

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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24 ---o0o---

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

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1 FRIDAY, DECEMBER 1, 2023 -- MORNING SESSION

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

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

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

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

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

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

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

19 Now, is Dr. Capps still on the stand?

20 You may resume your location at the witness chair.

21 Welcome back, Dr. Capps.

22 THE WITNESS: Thank you.

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

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

27 THE COURT: Thank you. You remain sworn.

28 //



1 ORAL CAPPS, JR.,

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

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

6 CROSS-EXAMINATION

7 BY MR. MILTNER:

8 Q. Good morning, Dr. Capps.

9 A. Good morning.

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

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

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

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

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



1 alternatives, PBMA.

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

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

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

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

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

19 THE WITNESS: They are substitutes.

20 THE COURT: Are?

21 THE WITNESS: Are.

22 THE COURT: Oh.

23 By MR. MILTNER:

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

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



1 Q. And what year did you say the chair was endowed?

2 A. 2001.

3 Q. Thanks.

4 So Jean Dunham probably was running the Southwest
5 Dairy Museum at that point?

6 A. Yes.

7 Q. And you and I know about Southwest Dairy Farmers,
8 but for the purposes of the hearing record, that is a
9 qualified regional promotion program, correct?

10 A. Yes. It would fall under QPs.

11 Q. And it's a -- so it's funded by dairy farmer
12 checkoff dollars?

13 A. Yes.

14 Q. And they op- -- their museum is in Sulphur
15 Springs, Texas, I think, correct?

16 A. Correct. And they have also expanded their
17 operations to the Southeast. So they are called the
18 Southwest and Southland Dairy Farmers.

19 Q. I think I got my calendar in the mail a couple of
20 weeks ago for the new year. I assume you got yours, too.

21 A. Yes.

22 Q. So that endowed chair and the work you do, is it
23 limited to post-production marketing activities?

24 A. Yes. As far as I understand, I have only worked
25 on marketing issues.

26 Q. And the marketing issues that you work on, those
27 are marketing of dairy products as opposed to the
28 marketing of raw milk by a farmer cooperative, correct?



1 A. Yes, the marketing of dairy products.

2 Q. In your research or teaching, have you had the
3 opportunity to do much research into Federal Orders and
4 Federal Order pricing?

5 A. I have not.

6 Q. And I don't know if this was asked, have you --
7 have you testified at a Federal Order proceeding before?

8 A. No.

9 Q. Welcome.

10 When you were looking at product prices and
11 elasticities for the research you have presented here,
12 were the -- was there anything unique to your research
13 related to Federal Order minimum prices?

14 A. There was -- the only connection to Federal Order
15 prices was the assumption of the proposition that the
16 Class I price would be raised by 8.6%.

17 Q. And was that presumption provided to you by IDFA?

18 A. No.

19 Q. Okay. How did -- how did you come up with the
20 8.6% price increase to base your conclusions upon?

21 A. That came from Dr. Kaiser's testimony.

22 Q. Okay.

23 A. And Dr. Kaiser raised the issue there. And as I
24 testified yesterday, I presume that is a given, along with
25 his elasticity of price transmission.

26 Q. And am I correct in recalling that the elasticity
27 of price transmission is the percentage of the raw milk
28 price that gets passed through to the shelf price?



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

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

6 A. I have it.

7 Q. Okay. On the first page, it's the third
8 paragraph, and you're describing -- drawing some
9 distinctions, I think, between what you are doing and
10 Dr. Kaiser's testimony earlier. And you note that of the
11 38 studies cited by Dr. Kaiser, only two were published
12 after 2021.

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

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

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

21 Q. It's --

22 A. If you wish.

23 Q. That would be great. Thank you.

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

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



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

3 Q. Thank you.

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

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

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

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

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



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

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

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

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

17 Q. And what would that variability be attributable
18 to?

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

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



1 milk discount promotions?

2 A. Yes.

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

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

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

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

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

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



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

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

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

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

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

20 A. Yes.

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

24 Would you agree with that?

25 A. Yes.

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



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

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

9 A. Yes, on a weekly basis.

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

14 A. Yes.

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

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



1 study.

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

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

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

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

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

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

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

27 A. Yes.

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



1 said yes.

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

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

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

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

13 THE WITNESS: Thank you.

14 CROSS-EXAMINATION

15 BY DR. CRYAN:

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

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

19 A. Good morning, Roger.

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

22 When the periods were defined, I probably wrote
23 this down wrong. But the first period is January 8, 2017,
24 the pre-pandemic period is January 8, 2017, to March 15th,
25 2020?

26 A. Yes.

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



1 A. Yes. 2022.

2 Q. Okay. And the next, the final period is May 2022
3 to August --

4 A. 13.

5 Q. Okay. Thank you. I wrote that down wrong
6 yesterday when it was --

7 THE COURT: Of 2023?

8 DR. CRYAN: 2023.

9 THE WITNESS: Right.

10 THE COURT: Okay.

11 DR. CRYAN: I apologize.

12 THE COURT: No worries.

13 DR. CRYAN: I wrote that down wrong when it was
14 being discussed yesterday, so I just want to make sure.

15 BY DR. CRYAN:

16 Q. Okay. So as you indicated, Dr. Kaiser presented
17 38 studies, and only one of them showed that milk was
18 demand elastic at the retail level. So that -- that
19 means, as I guess as Dr. -- as Ms. Hancock indicated, your
20 results are an outlier. You are an outlier relative to
21 the broad range of studies that are presented, whatever
22 time periods those were looked at.

23 A. I don't -- I wouldn't use the term "outlier." And
24 as I just testified this morning and yesterday, there were
25 two studies using weekly data with demand systems, a
26 different set of milk products, but in each of those
27 cases, those elasticities mirrored mine. So I wouldn't
28 use the term out "outlier." Methodology is completely



1 different --

2 Q. Right.

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

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

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

13 A. Yes. Historically, yes.

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

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

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

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



1 76% of that is -- is captured, but Circana captures 64 of
2 that 76%. So when we're talking about milk volumes sold
3 at retail stores, if you look at the ratio of, you know,
4 64 over 76, you get about 84% coverage. That was a --
5 a -- that probably needs to be clarified better on my
6 slide.

7 Q. I appreciate what you are saying.

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

11 Q. Right.

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

16 A. Yes. Right. And -- but Circana is representing
17 84% of that volume that's sold in retail outlets.

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

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

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

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



1 sensitivity when it comes to sales at foodservice and
2 schools.

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

5 A. By the USDA data you are referring to?

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

10 A. Yes.

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

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

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

22 A. True.

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

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



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

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

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

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

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



1 you are examining?

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

6 Q. Okay.

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

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

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

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

21 A. I don't know.

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

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

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

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

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



1 number, I'm just --

2 THE COURT: Okay.

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

6 BY DR. CRYAN:

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

10 That's the correct term?

11 A. Yes.

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

15 So a 8.6% farm increase translates to a 4.72%
16 increase in retail price, which is a -- which translates,
17 given your elasticity of over 1, translates to an almost
18 6% decrease in the volume.

19 A. For total milk.

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

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



1 price at farm.

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

6 THE COURT: Thank you.

7 BY DR. CRYAN:

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

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

18 Q. Right.

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

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

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

28 Q. And you have made the connection between the



1 Class I price and the retail price in your slides?

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

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

8 A. We agree. But you want to suggest that the
9 own-price elasticity at the farm level, then, is negative
10 .7, and I don't -- I disagree with that.

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

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

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

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

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



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

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

8 A. Yes.

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

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

16 Q. Okay.

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

22 Q. Okay.

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

26 Q. Okay. So that leads me to a question about the
27 64% versus the 76%.

28 If there were -- if there were differences in



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

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

8 Q. Right.

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

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

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

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

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



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

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

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

17 A. Yes.

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

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

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



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

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

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

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

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

23 Q. Okay.

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



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

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

6 A. Weekly.

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

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

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

20 Q. Right.

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



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

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

7 DR. CRYAN: Thank you very much.

8 THE WITNESS: Thank you.

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

12 THE WITNESS: I have lived with them, Judge.

13 THE COURT: But you are remarkable.

14 Who else has questions?

15 CROSS-EXAMINATION

16 BY MR. LAMERS:

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

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

21 A. And that's probably good.

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

24 A. Yes. Took me a while.

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

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



1 going down, and it has been since 1995.

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

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

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

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

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

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

23 Q. Correct.

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

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



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

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

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

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

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

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



1 products?

2 A. No. In this report we do separate analyses for
3 fluid milk, cheese, butter, all dairy. The data coming on
4 pertaining to advertising and promotion, come from DMI,
5 Dairy Management, Inc.; MilkPEP, the processor group;
6 Qualified Programs, one of which being the Southwest Dairy
7 and Southwest Dairy Farmers, and there's about 60 of
8 those. And the overall budget for promotion is
9 \$400 million, but there are separate expenditures,
10 advertising and promotion expenditures for fluid milk,
11 cheese, butter.

12 Q. Okay. I understand.

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

14 THE WITNESS: Thank you.

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

18 Mr. Rosenbaum.

19 REDIRECT EXAMINATION

20 BY MR. ROSENBAUM:

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

22 THE COURT: Are you doing redirect right now?

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

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

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

28 THE COURT: Thank you.



1 BY MR. ROSENBAUM:

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

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

10 A. Yes.

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

12 A. Yes.

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

14 A. Yes.

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

16 A. Yes.

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

19 A. Yes.

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

22 A. It is.

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

27 A. Same company.

28 Q. And Circana just tracks retail sales, correct?



1 A. Yes.

2 Q. And not every single retailer participates,
3 correct?

4 A. Yes.

5 Q. Okay. And so -- and so what percentage of the
6 fluid milk sold through retail outlets is captured by
7 Circana?

8 A. If you took the ratio of 64% divided by 76%, that
9 gives you the coverage of milk sold at retail outlets
10 that's captured by Circana. And if my calculations are
11 right, that's about 84%.

12 Q. Okay. So Circana captures 84% of all fluid milk
13 sold at retail, correct?

14 A. Yes.

15 Q. And you have already discussed what subset retail
16 sales is of total, namely it's 76% of total?

17 A. Right.

18 Q. Okay. Thanks.

19 Now, in terms of the work you had previously done
20 for AMS and that you do for the reports to Congress,
21 correct?

22 A. Yes.

23 Q. All right. Now, first of all, I -- let's just
24 clarify. If you look at your written testimony, which is
25 Hearing Exhibit 386, you do explicitly reference that --
26 that you do those studies, correct?

27 A. I have.

28 Q. And you explicitly reference that what you view as



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

5 A. Right.

6 Q. Okay. Now, you also, in the next paragraph,
7 talked about how, you know, some of the differences
8 between the work you do for AMS and the work you did for
9 IDFA for purposes of putting together the Exhibits 386 and
10 387, correct?

11 A. Yes.

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

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

19 Q. Yes. Page 42.

20 A. Yes, I'm there.

21 Q. First paragraph.

22 You do represent the AMS data, correct?

23 A. I do.

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

26 A. Yes.

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



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

3 A. Yes.

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

9 A. Yes.

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

15 A. Yes.

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

18 A. It's explicitly stated.

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

21 THE WITNESS: Okay. What the Judge said.

22 MR. ROSENBAUM: Okay. All right.

23 BY MR. ROSENBAUM:

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

27 A. Yes.

28 Q. And that you said that plainly, correct?



1 A. I have.

2 Q. Okay. And that's what you conveyed in Hearing
3 Exhibit 394 as well, correct?

4 A. Right. On page 42.

5 Q. Now, one technical question that I'm going to ask,
6 and I may be stealing USDA's thunder here, because they
7 are as meticulous about finding differences in numbers
8 between two documents as -- as anyone.

9 But if you look at your PowerPoint presentation,
10 Hearing Exhibit 387, page 12, where you set forth various
11 elasticities, okay?

12 A. Yes.

13 Q. And if you compare that to Hearing Exhibit 394,
14 which is the report you had done for IDFA in March of this
15 year, so a few months earlier, and you look at page --

16 A. iii?

17 Q. Thank you. Exactly, iii.

18 You have -- I mean, if you just look at the two
19 next to each other, they are very similar bar charts,
20 correct? At the bottom of the page of page iii of Hearing
21 Exhibit 394 versus page 12 of Exhibit 387, correct?

22 A. Yes.

23 Q. And, for example, for the -- if you look just at
24 the total milk number as an example, for the pre-COVID
25 period, the numbers in the two documents are the same,
26 namely a price elasticity of negative 1.1, correct?

27 A. Correct.

28 Q. But if you look at the COVID period, the numbers



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

4 A. Yes.

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

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

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

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

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

26 A. Yes.

27 Q. As opposed to AMS data, correct?

28 A. Yes.



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

4 A. Yes.

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

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

11 Q. Let's just pause.

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

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

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

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



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

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

7 A. An impact on volumes sold.

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

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

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

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

21 A. No.

22 Q. And just tell us why.

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

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



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

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

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

22 Q. All right. Let me ask --

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

24 You said refrigerated milk and --

25 THE WITNESS: Refrigerated yogurt.

26 THE COURT: Yogurt.

27 THE WITNESS: Yeah.

28 THE COURT: And I knew that because you have told



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

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

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

5 THE COURT: Understood.

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

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

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

21 BY MR. ROSENBAUM:

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

26 Do you have that in front of you?

27 A. I do.

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



1 was published in 2023, correct?

2 A. Yes.

3 Q. The same year as yours, as the work you have done
4 for IDFA, correct?

5 A. Right.

6 Q. And this was published in the Journal of
7 Agricultural and Resource Economics.

8 Do you see that?

9 A. I do.

10 Q. Are you -- is that a well-regarded journal?

11 A. Well-regarded journal. I would put that in a
12 top-quality journal.

13 Q. Okay. And do you have to have your work
14 peer-reviewed in order to be published in that journal?

15 A. Yes.

16 Q. Okay. Now, the co-author of this, one of the
17 co-authors of this report is a woman, Andrea Carlson.

18 Do you see that?

19 A. I do.

20 Q. Do you know her?

21 A. I do.

22 Q. Okay. And she -- and as indicated here, she is an
23 economist at the Economic Research Service of the U.S.
24 Department of Agriculture, correct?

25 A. Yes.

26 Q. And do you know what her -- is she a doctor?

27 A. She --

28 Q. A Ph.D.?



1 A. Yes, she has a Ph.D. degree.

2 Q. Do you know what her Ph.D. is in?

3 A. Agricultural economics.

4 Q. And if we turn to page 288 of this document,
5 there's a Table 5 that's entitled, "Marshallian and
6 Hicksian Price Elasticity Estimates." And if you -- if
7 you were going to compare your work to the work in this
8 article in terms of the elasticities, which would you look
9 at, Marshallian or Hicksian?

10 A. Marshallian.

11 Q. And I will leave it to someone else if they want
12 to have a technical explanation why that is.

13 A. Okay.

14 THE COURT: Could you spell both those names for
15 us?

16 THE WITNESS: Marshallian is spelled
17 M-A-R-S-H-A-L-L-I-A-N; and Hicksian is H-I-C-K-S-I-A-N.

18 THE COURT: Thank you.

19 BY MR. ROSENBAUM:

20 Q. And does this document list own-price elasticities
21 as concluded by the authors of this study?

22 A. Yes.

23 Q. Okay. And -- and what did they conclude was the
24 elasticity own -- start the question again.

25 What does the study conclude is the own-price
26 elasticity of skim milk?

27 A. Negative 1.297.

28 Q. And what does this study conclude is the



1 elasticity -- start that again.

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

4 A. Negative 1.666.

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

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

10 A. Negative 1.45.

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

13 A. No.

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

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

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

23 A. Yes.

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

27 A. Yes.

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



1 that?

2 A. They mirror those.

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

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

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

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

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

23 A. Yes.

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

28 "This study tests the assumption of weak



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

11 Do you see that?

12 A. Absolutely, I see it.

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

17 A. Yes.

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

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

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

28 A. Yes.



1 Q. And that's what you did?

2 A. That's what I did.

3 Q. And that's what Dr. Carlson and her cohorts did,
4 too, right?

5 A. Yes, but over the period 2012 to 2017.

6 Q. But they were using scanner data just like you
7 used, correct?

8 A. Yes.

9 Q. And they were using weekly -- were they using
10 weekly data also?

11 A. Weekly data.

12 Q. That's what you used, too?

13 A. Yes.

14 Q. Okay.

15 MR. ROSENBAUM: That's all I have.

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

20 MS. TAYLOR: Yes.

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

23 We are off record at 9:29.

24 (Whereupon, a break was taken.)

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

26 We're back on record at 9:48.

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



1 invite anyone who has additional questions to come forward
2 now.

3 DR. CRYAN: Hello, Your Honor.

4 RECROSS-EXAMINATION

5 BY DR. CRYAN:

6 Q. Roger Cryan from the American Farm Bureau
7 Federation.

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

10 Mr. Rosenbaum --

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

12 BY DR. CRYAN:

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

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

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

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



1 numbers?

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

7 Q. Right.

8 A. So there -- the point is, there's no immediate
9 direct comparison. However, the elastic responses in
10 terms of own-price elasticities for the skim, reduced fat,
11 and whole fat, mirror the -- at least in the pre-pandemic
12 period -- were higher than the traditional own-price
13 elasticity that I got for white milk, which was negative
14 .77, I believe.

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

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

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

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



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

5 Q. Right.

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

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

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

25 A. Yes.

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



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

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

8 Q. Okay.

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

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

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

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

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

24 Q. Right.

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



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

7 A. Can't make that claim. In fact, if you look at
8 the results that I had when we -- you know, we had a
9 similar disaggregate system of five consumer segments, and
10 then I collapsed all of that to total milk, the
11 responses -- the own-price elasticity I got for total
12 milk, at least for the moving-past period, was negative
13 1.26, and for the pre-pandemic period, negative 1.1, still
14 elastic, even when you collapsed all the possible
15 substitutability or complementary conditions among the
16 five segments.

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

21 Q. Right.

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

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



1 what these results indicate?

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

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

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

14 A. No, it is --

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

18 A. I agree with that statement.

19 Q. Very good. Thank you.

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

22 THE WITNESS: 288.

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

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

27 //

28 //



1 RECCROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. Good morning.

4 A. Good morning.

5 Q. Thank you for joining us. You certainly picked
6 the mother of all hearings to be your first Federal Order
7 hearing to testify at.8 Just a little context for our questions. We get
9 the privilege of going back and taking all of this
10 information and trying to help the Secretary determine the
11 decision he wants to make. But after this hearing, we're
12 not allowed to come back and ask you any questions or talk
13 to anybody else in this room. So a lot of our questions
14 are trying to make sure we know what we need to know to go
15 back, so when we look at this again later, we still
16 understand what you are trying to tell us. So I just
17 wanted to give you the context for why I'm asking.

