

**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 11, 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:  
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Nicole Hancock  
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FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

Steve Rosenbaum

FOR THE AMERICAN FARM FEDERATION:

Dr. Roger Cryan

FOR THE MAINE DAIRY INDUSTRY ASSOCIATION:

Dan Smith

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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 WEDNESDAY, OCTOBER 11, 2023 - - MORNING SESSION

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

3 We're back on record. It is October 11, 2023.

4 It's a Wednesday, approximately 8:02 in the morning.

5 I am ready for my next witness, unless there are  
6 any preliminary matters.

7 We can go forward. You may take the witness  
8 stand.

9 Please state and spell your name.

10 THE WITNESS: Calvin, C-A-L-V-I-N, Covington,  
11 C-O-V-I-N-G-T-O-N.

12 THE COURT: Mr. Covington, welcome back.

13 THE WITNESS: Thank you, ma'am.

14 THE COURT: You remain sworn.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: And before I ask counsel to introduce  
17 herself, I have before me an exhibit that needs its next  
18 number.

19 And what will that number be? 342.

20 All right. I'm marking as 342 a document that is  
21 also marked Exhibit NMPF-44.

22 (Thereafter, Exhibit Number 342 was marked  
23 for identification.)

24 THE COURT: Ms. Hancock, you may introduce  
25 yourself and proceed.

26 MS. HANCOCK: Thank you, Your Honor.

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CALVIN COVINGTON,

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

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. Covington. Welcome back to the  
stand.

Are you here to present your testimony that's been  
identified in Exhibit 342?

A. Yes, ma'am.

MS. HANCOCK: And, Your Honor, just so our record  
includes it in this portion of the testimony as well,  
Mr. Covington has previously been recognized as an expert  
in this matter.

THE COURT: Thank you.

BY MS. HANCOCK:

Q. Mr. Covington, would you proceed with your  
testimony, please.

A. Yes, ma'am. Thank you.

This testimony is presented in support of  
Proposal 19, update the Class I price differential surface  
throughout the United States as proposed by National Milk  
Producers Federation.

I will skip over the next few paragraphs since  
they have been included in previous testimony, and start  
with the paragraph at the bottom of page 1.

Previous witnesses provided testimony on the  
process used in developing the Proposal, updated Class I



1 differentials. My testimony, in support of updating  
2 Class I differentials, focuses on the Florida Federal Milk  
3 Marketing Order and will cover fluid demand, milk supply,  
4 and proposed Class I differentials.

5 Demand. Florida is one of the few remaining  
6 Class I markets in the Federal Milk Marketing Order  
7 system. From 2000 through 2022, average annual Florida  
8 Federal Milk Marketing Order Class I utilization has  
9 exceeded 82%. Most of the producer milk classified is  
10 Class II, III and IV, is cream resulting from  
11 standardization of fluid milk products, bulk inventory,  
12 and shrink. For 2023, through August, Class I utilization  
13 is 83.11%.

14 Since 2021, Class I disposition in the Florida  
15 Federal Milk Marketing Order has increased. 2021 Class I  
16 disposition was 1,996,086,644 pounds. In 2022, it was  
17 2,042,133,745 pounds, a 2.3% increase. Through the first  
18 eight months of 2023, Class I disposition is 1.6% higher  
19 than the same period in 2022.

20 The Florida Federal Milk Marketing Order covers  
21 the entirety of Florida, excluding the four most western  
22 counties located in the Panhandle. Florida is the third  
23 most populous state in the United States with over  
24 22 million people.

25 Since 2000, average annual population growth is  
26 1.8%. All current indicators point to continued  
27 population growth in the state. The University of Florida  
28 projects the state to add another 2 million residents by





1 2030. The number of potential milk consumers in the  
2 Florida Federal Milk Marketing Order has grown and  
3 continues to grow.

4 In the fluid milk market, milk deliveries to pool  
5 distributing plants varies from month to month and day to  
6 day. Table 1 shows average daily Class I disposition in  
7 2022, by month, in the Florida Federal Milk Marketing  
8 Order.

9 And, again, Table 1 shows each month and the  
10 average Class I disposition there in the Florida order.

11 Note the wide variation in Class I disposition  
12 from month to month and how quickly disposition can  
13 change. In just a 90-day period from April to July,  
14 Class I demand dropped from averaging 5.830 million pounds  
15 per day to 4.939 million pounds per day. This is a  
16 decline of the equivalent of 18 loads of milk per day in  
17 just 90 days. And just 90 days later, July to October,  
18 Class I disposition goes back up by 19 loads per day.

19 There's a wide variation in daily deliveries as  
20 well. Using 2022 SMI data, the volume of milk delivered  
21 to pool distributing plants on each Monday through 2022  
22 averaged 28% more than milk volume delivered on a Sunday.  
23 Similarly, the volume of milk delivered on a Friday  
24 averaged 8% less than Thursday deliveries.

25 There is a cost to managing these swings in milk  
26 demand. It requires additional milk tankers, horizontal  
27 storage, marketing milk to non-pool plants at below class  
28 prices, often when production exceeds demand, purchasing



1 supplemental milk at above class prices when demand  
2 exceeds production, and transporting the milk considerable  
3 distances, offering credits to encourage pool distributing  
4 plants to receive a consistent milk supply, and working  
5 with other cooperatives to balance supply and demand. To  
6 adequately serve a fluid milk market, a cooperative must  
7 have access to a raw milk supply equal to the maximum milk  
8 volume needed by pool distributing plants on a given day.

9 The nature of consumer buying patterns, schools  
10 not operating year round, or seven days per week,  
11 marketing milk in a peninsula with a seasonal residential  
12 population, and being prone to hurricanes, are reasons for  
13 the variation in milk deliveries to pool distributing  
14 plants.

15 Cooperatives continue to improve efficiency of  
16 balancing milk supply and demand, and working to control  
17 balancing expenses. However, due to the reasons just  
18 stated, there will always be variations in the volume of  
19 milk required to serve a fluid milk market. It costs  
20 money to adequately serve a fluid milk market and ensure  
21 there is fluid milk on the shelf for consumers and in  
22 school cafeterias. Class I differentials do more than  
23 encourage movement of raw milk to fluid markets, they also  
24 assist in covering the expenses needed to serve a fluid  
25 milk market.

26 Previous witnesses have provided information  
27 documenting the increased costs to turn raw milk into  
28 butter, cheese, and milk powders. Costs to transport raw



1 milk from farm to milk plant have increased as well, which  
2 further supports the need to increase Class I  
3 differentials. I do not want to duplicate what others  
4 have provided in regards to increased milk hauling costs,  
5 but I will add information specifically related to the SMI  
6 and the Florida market.

7 Table 2 shows SMI producer hauling rates for the  
8 2003, 2013, and May 2023. These hauling charges are for a  
9 producer shipping 49,500 pounds of milk per pickup (one  
10 load) and located 175 miles from the producer's assigned  
11 milk plant. In 2003, the producer charge was \$0.82 per  
12 hundredweight or \$2.31 per loaded mile. In May of this  
13 year, the producer charge was \$2.11 per hundredweight or  
14 \$5.98 per loaded mile. Current producer milk hauling  
15 charges are almost double the charges in 2013 as shown in  
16 Table 2.

17 Keep in mind the Class I differentials along the  
18 Interstate 4 corridor and the Miami area are the same  
19 today as they were in 2013, \$5.40 per hundredweight and \$6  
20 per hundredweight, respectively.

21 Table 2 shows the producer milk hauling charges,  
22 annual for 2003, annual for 2013, and then just for May  
23 2023. Now, let me explain why I have two annuals and just  
24 one month.

25 In 2003 and 2013, the hauling charge that  
26 Southeast Milk charged its members was constant throughout  
27 the year. It was established generally in November or  
28 December of the previous year, and that held constant



1 throughout the year.

2 But what we found out in the last year or so,  
3 especially with fuel charges going up, that hasn't worked  
4 very well. So starting in January of this year, we have  
5 fixed costs per hundredweight, but we have a variable cost  
6 that changes each month based upon the price of diesel  
7 fuel. So the hauling charge can vary each month here in  
8 2023 based on the price of diesel fuel.

9 Now, Your Honor, when I get to the first paragraph  
10 there on page 4, I would like to strike that first  
11 sentence, and replace it with what I'm getting ready to  
12 state.

13 Southeast Milk, Incorporated, owns and operates  
14 its own milk hauling fleet. The following are annual  
15 changes in recent years for four milk hauling related  
16 expenses incurred by SMI. This further shows the increase  
17 in milk hauling expenses.

18 I start there with the average annual diesel fuel  
19 cost expressed in dollars per gallon. You can see the  
20 increase from 2020 to 2021 and 2022. And so far for the  
21 year to date -- and, again, we are on a fiscal year that  
22 starts on October 1 -- they have come down to \$3.6494 per  
23 gallon.

24 Then we go to average annual milk hauler wages,  
25 and this does not include benefits, and it's expressed in  
26 dollars per hour, for our current fiscal year, we are at  
27 \$30.23 per hour.

28 And then quoted prices to SMI for a Peterbilt day



1 cab, not including taxes, you can see in 2020, \$118,102,  
2 the most recent quote we received on June 16th, this would  
3 be for a 2024 day cab, gone up to \$172,368.

4 And then quoted prices to SMI for a 6,200-gallon  
5 milk tanker, most recent -- 2021, \$69,400, and our -- the  
6 2024 models have been quoted to us at \$90,000.

7 Let me emphasize, there are more milk hauling  
8 expenses than just fuel, wages, and equipment that have  
9 increased. Other expenses, including employee benefits,  
10 insurance premiums, tractor and tanker maintenance, tires,  
11 repairs, taxes, permits, and highway tolls.

12 The December 1962 Report to the Secretary of  
13 Agriculture by the Federal Milk Order Study Committee,  
14 more commonly known as the Nourse report, laid out the  
15 objectives of Federal Milk Marketing Orders per the  
16 Agricultural Marketing Agreement Act of 1937. One of the  
17 objectives is to assure consumers that they will have  
18 access to adequate and dependable supplies of high quality  
19 milk from sources best suited both technologically and  
20 economically to supply these demands. To paraphrase,  
21 ensure consumers have an adequate supply of fluid milk for  
22 consumption. A growing Florida population, along with the  
23 challenges and increased costs to serve the Florida  
24 Federal Milk Marketing Order, supports the need to update  
25 Class I differentials to meet this FMMO objective.

26 Supply. Farm milk production within the  
27 boundaries of the Florida Federal Milk Marketing Order is  
28 declining. Only 76.0% of the order's producer milk was



1 produced in Florida in 2022, compared to 87.1% just three  
2 years earlier. Again, this is shown in Table 3.

3 Let me interject, Florida Federal Milk Marketing  
4 Order producer milk volume numbers track National  
5 Agricultural Statistics Service (NASS) milk production  
6 numbers for the state of Florida. Of the 24 states in the  
7 NASS monthly milk production report, Florida had the  
8 largest year-over-year milk production decrease in 2022,  
9 down 10.9%. In 2022, Florida reported its lowest milk  
10 volume since 1984. For the first half of 2023, Florida  
11 production is 6.0% lower than the same period in 2022.  
12 Again, of the 24 monthly reporting states, Florida has the  
13 largest decline.

14 Table 3 shows Florida Federal Milk Marketing Order  
15 producer milk by state, from 2018 through 2022. And,  
16 again, you can see in the third column how the percent of  
17 the milk from Florida -- Florida produced as a part of the  
18 total order producer milk has declined while other states  
19 has increased.

20 Higher milk production expenses, ongoing  
21 environmental challenges and related expenses, opportunity  
22 costs, urbanization, and lower on-farm margins are reasons  
23 for declining Florida milk production. Compared to most  
24 other parts of the country, a higher percent of a Florida  
25 dairy farm's operating expense is feed. This is because a  
26 high percent of Florida's dairy feed and crop inputs  
27 imported into the state.

28 Due to Market Administrator confidentiality



1 policies, actual milk volume for each state in the "other  
2 states" category, Table 3, is not available. However,  
3 based on SMI milk marketings and personal knowledge, I can  
4 confidently state over 90% of the "other states" producer  
5 milk comes from South Georgia.

6 Historically, South Georgia served as a reserve  
7 milk supply for the Florida Federal Milk Marketing Order.  
8 Due to declining Florida milk production and increased  
9 milk production in Georgia, South Georgia is now a regular  
10 milk supplier to the Florida Federal Milk Marketing Order.  
11 Georgia milk production has increased in recent years.

12 In discussions with Georgia dairy farms, most  
13 expanded due to lower margins per unit. No different than  
14 dairy farms anywhere, more units of production are needed  
15 to cover fixed expenses. Also, South Georgia is more  
16 conducive to dairy farming and dairy expansion compared to  
17 other parts of the Southeast.

18 Due to closure of many pool distributing plants,  
19 especially in the Southeast Federal Milk Marketing Order,  
20 the distance to fluid milk plants and the associated milk  
21 hauling costs are major concerns to South Georgia dairy  
22 farmers. It will weigh heavily on their decisions for  
23 future expansions.

24 It is about 300 miles from the center of the South  
25 Georgia milk supply to the closest Florida Federal Milk  
26 Marketing Order pool distributing plant. Using May 2023  
27 SMI farm-to-market producer milk hauling charges, the cost  
28 to transport a tanker of farm milk 300 miles is \$3.30 per



1 hundredweight.

2 The Act states a primary standard for establishing  
3 Class I prices is the relationship between milk supply and  
4 demand in the marketing areas. Meeting Class I demand is  
5 vital to the Federal Milk Marketing Order system to ensure  
6 it carries out its primary objectives.

7 Based on the data presented for the Florida  
8 Federal Milk Marketing Order there is:

9 1. Not an adequate volume of producer milk within  
10 the marketing area to meet the Class I demand;

11 2. An increasing volume of milk located outside  
12 the marketing area is regularly transported into the  
13 Florida Federal Milk Marketing Order to meet the Class I  
14 demand.

15 These two challenges support updating Class I  
16 differentials in the Florida Federal Milk Marketing Order  
17 to ensure Class I demand is met and orderly marketing  
18 conditions are maintained.

19 Proposed Class I differentials. Florida Federal  
20 Milk Marketing Order pool distributing plants are in three  
21 different geographical areas. The areas and their current  
22 and proposed Class I differentials are shown in Table 4.

23 And you see in Table 4, I have the pool  
24 distributing plants broken down into three areas. The  
25 first is what we call the Interstate 4 corridor. That  
26 runs from Daytona Beach on the Atlantic side, runs down  
27 southwest to the Gulf to Tampa. Current Class I  
28 differential is \$5.40 a hundredweight; the proposed is





1 \$7.30 a hundredweight, or an increase of \$1.90 a  
2 hundredweight.

3 The second area I have listed is Sarasota. But  
4 let me add, for several months now, the one plant in the  
5 Sarasota area has not been a fully regulated plant. It's  
6 only been a partially regulated plant. The current  
7 Class I differential there is \$5.80 per hundredweight,  
8 proposed is \$7.50 per hundredweight, an increase of \$1.70.

9 The other two pool distributing plants in the  
10 Florida Federal Milk Marketing Order are what we call the  
11 Miami/Palm Beach area. This will be on the southeast  
12 coast on Interstate 95, from Deerfield Beach, and about  
13 30 miles down to Miami.

14 The current Class I differential is \$6, we  
15 proposed \$7.90, proposed increase of \$1.90 per  
16 hundredweight.

17 The Interstate 4 Corridor and Miami areas include  
18 all but one of the order's pool distributing plants. The  
19 proposed increase in these two areas is \$1.90 per  
20 hundredweight. The proposed differential for the Miami  
21 area which includes the area from Palm Beach to Miami/Dade  
22 is \$7.90 per hundredweight. And the proposed Interstate 4  
23 Corridor differential is \$7.30 per hundredweight, which  
24 includes the area from Daytona Beach to Tampa.

25 The results of the University of Wisconsin model  
26 suggested more variation in Class I differentials in both  
27 the Interstate 4 Corridor and Miami areas. However, the  
28 historic pricing structure in each of these geographic



1 areas should be preserved. Pool distributing plants  
2 located within each respective area compete for sales  
3 throughout the entire territory.

4 Having more than one Class I differential in each  
5 respective area has the potential to create raw milk price  
6 inequities, disrupt flow of raw milk, and create  
7 disorderly marketing. To maintain orderly marketing and  
8 historical norms, we propose keeping the same Class I  
9 differential throughout each of the two respective areas,  
10 \$7.30 per hundredweight in Miami and \$7.90 per  
11 hundredweight in the Interstate 4 Corridor.

12 We also propose preserving the location  
13 differential between the Miami and Interstate 4 Corridor  
14 Class I differentials. Since May 2008, it has been \$0.60  
15 per hundredweight. Experience tells us this is an  
16 equitable and workable price difference. There are less  
17 pool distributing plants in the Miami area today compared  
18 to previous years. Florida's largest milk producing area  
19 is located between Miami and the Interstate 4 Corridor.  
20 Raw milk from this area moves to pool distributing plants  
21 in both geographic areas. The \$0.60 per hundredweight  
22 differential facilitates a more orderly flow of milk.

23 The proposed increase in the third area, Sarasota,  
24 is \$1.70 per hundredweight. Its proximity to the  
25 Interstate 4 Corridor area, and there not being a pool  
26 distributing plant in that region in May 2008 when Class I  
27 differentials were last updated, is the reason for the  
28 smaller increase.



1           Again, as I stated just a few moments ago, the one  
2 plant there for most months this year has been only a  
3 partially regulated plant, not a fully regulated plant.

4           Alternative milk supplies are considered when  
5 establishing Class I differentials. The closest pool  
6 distributing plants to the Florida Federal Milk Marketing  
7 Order are in the Atlanta, Georgia, metropolitan area. The  
8 NMPF proposal calls for a \$5.95 per hundredweight Class I  
9 differential in the Atlanta area.

10           The approximate distance between Atlanta and the  
11 Interstate 4 Corridor plants is 440 miles. As of May  
12 2023, a conservative cost estimate to transport a gallon  
13 of packaged milk from to Atlanta to the Interstate 4  
14 Corridor is about \$0.22 per gallon. The \$1.35 per  
15 hundredweight difference in the proposed Class I  
16 differentials, \$7.30 per hundredweight versus \$5.95 per  
17 hundredweight, equates to \$0.12 per gallon, which is \$0.10  
18 per gallon less than estimated transportation cost. Said  
19 another way, the cost to transport packaged fluid milk  
20 from the Atlanta area to the Interstate 4 Corridor is  
21 greater than the Class I differential slope.

22           Five of the top U.S. milk producing states --  
23 Indiana, Kansas, Michigan, Ohio, and Texas -- have the  
24 potential to provide alternative raw milk supplies for the  
25 Florida market. These were analyzed using March 2022  
26 Federal Milk Marketing Order blend prices, plus the  
27 estimated blend price increase resulting from the NMPF  
28 proposal updated -- proposed updated Class I



1 differentials.

2 Estimated blend price calculations were performed  
3 by USDA's Dairy Division. The results show differences  
4 between blend prices, along with the cost to transport  
5 milk from those states to Florida, would be insufficient  
6 to move milk economically.

7 For both packaged fluid milk and farm milk, my  
8 analysis shows --

9 THE COURT: Mr. Covington?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Re-read that last sentence of that  
12 paragraph, please.

13 THE WITNESS: The results show differences between  
14 blend prices, along with the cost to transport milk from  
15 those states to Florida, would be insufficient to move  
16 milk economically.

17 For both packaged fluid milk and farm milk, my  
18 analysis shows adopting the NMPF proposed Class I  
19 differentials in the Florida Federal Milk Marketing Order  
20 does not provide a price advantage from alternative  
21 suppliers. The Act states, "Milk purchased from producers  
22 or associations of producers shall be uniform as to all  
23 handlers subject to certain adjustments including  
24 location." This vital requirement in the Act helps  
25 maintain orderly marketing.

26 In my experience working with fluid milk buyers, a  
27 common concern among them is that their competitors have  
28 equal raw milk product costs. This is due to raw milk



1 being a high percentage of the cost of packaged fluid milk  
2 at a plant's loading dock. Granted, there are over-order  
3 premiums charged to most fluid buyers throughout the  
4 country including Florida. In the Florida Federal Milk  
5 Marketing Order, over-order premiums do not adequately  
6 cover the expense of serving the market.

7 Fluid milk buyers are concerned about the impact  
8 higher over-order premiums may have in creating unequal  
9 raw milk costs, possibly giving one processor an advantage  
10 over another processor. This creates a challenge in  
11 establishing over-order premiums at an adequate level to  
12 cover the expense of serving the fluid milk market.

13 Increasing the fluid milk price by increasing the  
14 Class I differential throughout Federal Milk Marketing  
15 Orders provides fluid milk processors greater assurance of  
16 equal raw milk costs. Milk buyers have confidence in the  
17 enforcement of minimum prices, which helps to maintain  
18 orderly milk marketing.

19 Summary. Current demand and supply conditions in  
20 the Florida Federal Milk Marketing Order warrant an update  
21 in Class I differentials. Demand exceeds the producer  
22 milk supply within the marketing area. More producer milk  
23 is being transported into the marketing area to meet fluid  
24 demand, in part, a function of the population increasing.  
25 Alternative milk supplies would have no price advantage  
26 imparted to them by adopting the NMPF proposed Class I  
27 differentials.

28 We are optimistic the NMPF proposed Class I



1 differentials will help improve the profitability of  
2 Florida dairy farms, thus slowing the exodus of dairy  
3 farmers within the marketing area. The proposed Class I  
4 differentials will help ease the transportation cost  
5 burden on farm milk coming into Florida from outside of  
6 the marketing area and encourage the continued  
7 availability of that milk for the Florida Class I market.

8 Increasing the Class I price through higher  
9 differentials gives fluid milk buyers a greater level of  
10 confidence they are competing for raw milk on a level  
11 playing field, thus, maintaining orderly milk marketing.

12 More importantly, the NMPF proposed Class I  
13 differentials for the Florida Federal Milk Marketing Order  
14 will help provide Florida consumers with an adequate  
15 supply of fluid milk for consumption, A fluid milk supply  
16 for Florida consumers that does not have to be transported  
17 into the marketing area from hundreds of miles away.

18 Southeast Milk, Incorporated, expresses its  
19 appreciation to the Secretary of Agriculture and the Dairy  
20 Division for holding this hearing to consider these  
21 important proposals. We encourage the Secretary to  
22 recommend the adoption of Proposal 19, update Class I  
23 differentials throughout the U.S.

24 Respectively submitted.

25 BY MS. HANCOCK:

26 Q. Thank you, Mr. Covington. And I apologize.  
27 Mr. Sims said that I misstated your name earlier, so I  
28 think my coffee hadn't caught up to me yet.



1           So I thought I would just follow up with just a  
2 couple of items.

3           You talked about in your -- page 3 of your  
4 testimony that there's a cost in managing swings in  
5 demands of milk. I'm wondering if you would be willing to  
6 share what Southeast Milk's balancing costs are.

7           A. Yes, ma'am. For -- go back, starting in -- in the  
8 year 2000, each month Southeast Milk keeps detailed costs  
9 on what it costs to balance its milk supply. And we track  
10 those to try to make improvement, and also share each  
11 month with the membership and the Board of Directors.

12           Through January of August of this year, so we're  
13 talking about the first eight months of this year, the  
14 average balancing cost for Southeast Milk has been \$1.33  
15 per hundredweight.

16           Q. And what does the balancing cost include?

17           A. The balancing cost includes a number of factors.  
18 And let me -- I'll try to get most of them.

19           If we have to purchase supplemental milk, what  
20 that milk costs us compared to what we are paid for it  
21 generally is going to be a loss, and so that loss is  
22 considered a balancing cost. If for one-tenth of 1% of  
23 the time it happened to be a plus for some reason, yeah,  
24 it then would be a positive. So, supplemental milk.

25           Surplus milk. When we have more milk than what we  
26 need and what we can hold through horizontal storage for  
27 72 hours, we have to do something with that milk, and that  
28 milk has to go to a non-pool plant. And what our goal is



1 today is try to recover at least the transportation cost  
2 of what it takes to get that milk there, a little bit  
3 more. If not, we're just going -- unfortunately we end up  
4 dumping that milk.

5 So -- and we compare what we received for that  
6 milk to the Federal Order 6 uniform price adjusted for  
7 location, and whatever that loss is, goes in -- is  
8 considered a balancing expense.

9 Another big category is what we call diverted milk  
10 cost. Each dairy farmer is assigned a primary market, and  
11 their hauling cost is calculated from their farm to that  
12 market. There are going to be times that that market  
13 cannot take that milk, the plant might be closed, we have  
14 ups and downs. So that milk has to be diverted to another  
15 market, and generally that market's going to be a greater  
16 distance. We do not charge that farmer that extra  
17 distance. That extra cost goes into our balancing  
18 expenses that's shared by all dairy farmers.

19 Then the next category, and a term I'm going to  
20 use, I'm going to call it staging milk. And this is one  
21 that we're trying to get better at, and it involves a lot  
22 of horizontal storage, buying extra milk tankers.

23 From when that seal goes on that milk tank at the  
24 farm to that seal is removed at the plant, we have  
25 72 hours. And we have tried to help work on improving  
26 milk quality, get the milk colder going on the tanks,  
27 making sure that they are full, so we can hold that milk  
28 the maximum 72 hours if we have to.





1           So some days, especially on holidays, we might be  
2 holding 50, 60, 70 loads of milk. All right? So we have  
3 to have extra tanks to do that. All right?

4           Also -- and that's a cost.

5           And then also we're encouraging more and more of  
6 the dairy farms to have direct load. And what I mean by  
7 direct load, they have facilities set up. So when that  
8 milk comes out of the milking parlor from the cows to the  
9 milking parlor through the pipelines, it is cooled down.  
10 It goes directly into a milk tanker. So we don't have to  
11 have somebody go there and hook a hose up to the tank and  
12 so forth. It is direct load.

13           So we stage -- excuse me -- we stage tankers at  
14 that farm, and that farm has the means to put the tankers  
15 in and out. So we have extra tankers there, and that way  
16 we don't have to have our driver right there right then to  
17 clean that tank so they can start milking again. So  
18 that's an extra cost that goes into balancing.

19           And then, plants today don't -- do not receive  
20 milk 24 hours a day. A lot of them will have 8:00 to  
21 4:00, some of them 8:00 to 12:00, and so forth. So what  
22 we did a few years ago, we have yard dogs or yard dog  
23 drivers.

24           So plants will buy the -- just call it a fancy day  
25 cab with the license taken off of it. They can shuttle  
26 tankers back and forth. So we'll have space at the plant,  
27 hopefully the plant gives us space, where we can just take  
28 tankers down and drop them.



1           So when that plant opens up and wants to receive  
2 milk, we actually have an employee there that gets in the  
3 yard dog, picks up the tanker, pulls it into the receiving  
4 place, unloads it, washes the tank, takes the empty out,  
5 and then our drivers can just shuttle back and forth.  
6 But, again, that's a balancing expense, you know, where we  
7 just can't take a tanker in, unload, and come back.

8           So all those go up. That's what makes up that  
9 \$1.33 through the first eight months of this year.

10          Q.    Okay. And how does the \$1.33 per hundredweight  
11 for balancing costs this year in 2023 compare to years  
12 prior?

13          A.    Well, I'll go back to when I was -- my last --  
14 actually being full-time at Southeast Milk was -- is in  
15 2010. And we have to show these costs each year monthly  
16 to our board and membership. There's about a membership  
17 meeting every month.

18               And during that period of time when I left, the  
19 balancing costs were running -- I don't have it right down  
20 to the penny, I didn't bring all that data with me --  
21 somewhere between 75 and \$0.80 a hundredweight. So it has  
22 gone up, as you would expect. A lot of it's due to  
23 freight, and a lot of it's due, again, as the equipment  
24 cost I mentioned, we have added more trailers, just trying  
25 to use what milk we have so we don't have to buy more or  
26 get rid of surplus.

27          Q.    Okay. Thank you for sharing that.

28               I'm wondering about your milk supply agreements



1 that you have. Can you tell me about what types of milk  
2 supply agreements that Southeast Milk has?

3 A. I'm not able to give you the details of the  
4 agreements.

5 The best of my knowledge, every customer that  
6 Southeast Milk supplies now on a regular basis, there is a  
7 written milk supply agreement with, and those agreements  
8 will run from a minimum of one year to multiple years.

9 Q. And have you ever been in a situation where  
10 Southeast Milk has not renewed that milk supply agreement?

11 A. Yes. Yes, ma'am. Unfortunately that took place  
12 not quite a year ago. Some milk we were -- we were  
13 putting in, through another cooperative, to another pool  
14 distributing plant, we did not renew that agreement. And  
15 the reason we did not renew that agreement is because our  
16 basics -- our supply in Florida was declining, the milk  
17 demand was going up, so that milk was actually further up  
18 of our membership in South Carolina. So we had to  
19 terminate that agreement and turn that milk around to move  
20 it south. Again, we were just getting short on milk in  
21 Florida, so we needed to turn it around and move it. Plus  
22 by doing that, we get a greater return by going south  
23 versus going west.

24 Q. And do you know if that fluid milk plant has found  
25 an alternative supply for its milk?

26 A. I can't -- you know, I -- I don't want to get into  
27 somebody's detailed business. But I do know, since the  
28 dairy industry is pretty small, you know where milk moves



1 and so forth. They had to replace that milk because that  
2 plant needed it. The plant is still going, they had  
3 sales, so they just had to go further north to get that  
4 milk.

5 Q. Okay. And you said that that happened within --  
6 within the year.

7 Was that in calendar year 2023?

8 A. We -- get the dates right. We're in 2023 now. We  
9 made that decision about November or December of last  
10 year. It was an agreement that would start in January of  
11 this year.

12 Q. Okay. Thank you so much for sharing. I  
13 appreciate it.

14 A. Uh-huh.

15 MS. HANCOCK: Your Honor, we would make  
16 Mr. Covington available for cross-examination.

17 THE COURT: Mr. Covington, you do amaze me.

18 I want us to make the change that he noted in  
19 Exhibit 342. I go to page 4. There's a table at the top  
20 of that page, and below that table is the sentence that we  
21 will alter.

22 Now, are you there, Mr. Covington?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: All right. I'm going to leave the  
25 last words of that sentence just as they were, which are  
26 "its own milk hauling fleet." That was the same --

27 THE WITNESS: Yes, ma'am.

28 THE COURT: -- even after you inserted different



1 words for the beginning of that sentence.

2 Would you slowly tell me what words go in the  
3 beginning of that sentence?

4 THE WITNESS: "SMI owns and operates."

5 THE COURT: That change has been made on the  
6 record copy.

7 And then there's a tiny little thing I want to go  
8 to, and that's page 8, the second paragraph -- one, two,  
9 three, four -- five lines down. There's just a little  
10 word we can strike, and that's the word "to," just before  
11 "Atlanta."

12 THE WITNESS: Yes, ma'am. I put one too many  
13 "to's" in there, didn't I?

14 THE COURT: That was a tiny thing, but otherwise,  
15 the statement is perfect, so --

16 THE WITNESS: I appreciate that.

17 THE COURT: So we'll just strike the "to" just  
18 before the word "Atlanta."

19 All right. I invite cross-examination to begin  
20 now. Who would like to come forward?

21 MS. VULIN: Ashley Vulin with the Milk Innovation  
22 Group. And I do have a couple of exhibits, Your Honor, if  
23 we want to do a quick morning stretch break.

24 THE COURT: Perfect idea. Thank you.

25 Let us come back, ready to go on record at 8:50.  
26 That's 8-5-0. We go off record at 8:45.

27 (Whereupon, a break was taken.)

28 THE COURT: Let's go back on record. It is 8:50.



1 MS. VULIN: Thank you, Your Honor. Again, Ashley  
2 Vulin with the Milk Innovation Group. I have two exhibits  
3 that have been distributed.

4 Have you gotten them yet, Mr. Covington?

5 THE WITNESS: No, ma'am.

6 THE COURT: All right. So which one will be 343?

7 MS. VULIN: I would ask that we mark the map of  
8 Florida Exhibit 343, please.

9 THE COURT: 343 is the map of Florida, and it's a  
10 MIG exhibit. Do you want to give it a number, or no?

11 MS. VULIN: I don't think we need to, Your Honor,  
12 unless you do.

13 THE COURT: Very good.

14 (Thereafter, Exhibit Number 343 was marked  
15 for identification.)

16 THE COURT: And then the other exhibit will be  
17 344, and it is also Exhibit MIG-33, M-I-G, 33.

18 (Thereafter, Exhibit Number 344 was marked  
19 for identification.)

20 MS. VULIN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. VULIN:

23 Q. And you can set those aside, but I printed the map  
24 for myself than anyone else. I'm sure you know these  
25 counties all so well, but I'm a visual person, so I wanted  
26 to have that in front of us so that as we talked about the  
27 various counties, we could see where they fit within the  
28 state.



1           So, Mr. Covington, on page 2 said that Florida is  
2 one of the few remaining Class I markets in the FMMO  
3 system.

4           Do you recall that?

5           A. Yes, ma'am.

6           Q. What do you mean by "Class I markets"?

7           A. The majority of the milk in the particular  
8 marketing area is utilized in Class I.

9           Q. So the utilization within the order is very heavy  
10 on Class I?

11          A. Yes, ma'am. When I refer to being a high Class I  
12 market, you take the total volume of milk of all the  
13 producer milk that's utilized in Class I, the majority of  
14 it is going to be in Class I. So you can express that as  
15 pounds or just take the pounds and divide it by the total  
16 producer milk to get the percentage number that I refer to  
17 in my testimony.

18          Q. And you said that's one of the few remaining.

19                 So it's different than many of the other Federal  
20 Milk Marketing Orders in terms of its high Class I  
21 utilization?

22          A. Historically, the Florida Federal Milk Marketing  
23 Order has the highest Class I utilization.

24          Q. What is the Class I utilization in Florida?

25          A. I'll refer back to my testimony there on page 2  
26 that you just mentioned. Currently through August, the  
27 Class I utilization for this year to date was 83.11%.  
28 It's in my testimony.



1 I'm trying to recall -- September just came out  
2 yesterday. You could -- the Market Administrator is here.  
3 You can ask him what September was, but it was somewhere,  
4 give or take, plus or minus. And as I stated in my  
5 testimony that you just referred to, the average annual  
6 Class I utilization has exceeded 82% every year since  
7 2000.

8 Q. Thanks for pointing me back to those numbers.

9 And we had talked about that being different than  
10 other orders. Many other orders have closer to 20 to 30%  
11 Class I utilization; is that right?

12 A. If -- we can do one of two things: You can find  
13 many, or I can just give them to you if you would like, if  
14 that would be helpful.

15 Q. Sure. Thank you.

16 A. And I can be off on some of these, because I'm  
17 going from memory now. You know, they are easy to find.

18 If you go to the Southeast order, the Southeast  
19 order is going to be somewhere between 76 and 77% Class I  
20 utilization. Again, I can be off two or three points.

21 The Appalachian order, it stays somewhere just a  
22 point or two below the Southeast order. All right?

23 Then we -- then we go -- then after you leave  
24 those three, you are going to start falling below 50%.

25 The Northeast order, I'm trying to remember, I  
26 think it stands somewhere in the 40s, but don't hold me to  
27 that.

28 Then you start coming across to the Mideast order.





1 You are going to be somewhere in the 30s.

2 Upper Midwest order, down about 10%.

3 You're going to come on down to the Central order.

4 You are somewhere in the high 20s to low 30s.

5 Texas -- excuse me -- Southwest order, you are  
6 going to be up, I think in Texas -- again, don't hold  
7 me -- I'm going on memory now. It is below 50, somewhere  
8 around 40.

9 You are going to get over to Arizona. You are  
10 going to be somewhere around 20.

11 California, somewhere probably in 20.

12 And you get on up into the Pacific Northwest,  
13 somewhere probably in the 30s.

14 But, again, that data is very easily available.  
15 I'm going on memory.

16 Q. And I am just trying to orient us that there is a  
17 very wide spread in the utilization amongst all the  
18 orders, correct?

19 A. Ever since there'd been -- if we go back since  
20 1960, when we had the big growth of Federal Milk Marketing  
21 Orders, we have had a wide spread in utilization. And  
22 because this country is so big, it's got a wide variation  
23 in dairy.

24 Q. And you mentioned Order 30. That sometimes even  
25 drops below 10%, right?

26 A. Again, the number I gave you, I'm going on memory.  
27 That data is very easily available if we want to get the  
28 exact number. I can't remember it month by month.



1 Q. And the reason I'm asking this is because when  
2 we're talking about using the Class I price in order to  
3 attract milk to a marketing area, or otherwise manage  
4 price inversions, that's going to play out very  
5 differently in orders with very high Class I utilization  
6 versus orders with very low Class I utilization, correct?

7 A. Ma'am, I'm sorry. I don't quite understand your  
8 question there.

9 Q. The reason I wanted to ask about utilization is  
10 because we're talking about Class I prices, right?

11 A. My proposal -- my testimony dealt with  
12 Proposal 19, which addresses updating Class I price  
13 differentials.

14 Q. And because you are -- because Order 6 has such  
15 high Class I utilization, the Class I price will have more  
16 of an effect on the overall pool than it would in an order  
17 with low Class I utilization, correct?

18 A. Yes, ma'am.

19 Q. And so when we're talking about the prices and the  
20 impact they have in Florida, that's going to play out very  
21 differently than how Class I prices may impact the order  
22 in Order 30, correct?

23 A. Yes, ma'am.

24 Q. And are you here today -- is your testimony here  
25 today that there are inadequate volumes of producer milk  
26 in every order or just in Florida?

27 A. My testimony concentrated on Florida. That's what  
28 I have knowledge about. There will be other witnesses



1 that's going to address other areas, and I don't want to  
2 get into their testimony. And I know you want accurate  
3 information. So I feel a lot more comfortable that the  
4 people who are actually marketing milk in those areas can  
5 do a lot better job of answering that question than I can.

