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

December 1, 2023

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Reported by:

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

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IN CHRONOLOGICAL ORDER:

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FRIDAY, DECEMBER 1, 2023 -- MORNING SESSION

THE COURT: Let's go back on record.

We're back on record. 2023, December 1, at approximately 8:03 a.m.

Is there anything preliminary to our dealing with the exhibits that Ms. Hancock wants admitted into evidence?

MS. TAYLOR: Can we handle that after the break?

THE COURT: Yes, we can deal with that after the first break.

I do have one preliminary announcement. I'm kind of used to starting our lunch hour at around noon. Today I would like to start our lunch hour at around 12:45, and we will take an additional morning break in order to make that work. And my apologies to anyone who was counting on our normal schedule.

Today is Friday, and there's a lot we need to fit into this, including packing up at the end. All right.

Now, is Dr. Capps still on the stand?

You may resume your location at the witness chair.

Welcome back, Dr. Capps.

THE WITNESS: Thank you.

THE COURT: When you are situated, please speak your name and spell your name, again.

THE WITNESS: I am Oral Capps, Jr., O-R-A-L, C-A-P-P-S, J-R.

THE COURT: Thank you. You remain sworn.

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ORAL CAPPS, JR.,

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

THE COURT: Who next has cross-examination questions for Dr. Capps?

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Dr. Capps.

A. Good morning.

Q. My name is Ryan Miltner. I represent Select Milk Producers, a cooperative that operates in the Southwest and Midwest.

Among many of your titles and accreditations is the Southwest Dairy Marketing Endowed Chair.

I wonder if you could let us know what -- what the Southwest Dairy Marketing Endowed Chair does in terms of research and teaching?

A. Okay. The Southwest Dairy Marketing Endowed Chair was the bestowed upon me in 2001 by the Southwest Dairy Farmers. What the -- what they did, they put up a half a million dollars for the chair. The University, that is Texas A&M, matched it. And basically, the amount of money that is earned from investments is the amount of money that I have to do research. There's no teaching component.

And principally I help them with the various issues, marketing issues. Probably the latest one that we have been working on is how do we combat plant-based milk

alternatives, PBMA.

Jim Hill, the CEO and general manager at Southwest Farmers, they align themselves with an advertising group, and we have helped -- I have helped them put together a campaign called the Wannabes, you know, trying to illustrate the difference between milk and plant-based milk alternatives when it comes to tradition or nutrition.

But I also provide them the, you know, economic aspects, for example, are really plant-based milk alternatives a substitute for milk? And I have demonstrated they are.

THE COURT: You have demonstrated they what? You demonstrated they?

THE WITNESS: That plant-based milk alternatives and conventional milk are substitutes.

THE COURT: And you have it demonstrated either that they are or they are not, but it wasn't clear to me which you said.

THE WITNESS: They are substitutes.

THE COURT: Are?

THE WITNESS: Are.

THE COURT: Oh.

By MR. MILTNER:

Q. And you say "substitutes" in the sense of a consumer substitute, not in terms of a nutritional substitute?

A. Consumer substitutes. In the eyes of the consumer.

Q. And what year did you say the chair was endowed?
A. 2001.
Q. Thanks.
So Jean Dunham probably was running the Southwest Dairy Museum at that point?
A. Yes.
Q. And you and I know about Southwest Dairy Farmers, but for the purposes of the hearing record, that is a qualified regional promotion program, correct?
A. Yes. It would fall under QPs.
Q. And it's a -- so it's funded by dairy farmer checkoff dollars?
A. Yes.
Q. And they op- -- their museum is in Sulphur Springs, Texas, I think, correct?
A. Correct. And they have also expanded their operations to the Southeast. So they are called the Southwest and Southland Dairy Farmers.
Q. I think I got my calendar in the mail a couple of weeks ago for the new year. I assume you got yours, too.
A. Yes.
Q. So that endowed chair and the work you do, is it limited to post-production marketing activities?
A. Yes. As far as I understand, I have only worked on marketing issues.
Q. And the marketing issues that you work on, those are marketing of dairy products as opposed to the marketing of raw milk by a farmer cooperative, correct?

A. Yes, the marketing of dairy products.
Q. In your research or teaching, have you had the opportunity to do much research into Federal Orders and Federal Order pricing?
A. I have not.
Q. And I don't know if this was asked, have you -- have you testified at a Federal Order proceeding before?
A. No.
Q. Welcome.
When you were looking at product prices and elasticities for the research you have presented here, were the -- was there anything unique to your research related to Federal Order minimum prices?
A. There was -- the only connection to Federal Order prices was the assumption of the proposition that the Class I price would be raised by 8.6%.
Q. And was that presumption provided to you by IDFA?
A. No.
Q. Okay. How did -- how did you come up with the 8.6% price increase to base your conclusions upon?
A. That came from Dr. Kaiser's testimony.
Q. Okay.
A. And Dr. Kaiser raised the issue there. And as I testified yesterday, I presume that is a given, along with his elasticity of price transmission.
Q. And am I correct in recalling that the elasticity of price transmission is the percentage of the raw milk price that gets passed through to the shelf price?

A. Technically it's the percentage change in the retail price attributed to a 1% change in the farm price, or Class I price in this case.

Q. Now, I'm looking at Exhibit 386, which is your written testimony.

A. I have it.

Q. Okay. On the first page, it's the third paragraph, and you're describing -- drawing some distinctions, I think, between what you are doing and Dr. Kaiser's testimony earlier. And you note that of the 38 studies cited by Dr. Kaiser, only two were published after 2021.

Were there any research studies on this issue after 2021 that you believe were excluded by Dr. Kaiser that should have been included in his analysis?

A. Well, I cite several after I performed my analysis just to get an idea of how my research either corroborates or doesn't with the literature.

If you will permit me, I can show you where they are here.

Q. It's --

A. If you wish.

Q. That would be great. Thank you.

A. Okay. Yes. I apologize for the delay.

Page 11 of Exhibit 386, the third paragraph that begins with the word "fourth," there's a couple of studies there by Ghazaryan, Bonnano, and Carlson in 2023, and Son and Lusk, each of those in 2023. Those would be two

examples of research that should have been included in Dr. Kaiser's list.

Q. Thank you.

In the next paragraph of your testimony, same exhibit, 386, you're referring to the study that you and Dr. Brown did, and your phrasing is that you reported that "per capita consumption of fluid milk was lower by 3.3% due to the onset of the pandemic."

And I'm -- I'm curious when you say it was "due to the onset of the pandemic," is that -- have you aggregated all of the different impacts on consumption to arrive at that 3.3%, and is this -- does that include more than just price, the price impacts or the price -- the impacts on demand as result of price change?

A. Yes. As I testified yesterday, this deals with the report to Congress. But in this particular report, I'm not able to comment fully.

But similar to the previous report that I was asked about yesterday, this comes about from a regression of per capita consumption of fluid milk, there's a list of explanatory factors. And in this Congressional study, we added some variables related to the pandemic. So when the pandemic hit right away, in a short amount of time, in a quarter that is, because these are quarterly data, there was a negative impact attributed to the pandemic, and the measurement of that came out to be 3.3%.

So to fully answer your question, other factors like price, income, seasonality, age distribution of the

population for adolescents, pre-adolescents, and preschool kids, all of those factors were taken into account, and this was the result. Also a very important factor that was also taken into account was the advertising and promotional expenditures spent on fluid milk.

Q. I hope everyone will indulge me. This is maybe a little more of my curiosity than anything else.

When you are looking at weekly data from IRI, as opposed to monthly or quarterly data that you noted as referenced in other elasticity studies, is there noise in a weekly survey that is filtered out when you look at a longer period?

A. Well, I wouldn't necessarily use the word "noise." Certainly there's typically more variability week-to-week than month-to-month than quarter-to-quarter than year-to-year.

Q. And what would that variability be attributable to?

A. Well, there would be a number of things. Probably at the top of the list would be something I would refer to as inventory adjustment. So, for example, I -- I want to purchase fluid milk, but I didn't -- I ran out, so I need to replenish that, or there could have been other factors related to incentives by a store to get me to purchase more on a week-to-week basis. But there could be a number of things.

Q. Have you observed or seen that the certain weeks of a month tend to be those in which retailers will run

milk discount promotions?

A. Yes.

Q. And so if their -- and I forget which week it is, but let's assume it's the first week of the month that they promote milk as a loss leader or a get-in-the-door incentive. They have dropped the price to bring people into the store, and presumably it's achieving what they want, and volumes increase during that week. Would the IRI data the next week then show a rapid price increase in product and a decline in sales of the same SKU?

A. It could be. I don't know if it would be a rapid increase. It may not be an increase. That -- that's why we have to look at this on a week-to-week basis.

However, what you are describing is actually picked up by price, which obviously has an impact on the own-price elasticity and could be a major reason why -- not the only one -- why we see higher own-price elasticities of fluid milk products on a weekly basis.

Q. And that would be one of the reasons then that your research or your study showed greater elasticity than those that look at longer periods of time.

A. Yes. Not only mine, but the two studies that I just recently cited, because they, too, used, A, a demand systems approach, and weekly information.

Q. And if you had that same information, same sales data aggregated in month-long periods or quarter-long periods, you wouldn't show that variability, and the elasticities you might predict would be reported lower?

A. That's a testable proposition. I would expect lower variability.

But the reason that the weekly frequency, as I testified yesterday, makes the most sense, I'm operating, just like my own behavior, on the presumption that when -- when people -- when consumers shop at retail outlets, they do -- they do so on a weekly basis. Of course, some could do it daily, or more than one time a week, and some maybe two times a week. But the weekly presumption makes the most sense to me as opposed to, well, I'm only going to shop once a month. There may be people that do that. Or, I'm only going to shop once a quarter, and I can't imagine anybody that shops once a year.

Q. If they are, they are not buying a lot of fresh fluid milk, are they?

A. Probably not, especially for products that, you know, may spoil for sure.

Q. Now, Federal Orders establish the Class I price on a monthly basis, correct?

A. Yes.

Q. And so most, if not all, fluid milk buyers have their raw product cost for the milk set on a monthly basis.

Would you agree with that?

A. Yes.

Q. And so if there are price changes at the retail level on a week-to-week basis, would you hypothesize that those variabilities are not tied to the raw milk cost?

A. Well, the weekly IRI data just -- just relates to what happens to consumer behavior at retail outlets. There's -- and the -- and because of that, we're observing just consumer behavior. So there's no direct tie to the Class I price.

Q. But the consumer behavior and the analysis you have done is tying that consumer behavior to the price for the product observed, correct?

A. Yes, on a weekly basis.

Q. And if that price is fluctuating on a weekly basis, that's, in all likelihood, the decision of the retailer in response to a myriad of possible reasons, correct?

A. Yes.

Q. And if the raw -- if the -- if their wholesale price for that gallon of milk or 52 ounces of Fairlife, if that wholesale cost is established on a monthly basis, then wouldn't the weekly volatility in that price in all likelihood be tied to something other than the Class I price?

A. Well, as you mentioned, retailers change their prices for a number of reasons. Obviously, they have to be provided the product, and that -- that factors into the decision as to how to price it. But there could be other reasons, too. So there's not an actual disconnect between Class I price and the price at retail; obviously, there has to be a link. But we're only observing behavior on a weekly basis at the retail outlets with the IRI or Circana

study.

Q. Did IDFA ask you to do any analysis as to what the price elasticities would be, or what consumer behavior might be if -- if the regulated price were to decline by a substantial percentage?

A. No, but based on the elasticities that I generated, similar to what I testified in my -- in my report here on Exhibit 386, you take whatever the Class I price percentage change is, coupled with the elasticity of price transmission, and then you get the corresponding percentage change in the retail price. And then you are in position, with that percentage change, with the use of my elasticities, to talk about what's going to happen to the percentage change in the quantities purchased.

Q. Is the percentage of price transmission a static number at all points?

A. The elasticity of price transmission is dynamic, and so is the own-price elasticity as well.

Q. And so the transmission, the elasticity of price transmission, would -- would vary based on whether you were increasing the price or decreasing the price, correct?

A. It could. And that -- that phenomenon to which you refer is called asymmetry in price transmission.

Q. Do you know if the IRI data accounts for couponing?

A. Yes.

Q. Okay. So I asked if you knew about it, and you

said yes.

Were you saying, yes, you knew, or yes, it does account for it?

A. Coupons are taken into account when you look at sales and volumes. And once you have dollar sales and volumes, volumes for milk products being measured in gallons, that's how you get an average price. That is the ratio of dollars to gallons -- price per gallon.

Q. I'm doing my best not to duplicate questions you have already been asked. I think I've done relatively well. But I think the rest have already been covered.

MR. MILTNER: So thank you very much, Doctor.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY DR. CRYAN:

Q. Good morning. I'm Roger Cryan with the American Farm Bureau Federation.

Hello, Dr. Capps. It's nice to see you.

A. Good morning, Roger.

Q. The first thing I -- I -- I probably missed something.

When the periods were defined, I probably wrote this down wrong. But the first period is January 8, 2017, the pre-pandemic period is January 8, 2017, to March 15th, 2020?

A. Yes.

Q. But the COVID period is June 28th to -- is it May 15th?

A. Yes. 2022.
Q. Okay. And the next, the final period is May 2022 to August --
A. 13.
Q. Okay. Thank you. I wrote that down wrong yesterday when it was --
THE COURT: Of 2023?
DR. CRYAN: 2023.
THE WITNESS: Right.
THE COURT: Okay.
DR. CRYAN: I apologize.
THE COURT: No worries.
DR. CRYAN: I wrote that down wrong when it was being discussed yesterday, so I just want to make sure.
BY DR. CRYAN:
Q. Okay. So as you indicated, Dr. Kaiser presented 38 studies, and only one of them showed that milk was demand elastic at the retail level. So that -- that means, as I guess as Dr. -- as Ms. Hancock indicated, your results are an outlier. You are an outlier relative to the broad range of studies that are presented, whatever time periods those were looked at.
A. I don't -- I wouldn't use the term "outlier." And as I just testified this morning and yesterday, there were two studies using weekly data with demand systems, a different set of milk products, but in each of those cases, those elasticities mirrored mine. So I wouldn't use the term out "outlier." Methodology is completely

different --

Q. Right.

A. -- a new -- new set of products. So outlier would not be the word I would use.

Q. I understand. Outlier implies that the data is somehow an aberration, and I understand that you are arguing it -- I understand your defense of your study in the context of how you have approached it. I appreciate that.

But -- but most studies have -- of retail fluid milk demand elasticities show substantially lower elasticity?

A. Yes. Historically, yes.

Q. Okay. And your data, just to be clear, your -- you -- well, you have gone over this, but this context for the next -- the Circana data represents 64% of milk volume according to your slides. And let's -- let's say, as you have argued I think reasonably, that that also, in effect, represents the other 12% of retail that is not tracked, so that represents -- so in a sense it represents three-quarters of the fluid milk, and the rest are foodservice and schools and shrink and other.

And those others -- that other 24%, is -- is -- is rather inelastic; is that correct?

A. Well, yes. Let me back up. There's a number of things there.

Basically, the -- the IRI data, well, the -- the -- when it comes to milk volume sold at retail stores,

76% of that is -- is captured, but Circana captures 64 of that 76%. So when we're talking about milk volumes sold at retail stores, if you look at the ratio of, you know, 64 over 76, you get about 84% coverage. That was a -- a -- that probably needs to be clarified better on my slide.

Q. I appreciate what you are saying.

A. But the -- but the coverage, as you said, there's no coverage for foodservice. There's no coverage for -- for schools.

Q. Right.

So for the -- and I accept that for the 12% of milk that is in untracked retail, that retail is substantially similar to the other 64%, so that you are virtually representing 76%?

A. Yes. Right. And -- but Circana is representing 84% of that volume that's sold in retail outlets.

Q. But the -- but the point economically is that your data in concept represents 76% of the total volume, which is your -- which is your -- I'm just restating what you said, right?

A. Right. According to reports from Prime Consulting, 76% of the milk volume is sold at retail outlets.

Q. Okay. The other 24, which goes to foodservice and institutions and so forth, that tends to -- that tends to be very demand inelastic.

A. My hypothesis is, I wouldn't expect much price

sensitivity when it comes to sales at foodservice and schools.

Q. Okay. So -- but that -- that 24% is -- is part of Class I sales in the market?

A. By the USDA data you are referring to?

Q. That 24% that's not represented in effect either actually or virtually in your -- in your analysis, is part of the Class I volume that is -- that is sold by farmers through the system into the market?

A. Yes.

Q. Okay. And would you -- would you conclude, then, that the price elasticity of demand for -- for Class I for all the milk sold in all outlets is maybe somewhere between three-quarters and four-fifths of the number you are estimating, ballpark?

A. Could you repeat the question so that I understand?

Q. You're capturing actually or virtually 76%, about three-quarters of the milk, of the fluid milk sales, and you're acknowledging that the other 24% have a very low elasticity of demand?

A. True.

Q. So the implication, then, would be that for the total 100%, the elasticity and the demand with respect to the retail, with respect to the retail food price is -- is something more in line with three-quarters or four-fifths of the number you have come up with?

A. You see, that was what bothered me when I asked

you to repeat the question. I'm not sure I would say three-quarters or four-fifths. It's not necessarily a proportionate concept. If, you know, you -- if you are referring to taking the own-price elasticity I have and then multiplying that by .75 or .8, it doesn't work that way for the calculation of own-price elasticity.

Q. If we take the -- the total fluid sales as -- as a denominator of a measure of demand elasticity -- I'm sorry -- as a numerator for the demand elasticity, if we simply look at what the impact is -- because the context here is we're looking at price changes and how they affect the Federal Order system, and the total of volume of milk sales in the system, and how that -- how that affects the overall -- the overall Federal Order system and milk marketing from the farm all the way to the other end.

So I appreciate that what your -- that your study is looking specifically at retail sales and how that responds. And in the context, most -- in the context in which you generally work that makes perfect sense because that's all you are considering.

In this context what we're saying, we're looking at the impact on fluid sales overall of the kind of price change that is implied by the 8.6% increase that -- that you are starting from. And so what I'm saying is, would you -- well, so let me just back up then.

Would you expect significant change, significant impact on the other 24 -- on the volume of the -- on the other 24% of sales from the changes in retail price that

you are examining?

A. I don't know if I would use the word significant. There would be -- if you just focused on the 24%, as I hypothesized, I would expect a lower own-price elasticity, but I don't know what that is.

Q. Okay.

A. And even if I knew, I wouldn't know how to take that coupled with the own-price elasticities that I have calculated to get you the own-price elasticity that you want.

Q. I'm not looking for a number. I want -- I'm looking for --

A. No, what I mean is you are trying to say -- apply to the entire Class I volume.

Q. Yeah. And I'm just -- I'm trying to ballpark what the implication is if your -- if the assessment is that the -- that there's -- that's fine. That's fine. I appreciate you're saying that the demand elasticity for the other 24% would be lower, but you don't want to go out on a limb and say what that would be.

A. I don't know.

Q. Okay. All right. Okay. And you laid out that --

THE COURT: Dr. Cryan, just so we can kind of follow along with you, what page number of the slides is the one you are looking at right now?

DR. CRYAN: Okay. Now I'm looking at slide --

THE COURT: Now, every other one has a number.

DR. CRYAN: Right. I understand. They all have a

number, I'm just --

THE COURT: Okay.

DR. CRYAN: -- trying to make sure I'm doing things in order so I -- so it's clear to myself and everybody else what's -- what I'm talking about.

BY DR. CRYAN:

Q. The -- the -- you looked at the price transmission, what you were discussing with Mr. Miltner, the elasticity of price transmission.

That's the correct term?

A. Yes.

Q. Okay. The 55%, which means that the 8.6% farm price increase, the Class I price increase, translates to a -- I had this clear yesterday. I'm sorry.

So a 8.6% farm increase translates to a 4.72% increase in retail price, which is a -- which translates, given your elasticity of over 1, translates to an almost 6% decrease in the volume.

A. For total milk.

Q. Right. But -- but the elasticity of demand with respect to the raw milk price is -- is about .7 based on that calculation. If we have a 8.6% increase in the farm price, and that leads to a 5.98% decrease in the volume, quantity of volume, quantity of milk, fluid milk, that would translate to about .7% elasticity with respect -- of the retail price, with respect to the Class I price.

A. But you are talking about the percentage change in quantity at retail divided by the percentage change in

price at farm.

Q. Right. That's right. And that's the implication. That's the conclusion you are drawing. You are connecting those dots in your presentation on page -- on Slide 19. I'm not sure if I said that, but Slide 19.

THE COURT: Thank you.

BY DR. CRYAN:

Q. You are connecting those dots. And I'm just clarifying that the implication of those connected dots is that the demand elasticity of retail fluid milk sales with respect to the Class I price is -- is about .7.

A. I'm not sure you can connect the dots there, Roger. I mean, what you see is a trigger of the 8.6%, then giving rise to percentage changes in retail price, and then based on the elasticity I have for total milk in this case, in the moving-past-COVID period, that's how we get the 6% decline in retail, attributed --

Q. Right.

A. -- to the 8.6% increase in Class I price. That's -- that's about as far as I would go on that.

Q. That's as far as I'm going. I'm just trying to clarify that that implies a demand elasticity of retail sales with respect to the Class I price of about .7?

A. And I'm saying I wouldn't make that connection because the elasticity -- or the calculation to get you that 6% decline rests on the own-price elasticity at retail.

Q. And you have made the connection between the

Class I price and the retail price in your slides?

A. And I'm maintaining that the 8.6% increase in Class I price leads to a 6% decline in quantities purchased at retail. That's about as far as I'm going to go.

Q. Mathematically, that's exactly what I'm saying, is it not?

A. We agree. But you want to suggest that the own-price elasticity at the farm level, then, is negative .7, and I don't -- I disagree with that.

Q. No. That's not -- I'm sorry. Let me clarify that.

What I'm saying is that implies that the retail, that the elasticity of demand for retail fluid milk sales with respect to the Class I price is about .7, about negative .7.

A. Well, you reach that conclusion, but I don't. I mean, we're close. I say the 8.6% increase in Class I price produces a 6% decline in retail purchases of total milk.

Q. Okay. I guess we're going to have to agree or agree.

Thank you. All right. You -- you indicate -- you acknowledge that the elasticities on shorter-term frequencies are likely -- this is from Slide 17 -- and the quote bolded in the middle is, "elasticities based on shorter-term frequencies are likely to be greater in magnitude then elasticities based on longer-term

frequencies." And there's been some discussion about this, and I appreciate Mr. Miltner beginning this conversation. I don't know that this was entirely for his curiosity. I think it was pretty relevant.

You talked about, I think -- just let me -- let me back up and ask, your analysis is a pure time series analysis; is that right?

A. Yes.

Q. It's not comparing stores or -- or -- it's not looking at prices at different stores or different chains. It's not a -- it's pure time series. You have -- for each week, you have a single set of numbers; is that right?

A. Yes. And what Circana had done is aggregate during a particular week for that -- for a particular product --

Q. Okay.

A. -- across all participating retailers, recording their dollar sales with or without coupons and volume. And then once the dollar sales and volume have been calculated, an average price occurs, technically, it would be a weighted average price --

Q. Okay.

A. -- for that week. And so all subsequent weeks have the same thing. And as such, it is a pure time series.

Q. Okay. So that leads me to a question about the 64% versus the 76%.

If there were -- if there were differences in

timing of specials in the 64% versus the other 12%, could that lead to -- could that lead to some increase in -- in the elasticity that you measured that would not necessarily be as high if you had all retailers?

A. Well, you have to realize that data from Circana or Nielsen, these third-party vendors, the actual data sets that are produced are samples, but -- but --

Q. Right.

A. -- stream coverage of -- of what's happening at the retail level. But they are representative, and that's key. So there could be differences that happen for untracked data that Circana wouldn't pick up, but because of its representation -- and that's a key issue if analysts are going to use this -- would be -- would be okay to be used in applications such as the one that I have done. The key there being representative.

Q. Right. A week is a pretty short period of time.

And if the -- if the -- if the -- if the timing of milk's price promotions varied among between -- you know, even a bit between the 12% and the 64%, there would be some reduction in the elasticity, the actual elasticity relative to what you have measured?

A. Well, it's hard to speculate what direction the elasticity would be. I mean, the numbers, we wouldn't be able to -- you know, based on the coverage that we're having from Circana, we're not able to track that 12% that are untracked retail.

Q. Okay. And you did acknowledge that, I think, in

your discussion with Mr. Miltner, that weekly pricing, in particular for fluid milk, I mean, weekly pricing is about as -- you have to get that small so you can start measuring inventory -- inventory impact you are talking about, encouraging folks to stock up, buying two gallons instead of one gallon this week. If we -- if we buy -- if we tend to consume three gallons every two weeks at home, there's a tipping point, pretty low tipping point for when we buy two gallons versus when we buy one gallon, so that kind of impact can have an impact when you are looking at weekly data as well.

A. Yes. Inventory adjustment is part of that when you look at weekly frequencies.

Q. And in the context of what we're doing here today, the -- you're aware that Class I prices are set on a monthly basis; is that correct?

A. Yes.

Q. Okay. The periods that you have shown, pretty -- pretty substantial. In fact, I would -- I guess I would say dramatic differences in fluid milk price, demand price elasticity among those three periods, you know, the pre-pandemic, the COVID, and the getting past COVID.

What -- what basis would you have to believe or not believe that the results for getting past COVID are going to be persistent, that they -- that moving forward, that we're going to have results that look more like that than what we had in the pre-COVID period?

A. Well, that's a testable proposition, but that was

the primary reason we wanted to take a look at the next period, the moving-past period. Initially, as I testified yesterday, when I did the first study for IDFA, we had pre-pandemic and COVID-affected period.

Same question was asked -- you know, in fact, I wanted to know the answer to that, so what we wanted to find out is, well, did we recover from the pandemic in terms of the own-price elasticity that may have occurred in the pre-pandemic period, or are we finding own-price elasticities persisting as happened in the COVID-affected period?

Well, as you just noted, the own-price elasticities in the moving-past period were not the same as in the COVID-affected period. And in the case of total milk, total milk, the own-price elasticity pre-pandemic was negative 1.1, and the moving-past-COVID period, negative 1.26.

Q. Okay. So not that different is what -- I mean --

A. Not that much difference. So I'm acting on that basis, just focusing on that, there -- the -- in terms of the own-price elasticity became similar to what was observed in the pre-pandemic period.

Q. Okay.

A. And also, I'll make this statement, in the Son and Lusk study, which also used weekly data, they provided an own-price elasticity for total milk. They called it regular dairy milk. I'm interpreting that to be total milk. And their own-price elasticity was negative .95.

In my pre-pandemic period for total milk, my elasticity was negative 1.1. Now, the time periods were different, different demand systems, but there's some congruence there.

Q. Yeah. Okay. That's also a weekly study?

A. Weekly.

Q. Okay. My last -- my last question, which is a little bit different. There is -- there's I think often been a suggestion that Class I pricing, per se -- you know, the discrimination is a higher price for Class I than other classes has been the cause of the decline in fluid, the ongoing decline in fluid sales per capita.

Would you say that that is a reasonable thing or would you suggest that when you raise the price by a fixed amount that you have a one-time impact and that's that?

A. Well, all we can trace are short-run effects. So if -- if we have an 8.6% increase in the Class I price, and I have testified based on Exhibits 386 and 87 what the repercussions of that would be --

Q. Right.

A. -- so that -- that's what happens in the short-term. But if prices change and you have additional data, the demand system needs to be rerun. But if that occurs, I suspect that you will have a -- especially in the moving-past period, not exactly the same own-price elasticities, but they are not going to be as different as we have seen in the analysis that I did. Again, that's a testable proposition.

Q. But when you raise the price, you expect the impact to happen over some limited period of time and then -- then to kind of become static?

A. Yes. I mean, we're measuring the short-run effects. When I say "we," economists are measuring the short-run effects.

DR. CRYAN: Thank you very much.

THE WITNESS: Thank you.

THE COURT: What is so remarkable to me, Dr. Capps, is you don't even look at Exhibit 386 or 387. You apparently have total recall of all of these numbers.

THE WITNESS: I have lived with them, Judge.

THE COURT: But you are remarkable.

Who else has questions?

CROSS-EXAMINATION

BY MR. LAMERS:

Q. Good morning, Dr. Capps. My name is Mark Lamers representing Lamers Dairy, Appleton, Wisconsin.

I'm a dairy guy, so I can ensure you that these types of conversations never happen on a daily basis.