18 A. Thank you for the context.

19 Q. Okay. All right.

20 As you were having the back and forth with
21 Dr. Cryan, I thought to myself, I don't think anyone --
22 I'm not sure, maybe you did, but I didn't see it in your
23 slides -- defined cross-price elasticity on the record.
24 Maybe you had before. I couldn't find it. But if you
25 wouldn't mind doing that real quick, that would be
26 helpful.27 A. I believe the definition is in my testimony in my
28 PowerPoint presentation.

1 Q. I think I missed the page, though.

2 A. Let me see if I can find it. The PowerPoint
3 presentation.

4 Q. I thought it was as well, but then I flipped
5 through and I thought, I don't see it here.

6 A. My apologies. I got a lot of papers here.
7 Yes. This is Exhibit 387.

8 Q. Okay.

9 A. I'm trying to find the appropriate page. My bad.

10 Q. Oh, I think I actually see it now. Page 7.

11 A. Thank you.

12 Q. Yeah.

13 A. Yes. Cross-price elasticity is referred to
14 percentage changes in the quantity of any product
15 attributed to a 1% change in the price of another product.

16 Q. Okay. Thank you. I do want to start on page --
17 Slide 8.

18 A. Of Exhibit --

19 Q. Of Exhibit --

20 A. -- 387?

21 Q. Yes. I'm going to stick mostly to this exhibit.

22 A. Okay.

23 Q. Okay. We want to talk a little bit about the time
24 periods, pre-COVID, during COVID, and moving past COVID.
25 The first question is there seems to be a gap between the
26 pre-COVID and the -- and the COVID period. I'm just
27 wondering if you can talk about why there is that time gap
28 in the data.



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

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

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

23 Q. Okay. And when we look at the length of time in
24 each period, if we want to count them in weeks, so this is
25 weekly data, we calculated the first time period,
26 pre-COVID, is 166 weeks; the second time period would be
27 98 weeks; and the third, moving-past-COVID period, would
28 be 64 weeks in that time data.



1 A. Right.

2 Q. Just wondering if you could elaborate or comment
3 on whether there's an impact -- whether the impact of the
4 different lengths of time in each of these periods
5 impacted your analysis results.

6 A. Well, the amount of data you have always impacts
7 your analysis. We don't know to what degree, could be a
8 small impact, could be a large impact. But as long as you
9 have sufficient degrees of freedom to estimate the model,
10 and the minimum number of weeks was the last period, as
11 you mentioned 64, was sufficient to handle the estimation
12 of the 11-equation or seven-equation Barten Synthetic
13 Demand Systems Model. So no issues regarding the sample
14 size. They do not have to be the same.

15 Q. Okay. And you wouldn't see any issues with the
16 fact that in the post-COVID period, or moving past COVID,
17 that period only, say, for a vast majority of the
18 observations, only -- you know, didn't -- only picked up
19 one season. For example, it might only have one spring in
20 the data. If there's some seasonality between --

21 A. Yes.

22 Q. -- demand.

23 A. So, you know, we did account for seasonality in
24 the demand systems model, technically with the use of
25 quarterly dumps --

26 Q. Okay.

27 A. -- every 13-week periods. So May 22 would be
28 Quarter 2, then you'd have Quarter 3 and Quarter 4 in



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

9 Q. You counted for that?

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

11 Q. Okay. Thank you.

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

17 A. Yes.

18 Q. Okay.

19 A. Not me.

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

26 A. It should reflect that.

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



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

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

4 Q. Yeah.

5 A. Yes. I have Exhibit 386.

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

9 A. Budget share.

10 Q. -- how that was computed?

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

18 Q. Okay.

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

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



1 A. On these categories.

2 Q. Got it.

3 A. Right. It's conditional on these categories. And
4 you will note further, bottled water, number one; juices
5 typically, number two, or milk, number two; and then among
6 the five consumer segments of milk, by far, not
7 surprising, traditional white milk occupies the highest
8 budget share.

9 Q. Uh-huh. So this total milk number, I didn't
10 calculate it, but it is an aggregate of all the
11 disaggregated columns under milk?

12 A. It is. When you multiply, for each week now, the
13 price and quantity, and then add them up, you can get a
14 total expenditure each week. And then what we're doing
15 is, for each week, calculating the budget share for these
16 corresponding categories. And what's presented here in
17 Table 1 is an average-of those budget shares in the three
18 respective time periods.

19 Q. Okay. Wondering if you could talk about if
20 there's any other variables you included in the -- in the
21 analysis, other than the ones we have talked here of
22 price, and volume, and quantity, in particular?

23 A. Seasonality and total points distribution. Those
24 are the variables that I used to estimate the model. And
25 you are asking what other variables?

26 Q. Anything else, like income?

27 A. Well, the problem with income, it's not available
28 weekly.



1 Q. Okay.

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

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

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

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



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

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

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

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

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

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



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

7 Q. Okay.

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

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

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

22 Q. Got you. Okay.

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

25 There we go. Thank you.

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

28 ///



1 BY MS. TAYLOR:

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

4 A. I'm sorry, which --

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

7 A. Yes.

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

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

16 And in my own experience working with Circana and
17 Nielsen, you know, not only for dairy products, but other
18 products that I have, you know, been involved with, that
19 64% does not surprise me. For some it might be lower; for
20 some it might be higher. So 64%, you know, resonated with
21 me. It was -- I feel comfortable with that.

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

24 Q. And that all came from Prime?

25 A. Yes.

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

28 A. I suppose it is.



1 Q. Okay.

2 A. But I don't know if it's -- for sure, if it's
3 publicly available. It was made available to me.

4 Q. Okay. As far as you know, it's not part of this
5 hearing record.

6 A. I'm sorry.

7 Q. As far as you know, it is not part of this hearing
8 record.

9 A. No.

10 Q. Okay. So there's been a lot of talk about the 64
11 and the 76 percentages, and every time I think -- we think
12 we're clear on it, we spend too much time talking
13 ourselves out it based on what we have heard. So I want
14 to make sure that this is correct.

15 Circana constitutes 64% of total beverage milk
16 volume sold in the United States.

17 A. Of milk volume. It says, yeah. 64% of milk
18 volume.

19 Q. And I'm talking about fluid milk volume. Beverage
20 milk volume. It doesn't account for the milk volume put
21 in cheese, the milk volume put in --

22 A. No.

23 Q. -- just to make sure we're clear on that.

24 A. Right. Sold at retail.

25 Q. That's sold at retail. And let me see my other
26 number.

27 THE COURT: So -- so looking at page 9, this is
28 fluid milk volume; is that right?



1 THE WITNESS: It says 64% of milk volume.

2 THE COURT: All right. Not necessarily fluid
3 milk?

4 THE WITNESS: Presumably it's fluid milk.

5 BY MS. TAYLOR:

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

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

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

12 A. At retail outlets.

13 Q. -- is covered by the Circana data?

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

15 Q. I'm getting there.

16 A. Oh, sorry.

17 Q. Okay. So -- so then that leaves another 36%. And
18 according to Circana: 12% of that is untracked retail;
19 15%, foodservice; 8%, schools; and 1%, shrink.

20 And so you added 64 to 12 to get 76%, which you
21 would say, then, if your dat- -- you can extrapolate that
22 your data should be similar to that 12%, so you kind of
23 feel like your data -- that data actually covers 76%, not
24 64?

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



1 But Circana constitutes 64% of that 76%.

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

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

12 A. Right. I mean, you were incorrect.

13 Q. It wouldn't be the first time.

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

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

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

24 Q. Okay.

25 A. I hope that clarifies the situation.

26 Q. It does. Thank you very much.

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



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

2 A. That's one example.

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

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

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

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

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

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

28 A. Absolutely. You are right.



1 Q. And others did.

2 A. Yes.

3 Q. Just wondering if you might infer -- infer as to
4 why that might be.

5 A. Well, I don't have an excellent reason why that
6 was the case, but consumers seemed to be unaffected
7 pre-pandemic, pandemic, post-pandemic, when it comes to
8 bottled water, sports drinks, and protein beverages. As
9 to why that's the case, I don't know. There may also not
10 have been much in the way of disruptions, but we have
11 captured disruptions indirectly with the use of the total
12 points distribution variable. So I don't know. But it is
13 a remarkable result that they are largely unaffected,
14 those categories, when it comes to own-price elasticities.

15 Q. I just wanted to kind of reference, I'm going to
16 turn to Exhibit 394, which is your March report to IDFA,
17 and I want to look at three little iii.

18 A. What page are we on?

19 Q. Three little iii's are --

20 A. Oh, oh, oh, three little iii's.

21 Q. That's what I call it.

22 A. Yes.

23 Q. And I can also then look at -- sorry, I'm going to
24 get a lot of documents in front of you -- report
25 Exhibit 386, page 7. I think this is missing -- so, as
26 Mr. Rosenbaum alluded to, we like to triple check the
27 numbers, right? To make sure --

28 A. Yes.



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

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

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

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

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



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

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

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

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

14 Q. No. It's a lot.

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

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

20 A. Yes, yes, yes. Okay.

21 Q. And the --

22 A. So --

23 Q. The milk ones match --

24 A. Okay.

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

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



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

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

11 Q. Okay. Thank you very much.

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

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

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

19 MS. TAYLOR: Certainly.

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

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

24 THE WITNESS: Correct.

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



1 on the record copy.

2 THE WITNESS: Yes, ma'am.

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

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

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

10 THE COURT: All right.

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

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

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

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

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

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

27 THE WITNESS: Correct.

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



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

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

9 MS. TAYLOR: No problem.

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

14 THE WITNESS: That is correct.

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

16 MS. TAYLOR: Yes. 386.

17 MS. ROSENBAUM: I thought I heard 286.

18 THE COURT: I said 3.

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

20 THE COURT: Thank you, Mr. Rosenbaum.

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

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

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



1 MS. TAYLOR: Thank you, Your Honor.

2 BY MS. TAYLOR:

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

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

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

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

24 Q. I want to turn to page 14.

25 A. Of?

26 Q. Of your slides, thank you.

27 A. Oh, okay.

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



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

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

13 Q. Sure.

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

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

22 Q. Yes.

23 A. Did I get that right?

24 Q. You did.

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

28 Q. So people will switch amongst what milk they



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

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

7 Q. Okay.

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

14 Q. Uh-huh.

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

16 Q. Okay.

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

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

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



1 final results of that total milk category?

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

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

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

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

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

26 Q. Right.

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



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

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

10 A. Exhibit 387?

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

13 Can you turn to Slide 18?

14 A. Yes.

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

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

24 A. That is correct.

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

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



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

3 Q. Appreciate it.

4 A. So the starting point on this was information
5 provided from Dr. Kaiser's testimony where National Milk
6 Producers recommended increasing the Class I price by
7 8.6%. That's a percentage change in the farm price.
8 Okay? But we need to move from the farm price to the
9 retail price and get a corresponding percentage change in
10 retail price.

11 With me so far?

12 Q. Yes.

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

23 Q. Uh-huh.

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



1 triggered by the Class I price increase.

2 Q. Uh-huh.

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

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

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

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

24 Q. Okay.

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



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

6 Q. Okay. That's super helpful.

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

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

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

12 Q. Sure.

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

15 A. Okay.

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

19 A. For total milk.

20 Q. For total milk.

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

23 A. Percentage.

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



1 A. Correct.

2 Q. Okay.

3 A. Absolutely.

4 Q. All right. Now, I think I would like to turn to
5 Slide 20.

6 A. 21?

7 Q. 20.

8 A. Oh, back to the PowerPoint, right?

9 Q. Yeah. So as I read through this slide, and I
10 think Dr. Kaiser came to the same conclusion but maybe
11 different -- a different -- a different number, or a
12 different degree, is that an increase in Class I prices
13 will lead to an increase in gross revenue to dairy
14 farmers.

15 A. Correct. Both Dr. Kaiser and I agree on the
16 increase. We disagree on the magnitude of the increase.

17 Q. Okay. On Slide 21, this is where you are just
18 kind of talking about similar analysis, and you -- on some
19 examples of one done looking at plant-based meat products.
20 And you say that what they found is congruent to what you
21 found. And I just want to make sure I'm clear on what you
22 mean by they are "congruent." And I wrote down some
23 notes, but if you'd just like to make sure I wrote my
24 notes correctly.

25 A. Congruent was the best word I could come up with.
26 And here's why. First of all, ask yourself, well, how
27 many studies have actually looked at own-price
28 elasticities between pre-pandemic and pandemic? Might



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

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

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

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

21 Q. Sure.

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

26 A. Was not what?

27 Q. Was not consistent.

28 A. Yes. And --



1 Q. Is that also correct?

2 A. -- not uniform.

3 Q. Not uniform?

4 A. Uniform. And that's what I found. So what I was
5 trying to -- you know, the purpose for doing that --
6 because the study that I have conducted is unique, right?
7 Well, how does it compare, if you can find any other
8 studies, with what others have done? And I mentioned
9 the -- you know, the Ghazaryan, Bonnano, and Carlson, and
10 Son and Lusk, although we had different products. And
11 here in this study, meat products, but at least they
12 examined pre-pandemic, pandemic.

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

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

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

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



1 everybody looks at?

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

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

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

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



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

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

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

15 Q. Okay.

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

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

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

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

26 A. What exhibit are we?

27 Q. 386, that's your written testimony.

28 A. Okay. Okay. At page 6?



1 Q. Yes.

2 A. Okay.

3 Q. And as we were looking at this, you explained how
4 you got budget share and quantities, and we can figure out
5 how you added up to get total milk.

6 We're curious about how did the data or you deal
7 with the different container sizes of Class I sales. How
8 does that account for that?

9 A. Well, that's an excellent question in dealing with
10 scanner data, because dollars are easy. And you got to
11 remember -- oh, just -- let's just pick one category so I
12 can be clear, okay? Let's say traditional white milk.
13 All right?

14 Traditional white milk, as you know, can be sold
15 in pints, quarts, half gallons, gallons. So when it comes
16 to volume, there has to be a standardization done either
17 by the purveyor of the data, in this case Circana, or the
18 analyst. Well, fortunately, that was done by Circana.
19 And so the standardization is all gallons.

20 And then we add up, you know, within a week, all
21 the UPCs -- or what Circana actually does -- all the UPCs
22 associated with traditional white milk, performed to the
23 standardization that I just described, you get the
24 gallons. The dollars are easy, you just add them up.
25 There's the dollars.

26 And so the ratio then, of dollar sales, which
27 aren't reported here, but I just have price and quantity,
28 to -- to quantity, gives you the average price.



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

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

18 Q. Okay.

19 A. It's a weighted average price.

20 Q. It is.

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

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

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

26 THE WITNESS: Thank you.

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

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



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

3 DR. CRYAN: I won't.

4 THE COURT: Thank you.

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

7 RECROSS-EXAMINATION

8 BY DR. CRYAN:

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

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

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

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

26 Q. Okay. Is that available?

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



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

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

10 A. You would have to go to Circana.

11 Q. Okay.

12 DR. CRYAN: Thank you.

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

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

18 I see no objection.

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

21 MR. ROSENBAUM: Exhibits, Your Honor.

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

24 Dr. Capps, thank you.

25 THE WITNESS: Thank you.

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

28 (Whereupon, a break was taken.)



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

2 We're back on record at 11:25.

3 Now, we have a number of exhibits.

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

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

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

10 There is none. Exhibit 386 is admitted into
11 evidence.

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

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

16 There is none. Exhibit 387 is admitted into
17 evidence.

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

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

22 There is none. Exhibit 388 is admitted into
23 evidence.

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

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

28 There is none. Exhibit 389 is admitted into



1 evidence.

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

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

6 There is none. Exhibit 390 is admitted into
7 evidence.

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

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

13 There is none. Exhibit 391 is admitted into
14 evidence.

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

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

19 There is none. Exhibit 392 is admitted into
20 evidence.

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

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

25 There is none. Exhibit 393 is admitted into
26 evidence.

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



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

3 There is none. Exhibit 394 is admitted into
4 evidence.

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

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

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

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

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

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

19 Would you state and spell your name?

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

22 THE COURT: Have you previously testified in this
23 proceeding?

24 THE WITNESS: I have not.

25 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



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

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

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

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

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



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

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

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

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

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



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

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

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



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

6 The growing needs for milk to be brought into
7 these areas is being met by purchasing milk supplies
8 coming mostly from the west. This milk comes daily from
9 Western Kansas and Western Texas dairy farms. Typically,
10 loads of milk being delivered from these locations into
11 Southern Missouri and Arkansas must travel over 500 to
12 650 miles. With the implementation of the NMPF proposed
13 Class I price surface, the additional dollars can be used
14 to cover a small fraction of the ever-increasing
15 production and transportation costs experienced by today's
16 dairy farms.

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

23 Thank you for your time and letting me testify
24 today.

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

28 THE WITNESS: Thank you very much, Your Honor.



1 THE COURT: Thank you.

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

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

6 Who would like to ask questions first?

7 MR. ENGLISH: Good morning, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

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

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

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

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

19 A. Correct.

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

22 A. Correct.

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

27 A. I've only seen --

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



1 about, the ones that require the yardstick to read.

2 BY MR. ENGLISH:

3 Q. You have not really seen those before this
4 hearing, correct?

5 A. I have only seen them here, but I can speak to --

6 Q. All right.

7 A. -- the support for the numbers that are developed
8 in those.

9 Q. But you also then, therefore, had no role in
10 deciding what city was an anchor city, correct? So-called
11 anchor cities?

12 A. I did not.

13 Q. And as I read your testimony, while you talk about
14 Orders 5, 6, and 7, it would appear that your knowledge is
15 mostly about Arkansas and Missouri; is that correct?

16 A. No, my knowledge is pretty much the whole
17 Southeast area. I was just asked to focus on Southern
18 Missouri and Arkansas.

19 Q. So when you say that DFA owns and operates nine
20 manufacturing facilities, where are each of those nine
21 plants for DFA?