6 Q. So we'll limit your testimony then to the Florida  
7 area.

8 A. Yes, ma'am. That's what I have more knowledge  
9 about.

10 Q. And you say on page 5, you talk about some of the  
11 challenges or expenses that farmers in Florida face. And  
12 you say, "Higher milk production expenses, ongoing  
13 environmental challenges and related expenses, opportunity  
14 costs, urbanization, and lower on-farm margins are reasons  
15 for declining Florida milk production."

16 Do you recall that?

17 A. Yes, ma'am. That's on page 5 in my testimony, the  
18 second paragraph from the bottom.

19 Q. And so it seems to me that a lot of those  
20 challenges are factors that are outside of the FMMO  
21 system; is that right?

22 A. No, ma'am.

23 Q. Urbanization is not something that is a factor  
24 outside of the FMMO system, or is that something you would  
25 expect USDA to address?

26 A. I don't expect USDA to address where a person's  
27 going to build a house or put up a warehouse. However --  
28 and you can talk to dairy farmers in Florida. You've got



1 dairy farmers now that could sell their operations for a  
2 housing development, but they are still getting by. And  
3 they've got to make a living somehow, and so they are  
4 still getting by, you know, potential profit from milking  
5 cows. They got to weigh the opportunity costs.

6 But you get to a point where if milk prices get so  
7 low, hey, I got to feed my family, and here's somebody  
8 that wants to buy it for development, so they -- neither  
9 of them are related. The Federal Milk Marketing Orders  
10 are involved in setting milk prices, and milk prices are  
11 the main revenue source for dairy farmers in Florida, so  
12 that weighs in what I mean by opportunity cost.

13 Q. And do you expect USDA to set prices based on what  
14 the opportunity costs would be to sell the land for  
15 development?

16 A. No, ma'am. That's not what I'm saying. According  
17 to the Act, the Class I differentials will help move milk  
18 to a Class I market. You got to have a Class I price to  
19 help do that.

20 And if opportunity costs are forcing dairy farmers  
21 out of business -- and that's happening all over the  
22 world. I mean, that's happening in my little neck of the  
23 woods in North Carolina. All right. That's going to  
24 happen. Nothing we can do about that. But you got to  
25 maintain the milk price if we want to have a food supply  
26 in this country. So you got to weigh them together.

27 So all -- look, all USDA programs are impacting  
28 that. They all work together.



1 Q. And is it your testimony that USDA should maintain  
2 the milk price high enough that a farmer will remain  
3 profitable or more profitable than selling the land for  
4 other use?

5 A. No, ma'am. That's not what the Federal Order  
6 regulations say. The Federal Orders cannot guarantee a  
7 dairy farmer a profit. They can't guarantee any farmer a  
8 profit. But they need to have programs that will help  
9 dairy farmers be profitable. And Federal Milk Marketing  
10 Orders, if we go back to why they were established in  
11 1937, that is to help dairy farmers be profitable so they  
12 can supply -- see that consumers have an adequate supply  
13 of fluid milk.

14 Q. And you raise other issues like environmental  
15 challenges, higher production expenses, and other things.

16 Do you expect those market conditions to continue  
17 in the future?

18 A. Ma'am, your guess is as good as mine. Seems like  
19 throughout my 70-some years of life, costs have always  
20 gone up, and they are probably going to keep going up. I  
21 could be wrong.

22 Q. And so when -- when thinking about pricing milk in  
23 parts of Florida where there are these competing  
24 challenges, right, the value of land for development,  
25 environmental concerns, production costs, is there a price  
26 or a level of expense at which you would believe it would  
27 not make sense to continue raising the price in order to  
28 make milk production there profitable?



1           A.    No, ma'am.  I couldn't put a number on that.  
2           That's going to vary.  I don't know how much time you've  
3           spent in the agricultural land of Florida, of the state of  
4           Florida but -- have you spent much time in Florida?

5           Q.    A little bit.  I'm from the other side of the  
6           country though.

7           A.    Okay.  Well, if you get away from the coast in  
8           Florida, and you get away from Disney World, Florida is  
9           pretty rural.  I mean, there's just not much else you can  
10          do with it.  It's very, very rural, very -- a lot of  
11          agriculture in it.

12                    And so what you have had -- and if you would talk  
13          to a lot of dairy farmers, I wouldn't say most, but a  
14          number of dairy farmers in Florida, what they have done,  
15          they have relocated.  They have been in an urban area, and  
16          they want to keep farming, and so they just move to a more  
17          rural area.  I can -- probably half of them are like that  
18          down there.

19                    So they can accommodate the situation of all these  
20          things, but it is pressure on them.  But yet the Federal  
21          Order system, we need to have a Class I price that's going  
22          to be adequate to help them with income, to make sure we  
23          get those 22 million consumers in Florida an adequate  
24          supply of fluid milk.

25           Q.    And speaking of that, so you had talked about the  
26          milk servicing the Florida market as shifting from coming  
27          from Florida to coming more from South Georgia; is that  
28          right?



1           A.     Yes, ma'am.  I -- I refer to that in my testimony.  
2     I got to find the -- I think I talk about that starting on  
3     page 5, going into page 6.

4           Q.     And so this shift in production of milk, servicing  
5     the Florida market, coming from Florida versus South  
6     Georgia, is it a bad thing that it's coming from South  
7     Georgia now?  Is that something you think USDA should  
8     prevent?

9           A.     No, ma'am.  I didn't say that was a bad thing in  
10    my testimony.  I did not say it was a bad thing.

11          Q.     And so then if it's not a bad thing, aren't the  
12    current prices doing what they need to do to ensure  
13    service of the fluid market in Florida?

14          A.     We have to think long-term.  As I had in my  
15    testimony there, had in my testimony, that milk moves a  
16    long distance.  A long distance.  And because of the  
17    conditions I mentioned in my testimony about South  
18    Georgia, for the foreseeable future it is going to be  
19    conducive to dairying, but yet there's got to be a profit.  
20    Those guys are not going to make milk unless it's  
21    profitable.  Their big concern is how far their milk has  
22    to move, and with costs continuing to go up, especially  
23    transportation costs, as I mentioned the balancing costs,  
24    which those dairy farmers pay, that concerns them.

25                 So if we want to keep that South Georgia milk  
26    supply, we got to assure that the Class I differentials  
27    are adequate to encourage them to keep in business to move  
28    that milk to the plants.



1 Q. And why do you believe supply and demand market  
2 forces won't do that? You gave us the example of the  
3 plant who is now pooling their milk after you cancelled  
4 the contract in place, pulling their milk from elsewhere.  
5 And why do you believe supply and demand forces won't  
6 solve that problem?

7 A. Ma'am, I want to correct you first. We didn't  
8 cancel the contract.

9 Q. I didn't mean to misstate that. I apologize.

10 A. I want to get it on the record. You can go back  
11 and read. We said we just didn't renew it.

12 Q. Thank you.

13 A. And I gave the reasons for that. We did not  
14 cancel it.

15 Q. Okay. Thank you for the clarification. And I --  
16 as I said, I didn't mean to misstate your testimony.

17 But I would still like to pose the question: Why  
18 can't we rely upon supply and demand forces to solve the  
19 question of bringing milk down from South Georgia versus  
20 having it produced in Florida?

21 A. We keep on moving milk a greater distance, and the  
22 plant where we -- we did not renew the agreement, they  
23 have had to go further to get that milk. The more further  
24 you move milk, the greater cost it is to do it. And we're  
25 better off to have a local supply of that milk. And if we  
26 want to have a local supply, we've got to give  
27 encouragement to those dairy farmers to keep them in  
28 business.





1           And that's one of the reasons why we're here at  
2 this hearing proposing why I'm here, for higher Class I  
3 differentials, to help keep dairy farmers in business, so  
4 we can supply milk, so we don't have to keep going another  
5 hundred miles, 200 miles, 300 miles to transport milk.  
6 One of these days we're going to get to a distance where  
7 it's just not feasible for a variety of reasons to move  
8 milk.

9           Q.    Why isn't it a rational decision, though, to let  
10 that plant make that decision, that they can pay more for  
11 the local milk or they can pay a higher hauling cost or a  
12 premium or a fee to bring the milk in from further? Isn't  
13 that a rational economic decision that a plant can make?

14           A.    Well, again, if you look at the economics of it,  
15 and I don't know how much you have done on calculating  
16 costs, what we're talking -- and, again, I go back to my  
17 testimony where I compare it to alternate supplies. And,  
18 again, if we look at the impact of increasing these  
19 Class I differentials on the Florida market, yes, it  
20 raises the farm -- the milk price. No argument there, it  
21 raises the milk price.

22           But you can compare it to alternate supplies where  
23 there would be enough availability of milk, and the cost  
24 to move that milk or transport that milk is still more  
25 economical for the those pool distributing plants to pay  
26 this higher -- what we're proposing, higher Class I  
27 differential, than the distance it cost -- than the cost  
28 to move that milk.



1 Q. Then if they are rational actors, why wouldn't  
2 they then be advocating for higher minimum prices? The  
3 plants are saying, no, we'd rather handle it ourselves and  
4 pay to move the milk. Doesn't that presume something that  
5 there's no facts in the record to support?

6 A. Ma'am, I -- your question says that the processors  
7 say they don't want to pay minimum prices. Again, I guess  
8 somewhere I have missed that testimony.

9 Q. Let me rephrase the question maybe a little bit  
10 more clearly. If you are saying that it will be more  
11 affordable for processors to pay a minimum price that is  
12 higher versus paying for the milk, isn't that something we  
13 can leave to a rational processor who is making rational  
14 economic decisions to decide and manage through over-order  
15 premiums?

16 A. No, ma'am. I'll go back to my testimony. And,  
17 again, I don't know how many large milk processors you  
18 have talked with, but I have conversations where -- with a  
19 lot of them, as I had in my testimony. But since raw milk  
20 is such a high percent of that cost of that finished  
21 product at the docket, they want to make sure they have  
22 equal raw product cost. And the processors I talk with  
23 they know they got to keep farmers in business, because if  
24 they don't have milk -- I've never seen a milk plant yet  
25 that can run without milk. So they want to have milk.  
26 They prefer it locally. So they are comfortable with  
27 having that in the order price because they know it has  
28 enforcement and they know there's equal raw product cost.



1 Q. And will any of those processors be testifying  
2 here?

3 A. I don't know.

4 Q. Do you have any testimony -- any evidence of that  
5 to submit for us today?

6 A. No, ma'am. I presented my testimony. I cannot  
7 speak for a processor.

8 Q. Okay.

9 A. I can only relay the conversations I had that they  
10 allow me to relay.

11 Q. Well, we can certainly ask them that point when  
12 they testify.

13 So I'd like to talk now about the specific  
14 development of Proposal 19. We have kind of learned a bit  
15 about how the various committees and all of that work, so  
16 I don't want to go through the entire process. But I  
17 would like to know about your specific involvement.

18 So can you tell me kind of how you got involved in  
19 helping develop Proposal 19 and which committee you were  
20 on and how that worked, please?

21 A. Well, ma'am, I'm -- I guess you might call me a  
22 johnny-come-lately. I didn't get -- the process had  
23 already started, the task force had already started before  
24 I got involved. I can't give you the exact date, but I  
25 got involved in the summer of 2022. All right?

26 And you asked why I got involved in it. There  
27 were management changes at Southeast Milk, and the new  
28 management that have experience in Federal Milk Marketing



1 Orders, and I had just stepped down as their interim CEO,  
2 so they came to me and said, hey, Calvin would you  
3 represent us and be involved in this? So that's how I got  
4 involved.

5 So I could go back. I don't have it here with me,  
6 my calendar, and give you exact first meeting I went to,  
7 but it's sometime in the summer of 2022.

8 Q. Had NMPF already run the USDSS model results,  
9 either version 1, 2, or 3 at that point?

10 A. I cannot give you -- I'm just going to have --  
11 I'll tell you what I know. That's all I can do is tell  
12 you what I know.

13 I think it was already in progress. I can't know  
14 whether it was on 1, 2, or 3. It was in progress when I  
15 started getting involved because it was already being  
16 talked about.

17 Q. And what committee were you on?

18 A. Well, that is a good question. I wouldn't quite  
19 call them committees. We were given tasks. That's the  
20 way I would call it. We were given tasks. And the task I  
21 was given to start with was my input on Class I  
22 differentials for Florida. And then it was even much  
23 later, it was only -- it was up -- it was really this year  
24 when I was asked to get involved in the milk composition,  
25 what we did on Proposal 1. I wasn't asked to get involved  
26 in that, probably it was May or -- April, May, or June of  
27 this year, and the same time about the higher-of.

28 Q. And so you were on the task force or the group



1 that was tasked with developing the differentials for just  
2 Florida?

3 A. That's where I gave the most input. You know,  
4 people looked to me, says, Calvin, hey, you know the  
5 Florida market. Again, when we had meetings, there was  
6 discussion about others, and I was interested in that,  
7 because I had to -- we had to keep price alignment. I had  
8 already made my recommendations on Florida, but I had to  
9 keep eyes what might be going on in other parts of the  
10 country to keep things in line. But as far as getting  
11 involved and setting the Class I differential for New York  
12 or Pennsylvania or California, no, I wasn't involved in  
13 that.

14 Q. And who else was tasked -- or who else did you  
15 work with directly on just the Florida differentials? Who  
16 else was focused in that area?

17 A. I was the main one and also had conversations with  
18 Jeff Sims about it, Chris Hoeger. And there was somebody  
19 from DFA, and I can't recall if it was a local -- if it  
20 was Ed Gallagher or maybe Ed had asked the regional  
21 manager down there. And then I think Mike John too. And  
22 we just had conversations about it over the telephone.  
23 Or, well, now that they use --

24 Q. Zoom?

25 A. Yeah. Sometimes I always don't hit the right  
26 button on Zoom, so I end up being on the telephone, so...

27 Q. I think that's happened to all of us.

28 A. Yeah.



1 Q. So you mentioned Jeff Sims. Was it Chris Hoeger?

2 A. Yeah, Chris Hoeger.

3 Q. Possibly Ed Gallagher or someone else --

4 A. It was somebody from DFA. And I just can't  
5 remember, because Ed's been involved, and Ed stays pretty  
6 busy. And I'm trying to think of whether maybe Ed had  
7 asked -- but I just -- you'll have to ask Ed Gallagher  
8 that question.

9 Q. Will do. Thank you.

10 And was anyone else as specialized in Florida or  
11 was that kind of more your expertise and these people gave  
12 input?

13 A. Well, you know, some of these others, especially  
14 DFA, you know, markets milk in Florida, but they -- they  
15 are new to it, and I guess they sort of -- since I have  
16 been around a long time, I was the oldest guy, they just  
17 said, hey, what do you think, Calvin?

18 Q. So you were the lead expertise on setting Florida  
19 differentials?

20 A. Well, I wouldn't call it the lead expertise, but I  
21 provided input, and the suggestions I made were very close  
22 to what we come up with.

23 Q. And you say the suggestions you made. Like to  
24 whom? Who took your suggestions and came up with the map?

25 A. Well, Jeff Sims was the leader of that, and so  
26 Jeff did the spreadsheets. But I don't mean to be  
27 critical of Jeff, but I think when it comes to making  
28 maps, Jeff might not have much more map expertise than I



1 do, and I think we found somebody, a younger person, to  
2 make the maps for us.

3 Q. So you provided your input on what the  
4 differentials should be to Jeff --

5 A. Yeah.

6 Q. -- and then he compiled all of that into the  
7 spreadsheet?

8 A. Yeah. And it was pretty simple for Florida.

9 Q. Why?

10 A. Well, we only have seven -- at that time, seven  
11 pool distributing plants, and that's what we've had to  
12 focus on. And those seven plants are pretty much just in  
13 two regions as I testified. Even though there are 67  
14 counties in Florida, you know, people are just in a few of  
15 them.

16 Q. Got it. And then you mentioned Mike John as well.  
17 Was that -- was his expertise in regard to Order 7 and how  
18 6 and 7 interacted?

19 A. Well, he markets milk more in the Appalachian and  
20 Southeast orders, and they would have to think about  
21 alignment. But that's -- that would be a question you  
22 would have to ask Mike John.

23 Q. Understood.

24 And so looking at your testimony -- and now would  
25 be a good time to bring up these Exhibits 343 and 344. As  
26 I said, I printed the map. I know you know all of this in  
27 your mind's eye, but the rest of us might just know the  
28 Disney World part. So I wanted to make sure that we had



1 that.

2 And then Exhibit 344 is the data from the USDSS  
3 model, then the average, and the proposal. And then we  
4 added the columns the difference and the percentage  
5 change. And so to avoid having to do math on the fly,  
6 provided that here so we could talk about some of those  
7 differences.

8 But just wanted to acknowledge, I know you didn't  
9 make this chart, and so not asking you to attest to the  
10 accuracy necessarily, but wanted to represent where this  
11 data came from and why we have got it here.

12 So if we could start with Miami-Dade County, which  
13 I believe is on page 2 of Exhibit 344. In Row 335 -- and  
14 I see here the current Class I differential is \$6,  
15 correct?

16 A. Yes, ma'am.

17 Q. And then the USDSS average is \$7.90, correct?

18 A. Yes, ma'am.

19 Q. And then you -- the proposal is also \$7.90,  
20 correct?

21 A. Yes, ma'am.

22 Q. And we have heard a lot of discussion about this  
23 addition of the \$0.60 to the base or to raise the minimum  
24 price.

25 And so what I wanted to know is for this county,  
26 why did you not add the \$0.60 or otherwise increase the  
27 USDSS average?

28 A. We -- I have a lot of confidence in Mark





1 Stephenson and Chuck Nicholson. I have known them,  
2 especially Mark, for a long time, and I have confidence in  
3 that model. So when they put that model out, you know,  
4 I'm -- my philosophy is you start at the high point and  
5 work down, and Miami is going to be the high point. So I  
6 was interested where they came out at Miami. So they came  
7 out at 7.90. So I had no reason to doubt them that that  
8 7.90 should be the model number for Miami.

9 And where you are talking about the starting  
10 point, I didn't even think about that, the starting point.  
11 I mean, the model that they had, the starting point was  
12 7.90, and I had no reason to doubt that. I knew we would  
13 get to a hearing. That's going to need to be supported.

14 And, again, I know if you read their -- what they  
15 wrote about it, there's going to be some variations within  
16 the county. You got to use local knowledge. But I was  
17 very comfortable with that 7.90. I knew it was going to  
18 be a \$1.90 increase, but just thinking about things, I was  
19 comfortable with that being the starting point.

20 Q. So even given the challenges that we have heard  
21 quite a bit about and that you have testified to about,  
22 about attracting milk in Florida and keeping milk  
23 production in Florida, you feel that the USDSS model is  
24 sufficient to meet those needs?

25 A. The term I would use, it's reasonable. And  
26 especially when I consider we had the increase, Miami had  
27 the largest increase back in 2008 as well, and putting all  
28 those factors together, and I knew there had to be price



1 alignment, that USDA looks at price alignment, I felt that  
2 7.90 was a reasonable number.

3 Q. And you mentioned price alignment. So to the  
4 extent other places in the country, the differential was  
5 being raised by tacking on \$0.60, or something around  
6 that, why did you not feel for price alignment you needed  
7 to do the same in Florida in order to maintain the slope  
8 amongst all the areas in the country?

9 A. I have confidence in the model, and the model  
10 results showed that Miami was 7.90, so I was comfortable  
11 with that 7.90.

12 Again, about tacking on numbers, I mean, I'm sure  
13 you have already gone through it. We had some ups and  
14 downs, just trying to get things in Florida, we weren't  
15 exactly on the model number, but to try to be reasonable.  
16 And I'm sure in other parts of the country, if they went  
17 above or below, they made those same considerations.

18 Q. And you mentioned going above or below.

19 Do you have any intent to only go above and below  
20 by a certain amount? Were you trying to keep those  
21 adjustments minimal or were you willing to adjust however  
22 much you thought appropriate?

23 A. Well, based upon the results in Florida, since  
24 they were fairly close, the adjustments we made are  
25 relatively small just because of the numbers we had to  
26 start with.

27 Q. Got it. So because you kind of came up with your  
28 adjustment philosophy once you saw the USDSS results; is



1 that right?

2 A. Well, we had to have a starting point. I mean,  
3 I -- we had to have a starting point. So, again, my --  
4 I'm probably a little different than other people. I like  
5 to start at the high place, because you can't go much  
6 further than Miami when it comes to delivering milk and  
7 work your way back.

8 Q. And then you talk about the Daytona Beach/Tampa  
9 area that you describe as the Interstate 4 Corridor,  
10 correct?

11 A. Yes, ma'am.

12 Q. So for those of us who aren't from Florida, what  
13 counties are you referring to when you talk about those?

14 A. Well, I'll tell you what, if you don't -- can I  
15 use this as a cheat sheet?

16 Q. The map? That's what it is intended for.

17 A. Well, I don't want to misspeak, and I can get them  
18 in line here a little better.

19 Where -- what side of the -- you want to start on  
20 the Gulf or you want to start on the Atlantic?

21 Q. You get to pick.

22 A. Well, let's just start up there on the -- on  
23 the -- on the Atlantic side. Hang on here just a minute.

24 THE COURT: And just so everybody knows, the,  
25 quote, cheat sheet, the map, is Exhibit 343. That's where  
26 we're looking.

27 THE WITNESS: Okay. If you'll look on up here,  
28 Volusia County, the Interstate 4 starts where it



1 intersects Interstate 95, right somewhere north of  
2 Seminole and right east of Lake, Interstate 4 Corridor.  
3 And it runs from there, down -- come on down -- and Tampa  
4 is Hillsborough. So just come right straight down. It's  
5 going to run down through part of Lake, Orange, and Polk,  
6 and Hillsborough, and it's going to stop there about Tampa  
7 Bay.

8 BY MS. VULIN:

9 Q. And what county is Tampa Bay in?

10 A. Tampa Bay technically is going to be in two  
11 counties. It's going to be part of Hillsborough and then  
12 part of the Santee County (phonetic).

13 Q. I don't see a Santee on there. Is it too small  
14 for our map?

15 A. Oh, excuse me. Manatee. I'm sorry.

16 Q. Manatee.

17 A. You can see better than I can.

18 Q. That helps. Thank you.

19 So I looked at some of those counties. And  
20 Hillsborough, the model USDSS average was \$7.30, which was  
21 also your proposal.

22 But Polk and Orange and Osceola -- did I say that  
23 correctly?

24 A. Osceola, yes.

25 Q. -- those had some variations. You can look at  
26 Exhibit 344 to confirm, but looking at Polk, the model  
27 said 7.35, and you said \$7.30. Orange, the model said  
28 \$7.25, and you moved that to 7.30. So one of those went



1 up; one of those went down. And then Osceola, the model  
2 said \$7.40, and you also moved that to 7.30.

3 And so what I wanted to know is given the trust in  
4 the model and all of the data that went into it, why make  
5 those changes to all of these counties?

6 A. Ma'am, first of all, I need you to go back. Did  
7 you say Osceola was 7.40?

8 Q. I said Osceola, the model was 7.40, and you  
9 proposed \$7.30. Is that correct?

10 A. No -- no, ma'am. That's not correct, what you  
11 said.

12 Q. Okay. Please tell me what -- what the correct --

13 A. Go to your sheet there and look at Osceola on your  
14 sheet.

15 Q. Uh-huh. And what -- what do you see as the  
16 average?

17 A. We proposed \$7.30.

18 Q. I thought that was what I said.

19 A. Well, if I did, I misunderstood.

20 Q. Apologies. We have had a lot of numbers.

21 A. And, again, there's no plant in Osceola anyhow.

22 Q. Okay. So -- but, again, the question stands,  
23 given that the model did generate differences in those,  
24 why make them all the same?

25 A. Okay. Well, again, you go back and read Mark  
26 Stephenson's work, and Mark says, well -- and I'm  
27 paraphrasing him now -- he says, you people who market  
28 milk in that area, there are going to be some adjustments



1 made because you know where the plants are and you know  
2 where the milk moves.

3 And historically, that I-4 Corridor, and all the  
4 plants are either a mile or two of that I-4 Corridor. I  
5 think the furthest one away might be ten miles. They all  
6 are in the same marketing area. They all compete for  
7 sales from the same -- in the same area. Historically  
8 it's always been the same Class I differential for as long  
9 as I can remember. And it's the same milk supply.

10 So, again, putting the art part of it, to keep  
11 orderly marketing, it just made good sense to keep the  
12 same differential throughout that area.

13 Q. But when I look at Hillsborough, which you say is  
14 where Tampa is located, right, a population center, much  
15 closer than Osceola or Polk. Right? And so when thinking  
16 about the price going up the further you are from a  
17 population center, that seems to make some sense, correct?

18 A. No, ma'am. You've got heavy population all that  
19 I-4 Corridor, heavy population.

20 Q. And the model takes that into account, correct?

21 A. It's my understanding -- you need to ask the  
22 experts on the model. I'm no expert. I think it takes in  
23 account consumers.

24 Q. And then thinking, again, about kind of these  
25 model inputs and the \$0.60, the inputs for the model that  
26 generated the differentials in Idaho or California, those  
27 are substantively the same inputs or variables that  
28 generated Florida differentials, correct?



1 A. Ma'am, I'm no expert on the model. You'd need to  
2 ask the model experts on that. I don't want to misspeak.

3 Q. But are you aware of any differences in the  
4 variables that are taken into account in Idaho or  
5 California versus Florida?

6 A. Ma'am, I would think the fuel cost in Florida -- I  
7 know the fuel cost in Florida is different than the fuel  
8 cost in Idaho and California, because I know fuel is put  
9 in there. But the other variables, I don't want to  
10 misspeak. You need to ask the experts on that to get the  
11 right answer.

12 Q. And talking about adjusting these counties so that  
13 they are all at the same \$7.30, you talk about maintaining  
14 the competitive relationship, correct?

15 A. Not correct. But what I'm talking about,  
16 maintaining equal raw product cost.

17 Q. And why is it important under the FMMOs -- let  
18 me -- strike that. Let me restate that.

19 Is competitors having raw -- different raw product  
20 costs disorderly marketing?

21 A. Well -- well, ma'am, the raw -- raw milk is such a  
22 high percent of the packaged price of milk there at the  
23 dock. I mean, that is -- that's the highest percent.  
24 We're talking about 75 to 80% of that cost. And since  
25 milk -- there's a reason milk is priced the four decimal  
26 points, because the margins are so small.

27 And so if you have a variety of difference -- of  
28 equal raw product costs, that could give one processor an



1 advantage over another, or a disadvantage.

2 Q. And I understand that and appreciate that, but my  
3 question is somewhat different. So is that advantage or  
4 disadvantage, as generated by the USDSS, is that  
5 disorderly marketing?

6 A. I think we're talking about two different things,  
7 and I want to make sure -- and you're -- I guess I  
8 disagree with the premise of your question.

9 The model -- and I can't remember all the big  
10 words for the model, but I'll call it the University of  
11 Wisconsin model, if that's okay -- it is a model, a  
12 guideline. And it's -- again, when I read what Mark  
13 Stephenson had wrote -- and, again, when I have had  
14 conversations years ago with Mark about the model, he  
15 says, Calvin, it's a guideline to use. It's going to be  
16 up for you people in the marketing area to make the  
17 adjustments that you need to make sure that you can have  
18 as orderly a market as possible, including trying to keep  
19 equal raw product cost. And that's what I did in what  
20 I -- in the proposal that I had input on.

21 Q. And that's my question, is your decision to adjust  
22 the model, right, to reflect what you believe the market  
23 should be at, are you doing that because competitors  
24 having different prices is, you believe, something that  
25 FMMOs should not have or allow?

26 A. If you go back -- and, again, I'm going on memory.  
27 I don't have my copy with me -- but the Agriculture  
28 Marketing Agreement Act of 1937 has wording in there --





1 and I think I quote part of it here, out of the -- from  
2 the Nourse report -- that handlers or buyers of milk  
3 within the same marketing area, subject to location, need  
4 to have equal raw product cost. So that is a fundamental  
5 of the Federal Milk Marketing Orders.

6 Q. But the handlers need to have equal product  
7 costs or --

8 A. Raw product cost.

9 Q. -- or that the farmers are paid uniform prices for  
10 those raw products?

11 A. Both.

12 Q. Both.

13 And so you believe that it's a purpose or goal of  
14 FMMOs to ensure that competitors have equal raw product  
15 costs within similar areas?

16 A. No, ma'am. I don't believe. I have strong, very  
17 strong -- again, go back and read Federal Milk Marketing  
18 Orders, go back and read the Agricultural Marketing  
19 Agreement Act, go back and read the 1962 Nourse report, it  
20 makes it plain there that purposes of Federal Milk  
21 Marketing Orders is to maintain orderly milk marketing.  
22 Well, one of the ways that you maintain orderly milk  
23 marketing is through the uniform price, the blending, and  
24 minimum prices of Class -- minimum prices, so handlers,  
25 similar locations, would have equal raw product costs. So  
26 I don't believe it, it's there.

27 Q. So, yes. Yes.

28 A. Amen, that's what I'll say.



1 Q. So I would like to talk then about over-order  
2 premiums if we could a little bit more. You say in your  
3 testimony that in Florida over-order premiums are not  
4 adequately covering the expense of serving the market.

5 Do you recall that?

6 A. That was in my testimony.

7 Q. Uh-huh. And has -- has SMI ever negotiated an  
8 over-order premium with a Class I plant?

9 A. Yes, ma'am.

10 Q. How -- how frequently does that happen? If you  
11 could tell me the percentage of agreements that you have,  
12 that SMI has with fluid milk plants, 50%, 80, 20? Can you  
13 give me a rough estimate, please?

14 A. All the agreements that Southeast Milk has, has  
15 over-order premium in it.

16 Q. So when --

17 A. Can I finish?

18 Q. Oh, please. I'm sorry. I thought you were done.

19 A. The -- and I don't know how familiar you are with  
20 milk agreements. But the milk agreements do not list --  
21 at least the one Southeast Milk is -- does not list a  
22 price, per se, and there's a reason for that. It says  
23 that the price would be the applicable price for the  
24 Federal Milk Marketing Order, and it would be the  
25 prevailing over-order premium in the market. Again, we  
26 get back to maintaining equal raw product cost.

27 And so we're constantly working -- again, that's  
28 part of the job as a cooperative to try to do the best job



1 you can to market your members' milk. And since milk  
2 covers such a big area now -- again, you have heard  
3 previous testimony, cooperatives participate in marketing  
4 agencies in common, which is allowed, and we all have to  
5 agree on the over-order premium to maintain equal raw  
6 product cost.

7 So, again, the agreements we have that is going to  
8 be the prevailing over-order premium, but the cooperative  
9 will ensure that that price will not be greater than what  
10 the prevailing price is in the market.

11 Q. So just to make sure I have got the answer, in  
12 100% of SMI's agreements with Class I processors, SMI has  
13 negotiated an over-order premium?

14 A. No, ma'am. That's not what I said.

15 Q. I thought you had said in every agreement.

16 A. In every agreement we don't -- every agreement, it  
17 has the terminology that I just mentioned, that Federal  
18 Order minimum price and then its prevailing over-order  
19 premium but not a specific number.

20 Q. Okay. So in 100% of the agreements that SMI has  
21 with Class I plants, SMI has negotiated the concept of an  
22 over-order premium but not a specific number?

23 A. No, ma'am. I wouldn't phrase it that way.

24 Q. Okay. I'm just trying to get us to some -- some  
25 tighter answer so that we can move through on the same  
26 page. I'm not trying to misstate your testimony. But  
27 didn't you just say that the marketing collective  
28 negotiates language regarding the over-order premium -- or



1 negotiates the price and that you put language in the  
2 agreement that ensures that price?

3 A. No, ma'am. I didn't say that.

4 Q. Okay. Say it one more time then for me, please.

5 A. The agreements that we have with our buyers of our  
6 milk, we talk about price. It is going to be the  
7 applicable Federal Order price there. And then that the  
8 prevailing over-order premium -- I think that's the word  
9 we have in the language, prevailing. I don't have a copy  
10 here in front of me, prevailing. And, again, also we have  
11 language that the price we charge them will not be greater  
12 than what the prevailing price is in the marketplace,  
13 again, to maintain equal raw product cost.

14 Q. So this language, prevailing over-order premium,  
15 is included in the 100% of SMI's agreements?

16 A. We have -- I'm trying to think -- I -- if we  
17 use -- it's been a few years since I wrote one, and I'm  
18 trying to think if we use the word prevailing or if it is  
19 another word we used. I'd have to go back and look at an  
20 agreement to see if that's exact -- it is the same concept  
21 as the word prevailing.

22 Q. And this prevailing over-order premium is some  
23 amount above the minimum Class I price?

24 A. The definition of over-order premium is an amount  
25 above the minimum Federal Order price.

26 Q. And has SMI ever passed along a fuel cost or a  
27 hauling fee to a Class I processor plant?

28 A. It has passed along a few surcharge.



1 Q. A fuel surcharge.

2 What percentage of time does SMI pass along --  
3 estimate -- what estimated percent of time does SMI pass  
4 along a fuel surcharge to the Class I plants it sells its  
5 milk to?

6 A. For -- for several years, when fuel start going up  
7 back in the 2000, 2006, it went on for several years, then  
8 it came to a stop -- boy, I'm trying to remember the exact  
9 years -- it came to a stop somewhere around the middle of  
10 the last decade, then it went several years where there  
11 was not one. And it's only been, I think, in the past  
12 year where one has gone back in. But I am giving you the  
13 approximate dates. I'd have to go back -- I just can't  
14 remember those dates from memory.

15 Q. And when SMI is passing along a fuel surcharge,  
16 does it pass along that fuel surcharge to all of the  
17 Class I processor plants purchasing its milk?

18 A. Again, we treat 'em all the same.

19 Q. Does SMI have any agreements with any Class I  
20 processor plant that does not contain a fuel surcharge?

21 A. Just as I testified, we treat 'em all the same.

22 Q. So they all do contain a fuel --

23 A. As I have testified, we treat 'em all the same.

24 Q. So, yes, they all contain --

25 A. We treat 'em all the same. I don't know -- yes,  
26 we treat 'em all the same.

27 Q. I -- it is much clearer for the record if I can  
28 get a yes or a no to the question, because then we can



1 read and make sure that we are understanding each other.  
2 So I'm not asking repeatedly in order to -- to be  
3 difficult. I want to make sure that our record is very  
4 clear.

5 So when you talk about increased hauling expenses,  
6 do you intend that testimony to support the \$1.60 base in  
7 the USDSS, the increase from current differentials to  
8 today? How does that fit in with the differentials you  
9 are proposing in Florida?

10 A. My testimony laid out a proposed increase in  
11 differentials, again, \$7.90, and the Miami market go up  
12 \$1.90, the I-4 Corridor also going up \$1.90. And the  
13 transportation information that I included in my testimony  
14 was to support that increase.

15 Q. The \$1.90 increase?

16 A. Yes, ma'am.

17 Q. And it's not meant to support necessarily a  
18 uniform \$1.90 increase. It is meant to support the  
19 increase in each respective county from the prior  
20 differential to the present; is that right? Or is it  
21 meant just to support the \$1.90 increase in I believe it  
22 was Miami-Dade?

23 A. What my testimony -- I -- I didn't list every  
24 county. I focused on the counties where there were pool  
25 distributing plants, because I -- which I felt that was  
26 the most important to be talking about, because that's  
27 where the plants were located at. I realize that every  
28 county is assigned a Class I differential.



1           And, again, you can look at all 67 of them and  
2 Florida. When those were signed, we tried to keep a  
3 straight line or whatever going back, because I will have  
4 to admit, when they were adjusted in 2008, and also they  
5 were adjusted in 2000, you're going to have a few counties  
6 you're going to question how they got that particular  
7 number, and who knows, it could have been a key punch  
8 error or whatever.

9           So I have full confidence in USDA when they look  
10 at this, if we see other counties, especially north of I-4  
11 where there are no pool distributing plants, if we've got  
12 one that should have been \$0.10 higher or \$0.10 lower or  
13 whatever, we want it to be feathered properly.

14           Q.     And so you --

15           THE COURT:   I'm sorry, be what?

16           THE WITNESS:  Feathered. Feathered. That's a  
17 term we use. Feathered. Yes, ma'am. Yeah, you know how  
18 feathers on a bird that are thick and thin, and so we call  
19 it feathering.

20           BY MS. VULIN:

21           Q.     I have heard that before.

22           So then that's a good question. So you did not  
23 talk about every county. And I did want to ask, for  
24 example, Broward County, which I see down next to  
25 Miami-Dade, and if I look at my --

26           THE COURT:   Ms. Vulin?

27           MS. VULIN:   Yes.

28           THE COURT:   Remember where you are. I would like



1 to take a ten-minute break.

2 Please be back ready to go at 9:55. We go off  
3 record at 9:44.

4 (Whereupon, a break was taken.)

5 THE COURT: We're back on record at 9:54.

6 Ms. Vulin, you may proceed.

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

9 BY MS. VULIN:

10 Q. So we were talking about some of the specific  
11 counties and how those prices were set in NMPF's proposal.  
12 I wanted to revisit briefly, though, you had mentioned  
13 that Miami was the highest and that you would kind of  
14 build out from there, correct?

15 A. Yes, ma'am.

16 Q. Yeah. But Miami was not one of the anchor cities  
17 that NMPF used in its anchor city approach, correct?

18 A. To the best of my knowledge -- and I can't  
19 remember the definition of anchor city, but I don't  
20 consider Miami -- I guess my term is anchor city. It's  
21 the end point or the highest point.

22 Q. Thank you. I just wanted to clarify that.

23 And for the anchor cities used in the NMPF anchor  
24 city approach to developing differentials, none of those  
25 anchor cities are cities in Florida, correct?

26 A. Again, I don't have that list in front of me, and  
27 I know you talked about it -- it was talked about  
28 yesterday. But to the best of my memory, all the anchor





1 cities I'm going to say were up north toward the  
2 Mason-Dixon line, that direction.