A. And that's probably good.

Q. Do you have a copy of Exhibit 392? It's the report to Congress, Agricultural Marketing Service.

A. Yes. Took me a while.

Q. Just -- I'd just like for you to turn to page 25 of that report, if you don't mind.

So looking at page 25 there, looking at the per capita consumption of fluid milk. Obviously, the trend is

going down, and it has been since 1995.

In your professional opinion, does the proposals by National Milk do anything to reverse that trend?

A. Well, I'm not familiar with the proposals, other than one proposal to raise the Class I price to 8.6%.

Q. I'm sorry, that's what I'm referring to, yes. Just on the study that you did.

A. Well, there's no direct link to that, and I -- I couldn't -- I couldn't opine on whether or not that had any impact on the per capita consumption of fluid milk.

Q. Okay. Then looking at fluid milk sales versus alternative milk sales, do you think that it's a possibility that the fluid milk sales could lose volumes as those price relationships get higher on the fluid milk sales -- on the fluid side versus the alternative beverage side?

A. Well, what I have established in my own research, as I mentioned in the earlier testimony, based on work that I have done for the Southwest Dairy Farmers, and also based on the analysis that I have done for IDFA, it's abundantly clear that fluid milk and plant-based milk alternatives are substitutes.

Q. Correct.

A. And there are some that -- researchers that attribute the decline that you see here in Figure 3.8, one of the possible reasons, but not the only one, could be the emergence of plant-based milk alternatives.

Q. So there's really no -- I'll strike that.

In your professional opinion, would you expect to see that decline continue in fluid milk sales?

A. Well, milk is under a lot of pressure, as established by my research. Not only do you have plant-based milk alternatives, but you also have competition from bottled water, juices, sports drinks, protein beverages, even refrigerated yogurt that I have been able to document.

What -- in the report to Congress, the purpose is, well, maybe to reverse the trend or at least lessen the decline, what about the use of advertising and promotion expenditures?

So the question there, the overarching question is, well, if we increase advertising and promotion expenditures, what does that do to per capita consumption of fluid milk? Well, in this report what I have demonstrated, it has a positive effect on per capita consumption, which is the expectation. And if the checkoff program associated with dairy products is to be effective, you better get a positive impact, and we have demonstrated that. And the impact is statistically significant.

And one may say, well, but yet per capita consumption of fluid milk continues to decline, and my response would be, it would fall off a cliff without advertising and promotion expenditures.

Q. Do those promotion expenditures pertain only to fluid milk or does it also pertain to manufactured

products?

A. No. In this report we do separate analyses for fluid milk, cheese, butter, all dairy. The data coming on pertaining to advertising and promotion, come from DMI, Dairy Management, Inc.; MilkPEP, the processor group; Qualified Programs, one of which being the Southwest Dairy and Southwest Dairy Farmers, and there's about 60 of those. And the overall budget for promotion is $400 million, but there are separate expenditures, advertising and promotion expenditures for fluid milk, cheese, butter.

Q. Okay. I understand.

MR. LAMERS: That's all I have. Thank you.

THE WITNESS: Thank you.

THE COURT: Are there additional cross-examination questions before I turn to the Agricultural Marketing Service?

Mr. Rosenbaum.

REDIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Dr. Capps, I would like to start by just --

THE COURT: Are you doing redirect right now?

MR. ROSENBAUM: Yeah, effectively it is, but it is partly a clarification. And so it might be helpful --

THE COURT: All right. So it might be helpful now.

MR. ROSENBAUM: -- for me to do it now.

THE COURT: Thank you.

BY MR. ROSENBAUM:

Q. And if you could turn to your PowerPoint presentation, which is Hearing Exhibit 387, on page 9, I think it would be helpful, and perhaps we may even need one clarification as to what these various numbers mean, and are.

So I want to start with what it is that makes up all fluid milk sold in the United States. Okay? So we're going to end up with 100%. Okay?

A. Yes.

Q. Foodservice is 15% of that 100%, correct?

A. Yes.

Q. Schools are 8% of that 100%, correct?

A. Yes.

Q. Shrink and other is 1% of that 100%, correct?

A. Yes.

Q. Those, if you just add those numbers together, that is 24% of the 100%, correct?

A. Yes.

Q. Is the remaining 76% fluid milk sold at retail outlets?

A. It is.

Q. Okay. Now, when it comes to Circana, Circana -- first of all, I think this is well-established, but Circana and IRI, those words are synonymous, correct? It's the same company; they changed their name?

A. Same company.

Q. And Circana just tracks retail sales, correct?

A. Yes.
Q. And not every single retailer participates, correct?
A. Yes.
Q. Okay. And so -- and so what percentage of the fluid milk sold through retail outlets is captured by Circana?
A. If you took the ratio of 64% divided by 76%, that gives you the coverage of milk sold at retail outlets that's captured by Circana. And if my calculations are right, that's about 84%.
Q. Okay. So Circana captures 84% of all fluid milk sold at retail, correct?
A. Yes.
Q. And you have already discussed what subset retail sales is of total, namely it's 76% of total?
A. Right.
Q. Okay. Thanks.
Now, in terms of the work you had previously done for AMS and that you do for the reports to Congress, correct?
A. Yes.
Q. All right. Now, first of all, I -- let's just clarify. If you look at your written testimony, which is Hearing Exhibit 386, you do explicitly reference that -- that you do those studies, correct?
A. I have.
Q. And you explicitly reference that what you view as

the -- one of the issues regarding that study, namely that it -- your most recent study didn't, for example, focus on own-price elasticity during pre-pandemic versus COVID-affected, correct?

A. Right.

Q. Okay. Now, you also, in the next paragraph, talked about how, you know, some of the differences between the work you do for AMS and the work you did for IDFA for purposes of putting together the Exhibits 386 and 387, correct?

A. Yes.

Q. Okay. Now -- and in Hearing Exhibit 394, which is the document that you were shown by counsel for National Milk yesterday, if you look at page 42, you, in that document, which did go to IDFA, you did reference the AMS data, correct?

A. I was flipping through the pages, Mr. Rosenbaum, sorry.

Q. Yes. Page 42.

A. Yes, I'm there.

Q. First paragraph.

You do represent the AMS data, correct?

A. I do.

Q. And you said the AMS data would shed light on the non-retail component of the fluid milk sales, correct?

A. Yes.

Q. Now, ultimately in the report that you submitted in your testimony with respect to non-retail sales, you

make a blanket statement that you think that those sales, in fact, would be highly inelastic, correct?

A. Yes.

Q. I mean -- I mean, to the extent that it's in IDFA's benefit in this hearing to show an impact of price increases at the Class I level on retail sales, that -- not retail sales, all sales -- I mean, that statement, if you will, works against IDFA, correct?

A. Yes.

Q. I mean, you were essentially saying in the document you filed in this hearing, that with respect to the 24% of milk that is not sold at retail, you would not expect there to be a material or highly material diminution in sales, correct?

A. Yes.

Q. So you are not somehow hogging that by not making specific reference to AMS data, were you?

A. It's explicitly stated.

THE COURT: Answer his question, "No, I was not hiding that," that's what he wants on the record.

THE WITNESS: Okay. What the Judge said.

MR. ROSENBAUM: Okay. All right.

BY MR. ROSENBAUM:

Q. I mean, you were conveying to USDA that for purposes of this hearing it would be reasonable to assume a very low elasticity for non-retail outlets, correct?

A. Yes.

Q. And that you said that plainly, correct?

A. I have.
Q. Okay. And that's what you conveyed in Hearing Exhibit 394 as well, correct?
A. Right. On page 42.
Q. Now, one technical question that I'm going to ask, and I may be stealing USDA's thunder here, because they are as meticulous about finding differences in numbers between two documents as -- as anyone.
But if you look at your PowerPoint presentation, Hearing Exhibit 387, page 12, where you set forth various elasticities, okay?
A. Yes.
Q. And if you compare that to Hearing Exhibit 394, which is the report you had done for IDFA in March of this year, so a few months earlier, and you look at page --
A. iii?
Q. Thank you. Exactly, iii.
You have -- I mean, if you just look at the two next to each other, they are very similar bar charts, correct? At the bottom of the page of page iii of Hearing Exhibit 394 versus page 12 of Exhibit 387, correct?
A. Yes.
Q. And, for example, for the -- if you look just at the total milk number as an example, for the pre-COVID period, the numbers in the two documents are the same, namely a price elasticity of negative 1.1, correct?
A. Correct.
Q. But if you look at the COVID period, the numbers

are different in the March report, which is Hearing Exhibit 394, the number was 0.40, and in your testimony today, Hearing Exhibit 387, that number is 0.58, correct?

A. Yes.

Q. And so just to clarify the record, what is the reason why those numbers are not, in fact, exactly the same?

A. When -- when the analysis was updated using Circana, the Circana data past May 15, 2022, Circana also included data before the period that we wanted. And as often happens, especially in any analysis, whether it's from the private sector or the public sector from government agencies, data are revised. So there were some revisions in the Circana data that affected the -- principally the COVID-affected period, and that's why you see the differences in the elasticities.

Q. Okay. And are -- do the elasticities that are reflected on page 12 of Hearing Exhibit 387, which is your testimony at the hearing, do those elasticity numbers reflect the updated Circana data?

A. The updated, and not -- there's -- had been no more revisions.

Q. Okay. All right. So obviously, for purposes of your report today, you have focused on the Circana data, correct?

A. Yes.

Q. As opposed to AMS data, correct?

A. Yes.

Q. Okay. And that with respect to the impact of increase in the Class I price on sales at retail outlets, correct?

A. Yes.

Q. Okay. Now, so what does the Circana data allow you to do that the AMS data does not allow you to do?

A. Well, the AMS data does not include -- well, first of all, it's monthly. That's been asked twice by me today. The Circana data are weekly, so there's a difference in time period. But in --

Q. Let's just pause.

And what -- and what -- why do you prefer the weekly data?

A. Okay. As I have testified both in my PowerPoint Exhibit 387 and my testimony, 386, those exhibits, weekly data offer a more realistic picture of what's happening at the retail landscape rather than monthly, because as I have discussed several times now, I'm operating under the presumption that consumers shop more on a weekly basis. So we're trying to capture, you know, what's happening in the retail landscape and measure that consumer behavior.

Q. Okay. What's the next thing that the Circana data allows to you do that AMS data does not?

A. Well, it allows us to consider alternative beverages. And the principal -- I mean, we have a number of them that we have used, you know, juices, bottled water, sports drinks, protein beverages. But particularly plant-based milk alternatives, that -- that is not part of

the AMS data. And we have also included refrigerated yogurt. And in my analysis I have shown statistically that the prices of these beverages do have an impact on fluid milk products.

Q. Okay. And when you say "an impact," an impact on sales?

A. An impact on volumes sold.

Q. All right. What's the next difference between what the Circana data allows you to do and what the AMS data allows you to do?

A. Well, there's some disaggregation of the -- of the USDA data. They have information on organic and flavored and white milk, but there's no information on health-enhanced milk and lactose-free milk. And with these, with the Circana or IRI data, we're able to pick up those important consumer segments, and you aren't able to do with AMS data.

Q. And, lastly, your report here is focused today on the 76% of sales that take place at retail.

Are you -- does the AMS data allow you to do that?

A. No.

Q. And just tell us why.

A. The AMS data is the dispositional data, where products are sold to convenience stores, foodservice stores, but you don't get the -- and schools and institutions. But we don't get the detailed information that you would get with the Circana data.

Q. Okay. And in the end, what is your professional

conclusion as to which dataset is the most appropriate dataset to use for purposes of the analysis you have done?

A. Well, the conclusion, I think, is best said if you look at Exhibit 387 and the last slide or the next to the last slide of my presentation. So if we want to measure for the purposes of these FMMO system, you know, elasticities, the best way to do that is to focus on current market conditions at the retail level, do so to mirror shopping behavior by consumers that is on a weekly basis, and include not only more of a disaggregation of the fluid milk into its various five segments, but also take into account primary competitors or other alternative beverages, and even refrigerated milk, to get the best picture of consumer behavior at the retail level. And as it stands right now, my research is the only one that fulfills these conditions.

And on top of that, we were able to understand, at least when it comes to the measurement of elasticities, the impact of the pandemic. No other study has been able to do that. And we hope to get this peer-reviewed and published very soon.

Q. All right. Let me ask --

THE COURT: Let me stop you, Mr. Rosenbaum.

You said refrigerated milk and --

THE WITNESS: Refrigerated yogurt.

THE COURT: Yogurt.

THE WITNESS: Yeah.

THE COURT: And I knew that because you have told

me that five or six times now, and I appreciate it.

Now, it's not all drinkable yogurt, true?

THE WITNESS: Refrigerated yogurt. Well, you know, as you would -- not the drinkable yogurts.

THE COURT: Understood.

And you have also testified about that, but this would be a good reason to explain again why that's a substitute for milk.

THE WITNESS: Well, one possibility would be consumers are substituting yogurt for cereal for breakfast purposes. In my own household, I'm one of those people, for example. Although, for the record, I also eat cereal but -- with milk. So that -- that's a reason.

And, in fact, that was the primary reason why we considered refrigerated yogurt. I mean, if you look at all the products in my 11-commodity system, yogurt is not a beverage, and we're not talking about the drinkable yogurts. But that was the major reason because of the observation of what happens particularly at breakfast when it comes to yogurt.

BY MR. ROSENBAUM:

Q. Dr. Capps, at this point I ask you to pull out Hearing Exhibit 390, that's the published article, "I Say Milk, You Say Mylk, Substitution Patterns and Separability in a Broadened Milk Category."

Do you have that in front of you?

A. I do.

Q. Okay. Now, just, this -- this isn't -- this study

was published in 2023, correct?
A. Yes.
Q. The same year as yours, as the work you have done for IDFA, correct?
A. Right.
Q. And this was published in the Journal of Agricultural and Resource Economics.
Do you see that?
A. I do.
Q. Are you -- is that a well-regarded journal?
A. Well-regarded journal. I would put that in a top-quality journal.
Q. Okay. And do you have to have your work peer-reviewed in order to be published in that journal?
A. Yes.
Q. Okay. Now, the co-author of this, one of the co-authors of this report is a woman, Andrea Carlson.
Do you see that?
A. I do.
Q. Do you know her?
A. I do.
Q. Okay. And she -- and as indicated here, she is an economist at the Economic Research Service of the U.S. Department of Agriculture, correct?
A. Yes.
Q. And do you know what her -- is she a doctor?
A. She --
Q. A Ph.D.?

A. Yes, she has a Ph.D. degree.
Q. Do you know what her Ph.D. is in?
A. Agricultural economics.
Q. And if we turn to page 288 of this document, there's a Table 5 that's entitled, "Marshallian and Hicksian Price Elasticity Estimates." And if you -- if you were going to compare your work to the work in this article in terms of the elasticities, which would you look at, Marshallian or Hicksian?
A. Marshallian.
Q. And I will leave it to someone else if they want to have a technical explanation why that is.
A. Okay.
THE COURT: Could you spell both those names for us?
THE WITNESS: Marshallian is spelled M-A-R-S-H-A-L-L-I-A-N; and Hicksian is H-I-C-K-S-I-A-N.
THE COURT: Thank you.
BY MR. ROSENBAUM:
Q. And does this document list own-price elasticities as concluded by the authors of this study?
A. Yes.
Q. Okay. And -- and what did they conclude was the elasticity own -- start the question again.
What does the study conclude is the own-price elasticity of skim milk?
A. Negative 1.297.
Q. And what does this study conclude is the

elasticity -- start that again.

What does the study conclude is the own-price elasticity of reduced fat milk?

A. Negative 1.666.

Q. And what does this study conclude is the negative -- strike that, keep saying it wrong. Start the question again.

What does this study conclude is the own-price elasticity of whole fat milk?

A. Negative 1.45.

Q. And your study did not break down milk by fat levels, correct?

A. No.

Q. Okay. Nonetheless, if you look at these -- so we don't have precise the same number, but these all show elasticities well in excess of 1, correct?

A. They are elastic. Right. In the elastic range.

Q. Okay. And indeed, these numbers are higher, for example, than the number that you calculated for -- for the -- I don't know the exact phraseology -- the -- these are higher numbers than you calculated for your total milk number, correct?

A. Yes.

Q. And they are pretty similar to the number that you calculated for traditional white milk where you calculated a negative 1.4 in the moving-past-COVID period, correct?

A. Yes.

Q. And the numbers in this study more or less bracket

that?

A. They mirror those.

Q. Okay. Now, actually, just so we're not misleading, this is actually a study that looks at earlier, the pre-COVID data, correct?

A. Pre-COVID. So the best measure there in terms of own-price elasticity, if you want to compare that for -- to traditional white milk, my own-price elasticity was negative .77 for traditional white milk. So these are higher.

Q. Now, so we can orient ourselves as to why they were doing this study, if you turn to page 1 of the study, the very first page, I'll just paraphrase, tell me if my paraphrasing is wrong, but what they were trying to study was whether nondairy milk products are, in fact, serious competitors to milk, correct?

A. They want especially the plant-based milk alternatives.

Q. Yes. And that's better stated. They were looking at the relationship between plant -- this plant-based beverages versus milk and their substitutability for each other, correct?

A. Yes.

Q. And -- and they say, "This study tests the assumption of weak separability because demand for dairy and nondairy milk products" -- sorry, I misspoke that. Start again.

"This study tests the assumption of weak

separability between demand for dairy and nondairy milk products by using food scanner data from 2012 to 2017, and estimating linear approximate EASI demand systems. Our results show that the weak separability structures can be rejected. First, the findings show that nondairy milk products compete with dairy milk for consumers' budget allocated to milk. Second, although milk demand studies often do not include nondairy milk or assume weak separability, the exclusion of these products -- or the separability assumptions -- may lead to biased estimates."

Do you see that?

A. Absolutely, I see it.

Q. And is that -- I mean, and you have -- you have identified already that one shortcoming of reliance upon AMS data is that it doesn't capture the competition posed by plant-based beverages, correct?

A. Yes.

Q. And is it fair to say that this study, Hearing Exhibit 390, would suggest that reliance upon data that doesn't capture that is missing out on a significant component of reality for milk competition?

A. Does -- yeah. It -- this study says one needs to include nondairy milk, principally plant-based alternatives, if one wants to understand the own-price elasticity of fluid milk products.

Q. And to do that you need to turn to data like IRI data, correct?

A. Yes.

Q. And that's what you did?
A. That's what I did.
Q. And that's what Dr. Carlson and her cohorts did, too, right?
A. Yes, but over the period 2012 to 2017.
Q. But they were using scanner data just like you used, correct?
A. Yes.
Q. And they were using weekly -- were they using weekly data also?
A. Weekly data.
Q. That's what you used, too?
A. Yes.
Q. Okay.

MR. ROSENBAUM: That's all I have.

THE COURT: That was helpful to put in your redirect. The Agricultural Marketing Service suggests that we take our 15-minute break and then we will turn to you.

MS. TAYLOR: Yes.

THE COURT: All right. Good. Please be back and ready to go at 9:45.

We are off record at 9:29.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 9:48.

I believe there are some more questions before I call on the Agricultural Marketing Service, and I would

invite anyone who has additional questions to come forward now.

DR. CRYAN: Hello, Your Honor.

RECROSS-EXAMINATION

BY DR. CRYAN:

Q. Roger Cryan from the American Farm Bureau Federation.

Following up on Mr. Rosenbaum's highlighting the Ghazaryan, Bonnano, and Carlson paper, Exhibit 390.

Mr. Rosenbaum --

DR. CRYAN: Hello, Judge, long time, no speak.

BY DR. CRYAN:

Q. The -- Mr. Rosenbaum highlighted these own-price elasticities for these individual categories of skim milk, reduced fat milk, and whole fat milk, which were higher than your results for the category as a whole.

In light of the significant cross-price elasticities among those categories, would it be reasonable to conclude that that -- that's not -- that's not a demonstration, that those -- that the milk category as a whole, in their estimation, would be -- would be -- from their results, would be higher than yours? That the elasticity is necessarily higher than yours?

It's -- it's in the ballpark, but it doesn't -- actually, let me put it this way.

Would there be -- are the cross-price elasticities an indication that the own-price elasticity for the dairy category as a whole would be lower than those individual

numbers?

A. Well, what the study does as far as dairy products is only focus on milk by fat type: Skim, fat, and reduced fat, and whole fat. I didn't break down, you know, traditional white or traditional flavored milk by fat type.

Q. Right.

A. So there -- the point is, there's no immediate direct comparison. However, the elastic responses in terms of own-price elasticities for the skim, reduced fat, and whole fat, mirror the -- at least in the pre-pandemic period -- were higher than the traditional own-price elasticity that I got for white milk, which was negative .77, I believe.

So the statement, are these higher than the ones that I have got? There's no direct comparison because I don't have exactly the same categories. But it does demonstrate that there are elastic responses among dairy products, which is the point I wanted to make with my work.

Q. The two largest categories of fluid milk sales are whole fat and reduced fat, and this shows cross-price elasticities between -- between those two that are pretty substantial; is that right?

A. You mention the term cross-price elasticity, do you mean own-price elasticity?

Q. No, I mean the elasticity between reduced fat and whole fat in both directions.

A. So are you talking -- oh, okay. You are talking about the cross-price elasticity between reduced fat and whole fat, .474, and then the cross-price elasticity between whole fat and reduced fat, .926?

Q. Right.

A. Right. The -- what that shows, and in fact the better way to show it, and that's why the authors produced Hicksian elasticities, if you really want to classify products as substitutes or complements, one looks at the compensated cross-price elasticities. That's what the Hicksian elasticities indicate.

But if you look down to the Hicksian elasticities, they do, in fact, show positive and results in statistically significant, indicative that reduced fat and whole fat milk are substitutes, and skim milk and whole fat milk are complements, and reduced fat and skim milk are substitutes.

Q. Would you conclude that has to do largely with the fact that folks will tend to move from -- from one category to the next rather than directly from skim to whole? I mean, again, the two largest categories in fluid sales, I'm -- I expect you are aware of that -- are whole and reduced fat at the retail level. And we're talking about retail.

A. Yes.

Q. And so these -- these really pretty large cross-price elasticities, and in the Hicksian you have the cross-price elasticities are larger than the ones in the

Marshallian estimation. Don't those indicate that quite a bit of that own-price elasticity for reduced fat and whole fat milk is based on switching, when people see a difference in the price, they just buy whichever one is cheaper?

A. You can't make that claim. All you can claim is that reduced fat and whole fat milk are substitutes.

Q. Okay.

A. The own-price elasticities are estimated, you know, simultaneously with the cross-price elasticities, but that's about as far as you can go in making the claims.

Q. Isn't that what an economic substitute is, if the price is different, people buy what's cheaper?

A. Yeah. The substitutability demonstrates that if the price of reduced fat milk goes up 1%, what's the corresponding percentage change, for example, on the quantity purchased of whole fat milk.

Q. Right. So if the prices -- let's say the prices are the same and then the price for the one goes up, people tend to buy the one that didn't go up?

A. No -- no disagreement there. But you also have the own-price elasticity as well, so --

Q. Right.

A. But to say the magnitude of the -- if I understand your question right, the magnitude of the cross-price elasticities have an impact on the own-price elasticity, they are estimated at the same time within the system.

Q. I'm not saying they have an impact on the own-price elasticities for the category, for the individual subcategory. I'm saying they have an -- they have -- they indicate that the own-price elasticity for the whole dairy category might be lower than you would expect if you didn't have that cross-price elasticity.

A. Can't make that claim. In fact, if you look at the results that I had when we -- you know, we had a similar disaggregate system of five consumer segments, and then I collapsed all of that to total milk, the responses -- the own-price elasticity I got for total milk, at least for the moving-past period, was negative 1.26, and for the pre-pandemic period, negative 1.1, still elastic, even when you collapsed all the possible substitutability or complementary conditions among the five segments.

Here, in order to formally address your question, you might ask Carlson and others to collapse their skim milk, reduced fat milk, and whole fat milk and do another system with total milk --

Q. Right.

A. -- vis-a-vis other nondairy, soy, and almond.

Q. And I'm not saying -- I'm not asking you to say that they would be inelastic. I'm asking you to say it would be less elastic. I mean, can you not say that if the cross-price elasticities between whole fat and reduced fat milk were zero that that would not indicate a higher own-price elasticity for the category as a whole, than

what these results indicate?

A. Understood. But you also have complementarity conditions between whole fat and skim milk. You have to take that into account, too.

So I don't -- I don't know directionally what would happen if you would collapse the skim milk, reduced fat milk, and whole fat milk into a total milk category. That's precisely why I did that in my analysis, but they did not do that here.

Q. Okay. But there's no clear indication from this that their result for the category, dairy category as a whole, would be -- would be larger than yours, that the elasticity would be larger than yours?

A. No, it is --

Q. It's only some confirmation that the approach, that their approach and your approach are consistent and get similar results?

A. I agree with that statement.

Q. Very good. Thank you.

THE COURT: For the record, we were in Exhibit 390 on page 288. Thank you.

THE WITNESS: 288.

THE COURT: Before I call on the Agricultural Marketing Service, is there any other re-cross?

I see none. I'd ask the Agricultural Marketing Service to proceed with questions.

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RECROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. Thank you for joining us. You certainly picked the mother of all hearings to be your first Federal Order hearing to testify at.

Just a little context for our questions. We get the privilege of going back and taking all of this information and trying to help the Secretary determine the decision he wants to make. But after this hearing, we're not allowed to come back and ask you any questions or talk to anybody else in this room. So a lot of our questions are trying to make sure we know what we need to know to go back, so when we look at this again later, we still understand what you are trying to tell us. So I just wanted to give you the context for why I'm asking.

A. Thank you for the context.

Q. Okay. All right.

As you were having the back and forth with Dr. Cryan, I thought to myself, I don't think anyone -- I'm not sure, maybe you did, but I didn't see it in your slides -- defined cross-price elasticity on the record. Maybe you had before. I couldn't find it. But if you wouldn't mind doing that real quick, that would be helpful.

A. I believe the definition is in my testimony in my PowerPoint presentation.

Q. I think I missed the page, though.
A. Let me see if I can find it. The PowerPoint presentation.
Q. I thought it was as well, but then I flipped through and I thought, I don't see it here.
A. My apologies. I got a lot of papers here.
Yes. This is Exhibit 387.
Q. Okay.
A. I'm trying to find the appropriate page. My bad.
Q. Oh, I think I actually see it now. Page 7.
A. Thank you.
Q. Yeah.
A. Yes. Cross-price elasticity is referred to percentage changes in the quantity of any product attributed to a 1% change in the price of another product.
Q. Okay. Thank you. I do want to start on page -- Slide 8.
A. Of Exhibit --
Q. Of Exhibit --
A. -- 387?
Q. Yes. I'm going to stick mostly to this exhibit.
A. Okay.
Q. Okay. We want to talk a little bit about the time periods, pre-COVID, during COVID, and moving past COVID. The first question is there seems to be a gap between the pre-COVID and the -- and the COVID period. I'm just wondering if you can talk about why there is that time gap in the data.

A. A lot of volatility attributed to the pandemic. We didn't want to necessarily -- we wanted to filter out the word noise was mentioned earlier by questioning. There may have been a lot of noise associated with the immediate impact of the pandemic. We wanted things to settle down a little bit. So what we actually -- or what I actually did is tried different dates to when we thought we had a settling down period, so there were six or seven additional runs that I made that weren't published. But we settled on -- and when I say "we," Ariun Ishdorj who was helping me with this -- settled on June 28, 2020. That explains the gap.

Q. Okay. And can I just ask why you settled? What made you settle on this date?

A. We didn't want to necessarily take a look at own-price elasticities that really wouldn't have -- I mean, the impact on the own-price elasticities occurred, but again, we're trying to measure what the typical consumer behavior would be, so we thought some settling down of that to get rid of the immediate noise that was created by the pandemic, and that's how we settled on that time period.

Q. Okay. And when we look at the length of time in each period, if we want to count them in weeks, so this is weekly data, we calculated the first time period, pre-COVID, is 166 weeks; the second time period would be 98 weeks; and the third, moving-past-COVID period, would be 64 weeks in that time data.