22 A. You would like me to list them?

23 Q. Yes, please.

24 A. Okay. There are two in Florida at Orlando and
25 Orange City; one in South Carolina, Spartanburg; two in
26 North Carolina, Winston-Salem and High Point; one in
27 Tennessee at Nashville; then I was counting two in
28 Missouri, one in Cabool, Missouri, and one at Joplin,



1 Missouri.

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

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

6 BY MR. ENGLISH:

7 Q. And which one is a pool supply plant?

8 A. Cabool.

9 Q. I thought so.

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

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

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

14 A. Correct.

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

18 A. I am not exactly sure.

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

22 A. No.

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

26 A. No.

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



1 A. I didn't prepare those percentages.

2 Q. When you used the term "outside milk" referring to
3 supply plants, do you mean milk from outside the marketing
4 area?

5 A. Correct.

6 Q. Sort of like the milk coming from West Texas and
7 West Kansas, correct?

8 A. Correct.

9 Q. Is that milk needed year-round or just certain
10 times of the year?

11 A. Year-round.

12 Q. Does DFA also supply member milk to plants that
13 are not owned by DFA?

14 A. Yes.

15 Q. In the Southeast?

16 A. Yes.

17 Q. Does DFA charge on such milk, a fuel surcharge for
18 the delivery of that milk?

19 A. The invoicing that we have to all of our plants
20 are related to our -- an agency pricing that we have, and
21 it does include a fuel surcharge.

22 Q. It does or does not?

23 A. Does.

24 Q. And when you say "an agency," you are referring to
25 a group of cooperatives acting together, correct?

26 A. Correct.

27 Q. So congratulations or commiserations, you are the
28 first witness on the stand after USDA finalized the



1 Southeast transportation decision.

2 Are you aware that it's been finalized?

3 A. I am aware.

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

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

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

11 BY MR. ENGLISH:

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

17 A. Correct.

18 Q. But it also provides --

19 A. I'm sorry --

20 Q. Yes.

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

23 Q. Yes.

24 A. So it was updating the old program --

25 Q. Right.

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

27 Q. Thank you.

28 (Court Reporter clarification.)



1 BY MR. ENGLISH:

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

6 A. Correct.

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

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

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

17 A. Correct.

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

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

27 Q. So -- thank you.

28 A. So --



1 Q. I'm sorry, go ahead.

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

6 Q. All right. Thank you for that.

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

15 Have you thought about that?

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

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

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

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



1 it was published yesterday.

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

7 BY MR. ENGLISH:

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

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

11 A. Correct.

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

14 A. I was.

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

17 A. I did.

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

23 A. In the proposal?

24 Q. Yes.

25 A. Correct.

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

28 A. Correct.



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

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

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

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

12 Q. Yeah, I understand.

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

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

18 Q. By how much? \$0.05?

19 A. \$0.15.

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

22 A. Right now there's zero.

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

24 THE COURT: And you nodded your head yes.

25 THE WITNESS: Yes.

26 BY MR. ENGLISH:

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



1 A. You want me to guess? I don't know.

2 Q. I don't want you to guess. Were you here for
3 testimony earlier as well, cross-examination by
4 Mr. Miltner of a witness that suggested that it -- you
5 know, it was basically a penny for every mile that you had
6 to move?

7 A. I think I heard that.

8 Q. So I guess, then, how do you get milk to move from
9 Central Kansas to Southwest Missouri and Arkansas for
10 \$0.15?

11 A. As I have said I think in my testimony, that these
12 programs are only covering a small portion of the
13 transportation costs.

14 Q. Well, now you are talking about the transportation
15 credits program, correct?

16 A. Transportation costs. And so you are talking
17 about the hauling costs, which I'm using the word
18 transportation. So I don't believe that the \$0.15
19 difference is enough to move it, but you have to select
20 numbers at some point. It's not enough to get the milk to
21 Wichita.

22 Q. I guess what I'm getting at is, aren't you
23 creating a situation where it would be more incentive to
24 stop in Wichita, rather than continuing on into Southwest
25 Missouri and Arkansas where you need the milk?

26 A. I hope not.

27 Q. Again, you have been here, but I take it that
28 because you weren't on a red pencil crew, you really



1 didn't study very hard the model, USDSS's model?

2 A. The original model?

3 Q. The original model. Yes or no.

4 A. I was not, no.

5 Q. So part of why I asked the questions about the
6 extent of your testimony, because I read about the
7 Missouri and Arkansas. I do want to talk with you, as
8 DFA's representative, about North Carolina.

9 And you are familiar with the North Carolina
10 pricing, correct?

11 A. I have -- yes.

12 Q. That is part of your job role, correct?

13 A. The current --

14 Q. Yes.

15 A. -- locations? Yes.

16 Q. Yes.

17 MR. ENGLISH: So if I could have a new exhibit
18 marked, Your Honor.

19 THE COURT: Yes. So this will be 396.

20 (Thereafter, Exhibit Number 396 was marked
21 for identification.)

22 MR. ENGLISH: This is MIG-61. It was submitted, I
23 think, this morning or last night.

24 This is 396, Your Honor?

25 THE COURT: 396, yes.

26 MR. ENGLISH: Can I hand one to Your Honor and to
27 the witness?

28 THE COURT: Yes, please. Thank you.



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

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

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

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

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

12 MR. ENGLISH: Of 353, correct?

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

15 THE WITNESS: Exhibit 353.

16 THE COURT: Thank you.

17 Mr. English, you may proceed.

18 MR. ENGLISH: Thank you.

19 BY MR. ENGLISH:

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



1 calculations in the out columns, the last columns.

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

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

7 THE COURT: You would add?

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

10 THE COURT: Oh.

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

14 BY MR. ENGLISH:

15 Q. And so like --

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

18 You may proceed, Mr. English.

19 BY MR. ENGLISH:

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

21 A. I was.

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

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



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

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

8 A. That's what your comparison shows.

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

12 A. That's the correct math.

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

16 A. It appears that's correct.

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

21 A. Right. Yes.

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

25 A. At Asheville.

26 Q. At Asheville, correct?

27 A. Yes.

28 Q. Okay. And by reducing Asheville by a further



1 \$0.30, the result would be now that Charleston would be
2 only \$0.70 less than that location, correct?

3 A. Correct.

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

7 A. I have no idea.

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

10 A. I'm aware of that.

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

13 A. I don't know that.

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

19 A. I would suppose so.

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

21 A. Very little.

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

24 A. Less than half percent.

25 Q. Do you actively seek out Grade B milk?

26 A. Definitely not.

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



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

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

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

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

10 Thank you.

11 Who next has questions for Mr. Herting?

12 CROSS-EXAMINATION

13 BY MR. MILTNER:

14 Q. Good morning, Mr. Herting.

15 A. Good morning.

16 Q. Ryan Miltner representing Select Milk Producers.

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

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



1 A. Not enough.

2 Q. That's -- that's spoken like an actual producer.

3 A. I don't know a percentage.

4 Q. Okay. If you want to turn to page 3, and you are
5 describing some of the supply dynamics in the Southeast,
6 in the middle of the first paragraph your testimony reads:
7 "This milk is always offered for sale on a fixed volume
8 basis, regardless of the supply needs of these plants,
9 which ebbs and flows significantly during a year's time."

10 Can you help me get a better understanding of what
11 you mean by "the milk being offered for sale on a fixed
12 volume basis?"

13 A. A certain number of loads per day, all year long,
14 is what suppliers want to fix in.

15 Q. And the particular sales transaction you are
16 describing in this paragraph, in this instance, is DFA
17 selling milk to a non-DFA plant?

18 A. No.

19 Q. Is DFA selling milk to a DFA plant?

20 A. A joint venture plant.

21 Q. Okay. So those plants are asking for a fixed
22 volume --

23 A. No.

24 Q. I'm sorry, you are offering it for sale on a
25 fixed --

26 A. No, no, no, no. The suppliers that we are
27 marketing, purchasing the milk from to supply the plants.
28 So the third-party supplier that we're buying the milk



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

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

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

8 Q. Okay.

9 A. -- it differs.

10 Q. It differs.

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

14 A. No.

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

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

21 A. I have not analyzed it, yet.

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

23 THE WITNESS: You're welcome.

24 THE COURT: Mr. English, you may return.

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

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



1 these copies? You want only 301?

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

4 CROSS-EXAMINATION

5 BY MR. ENGLISH:

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

9 A. Is that where Joplin is?

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

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

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

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

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

19 A. Correct.

20 Q. Okay.

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

23 BY MR. ENGLISH:

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

27 A. That is correct.

28 Q. Okay.



1 A. I misspoke earlier.

2 Q. That's correct.

3 A. And I apologize.

4 Q. No, don't apologize. It's all good.

5 So -- but the proposal would move Sedgwick into
6 that \$3.85 zone, correct?

7 A. Correct.

8 Q. And Southwest Missouri is in the \$4.00 zone,
9 correct?

10 A. Correct.

11 Q. So now there's a \$0.15 difference, correct?

12 A. Correct.

13 Q. So that's a \$0.05 reduction, correct?

14 A. No, a \$0.05 less of an improvement.

15 Q. Well, okay. Well, okay. \$0.05 less of an
16 improvement.

17 But in terms of the difference --

18 THE COURT: That's well done. Well done.

19 MR. ENGLISH: Nice try.

20 BY MR. ENGLISH:

21 Q. What it really is, though, is a \$0.05
22 disimprovement vis-a-vis the difference between Sedgwick
23 and Southwest Missouri, correct?

24 THE COURT: You mean between the model result?

25 MR. ENGLISH: No, in terms of the current.

26 THE COURT: Oh, the --

27 BY MR. ENGLISH:

28 Q. The current has a \$0.20 difference. Now there



1 will be a \$0.15 difference.

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

5 A. That is correct.

6 Q. Hauling costs have gone up, correct?

7 A. They have.

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

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

13 Q. Thank you very much.

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

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

22 A. To the Missouri comparison?

23 Q. Yes.

24 A. A nickel less incentive?

25 Q. Yes.

26 A. Correct.

27 Q. Thank you.

28 MR. ENGLISH: I have no further questions.



1 THE COURT: Thank you, Mr. English.

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

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

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

9 MS. TAYLOR: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. TAYLOR:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Thanks for being here today.

15 A. You're welcome.

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

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

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

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

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



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

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

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

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

10 A. Correct.

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

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

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

20 Q. Thank you.

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

23 Q. Okay.

24 A. Mr. Sims.

25 Q. Okay. Thank you.

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



1 A. I believe so.

2 Q. Okay. Do you know anything about how they operate
3 the pricing side of things? Do they work in -- I know I'm
4 going back weeks, right? But you are up here, so I'll
5 ask. Do they do any hedging on their raw milk?

6 A. I do not know.

7 Q. All right.

8 MS. TAYLOR: That's it. Thank you so much.

9 THE WITNESS: You're welcome.

10 THE COURT: Ms. Hancock?

11 MS. HANCOCK: Thank you, Your Honor.

12 We would move for the admission of Exhibit 395.

13 THE COURT: Is there any objection to the
14 admission into evidence of Exhibit 395?

15 There is none. Exhibit 395 is admitted into
16 evidence.

17 (Thereafter, Exhibit Number 395 was received
18 into evidence.)

19 MS. HANCOCK: Thank you, Mr. Herting, for your
20 time. Appreciate it.

21 THE COURT: With regard to Exhibit 396,
22 Ms. Hancock, did you want to make your comments?

23 MS. HANCOCK: Oh, Mr. English made my objection
24 for me. So with the same -- just with the same
25 reservation, Your Honor, on -- that this witness has not
26 independently verified the information. But with that, we
27 have no other objections.

28 THE COURT: Thank you.



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

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

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

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

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

14 THE COURT: Yes. I already have my 397.
15 Thank you so much, Mr. Herting. You may step
16 down.

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

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

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

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

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

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



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

3 THE COURT: Have you previously testified in this
4 proceeding?

5 THE WITNESS: Yes, I have.

6 THE COURT: You remain sworn.

7 THE WITNESS: Thank you.

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

10 MS. HANCOCK: Nicole Hancock for National Milk.

11 DIRECT EXAMINATION

12 BY MS. HANCOCK:

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

15 A. Yes, I did.

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

18 A. Thanks.

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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



1 of population growth and declining milk production.
2 According to the U.S. Census data from 2000 to 2020, the
3 population in Seattle, Washington, increased from
4 3.04 million people to 4.02 million people. For that same
5 time period, in Portland, Oregon, population increased
6 from 1.93 million people to 2.51 million people.
7 Combined, the regions grew by more than 30% in 20 years.
8 This doesn't include the surrounding areas where growth
9 was also occurring at similar or increased percentages.

10 At the same time, the dairy industry and milk
11 production in this region has been declining. According
12 to Federal Order 124 Market Administrator data from
13 December 2001 in those counties along the I-5 corridor,
14 there -- and I'll add the word here, there were 794 farms
15 producing 400 million pounds of milk. In those same
16 counties in March of 2023, there were 261 farms producing
17 242 million pounds of milk. It represents a 67% drop in
18 farms and a 39% drop in milk production in just over
19 20 years, The same time period in which this region grew
20 its population by over 30%.

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

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



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

9 Next, I will speak briefly about transportation
10 costs to service the pool distributing plants in Seattle
11 and Portland. The majority of the milk that does, and
12 will, continue to service the pool distributing plants
13 comes from Eastern Washington, and specifically, Moses
14 Lake and Sunnyside, Washington. Internal freight data
15 paid to haulers to assemble a load of milk and deliver it
16 to either Seattle or Portland has gone from \$1 per
17 hundredweight in 2008 up to \$2.10 per hundredweight in
18 2023. That is an increase of \$1.10 per hundredweight in
19 15 years.

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

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



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

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

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

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

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



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

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

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

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

24 Have you been present during some of those
25 questions?

26 A. Yes.

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



1 transportation issues that you have outlined in your
2 testimony?

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

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

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

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

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



1 to spend nights in hotel rooms.

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

28 But a lot of times the plants want to operate



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

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

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

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

10 We go off record at 12:48.

11 (Whereupon, the lunch recess was taken.)

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1 FRIDAY, DECEMBER 1, 2023 - - AFTERNOON SESSION

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

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

6 MR. ENGLISH: Good afternoon, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. ENGLISH:

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

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

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

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

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

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

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

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



1 Washington.

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

4 THE COURT: 399 will be MIG-46.

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

7 THE COURT: 400 will be --

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

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

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

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

16 MR. ENGLISH: You don't have to change your
17 numbers. I just want to make sure the record is clear as
18 to which is which.

19 THE COURT: Very good.

20 And MIG-48 will be 401. Exhibit 401.

21 (Thereafter, Exhibit Number 401 was marked
22 for identification.)

23 THE COURT: And let's go off record now while
24 those are distributed.

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

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

27 We're back on record at 2:00 p.m.

28 I want to read into the record these new exhibits.



1 Exhibit 398 is also MIG-45, and it is an Oregon County
2 map; Exhibit 399 is also Exhibit MIG-46, and it is
3 Washington, the State of Washington County map; and
4 Exhibit 400 is also MIG-47, and it is State of Idaho
5 County map; and Exhibit 401 is also MIG-48, and it is
6 State of Montana County map.

7 And, Mr. English, I really appreciate these.
8 These are really helpful when we're trying to picture what
9 you are asking questions about.

10 MR. ENGLISH: Thank you, Your Honor.

11 BY MR. ENGLISH:

12 Q. So good afternoon, again, Mr. Schilter.

13 A. Good afternoon, Mr. English.

14 Q. With respect to Darigold, are your fluid milk
15 plants all supplied by your own milk supply?

16 A. Yes, they are.

17 Q. Other than your own plants, does Darigold sell its
18 members raw milk to other fluid milk plants in the Pacific
19 Northwest area?

20 A. Yes.

21 Q. Which plants?

22 A. That's proprietary information.

23 Q. Thank you.

24 A. Yep. But if you were to look at the Federal
25 Order 124 and you saw pool distributing plants on that
26 order, and you saw the cooperatives or the supply plants,
27 it will help you answer your question. But I will not
28 tell you who our customers are.



1 Q. And I always respect that. That's fine. Doesn't
2 mean I don't ask, but you don't have to answer.

3 Are you able to -- at least able to tell me what
4 portion of your milk goes into your own plants, including
5 cheese plants or powder plants?

6 A. Yeah. We are running, I'd say, on average between
7 75 and 80%.

8 Q. In addition to fully-regulated plants, does
9 Darigold operate any partially-regulated plants?

10 A. Yes.

11 Q. Is that located in Idaho?

12 A. Yes. And also if you reference Order 124, you
13 will notice that the plant in Idaho has been fully
14 regulated for a few months as well.

15 Q. Sometimes it's fully-regulated, but more often
16 it's partially-regulated?

17 A. Yes, historically, yes. And it's
18 partially-regulated in multiple orders. They're right now
19 currently fully-regulated in Order 124.

20 Q. Thank you.

21 So were you an actual part of a Western red or
22 colored pencil crew?

23 A. Yes, it was the colored pencil crew. If it was
24 red pencil crew, it would not be as exciting, right?

25 Q. I thought somebody used red pencil the very first
26 day, but okay. Colored pencil crew, more exciting.

27 I won't ask why it's more exciting, but who was in
28 this group?



1 A. So I -- I started with the group after Rob
2 Vandenneuvel reached out to me requesting that there
3 was -- that the group had broke apart from a larger task
4 force, and within the Western group it was myself and Rob,
5 and then various representatives from -- at times, from
6 United Dairymen of Arizona and Dairy Farmers of America.

7 Q. And I believe the geographic area you particularly
8 were involved in then was Montana, Idaho, Washington, and
9 Oregon; is that correct?

10 A. Yes. For NDA and Darigold, those are the four
11 states, yes.

12 Q. Did anybody else for those four states -- did you
13 consult with anybody else for those four states
14 individually as opposed to the group talking about the
15 larger geographic area?

16 A. Yes. Consulted with DFA.

17 Q. Were there changes made over time -- I think you
18 have been here long enough to know that we have got a
19 March submission, a May submission, and a June submission
20 to USDA.

21 A. I don't recall specifically. I do recall that as
22 we were moving towards the final submission, that there
23 were various -- there were conversations where we were
24 trying to match up different -- different bordering
25 states. When you are dealing with the Western Area and
26 you have got bordering regions, we wanted to make sure
27 there was price alignment between the bordering regions,
28 and so there was some art involved in that work.



1 Q. And did that result in proposed changes that went
2 down from March to May of 2023?

3 A. I don't know.

4 Q. Okay. I think Mr. Hiramoto specifically mentioned
5 you.

6 So do you recall any specifics from the
7 conversations you had with Mr. Hiramoto consulting about
8 the Pacific Northwest area?

9 A. Define "specific."

10 Q. Well, as opposed to just general conversations.

11 A. I mean, we were on multiple calls at the same time
12 with others, but I think asking for specifics without
13 determining what specifics are, I don't know how to answer
14 that.

