

**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
November 27, 2023

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Reported by:

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

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1 MONDAY, NOVEMBER 27, 2023 - - AFTERNOON SESSION

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

3 We're back on record. It's 2023, November 27,
4 it's a Monday, and we are here because this is the time to
5 reconvene the Federal Milk Marketing Orders Rulemaking
6 Proceeding. The docket number is AO23-J-0067.

7 I -- I have been asked, what does the "AO" stand
8 for? Well, that's something the hearing clerk uses. The
9 hearing clerk puts in the category "AO," agreements and
10 orders, rulemaking proceedings such as this.

11 Are there preliminary matters? Does anyone want
12 to, from Agricultural Marketing Service, make a record of
13 the pronouncement by which this hearing was reconvened or
14 anything of the like? We took care of that at the last
15 day of our hearing. We don't have to, but if anyone wants
16 to, you may.

17 MS. TAYLOR: Good afternoon, Your Honor. I think
18 I'm still suffering from turkey overload or something.
19 And we forgot to print off the reconvened Hearing Notice
20 that was published to reconvene this hearing today, so we
21 will have printed that off to enter into the record
22 tomorrow. But this was noticed in the Federal Register
23 that we would convene at 1:00 p.m. today.

24 THE COURT: Very good. Yes. And it's very
25 beautifully presented on the Agricultural Marketing
26 Service website. Very clear. So I was -- I couldn't
27 imagine that you could get that done so quickly, which you
28 did. I believe the date that it was in the Federal



1 Register was November the 6th or something like that,
2 which amazes me that you got that done so quickly.

3 All right. We have a witness on the stand. Is
4 there anything preliminary to my having the witness
5 identify himself?

6 I see nothing.

7 Would you, again, state your name and spell it for
8 the record, please?

9 THE WITNESS: Chris Hoeger, C-H-R-I-S,
10 H-O-E-G-E-R, Prairie Farms Dairy, Incorporated.

11 (Court Reporter clarification.)

12 THE COURT: Let's go off record for just a minute.

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

14 THE COURT: Let's go back on record. We're back
15 on record at 1:05.

16 Mr. Hoeger, you had announced your name, you had
17 spelled it, and you had said you are from Prairie Farms
18 Dairy, Inc.; is that correct?

19 THE WITNESS: Correct.

20 THE COURT: And you may proceed.

21 Oh, I guess that's all you need to do before I ask
22 you if you have testified here before?

23 THE WITNESS: Yes, I have.

24 THE COURT: You remain sworn.

25 THE WITNESS: Thank you.

26 THE COURT: Counsel, we had looked at Exhibit 352
27 the last day we were here before today, and you had moved
28 it into evidence, and it's under consideration.



1 Where do you want us to start today?

2 MS. HANCOCK: Your Honor, I believe that we were
3 in the process of the cross-examination by Mr. English. I
4 would just suggest we pick back up there.

5 THE COURT: Excellent.

6 Mr. English.

7 MR. ENGLISH: Good afternoon, Your Honor.

8 My name is Chip English, attorney for the Milk
9 Innovation Group.

10 I actually had related housekeeping matters, but I
11 thought I would wait until I got up here rather than
12 interrupt.

13 So to start with, we have two exhibits that have
14 previously been submitted that we are correcting. One of
15 them we're correcting because, as you may recall, there
16 were a series of exhibits where National Milk asked for
17 clarification on the header to make it clear that they
18 were Milk Innovation Group documents rather than National
19 Milk documents.

20 And so one of those was labeled MIG-33, and it was
21 given an Exhibit Number 344. And we now have a corrected
22 version, which we promised. This was during
23 Mr. Covington's testimony. And we promised to provide,
24 and we have submitted electronically -- although I'm
25 having trouble with the website today, so I can't
26 confirm -- but I have -- and I don't know whether we -- I
27 can't remember now whether we replaced the exhibits,
28 because I think National Milk was concerned about an



1 exhibit number or whether we gave it a new exhibit number.

2 But I have MIG -- what was labeled MIG-33, what
3 was given a number Exhibit 344, and as promised, I have
4 submitted those, and I have copies both for USDA and for
5 the participants.

6 THE COURT: And how are they labeled now? They
7 are still called --

8 MR. ENGLISH: They are labeled "Prepared by MIG,
9 Exhibit 344, MIG-33, NMPF." They talk about being
10 prepared by MIG, just as requested. They make it clear in
11 the actual heading that it's a MIG exhibit, just as
12 requested. And then it says "Corrected Header" in the far
13 right, so that it is clear that we have done what was
14 asked, in my mind.

15 And so I can provide those. And I can't remember
16 now whether we were just replacing the old exhibit so the
17 other one didn't exist or we were giving it a new exhibit
18 number. I had forgotten the protocols.

19 THE COURT: So my preference is that we don't
20 eliminate from the record things we have already talked
21 about, we leave them in there. This is an additional
22 document. But that's my preference.

23 MR. ENGLISH: I think National Milk had a slightly
24 different preference. I have no position. I just --

25 MS. HANCOCK: Your Honor, this was our objection
26 to the admission of that earlier exhibit. So by
27 correcting it, it removes our objection. So I think it
28 does replace that original exhibit number.



1 THE COURT: All right. And what you are saying is
2 don't -- do not retain for the record the flawed
3 Exhibit 344?

4 MS. HANCOCK: I think that it's in the record
5 already by testimony, and I think your ruling on admitting
6 the exhibit was admitting it on the condition that the
7 header was changed, and so I think that the admitted
8 exhibit is the one that Mr. English is providing to you
9 with the corrected header.

10 THE COURT: That makes sense. Thank you.

11 MR. ENGLISH: And just to be clear, Your Honor,
12 I'm perfectly fine with that. I think that's exactly what
13 we should do.

14 THE COURT: We'll actually put the yellow stickers
15 on this saying 344. What you are putting 344 on shows, on
16 the upper right-hand corner, "Corrected Exhibit MIG-33."

17 All right. Does anyone not have a copy of what
18 Mr. English has just distributed? Who wants one?

19 Everyone's happy, Mr. English.

20 MR. ENGLISH: All right. So next, Your Honor --
21 I'm sorry, maybe I should move admission of that so we
22 don't get confused.

23 THE COURT: You may.

24 MR. ENGLISH: Okay. I move admission.

25 THE COURT: Are there any objections to the
26 admission of the -- into evidence of the corrected
27 Exhibit 344?

28 There are none. Exhibit 344 is admitted into



1 evidence.

2 (Exhibit Number 344 was received into
3 evidence.)

4 MR. ENGLISH: So the next one is a little
5 different, and I think it should have a new exhibit
6 number.

7 So we had entered into Exhibit MIG-31, which was
8 given Exhibit Number 323. This does have the corrected
9 heading; that wasn't the issue. The issue, Your Honor, is
10 that when it was created, it's a list of the anchor
11 cities, and it turns out that there are two Kansas Cities,
12 both located in Jackson County, one located in Missouri,
13 one located in Kansas. And the original MIG-31, which was
14 given Exhibit 323, used the Kansas, Kansas City.

15 It turns out it makes a difference, that both the
16 model and the Federal Orders use the Missouri, Kansas
17 City, which is row number 1498.

18 So we have simply replaced -- well, it can't be
19 replaced, because the other is an exhibit, and this is
20 different from the other. But we now have a MIG-31
21 corrected, which we submitted to USDA earlier today, which
22 I would like to hand out and then have it marked and
23 admitted.

24 THE COURT: So I believe that this will now get a
25 new exhibit number, and that it's number will be 353.

26 (Exhibit Number 353 was marked for
27 identification.)

28 MR. ENGLISH: Your Honor, may I approach and give



1 you a copy?

2 THE COURT: You may.

3 MR. ENGLISH: May I also approach and give the
4 witness a copy?

5 THE COURT: Yes, but if you want that on the
6 record, you have to speak into the mic.

7 MR. ENGLISH: May I approach, Your Honor, to give
8 you a copy, and may I approach the witness to give him a
9 copy?

10 THE COURT: You may. Thank you.

11 MR. ENGLISH: Thank you, Your Honor. Those are
12 the housekeeping matters that we had.

13 THE COURT: Now, let me make sure that the
14 Agricultural Marketing Service got their record copies,
15 and those are Exhibit 353. Good.

16 All right. You may proceed.

17 MR. ENGLISH: I guess before I forget, can I move
18 admission? I mean, literally, it's the same document as
19 323 with the one replacement being Row 1498, Kansas City,
20 County of Jackson, but Missouri, not Kansas. The correct
21 FIPS code of 29095, correct Federal Order 32, current
22 differential \$2, University of Wisconsin average being
23 3.35, proposal by team being 3.35, and the difference
24 being zero. Those are the only changes between 323 and
25 353.

26 THE COURT: Is there any objection to the
27 admission into evidence of Exhibit 353?

28 There is none. Exhibit 353 is admitted into



1 evidence.

2 (Exhibit Number 353 was received into
3 evidence.)

4 MR. ENGLISH: Thank you, Your Honor.

5 CHRIS HOEGER,

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

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. Good afternoon, Mr. Hoeger.

11 With the six-week break in between October 11th
12 and today, and we're restarting your cross-examination, do
13 you have any changes to your testimony before we get
14 started?

15 A. Yes.

16 Q. Could you tell us what that is?

17 A. On the page 10 of 13.

18 THE COURT: Of what number?

19 MR. ENGLISH: Exhibit 352.

20 THE WITNESS: Exhibit 352.

21 THE COURT: All right.

22 THE WITNESS: There's a -- I refer to it on page 9
23 as a graph, but it's the average U.S. retail price for one
24 gallon milk, whole milk, and it also says Figure 1. Well,
25 another exhibit within that testimony also has Exhibit 1,
26 so I think it would be best to label that as Table 6,
27 being Figure 1 and Figure 2 are describing those tanker
28 costs, and that is part --



1 BY MR. ENGLISH:

2 Q. Sorry, which one is Table 6, sir? The -- what's
3 labeled Figure 1 on page 10?

4 A. Yes. The average U.S. retail price for one gallon
5 milk.

6 THE COURT: So you are saying that on page 10 of
7 Exhibit 352, instead of calling that Figure 1, we're
8 calling it Table 6?

9 THE WITNESS: Correct.

10 THE COURT: And I'd like the record copy to be so
11 noted.

12 THE WITNESS: Yes, Erin?

13 MS. TAYLOR: Your Honor, does that mean we should
14 also make a change on page 9 where you refer to it as
15 Figure 1 and we should -- I'm thinking at the bottom of
16 the page.

17 THE WITNESS: Oh, it does say -- yes, correct.
18 I'm sorry, I looked at the line above it where I just said
19 "the graph." So on the bottom of page 9 where it says,
20 "As shown in Figure 1, the average milk price from
21 2000-2010," that should be changed to Table 6.

22 THE COURT: Table 6. So we have replaced the
23 phrase "Figure 1" with the phrase "Table 6," page 9 of
24 352, about four lines up from the bottom.

25 THE WITNESS: Correct.

26 THE COURT: All right. The record copy has been
27 so changed. Good.

28 You were saying, was there anything else that you



1 wanted to add in response to Mr. English's question?

2 THE WITNESS: Nope. I think we're ready.

3 THE COURT: All right. Mr. English.

4 BY MR. ENGLISH:

5 Q. Thank you, sir.

6 So the best we can, let me go back to our brief
7 discussion of October 11th. I believe I have about 15,
8 20 minutes.

9 So Mr. Covington testified just before you that he
10 may have received input from you with respect to his
11 efforts regarding his testimony.

12 Do you have any recollection of that?

13 A. Not at this present time. It was such a long time
14 ago, that we had a lot of different discussions about
15 inter-regionalities and so forth. But if you -- if you
16 recall -- if he made a statement, then a little more
17 specific that might help recall but --

18 Q. Yeah, I'm merely partly looking back at the
19 transcript, partly looking at what I recall having been
20 said at the time. He -- I marked it down that he noted
21 that. I'm not -- you know, if you don't recall --

22 A. No, I don't recall it. We have had so many
23 conversations on the whole map that anything specific
24 doesn't come to head right now.

25 Q. What about generally? What kind of conversations
26 did you have generally about the map?

27 A. Well, we -- we -- we had a general conversation
28 initially when the -- you know, the Wisconsin study was



1 done. And then we -- we started with the key cities, and
2 that's where we had a lot of discussion to kind of
3 starting in Miami, as Mr. Covington would have been
4 covering, and then we worked our way kind of in a fan
5 effect, north -- north and west from Miami.

6 Q. Do you recall any particular conversation after
7 the model came out, like, goodness the model's wrong, or
8 anything like that?

9 A. We did have a real question with Chicago, and that
10 in Chicago it was a little bit -- because it came in at
11 3.70, and we just wondered why Chicago came in at 3.70,
12 but somewhere just west of Chicago, or just up into
13 Wisconsin, was dramatically lower than that. So the
14 slope -- it wasn't as much of a slope from Chicago to
15 Miami I guess as what we would have anticipated.

16 Q. So you thought Chicago was too high.

17 A. Yeah. Especially in correlation, I mean, against
18 if you look at the current model, and I'll use our -- our
19 Rockford, Illinois, plant, that's a nickel off of Chicago
20 right now, 1.80 to 1.75. And Rockford, I think it's
21 almost \$0.50 or more now, from 3.70 to -- I don't have it
22 right here in front of me. I can look quickly.

23 THE COURT: Mr. Hoeger, what exhibit number are
24 you looking in?

25 THE WITNESS: It would be Exhibit 300.

26 MR. ENGLISH: Do you want look at 300 or 301? 300
27 was the earlier but --

28 THE WITNESS: Yeah, probably should look at 301.



1 THE COURT: I hauled all these back. I was hoping
2 you would use them.

3 MR. ENGLISH: I have bad news, Your Honor.

4 THE WITNESS: I guess it was -- yeah. \$0.40 drop.

5 MR. ENGLISH: \$0.40 drop?

6 THE WITNESS: Yeah. Between -- where there's a
7 nickel difference right now, it's -- the model suggested a
8 \$0.40 difference between Cook County and --

9 MR. ENGLISH: And Rockford?

10 THE WITNESS: Yes.

11 BY MR. ENGLISH:

12 Q. Which one's higher? Which went up, which went
13 down?

14 A. Well, Rockford was lower like it is now, a nickel
15 lower than Cook County, and it's \$0.40 lower in the model.
16 So I guess differences like that, when \$0.40 is pretty
17 significant. And it just -- it was -- like I said, it was
18 DuPage and Cook County that were modeled to come in at
19 3.70.

20 Q. Did you ever ask for Wisconsin why it came out
21 that way?

22 A. We had numerous conversations with Chuck and Mark,
23 and I believe that did come up. And from my best of my
24 recollection was it -- they -- they said it came out with
25 the -- you know, the differences between plant locations,
26 and that was kind of their answer in the various plant
27 locations and so forth, and the slope of -- or what they
28 felt was the movement of the milk.



1 THE COURT: The slope was what?

2 THE WITNESS: The slope or the movement -- the
3 slope of the overall model that coincides with the
4 movement of milk.

5 BY MR. ENGLISH:

6 Q. Are there any plants located in Chicago?

7 A. Not anymore.

8 Q. Okay.

9 A. I think the last one that was in the proper --
10 Chicago proper was -- well, I guess I'm not -- I can't say
11 that for sure. There's -- Oberweis has a plant, but I
12 think that's actually in -- I don't think that's in Cook
13 County. I think that's in the one county west of there,
14 DuPage, I believe.

15 Q. Wouldn't the model have been picking up the
16 population increase in Chicago and the fact that, as your
17 own testimony indicates, plants had shut down, so more
18 milk needed to move to Chicago?

19 A. That would be probably what the model was taking
20 into consideration, yes.

21 Q. Was the model flawed in taking that into
22 consideration?

23 A. No. But the one thing that Chuck did tell us in
24 the testimony -- or not testimony, excuse me, in
25 questioning was -- and we had one thing that the model
26 doesn't take into consideration is kind of the current
27 Federal Milk Market Order layout. So when it comes to
28 zone back prices and so forth, and that led to some of our



1 conversation analysis of doing a blend price analysis
2 between Chicago and Minneapolis. I think we touched on
3 that just as we were ending our testimony six weeks ago.
4 That's, hence, why Minneapolis is higher than the model,
5 just because we came to an agreement on the Chicago number
6 in reference to other inter -- you know, other region
7 issues within that alliance -- or that -- that part of the
8 model. So, hence, that's when that -- there was a lot of
9 discussion on that just because of the blend price
10 analysis that we were doing.

11 Q. Has USDA taken into consideration blend price
12 analysis in doing Class I differentials in the past?

13 A. Not that I'm aware of. But I don't know if they
14 did that when they did it informal -- during informal
15 rulemaking back when this model -- you know, because the
16 model showed -- from one thing I do know, Chuck, when him
17 and I were having a conversation one on one about the
18 model because we had talked about 25 years ago, and he
19 said it was a similar thing 25 years ago. So I don't know
20 if USDA, when they did the map in informal rulemaking, if
21 they made that decision then or not. I don't know what
22 that thought process was. I wasn't around.

23 Q. All right. Well, going back to the -- the
24 beginning of my questions now.

25 So other than Mr. Covington, because he also
26 decided to finger Mr. Sims, he said, you know, you and
27 Mr. Sims and he had conversations. Do you recall any
28 conversations with Mr. Sims about the Southeast?



1 A. We just -- we talked about the slope was mainly
2 the -- you know, and the movement of milk from where the
3 milk sheds were and where it was traveling to to make sure
4 that it was correlated correctly between the various
5 plants.

6 Q. So you've mentioned slope a couple of different
7 times.

8 Was it you wanted slope to be greater or less
9 going from -- from current --

10 A. From current versus --

11 Q. Yes.

12 A. -- now.

13 Q. Yes. Yeah.

14 A. We were looking to -- and the model showed that --
15 that it should be greater than what the slope is
16 currently.

17 Q. And was your conclusion that the model slope was
18 not as large as it should be as opposed to what you
19 thought it should be?

20 A. Yeah. I mean, if you look at part of my testimony
21 there, the model showed, like, in -- in my Table 3, where
22 you have got some disparities in the model, like
23 currently, going from Scott, Missouri, Scott County,
24 Missouri, where part of the milk shed is that serves
25 Kosciusko, Mississippi, that distance is 326 miles. Well,
26 the current price surface difference is \$0.90. But you
27 have Delaware County, Iowa, and Carlin- -- to Carlinville,
28 Illinois, and that distance is 313, so about the same, but



1 yet you've got a current slope of only \$0.25. So I guess
2 that's where we were just looking to try to get the better
3 continuity.