3 Q. And were those selected before you joined the task  
4 force about Florida?

5 A. I cannot remember. I just can't remember. But I  
6 had really no -- no involvement in that. I just can't  
7 remember.

8 Q. And if you could turn then -- we were going to  
9 look at Broward County, which is down just north of  
10 Miami-Dade. So if I'm looking on the county map on  
11 Exhibit 343, I see it there. And then it's Row 298 in  
12 Exhibit 344.

13 Do you see that?

14 A. Yes, ma'am.

15 Q. And this is a county where the USDSS average was  
16 \$7.80, correct?

17 A. Yes, ma'am.

18 Q. And you proposed in Proposal 19, \$7.90, correct?

19 A. Yes, ma'am.

20 Q. A \$0.10 increase for that county --

21 A. Yes, ma'am.

22 Q. -- correct?

23 And I didn't see that discussed anywhere in your  
24 testimony. Was it in there, or did I miss it?

25 A. I didn't give specifics. What I -- now, I'll be  
26 glad to give you specifics now. I mentioned in the  
27 model -- excuse me -- in my testimony, when we got down to  
28 the Miami area -- I call it Miami area. Really the Miami



1 area runs all the way up to West Palm Beach, which  
2 includes Broward County. And I said the model had  
3 different numbers for those counties.

4 There's only -- unfortunately there's only two  
5 pool distributing plants left down there, unfortunately.  
6 And the model called for one of them being 7.90, one of  
7 'em being 7.80, but they are not that many miles apart as  
8 we think of it in Florida. Historically, all that area  
9 has been in the same -- has the same Class I differential.  
10 There are competing in the same marketing area. It's the  
11 same milk that supplies both plants.

12 And, again, I used the same reasoning I did on the  
13 Interstate 4 Corridor. It made good sense to keep that  
14 area in the same Class I diff- -- with the same Class I  
15 differential, not having variation from county to county,  
16 as it has been since the first Federal Orders were  
17 implemented down there in the 1950s.

18 Q. You said there's one plant in Broward that is a  
19 pool distributing plant.

20 Where is the other plant in that area?

21 A. You've got the -- and I hope I got the right  
22 county, it's at Deerfield Beach. All those counties --  
23 and I think that's -- I can't remember Deerfield Beach is  
24 in Broward or West Palm -- it's right there on the  
25 order -- and then the other one is Miami-Dade. You only  
26 have two down there. So you need to look and see. I  
27 can't remember if Deerfield Beach is in Broward or West  
28 Palm Beach County. Anyhow, they are both next door to



1 each other. But it was 7.80 what was in the model.

2 Q. I see. So I'm looking -- just to be clear on kind  
3 of what was done there. So Broward was at -- the USDSS  
4 average was \$7.80, and you moved that up to \$7.90,  
5 correct?

6 A. Yes, ma'am. If I'm correct, the plant at  
7 Deerfield Beach is in Broward County.

8 Q. And then if I'm looking at Miami-Dade, the USDSS  
9 average is \$7.90, and that's what drove the change in  
10 Broward County?

11 A. I wouldn't -- I wouldn't use that terminology. As  
12 I said earlier, we started at \$7.90 as the high point, and  
13 that whole area, what I call the Miami area up through  
14 West Palm Beach, if we go back to the late 1950s when the  
15 first Federal Milk Marketing Order went down there, that  
16 area has had the same Class I differentials. They all  
17 serve the same marketing area. It's the same milk supply.  
18 So, to me, it provides for more orderly marketing to  
19 maintain the same differential. So if Miami is 7.90, I  
20 was comfortable with that, bring the other one up \$0.10.

21 Q. And if I'm looking at Palm Beach, the USDSS had  
22 that at \$7.65, and that was also moved to 7.90, correct?

23 A. Again, I'll give the same answer I just have. If  
24 we go back to the 1950s when Federal Milk Marketing Orders  
25 were put in down there, it's -- they have had the same  
26 Class I differential because they serve the same -- have  
27 the same sales area to market their retail product, and  
28 it's the same milk. I didn't mention specifically West



1 Palm Beach because all they are is multi-million-dollar  
2 houses now in West Palm Beach. There's no pool  
3 distributing plant.

4 Q. But so just to -- again, just to be clear on the  
5 record, the reason that you adjusted Palm Beach up \$0.25  
6 was to remain consistent with the \$7.90 that you had  
7 chosen for Broward and Miami-Dade, correct?

8 A. Not correct. I started with 7.90. And  
9 historically, again, we go back to the late 1950s when  
10 Federal Orders were first implemented there, they have had  
11 the -- that whole area up there from Miami-Dade up to West  
12 Palm Beach, and maybe might be even a little further up,  
13 all had the same Class I differential. They serve --  
14 their sales are in the same area, and it's the same raw  
15 milk that serves them. So I wanted to keep -- well, I  
16 shouldn't say "I" -- my recommendation was we need to keep  
17 that area the same Class I differential to maintain the  
18 historical perspective and to maintain orderly marketing.

19 Q. And I am tracking, and so I just -- to complete  
20 the point about what that meant for Palm Beach County,  
21 right? When you applied that philosophy based on the  
22 historical relationship of those prices, that's why you  
23 moved Palm Beach County from the \$7.65 under the USDSS to  
24 \$7.90, so it would remain consistent with those other  
25 counties?

26 A. Again, just like I have testified, we -- we go  
27 back to the 1950s. That's maintained the same Class I  
28 differential in that area. And those pool distributing



1 plants, we're now down to just two. And even back when we  
2 have more pool distributing plants, their sales were in  
3 the same area, and it's the same milk supply that serve  
4 them. So that's the reason why my proposal -- or our  
5 proposal keeps it all in the same Class I differential.

6 Q. And this is one of those instances where I am  
7 looking for a yes or a no.

8 So, yes, you changed the Palm Beach USDSS  
9 recommendation from \$7.65 to \$7.90, correct?

10 A. Yes, I changed it.

11 Q. And the reason you changed that was to remain --

12 THE COURT: Let's stop there.

13 MS. VULIN: Okay.

14 THE COURT: I have heard the reason that he  
15 changed it. And you don't have to get a yes or a no. So  
16 we're good. And next topic, please.

17 MS. VULIN: Okay.

18 BY MS. VULIN:

19 Q. Did anyone disagree with any of the  
20 recommendations that you made about the Florida counties,  
21 all of them, not just the ones we have discussed?

22 A. No, ma'am, I -- we had -- I think I had similar  
23 questions because people weren't as familiar with Florida  
24 as I was, just like what you have asked. And we just --  
25 so I gave my reasons, and people were comfortable with it.

26 Q. And so no one recommended anything different than  
27 what you recommended for Florida?

28 A. No. Again -- no, nobody had any different



1 recommendations. No.

2 Q. And I believe you previously testified that in  
3 order to be a member of SMI, a farmer has to be certified  
4 Grade A, correct?

5 A. They have to have a Grade A milk license.

6 Q. And then you talked a little bit earlier about the  
7 cost of managing swings in milk demand and the balancing  
8 costs that SMI incurred because of that.

9 Do you recall that?

10 A. Yes, ma'am. I talked about balancing costs.

11 Q. And are those costs specific only to serving the  
12 Class I market or would SMI incur any of those costs if it  
13 was also serving, for example, a Class III plant?

14 A. Well, first of all, all the markets that SMI  
15 serves on a regular basis, they are pool distributing  
16 plants. So that means they are going to be -- the  
17 majority of the milk is going to be Class I. Okay? So  
18 Southeast Milk does not serve any -- any Class III plants.

19 Now, SMI does serve a plant that is partially  
20 regulated. And the reason -- again, you have to ask the  
21 Market Administrator specifics on why they are partially  
22 regulated, but my thinking is they are partially regulated  
23 because they do have some Class II products.

24 But that plant in years past, we are talking about  
25 several years ago when there were other Class II plants,  
26 because of the nature -- and we're focused on Class I --  
27 we treated them all the same. And those Class II --  
28 actually the Class II plant, that one that's -- Southeast



1 Milk is servicing now, they act just like a Class I plant,  
2 and so we have the same balancing cost. If you broke it  
3 down plant -- it might even be a tad more.

4 Q. It might be -- the balancing cost to serve the  
5 partially regulated plant?

6 A. It could be a tad more. But we don't -- you get  
7 to the point how far you want to break things down.

8 Q. Uh-huh. And these balancing costs, has SMI ever  
9 passed along what it would consider to be a balancing cost  
10 to a Class I processor?

11 A. We hope -- we don't put a line item -- we never  
12 have a line item called balancing cost. But what you --  
13 what you hope, that at least some over-order premium will  
14 help cover some of those balancing costs.

15 Q. And you calculated I believe it was \$1.33 per  
16 hundredweight as the average balancing cost for the first  
17 eight months of this contrary, correct?

18 A. Yes, ma'am.

19 Q. And that was for SMI?

20 A. Yes, ma'am.

21 Q. And this \$1.33, did you calculate that as part of  
22 developing Proposal 19?

23 A. No, ma'am. I will tell you how we did it. When I  
24 was listening to questions last week where balancing came  
25 up quite a bit, I got on the telephone over the weekend  
26 with my colleagues back in the Southeast Milk, and I had  
27 some of the data. I said, let's -- let's go over  
28 everything so we can get the exact number right down to



1 the penny. So it was -- and, again, we checked them,  
2 triple checked them. I mean, I knew pretty close to what  
3 it was, but I wanted to have the exact number. So that's  
4 when we put it together.

5 Q. And then you participated in the recent hearing in  
6 the Southeast on assembly credits, correct?

7 A. I participated in the Southeast hearing, yes.

8 Q. And there you -- I believe you spoke in support of  
9 a proposal to establish distributing plant delivery  
10 credits or intramarket transportation credits; is that  
11 right?

12 A. Yes, ma'am.

13 Q. And I have heard those used interchangeably with  
14 assembly credit.

15 Do those terms all mean the same thing or can you  
16 describe for me what you specifically believe the credit  
17 discussed in that hearing does?

18 A. Okay. The -- what was proposed there was a  
19 distributing plant delivery credit. Okay? I think there  
20 were some talk there about assembly credit, and I think  
21 that was a little different. We could go back and look at  
22 the Federal Register and they can give you more details on  
23 assembly credit. But what that was, was that milk that  
24 moves on a regular basis to -- that's located within the  
25 Florida marketing area, plus certain counties in Georgia,  
26 mainly the counties south of Montezuma that regularly  
27 serve the Florida market, that that distributing plant  
28 delivery credit, it would compensate for a portion of the





1 transportation cost to move that milk from the farm to the  
2 distributing plant.

3 Q. And those are specific to transportation of milk  
4 to Class I plants?

5 A. The pool distributing plants.

6 Q. And do you believe that Proposal 19 -- well,  
7 sorry. Strike that.

8 Are you aware of a proposed rule that has been  
9 issued in response to that proposal in hearing?

10 A. I'm aware of a recommended decision.

11 Q. Thank you. More accurate, recommended decision.  
12 And do you believe that impacts in any way the  
13 differentials you are proposing here for Proposal 19?

14 A. No, ma'am.

15 Q. Because Proposal 19 was developed before the  
16 recommended decision came out, correct?

17 A. The -- again, I don't have those dates right in  
18 front of me, but the recommended decision, I think, came  
19 out within the last 30 to 45 days. But you can look in  
20 the Federal Register and get the right date. But I  
21 can't -- I think it's like 30 or 45 days.

22 Q. And in light of the recommended decision, do you  
23 believe that the Proposal 19 Class I differentials for  
24 Florida need to be adjusted in any way?

25 A. No, ma'am.

26 Q. Even though -- do you believe that the recommended  
27 decision will provide some reimbursement for hauling costs  
28 to suppliers in Florida?



1 A. That's the purpose of it. The distributing plant  
2 delivery credit will help pick up portions of the cost to  
3 move milk from the farm to the pool distributing plants.

4 Q. And in light of the fact that you said part of  
5 your Class I differentials in Proposal 19 is meant to  
6 incorporate those increased hauling costs, you don't  
7 believe they need to be adjusted now in light of the fact  
8 that there's this recommended decision that would also  
9 compensate farmers for hauling costs?

10 A. No, ma'am, I don't.

11 MS. VULIN: Nothing further. Thank you for your  
12 time.

13 THE WITNESS: Yes, ma'am.

14 MR. SMITH: Good morning, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q. Good morning, Mr. Covington.

18 A. Good morning, sir.

19 Q. I'm Dan Smith with the Maine Dairy Industry  
20 Association. I'd like to ask you a couple of questions  
21 about your table.

22 On page 5 of Exhibit 342 I think is what your  
23 statement's been marked as, in any case, NMPF-44.

24 A. Excuse me. Are you talking about the table -- you  
25 say Table 3 or page 5? I'm --

26 Q. Table 3 on page 5.

27 A. Yes, sir. I have it in front of me.

28 Q. Okay. Great.



1           The table and your testimony indicated that the  
2 percentage of the milk supply sourced from within the  
3 marketing area in the past couple of years has reduced  
4 from 87% to 76%?

5           A.    Yes, sir.

6           Q.    So the equivalent is that you are now sourcing  
7 from the surplus area 13% to 24%?

8           A.    Yes, sir.

9           Q.    Can you just put that in context since 2000?  
10 Was -- was the sourcing of milk within the marketing area  
11 in the -- in the same range or has it been coming down and  
12 it is accelerated in the last few years?

13          A.    It -- again, going back to Table 3, the amount of  
14 milk that serves the Florida Federal Milk Marketing Order  
15 that comes from out of the marketing area, that number has  
16 gone up.  And generally what happens, if you look back  
17 many, many years in Florida, it -- as I like to tell  
18 people, good or bad, Florida is a bellwether state when it  
19 comes to dairy farm profitability, and it's because of the  
20 nature of dairying in Florida.  It's a different type of  
21 dairying compared to the rest of the country.  And so  
22 Florida dairy farmers are going to react quicker when  
23 prices are not good or profitability goes down.

24                And so you see that number started going up from  
25 out of state the last few years?  That's just a sign of --  
26 you think about milk other than -- when we had the record  
27 prices before that, milk prices were low, you know, dairy  
28 farmers just went out of business.



1 Q. I understand that. That's --

2 A. And they went out of business and we had to bring  
3 more milk in.

4 Q. I'm just trying to get the context going back to  
5 2000. Was there a degree of stability in the milk supply  
6 from 2000 to 2015, '16, or was there -- because 87%, you  
7 are pretty high, 76%, you are really starting to tail now,  
8 right? Correct?

9 A. Yes, sir. If -- if we go back -- and I keep all  
10 those numbers. If we had all those numbers to show, milk  
11 production in Florida peaked around 2010, 2011. In fact,  
12 we had a pretty good balance back in those years between  
13 what we needed to serve the market and what was available,  
14 what the demand was and supply. Yeah, we had seasonal  
15 variations. We had to manage that. But dairy farm -- we  
16 had dairy farmers had expanded. We had some dairy farmers  
17 that relocated within the state. And things were better.  
18 But since then, the tide has turned.

19 Q. And that's my next set of questions. The tide has  
20 turned in terms, the -- previously farms had been going  
21 out of business, but you saw consolidation, you saw farms  
22 putting more cows on their operations, expanding, for  
23 either tak- -- absorbing cows from farms that went out or  
24 buying new cows. Increased production per cow, correct,  
25 and that allowed the offset to the loss of farms, correct?

26 A. Yes, sir. The -- the milk production in Florida  
27 has increased, and we have seen the current farms to the  
28 best of their ability have expanded. You can see that by



1    how herd size in Florida has probably gone up by --  
2    probably 2010, I'm going on memory, average herd size was  
3    probably 900 to 1,000 cows, and now it's knocking on the  
4    door of 1500. The farms have stayed in business. They  
5    needed to because the profit margin was smaller, they  
6    needed to milk more cows.

7           Q.    And so when you say the tide has turned, what has  
8    turned is that that capability to expand, however, is no  
9    longer as available for producers in the Florida marketing  
10   area?

11          A.    If you look at -- at Florida, the milk production  
12   area -- remember I mentioned the Interstate 4 Corridor?  
13   Think about that dividing the state. You got milk  
14   production south around Okeechobee, and you got milk  
15   production up what I call west of Gainesville -- northwest  
16   of Gainesville, west of the University of Florida, up in  
17   that area. That's the two milk production pockets.  
18   Everything probably within a hundred miles of the I-4  
19   Corridor, or 75 miles, is gone -- is no longer in  
20   business.

21                And the environmental regulations on South  
22   Florida, Lake Okeechobee, the Everglades, it's more  
23   difficult to expand down there. A lot more difficult.  
24   But you get up that northwest area, I mean, it's still  
25   very rural. You know, it's -- if you don't milk cows, it  
26   is all pine trees. There are environmental regulations  
27   because of the Suwannee River up there, but they are not  
28   near as restrictive. So you see more expansion up in that



1 area.

2 Q. I have to say, I have had the privilege to do the  
3 non-Disney World tour in that area. Wonderful except for  
4 the feral hogs. Didn't enjoy the feral hog experience.

5 A. That --

6 Q. That part was not so good.

7 A. Yes, sir. That -- feral hogs is getting to be a  
8 challenge, especially for the corn growers.

9 Q. So my next and last question here is, what do you  
10 see as future trend? Do you think that -- that there is a  
11 point of stabilization in the milk supply, the number of  
12 producers who are going to stay in business? Or do you  
13 see what you said, the tide has turned, is it going to  
14 continue to recede and farms are going to continue to go  
15 out and there will be more milk drawn in from the surplus  
16 area than the seventy -- the 24% now?

17 A. As we speak today, there are only 47 dairy farms  
18 in the state of Florida. 47 dairy farms regulated under  
19 the Federal Milk Marketing Order. Only 47. That's way  
20 down.

21 And I can tell you, those 47 dairy farmers are  
22 looking very closely at the results of this hearing. They  
23 are looking very closely at the results of the hearing we  
24 had on the distributing plant delivery credit. And they  
25 are putting their hope on that, that this was going to  
26 give them some additional revenue to stay in business.  
27 And I mean this with all sincerity, they are looking at  
28 it.



1           And, in fact, I'll be meeting with them, a group  
2 of them, about the end of January. They want to know my  
3 opinion what we think might come out of this or whatever,  
4 because they are making their future economic decisions.  
5 These guys look ahead 12, 24 months. So if they can see  
6 some potential improvement coming, that will keep them in  
7 business, make some decisions they need to do as far as  
8 upkeep of equipment and those type of things. If not, if  
9 they can't see the future's going to get any better, a  
10 year from now that 47 will be lower.

11           Q. Thank you.

12           Mr. Covington, just a couple questions about  
13 over-order premiums. Do the premiums reflect procurement  
14 or quality or both?

15           A. Neither.

16           Q. Okay. And so they reflect -- can you just  
17 describe what the purpose is then?

18           A. Yeah. The purpose is -- when I am talking to  
19 our -- again, when I have had to be involved in  
20 negotiating over-order premiums, the purpose of those --  
21 we explained the balancing cost, and we would hope  
22 over-order premiums would try to help cover a part, if not  
23 all, of those balancing costs. Because to try to explain  
24 to them, even if you have your own milk supply, you are  
25 going to have a balancing cost, I mean, just the nature of  
26 a fluid milk plant. But -- but the cooperative is picking  
27 up that balancing cost, and if the cooperative can serve  
28 several plants, it's like milking more cows, we can spread



1 those costs over more units and try to make it better for  
2 everybody.

3 Q. Understood.

4 A. So my term, over-order premiums, is more directed  
5 on trying to cover the balancing costs.

6 Q. So is it correct to say then that procurement and  
7 quality premiums aren't available in the marketplace then  
8 today?

9 A. Yeah. There's no -- there's not a -- Southeast  
10 Milk does not have a -- a customer that pays any quality  
11 premium. What their thing is, hey, each of them has  
12 quality requirements that they set, and those quality  
13 requirements -- because we want to have good milk that's  
14 going to last and taste good for the consumer, and so they  
15 think that's a part of the price, hey, you just need to  
16 bring -- I mean, that's part of the base price, good  
17 quality milk. So we have no quality premiums.

18 Now, at Southeast Milk, again, we are probably  
19 different than other cooperatives. We have some penalty  
20 programs, that if a producer's bacteria gets above a  
21 certain level, somatic cell count level, we -- we have  
22 some pretty hefty deducts for the individual producers,  
23 trying to encourage them, or if they have problems keeping  
24 the milk cold or those type of things.

25 MR. SMITH: Okay. Very good. Thank you very  
26 much.

27 THE WITNESS: Uh-huh.

28 MR. SMITH: Thank you, Your Honor.





1 MR. SLEPER: Good morning, Your Honor. I just  
2 have a few questions. Jim Sleper from Sleper Consulting,  
3 S-L-E-P-E-R.

4 CROSS-EXAMINATION

5 BY MR. SLEPER:

6 Q. Good morning, Calvin.

7 A. Good morning, sir.

8 Q. Just a few questions.

9 We have -- the last cross-exam talked about the  
10 production changes in terms of milk -- dairy farmers, mama  
11 cows, and so forth. Let's get on the record a few of the  
12 changes that I believe Florida is unique compared to the  
13 rest of the country in terms of the consumption patterns,  
14 if we can.

15 You mentioned Florida has 22 million people?

16 A. Yes, sir.

17 Q. Do you know what kind of visitors come to Florida  
18 on an annual basis?

19 A. Millions.

20 Q. Okay. I know a little bit about Florida. Some of  
21 the most recent estimates I see is about 137 to  
22 150 million.

23 Would you disagree with that?

24 A. I would not disagree. And it appears that that  
25 number -- based upon the numbers coming from the Florida  
26 tourism organization, that number keeps going up.

27 Q. So, in other words, that's four to five times more  
28 than what the state of population of Florida contains.



1           A.     Yes, because the number I gave was the resident  
2 population.

3           Q.     Okay. Florida, as well as the full Southeast, has  
4 these critters called hurricanes, but especially Florida.

5                     Can you go through some examples of how those  
6 impact the consumption patterns?

7           A.     Well, unfortunately, I have lived through several  
8 very bad hurricanes that's done a lot of destruction. And  
9 what happens when the hurricanes hit, right before  
10 everything closes down, you have a rush to the grocery  
11 stores, and the plants want all the milk that they can get  
12 because the stores are cleaned out. And then on some of  
13 the hurricanes I have lived through, things are shut down  
14 for four or five days. I mean, there was one where our  
15 home was without electricity I think for 11 days. And  
16 it -- and you think about what it does to the dairy  
17 farmers, because we had some that just wiped out and  
18 couldn't get the milk, so you got to do something with the  
19 milk, because the plants are closed.

20                     But the day that things open back up, the day that  
21 electricity comes back on, there is a rush for milk. And  
22 I hope it's okay for me to say this, there's no state  
23 regulators in the room, but all regu- -- when that  
24 happens, all regulations come off, and they want milk as  
25 quick as we can get it, to the pool distributing plant.  
26 They don't even hardly pull a sample. They unload.  
27 They'll wash the tank. We go right back out and get a  
28 load of milk and get it back -- back -- back in there. I



1 mean, it's just -- and then there's been times from some  
2 of those hurricanes, back when it's a little easier to get  
3 trucks, we would probably have 50 to 75 loads of milk  
4 lined up to come in every day, just to fill the pipeline  
5 back up.

6 Q. What about trying to ascertain --

7 (Court Reporter clarification.)

8 BY MR. SMITH:

9 Q. What about trying to get diesel fuel during those  
10 periods?

11 A. Well, that is a -- that's a challenge. And what  
12 we do, when those things come, Southeast Milk has large  
13 storage tanks just for that. Anything that can be filled  
14 up is filled up. We make sure every truck is filled up.  
15 And Southeast Milk had a member who was a diesel fuel  
16 broker, or had a distribution center, and he would  
17 actually stage some trucks for us with diesel fuel at the  
18 yards to keep things full. It's a challenge.

19 Q. I can recall personally going through Hurricane  
20 Irma where 5.4 million people left the state, and that  
21 creates a considerable situation for milk consumption  
22 patterns.

23 Would you agree with that?

24 A. Yes, it does.

25 Q. Okay. We also when -- or in the state of Florida,  
26 you also go through the period of the snowbirds come down  
27 and so forth.

28 Can you go through that a little bit and how that



1 impacts dairy consumption as well?

2 A. Yes. And you can -- in fact, I had a longtime  
3 colleague of mine -- unfortunately, he's no longer with  
4 us -- who was our chief dispatcher, and he could pick the  
5 week when milk would go up, and the week would go down --  
6 milk would go down. And it was when people come, there's  
7 two patterns. One was right after Thanksgiving, people  
8 celebrate Thanksgiving with their family, then came to  
9 Florida, and those people stayed. Or the week right after  
10 Christmas, the ones that wanted to stay home up north for  
11 Christmas.

12 And then when they returned, I don't care what day  
13 of the year Easter fell on, they left the week before  
14 Easter. And we always would hope that Easter would come  
15 late in the year because it helped our milk sales, because  
16 they left the week -- and you could just -- it was on the  
17 calendar, you could pick by milk orders that seasonality.

18 Q. Thank you, Calvin.

19 I'm going to piggyback a little bit on Dan Smith's  
20 question but ask it in just a little bit different way.  
21 When you started with SMI, I would make the assumption  
22 that they imported -- that is getting supplemental milk --  
23 from, oh, I'm guessing, seven, eight months of the year?

24 A. Yes. When I started with Southeast Milk, even  
25 though we had 200 dairy farmers at that time, there was a  
26 lot more seasonality in milk production in Florida, so we  
27 had to get a lot more supplemental milk. And trucking was  
28 so much easier back then. It wasn't as major concern as



1 it is today on trucking. Getting somebody just to get on  
2 the truck and with the reduced hours of service, it just  
3 makes it a greater challenge to move milk.

4 But, yeah, it would be common back then,  
5 especially when school cranks up, we would have coming in  
6 anywhere from 40 to 50 loads of milk a day.

7 Q. So if it was -- let's just pull a number, seven  
8 months of the year you were importing back then, compared  
9 to recent, meaning this last year or two years, I would  
10 assume it would be many more months than seven?

11 A. Yeah. It -- again, it's almost -- again, since  
12 Florida production has declined so much, every month,  
13 milk's coming in.

14 Q. Very good.

15 Would you agree with me, Calvin, basically the  
16 bottom line is Florida dairy farmers are paying the way in  
17 terms of balancing to service the Class I market?

18 A. Yes, they are because the over-order premiums do  
19 not cover it today.

20 MR. SLEPER: Thank you, Calvin.

21 THE COURT: Are there other questions before I  
22 turn to the Agricultural Marketing Service for their  
23 questions?

24 Then I now turn to the Agricultural Marketing  
25 Service.

26 MS. TAYLOR: Thank you.

27 //

28 //



## 1 CROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. Good morning, Mr. Covington.

4 A. Good morning.

5 Q. Just a few quick questions. I wanted to start on  
6 page 3 of your statement, Exhibit 342.7 At the bottom paragraph you give some hauling data  
8 on the cost to haul milk down there?

9 A. Yes, ma'am.

10 Q. And you used 175 -- a producer and a plant that's  
11 175 miles apart.

12 A. Yes, ma'am.

13 Q. Is that a representative haul or representative of  
14 the -- a producer's nearest plant down there?15 A. Yes, ma'am. If I just take the Southeast Milk  
16 members just within Florida, the Florida marketing area --  
17 and we did this calculation. And I rounded off of a few  
18 miles there. We just did a weighted average for 2022, how  
19 far their milk moved, and it came out to be approximately  
20 175 miles. That's the producers within Florida.21 Q. If we can go to page 7. I think I wanted to ask  
22 one clarification, that there might be an additional  
23 change in your testimony.24 So I'm on the middle paragraph there. In the  
25 bottom sentence, and where it says 7.30 per hundredweight  
26 in Miami and 7.90 per hundredweight in the Interstate 4  
27 Corridor, I'm thinking those two numbers should be  
28 flipped.

1           A.     Ms. Taylor, thank you so much for catching that.  
2     I don't know how many times I read that and it -- as my  
3     wife says, my dyslexia, whatever you call it, has showed  
4     up there or whatever.

5           Q.     That is -- I won't attribute it to that because I  
6     know this experience very well.

7           A.     Thank you so much. Even reading it aloud I missed  
8     it. Thank you.

9           MS. TAYLOR: So if I could ask that that gets  
10    changed on the record copy, Your Honor.

11          THE COURT: So I'm going to ask you to guide us.  
12    I am going to ask that we make a change on Exhibit 342,  
13    page 7, in the paragraph that's below Table 4. And now  
14    I'm going to have you guide us, if you will,  
15    Mr. Covington, to what we're changing.

16          THE WITNESS: Okay. I am going to start with the  
17    second from bottom line, that paragraph, that starts --

18          MS. TAYLOR: If I could just make sure we're clear  
19    for Your Honor. It is the second paragraph below the  
20    table. So it's in the paragraph that starts "the results  
21    of the University of Wisconsin."

22          THE COURT: Thank you. I was in the wrong  
23    paragraph.

24          MS. TAYLOR: Okay.

25          THE COURT: All right. So now direct me,  
26    Mr. Covington.

27          THE WITNESS: I'm going to come on down to the --  
28    one, two, three, four, five, six -- the eighth line. It



1 starts with the word "each."

2 THE COURT: Yes.

3 THE WITNESS: Okay. "Each of the two respective  
4 areas, \$7.90 per hundredweight in Miami and \$7.30 per  
5 hundredweight in the Interstate 4 Corridor."

6 And thank you so much for catching that.  
7 Appreciate it.

8 THE COURT: Good catch. And those changes have  
9 been made on the record copy.

10 And I just -- this Agricultural Marketing Service  
11 team is amazing. I think they can even feather whatever.

12 THE WITNESS: Your Honor, if I can -- can say so,  
13 they do an excellent job of feathering those differentials  
14 back up. They can do a lot -- they can do better than the  
15 model, and especially do better than me.

16 BY MS. TAYLOR:

17 Q. I wanted to follow up with a question that  
18 Ms. Vulin asked you in regards to the distributing plant  
19 delivery credits that have been recommended by the  
20 Secretary in the Florida order.

21 So, currently, there's no transportation  
22 assistance in the Florida order; is that correct?

23 A. That is correct.

24 Q. So these credits would be something new down  
25 there?

26 A. They will be new.

27 Q. And I think she asked you about were those  
28 considered when you guys came up with Proposal 19, and you





1 indicated they were not and that you didn't think they  
2 needed to be considered when looking at differentials.

3 And I wanted to follow up with, why do you think  
4 that that is appropriate?

5 A. Well, first of all, there are two separate things.  
6 You have got the Class I differentials. Again, that sets  
7 the minimum Class I price. And then the distributing  
8 plant delivery credit is just focused just on  
9 transportation, to help offset a portion of that  
10 transportation cost.

11 And being optimistic that the recommended decision  
12 for -- on the distributing plant delivery credits would  
13 end up being a Final Decision and be approved by  
14 producers, and being optimistic that Proposal 19 would  
15 eventually be implemented, and thinking about the  
16 additional help that would help to the Florida market,  
17 both of them are needed to keep serving that market.

18 Q. So from that, I can -- I'm inferring your opinion  
19 is that the costs down there are so great, that even  
20 increasing the differentials, I think it was at a max of  
21 \$1.90 over the current levels in some areas, that wouldn't  
22 cover -- that still does not cover the cost down there,  
23 and you do need additional transportation credits?

24 A. Yes. And, again, you -- part of my responsibility  
25 still at Southeast Milk is trying to project ahead. And,  
26 you know, sometimes, you know, that's difficult to do.  
27 But if you look at the -- you know, I gave disposition  
28 numbers. We had a dip in disposition in Florida, but it



1 is starting to come back up. And it appears that  
2 disposition is going to probably keep going up in Florida,  
3 I'm going to say somewhere 1%, 1.5% a year, but there's  
4 going to be milk -- those milk needs there.

5 And so the Florida market is going to continue to  
6 look more north towards Georgia to get that milk. And,  
7 again, you think Georgia right next to Florida, but since  
8 Florida is so long, it is quite a distance to cover.

9 So that transportation number, if I had done --  
10 all the milk had been much higher than this 175-mile  
11 number, that number is going to keep growing. And because  
12 of the nature of the dairy farmers in South Georgia, the  
13 size of their operations, and they are very young and have  
14 an entrepreneurial spirit, if we can't keep them  
15 competitive to serve the fluid markets in Florida, I think  
16 longer-term they could look for other alternatives.

17 Q. Okay. If we could turn to page 8.

18 In that middle paragraph, here you are talking  
19 about moving in milk -- alternative milk supplies in  
20 Florida from more distant states, and you conclude that  
21 even with the differentials as proposed and the impact  
22 that they would have on blend prices for milk pooled in  
23 Florida, that it still would be insufficient to move that  
24 distant milk into Florida. And I wondered if you could  
25 for the record just elaborate on why that would be.

26 A. Yes, ma'am.

27 I cannot remember the exhibit number, but the  
28 dairy division prepared -- or calculated what blend prices



1 would do in the various orders by increasing the  
2 differentials. And, again, I can't remember what exhibit  
3 that number is, but I think you are familiar with that,  
4 whatever.

5 What I did, I just looked at those blend prices,  
6 and I looked at the various areas. And the one that comes  
7 the closest -- and, again, this might not be a reserve  
8 supply now, but I know a few years back Southeast Milk was  
9 able to get some supplemental milk from Eastern Ohio  
10 around the Canton, Ohio, area. And that was the most  
11 economical one to move for those five years. So I just  
12 looked at the difference in blend price and what it would  
13 cost to move that milk down there.

14 And when I ran those numbers, the haul cost would  
15 need to be \$2 hundredweight to move that milk from Canton,  
16 Ohio, down to Orlando, Florida, to break even. And I just  
17 don't think you can move milk for \$2 hundredweight from  
18 Canton, Ohio, to Orlando, Florida. But I did it with all  
19 areas, and that's what I did.

20 Q. Okay. I missed a question.

21 In your statement you talk about the milk supply  
22 in Georgia and how it's growing, and you state that it's  
23 more -- Georgia's -- South Georgia is more conducive to  
24 dairy farming and dairy expansion than other areas in the  
25 region. Just wondering if you could talk a little bit  
26 about why that is.

27 A. And I don't mean any offense to anybody that's  
28 living in South Georgia now. Okay? But South Georgia is



1 very, very rural. Very, very rural. And there's not many  
2 people there. Pine trees, some crop farming. Georgia has  
3 not been very strict on environmental regulations. It's  
4 day and night between environmental regulations in Florida  
5 and Georgia. Day and night. I wouldn't say you can do  
6 most anything in Georgia, but it's much more lenient there  
7 in South Georgia. The land costs much, much lower. Much,  
8 much lower, because there's just nothing else that can be  
9 done with it. Okay.

10 Then you have plenty of water for irrigation. A  
11 good water source for irrigation. And relatively cheaper  
12 electricity to run the irrigation. So a lot of those  
13 farmers now are able in that area to triple crop for  
14 forage. I mean, I'm talking about not double cropping,  
15 I'm talking about triple cropping. So they've got good  
16 forage.

17 And then probably what the -- the most important  
18 thing is, it's really helped, there's only -- I'm going to  
19 say there's three key dairy farmers in that South Georgia  
20 area. And I'm not trying -- I say three key ones, the  
21 ones I'm most familiar with. And they have multiple  
22 farms. They are very young, smart. They know how to make  
23 milk. They know how to make money. They just know how to  
24 manage a dairy farm, and they are passionate about dairy.  
25 So you put all that together, that's the reason why you  
26 have had growth.

27 I'll give you one example, one that's real good  
28 friends of mine. He is many, many years younger. I have



1 a conversation with him face to face once a year. And I'm  
2 always behind on how many cows he's milking. He has farms  
3 and 2500 cow units. He is -- his philosophy is the  
4 2500-cow unit is the most profitable.

5 And every year I see him -- I think the last time  
6 I saw him, I says, "What are you milking, 10,000?"

7 "No, you missed one. I added another 2500 cows."

8 And he has another one on the drawing board to  
9 keep adding if the economics are there. So there's growth  
10 potential there, because there's no other opportunities in  
11 that area.

12 MS. TAYLOR: That's it for AMS. Thank you so  
13 much.

14 THE WITNESS: Yes, ma'am.

15 REDIRECT EXAMINATION

16 BY MS. HANCOCK:

17 Q. Thank you, Mr. Covington. Just a couple of  
18 follow-up questions.

19 You were asked about the recommended decisions in  
20 Orders 5, 6, and 7, and I just wanted to be clear about  
21 other factors that might have come into your explanation  
22 about why it doesn't impact the differentials that  
23 National Milk has proposed.

24 Is another reason that a portion of those  
25 additional charges accounted for, for farm-to-plant  
26 deliveries that are south to north or west to east?

27 A. Yes. And I forgot about that. That's a very,  
28 very important part of that decision. As you know, under



1 Federal Milk Marketing Orders, the differentials increase  
2 as you go south and as you go east. So that helped -- the  
3 higher differential helps pick up part of that  
4 transportation cost. But since we have lost quite a few  
5 pool distributing plants, especially in the Southeast  
6 order, and if you look where the milk pockets are, we have  
7 more and more milk moving south to north, so actually, the  
8 Class I differential works against that milk. And we are  
9 having more milk move from east to west than the Class I  
10 differential works against.

11 But the distributing plant delivery credit doesn't  
12 penalize you from going south to north or going from east  
13 to west. So that is a big improvement that helps, which  
14 we don't get the benefit from with Class I differentials.

15 Q. So the south to north shipments in Florida  
16 actually lose value under the Class I grid, even though  
17 the milk is needed to the north, and the transportation  
18 costs is the same with the grid?