15 Q. So when did the -- this concept of equity with
16 South Dakota or the Upper Midwest first arise?

17 A. In the conversations around Idaho and Montana.
18 And this is -- this is from my recollection. We were
19 discussing how to create these price alignment and
20 similarities between the Upper Midwest through these
21 unregulated areas where we had larger milk production with
22 less demand, and then also trying to, you know, not have
23 big price discrepancies between Idaho and the Pacific
24 Northwest, Washington, Oregon areas.

25 And so I don't exactly recall when it happened.
26 It wasn't at the beginning, but it was more towards the
27 end as -- as everything was getting finalized. But that
28 was -- that was one of the areas that we were trying to --



1 trying to use to help bridge the Midwest to the Pacific
2 Northwest.

3 Q. Given that we're talking about Class I, there's no
4 Class I milk that's moving, say, from Montana into
5 Minneapolis, is there?

6 A. I don't think so.

7 Q. Or similarly, there's not Class I milk moving
8 across the Great Plains into the State of Washington, is
9 there, from the Upper Midwest, in packaged form?

10 A. I can answer that with no.

11 Q. So why is equity between two manufacturing regions
12 important when setting Class I differentials?

13 A. I think it's extremely important. And I think --
14 I understand the direction that you are coming from. I
15 need you to look at it from a producer perspective in
16 regards to the world that they live and compete in is just
17 as competitive as -- as you can imagine.

18 And when you have producers that are progressive
19 and looking to either grow or expand or move, what these
20 regions look like against each other is very important.
21 And so for -- for me to help preserve the integrity of the
22 system, having equity across regions is extremely
23 valuable.

24 And so when I looked through -- and I had
25 mentioned this in my testimony -- when I looked through at
26 establishing the base in Seattle, I wanted to focus on
27 what was going on in other similar metropolitan areas.

28 And so I -- yeah, I -- I -- so that's why I think



1 equity is important, because farms compete with each
2 other, too. They compete for feed. They compete for
3 resources. It's very important.

4 Q. What we have, you know, multiple regional Federal
5 Orders, each with their own Class I utilization, correct?

6 A. Yes.

7 Q. So if you have the same Class I differential as
8 the Upper Midwest, the return to the producers will
9 nonetheless be different, correct, between those two
10 orders?

11 A. Mathematically, yes.

12 Q. Is that inequitable?

13 A. I think you are failing to -- you are failing to
14 bring in the fact that the Upper Midwest is a Class III
15 heavily -- heavy Class III market, and Washington, Oregon,
16 Idaho is -- you know, leans a little bit more Class IV.
17 So I'm not going to engage in an argument over milk
18 pricing when we have got two other variables that are also
19 having impacts on milk prices.

20 Q. Do you know whether in this -- so when USDA has
21 considered for setting Class I differentials, the equity
22 between different regions?

23 A. Sorry, can you restate that?

24 Q. Okay. I'll break it up.

25 Can you tell me whether USDA, in setting Class I
26 differentials at any time, has considered equity between
27 different regions?

28 A. I do not recall.



1 Q. In setting proposed Class I differentials for your
2 area starting at 2.20 in relatively unpopulated areas of
3 Idaho and ranging to \$3 in Spokane and Seattle, did you do
4 any analysis of what impact they would have on production
5 of milk in the Pacific Northwest?

6 A. What I didn't see -- I would say yes. In my
7 thought process of establishing 2.20 zones, as I said in
8 my testimony, those are areas that do not or have not had
9 milk for a while. So I felt like that was relatively, I
10 wouldn't say safe, but representative of an area that is
11 not suited to milk cows. So I didn't think there was
12 much -- there was not going to be an impact in those
13 areas.

14 Q. So why set that at 2.20 rather than, say, \$2?

15 A. 2.20, to my understanding, was the minimum in the
16 base of the conversation. But, I mean, in the same
17 fashion, why not set it at 2.55?

18 So if -- if -- to take your question and maybe
19 rethink what I should have done. Maybe I should have set
20 that at 2.55 if it's irrelevant.

21 Q. Isn't it relevant to the amount of milk that we
22 produced, ultimately, if you set it at 2.20 or 2.55 and
23 then price off of that into Seattle?

24 A. Did you say relevant or irrelevant?

25 Q. Isn't it relevant to how much milk is going to be
26 produced ultimately?

27 A. In an area where there is no milk production?

28 Q. Well, whether the milk production is not -- isn't



1 there or not is irrelevant if you are starting there and
2 you go up from there to a place where it is relevant?

3 A. That's not where I started from. I started from
4 Seattle and worked down into those areas.

5 Q. And you started from Seattle at \$3 because that
6 was what was used in the Upper Midwest.

7 A. Yeah. When I looked at the Upper Midwest, at
8 least at Orders 30 and 32, and we do comparisons, I mean,
9 we can look at all these cities, Denver, Minneapolis,
10 Chicago, Kansas City, Milwaukee, Omaha, all of these areas
11 range from \$3 to \$3.35.

12 Q. Well, that's what they range after you adjusted
13 the model, that's not what the model results were,
14 correct?

15 A. Correct.

16 Q. What specific fallacies are there in the model
17 before you adjust for this Pass being closed today, what
18 specific fallacies are there in the model that justify
19 increasing to those levels in, as you said, multiple
20 areas, whether it was Milwaukee, whether it was
21 Minneapolis, whether it was Denver I think you said, in
22 your area? What was -- what are the fallacies in the
23 model that justified that deviation?

24 A. As stated in the testimony and the initial
25 conversations with -- or the conversations with
26 Ms. Hancock, you know --

27 Q. I don't want to know any conversations with
28 Ms. Hancock.



1 A. Sorry, we refer to it as cross.

2 MS. HANCOCK: Direct.

3 THE WITNESS: Direct?

4 In the direct with Mrs. Hancock.

5 BY MR. ENGLISH:

6 Q. Oh, okay. So actually, in public. Okay. I just
7 wanted to make sure --

8 A. Right. On record, the conversation that we just
9 had on record.

10 Q. Fine. That's allowed.

11 A. Okay.

12 Q. Okay.

13 A. You know, the model has some limitations in which
14 we were talking about transportation congestion, weather.
15 We also -- we also talked about different challenges that
16 we have in -- in-plant receiving. For all of these
17 factors in which, I believe -- actually which we were
18 told, are not reflected in the model. For me, it's a fair
19 justification to -- to move off of the model number up to
20 a higher number.

21 Q. So Seattle's \$3, correct, in the National Milk
22 proposal?

23 A. Yes.

24 Q. Spokane is at \$3, correct?

25 A. Yes.

26 Q. Wouldn't it be a lot easier to get milk into
27 Spokane than Seattle?

28 A. Yeah, for the -- from a traffic, from a weather



1 perspective, yes. From a comparative regional
2 competitive, competitiveness perspective, that
3 relationship was established in the 2000 version. And to
4 stay consistent with what I proposed for Washington and
5 Oregon, I wanted to keep those relationships the same.

6 Q. But in keeping those relationships the same,
7 haven't you, in essence, said, I'm okay one way or the
8 other. It's less expensive to move milk to Spokane, but
9 I'm going to charge more, or it's more expensive to ship
10 to Seattle, but relative to Spokane, I'm going to charge
11 the same so -- I'm not understanding why those two should
12 remain the same if hauling costs have gone up and traffic
13 is what it is and the Pass is closed today due to snow?

14 A. Yeah, and this goes back to, again, Spokane. I
15 used Seattle as the base and then referenced the 2000 --
16 the 2000 zones, the zones from the 2000 model in which
17 Spokane and Seattle were both the same.

18 Q. Were you involved in providing any plant
19 information to Dr. Nicholson or Dr. Stephenson for the
20 USDSS study?

21 A. Yes.

22 Q. Did that include the plant that you are building
23 in Pasco?

24 A. It did not include the plant on the initial run,
25 and I suggested that the model did include the plant on
26 the subsequent run, maybe it was the second or the third
27 run, in which -- in which I believe that the model
28 included the Pasco facility in the -- in that other -- in



1 that last run.

2 Q. And notwithstanding your discussion about loss of
3 milk along the coast, by definition, there must be milk
4 being produced in Washington sufficient for you to justify
5 building that plant in Pasco, correct?

6 A. We are expecting milk to increase in the Northwest
7 to help fill up that facility. We will fill up that
8 facility either with increased milk production or with
9 shifting milk around, but it is -- it has a financial
10 incentive to run that facility as close to full as
11 possible, even though it is a butter and powder facility.

12 Q. So looking at what has been marked as Exhibit 398,
13 State of Washington, in which counties --

14 THE COURT: 398 is Oregon.

15 MR. ENGLISH: I need new eyesight.

16 399. Thank you, Your Honor.

17 THE COURT: You're welcome.

18 BY MR. ENGLISH:

19 Q. In -- in which counties is the greatest amount of
20 milk production in the State of Washington?

21 A. We can start in Yakima County. Yakima, Benton,
22 Franklin, Grant, and Adams.

23 Q. Are all five of those counties -- I believe the
24 answer is yes -- east of the mountain pass you mentioned
25 earlier today?

26 A. Yes.

27 Q. Is there any mountain pass between those five
28 counties and Spokane?



1 A. There's no mountain pass, but there can be adverse
2 weather for anyone that's driven into Spokane from the
3 west side, which is where the milk would be coming from.
4 There's a corridor that freezes up more than you can
5 imagine.

6 Q. If -- if milk production has dropped in the
7 western part of the state, has it increased in those five
8 counties of Yakima, Benton, Grant, Franklin, and Adams?

9 A. Over the last 20 years?

10 Q. Yes.

11 A. Yes. Milk has shifted from one side of the
12 mountains to the other.

13 Q. I'm still struggling with what regional
14 competitiveness means, in that Class I utilizations are
15 different.

16 What does reasonable competitiveness mean in your
17 testimony?

18 A. It means that -- it has a twofold meaning. Maybe
19 that's what's confusing you.

20 For me, the first meaning is how do we compete --
21 or if -- the term that's been used earlier is price
22 alignment, potentially interchangeably here. I prefer to
23 use regional competitiveness. But at first, when I look
24 at the metro cities of the Northwest and the Midwest and
25 Upper Midwest, that's one comparison.

26 The other comparison is, specifically in my
27 testimony, was the counties that are west of the Cascade
28 Mountains between the Canadian border and the California



1 border. That was my second use of regional
2 competitiveness.

3 Q. Do you understand that the model attempts to
4 recognize the value of an additional hundred pounds of
5 milk at any particular location for use in Class I?

6 A. I hadn't heard it that way, so I can't answer that
7 as yes.

8 Q. How have you heard it?

9 A. That it is a value that, I don't know, properly
10 values the milk in the area, and then -- and then also
11 encourages movement of milk from manufacturing plants to
12 Class I pool manufacturing plants.

13 Q. But when you talk about regional competitiveness
14 with your dairy farmers, are you saying, look, if my dairy
15 farmers don't get a similar pay price in the Midwest, they
16 are going to move to the Upper Midwest?

17 A. That's a possibility. The -- we have seen shifts
18 in the last 20, 25 years, because this is my historical
19 background, where producers are moving to areas where it
20 is -- it is best places to dairy, best profitable places
21 to dairy. And I do feel like it's important to create an
22 equal playing field as much as possible with the West
23 Coast and the Upper Midwest.

24 Q. So you want Federal Orders to put a thumb on the
25 scale so that milk doesn't move to where maybe it more
26 efficiently can be produced?

27 A. I think there's bigger market forces at play than
28 Class I differentials that would -- that move milk into



1 where economics says it should be produced. There's also
2 natural resource constraints that -- that will come into
3 play.

4 Q. So should Federal Orders be used to try to adjust
5 for that, by saying, okay, we're going to charge more in
6 Seattle than the milk may actually be worth using an
7 economic model because of regional comparisons?

8 A. Yeah. In this instance with Class I -- I think,
9 you know, rather than it being a disruptor, if -- if -- if
10 the Upper Midwestern prices are going to be adjusted
11 upward, then I think that the Western prices should be
12 adjusted upward as well compared to the models. I think
13 there's some -- some reality to that equity.

14 Q. So now, actually looking at the map for Oregon --

15 MR. ENGLISH: Which is 398, correct, Your Honor?

16 Do I have that right?

17 THE COURT: Yes, it is.

18 But before we go there, I would just like to know,
19 is Seattle in Jefferson County?

20 THE WITNESS: Seattle's in King County.

21 THE COURT: Oh, that's right. Okay. Thank you.

22 Thank you.

23 Now we're going to 398. Exhibit 398, also MIG-45.

24 MR. ENGLISH: And as I do that, Your Honor, I
25 would like now to mark another exhibit, I believe, as 402.
26 It is MIG-58.

27 THE COURT: Very good. Let's go off record at
28 2:27.



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

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

3 We're back on record at 2:28.

4 Mr. English, we have marked Exhibit 402, which is
5 also MIG-58.

6 (Thereafter, Exhibit Number 402 was marked
7 for identification.)

8 BY MR. ENGLISH:

9 Q. So with respect to Oregon, where are the milk
10 supplies, milk production?

11 A. The majority of the milk in the State of Oregon
12 are in Tillamook County and then also over in Moro County.
13 The balance is in the -- in the Willamette Valley, which
14 is Multnomah County down to basically the California
15 border is where we will find cows that are, or farms that
16 are still in operation.

17 Q. Down to Jackson County?

18 A. Down to Jackson and -- yeah. And I -- and it's --
19 the dairy industry in Oregon has changed dramatically in
20 that area in the last five years. So when I say that
21 there's farms down there, there are specklings of one here
22 and one there as you get below Lane County. The other
23 place, there's a handful of dairies out in Coos County.
24 All of those farms are organic.

25 THE COURT: I'm having trouble finding Coos.

26 THE WITNESS: Coos is southwest on this page.

27 THE COURT: Oh, I see it.

28 MR. ENGLISH: Second county up from the west in



1 California.

2 THE COURT: Okay. And where is Portland? What
3 county?

4 THE WITNESS: Multnomah, I believe.

5 MR. ENGLISH: Yes.

6 THE WITNESS: Multnomah, on the top.

7 MS. TAYLOR: Thank you.

8 THE WITNESS: Yeah. M-U-L-T-N-O-M-A-H.

9 MR. ENGLISH: In a more perfect world, Ms. Vulin
10 would be here to ask these questions.

11 BY MR. ENGLISH:

12 Q. So I want to look at, on this Document 402,
13 Row 2184, Douglas, Oregon, there's a proprietary operation
14 there called Umpqua?

15 A. Yep -- or yes.

16 Q. And the model average, which is the column sort of
17 right in the middle, UoW v3, for Version 3, average, put
18 that differential at a \$2 Class I differential, correct?

19 A. Yes.

20 Q. And -- and then, as you have already discussed, a
21 fair number of locations were set to \$3, and that's your
22 proposal for Umpqua in Douglas County, correct?

23 A. Correct.

24 Q. And if you look at Portland, Row 2200, the model
25 said \$2.35, correct?

26 A. I'm not finding line 2220, apologize.

27 Q. Right in sort of the middle of the page,
28 Alpenrose, Portland area.



1 A. 2200.

2 Q. Did I say something other than 2200?

3 A. 2200. I heard 22220. Sorry.

4 Q. I may have done that.

5 So -- so 2200, middle of the page, for Portland,
6 the model had \$2.35, correct?

7 A. Correct.

8 Q. And, similarly, you set the proposal \$3, correct?

9 A. Correct.

10 Q. So how was the model flawed in setting a \$0.35
11 difference between Douglas and Multnomah?

12 A. The -- to understand -- well, first of all, again,
13 I set the numbers between the Canadian border and the
14 California border using King County as a base, and taking
15 that to \$3, and then matching the logic that was used in
16 the 2000 model, which stated that -- or which showed that
17 all of the counties west of the Cascades were on the same.
18 So I can restate that again if you need.

19 With that logic, Portland and the Portland area
20 and the Umpqua plant maintain the same -- the same value.
21 The competitiveness -- the competitiveness along the I-5
22 corridor, I think, is important to consider. I would hope
23 that the model would have considered that, but I think
24 it's important that there's a competitive balance between
25 all the -- all the plants on the I-5 corridor. Milk moves
26 up and down the I-5 corridor to service these plants, and
27 finished goods move up and down the I-5 corridor to
28 service the customers. So I think it's important to



1 create a -- a parity in that marketplace.

2 THE COURT: Is the I-5 corridor roughly from
3 Portland south?

4 THE WITNESS: And north.

5 THE COURT: And north, yes.

6 MR. ENGLISH: The Canadian border down to --

7 THE WITNESS: The California border.

8 MR. ENGLISH: -- Mexican border.

9 THE WITNESS: Well, yeah, the Mexican border. But
10 we don't ship milk south of the Oregon border very often.
11 Others might, but that's not in our -- not how our milk
12 moves.

13 BY MR. ENGLISH:

14 Q. If hauling costs have increased, and other costs
15 have increased since 2000, wouldn't you expect that
16 relationships between plants in terms of the relative
17 value of the milk would have changed since 2000?

18 A. In reality or in what the model would have
19 produced?

20 Q. Well, let's start with the model.

21 A. Yeah. So to understand how milk is -- moves along
22 the I-5 corridor, you know, we have farms up and down the
23 I-5 corridor. We have plants up and down the I-5
24 corridor. Most all of those are pool distributing plants.
25 But for this example I'll call them demand plants, in
26 which we have contracts with, and others have contracts
27 with to fill. And after you satisfy the demand plants'
28 volume with how this network works, we have to -- we



1 backfill product out of Eastern Washington.

2 Reality is, is we have got excess milk production
3 in Eastern Washington that has to go somewhere, but we
4 have been matching that off over the years by moving milk
5 over the pass. And so while I'll recognize, yes, there's
6 going to be some discrepancies between transportation
7 costs between plants with how we try to fill in the
8 buckets and fill in the cracks with milk, we try to keep
9 it as equal as possible, at least in relation to this --
10 to this proposal.

11 Q. But you have discussed with your own counsel the
12 difficulties of getting into Seattle, the difficulty
13 today, especially today, of getting over the Pass into
14 Seattle.

15 Does that same difficulty exist in Southern Oregon
16 to get milk?

17 A. The milk that goes into the Portland market will
18 flow in a different direction, but it will flow through
19 the Columbia River Gorge, which has its own challenges
20 weather-wise. It does not have the snowfall that shuts
21 down the Pass, but it has wind and snow and ice that
22 create challenges. The -- but we have had our own
23 problems with -- with that area.