A. Right.
Q. Just wondering if you could elaborate or comment on whether there's an impact -- whether the impact of the different lengths of time in each of these periods impacted your analysis results.
A. Well, the amount of data you have always impacts your analysis. We don't know to what degree, could be a small impact, could be a large impact. But as long as you have sufficient degrees of freedom to estimate the model, and the minimum number of weeks was the last period, as you mentioned 64, was sufficient to handle the estimation of the 11-equation or seven-equation Barten Synthetic Demand Systems Model. So no issues regarding the sample size. They do not have to be the same.
Q. Okay. And you wouldn't see any issues with the fact that in the post-COVID period, or moving past COVID, that period only, say, for a vast majority of the observations, only -- you know, didn't -- only picked up one season. For example, it might only have one spring in the data. If there's some seasonality between --
A. Yes.
Q. -- demand.
A. So, you know, we did account for seasonality in the demand systems model, technically with the use of quarterly dumps --
Q. Okay.
A. -- every 13-week periods. So May 22 would be Quarter 2, then you'd have Quarter 3 and Quarter 4 in

2022, and in 2023 you would have Quarter 1, Quarter 2, and a little bit of Quarter 3. Yes. But they're measuring -- they are corresponding to 13-week periods, so that dummy variable would be a 1 for 13 weeks. So even though it looks like you are only accounting for, you know, a relatively small number of seasons, as you mentioned, with the use of the weekly data and the number of 1s that correspond to seasonality, you get --

Q. You counted for that?

A. -- you get a better reflection of seasonality.

Q. Okay. Thank you.

So yesterday and this morning you answered some questions about the five-year study you did for IDFA using AMS data, I think it's Exhibit 393.

We were wondering, did you -- in this Circana data you used, you broke it up into the three time periods. Did you ever look to run a demand elasticity over that full five-year time period?

A. I considered it, but the reason I didn't do it, I would -- it would preclude me from looking at the impact of the pandemic. And if you were to use the whole five-year period, you know, the question that any reviewer would suggest is, well, how did you account for the pandemic?

So one could do it easily, and who knows what the elasticities would be. You can't simply take a weighted average of the own-price elasticities that I had based on maybe the number of weeks, for example, or volume or

however you come up with the weeks, you'd have to actually estimate the model. But I think breaking it up in these respective periods give a better indication of what really transpired at the -- in the retail landscape. And right now, all my money is on the moving-past-COVID period because that's the most reflective time period.

Now, you could always update that dataset, but the model is in place to handle that, so the next question you might suggest, is, well, what happens after August 13? And my answer is, that's a testable proposition.

Q. Okay. I want to talk a little bit at the top part of that slide about the data providing information on volume, dollar sales, average price per volume, and total points of distribution.

Can you talk a little bit about what total points of distribution is?

A. Well, what we're -- you know, for example, volume or dollar sales may be a function of, well, what was the penetration of the particular products that make up the consumer segments across the retail stores? And if you didn't take into account this aspect, total distribution, which I like to better refer to it as market reach or market penetration, you might not necessarily get the best picture of what's happening in the landscape.

So in addition to quantities and prices that are part of the Barten Synthetic Model, and we already talked about seasonality, so I have appended those quarterly variables, and there is a market reach or total

distributions variable that I also put in the model to account for market reach. So, you know, maybe sales are down not because consumers aren't buying, we just -- Circana wasn't able to get a good picture of what the market reach is. So it will account for that. And I think that's an important accounting.

And a lot of demand studies that I have peer-reviewed, they don't do that. I -- and sometimes the very fortunate -- because when you do account for it and that coefficient turns out to be not different from zero, I don't like to leave anything to chance.

Q. So is that a number that -- that's not data you received, that's a number you computed?

A. It's not a number I computed. It's a number that Circana has computed.

Q. Okay. That -- that number came from Circana?

A. Yes.

Q. Okay.

A. Not me.

Q. Okay. Another question then. That number, let's say during a time period milk never made it to the store, maybe the store was short for whatever reason. Does that number, would that be reflective in that number, the fact that there wasn't as much market reach in that particular week because of that fact?

A. It should reflect that.

Q. Okay. I'm doing a little bit of cross-referencing. I wanted to turn to Exhibit 386 just

because we were looking at the price and quantity information you had on page 6.

A. I'm with you here. I'm shuffling papers.

Q. Yeah.

A. Yes. I have Exhibit 386.

Q. Okay. I'm on the table on page 6. And you have columns there for budget share. Can you just explain what that is and --

A. Budget share.

Q. -- how that was computed?

A. Yes. If -- if you were to multiply price times quantity for each of the products here, and add them up, you would get the total expenditure on the 11 products that I have listed. Then, if you took the total expenditure on each of the individual products relative to the total expenditure across all products, that gives you the budget share.

Q. Okay.

A. So, for example, if you will see in the pre-COVID period under the column budget share for traditional white milk, it was 17%, and then the budget share declined 15%, essentially, and then 14% in the moving-past period. And for the total milk category, you know, of the -- of -- including the alternative beverages and yogurt, milk essentially accounted for 25% of the expenditure, 23% in the COVID period and a little bit less than 22% in the moving-past period.

Q. Of all of the money spent on these categories?

A. On these categories.
Q. Got it.
A. Right. It's conditional on these categories. And you will note further, bottled water, number one; juices typically, number two, or milk, number two; and then among the five consumer segments of milk, by far, not surprising, traditional white milk occupies the highest budget share.
Q. Uh-huh. So this total milk number, I didn't calculate it, but it is an aggregate of all the disaggregated columns under milk?
A. It is. When you multiply, for each week now, the price and quantity, and then add them up, you can get a total expenditure each week. And then what we're doing is, for each week, calculating the budget share for these corresponding categories. And what's presented here in Table 1 is an average-of those budget shares in the three respective time periods.
Q. Okay. Wondering if you could talk about if there's any other variables you included in the -- in the analysis, other than the ones we have talked here of price, and volume, and quantity, in particular?
A. Seasonality and total points distribution. Those are the variables that I used to estimate the model. And you are asking what other variables?
Q. Anything else, like income?
A. Well, the problem with income, it's not available weekly.

Q. Okay.

A. However, there is a -- a technique where you could calculate an income elasticity sort of, I would call it a sophisticated back-of-the-envelope category. And the way to do that, you take the total expenditures that we just talked about, right? And, you know, I think income was available quarterly, or monthly. You could develop a monthly total expenditure category, and do a regression of total expenditure as a function of income, and then compare that result, or multiply that coefficient by the -- you know, by the budget share here, and then we -- or the total expenditure elasticity, and we could get an income elasticity.

So you can -- you can get that. We -- we didn't do that exercise here, because we wanted to concentrate predominantly on the own-price elasticities and, somewhat secondarily, although importantly, the cross-price elasticities.

Q. And so do you -- based on your professional experience, do you think if income is accounted for, it would have any impact on the demand own-price elasticities results that you got?

A. In my experience, total expenditure and income are typically not only positively correlated, but highly correlated. That said, if one were to substitute, if capable, but we didn't do that here, income for total expenditure, it would not have that much of effect. That's been my personal observations.

Q. Okay. Another kind of professional question since we have you up here on the stand, don't like to miss an opportunity.

Are there any other factors beside price and perhaps income, like we just discussed, that would cause any changes to the quantity of milk demand that's in the dairy side?

A. Well, in the -- in the report to Congress, for example, we include some variables there that aren't part of the study here. One would be the percentage of the U.S. population that -- of preschool children, the percentage of the population of preadolescent children, and the percentage of the population of adolescents. And the reason the focus on that, well, children are typically positively linked to fluid milk consumption.

Another variable that we use in the report to Congress is the percentage of sales eaten away from home. I mean, so you look at the food dollar, you can -- you know, the food dollar can be used to purchase at-home purchases, but you can also take the food dollar and look at away-from-home purchases.

And the rationale there is, as the percentage of the dollar that goes to foods eaten away from home, since milk is not typically consumed often away from home, we would expect a negative relationship there between that variable and fluid milk consumption.

Now, you -- those are certainly viable variables, I have used them myself, but the reason they weren't used

here is that, first of all, the percentage of the population of children in the various classes is an annual calculation. I mean, you can impute, and, in fact, I do for the report to Congress on a quarterly basis, I feel comfortable with that. But to do that on a weekly basis, my comfort level disappears.

Q. Okay.

A. And the same thing is true for the share of the dollar away from home. Comfort level is good quarterly, not good weekly. So I -- I didn't try those.

Q. Okay. So I think in total what I hear is, using the weekly data, in your opinion, provided you some benefits over the AMS data that's not weekly, that's monthly, or any other kind of larger time series data, but on the flip side of that, there might be other variables that aren't available weekly, so you can't include them necessarily in the analysis; is that accurate?

A. That's accurate. Again, the whole purpose weekly is to try to get the best picture of consumer behavior in the retail marketplace, and for statements I have already made, I think the use of the weekly data is the best.

Q. Got you. Okay.

THE COURT: Dr. Capps, would you take the far end handle.

There we go. Thank you.

THE WITNESS: I usually have no trouble speaking, Judge to it, but thank you. All right?

///

BY MS. TAYLOR:

Q. I want to turn to Slide 9. There's been a lot of talk about this Prime Consulting percentages.

A. I'm sorry, which --

Q. Slide 9, I'm sorry, on your Exhibit 387, your PowerPoints.

A. Yes.

Q. So can you describe who -- what is Prime Consulting?

A. Okay. Prime Consulting is an independent consulting firm headed by Doug Adams, and he has contracts with IDFA to do a number of things. In this report -- in this case, he provided information on all channel tracking. And the percentages that you see here came directly from Prime Consulting.

And in my own experience working with Circana and Nielsen, you know, not only for dairy products, but other products that I have, you know, been involved with, that 64% does not surprise me. For some it might be lower; for some it might be higher. So 64%, you know, resonated with me. It was -- I feel comfortable with that.

I had no idea about the percentage of milk volume that was untracked retail foodservice and schools.

Q. And that all came from Prime?

A. Yes.

Q. And do you know if that report is public and available for us to take a look at?

A. I suppose it is.

Q. Okay.
A. But I don't know if it's -- for sure, if it's publicly available. It was made available to me.
Q. Okay. As far as you know, it's not part of this hearing record.
A. I'm sorry.
Q. As far as you know, it is not part of this hearing record.
A. No.
Q. Okay. So there's been a lot of talk about the 64 and the 76 percentages, and every time I think -- we think we're clear on it, we spend too much time talking ourselves out it based on what we have heard. So I want to make sure that this is correct.
Circana constitutes 64% of total beverage milk volume sold in the United States.
A. Of milk volume. It says, yeah. 64% of milk volume.
Q. And I'm talking about fluid milk volume. Beverage milk volume. It doesn't account for the milk volume put in cheese, the milk volume put in --
A. No.
Q. -- just to make sure we're clear on that.
A. Right. Sold at retail.
Q. That's sold at retail. And let me see my other number.
THE COURT: So -- so looking at page 9, this is fluid milk volume; is that right?

THE WITNESS: It says 64% of milk volume.

THE COURT: All right. Not necessarily fluid milk?

THE WITNESS: Presumably it's fluid milk.

BY MS. TAYLOR:

Q. So 64% -- I'm going to read the sentence so we're all kind of clear and make the record clear.

The sentence says, "The syndi-" -- The report -- "The syndicated retail data that constitutes 64% of milk volume."

So that's 64% of the fluid milk sold in retail --

A. At retail outlets.

Q. -- is covered by the Circana data?

A. Yes. But there's another 12% --

Q. I'm getting there.

A. Oh, sorry.

Q. Okay. So -- so then that leaves another 36%. And according to Circana: 12% of that is untracked retail; 15%, foodservice; 8%, schools; and 1%, shrink.

And so you added 64 to 12 to get 76%, which you would say, then, if your dat- -- you can extrapolate that your data should be similar to that 12%, so you kind of feel like your data -- that data actually covers 76%, not 64?

A. Maybe the best statement to make is that when it comes to milk volume sold at retail outlets, 76 -- or 76% of milk volume is sold at retail outlets. I'll just say it again. 76% of milk volume is sold at retail outlets.

But Circana constitutes 64% of that 76%.

So if you want to make the statement, as I bolded here, and then my answer is wrong, because if you take the ratio of 64 to 76, Circana data, if you're just talking about milk volume sold at retail outlets, constitutes 84% of that. I'm only talking about just the milk volume sold at retail outlets.

Q. Right. And I -- I just had to think about it. Because yesterday when I was trying to compute this, I flipped the equation and got 48%, and that is not the way to look at it.

A. Right. I mean, you were incorrect.

Q. It wouldn't be the first time.

A. Well, listen, I'm there with you.

So just to be clear, what I have bolded it says, "Circana data cover roughly 76% of the milk volume sold at retail outlets."

Actually, it's 84%. Because 76%, the amount of milk volume sold at retail outlets is 76%, but Circana constitutes 64% of that 76%. So if you really want to talk about the coverage by Circana limited to milk volume sold at retail outlets, that's where the 84% comes into play.

Q. Okay.

A. I hope that clarifies the situation.

Q. It does. Thank you very much.

Okay. Let's see. And I know you mentioned that untracked retail are retail outlets that don't report

their data, one being H-E-B, and I know some --

A. That's one example.

Q. That's an example. Asked you other questions of specific retailers.

But I just want to the ask categori- -- if I look at it as a category, does that mean it might not include convenience stores as well? I'm trying to see what else is in that number, as like, a category, not necessarily an individual company.

A. Well, I don't know the specific breakdown of the retail outlets in Circana. I have better knowledge of that in Nielsen, but I don't know what the breakdown of Circana.

But in Nielsen, the coverage -- and I would expect it to be similar, but I don't know for sure -- Nielsen covers dollar stores, drug stores, convenience stores, super centers like Walmart and Sam's -- Nielsen now. But I don't -- you know, there -- it's sort of a Gallipoli there in the market for scanner data. So my presumption is, but without formal knowledge, is there would be a similar -- in terms of retail outlets, there would be a similar assessment, but I don't know that for sure.

Q. Okay. I want to turn to Slide 12.

So as we were looking through these numbers, these elasticities, seems like elasticities for some products like water, sports drinks, protein beverages, they didn't really change between any of the time periods?

A. Absolutely. You are right.

Q. And others did.
A. Yes.
Q. Just wondering if you might infer -- infer as to why that might be.
A. Well, I don't have an excellent reason why that was the case, but consumers seemed to be unaffected pre-pandemic, pandemic, post-pandemic, when it comes to bottled water, sports drinks, and protein beverages. As to why that's the case, I don't know. There may also not have been much in the way of disruptions, but we have captured disruptions indirectly with the use of the total points distribution variable. So I don't know. But it is a remarkable result that they are largely unaffected, those categories, when it comes to own-price elasticities.
Q. I just wanted to kind of reference, I'm going to turn to Exhibit 394, which is your March report to IDFA, and I want to look at three little iii.
A. What page are we on?
Q. Three little iii's are --
A. Oh, oh, oh, three little iii's.
Q. That's what I call it.
A. Yes.
Q. And I can also then look at -- sorry, I'm going to get a lot of documents in front of you -- report Exhibit 386, page 7. I think this is missing -- so, as Mr. Rosenbaum alluded to, we like to triple check the numbers, right? To make sure --
A. Yes.

Q. And we noticed that for some of the pre-COVID period numbers, particularly under alternative beverages, they are slightly different in what's on your PowerPoint presentation than what we see on the tables, for example, in Exhibit 386.

So, I'll state for example, bottled water, in the pre-COVID period in your chart, it's negative 1.48, but on the Exhibit 386 it's negative 2.22. And I'm just trying to figure out, is that because maybe one was done -- I'm just trying to figure out why there's that discrepancy.

A. When the -- when we asked for additional data from Circana, they not only provided the additional data from May 22nd, 2022 to August 13, 2023, but for whatever reason they also provided data earlier to that. And what we noticed, because when I get information like that I want to make sure I take a good look at the descriptive statistics, and there were some changes, revisions. So when -- when I posed a question to Circana, my answer that I -- the answer that I got was revisions were made in the categories.

So whenever that occurs, operationally in the way I like to proceed is use the most recent data available to me that presumably has taken into account revisions. If asked why they're revisions, I have no clue.

But I am working with government data. For example, government revises or updates their data all the time, so this is not a surprise. And by the way, it's just a fact of life for revisions to occur.

Q. We certainly do. And that explains the discrepancy from the March '23 report, certainly, but then there's also still a little bit of differences between your written testimony and the PowerPoint slides, which I would think would be the same.

A. So let me be clear. You -- there -- there are differences into what I -- let me see, between my PowerPoint in Exhibit 387 and my testimony in Exhibit 386?

Q. Yeah. So I'm on page 7 of 386, and it's the table that lists own-price elasticities in a table form for the three different time periods.

A. Oh. Oh, I see. Well, let me see. Sorry. I'm just shuffling papers around.

Q. No. It's a lot.

A. To be clear, I'm looking at page 7, Exhibit 386, the table of own-price elasticities, and I'm comparing that to the pictorial summary that I provided on page 9 in Exhibit 387.

Q. Page 12, Slide 12 on 387. That's my slide.

A. Yes, yes, yes. Okay.

Q. And the --

A. So --

Q. The milk ones match --

A. Okay.

Q. -- but the alternative beverage ones, seems to be some discrepancies in the pre-COVID period.

A. Ah, ah. The numbers that are correct are those on page 7 of Table 2. So, for example, the bottled water --

and thank you for pointing this out -- the negative 1.48 in the pre-COVID period should be negative 2.22. And for sport drinks it should have been, in the pre-COVID period, negative 1.89, and for protein beverages, negative 2.11 again in the pre-COVID period. And I think all the others were correct, except for refrigerated yogurt should have been negative 2.58 in the pre-COVID period.

So the discrepancies between Table 7, the correct, and what I have pictured related to those products and the pre-COVID period.

Q. Okay. Thank you very much.

A. No, thank you. I -- you know, no matter how many times you look at this -- but I'm glad we got that cleared for the record.

Q. Yes, I do understand sometimes the mind just sees things that aren't there. Okay.

MR. ROSENBAUM: Your Honor, might we have a formal correction so that might be --

MS. TAYLOR: Certainly.

THE COURT: I think that's a good idea. All right.

So, Dr. Capps, I'm looking at Exhibit 386, page 7, and no corrections are needed there?

THE WITNESS: Correct.

THE COURT: All right. Now, I'm looking at Exhibit 387, page 12, and I want you to talk me through what needs to be corrected in the alternative beverages, and go slowly because we'll be making those changes right

on the record copy.

THE WITNESS: Yes, ma'am.

Under bottled water in the pre-COVID period, on page 12 of Exhibit 387 it says negative 1.48. Well, that should be negative 2.22.

THE COURT: Negative 2.22. And I strike in the yellow column, minus 1.48.

THE WITNESS: Everything else under bottled water is right except for the first number.

THE COURT: All right.

THE WITNESS: And for sports drinks, the first number was negative 1.87, it should be negative 1.89.

THE COURT: All right. So in the yellow column -- you know, actually, before I said yellow, I should have actually said white. Anyway, the first column. So I'm striking minus 1.87 and I'm making it say minus 1.89.

THE WITNESS: And two more, Your Honor. Under protein beverages, that first number of negative 2.07 should be negative 2.11.

THE COURT: I'm striking minus 2.07 and I'm writing minus 2.11.

THE WITNESS: And finally, for the refrigerated yogurt, the first number was negative 2.50, that should be negative 2.58.

THE COURT: All right. I'm striking minus 2.50, and I am writing minus 2.58.

THE WITNESS: Correct.

MS. TAYLOR: And if I could add, that exact same

table is on page 8 in the written testimony of 386. So I'm not sure we need to go through it again, but we would ask that the same exact changes be made on that table, that way they correspond.

THE WITNESS: Yes, in making of the PowerPoint presentation, I copied and pasted the table in Exhibit 386 to create the table on page -- or the pictorial summary on page 12. Thank you again.

MS. TAYLOR: No problem.

THE COURT: I think we do need to do it. So turning to Exhibit 386 and looking at the changes we just made on page 387, page 12, please make those same four changes on Exhibit 286 (sic), page 8.

THE WITNESS: That is correct.

MR. ROSENBAUM: Your Honor, did you say 386?

MS. TAYLOR: Yes. 386.

MS. ROSENBAUM: I thought I heard 286.

THE COURT: I said 3.

MR. HILL: You said 286, but it's 386.

THE COURT: Thank you, Mr. Rosenbaum.

THE WITNESS: Well, I'm the one that caused all the trouble with the typo, so --

THE COURT: I meant these changes are now being made on Exhibit 386, page 8. And fortunately, AMS knew that's what I meant. So that's where they were, but now the record is better.

All right. We're caught up. Thank you, Ms. Taylor.

MS. TAYLOR: Thank you, Your Honor.

BY MS. TAYLOR:

Q. So as we look at the elasticities for fluid milk, the results on your page, on this page, they show some significant changes during the three time periods. And USDA is setting Class I policy for Federal Orders, and so that policy usually extends over a longer period of time.

So how would you think we should interpret these large changes over shorter -- these short periods of time?

A. Well, as I testified, especially with the second period, the COVID period, there was a structural change. Going forward, my recommendation would be, that's what happened in the pandemic period, but that's not the situation in moving past COVID. So if I had to put my laurels on a set of numbers as to what are the appropriate own-price elasticities today, that would -- I would use the moving-past-COVID period. And in making comparisons with Dr. Kaiser, also in my testimony in Exhibit 386, that's what I -- that's the period that I used, the moving-past-COVID period.

So things have settled down. I mean, we were walking along fine pre-pandemic, we had the pandemic, and now moving past pandemic.

Q. I want to turn to page 14.

A. Of?

Q. Of your slides, thank you.

A. Oh, okay.

Q. 387. I believe -- yes, 387. Exhibit 387. So

here you are kind of discussing, and through these major takeaway pages, the demand on elasticities that you found for both the aggregated milk category and the disaggregated categories that you looked at. And is it typical for an aggregated category like traditional white milk to be more or less elastic compared to the disaggregated products, both the ones that you looked at, but also as cited here in Slide 14 for the breakdown and products of -- by fat content, skim, reduced fat, and whole milk?

A. I mean, let me see if -- I think I understand your question, but let's agree on that before I comment. Okay?

Q. Sure.

A. So if we're supposing that traditional white milk, my category, is the sum of skim milk, reduced fat milk, and whole milk, and you see by the work of Ghazaryan, Bonnano, and Carlson that was discussed earlier, what those own-price elasticities were.

So, finally, your question is what would I expect the own-price elasticity for an aggregate category be compared to the disaggregate category?

Q. Yes.

A. Did I get that right?

Q. You did.

A. And my answer, in most cases, I would expect the own-price elasticity for the aggregate category to be lower.

Q. So people will switch amongst what milk they

purchase, type of milk, but not necessarily move to an alternative that's not milk.

A. They could. But, you know, in terms of the own-price elasticity, I expect it to be lower, but I -- you can't determine a priori if it's going to be much lower, but I would expect it to be lower.

Q. Okay.

A. And in the pre-COVID period, if you go back to Slide 12, if you look at the own-price elasticity for traditional white milk pre-COVID -- and the reason I'm choosing pre-COVID, is that's the work of Ghazaryan, Bonnano, and Carlson -- my traditional white milk own-price elasticity is negative .77, indeed lower.

Q. Uh-huh.

A. So that -- that isn't a surprise to me.

Q. Okay.

A. But much higher than conventional wisdom, too, when it comes to own-price elasticities for traditional white milk.

Q. Uh-huh. So your analysis shows that demands for disag- -- when you look at disaggregated milk products, as you have done, they are sensitive to changes in price, but Federal Orders, we set fluid milk prices uniformly across the entire category without any differentiation between health-enhanced or lactose-free, for example.

So I mean, the question comes up is, does this disaggregated data that you have looked at in your study that no one else has done before, is that influencing the

final results of that total milk category?

A. Excellent question. And also the primary reason why I moved from an 11-disaggregate-commodity system to a seven. In other words, I collapsed the five fluid milk categories that you just mentioned into a total milk category. And with that system I had total milk as an aggregate and the other beverages or other products were the alternative beverages and refrigerated yogurt.

The other reason I did that analysis is that most studies didn't do a disaggregate analysis of fluid milk, and if you wanted to compare, you know, my results with respect to the literature, to be fair at least, we would have to talk about the aggregate category of fluid milk. So there were two reasons why I did that.

Now, even though I did that, in the moving-past-COVID period, the own-price elasticity for total milk was negative 1.26, elastic.

Q. So if I interpret what you just told me, I think, you did this analysis so you could look at that disaggregated set of products and the elasticities that they have, but that doesn't mean that when you ran the model and looked at it altogether, that that impacted that total milk number?

A. I wanted to find out what the total impact would, where the impact would be on total milk.

Q. Right.

A. And you can't, you know, take a weighted average, if you had, for example, the own-price elasticities for

the disaggregate products, and we just talked about budget shares, you know, some people would say, well, I'll just use the average budget shares to come up with a weighted average of what the elasticity would be for total milk. That's inappropriate. So you need to rerun the system, collapsing the five categories into the total milk category, and that's how we got the numbers for total milk, own-price elasticities for total milk.

Q. Okay. Thank you. Let's turn to Slide 20.

A. Exhibit 387?

Q. Yes. I take that back. I didn't write this down, but I definitely have some questions.

Can you turn to Slide 18?

A. Yes.

Q. Okay. So you ran through these numbers yesterday, but it was quick. You went through this slide. And I would like you, if you could, to run through this again so we understand kind of how you computed what you computed.

And I know you used some assumptions that Dr. Kaiser put in earlier and then applied those to the elasticities that you found, if I'm correct, to determine the change in quantity that we would see in these various milk products; is that correct?

A. That is correct.

Q. Okay. So if you could just run through for me, with that understanding, to make sure we kind of understand the math of how you got there.

A. See, this is where as an academician I would love

to stand up and show you on the board, but I will -- I will try to walk you through this. Okay?

Q. Appreciate it.

A. So the starting point on this was information provided from Dr. Kaiser's testimony where National Milk Producers recommended increasing the Class I price by 8.6%. That's a percentage change in the farm price. Okay? But we need to move from the farm price to the retail price and get a corresponding percentage change in retail price.

With me so far?

Q. Yes.

A. Now, how do we do that? Well, that's where this concept of elasticity of price transmission comes into play. And what that relates to is the percentage change in the retail price due to a 1% change in the farm price. But the percentage change in the farm price was 8.6%. Therefore, if you multiply 8.6 by .55 -- and all of this is from Dr. Kaiser, I agree with him that that Class I price results in a -- I think he called it 4.7 -- 4.72% increase in the retail price for milk products. But y'all do the math, 8.6 times .55, verified. Okay?

Q. Uh-huh.

A. The next part is a little more tricky to get to the answer. What we have for the disaggregate fluid milk products, we need their percentage changes, but all we have been able to calculate so far is the percentage change in the retail price of fluid milk aggregate

triggered by the Class I price increase.

Q. Uh-huh.

A. So how do you get, then -- the question is, how do you get the percentage change, for example, in the price of traditional white milk before I can implement my own-price elasticity?

So as I indicated -- I got so many papers here -- but as I indicated in my testimony in Exhibit 386, I regressed the retail price of total milk as -- or the retail price of each of these five segments as a function of the retail price of fluid milk in aggregate, and get that percentage change. And those numbers are listed. For example, for traditional white milk it's .94, if you got that percentage change.

So if you multiply .94 times 4.73, then you get the accompanying percentage change in order to implement my elasticities for the traditional white milk.

And just to be specific, those percentages are at page 12 at the bottom of Exhibit 386, or near the bottom. So the percentage changes, for example, in the price of traditional white milk due to a percentage change in the price of aggregate fluid milk .94, .95. For traditional flavored milk, 87, lactose-free milk, yada, yada, yada.

Q. Okay.

A. Then the -- now -- now that we have, at the bottom what that 8.6% change in Class I price translates into in terms of a percentage change of the retail price of each of these products, then I can use my own-price elasticity

and multiply the own-price elasticity by, for traditional white milk, for example, by 4.49, 4.41 for traditional flavored, and therefore, back to Exhibit 387, that's how I computed the decreases in the quantity purchased of each of the five disaggregate fluid milk products.

Q. Okay. That's super helpful.

A. Yeah. I'm -- yeah. There's a lot of --

Q. You went through it really fast yesterday, and I just wrote "go over it again" on this page.

A. Okay. That's why I say, I feel more comfortable on the board.

Q. Sure.

So I'm going to say an example in one sentence, just to make sure we're summarizing it correctly.

A. Okay.

Q. Using some of Dr. Kaiser's assumptions, if there's an 8.6% increase in the Class I price, 4.72% of that -- that results in a 4.72 increase at the retail price?

A. For total milk.

Q. For total milk.

Then using some regression analysis, you figured out what that meant on an individual broken out --

A. Percentage.

Q. -- category. You multiplied those times your elasticities. So, for example, for traditional white milk, an 8.6 increase in the Class I price would lead, under your assumptions, to a decrease of 6.28% in the quantity of purchased milk -- of traditional white milk?