19 A. I guess I can best answer that question by giving  
20 you an example.

21 In my testimony I mention a large pocket of milk  
22 in Florida is located around Lake Okeechobee, and that's  
23 between the Miami market and the I-4 Corridor. In the  
24 past, almost all that milk went to Miami because we had  
25 more pool distributing plants. Today since there's only  
26 two distributing plants, you have more milk in that area  
27 has to come up the I-4 Corridor. So instead of moving  
28 with the grain to a market that has a \$0.60 higher Class I



1 differential than the I-4 Corridor, it has today come  
2 uphill or against the grain. So from where they are  
3 located at, they are actually moving to a lower milk  
4 price. The distributing plant delivery credit would  
5 provide some assistance to that milk to move up there.

6 Q. Okay. Thank you for that.

7 You also talked a little bit about the purposes of  
8 the Federal Order. I just want to take a step back for a  
9 second.

10 Can you tell us what you understand to be the  
11 purposes of the Federal Order?

12 A. I'll try to keep it -- keep it brief.

13 The Federal Milk Marketing Orders assist both  
14 dairy farmers and processors of milk. We have minimum  
15 prices, so dairy farmers know that when they sell milk to  
16 a pool distributing plant they are going to get a minimum  
17 price, or that milk is going to be pooled and they are  
18 going to have a uniform price, and that uniform price is  
19 going to be the same whether that plant happens to be 90%  
20 Class I utilization or 70% Class I utilization. It  
21 provides for some orderly marketing.

22 It also provides -- and I think it's one that we  
23 often forget -- payment. I mean, I have been through  
24 cases where dairy farmers haven't got paid, but -- but  
25 Federal Orders enforce payment, and they know what date  
26 that check is going to come.

27 They also monitor, you know, tests.

28 Then, likewise, when the plants themselves, as I



1 put in my testimony, since the raw milk is such a high  
2 percent of that package cost, they want to ensure that  
3 it's, you know, the same location that their raw product  
4 cost is going to be the same.

5 And, again, I don't mean to reminisce, and you  
6 stop me if I go too far on this, but I still remember,  
7 good friends of mine in the late 1950s were producing milk  
8 in South Florida for the Miami market. There was no  
9 Federal Milk Marketing Order. They didn't know when they  
10 were going to get paid, whether they were going to get  
11 paid, if the milk volume they delivered was going to be  
12 correct, if their butterfat was going to be correct. They  
13 did not know. And so they asked for a Federal Milk  
14 Marketing Order to help ensure that.

15 And so -- and those people, it helped instill into  
16 me, says, "Calvin, you might think we don't need one, but  
17 let me tell you all this, and if we don't have one, those  
18 things can happen again."

19 Q. Okay. So it is -- is it fair to say that you  
20 understand that a Federal Order is also to help achieve  
21 equality in the bargaining power that producers have in  
22 negotiating and achieving the sale of their milk?

23 A. Yes. Yes, it aids in that. Because, again, you  
24 have minimum prices, you have uniform prices, both to  
25 producers and to the processors as well. And then as you  
26 negotiate for -- and, again, I don't know how many  
27 processors and retailers have told me how important it is  
28 those minimum payment provisions, because the processor





1 tells me, "I can take this to the major box store that I'm  
2 selling packaged milk to and show, 'Hey, here's a federal  
3 regulation, I got to pay my milk suppliers on so and so  
4 day, so you've got to pay me by then so I can pay them.'"  
5 I mean, that is so important.

6 And then by having a minimum price and the audit  
7 procedures and so forth, it helps as cooperatives try to  
8 negotiate contracts, including over-order premiums.

9 Q. Okay. And in an effort to try and equalize that  
10 bargaining power between the dairy farmers and the buyers  
11 of their milk, the handlers, isn't it fair to say that  
12 that disparity in bargaining power that drove some of the  
13 justification for having a Federal Order put in place is  
14 also that disparity in bargaining power that happens when  
15 a dairy farmer is trying to achieve an over-order premium?

16 A. I hope I'm understanding your question there,  
17 that, yeah, when it comes to bargaining for over-order  
18 premiums, it is just the cooperative for the producer and  
19 the plant. I mean, there's no -- any kind of regulations.  
20 You know, that over-order premium can be here today, it  
21 can be there tomorrow. I have had cases where the  
22 processor got upset about something, he paid us the  
23 Federal Order minimum, but wouldn't pay us the over-order  
24 premium. And so the only way we could go get that is  
25 just, you know, had to go and have a conversation with  
26 him, because nobody is enforcing him to pay that. And  
27 that can just drop overnight.

28 Q. And so it's fair to say that we can't just rely on



1 the supply and demand conditions to fix the pricing for  
2 us, we still need that minimum price that's regulated by  
3 the Federal Order in order to protect and equalize the  
4 bargaining power in negotiating those prices?

5 A. Again, you come back to all agriculture. There's  
6 few buyers, a lot of sellers. And so dairy farmers need  
7 that protection assistance that Federal Orders provide. I  
8 go back to the example of those dairy farmers that started  
9 in the late '50s, what happened to them and why they asked  
10 for a Federal Milk Marketing Order. And so it's so  
11 important.

12 But most importantly, you know, we're in the  
13 business to make sure consumers are fed milk, and the  
14 whole process helps us dairy farmers to ensure that that  
15 happens.

16 Q. Thank you so much for your time.

17 MS. HANCOCK: Your Honor, we would move to admit  
18 Exhibit 342.

19 And just to maybe expedite this, I don't have any  
20 objection to Exhibit 343.

21 But Exhibit 344 is, again, a worksheet that MIG  
22 prepared. And they had something kind of off to the side  
23 that says "prepared by MIG," but the title over the top of  
24 it identifies it as a "National Milk Final Class  
25 differentials," and I think that the title should be  
26 corrected to reflect that it's an MIG working document,  
27 not a National Milk document. And with that correction, I  
28 wouldn't have any objection to its admission.



1 MS. VULIN: The title is meant to indicate that  
2 these are NMPF's final Class I differentials, and so  
3 that's why it's there. We did add "prepared by MIG" based  
4 on conversations yesterday. We thought that would solve  
5 the issue. They are not MIG's Class I differentials, and  
6 so I would not like to change the title in that regard.

7 THE COURT: Let me look at what we did in the  
8 similar document yesterday where I had Mr. English read  
9 the title, but he didn't have the new version, that one.

10 Can somebody tell me which exhibit that was?

11 MS. VULIN: Is it Exhibit 323, Your Honor?

12 THE COURT: No wonder I'm digging so deep in my  
13 stack.

14 Indeed. Good job.

15 All right. So let me compare the top of  
16 Exhibit 323 with the top of Exhibit 344.

17 So what --

18 MS. HANCOCK: I haven't actually seen a hard copy  
19 of it. And I have an electronic version, but I can't see  
20 what the title looks like in print.

21 This is the corrected one?

22 MS. VULIN: No. This is what the title yesterday,  
23 and then it has this --

24 MS. HANCOCK: Okay. So, Your Honor, I haven't  
25 seen the hard copy. They sent me an electronic copy, but  
26 I can't tell on the electronic copy what the title looks  
27 like. It was my understanding yesterday that when we made  
28 that agreement that it would be put with the title so that



1 it's clear from the title of the document that it's MIG's  
2 working workbook on utilizing National Milk's numbers.  
3 But my concern is, is that just having it off to the side  
4 doesn't make it clear that it's not National Milk's  
5 document.

6 THE COURT: Could you approach me, Ms. Hancock?  
7 Let me show you. I like the way 323 came out.

8 MS. HANCOCK: Well, that's because you have  
9 your -- let's go off --

10 THE COURT: Yes, we're still on record. I would  
11 like to stay on record.

12 MS. HANCOCK: Okay. So I think it's because your  
13 exhibit is there.

14 But what I'm concerned about is that it looks like  
15 this (indicating) when there's nothing on there. So if  
16 somebody grabs this and they just look at the title, and  
17 they are not over here -- I mean, it says that they  
18 prepared it, but it is called "National Milk." None of  
19 this is National Milk's.

20 MS. VULIN: All of the differentials are National  
21 Milk's, and these -- this data was added, and it does  
22 indicate prepared by MIG. If we change the title, then  
23 it's going to indicate that these are MIG's Class I  
24 differentials, and they are not. The title came from the  
25 source document --

26 MS. HANCOCK: I'm not trying to say -- it doesn't  
27 have to be MIG's Class I. It just has to say MIG's, you  
28 know, workbook 4, or something to that effect, in



1 conjunction with the title. I think it should be attached  
2 to the title. What do you care?

3 THE COURT: Okay. I'm ready to rule.

4 With regard to Exhibit 342, is there any objection  
5 to the admission into evidence of Exhibit 342?

6 There is none. Exhibit 342 is admitted into  
7 evidence.

8 (Thereafter, Exhibit Number 342 was received  
9 into evidence.)

10 THE COURT: Is there any objection to the  
11 admission into evidence of Exhibit 343, which is the map  
12 of Florida with the counties?

13 There is none. Exhibit 343 is admitted into  
14 evidence.

15 (Thereafter, Exhibit Number 343 was received  
16 into evidence.)

17 THE COURT: With regard to Exhibit 344, it will  
18 suffice if the document is altered in similar fashion to  
19 the way Exhibit 323 was altered. And that results in  
20 "MIG" being in three places across the top of the  
21 document. First of all, in the left top, it will say,  
22 "prepared by MIG"; then in the title of the document, it  
23 will say, "Exhibit 344, MIG-33"; and then it will pick up  
24 the title it has, and after the word "Florida," in all  
25 caps, will be "CORRECTED HEADER," and those changes will  
26 suffice for me to admit it into evidence.

27 So how soon can the corrections be made? I know  
28 we're leaving here today. It's fine with me if there's



1 assurance that those corrections are made as promptly as  
2 they can be, and I can verify that number back in  
3 November.

4 MS. VULIN: I'm sorry, Your Honor. I'm not  
5 understanding the header correction. So the title saying  
6 "NMPF Final Class I Differentials, June 2023, Florida,"  
7 how do you want that to read?

8 THE COURT: Approach me, please.

9 MS. VULIN: Okay.

10 THE COURT: And stay on the record.

11 All right. So I'm using as the perfect template  
12 our corrected header for Exhibit 323. So when we compare  
13 that, the header in the middle of Exhibit 344 will have  
14 some addition. It will say "Exhibit 344, MIG-33," then it  
15 will pick up with what the header says, and then it will  
16 say, in all caps, "CORRECTED HEADER," and that will  
17 suffice.

18 MS. VULIN: Thank you, Your Honor. We'll work  
19 offline. Given the timing, it would be probably difficult  
20 to get these reprinted today, but we certainly can have  
21 them when we return.

22 THE COURT: Excellent.

23 All right. With that provision, with that  
24 required correction, Exhibit -- I now ask if there are any  
25 objections to the admission into evidence of Exhibit 344?

26 There are none. Exhibit 344 is admitted into  
27 evidence, requiring the recorded changes to the top  
28 portion of the document.



1 (Thereafter, Exhibit Number 344 was received  
2 into evidence.)

3 THE COURT: To me, that makes it clear that MIG  
4 did this. And so we have to check, the accuracy of the  
5 document, and everyone can do that.

6 All right. I think a break would be good. Let's  
7 take a ten-minute break. Please be back at 11:15. We go  
8 off record at 11:03. The witness may step down.

9 (Whereupon, a break was taken.)

10 THE COURT: Let's go back on record. We're back  
11 on record at 11:16. We have a new exhibit and a new  
12 witness.

13 I'd like the witness in the witness chair to state  
14 and spell his name.

15 THE WITNESS: Rob Vandenneuvel, R-O-B, and the  
16 last name is V-A-N-D-E-N-H-E-U-V-E-L.

17 THE COURT: Ms. Hancock, if you will identify  
18 yourself, and then we'll number these exhibits.

19 MS. HANCOCK: Thank you, Your Honor. Nicole  
20 Hancock for National Milk. And we should have a written  
21 statement and three attachments.

22 THE COURT: Very good. I see them.

23 All right. So the testimony will be Exhibit 345.

24 (Thereafter, Exhibit Number 345 was marked  
25 for identification.)

26 THE COURT: Attachment 1 -- oh, and let me  
27 mention. 345 is also Exhibit NMPF-39.

28 The next one is NMPF-39A. That will be 346.



1 (Thereafter, Exhibit Number 346 was marked  
2 for identification.)

3 THE COURT: Exhibit NMPF-39B will be 347.

4 (Thereafter, Exhibit Number 347 was marked  
5 for identification.)

6 THE COURT: And the Exhibit NMPF-39C will be 348.

7 (Thereafter, Exhibit Number 348 was marked  
8 for identification.)

9 THE COURT: Mr. Vandenheuvel, have you previously  
10 testified in this proceeding?

11 THE WITNESS: Yes, I have.

12 THE COURT: You remain sworn. Ms. Hancock, you  
13 may proceed.

14 MS. HANCOCK: Thank you, Your Honor.

15 ROB VANDENHEUVEL,

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

18 DIRECT EXAMINATION

19 BY MS. HANCOCK:

20 Q. Mr. Vandenheuvel, did you prepare Exhibit 345 as  
21 your written testimony in support of your statements  
22 today?

23 A. Yes.

24 Q. And to support that testimony, you have also  
25 included Exhibits 346, 347, and 348?

26 A. Yes.

27 Q. Okay. Would you proceed with your testimony,  
28 please?





1           A.    All right.  Thank you.

2                    This testimony is presented on behalf of  
3 California Dairies, Inc., hereafter CDI, and is submitted  
4 in support of Proposal Number 19.

5                    Because I have testified prior, I will skip the  
6 next paragraph and go directly to the section under  
7 "Class I Differentials."

8                    By comparison to other regions of the country,  
9 California is fairly new to the issue of Class I  
10 differentials, as the California Federal Order began in  
11 November 2018.  Included in that promulgation of a new  
12 California Order was the current Class I differential map  
13 that existed in its current form since the early 2000s.  
14 No updates to that differential map were requested during  
15 the course of the California Federal Order promulgation  
16 hearing, but the experience the past four years has  
17 revealed opportunities for updates and improvements that  
18 will be further described in this testimony.

19                   Prior to entering the Federal Order system,  
20 California dairy farmers and milk handlers operated under  
21 a California State Order that used a different method to  
22 establish Class I prices.  The California county-by-county  
23 Class I differential map developed in 2000 was therefore  
24 dormant until the implementation of the California Federal  
25 Order in November 2018.

26                   While operating under that State Order, California  
27 experienced significant imports of bulk raw milk, with  
28 increased prevalence up to 2018.  These long-distance



1 movements of bulk raw milk into California-based bottling  
2 facilities were largely the result of financially  
3 beneficial milk price differences, made possible because  
4 of California's inability to regulate interstate commerce  
5 under the Commerce Clause of the U.S. Constitution.  
6 Therefore, milk originating outside of California could be  
7 marketed to California-based bottlers without the need for  
8 that milk to participate in the State-run milk pricing and  
9 pooling program.

10 At the time, the savings associated with avoiding  
11 minimum California state milk prices and any pooling  
12 obligations that would otherwise be required for purchases  
13 from a California-based farm or milk handler served as an  
14 offset against the additional cost associated with hauling  
15 milk from farms located out of state.

16 In the more than four years since California has  
17 operated under the Federal Order system, interstate  
18 movements of raw milk have been greatly reduced. The  
19 regulatory gap that existed in the California State Order  
20 with respect to milk originating outside of California no  
21 longer exists. The limited volume of interstate milk  
22 movements into and out of California that remain are now  
23 driven by either temporary or long-term business-related  
24 issues, as opposed to a function of the milk pricing and  
25 pooling regulations.

26 In light of these facts, CDI supports a general  
27 continuation of the current regional relationships between  
28 California and surrounding states. In other words, CDI



1 supports Proposal Number 19, in part, because it maintains  
2 a relatively consistent relationship between California's  
3 Class I differentials and those of surrounding states.

4 As for proposed updates to the Class I  
5 differentials, testimony has been provided by -- and I  
6 wrote this prior to that testimony -- by one author of the  
7 University of Wisconsin Madison report entitled "Spatial  
8 Price Relationships in Class I Markets," using a model  
9 referred to as The U.S. Dairy Sector Simulator, or USDSS.

10 This dynamic model has many variables taken into  
11 account as it generates county-by-county spatial  
12 relationship recommendations and should be considered when  
13 proposing an updated Class I differential map. However,  
14 it should not be the only consideration, as all models  
15 have limitations. For example, the USDSS does not and  
16 cannot take into account:

17 Regional competitiveness at the farm level, an  
18 important consideration for USDA and for the industry when  
19 updating any element of the Federal Order program,  
20 including the Class I differential map;

21 Pool stability and maintaining a robust incentive  
22 for handlers and farms to serve as available supply for  
23 the Class I market, another critical consideration;

24 Limitations or cost drivers created by  
25 region-specific factors, such as geography (for example,  
26 mountain ranges), chronic traffic congestion, and  
27 differences in regional cost structures and operational  
28 costs.



1           These comments are not intended to diminish the  
2 value of USDSS or any other model used to evaluate various  
3 proposals. Economic modeling can serve a critical purpose  
4 as a tool that should be a factor among real-life  
5 considerations, as opposed to the sole and absolute tool  
6 in crafting or evaluating a proposal.

7           The proposed updates being considered in this  
8 hearing, including Proposal Number 19, are not conceived  
9 in a vacuum, but rather in the context of promoting stable  
10 marketing relationships for handlers and producers, based  
11 on real life data and experience. As such, the model  
12 results must be supplemented with considerations that are  
13 beyond the scope of the model.

14           Specific to regional competitiveness, while  
15 virtually no milk moves between California's primary milk  
16 supply region of the Central Valley and the major Upper  
17 Midwest milk sheds of Wisconsin, Minnesota, and South  
18 Dakota, these regions have some functional similarities.

19           First, both regions share a profile as large  
20 milk-producing regions with a vast majority of milk  
21 marketed to local non-Class I manufacturers and serving as  
22 a reserve supply for the relatively small portion of  
23 Class I bottlers in the region. In total, about 10 to 12%  
24 of California's milk production ends up in a Class I  
25 facility, but a majority of that Class I demand is from  
26 bottlers outside the Central Valley. While the Central  
27 Valley is home to approximately 90% of the total milk  
28 production in the state, only five of California's 20



1 current pool distributing plants are located in the area.

2 The on-farm competitiveness of similar regions  
3 across the U.S. is not something the USDSS model is  
4 designed to solve for, but it is an important factor for  
5 USDA and the industry to consider. Dairies across the  
6 country participate in the same federal safety net  
7 programs, such as the Dairy Margin Coverage, Dairy Revenue  
8 Protection, and Livestock Gross Margin Dairy programs, all  
9 of which rely on national -- not regional --milk and dairy  
10 markets in triggering distributions or indemnities. Those  
11 same dairies compete for animal feed and other supplies  
12 sourced throughout the United States.

13 The current Class I differentials reflect the  
14 similarities between California's Central Valley and the  
15 Upper Midwest regions, as the Class I differentials in  
16 California's Central Valley range from \$1.60 to \$1.80 per  
17 hundredweight, while the current Class I differentials in  
18 Wisconsin, Minnesota, and South Dakota range from \$1.65 to  
19 \$1.80 per hundredweight.

20 In light of these facts, Proposal Number 19  
21 establishes updated Class I differentials in California's  
22 Central Valley ranging from \$2.50 to \$2.60 per  
23 hundredweight. Proposed Class I differentials in  
24 Wisconsin, Minnesota, and South Dakota range from \$2.55 to  
25 \$3.00 per hundredweight. The gap is wider than exists  
26 today, but CDI supports Proposal 19 and believes it  
27 represents a reasonable relationship in the Class I  
28 differentials between these two regions.



1 Pool stability is another critical consideration  
2 in structuring any update to Federal Orders, but is  
3 another variable that the USDSS is not designed to  
4 consider. In the more than four years that California has  
5 operated within the Federal Order program, our state's  
6 industry has received a graduate-level education on the  
7 farm level impacts of pooling and depooling large volumes  
8 of milk in any given month.

9 While one might point to the COVID-19 pandemic as  
10 a contributing factor in driving volatile classified milk  
11 prices that contributed to significant depooling,  
12 California actually saw its lowest volume of pooled milk  
13 in July 2022, at 1.65 billion pounds of milk, followed by  
14 its highest volume of pooled milk in March 2023, at  
15 2.84 billion pounds of milk. Comparing those volumes to  
16 USDA's Milk Production Report, July 2022 verified that  
17 less than half, or 47%, of all California milk production  
18 was associated with the Federal Order pool. That figure  
19 grew to 78% of all California milk production associating  
20 with the Federal Order pool in March 2023.

21 The decision of whether to pool or not to pool  
22 milk on a Federal Order can be driven by many things,  
23 including both price and non-price considerations.  
24 Specific to price considerations, one can reasonably claim  
25 that large and sustained gaps between the Class III and  
26 Class IV monthly milk prices are a major contributor to  
27 the swings we have seen in the volume of milk pooled on  
28 Federal Orders across the U.S.



1           However, there is no doubt that specific policies  
2 related to Class I pricing can also have a meaningful  
3 impact on those pooling decisions. Elimination of the  
4 "higher-of" Class I mover in 2019, as mandated in the 2018  
5 Farm Bill, also known as the Agriculture Improvement Act  
6 of 2018, reduced the incentive to pool milk in certain  
7 months over the four-year history of that change.

8           Previous testimony given at this hearing has  
9 demonstrated that Federal Orders across the U.S. saw  
10 nearly \$1 billion less pool revenue over the past four  
11 years as a direct result of that formula change.  
12 Likewise, a lack of updates to the Class I differential  
13 levels to recognize incremental increases in the cost of  
14 supplying Class I markets over the past two decades has  
15 also suppressed the pool revenues that could otherwise  
16 have been available as a further incentive for more farms  
17 and milk handlers to associate regularly with their  
18 respective Federal Order pool.

19           While there is no silver bullet that will  
20 incentivize more milk to associate with a Federal Order  
21 pool, other than a mandatory requirement to pool all  
22 Grade A milk handled, restoring the "higher of" Class I  
23 mover (Proposal Number 13) and updating the Class I  
24 differential map (Proposal Number 19) will help to  
25 increase the incentive by growing overall pool revenues.  
26 Not only does an increased incentive to pool milk help  
27 ensure that more farms and milk handlers are willing to  
28 supply Class I needs, but it also creates more stability



1 at the producer level, as blended prices paid for milk  
2 produced across a Federal Order are more consistent from  
3 farm to farm.

4 The third consideration to supplement the USDSS  
5 model results are regional cost drivers that are not  
6 reasonably captured by a national model. California has  
7 undergone significant shifts in population centers and  
8 milk sheds since 2000, which has meaningfully impacted the  
9 cost of hauling bulk milk generally, and the cost of  
10 supplying urban-centered Class I bottlers specifically.

11 In 2001, the California Department of Food and  
12 Agriculture, or CDFA, reported that there were 295 dairy  
13 farms in Southern California, housing an estimated 266,672  
14 cows. And that would be in Attachment A, which was  
15 labeled Exhibit 346.

16 That same report indicated that between the five  
17 milk-producing counties surrounding the Bay Area --  
18 Sonoma, Marin, Solano, Contra Costa, and Santa Clara  
19 Counties -- there were 125 dairies in 2001, housing an  
20 estimated 42,031 cows.

21 In 2017, the last such report published by CDFA,  
22 those numbers had fallen to 92 dairy farms in Southern  
23 California, housing an estimated 90,675 cows, and had  
24 fallen to 87 dairy farms in the five counties surrounding  
25 the Bay Area, housing an estimated 37,928 cows. And that  
26 would be Exhibit 347, Attachment B.

27 Meanwhile, those respective regions also  
28 experienced population increases. The Southern California





1 population centers of Los Angeles, Orange, San Bernardino,  
2 Riverside, and San Diego Counties grew from 18.43 million  
3 residents in the 2000 Census to 21.10 million residents in  
4 the 2020 Census, a 14.5% increase; and the Bay Area  
5 population centers of San Francisco, Contra Costa,  
6 Alameda, and Santa Clara Counties grew from 4.85 million  
7 residents in the 2000 Census to 5.66 million residents in  
8 the 2020 Census, a 16.6% increase. And the reference  
9 there to Attachment C is Exhibit 348.

10 These two trends of a shrinking local milk supply  
11 and a shifting and growing population has resulted in the  
12 need for bulk raw milk to be sourced from further  
13 distances to meet the needs of milk bottlers located near  
14 the population centers. Extreme traffic congestion that  
15 is generally the rule, rather than the exception, and  
16 these metropolitan regions adds further complexity and  
17 cost that cannot be captured by current economic modeling.

18 In addition, while cooperatives, including CDI,  
19 previously operated manufacturing plants available for  
20 balancing purposes in Southern California, those plants  
21 have since been closed. The nearest cooperative-owned  
22 balancing plant to the urban population center of Los  
23 Angeles County is CDI's butter and milk powder  
24 manufacturing facility in Tipton, California, roughly 150  
25 miles -- and over the Tehachapi Mountain Range -- from the  
26 Southern California bottlers that need milk on a specific  
27 schedule in specific and varying quantities throughout the  
28 week.



1 Further, there is only one primary path to travel  
2 between the milk shed in California's Central Valley and  
3 the urban centers of Southern California, Interstate 5, a  
4 highly travelled interstate highway with significant  
5 commuter and other business traffic in both directions  
6 crossing over the Tehachapi Mountains. Two alternative  
7 routes -- one through the desert and one via the coast --  
8 are utilized only in emergency situations, as they are  
9 significantly longer routes.

10 Taken together -- the closure of nearby balancing  
11 assets in 2019 and the logistical challenges associated  
12 with navigating extreme traffic conditions -- has simply  
13 increased the cost and complexity associated with serving  
14 those urban Class I markets, a dynamic that the USDSS  
15 model is simply not designed to capture.

16 Proposal 19 includes the following updated Class I  
17 differentials in California. And I will not read that  
18 table into the record, but it is consistent with National  
19 Milk's Proposal 19.

20 In addition to an overall increase in Class I  
21 differentials for reasons stated earlier in this  
22 testimony, Proposal Number 19 also includes necessary  
23 adjustments to some of the county-by-county relationships.  
24 As previously alluded to in this testimony, there are  
25 generally three distinct regions of California, each with  
26 unique supply/demand dynamics.

27 As mentioned earlier, the Central Valley makes up  
28 approximately 90% of the state's milk supply. Southern



1 California, made up of counties south of the Tehachapi  
2 Mountain Range, has a limited and shrinking milk supply,  
3 representing less than 5% of the state's total supply, but  
4 is home to ten of the 20 total pool distributing plants in  
5 the state. As such, bulk raw milk from the Central Valley  
6 is regularly exported to Southern California.

7 Finally, the Bay Area is a region of extremely  
8 limited and shrinking milk supply, representing less than  
9 3% of the state's total supply, and is home to five of the  
10 20 total pool distributing plants in the state. As such,  
11 bulk raw milk from the Central Valley is also regularly  
12 exported to the Bay Area.

13 Proposal Number 19 incorporates a "slope" in the  
14 Class I differentials between the Central Valley and  
15 Southern California and between the Central Valley and the  
16 Bay Area at levels intended to incentivize dairies and  
17 milk handlers to serve the Class I needs in those urban  
18 regions.

19 Specific to Southern California, the current  
20 Class I differential map incorporates a \$0.30 per  
21 hundredweight slope between Kern and Los Angeles Counties,  
22 with a significant volume of Kern County milk regularly  
23 supplying Los Angeles County Class I needs, as it is the  
24 nearest available milk other than local farms located in  
25 Southern California. Proposal Number 19 includes a \$0.40  
26 per hundredweight slope between Kern and Los Angeles  
27 Counties as a more appropriate slope.

28 The average cost incurred by CDI in 2022 for



1 delivering bulk milk from Kern County to Los Angeles  
2 County ranged from \$1.39 to \$1.50 per hundredweight.  
3 Meanwhile, the average cost incurred by CDI in 2022 for  
4 delivering bulk milk from those same farms in Kern County  
5 to the nearest local manufacturing plant in Tulare County  
6 was \$0.68 to \$0.81 per hundredweight.

7           Simply put, the \$0.40 per hundredweight slope in  
8 Proposal 19 provides an additional pool draw for those  
9 farms and milk handlers that is needed to at least  
10 partially offset the incentive that otherwise exists to  
11 simply deliver all milk to the local manufacturing plant  
12 in the Central Valley.

13           Proposal 19 includes a \$0.50 per hundredweight  
14 slope between the remaining counties in the Central Valley  
15 and Los Angeles County. While that slope exists  
16 throughout the Central Valley north of Kern County, the  
17 slope is most important for Tulare and Kings Counties, as  
18 farms in those counties represent the next logical reserve  
19 milk supplies in the event Kern County milk is not  
20 sufficient to supply Class I needs in Southern California.  
21 This \$0.50 per hundredweight slope is consistent with the  
22 current spread between the differential levels in Tulare  
23 and Kings Counties and Los Angeles County.

24           The cost incurred by CDI in 2022 for delivering  
25 bulk milk from Tulare County to Los Angeles County ranged  
26 from \$1.68 to \$1.88 per hundredweight. Meanwhile, the  
27 average cost incurred by CDI in 2022 for delivering bulk  
28 milk from those same farms in Tulare County to the nearest



1 local manufacturing plant in Tulare County was \$0.44 to  
2 \$0.54 per hundredweight. While that gap is more than the  
3 \$0.50 per hundredweight provided by the slope in the  
4 proposed differential map, it is consistent with the  
5 current slope for this reserve supply of milk available  
6 for Southern California Class I usage.

7 In addition, Proposal Number 19 includes some  
8 adjustments in the county-to-county relationships within  
9 the three distinct regions mentioned earlier in this  
10 testimony. Under the proposal, Class I bottlers in all  
11 counties in Southern California are subject to the same  
12 Class I differential, as they procure milk from a  
13 combination of locally-produced milk and milk produced in  
14 the Central Valley. They also participate in a common  
15 market without significant logistical advantages in any  
16 parts of Southern California. This updated structure  
17 promotes a competitive landscape for all bottlers and  
18 handlers.

19 Further, the proposal establishes a common Class I  
20 differential for most of the counties within the Central  
21 Valley, as the regions represent a collective milk shed.  
22 The one exception is Kern County, which Proposal Number 19  
23 brings closer to, but not equal to, the differential  
24 levels in the other counties within the Central Valley.

25 Specific to the Bay Area, the current Class I  
26 differential map incorporates a \$0.10 per hundredweight  
27 slope between the coastal regions of San Francisco and the  
28 nearby milk sheds of Sacramento, Stanislaus, and San



1 Joaquin Counties, an insufficient differential when  
2 looking at the cost of servicing that market and  
3 attracting a long-term milk supply.

4 Proposal Number 19 includes a more appropriate  
5 \$0.40 per hundredweight slope between these same counties.  
6 The cost incurred by CDI 2022 for delivering bulk milk  
7 from San Joaquin County to Alameda County, which includes  
8 Class I utilization and borders the San Francisco Bay,  
9 ranged from \$1.08 to \$1.29 per hundredweight.

10 Meanwhile, the average cost incurred by CDI in  
11 2022 for delivering bulk milk from those same farms in San  
12 Joaquin County to the nearest local manufacturing plant in  
13 Stanislaus County was \$0.45 to \$0.65 per hundredweight.  
14 As with the earlier reference to Southern California, the  
15 \$0.40 per hundredweight slope proposed for the Bay Area  
16 would provide an additional pool draw to partially offset  
17 the incentive that otherwise exists to simply deliver all  
18 milk to the local manufacturing plant in the Central  
19 Valley.

20 For the reasons outlined in this testimony, which  
21 reach beyond a strict spatial analysis as conducted by the  
22 University of Wisconsin and incorporates broad-based  
23 policy considerations, CDI urges the Secretary to adopt  
24 Proposal Number 19.

25 Q. Thank you, Mr. Vandenheuvel. Just a couple of  
26 questions.

27 Your California proposal for Class I  
28 differentials, it looks a little bit different than what



1 we've just heard when we were talking about the Southeast  
2 markets, and I'm wondering if you can just maybe take a  
3 step back and address that.

4 A. Absolutely. If I could show my -- what's on my  
5 screen here. This is -- this is from Exhibit 303, which  
6 was Dr. Nicholson's testimony at this hearing, I guess  
7 last week. And this is Figure 1 on page 4.

8 And as you can see from this, what this map is --  
9 and I -- I didn't hear all of Dr. Nicholson's testimony,  
10 so it's -- he may have explained this in detail. But just  
11 to make sure, this is -- this is titled "Milk Assembly At  
12 Fluid Plants and Packaged Milk Flows, May 2021." On this  
13 table -- and this is explained in Exhibit 303 -- the green  
14 line represents the incoming milk to Class I bottling  
15 plants. And this is just looking at the supply and demand  
16 of milk across the country and how far that plant would  
17 need to go to find available milk to supply those Class I  
18 needs. The yellow lines are the outgoing distribution  
19 lines, where that milk coming out of that bottling plant  
20 would be going to find a market.

21 Without digging into each individual line, what  
22 struck me in reviewing Dr. Nicholson's work is that you  
23 have got two very different dynamics going on in this  
24 country. You have got east of the Rockies, largely,  
25 serving, to some extent, as available supply to the  
26 Southeast, ranging all the way almost up to the Upper  
27 Midwest regions that I talked about there, of Wisconsin,  
28 Minnesota, and South Dakota. They are just outside of



1 where most of that green line activity occurs.

2 On the west side of the Rockies you have got a  
3 very different looking model, very different milk  
4 movement, different supply/demand dynamics.

5 And so how does this fit into the testimony I just  
6 gave? What this demonstrates to me is that that one  
7 region is not impacting the other region. Dr. Nicholson's  
8 and Dr. Stephenson's analysis takes a national look, and  
9 that makes a lot of sense, and I understand why they did  
10 it.

11 But I -- I believe that because of the  
12 considerations that I mentioned in my testimony, we needed  
13 to keep a regional reasonable relationship for competitive  
14 reasons, from the bottom of the slope in the West to the  
15 bottom of the slope on the east side of the country, which  
16 is the Upper Midwest.

17 While that may look odd when you compare it and  
18 overlay it to Dr. Stephenson and Dr. Nicholson's study,  
19 given this -- this dynamic expressed in the chart, I don't  
20 believe taking that different approach in the western U.S.  
21 in any way impacts what is needed on the eastern part of  
22 the country because they are dealing with almost a  
23 separate pool of supply/demand relationships over there.

24 Q. So when you say "taking a different approach,"  
25 what are you referring to?

26 A. Well, Mr. Covington testified, and I think others  
27 have testified, Mr. Sims as well, about the approach that  
28 was taken to identify the high point, where the milk needs





1 to go, Miami has been referenced, and then working --  
2 feathering it out from there.

3 Through my testimony, what I have made pretty  
4 clear, is that we looked at the bottom of the slope and --  
5 or at the bottom of the trough, where is that area of  
6 significant milk supply and what is the relationship in  
7 that region to a similar situated region in a competitive  
8 area of the country, I mentioned the Upper Midwest, and  
9 then from there building a slope up to where the milk  
10 needs to get in the Bay Area and in Southern California.  
11 And when those in the Pacific Northwest are here  
12 testifying, they will talk about those urban centers, and  
13 the same in -- in Idaho -- I mean, in Arizona, I'm sorry.

14 So it's -- it's a bottom-up approach as opposed to  
15 a top-down approach. Ultimately, still develops a slope  
16 that we believe is appropriate for milk handlers and  
17 plants and producers to respond to those incentives.  
18 But -- but I think this map helps support that different  
19 approach.

20 Q. Okay. And when you talk about the bottom-up  
21 approach, you are talking about using that for the western  
22 side of the country?

23 A. Correct.

24 Q. And so at some point you match up with and you  
25 meet up with the top approach that was started in Miami  
26 that Mr. Covington talked about.

27 And so is that what you are talking about, that  
28 there has to be an alignment where those two intersect at



1 some point?

2 A. That's correct. And that really was -- I mean, we  
3 have talked about cane anchor cities a lot in this -- in  
4 this last week. That was what the anchor cities were  
5 about, is you are going to have your own considerations  
6 and your own things you do in your different regions.  
7 Where those regions intersect, we have got to have some  
8 alignment or you end up with very odd county-to-county as  
9 you maybe cross a state line, and we wanted to avoid that.

10 Q. Okay. Thank you very much for your testimony.

11 MS. HANCOCK: Your Honor, at this time we would  
12 make Mr. Vandenheuvel available for cross-examination.

13 THE COURT: Mr. Vandenheuvel, I want to make sure  
14 you have emphasized the footnote that's on page 3 of your  
15 testimony. I didn't keep up with you because you had so  
16 much information here, I was looking in different places.  
17 I don't know whether you read into the record Footnote 1,  
18 but I just want to make sure that you now read the  
19 sentence that is at the top of page 3 that contains  
20 Footnote 1, and then read Footnote 1.

21 THE WITNESS: Absolutely. And I did not read  
22 this, so thank you for the opportunity to make sure that  
23 everyone understands Central Valley the same way that I  
24 do.

25 Specific to regional competitiveness, while  
26 virtually no milk moves between California's primary milk  
27 supply region of the Central Valley -- and Central Valley  
28 is defined, for the purposes of this testimony, in the



1 footnote there: "For purposes of this testimony,  
2 California's Central Valley is defined as Butte, Glenn,  
3 Fresno, Kern, Kings, Madera, Merced, San Joaquin,  
4 Sacramento, Stanislaus, Sutter, and Tulare Counties.  
5 These counties collectively represent the most prominent  
6 milk shed within the state of California."

7 And then finishing out that sentence after Central  
8 Valley: "And the Upper Midwest regions -- Upper Midwest  
9 milk sheds of Wisconsin, Minnesota, and South Dakota,  
10 these regions have some functional similarities."

11 THE COURT: Cross-examination. Who would like to  
12 begin?

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

14 THE COURT: Please be back and ready to go at  
15 1:00 p.m. We go off record at 11:54.

16 (Whereupon, the lunch recess was taken.)