4 You know, did we achieve that? No, because
5 we're -- the model showed to be a buck-and-a-half, and
6 there's much larger deficit of milk from, you know, in
7 Mississippi than there is in Carlinville, Illinois. Are
8 we short milk once in a while in Carlinville, Illinois?
9 Yeah, seasonality-wise. But we don't have near the
10 struggles that we do in Mississippi, so that's why we felt
11 that the slope should be a larger.

12 Q. As a general principle, in order to move milk, the
13 slope should be larger?

14 A. Correct. Yes. Sorry.

15 Q. Thank you. That's fine.

16 Do you recall any input that you gave Mr. Sims
17 about the Southeast, other than what we just talked about?

18 A. I -- I looked at -- I think, you know, my general
19 consensus to Mr. Sims was that I agreed with what the
20 model was showing and felt that that was sufficient based
21 on the current market dynamics. And really -- really, I
22 actually left it a little bit open to him because he's our
23 major supplier and that, so he knows the cost of where
24 he's moving milk from and what it takes to get it to our
25 plants in the Southeast.

26 Q. Thank you.

27 So when we did get -- ran out of time back in
28 October, we were actually talking about the regional



1 market.

2 What impact has the closures of Class I plants, as
3 you discussed in your testimony, had on milk sources and
4 destinations?

5 A. Well, as one example, with us closing our Peoria
6 plant, now that milk is traveling, we closed that Peoria,
7 Illinois, plant in 2020, and so that milk where it
8 normally was coming from Northeast Iowa and Central Iowa
9 and even Northern Illinois, it's probably traveling about
10 another 125 to 150 -- about 125 miles farther.

11 Q. To where?

12 A. To Carlinville, Illinois. We kind of use that as
13 our tipping point for the St. Louis market, because we --
14 we take milk from that area down south to St. Louis, and
15 we -- just we do the stair-stepping thing that we call.

16 Q. What is stair-stepping? I don't think we have
17 really talked about that that much.

18 A. Stair-stepping is, we just -- we're -- we're right
19 there in -- as Carlinville as an example, we would --
20 economically you take the closest milk to the closest
21 plant. But because to go from, like, Delaware County
22 Iowa, or Dubuque County, Iowa, where there's a strong milk
23 shed, because of local trucking -- or not local -- the
24 current trucking laws, they can make the turn in one day,
25 so we stair-step it.

26 So even though we have milk right around, you
27 know, east of Carlinville that we should take to the
28 Carlinville plant, we actually take that farther south to



1 supply our St. Louis -- what I'll call more local
2 St. Louis plants, and then we bring the Northeast Iowa,
3 Northern Illinois milk to Carlinville, because we can make
4 the turn. So we are basically -- instead of taking the
5 Northeast Iowa and Northern Illinois milk all the way to
6 St. -- like O'Fallon, Illinois, we bring it to
7 Carlinville, and we stair-step, then we take the
8 Carlinville milk down to O'Fallon, Illinois.

9 Q. So then, for instance, since you have listed
10 Dubuque on Table 4, where does the Dubuque milk come from
11 if you are moving the milk around from Dubuque down to
12 Carlinville?

13 A. Dubuque we pull -- part of Dubuque's milk shed is
14 coming from Wisconsin, and then the rest of it is coming
15 from -- there's -- it's a large milk shed there, so
16 there's milk that is coming up from Northern -- north of
17 Dubuque, but going towards our Luana cheese plant. So
18 then, again, from there we're pulling milk from Wisconsin
19 and Minnesota into -- and west of -- west of Luana into
20 our Luana cheese plant.

21 Q. So you are pulling -- so you do need to pull milk
22 out of Minnesota for Dubuque, correct? You just said
23 Wisconsin and Minnesota.

24 A. Well, again, we stair-step it. So we take some
25 milk that's right around Luana down to Dubuque, and then
26 we bring milk out of Minnesota to Luana. So instead of --
27 instead of that milk from Minnesota traveling 150 to
28 175 miles, it's probably travelling about 80 to 90 miles,



1 and then we're bringing -- we're basically probably doing
2 the same, the same miles, but we're stair-stepping it
3 because we're taking milk that's right around Luana down
4 to Dubuque and covering and stair-stepping.

5 It allows the haulers to remain efficient because
6 a lot of those are small farms, and those farms, they
7 are -- the haulers are able to try to still accomplish
8 getting a couple of loads of milk picked up a day.

9 Q. Now, when the plants closed and things changed,
10 did any of the milk production in that area go to large
11 cheese plants?

12 A. There isn't that many large -- when you say "large
13 cheese plants," what do you, I guess --

14 Q. Maybe in South Dakota?

15 A. No. That -- that milk is -- we have started to
16 pull some milk down from Northwest Iowa, and that milk --
17 and that's mainly because the -- our one supplier has lost
18 milk in Northeast Iowa that's now going to Wisconsin.
19 That just happened here August 1st of this year.

20 Q. I'm sorry, what happened?

21 A. So the group of farms that were part of another
22 co-op that has been a strong supplier of Prairie Farms,
23 they had about five to six loads of milk per day in
24 Northeast Iowa. They would accumulate the loads, take it
25 to a reload, and then they would tanker it down to our
26 Carlinville, Illinois, plant. They lost those farms to a
27 different company, and that milk now goes into Wisconsin
28 to a cheese plant, because at the end of the day, it's an



1 economic decision for the farms.

2 I mean the -- the other company was, from what I
3 could see on paychecks, was re-blending the -- the cost of
4 the freight. And so the dairy producers made the decision
5 to go with a different company because they are going to
6 take less of it without the reblend and supply that cheese
7 plant.

8 Q. So that is milk in Northeast Iowa, correct?

9 A. Correct.

10 Q. That was going --

11 A. To Carlinville, Illinois.

12 Q. To Carlinville, which is southeast, correct?

13 A. Yeah. Well, it's Central Illinois.

14 Q. Well, but it's southeast of Dubuque, correct?

15 A. Correct. Yes.

16 Q. Okay. And now it's moving northeast to Wisconsin?

17 A. Yes.

18 Q. Okay.

19 A. And so then the supplier is now bringing milk from
20 Northwest Iowa all the way to Carlinville. So it's
21 traveling close to 500-some miles.

22 Q. Would that suggest that the Wisconsin price
23 relative to the need to transport it down to Carlinville
24 is too high? That is, the slope is too low?

25 A. Is the slope too low or is it just the cost of the
26 freight? I mean, if you look at it, the milk's traveling
27 326 miles. With a Class I blend price, that's with a 5.5
28 to 6% utilization in Wisconsin, I kind of believe that



1 the -- that the price -- it's really coming down to is the
2 freight. Yeah.

3 I did -- one of the things that I probably would
4 have made a comment, I know Jeff Sims, is I really thought
5 that the slope from Chicago to St. Louis would have been
6 higher, but the model didn't show that.

7 Q. But similarly wouldn't you expect the model --

8 A. What I meant was that Chicago to St. Louis would
9 be a larger difference than what it was. Because
10 according to the model, St. Louis and Chicago were to be
11 the same. And I -- it's over 300 -- it's 300, almost 300
12 miles from Chicago to St. Louis, so the model should
13 account for some freight.

14 Q. Well, similarly, though, wouldn't you then want or
15 need the slope north of Chicago to be greater in order to
16 help move the milk south?

17 A. Yes. You -- when you get to the point of what
18 we'll call equilibrium, and then it comes down to -- in
19 our analysis, it comes down to blend price and that. And
20 so that's really, once you get north of Chicago, our whole
21 thought process was -- was analyzing blend price.

22 Q. All right. I'm trying to save going through it
23 later, but I may have to go there now since you brought it
24 up a couple of different times.

25 How much can you do for the blend price in a
26 market that is 6% Class I?

27 A. Well, you can't do a lot, but the -- the issue is
28 that if Chicago is going to be your baseline and that's



1 where your Federal Order announcement price is, if you --
2 if you follow the model between Chicago and Minneapolis,
3 there was \$0.95 a hundredweight difference. So that zone
4 back, why would a dairy producer even want to ship to
5 Class I in the Minneapolis market if they were constantly
6 going to get a negative return on -- on the milk?

7 Q. Well, wouldn't the milk maybe for that location
8 come from farther north where the price is even lower and
9 so there was a benefit?

10 A. No. It was like I was just saying, you get to the
11 point of equilibrium where the -- it kind of flips. I
12 mean, as an example, Goodhue County in Minnesota is south
13 of Minneapolis, and that's a strong, strong milk county,
14 and there are several large cheese plants near Goodhue
15 County and also near the three bottling plants in
16 Minneapolis. And so if you -- it's actually shorter
17 transportation to go from Goodhue County to like our
18 Woodbury plant. It's 49 miles. If you had a \$0.95 zone
19 back, the dairy producer could make the decision to ship
20 it to Le Sueur, Minnesota plant -- do you need me to spell
21 Le Sueur?

22 (Court Reporter clarification.)

23 THE WITNESS: L-E, S-E-U-R-E-R -- E-U-E-R [sic],
24 excuse me.

25 (Court Reporter clarification.)

26 THE WITNESS: L-E, S-E-U-E-R [sic]. Minnesota.

27 So anyway, Le Sueur is about 66 miles from Goodhue
28 County, and our Woodbury plant is 49 miles. But with a



1 \$0.95 zone back, there would be zero times that you would
2 really want to ship to a Class I plant.

3 BY MR. ENGLISH:

4 Q. Hasn't the problem about shipping milk to
5 Minnesota existed for decades? I mean, hasn't that been a
6 Federal Order issue for 25, 30 years at least, shipping
7 milk to Minneapolis?

8 A. In -- what do you mean? In what aspect shipping
9 milk to Minneapolis?

10 Q. Well, hasn't it been a conversation point and a
11 series of Federal Order hearings trying to figure out how
12 to deal with it? Isn't that --

13 A. I don't know because I haven't been -- I haven't
14 been part of it. I can tell you that what we did and why
15 we came up with the difference right now with Chicago
16 being at 3.10 and Minneapolis at three bucks, is we kind
17 of followed the current model, which is a \$0.10 zone back
18 from Chicago right now at Minneapolis.

19 Q. Even though that would not increase the slope,
20 correct? So you are deliberately trying to find a way not
21 to move milk out of Minneapolis.

22 A. Correct. Because right now, like I said, you get
23 to a point of equilibrium, you try to -- you're trying to
24 flatten it and that. Because if the milk is sufficient,
25 then it's about efficiently move it within the
26 marketplace.

27 Q. So why didn't that principle apply to other
28 locations in the country?



1 A. Because there's not enough milk. I mean --

2 Q. In other parts of the country there's not enough
3 milk?

4 A. In Kosciusko, Mississippi, there's not enough
5 milk, so --

6 Q. So in Kosciusko, Mississippi, we need to raise the
7 price because there's not enough milk, and in Minneapolis
8 we need to raise it because there's too much milk?

9 A. Well, again, we looked at Minneapolis just because
10 of being, like I said, the flattening of the curve, and
11 the -- and it was all, it came down to blend price.

12 Q. What conversations --

13 THE COURT: I'm sorry, it came down to what?

14 THE WITNESS: Blend price.

15 THE COURT: Thank you.

16 BY MR. ENGLISH:

17 Q. Given, again, a low Class I utilization, what
18 consideration was given instead, at least for Minneapolis,
19 to think about whether or not you should amend
20 paragraph 55 within Order 30?

21 A. Are you going to share 55? Because I --

22 Q. Do you know what 55 is?

23 A. No, I don't.

24 Q. Do you know about the transportation credits and
25 assembly credits in Order 30?

26 A. Vaguely. And we don't have a lot of milk, so I
27 rely on our supply partners to understand that.

28 Q. So you don't know if this provision, for instance,



1 was put in in the '90s, actually maybe even the late '80s,
2 late '80s, early '90s, in order to address the very
3 question about the fact that low Class I utilization in
4 Minneapolis?

5 A. Well, that helps with -- the transportation
6 credits helps move the milk.

7 Q. Yeah.

8 A. Yeah.

9 Q. So what consideration was given to saying rather
10 than lowering the slope between Minneapolis and Chicago or
11 keeping it the same at \$0.10, to say, oh, look, we have
12 this provision in Order 30, it needs updating. Let's
13 update that and lower the slope that we were lowering
14 everywhere else.

15 A. We did not have any of that conversation amongst
16 the -- amongst the task force.

17 Q. Thank you.

18 So we are now actually where I was when we broke.
19 And you correctly pointed out to me that I was about to do
20 a comparison for years that were different from your
21 testimony. In other words, I was about to take official
22 notice of one set of data, and you said, wait a minute, I
23 was looking at something else -- you were looking at
24 something else.

25 MR. ENGLISH: So what I would like to do now, Your
26 Honor, is fix my mistake.

27 THE WITNESS: And is this the Milk Production --

28 MR. ENGLISH: Yeah. This will be Milk Production



1 Disposition Income Summary for 2002, because that was what
2 was testimony was about, issued in April 2003. And so we
3 have already taken official notice of similar documents,
4 Your Honor, which people may or may not have kept copies
5 of. And so I have got probably too many copies. I have
6 got 15. This is official notice, so it's not an exhibit.
7 But I have copies of this for official notice purposes.

8 THE COURT: Again, I do appreciate your courtesy
9 in giving us copies of things that you are asking me to
10 take official notice of.

11 Let's go off record while these are distributed.
12 (An off-the-record discussion took place.)

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

14 We're back on record at 1:45.

15 Mr. English.

16 MR. ENGLISH: Your Honor, what I have handed out
17 is USDA publication by the National Agricultural Statistic
18 Service, "Milk Production Disposition and Income, 2002
19 Summary," issued April 2003. And like the other document,
20 it has a docket code of DA1-2, but this is (03),
21 presumably because it's from 2003. And so I have asked
22 for initial notice to be taken of that document, Your
23 Honor.

24 THE COURT: Is there any objection?

25 There is none. I take official notice of the
26 document that Mr. English has just distributed and
27 described.

28 ///



1 BY MR. ENGLISH:

2 Q. So I would like to start, again, this page 9 of
3 that document, and if you still have it with you, sir, the
4 April -- the 2022 summary issued in 2023, which is
5 page 11, is the same chart, or essentially the same chart,
6 but on a different page. So I would like to look at that
7 and compare some of the things there.

8 A. This one, right?

9 Q. That's correct. Yes. Let's start with South
10 Dakota. And it would look like -- you have a ruler. Do
11 you want to use it, or do you want me to hand you one of
12 my rulers?

13 THE COURT: I have got the yardstick if you want
14 it.

15 THE WITNESS: No, I'm good. I remember that I was
16 menacing the last time you gave it to me.

17 BY MR. ENGLISH:

18 Q. So South Dakota, these are in million pounds. So
19 it's gone up from, in 2002, from 1392 million pounds in
20 South Dakota to 4153, correct?

21 A. Correct.

22 Q. More than triple, correct?

23 A. Yep.

24 Q. Is that correct?

25 A. Correct.

26 Q. I also note that it appears in 2002 that 93% of
27 South Dakota milk was Grade A, and today, 100% of milk is
28 Grade A, correct?



1 A. Correct.

2 Q. So North Dakota, looks like it's 571 million
3 pounds in 2002, and it's basically faded back to 314, so
4 it's -- it's -- North Dakota has gone down, correct?

5 A. Correct.

6 Q. And similarly, it's gone from 94% Grade A to
7 99% Grade A, correct?

8 A. You said 94%?

9 Q. It went from 94 --

10 A. It should be 74%.

11 Q. I'm sorry. Thank you. Bigger change.

12 74% -- maybe I'm the one who needs a ruler -- to
13 99%, correct?

14 A. Correct.

15 Q. So let's look at Minnesota. Minnesota, in 2002,
16 had 8,358 million, 96% Grade A, and now it's --

17 A. 100.

18 Q. -- 10,378, and 100% Grade A, correct?

19 A. Correct.

20 Q. So production has increased by 18% or so in
21 Minnesota, correct?

22 A. Correct.

23 Q. Okay. So now when you provided information in
24 your testimony on page 4 --

25 A. Illinois?

26 Q. Yes. Illinois.

27 A. Okay.

28 Q. What is the source of that information?



1 A. That is from Order 32 pool information.

2 Q. So that's producer milk, correct?

3 A. Correct. Producer pooled on Order 32.

4 Q. Okay. So if, by definition, if that milk -- if
5 milk produced in any of these counties were instead pooled
6 on Order 5, they would not appear on Table 2, page 4,
7 correct?

8 A. Correct.

9 Q. Okay. And so when we look at Illinois in this
10 data, we do see that it has dropped, correct?

11 A. Yes.

12 Q. It has dropped from 2036 to 1703, correct?

13 A. Correct.

14 Q. So by definition, as you say, you need to
15 stair-step more milk into Illinois, correct?

16 A. Correct.

17 Q. Now, on the other hand, Iowa has gone --

18 A. Up.

19 Q. -- up and is now also 100% Grade A, correct?

20 A. Correct.

21 Q. So 6 -- maybe 15% increase, correct?

22 A. Correct.

23 Q. I guess what I'm trying to get at is, I understand
24 what you just said about Minneapolis, but --

25 A. Uh-huh.

26 Q. -- what is a consistent theory for Class I
27 differentials for moving milk if in some areas you are
28 going to say, I need to look at the blend price and keep



1 the milk home?

2 A. It gets to the point of how much milk -- is South
3 Dakota going to truly supply Miami? I mean, we always use
4 Miami as the destination point. And there isn't -- even
5 stair-stepping, there isn't that -- as big of a need for
6 South Dakota milk to stair-step.

7 So then it becomes correlation to neighboring
8 regions, and that's what, no different than what we
9 talked about with Chicago and the difference between
10 Michigan and Wisconsin. We actually were lower than what
11 the model recommended in Wisconsin versus on the -- on our
12 final map. And that was purely because we wanted the
13 inner relationship between Michigan and Wisconsin, because
14 they are both -- those plants that service the Chicago
15 market are getting their milk supply from there, so we
16 wanted all those plants to have a competitive level
17 playing field.

18 Q. Are there no fluid plants in Wisconsin that need
19 to keep the milk back in Wisconsin?

20 A. One now. One or two. There's -- yeah, there will
21 be Le Mars Dairy and then the Cedarburg plant.

22 Q. Why doesn't the principle of keeping the milk home
23 in Wisconsin like Minnesota apply?

24 A. Well, there's plenty -- there's still -- as far as
25 what -- I guess what do you mean by keeping the milk home?

26 Q. Well, I mean, as I read your testimony and the
27 testimony of other witnesses, the concept was we need to
28 not zone out Minneapolis so far because that will cause



1 milk to move. If -- the way it's built in the model,
2 that's going to cause too much milk to move south, as I
3 understood your testimony.

4 A. No, it was more about the correlation with the
5 other plants in that region, which are also large cheese
6 plants, and having a consistent level field for that --
7 the -- because like I mentioned on the Le Sueur plant,
8 they would also compete in Goodhue County with the
9 Minneapolis plants are competing for that milk supply.

