17 THE WITNESS: Yes.

18 MR. HILL: Can you slow down just a bit with these
19 numbers so the court reporter can capture them?

20 THE WITNESS: Absolutely.

21 Item 7: Cost of interest on construction/facility
22 remodel loan. Loan amount of \$725,000 for the milk house,
23 parlor, cow yard, cow housing area, lagoon, water supply,
24 bulk tank, and toilet. Figure a 6% interest rate, 20-year
25 repayment period, \$26,080 per year, which works out to
26 \$1.02 per hundredweight for this size farm.

27 Item 8: Regulatory inspections to ensure Grade A
28 standards are being met. The farm is responsible for



1 paying the Market Administrator's fee, which is \$0.05 per
2 hundredweight for this size farm.

3 Item 9: Increase electricity usage for --

4 THE COURT: Dr. Erba, I just want to make sure
5 that's clear. \$0.05 per hundredweight is not just for the
6 Market Administrator fees, it's all the things in this
7 category, correct?

8 THE WITNESS: It's for the inspections that have
9 to be performed to make sure you maintain Grade A status.

10 THE COURT: So it is just that?

11 THE WITNESS: Yes.

12 THE COURT: Understood. Thank you.

13 THE WITNESS: Yes.

14 Item 9: Increased electricity usage for fans,
15 bulk tank refrigeration, manure pumps for lagoon.
16 Estimate \$0.15 per hundredweight for this size farm.

17 Item 10: Increase in transportation costs.
18 Increase pickups from every three days to every other day
19 to be Grade A compliant. This assumes a \$25 stop charge.
20 Increase the frequency of pickups by 50%. For this size
21 farm, increase from ten pickups per month to 15 pickups
22 per month. That's \$125 increase per month. That works
23 out to \$0.06 per hundredweight for this size farm.

24 Item 11: Increased chemical usage and more
25 frequent rubber part replacement to maintain Grade A milk
26 quality standards. More frequent system and facility
27 washings and cleanings; higher quality soap, acid,
28 sanitizer, and teat dip; more frequent replacement of all



1 rubber gaskets, hoses, and inflations. Figure \$0.25 per
2 hundredweight for chemicals and \$0.10 per hundredweight
3 for rubber part replacement.

4 So the total cost conversion from Grade B dairy to
5 a Grade A dairy farm is \$2.93 per hundredweight.

6 Related to the analysis of determining the cost of
7 converting a Grade B dairy farm to a Grade A dairy farm is
8 the cost of maintaining a Grade A license. In other
9 words, after a dairy is remodeled to meet the PMO
10 requirements for a Grade A facility, what does it cost to
11 maintain the Grade A license?

12 It is fair to say that all the variable costs
13 cited in the analysis would continue to apply. These
14 would include paying for inspections (\$0.05 per
15 hundredweight), increased electricity usage (\$0.15 per
16 hundredweight), increased frequency of hauling (\$0.06 per
17 hundredweight), increased chemical usage for sanitation
18 (\$0.25 per hundredweight), and increased frequency of
19 replacing rubber parts (\$0.10 per hundredweight).

20 In addition, the maintenance cost of the physical
21 assets necessary for the dairy farm to meet the Grade A
22 standards should be included. Estimated maintenance costs
23 for physical assets such as barns and other farm
24 structures range between 2% and 5% of replacement cost.

25 Using construction costs as a proxy for
26 replacement costs and using 3% as the maintenance cost,
27 the cost to maintain the physical structures cited in the
28 cost of conversion analysis amounts to \$21,750 per year,



1 or \$0.85 per hundredweight. As such, the estimated
2 ongoing cost of maintaining a Grade A license is \$1.46 per
3 hundredweight. This does not include the non-cash expense
4 of depreciation, which represents about \$1.30 per
5 hundredweight.

6 For more than 20 years, Class I differentials in
7 the Mideast Area have been unchanged. During that time,
8 Michigan has emerged as a leading reserve supply for the
9 Mideast Area, and at times, Michigan has also been the
10 reserve supply for states in the southeastern U.S. At the
11 same time that Michigan's milk production capacity has
12 been evolving, traditional milk supply points within the
13 Mideast Area, such as Eastern Ohio, Southern Ohio, Western
14 Pennsylvania, and Central Kentucky, have been losing and
15 continue to lose milk production capacity as a result of
16 dairy farms exiting the business.

17 The U.S. dairy industry has been built around the
18 ability to haul milk when and where it is needed, and the
19 Mideast Area has followed that same pattern. Milk must
20 move from the north to the south, and from the west to the
21 east to meet customer raw milk needs. As milk hauling
22 costs have increased for a variety of reasons, the need
23 for greater financial incentives to encourage milk to move
24 to Class I plants has also increased. Current supply and
25 demand conditions in the Mideast Area and in surrounding
26 areas justify updates to the current Class I
27 differentials.

28 DFA expresses its appreciation to the Secretary of



1 Agriculture and the Dairy Division for holding this
2 hearing to consider these important proposals. We
3 encourage the Secretary to recommend the adoption of
4 Proposal 19, update Class I differentials throughout the
5 U.S.

6 MS. HANCOCK: Thank you, Dr. Erba.

7 Your Honor, at this time we would make him
8 available for cross-examination.

9 THE COURT: All right. Good. Please be back and
10 ready to go at 10:50. We go off record at 10:39.

11 (Whereupon, a break was taken.)

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

13 We're back on record at 10:51.

14 MR. ENGLISH: Good morning, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. ENGLISH:

17 Q. And good morning, Dr. Erba.

18 A. Good morning.

19 Q. My name is Chip English representing the Milk
20 Innovation Group.

21 So I want to start with a couple of questions
22 particularly because, from your own background, I think
23 that you can agree with me that you have specific long
24 history with California, correct?

25 A. I do have a long history with California.

26 Q. So speaking about the California state order as
27 opposed to the California Federal Order for a moment, in
28 your experience under the California state order, which



1 ceased on November 1st, 2018, did dairy farmers have the
2 option to elect Grade B status for an annual basis?

3 A. Yes.

4 Q. And in your experience, did they do so?

5 A. Yes. Some did.

6 Q. Yeah. Can't quantify it necessarily, but some
7 did, correct?

8 A. Yes.

9 Q. And that was an economic decision on their part to
10 elect Grade B status, correct?

11 A. Yes.

12 Q. And it was effectively really on paper. It wasn't
13 that they were giving up, because they might want to
14 become Grade A the next year, correct?

15 A. It was on paper they gave up their Grade A
16 license, and when they came back in, whenever that was,
17 might be a year, might be two, they had to meet the
18 standards that were applicable at that time. So I'm not
19 sure that we're -- not sure I'm following you exactly, but
20 I think that's --

21 Q. I think that's following.

22 A. Okay.

23 Q. I don't think we're disagreeing.

24 A. Okay.

25 Q. Now, by the time there was a Federal Order in
26 California, you had left CDI; is that correct?

27 A. That is correct.

28 Q. Nonetheless, given your experience in California,



1 do you know whether dairy farmers have at least until the
2 end of last year been electing Grade B status for economic
3 reasons under the Federal Order?

4 A. I was unaware that they still had that option.

5 Q. Well, not so much the option as if they
6 effectively did the same thing, which was go Grade B on
7 paper, they would then not be -- have producer milk under
8 the Federal Order, correct?

9 A. I don't know. I -- when I left California, I did
10 not pay any attention to what was happening with that
11 provision.

12 Q. I don't blame you.

13 But you do know that -- you were involved in the
14 hearing that led to the California Federal Order, correct?

15 A. Yes, I was.

16 Q. And you are aware that as a result of that
17 proceeding, when the Federal Order was adopted, the United
18 States Department of Agriculture, through a section
19 authorized by the 1996 Farm Bill, permitted California to
20 continue to operate the quota system, correct?

21 A. Yes.

22 Q. And that operation of that quota system would have
23 created some of the same economic opportunities for
24 somebody to say, I don't want to pay in the quota system,
25 therefore I'm going to elect Grade B?

26 A. And that's the part that I didn't follow after I
27 left California.

28 Q. Thank you, sir.



1 MR. ENGLISH: So for the next section it would
2 help if the witness could have Exhibits 53 and 58. And
3 probably Her Honor as well.

4 THE COURT: If you have an extra, I will borrow
5 from you. It was given to my predecessor, but I shipped
6 it to Washington DC.

7 MR. ENGLISH: I wish I could do that with all my
8 documents.

9 So for everybody's information, Exhibit 53 is
10 Producer Milk by County, December 2000, and Exhibit 58 is
11 Producer Milk by County, December 2022.

12 THE WITNESS: Shall I assume I will get a copy at
13 some point?

14 MR. ENGLISH: That's my hope.

15 THE COURT: Dr. Erba, you are being handed a
16 record copy, which means you must be sure to give it back.

17 THE WITNESS: I will be sure to give it back.
18 Thank you.

19 THE COURT: And I will do likewise.

20 MR. ENGLISH: I will do my part to help make that
21 happen, Your Honor.

22 THE COURT: Very good.

23 BY MR. ENGLISH:

24 Q. So a couple of predicate questions. For a
25 complete picture of milk production in the geographical
26 territory that's the Mideast market, you would need to
27 account not only for the milk that is producer milk on
28 Order 33, but also milk that is producer milk on other



1 orders, correct?

2 A. Correct.

3 Q. And fortunately, having just handed you
4 Exhibits 53 and 58, we have that information. So I'm not
5 going to try to belabor the specific numbers if I can, but
6 I would like to look at a few data points.

7 If you look first at December 2000, which is
8 Exhibit 53, and if you'll look at page 3 of 11, which is
9 Order 5, you would agree that you see milk pooled on
10 Order 5, that is produced in Michigan, Indiana, Ohio, and
11 at least part of Pennsylvania that is part of Order 33,
12 correct?

13 A. Yes.

14 Q. And similarly, if you look at Order 1 -- I have
15 this backwards, I'm sorry -- if you look at Order 1, which
16 is page 2, you will see milk in Western Pennsylvania that
17 is part of Order 33 that is pooled on Order 1, correct?

18 A. Yes.

19 Q. And now turning to Exhibit 58, there is some small
20 quantity of milk listed here on page 2 in 2022 that would
21 be pooled on Order 1, correct?

22 A. Where are you seeing that?

23 Q. Well, okay. So, first of all, let's break it into
24 two parts. On page 2 there is still, for Order 1, a
25 couple of counties in the Order 33 area that are pooled on
26 Order 1, correct?

27 A. Yes.

28 Q. But the overall volume, overall pounds of milk in



1 Pennsylvania includes both Order 1, unregulated territory,
2 and Order 33, correct?

3 A. If I could have you repeat that, please.

4 Q. Okay. I'm just trying to -- I'm not trying to
5 overstate how much is in -- from Western Pennsylvania, so
6 I want to be clear. For the 640,532,000 pounds of milk
7 from Pennsylvania that are pooled on Order 1, that
8 includes not only those western counties in Pennsylvania,
9 Order 33, but it includes territory that is Order 1 and
10 also territory that is called unregulated, correct?

11 A. Yes.

12 Q. Okay. And if we look at Order 5, we see, again,
13 milk from Michigan, Indiana, Ohio, and, again, a small
14 portion of Western Pennsylvania that is Order 33, that is
15 pooled on Order 5 in December of 2022, correct?

16 A. Yes.

17 Q. And, in fact, looking just quickly, Indiana --
18 admittedly, some of Indiana is also in Order 5, but
19 Indiana represented 10% of the milk pooled on Order 5 in
20 December of 2022, correct?

21 A. Yes, approximately 10%.

22 Q. And Ohio represented approximately 5%, correct?

23 A. Correct.

24 Q. And if you look at Order 7, again, there is milk
25 in Indiana for December of 2022 that is physically located
26 and produced in the Mideast Area -- Mideast Marketing Area
27 that is, in fact, pooled on Order 7, correct?

28 A. Yes.



1 Q. And there's some from Michigan, but we don't know
2 how much because it's restricted. But Indiana, again,
3 represents more than 10% of the milk that is being pooled
4 under Order 7 from Order 33, correct?

5 A. Yes.

6 Q. And if we turn to Order 30, while small volumes,
7 nonetheless there's volumes of milk from Indiana and
8 Michigan and some unquantifiable number for Ohio that is
9 pooled on Order 30 from Order 33 marketing area, correct?

10 A. Yes.

11 Q. And finally for Order 32, there's some very small
12 amount of milk from Indiana that is pooled on Order 32,
13 correct?

14 A. Yes.

15 Q. So, in fact, when we look at pages 2 and 3 of your
16 testimony, that is milk pooled on Order 33, whether or not
17 that milk was produced in the marketing area, correct?

18 A. I believe that's correct.

19 Q. And it doesn't include any of that milk that we
20 just looked at in Exhibit 58 that is being pooled on
21 Orders 1, 5, 7, 30, and 32, correct?

22 A. That's correct.

23 Q. I'll keep my promise now. I'm done with those
24 exhibits. And if I may approach the witness?

25 THE COURT: You may.

26 MR. ENGLISH: And, Your Honor, I will get the
27 copies and return them to USDA.

28 ///



1 BY MR. ENGLISH:

2 Q. So I want to turn now to some of your statements,
3 issues, and in particular, I want to start discussing
4 Dairy Farmers of America.

5 And the sentence at the end of the first
6 paragraph, "As of June 2023, DFA's Mideast Area had 828
7 member farms located in the six aforementioned states,
8 producing about 20 million pounds of milk per day."

9 And so recalling what we just discussed -- and I
10 admit I was confused, so this is on my part -- are those
11 828 member farms all the farms that DFA has that are
12 physically located in the marketing area regardless of
13 where the milk is pooled?

14 A. Yes. Yes.

15 Q. Do you know how many of those 828 member farms
16 located in the Mideast Area itself are actually pooled on
17 Order 33?

18 A. I do not know that. The majority of them.

19 Q. How about the 20 million pounds of milk per day,
20 how much of the milk that are -- that is physically
21 produced by DFA members in the marketing area is actually
22 pooled on Order 33?

23 A. I do not know that number.

24 Q. Okay. Thank you. So thank you for correcting
25 what I considered to be a typo about the cheese plant
26 being in Western versus Eastern Pennsylvania. I confess I
27 puzzled over that.

28 Who owns that plant?



1 A. Who owns that plant?

2 Q. In Western Pennsylvania. Now that we have
3 corrected the plant in Western Pennsylvania as a large
4 cheese plant, who owns that plant?

5 A. That's a DFA plant.

6 Q. And what is the supply for that plant in terms of
7 geographic region?

8 A. You mean how large is the footprint?

9 Q. No. How far away does the milk come?

10 A. Right. So --

11 Q. Does it come from far away as Michigan?

12 A. It can, yes.

13 Q. Can, but does it?

14 A. Yes.

15 Q. Does it come from Indiana?

16 A. I would say not as a regular supply. But, yes.

17 Q. Going back to Michigan, would it go as a regular
18 supply from Michigan?

19 A. Yes.

20 Q. Does that plant operate as a traditional balancing
21 plant or is it running at full capacity?

22 A. That plant would run at full capacity.

23 Q. Is it true that that plant does not accept milk as
24 a balancing facility for Order 33 Class I plants?

25 A. I'm not sure what you mean by that.

26 Q. Well, you have just said that it is running at
27 full capacity. If so, does it have the ability to accept
28 surplus milk from milk being diverted from Class I plants



1 in Order 33?

2 A. I would say that would not be a usual practice. I
3 won't say it never happens, but it's not a usual practice.

4 Q. And is it ever a practice to accept milk diverted
5 by Class I proprietary handlers as opposed to co-op?

6 A. I would say probably even less frequent.

7 Q. So I'm hoping to have a shorter conversation with
8 you than I did with Mr. Sims, about the question of the
9 \$1.60 and the \$2.20.

10 A. Okay.

11 Q. I say that because on page 18 of your testimony,
12 you quote from USDA Federal Order reform, and you say that
13 "Option 1A recognizes the quality Grade A of milk through
14 the addition of a differential that begins at \$1.60 per
15 hundredweight in the base zone."

16 You acknowledge there's a base zone of \$1.60, at
17 least in Federal Order reform, correct?

18 A. In the Federal Order reform, yes.

19 Q. Is there a base zone as that term is used by USDA
20 in Federal Order reform at \$2.20 in National Milk's
21 proposal?

22 A. I would say no, we did not approach it the same
23 way.

24 Q. Is it fair to say that in Federal Order reform
25 that USDA had the \$1.60 base zone, they then had a price
26 surface that was added to the \$1.60 base zone, and then
27 there were red pencil adjustments made? Is that a fair
28 characterization of what USDA did in your view?



1 A. That would be my understanding, yes.

2 Q. National Milk Producers Federation went back to
3 the source of the USDSS, United States Dairy --

4 A. Sector Simulator.

5 Q. I keep forgetting sector, Sector Simulator.

6 And National Milk had that run using the same
7 \$1.60 from Federal Order reform, correct?

8 A. Yes. We had a -- that was by request from the
9 task force, National Milk Producers Federation task force,
10 to have essentially a price wedge of \$1.60 per
11 hundredweight that was applied.

12 Q. And now you said you approached it differently.
13 There's a \$2.20 minimum as I understand it from
14 Mr. Sims?

15 A. Yes.

16 Q. And that means that in some areas \$0.60 was not
17 added in the same way it was added by -- in terms of the
18 \$1.60 by USDA in Federal Order reform, correct?

19 A. I think that is a fair characterization.

20 Q. What is the philosophical justification for
21 National Milk to use a different mechanism than USDA used
22 in Federal Order reform?

23 A. Our initial approach was the same. Everybody
24 started with the USDSS results at \$1.60 per hundredweight
25 added in, as we requested. Mr. Sims spoke to the four
26 groups that split up and went their separate ways to work
27 on each geographic region. Most of them came back and
28 said, we can make this work with no adjustments with the



1 \$1.60.

2 At least one area, maybe more, I don't recall off
3 the top of my head, came back and said, we can't make
4 these add up. The price alignment doesn't work if we
5 leave it at \$1.60. We need some movement.

6 And so those sections of the country that had that
7 issue worked together to come up with a minimum price that
8 would be elevated above the \$1.60, and that's where the
9 \$2.20 came in. But that \$2.20 was not applied
10 universally, only in the areas that were having price
11 alignment issues.

12 Q. Was it price alignment issues or was it areas
13 where the model showed that the values were negative or
14 close to zero?

15 A. My understanding is it's price alignment issues.
16 But the folks that are following me that were in those
17 areas can speak to that directly. We did not have that
18 issue in the Mideast, and that's where I worked.

19 Q. I really want to thank you for your candor. Thank
20 you.

21 You talk about the widening distance between the
22 plants and the farms that supply them.

23 Is it true that farms supplies for milk are
24 increasingly distant from the populations that consume the
25 ultimate dairy products?

26 A. I think that's probably an accurate statement,
27 yes. They are trying to expand. Expansion requires more
28 land. And they are trying to go to areas where they can



1 acquire land to expand their farms. So that typically
2 means you are headed away from cities, not toward them.

3 Q. And when building a plant, a processor can weigh
4 the trade-off of either building a plant next to the farm
5 supply or next to the population it tends to serve,
6 correct?

7 A. They absolutely do make that evaluation.

8 Q. Do you know whether new plants are actually being
9 built that are farther away from the farm supply as
10 opposed to closer to the farm supply?

11 A. Yes.

12 Q. Which plants in the Mideast region that have been
13 opened are farther from the milk supply?

14 A. I spoke to two plants, both Class I plants, that
15 are closer to the population centers. One is in Tipp
16 City, Ohio, and one is in Northeast Indiana, near Fort
17 Wayne. Those are closer to the population and further
18 from the milk supply.

19 Q. Do you agree that the USDSS model takes into
20 account the cost of hauling milk from production to where
21 it's needed?

22 A. I would hope so. That was my contribution
23 25 years ago.

24 Q. And also the cost of getting that finished fluid
25 product to the market, correct?

26 A. Fluid and other products as well, yes.

27 Q. And neither the USDSS nor the Federal Market
28 Orders have any policy or decision about who bears those



1 transportation costs, correct?

2 A. That is correct.

3 Q. Because it is up to the supplier and processor to
4 negotiate how they will account for those hauling costs?

5 A. In the model?

6 Q. Outside the model?

7 A. I was thinking about something differently when
8 you asked that question, so I'll have to ask you to ask
9 that again.

10 Q. So my predicate question that you agreed with, I
11 believe, was that neither the USDSS nor the Federal
12 Marketing Orders have any policy or decision about who
13 bears those transportation occasions, and I think you
14 agreed with that statement.

15 A. Maybe I should qualify that. Minimum prices apply
16 at point of delivery, not point of production. So there
17 is a cost, there is an expectation that the product will
18 be delivered to that point of sale.

19 Q. FOB plant?

20 A. FOB plant, correct.

21 Q. And the USDSS model, again, takes that into
22 consideration in terms of figuring out the spatial values,
23 correct?

24 A. It doesn't care who bears that cost. It just
25 knows there is a cost.

26 Q. Thank you.

27 And so my follow-up question was that since the
28 model doesn't care, but nonetheless tells us where those



1 costs are, suppliers and processors are free to account
2 for that hauling cost maybe not being FOB plant, correct?

3 A. There is some of that negotiation that happens.
4 And it is a negotiation. But the minimum prices do apply,
5 as you said, FOB plant, and the negotiation starts there.