17 ---o0o---



1 WEDNESDAY, OCTOBER 11, 2023 - - AFTERNOON SESSION

2 THE COURT: Let's go back on record. We're back  
3 on record at 1:00 p.m.

4 And I have new paperwork.

5 Ms. Vulin, would you help us get started with  
6 what -- the first document I should look at?

7 MS. VULIN: Yes. Thank you, Your Honor. Ashley  
8 Vulin with the Milk Innovation Group.

9 If we could start with the California county map,  
10 please.

11 THE COURT: I have it. And I'm delighted to have  
12 it.

13 So does that get the next exhibit number?

14 MS. VULIN: Yes, please, Your Honor.

15 THE COURT: So our last exhibit number was 348.  
16 So California will be 349.

17 (Thereafter, Exhibit Number 349 was marked  
18 for identification.)

19 MS. VULIN: And then the next exhibit is MIG-34.

20 And I was just told we do have printed copies that  
21 are with the corrected header on them. They just arrived  
22 maybe 30 seconds ago.

23 THE COURT: Wonderful.

24 MS. VULIN: So, yeah, we'll pass those around so  
25 everyone can have that.

26 THE COURT: Good. So let's give it a number now,  
27 and so that will be 350. 350 correlates to  
28 Exhibit MIG-34.



1 (Thereafter, Exhibit Number 350 was marked  
2 for identification.)

3 THE COURT: And the reason something is being  
4 passed around now is it has the corrected case -- or the  
5 corrected heading. Is that correct?

6 MS. VULIN: Yes, Your Honor.

7 THE COURT: Okay. Good. That's wonderful you  
8 managed to do that in spite of the fact that your printer  
9 has left the building.

10 MS. VULIN: I'm told it was the last thing hot off  
11 the press before it absconded.

12 THE COURT: Excellent.

13 MS. VULIN: And the last document is Exhibit 70,  
14 entitled "Testimony of Dennis Schad in Support of  
15 Proposal 1 of California Dairies, Inc.," from the Clovis  
16 California proceedings in 2015.

17 THE COURT: That brings back the days of my youth.  
18 We can mark that as 351. And that Exhibit 351 also shows  
19 the exhibit in the California milk order proceeding which  
20 was 70. I'm leaving that there. That's helpful. And  
21 down at the bottom it happens to say  
22 "Cooperative-Exhibit 6."

23 (Thereafter, Exhibit Number 351 was marked  
24 for identification.)

25 MS. VULIN: Thank you, Your Honor.

26 And then I would also ask that the witness be  
27 given Exhibit 323 and Exhibit 344, and that way we'll have  
28 all of our paperwork ready, and we can proceed.



1 THE COURT: 323 and 344. I have mine. So they  
2 are MIG-31, with a corrected header, and MIG-33, whose  
3 header is not yet corrected. We're looking for that when  
4 we come back.

5 MS. VULIN: Correct. We weren't able to get that  
6 one printed in time.

7 THE COURT: Understood.

8 MS. VULIN: Okay. I think that takes care of all  
9 of the paperwork. Thank you, Your Honor.

10 THE COURT: You're welcome.

11 THE WITNESS: I have 323 and 344. Am I supposed  
12 to have the other stuff that was just handed out?

13 MS. VULIN: Yes. The witness will also need 349,  
14 350, and 351, please.

15 Thanks for flagging that.

16 THE WITNESS: You're welcome.

17 THE COURT: 350 is the MIG-34. Now, we don't need  
18 to give the witness -- okay. So you are giving the  
19 witness the record copy and he'll need to give it back?  
20 So if someone wants to give him one that he can keep if he  
21 wants one, be sure to do that.

22 MS. VULIN: And I have extras. I'm happy to  
23 provide after the examination.

24 THE COURT: Okay. So I'm going to have the  
25 witness mark those. Do they have the numbers on them?

26 THE WITNESS: No.

27 THE COURT: Okay. So start with the California --  
28 do you have something to write with? Start with the



1 California map and write 349.

2 THE WITNESS: Okay.

3 THE COURT: And then find one that is MIG-34 and  
4 mark it 350.

5 And then find the California exhibit, mark that  
6 351.

7 And now you are set to go.

8 THE WITNESS: Thank you. All right.

9 THE COURT: All right. Now you may proceed.

10 MS. VULIN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. VULIN:

13 Q. So, Mr. Vandeneuvel, thanks for being here with  
14 us today.

15 A. Yes.

16 Q. So let's start with your involvement in developing  
17 Proposal 19. I know you have -- I think you have seen a  
18 little bit of the questioning so far. So as I told the  
19 previous witness, we have a general sense of how the  
20 overall structure worked, but can you let me know what --  
21 when you came on board and what your role is, please.

22 A. Yeah. I came on board, so to speak, with the task  
23 force from the beginning. When -- I don't remember  
24 exactly when that was, but when we started -- well, let me  
25 back that up. There was some of this discussion to  
26 include a change to the Class I differentials dating back  
27 probably beyond when I was involved. But once the  
28 decision was made to proceed with a Class I differential



1 update I was brought in to represent the western United  
2 States, given our presence in California, and provide  
3 perspective in the West.

4 Q. And was that before the first USDSS run, do you  
5 know?

6 A. I do not believe it was before the first USDSS. I  
7 believe that started when a group of folks looking at  
8 Class I issues, generally, they decided they wanted to go  
9 down this path. They retained Dr. Stephenson and  
10 Dr. Nicholson. It was some time after that that a  
11 formalized task force came together to now figure out what  
12 we do with this information.

13 Q. And you said you came aboard to represent the  
14 western United States.

15 Was that just California or the more general  
16 region?

17 A. In that initial meeting, I believe from the  
18 western United States, I was the only one in the room. So  
19 in some of the initial discussions, I was providing a  
20 western perspective. That would be West Coast, maybe  
21 including Arizona, Nevada, but, you know, west of the  
22 Rockies for sure. And then we started bringing others in  
23 with more of a local expertise outside of California since  
24 California is the only place I have ever done any  
25 business.

26 Q. And I know we have talked about these regional  
27 subgroups.

28 Were you a leader of one those or what was your





1 role in those?

2 A. I would probably call myself a coordinator of that  
3 effort. Other individuals I worked with on that included  
4 representatives from United Dairymen of Arizona, and there  
5 was a couple of people that rotated through that process.  
6 But most recently Brent Butcher from United Dairymen of  
7 Arizona. Darigold, or Northwest Dairy Association, and  
8 there was a couple of people that rotated through there,  
9 but most recently Monte Schilter. And Dairy Farmers of  
10 America, quite a few representatives there, including  
11 Johnny Hiramoto, Ed Gallagher. Eric Erba for a period of  
12 time participated in these discussions. Gary Stueve. I  
13 think that's it that I was familiar with at Dairy Farmers  
14 of America. And then -- and then Land O'Lakes generally  
15 oversaw what was going on, although it was more  
16 tangential, their involvement.

17 THE COURT: Would you spell Gary Stueve, please?

18 THE WITNESS: G-A-R-Y, and last name, S-T-U-E-V-E.

19 BY MS. VULIN:

20 Q. And those were all members of the western U.S.  
21 group or what was the geographic scope of that task force?

22 A. That task force was tasked with -- with refining  
23 and finalizing recommendations on California -- or Federal  
24 Order 51, Federal Order -- whatever the number is for  
25 Arizona, the Pacific Northwest Federal Order, and the  
26 surrounding unregulated areas, which would include Idaho,  
27 Utah, Nevada, and Montana, which is a state order.

28 Q. And we had heard some discussion earlier about



1 multiple runs of the USDSS.

2 Were you involved in any of those iterations or  
3 can you provide any insight as to the development between  
4 those runs?

5 A. The thing that sticks out in my mind is that  
6 between run 1 and 2, there was an effort to modernize the  
7 list of plants, that perhaps there was some updates to the  
8 list of plants in the model that warranted a change.  
9 Maybe some plants that were imminent, and I'm thinking  
10 mostly of an announced plant in Washington that had  
11 already been -- you know, broken ground, and the thought  
12 was could change some of the milk flows in that area. So  
13 I know that was between 1 and 2. I don't recall what --  
14 what the adjustments would be between runs 2 and 3.

15 Q. And we have heard a little bit about this, adding  
16 or removing plants to make sure it reflects what -- what  
17 was going on in the industry.

18 Do you have any specific information on what  
19 plants were added and what plants were removed in that  
20 run?

21 A. In California, which would have been the only  
22 stuff that I was directly informed on, there was a -- I  
23 think there were two plants that come to mind that were in  
24 the initial run, because we were provided a list of the  
25 plants that the model had included, and they had been  
26 since closed down. One was a plant in Southern  
27 California, and one was a plant in the Bay Area. That's  
28 what comes to mind. And it was -- so in that case it was



1 removal of plants.

2 Q. Do you recall specifically, can you tell me which  
3 plants those were?

4 A. One was a Kroger facility in the City of Industry,  
5 and I believe the other that's come to mind is the  
6 Berkeley Farms facility owned by Dean Foods.

7 Q. And you said you recall -- so those are two plants  
8 that were removed from the USDSS, correct?

9 A. Correct.

10 Q. And you also recall there was a plant added that  
11 was in Washington?

12 A. Yeah, a Darigold facility in Pasco, Washington.  
13 And it's added to the model. It's in -- under  
14 construction. I don't know what the launch date is. But  
15 because it was already broken ground and imminent, then --  
16 and we never know how long those hearings last, so we  
17 decided it was prudent to add.

18 Q. And that's a plant -- the Darigold plant you said  
19 is still under construction, as of today even?

20 A. As far as I know.

21 Q. And it's not obviously receiving any milk at that  
22 location?

23 A. Not to my knowledge.

24 Q. Any other knowledge of plants that were added or  
25 removed, even if not in your area?

26 A. Nothing coming to mind.

27 Q. And then I understand that there were anchor  
28 cities developed. And if you could pull up Exhibit 323,



1 please.

2 Were these anchor cities developed before -- was  
3 this list developed before or after you became involved?

4 A. The very first meeting I was involved included the  
5 selection of these cities.

6 Q. And so you helped select which cities should be  
7 the anchor cities?

8 A. Yeah. Yes.

9 Q. And can you tell me who else was part of that  
10 meeting?

11 A. Boy. Mr. Sims, Mr. Covington were definitely in  
12 that meeting. Boy, I'm going back a ways now.  
13 Mr. Vitaliano. I believe Mr. Sleper. I want to say there  
14 was a representative from Land O'Lakes, might have been  
15 Tom Wagner, but I'm not 100% on that. A representative  
16 from DFA, probably would have been Ed Gallagher. Chris  
17 Hoeger was probably in that room. And that -- those --  
18 those are the faces I remember.

19 Q. And when you -- I know it's hard to recall stuff  
20 from that far back. Is it that those were the only people  
21 there and there were 20 other people who you can't  
22 remember, or there were only about ten people, and you  
23 think you have got them all, but you are not sure?

24 A. It was a fairly small room, and so I remember  
25 there wouldn't have been more than a dozen people in the  
26 room. And then there were a few folks that were  
27 participating by Zoom, I believe. Not very many but a  
28 couple folks. So less than 15 people total, but



1 representing different pockets of the country and  
2 different pockets of the National Milk membership.

3 Q. And at this meeting where you selected the anchor  
4 cities, is that also where the approach to use anchor  
5 cities was developed, or was that done before that  
6 meeting?

7 A. I don't know what discussion took place before  
8 that meeting in preparation, but that was the first time  
9 that I had heard of this idea of creating these benchmark  
10 cities in between regions to ensure that regional work  
11 that would come out of that meeting had a point between  
12 those regions that you would target some reasonable  
13 relationships. In other words, one region didn't take a  
14 vastly different approach than the neighboring region, and  
15 now you have got to meld those two at the adjoining  
16 boundary. So that was the first time I had heard that,  
17 that -- as a tool to try to get regional work done but  
18 still have a national strategy at the end of the day.

19 Q. And you said you gave input on the selection of  
20 anchor cities that were located in the West?

21 A. Yes.

22 Q. Can you identify which ones those are for us on  
23 Exhibit 323, please?

24 A. The two in Arizona, so Phoenix and Yuma -- I guess  
25 from a county standpoint, Maricopa and Yuma Counties. One  
26 in Southern California, Los Angeles County. And one in  
27 the Bay Area, San Francisco County. And I believe those  
28 would have been the four that I -- I weighed in on.



1           With the idea being that the relationships between  
2 Phoenix, Yuma, and Los Angeles, there's a -- there's a  
3 significance there. They -- they are kind of neighboring  
4 areas. You want some similarities -- I included some of  
5 that in my testimony about historical milk movements  
6 between Southern California and Arizona. And so that  
7 balance and making sure those two regions didn't go in  
8 vastly different directions. And then the Bay Area was  
9 put in there as kind of the nearest divider to the Pacific  
10 Northwest up in the northern part of our milk shed.

11           Q.    And I don't believe there are any Pacific  
12 Northwest cities in here, are there?

13           A.    There wasn't. And -- well, I don't remember all  
14 the exact conversation. It would have made sense that  
15 there wasn't any specific in the Pacific Northwest as,  
16 again, these were targeted at those borders to regions.  
17 So if you treat the Pacific Northwest as one large region  
18 that's going to have a consistent strategy, wouldn't need  
19 anchor cities within that region. It would be more  
20 important to have anchor cities around that region, such  
21 as whether it's Denver or whether it's Northern  
22 California, to maintain some consistency.

23           Q.    And we'll talk a bit more about this, but I want  
24 talk a little bit about just the methodology or the theory  
25 behind how you approached the USDSS and those adjustments.

26                    So you said that the USDSS cannot take into  
27 account regional competitiveness at the farm level.

28                    Do you recall that?



1 A. Correct. Yes.

2 Q. What do you mean by that?

3 A. I mean, it doesn't look at farm level prices at  
4 all. I think Dr. Nicholson talked about that. That's not  
5 the intention or design of the model. It absolutely is an  
6 important consideration for CDI as we evaluate these  
7 proposals. I believe it is an important consideration for  
8 National Milk as well. And we believe it should be an  
9 important consideration for USDA.

10 But the general -- the general price -- I don't  
11 like to use the word exactly alignment, but -- but  
12 relative relationship between prices in different regions  
13 was an important consideration that the model just wasn't  
14 designed to -- to address.

15 Q. And when you say "farm level prices," do you mean  
16 that the USDSS doesn't take into account production costs  
17 at the farm level?

18 A. No. I'm talking about what is being paid into the  
19 pool for prices or for milk purchased and, therefore,  
20 consistent prices across the country. Not equal prices.  
21 You have different pools, different utilizations. Blend  
22 prices are a combination of price and utilization. So you  
23 are not going to have similar utilization in different  
24 regions, but -- but the prices paid into the pool, which  
25 ultimately turn into farmer revenue, it is important to  
26 keep some alignment in our opinion.

27 Q. I guess I'm struggling a little bit. My  
28 understanding is the USDSS is meant to generate that



1 price, right, or a portion of that price. And so how can  
2 it take into account what that price will ultimately be?  
3 Isn't that the output of the model?

4 Or I might not be tracking what you are saying  
5 there. Is it that the USDSS doesn't take into account  
6 whether or not the ultimate price it produces is  
7 sufficient in the marketplace? Is that what you mean?

8 A. I -- that would be -- that would be another way of  
9 saying what I'm gathering at, yes.

10 Q. And then you talk about pool stability and  
11 maintaining a robust incentive for handlers and farmers to  
12 serve as available supply for the Class I market.

13 Do you recall that?

14 A. Yes.

15 Q. And what do you mean by pool stability? Is that  
16 depooling or price inversions?

17 A. Yeah. I -- and I talked about pool stability in  
18 more detail starting on page 3 of the testimony, going  
19 into page 4. But it's, you know, not the only focus of  
20 our Class I updates, but it is a part of that, that there  
21 are features of the Class I price that contribute to  
22 whether more or less milk will pool, and to the extent  
23 that more pool -- more milk has an interest in pooling,  
24 that's more stable, it's more available milk to service  
25 the Class I market, and so this contributes to that in our  
26 opinion. This proposal contributes to that.

27 Q. And you say even in your testimony that a big part  
28 of the cause of depooling is the large and sustained gaps





1 between the Class III and IV prices, correct?

2 A. Correct.

3 Q. And so even in your testimony, you state that  
4 Class I prices are just a part of creating pool stability?

5 A. Absolutely.

6 Q. And I want to follow up on that a little bit.

7 In terms of how that operates in California, what  
8 is the Class I utilization in California, an estimate?

9 A. Somewhere -- estimated, call it 18 to 20% in any  
10 given month.

11 Q. And in terms of the Class I price and the ability  
12 of that price to impact pooling decisions, have you done  
13 any mathematical studies or numerical analyses to confirm  
14 that the degree to which your proposal can support pool  
15 stability?

16 A. We don't have a specific mathematical analysis.  
17 We do know that the more money that's paid into a pool,  
18 the higher the incentive to participate in that pool over  
19 the long-term.

20 Q. But only if that money is high enough, right, to  
21 change a pooling decision, correct?

22 A. Correct.

23 Q. So even if we have more money added to the pool,  
24 if it is not enough money to change a Class III or IV  
25 pooling decision, it won't actually improve pool  
26 stability, correct?

27 A. Yes. But I'd like to expand on that a little bit.

28 I am somewhat involved in our pooling decisions at



1 CDI, and I can tell you that even if you are not going to  
2 pool 100% of your milk, some milk is pooled or not pooled  
3 on the basis of pennies. And so to the extent that the  
4 blend price is higher because there's more money in the  
5 pool, it will result in a higher percentage of milk that's  
6 pooled, even if it's not completely eliminating an  
7 incentive to depool some of the milk.

8 Q. But you haven't done any analysis to see if  
9 Proposal 19 is sufficiently high to have that type of  
10 impact, have you?

11 A. Analysis? No. But I can tell you, like I said,  
12 it -- it -- we have milk that's not pooled on the basis of  
13 pennies per hundredweight in many months. And so I  
14 wouldn't want to leave the record with the -- with the  
15 message that we didn't -- we just assumed that somehow  
16 these -- this proposal would lead directly to more milk  
17 being pooled. It's adding significant dollars to the pool  
18 when you look at, you know, pretty, admittedly,  
19 significant increases to the Class I differential. That  
20 will move the blend price enough to have additional milk  
21 that would not otherwise be pooled as pooled. But it is  
22 correct that I don't have an analysis to that effect.

23 Q. And that impact of the additional Class I dollars  
24 in the pool is going to vary based on the utilization of  
25 the respective pools, correct?

26 A. Correct.

27 Q. And did you see the testimony of Jacob Schuelke  
28 with Crystal Creamery when he testified on the impacts of



1 the Class I price on pooling decisions?

2 A. I caught pieces of it online, but it -- I was not  
3 here for it and didn't catch his whole testimony.

4 Q. Did you see when he ran the analysis of how much  
5 the Class I price would have to change in order to change  
6 pooling decisions?

7 A. I'm not sure I saw an exhibit. I heard him  
8 talking about it.

9 Q. And you recall that testimony?

10 A. I recall that he claimed the Class I price would  
11 have to move substantially higher to incentivize milk to  
12 all pool or to eliminate any chance of inversions.

13 Q. And do you disagree with that testimony?

14 A. I don't disagree with the testimony. If your goal  
15 is to have 100% of milk pooled, we should change the  
16 pooling rules. But it's undoubted -- it's un- -- you  
17 can't argue against the fact that more money in the pool  
18 will result in a higher percentage of the milk in that  
19 order wanting to associate with the pool over the  
20 long-term. So I think those are two different arguments.  
21 Do you want 100% or do you want more? We don't have a  
22 system that mandates 100%. It's not a realistic goal.  
23 But more is -- this proposal would increase what  
24 percentage of milk wanted to associate with the pool.

25 Q. But you are not sure by how much more because you  
26 haven't done the analysis, you have just concluded it will  
27 increase pooling by some amount?

28 A. Correct. And that's not the sole driver of why



1 we're proposing Number 19, but it is a contributing factor  
2 that was worth noting in my testimony.

3 Q. And in terms of kind of how the marketplace  
4 impacts these prices, if the market is demanding high  
5 prices for Class I milk, or milk to be used for Class I,  
6 wouldn't we be seeing that in over-order premiums?

7 A. Can you repeat the first part of that -- or repeat  
8 the whole question because I'm not sure I caught the  
9 intro.

10 Q. So it was a little bit of a transition, so that's  
11 fair.

12 But thinking about how the marketplace drives  
13 prices, and if the marketplace is demanding more milk for  
14 fluid use, isn't that going to be reflected in higher  
15 over-order premiums for that milk?

16 A. Over the long-term, that is correct.

17 Q. And so, again, I posed this question to  
18 Mr. Covington, why aren't we letting over-order premiums  
19 solve this problem then, if it's really about the getting  
20 milk to Class I?

21 A. I can't speak for the entire country, but I can  
22 tell you in -- in our pocket of the country, it is a  
23 combination of the regulated price and over-order  
24 premiums. So they both -- they both are. It's not one  
25 exclusive of the other.

26 And so in our region we have Class I  
27 differentials, we have regulated prices, and those serve  
28 as a foundation of how we start with the milk price, and



1 then over-order premiums are on top of that. And they  
2 drive typically, based on more than just, you know, is  
3 Class I demand high. It might be regional considerations.  
4 It might be limitations of that plant, difficulties in  
5 servicing that plant, balancing schedules. All these  
6 things get factored into that. And I think that's a  
7 critical part of this, but it doesn't ignore the fact that  
8 after 20 years, the underlying price warranted another  
9 look.

10 Q. And isn't there a risk that if the Class I price  
11 is set too high, that could generate more milk than the  
12 market demands?

13 A. I think that's always something that needs to be  
14 taken into account in regulated prices. We don't believe  
15 Proposal 19 does that.

16 Q. And when talking about encouraging pooling -- and  
17 I know you brought up, if you want 100% pooling, you have  
18 to address that through the regulations that govern  
19 pooling. But with Class I utilization as low as it is in  
20 a number of orders, is the Class I price the best  
21 mechanism by which to try and create pool stability? Or  
22 even a useful mechanism?

23 A. If Proposal 19 was being done to specifically fix  
24 pool stability, I would say it's a very inefficient way to  
25 fix that problem. Does it help contribute to more pool  
26 stability? I believe it does. That's why it's in my  
27 testimony. It's not the first or even primary reason that  
28 we support Proposal 19, but it was an important



1 consider- -- important enough consideration to include at  
2 least a reference in the testimony.

3 Q. And in terms of over-order premiums, I know you  
4 had said those play an important role.

5 Does CDI or has CDI ever negotiated an over-order  
6 premium with a Class I plant?

7 A. Yes.

8 Q. How frequently?

9 A. Our typical supply agreements range from probably  
10 two to four years, and so as they come up, you have got to  
11 renegotiate those agreements, and they all have some level  
12 of negotiation around over-order premiums.

13 Q. And so just -- and my question was maybe a little  
14 imprecise. So I was looking kind of at what percentage of  
15 agreements that CDI has with Class I plants contain some  
16 type of over-order premium, and it sounds like all of  
17 them?

18 A. 100%.

19 Q. Thank you.

20 And has CDI ever passed along a fuel or -- a fuel  
21 fee or a hauling fee, I have heard some different  
22 terminology, but something equivalent to that, to a  
23 Class I processor plant?

24 A. Yes.

25 Q. And, again, percentage-wise, how frequently does  
26 that happen in the sales that CDI makes to Class I plants?

27 A. Nearly -- nearly 100%. The only exception would  
28 be if we operate on a temporary spot sale, we'll just



1 price that because it's a known period of time without the  
2 uncertainty of what fuel prices will do during the course  
3 of that contract term. Then we will just price it in one  
4 number so we don't complicate the discussion. But if it's  
5 a multi-year agreement and you want to hedge the risk that  
6 fuel prices could elevate beyond what is assumed at the  
7 time of contract, we include that adjuster in the contract  
8 language.

9 Q. And the fuel adjuster would adjust based on the  
10 cost of fuel going up or down?

11 A. Correct.

12 Q. And have you -- I know you covered hauling  
13 expresses in some of your testimony, correct?

14 A. Yeah, I did. I talked about some of CDI's hauling  
15 expenses differing from one region to another.

16 Q. And as part of that analysis did you deduct or  
17 otherwise account for the percentage of hauling costs that  
18 CDI typically earns back through its hauling or fuel fee?

19 A. I believe I did not because I included the all-in  
20 cost in both regions to show the differential of what both  
21 regions would do, because I wasn't trying to express  
22 the -- the total gross number wasn't as important as the  
23 difference between the two numbers. So I believe I  
24 included -- whatever I did, I included on both sides to  
25 ensure that the gap was measured consistently.

26 Q. So if we're looking at that number to determine  
27 what is the potential out-of-pocket cost to CDI for  
28 hauling or fuel costs, we would not take that number



1 wholesale, we would want to reduce it by whatever CDI in a  
2 particular agreement has for its hauling or fuel fee?

3 A. You would, except -- so this is on page --  
4 predominantly on page 7 of my testimony. And so if you --  
5 if you look, for instance, in the first paragraph, I give  
6 one range for milk deliveries from Kern County to Los  
7 Angeles County, and a second range from Kern County to  
8 Tulare County, so I was demonstrating the gap. If you are  
9 going to adjust them to some fuel surcharge, you would  
10 have to adjust both of them, which means the gap would  
11 remain the same per hundredweight. But, yeah, you could  
12 either include them or you could subtract them, the gap  
13 would remain the same.

14 Q. And so in providing this hauling data, was the  
15 intent that USDA use that to justify your deviations from  
16 the USDSS or is this data meant to support the adoption of  
17 the USDSS and their separate justifications for your  
18 changes from that model output?

19 A. This -- this information was used to support the  
20 proposal. Now, the fact that the proposal represents a  
21 deviation from either the current Class I differentials or  
22 from the model, spatial relationships, this data was  
23 intended to support the final results as opposed to how we  
24 got there.

25 Q. So there's no way to draw a line -- for example,  
26 if I'm looking at this, \$0.68 to \$0.81 a hundredweight for  
27 shipping from Kern to Tulare.

28 Do you see that?





1 A. Yes.

2 Q. So there's no way to draw a specific correlation  
3 or number-to-number translation to say, okay, this was the  
4 hauling cost, and that's why NMPF recommended X for the  
5 differential in Tulare?

6 A. That's correct. There's no -- there's no direct  
7 line.

8 Instead what -- what -- the way I would look at  
9 this information -- or I did look at this information, was  
10 if I'm looking at -- let's say, I take the midpoint of  
11 these two numbers, roughly, \$0.75 for the shorter haul and  
12 roughly \$1.45 for the longer haul, that farmer or that  
13 milk handler sitting in Kern County has to make a  
14 decision: Do I send the milk to Southern California and  
15 incur the larger haul cost, or do I send it to a closer  
16 plant in Tulare County and incur the lower cost haul?

17 We believe that the \$0.40 gap in differentials  
18 from Kern County to Southern California is an adequate --  
19 it's an adequate incentive to continue sending the milk to  
20 Southern California where it's most needed.

21 Q. So given where Los Angeles County is today, which  
22 I believe is \$2.10 --

23 A. Yes.

24 Q. -- correct?

25 So how is -- and I'm not trying to be facetious,  
26 but how is milk making it there today if what the  
27 differential is at is much lower than what you are  
28 proposing and there are these hauling costs?



1           A.     Well, the reality is it's -- it's making it there  
2 today through a combination of the base price and  
3 over-order premiums, and that is why you will notice that  
4 while the underlying lower -- lowest value in our state,  
5 we are proposing to move it higher, the relationship from  
6 Kern County to Southern California, or from Tulare County  
7 to Southern California, is largely unchanged, very minor  
8 tweaks. We think that there's some improvement to make,  
9 which is discussed later in my testimony. But we have not  
10 proposed a significant change in the slope from the  
11 Central Valley to Southern California, because while we  
12 believe an update to the -- to the figures is warranted,  
13 we believe the relationship is okay.

14           Q.     And you said that over-order premiums are helping  
15 drive that milk to LA today, correct?

16           A.     Correct.

17           Q.     Do you expect that over-order premiums will no  
18 longer be needed if NMPF's proposal is adopted?

19           A.     I -- I don't have that expectation or don't not  
20 have that expectation. We will have to work with our  
21 customers and figure that out when we get there.  
22 Over-order premiums are unpredictable and -- and a moment  
23 in time as you are working out those supply arrangements.

24           Q.     And so the intent here is to account for what  
25 otherwise today is coming in over-order premium and put it  
26 in the base minimum; is that fair?

27           A.     The intent here is to update a set of assumptions  
28 that are more than 20 years old. What impact that will



1 have in the marketplace is not entirely known. It's  
2 impossible to know exactly what impact that would have.  
3 We think that there's a lot of reasons to make these  
4 changes. We know some of these changes are needed in  
5 other parts of the country, and we think it would be  
6 inappropriate to make them in other parts of the country  
7 and not also address California to maintain some level of  
8 competitive balance.

9 But I -- I wouldn't go so far as to say there will  
10 be either no change or some change to how those  
11 relationships look after this process. We -- we think it  
12 needs to be updated, and we'll let the chips fall where  
13 they may in terms of how supplier and receiver coordinate  
14 contracts going forward.

15 Q. So you think the marketplace will still have a  
16 role to playing?

17 A. I think the marketplace will always have a role to  
18 play. The marketplace is not just setting a price based  
19 on national factors. It is setting a price based on  
20 what's the milk available in that area and who is able to  
21 sell it and who is able to buy it. And, yeah, those  
22 things change a lot faster than the regulatory process can  
23 possibly respond to.

24 Q. Thank you.

25 And if you could pull up Exhibit 351, please,  
26 which is the California testimony.

27 And so I want to go back in time a little bit just  
28 to understand how this process of approaching



1 differentials in California has developed and evolved.

2 So you discussed on page 1 the adoption of the  
3 FMMO in California, correct?

4 A. Correct.

5 Q. And you participated in that promulgation hearing,  
6 correct?

7 A. I was not at California Dairies, Inc., so I  
8 testified in a much different way, as a representative of  
9 the Milk Producers Council. So I would say I  
10 predominantly listened but occasionally would participate.

11 Q. CDI was a participant, correct?

12 A. CDI was a participant.

13 Q. And when I see here at the bottom of this, it  
14 says, "Cooperative-Exhibit 6."

15 Do you see that there?

16 A. Yes.

17 Q. Was CDI a member of the group of cooperatives who  
18 were petitioning to have a California Federal Milk  
19 Marketing Order put in place?

20 A. Yes.

21 Q. And I think a lot of us here got to enjoy that  
22 proceeding, so the band is back together here in Indiana.

23 A. I dispute the word "enjoy." But, yes.

24 Q. Noted for the record. Thank you.

25 And in this testimony, which was put forth by  
26 Dennis Schad of Land O'Lakes, I wanted to just ask a  
27 couple questions about how the approach that the  
28 cooperatives and CDI as a member of that group in



1 California took versus the approach you are proposing  
2 today.

3 So if you could go to page 29, please.

4 And there is some discussion on this page of the  
5 Class I differentials. And I'll go through and maybe read  
6 you some testimony just to orient us, and then go through  
7 and questions. Does that work?

8 A. Yes.

9 Q. So on this page, if you look at the top paragraph,  
10 second sentence, it says, "Section 1000.52 lists the  
11 Class I differentials for all counties in the United  
12 States, including California.

13 "The Cooperatives recommend that this section be  
14 included in the California Order in Sections 1051.51 and  
15 1051.52."

16 And then if I go down to the next paragraph, it  
17 starts, "These differentials were developed during the  
18 Federal Order Reform process and represent the spatial  
19 value of milk and its components across the United States.  
20 AMS relied on the United States Dairy Sector Simulator  
21 Model (USDSS) to estimate relative geographic values of  
22 milk and place them on a national grid, which assigned  
23 Class I location values for each county in the U.S."

24 And then it goes on to explain that Congress  
25 instructed that the Secretary apply Option 1A, which we  
26 have had a little discussion about.

27 And then: "The Federal Register of December 17,  
28 1999, lists all counties of the United States, including



1 counties of California, and the Class I differentials  
2 associated with each."

3 So just to orient us, even though at this point in  
4 time California was not under the Federal Order system,  
5 there were still differentials developed for the state of  
6 California, correct?

7 A. Correct.

8 Q. And just as today we have differentials for Idaho  
9 or other states that are not part of Federal Orders,  
10 correct?

11 A. Correct.

12 Q. And based on this, and my recollection, and I want  
13 to know if yours is the same, the cooperatives in  
14 California requested that the USDA adopt those  
15 differentials that were already within the regulations for  
16 California and apply those to the California Federal  
17 Order, correct?

18 A. Correct, with respect to Class I prices. I seem  
19 to recall that the proposal by the cooperatives treated  
20 blend price calculation different, but -- but for setting  
21 Class I prices, yes, they adopted the -- they requested  
22 the adoption of the current map.

23 Q. Thank you. And -- and I appreciate the nuances  
24 there.

25 And then if you turn to page 30 on the next page.

26 The bottom paragraph starts with "also addressed  
27 in Federal Order Reform was the appropriateness of the  
28 utilization of the minimum \$1.60 per hundredweight base



1 Class I price."

2 And we have had a lot of discussion about whether  
3 or not this \$1.60 is a minimum, is a base.

4 What's your understanding of what this \$1.60 is  
5 that is used in the USDSS?

6 A. My understanding of that historical reference is  
7 that it was used -- it was a result of a consideration  
8 USDA made -- or came out of the Federal Order Reform  
9 process with and was used in some way as a basis of how  
10 they established the map at that time.

11 Q. And the \$1.60 was added flat across every county,  
12 correct?

13 A. I've not seen maybe it said exactly that way, but  
14 as I have listened to this testimony and read a little bit  
15 of the history, that that appears to be consistent.

16 Q. Thank you.

17 And then if you could go to page 32, please.

18 And I'm looking at the last paragraph that starts  
19 "since reform."

20 A. 32. Okay.

21 Q. "Since reform, AMS has only changed the Class I  
22 differentials found in Section 1000.52 once as a result of  
23 a hearing held in May 2000 [sic] for FMMOs 5, 6, and 7."

24 THE COURT: Read again the year -- or the month  
25 and the year.

26 MS. VULIN: May 2007.

27 BY MS. VULIN:

28 Q. "That decision to increase the differentials



1 within the marketing areas was based on testimony that the  
2 Southeast was experiencing an increase of demand  
3 concurrent with a decline in milk production. All three  
4 marketing areas were described as milk deficit.  
5 Adjustments to the county differentials were based on a  
6 transportation cost function from the nearest surplus  
7 supply region to the Southeast markets. None of the  
8 supply/demand factors referenced in the Southeast decision  
9 are present in California."

10 Do you see that?

11 A. I do.

12 Q. And so my question is, this testimony was from  
13 2015.

14 Do you believe that the supply/demand factors have  
15 since changed in California or do you believe the  
16 statement is still true?

17 A. I believe that it's a fundamentally different  
18 exercise, changing one region and leaving the rest of the  
19 country the same. That's -- that's something they did in  
20 the Southeast at one point because things had changed  
21 enough in that region to focus on that area only. I think  
22 the bar was appropriately high as to when you would make  
23 such a regional change but leave everything else in the  
24 country consistent.

25 What we're talking about in this hearing, and what  
26 Proposal 19 represents, is a wholesale review of the  
27 entire map. And in that -- through that lens, I believe  
28 you would take different things into consideration as to





1 when these differentials would move higher or lower. I  
2 still think it's appropriate -- as much as my dairy  
3 farmers won't like me saying this -- that the Class I  
4 price is higher in Florida than it is in California. They  
5 have a different regional supply and demand. They have to  
6 pull milk from further distances as has been testified to  
7 in this hearing.

8 The discussion over what the map looks like coast  
9 to coast, however, and what the lowest points are and what  
10 the highest points are, is where we think there's an  
11 appropriate review at this time.

12 Q. Do you believe or do you assert here that there is  
13 disorderly marketing in California due to the Class I  
14 prices?

15 A. No.

16 Q. And so the change of Class I prices in California  
17 is primarily prompted because other regions are changing  
18 and California needs to be changed in order to maintain  
19 the appropriate relationship with those regions?

20 A. Yes. We believe there are some adjustments to the  
21 counties as I talked about. But in terms of the  
22 predominant purpose of the change, it was -- it was, as  
23 you stated, a need to make adjustments in other parts of  
24 the country, a need for a lot of reasons as described in  
25 the testimony, to make sure we feathered that out across  
26 the country, even if we weren't supplying the Southeast or  
27 a particular region that was short of milk.

28 Q. We're doing a good job with our buzz words of



1 feathering and aligning.

2 A. Yeah. It's the word of the day.

3 Q. And so would -- based on your recollection of the  
4 California proceeding, did any of the cooperatives propose  
5 adjustments to the USDSS generated prices that ultimately  
6 became the Class I differentials in California?

7 A. No. At that time, again, because it -- we would  
8 be looking at just the region of California, we did not  
9 look at that.

10 And, again, I referenced it earlier, but to  
11 reiterate, the ultimate Federal Order provisions that  
12 became Order 51 were not the same as what the  
13 cooperatives' proposal was. So the cooperatives' proposal  
14 was supportive of the Class I differential map in  
15 determining Class I obligations of handlers, but they  
16 didn't, admittedly -- and I wasn't in the room, but from  
17 the outside, clearly didn't take a close look at the  
18 impact it would have on blend prices and -- and the  
19 handlers that are supplying those plants and their pool  
20 draws because that wasn't part of their proposal, that  
21 then was incorporated into the proposal, you know, in the  
22 recommended and ultimately Final Decision.

23 But this testimony, which would have been given  
24 under the assumption that the proposal includes a  
25 consistent blend price across the country, not adjusted by  
26 Class I differentials, would have driven -- in other  
27 words, the co-ops might have taken a different approach if  
28 they knew they were going to have a blend price that was



1 also adjusted by Class I differentials, but they didn't.  
2 And so here we are four or five years later. We now know  
3 the rules that we operate under. We have been in there  
4 for four or five years, and we think that there's a  
5 warrant to make some adjustments to some of the counties  
6 and how they interact.