10 If -- if you had the zone back the way the model
11 suggested, there would be no incentive to ever supply any
12 of Minneapolis.

13 Q. Unless you use paragraph 55 and the transportation
14 credits?

15 A. Correct. But even in -- if I understand most
16 transportation credits, like, how that is written, there's
17 still a mileage -- and I would have to go back and read
18 specifically, you know, page -- that section, but as an
19 example, I do know the Southeast as an example, there's
20 the 85-mile rule. The first 85 miles are on the producer.

21 So that being the case, Goodhue County is only
22 49 miles from the Minneapolis market.

23 Q. Even if that is the case --

24 A. So there -- if that was the case, and I don't know
25 that specific rule in Order 30, but if that was the case,
26 those farms would not be eligible for any transportation
27 credits.

28 Q. Unless of course you were amending it to make it



1 higher because hauling costs have gone up, and that
2 assumes that requirement is there in the first place,
3 right?

4 A. Can you repeat that, please?

5 Q. Well, okay. Two parts.

6 First, you are assuming that there is a minimum
7 mileage within the provision, correct?

8 THE COURT: You are talking so fast.

9 MR. ENGLISH: I will slow down, Your Honor.

10 THE COURT: Thank you.

11 BY MR. ENGLISH:

12 Q. You are assuming --

13 A. I'm making an assumption based on what I
14 understand the -- like the Southeast orders, what their
15 transportation credits have.

16 Q. I told you that, instead, it has a maximum mileage
17 provision of 400 miles rather than a minimum provision,
18 that would change your view maybe?

19 A. Possibly, if I could --

20 Q. I'm just trying to get at, was there a different
21 solution -- or is there a different solution to
22 Minneapolis when it appears that when you start with
23 Minneapolis and then work your way west, that is a reason
24 that is used by National Milk to raise prices in parts of
25 the country where there is, for want of a better word,
26 plenty of milk?

27 A. Again, what we did is, when we did the analysis,
28 we looked at the blend price, and then we also took in



1 correlation to the current model. So if there was a \$0.10
2 drop in Chicago to Minneapolis currently, we tried to
3 maintain that, so that -- so that blend prices would not
4 be dramatically impacted, good or bad.

5 Q. Did you do any analysis of what those changes
6 would mean for milk production in parts of the country
7 that have plenty of milk?

8 A. We didn't do any type of forecasting of what
9 additional milk production would be caused. But at the
10 end of the day, with a 6% utilization, if you --
11 Minneapolis being \$0.95 higher, your -- it's \$0.06 a
12 hundredweight.

13 Q. Exactly. So why bother?

14 A. Yeah.

15 Q. Okay. Thank you.

16 THE COURT: So when you said to him, "why bother,"
17 he agreed with you --

18 MR. ENGLISH: He said yes. That's right.

19 THE COURT: -- is that correct?

20 THE WITNESS: Yeah, I took it as -- yeah. It's
21 very minor increase is what I'm agreeing with.

22 THE COURT: Understood.

23 MR. ENGLISH: Thank you, Your Honor. Appreciate
24 the clarification.

25 BY MR. ENGLISH:

26 Q. All right. Changing subjects just a little bit.
27 Where are your plants located that are pooled on
28 Order 32?



1 A. Dubuque, Iowa. We have a supply plant in Luana,
2 so we have a pool silo there. And then we also have Sioux
3 Falls, South Dakota. And then we have Carlinville,
4 Illinois. O'Fallon, Illinois. Granite City, Illinois.
5 Olney, Illinois.

6 Q. How is that spelled?

7 A. O-L-N-E-Y.

8 And then we also have Quincy, Illinois, and
9 Carbondale, Illinois.

10 Q. And --

11 A. Excuse me --

12 Q. Sorry.

13 A. Jeff City, Missouri, is in an unregulated area,
14 part -- but it is part of the unit, so it's pooled on
15 Order 32.

16 Q. So you don't treat the plant as a partially
17 regulated plant or anything, it's --

18 A. No, it's fully.

19 Q. Okay. Which of those plants distribute milk into
20 Order 5?

21 A. There -- there might be -- Olney, Illinois does
22 distribute some into Order 5 because they -- for
23 production efficiencies, we -- with our Holland, Indiana,
24 plant, we do that -- production efficiencies. One will
25 produce one SKU, and the other one will produce the other
26 SKU, and then we haul between them, because that's a short
27 haul. But otherwise, unless there's a breakdown or
28 something, there isn't anything on a consistent basis



1 that --

2 Q. What about any of those plants distribute milk in
3 Order 7?

4 A. No. Because we -- we have our Hiland, Memphis,
5 Tennessee, plant is in the very northern edge of Order 7,
6 so --

7 Q. And that's a plant that you have pooled on
8 Order 7, correct?

9 A. Correct.

10 Q. Holland, Indiana, is pooled on Order 5?

11 A. Correct.

12 Q. Is that located in the Order 32 marketing area?

13 A. No. It's in Order 5. It's --

14 Q. It's physically in Order 5?

15 A. Correct. We have two plants in Order 5:
16 Somerset, Kentucky, and Holland, Indiana.

17 Q. And where are your plants located other than
18 Tennessee that are pooled in Order 7?

19 A. We have -- in Order 7, we have Kosciusko,
20 Mississippi, and Holland -- or excuse me, not Holland --
21 Hammond, Louisiana.

22 THE COURT: What is the spelling of the
23 Mississippi place?

24 THE WITNESS: K-O-S-C-I-U-S-K-O.

25 BY MR. ENGLISH:

26 Q. As a member of National Milk Producers Federation,
27 do you accept the validity of the USDSS model up to the
28 point where you did your red pencilling?



1 A. Yes, we used that as the baseline to begin our
2 work.

3 Q. Do you know which plants National Milk asked
4 University of Wisconsin to add in considering the model?

5 A. I don't have that list off the top of my head, but
6 I know we did add -- we had plants that were added and
7 made sure were subtracted, because we -- we took into
8 consideration in -- as an example, in Order 7, the
9 Hattiesburg, Mississippi, and Dothan, Alabama, plants that
10 closed. And that happened, I believe -- I think that
11 happened before -- after our -- after the first run, I
12 believe, or before the -- I think it was after. We had
13 them run the model a couple of times, and I think it was
14 after the first time. We had already run the model once,
15 and then I think we made adjustments to make sure we
16 included the right list of plants.

17 Q. That's a couple plants --

18 A. I could be gray area on that statement though.

19 Q. But you think there were possible -- two plants
20 were taken out, Hattiesburg and Dothan?

21 A. I know those -- I know those specifically were,
22 but we had a list of plants across the U.S. that were
23 either added or subtracted, but I don't have that list
24 here in front of me.

25 Q. Okay.

26 THE COURT: Mr. English, is this a good time for a
27 break?

28 MR. ENGLISH: If you'd like one, yes.



1 THE COURT: Well, what I'm concerned about, this
2 room is not as cold as it was. People are nodding off.

3 MR. ENGLISH: Well, that can't possibly be from
4 the examination, Your Honor. But if you wish to take a
5 break, we can take a break.

6 THE COURT: Please be back and ready to go at
7 2:15. 2:15. We go off record at 2:02.

8 (Whereupon, a break was taken.)

9 THE COURT: Let's go back on record.
10 We're back on record at 2:15.

11 Mr. English, you may resume.

12 MR. ENGLISH: Thank you, Your Honor.

13 BY MR. ENGLISH:

14 Q. Yes?

15 A. I'd like to make a correction statement.

16 Q. Sure.

17 A. I misspoke on Jeff City. Jeff City is still fully
18 regulated under Order 32, but they are not part of our
19 unit, as I stated earlier.

20 Q. Okay. Thank you. I would not have known, so
21 appreciate that.

22 And by "Jeff City," you have shortened Jefferson
23 City?

24 A. Jefferson City, Missouri.

25 Q. Just for the court reporter's benefit.

26 A. She's going to come over and slap my tongue
27 instead of my hand.

28 Q. So maybe there's a way of shortcutting the



1 cross-examination. As I -- as I read your testimony and
2 the cross-examination we have had so far, while you talk
3 about a number of factors justifying increases on page 8,
4 you are not, it appears to me, using those as reasons to
5 deviate from the model; is that correct?

6 A. You are talking on page 8 of my testimony?

7 Q. Yeah, page 8 of your testimony.

8 A. Okay.

9 Q. You have got issues about the trucking costs. You
10 have got the emission systems. You have got, you know,
11 collision mitigation, technology advancements, added
12 hidden costs.

13 A. It's --

14 Q. But that seems to be more to be why you need to
15 increase Class I differentials rather than this is why I'm
16 deviating from the model.

17 Would that be correct?

18 A. It's probably just a restatement of, you know --
19 and as we have covered in a lot of other testimonies, that
20 the model takes a lot of these updates that have happened
21 into consideration.

22 Q. And so I'm just -- again, if this doesn't work, it
23 doesn't work.

24 A. Uh-huh.

25 Q. I'm hearing you say we needed to lower Chicago
26 because of a slope issue going south and east; is that
27 correct?

28 A. South and southeast, correct.



1 Q. And we needed to raise Minneapolis because there's
2 a blend price issue if we don't do that, correct?

3 A. Correct.

4 Q. I don't hear you saying, I am making this
5 particular -- I propose or we are proposing this
6 particular adjustment to Carlinville because of these
7 costs on page 8 from the model; is that correct?

8 A. That's correct.

9 Q. Okay. And you would agree that the USDSS model
10 picks up closed plants that you have discussed, correct?

11 A. Correct.

12 Q. And, therefore, would pick up the fact that milk
13 needs to move farther to get to some of these locations
14 like Kosciusko, correct?

15 A. Correct.

16 Q. Now, there are also new manufacturing facilities
17 in -- in or near your area, such as South Dakota, correct?

18 A. I don't know if I'd call them near when it's 500
19 miles away.

20 Q. Well, I guess that's a good question. Is it
21 really fair to think about, you know, other than the fact
22 that it's in Order 32, your facility in Sioux City, South
23 Dakota, as really being relevant to Order 32?

24 A. Yeah. Because that plant is a small plant, and
25 there is plenty of milk in that area.

26 Q. And plenty of that milk ends up going to cheese,
27 correct?

28 A. I would say probably the vast majority of that



1 milk goes to cheese.

2 Q. Okay. Did you, nonetheless, propose increasing
3 the price into that location from the model?

4 A. I believe so. I'd have to double check, but I
5 believe that's correct. Just, again, they come down to
6 the flattening of the slope or -- due to the blend price.

7 Q. When it's a small plant, what would make it hard
8 to get milk to that plant?

9 A. There isn't a lot of challenges with getting milk
10 to that plant.

11 Q. So then why raise the price there?

12 A. Again, we tried to, we flattened the slope in
13 correlation to other regions.

14 Q. Which regions were you correlating to a flatter
15 slope?

16 A. Well, it kind of -- Chicago was that tipping
17 point, and so as we go farther north and west of Chicago,
18 then we looked at maintaining a similar slope as the
19 current day is, and to work towards a -- it's just a
20 flatter versus a larger slope than what the model called
21 for.

22 Q. But wasn't the current data based upon how the
23 model was used 25 years ago, reflecting the same kind of
24 information as in the new model?

25 A. And I had a specific discussion with Chuck on
26 this, and the model showed a very similar slope as it does
27 today, in today's model run. But, again, he said that
28 that's where the local knowledge comes in, to give that



1 consideration.

2 And I -- I would, I guess, have to pose that. I
3 mean, because none of us were part of the -- the model
4 build or the final, you know, location differential map,
5 because that was done in informal rulemaking, so --
6 25 years ago from my understanding. I wasn't in the dairy
7 industry at that time.

8 Q. What is -- what is the point of the model if when
9 it comes to one part of the country, you are going to have
10 the slope increase, down in the Southeast, and another
11 part of the country you are going to have the slope
12 decrease? What is the point of having the model at all?

13 A. The model works to, again, take those correlation
14 of the plants into consideration. Now, the local
15 knowledge then comes to how the milk is moved, and so then
16 that's where -- again, it -- there was a -- we did a lot
17 in the Upper Midwest based on blend price. That's
18 probably the simple and short answer of it.

19 Q. How is the public interest for consumers to pay
20 more in Sioux City, South Dakota, or Minneapolis, because
21 of blend price considerations as opposed to actual
22 differences in costs of manufacturing milk?

23 A. Is the model supposed to take retail prices into
24 consideration? Because if you look at the -- the one part
25 of my testimony, there's -- the retail prices don't --
26 don't necessarily move with the -- it looks like it moves
27 more in the market than it does necessarily an abrupt
28 change.



1 Q. As a general matter, you know, don't you try to
2 pass your costs along in order to keep your plant
3 profitable?

4 A. Yes, we do, but that doesn't mean the retailer
5 passes it on to the consumer. I spent ten years with a
6 large retailer prior to coming into the dairy industry.
7 And I know in one area in Fort Dodge, Iowa, which isn't
8 that far from Sioux City or -- regular milk price was --
9 back in the early '90s, was getting sold for \$1.99 a
10 gallon to 2.59 a gallon, and in that market there was a
11 price war between two retailers that sold milk at \$0.99 a
12 gallon. I mean, that --

13 Q. In states where it's illegal, because not all
14 states allow sales below cost --

15 A. Uh-huh.

16 Q. -- it is not at all uncommon for retailers to use
17 milk as a loss leader, correct?

18 A. Correct. I used to own my own grocery store, so I
19 agree.

20 (Court Reporter clarification.)

21 BY MR. ENGLISH:

22 Q. And, you know, in fact, you know, grocery stores
23 will locate the milk in one corner and the bread as far
24 away from the milk as possible, correct?

25 A. Correct.

26 Q. All about driving foot traffic, correct?

27 A. Yep. Back of the store.

28 Q. I think we already discussed some of this, but



1 when you closed the Peoria facility, did you turn that
2 location into a distribution center?

3 A. Yes, it's still currently a distribution center.
4 So we produce the -- we produce the milk in Carlinville,
5 and then Carlinville supplies -- supplies that
6 distribution center.

7 Q. And what about the other plants that you closed in
8 the region, did you keep those locations as distribution
9 centers?

10 A. Generally, yes, but not always.

11 Q. What about Chemung?

12 A. I can't speak to that because we didn't own that
13 facility.

14 Q. Okay.

15 A. I would guess that that one is not being used,
16 because I believe that was owned by, I believe Borden and
17 that, so -- and I don't think -- unless they are supplying
18 it from -- I guess Cleveland would be their closest plant.

19 Q. So you have already discussed stair-stepping.
20 Stair-stepping can work two ways.

21 A. Uh-huh.

22 Q. You, I think, discussed moving the raw milk from
23 say Northeast Iowa down and then replacing that with other
24 milk in the raw form, correct?

25 A. Correct.

26 Q. But it can also -- stair-stepping can also be in
27 packaged form, correct?

28 A. Sure. It's usually cheaper to do it by raw down



1 because of the fact that you can pull it generally --
2 industry adage would be 6,000 gallons on a tanker, whereas
3 in a refrigerated box trailer, we generally only put about
4 4100 gallons. So economically, it's usually cheaper to
5 move raw.

6 Q. But both do occur, correct?

7 A. I would be foolish to say that it doesn't.

8 Q. And the model picks up both of those, correct?

9 A. It should.

10 Q. All right. Let's now turn to what's been marked
11 and actually entered as Exhibit 353, which is the
12 corrected MIG-31. And for your benefit, and because I'm
13 not sure you and I have discussed this before, this is
14 MIG's use of our understanding of what the anchor cities
15 are for National Milk's proposal.

16 A. Okay.

17 Q. Do you know how these cities were selected?

18 A. We -- we started in Miami. Miami on -- it's not
19 on here. So originally when we met to start our whole
20 task force, we had regional people, regional experts that
21 knew the market area, and we started with -- in Miami, and
22 we kind of worked, again, our north -- we worked our way
23 north, and then we worked our way west on key pivot
24 cities. And, again, like I said, and I think we have
25 talked about this a fair amount, but Chicago was one of
26 those key pivot cities.

27 Q. When you talked about the need to increase the
28 slope, did you discuss why it was that a determination was



1 made to keep Miami at the model average?

2 A. I think from, according to the analysis, other
3 than if you take out that northern sliver of Illinois,
4 that we finally -- we were pretty close to the model on
5 most of east of the Mississippi, if I recall correctly.
6 There might have been some slight adjustments, but nothing
7 significant. Because I know when I looked at overall of
8 Illinois, just a simple average, we were \$0.06 under what
9 the model called for.

10 Q. So would you agree as a general matter, that where
11 the milk is needed, so to speak, is more east of the
12 Mississippi than west of the Mississippi for Class I
13 purposes?

14 A. I would -- yes. There's more -- in large part
15 what drives that is the Southeast.

16 Q. And the southeast really is a big issue. It's a
17 real deficit. We all agree on that, right?

18 A. I think we can all agree on that, yes.

19 Q. So what I'm struggling with is, why, then, is the
20 model, by and large, with the exception of the need to
21 change Chicago and then northwest of Chicago, why is the
22 model correct in that part of the country where milk is
23 needed the most, and then the increases are by and large
24 happening west of the Mississippi, that is the increases
25 from the model?

26 A. So I'm assuming you are talking about on
27 Exhibit 353?

28 Q. Sure. Yeah. Exactly.



1 A. We -- again, when we reviewed that, I would have
2 to leave that to those regional experts, because I didn't
3 have a lot of knowledge or input on that, because I
4 don't -- we don't move milk in that area.

5 Q. So which anchor cities fell under your subgroup
6 for the red pencil club?

7 A. The Indianapolis, kind of Nashville, even though
8 we don't -- that kind of is the pivot point coming towards
9 our plants, even though that's not an area where we have,
10 Chicago, St. Louis, Dubuque.

11 THE COURT: Did you say Asheville or Nashville?

12 THE WITNESS: Nashville.

13 THE COURT: Nashville. Okay. Thanks.

14 And then you said Chicago, and keep going?

15 THE WITNESS: Chicago, St. Louis, Dubuque, Kansas
16 City. And that's kind of -- I mean, Kansas City would be
17 on that western edge. We just -- we looked to keep --
18 when we had discussions, we talked about that. No
19 different than it is today, Indianapolis, St. Louis, and
20 Kansas City are all in the \$2.00 zone, and keeping a
21 similar correlation with that. But we didn't look and
22 review that. It was decided that Kansas City has a pretty
23 sufficient milk supply that takes care of that plant, that
24 they stayed close to the model, from my understanding.

25 BY MR. ENGLISH:

26 Q. So you don't need -- no one's stair-stepping milk
27 around Kansas City?

28 A. That would probably be a better question for Joe



1 Brinker on the movement of milk over that area because he
2 handles that. But from my understanding, I think during
3 times of the year they may stair-step milk south to, like,
4 Springfield and Northern Arkansas area, and then bring it
5 back in what we'll call the flush time of the year. But
6 Joe would be able to articulate that better.