A. Correct.
Q. Okay.
A. Absolutely.
Q. All right. Now, I think I would like to turn to Slide 20.
A. 21?
Q. 20.
A. Oh, back to the PowerPoint, right?
Q. Yeah. So as I read through this slide, and I think Dr. Kaiser came to the same conclusion but maybe different -- a different -- a different number, or a different degree, is that an increase in Class I prices will lead to an increase in gross revenue to dairy farmers.
A. Correct. Both Dr. Kaiser and I agree on the increase. We disagree on the magnitude of the increase.
Q. Okay. On Slide 21, this is where you are just kind of talking about similar analysis, and you -- on some examples of one done looking at plant-based meat products. And you say that what they found is congruent to what you found. And I just want to make sure I'm clear on what you mean by they are "congruent." And I wrote down some notes, but if you'd just like to make sure I wrote my notes correctly.
A. Congruent was the best word I could come up with. And here's why. First of all, ask yourself, well, how many studies have actually looked at own-price elasticities between pre-pandemic and pandemic? Might

surprise you that this is the only one that I was able to find. Hopefully if mine gets published, then there will be another one. The problem there is -- and they were using weekly data, too. Okay?

But the problem there is their products weren't dairy products, it was all meat products. In fact, one of the authors of that now is my post-doc working for me.

So anyway, but they were after looking at, what is the own-price elasticities pre-COVID and COVID. The bottom line is, without going through a litany of discussion here, COVID affected the own-price elasticity similar to what I got, and in many cases pre-COVID, the own-price elasticity was elastic. For some of the products in the COVID period it remained elastic, but maybe turned inelastic. I don't have full recall, but obviously I could. So that's what I mean by congruent.

If congruent bothers you, similar. But I was bothered by similar because they are not similar. They are -- as I say, the best word I could come up with would be congruent.

Q. Sure.

And I think I wrote down something else you said yesterday: Was it found -- you -- it was congruent in that the own-price elasticities between the products was not consistent?

A. Was not what?

Q. Was not consistent.

A. Yes. And --

Q. Is that also correct?
A. -- not uniform.
Q. Not uniform?
A. Uniform. And that's what I found. So what I was trying to -- you know, the purpose for doing that -- because the study that I have conducted is unique, right? Well, how does it compare, if you can find any other studies, with what others have done? And I mentioned the -- you know, the Ghazaryan, Bonnano, and Carlson, and Son and Lusk, although we had different products. And here in this study, meat products, but at least they examined pre-pandemic, pandemic.

So my comfort level was good to begin with, even without these studies, but my comfort level rises when we see results that, okay, are corroborated by others.

Q. Okay. If you could turn to Slide 24 on 386. This was touched on a little bit, but I just wanted to come back to it. And this is where you are talking about, as you said before, the IRI data is just retail data, so it doesn't include data on schools, prisons, home healthcare, places like that, which, in your opinion, would have more elastic -- inelastic demand, excuse me; is that correct?

A. Yes. Not -- I wouldn't expect much sens- -- much sensitivity to changes in prices to these non-retail outlets. Maybe that's the best way to summarize the statement.

Q. And do you know if there's any studies that have looked at that, or is that just kind of an assumption that

everybody looks at?

A. That's a good question. I tried to find some. I wasn't able to do that.

Q. Okay. And you have mentioned that the AMS data incorporates all of those categories, not just retail. But again, our Class I prices impact all of those categories. So the question comes to mind is, why would it be appropriate for USDA to set a policy using elasticities that only deal with a segment of all Class I milk sales? It doesn't, in this case, look at, you know, a quarter of Class I milk sales.

A. Because in my opinion it -- it blurs the actual sensitivity to changes in price because the AMS data, as I testified earlier, doesn't include alternative dairy products. And we know they are important, particularly the plant-based milk alternatives. The data are monthly, but if you really want to talk about elasticity and impact on consumers, which makes up the majority of -- of the milk volume, a better picture there is given by weekly data, as I maintain.

So to capture better the inner relationships that exist by including other categories, or perhaps even breaking down the fluid milk categories, although I also had a demand system for total milk category, I just think the IRI is a better way to go. You have 76% coverage, and the other 24% -- although I don't know what the own-price elasticity, it's likely to be much smaller than what I had. And even if I had that, you can't take some sort of

weighted average to get, you know, what the total own-price elasticity would be.

Q. Okay. But in your opinion, it was more important to the make sure other alternatives were looked at, as they have not previously been done?

A. Yes. Other studies mention that. That's why I included those. But in my analysis, I did more than included it. If you look at the coefficients in the demand model associated with each of those prices, across the board they're statistically different from zero. Meaning, you really need to consider these alternative products. And at a minimum, you know, I would add a minimum, bottled water and plant-based alternatives for sure.

Q. Okay.

A. But it also is the case that juices, sport drinks, protein beverages, and refrigerated yogurt, those prices were important in the decision affecting the amount purchased of each of the respective fluid milk categories.

Q. Okay. I'm almost done, I promise, and I do appreciate your patience.

A. I'm good. I'm good.

Q. I just had a couple questions on your written statement in addition to what we have discussed on 38- -- Exhibit 386, if I can turn to Table 1 on page 6.

A. What exhibit are we?

Q. 386, that's your written testimony.

A. Okay. Okay. At page 6?

Q. Yes.
A. Okay.
Q. And as we were looking at this, you explained how you got budget share and quantities, and we can figure out how you added up to get total milk.
We're curious about how did the data or you deal with the different container sizes of Class I sales. How does that account for that?
A. Well, that's an excellent question in dealing with scanner data, because dollars are easy. And you got to remember -- oh, just -- let's just pick one category so I can be clear, okay? Let's say traditional white milk. All right?
Traditional white milk, as you know, can be sold in pints, quarts, half gallons, gallons. So when it comes to volume, there has to be a standardization done either by the purveyor of the data, in this case Circana, or the analyst. Well, fortunately, that was done by Circana. And so the standardization is all gallons.
And then we add up, you know, within a week, all the UPCs -- or what Circana actually does -- all the UPCs associated with traditional white milk, performed to the standardization that I just described, you get the gallons. The dollars are easy, you just add them up. There's the dollars.
And so the ratio then, of dollar sales, which aren't reported here, but I just have price and quantity, to -- to quantity, gives you the average price.

Q. So quantities in gallons, and that's -- but for the price part, I mean, these smaller container sizes cost more. You can't just say -- or maybe you did, you know, did you just say, okay, well, I add up four quarts, I get a gallon, so I take the price of the quarts times four, and that was the price of -- equivalent price of that gallon, which would be higher than if I just bought a gallon off the shelf?

A. No. The price is calculated as an after fact. In other words, as I described, you get the total dollars in a week for a category, you get the total volume, and so that ratio gives you an average price, or more technically correct, a weighted average price. So you don't actually worry about the calculation of the individual prices until the end, when after you have had the aggregation of quantity -- or volume and the aggregation of dollar sales. So the price actually reflects that.

Q. Okay.

A. It's a weighted average price.

Q. It is.

A. I feel very comfortable with that. I have used that for 40 years.

Q. Okay. I think that's it from AMS.

MS. TAYLOR: I do appreciate your time. Thank you.

THE WITNESS: Thank you.

THE COURT: Dr. Cryan, you are wearing on me here.

DR. CRYAN: I have one short question, please.

THE COURT: Well, try not to make Dr. Capps say something just because you want it said.

DR. CRYAN: I won't.

THE COURT: Thank you.

DR. CRYAN: It is specifically a question about the data that's been discussed.

RECROSS-EXAMINATION

BY DR. CRYAN:

Q. You talked about the -- as I understand, the retail sales include the traditional grocers, big box stores, club stores, convenience stores, all sorts of retail; is that correct?

A. I testified I know what Nielsen includes, but I was not aware specifically of what Circana includes. And given that there's a duopoly in scanner data, in the scanner data market, I presumed that Circana would capture the same types of retail outlets.

Q. So how do you -- how do you know that the 64% is representative of the other 12%?

A. Well, I don't have, and neither does Circana, have the data for the 12%, so there's no way to make that comparison. However, the coverage of the retailers or other retail outlets that are included, they -- they do a market study to suggest that what we have is representative of the industry.

Q. Okay. Is that available?

A. You have to go to Circana and Nielsen. I -- you know, I have -- I have had more discussions with Nielsen

about that issue because as an analyst I need to be comfortable with its representativeness, and I am. And, again, I suppose that because these are competing entities, whatever one firm is doing, likely the other firm is doing it as well. So I -- I feel -- my comfort level is good, even though I don't have the full details with the Circana data.

Q. So you don't have anything we can put on the record to verify that?

A. You would have to go to Circana.

Q. Okay.

DR. CRYAN: Thank you.

THE COURT: Thank you, Dr. Cryan. You did well.

All right. May I conclude that this is the last we will need Dr. Capps for testimony? We still have exhibits to deal with, but can he be excused as a witness? Is there anyone who would object to that?

I see no objection.

Mr. Rosenbaum, were you about to talk about exhibits or more questions for Dr. Capps?

MR. ROSENBAUM: Exhibits, Your Honor.

THE COURT: All right. We'll take a break, and then we'll come back and do exhibits.

Dr. Capps, thank you.

THE WITNESS: Thank you.

THE COURT: We go off record at 11:10. Please be back ready to go at 11:25.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 11:25.

Now, we have a number of exhibits.

Mr. Rosenbaum, would you come forward first, please?

MR. ROSENBAUM: Your Honor, I would move into evidence Hearing Exhibits 386, 387, 388, 389, and 390.

THE COURT: Is there any objection of the admission into evidence of Exhibit 386?

There is none. Exhibit 386 is admitted into evidence.

(Thereafter, Exhibit Number 386 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 387?

There is none. Exhibit 387 is admitted into evidence.

(Thereafter, Exhibit Number 387 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 388?

There is none. Exhibit 388 is admitted into evidence.

(Thereafter, Exhibit Number 388 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 389?

There is none. Exhibit 389 is admitted into

evidence.

(Thereafter, Exhibit Number 389 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 390?

There is none. Exhibit 390 is admitted into evidence.

(Thereafter, Exhibit Number 390 was received into evidence.)

THE COURT: Now, Ms. Hancock, with regard to Exhibit 391, is there any objection to the admission into evidence of Exhibit 391?

There is none. Exhibit 391 is admitted into evidence.

(Thereafter, Exhibit Number 391 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 392?

There is none. Exhibit 392 is admitted into evidence.

(Thereafter, Exhibit Number 392 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 393?

There is none. Exhibit 393 is admitted into evidence.

(Thereafter, Exhibit Number 393 was received into evidence.)

THE COURT: Is there any objection to the admission into evidence of Exhibit 394?

There is none. Exhibit 394 is admitted into evidence.

(Thereafter, Exhibit Number 394 was received into evidence.)

MS. HANCOCK: Your Honor, our next witness is Mike Herting. I'm not sure of the next exhibit number.

THE COURT: The next exhibit number is 395. And I already have Mr. Herting's testimony. In fact, I have had it all week I think.

(Thereafter, Exhibit Number 395 was marked for identification.)

MS. HANCOCK: I'm still very overly optimistic how fast we're going to make it to the witnesses, apparently.

THE COURT: Well, you're kind to yield some of your time to others who needed to go, and I know that makes it harder for you, and I appreciate it. All right.

Would you state and spell your name?

THE WITNESS: Mike Herting, M-I-K-E, H-E-R-T-I-N-G.

THE COURT: Have you previously testified in this proceeding?

THE WITNESS: I have not.

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

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MIKE HERTING,

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

THE COURT: Now, take a minute to make yourself comfortable so that you can see the person who will be questioning you and see your papers.

Very good. You may proceed.

MS. HANCOCK: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. Herting.

Can you provide your business address, please.

A. Yes. It's 1405 North 98th Street, Kansas City, Kansas, 66111.

Q. And did you prepare Exhibit 395 in support of your testimony today?

A. Yes, I did.

Q. Thank you. Would you please provide us with your written statement, and then just be mindful of your reading speed for our court reporter.

A. I will.

My name is Mike Herting. I am the director of operations and accounting for the Southeast Area of Dairy Farmers of America, or DFA. I have worked for DFA over 31 years in a variety of positions within accounting, marketing, logistics, and information technology, analytics. My work experiences during this time have allowed me to work within multiple phases of the marketing

of milk, including the analytics, planning, and execution of efficient milk movements.

DFA is a national dairy cooperative that includes membership and operations across the continental United States. Currently, DFA has 835 farmers owners within its Southeast area, producing approximately 5.7 billion pounds annually, with the majority pooled on Federal Orders 5, 6, and 7. The average farm size is around 258 cows per farm. Nearly all of our farmer-owner milk is picked up and delivered across the region by third-party contract haulers.

Additionally, DFA owns and operates nine manufacturing facilities within the Southeast area that receive raw milk to make a variety of products, including, but not limited to, fluid milk, ESL milk products, retort products, cream, and condensed skim. The facilities operate as pool distributing plants, a pool supply plant, and an unregulated plant within Federal Orders 5, 6, and 7.

Additionally, there are two other plants that operate within the Southeast that do not receive raw milk, but receive milk components to make coffee beverages, ice cream, and specialty concentrates.

I appear today on behalf of Dairy Farmers of America and National Milk Producers Federation, in the future NMPF, in support of Proposal 19 to update the Class I price surface. This action is a much needed step to help dairy farmers recover a small portion of the

additional costs they have been burdened with since the price surface was last updated.

Declining milk production in the Southeast, combined with the closing of processing plants, forces milk to move further to markets at greater transportation expense. The farmers that continue to supply these markets through their milk marketing cooperatives bear the majority of these costs. This causes additional economic pressures to family farms within the region. Along with these headwinds, the growing population of the Southeast compounds the situation by increasing demand for fluid dairy products in an already deficit supply region.

In the Southeastern U.S., the majority of raw milk is sold to Class I processing plants which package fluid milk for the consuming public throughout the area. While the growing population of the Southeast promotes healthy consumer demand, this same region currently operates as the most significant milk deficit region of the country.

Due to the imbalance between the local supply and demand, the marketing dynamics require that importing milk from outside the marketing areas to supplement the local supply.

For example, in the Southern Missouri and Arkansas geography of the Southeast area, DFA Southeast area currently supplies all of the fluid milk needs for six manufacturing plants, four of these are bottling plants and the other two make specialty products. Supplying these plants with their year-round milk needs requires

contracting for the purchase of the milk and paying the transportation cost for great volumes of outside milk. This milk is always offered for sale on a fixed volume basis, regardless of the supply needs of these plants which ebbs and flows significantly during a year's time. In order to incentivize this distant outside milk to move to the plants in Southern Missouri and Arkansas, there's a need to pay large transportation costs to draw the milk into these plants.

While we do have Federal Order transportation credit, or t-credit programs, in Federal Orders 5 and 7, they only partially compensate for a small portion of the costs of hauling this out-of-area distant milk in. First, these programs are set up only for local distributing plants and do not apply for milk delivered to other manufacturing plants. Second, these programs only cover a small segment of the transportation costs in these orders. In fact, the Federal Order 7 program fund usually does not have enough funding to fully pay requests for most of the year.

Over the decade that I have been involved directly with Southeast Dairy Milk Marketing I have seen the milk volumes in Southern Missouri and Arkansas disappear rapidly. Map 1 below shows that over the period from 2012 to 2022, Arkansas milk production dropped by 66% and Missouri overall dropped by 33%. Given the decline of this nearby milk supply, the demands of the milk manufacturing plants located in Southern Missouri and

Arkansas must be met increasingly by milk volumes from greater distances and facing ever-increasing haul invoices. The remaining dairy farmers in region feel the brunt of the increasing costs to service this Class I market.

The growing needs for milk to be brought into these areas is being met by purchasing milk supplies coming mostly from the west. This milk comes daily from Western Kansas and Western Texas dairy farms. Typically, loads of milk being delivered from these locations into Southern Missouri and Arkansas must travel over 500 to 650 miles. With the implementation of the NMPF proposed Class I price surface, the additional dollars can be used to cover a small fraction of the ever-increasing production and transportation costs experienced by today's dairy farms.

In closing, I urge the USDA to recognize the burden currently being placed on the local dairy farm families and to implement the NMPF proposal to adjust the Class I price surface. Adoption will support many Small Business owners that produce the farm fresh milk vital to these marketing areas.

Thank you for your time and letting me testify today.

THE COURT: I think you read at the perfect pace, and you are the first witness to have figured out how to do that.

THE WITNESS: Thank you very much, Your Honor.

THE COURT: Thank you.

MS. HANCOCK: With that, Your Honor, we would make him available for cross-examination.

THE COURT: I should have mentioned Exhibit 395 is the same as NMPF-50.

Who would like to ask questions first?

MR. ENGLISH: Good morning, Your Honor.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning, Mr. Herting. My name is Chip English with the Milk Innovation Group.

In reading your testimony, it's not clear to me, although maybe it is, did you serve on a red pencil club -- red pencil crew?

A. I don't know of any red pencil groups. We had colored pencils, and I did not.

Q. Okay. All right. Okay. So you weren't one with a colored pencil, correct?

A. Correct.

Q. So you had no role in the actual development of any of the differentials that we're talking about today?

A. Correct.

Q. And if I asked you about the infamous spreadsheets, 300 and 301, you've probably never seen them unless maybe at this hearing room, correct? The big spreadsheets.

A. I've only seen --

THE COURT: Let me show him what we're talking

about, the ones that require the yardstick to read.
BY MR. ENGLISH:
Q. You have not really seen those before this hearing, correct?
A. I have only seen them here, but I can speak to --
Q. All right.
A. -- the support for the numbers that are developed in those.
Q. But you also then, therefore, had no role in deciding what city was an anchor city, correct? So-called anchor cities?
A. I did not.
Q. And as I read your testimony, while you talk about Orders 5, 6, and 7, it would appear that your knowledge is mostly about Arkansas and Missouri; is that correct?
A. No, my knowledge is pretty much the whole Southeast area. I was just asked to focus on Southern Missouri and Arkansas.
Q. So when you say that DFA owns and operates nine manufacturing facilities, where are each of those nine plants for DFA?
A. You would like me to list them?
Q. Yes, please.
A. Okay. There are two in Florida at Orlando and Orange City; one in South Carolina, Spartanburg; two in North Carolina, Winston-Salem and High Point; one in Tennessee at Nashville; then I was counting two in Missouri, one in Cabool, Missouri, and one at Joplin,

Missouri.

THE COURT: What is the first place you mentioned in Missouri?

THE WITNESS: First place? Cabool, spelled C-A-B-O-O-L.

BY MR. ENGLISH:

Q. And which one is a pool supply plant?

A. Cabool.

Q. I thought so.

And which one is an unregulated plant? You mentioned an unregulated plant within the orders.

A. I must have been counting Jasper -- Joplin.

Q. Okay. That's also Missouri, correct?

A. Correct.

Q. Just because the term, I don't believe, in the nine weeks we have been here has come up, I'm going to ask, what is a retort product?

A. I am not exactly sure.

Q. Okay. Are the nine dairy manufacturing facilities within the Southeast area supplied 100% by DFA member milk?

A. No.

Q. Are all the fluid processing plants 100% supplied by DFA member milk? The fluid plants as supposed to the Cabool supply plant.

A. No.

Q. What percentage of milk received at the fluid plants owned by DFA would be member milk?

A. I didn't prepare those percentages.
Q. When you used the term "outside milk" referring to supply plants, do you mean milk from outside the marketing area?
A. Correct.
Q. Sort of like the milk coming from West Texas and West Kansas, correct?
A. Correct.
Q. Is that milk needed year-round or just certain times of the year?
A. Year-round.
Q. Does DFA also supply member milk to plants that are not owned by DFA?
A. Yes.
Q. In the Southeast?
A. Yes.
Q. Does DFA charge on such milk, a fuel surcharge for the delivery of that milk?
A. The invoicing that we have to all of our plants are related to our -- an agency pricing that we have, and it does include a fuel surcharge.
Q. It does or does not?
A. Does.
Q. And when you say "an agency," you are referring to a group of cooperatives acting together, correct?
A. Correct.
Q. So congratulations or commiserations, you are the first witness on the stand after USDA finalized the

Southeast transportation decision.

Are you aware that it's been finalized?

A. I am aware.

MR. ENGLISH: And it's my understanding that means ex parte rules no longer apply, correct?

MS. TAYLOR: I'm not on the stand, but, yeah.

MR. ENGLISH: Okay. Well, I just want to make sure before I ask the question, because you are not on the stand, but my understanding is, ex parte rules no longer apply.

BY MR. ENGLISH:

Q. And I don't have a ton of questions for you on it, but -- so I don't know whether USDA has asked this or not, but to what extent -- well, first of all, that decision applied -- provides for, you know, updating the old transportation credits within the marketing area, correct?

A. Correct.

Q. But it also provides --

A. I'm sorry --

Q. Yes.

A. I believe you -- did you say within the marketing area?

Q. Yes.

A. So it was updating the old program --

Q. Right.

A. -- for milk that comes in from outside.

Q. Thank you.

(Court Reporter clarification.)

BY MR. ENGLISH:

Q. Thank you very much for the correction. The original system in place still today is -- provides for transportation credits for bringing milk from outside the area, correct?

A. Correct.

Q. And the updating is to update the hauling rate and some of the distance points, correct, for how far you can come and what are eligible locations?

A. They changed the formula from excluding 85 miles to making it 85%, and then they updated the mileage rate factor -- factors.

Q. And then, as you were correcting me, there's a new element within the program that would provide some transportation credits for moving milk within the marketing area, correct?

A. Correct.

Q. Has National Milk taken consideration in proposing NMPF-19, either the existing or the newly-adopted, not yet implemented, transportation credits program within USDA in the Southeast?

A. I -- I believe that based upon the way that the formulas are made for both of those programs, it's self-correcting. So within the formula, when milk moves from a lower location to a higher location, it's subtracted out of the payment calculation.

Q. So -- thank you.

A. So --

Q. I'm sorry, go ahead.

A. I was going to say, so -- but you don't know. If a county's location is increased by an amount, that amount is then subtracted out, so the higher the locations are, the more subtraction there would be.

Q. All right. Thank you for that.

And I apologize for my imprecise question. I think what I meant was, to what extent when you are thinking about what level there should be for Class I differentials in the Southeast, should USDA consider the existence of this unique geographical program, leaving aside whatever is done in Minnesota for transportation credits, in terms of setting the Class I differentials in the Southeast.

Have you thought about that?

A. I'm sorry, would you ask that again?

Q. To what extent, if you know, did DFA or National Milk take into consideration for establishing Class I differentials in the Southeast, the existence of the existing system and the adoption of the new program not yet implemented?

THE COURT: What was the tail end of what you just said?

MR. ENGLISH: Not yet implemented. The decision is out, Your Honor, but it has not been voted on. It has not been, you know -- but the decision, the final decision of the Secretary, has been made, and so I'm referring to that. And when I say "not yet implemented," it's because

it was published yesterday.

THE WITNESS: I'm not personally aware of the consideration taken into account by National Milk due to the impact of these two programs. Because from my understanding, that with this formula that I mentioned, the impact is taken out.

BY MR. ENGLISH:

Q. All right. I'll -- I'll move on.

You have, I believe, maybe unfortunately for yourself, been here most of this week, correct?

A. Correct.

Q. Were you in the room for the -- or at least maybe watching on the testimony of Mr. Brinker?

A. I was.

Q. And did you hear my discussions with him about some of the pricing in Kansas?

A. I did.

Q. So with that as a predicate, to the extent National Milk Producers Federation seeks to, you know, increase from the model, the proposed Class I differential for Wichita so that there's a zone, you know, there's a zone of 3.85 zone, correct?

A. In the proposal?

Q. Yes.

A. Correct.

Q. And for Western Arkansas and Southwest Missouri that's $4.00; is that correct?

A. Correct.

Q. So how does it help to move milk out of Western Texas and Western Kansas if there's only a $0.15 difference between that $3.85 zone in Central Kansas and Northern -- North Central Oklahoma, and then $4.00 in Arkansas and Missouri?

A. Well, the importance is the increase from what it is today to the $4.00.

Q. What's the difference today between that Central Area of Kansas and Arkansas?

A. $1.10, $1.30, and $1.60 in Southern Missouri to the proposal.

Q. Yeah, I understand.

But are you -- are you proposing narrowing, keeping the same, or increasing the difference between Central Kansas and Arkansas?

A. It increases the rate in Southern Missouri compared to Wichita.

Q. By how much? $0.05?

A. $0.15.

Q. No, that's -- that's the difference you end up with is $0.15. So if you are saying --

A. Right now there's zero.

Q. There's a zero difference you are saying. Okay.

THE COURT: And you nodded your head yes.

THE WITNESS: Yes.

BY MR. ENGLISH:

Q. What's the distance between Central Kansas and Southwestern Missouri?

A. You want me to guess? I don't know.
Q. I don't want you to guess. Were you here for testimony earlier as well, cross-examination by Mr. Miltner of a witness that suggested that it -- you know, it was basically a penny for every mile that you had to move?
A. I think I heard that.
Q. So I guess, then, how do you get milk to move from Central Kansas to Southwest Missouri and Arkansas for $0.15?
A. As I have said I think in my testimony, that these programs are only covering a small portion of the transportation costs.
Q. Well, now you are talking about the transportation credits program, correct?
A. Transportation costs. And so you are talking about the hauling costs, which I'm using the word transportation. So I don't believe that the $0.15 difference is enough to move it, but you have to select numbers at some point. It's not enough to get the milk to Wichita.
Q. I guess what I'm getting at is, aren't you creating a situation where it would be more incentive to stop in Wichita, rather than continuing on into Southwest Missouri and Arkansas where you need the milk?
A. I hope not.
Q. Again, you have been here, but I take it that because you weren't on a red pencil crew, you really

didn't study very hard the model, USDSS's model?
A. The original model?
Q. The original model. Yes or no.
A. I was not, no.
Q. So part of why I asked the questions about the extent of your testimony, because I read about the Missouri and Arkansas. I do want to talk with you, as DFA's representative, about North Carolina.
And you are familiar with the North Carolina pricing, correct?
A. I have -- yes.
Q. That is part of your job role, correct?
A. The current --
Q. Yes.
A. -- locations? Yes.
Q. Yes.
MR. ENGLISH: So if I could have a new exhibit marked, Your Honor.
THE COURT: Yes. So this will be 396.
(Thereafter, Exhibit Number 396 was marked for identification.)
MR. ENGLISH: This is MIG-61. It was submitted, I think, this morning or last night.
This is 396, Your Honor?
THE COURT: 396, yes.
MR. ENGLISH: Can I hand one to Your Honor and to the witness?
THE COURT: Yes, please. Thank you.

Copies are now being distributed in the room, but it will go quickly. It's a one-page document.

MR. ENGLISH: And I note, Your Honor, that it would help if at the same time USDA provided their copy of Exhibit 353, also known as Exhibit MIG-31, corrected.

THE COURT: 353, the record copy for the witness, please.

Please raise your hand if you need a copy of Exhibit 396, there are some others available.

Mr. English, the witness has been given the record copy.

MR. ENGLISH: Of 353, correct?

THE COURT: Would you state what you are looking at there, what number it has?

THE WITNESS: Exhibit 353.

THE COURT: Thank you.

Mr. English, you may proceed.

MR. ENGLISH: Thank you.

BY MR. ENGLISH:

Q. So I want to the focus on 396. Okay. Let me explain. 396 is -- as I noted, is MIG-61. And like previous exhibits, these are selected counties in Kentucky, North Carolina, South Carolina, Tennessee, and Virginia for comparison purposes. And recognizing again in advance, the concern of National Milk about the column called pool distributing and supply plants, I do note again that the legend provides the source of all information which is, in most cases, exhibits, and then

calculations in the out columns, the last columns.

I also had placed -- have had USDA place in front of the witness Exhibit 353, and for that purpose, I would focus only to add to Exhibit 396.

On the second row, Row 2979, Charleston, in Kanawha, West Virginia, K-A-N-A-W-H-A.

THE COURT: You would add?

MR. ENGLISH: I'll just have him look at that. I'm just saying that --

THE COURT: Oh.

MR. ENGLISH: -- as we talk about 396, I want him also to have that one particular row of 353, you know, in front of him.

BY MR. ENGLISH:

Q. And so like --

THE COURT: I would point out that the ruler may be of some help in staying on the right row in 396.

You may proceed, Mr. English.

BY MR. ENGLISH:

Q. So were you here for the testimony of Mr. John?

A. I was.

Q. Okay. So Mr. John and I had a conversation about the North Carolina pricing proposals which are reflected on Row 1868 and 1891 on Exhibit 396, and the idea that there was going to be some lowering of the Class I differentials from the model.