24 When we get extreme weather in the Seattle area
25 that shuts down I-90, we tend to have the same, that
26 weather coming from the south, and when that happens it
27 affects the Portland, it affects the Columbia River Gorge
28 area. So they are different, but when it's extreme, it's



1 bad.

2 Q. So what about the milk that goes to a plant in
3 Douglas County, where does that come from?

4 A. The milk that goes into Douglas County currently
5 is coming from Klamath, Jackson, Douglas, and it will also
6 come from all the counties north of that up to Multnomah.

7 I -- I will say with some of the changes that's
8 happening right now in the industry, we are very likely
9 going to have to start shipping milk from Yakima, which is
10 Sunnyside, Washington, area, potentially down as far as
11 Douglas County to service demand.

12 Q. But that's not happening now.

13 A. At times when we need to, it will happen, but it's
14 not on a regular basis, and I would not say that it's a
15 regular basis. But with consistent departures of farms in
16 the Willamette Valley, this reality will be upon us fairly
17 quickly.

18 Q. Leaving aside the question of moving the milk from
19 farther away to the east, whether it's Washington or for
20 Seattle, or whether it's Portland, does National Milk --
21 I'm sorry -- does National Milk, or in this case Darigold,
22 agree that there are sufficient supplies of milk for fluid
23 use in Washington and Oregon?

24 A. Yes. Right now the PNW order is about 20% Class I
25 utilization. There is -- there is enough milk to supply
26 the Class I demand. As long as we can get trucks
27 underneath of it and haul it, we can get it there, and as
28 long as we can find pricing agreements that make it make



1 sense economically, we'll get it there.

2 Q. And Idaho certainly has sufficient supplies of raw
3 milk for fluid use, correct?

4 A. Yes. I think Idaho, if regulated, I would
5 speculate is less -- way less than 5% Class I.

6 I'm sorry, maybe I misstated. "If regulated" was
7 not the right qualifier. If we knew the information, it
8 would be -- we would -- we would believe it would be less
9 than 5%.

10 Q. I think what you meant was, if it were regulated,
11 we would know the information?

12 A. Fair. Thank you for -- yeah. So that is my
13 professional opinion of my market knowledge.

14 Q. So finally, let's turn to Montana. I -- my
15 knowledge may be dated.

16 Is Montana still regulated by a state order?

17 A. Yes.

18 Q. Are there still two fluid milk plants in Montana?

19 A. There are three.

20 Q. Three. So I remember two. I'm sure the third was
21 very small. Okay.

22 So one is owned by Darigold?

23 A. Correct.

24 Q. One is owned by DFA?

25 A. There are two owned by DFA. And if I'll speak on
26 behalf of DFA, because it is public Montana record, or at
27 least you can look it up on the FDA IMS report, one of
28 those plants is located in Billings, Montana; the other



1 one is located in Great Falls.

2 Q. Okay. So maybe part of my confusion is, is the
3 Darigold plant located near one of the DFA plants or are
4 they all far?

5 A. I mean, the Darigold plant is located in Bozeman.

6 Q. Bozeman.

7 A. The definition of "near" in Seattle is different
8 than the definition of "near" if you are in Montana.

9 Q. I was well aware -- I knew that's why you were
10 going to -- going to go at me.

11 Speed limits are really different in Montana, too.

12 A. I didn't realize there were speed limits in
13 Montana.

14 Q. Are any of those three plants fully-regulated
15 under Federal Order?

16 A. I do not believe any of those plants are
17 fully-regulated.

18 Q. Are any of those states partially-regulated on a
19 Federal Order?

20 A. Are any of those partially-regulated on a Federal
21 Order? Yes.

22 Q. All three?

23 A. I don't know.

24 Q. Okay. Does -- to the extent Darigold sells milk
25 to other Class I processors, does Darigold charge an
26 over-order premium?

27 A. At times, yes.

28 Q. Does Darigold presently pass along a fuel



1 surcharge?

2 A. In some contracts, yes.

3 Q. And I have either forgotten the answer or I didn't
4 ask the question: Are any of your fluid milk plants
5 receiving milk from another supplier?

6 A. Yes.

7 Q. Do you -- does Darigold pay that other supplier
8 over-order premium?

9 A. It's organic milk, so I don't know how you define
10 over-order premium with organic milk.

11 Q. What you mean is organic milk is charged its own
12 price, correct?

13 A. Federal Order doesn't recognize organic. Milk is
14 milk.

15 Q. Right.

16 A. So the price we pay for that is well over the
17 order. That's the definition of an over-order premium. I
18 would say yes.

19 Q. But -- but if I use the term "over-order premium"
20 for the purposes of services rather than a specific
21 quality of milk like organic, then -- then -- then the
22 answer is no, correct? Because the milk you got is
23 organic milk.

24 A. I forgot the question you were asking.

25 Q. Okay. Is the only milk that Darigold receives
26 that's not its own milk, organic milk?

27 A. Yes.

28 Q. Okay. Does Darigold have any members who are



1 Grade B?

2 A. No.

3 Q. Let me consult for one second.

4 Going back to the process and your testimony on
5 page 4. You have got several statements, and I was going
6 to read partial statements. These are all on page 4.

7 "I kept the zones the same. I kept the spread of
8 \$0.15. I proposed a very simple approach. I treated them
9 similar."

10 Does "I" mean expressly that, that this was your
11 decision?

12 A. I led the decision process, yes. So in states of
13 Washington and Oregon, yes, I was the one that was
14 understanding that I was going to make that decision and
15 sit up here and represent that.

16 MR. ENGLISH: I have no further questions, Your
17 Honor.

18 Thank you for your time, Mr. Schilter.

19 THE WITNESS: Thank you, Mr. English.

20 CROSS-EXAMINATION

21 BY MR. MILTNER:

22 Q. Good afternoon, Mr. Schilter.

23 A. Good afternoon, Mr. Miltner.

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

26 On page 2 of your testimony on the -- in the
27 first -- I'm sorry, second full paragraph, your second
28 sentence states, "The Pacific Northwest, specifically



1 around King County, Washington, operates similarly to the
2 urban parts of Federal Order 32, so I looked to those
3 areas for comparison."

4 Can you tell me how King County, Washington, is
5 similar to the urban parts of Order 32?

6 A. Yeah. The -- what I was getting at was that they
7 were urban areas, particularly the largest urban centers
8 in those parts of the country surrounded by rural areas
9 that were supplying milk supply into those areas. That's
10 as simple as my thought process was in operating
11 similarly.

12 Q. You might find similar situations in other Federal
13 Orders, though, couldn't you?

14 A. Yes.

15 Q. So I'm curious as to why Order 32 specifically.

16 A. Order 32, you know, and I have later on -- well,
17 in the testimony said 32, but very much so should have
18 included Order 30. And when I start looking at the cities
19 of, you know, Milwaukee, Omaha, Kansas City, Chicago,
20 Minneapolis, and Denver, I think that is a pretty good
21 representation. If I'm going to make a comparison to the
22 Midwest and the Upper Midwest, those are the cities that
23 I'm looking at.

24 Q. So it wasn't necessarily Class I utilization in
25 those orders, it was a function of urban centers with
26 rural milk supplies?

27 A. Yeah, it's good -- good point. I -- if we look at
28 the Federal Order Statistics Report from October of 2023,



1 Order 32, 29.7% Class I; Order 30 is 6% Class I; but
2 Order 124 is 22.5.

3 So when I make comparisons to Order 30, that's a
4 6% Class I, I could see where you draw a conclusion that
5 that does not operate in a similar fashion.

6 So when I come back to urban cities with rural
7 areas surrounding it and then try to compare with those,
8 then that's where I looked at the specific differentials
9 that were in those counties.

10 Q. And that leads to my next question, really a
11 question to confirm. You selected Order 32 because you
12 felt it operated similarly to the Pacific Northwest and
13 King County and, therefore, tried to have the proposed
14 Class I surface mimic that which was devised for Order 32?

15 A. The surface only for the base counties, or the --
16 I'm drawing a blank on the term that was -- that was used
17 in the --

18 THE COURT: They said anchor cities.

19 THE WITNESS: The anchor cities.

20 The anchor cities and base cities, at which I
21 would -- those -- I know anchor cities is what National
22 Milk had used. Base counties is what I believe I recall
23 seeing in the original USDSS model.

24 BY MR. MILTNER:

25 Q. Okay. Different from a pricing base city, like
26 Seattle is the base zone for Order 124?

27 A. Yes.

28 Q. Okay. Those are two --



1 A. Base county or base zone. I don't remember the
2 exact term, but I think we're talking about the same
3 thing.

4 Q. We are talking about -- that's my question. When
5 I -- when I think of a base zone, I'm thinking Seattle,
6 King County, for Order 124; Cuyahoga County, Cleveland,
7 for Order 33.

8 You are nodding. Yes?

9 A. Yes, I agree.

10 Q. You talk about, on page 3 of your testimony, a new
11 manufacturing plant in Pasco.

12 When you were using your colored pencils, were
13 you -- were you -- were you considering the milk demand of
14 Pasco inoperational or were you primarily focusing on the
15 plants as they are today?

16 A. I think it would be -- it was with Pasco in
17 operation. To know that that opening of that plant is
18 imminent and to not have it in the model, or at least not
19 planned towards that, would be a mistake.

20 Q. Do you expect that the operation of the Pasco
21 plant will alleviate or exacerbate your issues with milk
22 hauling and the logistical problems that NDA has to
23 contend with?

24 A. It will alleviate. That was one of the main
25 reasons for building the plant -- or not one of the main
26 reasons, but a contributing factor was, you know, we are
27 currently moving -- and I'll share this information,
28 let's -- well, we'll range it somewhere between 3 to



1 4 million pounds of milk a day over this -- over these
2 mountain passes, and -- and that is all at risk in
3 these -- in these weather events.

4 So while the current supply and demand balance on
5 the I-5 corridor will still demand product to come from
6 Eastern Washington, it will not be at the same volume as
7 it is today. And that's assuming that today's volumes
8 don't change. There may be -- there may be a scenario in
9 the next ten years when milk production grows, or if
10 there's plants that aren't operating where -- that balance
11 changes. But -- but as of right now, that alleviates a
12 major risk and a major cost to our system.

13 Q. I wanted to ask about a minimum differential. And
14 it was a -- several witnesses had talked about that or
15 been asked about that during our previous session in
16 October. I don't -- you may have been the first one this
17 week to really mention a minimum differential.

18 When -- did I hear you correctly to say that when
19 you were putting together the differential map for the
20 Pacific Northwest, that you viewed \$2.20 as the base
21 differential from which to work?

22 A. No. That's -- the approach that I took, as I
23 stated in my testimony, was I started with King County at
24 \$3 and then carried the same relationships forward.

25 The conversations -- so I'll leave it at that.
26 That was my approach. I did not start at 2.20, I started
27 at \$3 and worked my way east.

28 Q. For you and your committee's understanding, was



1 \$2.20 the minimum differential?

2 A. I -- I don't recall if we talked about that in the
3 Western group. We may have. I don't recall.

4 Q. The testimony you have provided about the
5 challenges faced by weather and mountains and the other
6 items you have referenced, some other witnesses in support
7 of Proposal 19 have testified to similar considerations
8 and explained that that testimony was meant to justify
9 increases in the differentials generally, and others have
10 offered that evidence to help explain why there were
11 deviations from the model.

12 A. Yeah.

13 Q. So in your case, are you presenting this evidence
14 as justification for increasing differentials generally or
15 to support the deviations that you and your committee made
16 from the model's results?

17 A. Yeah. It would be to support the deviations. My
18 justification to move away from the model was more about
19 regional competitiveness. We are not -- you know, we're
20 not that much different than anywhere else in the country.
21 We all have challenges. We do not have road temperatures
22 getting up to 115 degrees, though, so that's -- we're okay
23 with that. But the regional competitiveness was the
24 driver. And the way that it was laid out in the testimony
25 was that it was supporting information in general for
26 increasing differentials.

27 Q. In your testimony?

28 A. Yes.



1 Q. Okay.

2 MR. MILTNER: Thank you. That's all I had.

3 THE WITNESS: Thank you, Mr. Miltner.

4 CROSS-EXAMINATION

5 BY MR. ROSENBAUM:

6 Q. Steve Rosenbaum for the International Dairy Foods
7 Association.

8 I mean, looking at page 4, two days per year of
9 bad weather strikes me as sort of pretty minimal.

10 Am I missing something?

11 A. Yeah. The two days are not just bad weather. The
12 two days are of Pass closures.

13 Q. Are what?

14 A. The mountain pass closures. And these are not
15 just, you know, two-hour, three-hour closures. These are,
16 shut it down and sit. And we face the same problems as
17 any other industry that's trying to move products into the
18 Seattle area.

19 So if we talk about the cost to service the
20 Class I market and we are dealing with time periods where
21 we have 24 hours where we can't move milk off farms, we
22 have to ask our farms to invest into farm storage to help
23 hold that milk, or we have to balance milk through adding
24 storage in our plants, or we have to add tankers of milk.
25 But the milk keeps coming out of the cows, and if we can't
26 move it, it's got to sit somewhere.

27 Q. Is there anywhere in the country that doesn't have
28 two days of equally bad weather, you know, like hurricanes



1 in Texas or Florida, or snowstorms in Minnesota, or things
2 of that nature?

3 A. I -- I would imagine.

4 Q. Yeah.

5 A. But these are the realities of --

6 Q. How much more are you asking --

7 MS. HANCOCK: Your Honor, if he could finish his
8 answer.

9 MR. ROSENBAUM: You're quite right. Please
10 continue.

11 THE WITNESS: Yeah. I think when we look at the
12 realities of some of our farms, there is some differences,
13 and I guess it depends upon how you manage or how you
14 balance a milk supply to service a Class I market. But
15 there are differences on the farms on farm size and
16 storage. We tend to move to a model where we -- you know,
17 some of our farms may not have a full day's storage. We
18 may be shipping five or six loads a day off of a farm, and
19 to ask a farm to put in, you know, enough storage to hold
20 12 loads or six loads because of a one-day pass closure is
21 unrealistic. And so when we have these extended
22 downtimes, or these extended closures, some of the costs
23 and some of those -- some of those situations become very
24 real very quickly.

25 BY MR. ROSENBAUM:

26 Q. Did you read about how -- I think it was last
27 year, basically the whole Texas Panhandle shut down
28 through this huge storm there. Indeed they lost power in



1 Austin, Texas, for -- which is normally a pretty warm
2 place, for like five days. It was 20-degree weather,
3 et cetera?

4 A. Yeah. It's an absolute disaster. And last
5 year -- or two years ago, we had that Pass, that same Pass
6 was closed for five days, and we dumped a total of
7 10 million pounds of milk during that five-day stretch.
8 And the size of those loads, 10 million pounds, it was --
9 in our world, that's 150 loads of milk. And so we face
10 severe weather as well.

11 The consistency of these problems year in and year
12 out, we have to build a system around.

13 Q. And just to be clear, I think you answered this in
14 response to questions from Mr. Miltner, but you're
15 pointing to these things as reason not that you should
16 have the increases in the Class I differentials that the
17 University of Wisconsin model might suggest, but why you
18 are entitled to a deviation that would give you more
19 money.

20 Am I -- did I hear that correctly?

21 A. Before I answer that question, I want to either
22 have it asked again or -- I don't quite understand what
23 you are asking.

24 Q. Well, I mean, National Milk is asking for Class I
25 differentials in general that are higher than the
26 University of Wisconsin midpoint between its two proposed
27 Class I differential increases, correct?

28 A. Yes.



1 Q. Okay. And so that's what I'm -- I'm referring to
2 that as a deviation from the University of Wisconsin
3 model.

4 And I think Mr. Miltner asked you a question
5 whether when you point to things like weather, whether you
6 are doing that for the purpose of suggesting that
7 University of Wisconsin is correct, we are entitled to
8 more money, or in support of the proposition that
9 University of Wisconsin didn't get it quite right, we're
10 entitled to even more money.

11 A. Yeah. So again, I'll go back to what I had said
12 in my testimony about how I answered quite a few of these
13 questions. But, you know, establishing the increase in
14 our area, it all started with comparing King County to the
15 Upper Midwest comparable areas. The conversations of
16 support here are just -- are general support comments of
17 why the increases are justified.

18 Q. Have you ever seen any indication over the entire
19 history of the Federal Order system going back to 1937,
20 where USDA, in setting Class I differentials, looked at
21 the competitive relationship between two different orders,
22 I don't know what it is, 1500 miles apart?

23 A. I personally have not.

24 Q. And you want to have the same Class I differential
25 for pool distributing plants along the I-5 corridor over
26 what mileage?

27 A. Absolutely. I think that creates parity amongst
28 plants that are all competing against each other.



1 Q. How many miles?

2 A. It's a couple hundred. It might be -- it might be
3 close to a thousand.

4 Q. A thousand miles?

5 A. I -- I -- it's probably not a thousand. It's
6 probably 600, 700 miles.

7 Q. You think we should have competitive parity among
8 Class I plants over a 600-mile --

9 A. Absolutely.

10 MR. ROSENBAUM: That's all I have.

11 THE COURT: Mr. English?

12 MR. ENGLISH: Partly because I forgot, but partly
13 because Mr. Miltner asked a question about this.

14 CROSS-EXAMINATION

15 BY MR. ENGLISH:

16 Q. For -- for -- why was there no anchor city in that
17 whole quadrant, northwest quadrant of the United States?

18 A. I wasn't a part of those conversations when the
19 task force established the anchor cities, so I do not have
20 an answer for you.

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

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

26 I see none.

27 Does the Agricultural Marketing Service want a
28 very brief break?



1 MS. TAYLOR: No.

2 THE COURT: No? You are ready to go? All right.
3 Good. Thank you. You may proceed.

4 Let's stretch for five minutes. Doesn't hurt.
5 All right. So please be ready to go at 3:10. 3:10.

6 (Whereupon, a break was taken.)

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

8 We're back on record at 3:10.

9 Did anyone else have any questions before I hear
10 from the Agricultural Marketing Service? No?

11 Agricultural Marketing Service, you may proceed
12 with your questions.

13 MS. TAYLOR: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Thanks for sticking around all week.

19 A. Thank you for allowing me the opportunity to
20 finally get up here. I think this is Day 14 for me.

21 Q. Yes.

22 THE COURT: It's more for her.

23 MS. TAYLOR: And a few others in this room.

24 THE WITNESS: Might be Day 12, put it that way.
25 And I appreciate your efforts for the industry.

26 As I haven't shared this before, but my family is
27 in the dairy industry, milks cows. They have for
28 50 years. And I took this path, and I really appreciate



1 the support that you have given to the small dairies and
2 the large dairies and all the industry.