6 Q. And, in fact, there are supply agreements,
7 especially recently, that have provisions for fuel
8 charges, correct?

9 A. Yes. And we would have some of those in the
10 Mideast Area as well. They are not universal.

11 Q. So, again, maybe we can have a shorter
12 conversation than I had with Mr. Sims.

13 You have mentioned labor costs going up, fuel
14 costs going up, equipment costs going up, correct?

15 A. I suppose I didn't actually mention that. It is
16 in my written testimony, but I didn't actually say those
17 things. But, yes.

18 Q. Well, you understand that I have poured over your
19 testimony with great interest.

20 A. I am delighted about that.

21 Q. No one bought that.

22 A. I did. I believed you.

23 Q. You would agree, again, partly because of your
24 involvement, that the USDSS accounts for labor costs,
25 correct?

26 A. I'm sorry. Somebody coughed and I didn't hear
27 your operative word there. Say it again, please?

28 Q. That the USDSS accounts for labor costs, correct?



1 A. What sort of labor costs?

2 Q. The labor costs that you testified in your written
3 testimony have gone up.

4 A. The transportation?

5 Q. Whatever labor costs you included. It was just --

6 A. Yes.

7 Q. -- transportation?

8 A. Yes.

9 Q. Okay. And the costs of fuel are included in that
10 model as well?

11 A. Yes. The more recent versions of it, I'm not
12 exactly sure what is used for transportation. But as it
13 is an iterative process, I imagine that the same labor
14 factors and fuel factors that were there 25 years ago are
15 still there, but probably better and improved. But I do
16 not know what's in it today.

17 Q. Were you here for Dr. Nicholson's testimony last
18 week?

19 A. I was.

20 Q. Did you hear him say that sometime around 2010 or
21 2011 they had created I believe a separate hauling cost
22 model?

23 A. Yes. That seems to spell the demise of my
24 contribution. Yes.

25 Q. Well, it probably grew out of it. It wouldn't
26 exist but for you.

27 A. Yes.

28 Q. How about that?



1 And includes the cost of equipment, correct?

2 A. I'm not sure about that one. He would be the
3 expert on that. I don't know.

4 Q. Did National Milk ask Dr. Nicholson what was or
5 what was not in the model?

6 A. As far as transportation costs?

7 Q. Yes.

8 A. I don't think so. I just might -- I have this in
9 my testimony. I did not read it.

10 The National Milk Federal Order task force was
11 already well underway when I was asked to participate. So
12 there will be some things -- in fact, I was not around
13 participating when the task force asked Drs. Nicholson and
14 Stephenson to do that work. About the time I showed up
15 was just after that first model run had come. So I don't
16 know exactly what was asked for.

17 Q. Based upon your own work for your dissertation,
18 and your knowledge that it's an iterative process, do you
19 have any reason to believe that the USDSS model is
20 incomplete in any material way?

21 A. Well, there's always improvements that can be
22 made, but I would say it is as good a representative of
23 what it's supposed to be as what it can be. For a
24 transshipment model that is as detailed, with as much
25 input data as it has, it's fairly remarkable, and there
26 aren't any counterparts to that. So I think improvements
27 can be made, but a lot of that depends on the computing
28 power and these days founding somebody who wants to work



1 on it.

2 Q. So as I have read your testimony and listened to
3 it today, are there any of the modifications that you made
4 in the Mideast Area, made to correct or to improve on the
5 USDSS model?

6 A. Yes, I think so. Dr. Nicholson said it. I know
7 I've talked to Mark about this several times,
8 Dr. Stephenson. And it was certainly evident when I did
9 my dissertation work on it. It's a starting point where
10 it gives you some decent guidelines to say, what else
11 might we think about? If you wanted to look at a blank
12 map of the U.S. that said, fill in the Class I
13 differentials, and you had nothing to guide you, you might
14 have some real trouble doing that. And the USDSS gives
15 you, I think, initially, a really nice framework, nice
16 foundation that you can build on.

17 And a lot of what we did with the task force is
18 exactly what I'm talking about. Said, this is the
19 starting point, but this is not necessarily complete
20 because the model cannot account for anything, it does not
21 account for everything. And even Chuck and Mark would
22 tell you the same thing, that there is a fair amount of I
23 would say art -- that's been used before, I think that's
24 an appropriate term -- to go in and colorize this
25 framework and say, I think that's close, but it is maybe
26 not exact, and we can get a little bit more precise by
27 adding the information that we know specifically occurs in
28 that market.



1 Q. So let me back up for a moment.

2 On page 6 of your testimony, you say that "current
3 Class I pricing zones in the Mideast Area are too large
4 geographically and do not reflect today's costs of moving
5 bulk milk."

6 Do you agree that the USDSS model attempts to
7 account for that?

8 A. I think it attempts to account for that, yes.
9 It's certainly an improvement over what the current
10 Class I differentials are that were set up 25 years ago or
11 23 years ago.

12 Q. And then you go on to say in the same page, "When
13 attempting to move milk to satisfy Class I customer order
14 requirements, Class I differentials are the main
15 regulatory tool available to incentivize milk movements."

16 Correct?

17 A. Yes.

18 Q. So except for your discussion of the base price,
19 would you agree that Class I differentials are not
20 intended to cover production costs but rather to be a
21 relational and geographical tool to move milk between
22 locations?

23 A. I think that's a fair working definition of what
24 they are.

25 Q. And am I correct that in making your modifications
26 in the Mideast, you did not believe it was necessary to
27 add \$0.60 to the base differential?

28 A. We did not add \$0.60. We used the \$1.60 as the



1 base, used the model output, the USDSS model output, and
2 using that framework we were able to come up with what I
3 think is the sensible and explainable surface for the
4 Mideast Area.

5 Q. Thank you.

6 Going back to the hauling testimony on pages 4 to
7 6 of your testimony. I would ask a couple of questions
8 that I asked last week when Mr. Zalar was here.

9 You have included data for 2023 costs in your
10 testimony. But as I understand it from last week's
11 testimony from National Milk, that in order to keep the
12 results consistent with the model that was for May and
13 October of 2021, that you are not actually relying on 2023
14 costs at this point; is that correct?

15 A. The point of these two tables that I included,
16 that Mr. Zalar spoke to specifically and I did not, was to
17 merely show the increase in hauling costs as experienced
18 from as far back as we could go that we had known reliable
19 data to current. So these weren't anything more than just
20 to show how much costs have gone up, which is quite a
21 surprise when you look at some of the numbers that are
22 included here, it could go up that much in a relatively
23 short period of time. But these were not tied to the
24 model at all.

25 Q. Or the proposal?

26 A. To the model.

27 Q. Well, it's -- is the fact that -- is the 2023 data
28 that you have testified to -- or Mr. Zalar testified to



1 and you talked about very briefly, is it -- is the fact
2 that that data is 2023 versus 2021 used in any way in the
3 modifications that the Mideast working group made to come
4 up with the proposal for your area?

5 A. So in a sense I would say the answer is yes,
6 because as I spoke to the ten two-city pairings, we talked
7 about what it actually costs to get milk to move from
8 certain areas. And those -- we rely on those value
9 judgments and opinions and thoughts were based on what it
10 currently costs to move milk. So it would be more apt to
11 say those are current costs, not 2021.

12 Q. Do you know if that was a consistent principle
13 across the different working groups?

14 A. I do not know that. I -- actually the working
15 groups worked to some degree in isolation when we had to.
16 It was difficult to get that many people together. And
17 when we had our region-by-region discussions, we started
18 comparing numbers along those seams. We didn't
19 necessarily talk about details and how we got there. So I
20 don't know exactly what the other areas did, although I
21 suspect that they did something pretty similar to what we
22 did.

23 Q. So when you did look at these pairs and in 2023
24 costs, did you cover 100% of the costs while looking at
25 that?

26 A. I -- I wouldn't say that that way. It was more of
27 a question of what do we think it takes -- what kind of a
28 price difference do we think it takes to get milk to move



1 that -- from one location to the next? And it wasn't a
2 matter of saying, we want to cover 100% of the cost or any
3 percent of the cost. It was, what do we think it takes to
4 get that milk to move?

5 Q. Do you know whether USDA in its thinking has
6 considered using some percentage less than 100%?

7 A. I don't know that. I suspect that they probably
8 would.

9 Q. I'm pretty sure you were in California at the
10 time. But you are aware there was a hearing -- the only
11 changes in the Class I price surface since Federal Order
12 reform was in the Southeast, correct?

13 A. Yes.

14 Q. Would you accept my representation that in that
15 proceeding, DCMA, which was the cooperative, and USDA in
16 accepting the proposal, applied an 80% hauling cost
17 difference?

18 A. I will accept that. That would be, I think,
19 consistent with what we did in California at the time with
20 similar transportation issues.

21 Q. Did you apply an 80% calculation to the pairings
22 that you discussed in this testimony?

23 A. Not specifically.

24 Q. Generally?

25 A. Well, again, it wasn't -- the discussion was, what
26 do we think it takes to make milk move? So that number
27 may be higher or lower depending on what day, what week,
28 what month, what season. It was more of a general



1 assessment of, we think we need, for example, an
2 additional \$0.30 for that milk to move this direction.
3 Now, nobody said, and that will cover 80% of the cost, or
4 100% of the cost. It was, we think that's the number we
5 need to have milk move regularly.

6 Q. Now, you said a few moments ago that you got
7 involved in the process some time after it started.

8 Were you involved at the time that National Milk
9 created a spine of 19 strategically chosen anchor cities
10 extending across the United States?

11 A. It sounds like you read something right out of my
12 testimony. Yes, I was involved. That was my first
13 meeting.

14 Q. Do you know whether that was an approach used in
15 the past, either in Federal Order reform or in the
16 Southeast proceeding?

17 A. I don't know that it was used ever before. I
18 thought it was a very innovative way to get a lot of
19 people who are local experts on the same page. I thought
20 it was a -- a wonderful idea to get it started. And I
21 supported it 100%.

22 Q. I think I know the answer based upon something you
23 said a few minutes ago. But did National Milk provide --
24 establish any written parameters of how participants in
25 the various regional meetings were to determine which
26 criteria to apply to specific local challenges, or was
27 that left to those individual groups?

28 A. I think there was encouragement. It would have



1 been via e-mail, not a specific form, a document, to say,
2 this is how we expect that everyone's going to approach
3 this, take these things into consideration. It was a
4 brief list.

5 Q. Can you give us any context or specific
6 information as to how the 19 -- and maybe that should be
7 18 -- anchor cities were selected?

8 A. As that was my very first meeting, I was mostly
9 all ears. I did very little speaking. And it was a
10 discussion about, as Mr. Sims described, what are the
11 cities that are either close to one or more territories,
12 or in some cases cities that we knew maybe needed a closer
13 look, that had been problematic in the past. But I think
14 he described it aptly what we did and how we did it, as
15 far as picking out those 19 cities.

16 Q. Did the larger group, before breaking up into the
17 smaller groups, make a determination as to what values to
18 assign for the proposal to the anchor cities?

19 A. Yes. So we picked out the anchor cities. That
20 was the point, to say, these are values associated with
21 these 19 cities. And they were interpreted to be
22 flexible, but you might have to work kind of hard to get
23 somebody to change their point of view, because everybody
24 was trying to use those same numbers.

25 So, for example, in Charleston, West Virginia,
26 with the \$4.70 differential, that was the one that was
27 given to us that day, and I believe it remains the same --
28 remained the same in the proposal. But the idea was,



1 assign numbers that are relatively fixed, could possibly
2 change if you had to, but those are the ones you are going
3 to base everything that -- we'd go into the subgroups and
4 have your discussions, those are the ones that you are
5 going to be -- those are going to be the reference
6 standards. Those are the ones you are always going to
7 keep an eye on.

8 Q. When you said they were "given," was that somebody
9 provided them to the group or the group discussed?

10 A. I think for the most part they came out of USDSS.
11 I cannot swear to that, but I'm pretty sure that's
12 where -- if they didn't, if they weren't exactly that,
13 they were very close to that.

14 Q. Well, now, I agree Charleston, West Virginia, was.
15 So maybe we should get Exhibit 323.

16 THE COURT: Which one?

17 MR. ENGLISH: Exhibit 323, if we could get a copy
18 for Your Honor and Dr. Erba.

19 And, again, for the record, and for those who are
20 listening online, this is the now I believe resubmitted
21 MIG-prepared Exhibit MIG-31, that's been labeled and
22 admitted as Exhibit 323, that we have represented is an
23 extraction except for the last column being different of
24 the proposal versus the Wisconsin third iteration average.

25 THE COURT: And would you read into the record its
26 name, Exhibit 323 MIG --

27 MR. ENGLISH: 31.

28 THE COURT: Keep reading. I'm talking about the



1 heading here that includes the word "corrected."

2 MR. ENGLISH: Well, you have a copy I don't have,
3 Your Honor, because I've got the old version.

4 THE COURT: Okay.

5 MR. ENGLISH: You are more up to date than I am.

6 THE COURT: I feel quite elevated.

7 "Exhibit 323, MIG-31, NMPF, underlined, Final
8 Class I Differentials, June 2023, Anchor Cities Corrected
9 Header."

10 You may proceed.

11 MR. ENGLISH: I believe somewhere, if it's the
12 corrected version, it should also say "Prepared by MIG."

13 THE COURT: Well --

14 MR. ENGLISH: Maybe you don't have the most recent
15 version.

16 THE COURT: Well -- oh, you are correct. Okay.
17 To the left of what I read it says, "Prepared by MIG."
18 It's also a MIG exhibit, and I did read "Exhibit 323
19 MIG-31."

20 MR. ENGLISH: Your Honor, that -- what you have is
21 what we submitted today in response to our conversation
22 that I had with Ms. Hancock, that we were going to before
23 it was admitted make a modification, and the modification
24 is to say "Prepared by MIG." And we did submit that. And
25 if we didn't send a copy, we will get a copy to everybody.
26 BY MR. ENGLISH:

27 Q. So, Dr. Erba, looking at this, we have Charleston
28 anchor city -- I'm not going to try to pronounce the name



1 of the county -- West Virginia.

2 And indeed, there's a \$4.70 model average, and a
3 \$4.70 proposed, for a difference of zero, correct?

4 A. Correct.

5 Q. And similarly, although I believe in your
6 testimony you call it Verona, Virginia, in Row 2917,
7 Winchester, which is Winchester City, because Virginia is
8 what it is, in the Commonwealth of Virginia, similarly you
9 had a 4.50 model average, 4.50 proposal, and a zero
10 difference, correct?

11 A. Yes.

12 Q. Okay. Let's just briefly divert, because in your
13 testimony you refer to the city of Verona, Virginia, which
14 I believe is an unincorporated area of a county that's
15 90 miles southwest of Winchester.

16 A. Yes.

17 Q. So which one's correct?

18 A. Well, we used -- we used the -- them
19 interchangeably. And I -- as I understood, of course, I
20 didn't know where either one was when we talked about this
21 back in September of last year. I assume that they were a
22 little closer than that. But they are relatively close.
23 So we used those interchangeably. Verona was what we
24 talked about the day that I participated.

25 Q. Okay. It looks to me to be 89 road miles from
26 Winchester to the southwest.

27 But you have used them interchangeably?

28 A. Yes.



1 Q. Okay. Now, we'll talk a little later today --
2 maybe before lunch, maybe not -- about what was done for
3 Sharpsville, Pennsylvania. And you have already discussed
4 in your testimony, Chicago, which was down \$0.60.

5 So that decision basically to take Chicago down
6 \$0.60 was made during that initial meeting for setting up
7 the anchor cities?

8 A. No. That was -- it was an iterative process, and
9 Chicago was one of the cities that we revisited several
10 times as that was one of the key places where quite a few
11 of the territories, the regions that we're looking at
12 this. So I don't think it was ever as high as what the
13 model said it should be. We already talked it down as a
14 group to say, we need to start that lower.

15 The Mideast would have liked to have seen that a
16 little bit higher, but we agreed that we had to come up
17 with a number that everybody could live with, and that's
18 where we ended up. So that did change quite a few times.

19 Q. So in the Mideast you just said that you thought
20 that number actually should be higher, correct?

21 A. That's where we were initial ly trying to push it.
22 And we were -- and we don't market milk in Chicago from
23 the Mideast, typically. It made sense to us because of
24 the way that Chicago is set up, in terms of the traffic
25 especially. It's difficult to get trucks through there.
26 But we don't market milk there, so we deferred to the
27 people who do, and they said it should be lower, so we
28 said, okay, we can live with that.



1 But we had to -- our point was that one of the
2 initial things that we had to get corrected was Chicago
3 and Grand Rapids need to be about the same, so wherever
4 Chicago ended up is kind of where we started our analysis.

5 Q. I think you anticipated where I was going because
6 you discussed in your testimony about trying to match it.

7 So in a way, once Chicago went down from \$3.70 to
8 \$3.10, that meant Grand Rapids had to go down, correct?

9 A. They were already -- we already had a low number.
10 I think the initial number was 3.20 before we did any of
11 the work with the rest of the Mideast. So we didn't -- we
12 weren't very far off initially.

13 Q. Was that what the model had for Grand Rapids?

14 A. I don't know actually. I don't think so. I'm not
15 sure.

16 Q. So similar to Chicago being an iterative process
17 and somebody came back and said, that's what we need,
18 was -- was Denver discussed, Row 233, and set as part of
19 an iterative process, or was the \$0.80 increase from the
20 model in the proposal laid out when you first established
21 the anchor cities?

22 A. Denver, I do not know. That was very clearly
23 outside the Mideast Area, and I didn't have any
24 discussions about what was going on with Denver.

25 Q. Would that be similar if I asked you about
26 Amarillo?

27 A. Yes, that would be similar. I did not have any
28 discussions about what Amarillo should be.



1 Q. Okay. What about Norman, Oklahoma, was that also
2 similar?

3 A. Also similar. I did not have any discussions
4 about what would be in that central part of the U.S.

5 Q. What about either Phoenix or Yuma, Arizona?

6 A. Yes, very much so.

7 Q. "Very much so" that you did not involve --

8 A. I was not involved.

9 Q. And notwithstanding your prior involvement in
10 California, would that also be the case for the two
11 California cities, Los Angeles and San Francisco?

12 A. Very early on because it was a new process, I was
13 asked to sit in on some of the Western region meetings,
14 which I was happy to do, and explain what I understood
15 about the model and what it meant. Other than getting
16 them started on what that discussion should be and how
17 they should go about it and what those results meant, I
18 didn't participate in what those final numbers looked
19 like.

20 Q. How about preliminary numbers?

21 A. They would have been very preliminary. Like
22 a-year-ago numbers.

23 Q. Do you remember what they were?

24 A. Top of my head, no. Qualitatively, I would say
25 that the numbers in San Francisco and LA, I would have
26 encouraged them to be higher than what the model said for
27 the reasons that have been discussed, traffic concerns
28 mainly. But beyond that, no.



1 THE COURT: What concerns mainly?

2 THE WITNESS: Traffic. Congestion.

3 THE COURT: I still don't --

4 THE WITNESS: Traffic. Cars, trucks, highways.
5 Traffic.

6 MR. ENGLISH: Traffic, T-R-A-F-F-I-C. Correct?

7 THE WITNESS: Yes.

8 THE COURT: Thank you. I am familiar with
9 traffic. I don't know why I had trouble with that word.

10 MR. ENGLISH: Because we have been in this
11 wonderful jurisdiction with roundabouts.

12 BY MR. ENGLISH:

13 Q. Did you then choose a different subset after the
14 anchor cities to be the next set? Was there sort of like
15 a subset of anchor cities within the Mideast?

16 A. Yes. And that's part of that ten two-city
17 pairings that I went through in -- in some detail. Those
18 are the cities that made the most sense to us to get some,
19 again, I would say maybe a secondary spine that would run
20 across the Mideast. It's something that everybody could
21 understand, all the participants in the Mideast discussion
22 could understand where those were and what the challenges
23 were to get milk to move there.

24 Q. And was the idea that these anchor cities would be
25 major consumption points?

26 A. Not necessarily. They tended to be larger cities,
27 although we have some on there that are not large cities.
28 Those were just the ones that are the most familiar with



1 the folks that were in the discussions.

2 Q. So, for instance, Pittsburgh is a pretty large
3 city, correct?

4 A. Yes, it is.

5 Q. And Sharpsville is not a very large city, right?

6 A. That's correct.

7 Q. So why was Sharpsville chosen rather than
8 Pittsburgh?

9 A. Sharpsville is a location of one of the Class I
10 plants, and we wanted to make sure that we had discussion
11 around that, particularly since there's a large cheese
12 plant less than an hour away from that. So it was an
13 important city to get right.

14 Q. Okay. But that large cheese plant is running at
15 full capacity, correct?

16 A. I think for the most part it is, yes.

17 Q. So it's not as if -- like the conversation that
18 Mr. Rosenbaum had with Mr. Sims yesterday, it's not the
19 same thing as pulling milk away from a cheese plant in
20 Amarillo to Dallas, is it?

21 A. I don't know if I would make that comparison. I
22 wouldn't -- I wouldn't want to hazard that guess. But I
23 do know it is difficult to get milk there, and it's been
24 increasingly difficult to get milk there. And it is a
25 challenge. Every year we have the negotiation about how
26 to set up the supply agreement with that plant and -- I'll
27 just leave it at that.

28 Q. So when we were talking about "that plant," we



1 were referring to the cheese plant, not the fluid milk
2 plant?

3 A. The Sharpsville plant. Sorry. I got this mixed
4 up. It is New Wilmington that's the cheese plant.
5 Sharpsville is the Class I plant.