Could you please explain, from your perspective, why that makes sense?

A. When looking at the National Milk Producer Federation's proposal, as I wasn't part of the group that changed these, it looks like they were trying to keep a price similarity across a region.

Q. So the model would have increased, looking at Row 1868, from $3.40 to $5.70, or a $2.30 increase, correct?

A. That's what your comparison shows.

Q. Now, if we look at Exhibit 353, Row 2979 for Charleston, West Virginia, the current is $2.20 and proposal is $4.70, for an increase of $2.50, correct?

A. That's the correct math.

Q. Okay. And that's an anchor city, and National Milk has proposed not modifying from the model there, correct?

A. It appears that's correct.

Q. Now, the difference today between Charleston, West Virginia and those two plants in North Carolina is $1.20, correct? The difference of the current $2.20 and a difference of the -- of $3.40, correct, for $1.20?

A. Right. Yes.

Q. The model, if we look at Asheville, would reduce that by $0.20 to $1, correct? From $4.70 to $5.70, correct?

A. At Asheville.

Q. At Asheville, correct?

A. Yes.

Q. Okay. And by reducing Asheville by a further

$0.30, the result would be now that Charleston would be only $0.70 less than that location, correct?

A. Correct.

Q. So doesn't that -- isn't that going to make it harder for a plant in Charleston to sell milk to the south, down into that area of North Carolina?

A. I have no idea.

Q. Do you know whether there's a proprietary operation known as United Dairy in Charleston?

A. I'm aware of that.

Q. Do you know if that plant sells milk down into the research triangle of North Carolina, in packaged form?

A. I don't know that.

Q. If the Southeast is short of milk such that it was necessary to go to a hearing in February of this year, get a final decision to increase transportation credits, wouldn't it make as much sense to encourage packaged milk to move into the Southeast?

A. I would suppose so.

Q. In the Southeast, does DFA have any Grade B milk?

A. Very little.

Q. By "very little," less than a half a percent? Yes?

A. Less than half percent.

Q. Do you actively seek out Grade B milk?

A. Definitely not.

MR. ENGLISH: I thank you for your time. I have no further questions. I would move the admission,

subject, of course, to the caveat of the concern over pool distributing and supply plants by National Milk, of Exhibit 396.

THE COURT: Thank you. I'll deal with the admission in just a moment.

MR. ENGLISH: And I guess I'd return the record copy of 353, if I may.

THE COURT: All right. Would you give that back to the Agricultural Marketing Service, Mr. English?

Thank you.

Who next has questions for Mr. Herting?

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Mr. Herting.

A. Good morning.

Q. Ryan Miltner representing Select Milk Producers.

I have maybe just a couple of questions. On page 2 of your testimony, in the second -- well, the first full paragraph, you stated that "updating the Class I price surface is a much-needed step to help dairy farmers recover a small portion of the additional cost they have been burdened with since the price surface was last updated."

It's a -- that's a theme that we have heard from a lot of witnesses. And I was wondering if you, in preparing your statement or working on Proposal 19, what portion of those additional producer costs do you think will be covered by the increased Class I surface?

A. Not enough.
Q. That's -- that's spoken like an actual producer.
A. I don't know a percentage.
Q. Okay. If you want to turn to page 3, and you are describing some of the supply dynamics in the Southeast, in the middle of the first paragraph your testimony reads: "This milk is always offered for sale on a fixed volume basis, regardless of the supply needs of these plants, which ebbs and flows significantly during a year's time."
Can you help me get a better understanding of what you mean by "the milk being offered for sale on a fixed volume basis?"
A. A certain number of loads per day, all year long, is what suppliers want to fix in.
Q. And the particular sales transaction you are describing in this paragraph, in this instance, is DFA selling milk to a non-DFA plant?
A. No.
Q. Is DFA selling milk to a DFA plant?
A. A joint venture plant.
Q. Okay. So those plants are asking for a fixed volume --
A. No.
Q. I'm sorry, you are offering it for sale on a fixed --
A. No, no, no, no. The suppliers that we are marketing, purchasing the milk from to supply the plants. So the third-party supplier that we're buying the milk

from to sell to the plants, they are offering it to us on a fixed basis. We'd love if the plant wanted it on a fixed basis.

Q. Okay. And in that instance, is DFA, as the purchaser in that transaction, paying all of the transportation costs to its supplier?

A. There's -- that's proprietary, but --

Q. Okay.

A. -- it differs.

Q. It differs.

Do you expect the changes in Proposal 19, if they are adopted, to cover a sufficient portion of the large transportation costs?

A. No.

Q. You're shaking your head no. Okay.

Have you analyzed -- at the risk of repeating a question from Mr. English -- have you analyzed the combined effects of Proposal 19 and the recent transportation credit decision to determine whether those large transportation costs will be adequately covered?

A. I have not analyzed it, yet.

MR. MILTNER: That's all I have. Thank you.

THE WITNESS: You're welcome.

THE COURT: Mr. English, you may return.

MR. ENGLISH: I apologize. I got a little confused, and unfortunately, I think I do need for him to have Exhibit 301.

THE COURT: Would you approach and I'll give you

these copies? You want only 301?

All right. And for that you may need the yardstick.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. So let's start with this question. When you talk about Southwest Missouri, would Jasper County be in Southwest Missouri for this purpose?

A. Is that where Joplin is?

Q. Well, I have to -- I have to look. I was looking at the closest county, but -- so let's look at Joplin.

A. I guess it probably is because that's a 2.40 zone currently.

Q. Okay. And would you agree that Wichita in Sedgwick is presently in the 2.20 zone?

A. And I must have misspoken about them being the same. Then there's a $0.20 difference.

Q. There's a $0.20 difference today, correct? Yes?

A. Correct.

Q. Okay.

THE COURT: Now, a $0.20 difference between what and what?

BY MR. ENGLISH:

Q. Sedgwick -- Wichita, Sedgwick, Kansas, is $2.20, or $0.20 less than Southwest Missouri, set for $2.40, correct, sir?

A. That is correct.

Q. Okay.

A. I misspoke earlier.
Q. That's correct.
A. And I apologize.
Q. No, don't apologize. It's all good.
So -- but the proposal would move Sedgwick into that $3.85 zone, correct?
A. Correct.
Q. And Southwest Missouri is in the $4.00 zone, correct?
A. Correct.
Q. So now there's a $0.15 difference, correct?
A. Correct.
Q. So that's a $0.05 reduction, correct?
A. No, a $0.05 less of an improvement.
Q. Well, okay. Well, okay. $0.05 less of an improvement.
But in terms of the difference --
THE COURT: That's well done. Well done.
MR. ENGLISH: Nice try.
BY MR. ENGLISH:
Q. What it really is, though, is a $0.05 disimprovement vis-a-vis the difference between Sedgwick and Southwest Missouri, correct?
THE COURT: You mean between the model result?
MR. ENGLISH: No, in terms of the current.
THE COURT: Oh, the --
BY MR. ENGLISH:
Q. The current has a $0.20 difference. Now there

will be a $0.15 difference.

They have both gone up, but Central Kansas has gone up $0.05 more under the proposal than Southwest Missouri, correct?

A. That is correct.

Q. Hauling costs have gone up, correct?

A. They have.

Q. Why, then, if you need milk in Arkansas and Southwest Missouri, including the fact that we have now transportation credits, is Wichita going up more than Southwest Missouri?

A. I don't have a good answer for that, Mr. English.

Q. Thank you very much.

A. Other than the staff that put the work together had reasons, I believe, to have some price consistency across the maps.

Q. If you are a -- I get back to my question. If you are trying to get milk to move west to east, have you not created a ridge in Central Kansas that makes it more economical for producers to ship to that plant and not continue the milk into Arkansas or Missouri?

A. To the Missouri comparison?

Q. Yes.

A. A nickel less incentive?

Q. Yes.

A. Correct.

Q. Thank you.

MR. ENGLISH: I have no further questions.

THE COURT: Thank you, Mr. English.

What other -- yes, would you please return my -- don't want to lose track of that.

Who else has questions for this witness before I turn to the Agricultural Marketing Service for their questions?

No one. I invite the Agricultural Marketing Service to question.

MS. TAYLOR: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. Thanks for being here today.

A. You're welcome.

Q. I really don't have many questions, just a couple, because you talk about -- and I'm on page 3 of your statement, and you discuss this a teeny bit with Mr. English -- or excuse me -- Mr. Miltner, about how that contracting works. But you talk about you're bringing in great volumes of outside milk.

Do you have any data on what type of volumes you are talking about there that have to come into the area?

A. I didn't prepare any for this hearing.

Q. Do you want to just talk a little bit about, maybe based on your experience working in the area, to just provide some context?

A. In rough volumes, over the course of the year, due

to the seasonality of milk production and the seasonality of orders, it can flow from 20 loads a day to 60 loads a day.

Q. And that's milk into just the Southern Missouri, Arkansas area?

A. Correct. But that's partially due to stair-stepping.

Q. So some of that milk in that area goes further Southeast?

A. Correct.

Q. And then you talk about -- so on the page 4 you talk about the distance that milk goes, must travel, anywhere from 5 to 600 miles, 650 miles -- excuse me -- and about the increased transportation costs.

And I was wondering if you had some cost data or some other context to put around that increased transportation cost that you are talking about?

A. I don't. But I -- Ms. Taylor, if I could add to that.

Q. Thank you.

A. I believe that a following witness will have some of that testimony.

Q. Okay.

A. Mr. Sims.

Q. Okay. Thank you.

And then one other question. Is one of the plants you say in that area that DFA operates is an ESL plant; is that correct?

A. I believe so.
Q. Okay. Do you know anything about how they operate the pricing side of things? Do they work in -- I know I'm going back weeks, right? But you are up here, so I'll ask. Do they do any hedging on their raw milk?
A. I do not know.
Q. All right.
MS. TAYLOR: That's it. Thank you so much.
THE WITNESS: You're welcome.
THE COURT: Ms. Hancock?
MS. HANCOCK: Thank you, Your Honor.
We would move for the admission of Exhibit 395.
THE COURT: Is there any objection to the admission into evidence of Exhibit 395?
There is none. Exhibit 395 is admitted into evidence.
(Thereafter, Exhibit Number 395 was received into evidence.)
MS. HANCOCK: Thank you, Mr. Herting, for your time. Appreciate it.
THE COURT: With regard to Exhibit 396, Ms. Hancock, did you want to make your comments?
MS. HANCOCK: Oh, Mr. English made my objection for me. So with the same -- just with the same reservation, Your Honor, on -- that this witness has not independently verified the information. But with that, we have no other objections.
THE COURT: Thank you.

I do admit, subject to that reservation, Exhibit 396. I find it sufficiently reliable and also self-evident so that others may check the math. So 396 is admitted.

(Thereafter, Exhibit Number 396 was received into evidence.)

THE COURT: The next exhibit number will be 397. And is that -- I probably have that. Who is the next witness?

(Thereafter, Exhibit Number 397 was marked for identification.)

MS. HANCOCK: Your Honor, our next witness is Monty Schilter.

THE COURT: Yes. I already have my 397.

Thank you so much, Mr. Herting. You may step down.

MS. HANCOCK: And I think timing-wise, we will likely have time to get this read in as well, so we should be okay on that.

THE COURT: Very good. While Mr. Schilter is coming to the witness stand, you may stand up and stretch for about two minutes.

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

THE COURT: Let's go back on record.

We're back on record. It is 12:25.

I have in front of me Exhibit 397, which is also marked as Exhibit NMPF-47. I'd like the gentleman in the witness chair to state and spell your name, please.

THE WITNESS: Yes. It is Monty Schilter, M-O-N-T-Y, S-C-H-I-L-T-E-R.

THE COURT: Have you previously testified in this proceeding?

THE WITNESS: Yes, I have.

THE COURT: You remain sworn.

THE WITNESS: Thank you.

THE COURT: Ms. Hancock, would you identify yourself, and then you may proceed.

MS. HANCOCK: Nicole Hancock for National Milk.

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Mr. Schilter, good afternoon. Did you prepare Exhibit 397 in preparation for your testimony today?

A. Yes, I did.

Q. If you could provide that statement, and then just be mindful of your reading speed.

A. Thanks.

My name is Monty Schilter. I am testifying today on behalf of Northwest Dairy Association, which is usually referred to as NDA. My title is senior vice president of NDA. I am responsible for leading the NDA member services team, and lead matters pertaining to Federal Orders. I have been an employee of NDA for over 15 years and have worked milk pricing and Federal Orders under the direction of Dan McBride for a majority of those years.

NDA is a cooperative, marketing the milk of approximately 295 dairy farmers in Washington, Oregon,

Idaho, and Montana. Approximately 240 of our producer members are part of the Pacific Northwest Federal Milk Marketing Order, Order 124. Approximately 45 producers are located in the unregulated area of Eastern Oregon and Southwest Idaho. Approximately 10 producers are located in state-regulated Montana.

NDA conducts all processing and marketing operations through a wholly-owned subsidiary known as Darigold. Darigold is a fluid milk processor in the Northwest region. Darigold operates three fully-regulated pool distributing plants in Order 124 (Seattle and Spokane, Washington and Portland, Oregon); one partially-regulated pool distributing plant in Boise, Idaho; and one unregulated bottling plant in Bozeman, Montana.

Darigold operates fully-regulated pool manufacturing plants that dry milk products, located in Lynden, Chehalis, and Sunnyside, Washington, and one unregulated plant in Jerome, Idaho, that dries milk products. Darigold also operates a fully-regulated pool manufacturing plant in Sunnyside, Washington, that produces cheese and whey, and operates two butter plants in Issaquah, Washington, and Caldwell, Idaho.

NDA would like to thank USDA for their timely response to the hearing request by NMPF and others. We appreciate the opportunity to address the important issue of updating the Federal Order Class I differentials at this hearing.

I am testifying on behalf of NDA in support of the Class I differentials as submitted by NMPF in Proposal 19 for the states of Washington, Oregon, Idaho, and Montana. I will describe the reasoning why the differentials submitted vary from the U.S. Dairy Sector Simulator, or the USDSS model, submitted by the University of Wisconsin, Madison authors in the report titled "Spatial Price Relationships in Class I Markets." The points I will support today are the importance of regional competitiveness at the farm level, continued incentives to service Class I markets in the rapidly changing landscape of the dairy industry in the Pacific Northwest, and geographic- and population-influenced cost drivers in the northwest.

Regional competitiveness at the farm level needs to be maintained in areas and regions similar to each other across the United States. The Pacific Northwest, specifically around King County, Washington, operates similarly to the urban areas of parts of Federal Order 32, so I look to those areas for comparison.

As it was back in 2000, King County, Washington, has continued to be a large population center in the Pacific Northwest; therefore, I looked at continuing to use King County as the base and attempt to mirror differential values in the Midwest population centers.

With the USDSS model proposal for Federal Order 32 going from $1.85 per hundredweight up to the $3 per hundredweight to $3.30 per hundredweight ranges near

population centers, the increase from $1.90 per hundredweight to $2.40 per hundredweight in King County didn't seem equitable. The differential in King County should at least be the minimum range, so $3 per hundredweight was used as the base.

Regional competitiveness also needs to occur within the Pacific Northwest, and the simplicity of the USDSS model in 2000 established three differential values that decreased by $0.15 per hundredweight as you moved away from the population centers.

The updated USDSS model was similar in how the zones were shaped, but complex enough that I leaned to a more familiar and simpler concept produced by the USDSS model from 2000. Additionally, regional competitiveness needs to remain on the I-5 corridor. Within the PNW, there are geographical features and significant distances that separate the I-5 corridor from the rest of the order (west of the Cascade Mountain range between the Canadian and California border).

The area represents the vast majority of the pool distributing plants. Eight of the 12 pool distributing plants are within the Seattle and Portland metro areas. All pool distributing plants in this region should compete on a level playing field, thus a similar differential should be maintained across these pool distributing plants.

The Pacific Northwest, much like other urban areas in the United States, is rapidly changing. It is an area

of population growth and declining milk production. According to the U.S. Census data from 2000 to 2020, the population in Seattle, Washington, increased from 3.04 million people to 4.02 million people. For that same time period, in Portland, Oregon, population increased from 1.93 million people to 2.51 million people. Combined, the regions grew by more than 30% in 20 years. This doesn't include the surrounding areas where growth was also occurring at similar or increased percentages.

At the same time, the dairy industry and milk production in this region has been declining. According to Federal Order 124 Market Administrator data from December 2001 in those counties along the I-5 corridor, there -- and I'll add the word here, there were 794 farms producing 400 million pounds of milk. In those same counties in March of 2023, there were 261 farms producing 242 million pounds of milk. It represents a 67% drop in farms and a 39% drop in milk production in just over 20 years, The same time period in which this region grew its population by over 30%.

Additionally, the decline in milk production along the I-5 corridor has accelerated over the last five years as we have gone from 398 farms producing 294 million pounds of milk to 261 farms producing 242 million pounds of milk, representing a 34% drop in farms and a 17% drop in milk production just in the last five years.

The numbers continue to point to the fact that servicing the pool distributing plants along the I-5

corridor will increasingly need to be satisfied by manufacturing plants located 200 miles or more away. Further, we are in the process of building a manufacturing plant in Pasco, Washington, that upon startup will demand more milk than will be available for the pool distributing plants, and due to the cost associated with operating the new Pasco facility, it will be interesting to see which plant the available milk will flow into.

Next, I will speak briefly about transportation costs to service the pool distributing plants in Seattle and Portland. The majority of the milk that does, and will, continue to service the pool distributing plants comes from Eastern Washington, and specifically, Moses Lake and Sunnyside, Washington. Internal freight data paid to haulers to assemble a load of milk and deliver it to either Seattle or Portland has gone from $1 per hundredweight in 2008 up to $2.10 per hundredweight in 2023. That is an increase of $1.10 per hundredweight in 15 years.

In order to service the two markets of Portland and Seattle, it involves mountain passes that can be severely impacted by winter weather. The majority of the years I have worked with NDA we have experienced at least two days or more per year when the passes are closed and impassable and has resulted in our farms having to dump milk, since we physically are unable to get it to market.

As the population continues to grow in these regions, it causes an increase in transportation

congestion. Driving in and out of Seattle and Portland adds time and cost to servicing pool distributing plants.

To speak more specifically about the differentials by county for Washington, Oregon, Idaho, and Montana, I will break it down moving west to east.

As stated earlier, for the counties located in Federal Order 124, I kept the zones the same as the 2000 version of the USDSS, and using King County, Washington, as the base at a recommendation of $3 per hundredweight. I kept the same spread of $0.15 per hundredweight for the counties east of the Cascade Mountains. It's worth pointing out that the counties in and around Spokane are at the same $3 per hundredweight differential as King County, since that was the original relationship. In likely insignificant counties where there is and has not been milk production for years, the differential is recommended to go down to $2.50.

Moving into unregulated Idaho, I proposed a very simple approach. In likely insignificant counties where there is and has not been milk production for years, the differential went to $2.20 per hundredweight, which I believe correlates to the lowest differentials in the NMPF proposal. For areas with milk production, I treated them similar to South Dakota at the NMPF proposal of $2.55 per hundredweight.

As for state-regulated Montana, all counties were treated similar to South Dakota at $2.55 as well. South Dakota was used as the benchmark comparison due to the

fact that these are all areas with significantly higher milk production versus population and fluid milk bottling facilities. Sorry, let me restate that. South Dakota was used as the benchmark comparison due to the fact that these are all areas with significantly higher milk production versus population in fluid milk bottling facilities.

In summary, NDA supports the Class I differentials as submitted by NMPF in Proposal 19, and specifically for the states of Washington, Oregon, Idaho, and Montana. The Federal Order should promote regional competitiveness at the farm level across the -- across the U.S. and within various regions, and it needs to continue to show incentives for farms to be economically viable to service Class I markets in the rapidly-changing landscape of the dairy industry and the evolving conditions in each regional territory.

Q. Thank you, Mr. Schilter. Just a couple of questions.

We have heard a lot about -- a lot of questions in our price differential section of this hearing that talks about the model and whether it accounts for transportation.

Have you been present during some of those questions?

A. Yes.

Q. What is your belief about whether the model that Dr. Nicholson talked about accounts for all of the

transportation issues that you have outlined in your testimony?

A. Well, as I have heard from previous testimony and I believe from Mr. Nicholson, is yes, the model does include transportation.

In my opinion, does it, in our region, reflect the changes in transportation from the 2000 version to the latest version? As I said in my testimony, we have seen, in 15 years, 100% increase in -- in one region, and I think that's very representative of -- of the Washington and Oregon complex.

Freight in our area, in comparisons that we have done with different parts of the world, I believe that we sit on the higher end of the transportation cost model from a labor -- mostly driven from a labor perspective.

Q. Can you think of examples beyond what you have talked about in your testimony where the model wouldn't or couldn't take into account some of the transportation issues that you see or observe?

A. Yeah. Absolutely. As of about an hour ago, I was informed that Snoqualmie Pass, which is our main route on I-90 from Eastern Washington to Seattle, is closed. Heavy snow, expecting 10 to 15 inches of snowfall. In situations like that, what happens is we end up sitting trucks on both sides of the Pass. You have potential for drivers running out of hours, meaning that the haulers have to send cars out to relieve drivers. And then if they get stuck on either side of the Pass, then they have

to spend nights in hotel rooms.

And, you know, the -- we know that the haulers pay for it, but at the end of the day, those are costs that they build into their -- into what they pass on to us, and ultimately what we pass on to the farmers. I don't know how the model is going to represent that type of a situation which is literally developing right now in Washington.

Q. Have you ever had situations where you have had to dump milk because the milk couldn't get there with these types of interferences with the deliveries?

A. Yeah, absolutely. I am right now in conversations with individuals at FSA in regards to the Milk Loss Program, specifically around the fact that in 2022 we had a major snow event that shut down this same mountain pass and other mountain passes for multiple days. During that time period we ended up dumping roughly 10 million pounds of milk valued at about $3 million.

And, you know, that was a combination of, you know, a very aggressive storm along the lines with some safety and labor issues with the Washington State Department of Transportation.

But ultimately, again, I don't know how the model would pick that up, and those are real costs that we're at least seeking additional assistance since we absorbed those costs as a company -- or as a co-op and -- and our farms ultimately pay for that out of either losses or a decrease in yearend distribution patronage.

Q. And so when you are looking at the incentives that will drive movement of milk, do you have to take into account traffic, weather events, mountain passes, things like that that the model was would not be able to account for?

A. Yeah. Absolutely. And I don't want to say that the Pacific Northwest is immune to weather events, or at least we're special compared to everyone else in the country, you know. Sitting and listening to other testimony, you have hurricanes in Florida. You have tornadoes in the Midwest. We have -- in the Northwest we have snow in the mountain passes. We have flooding events that will flood major highways. I mean, these are issues that not only affect us, but they happen all over, all over the U.S.

So, but, yeah, these are all things that are costs that lead to why our freight rates are twice what they were 15 years ago.

Q. And the willingness to find drivers that want to move from one area to another as well to transport milk?

A. Yeah. Yeah. I mean, I think everyone that hauls milk long distances, you know, to do that roundtrip and to get drivers to sleep in their own beds at night, that's a big challenge.

Where the biggest majority of our milk comes from is -- is in Eastern Washington. It's also, we'll call it a bread basket, of hay, of grains, of other products apples. All of them are loading products and sending them

to the Port of Seattle or the Port of Tacoma for export. So we're constantly competing with products that are likely generating higher value and attracting better drivers, and all of those drivers can make that trip typically and get into their own beds at night.

So we really have to be aware of the quality of drivers and driver availability. And I think a lot of that is what drives some of the driver labor costs in our region higher than most others in the U.S.

Q. And also factors that are not accounted for by the model.

A. Yeah. Congestion's obviously a big one. I think you touched on that. And I didn't talk about it, but, you know, anybody that's ever spent time driving around Seattle or Portland, it's a mess. I spent some time around D.C.; that's bad, too. So is L.A. So I'm not going to say we're worse than everybody else, and it's not a competition. It's just not good. And so we end up driving -- you know, driving loads in at night, but we can't do that all the time.

There's one limitation that we have constantly fought with pool distributing plants is receiving capacity, receiving hours. Everyone wants to -- everyone wants to have employees working from 8:00 to 5:00, not at night. So we have issues trying to get milk received at night when the traffic's the best. We keep pushing for that. Sometimes we get it; sometimes we don't.

But a lot of times the plants want to operate

during the daylight hours, and that's when the traffic is the worst, and those are things that also drive costs up.

MS. HANCOCK: Your Honor, that's all I have at this time. We would make him available for cross-examination, probably after lunch at this time.

THE COURT: Very good. Let's do break for lunch now.

We're going to -- I'd like you to be back and ready to go at 1:50. That's 1:50.

We go off record at 12:48.

(Whereupon, the lunch recess was taken.)

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FRIDAY, DECEMBER 1, 2023 - - AFTERNOON SESSION

THE COURT: Let's go back on record.

We're back on record at 1:53, and I would invite questions of Mr. Schilter. I'm sorry, yes, questions, because we'll deal with the exhibits in a minute.

MR. ENGLISH: Good afternoon, Your Honor.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon, Mr. Schilter. My name is Chip English for the Milk Innovation Group.

MR. ENGLISH: I do want to thank everybody in the room for accommodating my schedule today.

In order to move this along, to help with Ms. Taylor's request for a map for every state in the United States, I would like to start, Your Honor, with four exhibits, so I won't interrupt myself as much.

THE COURT: Now, talk into the mic, just so --

MR. ENGLISH: Okay. Because apparently at my lunch break I forgot how to use the microphone. So, either that or the last person was much taller than I, which isn't hard.

So I have four exhibits, MIG-45, MIG-46, MIG-47, and MIG-48, and I would like to start, I think, by just handing those out so that I can move forward more expeditiously and not interrupt four times with four maps.

THE COURT: Now, let me give them numbers. So the next number is going to be 398. So 398 will be MIG-45.

MR. ENGLISH: And that is a map of the counties in

Washington.

(Thereafter, Exhibit Number 398 was marked for identification.)

THE COURT: 399 will be MIG-46.

(Thereafter, Exhibit Number 399 was marked for identification.)

THE COURT: 400 will be --

(Thereafter, Exhibit Number 400 was marked for identification.)

MR. ENGLISH: I'm sorry, I got it wrong. Stop. I'm sorry, Your Honor.

MIG-45 is Oregon. So I apologize. MIG-45 is the map of Oregon.

THE COURT: Okay. No worries. I don't have to change my numbers for that.

MR. ENGLISH: You don't have to change your numbers. I just want to make sure the record is clear as to which is which.

THE COURT: Very good.

And MIG-48 will be 401. Exhibit 401.

(Thereafter, Exhibit Number 401 was marked for identification.)

THE COURT: And let's go off record now while those are distributed.

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

THE COURT: Let's go back on record.

We're back on record at 2:00 p.m.

I want to read into the record these new exhibits.

Exhibit 398 is also MIG-45, and it is an Oregon County map; Exhibit 399 is also Exhibit MIG-46, and it is Washington, the State of Washington County map; and Exhibit 400 is also MIG-47, and it is State of Idaho County map; and Exhibit 401 is also MIG-48, and it is State of Montana County map.

And, Mr. English, I really appreciate these. These are really helpful when we're trying to picture what you are asking questions about.

MR. ENGLISH: Thank you, Your Honor.

BY MR. ENGLISH:

Q. So good afternoon, again, Mr. Schilter.

A. Good afternoon, Mr. English.

Q. With respect to Darigold, are your fluid milk plants all supplied by your own milk supply?

A. Yes, they are.

Q. Other than your own plants, does Darigold sell its members raw milk to other fluid milk plants in the Pacific Northwest area?

A. Yes.

Q. Which plants?

A. That's proprietary information.

Q. Thank you.

A. Yep. But if you were to look at the Federal Order 124 and you saw pool distributing plants on that order, and you saw the cooperatives or the supply plants, it will help you answer your question. But I will not tell you who our customers are.

Q. And I always respect that. That's fine. Doesn't mean I don't ask, but you don't have to answer.

Are you able to -- at least able to tell me what portion of your milk goes into your own plants, including cheese plants or powder plants?

A. Yeah. We are running, I'd say, on average between 75 and 80%.

Q. In addition to fully-regulated plants, does Darigold operate any partially-regulated plants?

A. Yes.

Q. Is that located in Idaho?

A. Yes. And also if you reference Order 124, you will notice that the plant in Idaho has been fully regulated for a few months as well.

Q. Sometimes it's fully-regulated, but more often it's partially-regulated?

A. Yes, historically, yes. And it's partially-regulated in multiple orders. They're right now currently fully-regulated in Order 124.