7 Q. So why is Minneapolis not an anchor city?

8 A. Good question. I don't know why. I don't recall
9 why it didn't come up in conversation.

10 Q. So some of my next questions will use Exhibit 353,
11 but in comparison to your two Tables 3 and 4 on page 6 of
12 your testimony.

13 A. Okay.

14 Q. So Dubuque, which are now, you know,
15 stair-stepping milk from Dubuque down to Carlinville,
16 correct?

17 A. When you say "Dubuque," you mean --

18 Q. Dubuque, Iowa.

19 A. Dubuque County or the Dubuque plant?

20 Q. Well, the Dubuque County.

21 A. Yeah, there's -- Dubuque and Delaware County are
22 two counties right next to each other, and they have a
23 pretty significant milk supply that we stair-step milk
24 down, and one of our strategic supply partners.

25 Q. All right. You are proposing for Dubuque, you
26 know, looking at 353 and then your exhibit, you're going
27 to be \$0.15 less than the model, correct? The model would
28 have \$3.15, and you would have, in Proposal 19, \$3.00 for



1 Dubuque, correct?

2 A. Correct.

3 Q. Okay. Now, at the same time, Chicago is 3.10 in
4 your proposal, correct? Which is down \$0.60 from the
5 model, correct?

6 A. Correct.

7 Q. But it's 178 miles to Chicago. Isn't Dubuque much
8 closer to the milk supply, as you just discussed, there's
9 milk right there that you are stair-stepping?

10 A. Yes. Dubuque was part of the discussion, and I
11 referenced it in Table 4 of my testimony on page 6, that
12 fell into the analysis of regional competitiveness between
13 those listings and those plants there. So the Dubuque
14 number was derived to be in correlation to those other
15 plants.

16 Because, as an example, Cedarburg, a little bit
17 closer, but they -- they are both in the 1.75 zone
18 currently, so we wanted to maintain them to both be in the
19 1.75 zone -- or the same zone, so --

20 Q. Did you have that conversation outside your red
21 pencil club with other groups about this idea of
22 competitiveness being in the same zone because they are
23 selling into the same city?

24 A. We had that in -- in the Mid- -- what we'll call
25 the Mideast and the Upper Midwest, those -- those two
26 regions.

27 Q. But it seems like that's not what happened when we
28 look at Western Pennsylvania. Western Pennsylvania,



1 there's -- there are differences, correct?

2 A. I'm not familiar with Pennsylvania because we
3 don't have any milk over in that area.

4 Q. What principle should USDA apply: A larger slope
5 in order to move milk, a lesser slope in order to keep
6 milk from moving, or the same price because of
7 competition?

8 A. Do I only get to choose one of the three?

9 Q. Well, I'm asking for consistent principles because
10 I'm not sure I'm finding them.

11 A. The important thing is to make sure that milk
12 moves to the areas that it's needed. But along with that,
13 you do have to take some of those regional differences,
14 competitiveness, blend price, whatever you want to refer
15 to it as, as part of the analysis. That's kind of the --
16 the art of the analysis done in the proposal.

17 Chuck Nicholson, in conversation I had, he had
18 reiterated that to me, is that that's the one thing the
19 model doesn't take into consideration is --

20 Q. Well, saying it doesn't take into consideration
21 isn't the same thing as saying that USDA should apply it,
22 is it? That wasn't it. He was just saying it's not
23 considered, right?

24 A. As far as the art part of it or the regional --
25 the regional -- the regional adjacent markets?

26 Q. Well, Dr. Nicholson isn't here today, and he
27 didn't, to my knowledge, say those things. So I'm just
28 trying to figure out -- what is the basis for raising



1 Minneapolis, lowering Chicago, and then saying, well, all
2 these places, even though there's no plants in Chicago,
3 all these places that sell into Chicago have to have the
4 same price? What's the basis for that conclusion?

5 A. And, again, when we did that analysis, we used
6 previous history to use as a guide and -- and current --
7 no different than in some of these key cities. We looked
8 to make sure that they were the same correlation as they
9 are now.

10 Q. Well, would you agree that keeping the same
11 correlation is the same thing as saying you are not
12 increasing the slope?

13 A. That's a loaded question, because it all depends
14 on the part of the country that you are talking about. As
15 you get farther north, it's more about that more so on the
16 regional locations -- or the correlations than it is on
17 necessarily the slope, because there's ample milk up in
18 Minnesota, Wisconsin, South Dakota.

19 Q. What was the reason for lowering St. Louis by
20 \$0.05 from the model?

21 A. We did that mainly because of just continuity with
22 Indianapolis. But, see, we also lowered Indianapolis by a
23 nickel, so --

24 Q. It would have been just as easy to lower neither
25 one, correct?

26 A. Correct.

27 Q. Thank you.

28 Are you familiar with the concept of reserve



1 supply for Class I?

2 A. Yeah.

3 Q. What is your understanding of -- as USDA uses that
4 in setting Class I differentials, what -- what is your
5 understanding of reserve supply?

6 A. It would be a sufficient supply to be able to
7 handle any type of a seasonality or increased need or
8 demand by the Class I market.

9 Q. And is it your understanding that USDA uses a 25
10 to 30% reserve supply requirement?

11 A. I'm not specific to those exact numbers, but I'll
12 take your word on it.

13 Q. Would you agree that north of Chicago, whether in
14 Wisconsin or in Minnesota, there's far more than 25 or
15 30% reserve supply, given the Class I utilization?

16 A. Yeah. There's probably ten times what's needed.

17 Q. Are you aware of testimony in the past, USDA
18 adopting, at various times, a Class I differential price
19 surface that applied effectively 80% of the haul cost in
20 difference from one location to another?

21 A. We are -- I have heard of that. But I --

22 Q. Have you -- did you, in any of your work, apply
23 that principle to any of your proposals here today?

24 A. Part of that thought process was -- was when --
25 even coming from Dubuque down to Carlinville, or Delaware
26 County, that really that -- that 3.70 zone, if you used
27 80%, versus 3, there's only \$0.70 difference there, so
28 that's not covering all the freight -- you know, from an



1 80% perspective, that's not covering all the freight cost,
2 because the costs are generally are round \$3.00 a
3 hundredweight.

4 MR. ENGLISH: Your Honor, I would like to have
5 marked a new exhibit submitted earlier today to USDA. I
6 admit I'm having trouble getting on the website, so I
7 can't confirm that it's up yet, but we submitted MIG-36.
8 It's prepared by MIG. It's, you know, for Exhibit blank,
9 MIG-36, selected FMMO 30 and 32 Locations Comparison. It
10 doesn't ever mention National Milk, but it is, of course,
11 drawn from the various documents we have seen. And so I
12 have 15 copies for USDA.

13 THE COURT: Let's go off record while we
14 distribute this. I believe this will be marked as
15 Exhibit 354.

16 (Thereafter, Exhibit Number 354 was marked
17 for identification.)

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

19 THE COURT: All right. We're back on record. It
20 is 2:46.

21 Mr. English, we did indeed mark this exhibit as
22 354, and you may proceed.

23 MR. ENGLISH: Thank you, Your Honor.

24 BY MR. ENGLISH:

25 Q. All right. Mr. Hoeger, I distributed a limited
26 set from Iowa, Missouri, Nebraska, and then -- from
27 Order 32, and then Minnesota, Order 30. I don't want to
28 spend a ton of time on this, partly because we went down



1 some paths earlier in your testimony than I expected,
2 but --

3 THE COURT: I'm sorry. Pardon me?

4 MR. ENGLISH: We went down these paths earlier
5 than I expected in some of his testimony because he kept
6 talking about Minnesota, so I ended up going to Minnesota.

7 BY MR. ENGLISH:

8 Q. But I do want to understand, and I think you have
9 already said to some extent, I'll have to maybe talk to
10 Mr. Brinker, but I'm trying to understand why Anderson
11 Erickson goes up \$0.20 from the model, when Kansas City
12 goes up zero from the model, which would create some
13 issues because Anderson Erickson has told me, and they
14 will testify, their principal point of distribution to the
15 south is Kansas City.

16 And since you talked about needing to keep people
17 aligned, what was different about Anderson Erickson and
18 its competition into Kansas City that the principle of
19 alignment did not apply?

20 A. So our correlation was that when we looked at the
21 Des Moines market, which is a growing market, we looked at
22 Omaha, and we looked at Dubuque. Milk travels -- and then
23 we also looked at Le Mars, the Dean Le Mars DFA from
24 Plymouth, Iowa. Those all commute for the Des Moines
25 market. We bring milk over from our Hiland plant.

26 So currently -- and, again, this is that tipping
27 point -- that currently the current model is -- and
28 there's sufficient milk supply there -- that those plants



1 right now all have no more than a nickel difference.
2 Omaha currently is a nickel higher than Des Moines, and
3 Dubuque is a nickel lower than Des Moines. So we looked
4 at those three plants of keeping them on an equal playing
5 field.

6 And then, currently, also Kansas City is \$2.00
7 versus Des Moines being 1.80, so there's \$0.20 difference,
8 so we felt that increasing the spread by \$0.15 was a fair
9 competitive situation.

10 BY MR. ENGLISH:

11 Q. Even though in Chicago you thought it was fair to
12 keep everybody at the same level?

13 A. I don't think everyone in Chicago is at the same
14 level. They are either at \$3.10 or \$3.00.

15 Q. But they are at the same level relative to where
16 they were, correct?

17 A. Correct.

18 Q. But that's not true. I mean, you have now said
19 all of these plants sell into Des Moines. And for those
20 plants selling in Des Moines, Dubuque went down \$0.15 from
21 the model; Le Mars went up \$0.15; Anderson Erickson went
22 up \$0.20; and to the extent there's Hiland, you know, it
23 stayed the same. So that's not the same principle it
24 seems to me.

25 A. We came to a conclusion of the -- having the set
26 number, so we felt \$3.00 was a set number of being a
27 similar correlation. It's no different than Omaha
28 technically should have been \$0.20 under the model, but we



1 raised that \$0.40. So we gave Omaha -- we penalized
2 Omaha, and it's not -- they are going to be less
3 competitive to serve the Omaha than Des Moines market.

4 Q. So if you look now at Exhibit 300 and Row --

5 A. 300 or 301?

6 Q. I'm asking you to look at 300.

7 A. Okay.

8 Q. I want you to look at Row 831, which is Plymouth,
9 Iowa, where the Le Mars plant is, correct?

10 A. Correct.

11 Q. So if you look at line 831, and you look across
12 under Column O, which was the March 2023 number, it's
13 \$3.00.

14 A. Yeah. And the model suggested 2.65.

15 Q. The model suggested 2.65.

16 A. Correct.

17 Q. But at least somebody at some point said, let's do
18 \$3.00. And then in Column S, it says 2.65.

19 But when you get to Exhibit 301 in the final
20 proposal, you are at 2.80.

21 Please explain the thinking of, okay, the model
22 says 2.65, let's go with \$3.00, back in March of 2023,
23 then let's go to 2.65 in May of 2023, and then let's,
24 finally, in July of 2023, propose 2.80. What was the
25 conversation around those four numbers?

26 A. I don't recall why the original O was at \$3.00. I
27 do recall the last part of it, and it came back to, again,
28 wanting to be in correlation of what we were doing between



1 that whole region in Iowa with those four plants -- or
2 even though Omaha is not in that -- in Iowa, but it's part
3 of the -- it serves that market area, the western part of
4 Iowa.

5 Q. Okay. But Anderson Erickson moves milk south and
6 east, not west. So why is it being compared now to Omaha?

7 A. Oh, Anderson Erickson moves milk northwest. They
8 move it northeast. I mean, they move it over to -- they
9 move it over to the east in the Davenport Quad City
10 market. In fact, I think that's fairly strong.
11 There's -- they have got a fairly large depot right across
12 from our regional office there.

13 Q. So similarly to line 381, let's look at line 1498,
14 which is Hiland, Kansas City.

15 THE COURT: 1498?

16 MR. ENGLISH: Exhibit 300, 1498. And under
17 Column O it says 3.70, whereas Column S says 3.35 which is
18 also what 301 has.

19 THE COURT: Which is also what?

20 MR. ENGLISH: What shows up in Exhibit 301.

21 So in other words, March, Your Honor, was 3.70
22 according to this, then May was 3.35, and the final
23 submission in June was \$3.35.

24 BY MR. ENGLISH:

25 Q. And so similarly, what was the thinking of
26 increasing from \$3.35 to \$3.70 in March of last year?

27 A. That was from one of our very first meetings that
28 I -- that I -- if I can recall, that that was going back



1 to, no different than Kansas City, St. Louis, and
2 Indianapolis are all in the \$2.00 zone, so we were trying
3 to make them all similar.

4 But we had many, many meetings that -- there's no
5 difference, as you can see, between Column O and obviously
6 Column S, and then what was the final in Exhibit 301.
7 There were many meetings where there were a lot of -- a
8 lot of review done to make changes and --

9 Q. If Anderson Erickson testifies, as I expect they
10 will, that their view of looking at this outside of
11 Des Moines is that their major competition is in Kansas
12 City, why doesn't the principle of keeping things similar
13 apply in their instance when the current difference is
14 \$0.20? And, yes, the current proposal's \$3.35, but you
15 have increased them \$0.20, and you have kept Kansas City
16 the same from the model.

17 A. Well, again, we -- we were -- when we did this, we
18 weren't putting as much weight into Kansas City as we were
19 looking at the correlation between Le Mars, Dubuque, and
20 Omaha to Des Moines, because those serve that market and
21 are competitors in that market, so -- and based on the
22 current situation, they are all within, you know, a nickel
23 of each other, no more than a dime. I think you would
24 have to go to Plymouth. I don't know if they are up in
25 that 1.65 or if they are 1.70.

26 Q. Well, regardless, even at Omaha --

27 A. At the end of the day we still -- we gave our --
28 our Omaha plant a competitive disadvantage because they



1 could now easily go and be more competitive in the
2 Des Moines market. That's less than a two-hour trucking
3 from Omaha to Des Moines.

4 Q. Isn't it a little northeast, though, to
5 Des Moines?

6 A. What's that?

7 Q. From Omaha, isn't it northeast to Des Moines?

8 A. It's pretty much straight east.

9 Q. But nonetheless, whatever you did with them, you
10 did just the reverse in terms of going down \$0.15 for
11 Dubuque, and going up \$0.15 for Le Mars, and up \$0.20 for
12 Des Moines, correct, for the model?

13 A. According to what this is, correct.

14 Q. So looking at the last row on 354, and I know we
15 have talked about this, but I just want to see if I can
16 close the loop.

17 For Hennepin, Minnesota, which is Minneapolis,
18 correct?

19 A. Yep.

20 Q. Correct?

21 A. Correct.

22 Q. Okay. You are proposing a \$0.35 increase over the
23 model?

24 A. Correct.

25 Q. And that is to help get milk to those plants,
26 correct? In order -- because of the blend price issue,
27 correct?

28 A. That may -- the main foundation of that is the



1 blend price. The other part of that is to also have the
2 three plants in Minnesota -- Minneapolis all on the
3 same -- all in the same location differential. Because if
4 you take the plants that you have there, they are at 2.65.
5 There's the old Schroeder plant, which is now, I believe,
6 owned by DFA. That is in a different county that was
7 supposed to be 2.75. And then our Woodbury plant on the
8 southeast side of Minneapolis is 2.85. And those two
9 plants from Woodbury to the Minneapolis Kemps plant is a
10 total of 22 miles.

11 Q. But regardless, you are raising them, all three,
12 correct?

13 A. Correct. And, again, that's -- the main
14 foundation was on blend. But then why we came to three
15 bucks is to -- we left all three of those to be the same
16 is to put them on the same playing field.

17 Q. If the main purpose is the blend and using the
18 largest one, which is \$0.35 increase for Hennepin, at a 6%
19 Class I utilization, that's \$0.02 per hundredweight,
20 correct?

21 A. Sounds about right.

22 Q. Are you going to move 1 pound of milk for \$0.02 a
23 hundredweight?

24 A. No.

25 Q. Turning to a different section of the Federal
26 Orders, this one not unique to Order 30.

27 Are you familiar with paragraph 75 of the Federal
28 Orders? And I will tell you what it is since it may not



1 trip off the tongue.

2 It is entitled "Plant Location Adjustments for
3 Producer Milk and Non-pool Milk."

4 A. I'm not familiar with that.

5 Q. Do you know whether that section was discussed by
6 National Milk, or at least your red pencil group, in
7 setting any of these differentials?

8 A. I do not recall at this time.

9 MR. ENGLISH: Your Honor, back on October 11th
10 when I thought I was having a longer time -- or
11 Mr. Hoeger --

12 THE WITNESS: Just a short time ago.

13 MR. ENGLISH: Yeah. We pre-submitted at the time,
14 or submitted to USDA, what we had labeled as
15 Exhibit MIG-35. We never got there in the time that
16 Mr. Hoeger and I had together on October 11th. So I now
17 wish to turn to that exhibit and have it marked.

18 THE COURT: Very good. Let's -- that's a large
19 stack. Let's go off record while these are distributed.
20 So this gets the next number, which would be 355.

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

22 (Thereafter, Exhibit Number 355 was marked
23 for identification.)

24 MR. ENGLISH: And I'll note that this was created
25 at a time when we had the corrected header issue, so it
26 has NMPF initials in it, but we made it very clear that
27 it's a MIG document.

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



1 We're back on record at 3:05.

2 We're looking at Exhibit 355, also labeled
3 Exhibit MIG-35.

4 Mr. English.

5 MR. ENGLISH: Thank you, Your Honor.

6 BY MR. ENGLISH:

7 Q. So this is, again, a MIG-prepared document
8 extracting from Exhibit 301, so we are taking ownership of
9 the document. But Exhibit 301 -- but only the Order 32
10 columns.

11 And so -- and then at the end we have added
12 differences and a percent change column. So it's 301,
13 extracted for Order 32, with two columns added,
14 mathematically calculated by Excel for the difference, the
15 differences, the University of Wisconsin average versus
16 the Proposal 19, and then the percent change.

17 So, Mr. Hoeger, I am really trying to understand
18 as a matter for principled rulemaking --

19 A. Uh-huh.

20 Q. -- the differences here between the model and what
21 NMPF has proposed, and the range of differences for
22 Order 32.