7 Q. And you would agree with me that USDA didn't of  
8 their own volition take a look at the differentials and  
9 decide that there needed to be adjustments, correct?

10 A. Correct.

11 Q. But now you are advocating that USDA take a  
12 different approach, take the USDSS model and make  
13 adjustments to that or changes to that based on local  
14 knowledge, correct?

15 A. Correct.

16 Q. And you can set that aside now. Thank you.

17 A. I correct my previous statement. Somebody enjoyed  
18 the hearing.

19 Q. So we have talked about some of the price  
20 adjustments. And I have the map in front of me, and I'm  
21 sure, as with Mr. Covington, you have all of these  
22 counties committed to memory, but I find it helpful to  
23 have. I know that a lot of your testimony focuses on how  
24 do we get milk from kind of the Central Valley milk shed  
25 to the major cities, primarily LA and San Francisco,  
26 possibly also San Diego; is that right?

27 A. Yes.

28 Q. And I understand that part of what drives the



1 higher differentials in the cities and the deviations from  
2 the USDSS is traffic and the impact that has on the  
3 ability to move milk; is that right?

4 A. Yes.

5 Q. And so when I am looking at the deviations from  
6 the USDSS -- and if you want to have Exhibit 350 handy as  
7 well. And MIG has taken the differentials proposed by  
8 NMPF and added these difference in percent change columns.  
9 I found those helpful to, one, avoid having to do math on  
10 the fly and also for comparison.

11 And so I'm looking at Los Angeles County and the  
12 adjustment from the USDSS. And it's 33 --

13 THE COURT: Let me stop you there.

14 MS. VULIN: Yes.

15 THE COURT: I think this would be a good place for  
16 us to indicate -- I know you haven't had a chance yet to  
17 correct the heading, but this would be a good place for  
18 each of us to mark how you will adjust the heading to show  
19 that this is not a National Milk Producers Federation  
20 exhibit.

21 MS. VULIN: I believe we handed out corrected  
22 ones, but perhaps we haven't gotten one to Your Honor yet.  
23 Apologies.

24 THE COURT: No worries.

25 Oh, how beautiful, we don't have to write on it.

26 Okay. So I would like the witness to read to me  
27 what you're looking at, with regard to Exhibit 350, would  
28 you read across the top each section. And because we now



1 know that this is Exhibit 350, I would like you to fill in  
2 the blank, if you have a blank at the top.

3 THE WITNESS: Mine is different from yours, so I  
4 would need to read yours.

5 THE COURT: Let's give the witness the updated  
6 one. Do you have an extra copy? He doesn't have to take  
7 the record copy.

8 MS. VULIN: May I approach?

9 THE COURT: You may.

10 MS. VULIN: I'll take the old one.

11 THE COURT: Yes.

12 All right. Now, do you see, Mr. Vandeneuvel,  
13 that there's a fill-in-the-blank in the heading?

14 THE WITNESS: Yes.

15 THE COURT: Would you write into your copy, 350,  
16 because that's what we designated this exhibit.

17 THE WITNESS: Yes, it's been written.

18 THE COURT: Okay. Somebody's taking better care  
19 of you than they are of me.

20 All right. So I have 350. Please read into the  
21 record the way this heading reads now.

22 THE WITNESS: It says, "Exhibit 350, MIG-34,  
23 NMPF\_Final Class I Differentials, June 2023, California,  
24 Corrected Header."

25 THE COURT: Good. And then to the left of the  
26 heading, still on the same line as the heading, what words  
27 do you see?

28 THE WITNESS: "Prepared by MIG."



1 THE COURT: And to the right of the heading that  
2 you read into the record, what do you see?

3 THE WITNESS: "Exhibit MIG-34."

4 THE COURT: All right. Good.

5 Now, you may continue.

6 MS. VULIN: Thank you, Your Honor.

7 BY MS. VULIN:

8 Q. So if you could go to Row 177, please.

9 And here you can see we have extracted the  
10 California counties, which is why it starts at Row 159.  
11 But in thinking about the impact that traffic has and the  
12 justification of deviating from the USDSS based on that, I  
13 see a 33% change in the price for Los Angeles, from 2.25,  
14 as the model average, \$2.25, to \$3, correct?

15 A. Yes.

16 Q. But when I look at, for example, Fresno in  
17 Row 168, there was an almost identical percentage change  
18 there of 32%, from \$1.90 from the model to \$2.50.

19 And so in thinking about the respective traffic in  
20 those areas, and I don't live there, but I watch Saturday  
21 Night Live, so I have heard a little bit about the traffic  
22 in Los Angeles, it's some of the worst in the country, I  
23 would think.

24 And so how was that principle applied across the  
25 counties when we're seeing something very similar with two  
26 very different regions?

27 A. Well, when I talked earlier in my direct  
28 examination about the approach we took, the bottom -- and



1 \$2.50 would be the bottom in California, it would be the  
2 trough, the valley of the slope -- was established not  
3 based on the USDSS, but based on competitive  
4 considerations that I talked about, which may have been  
5 driven by USDSS in other parts of the country. And then  
6 we built up from that valley. And while milk in Fresno  
7 does not typically get transported to Los Angeles or even  
8 the Bay Area, milk in Kern or Tulare County does.

9 And so we then looked at, you know, what would we  
10 do to build that slope into Southern California. And  
11 frankly, we could have put together a justification to  
12 have a much larger than \$0.50 slope from the Central  
13 Valley to Southern California, but that's the slope we  
14 have today. We believe that milk is moving where it needs  
15 to move. And so we -- even though -- even though it  
16 didn't increase LA more than the \$0.50 that we had  
17 increased Fresno, we decided that that was an appropriate  
18 slope.

19 So that was the thought process. We obviously  
20 didn't look at it through the lens that you are presenting  
21 here.

22 Q. And just to be clear, when I equated the  
23 similarity of the change, it was by the percentage change,  
24 not the ultimate dollar.

25 A. Correct.

26 Q. So they were different dollar changes.

27 So then -- but my understanding was that Los  
28 Angeles was an anchor city. So I thought the Los Angeles



1 price came first, and then everything else would have been  
2 built from that.

3 A. It did come first. But that didn't mean that the  
4 numbers associated with LA County were set and never  
5 moved. We -- the anchor cities established basically the  
6 first run of, okay, each region, go to do your regional  
7 work, here's the anchor cities, we're going to put some  
8 numbers associated with those anchor cities, and then  
9 we're going to come back and meet. And hopefully because  
10 of the use of anchor cities, we have got some -- you know,  
11 some cohesion between the regions.

12 Then, throughout the process, we continued to  
13 evaluate what this map should look like, and so  
14 adjustments were made, whether it was an anchor city or  
15 not. So while LA was initially identified, LA ultimately  
16 ended up in a -- at a different differential  
17 recommendation than initially assumed.

18 Q. What was the original differential recommendation  
19 for LA when you established the anchor cities?

20 A. I -- I don't recall, but if I had to guess, it was  
21 probably somewhere close to the USDSS number of \$2.25.  
22 But I -- I don't have that reference available. But that  
23 would have been the most likely. Most likely \$2.25 or  
24 somewhere plus or minus somewhere close to that.

25 Q. When the anchor cities were established, was there  
26 an intent that those close very trackly -- let me start  
27 that again.

28 When the anchor cities were established, was there





1 an intent that those track very closely to the USDSS  
2 average results?

3 A. There was a recognition that this definitely was  
4 going to be a marathon, not a sprint. So at that point,  
5 they set it very close to the USDSS number, so that the  
6 regions could begin their work. Ultimately, in the  
7 refining sessions and the process of coming up with a full  
8 coast-to-coast proposal, lots of considerations came in,  
9 which I have already talked about. But in that moment in  
10 time, it was, we aren't going to debate what this number  
11 should ultimately be, let's start with something. And it  
12 probably was exactly the USDSS number because that was a  
13 reference price at that number -- you know, run one of the  
14 USDSS, and then we'll refine as we go forward.

15 Q. And I see that when I look at Exhibit 323, which  
16 lists the anchor cities.

17 A. Okay.

18 Q. I see some of the ones listed at the top which are  
19 maybe the more east coast or central. You do have some  
20 that are set right at the USDSS amount.

21 A. Yes.

22 Q. For example, Charleston, West Virginia, looks like  
23 Nashville, Tennessee.

24 But then as we go down, the four anchor cities in  
25 your region, Phoenix and Yuma in Arizona, and Los Angeles  
26 and San Francisco in California, have more significant  
27 deviations from \$0.60 to \$0.80, correct?

28 A. Correct.



1 Q. And you are saying the reason for those changes  
2 was that some of the other counties in California had to  
3 be pushed up, and therefore those counties got pushed up  
4 in order to maintain the slope relationship between them?

5 A. Correct.

6 Q. And what forced the other counties, like Fresno,  
7 to be pushed up that started this iterative change?

8 A. Regional competitiveness, pool stability, and  
9 maintaining a robust incentive for handlers and farms to  
10 serve as available supply for the Class I market, and  
11 limitations or cost drivers created by region specific  
12 factors. So all of the things I testified to, that are  
13 kind of broken down later. I would say probably regional  
14 competitiveness was an overriding theme that we talked  
15 about in the West, and in California in particular.

16 Q. And when you said "they" set it, referring to the  
17 anchor city USDSS -- let me start that again.

18 When we were talking about how the original anchor  
19 city prices were set, I believe you said "they" set it at  
20 the USDSS prices.

21 Who is "they"?

22 A. Yeah, I should have been more clear. So the group  
23 that -- that was meeting in that initial meeting. And  
24 actually I -- I'm not sure if this was the order in which  
25 they were selected. It was an exercise for much of the  
26 meeting of where does this region and that region come  
27 together that I was less familiar with, but came up with  
28 these list of cities, and then the group would assign a



1 value. And I believe the default value was the University  
2 of Wisconsin model run.

3 Q. And you were part of that group?

4 A. I was part of that group. Yes.

5 Q. And it is interesting to look at this selection of  
6 cities, right, because looking at San Francisco or LA, you  
7 understand how those can be real drivers. But I couldn't  
8 figure out why Yuma, why we would look at Yuma alongside  
9 LA or San Francisco given that based on my quick Google,  
10 Yuma has less than 100,000 people, and obviously San  
11 Francisco and LA have millions of people.

12 A. I believe Yuma sits on or very near the border of  
13 Arizona and California, and so it was seen as a -- as a  
14 border region that has milk, has -- has plant capacity.  
15 It's -- it's -- it's a -- it's a consideration in milk  
16 pricing in Federal Milk Marketing Orders, and conveniently  
17 sat between two regions that were going to have to go back  
18 and do some regional work. So that's why it was selected,  
19 so that the work the Arizona folks conducted and the work  
20 the California group conducted would ultimately be  
21 targeting a consistent target point on that border.

22 Q. Okay. And you had discussed earlier the  
23 relationship between California and other regions of the  
24 country, and you pulled up the map that Dr. Nicholson had  
25 shared demonstrating that there's kind of two distinct  
26 regions in a more major sense, right, the west and the  
27 east.

28 Is that right?



1 A. Yes.

2 Q. And I believe you said that they're largely  
3 separate and independent of each other.

4 Is that right, in terms of their milk sheds and  
5 processing?

6 A. With regard to milk, yeah, milk flows, I think  
7 there's -- when you are talking about feed, I mean, we had  
8 a witness from J.D. Heiskell talking about grain stuffs  
9 moving from one region to the other. But milk, too much  
10 water to move that kind of distance.

11 Q. And when we're talking about the regionality of  
12 it, you are talking both about the raw milk supply.

13 But what about this fluid milk finished product?  
14 Is that also a very regional product?

15 A. Yes. Typically very regional, particularly in  
16 the, you know, traditional bottled milk business with a  
17 limited shelf life.

18 Q. And probably the regions are more expansive or  
19 broader when you're talking about components or cheese or  
20 other products than you are fluid milk, correct?

21 A. Absolutely.

22 Q. And so you said in your testimony that the Upper  
23 Midwest milk sheds, like Wisconsin, Minnesota, and South  
24 Dakota, had their prices change as part of this process,  
25 and that the Central Valley of California needed to change  
26 to be comparable to those.

27 But if they are totally separate milk sheds that  
28 aren't competitors, why would they need to have comparable



1 prices?

2 A. In the Class I space you could certainly argue  
3 that they are mutually exclusive regions. The fact that  
4 this drives pool revenue and ultimate blend price  
5 calculations of farmers, those farmers are absolutely  
6 competing with farmers in regions all over the country,  
7 whether it's for feed supplies or -- I can tell you it's  
8 been an interesting dynamic watching the state of South  
9 Dakota and the state of Kansas put a representative in a  
10 booth at the Tulare County ag show trying to solicit our  
11 farms away from California and bring them to their region.  
12 You are competing at a farm level with where -- where is  
13 there other options to milk cows.

14 And so because this all, ultimately, results in a  
15 pool that determines blend price values for the farms, we  
16 thought it was appropriate that we not endorse a proposal  
17 that would put our farms at a competitive disadvantage  
18 because pool price -- pool revenues were enhanced in one  
19 area and not enhanced in our region.

20 Q. And then kind of looking at this global  
21 comparison, if you could look at Exhibit 350 and 344,  
22 which are the two tables. One we had talked to  
23 Mr. Covington about that showed the percent changes to the  
24 Florida USDSS prices, and then I have here the California  
25 one. And I set them side by side, and it's a very stark  
26 comparison to me, looking at the exclusively single-digit,  
27 very low percentage changes from the USDSS in Florida, and  
28 then the much more significant higher deviations in



1 California.

2 And if we're trying to approach the differentials  
3 in some kind of systematic or consistent way, how do we  
4 reconcile the severity of the differences in these  
5 approaches?

6 A. Well, I'll start with if we had \$6.90  
7 differentials in California, I probably wouldn't have  
8 strayed from the model too far, but that's not what we  
9 ended up with. We ended up with significantly lower.

10 We -- we -- we believe that there's justification  
11 for the numbers that we have set at the -- kind of the  
12 bottom of our valley for competitive reasons. We actually  
13 think we were probably conservative in how we built the  
14 slope up to the LA and out to the Bay Area urban centers.  
15 The fact that that results in a double-digit change is  
16 partially a function of we're starting with a lower  
17 number, and partially a difference of opinion on how to  
18 interpret the USDSS numbers, that we think that there's  
19 warrant in -- there's value in evaluating it as a separate  
20 pool as opposed to one national map, and as I talked about  
21 in my direct examination.

22 So I don't think you can compare what we're doing  
23 in -- what we're proposing to do in Florida under  
24 Proposal 19 with what we are proposing to do in  
25 California. I think you've got two different situations.  
26 I think as much as our farmers would like it, we're not  
27 proposing a \$6 or \$7 differential in California because,  
28 for all the reasons that are talked about in this hearing,



1 there is a difference in that part of the country. But we  
2 don't think it's unreasonable to ask for a meaningful  
3 adjustment to the California differentials, even if the  
4 USDSS did not recommend those changes.

5 MS. VULIN: And, Your Honor, I have one more set  
6 of questions, but I'm at a good stop if a break is in  
7 order.

8 THE COURT: A break is in order. And I  
9 congratulate the two of you. You're just covering a lot  
10 of important ground, and you are doing it very  
11 beautifully. Thank you.

12 So we go off record at 2:11. Please be back and  
13 ready to go at 2:25.

14 (Whereupon, a break was taken.)

15 THE COURT: Let's go back on record. We're back  
16 on record at 2:26.

17 Ms. Vulin.

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

20 Now I had Exhibit 300 put on your desk.

21 I believe we need a copy for Your Honor, or do you  
22 have --

23 THE COURT: I have my own.

24 And this is a good time to express my gratitude  
25 for the yardsticks. These are substantial. I've never  
26 had such a good yardstick. I'm going to need someone from  
27 AMS who as a motor vehicle to transport the yardsticks as  
28 if they were record exhibits. And I have one, and I have



1 a witness one, and --

2 MS. VULIN: I'm glad I'm a yard and a half away  
3 from you all.

4 THE COURT: All right. I'm sorry. What number?

5 MS. VULIN: Exhibit 300.

6 THE COURT: Ready.

7 MS. VULIN: Thank you.

8 BY MS. VULIN:

9 Q. And, Mr. Vandenheuvel, I'm -- I want to ask to see  
10 if you can solve a little mystery for us.

11 So Column O in this Exhibit 300 says "Proposed  
12 Class I," and Column S says "New Proposal."

13 Do you see that?

14 A. Yes.

15 Q. And I believe this was the May 2023 NMPF price  
16 differential Excel. And I'm trying to figure out what the  
17 differences between O and S.

18 Do you know that?

19 A. No.

20 Q. And we have also been trying to figure out who the  
21 author of this Exhibit 300 is that was submitted to USDA.

22 Was that you by chance?

23 A. No.

24 Q. Do you -- have you seen a document similar to this  
25 that was utilized as part of the process of developing  
26 Proposal 19?

27 A. In general, I have seen spreadsheets with columns  
28 that look like this, but not in this exact format.





1 Q. So you are not sure who may have been the owner or  
2 author of this document?

3 A. Correct.

4 Q. And then there's also a Column R there that says  
5 "Average Monthly Pounds 2022 (mil)."

6 Do you see that?

7 A. Yes.

8 Q. Do you have any idea what that column is  
9 indicating?

10 A. I will assume that's the amount of -- well, no, I  
11 don't know because I -- it could be amount of milk  
12 produced or processed in that county. Previous  
13 spreadsheets I have seen have not had such a column on it.

14 Q. So it would just be a guess?

15 A. Yes.

16 Q. So the mystery shall continue. You can set that  
17 aside.

18 So I have just a couple questions about Grade A  
19 versus B milk, in particular in California.

20 So did you hear any of the questions yesterday of  
21 Mr. Erba or Mr. Sims regarding the costs of Grade A  
22 farming?

23 A. Yes.

24 Q. And are you aware of there being any difference in  
25 how California allows election of being a Grade B farm  
26 versus A?

27 A. I think your question asked about a difference,  
28 and I'm not sure I caught what difference you are looking



1 for. Can you repeat the question?

2 Q. Sure. So I'll put it to -- are you familiar with  
3 the Food and Agricultural Code in California,  
4 Section 33452, which defines or provides for farms to make  
5 an annual election to not be a Grade A farm? Are you  
6 familiar with that?

7 A. I'm familiar with the concept, maybe not the exact  
8 verbiage of the regulation. But, yes, the concept.

9 Q. Can you tell me what you know about that concept,  
10 please?

11 A. The concept is by some period prior to January 1st  
12 of any given year, you can designate yourself as a  
13 manufacturing milk dairy as opposed to a market milk or  
14 Grade A dairy, and that decision is locked in for  
15 12 months from -- or for that calendar year, January 1  
16 through December 31.

17 Q. And those terms, marketing -- manufacturing milk  
18 and market milk, it's my understanding that the  
19 manufacturing milk is the Grade B and the market milk,  
20 because it can be used for fluid milk, is Grade A; is that  
21 right?

22 A. That's my understanding as well.

23 Q. And why would a -- this is -- sorry. Strike that.

24 In California, this is a unique option just to  
25 farms located in California?

26 A. I believe that's the case, yes.

27 Q. And why would a farm in California want to elect  
28 to be a Grade B or a manufacturing milk farm for a year?



1           A.     In today's environment, the purpose would be, if  
2     you can find a buyer that will buy your milk year round,  
3     and you can contract with that buyer at a price that is  
4     acceptable to you, it allows you to escape funding the  
5     California quota program that only applies to Grade A or  
6     market milk.

7           Q.     And I have some familiarity with the California  
8     quota program, but can you just give us a short  
9     description of what that is, please?

10          A.     California's quota program has a long and storied  
11     history, but in its current form, it is a -- a paper asset  
12     held by dairymen that entitles them to a certain return on  
13     each pound of quota, which is tied to a pound of solids  
14     nonfat that they produce. The funds to fund that payment  
15     to quota holders used to come out of the California state  
16     pool. With the creation of a California Federal Order,  
17     they are now funded by an assessment each month on all  
18     Grade A milk produced and processed in the state, thereby  
19     providing an incentive for someone to not produce Grade A  
20     milk if that was an available option because they would  
21     not have to fund that pot of money that's distributed to  
22     quota holders.

23          Q.     And this option to switch back and forth with the  
24     annual election, that would mean a farm that wanted the  
25     option to return as a Grade A farm would maintain the  
26     fixed aspects of their operation, right, the facilities  
27     and things like that, they would need to maintain that  
28     Grade A status if they wanted to elect back in the



1 following year?

2 A. They would at least keep it in a condition that  
3 they could -- they could restore to that standard by the  
4 time they signed up the next year.

5 Q. So when we're looking at the percentage of  
6 California farmers who may be Grade B at any point in  
7 time, there is a motivation to do that that's unique to  
8 California and not necessarily driven by the FMMOs; is  
9 that right?

10 A. Correct.

11 Q. And are you aware of any cheese processors in  
12 California who require suppliers to be Grade A?

13 A. I believe a majority, you might even say a vast  
14 majority, of cheese manufacturers require their supply to  
15 be Grade A.

16 Q. And are you aware of any cheese manufacturers or  
17 processors in California who actively solicit Grade B  
18 milk?

19 A. In 2023, I do not. There has been cases in the  
20 past when even a large cheese manufacturer would have a  
21 program offering that opportunity to its suppliers. I  
22 don't believe that's still the case in 2023.

23 Q. Thank you.

24 MS. VULIN: Nothing further, Your Honor.

25 Thank you for your time.

26 THE WITNESS: You're welcome.

27 CROSS-EXAMINATION

28 BY MR. MILTNER:



1 Q. Good afternoon, Mr. Vandenheuvel.

2 A. Good afternoon, Mr. Miltner.

3 Q. Ryan Miltner representing Select Milk Producers.

4 I wanted to start with getting a little more  
5 detail or clarification from you on one particular part of  
6 your testimony, and it is on page 3 of your written  
7 statement, Exhibit 345.

8 And you're comparing California's Central Valley  
9 and the Upper Midwest regions, and one sentence in  
10 particular caught my attention. You state, "The gap" --  
11 after you describe the Proposal 19 differentials in those  
12 two regions -- "The gap is wider than exists today, but  
13 CDI supports Proposal 19 and believes it represents a  
14 reasonable relationship in Class I differentials between  
15 these two regions."

16 I wondered what the importance of that  
17 relationship is to CDI as you were putting together this  
18 price surface?

19 A. Well, I -- I talked in the previous couple of  
20 paragraphs about why I think there are some functional  
21 similarities between the Central Valley of California and  
22 the major milk sheds of the Upper Midwest. And I also  
23 noted that in our current Class I differential map they  
24 are pretty close. And so at least at the time of  
25 establishing that map, they established -- "they" being  
26 USDA -- established a differential for those various  
27 counties that was pretty close. If you look at what the  
28 USDSS model generated in its most current run, they are



1 not very close.

2 And so for CDI, as we evaluated what we think is  
3 an appropriate set of differentials by county, we thought  
4 that there was justification to closer align, not exactly  
5 align, but at least closer align, within reason, the  
6 bottom of our trough or slope or whatever word you want to  
7 use, in California, with the bottom of the slope or trough  
8 in the Upper Midwest.

9 And so that was -- that paragraph is they're  
10 recognizing that while they may not be equal in the  
11 proposal, they are close enough and they are much closer  
12 than the USDSS model put out as a recommendation, and so  
13 we were supportive of that.

14 Q. What specifically about the characteristics of  
15 those two regions makes them -- makes it appropriate to  
16 align them more closely than the USDSS model suggests?

17 A. Well, we look at -- we looked at this as both  
18 regions could be fairly described as the supply portion of  
19 the supply/demand relationship as opposed to the demand  
20 side. It's -- it's more likely that those two regions are  
21 going to be on the bottom of the slope as opposed to the  
22 top, Miami or cities in the Southeast, for instance, that  
23 have been talked about in pre- -- by previous witnesses.

24 And so what led us to that belief is they are both  
25 areas that have strong and concentrated milk production  
26 assets. They both have very limited Class I utilization.  
27 I know that California, if all the milk was pooled, we  
28 might be closer to a 10 or 12% Class I utilization, but if



1 you look at the Central Valley in isolation and not  
2 including the Southern California region, the Bay Area  
3 that are very different from the Central Valley, there's  
4 very little in-area Class I utilization in the Central  
5 Valley of California.

6 So we thought that they had some similar features  
7 like that. I talked earlier about some of the competition  
8 that exists between farms in California and farms in the  
9 Upper Midwest, going so far as trying to recruit farms to  
10 those other regions, you know, better economics, closer  
11 access to feed, all those -- all those things that are --  
12 that are talked about when you are trying to convince a  
13 farmer to leave the state of California.

14 So that -- for those reasons, collectively, we  
15 thought there was a justification that those -- the bottom  
16 of those troughs -- the bottom of those slopes should be  
17 similarly situated.

18 Q. You said in your answer that if you look at the  
19 Central Valley in isolation without taking into  
20 consideration demand in Los Angeles.

21 Was that part of the approach that your particular  
22 working group looked at, was to say, let's look at  
23 production isolated from the Class I demands pulling from  
24 those regions?

25 A. I -- I think it was part of the consideration.  
26 You know, California is a huge state, and so one might  
27 say, well, you know, you have got Class I, it's just a  
28 little further south from the Central Valley. Well, in



1 other parts of the country that might be two states away  
2 in miles, but it happens to be in the same state, but it  
3 is really not the same region. There's not only miles in  
4 between, there's a mountain range in between, with limited  
5 arteries for traffic to go between those two regions.

6 And so we did definitely look at the Central  
7 Valley as the supply region and the bottom of the slope  
8 whereas the urban centers of the coast, whether that's  
9 Southern California or the Bay Area, were -- were, you  
10 know, different regions, which I talked about in the  
11 testimony as kind of three distinct regions.

12 Q. And I apologize. I had to step out of the room a  
13 little bit for part of your first set of questioning. But  
14 was there -- are you really viewing the whole map as not a  
15 single national surface, but a collection of regional  
16 surfaces in your analysis?

17 A. I think USDSS model attempts to create some  
18 regional distinctions, but is still ultimately a national  
19 map. My reason for bringing up the map from  
20 Dr. Stephenson and Dr. Nicholson's report was to show that  
21 it really is not one big pool where milk all flows to a  
22 common area of deficit. The West is a bit of an island.  
23 Milk doesn't flow over the Rockies on any kind of regular  
24 occurrence, for very legitimate reasons.

25 And so I was pointing that out to say that changes  
26 or variations that we would recommend to the model won't  
27 necessarily impact the milk flows or economics in the  
28 other part of the country. Not sure I would agree that we





1 looked at this with a lot of different regions, but we  
2 certainly, in the West, looked at this and said, we think  
3 there's -- there's other considerations outside of the  
4 model, regional competitiveness being a big one, and we  
5 think we can make some adjustments to reflect that, and we  
6 don't think that will compromise what's happening on the  
7 eastern part of the country.

8 Q. I wanted to ask you also about a base  
9 differential.

10 As your working group was beginning to look at  
11 county-by-county values and the USDSS model, did you  
12 assume that there was a base Class I differential from  
13 which to start?

14 A. Our initial work of our first draft would have  
15 been largely influenced by the USDSS, which as testimony  
16 earlier has revealed, had embedded in it a \$1.60 base  
17 differential. We at that point took a lot of other  
18 considerations into account.

19 So I'd say after that initial establishment, then  
20 we really didn't spend a lot of time focusing on a base  
21 differential and rather focused on some of the other  
22 considerations we talked about, most notably regional  
23 competitiveness.

24 Q. Now, are you familiar with USDA's discussion in  
25 the order reform decisions which breaks out three  
26 components of that \$1.60 base differential?

27 A. I generally am aware of that, yes.

28 Q. Do you believe that those three elements are still



1 relevant to the determination of a Class I differential?

2 A. I believe they are relevant to include in the  
3 discussion and to recognize the cost that exists when it  
4 comes to the three buckets that were discussed in that  
5 Federal Order Reform decision. Where I would stop short  
6 is that that should define exclusively the bottom of any  
7 regional slope. We think there's -- there's other  
8 factors, such as the ones in my testimony.

9 Q. When you say that it should stop short of defining  
10 the bottom of a regional slope, are you suggesting that  
11 the bottom of a regional slope could be lower than those  
12 three buckets?

13 A. We don't have any proposal -- or we don't have any  
14 counties in Proposal 19 that are lower than \$2.20, so  
15 that's what we support as the lowest. We don't call it a  
16 base differential, and it wasn't constructed as such. But  
17 we're not proposing any number that is tied to those  
18 calculations.

19 As I recall, Dr. Erba's calculations did not add  
20 up to exactly \$2.20 when he was talking about some of the  
21 pieces that add up to that, you know, those three buckets.  
22 So we just -- we took a fundamentally different look.

23 But I understand that the model had to put a value  
24 and -- in order for it to calculate, and that started --  
25 that served as an initial discussion point, but from there  
26 we took a lot of real life considerations into account.

27 Q. So I believe Dr. Erba testified that the Grade A  
28 maintenance costs were \$1.40 something. And I believe he



1 also testified that while he hadn't quantified it, that  
2 balancing costs and the cost to attract milk to Class I  
3 plants exceeded \$0.74, which in combination, if you take  
4 his testimony, would get you to \$2.20.

5 Now, if we take Dr. Erba's \$1.40-ish for Grade A,  
6 and Mr. Covington's testimony about the cost of balancing  
7 that they incur at SMI, we're over \$2.50, and we haven't  
8 even started to talk about the cost to attract milk to the  
9 market. And I don't think National Milk or its members  
10 have put on any other numbers to help us quantify what  
11 that base is.

12 Do you have -- CDI have an opinion on what those  
13 three buckets add up to?

14 A. No.

15 Q. And so when you say you took a different approach  
16 or a different look at this, you also deviated from the  
17 USDSS model by looking at competitive factors and the  
18 like, correct?

19 A. Correct.

20 Q. So I guess I'm trying to help synthesize all of  
21 this into a methodology to help justify the specific  
22 numbers that are in there? Because if you deviate from  
23 the base and you deviate from the model, then all we're  
24 left with is what the colored pencil crew did, right?

25 A. Well, previous testimony said a couple of things,  
26 as I recall, and I will admit that I haven't heard every  
27 minute of the testimony. But Dr. Nicholson I believe  
28 talked about the fact that to run their model they had to



1 put a number in, a base value. Otherwise, the dual  
2 pricing spatial analysis, whatever his terminology was,  
3 would have created a -- would have generated a county at  
4 zero or a base county at zero. So they put a number in  
5 there.

6 Testimony by Dr. Erba and some testimony by  
7 Mr. Covington was aimed at supporting why it shouldn't be  
8 zero, it should be some number higher than zero.

9 To support using the USDSS as a model, what I  
10 testified as to was that in the western United States, we  
11 don't think the model results represent an appropriate  
12 adjustment to the Class I differential map for the reasons  
13 referenced in my testimony. And so for those reasons, we  
14 made adjustments. We explained those adjustments. We  
15 didn't just put them in a grid and say, here they are, we  
16 would like USDA to take them. We put some thought around  
17 them and why there should be considerations beyond the  
18 model. The model is a good tool, but it's not the only  
19 consideration. And so that's -- that's the process by  
20 which we did.

21 And, you know, our hope is that there's enough in  
22 the record to explain why USDA should use the USDSS as an  
23 influencing factor in updating the differential map, but  
24 that also, when looking at a coast-to-coast adjustment,  
25 there are some pretty -- some other pretty important  
26 factors that should be taken into account that all roll up  
27 into Proposal 19.

28 Q. Dr. Vitaliano's statement on Proposal 19 referred



1 to a base Class I differential of \$2.20, quote, as  
2 embedded in the NMPF proposal, close quote.

3 Do you agree with his characterization of \$2.20 as  
4 a base Class I differential?

5 A. I would agree that \$2.20 is the lowest Class I  
6 differential in the proposal. And if that's what's  
7 meant -- I can't read beyond the words and what was  
8 intended to be described as a base differential, but it is  
9 absolutely the lowest differential in Proposal 19.

10 Q. Would you characterize it as a base differential?

11 A. I would characterize it as the lowest differential  
12 in Proposal 19.

13 Q. So is that a yes or a no, Rob?

14 THE COURT: He doesn't have to answer that yes or  
15 no.

16 MR. MILTNER: Well, I asked a yes or no question,  
17 Your Honor.

18 THE WITNESS: I will -- I will give closer to a  
19 yes and no perhaps.

20 California, the differentials that I was most  
21 involved with, I did not set those -- or recommend them.  
22 I didn't set them. They are part of a broad proposal that  
23 National Milk's Board of Directors included on a unanimous  
24 basis into our proposal, but I did not recommend those,  
25 along with other parties in the West and in California,  
26 with a 2.20 in mind. I recommended them for all the  
27 reasons laid out in my testimony.

28 But the reality is the lowest county is 2.20.



1 Whether you call that the lowest county in the  
2 differential schedule or you call it a base differential  
3 is semantics in my mind. But it did not influence why,  
4 and that's why it's not included in my testimony, because  
5 it did not influence why California established our slope  
6 and our bottom of the slope in the way we did. We used  
7 other factors.

8 MR. MILTNER: Thank you.

9 And, Your Honor, I would respectfully suggest that  
10 the term base differential has a very specific meaning  
11 within the context of the regulations as USDA stated them,  
12 and that's why it's important, in my opinion, for us to  
13 evaluate how these differentials were built because --  
14 precisely because of the way USDA has used that term in  
15 its previous decisions, and I don't believe it's just  
16 semantics.

17 But I appreciate your Honor's opinion and will  
18 respect it.

19 THE COURT: It is just that this witness didn't  
20 look at his evaluation that way. The fact that that may  
21 be an overriding concern, I grant you.

22 MR. MILTNER: Thank you.

23 BY MR. MILTNER:

24 Q. So, Mr. Vandenheuvel, I want to look at just --  
25 hopefully just a couple of counties here. And I don't  
26 know that you necessarily need to get out your ruler and  
27 exhibit, but you can if you wish. I'm looking at Kings  
28 County, California.



1 THE COURT: On what exhibit?

2 MR. MILTNER: I think they are all about the same,  
3 but I'm looking -- the one on my screen is MIG-30.

4 Is that the one you have got there? It would be  
5 the longer spreadsheet you just put papers on top of.

6 THE WITNESS: Are you only looking at California?

7 MR. MILTNER: I am.

8 THE WITNESS: Okay. Then MIG-34 has all the  
9 California counties.

10 THE COURT: Oh, okay. Good. The little one.

11 MR. MILTNER: So Kings County, California --

12 THE COURT: Hold on. Hold on. Hold on. So --

13 THE WITNESS: 350.

14 THE COURT: Thank you very much.

15 All right. We're all looking at Exhibit 350.

16 Now you may proceed.

17 MR. MILTNER: Thank you.

18 BY MR. MILTNER:

19 Q. Okay. So the USDSS has an average differential of  
20 \$2, correct?

21 A. Yes.

22 Q. And the current differential is \$1.60, correct?

23 A. Yes. Correct.

24 Q. Which, however we call that, \$1.60 is the lowest  
25 point on the current map, correct?

26 A. Yes.

27 Q. National Milk proposes \$2.50, correct?

28 A. Correct.



1 Q. And so the model increases the differential \$0.40.  
2 National Milk increases it \$0.90.

3 And so without going down this discussion about  
4 base zones or whatever, what -- how do you justify the  
5 \$0.50 difference between what the model shows and what you  
6 have asked for?

7 A. Well, at the risk of sounding like a broken  
8 record, the items in the testimony with regional  
9 competitiveness as a predominant factor to take into  
10 account why we -- why CDI supports a higher differential  
11 in Kings County than what the model recommended. And  
12 understanding the model doesn't recommend the Class I  
13 differential, but it recommends a spatial value of some  
14 definition.

15 Q. It has an output, right?

16 A. Yes.

17 Q. In looking at -- well, have you looked at USDA's  
18 order reform decisions on the establishment of Class I  
19 differentials?

20 A. Not -- not in a level of detail.

21 Q. Are you aware as to whether USDA refers to  
22 regional competitiveness as a factor in setting the  
23 differentials that we have currently?

24 A. I am not aware.

25 Q. Is there a way in which your working group or  
26 National Milk as a whole quantified -- if it's possible to  
27 quantify -- regional competitiveness?

28 A. Beyond what I have put in this testimony, I don't





1 believe we have another exhibit defining regional  
2 competitiveness.

3 Q. Regional competitiveness is more than simply the  
4 distance between two points on a map; would you agree with  
5 that?

6 A. I would agree with that, yes.

7 Q. Because, for instance, the distance from  
8 Bakersfield to City of Industry, which is in Los Angeles  
9 County and there are milk plants there, is about  
10 130 miles, right?

11 A. Sounds right.

12 Q. And the proposed slope between those two points  
13 between a milk production zone and a Class I demand area  
14 is \$0.50, correct? Bakersfield to LA?

15 A. Currently?

16 Q. As proposed?

17 A. As proposed is \$0.40.

18 Q. \$0.40. Okay.

19 So that's \$0.40 over 130 miles, but then  
20 Sacramento to San Francisco, which is about 90 miles,  
21 right?

22 A. Sounds right.

23 Q. That's a \$0.50 slope as proposed, correct?  
24 Sacramento to -- is that Marin County? San Francisco?

25 A. \$0.40. \$2.90 and \$2.50. My testimony said \$0.40,  
26 so you had me second guessing.

27 Q. Well, I'm second guessing myself now too.

28 But -- so if they are both \$0.40, one is 150 miles



1 and one is 90 miles, it is more than a function of  
2 distance, correct?