Q. Thank you.

So were you an actual part of a Western red or colored pencil crew?

A. Yes, it was the colored pencil crew. If it was red pencil crew, it would not be as exciting, right?

Q. I thought somebody used red pencil the very first day, but okay. Colored pencil crew, more exciting.

I won't ask why it's more exciting, but who was in this group?

A. So I -- I started with the group after Rob Vandenheuvel reached out to me requesting that there was -- that the group had broke apart from a larger task force, and within the Western group it was myself and Rob, and then various representatives from -- at times, from United Dairymen of Arizona and Dairy Farmers of America.

Q. And I believe the geographic area you particularly were involved in then was Montana, Idaho, Washington, and Oregon; is that correct?

A. Yes. For NDA and Darigold, those are the four states, yes.

Q. Did anybody else for those four states -- did you consult with anybody else for those four states individually as opposed to the group talking about the larger geographic area?

A. Yes. Consulted with DFA.

Q. Were there changes made over time -- I think you have been here long enough to know that we have got a March submission, a May submission, and a June submission to USDA.

A. I don't recall specifically. I do recall that as we were moving towards the final submission, that there were various -- there were conversations where we were trying to match up different -- different bordering states. When you are dealing with the Western Area and you have got bordering regions, we wanted to make sure there was price alignment between the bordering regions, and so there was some art involved in that work.

Q. And did that result in proposed changes that went down from March to May of 2023?

A. I don't know.

Q. Okay. I think Mr. Hiramoto specifically mentioned you.

So do you recall any specifics from the conversations you had with Mr. Hiramoto consulting about the Pacific Northwest area?

A. Define "specific."

Q. Well, as opposed to just general conversations.

A. I mean, we were on multiple calls at the same time with others, but I think asking for specifics without determining what specifics are, I don't know how to answer that.

Q. So when did the -- this concept of equity with South Dakota or the Upper Midwest first arise?

A. In the conversations around Idaho and Montana. And this is -- this is from my recollection. We were discussing how to create these price alignment and similarities between the Upper Midwest through these unregulated areas where we had larger milk production with less demand, and then also trying to, you know, not have big price discrepancies between Idaho and the Pacific Northwest, Washington, Oregon areas.

And so I don't exactly recall when it happened. It wasn't at the beginning, but it was more towards the end as -- as everything was getting finalized. But that was -- that was one of the areas that we were trying to --

trying to use to help bridge the Midwest to the Pacific Northwest.

Q. Given that we're talking about Class I, there's no Class I milk that's moving, say, from Montana into Minneapolis, is there?

A. I don't think so.

Q. Or similarly, there's not Class I milk moving across the Great Plains into the State of Washington, is there, from the Upper Midwest, in packaged form?

A. I can answer that with no.

Q. So why is equity between two manufacturing regions important when setting Class I differentials?

A. I think it's extremely important. And I think -- I understand the direction that you are coming from. I need you to look at it from a producer perspective in regards to the world that they live and compete in is just as competitive as -- as you can imagine.

And when you have producers that are progressive and looking to either grow or expand or move, what these regions look like against each other is very important. And so for -- for me to help preserve the integrity of the system, having equity across regions is extremely valuable.

And so when I looked through -- and I had mentioned this in my testimony -- when I looked through at establishing the base in Seattle, I wanted to focus on what was going on in other similar metropolitan areas.

And so I -- yeah, I -- I -- so that's why I think

equity is important, because farms compete with each other, too. They compete for feed. They compete for resources. It's very important.

Q. What we have, you know, multiple regional Federal Orders, each with their own Class I utilization, correct?

A. Yes.

Q. So if you have the same Class I differential as the Upper Midwest, the return to the producers will nonetheless be different, correct, between those two orders?

A. Mathematically, yes.

Q. Is that inequitable?

A. I think you are failing to -- you are failing to bring in the fact that the Upper Midwest is a Class III heavily -- heavy Class III market, and Washington, Oregon, Idaho is -- you know, leans a little bit more Class IV. So I'm not going to engage in an argument over milk pricing when we have got two other variables that are also having impacts on milk prices.

Q. Do you know whether in this -- so when USDA has considered for setting Class I differentials, the equity between different regions?

A. Sorry, can you restate that?

Q. Okay. I'll break it up.

Can you tell me whether USDA, in setting Class I differentials at any time, has considered equity between different regions?

A. I do not recall.

Q. In setting proposed Class I differentials for your area starting at 2.20 in relatively unpopulated areas of Idaho and ranging to $3 in Spokane and Seattle, did you do any analysis of what impact they would have on production of milk in the Pacific Northwest?

A. What I didn't see -- I would say yes. In my thought process of establishing 2.20 zones, as I said in my testimony, those are areas that do not or have not had milk for a while. So I felt like that was relatively, I wouldn't say safe, but representative of an area that is not suited to milk cows. So I didn't think there was much -- there was not going to be an impact in those areas.

Q. So why set that at 2.20 rather than, say, $2?

A. 2.20, to my understanding, was the minimum in the base of the conversation. But, I mean, in the same fashion, why not set it at 2.55?

So if -- if -- to take your question and maybe rethink what I should have done. Maybe I should have set that at 2.55 if it's irrelevant.

Q. Isn't it relevant to the amount of milk that we produced, ultimately, if you set it at 2.20 or 2.55 and then price off of that into Seattle?

A. Did you say relevant or irrelevant?

Q. Isn't it relevant to how much milk is going to be produced ultimately?

A. In an area where there is no milk production?

Q. Well, whether the milk production is not -- isn't

there or not is irrelevant if you are starting there and you go up from there to a place where it is relevant?

A. That's not where I started from. I started from Seattle and worked down into those areas.

Q. And you started from Seattle at $3 because that was what was used in the Upper Midwest.

A. Yeah. When I looked at the Upper Midwest, at least at Orders 30 and 32, and we do comparisons, I mean, we can look at all these cities, Denver, Minneapolis, Chicago, Kansas City, Milwaukee, Omaha, all of these areas range from $3 to $3.35.

Q. Well, that's what they range after you adjusted the model, that's not what the model results were, correct?

A. Correct.

Q. What specific fallacies are there in the model before you adjust for this Pass being closed today, what specific fallacies are there in the model that justify increasing to those levels in, as you said, multiple areas, whether it was Milwaukee, whether it was Minneapolis, whether it was Denver I think you said, in your area? What was -- what are the fallacies in the model that justified that deviation?

A. As stated in the testimony and the initial conversations with -- or the conversations with Ms. Hancock, you know --

Q. I don't want to know any conversations with Ms. Hancock.

A. Sorry, we refer to it as cross.

MS. HANCOCK: Direct.

THE WITNESS: Direct?

In the direct with Mrs. Hancock.

BY MR. ENGLISH:

Q. Oh, okay. So actually, in public. Okay. I just wanted to make sure --

A. Right. On record, the conversation that we just had on record.

Q. Fine. That's allowed.

A. Okay.

Q. Okay.

A. You know, the model has some limitations in which we were talking about transportation congestion, weather. We also -- we also talked about different challenges that we have in -- in-plant receiving. For all of these factors in which, I believe -- actually which we were told, are not reflected in the model. For me, it's a fair justification to -- to move off of the model number up to a higher number.

Q. So Seattle's $3, correct, in the National Milk proposal?

A. Yes.

Q. Spokane is at $3, correct?

A. Yes.

Q. Wouldn't it be a lot easier to get milk into Spokane than Seattle?

A. Yeah, for the -- from a traffic, from a weather

perspective, yes. From a comparative regional competitive, competitiveness perspective, that relationship was established in the 2000 version. And to stay consistent with what I proposed for Washington and Oregon, I wanted to keep those relationships the same.

Q. But in keeping those relationships the same, haven't you, in essence, said, I'm okay one way or the other. It's less expensive to move milk to Spokane, but I'm going to charge more, or it's more expensive to ship to Seattle, but relative to Spokane, I'm going to charge the same so -- I'm not understanding why those two should remain the same if hauling costs have gone up and traffic is what it is and the Pass is closed today due to snow?

A. Yeah, and this goes back to, again, Spokane. I used Seattle as the base and then referenced the 2000 -- the 2000 zones, the zones from the 2000 model in which Spokane and Seattle were both the same.

Q. Were you involved in providing any plant information to Dr. Nicholson or Dr. Stephenson for the USDSS study?

A. Yes.

Q. Did that include the plant that you are building in Pasco?

A. It did not include the plant on the initial run, and I suggested that the model did include the plant on the subsequent run, maybe it was the second or the third run, in which -- in which I believe that the model included the Pasco facility in the -- in that other -- in

that last run.

Q. And notwithstanding your discussion about loss of milk along the coast, by definition, there must be milk being produced in Washington sufficient for you to justify building that plant in Pasco, correct?

A. We are expecting milk to increase in the Northwest to help fill up that facility. We will fill up that facility either with increased milk production or with shifting milk around, but it is -- it has a financial incentive to run that facility as close to full as possible, even though it is a butter and powder facility.

Q. So looking at what has been marked as Exhibit 398, State of Washington, in which counties --

THE COURT: 398 is Oregon.

MR. ENGLISH: I need new eyesight.

399. Thank you, Your Honor.

THE COURT: You're welcome.

BY MR. ENGLISH:

Q. In -- in which counties is the greatest amount of milk production in the State of Washington?

A. We can start in Yakima County. Yakima, Benton, Franklin, Grant, and Adams.

Q. Are all five of those counties -- I believe the answer is yes -- east of the mountain pass you mentioned earlier today?

A. Yes.

Q. Is there any mountain pass between those five counties and Spokane?

A. There's no mountain pass, but there can be adverse weather for anyone that's driven into Spokane from the west side, which is where the milk would be coming from. There's a corridor that freezes up more than you can imagine.

Q. If -- if milk production has dropped in the western part of the state, has it increased in those five counties of Yakima, Benton, Grant, Franklin, and Adams?

A. Over the last 20 years?

Q. Yes.

A. Yes. Milk has shifted from one side of the mountains to the other.

Q. I'm still struggling with what regional competitiveness means, in that Class I utilizations are different.

What does reasonable competitiveness mean in your testimony?

A. It means that -- it has a twofold meaning. Maybe that's what's confusing you.

For me, the first meaning is how do we compete -- or if -- the term that's been used earlier is price alignment, potentially interchangeably here. I prefer to use regional competitiveness. But at first, when I look at the metro cities of the Northwest and the Midwest and Upper Midwest, that's one comparison.

The other comparison is, specifically in my testimony, was the counties that are west of the Cascade Mountains between the Canadian border and the California

border. That was my second use of regional competitiveness.

Q. Do you understand that the model attempts to recognize the value of an additional hundred pounds of milk at any particular location for use in Class I?

A. I hadn't heard it that way, so I can't answer that as yes.

Q. How have you heard it?

A. That it is a value that, I don't know, properly values the milk in the area, and then -- and then also encourages movement of milk from manufacturing plants to Class I pool manufacturing plants.

Q. But when you talk about regional competitiveness with your dairy farmers, are you saying, look, if my dairy farmers don't get a similar pay price in the Midwest, they are going to move to the Upper Midwest?

A. That's a possibility. The -- we have seen shifts in the last 20, 25 years, because this is my historical background, where producers are moving to areas where it is -- it is best places to dairy, best profitable places to dairy. And I do feel like it's important to create an equal playing field as much as possible with the West Coast and the Upper Midwest.

Q. So you want Federal Orders to put a thumb on the scale so that milk doesn't move to where maybe it more efficiently can be produced?

A. I think there's bigger market forces at play than Class I differentials that would -- that move milk into

where economics says it should be produced. There's also natural resource constraints that -- that will come into play.

Q. So should Federal Orders be used to try to adjust for that, by saying, okay, we're going to charge more in Seattle than the milk may actually be worth using an economic model because of regional comparisons?

A. Yeah. In this instance with Class I -- I think, you know, rather than it being a disruptor, if -- if -- if the Upper Midwestern prices are going to be adjusted upward, then I think that the Western prices should be adjusted upward as well compared to the models. I think there's some -- some reality to that equity.

Q. So now, actually looking at the map for Oregon --

MR. ENGLISH: Which is 398, correct, Your Honor? Do I have that right?

THE COURT: Yes, it is.

But before we go there, I would just like to know, is Seattle in Jefferson County?

THE WITNESS: Seattle's in King County.

THE COURT: Oh, that's right. Okay. Thank you. Thank you.

Now we're going to 398. Exhibit 398, also MIG-45.

MR. ENGLISH: And as I do that, Your Honor, I would like now to mark another exhibit, I believe, as 402. It is MIG-58.

THE COURT: Very good. Let's go off record at 2:27.

(An off-the-record discussion took place.)
THE COURT: Let's go back on record.
We're back on record at 2:28.
Mr. English, we have marked Exhibit 402, which is also MIG-58.
(Thereafter, Exhibit Number 402 was marked for identification.)
BY MR. ENGLISH:
Q. So with respect to Oregon, where are the milk supplies, milk production?
A. The majority of the milk in the State of Oregon are in Tillamook County and then also over in Moro County. The balance is in the -- in the Willamette Valley, which is Multnomah County down to basically the California border is where we will find cows that are, or farms that are still in operation.
Q. Down to Jackson County?
A. Down to Jackson and -- yeah. And I -- and it's -- the dairy industry in Oregon has changed dramatically in that area in the last five years. So when I say that there's farms down there, there are specklings of one here and one there as you get below Lane County. The other place, there's a handful of dairies out in Coos County. All of those farms are organic.
THE COURT: I'm having trouble finding Coos.
THE WITNESS: Coos is southwest on this page.
THE COURT: Oh, I see it.
MR. ENGLISH: Second county up from the west in

California.

THE COURT: Okay. And where is Portland? What county?

THE WITNESS: Multnomah, I believe.

MR. ENGLISH: Yes.

THE WITNESS: Multnomah, on the top.

MS. TAYLOR: Thank you.

THE WITNESS: Yeah. M-U-L-T-N-O-M-A-H.

MR. ENGLISH: In a more perfect world, Ms. Vulin would be here to ask these questions.

BY MR. ENGLISH:

Q. So I want to look at, on this Document 402, Row 2184, Douglas, Oregon, there's a proprietary operation there called Umpqua?

A. Yep -- or yes.

Q. And the model average, which is the column sort of right in the middle, UoW v3, for Version 3, average, put that differential at a $2 Class I differential, correct?

A. Yes.

Q. And -- and then, as you have already discussed, a fair number of locations were set to $3, and that's your proposal for Umpqua in Douglas County, correct?

A. Correct.

Q. And if you look at Portland, Row 2200, the model said $2.35, correct?

A. I'm not finding line 2220, apologize.

Q. Right in sort of the middle of the page, Alpenrose, Portland area.

A. 2200.
Q. Did I say something other than 2200?
A. 2200. I heard 22220. Sorry.
Q. I may have done that.
So -- so 2200, middle of the page, for Portland, the model had $2.35, correct?
A. Correct.
Q. And, similarly, you set the proposal $3, correct?
A. Correct.
Q. So how was the model flawed in setting a $0.35 difference between Douglas and Multnomah?
A. The -- to understand -- well, first of all, again, I set the numbers between the Canadian border and the California border using King County as a base, and taking that to $3, and then matching the logic that was used in the 2000 model, which stated that -- or which showed that all of the counties west of the Cascades were on the same. So I can restate that again if you need.
With that logic, Portland and the Portland area and the Umpqua plant maintain the same -- the same value. The competitiveness -- the competitiveness along the I-5 corridor, I think, is important to consider. I would hope that the model would have considered that, but I think it's important that there's a competitive balance between all the -- all the plants on the I-5 corridor. Milk moves up and down the I-5 corridor to service these plants, and finished goods move up and down the I-5 corridor to service the customers. So I think it's important to

create a -- a parity in that marketplace.

THE COURT: Is the I-5 corridor roughly from Portland south?

THE WITNESS: And north.

THE COURT: And north, yes.

MR. ENGLISH: The Canadian border down to --

THE WITNESS: The California border.

MR. ENGLISH: -- Mexican border.

THE WITNESS: Well, yeah, the Mexican border. But we don't ship milk south of the Oregon border very often. Others might, but that's not in our -- not how our milk moves.

BY MR. ENGLISH:

Q. If hauling costs have increased, and other costs have increased since 2000, wouldn't you expect that relationships between plants in terms of the relative value of the milk would have changed since 2000?

A. In reality or in what the model would have produced?

Q. Well, let's start with the model.

A. Yeah. So to understand how milk is -- moves along the I-5 corridor, you know, we have farms up and down the I-5 corridor. We have plants up and down the I-5 corridor. Most all of those are pool distributing plants. But for this example I'll call them demand plants, in which we have contracts with, and others have contracts with to fill. And after you satisfy the demand plants' volume with how this network works, we have to -- we

backfill product out of Eastern Washington.

Reality is, is we have got excess milk production in Eastern Washington that has to go somewhere, but we have been matching that off over the years by moving milk over the pass. And so while I'll recognize, yes, there's going to be some discrepancies between transportation costs between plants with how we try to fill in the buckets and fill in the cracks with milk, we try to keep it as equal as possible, at least in relation to this -- to this proposal.

Q. But you have discussed with your own counsel the difficulties of getting into Seattle, the difficulty today, especially today, of getting over the Pass into Seattle.

Does that same difficulty exist in Southern Oregon to get milk?

A. The milk that goes into the Portland market will flow in a different direction, but it will flow through the Columbia River Gorge, which has its own challenges weather-wise. It does not have the snowfall that shuts down the Pass, but it has wind and snow and ice that create challenges. The -- but we have had our own problems with -- with that area.

When we get extreme weather in the Seattle area that shuts down I-90, we tend to have the same, that weather coming from the south, and when that happens it affects the Portland, it affects the Columbia River Gorge area. So they are different, but when it's extreme, it's

bad.

Q. So what about the milk that goes to a plant in Douglas County, where does that come from?

A. The milk that goes into Douglas County currently is coming from Klamath, Jackson, Douglas, and it will also come from all the counties north of that up to Multnomah.

I -- I will say with some of the changes that's happening right now in the industry, we are very likely going to have to start shipping milk from Yakima, which is Sunnyside, Washington, area, potentially down as far as Douglas County to service demand.

Q. But that's not happening now.

A. At times when we need to, it will happen, but it's not on a regular basis, and I would not say that it's a regular basis. But with consistent departures of farms in the Willamette Valley, this reality will be upon us fairly quickly.

Q. Leaving aside the question of moving the milk from farther away to the east, whether it's Washington or for Seattle, or whether it's Portland, does National Milk -- I'm sorry -- does National Milk, or in this case Darigold, agree that there are sufficient supplies of milk for fluid use in Washington and Oregon?

A. Yes. Right now the PNW order is about 20% Class I utilization. There is -- there is enough milk to supply the Class I demand. As long as we can get trucks underneath of it and haul it, we can get it there, and as long as we can find pricing agreements that make it make

sense economically, we'll get it there.

Q. And Idaho certainly has sufficient supplies of raw milk for fluid use, correct?

A. Yes. I think Idaho, if regulated, I would speculate is less -- way less than 5% Class I.

I'm sorry, maybe I misstated. "If regulated" was not the right qualifier. If we knew the information, it would be -- we would -- we would believe it would be less than 5%.

Q. I think what you meant was, if it were regulated, we would know the information?

A. Fair. Thank you for -- yeah. So that is my professional opinion of my market knowledge.

Q. So finally, let's turn to Montana. I -- my knowledge may be dated.

Is Montana still regulated by a state order?

A. Yes.

Q. Are there still two fluid milk plants in Montana?

A. There are three.

Q. Three. So I remember two. I'm sure the third was very small. Okay.

So one is owned by Darigold?

A. Correct.

Q. One is owned by DFA?

A. There are two owned by DFA. And if I'll speak on behalf of DFA, because it is public Montana record, or at least you can look it up on the FDA IMS report, one of those plants is located in Billings, Montana; the other

one is located in Great Falls.

Q. Okay. So maybe part of my confusion is, is the Darigold plant located near one of the DFA plants or are they all far?

A. I mean, the Darigold plant is located in Bozeman.

Q. Bozeman.

A. The definition of "near" in Seattle is different than the definition of "near" if you are in Montana.

Q. I was well aware -- I knew that's why you were going to -- going to go at me.

Speed limits are really different in Montana, too.

A. I didn't realize there were speed limits in Montana.

Q. Are any of those three plants fully-regulated under Federal Order?

A. I do not believe any of those plants are fully-regulated.

Q. Are any of those states partially-regulated on a Federal Order?

A. Are any of those partially-regulated on a Federal Order? Yes.

Q. All three?

A. I don't know.

Q. Okay. Does -- to the extent Darigold sells milk to other Class I processors, does Darigold charge an over-order premium?

A. At times, yes.

Q. Does Darigold presently pass along a fuel

surcharge?

A. In some contracts, yes.

Q. And I have either forgotten the answer or I didn't ask the question: Are any of your fluid milk plants receiving milk from another supplier?

A. Yes.

Q. Do you -- does Darigold pay that other supplier over-order premium?

A. It's organic milk, so I don't know how you define over-order premium with organic milk.

Q. What you mean is organic milk is charged its own price, correct?

A. Federal Order doesn't recognize organic. Milk is milk.

Q. Right.

A. So the price we pay for that is well over the order. That's the definition of an over-order premium. I would say yes.

Q. But -- but if I use the term "over-order premium" for the purposes of services rather than a specific quality of milk like organic, then -- then -- then the answer is no, correct? Because the milk you got is organic milk.

A. I forgot the question you were asking.

Q. Okay. Is the only milk that Darigold receives that's not its own milk, organic milk?

A. Yes.

Q. Okay. Does Darigold have any members who are

Grade B?

A. No.

Q. Let me consult for one second.

Going back to the process and your testimony on page 4. You have got several statements, and I was going to read partial statements. These are all on page 4.

"I kept the zones the same. I kept the spread of $0.15. I proposed a very simple approach. I treated them similar."

Does "I" mean expressly that, that this was your decision?

A. I led the decision process, yes. So in states of Washington and Oregon, yes, I was the one that was understanding that I was going to make that decision and sit up here and represent that.

MR. ENGLISH: I have no further questions, Your Honor.

Thank you for your time, Mr. Schilter.

THE WITNESS: Thank you, Mr. English.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon, Mr. Schilter.

A. Good afternoon, Mr. Miltner.

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

On page 2 of your testimony on the -- in the first -- I'm sorry, second full paragraph, your second sentence states, "The Pacific Northwest, specifically

around King County, Washington, operates similarly to the urban parts of Federal Order 32, so I looked to those areas for comparison."

Can you tell me how King County, Washington, is similar to the urban parts of Order 32?

A. Yeah. The -- what I was getting at was that they were urban areas, particularly the largest urban centers in those parts of the country surrounded by rural areas that were supplying milk supply into those areas. That's as simple as my thought process was in operating similarly.

Q. You might find similar situations in other Federal Orders, though, couldn't you?

A. Yes.

Q. So I'm curious as to why Order 32 specifically.

A. Order 32, you know, and I have later on -- well, in the testimony said 32, but very much so should have included Order 30. And when I start looking at the cities of, you know, Milwaukee, Omaha, Kansas City, Chicago, Minneapolis, and Denver, I think that is a pretty good representation. If I'm going to make a comparison to the Midwest and the Upper Midwest, those are the cities that I'm looking at.

Q. So it wasn't necessarily Class I utilization in those orders, it was a function of urban centers with rural milk supplies?

A. Yeah, it's good -- good point. I -- if we look at the Federal Order Statistics Report from October of 2023,

Order 32, 29.7% Class I; Order 30 is 6% Class I; but Order 124 is 22.5.

So when I make comparisons to Order 30, that's a 6% Class I, I could see where you draw a conclusion that that does not operate in a similar fashion.

So when I come back to urban cities with rural areas surrounding it and then try to compare with those, then that's where I looked at the specific differentials that were in those counties.

Q. And that leads to my next question, really a question to confirm. You selected Order 32 because you felt it operated similarly to the Pacific Northwest and King County and, therefore, tried to have the proposed Class I surface mimic that which was devised for Order 32?

A. The surface only for the base counties, or the -- I'm drawing a blank on the term that was -- that was used in the --

THE COURT: They said anchor cities.

THE WITNESS: The anchor cities.

The anchor cities and base cities, at which I would -- those -- I know anchor cities is what National Milk had used. Base counties is what I believe I recall seeing in the original USDSS model.

BY MR. MILTNER:

Q. Okay. Different from a pricing base city, like Seattle is the base zone for Order 124?

A. Yes.

Q. Okay. Those are two --

A. Base county or base zone. I don't remember the exact term, but I think we're talking about the same thing.

Q. We are talking about -- that's my question. When I -- when I think of a base zone, I'm thinking Seattle, King County, for Order 124; Cuyahoga County, Cleveland, for Order 33.

You are nodding. Yes?

A. Yes, I agree.

Q. You talk about, on page 3 of your testimony, a new manufacturing plant in Pasco.

When you were using your colored pencils, were you -- were you -- were you considering the milk demand of Pasco inoperational or were you primarily focusing on the plants as they are today?

A. I think it would be -- it was with Pasco in operation. To know that that opening of that plant is imminent and to not have it in the model, or at least not planned towards that, would be a mistake.

Q. Do you expect that the operation of the Pasco plant will alleviate or exacerbate your issues with milk hauling and the logistical problems that NDA has to contend with?

A. It will alleviate. That was one of the main reasons for building the plant -- or not one of the main reasons, but a contributing factor was, you know, we are currently moving -- and I'll share this information, let's -- well, we'll range it somewhere between 3 to

4 million pounds of milk a day over this -- over these mountain passes, and -- and that is all at risk in these -- in these weather events.

So while the current supply and demand balance on the I-5 corridor will still demand product to come from Eastern Washington, it will not be at the same volume as it is today. And that's assuming that today's volumes don't change. There may be -- there may be a scenario in the next ten years when milk production grows, or if there's plants that aren't operating where -- that balance changes. But -- but as of right now, that alleviates a major risk and a major cost to our system.

Q. I wanted to ask about a minimum differential. And it was a -- several witnesses had talked about that or been asked about that during our previous session in October. I don't -- you may have been the first one this week to really mention a minimum differential.

When -- did I hear you correctly to say that when you were putting together the differential map for the Pacific Northwest, that you viewed $2.20 as the base differential from which to work?

A. No. That's -- the approach that I took, as I stated in my testimony, was I started with King County at $3 and then carried the same relationships forward.

The conversations -- so I'll leave it at that. That was my approach. I did not start at 2.20, I started at $3 and worked my way east.

Q. For you and your committee's understanding, was

$2.20 the minimum differential?

A. I -- I don't recall if we talked about that in the Western group. We may have. I don't recall.

Q. The testimony you have provided about the challenges faced by weather and mountains and the other items you have referenced, some other witnesses in support of Proposal 19 have testified to similar considerations and explained that that testimony was meant to justify increases in the differentials generally, and others have offered that evidence to help explain why there were deviations from the model.

A. Yeah.

Q. So in your case, are you presenting this evidence as justification for increasing differentials generally or to support the deviations that you and your committee made from the model's results?

A. Yeah. It would be to support the deviations. My justification to move away from the model was more about regional competitiveness. We are not -- you know, we're not that much different than anywhere else in the country. We all have challenges. We do not have road temperatures getting up to 115 degrees, though, so that's -- we're okay with that. But the regional competitiveness was the driver. And the way that it was laid out in the testimony was that it was supporting information in general for increasing differentials.

Q. In your testimony?

A. Yes.

Q. Okay.

MR. MILTNER: Thank you. That's all I had.

THE WITNESS: Thank you, Mr. Miltner.

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods Association.

I mean, looking at page 4, two days per year of bad weather strikes me as sort of pretty minimal.

Am I missing something?

A. Yeah. The two days are not just bad weather. The two days are of Pass closures.

Q. Are what?

A. The mountain pass closures. And these are not just, you know, two-hour, three-hour closures. These are, shut it down and sit. And we face the same problems as any other industry that's trying to move products into the Seattle area.

So if we talk about the cost to service the Class I market and we are dealing with time periods where we have 24 hours where we can't move milk off farms, we have to ask our farms to invest into farm storage to help hold that milk, or we have to balance milk through adding storage in our plants, or we have to add tankers of milk. But the milk keeps coming out of the cows, and if we can't move it, it's got to sit somewhere.

Q. Is there anywhere in the country that doesn't have two days of equally bad weather, you know, like hurricanes

in Texas or Florida, or snowstorms in Minnesota, or things of that nature?