23 So, for instance, on page 3 for Illinois,
24 Rows 589, Ford County; 600, Iroquois; and 608, Kankakee,
25 we see 16% decreases from the model. And yet when you
26 look at Row 821, Mills, Iowa --

27 THE COURT: Before you go there, would you
28 spell Kankakee?



1 MR. ENGLISH: K-A-N-K-A-K-E-E.

2 THE COURT: Thank you.

3 MR. ENGLISH: I-R-O-Q-U-O-I-S.

4 THE COURT: And then you directed us to what?

5 MR. ENGLISH: To Mills, M-I-L-L-S, in Row 821,
6 which is up 11%.

7 BY MR. ENGLISH:

8 Q. Can you explain what core principles drive the
9 differences from the model of negative 16 to plus 11%?

10 A. Iroquois and Kankakee are up there in Northern
11 Illinois, which is close to Chicago. So looking at that,
12 that they were, again, part of that Chicago discussion in
13 those counties surrounding Cook County.

14 Q. Well, what about Mills, Iowa? Where's Mills,
15 Iowa, do you know? Western part of the state?

16 A. It's the western part of the state. I'm not 100%,
17 but it's west central, I believe.

18 Q. Given the proximity of milk, why is it going up
19 11% if the others are going down 16%?

20 A. I'd have to go back and read the specific notes,
21 but I'm going to estimate that it was continuity of
22 neighboring counties around there when we made a
23 geographic region that \$3.00 zone.

24 Q. And I think if we want to talk about Kansas, I
25 should hold that for Mr. Brinker, correct?

26 A. That would probably be a better -- Mr. Brinker or
27 Mr. Gallagher.

28 Q. Going back to Exhibit 300 and Column R.



1 Do you know where Column R came from?

2 A. I do not.

3 Q. So, for instance --

4 A. I know it's been asked a lot. Have we figured out
5 what it means yet?

6 Q. It wasn't my document. Going back to Exhibit 355,
7 the --

8 A. This one right here (indicating), right?

9 Q. Yes. So, you know, looking at the two far right
10 columns with differences of percent changes --

11 A. Yep.

12 Q. -- would it surprise you if I told you that for
13 Order 32, NMPF has proposed modifying the model results in
14 502 of the 545 counties listed?

15 A. 502 out of the 545 counties?

16 Q. Yes. Would that surprise you?

17 A. That doesn't surprise me.

18 Q. Would it surprise you if you looked back at
19 Exhibit 300 and compared Column O to Column S, that
20 National Milk, between Column O which was March and
21 Column S which was May, modified 339 of the 545 counties
22 in Order 32?

23 A. I wasn't aware totally of that total number,
24 because with Order 32 being so large from the east to the
25 west, we kind of split that in two areas, like I said.

26 Q. That's a lot of counties though, right?

27 A. It is.

28 Q. So -- and then --



1 A. It's one-sixth of our total in the total model.

2 Q. And then, again, between Exhibit 300, Column S,
3 and the final results in June and submitted in
4 Proposal 19, another 65 counties, or 12%, are changed.

5 Would that surprise you?

6 A. 65 counties?

7 Q. 65 more counties changed between Exhibit 300,
8 Column S, and 301, the submitted proposal.

9 A. Oh. Okay. I'm sorry, I was thinking of your --
10 that's where I was confused. I was thinking 502, so --
11 and I wouldn't be surprised. I mean, we continued to
12 refine as we -- one of the things that we did is look for
13 a little bit of continuity between counties. So I know
14 you're notating there's a lot of changes from the model,
15 but there are -- it's what I referenced even when we just
16 talked here on Minneapolis between Hennepin County,
17 Stearns County, and I believe Reiss County, there is a
18 dime difference.

19 So when it came to a nickel or a dime difference,
20 we tried to get some type of continuity on a flow of a
21 map, kind of like similar to today. So they are -- the
22 model showed for a lot of changes, and a nickel or a dime
23 we didn't feel was significant in that it was going to
24 impact either way. You know, we talked earlier about the
25 \$0.02, that a nickel or a dime difference just provided
26 better continuity and flow with neighboring counties.

27 Q. So there's a general trend towards consolidation
28 in the dairy industry, correct?



1 A. That's plant side and farm side.

2 Q. Milk supply and herd productivity is increasing,
3 correct?

4 A. Generally, yes.

5 Q. And on the farm side, consolidation is a rational
6 response for producers looking to achieve more profit,
7 correct?

8 A. More profit.

9 Q. More profit?

10 A. Yes. I mean, size -- size matters. I mean,
11 because just from a cost efficiency, it's almost a
12 requirement for them to continue to get larger.

13 Q. And there's more than enough milk in the United
14 States total given the fact we now export 18% of our
15 production, correct?

16 A. Correct.

17 Q. And the total, if you include all milk, not just
18 Federal Order milk, the total of milk that is Class I, is
19 18% Class I utilization nationwide, correct?

20 A. I -- I don't have that exact number, but that
21 sounds pretty accurate.

22 Q. And at the same time, Class I plants are closing,
23 correct?

24 A. Correct.

25 Q. And that's --

26 A. But some are getting -- you know, as others are
27 closing, they are getting larger, too, on the ones that
28 are surviving.



1 Q. Sure. There's consolidated volume, just like what
2 you did when you closed a plant and turned a plant into
3 distribution center, correct?

4 A. Correct.

5 Q. But also there's declining Class I sales, correct?

6 A. Yeah. There's been that general trend. I mean,
7 as -- as a lot of demographic or things have changed with
8 the consumer, you know, the decline in milk has been very
9 similar, and there's studies out there that show it's very
10 similar to the cereal decline. We are all not eating a
11 bowl of cereal in the morning. We are going for a sport
12 shake or a frappe. So even though milk in Class I is
13 declining, doesn't mean that milk is not getting consumed,
14 I mean.

15 Q. Right. It's getting consumed in other ways,
16 correct?

17 A. Correct.

18 Q. But nonetheless, it's Class I that we're here
19 about, not Class I differentials, correct?

20 A. Correct.

21 Q. And, you know, to the extent plants have closed
22 and consolidated volumes, those are rational business
23 decisions, correct?

24 A. Correct.

25 Q. And those closings naturally change where Class I
26 milk is bottled, correct?

27 A. Correct.

28 Q. And so there's plenty of milk going into other



1 products, and yet we are still asking to increase the
2 price for that one segment that's the declining market,
3 correct?

4 A. Correct.

5 THE COURT: Would you repeat that?

6 MR. ENGLISH: There's plenty of milk, much of it
7 going to other products other than fluid milk, and yet
8 we're still looking to increase the price for that segment
9 that is the declining market. And I heard him say
10 correct.

11 THE WITNESS: Yes.

12 BY MR. ENGLISH:

13 Q. I realize that you don't tie retail prices
14 directly, but nonetheless, I think there's evidence in the
15 record that consumer prices are up 4.25% in Chicago. If
16 you -- if you increase prices, how is that in the public
17 interest if we're in a declining market?

18 A. Well, you also have to -- I mean, we can say we're
19 in a declining market, and I don't say that overall milk
20 total Class I sales are down. But it's also, when you
21 talk about Class I utilization, you have to look at the
22 other classes and the growth that they have had. I mean,
23 decades ago we didn't consume near the cheese on a per
24 capita basis that we have done. I mean, that's -- just in
25 the last, what, ten years, that's almost double, isn't it?

26 Q. I'm not going to disagree with you.

27 But isn't the point of Federal Orders to bring
28 forth an adequate supply of fluid milk for fluid use?



1 A. Correct.

2 Q. And so doesn't increasing the prices on Class I
3 risk further erosion of Class I sales, putting more stress
4 on fluid milk plants, risking more closure, and having to
5 more milk into nonfluid uses in order to sell it?

6 A. Depends. I mean, if you look at some of the new
7 Class I products, you know, and I think in some of the
8 retails that are out there on those, they seem to be
9 growing. I mean, we heard I think earlier from I believe
10 Fairlife that they -- they are seeing great growth in
11 theirs, and they continue to do plant expansions.

12 Q. And that's not overcoming --

13 A. And they're -- what's that?

14 Q. -- that's not overcoming overall sales and
15 declines in Class I, is it?

16 A. No. But they are also -- their innovation has
17 allowed -- you know, if you look at what a gallon of milk
18 is on a per -- per-ounce perspective versus on a per-ounce
19 perspective in some of those other competing beverages
20 we'll call it, that a gallon of milk is still a great
21 value.

22 Q. Did you hear the testimony of Mr. Lamers?

23 A. Yes. Don't know if I can totally recall all of
24 it, but I will say I was here the day --

25 Q. Do you recall and look at the testimony about the
26 dramatic sales declines from Order 30 being down
27 approximately 50% over the time period he was looking at?

28 A. I --



1 Q. In Order 30?

2 A. Order 30?

3 Q. Yes. Order 30.

4 A. Was he talking about the Class I sales?

5 Q. Class I.

6 A. What period of time was that?

7 Q. I thought it was the last 15 years.

8 A. Okay. And that's not really a fair analysis.

9 Q. Why is it not a fair analysis for Order 30?

10 A. Because our Dubuque plant, which sits in Order 32,
11 had been an Order 30 plant for many years, and then it
12 flipped to Order 32 during that timeframe that he quoted.

13 Q. Would that account for 50%? A drop in 50%?

14 A. No, but that probably -- it's a significant
15 percent. I don't want to disclose that number because --

16 Q. And I don't want you to.

17 A. But I do know it's a significant percent being
18 double digits.

19 Q. But nonetheless, Order 30 sales will be down even
20 if you exclude that, correct?

21 A. I'm not going to disagree with that statement, but
22 it's been a little misleading in my mind.

23 Q. So how do you cure that by raising Class I
24 differentials in Minneapolis, reducing it in Chicago, in a
25 market with 2 billion pounds of milk that voluntarily
26 pools or depools regularly?

27 A. Again, like I said, when we did the analysis, we
28 looked at the blend price, and that was the foundation of



1 our analysis.

2 Q. I thank you for your time, sir.

3 MR. ENGLISH: This concludes my cross-examination,
4 Your Honor.

5 THE COURT: Now, we did not admit --

6 MR. ENGLISH: Oh, I'm sorry, could I move
7 admission of --

8 THE COURT: Well, and we could wait -- but I think
9 we should do it now, just so that I don't lose track.

10 MR. ENGLISH: I move admission of 354 and 355,
11 Your Honor.

12 THE COURT: Is there any objection to the
13 admission into evidence of Exhibit 354?

14 There is none. Exhibit 354 is admitted into
15 evidence.

16 (Thereafter, Exhibit Number 354 was received
17 into evidence.)

18 THE COURT: Is there any objection to the
19 admission into evidence of Exhibit 355?

20 There is none. Exhibit 355 is admitted into
21 evidence.

22 (Thereafter, Exhibit Number 355 was received
23 into evidence.)

24 MR. ENGLISH: Thank you again, Mr. Hoeger.

25 THE COURT: Let's take a five-minute stretch
26 break. You can leave if you can be back in five minutes.
27 Please be back and ready to go at 3:27. We go off record
28 at 3:21.



1 (Whereupon, a break was taken.)

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

3 We're back on record. It's 3:29.

4 Who next will examine the witness, Mr. Hoeger?

5 Mr. Miltner.

6 CROSS-EXAMINATION

7 BY MR. MILTNER:

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

10 Good afternoon, Mr. Hoeger.

11 A. Good afternoon, Ryan.

12 Q. I am intending for this to be relatively brief.

13 A. Okay.

14 Q. So I'm looking at your testimony, Exhibit 352, and
15 I'm looking at the bottom of page 6 where you have what is
16 labeled Table 4.

17 A. Okay.

18 Q. So I'm going to walk through kind of my logic
19 here, and then hopefully a couple follow-up questions.

20 If I look at the column where it has current price
21 surface --

22 A. Uh-huh.

23 Q. -- the spread across all of those different points
24 is a nickel, correct?

25 A. Correct.

26 Q. And if I look at the proposed price surface, the
27 spread then across those same points is \$0.30, if I have
28 that correct.



1 Is that your understanding and read of the same
2 table?

3 A. Correct. And it's purely because of Fort Wayne
4 and Huntington.

5 THE COURT: I didn't really understand that. Say
6 it again?

7 THE WITNESS: That is purely because of Fort Wayne
8 and Huntington being included in the list.

9 BY MR. MILTNER:

10 Q. Okay. And so as National Milk was putting
11 together their surface, was the -- was the relationship
12 among those cities specifically a point that was discussed
13 and considered?

14 A. When we had our regional meetings they were.

15 Q. And so as that spread moved from \$0.05 to \$0.30,
16 that spread was something that the committee was
17 comfortable with; is that correct?

18 A. Correct. We actually -- I mean, if you look at
19 it, because I know there's been some focus of that, but
20 co-op owned plants were put at a competitive disadvantage
21 on the proposed model against proprietaries because there
22 are some of those listed there that are proprietary
23 plants. So where they were same, Fort Wayne and
24 Huntington was the same previously, now Huntington and
25 Fort Wayne are \$0.20 higher.

26 Q. Okay. So it's not listed here, but I went back
27 and I looked at Exhibit 300, and I think it would be the
28 same if you looked at Exhibit 301. I looked at the model



1 average for those points, which is Column M as in Mary.
2 And I don't want to go through them all, although I'm
3 happy to if you would like, but I found that the spread
4 among those points on the model was also \$0.30.

5 Is that -- do you recall if that was the case?

6 A. I do recall that, but I don't -- it wasn't -- I
7 don't know the exact details, but I'll take your word at
8 that.

9 Q. Okay. So now the next thing I looked at was the
10 price at Cook County, Illinois, for Chicago.

11 A. Uh-huh.

12 Q. Under the current price surface, that's \$1.80
13 point on the map, correct?

14 A. Correct.

15 Q. Now, as proposed, it's \$3.10, correct?

16 A. Correct.

17 Q. Under the model, it's \$3.70, though?

18 A. Yeah, it was more than double.

19 Q. Okay. So I'm wondering, if you could help me, for
20 the purposes of the record, explain why, if all of these
21 points were still relatively tightly bunched, then the
22 necessity -- what was the necessity for changing Cook
23 County, Illinois?

24 A. The -- there was discussion in -- mainly in
25 Michigan, because that's been a strong growth area, and in
26 the last decade we know of the oversupply that Michigan
27 has had, because there's been a lot of milk shipped as we
28 like to refer to, around the lake, to Wisconsin, that



1 raising the differential that much would continue to
2 promote more milk growth so we didn't want to, you know,
3 overcompensate in that. So that's why we -- when we
4 started to look at correlations and moving milk, it was
5 also looking at moving milk from Michigan into Indiana,
6 that there is a -- there is -- there does need to be some
7 type of a slope there. And more so moving from probably
8 Northern Indiana, Michigan, to getting closer adjacencies
9 to the South and Southeast.

10 Q. So I think I understand what slope you are talking
11 about. But for the purposes of the record, explain what
12 slope you are talking about in that context and what that
13 gradient direction looks like as you describe it.

14 A. So -- and I'll -- I'll use our Holland, Indiana,
15 plant as an example. There is a \$0.30 difference
16 currently -- or excuse me -- \$0.50 difference currently
17 between we'll say Fort Wayne and Holland. Holland is
18 considered to be part of that, starting the step into the
19 Southeast, which we all know is deficit. So we were
20 looking at that the -- that slope, if you look at the -- I
21 believe if I remember correctly, and a long time ago, but
22 that slope was flatter --if you would go to Battle Creek,
23 Michigan, where our Battle Creek plant is -- that slope
24 was flatter than what the -- in the model calling, when
25 you are looking at 3.70 to -- I believe Holland went to
26 \$4.00, so that actually decreased. So we thought there is
27 a cost of moving milk, so that slope should be -- should
28 be a larger slope than the \$0.30 from Michigan or Northern



1 Indiana down to Holland. And with that change being made,
2 that then caused us to review the other plants that are
3 listed in Table 4.

4 Did that explain that clear enough or is that --

5 Q. Yes. I think so. Thank you.

6 So there's another element, I think, of the prices
7 around Chicago and into Order 30 that I don't know has
8 been really testified to. I think Mr. English kind of
9 touched on it a bit. And that is with Chicago being the
10 base point for Order 30, if -- if that price is \$3.70 --

11 A. Uh-huh.

12 Q. -- and the prices up in Wisconsin are \$3.10 or
13 \$3.20, did your -- your committee discuss the impacts of a
14 50 or \$0.60 spread between the base price point and price
15 points in Wisconsin?

16 A. Yeah. And that's -- that goes back to that blend
17 price analysis I mentioned. And we specifically really
18 probably more so looked at the Chicago base price zone to
19 Minneapolis and milk in Minnesota.

20 Q. And --

21 A. But the same thought process would apply if you
22 wanted to go to -- I'm having a brain lapse. It starts --
23 large milk production county in Wisconsin starts Manitowoc
24 I believe -- up by North -- North Central, we'll call it,
25 Wisconsin. That's a large milk producing county in the
26 state.

27 Q. So if there was a large spread in the
28 differentials between the milk production -- strong milk



1 production counties in Wisconsin and Cook County --

2 A. Uh-huh.

3 Q. -- and low Class I utilizations in Order 30, would
4 you expect there to be a greater -- depooling to a greater
5 extent?

6 A. And which is when you add a greater depooling to
7 your -- thank you for the question.

8 When you add a greater depooling to that extent,
9 you are also going to -- you are going to add greater
10 volatility in those blend prices because you are going to
11 have more companies jumping in and out of the pool.

12 Q. So now I want to extend those thoughts eastward
13 into Order 33.

14 A. Okay.

15 Q. And if I look at Kent County, Michigan, where
16 Grand Rapids is, and you have \$1.80 as the current
17 differential --

18 A. Okay.

19 Q. -- 3.10 as the proposed differential, and if we
20 look at the base point for Order 33 in Cuyahoga County,
21 current --

22 A. Which is \$2.00, I believe.

23 Q. It's \$2.00 right now, so a \$0.20 difference
24 between Grand Rapids and Cleveland.

25 A. Okay.

26 Q. And you have a -- now a \$0.60 gap as proposed
27 because Cuyahoga County is proposed at \$3.70, does that
28 \$0.60 gap between Grand Rapids and Cleveland give you the



1 same pause that it would in Order 30?

2 A. No, only because of the fact that we used to -- we
3 used to have a bottling plant Murietta, Ohio, that we
4 bought three -- a little bit over three and a half years
5 ago that we closed. And, now, granted, that's south of
6 Cleveland, but we found that there actually -- that was a
7 challenging plant to service. We pulled milk from
8 Michigan down to that plant on a quite frequent basis. So
9 I guess that pause -- and I -- I understand what you are
10 saying from a blend price perspective, but part of that
11 is, is that we want to pull milk to that Ohio region.

12 Q. But your -- but your analysis for Chicago assumed
13 that milk was moving westward?

14 A. But you are using Grand Rapids as a processing
15 plant. I guess I'm looking -- when I say "Michigan," I'm
16 looking at the Michigan milk supply and that -- so -- but
17 those -- those are going to get zoned. You know, that
18 farm is going to make the decision, okay, do I ship it to
19 Grand Rapids and get a \$0.20 increase compared, you
20 know -- or excuse me -- get a 3.10 or do I ship it and get
21 a larger to cover that freight? And, you know, that's the
22 purpose of the location differentials.