6 Q. And the answer to your question a minute ago was
7 about getting a supply to the New Wilmington plant,
8 correct?

9 A. New Wilmington cheese plant, yes. They are about
10 an hour apart from each other.

11 Q. So with respect to Charleston, you then worked
12 your way north, I believe you said? Your testimony,
13 you --

14 A. Well, we kind of branched out from Charleston in
15 virtually all the directions that would be applicable to
16 the Mideast. So north and west and far north. Yes.

17 Q. But with respect to the conversation -- and I
18 apologize, I should have predicated this. So we're about
19 to talk about Western Pennsylvania.

20 And to that extent, as I read your testimony,
21 that's where you worked north from Charleston, correct?

22 A. Yes.

23 THE COURT: I just want to make sure this is easy
24 for anybody to grasp wherever they tune in.

25 Have all your references today been to Charleston,
26 West Virginia?

27 THE WITNESS: Yes.

28 THE COURT: Thank you.



1 MR. ENGLISH: I apologize, Your Honor. I should
2 have made that clear. Yes, on Exhibit 323, we're
3 discussing the anchor city, Row 2979, Charleston, West
4 Virginia, FIPS code 54039. And I do not intend, and
5 unless our witness takes us into an unexpected direction,
6 to talk about a different Charleston.

7 But thank you, Your Honor.

8 BY MR. ENGLISH:

9 Q. And so as I think your testimony on page 13 says,
10 you looked at the results, and then you fine tuned it some
11 more, correct?

12 A. Yes.

13 Q. Okay. And that was I think, quote, to correct for
14 pricing inconsistencies, correct?

15 A. Yes.

16 MR. ENGLISH: I hesitate to do this before lunch,
17 Your Honor, but if we could have the witness provided with
18 Exhibits 300 and 301.

19 THE COURT: We can.

20 Now, are -- can the record copy be returned yet,
21 and if not --

22 MR. ENGLISH: I'm going to ask for it again. So
23 the question -- I think it makes more sense to keep it,
24 but I'm not going to use it right this second. So if you
25 would rather return it and wouldn't mind retrieving it
26 when I need it later, then that's fine. I'm certainly not
27 going to use it before lunch.

28 And not to try to break for lunch early, but I



1 don't know if now's the time to start with 300 and 301 or
2 whether you want to --

3 THE COURT: No, it is time to start with them.

4 I would like us -- Mr. English, if you will help
5 me -- I would like us to return these record copies so
6 that they are properly with the Agricultural Marketing
7 Service over lunch.

8 So now we have borrowed another record copy that
9 the witness is being handed. Thank you, Mr. English, for
10 that. And I will get my copy.

11 And did you bring rulers?

12 MR. ENGLISH: I haven't had time to buy them, Your
13 Honor, for some reason.

14 THE COURT: All right. I'm situated and ready to
15 go. Thank you.

16 BY MR. ENGLISH:

17 Q. So we're going to look at Pennsylvania and --

18 THE COURT: Which one? 300?

19 MR. ENGLISH: 301.

20 THE COURT: 301. Okay. Good.

21 MR. ENGLISH: 301.

22 BY MR. ENGLISH:

23 Q. And I want to look at Rows 2220 -- sorry. It's
24 the ID is -- so 2221 is the row. 2237 and 2254.

25 And what these are, are Butler County, which is
26 Pittsburgh, correct, Dr. Erba?

27 A. I think Pittsburgh is in Allegheny County, but
28 they are right next to each other.



1 Q. Thank you very much. 2213.

2 THE COURT: Tell me again what row?

3 BY MR. ENGLISH:

4 Q. All right. We're not going to look at Row 2221.
5 I believe we're going to look at 2213, which is Allegheny
6 County. Thank you, Dr. Erba. Working too late last
7 night.

8 And that's Allegheny County, and that's where
9 Pittsburgh is, correct?

10 A. I believe that is correct.

11 Q. And Sharpsville is in Mercer County?

12 A. Yes. That is correct.

13 Q. And that is 2254.

14 And Fayette is 2237, and that's also known as
15 Uniontown, correct?

16 A. Yes.

17 Q. Okay. So, now, linking first, Allegheny, which is
18 Pittsburgh, and Mercer, Row 2254, which is Sharpsville, do
19 you agree that right now the differential for both is
20 \$2.10?

21 A. Yes.

22 THE COURT: And which column is that?

23 MR. ENGLISH: That's Column L. Thank you -- I'm
24 sorry, on this sheet, it is Column I. It was always
25 Column I, but Column I.

26 THE COURT: Current differential.

27 MR. ENGLISH: Current differential is \$2.10.

28 BY MR. ENGLISH:



1 Q. And I was ahead of myself. Column L would be
2 Sharpsville at \$4.20, and Allegheny at \$4.15, correct?

3 The model average would be \$4.15?

4 A. Yes.

5 Q. And then if you go to the proposal, although you
6 have modified it, so I'll go to the modified number,
7 because the proposal from Column O has \$4.40, but now for
8 Pittsburgh you say \$4.20, correct?

9 A. Yes.

10 Q. Okay. So that's \$4.20. But Mercer County is \$4,
11 correct?

12 A. Yes.

13 Q. So today, Sharpsville and Pittsburgh have the same
14 Class I differential. Under the model, Pittsburgh would
15 be \$0.05 less than Sharpsville, and after your adjustment,
16 today, now Sharpsville is \$0.20 less than Pittsburgh,
17 correct?

18 A. I believe that is correct.

19 Q. And plants in Pittsburgh are all proprietary
20 operators, correct?

21 A. I don't know that for sure, but I'm going to say I
22 think so.

23 Q. And Sharpsville is owned by DFA, correct?

24 A. Sharpsville is owned by DFA.

25 Q. And in your testimony you said that Sharpsville
26 doesn't compete directly in Pittsburgh with the Pittsburgh
27 operations, correct?

28 A. Yes. That -- Mercer County is several counties



1 north of where Pittsburgh is, so they're not in that same
2 geographic area.

3 Q. But, in fact, that plant sells significant volumes
4 in Pittsburgh, doesn't it?

5 A. I don't know that.

6 Q. You would have no reason to contradict Mr. Turner
7 when he returns and will say that?

8 A. I -- I truly don't know. You would have to ask
9 somebody who actually knows what those selling patterns
10 look like.

11 Q. In fact, because that's not your role, right?

12 A. That is not my role.

13 Q. So what specifically about the model is incorrect
14 when it comes to the conclusion that whether a nickel or
15 the same, Pittsburgh and Sharpsville should be either a
16 nickel lower for Pittsburgh or the same as Sharpsville?
17 What is wrong with the model on that particular issue?

18 A. I think the issue there is the same as what it is
19 other places, and it doesn't really take into account the
20 difficulty of moving milk in or out -- or dairy
21 products -- out of those plants into those areas. So --
22 with respect to Allegheny County, it's more difficult to
23 move through Pittsburgh. You would expect that it's far
24 enough south where there should be a price difference
25 anyway, different from Sharpsville, and that's the way we
26 assigned it. This was also close enough to the border of
27 the Northeast where we had to make some adjustments to
28 make sure that we lined up with the Northeast as well. So



1 those would be some of those counties that were lying
2 close enough to the seam where we needed to get some
3 adjustments made.

4 Q. Well, there's a lot to unpack there. Let's start
5 with, before you get to the Northeast, you have got the
6 unregulated territory between Orders 1 and 33, correct?

7 A. Yes.

8 Q. And Western New York is also subject to a state
9 order and not necessarily the Federal Order, correct?

10 A. As far as I understand it, yes.

11 Q. Okay.

12 THE COURT: Mr. English, I hate to stop you, but
13 I'm going to. I would like to break for lunch now for
14 about an hour.

15 MR. ENGLISH: Do we want to return those two
16 during lunch?

17 THE COURT: Yes. Would you please take a moment
18 now and take those record copies and return them to the
19 Agricultural Marketing Service? And then we'll have you
20 get them again after lunch.

21 And is there anything further that we want to
22 announce before we break for lunch?

23 Nothing further. We'll resume with this when we
24 get back.

25 Please be back and ready to go at 1:05 p.m. We
26 break at 12:02 p.m.

27 (Whereupon, a luncheon break was taken.)

28 ---o0o---



1 TUESDAY, OCTOBER 10, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's go on record.

3 We're back on record at 1:05 p.m.

4 There is a preliminary event, Mr. English.

5 Now, I just want to refer just a moment to the
6 Exhibit 318, and on page 41 there's a mention of the
7 colored pencil crews. Colored pencil.

8 Now, the wonderful Agricultural Marketing Service
9 has presented me with tools for this proceeding. Three of
10 them, I will guard them with my life. I allow the witness
11 to use one. The name of this ruler is the "Pencil Grip."
12 And since I only need one, and I have given the witness
13 number two, and I have a third one, I would allow whoever
14 is at the podium to use number three.

15 Would you approach, Mr. English?

16 MR. ENGLISH: I approach, and I accept. And I
17 thank you, and I thank AMS.

18 THE COURT: Every knew I needed a yardstick. The
19 yardstick would have been ideal. But this will be easier
20 in my luggage back and forth.

21 MR. ENGLISH: And I also promise to return it. Or
22 leave it up here for the next person.

23 Your Honor, good afternoon.

24 BY MR. ENGLISH:

25 Q. Dr. Erba, good afternoon. My name is Chip English
26 for the Milk Innovation Group.

27 When we broke, we were looking at Exhibits --
28 well, I haven't yet looked at 300. So, you know what,



1 let's just bring up 301 for now. And if I may have a copy
2 again for the witness, which we returned during lunch to
3 the care of USDA.

4 A. Thank you.

5 Q. Now, I have a few preliminary questions before
6 getting back to that.

7 One, going back to near the beginning of our
8 conversation, and this is about if there were principles
9 articulated in writing. And I did not follow at the time,
10 but am I correct that you said you saw one e-mail or maybe
11 more than one -- an e-mail early on that articulated
12 discussion points or criteria, maybe I'm getting it wrong,
13 as to what the principles would be for the modifications?

14 A. I would call it more of a reminder of the kinds of
15 things that each of the participants need to keep in mind.
16 It wasn't a prescriptive list, and it certainly wasn't
17 meant to be limiting. It was more of a reminder of, this
18 is what we discussed in our initial meeting, see if you
19 can adhere to these same kinds of ideas as you have your
20 individual discussions.

21 Q. And do you recall what the reminder list was?

22 A. I think it was similar to what was mentioned
23 earlier and just basics of the markets. So where are the
24 supply points, where are the demand points, what are any
25 considerations we might have for why we think it is --
26 milk is more challenging to market -- milk is more
27 challenging to market in some areas versus others.
28 Just -- just basic reminders of what it is we're trying to



1 do and how we're trying to do it.

2 Q. So thank you very much.

3 So now going back to where we broke off before
4 lunch, and I haven't been this specific, but I'm
5 essentially discussing page 14 of your testimony.

6 And we were discussing the question of
7 Sharpsville, Pennsylvania, Mercer County, and the
8 proprietary operations in Pittsburgh, Allegheny County,
9 and the fact that presently the Class I differential is
10 the same, the model had a modest decrease in the -- sorry,
11 I shouldn't use that phrase -- had a model \$0.05
12 difference in favor of Pittsburgh, and when National Milk
13 made its proposal, as corrected or adjusted today,
14 Pittsburgh is \$0.20 higher than the Sharpsville DFA plant,
15 correct?

16 A. You are going to have to give me a second to find
17 my rows again.

18 Okay. Yes.

19 Q. "Yes," you agree?

20 A. Yes.

21 Q. Now, what specific information do you have for
22 this record that suggests the model was incorrect and that
23 National Milk's approach granting DFA a \$0.20 advantage
24 over the proprietary operations in Pittsburgh is the
25 correct solution?

26 MS. HANCOCK: Your Honor, I don't know that that's
27 the right way to state that, and I don't want the witness
28 to respond to an argumentative question in a way that



1 adopts testimony that is not his.

2 THE COURT: I agree with you, Ms. Hancock.

3 Clever, Mr. English, but I would like you to
4 eliminate your distinction between the DFA plant and the
5 proprietary plant and instead ask a more open-ended
6 question.

7 MR. ENGLISH: Well, I --

8 THE COURT: I know it is cross.

9 MR. ENGLISH: It is cross, and I think it matters
10 a whole lot as we go through this conversation, Your
11 Honor, and it's going to be -- it is going to happen
12 repeatedly, because the fact of the matter is that over
13 and over again there are going to be examples where the
14 model had a result that either had plants at the same or
15 in the reverse order they now end up in, and,
16 coincidentally or not, the cooperatives end up with values
17 that are lower than proprietary operations.

18 And that is an important point for this record.
19 It's important for USDA to consider how it is -- how AMS
20 is being asked to use the system in what we view as an
21 anticompetitive way.

22 THE COURT: I appreciate your point of view, and
23 that is your argument for me to allow you to ask the
24 question as stated, but I decline to. Rather, do what you
25 have very carefully done. You have step by step had this
26 witness testify as to where these plants are, and if you
27 want, you can go back over that to make your point as to
28 where they are.



1 But that final question should be phrased in such
2 way that your ultimate determination of what happened is
3 not in your question, but rather this witness can testify
4 as to the facts.

5 MR. ENGLISH: So is it your instruction that I
6 cannot identify the ownership of the plant as I ask the
7 question?

8 THE COURT: No, no, no. That's not my
9 instruction.

10 MR. ENGLISH: All right. I will -- I will see --

11 THE COURT: I would like you to identify the
12 ownership of the plants before you get to the ultimate
13 question. Which I think you did before lunch. But I'm
14 inviting you to go back over that.

15 MR. ENGLISH: Thank you, Your Honor.

16 BY MR. ENGLISH:

17 Q. So what specific information do you have,
18 Dr. Erba, for the record, as to why plants located in
19 Pittsburgh should end up with a higher Class I
20 differential than a plant located in Sharpsville?

21 A. It follows the same approach that we used
22 everywhere, and that is it's more difficult to move milk
23 to the east and to the south. And Pittsburgh is one of
24 the southernmost occasions of where we move milk in the
25 Mideast fairly routinely. So to me, it's not particularly
26 alarming that the differential around Pittsburgh is higher
27 than one that's being compared to quite a ways north of
28 that.



1 I guess the other thing I would look at is to say
2 that the numbers that we have proposed in the NMPF
3 proposal are not that far off what the -- what the model
4 recommended to begin with. So I can understand why
5 there's maybe a little bit of a concern that there is that
6 difference, but it wasn't intentional, despite what it may
7 appear to be. It was just the way we came across, and we
8 had the discussions how we set the differentials up to
9 have a continuous, contiguous, explainable price surface.

10 Q. Can you provide specific economic information as
11 to why you deviated from the model in the case of
12 Sharpsville and Pittsburgh where the model had Pittsburgh
13 \$0.05 less than Sharpsville?

14 A. No. Qualitatively, yes. If you want specifics,
15 no. Just we know that it's more difficult to move milk in
16 that direction, and that is how we set up those
17 differentials in that part of Pennsylvania.

18 Q. So if Mr. Turner appears later in this hearing to
19 discuss his disagreement and specifics as to why he thinks
20 that moving milk to Pittsburgh is at least as easy as
21 moving it to Sharpsville, you do not have specific
22 information to contradict him?

23 A. No. But I would be interested to hear what he has
24 to say about it.

25 Q. Similarly -- and I confess, I was a little
26 confused, but I think I understand it -- at the end of the
27 paragraph, at the top of the page discussing Western
28 Pennsylvania, you say, "The same sentiment applies to the



1 plant located in Fayette County as is located further
2 south of the Pittsburgh market."

3 That's Uniontown, correct?

4 A. I believe that's correct.

5 Q. Okay. And when you say "the same sentiment," do
6 you -- what are you referring to? That your view that the
7 plant in Mercer County is not competing directly with that
8 plant in the Pittsburgh market?

9 A. I would say the same sentiment in this case means
10 that it's more difficult to move milk south and east, and
11 that's what's reflected in those Class I differentials.

12 Q. And what specific information do you have for
13 deviating from the model with Fayette County?

14 A. I guess I better see what the deviation is first.

15 So, again, this is a, from what I can tell, \$0.15
16 per hundredweight difference from what was proposed to
17 what was suggested by the model. And our feeling as a
18 group was that we need a little bit more of a differential
19 to attract the milk to get that far south and east of the
20 Mideast Area. Beyond that, I have nothing more specific.

21 Q. And, now, do you agree that the plant in Mercer
22 County is owned by DFA?

23 A. There is a plant in Mercer County owned by DFA,
24 yes.

25 Q. Is there any other plant in Mercer County?

26 A. Well, I'm not exactly sure where the county line
27 is, but there is that cheese plant and Class I plant that
28 are in close proximity. I'm not sure if they are in



1 different counties or not.

2 Q. And I apologize for my lack of specificity. Is
3 there a -- the plant I have been referring to in
4 Sharpsville is a Class I plant, correct?

5 A. Yes.

6 Q. Is there another Class I plant in Mercer County?

7 A. Not that I'm aware of.

8 Q. And the plants in Pittsburgh and Uniontown,
9 Pennsylvania, are proprietary plants, correct?

10 A. Yes. I believe that's correct.

11 Q. Okay. So let's go to the next paragraph, Ohio.
12 So Clark County, you have adjusted downwards in
13 your testimony from \$4 to 3.70, correct?

14 A. That is correct.

15 Q. And Wayne County, Indiana, is west of Clark
16 County, Ohio, correct?

17 A. That is correct. Yes.

18 Q. And, now, your principle that it is more expensive
19 to move milk east, shouldn't Clark County then be above
20 Wayne County?

21 A. I suppose it could be. But in the way we
22 discussed this, it made the most sense to move that into
23 the same pricing zone because our feeling was, amongst the
24 cooperative representatives that discussed this, that
25 those plants would all compete for the same business, so
26 they should be in the same zone.

27 Q. And that principle applied for a Clark County
28 operation that's a -- owned by a co-op, correct?



1 A. I'm not positive of that, so I will just say I
2 don't know.

3 Q. Okay. Nonetheless, the principle of equalizing
4 raw product cost, as you discuss at the end of the
5 paragraph, applied with respect to Clark County, correct?

6 A. Yes.

7 Q. But that principle did not apply with respect to
8 Western Pennsylvania, did it, sir?

9 A. I think it did. It's just different geography,
10 different roads, different ability with different ease of
11 moving milk in and dairy products out. So it's -- to me,
12 they are not exactly the same thing. And we would suggest
13 that, again, we are not very far off of what the model
14 suggested, and we're comfortable with where we ended up.

15 Q. But you don't have specific evidence for those
16 costs of those roads or evidence to contradict Mr. Turner
17 if he comes and says something different at the end of the
18 hearing?

19 A. Again, I would be interested to hear what he has
20 to say.

21 Q. Let's turn to your testimony, Figure 1.

22 A. Excuse me. Can I move this to the side now, or
23 no?

24 Q. You can move it to the side, but we will come back
25 to it.

26 So your testimony, which is Exhibit 336 NMPF-38
27 Amended, I want to look at page 15.

28 A. Yes.



1 Q. And I happen to be one of those people who thinks
2 a picture is worth a thousand words. And I'm sure I'm way
3 past a thousand.

4 When you look at this map, this is the NMPF
5 proposed Class I differentials, correct?

6 A. For Figure 1?

7 Q. Yes.

8 A. Yes. Yes.

9 Q. And this is, I believe, corrected for Pittsburgh
10 at \$4.20, correct?

11 A. No.

12 Q. It's not?

13 A. No. Unfortunately, I did not go back and review
14 the graphics according to the testimony I had. So
15 Allegheny County is still incorrectly marked on this, as
16 is Clark County. They are in the wrong pricing zones.

17 Q. Okay. So Pittsburgh in your picture is in a blue
18 zone?

19 A. Yes. And it should be yellow.

20 Q. Well, I think my principle still applies.

21 If you look at the map, southwest into Ohio, the
22 line looks, you know, relatively straight coming -- moving
23 up at a 45-degree angle; would you agree? The bottom of
24 the red line --

25 A. And the blue --

26 Q. -- and the counties?

27 A. And the blue line --

28 Q. And the blue --



1 A. -- where they intersect.

2 Q. -- line where they intersect --

3 (Court Reporter clarification.)

4 BY MR. ENGLISH:

5 Q. So looking at Figure 1, and looking at Ohio, and
6 looking at the red line and the blue line, you would agree
7 that it's moving relatively close at a 45-degree angle,
8 correct?

9 A. Yes.

10 Q. Okay. But when you get to Pennsylvania, that
11 stops, and if -- but I'm asking -- so what I'm asking is,
12 if you continued that line moving at the same 45-degree
13 angle, wouldn't you include most, if not all, of that
14 county that Pittsburgh is located in in the red zone?

15 A. That would be another way of doing it. Yes.

16 Q. Thank you, sir.

17 So we have talked a couple times around this
18 issue, and let's be a little more specific.

19 Order 1 and Order 33 do not directly connect, do
20 they? There's no place where you could draw a line where
21 Order 1 and Order 33 are connected, correct?

22 A. I thought there was, but maybe there is not. If
23 there is any place, it's very slim.

24 Q. Okay. And there's a fair number of counties in
25 Central Pennsylvania that are not -- not part of either
26 marketing area, correct?

27 A. Yes.

28 Q. And to the extent that they are regulated by



1 Federal Orders, it is as partially regulated plants under
2 Section 76, correct?

3 A. I believe that would be correct, yes.

4 Q. So they are not required to pay into the pool,
5 Federal Order pools. They are -- they have to account for
6 the pools under one of those options of 76, but they don't
7 actually have to contribute to the pool if they use the
8 Wichita option, correct?