A. I -- I would imagine.

Q. Yeah.

A. But these are the realities of --

Q. How much more are you asking --

MS. HANCOCK: Your Honor, if he could finish his answer.

MR. ROSENBAUM: You're quite right. Please continue.

THE WITNESS: Yeah. I think when we look at the realities of some of our farms, there is some differences, and I guess it depends upon how you manage or how you balance a milk supply to service a Class I market. But there are differences on the farms on farm size and storage. We tend to move to a model where we -- you know, some of our farms may not have a full day's storage. We may be shipping five or six loads a day off of a farm, and to ask a farm to put in, you know, enough storage to hold 12 loads or six loads because of a one-day pass closure is unrealistic. And so when we have these extended downtimes, or these extended closures, some of the costs and some of those -- some of those situations become very real very quickly.

BY MR. ROSENBAUM:

Q. Did you read about how -- I think it was last year, basically the whole Texas Panhandle shut down through this huge storm there. Indeed they lost power in

Austin, Texas, for -- which is normally a pretty warm place, for like five days. It was 20-degree weather, et cetera?

A. Yeah. It's an absolute disaster. And last year -- or two years ago, we had that Pass, that same Pass was closed for five days, and we dumped a total of 10 million pounds of milk during that five-day stretch. And the size of those loads, 10 million pounds, it was -- in our world, that's 150 loads of milk. And so we face severe weather as well.

The consistency of these problems year in and year out, we have to build a system around.

Q. And just to be clear, I think you answered this in response to questions from Mr. Miltner, but you're pointing to these things as reason not that you should have the increases in the Class I differentials that the University of Wisconsin model might suggest, but why you are entitled to a deviation that would give you more money.

Am I -- did I hear that correctly?

A. Before I answer that question, I want to either have it asked again or -- I don't quite understand what you are asking.

Q. Well, I mean, National Milk is asking for Class I differentials in general that are higher than the University of Wisconsin midpoint between its two proposed Class I differential increases, correct?

A. Yes.

Q. Okay. And so that's what I'm -- I'm referring to that as a deviation from the University of Wisconsin model.

And I think Mr. Miltner asked you a question whether when you point to things like weather, whether you are doing that for the purpose of suggesting that University of Wisconsin is correct, we are entitled to more money, or in support of the proposition that University of Wisconsin didn't get it quite right, we're entitled to even more money.

A. Yeah. So again, I'll go back to what I had said in my testimony about how I answered quite a few of these questions. But, you know, establishing the increase in our area, it all started with comparing King County to the Upper Midwest comparable areas. The conversations of support here are just -- are general support comments of why the increases are justified.

Q. Have you ever seen any indication over the entire history of the Federal Order system going back to 1937, where USDA, in setting Class I differentials, looked at the competitive relationship between two different orders, I don't know what it is, 1500 miles apart?

A. I personally have not.

Q. And you want to have the same Class I differential for pool distributing plants along the I-5 corridor over what mileage?

A. Absolutely. I think that creates parity amongst plants that are all competing against each other.

Q. How many miles?
A. It's a couple hundred. It might be -- it might be close to a thousand.
Q. A thousand miles?
A. I -- I -- it's probably not a thousand. It's probably 600, 700 miles.
Q. You think we should have competitive parity among Class I plants over a 600-mile --
A. Absolutely.
MR. ROSENBAUM: That's all I have.
THE COURT: Mr. English?
MR. ENGLISH: Partly because I forgot, but partly because Mr. Miltner asked a question about this.

CROSS-EXAMINATION

BY MR. ENGLISH:
Q. For -- for -- why was there no anchor city in that whole quadrant, northwest quadrant of the United States?
A. I wasn't a part of those conversations when the task force established the anchor cities, so I do not have an answer for you.
MR. ENGLISH: Thank you. I have no further questions.
THE COURT: Are there other questions before I turn to the Agricultural Marketing Service for their questions?
I see none.
Does the Agricultural Marketing Service want a very brief break?

MS. TAYLOR: No.

THE COURT: No? You are ready to go? All right. Good. Thank you. You may proceed.

Let's stretch for five minutes. Doesn't hurt. All right. So please be ready to go at 3:10. 3:10.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 3:10.

Did anyone else have any questions before I hear from the Agricultural Marketing Service? No?

Agricultural Marketing Service, you may proceed with your questions.

MS. TAYLOR: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. Thanks for sticking around all week.

A. Thank you for allowing me the opportunity to finally get up here. I think this is Day 14 for me.

Q. Yes.

THE COURT: It's more for her.

MS. TAYLOR: And a few others in this room.

THE WITNESS: Might be Day 12, put it that way. And I appreciate your efforts for the industry.

As I haven't shared this before, but my family is in the dairy industry, milks cows. They have for 50 years. And I took this path, and I really appreciate

the support that you have given to the small dairies and the large dairies and all the industry.

MS. TAYLOR: Thank you.

BY MS. TAYLOR:

Q. I want to -- so I'm an East Coast girl. I got to orient myself to the Pacific Northwest. So a couple of questions on that, using the handy maps, which I do appreciate from Mr. English, and I am going to make a collage on my work wall when I get home with all these maps.

You talk about your plants on the first page, your supply plants in Lynden, Chehalis, and Sunnyside, Washington.

Is that in the -- like, what counties -- I want to make sure I have the right counties -- is that kind of supply area with those plants, what counties are those?

A. Yeah. So Lynden on your Washington map --

Q. Uh-huh.

A. -- is in Whatcom County, so that's up at Canadian border.

Q. Okay.

A. Chehalis, if you go straight south, is in Lewis County, and Sunnyside is in Yakima County.

Q. Okay. And then where is your Pasco -- I don't know if I'm saying that right -- plant going?

A. That will be in Franklin County.

Q. Over to the east side?

A. Correct. East of Yakima.

Q. Okay. Okay. And then if I'm understanding correctly, a lot of the milk supply is in that Yakima, Franklin, Grant area.

Did I hear that correctly?

A. Yes. I would say 60, probably 60 to 65% of -- of the milk in Washington and Oregon is in the Yakima, Grant, Franklin, Adams County area.

Q. Okay.

A. It is by far our largest supply of milk in the -- within our system in the Northwest.

Q. And then -- then your plant up near the Canadian border, there is enough milk up there to supply that plant, or are you shipping?

A. We have to ship milk in from -- currently we are shipping all of the milk in from north of King County --

Q. Uh-huh.

A. -- and then we're also shipping milk from Grant County up to Whatcom.

Q. Okay. And that -- is Grant County where Moses Lake is that you refer to in your testimony?

A. Correct. Yes.

Q. Okay. And then you have distributing plants in King County and then down the I-5 corridor; is that correct? Maybe not you, but that's where the distributing plants are located.

A. Yes. Yeah. The majority of them are between King County and Multnomah County, Oregon.

Q. Okay.

A. But on the I-5 corridor, yes.

Q. All right. Thank you. All right. I'm going to try not to be repetitive of other questions that people asked.

You talk about -- and I'm on -- it's the middle, lower half of page 2, that the model in 2000 had three different values in the Pacific Northwest area. But the updated model had similar zones but were complex enough that you decided to kind of look back in offer zones that are more like the old model, and I was wondering if you could expand on why you decided to do that.

A. Yeah. Absolutely. Yeah, my initial view, like, I understood the complexity and the details of the model, but I, you know, in all honesty, when you are working with dairy farmers and you are trying to understand milk pricing and how the system works, the complexities that were being thrown in there, for one, to me, I didn't understand why, why it was important and why we had to have these kind of complexities. We could have had some simplicities.

And then the more and more I thought about it, it felt like there was situations where you could create some -- you know, with multiple different zones and all these distributing plants and milk coming in from all different areas, it just didn't make sense to me. And so like I said, when we're moving milk up and down the I-5 corridor to satisfy the pool distributing plants, why not have them all in one zone. So go from a simplicity

standpoint, go from a parity viewpoint, and -- and to me that was, that -- that's -- that was how I wanted to approach this.

Q. Okay. Two questions from that.

When you say additional complexities added to the model, can you just maybe give an example of what you -- what that would be?

A. Just the fact that there were multiple zones between the counties that, when I looked at that, I -- I didn't know how to describe that because it didn't -- to me, it didn't make sense what the model was kicking out.

Q. And so we looked at a map that showed -- visually showed the results for -- let's say, Washington as the model put them out, and it definitely had more zones. But they were all within, let's say, 5 to $0.15 of each other. I mean, there wasn't a lot of difference.

So what I'm hearing from you is the small differences didn't make sense, let's go back to basically the three zones as we have them now?

A. Yeah. I felt like, to me, to understand it and to explain it, because it was a -- it wasn't just like, you know, you look at the model from Florida out where you have one zone, and they just get less and less as you move forward. It seemed like it roller-coastered through the Pacific Northwest. And I thought that to help explain why it roller-coastered was much more complex than saying it's all the same.

Because the reality, when that milk moves -- and

this is -- I'm sure you all understand this, but weekly balancing in the distribution plants, this is a real thing. Where unless you can create the right incentives for distributing plants to act like they are going to receive milk evenly all throughout the week, we have to have balancing plants to absorb the milk that they are not taking on the weekends.

And so even though the model is kicking out numbers that are up ten, down five, up ten, stuff like this, that looks great from a macro view, but when you get down to the weekly actions, they are pulling milk in Monday through Friday, and they are pushing milk out Saturday and Sunday. And that's where I -- I felt like it was best just to spread it out as one zone across the whole area.

Q. Okay. Thank you.

Let's see. And I apologize if you mentioned this before, because you do talk about transportation, and you talked about some internal freight data. That's not NDA-owned freight, that's the third-party haulers?

A. Correct.

Q. Okay. And then you talked about milk that moves over the pass to get to Seattle.

Can you talk about the volumes of milk that move through there?

A. Yes. So there's two main routes that when we move milk from Eastern Washington to Portland and Seattle. So I'll expand on Portland as well.

But we will -- we will tend to balance the Portland market out of Yakima County. So if you look at the Oregon map, that's Multnomah as being balanced out of Yakima County. We have, in Lewis County, our manufacturing plant that we use as a balancing facility, so the Lewis County plant will balance Yakima as well. And then the Grant -- it's mostly the Grant County milk that moves into King County.

So between Grant County and Yakima County on a daily basis, right now we are moving between 3 and 4 million pounds of milk per day. That is not an insignificant amount of milk. We run 73,000-pound loads -- or, I'm sorry, our hauler does. And that is anywhere in that -- you know, let's just call it 50 loads of milk every day that's going through those areas.

Now, the split between those areas can vary, but I think for simplicity we will say it's 2 million into Seattle and 2 million into Portland.

Q. Okay. Thank you.

There's the supertankers that we had another witness earlier --

A. We don't have supertankers.

Q. 73,000 pounds isn't a supertanker?

A. No. So the -- with the tankers in our area are tandems --

Q. Oh, okay.

A. -- that reach up to 73,000. In the state of Idaho I believe there are supertankers, which will haul a net of

86,000. We also are in the 86,000 net range, but they are with tandems. That's a lot -- it's -- those -- you know, if there's other places, I understand, that only haul 50,000, and I can't imagine that the freight rates aren't higher than what they really are. But those are the kind of things we have had to do to try to -- try to cut costs, is payloads.

Q. Okay. Okay. I'm on page 4 of your statement. In the middle paragraph you are talking about in the -- in likely insignificant counties where there's not milk production, you recommended the differential down to 2.50, and that's what you did in Portland. But there's no 2.50 zone in Washington.

A. Yeah.

Q. Okay. Excuse me, in Portland -- in Oregon, sorry.

A. Yeah. So that is, if I recall, that is two counties in Southeastern Oregon that butt up to a similar situation in Northeastern California --

Q. Yeah.

A. -- so we were trying to connect the dots between those two borderlines.

Q. And the 2.55 in Malheur County seems to butt up against the 2.55 region in Idaho.

Would that be correct?

A. Yes. Malheur is still -- there's a handful of dairies there, but that's an area just across the Snake River that has vital agriculture.

THE COURT: Would you spell that?

THE WITNESS: M-A-L-H-E-U-R.

MS. TAYLOR: I think that's it from AMS. Thank you for your time.

THE WITNESS: Thank you.

MS. HANCOCK: Thank you, Mr. Schilter. Just a couple questions.

REDIRECT EXAMINATION

BY MS. HANCOCK:

Q. You were asked about whether -- about the changes that you had proposed to the model based on some weather events, and I just want to be clear about your testimony.

You weren't suggesting that the changes that you had proposed to the model were based on two snow days a year, were you?

A. The two snow days a year is really referencing there are significant events. Sure, you know, we get snow up in the mountains. I think the Snoqualmie Pass in which we go through will get 400 inches of snow every year. It's one of the most snowy places that I'm aware of in the West Coast, and there's a road that goes through there.

The significant events is when that thing is shut down for extended periods of time, and that artery that us and other industries are using to access Seattle is completely cut off. And that's when everything just stops, and so those are disruptive events. And we have at least two of those a year. And last year we had five consecutive days and/or -- yeah. And those are bad.

So that's what I was referencing was the extreme

events on an annual basis, so -- and they are disruptive.

Q. And you had talked about some other issues that factored into your recommendation that was sent in by -- or that was submitted by National Milk, including some of the congestion and traffic issues that face different cities and moving milk into the different locations; is that fair?

A. Yeah, that is correct. And I -- you know, I want it to be known that, you know, from a -- from a situational contractual customer situation, with how we're dealing with selling milk to customers, I mean, we have things that are -- that are cost drivers that are not included in the model. You know, we have -- we deal with the same temperature, low temperature constraints that our customers are asking for that are better than PMO standards. Same thing with somatic cell, PI, we try to service those customers. We have contractual arrangements that the model would never know about that drive costs up that are -- that are higher than Grade A PMO statements, and those are things that are new since 2000.

MS. HANCOCK: Your Honor, with that, we would move for the admission of Exhibit 397.

THE COURT: Is there any objection to the admission into evidence of Exhibit 397, also NMPF-47?

There is none. Exhibit 397 is admitted into evidence.

(Thereafter, Exhibit Number 397 was received into evidence.)

MS. HANCOCK: I was just going to --

MR. ENGLISH: I haven't moved them yet. Maybe I won't move them.

THE COURT: Oh, right.

MR. ENGLISH: Never mind.

Your Honor, this is Chip English. I move the admissions of the four maps, 398, 399, 400, 401, and another one of our charts, which is 402, which has the legend.

And this time I'll let Ms. Hancock make her own comment about it rather than mine, but I do move admission of 398 through 402.

THE COURT: Okay. Ms. Hancock, I'll hear from you.

MS. HANCOCK: Your Honor, just the same reservation. No objection with the understanding that this witness can't authenticate the accuracy of the document.

THE COURT: Thank you.

Is there any objection to the admission of any of the maps?

There is none. I admit into evidence Exhibit 398, also MIG-45; Exhibit 399, also MIG-46; Exhibit 400, also MIG-47; and Exhibit 401, also MIG-48.

(Thereafter, Exhibit Numbers 398, 399, 400, and 401 were received into evidence.)

THE COURT: Is there any other objection to the admission into evidence of Exhibit 402?

There is none. I do admit into evidence Exhibit 402.

(Thereafter, Exhibit Number 402 was received into evidence.)

THE COURT: I am aware of the reservation that Ms. Hancock has expressed. I find 402 to be reliable enough to admit it now. And I do really appreciate the legend that shows the source of the material.

All right. That means our next exhibit number would be 403, and we can, at this time, allow you to step down, Mr. Schilter.

THE WITNESS: Thank you very much.

THE COURT: Thank you.

MS. HANCOCK: There should also be a 53A, Your Honor.

THE COURT: Let's see. So is this Steve Stout?

MS. HANCOCK: Yes. You should have Exhibit NMPF-53 and 53A.

THE COURT: What is -- does -- 53 looks like this (indicating)? Good.

MS. HANCOCK: And we didn't bring hard copies of 53A, other than for the record, just because of its length, but it's been on the website for quite some time.

THE COURT: Okay. So I'm going to mark NMPF-53 as Exhibit 403, and I'm going to mark the other document as 403A?

MS. HANCOCK: I think it would be 404.

MS. TAYLOR: Yeah.

THE COURT: 404.

(Thereafter, Exhibit Numbers 403 and 404 were marked for identification.)

THE COURT: And the one that is 404, I'm going to hold it up to my camera, 404. I'll do that at a later time.

Okay. Shall we keep going? Is everybody ready for us to keep going?

MR. HILL: Hold on one second, Your Honor.

THE COURT: Let's get started, and then we will take the break in just a little while.

Okay. Would you state and spell your name, please.

THE WITNESS: Sure. Steve Stout, S-T-E-V-E, S-T-O-U-T.

THE COURT: And have you testified before in this proceeding?

THE WITNESS: I have not.

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

STEVE STOUT,

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

THE COURT: Now, I have before me Exhibit 403, also NMPF-53, and I also have Exhibit 404, and I would just like to hold that up so that people who are remote can see it, if you can.

MS. HANCOCK: It is online as NMPF-53A.

THE COURT: All right. Here's what it looks like.

That's 404. I marked as 403, 53. All right. Good.

I'm going to take a break soon, but let's get some of the testimony in. Are you looking at how much time there is left?

This would be a good time for a break, wouldn't it? Let's take 15 minutes, almost 15 minutes. Please be back and ready to go at 3:45.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 3:48.

Ms. Hancock.

MS. HANCOCK: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good afternoon, Mr. Stout.

Would you mind providing your business address for the record, please.

A. Sure. It is 1405 North 98th Street, Kansas City, Kansas, 66111.

Q. And did you prepare Exhibit 403 for your testimony today?

A. Yes, I did.

Q. And this is your full written statement?

A. Correct.

Q. And then Exhibit 404, can you tell us what that document is?

A. That is just backup for the study that I was referencing.

Q. That you were referencing in Exhibit 403?
A. Correct.
Q. Okay. And you have been very gracious with your time and have been hanging out here all week waiting to go on the stand; is that right?
A. That's correct.
Q. And our goal is to try and get you a chance to go home today, so will you be providing a truncated summary of what you have in Exhibit 403, in your verbal testimony, to augment what you have in writing here?
A. I would love to --
Q. Okay. If you would --
A. -- for all our benefit.
Q. If you would proceed, that would be great.
A. Okay. Thank you.

All right. If you will turn to page 5. Just for reference, again, I have on Table 1, just in reference to, as kind of what Monty talked about, just as I was looking at the different geographies, I was looking at Denver and seeing why the model was coming in at a $0.05 reduction versus our current 2.55, the model is coming in at 2.50.

And we felt that in looking at this, looking at these other particular cities and states in which we have had very similar, if not even more growth, in terms of population and/or Class I utilization, that it seemed unequitable for Denver to be at 2.50. And so that's just -- that Table 1 is just showing that we're asking for $0.75 increase from the present versus like Sioux Falls,

South Dakota, is $1.10; Milwaukee is $1.25, this is the top right corner of that; and Kansas City, $1.35.

I do reference throughout my documents in terms of Kansas City and referencing in regards to that, because we have had a relationship on our milk pricing surface in which Denver has, for the last 25 years, been $0.55 higher than Kansas City, and now we're going from $0.55 higher, based on the model, to $0.05 below, so therefore, that's a $0.60 swing, and very, very painful.

So -- so let's go to page 11. And from there you will see that on my Table 2, one thing that I wanted to talk very heavily about is on the growth in Colorado. I understand that the model, because of the natural growth that Colorado has had in terms of milk production from 2000 to 2022, in Table 2, I kind of show that there's a reason why that growth has happened.

On line 1 you will see that our production in 2000 is 1.8 billion pounds, and in 2022 it was over 5 billion pounds. So, yes, substantial growth. 178% increase in our production.

On line 2 and 3, if you will notice, there's a reason for that. As we have had a substantial manufacturing entity partnered with us that -- that built a substantial plant in Greeley, Colorado, we had to -- we were supplying the milk for that plant, and we were purposefully growing the milk in that area for the reason of being able to supply that plant.

So if you take out, between lines 2 and 3, which

is netting lines 4, you will see that back in 2000 our net milk going to manufacturing was .73 billion pounds, and in 2022 it was 4.2 billion pounds. So the substantial increase in the production of Colorado milk production was due to the need to be able to fill that plant and other manufacturing plants.

So in reality, on line 5 you will see that the net of that, taking the Colorado milk production and subtracting the net milk going to manufacturing, is we actually have decreased our milk available in Colorado, what's available for Class I, which has actually decreased 27%.

I then kind of talk about our different hauling costs that we have had substantial increases in hauling. We're one -- unique in DFA for the seven areas that DFA has, in which we have our own company fleet. I, of course, am not trying to reference our costs in terms of DFA transportation, but -- so therefore, I go through and, in Exhibit 404, provide some -- a study that was done by the ATRI, which is a national entity that tracks information concerning transportation costs, and just to show that how much their costs have gone up in terms of their pool of -- that's part of their system.

On page 13 I do reference some of the differences that that study shows versus what our transportation fleet shows. So up at the top there you can see I have, for DFA Mountain, we have 185 tractors, 327 trailers, with over 230 drivers that are part of our fleet here.

So the reasons for some of those cost increases, we have trailers that obviously in the study doesn't incorporate our type of trailers, which are obviously stainless steel tubes, and theirs were obviously much cheaper in terms for that study.

On number 2 you will notice the trailer, our trailer sizes are large. We do more than just supertankers in which we have -- we can hold capacities up to 80,000 pounds on a single trailer. We also have supertankers that have been talked about that hold up to 80 to 85 throughout Utah and Idaho. A lot of our very large trailers, the ones that hold up to 90, are in Colorado.

Then, because of that large trailer, obviously our tractors have to be much more equipped to be able to have the power, the tri-axles, the horsepower, and so on, to be able to carry that much weight, and so the tractors also are more expensive.

Our driver shortages, as Monty mentioned, it's been very significant throughout the United States. I'm not trying to pick on Utah, but in Colorado, but it has been excessive, and it's been difficult to hire drivers. So, anyway, that's the process I was going through to kind of isolate those costs.

So let's go back to page 6. And from there, just to kind of point to the fact that the reason for the price parity is really to avoid the loss of these family farms that are in the state of Colorado.

And what I mean by that is if the model was held and we saw a $0.05 reduction in the location differential for our Class I milk, and the farmers felt the impact of that, that -- not -- I did not calculate, but others at Kleppinger can reference this on Monday, but he calculated $1 impact to what our producers would feel if that model held true, along with -- not just the $0.05, along with the Make Allowance as proposed in several other factors.

So that would be quite devastating to our farmers. And the potential of loss of farmers, whether they say, I have had enough, what I'm referring to is in Colorado we have some very heavy expensive -- you guys have heard from Stephen Koontz from the CSU in which he mentioned that the costs in Colorado for feed costs are significantly higher than neighboring states.

That wasn't the case in 2000, but it is the case in recent years. So things have changed. The costs are higher, water is becoming much more of a heavy burden on our dairy farmers. The urban encroachment is significant, so they have some very real significant costs. And I have heard from many dairy farmers since this has started, that if they have a reduction like this, it could be the end of their farm.

And so if that was to trigger, and we start having this cascading effect of dairies moving and/or going out of business, we would have troubles being able to satisfy our manufacturing commitments. We would have trouble satisfying our Class I commitments. It would be very

devastating to move that milk from other states nearby to be able to bring that milk into that area.

So that's kind of to summarize my testimony.

MS. HANCOCK: Thank you very much.

Your Honor, we would make him available for cross-examination.

MR. ENGLISH: Thank you, Your Honor. My name is Chip English for the Milk Innovation Group.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. And good afternoon, Mr. Stout.

A. Good afternoon.

MR. ENGLISH: I am not going to apologize, but I have a very long cross-examination. This is a terribly important witness, with terribly important testimony. I don't know whether you want to go one minute past 5:00, but I also know we have some other things we have to address.

And I think the Event Centre needs us to get out, right? At some point?

MS. TAYLOR: We are supposed to end at 5:00.

MR. ENGLISH: So I apologize. But even with an abbreviated statement -- I'm not sure why I'm apologizing. This is a terribly important witness, with terribly important testimony, with increases in the model that are rather dramatic.

BY MR. ENGLISH:

Q. Sir, I'll start with this: Can you name a county

with faster milk growth in the last 20 years than Weld County, Colorado?

(Court Reporter clarification.)

MR. ENGLISH: Weld County, Colorado.

THE WITNESS: I haven't analyzed things in that manner, but probably not.

BY MR. ENGLISH:

Q. On page 11 of your testimony, when you refer to out-of-state purchased milk into Colorado, under line number 3, is that DFA milk brought into Colorado?

A. Mostly, yes. But some has been from others.

Q. Some from others to supply DFA needs?

A. No. It's more local distributing plants that have had excess milk, and we have took it into our plant.

Q. That milk does not reflect any organic milk that's moving into Colorado, is it?

A. No.

Q. That's no?

A. No. Sorry.

Q. You discussed the Mountain area at the start of your testimony.

What states are the Mountain area?

A. Thank you. It is Colorado, Wyoming, Montana, Utah, and Idaho.

Q. How long has Dairy Farmers of America had that fleet of farmer-owned milk trucks?

A. From before DFA was in existence in 1998, WDCI fleet back then.

Q. Is that unique for DFA?
A. It is -- was unique up until the last two years, and now the Northeast Area Council has also added fleet.
Q. To what extent, if you know, do other major cooperatives in the United States use their own fleet or use a third party?
A. I do not know that number.
Q. When you refer to nine manufacturing facilities in the Mountain area, can you tell me where they are?
A. Yes. Just grab where I reference that.
Do you have a page number, sir?
Q. I'm sorry, I don't. Let me ask it this way.
Does DFA have nine manufacturing facilities in the Mountain area?
A. A good way to change the subject. Yes, we do.
Q. So --
A. Trying to find it. I had them written down just to make sure I didn't miss any. I'm trying to find it, but let me go through it. I can't see it.
Okay. We'll start off with Colorado. We have Meadow Gold, Englewood.
Q. That's a fluid plant?
A. Yes. We have DFA, Fort Morgan in Colorado.
Q. Is that a fluid plant or a cheese plant?
A. No, that is a balancing plant. It is a powder plant.
Q. Thank you.
A. In Montana, we have two Meadow Gold plants, fluid

plants, in Great Falls and Billings. In Idaho, we have a Meadow Gold plant in Boise.

In Utah, we have several. We have Meadow Gold, Salt Lake City, a fluid plant; we have Meadow Gold in St. George, which is an ice cream plant; we have DFA Beaver, in Beaver, Utah, which is a balancing plant, which is a cheese and condensing operation; and we have Western Quality Foods, which is an ESL plant in Cedar City, Utah.

And we have Meadow Gold Las Vegas in Las Vegas, which is a fluid plant.

Q. Meadow Gold Las Vegas, is that -- that's regulated under the Nevada state order, correct?

A. Correct.

Q. Does it -- is it a partially-regulated plant in any order, if you know?

A. Not to my knowledge.

Q. The plants in Utah that operate in the Class I, are they partially-regulated in any order?

A. No.

Q. The plant --

A. Excuse me, sorry, you said Class I. The ESL plant in Cedar City is -- depends on the month, but can be partially-regulated in 51 or 124.

Q. The Meadow Gold operation in Idaho, is it partially-regulated?

A. No.

Q. Are either of the Montana plants partially-regulated?

A. No, they are state order plants.
Q. Is the plant in Cedar City fully regulated on Order 51 today?
A. It is -- October, I think it was. I'd have to -- I'm sorry, I'm not positive, but it's come and gone off 51 or 124, as I mentioned.
Q. Do you consider your manufacturing plants to be balancing plants?
A. Beaver and Fort Morgan, yes.
Q. To balance Class I in Colorado?
A. Fort Morgan does, yes.
Q. You don't provide any balancing for organic milk in Colorado, do you?
A. No.
Q. Does DFA have any members in Nevada?
A. We do not.
Q. There's been a lot of conversation about the colored pencil crew.
Were you a member of the colored pencil crew?
A. Didn't know the term was that, but I was part of the group that -- concerning the area of Federal Order 32.
Q. 32?
A. Uh-huh.
Q. In what geographical region for Order 32 were you involved with?
A. I honestly don't know where the others were coming from in terms of their total geography, but it was basically the midwestern part of the United States.