23 Q. I guess I'm not understanding the difference
24 between the analysis in Order 30 and Order 32 then,
25 because they seem to me to be identical or very similar.

26 A. That -- and you are correct, and it is very
27 similar. Why we did that, we were more focused on those
28 plants that are servicing Chicago to make sure that they



1 all had that regional competitive similarities, and we
2 didn't take -- I would say that we probably didn't take
3 into consideration the zone back, like we didn't take into
4 consideration the zone back in Wisconsin and Minnesota.

5 Q. I appreciate the answer there.

6 Now, in Michigan, did the committee take into
7 consideration the fact that while there is growth in the
8 milk supply in Michigan, there is also an extremely large
9 cheese plant that's been commissioned in the last few
10 years there?

11 A. Correct. And that -- that probably has chewed up
12 what our -- taking in a big chunk of the surplus that had
13 been what I had referenced earlier, traveling around the
14 lake, because there was -- there was a lot of -- from
15 2013, 2014, until probably that cheese plant opened, there
16 was a lot of milk making that trip around the lake, as we
17 call it.

18 Q. And -- and Fairlife's first plant, now an
19 expanding plant, is right outside of Grand Rapids as well,
20 correct?

21 A. That is correct. I believe so.

22 Q. And so was that taken into account by the
23 committee that there's yet another demand plant -- Class I
24 demand plant in Grand Rapids that is utilizing that
25 growing milk supply there?

26 A. As far as specifically naming a plant, we didn't
27 take that into consideration. Because, again, I guess if
28 you really look at the Fairlife plant, it is growing, and



1 that is a specialty product, too, that -- and that. But
2 we really didn't take that in -- I guess I don't recall
3 us -- if at the time, was that Fairlife expansion
4 announced yet? I don't know if that -- have they
5 completed it? I don't know.

6 Q. I don't -- I don't know exactly the dates on that.

7 A. I don't know. I think the one -- I do know when
8 we went through with Nicholson and Stephenson, when we
9 told them the adds and the subtracts, I know the large
10 cheese plant was taken into consideration, along with the
11 Class -- the two -- I believe the Class I plants were
12 taken into consideration -- yeah, they were taken into
13 consideration too, in the Chicago suburbs that had closed.

14 Q. So I want to talk about Cuyahoga County, Ohio, for
15 just a second. It's proposed at \$3.70; the model
16 reflected \$4.10.

17 Can you speak to if there's a need to pull milk
18 into North Central Ohio, why -- why that would be reduced?

19 A. Specifically that part of Ohio, I probably -- I
20 can't speak to because of the fact that we, even
21 ourselves, don't have milk there, so I relied on other
22 resources on the committee to answer that and determine
23 some of those levels.

24 Q. But if there's a need to move milk from -- from
25 Michigan to -- to Cleveland or other parts of Ohio, rather
26 than reducing the differentials in both Grand Rapids and
27 Cuyahoga County, you could have stuck with the model and
28 maintained pretty much the same slope and draw, couldn't



1 you?

2 A. Well, if you had mentioned Cuyahoga County should
3 have went to \$4.10 and Grand Rapids was supposed to be
4 \$3.00 --

5 Q. 3.40?

6 A. 3.40?

7 Q. Yes.

8 A. So the model was going to call for a \$0.70
9 difference, correct.

10 Q. Correct. And you have got it at 60.

11 A. At 60. So like I kind of mentioned earlier when
12 Mr. English was asking about some of the differences in
13 some of the counties, when it came to a nickel or a dime,
14 we -- we weren't that finite. We were kind of looking for
15 continuity in that real small geographic -- I mean, we
16 didn't want to have three different counties have only a
17 dime difference, so we a lot of times blended it, and that
18 was kind of the art part of the model.

19 Q. Although here we're not really talking about a
20 dime in terms of change by county. I mean, it's a \$0.40
21 drop -- or excuse me -- a \$0.30 drop in Kent County,
22 Michigan, from the model to the proposal.

23 A. Yeah.

24 Q. The \$0.10 difference is the difference in the
25 spread between Grand Rapids and Cleveland.

26 A. And Cleveland. So that would -- that wouldn't
27 have impacted the -- it benefitted the -- I guess the
28 Michigan producers by \$0.10 on the blend price.



1 Q. Although if you are --

2 A. Because it should have been \$0.70 if we followed
3 the model, but now it's only 60, correct?

4 Q. Although if you are a local farmer supplying a
5 plant in Grand Rapids, it's \$0.30 that you are not
6 necessarily accruing in terms of a higher differential to
7 the pool, correct?

8 A. And -- yeah. And the same thing would be said by
9 the producer in Ohio that's \$0.40.

10 Q. Right.

11 A. Correct.

12 Q. So a co-op with farms in Ohio and Michigan
13 might --

14 A. Raise exception.

15 Q. -- might raise an exception?

16 A. Uh-huh.

17 MR. MILTNER: Thank you. I don't have anything
18 else.

19 THE WITNESS: Okay.

20 THE COURT: Other questions for Mr. Hoeger?

21 CROSS-EXAMINATION

22 BY DR. CRYAN:

23 Q. Back again. I'm Roger Cryan with the American
24 Farm Bureau Federation.

25 Hello, Chris.

26 A. Good afternoon, Roger. How are you?

27 Q. Very well.

28 Are you a member of Farm Bureau?



1 A. Yes, I am.

2 Q. I'm glad to hear it.

3 A. Prairie Farms is, too.

4 Q. Yeah, Prairie Farms has a close relationship with
5 the Farm Bureau. I appreciate that, so thanks for
6 mentioning that.

7 The proposals from National Milk to modernize,
8 update Class I differentials, would you agree that they
9 are most fundamentally rooted in the model results?

10 A. For the most part, correct. There are -- there
11 are regional, you know, adjustments that are made to the
12 art part of it that we -- as we mentioned.

13 Q. At the root --

14 A. Yes.

15 Q. -- the model is the foundation.

16 A. We used -- at the root, we used the model as our
17 foundation or guide to get us started.

18 Q. Wonderful.

19 DR. CRYAN: Thank you very much.

20 THE COURT: Thank you, Dr. Cryan.

21 Other questions? Is there anyone else for
22 cross-examination before I ask the Agricultural Marketing
23 Service for their questions?

24 No one. I turn now to the Agricultural Marketing
25 Service.

26 MS. TAYLOR: Good afternoon.

27 //

28 //



1 CROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. We actually don't have a lot of questions. I
4 think most of this has been covered.5 One -- I want to start on page 3, Table 1. And
6 you mentioned on Table 2, it says Federal Order 32 data.

7 Is that the same for Table 1, your source?

8 A. You are talking the 28 southeastern counties of
9 Iowa?

10 Q. Yes.

11 A. Yes. Both Tables -- the 51 central counties of
12 Illinois, Table 2, and the 28 southeastern counties of
13 Iowa, Table 1, are from Order 32 --

14 Q. Okay.

15 A. -- data.

16 Q. Now, I had to re-read everything to try to figure
17 out what my notes from six weeks ago --

18 A. So you missed part of the football games Thursday?

19 Q. No, I watched the Ravens win last night. I did.

20 So I have for my notes and what I re-read, you
21 know, yesterday and today, is that these tables,
22 particularly the Iowa table, I think the point of this
23 table -- and please correct me if I'm wrong -- is to show
24 that there's less milk in Southeast Iowa now, so you can't
25 do the stair-stepping that you had talked about
26 previously.27 A. Correct. The whole point of the table is just to
28 show that there are less farms, which is really not

1 surprising, but also less milk.

2 I would note that the restricted counties did
3 increase by counties, but the one -- there's one county,
4 which is Marshall County, which had zero back then. It
5 was a restricted county back then, and it's still a
6 restricted county now.

7 Q. Uh-huh.

8 A. I do know for knowledge that back in 2002 that
9 farm that's in that county, because there's one, and it
10 was 250 cows at the time, and today it's 7,000 cows. So
11 hence, that's part of the reason why the restricted
12 counties' volume jumped as much as it did.

13 Plus I would say it's -- Order 32 personnel could
14 probably better explain, but Western Iowa has continued to
15 grow, and there's -- and Cass County is another example.
16 If you go back to the results, there is -- there were four
17 farms that produced a total of three and a half million
18 pounds of milk in Western Iowa, and there's now an
19 8500-cow dairy in there. And we know that just because we
20 deal with those producers and that.

21 So, hence, those two farms alone kind of explain
22 why the restricted counties jumped from 3 million --
23 3.2 million up to 33 million and that.

24 Q. Uh-huh. Okay.

25 A. So -- but the point being, and your original
26 question is, is decrease in farms and decrease in volume.
27 So the stair-stepping has got to be a bigger stair-step.

28 Q. I think I asked this question of a different



1 witness many, many weeks ago, but I'll ask you.

2 When it comes to particularly milk going into the
3 Southeast --

4 A. Uh-huh.

5 Q. -- of which you discuss on page 5, the Department
6 currently has a recommended decision out there that put in
7 distributing plant delivery credits.

8 A. Correct.

9 Q. I think that's what they are called.

10 A. Yes.

11 Q. And that would help cover some of the haul for
12 that milk going into the Southeast, which doesn't
13 currently get any transportation cost assistance.

14 A. For some of the -- for --

15 Q. For regular suppliers.

16 A. Regular suppliers, that is correct. That -- the
17 Department currently is weighing that decision. I guess
18 we're waiting for that, so we will see what that
19 recommendation is.

20 But the recommendation is, is for the regular
21 suppliers that are outside of the order that are a regular
22 part of the Southeast supply, and they would qualify under
23 that distributing plant credit up to a max. You might
24 have to ask Mr. Sims because he is -- he was a little more
25 in touch, but I think it's up to a max of 50 or \$0.55 a
26 hundredweight, because we also have the transportation
27 credit.

28 Q. Right. That's the assessment paid by the handler.



1 A. Correct.

2 Q. Yeah. My question is on those, should they be
3 recommended, again, by the Secretary and voted and
4 approved and implemented, should those be considered at
5 all when we are looking at the Class I differentials in
6 that particular of the country?

7 A. They probably should be given some consideration.
8 And, I mean, really probably one of the struggles that has
9 been in Order 7 and one of the big challenging -- probably
10 the one order that's got more challenges than Order 5 is
11 the -- even though the transportation credit fund is out
12 there, and other than maybe one or two months of the year
13 from my understanding -- because, again, we don't do that,
14 we do the consistent year-round. But from what I have
15 heard from our suppliers, and I think what was even
16 discussed at the Southeastern hearing, is that fund on the
17 transportation credit side usually only pays out 100% I
18 think one or two months of the year, and it usually runs
19 out of funds by November, December, January, February.
20 I -- I can't say the exact month. I would have to go back
21 and look at the data. But I think every year since it's
22 been implemented, that it's run out of money before and
23 that.

24 So I guess maybe it should be given some
25 consideration, but I guess we -- if we want to make sure
26 if we do that, let's ensure if we think that that supplier
27 is going to get \$0.50 a hundredweight because they get
28 \$0.50 a hundredweight in August and September, then we



1 should make sure that they still get \$0.50 a hundredweight
2 in February, and then not penalize them by adjusting the
3 location differential by the proposal that National Milk
4 has put forth, because that would be -- that would hurt
5 the supplier and that's -- they would end up covering the
6 transportation costs, and we don't want to see that happen
7 as being a plant operator in that market.

8 Q. And just so the record's clear. In that case when
9 we are talking about those credits, they are paid to the
10 handler or the cooperative, not necessarily the individual
11 producers?

12 A. Correct.

13 Q. Whereas the differentials --

14 A. Goes to the producers.

15 Q. -- on the producer side, goes to the producer?

16 A. Correct.

17 Q. Okay. I wanted to turn to page 6, your Table 4.
18 And you talked a little bit about this with Mr. Miltner,
19 about how Fort Wayne and Huntington are 3.30.

20 A. Uh-huh.

21 Q. And you acknowledge that they are different than
22 the others that are three bucks or 3.10. And I'm curious,
23 I don't think I heard why those were increased to 3.30,
24 being a \$0.20 difference from the other counties, whereas
25 currently they are all \$1.80.

26 A. We looked at it in correlation to if those --
27 those two plants would -- those two plants were kind of
28 unique in the sense that they probably go east and west,



1 and maybe south, but we looked at a --

2 Q. Meaning the distribution.

3 A. -- distribution. And we -- we looked at it also
4 to take into consideration what plants were east of there.
5 So, again, that limited that whole competitive price
6 alignment. Because if you go back to -- I'm going to
7 butcher what Mr. Miltner said, but Cuyahoga County in
8 Ohio, that is the \$2.00 zone, and so -- but now it's --
9 there's 3.70 to 3.30. So we try to keep a little of that
10 price continuity going east to west also.

11 Q. Okay.

12 A. If that makes sense.

13 Q. Yeah. With cities that aren't necessarily on this
14 table?

15 A. Correct. Yes. Yeah. Because this was more
16 focused just specifically on the Chicago market. Because
17 Huntington and Fort Wayne do do some supply into the
18 Chicago market, but not a tremendous amount.

19 Q. In your discussion on the Upper Midwest from when
20 we looked at the model results that came out in that
21 region, it has more zones than what is proposed by
22 National Milk, the slope is greater.

23 A. Correct.

24 Q. And I take it from the top of page 7 -- and I'm
25 just trying to summarize your testimony from October, from
26 your cross-examination today, and make sure we're pulling
27 it together.

28 What I gather is, you needed fewer zones in



1 recognition of kind of what you all feel is reality versus
2 what the model says things should happen, and the Federal
3 Orders provisions that exist, and the blend prices that
4 come out of those provisions that aren't accounted for in
5 the model --

6 A. Uh-huh.

7 Q. -- you needed fewer zones to make sure the milk
8 kind of stayed up there somewhat. And you don't
9 necessarily need to encourage all of that milk to come
10 down. Am I -- do I have that correct?

11 A. That's correct. That's correct. And the reason
12 we did is then we looked at, again, not necessarily just
13 Class I, but there are a tremendous amount of cheese
14 plants that are pool supply plants, and so we wanted to
15 make sure that they all had, again, a similar kind of
16 level playing field from a competitive perspective on --
17 you know, on their pooling of their milk.

18 Q. Okay. We have to remember what you have asked
19 already, so we try not to double ask you those questions.

20 MS. TAYLOR: I think that's it from AMS. Thank
21 you.

22 THE COURT: Are there other questions before we
23 turn to redirect and the issue of the admission into
24 evidence of Exhibit 352?

25 All right. I see no other questions.

26 Ms. Hancock.

27 Let's first deal with your having moved into
28 evidence Exhibit 352.



1 Mr. Hill, were your concerns addressed during
2 cross-examination?

3 MR. HILL: For the most part I'm not going to
4 object to this. But I'm just going to point out for
5 Figures 1 and 2, which Mr. Hoeger, it doesn't appear that
6 he -- he is actually privy to the facts of those, of
7 Figure 1 and 2. I will point out that in looking at the
8 next --

9 THE COURT: You are not right into the mic.

10 MR. HILL: Okay. Sorry.

11 THE COURT: That's much better.

12 MR. HILL: So I just want to point out, I'm not
13 going to object, like I said, but I will say that in
14 Figure 1 and 2, it's looking at the polar tankers, and
15 there are different prices, and I guess the point was to
16 show that they have increased in price. But because we
17 don't have the actual witness here for these two
18 documents, we're unsure whether the polar tankers listed
19 in Figure 1 are the same size as the polar tankers that
20 are in Figure 2, so it's kind of difficult to compare
21 price for the purposes for which the proponents have
22 offered them.

23 So I'm not going to object to them, I'm just going
24 to point out that I don't think it does what they want it
25 to do, but I'll leave it at that.

26 THE COURT: Ms. Hancock, I'll let you deal with
27 that, if you wish, during your redirect.

28 MS. HANCOCK: Thank you.



1 REDIRECT EXAMINATION

2 BY MS. HANCOCK:

3 Q. Mr. Hoeger, would you like to address anything
4 that Mr. Hill said?5 A. The document is as presented. And, no, I did not
6 specifically get them. It was -- this came from one of
7 our dairy producers that bought the tankers or were
8 getting the tankers quoted, so...

9 Q. One of your cooperative members?

10 A. Yes. In fact, he's on our Board of Directors.

11 Q. Okay. And he provided this to you?

12 A. Correct.

13 THE COURT: So you say he was getting the tankers
14 or getting them quoted?15 THE WITNESS: Yes. Both of these situations were
16 quotes that he had received to purchase new tankers.

17 MS. HANCOCK: Okay.

18 THE COURT: Let's deal with the admission into
19 evidence.20 Is there any objection to the admission into
21 evidence of Exhibit 352?22 There is none. Exhibit 352 is admitted into
23 evidence.24 (Thereafter, Exhibit Number 352 was received
25 into evidence.)

26 MS. HANCOCK: Thank you.

27 BY MS. HANCOCK:

28 Q. Mr. Hoeger, I'm going to -- I have some notes that



1 started back when your cross originally started in
2 October, so maybe this is more for the audience, just to
3 remind people that it might not sound as familiar from
4 today, so I'm just going to ask you about a couple of
5 things.

6 The first one, there was a line of questions that
7 you were presented with about whether cheese plants could
8 be used for balancing, as they could put up silos, save
9 the milk, process it at a later time.

10 I'm wondering if, in your experience, is that a
11 sufficient way to balance milk?

12 A. We have several cheese plants, and we -- I would
13 be foolish to say that we don't do some balancing. But
14 for us to really maintain in the competitive marketplace,
15 we have got to run them at a pretty consistent level year
16 round. But we do have some silo capacity that would allow
17 us to ebb and flow ever so slightly, but not -- not -- not
18 to the degree like -- I'll even use last week as an
19 example. We -- we ended up having to take our plant down
20 a day and a half of production, just so we could make sure
21 we could take care of the supply, and now this morning
22 we're sitting here with, you know, 20% more than what we
23 need. So cheese plants can be used slightly, but not
24 as -- not as effectively as like a powder plant can
25 because it's got a longer shelf life.

26 We -- we can't just take on extra milk at our
27 cheese plant, especially our cheese plants because they
28 are Swiss cheese. And Swiss is a very finicky cheese,



1 that, first off, requires really high-quality milk because
2 we want to make sure there's very little bacteria and any
3 other issues with that, because when you make Swiss
4 cheese, you pasteurize to kill all the bacteria. And then
5 what we do is we put in what's called gas formers, which
6 is a bacteria that then creates the eyes. So you are
7 really counterintuitive thinking, why would you add
8 bacteria when -- but the reason is, you want that milk to
9 be ultra clean.