3 A. It is more than a function of distance. One of  
4 the things that's going on in Kern County is there are no  
5 raw milk processing facilities in Kern County, and so all  
6 that milk needs to travel a great distance, not 130 miles,  
7 but it needs to travel north to Tulare County currently to  
8 be processed. And so the incentive to incentivize Kern  
9 County milk to go into Southern California doesn't need to  
10 be as aggressive as an incentive for Sacramento milk to go  
11 into the Bay Area because that Kern County milk is going  
12 to incur a significant cost. That dairy was built there,  
13 and that milk -- or the milk shed was build without a  
14 local home for milk. So they -- they -- their secondary  
15 option -- it's not just the primary option, it is what's  
16 their secondary option that's important to consider when  
17 you are looking at what does the incentive need to be to  
18 draw that milk into a region.

19 Q. Now, the USDSS includes in its model the locations  
20 of both distributing plants and manufacturing plants,  
21 correct?

22 A. I believe so, yes.

23 Q. So wouldn't -- wouldn't that secondary plant  
24 option already be encompassed in the model?

25 A. I think it probably would. And if you look at,  
26 let's say, Kern County and what the model says, the Kern  
27 County average price of the UW analysis, if I'm reading it  
28 right, is \$2.15 and LA County is \$2.25. So I think it has



1 recognized -- I think they have undervalued how difficult  
2 that drive is from Kern County to LA, because I think you  
3 need more than a -- we believe, CDI believes, you need  
4 more than a \$0.10 or \$0.15 difference. But that gap is  
5 probably smaller because of the supply plant locations as  
6 you referenced just now.

7 Q. So is it -- is it your understanding or your  
8 belief that the model undervalues the secondary marketing  
9 option and that's why you needed to adjust from it, or is  
10 it the difficulty of moving the milk to the primary  
11 market?

12 A. In this particular case, it was the difficulty  
13 moving the milk to the primary market that I believe the  
14 model is challenged to capture. And I reference some of  
15 those factors, a single highway -- or interstate highway  
16 that goes into Southern California with lots of traffic  
17 and geography to deal with.

18 Q. So the last -- I think the last set of questions I  
19 have are about a paragraph on page 7 of your statement,  
20 and it's the paragraph right in the middle where you are  
21 talking about this Tulare County to Los Angeles County  
22 delivery. And so I want to walk through my understanding  
23 of what you are outlining here.

24 So if we have a farm in Tulare County, and they  
25 were going to deliver milk to Los Angeles County, that  
26 cost of delivery -- the cost of delivery is between \$1.68  
27 and \$1.88.

28 That's what you've stated, correct?



1 A. That was our experience last year.

2 Q. Okay. So can we just call it \$1.80 so we can work  
3 with round numbers for right now?

4 A. Sounds good.

5 Q. Great.

6 Now, the average cost incurred by CDI for moving  
7 that milk from that same farm to the manufacturing plant  
8 is 44 to \$0.54 per hundredweight.

9 That's what you testified to, I just read it,  
10 correct?

11 A. Yes.

12 Q. Okay. Can we call that \$0.50 to play with round  
13 numbers?

14 A. Sure.

15 Q. Okay. So it costs an extra \$1.30 to move milk  
16 from Tulare County to Los Angeles County as opposed to its  
17 secondary market, correct?

18 A. Correct.

19 Q. And so the offset for making that additional haul  
20 is going to be made up by the Class I differential, right?

21 A. To the farmer the offset is the difference in the  
22 blend price, but it is the same difference.

23 Q. Well, no, it is different and we'll -- I wanted to  
24 tease that out.

25 But at least as to the value of the milk itself as  
26 classified, it's the Class I differential that is the  
27 difference there, correct?

28 A. Okay. I'll kind of let the line of questions go



1 forward, but, yeah -- to the farmer, or even to the milk  
2 handler, the Class I differential is -- is not directly  
3 impacting us. It is that impact on the blend price that  
4 impacts us, because when we sell milk as a cooperative, or  
5 as a farmer, either one, to a Class I handler in Southern  
6 California, we're paid the blend price, we're not paid the  
7 Class I price.

8 But -- so with that caveat then, the -- it -- the  
9 incentive is the higher blend price, which is captured by  
10 the higher Class I differential.

11 Q. Okay. So let's go -- I agree with everything you  
12 just said, and we're going down two paths, I think, to get  
13 to a similar point.

14 A. Okay.

15 Q. If your -- if that farm is delivering to that  
16 manufacturing plant, is that milk pooled for CDI today?

17 A. It may or may not be pooled, but the -- it may or  
18 may not be pooled.

19 Q. If that milk is pooled, is the return to the  
20 farmer -- the farmer is indifferent as to which plant he  
21 delivers to, correct?

22 A. In the case of a cooperative, things get a little  
23 bit mixed up. But, in general, if a farmer is delivering  
24 to a plant in Southern California or delivering to a  
25 pooled plant in Tulare County, their pay price is  
26 different by \$0.50 currently and under the proposal.

27 Q. Their pay price is different?

28 A. Pay price is different.



1 Q. Okay. Explain that.

2 A. The blend price in LA County is \$0.50 higher than  
3 the blend price in Tulare County, and you are paid based  
4 on where your milk is delivered to, not where your farm is  
5 from.

6 Q. But the purpose of the order itself is to make the  
7 farmer indifferent as to whether the milk is delivered to  
8 a Class I plant or a manufacturing plant to avoid  
9 competition for the highest market; isn't that correct?

10 A. I'm not sure I agree that it -- that the order is  
11 to make the farmer or handler indifferent, because region  
12 and county location of the receiving plant matters. But  
13 within -- if all the -- if all the facilities -- if the  
14 Class I bottling plant and the manufacturing plant were in  
15 the same county, then I could agree that the farmer would  
16 be indifferent because the blend price would be exactly  
17 the same if both plants were pooled. But in this case,  
18 there's a regional difference.

19 Q. Okay. And what is the difference today to CDI for  
20 this delivery you describe?

21 A. Today, the difference is the -- if you assume that  
22 the manufacturing plant -- that that milk is pooled, the  
23 draw, the pool draw, or the ultimate blended value of the  
24 milk in Southern California, would be \$0.50 higher than  
25 what that blend price would be in Tulare County.

26 Q. But you are now deducting a \$1.30 from that return  
27 for the haul, correct?

28 A. Correct.



1 Q. So it's \$0.80 -- the net return to the co-op or  
2 the producer is \$0.80 higher today delivering to the  
3 manufacturing plant; is that correct?

4 A. In this example, yes.

5 Q. Okay.

6 A. There's a logic behind this if -- unless -- I  
7 don't want to jump on any other questions.

8 Q. Go.

9 A. So one of the things you want to do is avoid  
10 unintended consequences. I talked about Kern County,  
11 which is south of Tulare County. That is a first logical  
12 supply of milk outside of Southern California. So you  
13 figure Southern California demand, first pounds then are  
14 going to be Southern California local milk. That makes  
15 sense. The next available milk is Kern County, and you  
16 can see that we have proposed a \$0.40 gap between Kern  
17 County and Southern California, or LA County, to partially  
18 offset that incremental haul that's higher going to  
19 Southern California than coming up to the Central Valley  
20 or coming up to Tulare to the nearest manufacturing plant.

21 What you want to avoid doing is creating a  
22 differential for Tulare County, a county to the north of  
23 Kern County, that would actually incentivize milk from  
24 further out to go down to Southern California, which would  
25 then mean the Kern County milk would have to go to a  
26 manufacturer and the drivers could high five on the I-5  
27 coming past each other. So you don't want to create  
28 unintended consequences.



1           So what this proposal, I think, correctly does, is  
2     it establishes the Kern County differential and the slope  
3     between Kern County and Southern California at one level,  
4     and then doesn't make it too generous if you do have to go  
5     pull milk from the next level. If we get to a point where  
6     Kern County milk is not sufficient to supply the needs in  
7     Southern California, and we need to start pulling milk  
8     from Tulare County, we're going to have to bridge that gap  
9     with over-order premiums. And I think those can happen  
10    faster than holding another hearing and adjusting things  
11    on a regulatory standpoint.

12           So it's intentional that the Tulare County math  
13    does not get closer than what you have laid out here.  
14    That's to recognize that there needs to be some modest  
15    incentive, but over-order premiums are going to need to  
16    bridge the gap above that, if we get to the point where  
17    Tulare County is a primary supply for Southern California.

18           Q. Is Tulare County a primary supply for Southern  
19    California today?

20           A. No.

21           Q. What is the primary supply for Southern California  
22    today?

23           A. Kern County and Southern California.

24           Q. So Kern County is the primary supply for Southern  
25    California -- is a primary supply for Southern California?

26           A. Kern County, not Tulare County.

27           Q. Tulare County, thank you.

28           A. Kern County.





1 Q. Okay. So for the example you are laying out in  
2 this paragraph, what is the net return to the producer  
3 under Proposal 19 delivering to Tulare County versus Los  
4 Angeles County?

5 A. I can only give you an incomplete answer because  
6 the net return is going to depend on over-order premiums  
7 that their co-op is able to secure or if they're a direct  
8 ship relationship that they would secure.

9 From a regulatory standpoint, if you're just  
10 looking at the blended milk prices, their net return would  
11 be negative. But there are other factors that would  
12 have -- if Tulare County became a supplying county for  
13 Southern California, on a large basis, they would -- that  
14 would need to be -- there -- that bridge would need to  
15 be -- or that gap would need to be bridged through some  
16 sort of over-order premium because, as proposed, the  
17 regulation -- regulated price would not fully offset the  
18 additional cost of haul nor do we think at CDI that the  
19 regulatory price should cover the full cost of haul -- or  
20 the full incremental cost of haul.

21 Q. Where you -- you acknowledge that it would be  
22 negative, would it be more or less negative than it is  
23 today?

24 A. It would be the same as today. Today there is a  
25 \$0.50 gap between the Southern California and Tulare  
26 County differentials, and that is the same gap that exists  
27 today -- or that exists in Proposal Number 19.

28 Q. And so after all the changes, the net return to



1 your members is the same, right?

2 A. For a county that's not the surplus supply  
3 currently for Southern California, it is a secondary  
4 market. Kern County is the predominant supply for  
5 Southern California, and we did increase that slope  
6 slightly by \$0.10. So we improved the return on Kern  
7 County, which is the primary supply; Tulare County, we  
8 opted not to make a steeper slope than exists today.

9 I remember, as I testified earlier, we really  
10 looked the opposite way. We looked at where do we think  
11 the bottom should be, that \$2.50 differential, in Tulare,  
12 Fresno, Madera, Merced Counties, that Central Valley, and  
13 then built up to LA. And admittedly, we could have  
14 probably justified a larger slope into Southern  
15 California, but we think that the current gap between the  
16 Central Valley and Southern California is resulting in  
17 orderly marketing of milk into Southern California and,  
18 therefore, opted to recommend that the slope largely stay  
19 the same.

20 Q. And you suggest that the gap there could be  
21 bridged with over-order premiums, but we have heard  
22 testimony from other witnesses that over-order premiums  
23 are not the solution to getting milk moved where it wants  
24 to be or where it should be.

25 How are we supposed to reconcile those two  
26 positions, between those who think the free market in  
27 over-order premiums are the better approach to reconcile  
28 these economic difficulties and those that say it must be



1 the regulated price?

2 A. Well, like a lot of things, the reconciliation  
3 probably lies somewhere in the middle. Over-order  
4 premiums are not the exclusive answer. They are not as  
5 reliable as a regulated price, which is announced every  
6 month and very transparent. There's concerns about  
7 transparency of over-order premiums when it comes to  
8 buyers, and I think Mr. Covington talked about that at  
9 length this morning.

10 But, ultimately, over-order premiums are what the  
11 marketplace will use to allocate milk in real time, not  
12 due to hearings that take place infrequently and take up a  
13 lot of time. Not criticizing them, but they just can't  
14 act as fast as the market needs to act.

15 And so if adjustments need to be made, adjustments  
16 will be made to make sure milk ultimately finds the right  
17 place, but that doesn't mean an adjustment to the  
18 regulated price isn't in order after 20 years since the  
19 last refresh.

20 Q. I believe that -- I'm trying to find it so I don't  
21 misquote. But I think Mr. Sims suggested that people who  
22 think over-order premiums can solve the problem are  
23 ignorant or naive. And I certainly don't believe that you  
24 are, nor do I believe that I am.

25 Do you disagree with his characterization?

26 THE COURT: I object to that. We listened to  
27 Mr. Sims for a long time.

28 MR. MILTNER: He wrote it down, Your Honor.



1 THE COURT: It's part of the solution or it's not.  
2 These other things are part of the solution or they are  
3 not. You have done a good job. His last answer was epic.  
4 That was your exit point.

5 MR. MILTNER: I disagree, and I'll respect your  
6 ruling. Thank you.

7 THE COURT: Thank you. And I note your exception.

8 THE WITNESS: Before Mr. Miltner steps down. I  
9 think the one thought that was bouncing in my head that I  
10 think is important to get in the record is that  
11 Mr. Covington and I, and even Mr. Sims and I, come at this  
12 from slightly different perspectives.

13 California is predominantly a manufacturing state,  
14 and so when it comes to over-order premiums, it's a very  
15 different situation when you do have 80%, 85%, almost 90%  
16 of your market that you can default to a manufacturing  
17 plant. And when you are California Dairies, Inc., and you  
18 have large plants, you can probably have a different  
19 discussion with those bottlers for over-order premiums  
20 because you are able to take that milk back to your own  
21 plant if you can't come to terms that are acceptable.

22 Mr. Covington and Mr. Sims, looking at the  
23 Southeast, are in a scenario where they have to sell to a  
24 Class I plant or they don't have another option. That is  
25 a very different situation when it comes to negotiating  
26 over-order premiums, and probably puts a higher sense of  
27 urgency on a regulated price that gives the transparency  
28 that those buyers need.



1           So I think there's -- there's nuance to this  
2 discussion of over-order premiums, and -- and I think both  
3 Mr. Covington and Mr. Sims and myself, can all be correct  
4 even if we're coming at this from a different perspective.

5                               CROSS-EXAMINATION

6 BY MS. VULIN:

7       Q.     Ashley Vulin with the Milk Innovation Group.

8           I'm following up on a separate topic from  
9 over-order premiums. We had discussed the plants that  
10 were either added or removed from the USDSS as part of  
11 NMPF's work with Dr. Stephenson and Dr. Nicholson,  
12 correct?

13      A.     Yes.

14      Q.     And I believe you just testified that there are no  
15 processing facilities currently in Kern; is that right?

16      A.     That's correct.

17      Q.     But it was my understanding that CDI is in the  
18 process of building a facility in Kern County; is that  
19 right?

20      A.     That's correct.

21      Q.     What kind of facility is that?

22      A.     A Class I UHT/ESL facility.

23      Q.     And did either you or anyone at NMPF have  
24 Dr. Nicholson or Dr. Stephenson add that plant to their  
25 model?

26      A.     We did not. The decision at that time, and this  
27 goes back -- and the timing would have been close to  
28 announcing the hearing as -- or the building of that



1 plant, we made the decision that plants should be  
2 recommended for inclusion only if they are already on  
3 their way to being constructed and are imminent to occur.  
4 Basing it on announcements would be premature to include  
5 in a model. You don't have details about what the  
6 throughput would be. In this case, we have yet to pour  
7 the first concrete, so it would have been premature a year  
8 and a half ago or whenever we were having that  
9 conversation to include a plant that at that time had been  
10 just an announcement.

11 Q. And as we sit here today, what is the current  
12 status of the construction of that Kern plant owned by  
13 CDI?

14 A. It has begun, but no concrete has been poured.  
15 It's -- it's -- it's in some of the ground preparation  
16 portion of the construction.

17 Q. And would it be fair as we consider the county  
18 differentials in NMPF's Proposal 19 to consider the fact  
19 that there very likely will be a CDI fluid Class I plant  
20 coming online in Kern County in the near term?

21 A. It wouldn't be inappropriate to look at that.  
22 I -- I hope this hearing results in a decision before  
23 we're producing milk in that plant, but let's call it a  
24 race. And the thing to keep in mind with that plant is in  
25 its phase currently under construction, it would process  
26 less than a million pounds of milk per day, and CDI alone  
27 has member milk production of approximately 6 million  
28 pounds of milk per day in Kern County. So it would be a



1 small portion of that Kern County milk that is processed  
2 in that facility.

3 So it would be -- the impact on the overall  
4 discussion we have had today, milk would still need to  
5 flow to Southern California, the excess would still need  
6 to flow to Tulare County. None of that changes. And I'm  
7 only looking at the California bal- -- or the CDI balance.  
8 Other handlers also have Kern County milk that would be  
9 unimpacted by the building of a CDI facility.

10 MS. VULIN: Thank you.

11 THE COURT: Other cross?

12 I invite the Agricultural Marketing Service to ask  
13 questions of this witness.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Thanks for returning to the stand.

19 A. I'd say anytime, but it's not -- I'm not being  
20 genuine.

21 Q. I wouldn't either.

22 Your testimony is just on California. Will there  
23 be another witness to talk about other parts of the  
24 western area?

25 A. Yes. I believe Brent Butcher from United Dairymen  
26 of Arizona will provide testimony; Monte Schilter from  
27 Northwest Dairy Association, or Darigold; Johnny Hiramoto  
28 from Dairy Farmers of America, all with a focus on the



1 Western U.S.

2 Q. Okay. Great.

3 I want to talk a little bit about the regional  
4 competitiveness, one of the factors you said that went  
5 into what you all ultimately proposed. And what I heard  
6 from that conversation over, kind of many lines of  
7 questioning, was you looked at the Class I surface not  
8 just as the Class I price that handlers pay for Class I  
9 milk, but also as a producer price surface and how they  
10 are paid. And when I hear regional competitiveness in  
11 what you talked about in that, that was a bigger factor in  
12 that discussion.

13 Would that be a correct interpretation of what we  
14 have heard this afternoon?

15 A. Yeah. And hopefully I -- my attempt to capture  
16 that was regional competitiveness at the farm level. I'm  
17 aware that a bottler in Los Angeles is not competing with  
18 a bottler in Chicago. But at the farm level, this all  
19 flows to a blend price. And so it absolutely -- I was  
20 looking at it predominantly through the lens of, you know,  
21 what is going into this pool calculation each month for a  
22 farmer, farmer pay price.

23 Q. And is this a particularly important issue in  
24 California given that LA is announced at one of the higher  
25 zone areas? And so, you know, your uniform price, it's  
26 always -- most often, right, you are backing off that  
27 price to what your producers get.

28 A. It would have been nice if the target city was





1 Visalia or Tulare instead of LA, but --

2 Q. Nice since 2020.

3 A. Yes. But, no, I -- I still -- whether you  
4 announce -- whether the price is announced at the bottom  
5 of the slope or the top of the slope is -- is -- does not  
6 change our concerns. What would be concerning is if  
7 everywhere outside the Western U.S. had differentials of  
8 \$2.75 or higher and because the model ignores the fact  
9 that the Western U.S. is just its own island, so to speak,  
10 with these movements, that we would have smaller pools  
11 because our bottlers would be paying, you know, more than  
12 \$1, \$1.50 less than that into the pool.

13 You know, I get the model, but convincing our  
14 producers that a bottler in Miami should pay \$7 a  
15 hundredweight on top of the Class I mover and our bottlers  
16 in the -- one of the most regulated, high cost portions of  
17 the country should only have to pay \$1.60 or \$1.70 per  
18 hundredweight over the mover is a tough argument to sell.  
19 But we understand supply/demand dynamics are different.

20 So we accept a gap. We object to that gap  
21 widening.

22 Q. And back in the California hearing, often it was  
23 comparing California to the Upper Midwest, as you did in  
24 your testimony, right, to say they are very similar.

25 So that's where you are talking about, at least  
26 the bottom of the slope or the bottom of the trough in  
27 those two areas as you have proposed them would be  
28 similar?



1           A.     Yeah. My reference to Miami was certainly not an  
2 endorsement that the two areas are the same. It was  
3 taking the extremes, the low on our side and the high on  
4 the Southeast. But our comparison here, as you note, is  
5 trying to compare regions of likes -- like functions in  
6 the bottom of the slope.

7           Q.     Okay. And I wanted to talk a bit about pool  
8 stability. When I -- I read through this couple of  
9 paragraphs, I summarize this, and please tell me if this  
10 is incorrect.

11                     Is the first factor is a willingness to supply  
12 Class I and, thus, have that milk be pooled?

13           A.     Yes.

14           Q.     The second would be more stability at the producer  
15 level through uniform producer prices.

16           A.     Yes.

17           Q.     Did that go into -- so in the Central Valley right  
18 now there are two zones. And as you have proposed them,  
19 it would all be at \$2.50.

20           A.     With the exception of Kern County.

21           Q.     Right.

22           A.     But, yes.

23           Q.     Yes. So is that, when you talk about more uni- --  
24 I mean, I'm just curious, did that play a bigger role in  
25 that particular area, to move that from two zones to one  
26 zone? Or how come you decided to do that piece?

27           A.     The reason for doing that is twofold. One is,  
28 there's really nothing magic about the line between Madera



1 and Merced County that fundamentally changes where the  
2 milk is going. It's still largely a manufacturing region,  
3 heavy -- you know, strong milk flows, and most of the milk  
4 is going to manufactured class plants. So what's the  
5 reason for having a difference in the differential?

6 But by moving that northern part of the valley to  
7 even, to one \$0.10 down, it also created a little more  
8 slope up to the Bay Area. It wasn't just we have to  
9 increase the Bay Area, we also took a -- we steepened the  
10 slope by leveling out the Central Valley. So kind of had  
11 that dual benefit of that change.

12 Q. Okay. Okay. You mentioned on page 5 about a  
13 balancing plant that closed, I think somewhere in Southern  
14 California.

15 A. Yes.

16 Q. Was that then -- is it correct that that plant  
17 then wasn't included in the model, you removed it?

18 A. That was not included in the model, yes. That was  
19 CDI's powder manufacturing facility in Artesia, California  
20 closed in 2019. Making powder is tough enough in the  
21 Valley, trying to make it in Southern California was even  
22 more challenging.

23 But what we learned in the closure of that is  
24 trying to balance Southern California bottlers' demand --  
25 and other manufacturers in Southern California -- their  
26 demand is more difficult when you don't have that  
27 balancing asset to bounce off of.

28 Q. Speaking of plants in the survey, you said you



1 all -- and this is for the Western area, generally -- you  
2 mentioned you added a plant in Washington, the Pasco  
3 plant.

4 A. Correct.

5 Q. And so then you -- but you didn't add your new --  
6 well, at that time, to-be-announced plant that's going in  
7 Kern. Were there any other plant changes you made that  
8 you remember in any other portions of the Western area?  
9 That might be a question I can ask someone else.

10 A. I -- I don't believe so. The only exception might  
11 be there -- there's a cheese plant -- or there was a  
12 cheese plant in Southern California called Farmdale  
13 Creamery, and they shut down the cheese plant, but they  
14 maintain the plant running other products, so they only  
15 shut down part of their plant. Didn't handle a lot of  
16 milk, but it's possible that we might have removed that  
17 and I'm not remembering. That's the only other plant  
18 that's coming to mind that was -- that was closed that  
19 might have been included. But because it still has some  
20 level of operations, it's also possible we left it in  
21 there.

22 Q. Okay.

23 MS. TAYLOR: All right. You answered my questions  
24 through other people. That's it from AMS.

25 THE WITNESS: All right. Thanks.

26 REDIRECT EXAMINATION

27 BY MS. HANCOCK:

28 Q. I apologize. That went a little faster than I was



1 expecting, so I didn't have my papers ready.

2 Thank you, Mr. Vandenheuvel, for your time again.  
3 Just a couple questions.

4 You looked at Exhibit 351 with Ms. Vulin, and that  
5 was the testimony from Dennis Schad at the Fresno  
6 promulgation hearing.

7 Do you remember talking with her about that?

8 A. Yes.

9 Q. This wasn't a company you ever worked for, was it,  
10 Land O'Lakes?

11 A. No.

12 Q. And did you have any -- any role in helping  
13 Mr. Schad prepare his testimony for that hearing?

14 A. No.

15 Q. Did you work for a cooperative when that hearing  
16 took place?

17 A. No.

18 Q. And you understood that that hearing was a  
19 promulgation hearing where California was moving from a  
20 state order system to a Federal Order system?

21 A. Correct.

22 Q. And did you believe that it was the time and the  
23 place to look at whether differentials across the country  
24 should be updated?

25 A. No, nor would that have been within the scope of  
26 the hearing.

27 MS. HANCOCK: Your Honor, I think that's all the  
28 questions that I have. We would move for Exhibits -- move



1 for the admission of Exhibits 345, 346, 347, and 348.

2 And for the record, we have no objection to the  
3 exhibits that Ms. Vulin offered.

4 THE COURT: Music to my ears.

5 Ms. Vulin, please come to the podium, but I'll  
6 first deal with these 345, 346, 347, and 348.

7 Is there any objection to the admission into  
8 evidence of Exhibit 345?

9 There is none. Exhibit 345 is admitted into  
10 evidence.

11 (Thereafter, Exhibit Number 345 was received  
12 into evidence.)

13 THE COURT: Is there any objection to the  
14 admission into evidence of 346?

15 There is none. Exhibit 346 is admitted into  
16 evidence.

17 (Thereafter, Exhibit Number 346 was received  
18 into evidence.)

19 THE COURT: Is there any objection to the  
20 admission into evidence of Exhibit 347?

21 There is none. Exhibit 347 is admitted into  
22 evidence.

23 (Thereafter, Exhibit Number 347 was received  
24 into evidence.)

25 THE COURT: Is there any objection to the  
26 admission into evidence of Exhibit 348?

27 There is none. Exhibit 348 is admitted into  
28 evidence.



1 (Thereafter, Exhibit Number 348 was received  
2 into evidence.)

3 THE COURT: Ms. Vulin.

4 MS. VULIN: Thank you, Your Honor. We would move  
5 to admit Exhibits 349, 350, and 351, please.

6 THE COURT: Exhibit 349 is the California map. Is  
7 there any objection to that being admitted into evidence?

8 There is none. Exhibit 349 is admitted into  
9 evidence. And that is an MIG exhibit.

10 (Thereafter, Exhibit Number 349 was received  
11 into evidence.)

12 THE COURT: With regard to Exhibit 350, you should  
13 have the header that includes the words "Corrected  
14 Header," to be certain that this is a MIG exhibit, and  
15 what I love about what they have been doing is that the  
16 last page includes the source for every line. Please do  
17 the math yourself if you would like.

18 Is there any objection to the admission into  
19 evidence of this Exhibit 350, also, Exhibit MIG-34 with  
20 corrected header?

21 There is none. Exhibit 350 is admitted into  
22 evidence.

23 (Thereafter, Exhibit Number 350 was received  
24 into evidence.)

25 THE COURT: And is there any objection to  
26 admission into evidence of Exhibit 351, which was  
27 Exhibit 70 in the Federal Milk Marketing Orders for the  
28 State of California back in 2015?



1           There is none. Exhibit 351 is admitted into  
2 evidence.

3           (Thereafter, Exhibit Number 351 was received  
4 into evidence.)

5           MS. VULIN: Thank you, Your Honor. And I think  
6 there are still record copies at the witness stand that  
7 we'll want to make sure are returned.

8           THE COURT: All right. Let's -- you sit there for  
9 a minute because you get to keep the ones that aren't the  
10 record copy. So I'll ask that Agricultural Marketing  
11 Service come collect whatever you loaned the witness, and  
12 he can walk away with everything else.

13           THE WITNESS: Anything with a yellow sticker.

14           THE COURT: Mr. Vandeneuvel, thank you so much.

15           Now, would our next witness -- although we will  
16 probably take a break -- would our next witness be  
17 Mr. Hoeger?

18           MS. HANCOCK: Yes, Your Honor.

19           THE COURT: I think Mr. Hoeger will be happy to  
20 get his work done. Should we take ten minutes?

21           All right. Please be back and ready to go at  
22 3:50. That's 3:50. We go off record at 3:38.

23           (Whereupon, a break was taken.)

24           THE COURT: We're back on record at 3:51.

25           I'd like the witness in the witness chair to state  
26 and spell his name.

27           THE WITNESS: Chris, C-H-R-I-S, Hoeger,  
28 H-O-E-G-E-R.





1 THE COURT: Mr. Hoeger, I have a document in front  
2 of me. I'd like to get it marked with an exhibit number.  
3 It is Exhibit NMPF-40, and I show this to be 352. I'm  
4 marking that exhibit as 352.

5 (Thereafter, Exhibit Number 352 was marked  
6 for identification.)

7 THE COURT: And do you have a copy of it in front  
8 of you?

9 THE WITNESS: I do.

10 THE COURT: And is yours marked with "352"?

11 THE WITNESS: I just did.

12 THE COURT: Excellent. All right. Good.

13 I know you have testified before because I  
14 remember you. You remain sworn.

15 THE WITNESS: Thank you.

16 CHRIS HOEGER,

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

19 DIRECT EXAMINATION

20 BY MS. HANCOCK:

21 Q. Mr. Hoeger, good afternoon. Did you prepare  
22 Exhibit 352 in support of your testimony today?

23 A. Yes, I did.

24 Q. Okay. Would you proceed with your testimony,  
25 please?

26 A. Certainly.

27 My name is Chris Hoeger. This testimony is  
28 presented in support of Proposal 19: Updating the Class I



1 Differentials throughout the United States (U.S.) as  
2 proposed by National Milk Producers Federation, herein  
3 referred as NMPF. This testimony is presented on behalf  
4 of Prairie Farms Dairy, Inc. (Prairie Farms), a dairy  
5 marketing cooperative owned by 668 dairy farmers.

6 My career in the dairy industry covers over 22  
7 years, working in various roles from sales representative  
8 to several executive/management level roles. I currently  
9 hold the title of Vice President of Procurement and Member  
10 Services. I have served on several dairy-related  
11 committees with many different dairy industry  
12 organizations. I have participated on the National Milk  
13 Federal Order Task Force over the last couple of years,  
14 and I have served on the NMPF Economic Policy Committee  
15 for the last decade.

16 Prairie Farms is a Capper-Volstead cooperative.  
17 As of June 30th, 2023, Prairie Farms' membership is 668  
18 conventional dairy farms located in Illinois, Indiana,  
19 Iowa, Kentucky, Michigan, Ohio, Minnesota, Missouri, and  
20 Wisconsin. Prairie Farms is the second largest fluid milk  
21 bottler in the U.S. with bottling plants primarily located  
22 in the Midwest. We operate through wholly owned  
23 subsidiaries and/or joint ventures for a total of 30 pool  
24 distributing plants located throughout the Midwest, from  
25 the Canadian border to the Mexican border. We also  
26 operate over 20 other manufacturing facilities, producing  
27 primarily Class II products, such as ice cream, cultured  
28 dairy products, and some cheese.



1 Prairie Farms purchases approximately 20 to 30% of  
2 its raw milk from other entities and under various  
3 arrangements. Prairie Farms has pool distributing plants  
4 in Federal Milk Market Orders (FMMOs) 5, 7, 30, 32, 33,  
5 and 126. The majority of our plants and milk supply are  
6 located in FMMO 32.

7 Milk production has continued to move farther and  
8 farther away from the population centers in the past 20  
9 years. Growth in the West and Northwest area of the Upper  
10 Midwest (UMW) has continued this trend. We continue to  
11 see the creation of "dairy deserts" in Illinois and the  
12 Eastern half of Iowa. I refer to "dairy deserts" as areas  
13 that were once strong or had significant dairy farm  
14 numbers but now have minimal farm numbers (less than three  
15 farms per county) or no dairy production in the area.

16 Prairie Farms over the years has become more  
17 dependent on supplemental milk supplies to serve the  
18 St. Louis, Missouri market, as well as other large  
19 population centers in Southern Illinois and in Missouri.  
20 This is evident by reviewing USDA's statistical data,  
21 which shows milk production has decreased in Illinois from  
22 1,173,396,523 pounds of milk in 2002 to 797,454,865 pounds  
23 of milk in 2022, a 32% decrease. Iowa shows a similar  
24 trend with milk production dropping from 3,170,628,596  
25 pounds in 2002 to 2,938,460,431 pounds in 2022, a nearly  
26 8% decrease.

27 Iowa has lost milk processing capacity in its  
28 eastern half due to several plant closures during the past



1 20 years. For example, Swiss Valley Farms closed a  
2 cultured plant in Cedar Rapids, Iowa, in 2008. Also, the  
3 Kalona Cheese plant, which produced barrel cheddar cheese  
4 in Kalona, Iowa, was closed in 2014. Closing these two  
5 facilities along with other plant closures resulted in  
6 loss of markets. The unfortunate result was that  
7 producers were required to ship their milk further to  
8 reach other markets, thereby incurring additional hauling  
9 costs.

10 Furthermore, Prairie Farms closed its Peoria,  
11 Illinois, fluid bottling plant in 2020. The milk  
12 processed by this plant was traditionally supplied from  
13 two main supply points, the Southern Illinois and Missouri  
14 milk shed and from the Northern Illinois and Eastern Iowa  
15 milk shed. Milk shipped from Northeast Iowa to the  
16 locations mentioned above would travel approximately 190  
17 miles to the Peoria facility because we ship milk from  
18 Central Illinois to fluid bottling facilities supplying  
19 the St. Louis metro market, as well as other southern  
20 population centers.

21 The continued deterioration of the milk supply in  
22 Central Illinois and in Southeast Iowa over the past two  
23 decades and the continued closure of plants now prevents  
24 stair-stepping milk to the south. We use the term  
25 "stair-stepping" as a way to move milk efficiently in  
26 smaller steps rather than using long hauls to reach the  
27 farthest destination.

28 For example, to get milk to Kosciusko,



1 Mississippi, milk is moved from Southern Illinois to  
2 Kosciusko. To service the Southern Illinois plants, milk  
3 is moved from Central Illinois to replace the local milk  
4 that went to Mississippi. In practice, we move milk from  
5 Northeast Iowa, Northern Illinois, and Southwest Wisconsin  
6 to the Central Illinois plant, thus creating a series of  
7 smaller steps to move milk from the stronger milk areas to  
8 where it is needed in the south.

9           Instead of being able to stair-step milk, Prairie  
10 Farms must now move milk from Northeast Iowa to plants  
11 that are just outside the St. Louis metro market at a  
12 distance of just over 300 miles. This milk supply  
13 traditionally provided seasonal support during the fall  
14 months, but with milk produced in South Central Illinois  
15 and in Missouri being pulled to plants in FMMO 5 and 7  
16 year-round, it has become necessary for milk produced in  
17 Northern Illinois and Northeast Iowa to provide support  
18 not just occasionally but year-round.

19           We have also pulled milk from Northwest Iowa to  
20 supply plants in Northeast Iowa as we continue to shift  
21 milk around to meet the demands of the fluid bottling  
22 plants in Central and Southern Illinois and Central  
23 Missouri. This is verified by Table 1 that shows the  
24 change in milk production for the 28 southeastern counties  
25 in Iowa from January 2002 and January 2023.

26           THE COURT: May I stop you for two spellings,  
27 Mr. Hoeger.

28           THE WITNESS: Sure.



1 THE COURT: You might guess the first one, it  
2 starts out K-O-S-C-I -- that one.

3 THE WITNESS: C-I-U-S-K-O. Kosciusko.

4 THE COURT: Yes. And that's a place in  
5 Mississippi.

6 THE WITNESS: Correct.

7 THE COURT: And then the other one is more  
8 familiar to you all, but to me it has an unusual spelling.  
9 What is it, Kalona?

10 THE WITNESS: Kalona, yes. It's K-A-L-O-N-A.

11 THE COURT: Thank you.

12 And in what state is that?

13 THE WITNESS: Kalona, Iowa.

14 THE COURT: Thank you.

15 You may proceed.

16 THE WITNESS: I included on the chart, which can  
17 go up on the...

18 So as -- I won't go through all the individual.  
19 I'll drop to -- I'll try to do this on -- as the chart  
20 shows, and I'll just go to the bottom, which will show  
21 the -- and I can read it -- in 2002, in those counties  
22 indicated on the table, there were 375 farms, which  
23 produced 42,347,131 pounds. Again, this was just for the  
24 month of January as I have used for a comparison. In  
25 January of 2023, there are 96 farms, 26,217,536 pounds.

26 The similar analysis of the 51 counties in North  
27 Central -- North and Central Illinois shows the continued  
28 deterioration of the milk supply that has forced increased



1 reliance on more distant milk supplies.

2 As indicated on Table 2 -- and, again, it is the  
3 51 counties that I referenced, and they are all listed  
4 there -- I'll go to the total at the bottom -- 237 farms  
5 produced 13,911,781 farms in 2002 January.

6 THE COURT: So that's 781 pounds?

7 THE WITNESS: Correct, pounds of milk.

8 THE COURT: All right. In 2002.

9 THE WITNESS: And then in January of 2023, there  
10 were -- there are now 48 farms for 3,860,422.

11 THE COURT: Pounds.

12 THE WITNESS: Pounds. Sorry. Correct.

13 Another case for increasing the Price Surface  
14 Differentials - Disparity for dairy producers.

15 The three Southeastern FMMOs (i.e., FMMOs 5, 6,  
16 and 7) have continued to need year-round support for  
17 supplemental milk. Another case for needing to update the  
18 Class I differentials is the disparity of what dairy  
19 producers receive in different parts of the country.

20 For example, Prairie Farms supports its southern  
21 and southeastern plants with milk produced in Central and  
22 Southern Illinois and in Southeastern Missouri. This milk  
23 travels an average of 326 miles to our Kosciusko,  
24 Mississippi, plant. Also, Prairie Farms ships milk from  
25 Central and Southern Illinois to Memphis, Tennessee, and  
26 to Somerset, Kentucky, on a year-round basis. This milk  
27 travels an average of 257 miles and 338 miles,  
28 respectively.



1           The Class I differentials for both Memphis and  
2 Somerset are \$0.90 per hundredweight higher than the  
3 Class I differentials where the milk supply originated.  
4 However, milk shipped about 300 miles from Northeast Iowa  
5 to Central Illinois only picks up \$0.25 per hundredweight  
6 in the Class I differential value. Said another way, for  
7 milk traveling south to Mississippi, the current  
8 differential difference of \$0.90 per hundredweight whereas  
9 milk coming from Northeast Iowa to Carlinville, Illinois,  
10 travels about the same distance but only receives \$0.25  
11 per hundredweight.