9 A. That's a little beyond my understanding, so I'm
10 going to take a pass on that. I don't know the answer.

11 Q. Do you know or did you consider in your committees
12 in establishing the differentials on that eastern side of
13 the Mideast order, the competitive situation that those
14 plants -- fully regulated plants have with respect to
15 partially regulated plants in the central part of
16 Pennsylvania?

17 A. I can say we did not make that detailed a
18 comparison. Our concern was to set up Class I
19 differentials that would aid us in the movement of milk to
20 Class I plants from the Mideast Area. We did not go into
21 a -- any kind of in-depth discussion or decision-making
22 using some of the more esoteric bits of information about
23 Federal Orders that you have described.

24 Q. On page 15 of your testimony, you discuss that for
25 387 counties in Federal Order 33 and parts of Order 5 in
26 Central Kentucky and Southern Indiana, National Milk
27 Producers Federation's proposal only modifies -- is it
28 still 3% or has that number changed, of counties by more



1 than \$0.25?

2 A. The correct number should be 406 counties. That's
3 at the bottom of page 15.

4 Q. I -- I should have started here actually.

5 Do you know -- because I confess, I spent my time
6 on the original -- do you know what the amendments are in
7 Amended 38 as compared to 38? Do you recall?

8 A. Yes. I could not probably point out every single
9 one of them. A lot of them were grammatical.

10 Q. Okay. Ignore the grammatical ones.

11 A. The section we're on currently on Section 15, when
12 I did the sorting in the Excel file, I inadvertently left
13 a filter on or off, I don't know which, but I end up with
14 a smaller number of counties than there should be. So
15 that was the -- the main correction in amended is this
16 paragraph that we're talking about that starts on 15 and
17 carries over to 16 and has to do with the number of
18 counties.

19 Q. Thank you, sir.

20 A. Yes.

21 Q. Do you know for those areas how many counties
22 National Milk modified by any amount from the model
23 average?

24 A. I don't know that. I did not count it up that
25 way.

26 Q. Do you know with respect to just Order 33 -- so
27 not including any counties from Order 5 -- how many
28 counties there are and how many you modified?



1 A. I didn't count it up that way. We split it out by
2 the different orders.

3 Q. Would it surprise you if you looked at just
4 Order 33, there are 303 counties and National Milk
5 Producers Federation proposes to modify 278, or 92%?

6 A. No, that wouldn't surprise me too much. I guess I
7 would point out that most of the modifications we made or
8 are suggesting to make are fairly small.

9 Q. So let's bring up 300.

10 A. 301.

11 Q. I want you to keep 301 and 300. I'm going to talk
12 about the --

13 THE COURT: He's just getting his delivered.

14 MR. ENGLISH: Yes, I understand.

15 THE COURT: Thank you.

16 BY MR. ENGLISH:

17 Q. So looking at Exhibit 300 -- and I think you were
18 here for Mr. Sims' examination. I'm going to focus on
19 Columns O and Columns S of 300.

20 THE COURT: O and?

21 MR. ENGLISH: O and S.

22 THE WITNESS: Okay.

23 THE COURT: S.

24 MR. ENGLISH: S as in Sam. O as in Ohio.

25 THE COURT: Thank you.

26 BY MR. ENGLISH:

27 Q. Do you know why in some instances Column O is
28 different from Column S?



1 A. I don't know. As I have pointed out before, this
2 was an iterative process. And it strikes me that O was
3 probably an earlier version of what the discussion was,
4 and S was some kind of a later version that had additional
5 discussion, perhaps some small changes made to get prices
6 aligned better. I know that's what we did in the Mideast.
7 I suspect it was the same thing that was happening
8 everywhere.

9 Q. Well, actually, you say you know it was the
10 Mideast. At least when we did the analysis, it appears to
11 us that in the Mideast there were no changes between
12 Column O and Column S.

13 Would that surprise you?

14 A. Maybe a little bit, because I know we went through
15 this process in iterative ways. It just depends on
16 which -- what the date was that Column O represents
17 relative to Column S. And from what you said, I would
18 suggest that maybe Column O was later in the process and
19 closer in date to Column S than maybe what I was thinking.

20 Q. And now keeping 300 in front of you with Column S,
21 and bringing up 301 with Column O. So, again, 300 was
22 what National Milk submitted in May; 301 was what National
23 Milk submitted in June.

24 Do you know from your information what differences
25 there are between Exhibit 300, Column S, and Exhibit 301,
26 Column O?

27 A. Specifically, no.

28 Q. Again, would it surprise you if, in the instance



1 of the Mideast, the answer is there were no changes?

2 A. That doesn't surprise me too much. We had our
3 price surface dialed in relatively early in the process,
4 and our discussions with Northeast, Southeast, to some
5 extent Midwest, were done relatively early in the process.
6 And I would say our -- and this is just going off of
7 memory -- our last changes were back in May, if I'm not
8 mistaken. So they had been pretty well set for a while.

9 Q. Give me one moment.

10 Thank you very much, sir. I am done. That means
11 I've got a few minutes to get back his exhibits and my
12 materials. And I appreciate very much your time, sir.

13 THE COURT: Let's go off record, take a
14 five-minute stretch break, while we move these papers
15 around.

16 (Whereupon, a break was taken.)

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

18 We're back on record at 1:42 p.m.

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

21 CROSS-EXAMINATION

22 BY MR. ROSENBAUM:

23 Q. I'm going to ask questions that relate to pages 17
24 through the end of your testimony, which is Hearing
25 Exhibit 336, namely the question of Grade B dairy farms
26 versus Grade A dairy farms. Okay?

27 A. Yes.

28 Q. Okay. So to orient ourselves, it is correct,



1 isn't it, that today more than 99% of all milk marketed is
2 by producers in the United States is, in fact, Grade A
3 milk?

4 A. That's what was discussed earlier in this hearing,
5 yes.

6 Q. So to the extent that there was historically some
7 need or desire to persuade farmers to meet Grade A dairy
8 requirements, that's a battle that's been won; is that
9 fair?

10 A. If you are talking about converting from Grade B
11 to Grade A dairy, then, yes, I would say that's a battle
12 that has been won.

13 Q. Now, I'm going to leave aside the question whether
14 in light of that answer and those facts the cost of
15 converting from Grade B to Grade A has any current
16 relevance, and I'm going to focus on what the cost may, in
17 fact, be.

18 Now, I would think that to determine what the cost
19 is of converting from Grade B to Grade A, you would start
20 with determining what actually are the requirements
21 applicable to a Grade B plant.

22 Did you -- did you look at that question in doing
23 your analysis?

24 A. The requirements for a Grade B plant?

25 Q. Yes -- excuse me, farm. I misspoke.

26 Did you -- did you start in analyzing the cost of
27 converting to or maintaining a Grade A plant -- excuse
28 me -- farm -- sorry, I keep saying plant, I mean farm --



1 start with an investigation of what requirements apply to
2 a Grade B farm?

3 A. No.

4 Q. Well, how is it you can determine what the cost is
5 of converting from a Grade B farm to a Grade A farm if you
6 don't even know what the requirements are for a Grade B
7 farm?

8 A. Because we assume we are starting with a Grade B
9 farm that meets those requirements already. That's why
10 it's a Grade B farm.

11 Q. But don't you have to then determine what the
12 differences are between the requirements for the Grade B
13 farm and the Grade A farm?

14 A. We did.

15 Q. You did?

16 A. That's what's in the testimony.

17 Q. But you did that without actually looking to see
18 what the requirements were for a Grade B farm?

19 A. We assume we start with a Grade B farm.

20 Q. And what did that mean in terms of the physical
21 requirements for a Grade B farm?

22 A. Whatever those could be. This is a theoretical
23 look at how do you get from a Grade B farm, dairy farm, to
24 a Grade A farm. And the requirements that we were
25 interested in is what things are missing from a Grade B
26 farm that need to be in place for a Grade A farm.

27 Q. And you made that determination without looking
28 into what the requirements were for a Grade B farm?



1 A. We assume we started with a Grade B farm.

2 Q. I know, but you didn't -- you didn't check what
3 the actual requirement -- statutory or regulatory
4 requirements were for such a farm; is that right?

5 A. We did not.

6 Q. Okay. So I'm holding up a document that is a
7 publication by the U.S. Department of Agriculture,
8 Agricultural Marketing Service Dairy Programs, called
9 "Milk for Manufacturing Purposes and Its Production and
10 Processing, Recommended Requirements, Effective July 1,
11 2011."

12 Are you familiar with that document?

13 A. I'm not.

14 Q. Do you know whether this is the current version of
15 the document? I assume the answer to that is no?

16 A. I do not know.

17 Q. Do you know whether this document has been adopted
18 as law in many states?

19 A. I do not know.

20 Q. It's called "recommended requirements," but do you
21 know whether it actually is literally a legal requirement
22 in a number of states because they have adopted it?

23 A. I am not familiar with that document, so I really
24 can't answer that question.

25 Q. Do you know whether many countries, including the
26 EU, require that before any product is exported from the
27 United States there, the milk must come from a farm that
28 at least meets the requirements of this document?



1 A. I don't know what's in that document, so I can't
2 answer that question.

3 Q. Okay. So let's look at the items you identify on
4 page 21, starting on page 21, as costs. And you have
5 Items 1 through 11, correct, going on to the next page?

6 A. Yes. That is correct.

7 Q. And these are costs that you assert are necessary
8 to get from a Grade B farm status to a Grade A farm
9 status, correct?

10 A. I would say it differently. The requirements are
11 what they are. We simply took an example and said, what
12 might those costs actually look at -- look like? And part
13 of our exercise was to see if the \$0.40 per hundredweight
14 that USDA used in the 1999 decision still applied. And we
15 wanted to look at the maintenance cost, not necessarily
16 the cost conversion, which USDA stated pretty clearly that
17 their -- as you said, the battle has been won, and we
18 don't need to worry about converting from Grade B to
19 Grade A anymore, but we do have a cost to maintain
20 Grade A.

21 And our way of looking at this was to say, let's
22 build up from a Grade B dairy to a Grade A dairy in the
23 conversion sense. Then pick out those costs which are
24 ongoing, variable costs and say, that's the cost of
25 maintenance. It is an estimate. I'm not saying it is the
26 only way of doing this. But we really wanted to see if
27 that \$0.40 was in the ballpark or not.

28 And what our analysis showed is that it's a little



1 bit light, that we are considerably higher in costs,
2 maintenance costs, than what the \$0.40 would suggest.

3 Q. But, sir, you in addressing the maintenance costs
4 applied a percentage to the construction costs, correct?

5 A. No. I don't think that's correct.

6 Q. You say at the bottom of page 22, and I quote:
7 "Estimated maintenance costs for physical assets, such as
8 barns and other farm structures, range between 2% and 5%
9 of replacement cost. Using construction costs as a proxy
10 for replacement costs and using 3% as the maintenance
11 cost, the cost to maintain the physical structure cited in
12 the cost of convection analysis amounts to \$21,750 per
13 year, or \$0.85 per hundredweight."

14 I read that correctly --

15 A. Yes.

16 Q. -- yes?

17 And that component, that \$0.85 per hundredweight,
18 makes up more than half of what you claim to be the
19 estimated ongoing cost of maintaining a Grade A license of
20 \$1.46 per hundredweight, correct?

21 A. Yes. You have to maintain those physical assets.
22 That's part of what the PMO states.

23 Q. But -- and that -- but the accuracy of your
24 calculation presupposes the correctness of your
25 information in Items 1 through 11 as to what it would cost
26 to change from Grade B farm status to Grade A farm status,
27 correct?

28 A. As I said, this was an exercise to see if the



1 \$0.40 per hundredweight the USDA cited from 1999 was still
2 relevant. Our analysis, and you can call it rudimentary
3 if you'd like, suggests that it is not accurate, it's too
4 low.

5 Q. Am I correct that over half of your estimated
6 ongoing cost of maintaining a Grade A license is comprised
7 of a percentage of what you say was the construction costs
8 of changing the farm from Grade A status -- Grade B
9 status, excuse me, to Grade A status?

10 A. Construction costs was our best guess at
11 replacement cost, and I think it is a decent proxy.

12 Q. And you used the construction cost sets forth in
13 Items 1 through 11, and then applied 3% to that to come up
14 with \$0.85 per hundredweight as a component of the total
15 \$1.46 per hundredweight cost of maintenance?

16 A. Right. It's the cost of maintaining those
17 physical structures as required by the PMO.

18 Q. Okay. And -- all right. And you have now
19 referred to the Pasteurized Milk Ordinance, the PMO,
20 correct?

21 A. Yes.

22 Q. That is the document that sets forth the
23 requirements for Grade A status for a farm, correct?

24 A. Yes.

25 Q. Now, in putting together Items 1 through 11, did
26 you select the least expensive undertakings that would be
27 sufficient to establish Grade A status?

28 A. What we did was have a conference amongst the



1 field staff in the Mideast Area who have the most
2 experience on farm and asked them what kinds of things
3 would you have to change to go from a Grade B dairy to a
4 Grade A dairy. And that was the list we used.

5 Q. And did you personally review each of the items
6 here on list 1 through 11 and check them against the
7 Pasteurized Milk Ordinance to confirm whether or not these
8 were, in fact, undertakings required in order to achieve
9 Grade A farm status?

10 A. I would say the answer to that is, yes, we did
11 that.

12 Q. You --

13 A. In our opinion these -- the items that we have
14 listed are consistent with what was found in the
15 Pasteurized Milk Ordinance. We're going from a Grade B
16 dairy to a Grade A dairy.

17 Q. Did you do that, was my question?

18 A. Did I review them?

19 Q. Did you review each of these items to determine
20 whether they were, in fact, required by the Pasteurized
21 Milk Ordinance?

22 A. Yes, I participated in these discussions.

23 Q. Okay. So let's take -- I'm going to take the
24 first -- this one a little out of order, Item 2, "install
25 a toilet facility."

26 Now, you estimate a \$15,000 cost for that,
27 correct?

28 A. Yes.



1 Q. Does the PMO actually require that there be a
2 toilet facility in the milk house or milking parlor?

3 A. Yes.

4 Q. You're confident about that?

5 A. Yes, I am.

6 Q. It is not merely required there be a toilet on the
7 farm?

8 A. It's got to be with a closing -- a door that's
9 able to close in or nearby the milk house.

10 Q. Can that toilet be in the farm house?

11 A. That, I could not tell you. My -- my
12 understanding is that it cannot be, but that may not be
13 entirely correct. I think it has to be part of the milk
14 house.

15 MR. ROSENBAUM: Your Honor, I'm going to
16 distribute a document, which I'll ask to be marked as the
17 next exhibit.

18 THE COURT: Let's go off record while we
19 distribute and mark the paperwork.

20 We'll go off record at two minutes to 2:00. Let's
21 come back on record at 2:05.

22 (Whereupon, a break was taken.)

23 THE COURT: We're back on record at 2:05 p.m.

24 Mr. Rosenbaum, the document that you have
25 distributed and have had marked as an exhibit is
26 Exhibit 340. 340.

27 (Thereafter, Exhibit Number 340 was marked
28 for identification.)



1 BY MR. ROSENBAUM:

2 Q. Dr. Erba, I have provided you a copy of Hearing
3 Exhibit 340.

4 Now, I do want to make clear that what I've given
5 you is the first 61 pages of the Pasteurized Milk
6 Ordinance. I do have -- and I have done that simply
7 because the entire document is 450 pages long, and I'm
8 trying to do something, in a small way perhaps, to limit
9 the bulk of the record.

10 I do want to say, however, I have with me the
11 complete document, and if at any point you would like to
12 look at that, feel free.

13 So -- and to orient ourselves, in doing the
14 analysis that appears on page 21 through 23, you, as
15 stated on page 20, were assuming a 100-cow dairy farm,
16 correct?

17 A. Yes.

18 Q. And by "page 20," of course, I'm referring to your
19 testimony here in Exhibit 336.

20 So this is, relatively speaking, and certainly for
21 these days, a small farm, correct?

22 A. Yes.

23 Q. All right. So if we turn to page 46 of Hearing
24 Exhibit 340, do you see that there is Item 7r, Toilet?

25 A. Yes.

26 Q. And the reference is that -- well, let me start
27 that again.

28 What's -- what the PMO often does is it states a



1 requirement, it explains the reasons for the requirement,
2 and then, in what it calls administrative procedures,
3 provides some additional detail regarding how the
4 requirement can be satisfied.

5 Is that correct?

6 A. It appears that way, yes.

7 Q. And so under 7r, Toilet, it says, "Every dairy
8 farm" -- and I emphasize the word "dairy farm" -- "shall
9 be provided with one or more toilets, conveniently
10 located, properly constructed, operated, and maintained in
11 a sanitary manner. The waste shall be inaccessible to
12 insects and shall not pollute the soil surface or
13 contaminate any water supply," end quote.

14 Do you see that?

15 A. I do.

16 Q. And then under "Administrative Procedures,"
17 looking at procedure 2, it says, "A toilet or privy is
18 convenient to the milking barn and the milk house."

19 Do you see that?

20 A. I do.

21 Q. Okay. Now, do you agree with me that there's no
22 explicit statement that the toilet needs to be in the
23 milking barn or the milk house but merely convenient to
24 it, correct?

25 A. That is correct.

26 Q. And so if the milking facilities are next to the
27 farm house, which will probably not be unusual with a
28 100-cow farm, a toilet in the farm house would meet this



1 requirement, correct?

2 A. I would say in practice that would not be the way
3 that it works. Typically, the farm house is not that
4 close to the dairy farm. It may not be 25 feet away, it
5 may be 100 yards away. And a toilet that is part of the
6 milk house, which is I would say the standard, is more
7 usual.

8 Q. Are there, in fact, some material number of
9 Grade A farms in the United States that do not have a
10 toilet in the milking barn or milk house?

11 A. There may be. I don't know if there are or
12 aren't. But from my observation, all the dairy farms that
13 I have been on, Grade A, the toilet is right there in the
14 milk house, it is not part of the farm house that may be
15 several hundred yards away.

16 Q. So let's go back to Item 1. I skipped over Item 1
17 momentarily.

18 So for Item 1, and I'm referring to your list on
19 page 21, you have a \$250,000 cost for what you call a
20 "simple structure meeting PMO requirements for impervious
21 surface, lighting, air circulation, animal distribution,
22 et cetera," correct?

23 A. Yes.

24 Q. And you in coming up with that estimate are
25 including what you call a double-four herringbone parlor
26 arrangement, correct?

27 A. Yes.

28 Q. Tell us what that is, please.



1 A. That is the milking system that the cows are
2 milked. So it would be basically four stalls in a
3 herringbone, so figure like a 45-degree angle to each
4 other, with a center pass down the middle, where eight
5 cows could be milked at one time.

6 Q. Now -- okay. And does -- does the PMO require
7 that there be a parlor to be Grade A?

8 A. I believe the answer is yes. I don't -- I don't
9 know. I confess, you caught me by surprise there. I
10 think the answer is absolutely yes.

11 Q. If you turn to page 37 of the PMO, Hearing
12 Exhibit 340, there we have item 2r, which is entitled
13 "Milking Barn, Stable Or Parlor - Construction." And it
14 says, "A milking barn, stable or parlor shall be provided
15 on all dairy farms in which the milking herd shall be
16 housed during milking time operation," end quote.

17 Do you see that?

18 A. Yes.

19 Q. So this provides the option of a barn or a stable
20 or a parlor, correct?

21 A. It's not the barn in the sense of a -- where the
22 cows would normally spend their -- most of their days --
23 or at least part of their day. This is where they would
24 be housed during milking time operations. So they are not
25 there for any longer than it takes to get them milked and
26 then get them back to the -- their other housing.

27 Q. Where does it say that?

28 A. "A milking barn, stable or parlor shall be



1 provided on all dairy farms in which the milking herd
2 shall be housed during milking time operations."

3 So they are not housed there all the time. They
4 are there for -- to be milked and then they go back to
5 their other facilities.

6 Q. Is there some provision of the PMO that relates to
7 this other facility?

8 A. I believe there is. I would call that is what I
9 have in Item 6, a cow yard and cattle housing area.

10 Q. Okay. So do you know whether such a milking barn
11 or a milking parlor is also required for a Grade B farm
12 under the USDA recommended requirements for milk for
13 manufacturing purposes and its production and processing?

14 A. I don't know that.

15 Q. In your description under Item 1, you talk about
16 this facility to meet PMO requirements, you reference
17 requirements for impervious surfaces, lighting, air
18 circulation, animal distribution, et cetera.

19 Do you know whether, in fact, there are
20 requirements for lighting, ventilation, impervious
21 materials, with respect to Grade B facilities --

22 A. I do not.

23 Q. -- based upon these USDA requirements?

24 A. I do not.

25 Q. All right. So Item 3 says, "Construct
26 liquid/solid waste holding structure (lagoon) with a clay
27 liner," correct?

28 A. Yes.



1 Q. And that's to deal with -- with cow waste,
2 correct?

3 A. Yes.

4 Q. Now, the -- we're talking about a 100-cow farm
5 here, correct?

6 A. Yes.

7 Q. Am I correct that the PMO does not, in fact,
8 require such a lagoon?

9 A. I don't see any requirement for lagoon in here.

10 Q. And if you turn with me to page 60 of the PMO,
11 Hearing Exhibit 340, which is the last item in the
12 document is Item 19r, Insect and Rodent Control.