Q. Stretching from --
A. So it could have been Order 30 as well, you know, part of Order 30.
Q. For you though, did you have any specific geographic responsibility?
A. Just concerning what was touching in 32, which was Denver, Colorado area.
Q. Were you involved with any rounds of changes in the March, May, or June timeframes when National Milk submitted three separate sets of numbers to USDA?
A. I was involved in information concerning that. I wasn't the one that helped submit the information collectively as National Milk required.
Q. Do you know anything about the differences that were generated between March and May in 2023?
A. No, I don't.
Q. For what we were told early on, anchor cities were largely cities along borders with other orders.
Is that your understanding?
A. I was never given a definition of anchor city.
Q. Do you know why Denver is such a city?
A. Again, large metropolitan area, bordering. And I never heard that part of the term, so...
Q. One witness said it borders the Midwest.
Is that true?
A. Yes.
Q. What part of the Midwest does Denver, you know, border?

A. Of Order 32, it's on the western end of 32.
Q. Okay. And so you understand that to be the Order 32?
A. Uh-huh.
Q. I'm sorry you have to answer yes for the court reporter.
A. Yes.
Q. Were you involved in any of the runs done by the USDSS model?
A. No.
Q. Did you provide any plant information or corrections to the runs?
A. I provided some plant information to Ed Gallagher, who provided it to the main source.
Q. What plant information did you provide to Mr. Gallagher?
A. Plant capacities that he was asking that he wasn't aware of.
Q. Okay. Was it anything about new plants or plants that should be taken off because they are closing?
A. Yes, we went through that, yes.
Q. Did you offer any names of plants that should be added?
A. Not that I recall.
Q. On page 6, which you did testify about directly today, you stated, "We also feel the differentials assigned by the study fell short for the Western region, especially in California."

Did you ever raise any issue with Dr. Stephenson or Dr. Nicholson regarding any inadequacy you perceived in the study?

A. You said California. I don't see that.

Q. I think it's Colorado. Maybe it's supposed to be Colorado. I apologize, may be a typo.

A. No, I did not.

Q. Okay. Do you believe the study did not consider relevant variables?

A. I wasn't fully aware of everything that went into the model. I wasn't privy to that information. But as we talked as a group, we felt that there was some areas which it was inadequate, so I had no discussions with the doctor.

Q. You have discussed hauling costs having doubled compared to 2001, correct?

A. Yes.

Q. Do you agree that the model already includes hauling costs in it?

A. To some degree, yes.

Q. Do you know to what degree?

A. I do not.

Q. When you discussed hauling in your testimony, do you do it to support the conclusions of the model -- I'm sorry -- do you do it generally to support the idea the Class I differentials need to go up or do you do it to justify deviations from the model?

A. A combination of both.

Q. So in what way does it justify deviations from the model for hauling?

A. In terms of the specifics of different areas in which hauling costs are more expensive for reasons that the model is not able to capture.

Q. So it's your understanding the model doesn't take into consideration hauling expenses in particular regions of the country?

A. Yes, I feel that's the case. All hauling costs concerning different regions of the country.

Q. Are you aware that National Milk Producers Federation -- you have been here this week -- are you aware that National Milk Producers Federation proposes to lower Class I differentials in North Carolina from the model?

A. Just -- I heard that, yes.

Q. Well, how does that square with the idea that hauling rates should be considered for raising for Colorado?

A. I don't know the specifics of North Carolina.

Q. When selling its member milk in Colorado, does DFA negotiate for over-order premiums with the Class I plants?

A. Yes, we do.

Q. Have you also passed along fuel charges, surcharges, in recent years on Class I?

A. In certain customers we're able to pass on a fuel surcharge, which my definition of a fuel surcharge is not all fuel costs, it is an incremental increase in the fuel

cost. So partially, yes.

Q. In your region, does DFA ever pay another supplier over-order premium for milk received at your fluid plants?

A. Can you repeat that question?

Q. In your region of the -- that you are responsible for Dairy Farmers of America, does DFA pay other suppliers an over-order premium for any milk received at fluid plants owned by DFA?

A. I don't recall that, when that has happened the last. So I guess the answer would be I don't know.

Q. Let me just maybe ask the question a different way. Are there other suppliers of milk in Colorado, other than DFA?

A. Yes, there is.

Q. Other than organic?

A. Yes.

Q. Are they significant?

A. No.

Q. So as highlighted by you in the short conversation with your counsel, on pages 4 and 5, and the chart, making comparison between Denver and other cities, you say, "Those cities have similar populations or similar population growth," correct?

A. Denver has been much greater than -- population growth has been much greater than those other cities, but similar in some ways, yes.

Q. Okay. But also Colorado milk production has been, as you acknowledged, very significant over the last

20 years, correct?
A. Correct. So has South Dakota's, has increased actually more than DFA's on a percentage basis in Colorado.
Q. When you say they have similar beverage consumption, by that do you mean the demand for fluid milk products is the same?
A. I'm taking from USDA's information concerning the beverage demand, and extrapolating that against the population to determine what the Class I usage might be in those states, and all of them have gone down, as you can see.
Q. And as they have gone down, doesn't the University of Wisconsin model take into consideration that information?
A. I assume so, yes.
Q. In the footnote on page 4, footnote 5 on page 4 -- I'm sorry -- page 5, page 5, footnote 5, you say that -- that "demand by state" -- "determined Class I demand by state by looking at national per capital consumption and multiplying that by the state population," correct?
A. Correct.
Q. And then comparing that to the state's milk production, correct?
A. Say it again? Excuse me.
Q. And then you compare that to the state's milk production, correct?
A. Yes.

Q. What does that measure?
A. That's not the -- I'm not measuring in terms of the comparison between the two. I'm measuring just showing what the demand has been, as well as what the milk production has been.
Q. How should USDA use that in setting Class I differentials?
A. That is not what the purpose of this was. It was just showing that there is similarities between these nearby cities and states that doesn't seem to reflect a justifiable reason for Denver to go down versus the others to go up significantly.
Q. Well, isn't a justification that in terms of -- as you yourself have indicated, there's a lot of milk in Colorado and limited need for Class I, whereas in some of those locations there's a need for that milk to move Southeast to fill the needs of fluid use, correct?
A. I'm not familiar with the movements of milk in those other areas.
Q. Well, if you are going to compare the other areas, isn't it important to be able to compare the movement of milk in those other areas?
A. That's what the other witnesses have testified concerning. I was focused on my area.
Q. On page 6, in the middle of the page, middle paragraph, second sentence, you state, "There are important factors that the University of Wisconsin model is not able to take into consideration that, if left, the

model's results only would result in disorderly marketing conditions."

What "disorderly marketing conditions" would result if we relied on the model in Colorado?

A. Actually, what I was stating in my overview, the cost -- excuse me -- the effect of what that would do to the Colorado producers could be substantial and significant in regards to movement of dairy farms going out of business and/or moving to other states because of it not being profitable of them to make money in the local area. That would be devastating to the needs of what our class -- satisfying the Class I market, as well as our manufacturing commitments.

Q. So you are taking into consideration your view of future needs in Colorado, correct?

A. On my analysis are you asking what would happen? Disorderly marketing conditions, yes.

Q. And how much more milk would there need to be in Colorado than there is today relative to the Class I use in order not to have that risk?

THE COURT: In order not to have that what?

MR. ENGLISH: That risk, that risk that he's assessing.

THE WITNESS: I can't determine that.

BY MR. ENGLISH:

Q. If there's something more, tell me more. If it's the same thing, tell me it's the same thing you have been referring to.

"There are factors at play" -- this is the same paragraph -- "there are factors at play in the greater Colorado region that the University of Wisconsin model is not constructed to contemplate, that provide clear evidence that the model's output has underpriced the pricing surface regions for this region."

What is that "clear evidence"?

A. That the -- as stated, especially referencing the table concerning the growth in the production of milk, which that's on Table 2 on page 11, that the growth in the production of milk in Colorado has been to satisfy the needs of the manufacturing, and actually our net milk going to Class I has actually reduced since 2000.

So to me, that's another factor that the model has not captured.

Q. When you say, "DFA Colorado production available for Class I," is that volume that actually goes to Class I?

A. Class I, Class II, yes, those plants, yes.

Q. So isn't that as much a factor of Class I sales being reduced as we have heard throughout this hearing?

A. Yes.

Q. I mean, you are not saying, of course, that if there were Class I needs, you would short the Class I market, are you?

A. That actually could happen.

Q. Has that happened?

A. No, it hasn't. Again, nothing's been changed. We

are still at the 2.55 level.

Q. Has DFA, National Milk, done an actual economic analysis to show that if this 2.55 level was adopted, there would actually be a reduction of available milk in Colorado?

A. I'm not aware of the study, no.

Q. Other than the plants issue, did you or do you know if anyone went to Dr. Stephenson or Dr. Nicholson to say, hey, you have not taken these factors into consideration?

A. I'm not aware of anyone, but I'm not privy to that because I was not part of that. Ed Gallagher would be able to answer that.

Q. If -- if 2.55 was too low, what was the economic rationale for saying it needed to increase to $3.30?

A. Okay. We -- as we're analyzing it, honestly, to the detriment of -- producers in our area in Colorado were not happy with my approach. But we felt that we had to give something. Okay? Meaning that we wanted to -- our producers wanted us to maintain the $0.55 differential between Denver and Kansas City, which means we would go up much more than 3.30, but felt that that was obviously too much of an ask, and that we needed to be somewhere in that range of the 3.30, which is actually below where Kansas City is.

So, again, a $0.60 change from where we are currently now, $0.60 below Kansas City is where we felt was a good place to settle in.

Q. You said $0.30 less than Kansas City? You mean $0.30 more than Kansas City?

A. No, $0.60. In total, we have gone down -- our differential is actually going to be a net change of $0.60. We're going to be -- the 55 that we currently have is going to go to a $0.05 less in the new proposal. That's -- the delta is $0.60.

Q. But in addition, the decision was made to raise Wichita up to 3.85, correct?

A. I wasn't aware of that. I focused on my area.

Q. You used the word "equitable." Please define equitable as you are using it in this testimony.

A. Okay. For me a lot of things that are concerning, as I stated, just our producers felt there was very much a concern that the current slope between Kansas City and Denver needed to be maintained because of the cost that the producers have in their raising -- effectively making the milk with their feed costs, water costs, environmental issues in the Denver, greater Denver area. So those areas were -- were the main reason for those changes was the fact that costs were significantly higher than those local areas in neighboring states.

Q. I'm sorry, those costs?

A. Yeah. The feed costs, the cost to produce the milk in Colorado has significantly increased.

Q. In creating a national price surface, are you aware if USDA has ever used differences in feed cost between different areas to set Class I differentials?

A. No, I'm not aware.
Q. Do you know whether USDA has ever considered this concept of equity in setting Class I differentials?
A. I don't know.
Q. What is the standard by which USDA should evaluate whether or not Class I differentials are equitable?
A. By taking feedback from the industry and those local areas to determine whether the model that can't be perfect and provide all of the parameters across the whole country can therefore be looked at and reviewed and modified.
Q. On an economic level, how do you judge equitable?
A. I don't. I don't know.
Q. Do you believe that supply/demand signals should be allowed to operate within the milk market under a Federal Order system operated with minimum prices?
A. Say that again?
MR. ENGLISH: You won't let her read it back, will you?
THE COURT: No. I was listening very carefully, and I didn't understand the question.
THE WITNESS: Thank you, Judge.
BY MR. ENGLISH:
Q. Do you believe that supply and demand signals should be allowed to operate within the milk market with Federal Milk Marketing Order minimum prices?
A. That's a loaded question. I -- I'm not sure how to answer that.

Q. Well --

THE COURT: You want to name a particular signal to give him something?

MR. ENGLISH: I will give him, I certainly was trying to ask the big general question, and that's fine.

BY MR. ENGLISH:

Q. So, for example, if there was a flush of milk in the Denver area that surpassed demand, do you think the price of milk there should go down in order to counter the overproduction?

A. You did say "demand," and, yes, the answer might be yes.

Q. Under what circumstances should the answer -- I'm sorry, I don't want to cut you off.

A. I'm saying all demand, not just Class I.

Q. Do you understand the purpose of Federal Orders is to bring forth an adequate supply of milk for fluid use?

A. Yes.

Q. Okay. In what sense should USDA consider demand for alternatives in setting that portion of the Class I differential that varies from one part of the country to the other?

THE COURT: Ask it one more time, please.

BY MR. ENGLISH:

Q. In what way should USDA, in addressing that part of the Class I differential that varies by location, consider alternative demands for milk like Class III?

A. To me, it's just what's happening, where AMS is

asking for a hearing for feedback from the industry to see what different pockets of milk are being cost, based on a model in this example.

Q. Going back to page 11.

To the extent that DFA entered into an agreement with a private party to supply it milk for Class III use, DFA did that voluntarily, correct?

A. Yes, in partnership with the manufacturer.

Q. Okay. But you weren't coerced into the agreement, were you?

A. Our hands were tied, we -- no. Just kidding. No, we were not coerced.

Q. That might have gone a different direction, but to be clear, you did not -- the hands were tied was a joke. You were not coerced, correct?

A. That was a joke. No, we were not coerced.

Q. The record may not get the laughter, so...

To what extent should Class I processors be charged a higher Class I differential because a co-op ends -- operates into a voluntary agreement to supply milk for Class III?

A. That's difficult to answer. In hindsight, it's easy to look at that and say, oh, yes, of course.

But as we were working with the manufacturer, and they were wanting to build this plant, and we wanted to supply that plant, we grew the milk in partnership with them. It was -- it was a -- a nice relationship that occurred.

I'm not sure how to answer your question in hindsight, that's obviously I know where you are going but --

Q. Well, where I'm going is, I'm trying to figure out why fluid milk processors should have to pay more money for that.

A. I'm just saying, the factor of having the growth in Colorado to be the reason for decreasing the location differential is not justified, looking at it in a vacuum.

Q. Does the model look at it in a vacuum?

A. In this regard, I -- it seems to be that it does.

Q. You said you've been with DFA for what, 35 years?

A. 30 years.

Q. 30 years.

So back before Federal Order Reform, in establishing Class I differentials, USDA was trying to find a way to get milk, A, to go to Class I plants; and B, move to where the milk is needed, correct?

A. As a general statement, yes.

Q. If you adopt National Milk's concept west of the Mississippi, the deviations from the model are highest precisely where there are other demands for milk, like Class III, and not a terrible amount of demand for Class I, is there?

A. In a macro picture, yes.

Q. Well, continue my example further, my example to flush milk in Denver now turned on its head. If the circumstances in Colorado persisted, and if an area like

Kansas City does not have such a surplus of milk in relation to demand, do you think it would be appropriate for the price of milk to be higher in Kansas City than in Denver?

A. Yes.

Q. So in that case, isn't it possible that the supply and demand forces we just discussed were what drove the model to generate a $2.50 differential for Denver and a $3.35 differential for Kansas City?

A. In terms of the model?

Q. Yes.

A. I think you said 2.55 for Denver, and they are coming up with 2.50.

Q. If I said 2.55, I meant 2.50.

A. Okay.

Q. So 2.50 for Denver and 3.35 for Kansas City was the model results, correct?

A. Correct.

Q. So isn't it possible that that's what the model was looking at, the need to get milk moved to Kansas City and the fact that milk was not as necessary in Denver for fluid milk purposes only?

A. I don't know all the parameters that went into the model, but it doesn't seem reasonable to have Denver be at 2.50 when, yes, there was a supply of milk for the area. But was it excess? No. And hence, that's -- we're not asking for a location differential above Kansas City, we're asking for a differential that is below Kansas City.

Q. But not as much as the model would suggest, correct?

A. Correct.

MR. ENGLISH: Your Honor, I would like to have marked an exhibit.

THE COURT: This will be 405.

MR. ENGLISH: May I approach, Your Honor?

THE COURT: Yes, Mr. English. All right. What I'm marking as Exhibit 405 is MIG-60. That's 60.

(Thereafter, Exhibit Number 405 was marked for identification.)

MR. ENGLISH: Your Honor, if I may, Exhibit 405, MIG-60, is another, now, for jurisdictions that we have been discussing -- or discussed in this testimony, selected locations in Colorado, Idaho, Kansas, Minnesota, Missouri, Montana, South Dakota, Utah, and Wisconsin. It has the same legend as before.

And I recognize, again, that pool distributing supply plants, while sourced in Exhibit 56, is not going to be corroborated by this witness, nonetheless, you know, continue to hope these documents are useful, and that we can move admission and have the same commentary.

BY MR. ENGLISH:

Q. So what this shows in one page, rather than having to jump around, is this $0.05 difference you and I were just talking about.

If you look at Line 233, which is the first line, is Denver, Colorado, correct, sir?

A. Correct.
Q. And then the ninth line down, Row 1498, is Kansas City in Jackson, Missouri, correct?
A. Correct.
Q. And it reflects that your proposal in June established a $3.30 -- proposes a $3.30 differential for Denver and proposes a $3.35 differential for Jackson, Missouri, correct?
A. Correct.
Q. Now, we heard testimony about the need to move milk from, say, Western Kansas to Missouri, admittedly Southern Missouri, but Missouri and Arkansas.

How is milk going to move west, for instance, out of Colorado -- I'm sorry -- move east to Kansas City with a $0.05 difference in between Colorado and Kansas City?
A. I don't see that it would be moving, nor does it.
Q. So then you discuss in your testimony you need to align other areas like Salt Lake City, Montana, and Southern Idaho with Denver, correct?
A. In terms of alignment? Yes.
Q. Yes. So by -- let's also look at Exhibit 405.

And look at, for instance, line 1337, Otter Tail, Minnesota, where the proposal is $2.80.

Do you see that?
A. I see that, yes.
Q. And do you see three columns over that the difference between Proposal 19 and the University of Wisconsin model is $0.45, correct?

A. I see that, yes.
Q. So, in other words, National Milk proposes raising the price in Otter Tail, Minnesota, the Upper Midwest, by $0.45, correct?
A. Yes.
Q. And then you propose aligning Denver with the Upper Midwest by raising it $0.80, correct? Line 1?
A. Yes.
Q. And now you are also then saying, as a result -- I'm sorry, go ahead.
A. $0.75.
Q. $0.75. All right. Thank you. I meant -- because I meant -- I'll take the 75, but I meant the $0.80, the proposal over the University of Wisconsin, which is one set of columns over, which is $0.80 increase. I was comparing the increases between the proposal and the model, not the difference between the proposal and the current.
Do you see $0.80 in that column?
A. Yes.
Q. What I'm getting at is, doesn't this all look like a bootstrap, that what you did is you start- -- National Milk started by increasing Minnesota, then you needed to increase Colorado, and then because of Colorado, you have to align Salt Lake City and Montana and Idaho, and therefore you have to increase those?
A. I can't answer that.
Q. If USDA disagreed and decided to keep the Denver

differential in line with the model, would that also mean these other areas, like Salt Lake City, Montana, and Idaho, would need to be lowered to remain in line?

A. I think that would have to be reviewed, obviously.

Q. You also describe changes in your testimony you made to Greeley and Fort Morgan, and you said that USDA should reject the model results and keep a slope, a current slope, of $0.10 between the counties as opposed to making them the same, correct?

A. Correct.

Q. And you just justified that because it would be "less disruptive to the marketplace to keep them the same."

Is that correct?

A. Correct.

Q. What disruption in the marketplace do you maintain would occur if those two counties in Colorado, Greeley -- in Colorado, that is Greeley and Fort Morgan, were to set each at the model average?

A. In my eyes, in terms of looking at the milk movements, that the milk in the area of Greeley to satisfy the Greeley customers would stay local and, therefore, not have to go to Denver, and therefore, that's where the $0.10 difference is coming from.

And in the like matter, Fort Morgan -- so this is all present slope that we have currently that works actually very well. We were just trying to maintain that. So the additional $0.10 slope between Greeley and Fort

Morgan is again where that pocket of milk is which would go to the Fort Morgan plants.

Q. Is it your contention that the model does not directly allocate those cost differences?

A. I can't answer that. I don't know what the model was doing.

Q. Assuming for a moment the manufacturing plants in Colorado were pulling milk, raw milk away needed by fluid plants, can't those plants address that through over-order premiums?

A. Could you restate that a different way?

Q. Leaving aside -- I don't think you have said this right now, that this has been happening, but if manufacturing plants in Colorado were pulling in so much raw milk that there was not enough raw milk for fluid plants, can't fluid plants address that by paying over-order premiums?

A. That's a hypothetical I couldn't answer. I'm not involved in over-order premiums in terms of addressing that with the plants.

Q. And I think you may have already said this, that you do not know of circumstances where any proprietary fluid milk plant in Colorado has had insufficient milk for their fluid needs because of manufacturing demands, correct?

A. That is correct.

Q. And to the extent DFA has its own supply of milk in Colorado, it can make the decision to serve its own

plants over manufacturing plants, correct?
A. Correct.
Q. Given National Milk Producers Federation's proposal, and the argument that Colorado should not go down, is there any market condition where you believe Class I differentials should go down?
A. To me, if there was surplus milk in the area in which milk was moving long distances to be disposed -- or I'm sorry, not disposed -- but delivered to other plants could be a consideration for that.
Q. Any other market conditions where you believe Class I differentials should go down?
A. Restate that.
Q. Any other -- other than the one you just named, which was milk moving a long distance, are there other conditions in which you believe Class I differentials should go down?
A. Not that I can consider right now.
Q. So assuming Colorado producers -- strike that.
Colorado producers receive, at least in part, the Federal Order blend price, correct?
A. Yes, they do.
Q. Given the fact that they receive a blend price, how will a higher Class I differential incentivize a cooperative like DFA to supply fluid plants instead of a cheese manufacturer?
A. We would meet the needs of the customer, and so that change in location differential would enable us to

continue to do that based on our increased costs that we have on satisfying that Class I customer.

Q. Isn't the overall relevant -- isn't the relevant metric overall volume of production available?

A. It's actually very stable right now in terms of our supply from our producers meeting the needs of all our customers in Colorado.

Q. Is it your view that the model, or at least USDA, in adjusting Class I prices, needs to consider and incorporate the business relationship between DFA and the private cheese manufacturer?

A. Restate that differently.

Q. In setting Class I differentials, is it your position that USDA needs to consider and incorporate the business relationship between DFA and a private cheese manufacturer?

A. I am stating that the milk movements in a particular area should be of a factor, not just Class I.

Q. So in that circumstance, is it also not the case that USDA should take into consideration other actual business relationships such as organic milk?

A. I can't answer that.

Q. Isn't it true that organic processors can only purchase milk from organic suppliers?

A. They -- I haven't thought of a question like that. They obviously, I guess, could, if they wanted to put up conventional milk.

Q. Well, if they want to remain an organic processor.

So they're organic processor, they need organic milk, correct?

A. Yes.

Q. And organic milk comes from organic dairy farmers, correct?

A. Correct.

Q. And those business relationships will also impact the milk availability for organic fluid milk processors, correct?

A. I'm sorry, I'm not that close to the organic supply and demand, so I can't answer that.

Q. Do you at least know that there is a significant organic processor located in Colorado?

A. Yes.

Q. And they pay Class I prices, correct?

A. I'm not that close to the plant, so I don't know.

Q. Well, if they are a Class I operation --

A. I'm sure they will -- or are.

Q. Then they are required to pay the Class I differential, correct?

A. Yes. Yes.

Q. Okay. And you are aware, I think there was testimony earlier today from Mr. Schilter, that organic milk pays a price significantly higher than the Federal Order price, correct?

A. Yes. Significant is subjective, but, yes.

Q. And you said DFA does not have organic milk in Colorado, correct?

A. We have a very small amount of organic milk in Colorado, from two producers.

Q. Small enough that it could not really make a difference for a large organic processor located in Aurora -- located in Boulder, Colorado, correct?

A. That is correct.

Q. So if USDA is to consider the uniqueness of any private relationship, for instance, between DFA and a cheese processor, shouldn't USDA also consider the uniqueness of the organic milk market when considering where to set Class I differentials?

A. Mr. English, I think that's been a question asked for a lot of organic processors that are producers for more than a decade, but I can't answer that.

Q. Isn't it particularly relevant in Colorado, if you are going to ask for an increase in the Class I differential over and above the model, when organic milk can't draw from the conventional market and just pays into the producer settlement fund, money that does not benefit the organic market?

A. I don't think that's far to say. The organic milk does receive a benefit from the conventional milk throughout the country.

Q. What is the benefit that organic milk gets from conventional milk throughout the country?

A. On the promotion side, which organic does not participate in, is a big one.

Q. How about in the Federal Order, how does it get

benefits from the Federal Order?

A. None that I know of.

Q. But your proposal would simply require organic milk to pay even more into the pool even though it doesn't benefit under the Federal Order, correct?

A. Correct on the surface of that. I don't know how organic would handle it.

Q. In your table on page 11, how, if at all, have you accounted for organic milk?

A. I have not. I was talking about DFA there, not all of Colorado.

MR. ENGLISH: Your Honor, I -- I'm sorry, there's no way this is going to get done today, and I know Mr. Miltner, I think, needs to go.

MS. TAYLOR: Well, then there's Monday. I don't know when he can return on Monday.

THE COURT: You want to finish today, correct?

THE WITNESS: Wanted to, but I live in Salt Lake, so it's a long ways. But I can come back Monday.

MS. TAYLOR: I would add, Mr. Stout, for your patience, you can come back next week at what day suits you, and we will make sure we can fit you in.

THE WITNESS: Okay.

MS. TAYLOR: I don't know your schedule, so if Monday doesn't work, we can certainly work on Tuesday or something like that.

THE WITNESS: Okay.

THE COURT: I'm sorry.

THE WITNESS: That's fine.

MR. ENGLISH: And I am, too, but I'm not the one who -- but anyway, it's fine. We're here.

THE COURT: Well, wait a minute, we all contributed.

MR. ENGLISH: Yeah, okay. We all contributed, but I'm not going to take sole responsibility.

THE COURT: We weren't blaming you.

MR. ENGLISH: Somebody might have.

THE COURT: All right. Let's end up Mr. Stout's testimony because we have got a few housekeeping things to take care of, and we have five minutes before we stop the hearing and clear this room.

So thank you so much, and work through Ms. Hancock as to when you would come back.

THE WITNESS: Thank you.

THE COURT: Now, those exhibit copies you have, you will probably just want to keep those with you as marked. All right.

I'm going to ask the Agricultural Marketing Service to take over from here.

MS. TAYLOR: Thank you, Your Honor.

We will reconvene next week on Monday, starting at 8:00 a.m., but it will not be in this location. As noticed in the Notice of Reconvening Public Hearing on Proposed Rulemaking that was published in the Federal Register on Monday, November 6, 2023, Federal Register Volume 88, page 76143, we will convene next week at the

Palomino Ballroom, at 481 South County Road, 1200 East, in Zionsville, Indiana, 46077.

For those who are participating every day, that is a little bit further from here, so you might want to account for your travels on Monday morning to get there on time. I think it's maybe about 20 minutes away or so.

So we will start at 8 o'clock. We will run to 5 o'clock each day, except on Friday. I recognize the Hearing Notice said that we would recess at 5:00 on next Friday, but we actually need to be out and finished by 3 o'clock for the venue. They have another event, so we will need to finish up by 3 o'clock on next Friday.

The question was, do we know what time they open the venue? I do not, but we can ask, and then for the attorneys present and attending in person each day, let you know via e-mail if that would suffice.

THE COURT: Would you name the event location's name?

MS. TAYLOR: It's called the Palomino Ballroom.

THE COURT: Very good.

And do we want to talk about the witnesses that we expect to hear from that day? Are there any that must testify on Monday, for example?

Now, I wrote down Jeff Sims Monday. Is he -- and I wrote that down yesterday.

MS. HANCOCK: Yes. So he will be here on Monday. We will have Jeff Sims, Brad Parks, Ed Gallagher. We will check with Mr. Stout on when he's coming back, but it

could be him as well, and Peter Vitaliano.

THE COURT: Excellent. Great.

MS. HANCOCK: And we have just as a reminder, I have said it before, but I have learned to say it again, we have Mr. Brown that is scheduled for Wednesday.

MS. TAYLOR: Yes. And I also have Mr. Mike Sumners that will be here on Wednesday as well, according to Mr. English. He is a dairy producer, so we would like him to testify when he arrives.

THE COURT: And I spelled him when we talked about him before. I spelled that S-U-M-A-R-E-S? Is that what you have?

MS. TAYLOR: S-U-M-N-E-R-S.

THE COURT: Sumners.

MS. TAYLOR: Yes.

THE COURT: Thank you. I got the wrong thing.

All right. I thank you all.

MS. HANCOCK: I'm so sorry, Your Honor, one clarification. It might not be in that exact order because we're going to go dealing with people traveling. Some combination.

MS. TAYLOR: Okay.

THE COURT: Very good. Thank you. All right. We convene Monday morning at 8:00. We go off record at 5:00 p.m. Thank you all.

(Whereupon, the proceedings were concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: January 10, 2024

FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613