3 MS. TAYLOR: Thank you.

4 BY MS. TAYLOR:

5 Q. I want to -- so I'm an East Coast girl. I got to
6 orient myself to the Pacific Northwest. So a couple of
7 questions on that, using the handy maps, which I do
8 appreciate from Mr. English, and I am going to make a
9 collage on my work wall when I get home with all these
10 maps.

11 You talk about your plants on the first page, your
12 supply plants in Lynden, Chehalis, and Sunnyside,
13 Washington.

14 Is that in the -- like, what counties -- I want to
15 make sure I have the right counties -- is that kind of
16 supply area with those plants, what counties are those?

17 A. Yeah. So Lynden on your Washington map --

18 Q. Uh-huh.

19 A. -- is in Whatcom County, so that's up at Canadian
20 border.

21 Q. Okay.

22 A. Chehalis, if you go straight south, is in Lewis
23 County, and Sunnyside is in Yakima County.

24 Q. Okay. And then where is your Pasco -- I don't
25 know if I'm saying that right -- plant going?

26 A. That will be in Franklin County.

27 Q. Over to the east side?

28 A. Correct. East of Yakima.



1 Q. Okay. Okay. And then if I'm understanding
2 correctly, a lot of the milk supply is in that Yakima,
3 Franklin, Grant area.

4 Did I hear that correctly?

5 A. Yes. I would say 60, probably 60 to 65% of -- of
6 the milk in Washington and Oregon is in the Yakima, Grant,
7 Franklin, Adams County area.

8 Q. Okay.

9 A. It is by far our largest supply of milk in the --
10 within our system in the Northwest.

11 Q. And then -- then your plant up near the Canadian
12 border, there is enough milk up there to supply that
13 plant, or are you shipping?

14 A. We have to ship milk in from -- currently we are
15 shipping all of the milk in from north of King County --

16 Q. Uh-huh.

17 A. -- and then we're also shipping milk from Grant
18 County up to Whatcom.

19 Q. Okay. And that -- is Grant County where Moses
20 Lake is that you refer to in your testimony?

21 A. Correct. Yes.

22 Q. Okay. And then you have distributing plants in
23 King County and then down the I-5 corridor; is that
24 correct? Maybe not you, but that's where the distributing
25 plants are located.

26 A. Yes. Yeah. The majority of them are between King
27 County and Multnomah County, Oregon.

28 Q. Okay.



1 A. But on the I-5 corridor, yes.

2 Q. All right. Thank you. All right. I'm going to
3 try not to be repetitive of other questions that people
4 asked.

5 You talk about -- and I'm on -- it's the middle,
6 lower half of page 2, that the model in 2000 had three
7 different values in the Pacific Northwest area. But the
8 updated model had similar zones but were complex enough
9 that you decided to kind of look back in offer zones that
10 are more like the old model, and I was wondering if you
11 could expand on why you decided to do that.

12 A. Yeah. Absolutely. Yeah, my initial view, like, I
13 understood the complexity and the details of the model,
14 but I, you know, in all honesty, when you are working with
15 dairy farmers and you are trying to understand milk
16 pricing and how the system works, the complexities that
17 were being thrown in there, for one, to me, I didn't
18 understand why, why it was important and why we had to
19 have these kind of complexities. We could have had some
20 simplicities.

21 And then the more and more I thought about it, it
22 felt like there was situations where you could create
23 some -- you know, with multiple different zones and all
24 these distributing plants and milk coming in from all
25 different areas, it just didn't make sense to me. And so
26 like I said, when we're moving milk up and down the I-5
27 corridor to satisfy the pool distributing plants, why not
28 have them all in one zone. So go from a simplicity



1 standpoint, go from a parity viewpoint, and -- and to me
2 that was, that -- that's -- that was how I wanted to
3 approach this.

4 Q. Okay. Two questions from that.

5 When you say additional complexities added to the
6 model, can you just maybe give an example of what you --
7 what that would be?

8 A. Just the fact that there were multiple zones
9 between the counties that, when I looked at that, I -- I
10 didn't know how to describe that because it didn't -- to
11 me, it didn't make sense what the model was kicking out.

12 Q. And so we looked at a map that showed -- visually
13 showed the results for -- let's say, Washington as the
14 model put them out, and it definitely had more zones. But
15 they were all within, let's say, 5 to \$0.15 of each other.
16 I mean, there wasn't a lot of difference.

17 So what I'm hearing from you is the small
18 differences didn't make sense, let's go back to basically
19 the three zones as we have them now?

20 A. Yeah. I felt like, to me, to understand it and to
21 explain it, because it was a -- it wasn't just like, you
22 know, you look at the model from Florida out where you
23 have one zone, and they just get less and less as you move
24 forward. It seemed like it roller-coastered through the
25 Pacific Northwest. And I thought that to help explain why
26 it roller-coastered was much more complex than saying it's
27 all the same.

28 Because the reality, when that milk moves -- and



1 this is -- I'm sure you all understand this, but weekly
2 balancing in the distribution plants, this is a real
3 thing. Where unless you can create the right incentives
4 for distributing plants to act like they are going to
5 receive milk evenly all throughout the week, we have to
6 have balancing plants to absorb the milk that they are not
7 taking on the weekends.

8 And so even though the model is kicking out
9 numbers that are up ten, down five, up ten, stuff like
10 this, that looks great from a macro view, but when you get
11 down to the weekly actions, they are pulling milk in
12 Monday through Friday, and they are pushing milk out
13 Saturday and Sunday. And that's where I -- I felt like it
14 was best just to spread it out as one zone across the
15 whole area.

16 Q. Okay. Thank you.

17 Let's see. And I apologize if you mentioned this
18 before, because you do talk about transportation, and you
19 talked about some internal freight data. That's not
20 NDA-owned freight, that's the third-party haulers?

21 A. Correct.

22 Q. Okay. And then you talked about milk that moves
23 over the pass to get to Seattle.

24 Can you talk about the volumes of milk that move
25 through there?

26 A. Yes. So there's two main routes that when we move
27 milk from Eastern Washington to Portland and Seattle. So
28 I'll expand on Portland as well.



1 But we will -- we will tend to balance the
2 Portland market out of Yakima County. So if you look at
3 the Oregon map, that's Multnomah as being balanced out of
4 Yakima County. We have, in Lewis County, our
5 manufacturing plant that we use as a balancing facility,
6 so the Lewis County plant will balance Yakima as well.
7 And then the Grant -- it's mostly the Grant County milk
8 that moves into King County.

9 So between Grant County and Yakima County on a
10 daily basis, right now we are moving between 3 and
11 4 million pounds of milk per day. That is not an
12 insignificant amount of milk. We run 73,000-pound
13 loads -- or, I'm sorry, our hauler does. And that is
14 anywhere in that -- you know, let's just call it 50 loads
15 of milk every day that's going through those areas.

16 Now, the split between those areas can vary, but I
17 think for simplicity we will say it's 2 million into
18 Seattle and 2 million into Portland.

19 Q. Okay. Thank you.

20 There's the supertankers that we had another
21 witness earlier --

22 A. We don't have supertankers.

23 Q. 73,000 pounds isn't a supertanker?

24 A. No. So the -- with the tankers in our area are
25 tandems --

26 Q. Oh, okay.

27 A. -- that reach up to 73,000. In the state of Idaho
28 I believe there are supertankers, which will haul a net of



1 86,000. We also are in the 86,000 net range, but they are
2 with tandems. That's a lot -- it's -- those -- you know,
3 if there's other places, I understand, that only haul
4 50,000, and I can't imagine that the freight rates aren't
5 higher than what they really are. But those are the kind
6 of things we have had to do to try to -- try to cut costs,
7 is payloads.

8 Q. Okay. Okay. I'm on page 4 of your statement. In
9 the middle paragraph you are talking about in the -- in
10 likely insignificant counties where there's not milk
11 production, you recommended the differential down to 2.50,
12 and that's what you did in Portland. But there's no 2.50
13 zone in Washington.

14 A. Yeah.

15 Q. Okay. Excuse me, in Portland -- in Oregon, sorry.

16 A. Yeah. So that is, if I recall, that is two
17 counties in Southeastern Oregon that butt up to a similar
18 situation in Northeastern California --

19 Q. Yeah.

20 A. -- so we were trying to connect the dots between
21 those two borderlines.

22 Q. And the 2.55 in Malheur County seems to butt up
23 against the 2.55 region in Idaho.

24 Would that be correct?

25 A. Yes. Malheur is still -- there's a handful of
26 dairies there, but that's an area just across the Snake
27 River that has vital agriculture.

28 THE COURT: Would you spell that?



1 THE WITNESS: M-A-L-H-E-U-R.

2 MS. TAYLOR: I think that's it from AMS. Thank
3 you for your time.

4 THE WITNESS: Thank you.

5 MS. HANCOCK: Thank you, Mr. Schilter. Just a
6 couple questions.

7 REDIRECT EXAMINATION

8 BY MS. HANCOCK:

9 Q. You were asked about whether -- about the changes
10 that you had proposed to the model based on some weather
11 events, and I just want to be clear about your testimony.

12 You weren't suggesting that the changes that you
13 had proposed to the model were based on two snow days a
14 year, were you?

15 A. The two snow days a year is really referencing
16 there are significant events. Sure, you know, we get snow
17 up in the mountains. I think the Snoqualmie Pass in which
18 we go through will get 400 inches of snow every year.
19 It's one of the most snowy places that I'm aware of in the
20 West Coast, and there's a road that goes through there.

21 The significant events is when that thing is shut
22 down for extended periods of time, and that artery that us
23 and other industries are using to access Seattle is
24 completely cut off. And that's when everything just
25 stops, and so those are disruptive events. And we have at
26 least two of those a year. And last year we had five
27 consecutive days and/or -- yeah. And those are bad.

28 So that's what I was referencing was the extreme



1 events on an annual basis, so -- and they are disruptive.

2 Q. And you had talked about some other issues that
3 factored into your recommendation that was sent in by --
4 or that was submitted by National Milk, including some of
5 the congestion and traffic issues that face different
6 cities and moving milk into the different locations; is
7 that fair?

8 A. Yeah, that is correct. And I -- you know, I want
9 it to be known that, you know, from a -- from a
10 situational contractual customer situation, with how we're
11 dealing with selling milk to customers, I mean, we have
12 things that are -- that are cost drivers that are not
13 included in the model. You know, we have -- we deal with
14 the same temperature, low temperature constraints that our
15 customers are asking for that are better than PMO
16 standards. Same thing with somatic cell, PI, we try to
17 service those customers. We have contractual arrangements
18 that the model would never know about that drive costs up
19 that are -- that are higher than Grade A PMO statements,
20 and those are things that are new since 2000.

21 MS. HANCOCK: Your Honor, with that, we would move
22 for the admission of Exhibit 397.

23 THE COURT: Is there any objection to the
24 admission into evidence of Exhibit 397, also NMPF-47?

25 There is none. Exhibit 397 is admitted into
26 evidence.

27 (Thereafter, Exhibit Number 397 was received
28 into evidence.)



1 MS. HANCOCK: I was just going to --

2 MR. ENGLISH: I haven't moved them yet. Maybe I
3 won't move them.

4 THE COURT: Oh, right.

5 MR. ENGLISH: Never mind.

6 Your Honor, this is Chip English. I move the
7 admissions of the four maps, 398, 399, 400, 401, and
8 another one of our charts, which is 402, which has the
9 legend.

10 And this time I'll let Ms. Hancock make her own
11 comment about it rather than mine, but I do move admission
12 of 398 through 402.

13 THE COURT: Okay. Ms. Hancock, I'll hear from
14 you.

15 MS. HANCOCK: Your Honor, just the same
16 reservation. No objection with the understanding that
17 this witness can't authenticate the accuracy of the
18 document.

19 THE COURT: Thank you.

20 Is there any objection to the admission of any of
21 the maps?

22 There is none. I admit into evidence Exhibit 398,
23 also MIG-45; Exhibit 399, also MIG-46; Exhibit 400, also
24 MIG-47; and Exhibit 401, also MIG-48.

25 (Thereafter, Exhibit Numbers 398, 399, 400,
26 and 401 were received into evidence.)

27 THE COURT: Is there any other objection to the
28 admission into evidence of Exhibit 402?



1 There is none. I do admit into evidence
2 Exhibit 402.

3 (Thereafter, Exhibit Number 402 was received
4 into evidence.)

5 THE COURT: I am aware of the reservation that
6 Ms. Hancock has expressed. I find 402 to be reliable
7 enough to admit it now. And I do really appreciate the
8 legend that shows the source of the material.

9 All right. That means our next exhibit number
10 would be 403, and we can, at this time, allow you to step
11 down, Mr. Schilter.

12 THE WITNESS: Thank you very much.

13 THE COURT: Thank you.

14 MS. HANCOCK: There should also be a 53A, Your
15 Honor.

16 THE COURT: Let's see. So is this Steve Stout?

17 MS. HANCOCK: Yes. You should have
18 Exhibit NMPF-53 and 53A.

19 THE COURT: What is -- does -- 53 looks like this
20 (indicating)? Good.

21 MS. HANCOCK: And we didn't bring hard copies of
22 53A, other than for the record, just because of its
23 length, but it's been on the website for quite some time.

24 THE COURT: Okay. So I'm going to mark NMPF-53 as
25 Exhibit 403, and I'm going to mark the other document as
26 403A?

27 MS. HANCOCK: I think it would be 404.

28 MS. TAYLOR: Yeah.



1 THE COURT: 404.

2 (Thereafter, Exhibit Numbers 403 and 404 were
3 marked for identification.)

4 THE COURT: And the one that is 404, I'm going to
5 hold it up to my camera, 404. I'll do that at a later
6 time.

7 Okay. Shall we keep going? Is everybody ready
8 for us to keep going?

9 MR. HILL: Hold on one second, Your Honor.

10 THE COURT: Let's get started, and then we will
11 take the break in just a little while.

12 Okay. Would you state and spell your name,
13 please.

14 THE WITNESS: Sure. Steve Stout, S-T-E-V-E,
15 S-T-O-U-T.

16 THE COURT: And have you testified before in this
17 proceeding?

18 THE WITNESS: I have not.

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

20 STEVE STOUT,
21 Being first duly sworn, was examined and
22 testified as follows:

23 THE COURT: Now, I have before me Exhibit 403,
24 also NMPF-53, and I also have Exhibit 404, and I would
25 just like to hold that up so that people who are remote
26 can see it, if you can.

27 MS. HANCOCK: It is online as NMPF-53A.

28 THE COURT: All right. Here's what it looks like.



1 That's 404. I marked as 403, 53. All right. Good.

2 I'm going to take a break soon, but let's get some
3 of the testimony in. Are you looking at how much time
4 there is left?

5 This would be a good time for a break, wouldn't
6 it? Let's take 15 minutes, almost 15 minutes. Please be
7 back and ready to go at 3:45.

8 (Whereupon, a break was taken.)

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

10 We're back on record at 3:48.

11 Ms. Hancock.

12 MS. HANCOCK: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. HANCOCK:

15 Q. Good afternoon, Mr. Stout.

16 Would you mind providing your business address for
17 the record, please.

18 A. Sure. It is 1405 North 98th Street, Kansas City,
19 Kansas, 66111.

20 Q. And did you prepare Exhibit 403 for your testimony
21 today?

22 A. Yes, I did.

23 Q. And this is your full written statement?

24 A. Correct.

25 Q. And then Exhibit 404, can you tell us what that
26 document is?

27 A. That is just backup for the study that I was
28 referencing.



1 Q. That you were referencing in Exhibit 403?

2 A. Correct.

3 Q. Okay. And you have been very gracious with your
4 time and have been hanging out here all week waiting to go
5 on the stand; is that right?

6 A. That's correct.

7 Q. And our goal is to try and get you a chance to go
8 home today, so will you be providing a truncated summary
9 of what you have in Exhibit 403, in your verbal testimony,
10 to augment what you have in writing here?

11 A. I would love to --

12 Q. Okay. If you would --

13 A. -- for all our benefit.

14 Q. If you would proceed, that would be great.

15 A. Okay. Thank you.

16 All right. If you will turn to page 5. Just for
17 reference, again, I have on Table 1, just in reference to,
18 as kind of what Monty talked about, just as I was looking
19 at the different geographies, I was looking at Denver and
20 seeing why the model was coming in at a \$0.05 reduction
21 versus our current 2.55, the model is coming in at 2.50.

22 And we felt that in looking at this, looking at
23 these other particular cities and states in which we have
24 had very similar, if not even more growth, in terms of
25 population and/or Class I utilization, that it seemed
26 unequitable for Denver to be at 2.50. And so that's
27 just -- that Table 1 is just showing that we're asking for
28 \$0.75 increase from the present versus like Sioux Falls,



1 South Dakota, is \$1.10; Milwaukee is \$1.25, this is the
2 top right corner of that; and Kansas City, \$1.35.

3 I do reference throughout my documents in terms of
4 Kansas City and referencing in regards to that, because we
5 have had a relationship on our milk pricing surface in
6 which Denver has, for the last 25 years, been \$0.55 higher
7 than Kansas City, and now we're going from \$0.55 higher,
8 based on the model, to \$0.05 below, so therefore, that's a
9 \$0.60 swing, and very, very painful.

10 So -- so let's go to page 11. And from there you
11 will see that on my Table 2, one thing that I wanted to
12 talk very heavily about is on the growth in Colorado. I
13 understand that the model, because of the natural growth
14 that Colorado has had in terms of milk production from
15 2000 to 2022, in Table 2, I kind of show that there's a
16 reason why that growth has happened.

17 On line 1 you will see that our production in 2000
18 is 1.8 billion pounds, and in 2022 it was over 5 billion
19 pounds. So, yes, substantial growth. 178% increase in
20 our production.

21 On line 2 and 3, if you will notice, there's a
22 reason for that. As we have had a substantial
23 manufacturing entity partnered with us that -- that built
24 a substantial plant in Greeley, Colorado, we had to -- we
25 were supplying the milk for that plant, and we were
26 purposefully growing the milk in that area for the reason
27 of being able to supply that plant.

28 So if you take out, between lines 2 and 3, which



1 is netting lines 4, you will see that back in 2000 our net
2 milk going to manufacturing was .73 billion pounds, and in
3 2022 it was 4.2 billion pounds. So the substantial
4 increase in the production of Colorado milk production was
5 due to the need to be able to fill that plant and other
6 manufacturing plants.