13 Do you see that?

14 A. Yes.

15 Q. And I'm not going to read that item, but I am
16 going to, if you will, please look at the Administrative
17 Procedures for compliance with that item, where it says,
18 "This item is deemed to be satisfied when," and number one
19 of that is, "surroundings are kept neat, clean, and free
20 of conditions, which might harbor or be conducive to the
21 breeding of insects and rodents. During fly season,
22 manure shall be spread directly on the fields," and it
23 goes on from there.

24 Do you see that?

25 A. Yes.

26 Q. And does that suggest that one can comply with the
27 PMO and reach Grade A status if, rather than building a
28 lagoon, you simply spread your manure on your fields?



1 A. I think you could probably do that with a
2 different set of costs. It would be much more labor
3 intensive. You would have to manage the manure supply
4 somehow to keep it from invading the spaces where the cows
5 are housed. So the lagoon may not be the only answer. It
6 is certainly one of the answers and the preferred choice
7 for every dairy farm that I have been on.

8 Q. And the cost of -- that you have for the lagoon,
9 that's \$100,000 in your analysis, correct?

10 A. Yes.

11 Q. So Item 4 is "develop a Grade A water supply."
12 Do you see that?

13 A. I do.

14 Q. Now, do you know whether the USDA recommended
15 requirements for manufacturing facilities, which has been
16 adopted as a matter of law in a number of states, whether
17 they also have requirements about the water supply?

18 A. I don't know that. I'm not familiar with those
19 requirements. But I know that the water supply is a
20 specific requirement for Grade A.

21 Q. Now, I don't want to mislead you. There is a
22 specific PMO requirement as to the distance of the well
23 from any source of contamination, I believe it's a 50-foot
24 requirement, which does not appear in the USDA guidance
25 for manufacturing plants.

26 But do you know whether that requirement presents
27 any -- a 50 feet distance provides any particular economic
28 challenge to a Grade B plant -- farm, excuse me?



1 A. If it was not located properly, then, yes, that
2 would be a problem. You would have to -- to go from
3 Grade B to Grade A, you would have to relocate it, and
4 that's a fair amount of expense to relocate a well.

5 Q. And have you done any analysis as to how many
6 Grade B farms, there aren't many out there, but for those
7 Grade B farms, whether or not their existing wells already
8 meet that requirement?

9 A. I have not done that analysis.

10 Q. So Item 5 is to "acquire, install, and plumb a
11 stainless steel 2,000-gallon bulk milk tank."

12 And, once again, I'm not trying to mislead
13 anybody. There is under the USDA guidance for Grade B
14 farms, an option either to use a bulk milk tank or to
15 use -- what do we call them?

16 A. Cans.

17 Q. Milk cans. There you go. Searching for a very
18 technical word there, a can.

19 But do you know whether in the real world, other
20 than maybe some of the Amish farmers use cans, but other
21 than that, is there anyone out there who is actually using
22 cans and doesn't have a bulk milk tank?

23 A. We have a -- in the Mideast Area, a fair number of
24 Amish and Mennonite farms that would still put milk in
25 cans and cool them accordingly. So at least in our area
26 of the world, yes, that's prevalent.

27 Q. All right. Anywhere else -- like I say, I was
28 vaguely aware of that example.



1 Anywhere else?

2 A. I'm not positive. I know that there are Amish
3 communities throughout the U.S. I'm only familiar with
4 the ones in the Mideast.

5 Q. So Item 6 is to "construct a cow yard and a cattle
6 housing area, a fully equipped free stall barn."

7 Does the PMO -- well, first of all, back up. What
8 is a free stall barn?

9 A. That would be where the cattle are housed when
10 they are not being milked or they are not out in the
11 pasture or not in the loafing pen. It's an open-sided
12 barn typically.

13 Q. Okay. What does the word "free stall" connote?

14 A. So the cows can access any stall they want. They
15 are not -- in the olden days, they were tied to a specific
16 stall. A free stall would indicate that they can go in
17 any empty stall they want at anytime.

18 Q. All right. And that may well be desirable. But
19 the PMO doesn't require a free stall, correct?

20 A. I don't believe they require that, but they do
21 speak to a housing environment for cattle.

22 Q. And I won't -- no reason for me to keep asking you
23 what the USDA guidance provides for the Grade B facilities
24 since you haven't looked at that.

25 The next Item 7, "cost of interest on
26 construction/facility remodel loan."

27 Do you see that?

28 A. Uh-huh. Yes, I do.



1 Q. Okay. So that Item 7 really turns on Items 1
2 through 6, I mean, in the sense that Item 7 assumes you've
3 had to borrow \$725,000, which is the cost if you add up
4 everything from Item 1 through 6, correct?

5 A. Yes.

6 Q. So the accuracy of the interest calculation turns
7 on the accuracy of the cost of Items 1 through 6, correct?

8 A. Yes.

9 Q. All right. So -- okay. The next item says,
10 "regulatory inspections to ensure Grade A standards are
11 being met."

12 So can you just tell us where the \$0.05 per
13 hundredweight number comes from for that item?

14 A. Yes. This -- well, in the -- if you are referring
15 to the PMO, I'm not sure it is in there. But it is a
16 practical cost and it's what our -- all of our members are
17 charged, the Market Administrator fee, for inspection of
18 the facilities. And they are checked regularly to make
19 sure they are in compliance with the Grade A standards.

20 Q. And this is -- I mean, does the -- this is an AMS
21 fee, is that what you are saying, when you call it a
22 Market Administrator fee, or am I -- are you mixing two
23 different things in the \$0.05?

24 A. Not sure about that. It's a -- it's an inspection
25 fee that's paid by the farmers, and it has to do with the
26 maintaining their Grade A facilities that they are checked
27 regularly on.

28 Q. Okay. And so when you say that's \$0.05 a



1 hundredweight, that comes out to -- so to figure out how
2 much that is in dollars, it's 100 cows times 70 pounds of
3 milk a day, that's the assumption that you set forth,
4 times 365 days, divided by 100 to get it to hundredweight,
5 times \$0.05? Is that right?

6 A. Yes.

7 Q. And so by my calculation, that gets you to
8 \$1,277.50.

9 And you are saying that a 100-cow farmer has to
10 pay that much each year for this inspection?

11 A. Yes.

12 Q. Okay. So next line item, "increased electricity
13 for fans, bulk tank refrigeration, manure pumps for
14 lagoon," you have that being \$0.15 per hundredweight.

15 Can you break that \$0.15 down among those three
16 items?

17 A. I cannot. This is a discussion, again, with the
18 field representatives who are very familiar with farms and
19 how they operate, and I simply asked for the increased
20 cost of operating the facilities that we're talking about
21 here. And they mentioned specifically, you would have to
22 pay more for fans for cow comfort, for bulk tank
23 refrigeration, there's a requirement for cooler milk in
24 Grade A than with Grade B, and then manure pumps and
25 whatever other items that would use that extra
26 electricity. So they estimated a \$0.15 per hundredweight
27 increase for a farm of this size.

28 Q. So, obviously, if you don't have a manure lagoon,



1 you don't have to incur electricity costs for the pumps,
2 correct?

3 A. Yes. But you would have other costs for how you
4 are going to manage that manure.

5 Q. And -- and then bulk tank refrigeration,
6 obviously, if you are a Grade B farm that does have a bulk
7 tank, you are going to have that cost, too, although as
8 you mentioned, and I'll get to it in a second, you
9 actually have a slightly different requirement for cooling
10 temperatures, correct?

11 A. Yes.

12 Q. And then fans, do you know whether, in fact, the
13 requirements for a Grade B farm include the provision of
14 adequate ventilation?

15 A. I don't know that. Would make sense that it was.
16 But it's spoke to specifically for Grade A, and that's why
17 it's included here.

18 Q. Okay. But, in fact, it may be you have to have a
19 fan for Grade B anyway, correct?

20 A. Maybe.

21 Q. Okay. Now, in terms of bulk tank refrigeration,
22 as I understand it, the requirement is that for Grade A,
23 you have to cool it to 50 degrees within four hours, and
24 then down to 45 degrees thereafter.

25 Is that how it works?

26 A. 45 degrees at pickup would be the absolute
27 maximum, and most requirements are substantially less than
28 that.



1 Q. Not a requirement of the PMO, though?

2 A. That is correct.

3 Q. Okay. And then -- now, do you have any analysis
4 as to what the actual cost is in electricity of reaching
5 the 45 degrees that the PMO requires versus the 50 degrees
6 that applies to a Grade B plant?

7 A. I do not. I just know that it's expensive to run
8 the chillers, which would be responsible, that's what
9 their job is, to chill the milk. It is expensive to run
10 those, particularly in the summertime. There is an
11 additional cost for certain.

12 Q. Now, transportation costs is Item 10. And you
13 actually I think discuss that in the text as well, if I'm
14 not mistaken.

15 On page 20 you refer to this issue as "increased
16 frequency of milk pickups are needed to meet Grade A
17 standards," correct?

18 A. I got to find where you are first here. You are
19 on page 20?

20 Q. Yes. I'm sorry. I should have been more
21 explicit. On page 20 --

22 A. Yes, I got it.

23 Q. -- under "Milk Hauling," correct?

24 A. Yes.

25 Q. And then you're basically adding a cost based upon
26 the notion that to be Grade A compliant, you can only --
27 you have to be picked up every other day; is that right?

28 A. At least as frequently as every other day, yes.



1 Q. Do you know where that is in the PMO? I could not
2 find that, and no one could find that, but maybe we just
3 weren't looking in the right place.

4 A. It may --

5 Q. Let me tell you what we did find, and you can tell
6 me if we were looking in the wrong place.

7 And that is if you look on pages 50 to 51, there
8 is -- let me make sure I have the right place. Yes, on 50
9 and 51, there's an Item 10r, relating to cleaning. And in
10 the Administrative Procedures in Item 3, there's an item
11 that says, "The milk storage/holding tank shall be cleaned
12 and sanitized when empty and shall be emptied at least
13 every 72 hours," which is three days, not two days.
14 That's the closest we could find to a requirement like
15 this.

16 But as I say, if there's somewhere -- if we were
17 just overlooking it? A 48-hour rule?

18 A. I -- I believe you are correct. There isn't a
19 48-hour rule in the PMO. This is a practical requirement
20 from customers. You do not want milk any older than
21 48 hours. So we have tried in the Mideast, several times,
22 particularly in the more remote areas, to allow for
23 every-three-days pickup, and that would be a great help as
24 far as hauling, particularly in more remote areas. None
25 of the handlers that we have talked to will allow for
26 that. So it's not a PMO requirement, it's a practical
27 requirement.

28 Q. And is there any reason to -- suppose that if this



1 is a practical requirement imposed by your customers, that
2 they would impose the same requirement on a Grade B farm?

3 A. No. They -- the Grade B -- the plants that will
4 accept Grade B milk are more lenient to allow for
5 three-day pickups.

6 Q. Once again, this is not a PMO requirement,
7 correct?

8 A. It is not a PMO requirement.

9 Q. Okay. So you have another item relating to
10 Item 11, "increased chemical usage and more frequent
11 rubber part replacement to maintain Grade A milk quality
12 standards."

13 Is there some particular requirement regarding the
14 replacement of rubber gaskets, hoses, and inflation --
15 inflations that you are referencing there?

16 A. Yes. There's requirements for bacteria that are
17 more stringent with Grade A compared to Grade B. And,
18 again, this is another place where there's a practical
19 requirement. If you want to have Grade A milk, I think
20 it's been pointed out several times that Grade A milk
21 these days is not simply Grade A milk, it's got to be
22 better than that. If you are going to meet those
23 standards, then you have to be more vigilant about using
24 the appropriate chemicals. The strength of chemicals and
25 replacing parts that could go bad, develop cracks, harbor
26 bacteria, like rubber parts, more frequently.

27 Q. What part of that is attributable to practical
28 requirements that go beyond the PMO?



1 A. That would be difficult to say exactly. I don't
2 know where you draw that dividing line. There aren't very
3 many dairies that want to be right on the edge of Grade A,
4 and they are going to try to do better than that. So I'm
5 not sure exactly where you could draw that line. But,
6 again, from a practical sense, you need to have high
7 quality soap, sanitizer, need to replace your rubber parts
8 more frequently. It is simply part of being Grade A.

9 Q. Okay. So sticking with Item 11, there's also a
10 line item, \$0.25 per hundredweight for chemicals.

11 Do you see that?

12 A. Yes.

13 Q. And are you saying that is a cost above and beyond
14 the cost that a Grade B dairy farm would incur?

15 A. Yes.

16 Q. And how exactly did you get that \$0.25 number?

17 A. In the Mideast, for DFA, we have a pretty
18 stringent milk quality program, and we monitor milk
19 quality of all of our -- of all of our members. We know
20 what it takes to meet the requirements, and we hear from
21 our members themselves what it costs them to meet the
22 requirements.

23 And they often complain vehemently that it costs
24 them significant money just to attain some of those
25 standards, and so that's where we get our information
26 from, is what does it cost for chemicals to maintain
27 Grade A. And, again, I point to this is more like
28 Grade A, tending toward Grade A plus, not Grade A at the



1 very margin of what's Grade A and what's Grade B. And
2 that's what they estimate that costs to be, again, for
3 soaps, for sanitizer, for acid.

4 Q. Okay. So \$0.25 per hundredweight -- let me back
5 up. You recall that you had one cost item that you
6 thought was \$0.05 per hundredweight. That's the
7 inspection cost, you remember?

8 A. Yes.

9 Q. And I said that you -- okay, if you take a hundred
10 cows, times 70 pounds a day, times 365 days, et cetera,
11 et cetera, you came to a particular cost, correct?

12 A. About a thousand dollars as I recall.

13 Q. Right. So here, if it's -- I want to do this one
14 a little differently. It should be on a per-cow basis.
15 So if it's a hundred -- no, I'm sorry.

16 So on a per hundredweight basis, my number
17 previously was \$1,277. That's what it costs for \$0.05 a
18 hundredweight. So when we multiply that times five to get
19 to \$0.25 a hundredweight -- just trying to cut through the
20 math a little bit -- that's going to get us something
21 around \$7,000 or so, correct?

22 A. Six to \$7,000 sounds like the right number.

23 Q. Okay. I'm sorry, six or \$7,000 per what, I'm
24 sorry, per --

25 A. Per year I think is what we --

26 Q. Per year for -- per what --

27 A. For all the chemicals, the acid, the sanitizer.
28 They are expensive.



1 MR. ROSENBAUM: That's all I have.

2 CROSS-EXAMINATION

3 BY MR. MILTNER:

4 Q. Good afternoon, Dr. Erba.

5 A. Good afternoon.

6 Q. Ryan Miltner. I represent the Select Milk
7 Producers.

8 So I'd like to -- and I'll do my best not to
9 duplicate questions here, if you'll bear with me when I
10 pause to cross things off.

11 What I would like to do is start by getting some
12 additional knowledge about some of the plants and cities
13 that you have referenced in your testimony or otherwise
14 are listed as distributing plants in the states that are
15 included in Order 33.

16 And so I want to start with Indiana. And you
17 mentioned a plant that was being built in the Fort Wayne
18 area. USDA's data introduced earlier listing all the
19 distributing plants identified that there was a plant
20 called Blue Kingfisher d/b/a Walmart in Fort Wayne.

21 Is that the plant you were referring to in your
22 testimony?

23 A. The Walmart plant, it was my reference, yes.

24 Q. Okay. Now, there's also in USDA's data a plant in
25 Fort Wayne that is listed as a Prairie Farms plant.

26 Are you aware of that plant?

27 A. I am vaguely aware of it, but that's not the one I
28 had in mind when I mentioned it in my testimony.



1 Q. Okay. Did that -- did that plant weigh
2 particularly on any of your working group's decisions
3 about setting the differentials for?

4 A. It did not.

5 Q. Okay. There is -- and I think these are listed
6 alphabetically on USDA's data, which is how I input them
7 here -- DFA d/b/a Schenkel's All Star Dairy in Huntington,
8 Indiana.

9 Did that plant bear at all on specific
10 determinations made by your working group?

11 A. It did not.

12 Q. All right. And I'll just go through the plants,
13 and assume the question is the same so I don't have to say
14 it every time, if that's okay with you?

15 A. That would be fine.

16 Q. Perfect.

17 Kroger's Crossroads Farms plant in Indianapolis?

18 A. They had no bearing on our discussions.

19 Q. Nestle's plant in Anderson, Madison County?

20 A. That had no bearing on our discussion.

21 Q. Okay. There's a plant called Ninth Avenue Foods
22 if Bartholomew County. I'm not familiar with that plant
23 at all.

24 Are you?

25 A. Yes. It's a relatively new plant. I'm not even
26 sure it is processing yet. But if it is, it's barely
27 processing.

28 Q. Is that a cooperative plant to your knowledge?



1 A. It is not.

2 Q. Okay. Pleasant View Dairy, which I believe is a
3 very small dairy in Lake County, Indiana.

4 A. I'm not familiar with that one.

5 Q. Okay. Prairie Farms in Fort Wayne we mentioned.

6 Prairie Farms in Holland, Indiana, which is Dubois
7 or Dubois, depending on how they pronounce it in Indiana?

8 A. No matter how they pronounce it, it had no bearing
9 on our discussions.

10 Q. You are familiar with our fun pronunciations of
11 Townsend, Ohio, correct?

12 A. I am.

13 Q. Okay. So you know what I'm talking about.

14 A. I lived in one of those.

15 Q. As did I. And now I live near another one in Lima
16 or Lima or whatever.

17 Prairie Farms, East Side Jersey Dairy in Madison
18 County?

19 A. That dairy is now closed.

20 Q. That is now closed.

21 A. That did not have any bearing on our discussion.

22 Q. Finally, Richmond Beverage Solutions in Wayne
23 County.

24 A. I am familiar with that, and it was not part of
25 our discussions.

26 Q. Okay. Do you know if that's a cooperative plant
27 or a proprietary?

28 A. It wasn't, and it may have been part of a DFA



1 acquisition, although I'm not positive that's the same
2 one. Smith Foods would be the owner that I'm thinking of.

3 Q. Okay. Moving on to Michigan.

4 C.F. Burger in Wayne County, Detroit?

5 A. I'm not even sure we mentioned that in our
6 discussion at all, but it certainly didn't have any
7 bearing on the discussions that we had.

8 Q. Is that a proprietary plant?

9 A. I believe it is.

10 Q. I think so too.

11 Calder Brothers Dairy in Wayne County, Michigan.

12 A. Remind me what the question is now other than --

13 Q. Yeah. The first question is did -- was that plant
14 and any competitive issues or price alignment issues part
15 of your working group's consideration?

16 A. No.

17 Q. Okay. And then I don't know if that's a -- do you
18 know if that's a cooperative or proprietary plant?

19 A. I don't think so. I think it is proprietary.

20 THE COURT: Mr. Miltner, for those of us who later
21 want to go back and look at the list, tell me again where
22 we would find it?

23 MR. MILTNER: Well, you'd have -- the one I'm
24 working off of, you would have to have my file. USDA
25 introduced a number of exhibits on the first day of the
26 hearing, and if you give me a moment, I'll tell you which
27 one I pulled this data from.

28 You know, Your Honor, if -- well, you all want to



1 look at it now. I was going to say if we had a break, I
2 would find it and give it to you then but --

3 THE COURT: Which is fine.

4 MR. MILTNER: Here we go. So Exhibits 33 and 34,
5 are Regulated Pool Distributing Plants and Regulated Pool
6 Supply Plants, from January 2010 through year to date,
7 which I believe ended at March of 2023. I believe
8 Exhibit 33 are the distributing plants that I pulled this
9 data from, and specifically I was looking at the 2023
10 plants.

11 BY MR. MILTNER:

12 Q. There's a plant listed as DFA d/b/a Country Fresh
13 in Kent County, Michigan. Now, you specifically mentioned
14 Kent County.

15 Was this plant one of the issues of price
16 alignment and competitive consideration?

17 A. The -- not that particular plant necessarily, but
18 that location, yes.

19 Q. There's another plant in Kent County, which is a
20 Schreiber Foods plant.

21 Was that plant also part of the consideration?

22 A. It was not mentioned specifically, no.

23 Q. The next is DFA d/b/a Country Fresh Jilberts,
24 J-I-L-B-E-R-T-S, in Marquette, Michigan.

25 A. Yes. That was -- again, not that plant
26 specifically, but that -- that location, that county was
27 part of the discussion.

28 Q. Now, with respect to Marquette, is there any other



1 milk processing in Marquette or in the Upper Peninsula at
2 all of any note besides the Country Fresh plant?

3 A. Not as far as I know.

4 Q. And do you know if the distribution from the
5 Marquette plant remains in the Upper Peninsula or does it
6 come down into Traverse City or that area at all?

7 A. It might. I know it stays in the Upper Peninsula.
8 There may be some that ventures a little further south,
9 but my impression was it's an island almost unto itself.

10 Q. Do you know if any of it moves west into Upper
11 Wisconsin?

12 A. I think it does. I think it may move back that
13 direction.

14 Q. The next plant is Michigan Dairy in Wayne County.
15 Was that part of any consideration?

16 A. Not specifically. It wasn't mentioned by name.
17 But we were concerned about -- that's -- you're basically
18 talking about Detroit, and we were concerned about Detroit
19 as a city.

20 Q. Do you know if that plant, Michigan Dairy, is a
21 cooperative or proprietary plant?

22 A. It's a proprietary plant.

23 Q. Prairie Farms Dairy in Calhoun County, Battle
24 Creek?

25 A. Wasn't mentioned even once by my recollection.

26 Q. All right. I think that takes care of Michigan.
27 Let me get to Ohio. DFA Reiter Dairy in
28 Springfield.



1 A. Was not part of the discussion.

2 Q. Okay. Hartzler Dairy in Wooster, Wayne County?

3 (Court Reporter clarification.)