10 So with that being the case, Swiss cheese also, we
11 don't carry much more than 90 days of inventory because we
12 start to see the cheese break down, and we have got to
13 break it -- we have got to -- we have got to age it
14 60 days before we can sell it. So it's not like you can
15 ebb and flow and let a large amount of inventory of milk.

16 And plus when you have extra milk, for us when we
17 have extra milk sitting in the silo, milk sitting in the
18 silo allows that bacteria to start to grow, so that
19 creates challenges.

20 So for us, we don't use our cheese plants to
21 really be balancing in a sense. If we do, we end up
22 pulling it and then we're not competitive because we're
23 not running as efficiently. So --

24 Q. And in that explanation you had mentioned the
25 heightened level of quality, especially for items like
26 Swiss cheese.

27 Does Prairie Farms have standards for its
28 producers that exceed the PMO?



1 A. Yeah. I mean, if you look at just even -- I think
2 most everyone does nowadays. We're all in -- have to --
3 whether it be our Swiss cheese or even -- and it's not
4 necessarily a requirement, but it's become an industry
5 practice is to have all milk that qualifies under
6 geometric mean -- or on somatic cell, which is 400,000.

7 So I mean, technically, by PMO, you -- if you --
8 you need to be under 750, so right there is another
9 increase by the industry to -- and we all do it -- we all
10 do it to use it as a marketing edge. We have a higher
11 quality milk, a higher quality product, which -- whether
12 it be us on PI and somatic cell or bacteria, we do those
13 things and hold our members to the higher -- and our
14 suppliers -- to that higher standard to make sure that --
15 because we have seen, as another example, PI. PI is a
16 true indicator of -- of shelf life on a gallon of milk.
17 And so we require that our milk comes in at a -- at a
18 cooler temperature than -- than what the PMO requires.

19 So, again, our producers are bearing that cost,
20 whether it's running the compressor on their farm at a
21 higher -- or a cooler temperature to make sure that it
22 gets to the plant and isn't rejected. Because, again, if
23 we have a high -- cooler milk allows that PI or bacteria
24 not to grow as fast. So, hence, with that, if we are able
25 to maintain that, we -- we get a longer shelf life.

26 Q. Okay. So you had mentioned both somatic cell and
27 PI, and then I think you even said temperature control.

28 So for all three of those categories, you have



1 quality standards that exceed the PMO Grade A standards;
2 is that right?

3 A. Yeah. And we -- we pay our producer, incentivize
4 them to meet those standards just because of the fact -- I
5 mean, if you look at the Federal Market Order, they pay on
6 the somatic cell, but we probably -- between those other
7 standards we pay an additional 60 to \$0.70 a
8 hundredweight.

9 Q. And that's designed to help your producers cover
10 the additional cost in achieving that higher standard as
11 well as incentivize them to produce at the higher
12 standards?

13 A. Correct.

14 Q. Okay. And what percentage of the milk that you're
15 purchasing do you ask for something higher than Grade A
16 standards?

17 A. Well, it would be all of the milk. I mean,
18 because we're -- whether it be temperature or PI, you
19 know, we're constantly working with our suppliers when --
20 because, you know, there's always going to be that one-off
21 load, and we're constantly holding our standards, and we
22 tell our suppliers that they -- if they don't meet the
23 standard, then we don't want that farm coming to our
24 plant.

25 Q. And have you terminated any farms for not being
26 able to meet or exceed your quality standards?

27 A. Yes. We have one this month that's going to be no
28 longer a member of Prairie Farms due to -- and we have had



1 several, a few in the last year that don't meet the
2 geometric mean standard.

3 Q. And we have heard a good deal of discussion about
4 how there's much fewer amounts of Grade B milk in the
5 market as there was historically.

6 Has the quality line under the market conditions
7 changed in the last 20 years?

8 A. Yeah. There's been a migration towards more
9 Grade A milk and that. I mean, Prairie Farms only accepts
10 Grade A milk, and they have to because of -- I mean, we
11 could do it up in our cheese plants, but the end of the
12 day we -- we have the expectation.

13 And when we take on new milk before they become a
14 member, their previous three-year history of quality gets
15 reviewed by my field staff before we take the farm on.

16 Q. And if --

17 A. And say, in fact, we just had one farm here
18 earlier this spring that's a grazing farm, and so they --
19 they actually had fallen off the Grade A status because
20 they were beyond -- usually they turn it -- they turn the
21 cows off, I guess, for lack of a better term, for the
22 60 days, but they went outside of that, so they had to get
23 recertified. And with that, we put the expectation on
24 them that their milk got tested before we picked it up.
25 And so they ended up using milk for calf feed for almost
26 30 days before they could get their somatic cell and
27 bacteria under control.

28 Q. And you mentioned Grade A milk, but this is --



1 your quality standards are something in excess of Grade A;
2 is that right?

3 A. Yeah. And that's what -- I should say that he had
4 to meet our expectations on quality.

5 Q. Okay. And then you had also mentioned the
6 European standard for -- for milk?

7 A. Yes.

8 Q. What was that called again?

9 A. It's the somatic cell, geometric mean on somatic
10 cell, which is a 400,000 average and that. The geometric
11 mean is a formula that's computed over a three-month
12 period.

13 Q. And how does that compare to the PMO Grade A
14 standards?

15 A. It's 750 is the PMO standards.

16 Q. And how does the European quality standards affect
17 the fluid milk in the U.S.?

18 A. On the fluid milk? It really doesn't. But the
19 problem is, is that on the cheese side or any other of the
20 commodities that's got to be produced, you have got to
21 meet that standard, otherwise you won't -- our suppliers
22 and the -- I mean, for ourselves, we have to do that on
23 our cheese plant. So it's easier to have everyone conform
24 to that expectation when it comes to logistically moving
25 milk around.

26 Q. And we had heard about some examples where the
27 dairy producer is making a decision as to where to deliver
28 milk, and if there's a cheese plant on one side of the



1 road and a fluid milk processor on the other, would it
2 present any challenges in you procuring milk to get it to
3 either the cheese plant or to your fluid milk plant with
4 those quality standards in place?

5 A. If we didn't have that expectation or higher
6 standard, we maybe would attract milk from -- you know,
7 that would go into a cheese plant. But that depends on
8 that cheese plant's expectation, too, from a quality
9 perspective.

10 Q. In Exhibit 352, if we take a look at what's now
11 been marked as Table 6 on page 10, I'm wondering if you
12 could help us understand the point of what your Table 6 is
13 designed to convey in this -- in this Table 6.

14 A. Well, as described in the previous -- on the
15 bottom of page 9, I just looked at the ten-year average --
16 or 11-year average on the average price of milk and how
17 much it would increase, which, on an annual basis, would
18 be a small amount. I mean, there is some volatility,
19 which is commodity price driven.

20 I mean, the one thing I would add is that, I mean,
21 from early 2020 to early '21, you know, there was probably
22 a 35% increase on retail prices on milk, and we didn't see
23 a drop. I mean, again, as I mentioned, that's -- the slow
24 decline in Class I has been more of a changing of the
25 beverages requested by the consumer along with lifestyle
26 changes.

27 I mean, we all go out to eat more. How many of us
28 order milk when you go to a restaurant? Last night when



1 we went to dinner, we had ice tea instead of milk. So I
2 mean, we're -- we're hurting ourselves but I mean -- not
3 up here to lecture everyone, but it's just -- we also have
4 seen the decline of cereal consumption, and the decline in
5 milk has been very, very correspondent to that.

6 So Class I has gone down. No debate. But at the
7 end of the day, I don't know if it's because prices are
8 getting too high and that. I would contend it's more on
9 lifestyle changes.

10 Q. Okay. So if we look at your Table 6 where you
11 have peaks in the retail prices for gallons of milk, you
12 didn't, as a processor, see a corresponding decline in the
13 orders that came from your retail clients because the
14 prices had gone up?

15 A. No. And I mean, as a point, and I know we have
16 kind of dismissed the whole COVID thing, but kind of
17 emphasized the -- and the numbers show it -- that
18 lifestyle that I'm talking about.

19 When we all had COVID, or when -- not when we had
20 it, but when COVID was rampant, more people were staying
21 at home. So what were they doing? They were consuming
22 more milk. Actually, there was an increase in milk, you
23 know, sales. And -- but overall, we generally don't see a
24 dramatic -- if there's a \$0.25 per gallon increase, like
25 there was here a couple months ago, we didn't see a
26 dramatic decrease in the sales.

27 Q. Okay.

28 MS. HANCOCK: That's all I have. Thank you so



1 much for your time, Mr. Hoeger.

2 THE COURT: Mr. Rosenbaum?

3 RECROSS-EXAMINATION

4 BY MR. ROSENBAUM:

5 Q. Steve Rosenbaum, International Dairy Foods
6 Association.

7 You may have said this, but I just want to
8 clarify. These higher standards you have than the Grade A
9 standards, do you impose those on your farmers regardless
10 of whether they are supplying your fluid milk plants
11 versus your Swiss cheese plants?

12 A. They are on all of our plants. We are a co-op, so
13 we hold -- we have the same standard for all farms.

14 Q. Okay. And so --

15 A. But, again -- I'm sorry, if I can just clarify one
16 further, is that -- I mean, we found, like I mentioned PI.
17 PI on the cheese side doesn't mean as much as bacteria and
18 somatic cell does, because somatic cell drives yield. But
19 we have found that PI and somatic cell on the fluid side
20 do provide a longer shelf life.

21 Q. And speaking about that somatic cell, I think you
22 said the Europeans have a 400,000 limit as opposed to the
23 PMO 750,000; is that right?

24 A. Correct.

25 Q. And I take it the -- you are not exporting fluid
26 milk to Europe, you are exporting cheese to Europe, I
27 assume?

28 A. Yeah, we are exporting cheese and that. And so no



1 different than all of our suppliers who are cheese --
2 we -- we make cheese in the big block, and then we sell it
3 downstream to be cut and -- what I call the slicer and
4 dicer, the cut-and-wrap guys. And they put the
5 expectation as the supplier on us, but we have to meet
6 that geometric mean.

7 So with that, we have also put that expectation on
8 our supplier. So it kind of -- it gets spread. And all
9 the milk has to end up being there just because you got a
10 decent percentage that has to be there to meet the cheese
11 side. So that kind of flows over to the fluid side.

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

13 THE COURT: Ms. Hancock, anything to follow up
14 with that?

15 MS. HANCOCK: No, Your Honor. Thank you.

16 THE COURT: Thank you. Is it possible that
17 Mr. Hoeger can step down?

18 I believe you may. Thank you.

19 MS. HANCOCK: Your Honor, our next witness will be
20 Joe Brinker.

21 THE COURT: Let's go off record while a document
22 is being distributed.

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

24 (Thereafter, Exhibit Number 356 was marked
25 for identification.)

26 THE COURT: All right. Let's go back on record.
27 We're back on record at 4:21.

28 We have marked as Exhibit 356, NMPF Exhibit 52.



1 Ms. Hancock, shall I swear in Mr. Brinker?

2 MS. HANCOCK: Yes, please.

3 THE COURT: Mr. Brinker, would you state and spell
4 your name, please?

5 THE WITNESS: Joe Brinker, J-O-E, B-R-I-N-K-E-R,
6 with Dairy Farmers of America, 1405 North 98th Street,
7 Kansas City, Kansas 66111.

8 THE COURT: Have you previously testified in this
9 proceeding?

10 THE WITNESS: I have not.

11 THE COURT: I'd like to swear you in.

12 Would you raise your right hand, please?

13 JOE BRINKER,

14 Being first duly sworn, was examined and

15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. HANCOCK:

18 Q. Good afternoon, Mr. Brinker. Thank you for being
19 here today.

20 Did you prepare what's been marked as Exhibit 356
21 in support of your National Milk testimony?

22 A. Yes.

23 Q. Okay. I'd like to have you read that statement
24 into the record. And if you could just be mindful of our
25 court reporter and read at a moderate pace.

26 A. Sure.

27 Q. Hello. My name is Joe Brinker, and I am appearing
28 today to support Proposal 19 as submitted by National Milk



1 Producers Federation (NMPF) that updates and modernizes
2 the U.S. Federal Milk Marketing Order pricing surface and
3 Class I differentials throughout the United States.

4 My career in the dairy industry covers over
5 28 years, working in various roles involving raw milk
6 movement and raw milk sales. I currently hold the title
7 of director milk marketing and operations for Dairy
8 Farmers of America's Central Area.

9 Currently, DFA has over 1100 farmer-owners located
10 in its Central Area, producing approximately 575 million
11 pounds per month, with the majority of the milk pooled on
12 the Central Milk -- Central Marketing Area, and the Upper
13 Midwest Marketing Area. DFA owns and operates 16 dairy
14 manufacturing plants within the central area, with ten
15 facilities receiving raw milk and five facilities
16 operating as pool distributing plants.

17 All Central Area milk produced by DFA
18 farmer-owners is picked up and delivered by contract milk
19 hauling companies. My current responsibilities include
20 the efficient movement of farm milk to raw milk customers,
21 including Class I distributing plants located in the
22 Federal Milk Marketing Orders of 30 and 32 geographies.

23 Today my testimony is in conjunction with other
24 NMPF proponents of their Class I surface pricing proposal,
25 which is Proposal 19. My testimony will focus primarily
26 on Missouri, Kansas, and Nebraska markets, and overall
27 price alignments with the Class I plants in and around the
28 Central Federal Milk Marketing Order. My DFA colleagues



1 and other proponents of the NMPF proposal will provide
2 supportive testimony on the surrounding regions.

3 The dairy industry has seen a significant increase
4 in the cost of serving the Class I market over the last
5 15 years. The number of dairy farms nationally and within
6 the milk sheds I work with continues to decline. For many
7 markets, the milk supply has moved further and further
8 away from the customer. While milk must move further, the
9 cost to ship this milk has increased substantially as we
10 have faced increased rates from our haulers.

11 Since 2005, the number of dairy farms located in
12 the geography supplying the Kansas City, Missouri, Omaha,
13 Nebraska, and Wichita, Kansas, Class I markets has
14 decreased by over 70%. The remaining farms are located
15 farther from the Class I plant locations, and in more
16 rural areas, increasing the number of miles from farm to
17 plant.

18 As the distance to plant and cost per mile hauled
19 increases, dairy farmers within the region face higher
20 economic strain. To help reinforce this claim, we
21 surveyed trucking companies providing raw milk hauling
22 services in the Nebraska, Kansas, and Missouri region to
23 quantify increases in their transportation costs. From
24 2005 to 2022, equipment costs were up 173%, licenses and
25 taxes fees were up 71%, and labor expenses increased 176%.
26 Overall, these increased hauler expenses resulted in
27 151% rate increase in milk hauling costs.

28 As referenced in previous testimony, those



1 participating in the NMPF process utilized the University
2 of Wisconsin model as a baseline to help build out the
3 NMPF proposal as referenced by Map 1. From my particular
4 region, Kansas City, Missouri, located in Jackson County,
5 Missouri, was determined to be an anchor city. This was
6 due to the Kansas City area being the price announcement
7 zone for the Central Federal Order producer price
8 differential and the base zone for determining producer
9 pool values.

10 NMPF has proposed using \$3.35 per hundredweight
11 for the Class I differential in Jackson County. The
12 model's results value Jackson County at \$3.20 per
13 hundredweight in the May analysis and \$3.50 per
14 hundredweight in the October analysis. Like many of the
15 NMPF proposed price surface upgrades, it is requesting the
16 average of the two months, \$3.35 per hundredweight as its
17 value. As referenced in Table 1, this represents an
18 increase of \$1.35 per hundredweight compared to the
19 current differential.

20 While Class I demand in the Kansas City market has
21 been relatively flat over the last 15 years, local milk
22 production continues to decline resulting in raw milk
23 traveling farther to supply the Kansas City market. Based
24 on internal DFA reporting and analysis, in the fall of
25 2015, 92% of Class I milk demand was supplied from farms
26 that were located within 150 miles of Kansas City. By the
27 fall of 2022, only 47% of the Kansas City Class I demand
28 came from farms within 150 miles.



1 The Omaha market has also seen a change in market
2 dynamics. In the fall of 2015, 65% of Class I milk demand
3 was supplied from farms that were located within 150 miles
4 of Omaha. By the fall of 2022, only 55% of the Omaha
5 Class I demand came from farms within 150 miles. The
6 change in the Omaha market demographics is less severe
7 compared to Kansas City, resulting in the proposed Omaha
8 differential increasing \$1.15 per hundredweight versus
9 \$1.35 a hundredweight in Kansas City.

10 The Wichita market has experienced a similar
11 change in market conditions. In the fall of 2015, 42% of
12 Class I milk demand was supplied from farms that were
13 located within 150 miles of Wichita. By the fall of 2022,
14 only 27% of the Wichita Class I demand came from farms
15 within 150 miles.

16 While maintaining current spreads in differentials
17 for these three markets was considered, the differing
18 changes in milk proximity to markets shows a need for
19 uneven differential recommendations. Market conditions
20 justify a differential increase of \$1.35 per hundredweight
21 in Kansas City; \$1.15 per hundredweight in Omaha; and
22 \$1.65 per hundredweight in Wichita. Considerations were
23 also made in regard to the recommended differentials in
24 surrounding marketplaces.

25 With the increased distance of farm milk to
26 processing plants, coupled with higher transportation
27 costs, a differential increase is vital to ensure a
28 reliable Class I milk supply is available to meet consumer



1 demand. As noted, milk must move further and further to
2 the marketplace. These increased costs flow down and to
3 the remaining dairy farmers supplying the region.

4 Thank you for allowing me to testify today in
5 consideration of this proposal.

6 Q. Thank you, Mr. Brinker.

7 If you could turn to the last page of your
8 testimony in Exhibit 356.

9 You have a Table 1 and a Map 1 there. I'm
10 wondering if you could speak to where those -- where that
11 information came from.

12 A. That information came from the NMPF proposal.

13 Q. Okay. And so you put these in just as reference
14 to -- for the areas that you are providing your testimony
15 in response to?

16 A. That is correct.

17 Q. Okay.

18 MS. HANCOCK: Your Honor, at this time we would
19 make Mr. Brinker available for cross-examination.

20 CROSS-EXAMINATION

21 BY MR. ENGLISH:

22 Q. Good afternoon, Mr. Brinker. My name is Chip
23 English. I'm an attorney with Davis Wright Tremaine for
24 the Milk Innovation Group. Thank you for being here
25 today.

26 So I don't believe I have seen you here before,
27 but maybe you have been monitoring the hearing. There's
28 been a lot of conversation about something called red



1 pencil crews.