12           Such disparity will cause (or has caused) dairy  
13 producers to question eventually whether they want to  
14 service the Class I market. Updating Class I  
15 differentials according to the NMPF proposal fairly  
16 compensates producers for some of the additional freight  
17 costs incurred.

18           The NMPF proposed Class I differentials have  
19 differences of \$1.50 per hundredweight at Kosciusko,  
20 Mississippi; \$1.05 per hundredweight at Memphis,  
21 Tennessee; and \$1.15 per hundredweight at Somerset,  
22 Kentucky, when compared to the Class I differentials at  
23 locations in Southern Illinois (Table 3). We feel the  
24 NMPF proposal would provide fair compensation to move milk  
25 to these deficit markets.

26           Milk costs for either shipping route is about the  
27 same whether hauling milk from Central Illinois to the  
28 southern markets or Northeast Iowa to Central Illinois;





1 the distance and terrain are about the same. Based on the  
2 extra freight that Prairie Farms pays its haulers to move  
3 milk to those markets, we estimate it costs \$1 per  
4 hundredweight to travel 100 miles.

5 Table 3 shows the chart of the differences between  
6 what I just described in some of my earlier testimony. As  
7 an example in the testimony, we have Clinton -- I'll take  
8 Clinton Illinois in the middle of the table, of Table 3,  
9 from Clinton, Illinois, to Holland, Indiana, is 162 miles.  
10 Current price surface difference is \$0.30, and we feel at  
11 162 miles the proposed difference between those two  
12 counties are adequate.

13 Clinton, Illinois, to Somerset, Kentucky, is  
14 360 miles. Currently it is \$0.90. And it adds -- we are  
15 going to go to \$1.15.

16 Livingston, Illinois, to Carlinville, Illinois, is  
17 152 miles, and that's going to go from \$0.20 to \$0.50.  
18 And that's -- that will help with that -- the haul of that  
19 milk.

20 The packaged fluid milk needs of the Chicago  
21 metropolitan area is served by several plants located in  
22 the Upper Midwest and in the Mideast. The members of  
23 NMPF's Class I price surface committee wanted to ensure  
24 that there was a price continuity for all the plants that  
25 serve the Chicago market. Also, we wanted to make sure no  
26 plant had a competitive advantage or a competitive  
27 disadvantage when serving this large population center.

28 Prairie Farms operates several Class I plants that



1 serve this market. In the last 18 months, this market  
2 lost a plant located in Chemung, Illinois, that was a  
3 major supplier of fluid milk. The plant closure in the  
4 summer of 2022 forced increased reliance on other plants  
5 to supply the market.

6 As shown in Table 4, the NMPF proposal assigned  
7 Class I differentials to those plants serving the Chicago  
8 market to make sure that no plant had a competitive  
9 advantage or disadvantage relative to other plants serving  
10 this large population center and to incentivize the  
11 movement of milk to the more deficiently supplied areas.

12 Slide that down on the screen.

13 So, again, as in Table 4, it shows the various  
14 plants, as we tried to keep the same plants with the same  
15 mileage, with the same current price surface, correlation,  
16 and do the same for the new proposed price surface.

17 The Upper Midwest price surface was reviewed by  
18 the NMPF's Class I differential subcommittee. Discussions  
19 centered around finding the right Class I price surface  
20 map to ensure a reliable milk supply as well as an  
21 equitable distribution of pool revenues. The subcommittee  
22 concluded that too much of a "slope" between Minnesota and  
23 Wisconsin would create a tremendous incentive to move milk  
24 out of Minnesota, milk that would not be part of the local  
25 supply, thus making the plants in Minnesota uncompetitive  
26 for milk supply in a tight market.

27 A secondary goal of addressing the Class I price  
28 surface was to minimize any negative impacts on producer



1 blend prices. With the Class I utilization averaging  
2 around 6 to 10% for FMMO 30, the NMPF Class I  
3 differentials proposed for the Upper Midwest would have a  
4 minimal impact on producer prices (Table 5).

5 Table 5 then shows the various -- I went back the  
6 last ten years to show the average Class I utilization by  
7 month based on -- from Federal Order 30, from 2013 to  
8 2023.

9 As shown in the Table 5, Class I milk utilization  
10 in the Upper Midwest (FMMO 30) is 10.67% on average. This  
11 means for an average increase in Class I differential of  
12 \$1.21 per hundredweight, the average increase to the FMMO  
13 30 blend price would be about \$0.13 per hundredweight.  
14 This is a minor price increase for dairy producers who  
15 still bear most of the cost of transporting milk to  
16 markets.

17 The cost of moving milk. Prairie Farms has many  
18 plants that must be served with its member milk. With  
19 many of the sales arrangements, the milk continues to get  
20 farther away from the population centers. Prairie Farms  
21 also supplies many of its own plants located in the  
22 southern and southeastern regions of the U.S.

23 The terms of the sale impose the cost of moving  
24 this milk to markets on dairy farmers. Rather than charge  
25 members the actual cost of moving their milk, Prairie  
26 Farms charges hauling costs to its member-owners as though  
27 the milk was delivered to the plant closest to the member  
28 farm. The cooperative, through its own pay price pool of



1 monies, pays the additional freight to move milk to the  
2 plant. Thus, all members share in the cost of the  
3 secondary haul.

4 Bear in mind, many plants served are located in  
5 excess of 250 miles away from the milk supply. Because we  
6 serve the southern and southeastern markets on a daily  
7 basis year-round, we have a good understanding of the cost  
8 per mile associated with moving milk. The cost of moving  
9 raw milk to our four southern and southeastern plants is  
10 approximately \$5.25 per mile to \$5.50 per loaded mile.  
11 With not many opportunities for back hauls, this cost is  
12 incurred solely to support those plants due to declining  
13 milk production capacities in those areas. We experience  
14 similar costs to move milk from Northeast Iowa and  
15 Northern Illinois to Central Illinois.

16 A trucking industry contact who works for a large  
17 trucking dealership that manages 23 locations throughout  
18 Iowa, Wisconsin, Illinois, Indiana, and Ohio provided me  
19 with some costs to be considered. The cost of a power  
20 unit and parts for the ten years covering 2013 to 2023  
21 showed an increase of 31 to 33%. Milk hauling equipment  
22 costs have continued to increase over the past decade,  
23 some of which are detailed below.

24 Some of the factors driving price increases in  
25 Class 8 vehicles over the last ten years include:

26 Point 1, emission systems-after treatment devices.  
27 In the last ten years, DTNA Class 8 trucks have gone  
28 through four EPA level changes:



1 A, EPA14;

2 B, EPA17;

3 C, GHG21;

4 D, DD product Gen 5 engines.

5 Also included is point 2, collision mitigation  
6 systems:

7 A. DTNA has advanced from simple ABS function to  
8 Detroit Assurance 5.0.;

9 i. Adding front radar, helping maintain safer  
10 following distances;

11 ii. Adding side radar, helping to avoid "blind  
12 spot" collisions;

13 iii. Adding anti-roll stabilizers to avoid  
14 turnpike on and off ramp rollovers;

15 iv. Adding forward-facing cameras to gain  
16 visibility to root cause of collisions and accidents;

17 v. Adding lane keep assist to autonomously keep  
18 unit within driving lanes;

19 vi. Adding lane deviation notification to alert  
20 driver of drifting outside of the lane.

21 Point 3, technology advancements:

22 A. HVAC systems that create idle-free cab heating  
23 and cooling while maintaining engine starting  
24 capabilities;

25 B. Creature comforts, such as heated and cooled  
26 seats;

27 C. Auto dimming lighting, including head lamps;

28 D. Auto operating windshield wipers.



1 Point 4, additional hidden costs.

2 A. Material surcharges have increased;

3 B. Increased transportation charges from original  
4 build plant to the final destination.

5 On average, the cost of power units has increased  
6 by 31 to 33% over the last ten years. Specialized/day  
7 cab/straight-chassis truck applications have seen even  
8 higher cost increases.

9 A leading seller of equipment in the Midwest  
10 verifies that hauling equipment costs have increased  
11 significantly.

12 THE COURT: Would you re-read that sentence,  
13 please. We're at the top of page 9.

14 THE WITNESS: A leading seller of equipment in the  
15 Midwest and Mideast verifies that hauling equipment costs  
16 have increased significantly. These cost increases do not  
17 include the cost of drivers that have continued to be in  
18 short supply.

19 On the positive side, fuel economy of new power  
20 units has been improved by implementing some of the  
21 technology changes over the last decade. However, that  
22 has not offset the increases of all the costs.

23 Tanker trailer costs have gone up dramatically in  
24 the last 20 years. For example, a 2023 Polar 6,500-gallon  
25 tanker trailer is almost double the cost of just a few  
26 years ago. Currently, a tanker trailer of that size would  
27 retail for about \$91,250. These same tanker trailers were  
28 selling for \$61,200 in 2020. Please see Figures 1 and 2



1 that show the quotes from 2020 and 2023.

2 I can put them up on the screen. They are at the  
3 back of my testimony. It shows there, it's 178,000 back  
4 in 2020 for three tankers, and now it is 91,266 per  
5 tanker.

6 THE COURT: Oops, you shifted. No, you are there.  
7 I see it. Thank you.

8 THE WITNESS: In summary, the original Class I  
9 "slope" from the Upper Midwest to the central part of the  
10 U.S. was sufficient at \$0.25 to \$0.30 per hundredweight as  
11 it was much cheaper to acquire and to operate milk moving  
12 equipment 20 years ago. In addition, milk was generally  
13 moving 100 to 150 miles at most.

14 In today's world, the milk supply is located  
15 farther from plants and population centers, and most milk  
16 is traveling much farther, as much as two to three times  
17 as many miles as it was in 2000.

18 Prairie Farms has always tried to be as efficient  
19 as possible by stair-stepping milk to the Southeast  
20 region, FMMOs 5 and 7. We also use that same approach  
21 when moving supplemental milk to the central part of the  
22 Midwest from the Upper Midwest.

23 Even when milk from the Central Midwest is used to  
24 support plants located in the Southeast on an everyday  
25 basis, the increase in "slope" in the range of \$0.90 per  
26 hundredweight to \$1.30 per hundredweight, as proposed by  
27 NMPF, does not fully cover the cost of moving milk 300  
28 miles or more. All dairy farmers need to be compensated



1 fairly to encourage the availability of adequate milk  
2 supplies that can be used to support milk demand in  
3 distant markets.

4 Impact on the Consumer. One of the questions  
5 asked is, "How will this change impact the consumer?" The  
6 impact on the consumer will be minimal when considered  
7 with the other reform measures within the FMMOs. If  
8 retail prices follow Federal Order Class I price, our  
9 estimate is an increase of approximately .149 cents per  
10 gallon for a consumer in the St. Louis, Missouri, market.

11 THE COURT: All right. So tell me that number  
12 again, per gallon.

13 THE WITNESS: .149 cents per gallon, just under  
14 \$0.15 a gallon.

15 THE COURT: Yeah. So it's not .149 cents, it's --

16 THE WITNESS: It's .149 dollars.

17 THE COURT: Yes. Which is also 14.9 cents.

18 THE WITNESS: Correct.

19 THE COURT: Okay. Good. Thank you.

20 THE WITNESS: It will be less in the Chicago,  
21 Illinois, Des Moines, Iowa, and Minneapolis, Minnesota,  
22 markets at approximately \$0.112 per gallon. This will be  
23 about a 4.25% increase to the consumer, assuming an  
24 average retail price of \$3.50 per gallon, which is close  
25 to the average retail price for milk over the last 20  
26 years (see the graph on the next page).

27 If comparing the cost to the average retail price  
28 from the last two years, the impact would be 3.63%. As





1 shown in Figure 1, the average milk price from 2000 to  
2 2010 was \$3.11 per gallon and the average prices from 2011  
3 to 2022 was \$3.41 per gallon. Using the data from the  
4 analysis above suggests the price increase proposed by  
5 NMPF would be less than .25% annually for a 20-year  
6 period.

7 THE COURT: Is that the figure that you want?  
8 It's less than a percent. It is a quarter of a percent.

9 THE WITNESS: Correct. On an annualized basis.

10 THE COURT: We're getting a bargain.

11 THE WITNESS: Yeah. Especially compared today's  
12 inflation prices. Inflation stats.

13 Prairie Farms expresses its appreciation to the  
14 Secretary of Agriculture and to the Dairy Division for  
15 holding this hearing. We strongly recommend the Secretary  
16 to adopt NMPF's Class I differential proposal. This will  
17 promote more orderly marketing of milk and will ensure an  
18 adequate supply of milk for Class I plants as needed to  
19 serve their markets.

20 Respectfully submitted, Chris Hoeger, on behalf of  
21 Prairie Farms Dairy, Inc., 3744 Staunton Road,  
22 Edwardsville, Illinois 62025.



1 BY MS. HANCOCK:

2 Q. Thank you, Mr. Hoeger. I just have a couple of  
3 questions before we open you up for cross-examination.

4 We had -- when Mr. Sims was on the stand, he had  
5 provided an example of some milk hauling costs to -- in  
6 Texas.

7 Do you recall that?

8 A. Yes.

9 Q. And then Mr. Rosenbaum put together Exhibit 332  
10 and 333 to look at the cooperative blend prices as  
11 compared to that individual handler -- or the individual  
12 producer price.

13 Do you remember that?

14 A. Yes.

15 Q. I am wondering if -- if you have any experience  
16 with dealing with single producers in your operations?

17 A. We actually do. We have -- in the Class III  
18 years, we have acquired several different plants in the --  
19 through the Dean's bankruptcy, and we also just acquired a  
20 couple plants last summer from Borden Dairy in the Texas  
21 market. The two Dean facilities were in Louisiana and  
22 Alabama.

23 Both those facilities and the Borden facilities  
24 have come -- when we acquired those plants, we inherited,  
25 I guess we'll call it, when we took them on as supply  
26 independent dairy producers, they have chosen that they  
27 want to -- our board and both kind of mutually agreed at  
28 this point in time they're going to continue to be



1 independent operators and ship their milk to our plants.

2 The 16 -- there was 16 of them in the -- Alabama  
3 that served our Alabama plant. They have since found  
4 another market because we closed our Birmingham, Alabama,  
5 plant back in -- I don't know what time -- we bought it in  
6 20- -- I think it was '21. Time has gone.

7 But currently we have 17 independent dairy  
8 producers that service our Louisiana plant and our Texas  
9 plants, and they are traveling very similar miles that  
10 Mr. Sims testified to. And they are -- several of them  
11 are up in that Hereford, Texas, area that ship down to our  
12 Conroe, Texas, plant down in Houston. And then we have  
13 also another large group that ships to our Dallas plant in  
14 Dallas, Texas. And then we also -- we have another farm  
15 that's shipping his milk to our Louisiana plant, and I  
16 know -- believe his farm is traveling about 420 miles,  
17 over 400 miles.

18 Q. Okay. And have they expressed to you the  
19 stressors that they face with respect to the financial  
20 pressures of transporting their milk that distance?

21 A. Yes. We -- we hear quite frequently from them  
22 that they are -- the transportation costs have continued  
23 to go up. That's probably their number one concern in the  
24 last few years.

25 Q. And do you cover those hauling costs for them?

26 A. We do what we can to help, you know, keep -- we  
27 have also got to remain competitive in the marketplace,  
28 and so, you know, we cover what we can. But, you know, we



1 explain to them, too, that that's -- I mean, this is what  
2 we can do at this point in time.

3 Q. Okay. It's always a pressure on both sides; is  
4 that fair?

5 A. Correct.

6 Q. Okay. And then on -- let's see what page it is.  
7 On page 6 of your testimony you talk about the Chicago  
8 market. And I just want to take a moment there and talk  
9 about some of the process that you were involved in with  
10 respect to the Chicago market.

11 Can you give us an overview about what -- what --  
12 what you -- what work you did on the task force with  
13 National Milk to make the recommendations for that market  
14 in particular?

15 A. There were several of us that were -- Chicago was  
16 a -- as Eric Erba kind of described -- was a -- a  
17 challenging key city in our key city index that we  
18 created. One of our goals was -- and that's where we sat  
19 down to look at the current relationship that all of the  
20 current plants that are serving the Chicago market have  
21 when it comes to the current location differential. We  
22 then looked at the mile, just to make sure the correlation  
23 was similar.

24 As an example, I will use our Dubuque, Iowa,  
25 plant. Got actually listed as a key city on our key  
26 city -- you know, when we were going through because it  
27 serves the Chicago market. I mean, no different than I  
28 think was mentioned in Rob's testimony, Dubuque, Iowa's



1 population is no different than -- I can't remember the  
2 plant he was referencing -- but it is only about 100,000  
3 people, so it's not like -- but Chicago market is an  
4 important market that it serves, along with several of  
5 them in Wisconsin.

6           Anyway, Dubuque, Iowa, is currently in the 1.75  
7 zone, and Grand Rapids, Michigan, is in the 1.80 zone.  
8 Grand Rapids is 179 miles -- by Google Maps, I just did  
9 the center part of -- downtown Chicago, and Dubuque is  
10 178. So we started to use that correlation to develop a  
11 foundation of let's try to keep some continuity so all  
12 plants stayed on some same similar raw milk cost, so they  
13 had the similar costs that they are currently under to  
14 make sure they were not competitively at an advantage or  
15 disadvantage.

16           Q. Okay. And were you -- in the process that you  
17 undertook, did you favor or give any preferential  
18 treatment to the cooperative locations as compared to the  
19 proprietary plants?

20           A. No. I would actually say no to that because maybe  
21 not necessarily in the Chicago -- I mean, I'll be  
22 perfectly honest, I -- I know several of the plants up in  
23 Michigan, but I don't know all of them. I found out  
24 through testimony, I think, that Grand Rapids must be  
25 proprietary. I mean, obviously Dubuque is cooperative.  
26 So if our goal was to maintain those two to be similar in  
27 correlation as they are right now, I can't see how I would  
28 be giving preferential treatment to a co-op plant.



1 Q. And then can you think of any examples in which  
2 proprietary plants are located in places that have more  
3 beneficial -- or higher differentials set than  
4 cooperatives?

5 A. When we did our review of Iowa, as an example,  
6 Anderson Erickson Dairy is located in Des Moines, and the  
7 Des Moines market, metro market, is about -- probably  
8 about one-fourth of the entire state of Iowa's population.  
9 So they are right in the heart bed of, you know, where all  
10 the activity is. I've got two daughters that live there,  
11 and they tell me that's where all the activity is.

12 But anyway, current -- that used to be on the 1.80  
13 zone. Our Omaha -- Hiland -- our Hiland plant in Omaha,  
14 Nebraska, which is about 130 to 140 miles away, was also  
15 in the 1.80 zone. Those both in the model, it called for  
16 Anderson Erickson to be at 2.80 and the Omaha plant to be  
17 at 2.60. The committee, we decided to put them both at  
18 \$3. So really we raised the co-op plant more than what  
19 the model called for versus what we increased.

20 Q. Okay. And then I want to talk about just how the  
21 model in Chicago deviated from -- from the model results  
22 and how you evaluated those deviations.

23 Can you talk about that process as well?

24 A. Yeah. That's in the -- as I discussed in my  
25 testimony on page 7. Really the challenge with Chicago  
26 was Cook and DuPage County was listed as, according to the  
27 model, \$3.70 a hundredweight. And after several  
28 conversations with Chuck Nicholson and trying to get --



1 just to figure out why Chicago came out that high, which  
2 surprised me, we were trying to figure out, and as Chuck  
3 testified in his statement, the one thing the model  
4 doesn't take into consideration is Federal Market Orders.  
5 And if you look at it, the base zone for Federal Market  
6 Order 30 is Cook County -- or Lake County but -- so it is  
7 \$3, and it's in that \$3.70 zone.

8 So when you go to zone back to Minneapolis, you  
9 are looking at going from 3.70 down to 2.75 at a negative  
10 \$0.95 zone back. That's where I'm referencing that  
11 Minnesota -- no one is going to want to service a Class I  
12 plant there because why would you always want to sign up  
13 for a negative PPD with such low Class I utilization.

14 THE COURT: Could you spell for me the plant  
15 that's near Des Moines, Iowa?

16 THE WITNESS: Anderson Erickson?

17 THE COURT: So what are you saying?

18 THE WITNESS: A&E, I mentioned A -- it goes by  
19 A&E, but it's known as Anderson Erickson.

20 THE COURT: Okay. Anderson Erickson?

21 THE WITNESS: Correct.

22 THE COURT: Both S-O-N?

23 THE WITNESS: I believe so. I'd have to look it  
24 up myself, but I'm pretty sure that is.

25 THE COURT: Thank you.

26 BY MS. HANCOCK:

27 Q. And when you -- you mentioned that you had some  
28 conversations with Dr. Nicholson who performed the USDSS



1 model and provided the results, did he say anything to you  
2 about whether it was appropriate to make those  
3 modifications?

4 A. He acknowledged that that probably would be an  
5 appropriate change from the model results.

6 Q. Okay. And that's based on the way in which the  
7 Federal Order and the blend prices are applied in each of  
8 those areas?

9 A. That would be correct, because he says that's the  
10 one thing that the model does not take into consideration.

11 Q. Okay. Thank you for your time.

12 MS. HANCOCK: Your Honor, at this time we would  
13 make him available for cross-examination.

14 THE COURT: Let's take a five-minute stretch  
15 break. You don't have to go very far, but you are welcome  
16 to leave if you are quick.

17 Please be back and ready to go at 4:40.

18 (Whereupon, a break was taken.)

19 THE COURT: Let's go back on record. We're back  
20 on record at 4:40 p.m.

21 MR. ENGLISH: Good afternoon, Your Honor. My name  
22 is Chip English, and I represent the Milk Innovation  
23 Group, which has ten members, one of them is a  
24 cooperative, and one of them is Anderson Erickson Dairy.  
25 A-N-D-E-R-S-O-N, E-R-I-C-K-S-O-N, Dairy.

26 CROSS-EXAMINATION

27 BY MR. ENGLISH:

28 Q. Good afternoon.





1 A. Thanks for the clarification.

2 Q. So in the somewhat limited time we have, I'll try  
3 to get some things done, but it's going to be fairly  
4 preliminary.

5 THE COURT: What was that last part?

6 MR. ENGLISH: "Fairly preliminary."

7 THE COURT: Okay.

8 MR. ENGLISH: I put a lot of stuff back, including  
9 your favorite spreadsheets.

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

11 BY MR. ENGLISH:

12 Q. So, Mr. Hoeger --

13 A. Sorry.

14 Q. We have to, especially at this point, have a  
15 little humor.

16 I want to start off with what I understand, maybe  
17 incorrectly, about your role in the red pencil crew.  
18 Mr. Sims, I think, indicated that you were the -- at least  
19 a lead for the red pencil crew, but for your region,  
20 correct? Is that correct?

21 A. Well, we touch a lot of regions, so I was -- if  
22 you want to say Order 32, the eastern half, because we  
23 kind of split Order 32 into two pieces because it goes so  
24 wide east to west, so I did assume that lead on Order 32  
25 and on Order 30.

26 Q. Okay. That's what I thought. And that's sort of  
27 what I wanted to sort of get the parameters around.  
28 Because it does appear from your testimony, you're talking



1 a little bit about Minnesota, a lot about Illinois, some  
2 about Iowa, and then you also talk about some slope down  
3 into the Southeast in Order 5.

4 A. Correct. Yes. Where our plants are.

5 Q. So what about Missouri? Are you talking about  
6 Missouri or is that someone else?

7 A. We -- that is -- I handled probably in the eastern  
8 half of Missouri. I didn't get really per se into what  
9 I'll say Southwest Missouri, like Springfield area,  
10 because that's part of our Hiland. And, again, that kind  
11 of fell in with -- with the other people that will be  
12 coming to testify for what I'll call west -- I'll include  
13 Springfield, Missouri, but west of I-35. Does that  
14 make --

15 Q. It makes sense to me.

16 A. Yeah.

17 Q. So, again, I just want to understand. Listen, I  
18 get it. Most of us know the Central order is very long  
19 west to east.

20 A. Yep.

21 Q. So similarly -- and I'll just move fairly quickly  
22 here -- it sounds like you did not have at least direct  
23 involvement with Oklahoma, correct?

24 A. Did not.

25 Q. Or Kansas?

26 A. Did not.

27 Q. But you mentioned Nebraska.

28 Did you -- did you --



1           A.     That was -- we worked on that together as a crew  
2     to make sure -- mainly it goes back to that -- some of  
3     that continuity and correlation. So the part of Nebraska  
4     that I guess I was involved in was Omaha in that sense,  
5     because I was concerned about making sure, again, that  
6     competitive landscape was similar to where it currently is  
7     for the rest of Iowa. Because Anderson Erickson and our  
8     Hiland plant in Omaha, Nebraska, one of the markets that  
9     they compete for is Des Moines.

10          Q.     And --

11          A.     Because our Dubuque plant focuses more east and  
12     goes to Chicago.

13          Q.     So if I may, again, trying to move it along a  
14     little bit --

15          A.     Uh-huh.

16          Q.     No, no, I'm not -- I'm saying in terms of my  
17     questions.

18          A.     Sure.

19          Q.     It appears that, at least from what I see, there  
20     were two or three principles applied, and maybe I'm  
21     missing something or maybe I'm adding on. One was the  
22     desire for competitive alignment in markets such as  
23     Chicago and the conversation you had about Omaha and Des  
24     Moines, correct?

25          A.     Correct.

26          Q.     One was stair-stepping and the need to move milk  
27     especially into the Southeast, correct?

28          A.     Correct. We currently have a strong milk supply



1 that it would be -- I'd call it east to southeast of our  
2 St. Louis market. We generally move that to plants right  
3 there in St. Louis or south or southeast to, like I said,  
4 Kosciusko or Somerset or Memphis. Only probably when it  
5 comes to weekend milk, because plants aren't processing as  
6 much, that some of that milk goes north up to our  
7 Carlinville plant.

8 Q. Okay. So you mentioned something that causes me  
9 to jump ahead, and I'll come back.

10 A. Sure.

11 Q. So you said you have a milk supply down south and  
12 east in the state of Illinois, sort of south of St. Louis,  
13 correct?

14 A. Yeah.

15 Q. And so in your testimony on page 4 you talk about  
16 central counties of Illinois, correct?

17 A. Correct.

18 Q. That would not include that southern section,  
19 correct?

20 A. No, it does not.

21 Q. Okay.

22 A. That essentially -- probably one of the more  
23 southern counties of that section, it kind of runs to  
24 just -- you might as well say Interstate 80, I don't know  
25 how familiar you are with Illinois, but Interstate 80 runs  
26 east to west from the south side of Chicago to Iowa. And  
27 then it goes south that -- those 51 counties go south to  
28 basically where our Carlinville plant is in -- Macoupin



1 County is where our Carlinville plant resides in, which --

2 THE COURT: Could you spell that for me, Macoupin?

3 THE WITNESS: Macoupin is M-A-C-O-U-P-I-N.

4 THE COURT: Thank you.

5 THE WITNESS: It's on Table 2, about halfway down.

6 BY MR. ENGLISH:

7 Q. And then I think I just heard at the -- near the  
8 end of your testimony, especially in your conversation  
9 with Ms. Hancock. And I think it was a third principle,  
10 but I'm not sure. There was this idea of proper alignment  
11 of blend prices from Chicago up to Minneapolis.

12 A. Correct.

13 Q. Okay. Were there other principles?

14 A. Again, up in Minneapolis, as an example, there are  
15 three processing facilities in the Minneapolis market.  
16 Ironically, Minneapolis metro area -- well, I shouldn't  
17 say Minneapolis -- the Minneapolis metro market.  
18 Ironically, all three plants reside in a different county.  
19 One is in Hennepin, and I think you've mentioned that in  
20 other cross-examination; the other one is Ramsey County;  
21 and then the last one is in Washington County, which is  
22 our Woodbury plant. And all three of them had the --  
23 according to the model, it had a different location  
24 differential. Even though from the two plants out on the  
25 very end of the spectrum, and one's exactly in the middle,  
26 they are 22 miles apart. The Minneapolis one sits kind of  
27 on the northwest side, and our Woodbury is more on the  
28 southeast side.



1           But anyway -- so there was 22 miles apart, but  
2           there's three different location differentials: 2.65,  
3           2.75, and 2.85.

4           So, again, no different than what we did kind of  
5           in the Chicago market. We agreed that all three plants  
6           should have the same location differential.

7           Q.    And you moved them all up, correct?

8           A.    Correct.

9           And the reason we moved them up had more to do  
10          with the blend price analysis that we had done versus just  
11          arbitrarily moving them up. It all came down to blend  
12          price analysis. Because really what it -- when it came to  
13          the blend price analysis, once we got Chicago established,  
14          then we were able to go to work into Minnesota and so  
15          forth, and stretching all the way out to Fargo.

16          Q.    So given the fact that you lowered the price in  
17          and around Chicago, I don't see, at least in my  
18          analysis -- and taking for a moment our view of the  
19          world --

20          A.    Uh-huh.

21          Q.    -- that there was a base -- Federal Order base  
22          Class I of \$1.60, I don't see an increase of \$0.60 that  
23          you took into consideration; is that correct?

24          A.    The only reason I know that it was -- there was a  
25          \$1.60 base, as you referred to it as, is because that's  
26          originally in our very first meeting with Mark and Chuck,  
27          that's what was used in the model. After that, there was  
28          no discussion of \$1.60 or anything. We evaluated the



1 model based on the model results, and then started to look  
2 at those correlations, and then also looked at the blend  
3 price analysis.

4 Q. Okay. So just to be clear, because I think I  
5 talked over you, there's --

6 A. Sorry.

7 Q. No, I -- what I hear you saying is that you did  
8 not in the meetings discuss increasing whatever it's  
9 called from \$1.60 to 2.20, correct?

10 A. No, we did not.

11 Q. Now, again, I -- looking at your testimony, I  
12 think I have puzzled something out. When you discuss at  
13 the bottom of page 1 and the top of page 2 USDA's  
14 statistical data with respect to milk production in  
15 Illinois, are you using producer milk on Order 32?

16 A. Correct.

17 Q. Okay. So you are not actually talking about all  
18 milk production in Illinois?

19 A. No.

20 Q. In either -- for Illinois or Iowa, right?

21 A. That would be correct. It's all from -- it came  
22 from the Order 32 statistical reports on their website.

23 Q. Okay.

24 A. Well, other than 2002 was not available for Iowa  
25 or -- and Illinois for back -- that's why Exhibit 60  
26 became requested by the USDA -- for the USDA exhibit.

27 Q. Okay. But the bottom line is you were using  
28 producer milk as opposed to actual milk production



1 according to NASS, correct?

2 A. Correct.

3 MR. ENGLISH: Okay. Your Honor, previously this  
4 week -- at least I believe it was this week -- we -- I  
5 provided copies for everyone and took official notice of  
6 USDA NASS Statistics 2022 Summary for April -- issued in  
7 April 2023. At this time, subject to our limitations on  
8 time, because the witness used the data he used, I have  
9 2000 summary issued in April of 2001. And so I can -- I  
10 have copies to pass out.

11 THE COURT: Wonderful.

12 MR. ENGLISH: And, again, it is -- I want to pass  
13 it out, and then I'll tell you what it is.

14 THE COURT: And, again, you would like me to take  
15 official notice?

16 MR. ENGLISH: Yes, Your Honor.

17 THE COURT: All right. And I appreciate the  
18 courtesy of the copies.

19 MR. ENGLISH: I'm going to provide the witness  
20 with our copy of the April 2023 that has already been  
21 taken official notice of.

22 THE COURT: Yes. You certainly may. Is that your  
23 only copy?

24 MR. ENGLISH: Well, obviously having, you know,  
25 people not prepared today for that, I'm not sure if people  
26 have extras. I passed out all my others before.

27 So, Your Honor, I'm not sure how much time we're  
28 going to have. I'm going to ask for official notice to be





1 taken of what I just handed out, which like the other  
2 documents is a United States Department of Agriculture  
3 publication of the National Agricultural Statistic  
4 Service, titled DA1-2(01) Milk Production Disposition and  
5 Income, 2000 Summary, April 2001.

6 THE COURT: I do take official notice of the  
7 document, and I appreciate very much the courtesy copy of  
8 the document. Of course, what I'm taking official notice  
9 of would be found in -- online in records.

10 MR. ENGLISH: May I exchange with the witness? We  
11 have an extra copy that's not been marked.

12 THE COURT: Yes. Wasn't that clever of  
13 Mr. English.

14 THE WITNESS: Now he knows what I wrote on there.  
15 Yeah.

16 MR. ENGLISH: I didn't do that on purpose.

17 THE WITNESS: All I did was write under Iowa and  
18 Illinois. I got such a big ruler, I think I would be  
19 hitting the mic, so I thought I would just write under it  
20 to help speed along our process.

21 THE COURT: All right. And I'm noting that I took  
22 official notice on October 11th.

23 BY MR. ENGLISH:

24 Q. All right. So let's start in alphabetical order  
25 with Illinois.

26 A. Okay. Which are we on, the '22 or --

27 Q. I have got my 2000 on the left and my 2022 on the  
28 right, so I'm going to do this time sequentially.



1 THE COURT: Your -- your 2000. You mean your  
2 2001?

3 MR. ENGLISH: Okay. It's published in 2001, but  
4 the data is 2000, Your Honor.

5 THE COURT: Okay.

6 MR. ENGLISH: And similarly the one published in  
7 2023 has the 2022 data.

8 THE COURT: Okay.

9 MR. ENGLISH: It's always published in April of  
10 the year following.

11 BY MR. ENGLISH:

12 Q. So if we look at Illinois --

13 A. Yep.

14 Q. -- in 2000, 98% of the milk was Grade A. And so  
15 consistent with what you said about your counties, there  
16 appear to have been annual marketings of 2,074,000,000  
17 pounds in 2000, and 1,703,000,000 pounds in 2022, correct?

18 THE COURT: Now here --

19 THE WITNESS: Mine was in 2002.

20 THE COURT: This may help you. I don't know.

21 MR. ENGLISH: All right. Your Honor, it is close  
22 to 5 o'clock. By the time I come back, I'll have the 2002  
23 one.

24 THE WITNESS: Well, I don't mean to be technical.

25 MR. ENGLISH: No, we got to be accurate.

26 THE COURT: Actually this would be a good time to  
27 stop. So you have given us a preview of what to expect.

28 THE WITNESS: And I appreciate that, Your Honor.



1 MR. ENGLISH: And other than Mr. Hoeger, no one  
2 else will be on time at 1 o'clock.

3 THE WITNESS: This is my six-week homework  
4 assignment?

5 THE COURT: I have a statement to read into the  
6 record.

7 I want first to know whether there's anything  
8 preliminary to that that anyone wants to put on the record  
9 before we approach recessing.

10 MS. HANCOCK: Your Honor, I'm just wondering if we  
11 can just move to admit his exhibits, just to knock that  
12 off, so I don't forget later.

13 THE COURT: I think that's an excellent idea.

14 Does anyone object to the admission into evidence  
15 of Exhibit 352, which is also NMPF-40?

16 MR. HILL: I think there are a couple of issues  
17 with the document. There's a numbering issue on the  
18 figures, and there's another couple of questions I have to  
19 ask about the document.

20 THE COURT: All right. Then it's been moved, and  
21 it's under consideration.

22 MS. HANCOCK: Okay. Thank you.

23 THE COURT: Thank you.

24 Is there anything else anyone would like to bring  
25 before the good of the body before we recess?

26 All right. This hearing will recess today and  
27 reconvene on November 27, 2023, at 1:00 p.m. Eastern, at  
28 the same venue here in Carmel, Indiana, where we now sit,



1 which is 502 Event Center, 502 East Carmel Drive, Carmel,  
2 Indiana.

3 Now, that week is November 27 through December 1.  
4 December 1 is the Friday of that week. If the hearing is  
5 not completed by December 1, the hearing will reconvene at  
6 the Palomino Ballroom, P-A-L-O-M-I-N-O, Ballroom,  
7 481 South County Road, 1200 East, Zionsville, Indiana.  
8 With the exception of Monday, November 27, the hearing  
9 will be held from 8:00 a.m. until 5:00 p.m. each weekday.

10 So I just note that that week that starts at the  
11 Palomino Ballroom, if we have not completed by 5:00 p.m.  
12 December 1, that week starts December 4, 2023, and that  
13 Friday is December 8, 2023.

14 A notice reiterating this information and  
15 outlining hearing procedures for the reconvened weeks will  
16 be published in the Federal Register as soon as possible.

17 During the recess, transcripts of the hearing will  
18 begin to be posted on the Agricultural Marketing Service  
19 website on or before October 27, 2023. Transcripts will  
20 continue to be posted on or before each subsequent Friday  
21 as additional transcript days become available.

22 This hearing is recessed at 5:02 p.m. Eastern.  
23 We're off record.

24 (Whereupon, the proceeding concluded.)

25 ---o0o---



1 STATE OF CALIFORNIA )  
 ) SS  
 2 COUNTY OF FRESNO )

3

4 I, MYRA A. PISH, Certified Shorthand Reporter, do  
 5 hereby certify that the foregoing pages comprise a full,  
 6 true and correct transcript of my shorthand notes, and a  
 7 full, true and correct statement of the proceedings held  
 8 at the time and place heretofore stated.

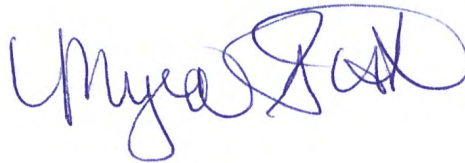
9

10 DATED: December 20, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR  
 17 Certificate No. 11613

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<b>\$0.10</b> 7999:17 8043:12 8045:20 8047:20 8097:26 8167:4 8174:6 8183:7	<b>\$1.33</b> 8003:14 8006:9,10 8051:15,21	<b>\$3.41</b> 8205:3	<b>1,000</b> 8057:3
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