4 MR. MILTNER: Wooster, W-O-O-S-T-E-R.

5 THE WITNESS: What was the name?

6 BY MR. MILTNER:

7 Q. Hartzler, H-A-R-T-Z-L-E-R, small glass bottled.

8 A. Yeah. So that was not part -- that plant was not
9 part of the discussion. Wooster was something we
10 considered, not because of that plant but from a different
11 plant, a Class II plant.

12 Q. Meijer, which is M-E-I-J-E-R, in Miami County. I
13 think you mentioned that as --

14 A. That's the Tipp City plant, yes.

15 Q. And that's owned by Meijer.

16 It's a cooperative-supplied plant, correct?

17 A. Yes. It is a grocery store chain that owns it,
18 supplied by a cooperative.

19 Q. New Dairy Ohio, which I believe is a former
20 Borden's plant in Cuyahoga County?

21 A. Well, we certainly didn't mention that one by
22 name. We did Cuyahoga County as basically Cleveland, so
23 we did talk about Cleveland as one of the basing points.
24 But not that dairy specifically.

25 Q. Prairie Farms East Side Jersey Dairy in Washington
26 County?

27 A. I thought you mentioned that one already, but I
28 may have misspoke earlier. There is a East Side Jersey



1 Dairy in Southeast Ohio that would have closed. I thought
2 that's what you referenced earlier.

3 Q. There's an East Side Jersey Dairy -- actually
4 looks like there are several. Looks like there's one in
5 Minnesota, which I did not mention, and there's one in
6 Anderson, Indiana, here that I mentioned before.

7 A. Yeah, that's -- then I misspoke. That one wasn't
8 one we talked about, but I don't know anything about that
9 plant. The one in Southeast Ohio did close.

10 Q. Okay. Smith Foods, Wayne County, Ohio?

11 A. We didn't talk about that plant specifically, but
12 Wayne County is one of the areas where there's high demand
13 for milk, so we talked about that region, but not that
14 plant.

15 Q. Superior Dairy in Stark County?

16 A. Yes, I mentioned that one specifically in
17 testimony. That was the Class I plant in Northeast Ohio.

18 Q. And is that plant now cooperative owned?

19 A. It has some sort of cooperative ownership,
20 although the exact structure, I do not know.

21 Q. DFA is not a partner of theirs.

22 A. No.

23 Q. Tamarack Farms, Kroger plant, in Licking County?

24 A. Right. So that's one of those plants right on the
25 Columbus/Dayton/Cincinnati area that I mentioned
26 specifically.

27 Q. Toft Dairy in Erie County, the beneficiaries of
28 unregulated spot in the state?



1 A. Not mentioned specifically and didn't influence
2 our discussion.

3 Q. And the last is United Dairy in Belmont County?

4 A. Not mentioned specifically and didn't influence
5 our discussion.

6 Q. And United Dairy is a proprietary plant I believe,
7 correct?

8 A. That is correct.

9 Q. And it's right on the border of West Virginia as I
10 recall; is that right?

11 A. There are -- I'm going to say there's at least two
12 and, I think, three United plants. And they're over --
13 they are all on the eastern side of the Mideast Area and
14 some -- maybe outside the Mideast Area.

15 Q. Thanks for going through that exercise.

16 A. Sure.

17 Q. Now, on page 3 of your testimony, Exhibit 336, you
18 mention at the bottom some plant changes that may have --
19 you may have taken into consideration. And you mentioned
20 a cultured plant in Wooster, which is -- I forget which
21 county it is, Wayne County.

22 And you mentioned another Class II plant in West
23 Central Ohio. Would that the plant in Minster?

24 A. Yes.

25 Q. And what about that plant particular did the --
26 did your working group take into account?

27 A. Just the fact that it's in a location, which is
28 going to draw a fair amount of milk, and you want to be



1 mindful of that because that plant will need to be
2 serviced. And really just making sure that we didn't
3 overlook it in terms of a demand point.

4 Q. Is that plant supplied by cooperatives?

5 A. Occasionally. Mostly has its own supply.

6 Q. Is it mostly supplied by a single farm about
7 20 miles north of the plant?

8 A. That would be a major supplier for that plant.

9 THE COURT: The spelling of that plant, please.

10 MR. MILTNER: Well, the city is Minster,
11 M-I-N-S-T-E-R. And the plant is Dannon, if I didn't use
12 that word.

13 THE WITNESS: Danone, I guess.

14 THE COURT: D-A-N-N-O-N, Danone (phonetic)?

15 MR. MILTNER: Well, Danone is D-A-N-O-N-E, which
16 is a French company, and then it's branded in the U.S. as
17 Dannon, D-A-N-N-O-N.

18 THE COURT: That's good. Is it data or data?

19 MR. MILTNER: I think I like data better, unless
20 it's singular.

21 THE COURT: The young witnesses all say data. I
22 have noticed.

23 MR. MILTNER: And sometimes they are talking about
24 one piece and don't say datum. So, you know, I don't
25 know. But we digress.

26 BY MR. MILTNER:

27 Q. I guess what were the considerations about that
28 Dannon/Danone plant and the milk demand -- or the milk



1 needs of that plant given that for the most part it's not
2 pooling from the milk shed?

3 A. To some degree it will pull from the milk shed.
4 It does have a number of independent suppliers, and
5 occasionally we will sell milk to them as a co-op. So
6 it's just -- it's just something to be aware of because it
7 is a large plant, and it is in a location which is going
8 to perhaps influence which way milk flows.

9 Q. I'm guessing it pre-dates your time at DFA, but
10 the single plant that comprises most of the supply there,
11 before that plant opened three, four years ago, was there
12 a different milk supply dynamic in that region that would
13 have needed to be taken into account?

14 A. I think you are correct in saying that that
15 pre-dates my time.

16 Q. On page 7 -- and I really don't recall if this was
17 asked of you already. If it was, if you would indulge me
18 with a recap of your answer.

19 You -- in the middle of the page you testified,
20 "Furthermore, there was a general agreement that the
21 Class I differential in Western Michigan should be
22 reasonably similar to the Class I differential established
23 for Chicago, Illinois."

24 Why -- why would that be an important issue of
25 price alignment?

26 A. So one of the major supply points for Chicago
27 comes from Grand Rapids, Michigan, so that's what --
28 that's what that was about. And I spoke to that in the



1 first pairing of the ten two-city pairings, Chicago and
2 Grand Rapids.

3 Q. And so you are talking about the supply of
4 packaged milk into the city of Chicago coming from the
5 Grand Rapids area?

6 A. Right. So there aren't any processing -- Class I
7 processing plants in Chicago anymore.

8 Q. Elaborate on this one step further if you could.
9 If the Class I differential is meant to attract milk from
10 the farm to the plant, and there are no plants in Chicago,
11 why would there be a need to align those prices?

12 A. So you are going back about a year ago when I --
13 literally the first day I started with this project, and
14 they had already been in process when I started. But
15 the discussion was that the supply areas that provide
16 packaged milk to Chicago should all be about the same
17 Class I differential. And Western Michigan, Grand Rapids,
18 was one of those areas.

19 Q. So as an economist, what -- I understand that's
20 your first day, and they threw you in the deep end. But
21 what -- as an economist, what would be the rationale for
22 that?

23 A. So you're looking at -- I'm going to say it is
24 four plants, although I'm not positive. I know if it is
25 four different cities. It may be more plants than that.
26 You want to try to equalize their raw product cost because
27 they are all supplying the same market.

28 Q. So in Grand Rapids, in -- I forget, I think that's



1 Kent County, there are a number of both large and small
2 farms within 15 miles of the city, perhaps? Is that about
3 right?

4 A. There's a lot of milk close by. Yes.

5 Q. In Chicago, how close are farms to Cook County?

6 A. Oh, that, I couldn't tell you. But I don't know.
7 I would not think that close, but probably not 15 miles.

8 Q. If, in fact, the milk supply is further from
9 Chicago than it is from Grand Rapids, wouldn't the
10 differential in Cook County logically need to be higher to
11 theoretically attract milk to a plant there that doesn't
12 exist?

13 A. Well, you may recall that the -- we discussed
14 earlier in the cross-examination that the USDSS had the
15 Chicago number higher than where it ended up, and that was
16 several different parties from several different
17 territories in the U.S. coming together and saying --
18 truly having a discussion, negotiation, about where that
19 number should end up. So it got pushed down quite a bit
20 from where it started from the USDSS results.

21 Q. And, in fact, the USDSS had Kent County at an
22 average of 3.40 and Cook County at an average of 3.70?

23 A. Yes.

24 Q. Does that sound correct?

25 A. That sounds correct.

26 Q. Now, Proposal 19 proposes 3.10 for both of those
27 counties, correct?

28 A. Yes.



1 Q. And so, again, if this is one that Mr. English
2 or -- I guess Mr. English would have asked about it.
3 Where the model places 3.70 on Cook County and 3.10, the
4 divergence there of \$0.60, what would -- is it -- what was
5 the rationale for that? I mean I know you have talked
6 about the committee that set -- made that determination
7 before you arrived. But what was the -- did they explain
8 to you their rationale other than, we need those two
9 cities to be aligned?

10 A. That was the overriding message about Chicago and
11 Western Michigan, is that they have got to be in close
12 alignment. So that was -- literally that was given to me
13 on that very first conference call.

14 The other piece that became clearer is that there
15 has to be some -- there's significant price alignment
16 issues, that if Chicago is not in a certain number -- and
17 it turns out that number is 3.10 -- we have all kinds of
18 problems with trying to get the rest of the areas to align
19 with our price surface.

20 So some of the points, even the anchor points, had
21 to be a little bit flexible in terms of what those numbers
22 looked like, and that was one of them.

23 Q. Okay. If we look at your -- now, we have already
24 talked about Marquette, so we'll skip over that.

25 Your third is Grand Rapids -- is on page 8 of your
26 testimony, and you're talking about Grand Rapids and
27 Elkhart, Indiana.

28 Is there a reason you chose Elkhart, Indiana,



1 specifically?

2 A. I would say the main reason is that's a big area
3 for milk supply. I don't know that we picked it for any
4 other reason other than we're all pretty familiar with
5 that.

6 Q. So in that instance it was based more on the milk
7 supply rather than on the milk -- packaged milk sales?

8 A. Right. So a lot of our discussion was what does
9 it take to move milk from an area of supply to an area of
10 demand, and this is one of those supply points rather than
11 a demand point.

12 Q. And just to point out what I hope is obvious,
13 that's a different consideration than the one that your
14 working group went through with respect to Chicago and
15 Grand Rapids?

16 A. Yes.

17 Q. And we can look at the spreadsheets if you like,
18 but looks like the model says Elkhart would be 3.50, and
19 we have already said Kent County, Michigan, would be 3.40.
20 'So there was a \$0.10 gap, and Proposal 19 sets them both
21 at 3.10, correct?

22 A. Yes.

23 Q. Putting aside that they are now aligned instead of
24 \$0.10 different, is there a reason for picking
25 differentials that are 40 and \$0.30 lower than the model?

26 A. Our objective was to get milk to move from areas
27 of supply to areas of demand. And very early on in our
28 discussions, without maybe using these exact same words,



1 we talked about the idea of creating a greater slope. And
2 to do that, we had to push down some areas, lower than
3 what USDSS would have suggested, and push some of the
4 areas, particularly in the Southeast, higher. And that
5 was how we created more slope.

6 Some of the numbers that have been talked about
7 are a result of that overriding principle. We need to
8 create more slope to get milk to move. In areas where we
9 had sufficient, adequate, and maybe an abundance of milk,
10 we were more willing to push those numbers down because we
11 knew we had the milk there and available, and we needed
12 a -- create a greater slope to get it to move somewhere
13 else.

14 And Elkhart and Grand Rapids were two of those
15 areas we felt we had adequate supply and no need to have a
16 differential quite that high to create a sufficient slope
17 to get milk to move south and east.

18 Q. And when you talk about the slope, were you
19 looking for a static slope from north to south or did the
20 gradient of the slope -- did you intend that the gradient
21 of the slope increased or decrease at any point along the
22 journey?

23 A. I would say the latter. A gradient that was maybe
24 malleable and not something you would just set a fixed
25 number and say, as you go south and east, this is the
26 exact number you change by. And, again, it was all
27 dependent on how we felt like we market milk in those
28 areas and what the availability of milk is. And maybe one



1 thing we haven't talked about very much is how willing the
2 haulers are to move that milk those distances to those
3 locations.

4 Q. Did you want to comment on the willingness of the
5 haulers at all since you brought it up?

6 A. Sure. So a fair amount of what happens in the
7 Mideast, particularly as you move to the south and to the
8 east, I spoke to this a little bit in my testimony, is the
9 willingness of haulers to make those kinds of moves. Some
10 haulers like to stay short, rather have short runs,
11 shorter mileages, maybe we can double trip. And some of
12 them prefer to go long because they have got the
13 equipment, they have got the manpower. And it depends.
14 And we don't always get the haulers that we need to move
15 milk in the right areas.

16 So part of the exercise was how do we encourage
17 that milk to move given the constraints we got, including
18 the haulers that we have got.

19 Q. Would any of those factors you just discussed be
20 included in the USDSS?

21 A. Not the way I have described them, no.

22 Q. Okay.

23 A. The USDSS would assume that the hauler can go any
24 distance, basically, at whatever those rates are that are
25 incorporated into the model.

26 Q. Would -- if there are certain routes that demand
27 higher compensation to the hauler because of the
28 considerations you have laid out, would those be



1 encompassed in the USDSS model?

2 A. They would not.

3 Q. So did your working group or the larger committee,
4 when thinking about the slope, have any type of numerical
5 or empirical basis for establishing that slope?

6 A. Other than to say -- I don't know what the other
7 groups did, so I'll confess to that right upfront. In the
8 Mideast we, again, talked about what kind of price
9 differential would we need to move from one area to
10 another. And we did that for that ten two-city pairing.
11 That really helped us think through this a lot. So we
12 didn't necessarily have to think about, how do you move
13 milk from Grand Rapids into say New Wilmington or any of
14 those places. We talked about those ten two-city
15 pairings, and that really helped us get a better visual of
16 what kind of milk -- what kind of price it would take to
17 get that milk to move.

18 Q. So if we look at those pairings, and I'll start
19 with Grand Rapids and Marquette, there's a 405-mile
20 over-the-road distance between those two points, and
21 Proposal 19 has a delta of \$0.50 to cover that 405 miles.
22 Now, the distance between Grand -- your first pairing,
23 Grand Rapids and Chicago, is 184 miles, and there's no
24 price delta.

25 So when you said you were looking at the pairings,
26 am I correct to assume that it wasn't boiled down to a
27 numerical slope, it was more of a practical consideration?

28 A. I think that's accurate. I mean, there's some



1 degree of this that's going to be quantitative. But, you
2 know, in the case of that second pairing with Grand Rapids
3 and Marquette, we knew that milk wasn't going to move. We
4 don't intend for it to move. But there should be some
5 kind of a variation there that says the milk in Grand
6 Rapids has more value to it just because of its proximity
7 to people and to plants than the Marquette milk would.

8 Q. Now, if I look at the third and fourth pairings,
9 Grand Rapids to Elkhart, and then Elkhart to Indianapolis,
10 Grand Rapids to Elkhart, about 160 miles with no delta,
11 and Elkhart to Indianapolis, also 160 miles but a \$0.60
12 delta?

13 A. I think Grand Rapids to Elkhart is just 100 miles,
14 not 160.

15 Q. You are correct. My apologies. So 100 miles with
16 no delta and 160 miles with a \$0.60 delta, what accounts
17 for that difference, or, again, is it more a practical
18 consideration based on the working group's experience?

19 A. I think it is both in this case. We have got two
20 areas, Grand Rapids and Elkhart, where we have got, I
21 would call it adequate, if not surplus milk supplies.
22 There really doesn't need to be a differential there --
23 difference between the differentials there.

24 When we look at Elkhart and Indianapolis, you have
25 got a sizeable number of miles, but more -- most
26 importantly, you don't really have a good milk supply
27 around Indianapolis, and you need to draw that milk in
28 somehow. There's obviously a lot of population, and we



1 knew we had a lot of plants in and around the area. And
2 that's what -- that's what explains that difference, the
3 \$0.60.

4 THE COURT: Mr. Miltner?

5 MR. MILTNER: Yes, Your Honor.

6 THE COURT: I want to take a ten-minute break, and
7 when we come back, I want to know whether we should
8 interrupt the examination of this witness to be sure we
9 get Mr. Covington on and off the stand today. So I'll
10 hear from you after the break.

11 But let's take a ten-minute break now. Please be
12 back, ready to go at 3:28. We go off record at 3:17 p.m.

13 (Whereupon, a break was taken.)

14 THE COURT: Let's go back on record. We're back
15 on record at 3:31.

16 Mr. Miltner, thank you, and you may resume.

17 MR. MILTNER: All right. Thank you, Your Honor.

18 BY MR. MILTNER:

19 Q. So, Dr. Erba, you're -- I'm looking now at
20 page 10 -- I guess it starts on the bottom of page 9, and
21 you have three -- really it starts with your fifth, but
22 I'm really looking at your sixth, seventh, and eighth city
23 pairings, which all involve Columbus, Ohio, Franklin
24 County.

25 And without looking specifically at the numbers in
26 those pairings, what is the dynamic of milk supply and
27 milk demand around Central Ohio that your working group
28 was concerned with, or considering perhaps?



1 A. There is not much milk around Columbus. There are
2 aren't a lot of direct routes into Columbus other than
3 I-71. Where the milk is, how you get it to Columbus is
4 sometimes challenging. Plus we have the -- what I
5 mentioned earlier, the issue with the haulers, do they
6 want to go that direction, and how much would they charge
7 to get there.

8 Q. Was it the committee's experience that haulers do
9 not want to haul to Central Ohio?

10 A. I would say the -- it's not a preferred location.
11 How about that?

12 Q. Okay. And you'd agree that there are no fluid
13 plants actually in Franklin County itself, correct?

14 A. As far as I know, that's correct.

15 Q. We have the same understanding.

16 Would the plant Tamarack Farms in Newark, Ohio, be
17 the closest to Franklin County?

18 A. Yes.

19 Q. And that is south -- slightly southeast of
20 Columbus, correct?

21 A. I thought it was northeast, but it's Licking
22 County is --

23 Q. Okay.

24 A. -- the county.

25 Q. So where would the milk --

26 THE COURT: What is the county?

27 MR. MILTNER: Licking.

28 THE WITNESS: Licking. L-I-C-K-I-N-G.



1 THE COURT: That's what I thought you said.

2 MR. MILTNER: Welcome to Ohio.

3 BY MR. MILTNER:

4 Q. Without regard for contractual arrangements, what
5 would be the closest milk supply to that -- to that plant?

6 A. It would probably come from Western Ohio.

7 Q. From Western Ohio?

8 A. Right.

9 Q. Around the Bowling Green/Van Wert area, or more
10 the Auglaize/Mercer County area?

11 A. It may be a little bit further south than
12 Van Wert.

13 Q. Okay. So closer to the -- where that large
14 Class II plant is?

15 A. Correct.

16 Q. Okay. And so -- so when you are looking now at
17 your sixth pairing of Columbus and Cleveland, and
18 Cleveland, of course, is north of Columbus, there are a
19 couple of bottling plants in Cleveland -- Cuyahoga County,
20 which is Cleveland, in that area, correct?

21 A. Yes.

22 Q. Now, where would the milk supply for those plants
23 naturally come from without regard for whatever
24 contractual arrangements might exist?

25 A. That gets tricky because that -- south of there is
26 going to be a fairly large pull from a lot of small- to
27 medium-sized cheese plants, so that's -- the milk's
28 probably not going to want to travel north. So what we



1 have ended up doing is bringing milk from the west and
2 sometimes from Michigan, down that I-90 corridor, which I
3 spoke to in my testimony.

4 Q. And so would you be attracting milk to Cleveland
5 from the West and also attracting milk to Columbus from
6 the West?

7 A. I think that's -- that's fair. They are not going
8 to be the same location. Cleveland's probably coming from
9 more like Michigan, you know, Northwest Ohio, and I would
10 say the Columbus is coming from milk that's in a different
11 milk shed than that, further south, but Western Ohio.

12 Q. Both at about the same latitude, both about
13 120 miles to the west, correct?

14 A. I think that is probably close. Our pocket of
15 milk tends to be up in that Northwest Ohio, Northern
16 Indiana, and certainly Michigan. And we -- we do a little
17 bit worse the further you get south.

18 Q. And so explain then, if you could, the committee's
19 consideration or your working group's consideration in
20 adjusting the USDSS numbers for Cuyahoga County and
21 Franklin County when they are attracting milk, not
22 relative to each other but from pools, separate pools,
23 equidistant to the west?

24 A. Right. And it just has to do with the willingness
25 of haulers to move and the ease of which they can move on
26 the roadways that are there. It's quite a bit easier to
27 get into Cleveland, even though the miles may be
28 significant. A little bit more difficult to get into



1 Columbus, even though the milk supply may be, as you said,
2 about equidistant. It is not the same easy miles. It's
3 not an interstate, and the haulers aren't as willing to go
4 there.

5 Q. And then so your seventh pairing you're looking at
6 Columbus again, but now Sharpsville, Pennsylvania.

7 And, again, we might be replowing ground again,
8 but Sharpsville, where is the milk supply for that area
9 coming from?