7 So in reality, on line 5 you will see that the net
8 of that, taking the Colorado milk production and
9 subtracting the net milk going to manufacturing, is we
10 actually have decreased our milk available in Colorado,
11 what's available for Class I, which has actually decreased
12 27%.

13 I then kind of talk about our different hauling
14 costs that we have had substantial increases in hauling.
15 We're one -- unique in DFA for the seven areas that DFA
16 has, in which we have our own company fleet. I, of
17 course, am not trying to reference our costs in terms of
18 DFA transportation, but -- so therefore, I go through and,
19 in Exhibit 404, provide some -- a study that was done by
20 the ATRI, which is a national entity that tracks
21 information concerning transportation costs, and just to
22 show that how much their costs have gone up in terms of
23 their pool of -- that's part of their system.

24 On page 13 I do reference some of the differences
25 that that study shows versus what our transportation fleet
26 shows. So up at the top there you can see I have, for DFA
27 Mountain, we have 185 tractors, 327 trailers, with over
28 230 drivers that are part of our fleet here.



1 So the reasons for some of those cost increases,
2 we have trailers that obviously in the study doesn't
3 incorporate our type of trailers, which are obviously
4 stainless steel tubes, and theirs were obviously much
5 cheaper in terms for that study.

6 On number 2 you will notice the trailer, our
7 trailer sizes are large. We do more than just
8 supertankers in which we have -- we can hold capacities up
9 to 80,000 pounds on a single trailer. We also have
10 supertankers that have been talked about that hold up to
11 80 to 85 throughout Utah and Idaho. A lot of our very
12 large trailers, the ones that hold up to 90, are in
13 Colorado.

14 Then, because of that large trailer, obviously our
15 tractors have to be much more equipped to be able to have
16 the power, the tri-axles, the horsepower, and so on, to be
17 able to carry that much weight, and so the tractors also
18 are more expensive.

19 Our driver shortages, as Monty mentioned, it's
20 been very significant throughout the United States. I'm
21 not trying to pick on Utah, but in Colorado, but it has
22 been excessive, and it's been difficult to hire drivers.
23 So, anyway, that's the process I was going through to kind
24 of isolate those costs.

25 So let's go back to page 6. And from there, just
26 to kind of point to the fact that the reason for the price
27 parity is really to avoid the loss of these family farms
28 that are in the state of Colorado.



1 And what I mean by that is if the model was held
2 and we saw a \$0.05 reduction in the location differential
3 for our Class I milk, and the farmers felt the impact of
4 that, that -- not -- I did not calculate, but others at
5 Kleppinger can reference this on Monday, but he calculated
6 \$1 impact to what our producers would feel if that model
7 held true, along with -- not just the \$0.05, along with
8 the Make Allowance as proposed in several other factors.

9 So that would be quite devastating to our farmers.
10 And the potential of loss of farmers, whether they say, I
11 have had enough, what I'm referring to is in Colorado we
12 have some very heavy expensive -- you guys have heard from
13 Stephen Koontz from the CSU in which he mentioned that the
14 costs in Colorado for feed costs are significantly higher
15 than neighboring states.

16 That wasn't the case in 2000, but it is the case
17 in recent years. So things have changed. The costs are
18 higher, water is becoming much more of a heavy burden on
19 our dairy farmers. The urban encroachment is significant,
20 so they have some very real significant costs. And I have
21 heard from many dairy farmers since this has started, that
22 if they have a reduction like this, it could be the end of
23 their farm.

24 And so if that was to trigger, and we start having
25 this cascading effect of dairies moving and/or going out
26 of business, we would have troubles being able to satisfy
27 our manufacturing commitments. We would have trouble
28 satisfying our Class I commitments. It would be very



1 devastating to move that milk from other states nearby to
2 be able to bring that milk into that area.

3 So that's kind of to summarize my testimony.

4 MS. HANCOCK: Thank you very much.

5 Your Honor, we would make him available for
6 cross-examination.

7 MR. ENGLISH: Thank you, Your Honor. My name is
8 Chip English for the Milk Innovation Group.

9 CROSS-EXAMINATION

10 BY MR. ENGLISH:

11 Q. And good afternoon, Mr. Stout.

12 A. Good afternoon.

13 MR. ENGLISH: I am not going to apologize, but I
14 have a very long cross-examination. This is a terribly
15 important witness, with terribly important testimony. I
16 don't know whether you want to go one minute past 5:00,
17 but I also know we have some other things we have to
18 address.

19 And I think the Event Centre needs us to get out,
20 right? At some point?

21 MS. TAYLOR: We are supposed to end at 5:00.

22 MR. ENGLISH: So I apologize. But even with an
23 abbreviated statement -- I'm not sure why I'm apologizing.
24 This is a terribly important witness, with terribly
25 important testimony, with increases in the model that are
26 rather dramatic.

27 BY MR. ENGLISH:

28 Q. Sir, I'll start with this: Can you name a county



1 with faster milk growth in the last 20 years than Weld
2 County, Colorado?

3 (Court Reporter clarification.)

4 MR. ENGLISH: Weld County, Colorado.

5 THE WITNESS: I haven't analyzed things in that
6 manner, but probably not.

7 BY MR. ENGLISH:

8 Q. On page 11 of your testimony, when you refer to
9 out-of-state purchased milk into Colorado, under line
10 number 3, is that DFA milk brought into Colorado?

11 A. Mostly, yes. But some has been from others.

12 Q. Some from others to supply DFA needs?

13 A. No. It's more local distributing plants that have
14 had excess milk, and we have took it into our plant.

15 Q. That milk does not reflect any organic milk that's
16 moving into Colorado, is it?

17 A. No.

18 Q. That's no?

19 A. No. Sorry.

20 Q. You discussed the Mountain area at the start of
21 your testimony.

22 What states are the Mountain area?

23 A. Thank you. It is Colorado, Wyoming, Montana,
24 Utah, and Idaho.

25 Q. How long has Dairy Farmers of America had that
26 fleet of farmer-owned milk trucks?

27 A. From before DFA was in existence in 1998, WDCI
28 fleet back then.



1 Q. Is that unique for DFA?

2 A. It is -- was unique up until the last two years,
3 and now the Northeast Area Council has also added fleet.

4 Q. To what extent, if you know, do other major
5 cooperatives in the United States use their own fleet or
6 use a third party?

7 A. I do not know that number.

8 Q. When you refer to nine manufacturing facilities in
9 the Mountain area, can you tell me where they are?

10 A. Yes. Just grab where I reference that.

11 Do you have a page number, sir?

12 Q. I'm sorry, I don't. Let me ask it this way.

13 Does DFA have nine manufacturing facilities in the
14 Mountain area?

15 A. A good way to change the subject. Yes, we do.

16 Q. So --

17 A. Trying to find it. I had them written down just
18 to make sure I didn't miss any. I'm trying to find it,
19 but let me go through it. I can't see it.

20 Okay. We'll start off with Colorado. We have
21 Meadow Gold, Englewood.

22 Q. That's a fluid plant?

23 A. Yes. We have DFA, Fort Morgan in Colorado.

24 Q. Is that a fluid plant or a cheese plant?

25 A. No, that is a balancing plant. It is a powder
26 plant.

27 Q. Thank you.

28 A. In Montana, we have two Meadow Gold plants, fluid



1 plants, in Great Falls and Billings. In Idaho, we have a
2 Meadow Gold plant in Boise.

3 In Utah, we have several. We have Meadow Gold,
4 Salt Lake City, a fluid plant; we have Meadow Gold in
5 St. George, which is an ice cream plant; we have DFA
6 Beaver, in Beaver, Utah, which is a balancing plant, which
7 is a cheese and condensing operation; and we have Western
8 Quality Foods, which is an ESL plant in Cedar City, Utah.

9 And we have Meadow Gold Las Vegas in Las Vegas,
10 which is a fluid plant.

11 Q. Meadow Gold Las Vegas, is that -- that's regulated
12 under the Nevada state order, correct?

13 A. Correct.

14 Q. Does it -- is it a partially-regulated plant in
15 any order, if you know?

16 A. Not to my knowledge.

17 Q. The plants in Utah that operate in the Class I,
18 are they partially-regulated in any order?

19 A. No.

20 Q. The plant --

21 A. Excuse me, sorry, you said Class I. The ESL plant
22 in Cedar City is -- depends on the month, but can be
23 partially-regulated in 51 or 124.

24 Q. The Meadow Gold operation in Idaho, is it
25 partially-regulated?

26 A. No.

27 Q. Are either of the Montana plants
28 partially-regulated?



1 A. No, they are state order plants.

2 Q. Is the plant in Cedar City fully regulated on
3 Order 51 today?

4 A. It is -- October, I think it was. I'd have to --
5 I'm sorry, I'm not positive, but it's come and gone off 51
6 or 124, as I mentioned.

7 Q. Do you consider your manufacturing plants to be
8 balancing plants?

9 A. Beaver and Fort Morgan, yes.

10 Q. To balance Class I in Colorado?

11 A. Fort Morgan does, yes.

12 Q. You don't provide any balancing for organic milk
13 in Colorado, do you?

14 A. No.

15 Q. Does DFA have any members in Nevada?

16 A. We do not.

17 Q. There's been a lot of conversation about the
18 colored pencil crew.

19 Were you a member of the colored pencil crew?

20 A. Didn't know the term was that, but I was part of
21 the group that -- concerning the area of Federal Order 32.

22 Q. 32?

23 A. Uh-huh.

24 Q. In what geographical region for Order 32 were you
25 involved with?

26 A. I honestly don't know where the others were coming
27 from in terms of their total geography, but it was
28 basically the midwestern part of the United States.



1 Q. Stretching from --

2 A. So it could have been Order 30 as well, you know,
3 part of Order 30.

4 Q. For you though, did you have any specific
5 geographic responsibility?

6 A. Just concerning what was touching in 32, which was
7 Denver, Colorado area.

8 Q. Were you involved with any rounds of changes in
9 the March, May, or June timeframes when National Milk
10 submitted three separate sets of numbers to USDA?

11 A. I was involved in information concerning that. I
12 wasn't the one that helped submit the information
13 collectively as National Milk required.

14 Q. Do you know anything about the differences that
15 were generated between March and May in 2023?

16 A. No, I don't.

17 Q. For what we were told early on, anchor cities were
18 largely cities along borders with other orders.

19 Is that your understanding?

20 A. I was never given a definition of anchor city.

21 Q. Do you know why Denver is such a city?

22 A. Again, large metropolitan area, bordering. And I
23 never heard that part of the term, so...

24 Q. One witness said it borders the Midwest.

25 Is that true?

26 A. Yes.

27 Q. What part of the Midwest does Denver, you know,
28 border?



1 A. Of Order 32, it's on the western end of 32.

2 Q. Okay. And so you understand that to be the
3 Order 32?

4 A. Uh-huh.

5 Q. I'm sorry you have to answer yes for the court
6 reporter.

7 A. Yes.

8 Q. Were you involved in any of the runs done by the
9 USDSS model?

10 A. No.

11 Q. Did you provide any plant information or
12 corrections to the runs?

13 A. I provided some plant information to Ed Gallagher,
14 who provided it to the main source.

15 Q. What plant information did you provide to
16 Mr. Gallagher?

17 A. Plant capacities that he was asking that he wasn't
18 aware of.

19 Q. Okay. Was it anything about new plants or plants
20 that should be taken off because they are closing?

21 A. Yes, we went through that, yes.

22 Q. Did you offer any names of plants that should be
23 added?

24 A. Not that I recall.

25 Q. On page 6, which you did testify about directly
26 today, you stated, "We also feel the differentials
27 assigned by the study fell short for the Western region,
28 especially in California."



1 Did you ever raise any issue with Dr. Stephenson
2 or Dr. Nicholson regarding any inadequacy you perceived in
3 the study?

4 A. You said California. I don't see that.

5 Q. I think it's Colorado. Maybe it's supposed to be
6 Colorado. I apologize, may be a typo.

7 A. No, I did not.

8 Q. Okay. Do you believe the study did not consider
9 relevant variables?

10 A. I wasn't fully aware of everything that went into
11 the model. I wasn't privy to that information. But as we
12 talked as a group, we felt that there was some areas which
13 it was inadequate, so I had no discussions with the
14 doctor.

15 Q. You have discussed hauling costs having doubled
16 compared to 2001, correct?

17 A. Yes.

18 Q. Do you agree that the model already includes
19 hauling costs in it?

20 A. To some degree, yes.

21 Q. Do you know to what degree?

22 A. I do not.

23 Q. When you discussed hauling in your testimony, do
24 you do it to support the conclusions of the model -- I'm
25 sorry -- do you do it generally to support the idea the
26 Class I differentials need to go up or do you do it to
27 justify deviations from the model?

28 A. A combination of both.



1 Q. So in what way does it justify deviations from the
2 model for hauling?

3 A. In terms of the specifics of different areas in
4 which hauling costs are more expensive for reasons that
5 the model is not able to capture.

6 Q. So it's your understanding the model doesn't take
7 into consideration hauling expenses in particular regions
8 of the country?

9 A. Yes, I feel that's the case. All hauling costs
10 concerning different regions of the country.

11 Q. Are you aware that National Milk Producers
12 Federation -- you have been here this week -- are you
13 aware that National Milk Producers Federation proposes to
14 lower Class I differentials in North Carolina from the
15 model?

16 A. Just -- I heard that, yes.

17 Q. Well, how does that square with the idea that
18 hauling rates should be considered for raising for
19 Colorado?

20 A. I don't know the specifics of North Carolina.

21 Q. When selling its member milk in Colorado, does DFA
22 negotiate for over-order premiums with the Class I plants?

23 A. Yes, we do.

24 Q. Have you also passed along fuel charges,
25 surcharges, in recent years on Class I?

26 A. In certain customers we're able to pass on a fuel
27 surcharge, which my definition of a fuel surcharge is not
28 all fuel costs, it is an incremental increase in the fuel



1 cost. So partially, yes.

2 Q. In your region, does DFA ever pay another supplier
3 over-order premium for milk received at your fluid plants?

4 A. Can you repeat that question?

5 Q. In your region of the -- that you are responsible
6 for Dairy Farmers of America, does DFA pay other suppliers
7 an over-order premium for any milk received at fluid
8 plants owned by DFA?

9 A. I don't recall that, when that has happened the
10 last. So I guess the answer would be I don't know.

11 Q. Let me just maybe ask the question a different
12 way. Are there other suppliers of milk in Colorado, other
13 than DFA?

14 A. Yes, there is.

15 Q. Other than organic?

16 A. Yes.

17 Q. Are they significant?

18 A. No.

19 Q. So as highlighted by you in the short conversation
20 with your counsel, on pages 4 and 5, and the chart, making
21 comparison between Denver and other cities, you say,
22 "Those cities have similar populations or similar
23 population growth," correct?

24 A. Denver has been much greater than -- population
25 growth has been much greater than those other cities, but
26 similar in some ways, yes.

27 Q. Okay. But also Colorado milk production has been,
28 as you acknowledged, very significant over the last



1 20 years, correct?

2 A. Correct. So has South Dakota's, has increased
3 actually more than DFA's on a percentage basis in
4 Colorado.

5 Q. When you say they have similar beverage
6 consumption, by that do you mean the demand for fluid milk
7 products is the same?

8 A. I'm taking from USDA's information concerning the
9 beverage demand, and extrapolating that against the
10 population to determine what the Class I usage might be in
11 those states, and all of them have gone down, as you can
12 see.

13 Q. And as they have gone down, doesn't the University
14 of Wisconsin model take into consideration that
15 information?

16 A. I assume so, yes.

17 Q. In the footnote on page 4, footnote 5 on page 4 --
18 I'm sorry -- page 5, page 5, footnote 5, you say that --
19 that "demand by state" -- "determined Class I demand by
20 state by looking at national per capital consumption and
21 multiplying that by the state population," correct?

22 A. Correct.

23 Q. And then comparing that to the state's milk
24 production, correct?

25 A. Say it again? Excuse me.

26 Q. And then you compare that to the state's milk
27 production, correct?

28 A. Yes.



1 Q. What does that measure?

2 A. That's not the -- I'm not measuring in terms of
3 the comparison between the two. I'm measuring just
4 showing what the demand has been, as well as what the milk
5 production has been.

6 Q. How should USDA use that in setting Class I
7 differentials?

8 A. That is not what the purpose of this was. It was
9 just showing that there is similarities between these
10 nearby cities and states that doesn't seem to reflect a
11 justifiable reason for Denver to go down versus the others
12 to go up significantly.

13 Q. Well, isn't a justification that in terms of -- as
14 you yourself have indicated, there's a lot of milk in
15 Colorado and limited need for Class I, whereas in some of
16 those locations there's a need for that milk to move
17 Southeast to fill the needs of fluid use, correct?

18 A. I'm not familiar with the movements of milk in
19 those other areas.

20 Q. Well, if you are going to compare the other areas,
21 isn't it important to be able to compare the movement of
22 milk in those other areas?

23 A. That's what the other witnesses have testified
24 concerning. I was focused on my area.

25 Q. On page 6, in the middle of the page, middle
26 paragraph, second sentence, you state, "There are
27 important factors that the University of Wisconsin model
28 is not able to take into consideration that, if left, the



1 model's results only would result in disorderly marketing
2 conditions."

3 What "disorderly marketing conditions" would
4 result if we relied on the model in Colorado?

5 A. Actually, what I was stating in my overview, the
6 cost -- excuse me -- the effect of what that would do to
7 the Colorado producers could be substantial and
8 significant in regards to movement of dairy farms going
9 out of business and/or moving to other states because of
10 it not being profitable of them to make money in the local
11 area. That would be devastating to the needs of what our
12 class -- satisfying the Class I market, as well as our
13 manufacturing commitments.

14 Q. So you are taking into consideration your view of
15 future needs in Colorado, correct?

16 A. On my analysis are you asking what would happen?
17 Disorderly marketing conditions, yes.

18 Q. And how much more milk would there need to be in
19 Colorado than there is today relative to the Class I use
20 in order not to have that risk?

21 THE COURT: In order not to have that what?

22 MR. ENGLISH: That risk, that risk that he's
23 assessing.

24 THE WITNESS: I can't determine that.

25 BY MR. ENGLISH:

26 Q. If there's something more, tell me more. If it's
27 the same thing, tell me it's the same thing you have been
28 referring to.



1 "There are factors at play" -- this is the same
2 paragraph -- "there are factors at play in the greater
3 Colorado region that the University of Wisconsin model is
4 not constructed to contemplate, that provide clear
5 evidence that the model's output has underpriced the
6 pricing surface regions for this region."