2 A. Uh-huh.

3 Q. Does that term mean something to you?

4 A. I have heard it used.

5 Q. Have you used it?

6 A. No, I have not.

7 Q. Okay. Do you know what it refers to?

8 A. I believe it was working committees that took the
9 NMPF committee that put together the differential
10 program -- or the differential recommendations.

11 Q. Were you on a red pencil committee?

12 A. I was.

13 Q. Which one were you on?

14 A. The Central Area.

15 Q. Now, your testimony, in the very first page,
16 references work that you have also done on Order 30,
17 correct?

18 A. Yes.

19 Q. Does your testimony today in any way touch on
20 Order 30?

21 A. No, it does not.

22 Q. Did you take any position or have any
23 conversations with anybody else about the proposed
24 National Milk Producers Federation differentials proposed
25 for Order 30?

26 A. No.

27 Q. Do you know anything about them, other than what
28 you might have heard today?



1 A. No.

2 Q. Do you want to talk about them? Not really?

3 Okay.

4 So who was in charge of your red pencil crew?

5 A. I believe it ended up at the end, Chris Hoeger.

6 Q. And other than you and Chris Hoeger, who else was
7 involved?

8 A. I believe there was a representative from Foremost
9 Farms, Land O'Lakes, I'm. Not sure who else was on.

10 Q. Who from Foremost?

11 A. I don't recall.

12 Q. Who from Land O'Lakes?

13 A. It was Tom Wagner at the time, but he's since
14 retired.

15 Q. So were there any principles discussed as to what
16 the red pencil crew would do?

17 A. I believe that our efforts were that, here was the
18 anchor cities. That was determined by the national
19 committee. And then we were to give input on the
20 reasonableness of the model results.

21 Q. Did you have any role in selecting the anchor
22 cities?

23 A. I did not.

24 Q. So it sounds like Kansas City, Missouri, would
25 have been one of the anchor cities in your area; is that
26 correct?

27 A. That is correct.

28 Q. Was -- was Norman, Oklahoma, part of your anchor



1 cities?

2 A. No.

3 Q. How about St. Louis, Missouri, was that part of
4 your anchor cities conversation?

5 A. It was -- it was in our working group, but that
6 anchor city was determined, correct.

7 Q. But you are here specifically for Nebraska,
8 Kansas, and Missouri, Western Missouri?

9 A. Wichita. Yeah, Western Missouri, right.

10 Q. Western Missouri.

11 So as I read your testimony, you have talked
12 about, you know, the distance between milk supplies and
13 how they have changed for Kansas City, Omaha, and Wichita;
14 is that correct?

15 A. That is correct.

16 Q. Do you know any other red pencil crews who did the
17 analysis that way?

18 A. I can't speak to how other groups did it.

19 Q. Even in your own region, you don't know if anybody
20 else did it that way?

21 A. That is correct.

22 Q. To the extent you have discussed hauling costs,
23 are you familiar with what's called the USDSS model?

24 A. No, I am not.

25 Q. Do you know if the University of Wisconsin
26 developed the original set of numbers that have been
27 discussed by NMPF to set up different pricing?

28 A. I am not.



1 Q. Do you -- you don't know about that model.

2 Do you know whether your testimony is designed to
3 describe why you are deviating from that model in any way?

4 A. I would -- I don't know.

5 Q. So, for instance, you -- you talk about survey
6 trucking companies providing raw milk hauling services in
7 Nebraska, Kansas, and Missouri with equipment costs up
8 173%.

9 How does that testimony -- how does that statement
10 work in your testimony?

11 A. That statement is that was a survey of the hauling
12 companies that we are currently using to haul our milk,
13 and we compared that information.

14 Q. And when you compared it, what did you do with it?

15 A. We took the hauling costs from -- that they had
16 quoted what it cost them in 2005, and then -- and then
17 what would it cost in 2022, and we did the comparison
18 percentage change on the increase.

19 Q. Okay. So that's up 173%, correct?

20 A. Correct.

21 Q. What did you do with that 173%?

22 A. I'm not following the question.

23 Q. Well, okay. Having done that calculation, what
24 did you do with the result? How did you apply it?

25 A. I applied it to my testimony to show that our
26 costs have increased that much over the last so many
27 years --

28 Q. Okay.



1 A. -- 17 years.

2 Q. How, if at all, did you use it to, say, set the
3 proposed Class I differential for Wichita?

4 A. Come again?

5 Q. How, if at all, did you use that cost increase
6 from 2005 to 2022, up 173%, to come up with the Class I
7 differential for Wichita?

8 A. We just used -- that particular number was not
9 part of the thought process with setting the differential.
10 It was just a cost justification that differentials do
11 need to be increased to recognize the increased cost to
12 supply the market.

13 Q. Okay. So that's what I'm getting at. It's just a
14 general recognition, it's not specifically applied; is
15 that it?

16 A. That is correct.

17 Q. Is that true about licensing fees being up 71% as
18 well?

19 A. I don't -- I -- I'm not sure what the question is
20 there.

21 Q. Well, okay. I'm looking at the bottom of page 2
22 of your statement, and I think we have just covered the
23 first clause, "From 2005 to 2022 equipment costs were up
24 173%."

25 A. Correct.

26 Q. Now I'm asking about license and taxes fees, which
27 you say were up 71%, correct?

28 A. Correct.



1 Q. Was that just a general increase applied, or how
2 was it applied specifically to any of the Class I
3 differentials that you are describing in your testimony?

4 A. It was not applied to differential levels.

5 Q. Would that be true about the labor expenses?

6 A. Yes.

7 Q. Would that be true about the hauler expenses
8 increase?

9 A. Well, the 151% is the sum of the three different
10 categories that you reference.

11 Q. I see. Thank you. So overall it is 151%.

12 A. Correct.

13 Q. But if the other three segments were general, then
14 this is also general, correct?

15 A. Pardon me?

16 Q. You didn't -- you didn't take the 151% overall
17 rate and use it specifically to say, "That's why I'm
18 setting Wichita at X"?

19 A. So those -- those costs would recognize that our
20 actual hauling costs have gone up \$0.65 a hundredweight.
21 So out of our differential recommendation, \$0.65 is just
22 on the transportation cost per hundredweight, but it does
23 not reflect the increase in the miles associated with it.
24 So the other part of my testimony recognizes that the milk
25 is moving farther and farther.

26 Q. So did you apply that \$0.65 to that farther and
27 farther in some way to come up with a number?

28 A. Not to the exact miles, no.



1 Q. So your statement on page 3, quote, "Like many of
2 the NMPF proposed price surface upgrades, it is
3 requesting, as to Kansas City, the average of the two
4 months, \$1.35 per hundredweight as its value."

5 Do you understand when you make that statement
6 that you are referring to the average from the University
7 of Wisconsin model?

8 A. Yes.

9 Q. Okay. Okay. So that means you do know what the
10 University of Wisconsin model is?

11 A. It wasn't described in the same manner, but, yes.

12 Q. Okay. Now, you say "like many of the upgrades,"
13 you are requesting the average of the two months.

14 Can you provide examples where there are just --
15 where there are distributing plants in your region, other
16 than Kansas City, where the value requested is the average
17 of the two months of the model?

18 A. Not off the top of my head, no.

19 Q. Can you name any throughout the United States,
20 supporting your statement "like many of the upgrades," it
21 is the average?

22 A. I have not looked at it, no.

23 Q. Where did you come up with that statement?

24 A. Well, it was my understanding that the averages is
25 what was being used throughout most of the country.

26 Q. Who provided that understanding to you?

27 A. Pardon me?

28 Q. How did you come by that understanding?



1 A. Just from some of the information that I had
2 gotten through the years. You got to understand this was
3 over a year ago.

4 Q. Has anyone told you that more like 2,895 counties
5 out of 3,108 counties in the United States do not
6 represent the average?

7 A. No, I don't have that number.

8 Q. Looking just at the anchor cities, do you know how
9 many of them, like Kansas City, use the average of the two
10 months of the model?

11 A. I do not.

12 MR. ENGLISH: This witness probably doesn't have
13 Exhibit 353 that was admitted earlier today. May I get a
14 copy from USDA to provide the witness or does counsel want
15 to provide it or --

16 THE COURT: Yes.

17 BY MR. ENGLISH:

18 Q. Mr. Brinker, I have handed you an exhibit which
19 was admitted earlier today when Mr. Hoeger was testifying,
20 which is Exhibit 353, which is a MIG document, but it is
21 extracted from materials submitted by National Milk to
22 USDA, except for the final column, which is just a
23 difference, and it is a list of the anchor cities.

24 Other than Charleston, West Virginia, and
25 Winchester, Virginia, and Kansas City, Missouri, do you
26 see any on that list that are -- have a zero difference
27 between the University of Wisconsin average and the
28 National Milk proposal?



1 A. Nashville, Tennessee.

2 Q. I'm sorry. Thank you very much. Nashville,
3 Tennessee.

4 Any others?

5 A. I do not.

6 Q. Okay. Do you know why, in Order 32, St. Louis,
7 Missouri, doesn't match up, and Norman, Oklahoma, doesn't
8 match up, and Denver, Colorado, doesn't match up in that?

9 A. I do not.

10 MR. ENGLISH: I'm going to ask for him to be
11 provided copies of Exhibit 300 and 301.

12 THE COURT: Ah, I happen to have an extra. And a
13 yardstick. This is very useful if you are asked to look
14 at a particular row.

15 BY MR. ENGLISH:

16 Q. Sir, these documents were submitted, 300 in May
17 and 301 in June, by National Milk to USDA.

18 Have you ever seen them before?

19 A. I have not.

20 Q. Have you heard any discussion of them by following
21 the hearing or any other conversations about them?

22 A. This afternoon.

23 Q. Just this afternoon?

24 A. Correct.

25 Q. Do you have any idea who the author of these
26 documents is?

27 A. Assuming National Milk but --

28 Q. But anybody at National Milk?



1 A. No.

2 Q. If you go to Row -- okay. So looking at
3 Exhibit 300, you go to Row 1,493, this is where the ruler
4 may come in handy, which is Hickory, Missouri. Go to the
5 next to the last column, which is Column R.

6 A. 1493 row, Column R.

7 Q. Column R. And the heading for Column R is
8 "Average Monthly Pounds 2022."

9 Do you have any idea where that number came from?

10 A. I do not.

11 Q. Did you provide any numbers like pounds for order
12 for your area?

13 A. I did not.

14 Q. Before we forget, why don't we -- you are done.
15 You got off light.

16 Do you know that the model provided values for
17 Kansas City, Wichita, and Omaha, Class I differential
18 values?

19 A. Yes.

20 Q. You say that less than 50% of the farm milk for
21 each location came from within 150 miles?

22 A. That is correct.

23 Q. If the model solves for the efficient movements of
24 milk, hasn't the model provided the differential for those
25 three locations?

26 A. I can't speak to what the model included or didn't
27 include.

28 Q. I know that your analysis discusses for each



1 location the percentage of milk coming from within
2 150 miles.

3 What is the relevance of that testimony?

4 A. Can you repeat?

5 Q. Your testimony discusses, for each of those three
6 locations, the percentage of milk coming from within 150
7 miles?

8 A. Correct.

9 Q. What is the relevance of that information for
10 setting a Class I differential for each of those three
11 locations?

12 A. I think that just demonstrates over time the milk
13 is moving farther and farther, traveling farther and
14 farther to get to the distributing plants.

15 Q. Okay. Do you have information for those locations
16 for how much milk comes from farther distances?

17 Okay. You said that -- you provided the
18 percentage for each of those three locations for the milk
19 coming within 150 miles, correct?

20 A. Correct.

21 Q. So do you have information for this record of how
22 much milk comes, say, from 200 miles, or 300 miles, or
23 400 miles, for each of those three locations?

24 A. Not -- not on this -- not in -- in my testimony,
25 no.

26 Q. Did that information for that kind of data figure
27 into your analysis for what to set for Kansas City, Omaha,
28 and Wichita?



1 A. Well, as indicated, we did use the model, and it
2 was used for reasonableness. And the mileage was just to
3 indicate that, you know, again, milk is moving farther and
4 it is justified that there would be a differential
5 increase to cover those additional transportation costs.

6 Q. But you don't have that specific information for
7 this record, correct?

8 A. That is correct.

9 Q. Do you know, to the extent to which you looked at
10 mileage distances for each location, that USDA in the past
11 has applied 80% of the hauling cost to justify Class I
12 differentials?

13 A. I'm not aware of that.

14 Q. Did you apply an 80% calculation in doing any of
15 your math?

16 A. I did not.

17 Q. So you propose leaving Kansas City at the model
18 value, correct?

19 A. Correct.

20 Q. What is different about Kansas City than Omaha
21 that you increase Omaha \$0.40 over the model value?

22 A. Part of the Omaha model was, you know, as
23 Mr. Hoeger had testified, is just the -- keeping
24 consistent with the different bands, if you will, the
25 slope I think he referred to it as. And so there was --
26 you know, as was previously testified, the model was the
27 foundation and the base -- the benchmark, if you will.
28 And then from there, market conditions would be



1 incorporated.

2 Q. How would market conditions be incorporated?

3 A. Maintaining the -- looking at current
4 differentials and relationships between markets and
5 attempt to minimize significant changes between the two.

6 Q. And so since you are the person for this area,
7 what were the bands to which you were being consistent for
8 Omaha, Nebraska?

9 A. Well, for example, there was -- currently there's
10 a \$0.20 difference between -- well, there's a \$0.15
11 difference between Omaha and Kansas City, and \$0.20
12 between Kansas City and Des Moines is the current
13 differential spread. So an effort was made to try to
14 maintain those historical relationships.

15 Q. Well, I -- I'm a little confused. If hauling
16 costs have gone up, how does one keep historical
17 relationships the same and still adjust Class I
18 differentials?

19 THE COURT: And still adjust what?

20 MR. ENGLISH: Class I differentials.

21 THE WITNESS: I'm not understanding the question.

22 BY MR. ENGLISH:

23 Q. Your testimony has focused on increases in hauling
24 costs in total, those three categories of 155%, correct?

25 A. Correct.

26 Q. If those hauling costs have gone up 155%, how does
27 that explain, given the fact that these places -- or all
28 these plants are different locations, maintaining as to,



1 at least some plants, a relationship as opposed to
2 building a spread?

3 A. Well, that was part of the -- the rationale
4 between milk is moving farther to go to Kansas City, and
5 so the relationship spread between Kansas City and Omaha
6 got wider, because even though the distance to travel to
7 Omaha has increased, it has not done so proportionally the
8 same as it has to Kansas City.

9 Q. Wouldn't that justify increasing Kansas City more
10 than Omaha?

11 A. That's certainly something we can do, but we did
12 increase Kansas City more than Omaha in the model, in the
13 proposal.

14 Q. But you have lowered it. You kept the model the
15 same, and you raised Omaha over the model, so that means
16 you -- relative to the model, you lowered the difference
17 between Omaha and Kansas City. That is to say you made
18 Omaha more expensive relative to Kansas City.

19 And how does that make sense if milk has to move
20 farther to Kansas City than to Omaha?

21 A. Well, that's compared to the model, not compared
22 to the current differential spreads.

23 Q. What's the point of the model if you are going to
24 focus so much on the current spread?

25 A. Well, I think the -- in -- in previous testimony,
26 it's -- that's just one piece of it. You know, there's a
27 lot more that goes into, you know, the pricing and then
28 the competitiveness than -- you know, it's -- I think it's



1 been demonstrated that the model itself wasn't the
2 end-all, be-all, and then there would have to be some --
3 some tweaks to it, if you will.

4 THE COURT: Mr. English, please remember where you
5 are. It's five minutes to 5:00. I would like to take the
6 next five minutes to talk about what we will do tomorrow.

7 MR. ENGLISH: I can do so, Your Honor.

8 THE COURT: And, Ms. Hancock, I'll be guided first
9 by your thoughts as to what witnesses would be available
10 for tomorrow.

11 MS. HANCOCK: Your Honor, our plan is to finish
12 Mr. Brinker. Then we will turn to Mike John; he will need
13 to go on and off the stand. And then we'll move to Scott
14 Werme. And then pick back up at Brad Parks.

15 THE COURT: How is Scott's last name spelled?

16 MS. HANCOCK: W-E-R-M-E.

17 THE COURT: And do you think we'll need all day
18 for that?

19 MS. HANCOCK: Well, you'd think no, but, yes,
20 probably.

21 And then we have Dr. Roger Cryan that still is
22 expected to go on and off this week. And we are working
23 around the anticipated Dr. Capps to testify on Thursday.

24 THE COURT: Dr.?

25 MS. HANCOCK: This is Mr. Rosenbaum's witness,
26 Dr. Capps.

27 MR. ROSENBAUM: C-A-P-P-S, Your Honor.

28 THE COURT: C-A-P-P-S.



1 And you are thinking Wednesday, Mr. Rosenbaum?

2 MR. ROSENBAUM: No, Your Honor, Thursday
3 afternoon.

4 THE COURT: Thursday afternoon.

5 MS. TAYLOR: If I may for a second, Judge Clifton.
6 I'm not sure I had talked to you about -- kind of we have
7 been trying to schedule a little bit for this week, and in
8 the off -- in the break.

9 To add to what Ms. Hancock just said -- and I was
10 trying to find my list. Hold on one second.

11 So right now what the plan was, was Dr. Cryan
12 would go on Wednesday afternoon. We do have Mr. Geoff
13 Vanden Heuvel coming in to testify on Thursday morning.

14 THE COURT: And how is that last name spelled?

15 MS. TAYLOR: V-A-N-D-E-N, H-E-U-V-E-L. Geoffrey
16 is his first name, G-E-O-F-F-R-E-Y.

17 His direct -- he's not a member of any of the
18 proponents, so I don't have his testimony yet. But he
19 indicated his direct testimony would only be about
20 20 minutes, so that part won't be too long.

21 And then as Mr. Rosenbaum was saying, Dr. Capps is
22 scheduled to go on Thursday afternoon, so he can conclude
23 this week because he will be unable to come back next
24 week.

25 So I think the goal was to have National Milk --
26 unless producers show up to testify, and then they can
27 testify at any time -- have National Milk witnesses go
28 through at least uninterrupted through Wednesday, midday.



1 THE COURT: That sounds really good.

2 And I'm sorry that we couldn't finish your
3 testimony today, Mr. Brinker, but so be it. I'm glad you
4 can come back tomorrow. You may step down. Thank you.

5 Is there anything else that anyone wants to put on
6 record before we close for the day?

7 I see no one.

8 We now recess until tomorrow morning at 8:00. We
9 go off record at 4:59.

10 (Whereupon, the proceedings concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

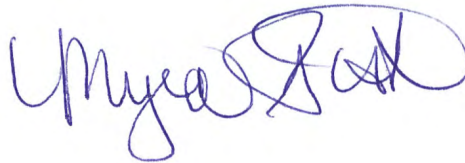
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10 DATED: December 22, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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