10 A. Sharpsville -- well, I can say Western
11 Pennsylvania, which would include Sharpsville and
12 Wilmington, the cheese plant that's out there. There's a
13 local milk supply. It's not near enough to satisfy either
14 one of those plants, let alone both of them. So it's got
15 to come from other spaces.

16 What we have been doing to minimize the long
17 distance hauls out of our milk surplus areas is to
18 stair-step milk, so pull milk out of the eastern side of
19 Ohio and then backfill with milk that's from the supply
20 points.

21 Q. When -- what are those supply points you would
22 backfill from?

23 A. So that would be Northern Indiana, Northwest Ohio,
24 and to some degree Michigan.

25 Q. The supplies from different -- okay, if it's -- if
26 you are backfilling and you are pulling from Ohio -- let's
27 back that up.

28 If you are fulfilling it from Ohio and backfilling



1 that, that milk is not flowing through Franklin County, it
2 is more flowing along the northern part of the state
3 through Cuyahoga County and Cleveland, correct?

4 A. Right. So I mentioned this earlier, and maybe it
5 wasn't clear. I'll say it again. When we looked at the
6 ten two-city pairings, we aren't necessarily moving milk
7 between those cities. So we're not talking about moving
8 milk from Columbus to Sharpsville. That's just two points
9 that we picked out to start trying to structure the zones
10 for the Mideast Area. We aren't necessarily moving milk
11 that direction.

12 Q. And was it then those two cities more than to
13 confirm the slope between those two points as you built
14 the whole -- whole map out?

15 A. Right. It's, again, to build up those zones and
16 to figure out where those lines should lay.

17 Q. Now, if I take your sixth and your seventh
18 pairings and I -- I really just look now at Cuyahoga
19 County, Cleveland, to Sharpsville, Pennsylvania, that's a
20 \$0.10 difference between those two points, and that's
21 about 100 miles as well, correct?

22 A. I think that's correct.

23 Q. You were -- no, I don't think that's correct. I
24 think the model showed -- Proposal 19 for Cuyahoga County
25 is a \$3.70 differential, and Sharpsville is \$4, so it's
26 \$0.30, correct?

27 A. I'll talk what you represent as accurate because I
28 don't have that information in front of me.



1 Q. Well, I guess my question is, if the milk that
2 comes to Sharpsville is, in fact, coming more along that
3 northern part of the state, in looking at these data
4 points, did you -- did the committee go back and confirm
5 that the actual route milk travels, that that actual slope
6 is sufficient?

7 A. We didn't look at it that way.

8 Q. Okay. And then I wanted to look at the ninth and
9 the tenth pairings.

10 First is Cincinnati to Winchester, Kentucky. And
11 there aren't really any Class I plants around Cincinnati,
12 correct?

13 A. That's correct.

14 Q. And there is in Winchester, Kentucky, correct?

15 A. Yes.

16 Q. So the milk that's supplying Winchester, Kentucky,
17 can you explain for us where the milk shed for that plant
18 might be?

19 A. Well, there's obviously going to be some Kentucky
20 milk that moves in there as much as we can, unless we
21 prefer to local supply, but it's a fairly large plant, and
22 obviously we don't have enough milk in that part of the
23 state to supply that plant, so it's got to come from the
24 north. Sometimes it comes from Ohio. Sometimes it comes
25 from Eastern Indiana. It might even come down from
26 Michigan from time to time.

27 Q. Because between Winchester, Kentucky, and
28 Cincinnati, there really isn't a lot of milk production,



1 is there?

2 A. No, there is not.

3 Q. And if you look north from Cincinnati, you really
4 need to move probably 75 to 90 miles north, yet, before
5 you find any significant milk production, correct?

6 A. Yeah. You might be better off moving west than
7 moving north.

8 Q. Now, if you look at the tenth pairing between
9 Cincinnati and Charleston, West Virginia, when we look at
10 Charleston, in that area, where would that milk be pulled
11 from?

12 A. That's becoming trickier and trickier to supply.
13 So you are going to go back to -- I'm going to call it the
14 East Central part of Ohio, and pull that milk from there,
15 and then backfill it with milk from further west. But
16 that is becoming a very difficult market to supply. It's
17 so much further from where our true milk surplus is, and
18 it's a great distance from anywhere we have got milk to
19 where those demand points are.

20 Q. And really, if you're pulling from East Central
21 Ohio, would that be -- would that be the Holmes County
22 area you are thinking, or south of there?

23 A. It would be that plus south of there.

24 Q. And so those tend to be smaller farms and --

25 A. Yes.

26 Q. -- sometimes Amish or Mennonite?

27 A. Yes.

28 Q. But -- and a generally dwindling supply --



1 A. Yes.

2 Q. -- comparatively?

3 A. Yes.

4 Q. Now, the slope between Hamilton County and
5 Charleston, I'm not going to try to pronounce the county,
6 is \$0.70. And it's about 200 miles between those points.

7 I think it would be about 210 miles or more to
8 that East Central Ohio milk shed you referenced. Does
9 that seem about right?

10 A. Yeah, that's probably about right. I'd call it
11 ballpark.

12 Q. I think in Mr. Sims' testimony he analyzed milk
13 shipments across Texas, and the hauling rate in there was
14 about a penny a mile. So \$1 hundredweight to move 100
15 miles.

16 If that is about a reasonable haul rate, is that
17 \$0.70 in West Virginia sufficient to cover the cost to
18 move the milk from the areas around Hamilton or Franklin
19 County?

20 A. It probably is not. And I would suggest that what
21 Mr. Sims covered and what Steve Zalar covered in his
22 testimony about \$1 a hundredweight per 100 miles applies
23 to what I would call kind of a standard route. This is
24 not a standard route. And for the most part, we are
25 trying desperately to hold on to reasonable hauling rates,
26 but they are getting away from us significantly in that
27 area. So \$0.70 is probably not near enough to cover that
28 rate -- or that cost.



1 Q. And I note that the USDSS for Charleston had a
2 4.70 differential, which is the same as Proposal 19; is
3 that correct?

4 A. Yes.

5 Q. So my question is, if -- if your working group
6 took the model and then looked to adjust these counties
7 that we have went through for competitive issues and price
8 alignment and making sure the slope was sufficient, why
9 did they not look for a higher rate in West Virginia to
10 make sure that there was enough of an incentive to get the
11 milk to that plant?

12 A. Well, ideally we would ask for every single bit of
13 extra rate we could get, but there comes a point where you
14 have got to match up with somebody else. And this is one
15 of those points that's on the very fringe of the Mideast
16 Area where we had to match up with somebody else, and that
17 4.70 was deemed to be a good number for them, so we
18 acquiesced to it. And it was also an anchor point number
19 that we couldn't feel -- we didn't feel like we had enough
20 of a reason to adjust it from where it was, and we
21 couldn't go up that much higher anyway. We were just
22 going to be short when it comes to moving that milk that
23 direction. That's the simple, sad story of it.

24 Q. If you are still going to end up short supplying
25 that plant, why would a cooperative sell its members' milk
26 at a loss if there was another higher return market?

27 A. We may not be doing that in the future. That's
28 something we're going to have to evaluate going forward.



1 Q. On page 14 of your testimony you're talking about
2 some of the changes to the Pittsburgh area. I wanted to
3 ask a question about a statement that's toward the bottom
4 third of the page.

5 And actually, I apologize, you are now back to
6 talking about Ohio.

7 And your statement reads: "There are several
8 plants within a relatively small geography that are likely
9 competing for the same business around Columbus, Dayton,
10 and Cincinnati. The solution to equalize raw product cost
11 was to move Clark County, Ohio, to the \$3.70 per
12 hundredweight zone."

13 Now, does the USDSS take into account competition
14 among Class I plants for retail sales?

15 A. I wouldn't say it does that, no.

16 Q. And so if the USDSS is supposed to be the
17 foundation of the differentials, why is it proper to take
18 into account the competition among processors for their
19 customers to set dairy farmer prices?

20 A. We go back to look at -- we tried to do this to
21 the best extent we could to equalize raw product costs for
22 plants producing similar products and competing in similar
23 markets. And I believe that is actually the direction of
24 USDA. I can't say -- I can't point you to anything that
25 says that absolutely has to be adhered to. But we
26 certainly tried to do that to make sure that we weren't
27 ending up with some very strange looking minimum costs,
28 minimum prices to processors who are competing in the same



1 market.

2 Q. Clark County, Ohio, and Miami County, Ohio,
3 60 miles apart, perhaps?

4 A. I'm not sure. I know that they are relatively
5 close.

6 Q. Okay. But the -- your working group's conclusion
7 was that \$0.30 in that -- among that group of four
8 counties caused -- caused competitive issues for the sales
9 of bottled product by Class I handlers, right?

10 A. I think there's two things here. I would agree
11 with what you just said. Plus Clark County was one of
12 those counties that was right on the fringe of one zone to
13 the next zone, and where you draw that line becomes a
14 little bit of a guessing game, to say, how should this
15 county fall, which direction should the line fall on.

16 If we follow what we -- I can't swear to this, but
17 I think the USDSS results is you end up with a county
18 that's probably in an area it shouldn't be, and it has to
19 do with those competitive issues. So we brought it back
20 into alignment with the other plants that we think compete
21 with that same business in that Cincinnati, Dayton,
22 Columbus area.

23 Q. Now I wanted to ask some questions about page 18
24 of your statement. You quote some language from one of
25 the order reform decisions, and it refers to \$1.60 per
26 hundredweight in the base zone.

27 Do you agree that \$1.60 is a base level for the
28 differentials?



1 A. I would say at that time it was. For that
2 decision, it was.

3 Q. Okay. Now, in your sentence preceding that, you
4 refer to "an appropriate minimum value for Class I
5 differentials should be \$1.60 per hundredweight."

6 In your mind, is there a difference between a base
7 differential and an appropriate minimum value of a
8 differential?

9 A. Yes. In my mind, there is.

10 Q. Okay. What is that difference to you, Dr. Erba?

11 A. \$1.60 base differential would be a number that's
12 added to all pricing points. It's a \$1.60 wedge, which is
13 not the same thing as the lowest price shall be \$1.60.

14 Q. Under the differentials that we have today, is it
15 your understanding that \$1.60 is a minimum value or a base
16 differential?

17 A. It's a minimum value for sure. The way it's been
18 discussed is a base differential is -- it almost makes the
19 two interchangeable, but in my mind they are not.

20 Q. Okay. Well, I appreciate your drawing the
21 distinction between whether those terms are
22 interchangeable or not.

23 On page 18 you then break down three pieces of the
24 base Class I differential. Actually you refer to it as
25 such in the previous sentence. So the cost -- the
26 maintenance cost for a Grade A license, the cost of
27 balancing for Class I plants, and the incentives to
28 encourage deliveries to Class I plants, are you -- you are



1 describing those as a build-up to a base Class I
2 differential; is that correct?

3 A. I was trying to be consistent with the language
4 that was used by USDA at the time they made that decision.

5 Q. Okay. So put aside your intention to be
6 consistent now.

7 And is that \$1.60 a base differential or is that
8 a -- an appropriate minimum value for a differential?

9 A. For that time?

10 Q. If you'd like to answer it that way, sure.

11 A. For that time, it was described as a base
12 differential. It also happened to be the minimum. So
13 they were, again, used interchangeably.

14 Q. Without respect for what those values might be
15 today, are those three costs that are still realities for
16 producers and cooperatives?

17 A. I would say so, yes.

18 Q. Do you think any of those -- any of those values
19 have decreased in the last 24 years?

20 A. I don't think we have got great data to describe
21 what balancing costs are. But certainly the piece that I
22 worked on most intently with the Grade A piece,
23 maintenance cost has not gone down, it's gone up,
24 significant ly. I have no reason to think those other
25 costs would go down, but I don't know that.

26 Q. Whatever the cost of balancing is, the cooperative
27 still incurs it, correct?

28 A. Yes.



1 Q. And whatever the monetary incentive is to
2 encourage deliveries to Class I plants, whatever that may
3 be, it exists somewhere at some number, correct?

4 A. Yes.

5 Q. And your testimony is that the maintenance cost
6 for a Grade A license exceeds \$2, correct?

7 A. No. I don't think that's what I said.

8 Q. Okay.

9 A. I said in the example that I used with a 100-cow
10 dairy farm, the maintenance cost was \$1.46 per
11 hundredweight.

12 Q. And so your reference to the depreciation costs we
13 should ignore?

14 A. That was not something I would have included.
15 That's a non-cash cost, and I was looking strictly at what
16 are the cash costs.

17 Q. Okay. So the cash cost is \$1.41?

18 A. Six.

19 Q. \$1.46.

20 Do you think that the combination of balancing and
21 incentives to encourage deliveries to Class I plants is
22 any lower than \$0.14?

23 A. I do not think it's lower than \$0.14.

24 Q. Do you think it is lower than \$0.74?

25 A. No. I do not think it's lower than \$0.74.

26 Q. And you understand that the USDSS includes \$1.60
27 base differential? And I intentionally say "base" and not
28 "minimum value."



1 A. They include \$1.60 base differential because we
2 asked for it to be \$1.60.

3 Q. Right. So you could take the results from the
4 model and rip out \$1.60, and that actually gives you the
5 model output?

6 A. Right. The model output is -- has a wedge of
7 \$1.60 that we specifically asked to be put in there.

8 Q. Would it be appropriate to take that base out --
9 that output from the model that excludes the \$1.60 and add
10 on whatever the costs of those three line items are -- the
11 cost of balancing, the cost of maintaining a Grade A
12 permit, and the cost of incentivizing movements of Class I
13 milk -- to achieve a proper differential at the county
14 level?

15 A. As you described it, no, I would not say so. We
16 went through a number of -- a number of meetings in
17 subgroups to talk about why those numbers from the output
18 of the USDSS don't necessarily apply as we see them. So
19 unless you wanted to start at a \$2.20 base instead of
20 \$1.60 and redo the entire exercise, I would say that's not
21 appropriate.

22 Q. What are the reasons that your group talked about?
23 You mentioned that there were reasons. What are they?

24 A. Ask me again, please?

25 Q. What are the reasons that it would be
26 inappropriate to take \$2.20 and add it to the model output
27 as I described?

28 A. Well, as we have talked about at some length



1 today, and previous witnesses, there are a number of milk
2 marketing challenges that are not reflected in the model,
3 and we don't think those are -- should be ignored. They
4 have value. And we did that across the country with local
5 experts. And although I suppose there is -- there is a
6 way to say you could use a \$2.20 base and use the USDSS
7 model output and say, that's your Class I differentials, I
8 would say that that would be fraught with some problems
9 because it doesn't take into account some of the local
10 conditions that we know exist.

11 So I think that answers your question.

12 Q. I think it does, but it also begs this one, which
13 is, if you are not going to take whatever the value of
14 these inherent expenses and costs are that make up a base
15 and add that to the model's output, then you have to
16 discount the validity of one of those or the other, and
17 which one do you discount?

18 A. I would suggest there's more than one way to get
19 to a final product. And what we try to do is say, if you
20 would like to go down the path of the -- I'm going to call
21 it the three-factor formula that sums up to \$1.60 and
22 update those costs, you could do it that way.

23 I think Mr. Sims presented a different way of
24 looking at it that says, how do we prevent price
25 inversions? That is a different way of looking at it.

26 So there's more than one way to get there.

27 Q. Do you believe that establishing the differential
28 based on the goal of eliminating price inversions is an



1 economically sound method for arriving at the
2 differentials?

3 A. I think it's worth discussion, yes.

4 Q. Should it be a -- should that be a factor that
5 USDA relies upon to set the differentials?

6 A. I think they should consider what Mr. Sims put
7 into the hearing record. I think it has validity, and I
8 think it shows an innovative way of looking at how Class I
9 differentials are set and what the objectives are for
10 having Class I differentials and minimum prices
11 altogether.

12 Q. Do you have a copy of Exhibit 340 up there with
13 you?

14 A. I do.

15 Q. Don't take it out. I won't ask you any questions
16 about it.

17 A. Okay.

18 MR. MILTNER: That's all I have. Thank you.

19 THE WITNESS: I thought there were no trick
20 questions here, Mr. Miltner.

21 THE COURT: Oh, dear.

22 MR. ENGLISH: No charts, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. ENGLISH:

25 Q. Chip English for the Milk Innovation Group, and
26 some questions that really are follow-on from Mr. Miltner.
27 And not very many.

28 So I started going there, and then Mr. Miltner



1 went there in greater detail, and this is the discussion
2 about Grand Rapids and Chicago and this question about
3 negotiation. If Chicago had not -- if the group doing
4 Chicago had not come back and insisted Chicago needed to
5 go down, was your group prepared to leave Grand Rapids at
6 3.40?

7 A. No. I think we would have come down anyway.
8 Having to be in some kind of relationship with Chicago was
9 just another constraint we had to be mindful of. But our
10 objective was still the same, and that was to create a
11 greater slope in the Mideast Area, and the way we would do
12 that is to press down some of those higher differentials
13 that would be seen in there as a surplus, which would be
14 in -- largely in Michigan, but certainly around Grand
15 Rapids. So we may not have gotten to the exact same
16 number, but we qualitatively would have done the same
17 thing.

18 Q. And do you know whether the group that came up
19 with that number for Chicago similarly pressed down the
20 numbers to the north of Chicago where the milk is
21 plentiful?

22 A. As much as I hate to punt to somebody else, I
23 don't like that, I really have no expertise in that area,
24 and I know we have got other witnesses who can speak much
25 more clearly to what happened west of Chicago.

26 Q. So on page 13 of your testimony, you refer to the
27 compromises.

28 So what kind of compromises were there made with



1 respect to groups outside the Mideast?

2 A. Well, fortunately, in our cases, we were very
3 close on every place there was a touchpoint with another
4 area. We weren't off by more than 5, 10, \$0.15. So it
5 was a compromise to say, we've got to get to a number that
6 agrees, what is that number going to be. It wasn't like
7 we were off by dollars and had to come up with something
8 really drastic. We were already pretty close.

9 Q. So going back to my sort of initial set of
10 questions, what principles were applied when you had to
11 compromise?

12 A. Well, I guess when you come down to the compromise
13 in the sense that I'm talking about, you have to have an
14 area that lines up, has a significant high degree of price
15 alignment with the contiguous area that's next to you.
16 And keep in mind, we worked in separate groups. We didn't
17 really share very much until we got together and said,
18 we're done, show us your cards, and we'll show you our
19 cards. And that compromise was, okay, how do we get these
20 things to match up. In our case, it was pretty easy, we
21 were already pretty close.

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

24 THE COURT: Mr. English, thank you.

25 Is there additional cross-examination of Dr. Erba
26 before I call on the Agricultural Marketing Service?

27 I see none. I ask the Agricultural Marketing
28 Service to ask their questions of Dr. Erba.



1 CROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Thanks for coming to testify.

6 A. Thanks for having me.

7 Q. I'm going to try to make my way through my sticky
8 notes, and most of them are just notes to myself, not
9 actually questions for you, I think, at this point. So
10 should be short.

11 I did have a question on page 3, going into
12 page 4. Here you are talking about the recent addition of
13 the large cheese plant in Michigan. And I wondered if you
14 could provide a little more context to how that has
15 impacted the supply in that area and, therefore, available
16 supplies to other areas.

17 A. I wouldn't say it has affected the supply so much
18 as it affected the demand. So previous to that plant,
19 we -- DFA -- were hauling a lot of milk out of that
20 eastern side of Michigan, particularly out of the thumb.
21 We have a lot of members who are in the thumb of Michigan.
22 There isn't a good location for that milk to go nearby.
23 So that milk was routinely leaving the state. Very
24 expensive and difficult to get haulers who wanted to make
25 that move.

26 The large cheese plant has been extremely helpful
27 in being able to manage that supply. So that plant takes
28 8 million pounds a day of Michigan milk, a large part of



1 that is DFA milk. Some of it is supplied by Michigan Milk
2 Producers Association. And it has drastically changed
3 what those hauling costs look like for DFA and our members
4 in Michigan just by its location.

5 Q. And so does most of that milk stay up there in
6 that plant or some of that milk does need to move south
7 and east?

8 A. We still have milk that needs to leave the state.
9 It's a very good place, Michigan, particularly the eastern
10 side, to make milk, and a lot of the expansions that we
11 are experiencing as DFA are occurring in the eastern side
12 of the state. So for a time, the milk flow out of the
13 state was reduced significantly. But as milk production
14 continues to grow, they are starting to run into a little
15 bit of the same problem we had previously, that milk has
16 got to move to the west and to the south, typically
17 leaving the state.

18 Q. And in Michigan you have proposed kind of more --
19 it used to be all the same, a flat slope. So now it is
20 more of a slope to help move that milk out where it would
21 need to go?

22 A. Right. So we put a little more dimension to it by
23 pressing down the northern part of Michigan and raising
24 the southern part.

25 Q. Okay. I want to turn to page 7, in the middle,
26 that's when you start talking about the anchor cities and
27 what you did from there.

28 And I'm not sure I asked Mr. Sims this question,



1 so I'll ask you. For those 19 anchor cities, or the ones
2 that were applicable in your market, did you generally
3 change those at all or you -- I know for Charleston, for
4 example, that 4.50 was what the model average was, I
5 believe, and so that you guys -- you guys kept that, you
6 didn't try to change that. But were there any that you
7 did try to change or need to change to make everything
8 work?

9 A. Yes. So for the most part, we tried to keep those
10 anchor city numbers what they were. And I think it was
11 4.70 in Charleston is what we had, and we kept that the
12 same, and Verona we kept the same.

13 The one we did change was Sharpsville, and we
14 reduced that by \$0.20 in the final output. But, again,
15 this -- that was along that eastern fringe. We wanted to
16 make sure we matched up well with the Northeast and the
17 Southeast.

18 Q. Okay. And I have a question on Sharpsville in a
19 minute.

20 And I take it what I have heard today is that when
21 you did make changes to say that Sharpsville location or
22 any of the model output locations, you didn't necessarily
23 do a transportation cost analysis, like what was done when
24 we changed the Southeast differentials, but you looked at
25 kind of what's the slope need to look like to move this
26 milk, and based on the experience that the people in the
27 room had on how to move milk, you kind of used that
28 knowledge to say, we need more here, or we can do less



1 here.

2 Is that an accurate description?

3 A. I would say that's pretty accurate. And it was a
4 little more involved than what you just described, but it
5 basically went along those lines. It was not
6 quantitatively intensive. It was more like, what kind of
7 increase do we think we need here to draw milk to this
8 area.

9 Q. And those increases don't necessarily mean it's
10 going to cover all the actual hauling costs that you
11 experience?

12 A. That is absolutely true. And, in fact, along
13 those eastern and southern fringes of the Mideast Area, we
14 have hauling costs that are 50, 60, 70% higher than they
15 are anywhere else. And it is because we have one choice
16 of hauler, who probably would like to retire, who says, if
17 you want me to stay in business, this is what it's going
18 to cost you. It's -- it has nothing to do with a -- any
19 kind of formula you could come up with. And it's
20 significantly higher than it was even five years ago.

21 Q. Okay. I want to turn to page 8, and that's when
22 you first discuss the city pairs. And I'll start with the
23 first one, which is Chicago to Grand Rapids.

24 In the middle of that paragraph, you say, "To
25 maintain Class I value continuity, the Class I
26 differentials in Chicago should be aligned with the prices
27 at these other locations supplying packaged milk to
28 Chicago."



1 I'm just wondering, I think this might have been
2 touched on, but I want to make sure I understand what you
3 mean by maintaining "Class I value continuity."

4 A. So, again, if you think about the price surface,
5 we didn't want to necessarily create something that looked
6 like a mountain peak, a local high in the middle of
7 nowhere, or a crater in the middle of nowhere. And that's
8 the part we were trying to be mindful of, to make sure
9 this is continuous and explainable without some very large
10 deviation from that.

11 Q. And that speaks to I think you talked before about
12 the different supply areas around Chicago. So you had to
13 lower Chicago just to make kind of it all look similar?

14 A. Yeah. So that was, again, one of the cities that
15 we had several iterations to go through to say, what does
16 that number need to look like? And it was a little bit of
17 a challenge because there isn't any Class I plant there
18 that's operating, but we know it's supplied by several
19 different areas, and we want to make sure they are pretty
20 much all in the same footing. And I think we succeeded
21 doing that.

22 Q. Okay. On the Sharpsville plant, when you talk
23 about it on page 10, you're comparing it -- the pairing
24 was Columbus to Sharpsville, and you are trying to get the
25 milk to move there instead of going to the local cheese
26 plant, I take it from what your statement says.

27 I was just wondering if you could expand a little
28 bit on the dynamics in that area.



1 A. Yeah. It's a real challenge out in the western
2 side of Pennsylvania. There's somewhat of a local supply,
3 but it is diminishing. Those farms tend to be small,
4 difficult to get to, hauling-wise. Those plants are
5 fairly large. They are, I'm going to just take a wild
6 guess, 2 to 3 million pounds a day intake for both those
7 plants, and that kind of milk does not lie anywhere close
8 to that area.

9 So milk has got to move from outside the area.
10 It's not going to come from the south. It's not going to
11 come from the north. It's got to come from the west.

12 And what we have been able to do -- and, again,
13 with a nod and recognition to our haulers of what they
14 have to go through, instead of trying to pull milk all the
15 way down from Michigan and get it into Sharpsville, which
16 would be pretty difficult, tried to do what I talked
17 about, and that is stair-step the milk to bring it in from
18 Eastern Ohio, or maybe even Western Ohio these days, to
19 fulfill those needs and then backfill with milk out of the
20 more surplus areas like Michigan.

21 Q. Okay. I wanted to go to -- it was in your
22 testimony. Let me find it. Page 22. And it is a
23 carryover from page 21 when you are talking about
24 regulatory inspections to ensure Grade A standards?

25 A. Yes.

26 Q. I know you listed it here it's a Market
27 Administrator fee.

28 And I guess my question is, do you know if Grade A



1 status is federally regulated or regulated by the states?

2 A. The states, as I understand it, at least in our
3 area, adopted the federal standards, the Food and Drug
4 Administration standards. So they are state run, but they
5 are basically the federal standards.

6 Q. And do you know who is -- who does those
7 inspections, though, if it's state regulations?

8 A. You are sort of hinting at the state and not
9 federal, and I probably would agree with that, yes.

10 Q. Okay. I just want to make sure everyone makes
11 their arguments later based on the correct facts.

12 A. Got it.

13 Q. Yeah.

14 MS. TAYLOR: That's it from AMS. Thank you.

15 THE WITNESS: Thank you.

16 REDIRECT EXAMINATION

17 BY MS. HANCOCK:

18 Q. Okay. Good afternoon, Dr. Erba.

19 A. Good afternoon.

20 Q. I want to just ask a few questions to make sure I
21 have it clear on the record.

22 When did you join the National Milk task force and
23 start working on Class I price surface?

24 A. September 2022.

25 Q. Okay. So that -- that initial model that came
26 from Dr. Nicholson had already been generated, and that
27 was the first draft that when you stepped in you started
28 working on; is that right?



1 A. As I recollect, when I stepped in, we had the very
2 first model run to look at, that's correct.

3 Q. Okay. Did you have any conversations with
4 Dr. Nicholson when you were on the task force?

5 A. At anytime?

6 Q. Yeah. Just about the process of what you were
7 going through?

8 A. I am sure I talked to him at some point, but we
9 talk about a lot of things, so it may not have been
10 related to this at all.

11 Q. Okay. And at some point, you -- Dr. Nicholson was
12 asked by National Milk to rerun or to run again the model
13 that generated another set of results?

14 A. Yes.

15 Q. And did you participate in the guidance that was
16 given to Dr. Nicholson in order to have him run an updated
17 model?

18 A. Right. So we -- I limited my conversations in
19 that process, and not directly with him, but with our
20 group, on the plants that are either -- had closed down
21 already or we thought were going to close down or going to
22 open in the Mideast Area.

23 Q. And did you provide him with any advice or
24 guidance other than just factual information about plant
25 closures or openings or locations?

26 A. Absolutely not.

27 Q. Okay. And then you took the output of the model
28 result --



1 THE COURT: Wait a minute. I heard his answer.
2 So, your question to him was, did he provide
3 guidance; is that right, other than just plant closures?

4 MS. HANCOCK: I think that's what I was asking.

5 THE COURT: Okay. Would you ask that again? I
6 just want to make sure -- there were like two parts to
7 your question, and when he said "absolutely not," I think
8 he meant, I absolutely provided no guidance. But I just
9 want to be sure it is clear.

10 MS. HANCOCK: Okay. Thank you. She'll make me
11 have a better question.

12 BY MS. HANCOCK:

13 Q. Did you guide Dr. Nicholson in any way other than
14 to provide him with plant closure and opening information?

15 A. No.

16 Q. Did -- and then you took the final model results.
17 And did you understand or did everybody understand
18 at that time that the model results was just a starting
19 spot?

20 A. We had a discussion with both doctors, Stephenson
21 and Nicholson, and that was one of the questions that was
22 asked in the -- it was a conference call or a Zoom
23 meeting. That was one of the questions that was asked is,
24 basically, is this a starting point or is this definitive?
25 Do we have to go with these numbers? And the response
26 back, and it was from Dr. Stephenson, said, this is the
27 starting point, and you absolutely should treat it as
28 such.



1 Q. Okay. And there's several factors in there, like
2 transportation and movement of milk that are already
3 contemplated by the model; is that right?

4 A. That is correct.

5 Q. Why isn't it good enough to just stop right there
6 and use this very smart model that's been improved on for
7 decades?

8 A. We have, as I have discussed in cross-examination,
9 several areas in the Mideast Area alone which don't follow
10 what the model suggests it probably should. And one of
11 the big things is -- is hauling. It's hauling costs and
12 hauling availability. And sometimes you can't get milk to
13 move the way you want it to move. The model would say,
14 yes, you can, and we're saying, practically, no, you
15 can't. And if you could, it's going to cost you a lot
16 more than what the model would suggest it should cost.

17 Q. So on top of that, then you also talked about
18 layering on price relativities or price alignments.

19 Why is that important to take into account when
20 you are looking at these territories and setting these
21 price differentials?

22 A. I think what you really are trying to avoid is
23 something that looks erratic and allows for essentially
24 arbitrage where you could simply move milk around and take
25 advantage of the regulated system. The USDSS does a
26 really nice job of saying, no, we're not going to allow
27 that to happen because we're going to make this a
28 continuous price surface. And to some degree we have to



1 depart from that because that's not reality. The backstop
2 of that is we don't want to create a problem where there
3 shouldn't be a problem, and that is to start getting into
4 areas where you could take advantage of the regulation.

5 So that's where some of this fine tuning has to
6 come in and say, yes, the model basically has it right,
7 but maybe we need to tweak a little bit here or there to
8 make sure that we stay on the proper track with what's
9 practical and what's reality.

10 Q. And you've heard some discussion from the
11 questions -- or that was embedded in some of the questions
12 that were asked of you about the competitive locations of
13 various plants.

14 Do you recall that?

15 A. I think so.

16 Q. Okay. Did -- when you were working on your task
17 force for National Milk and in your -- both regional and
18 then when you gathered nationally, did you at any time
19 ever take into account the ownership of any of the plants
20 as a factor for price -- setting price differentials?

21 A. In our working group, we did not. It was simply a
22 matter of looking at the different areas within the
23 Mideast, knowing where the demand points were, where the
24 supply points were, and trying to come up with a price
25 surface that made sense without regard to any kind of
26 plant ownership.

27 Q. And you just started that by a qualifier that will
28 make every attorneys' ears perk up, which is "in our



1 working group, we did not."

2 Are you at all implying that in any other working
3 group they did?

4 A. I don't think so, but I don't know because I only
5 worked in my group.

6 Q. Okay. You never saw anything in the process that
7 you were firsthand aware of that would indicate that
8 anybody was trying to obtain any kind of competitive
9 advantage, were you?

10 A. No.

11 Q. Okay. And you work for DFA, which has numerous
12 plants throughout the country; is that right?

13 A. Yes.

14 Q. And so to the extent that there is a DFA plant
15 that might be located in an area with higher
16 differentials, how would you respond to a question or an
17 implication that somehow that is designed to give DFA a
18 competitive advantage?

19 A. We didn't look at it that way, and that would not
20 have been one of our objectives within our working group.
21 That was certainly not one of the things that we
22 considered, even from the first day I participated. It
23 was all about, what's the price surface that makes the
24 most sense in your area that you know of.

25 Q. Okay. Thank you so much for your time, Dr. Erba.
26 I appreciate it.

27 MS. HANCOCK: Your Honor, at this time we would
28 move to admit Exhibits 336 through 338.



1 THE COURT: So I also know that I marked as
2 Exhibit 339 a larger version of a chart that comes from
3 Exhibit 299 from Dr. Vitaliano. And I don't know if we
4 actually got that created, but I want to admit that as
5 well.

6 MS. HANCOCK: You are right. I just didn't go far
7 enough. I forgot we had four exhibits. So it is 336,
8 337, 338, and 339. Thank you.

9 THE COURT: Is there any objection to the
10 admission into evidence of Exhibit 336? That's also
11 Exhibit NMPF-38 Amended.

12 There is none. Exhibit 336 is admitted into
13 evidence.

14 (Thereafter, Exhibit Number 336 was received
15 into evidence.)

16 THE COURT: Is there any objection to the
17 admission into evidence of Exhibit 337, also marked
18 Exhibit NMPF-38A?

19 There is none. Exhibit 337 is admitted into
20 evidence.

21 (Thereafter, Exhibit Number 337 was received
22 into evidence.)

23 THE COURT: Is there any objection to the
24 admission into evidence of Exhibit 338, also marked
25 Exhibit NMPF-38B, like boy?

26 There is none. Exhibit 338 is admitted into
27 evidence.

28 (Thereafter, Exhibit Number 338 was received



1 into evidence.)

2 THE COURT: Is there any objection to the
3 admission into evidence of Exhibit 339, which is a larger
4 piece of evidence that was taken out of Exhibit 299?

5 There is none. Exhibit 339 is admitted into
6 evidence.

7 (Thereafter, Exhibit Number 339 was received
8 into evidence.)

9 MR. ROSENBAUM: Steve Rosenbaum, International
10 Dairy Foods Association.

11 I would like to move into evidence Hearing
12 Exhibit 340.

13 THE COURT: Is there any objection to the
14 admission into evidence of Exhibit 340?

15 There is none. Exhibit 340 is admitted into
16 evidence.

17 (Thereafter, Exhibit Number 340 was received
18 into evidence.)

19 MS. HANCOCK: Your Honor, along with that last
20 document, we'll add this to the list of items that we'll
21 seek judicial notice -- of which we will seek judicial
22 notice at the end of the hearing. But just for -- so our
23 record is clear, in conjunction with this one, that we
24 would like the entirety of the document noticed.

25 THE COURT: Yes. I -- I take official notice of
26 the entire Grade A Pasteurized Milk Ordinance, 2019
27 Revision, from the United States Department of Health and
28 Human Services, Public Health Service, Food and Drug



1 Administration.

2 And then there's one other item, and that is when
3 Dr. Erba showed us some errors that we need to correct on
4 some Excel spreadsheets, I don't know exactly how we want
5 to handle that because those show up in a couple of
6 different places.

7 MS. HANCOCK: So, Your Honor, I believe what we
8 will do is we'll wait until we get to the end of this
9 section just to make sure that we don't have any other
10 changes along the way. We will submit an amended list of
11 the counties to have all of the correct numbers in there,
12 and we'll submit an amended map as well, so that both will
13 be complete. But we'll do it at the end just to make sure
14 that there's nothing along the way.

15 THE COURT: Okay. And specifically, what I'm
16 thinking about right now, is where -- let me make sure I'm
17 in the right place. So which --

18 MS. HANCOCK: I believe that his testimony is
19 correct as -- Dr. Erba's testimony is correct as it's
20 written, but it is different than what was submitted on
21 our county form. So the correction needs to be made to
22 Exhibit 299, but Dr. Erba's testimony in 336 is correct.

23 THE COURT: All right. And I think one of them --
24 and, Dr. Erba, maybe you can confirm whether I'm right or
25 not -- I'm looking at page 14 of Exhibit 336, and you were
26 talking about Allegheny County, where Pittsburgh is
27 located, and you mentioned that the solution was to move
28 that to the \$4.20 per hundredweight zone, and I believe



1 you said that the Excel spreadsheet should say \$4.20
2 instead of \$4.40.

3 THE WITNESS: Yes. So the Excel spreadsheet says
4 \$4.40 per hundredweight, and it should say \$4.20 per
5 hundredweight.

6 THE COURT: All right. And the second one was I
7 believe you were talking about Clark County, Ohio. And
8 your testimony on page 14 says that the solution was to
9 move that to the \$3.70 per hundredweight zone, and you
10 mentioned that the spreadsheet still showed \$4.

11 THE WITNESS: That is correct. So the testimony
12 is correct; the Excel spreadsheet is in error, it needs to
13 be corrected.

14 THE COURT: All right. Thank you.

15 And, Ms. Hancock, I appreciate your keeping track
16 of this because, of course, those numbers show up over and
17 over. So thank you.

18 MS. TAYLOR: If I could request, when you do
19 submit the amended sheet, to also submit that in an Excel
20 format as well as PDF. Thank you.

21 THE COURT: Good.

22 All right. Excellent. Now, where are we
23 time-wise? Oh, good. We have time for our next witness?

24 And would that be Mr. Covington? He's eager.
25 That's great.

26 Let's take a ten-minute break --

27 MS. HANCOCK: We won't have time if we do that.

28 THE COURT: Oh, we won't?



1 MS. TAYLOR: No, we won't.

2 THE COURT: We have to take the break.

3 MS. TAYLOR: We can go two ways. I would
4 suggest -- two different ways. Take a small break and put
5 Mr. Covington on, and I don't think he'll be done in
6 20 minutes. I know Ms. Keefe still has to get some
7 documents on as clean-up, if she is ready, and she
8 could -- I don't know what option is preferred. She could
9 get that done now and Mr. Covington could go on first
10 thing in the morning. I offer that as two options.

11 MS. HANCOCK: I think that his examination won't
12 finish until tomorrow, so he'll be on in the morning no
13 matter what, so I think it makes sense to do Ms. Keefe.

14 THE COURT: Very good. All right. You said short
15 break. Does that mean five minutes?

16 MS. TAYLOR: They tell me Ms. Keefe will be less
17 than five minutes, although I have been skeptical. So I
18 think whatever is your preference.

19 THE COURT: My preference is ten minutes.

20 Please be back and ready to go at 4:45. We go off
21 record at 4:35.

22 (Whereupon, a break was taken.)

23 (Thereafter, Exhibit Number 341 was marked
24 for identification.)

25 THE COURT: We're on record now at 4:45.

26 I'd like the witness in the witness chair to state
27 and spell your name.

28 THE WITNESS: My name is Sally Keefe, S-A-L-L-Y,



1 K-E-E-F-E, and that's F as in Frank.

2 MR. ENGLISH: And I'm recalling her to the stand,
3 so she's been previously sworn, Your Honor.

4 THE COURT: You remain sworn.

5 SALLY KEEFE,

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

8 THE WITNESS: Thank you.

9 MR. ENGLISH: So, Your Honor, during the break we
10 had a document marked as Exhibit 341, which is also marked
11 as Exhibit MIG, for Milk Innovation Group, 5B. And it has
12 been handed out. It is a multi-page document, which is,
13 by the way, with one -- two changes -- or one change, each
14 column, the same as Exhibit 112, pages 25, 26, and 27.

15 REDIRECT EXAMINATION

16 BY MR. ENGLISH:

17 Q. And Ms. Keefe is going to quickly explain what
18 this document is and why she prepared it.

19 A. Sure.

20 So way back when in August when we were on milk
21 composition, I presented a series of charts, and these
22 three pages had just the blue and yellow bars without the
23 number labels on them. So like for January of 2021, the
24 blue bar was just a bar, and it didn't count the number of
25 observations. It didn't have "19" there or "13" over the
26 yellow part.

27 And so the only change between Exhibit 112,
28 pages 25, 26, and 27, and Exhibit 341, pages 1, 2, and 3,



1 is just adding the labels onto the bar chart.

2 Q. Do you have any further information about
3 Exhibit 341?

4 A. Not unless anybody has questions about
5 Exhibit 341.

6 Q. So, Ms. Keefe, does -- do you have a statement to
7 make on behalf of Milk Innovation Group about advanced
8 pricing?

9 A. Yes, I do. I wanted to make sure that it was
10 clear in the record that the Milk Innovation Group does
11 not support the elimination of advanced pricing and
12 does -- and, therefore, does not support the adoption of
13 Proposals 16, 17, and 18, because each of those would
14 eliminate advanced pricing.

15 MR. ENGLISH: I have no further questions for the
16 witness. She's available for cross-examination at two
17 minutes and 17 seconds.

18 THE COURT: Who would like to ask Ms. Keefe
19 questions about the testimony she's just given us?

20 I would invite the Agricultural Marketing Service
21 to ask any questions that you may have.

22 MS. TAYLOR: We have no questions.

23 MR. ENGLISH: Your Honor, I move the admission of
24 Exhibit 341.

25 THE COURT: Is there any objection to Exhibit 341
26 being admitted into evidence?

27 There is none. I admit into evidence,
28 Exhibit 341.



1 (Thereafter, Exhibit Number 341 was received
2 into evidence.)

3 THE COURT: Ms. Keefe, you are not only brief and
4 concise, but uncontested.

5 THE WITNESS: Thanks, Your Honor.

6 MR. ENGLISH: And under four minutes.

7 THE COURT: Thank you. You may step down.

8 It is now 4:49. How would the Agricultural
9 Marketing Service like to proceed?

10 MS. TAYLOR: Your Honor, I think that's all the
11 witnesses available today.

12 So I think tomorrow we'll continue with our
13 witnesses from National Milk, and I believe Mr. Covington
14 will be first on the witness stand. And if we finish with
15 him, I'm not sure if we move to Mr. Vandeneuvel or
16 Dr. Vitaliano after that. That's up to National Milk.
17 That's who is on my list.

18 MS. HANCOCK: I think that's right. So we'll
19 start with Mr. Covington. Then we'll go to Rob
20 Vandeneuvel. If we have time, we'll go to Chris Hoeger.
21 And then we have Dr. Vitaliano who can fill in if we have
22 more time left.

23 THE COURT: Good. And as I recall we go to
24 5:00 p.m. tomorrow?

25 MS. TAYLOR: That's correct.

26 THE COURT: All right. Is there anything else
27 anyone wants to put on the record before I close the
28 record for the day?



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I see nothing. We now go off record until tomorrow morning at 8:00 a.m. We go off record at 4:50 p.m.

(Whereupon, the proceedings concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

9

10 DATED: December 13, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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