7 What is that "clear evidence"?

8 A. That the -- as stated, especially referencing the
9 table concerning the growth in the production of milk,
10 which that's on Table 2 on page 11, that the growth in the
11 production of milk in Colorado has been to satisfy the
12 needs of the manufacturing, and actually our net milk
13 going to Class I has actually reduced since 2000.

14 So to me, that's another factor that the model has
15 not captured.

16 Q. When you say, "DFA Colorado production available
17 for Class I," is that volume that actually goes to
18 Class I?

19 A. Class I, Class II, yes, those plants, yes.

20 Q. So isn't that as much a factor of Class I sales
21 being reduced as we have heard throughout this hearing?

22 A. Yes.

23 Q. I mean, you are not saying, of course, that if
24 there were Class I needs, you would short the Class I
25 market, are you?

26 A. That actually could happen.

27 Q. Has that happened?

28 A. No, it hasn't. Again, nothing's been changed. We



1 are still at the 2.55 level.

2 Q. Has DFA, National Milk, done an actual economic
3 analysis to show that if this 2.55 level was adopted,
4 there would actually be a reduction of available milk in
5 Colorado?

6 A. I'm not aware of the study, no.

7 Q. Other than the plants issue, did you or do you
8 know if anyone went to Dr. Stephenson or Dr. Nicholson to
9 say, hey, you have not taken these factors into
10 consideration?

11 A. I'm not aware of anyone, but I'm not privy to that
12 because I was not part of that. Ed Gallagher would be
13 able to answer that.

14 Q. If -- if 2.55 was too low, what was the economic
15 rationale for saying it needed to increase to \$3.30?

16 A. Okay. We -- as we're analyzing it, honestly, to
17 the detriment of -- producers in our area in Colorado were
18 not happy with my approach. But we felt that we had to
19 give something. Okay? Meaning that we wanted to -- our
20 producers wanted us to maintain the \$0.55 differential
21 between Denver and Kansas City, which means we would go up
22 much more than 3.30, but felt that that was obviously too
23 much of an ask, and that we needed to be somewhere in that
24 range of the 3.30, which is actually below where Kansas
25 City is.

26 So, again, a \$0.60 change from where we are
27 currently now, \$0.60 below Kansas City is where we felt
28 was a good place to settle in.



1 Q. You said \$0.30 less than Kansas City? You mean
2 \$0.30 more than Kansas City?

3 A. No, \$0.60. In total, we have gone down -- our
4 differential is actually going to be a net change of
5 \$0.60. We're going to be -- the 55 that we currently have
6 is going to go to a \$0.05 less in the new proposal.
7 That's -- the delta is \$0.60.

8 Q. But in addition, the decision was made to raise
9 Wichita up to 3.85, correct?

10 A. I wasn't aware of that. I focused on my area.

11 Q. You used the word "equitable." Please define
12 equitable as you are using it in this testimony.

13 A. Okay. For me a lot of things that are concerning,
14 as I stated, just our producers felt there was very much a
15 concern that the current slope between Kansas City and
16 Denver needed to be maintained because of the cost that
17 the producers have in their raising -- effectively making
18 the milk with their feed costs, water costs, environmental
19 issues in the Denver, greater Denver area. So those areas
20 were -- were the main reason for those changes was the
21 fact that costs were significantly higher than those local
22 areas in neighboring states.

23 Q. I'm sorry, those costs?

24 A. Yeah. The feed costs, the cost to produce the
25 milk in Colorado has significantly increased.

26 Q. In creating a national price surface, are you
27 aware if USDA has ever used differences in feed cost
28 between different areas to set Class I differentials?



1 A. No, I'm not aware.

2 Q. Do you know whether USDA has ever considered this
3 concept of equity in setting Class I differentials?

4 A. I don't know.

5 Q. What is the standard by which USDA should evaluate
6 whether or not Class I differentials are equitable?

7 A. By taking feedback from the industry and those
8 local areas to determine whether the model that can't be
9 perfect and provide all of the parameters across the whole
10 country can therefore be looked at and reviewed and
11 modified.

12 Q. On an economic level, how do you judge equitable?

13 A. I don't. I don't know.

14 Q. Do you believe that supply/demand signals should
15 be allowed to operate within the milk market under a
16 Federal Order system operated with minimum prices?

17 A. Say that again?

18 MR. ENGLISH: You won't let her read it back, will
19 you?

20 THE COURT: No. I was listening very carefully,
21 and I didn't understand the question.

22 THE WITNESS: Thank you, Judge.

23 BY MR. ENGLISH:

24 Q. Do you believe that supply and demand signals
25 should be allowed to operate within the milk market with
26 Federal Milk Marketing Order minimum prices?

27 A. That's a loaded question. I -- I'm not sure how
28 to answer that.



1 Q. Well --

2 THE COURT: You want to name a particular signal
3 to give him something?

4 MR. ENGLISH: I will give him, I certainly was
5 trying to ask the big general question, and that's fine.
6 BY MR. ENGLISH:

7 Q. So, for example, if there was a flush of milk in
8 the Denver area that surpassed demand, do you think the
9 price of milk there should go down in order to counter the
10 overproduction?

11 A. You did say "demand," and, yes, the answer might
12 be yes.

13 Q. Under what circumstances should the answer -- I'm
14 sorry, I don't want to cut you off.

15 A. I'm saying all demand, not just Class I.

16 Q. Do you understand the purpose of Federal Orders is
17 to bring forth an adequate supply of milk for fluid use?

18 A. Yes.

19 Q. Okay. In what sense should USDA consider demand
20 for alternatives in setting that portion of the Class I
21 differential that varies from one part of the country to
22 the other?

23 THE COURT: Ask it one more time, please.

24 BY MR. ENGLISH:

25 Q. In what way should USDA, in addressing that part
26 of the Class I differential that varies by location,
27 consider alternative demands for milk like Class III?

28 A. To me, it's just what's happening, where AMS is



1 asking for a hearing for feedback from the industry to see
2 what different pockets of milk are being cost, based on a
3 model in this example.

4 Q. Going back to page 11.

5 To the extent that DFA entered into an agreement
6 with a private party to supply it milk for Class III use,
7 DFA did that voluntarily, correct?

8 A. Yes, in partnership with the manufacturer.

9 Q. Okay. But you weren't coerced into the agreement,
10 were you?

11 A. Our hands were tied, we -- no. Just kidding. No,
12 we were not coerced.

13 Q. That might have gone a different direction, but to
14 be clear, you did not -- the hands were tied was a joke.
15 You were not coerced, correct?

16 A. That was a joke. No, we were not coerced.

17 Q. The record may not get the laughter, so...

18 To what extent should Class I processors be
19 charged a higher Class I differential because a co-op
20 ends -- operates into a voluntary agreement to supply milk
21 for Class III?

22 A. That's difficult to answer. In hindsight, it's
23 easy to look at that and say, oh, yes, of course.

24 But as we were working with the manufacturer, and
25 they were wanting to build this plant, and we wanted to
26 supply that plant, we grew the milk in partnership with
27 them. It was -- it was a -- a nice relationship that
28 occurred.



1 I'm not sure how to answer your question in
2 hindsight, that's obviously I know where you are going
3 but --

4 Q. Well, where I'm going is, I'm trying to figure out
5 why fluid milk processors should have to pay more money
6 for that.

7 A. I'm just saying, the factor of having the growth
8 in Colorado to be the reason for decreasing the location
9 differential is not justified, looking at it in a vacuum.

10 Q. Does the model look at it in a vacuum?

11 A. In this regard, I -- it seems to be that it does.

12 Q. You said you've been with DFA for what, 35 years?

13 A. 30 years.

14 Q. 30 years.

15 So back before Federal Order Reform, in
16 establishing Class I differentials, USDA was trying to
17 find a way to get milk, A, to go to Class I plants; and B,
18 move to where the milk is needed, correct?

19 A. As a general statement, yes.

20 Q. If you adopt National Milk's concept west of the
21 Mississippi, the deviations from the model are highest
22 precisely where there are other demands for milk, like
23 Class III, and not a terrible amount of demand for
24 Class I, is there?

25 A. In a macro picture, yes.

26 Q. Well, continue my example further, my example to
27 flush milk in Denver now turned on its head. If the
28 circumstances in Colorado persisted, and if an area like



1 Kansas City does not have such a surplus of milk in
2 relation to demand, do you think it would be appropriate
3 for the price of milk to be higher in Kansas City than in
4 Denver?

5 A. Yes.

6 Q. So in that case, isn't it possible that the supply
7 and demand forces we just discussed were what drove the
8 model to generate a \$2.50 differential for Denver and a
9 \$3.35 differential for Kansas City?

10 A. In terms of the model?

11 Q. Yes.

12 A. I think you said 2.55 for Denver, and they are
13 coming up with 2.50.

14 Q. If I said 2.55, I meant 2.50.

15 A. Okay.

16 Q. So 2.50 for Denver and 3.35 for Kansas City was
17 the model results, correct?

18 A. Correct.

19 Q. So isn't it possible that that's what the model
20 was looking at, the need to get milk moved to Kansas City
21 and the fact that milk was not as necessary in Denver for
22 fluid milk purposes only?

23 A. I don't know all the parameters that went into the
24 model, but it doesn't seem reasonable to have Denver be at
25 2.50 when, yes, there was a supply of milk for the area.
26 But was it excess? No. And hence, that's -- we're not
27 asking for a location differential above Kansas City,
28 we're asking for a differential that is below Kansas City.



1 Q. But not as much as the model would suggest,
2 correct?

3 A. Correct.

4 MR. ENGLISH: Your Honor, I would like to have
5 marked an exhibit.

6 THE COURT: This will be 405.

7 MR. ENGLISH: May I approach, Your Honor?

8 THE COURT: Yes, Mr. English. All right. What
9 I'm marking as Exhibit 405 is MIG-60. That's 60.

10 (Thereafter, Exhibit Number 405 was marked
11 for identification.)

12 MR. ENGLISH: Your Honor, if I may, Exhibit 405,
13 MIG-60, is another, now, for jurisdictions that we have
14 been discussing -- or discussed in this testimony,
15 selected locations in Colorado, Idaho, Kansas, Minnesota,
16 Missouri, Montana, South Dakota, Utah, and Wisconsin. It
17 has the same legend as before.

18 And I recognize, again, that pool distributing
19 supply plants, while sourced in Exhibit 56, is not going
20 to be corroborated by this witness, nonetheless, you know,
21 continue to hope these documents are useful, and that we
22 can move admission and have the same commentary.

23 BY MR. ENGLISH:

24 Q. So what this shows in one page, rather than having
25 to jump around, is this \$0.05 difference you and I were
26 just talking about.

27 If you look at Line 233, which is the first line,
28 is Denver, Colorado, correct, sir?



1 A. Correct.

2 Q. And then the ninth line down, Row 1498, is Kansas
3 City in Jackson, Missouri, correct?

4 A. Correct.

5 Q. And it reflects that your proposal in June
6 established a \$3.30 -- proposes a \$3.30 differential for
7 Denver and proposes a \$3.35 differential for Jackson,
8 Missouri, correct?

9 A. Correct.

10 Q. Now, we heard testimony about the need to move
11 milk from, say, Western Kansas to Missouri, admittedly
12 Southern Missouri, but Missouri and Arkansas.

13 How is milk going to move west, for instance, out
14 of Colorado -- I'm sorry -- move east to Kansas City with
15 a \$0.05 difference in between Colorado and Kansas City?

16 A. I don't see that it would be moving, nor does it.

17 Q. So then you discuss in your testimony you need to
18 align other areas like Salt Lake City, Montana, and
19 Southern Idaho with Denver, correct?

20 A. In terms of alignment? Yes.

21 Q. Yes. So by -- let's also look at Exhibit 405.

22 And look at, for instance, line 1337, Otter Tail,
23 Minnesota, where the proposal is \$2.80.

24 Do you see that?

25 A. I see that, yes.

26 Q. And do you see three columns over that the
27 difference between Proposal 19 and the University of
28 Wisconsin model is \$0.45, correct?



1 A. I see that, yes.

2 Q. So, in other words, National Milk proposes raising
3 the price in Otter Tail, Minnesota, the Upper Midwest, by
4 \$0.45, correct?

5 A. Yes.

6 Q. And then you propose aligning Denver with the
7 Upper Midwest by raising it \$0.80, correct? Line 1?

8 A. Yes.

9 Q. And now you are also then saying, as a result --
10 I'm sorry, go ahead.

11 A. \$0.75.

12 Q. \$0.75. All right. Thank you. I meant -- because
13 I meant -- I'll take the 75, but I meant the \$0.80, the
14 proposal over the University of Wisconsin, which is one
15 set of columns over, which is \$0.80 increase. I was
16 comparing the increases between the proposal and the
17 model, not the difference between the proposal and the
18 current.

19 Do you see \$0.80 in that column?

20 A. Yes.

21 Q. What I'm getting at is, doesn't this all look like
22 a bootstrap, that what you did is you start- -- National
23 Milk started by increasing Minnesota, then you needed to
24 increase Colorado, and then because of Colorado, you have
25 to align Salt Lake City and Montana and Idaho, and
26 therefore you have to increase those?

27 A. I can't answer that.

28 Q. If USDA disagreed and decided to keep the Denver



1 differential in line with the model, would that also mean
2 these other areas, like Salt Lake City, Montana, and
3 Idaho, would need to be lowered to remain in line?

4 A. I think that would have to be reviewed, obviously.

5 Q. You also describe changes in your testimony you
6 made to Greeley and Fort Morgan, and you said that USDA
7 should reject the model results and keep a slope, a
8 current slope, of \$0.10 between the counties as opposed to
9 making them the same, correct?

10 A. Correct.

11 Q. And you just justified that because it would be
12 "less disruptive to the marketplace to keep them the
13 same."

14 Is that correct?

15 A. Correct.

16 Q. What disruption in the marketplace do you maintain
17 would occur if those two counties in Colorado, Greeley --
18 in Colorado, that is Greeley and Fort Morgan, were to set
19 each at the model average?

20 A. In my eyes, in terms of looking at the milk
21 movements, that the milk in the area of Greeley to satisfy
22 the Greeley customers would stay local and, therefore, not
23 have to go to Denver, and therefore, that's where the
24 \$0.10 difference is coming from.

25 And in the like matter, Fort Morgan -- so this is
26 all present slope that we have currently that works
27 actually very well. We were just trying to maintain that.
28 So the additional \$0.10 slope between Greeley and Fort



1 Morgan is again where that pocket of milk is which would
2 go to the Fort Morgan plants.

3 Q. Is it your contention that the model does not
4 directly allocate those cost differences?

5 A. I can't answer that. I don't know what the model
6 was doing.

7 Q. Assuming for a moment the manufacturing plants in
8 Colorado were pulling milk, raw milk away needed by fluid
9 plants, can't those plants address that through over-order
10 premiums?

11 A. Could you restate that a different way?

12 Q. Leaving aside -- I don't think you have said this
13 right now, that this has been happening, but if
14 manufacturing plants in Colorado were pulling in so much
15 raw milk that there was not enough raw milk for fluid
16 plants, can't fluid plants address that by paying
17 over-order premiums?

18 A. That's a hypothetical I couldn't answer. I'm not
19 involved in over-order premiums in terms of addressing
20 that with the plants.

21 Q. And I think you may have already said this, that
22 you do not know of circumstances where any proprietary
23 fluid milk plant in Colorado has had insufficient milk for
24 their fluid needs because of manufacturing demands,
25 correct?

26 A. That is correct.

27 Q. And to the extent DFA has its own supply of milk
28 in Colorado, it can make the decision to serve its own



1 plants over manufacturing plants, correct?

2 A. Correct.

3 Q. Given National Milk Producers Federation's
4 proposal, and the argument that Colorado should not go
5 down, is there any market condition where you believe
6 Class I differentials should go down?

7 A. To me, if there was surplus milk in the area in
8 which milk was moving long distances to be disposed -- or
9 I'm sorry, not disposed -- but delivered to other plants
10 could be a consideration for that.

11 Q. Any other market conditions where you believe
12 Class I differentials should go down?

13 A. Restate that.

14 Q. Any other -- other than the one you just named,
15 which was milk moving a long distance, are there other
16 conditions in which you believe Class I differentials
17 should go down?

18 A. Not that I can consider right now.

19 Q. So assuming Colorado producers -- strike that.
20 Colorado producers receive, at least in part, the
21 Federal Order blend price, correct?

22 A. Yes, they do.

23 Q. Given the fact that they receive a blend price,
24 how will a higher Class I differential incentivize a
25 cooperative like DFA to supply fluid plants instead of a
26 cheese manufacturer?

27 A. We would meet the needs of the customer, and so
28 that change in location differential would enable us to



1 continue to do that based on our increased costs that we
2 have on satisfying that Class I customer.

3 Q. Isn't the overall relevant -- isn't the relevant
4 metric overall volume of production available?

5 A. It's actually very stable right now in terms of
6 our supply from our producers meeting the needs of all our
7 customers in Colorado.

8 Q. Is it your view that the model, or at least USDA,
9 in adjusting Class I prices, needs to consider and
10 incorporate the business relationship between DFA and the
11 private cheese manufacturer?

12 A. Restate that differently.

13 Q. In setting Class I differentials, is it your
14 position that USDA needs to consider and incorporate the
15 business relationship between DFA and a private cheese
16 manufacturer?

17 A. I am stating that the milk movements in a
18 particular area should be of a factor, not just Class I.

19 Q. So in that circumstance, is it also not the case
20 that USDA should take into consideration other actual
21 business relationships such as organic milk?

22 A. I can't answer that.

23 Q. Isn't it true that organic processors can only
24 purchase milk from organic suppliers?

25 A. They -- I haven't thought of a question like that.
26 They obviously, I guess, could, if they wanted to put up
27 conventional milk.

28 Q. Well, if they want to remain an organic processor.



1 So they're organic processor, they need organic milk,
2 correct?

3 A. Yes.

4 Q. And organic milk comes from organic dairy farmers,
5 correct?

6 A. Correct.

7 Q. And those business relationships will also impact
8 the milk availability for organic fluid milk processors,
9 correct?

10 A. I'm sorry, I'm not that close to the organic
11 supply and demand, so I can't answer that.

12 Q. Do you at least know that there is a significant
13 organic processor located in Colorado?

14 A. Yes.

15 Q. And they pay Class I prices, correct?

16 A. I'm not that close to the plant, so I don't know.

17 Q. Well, if they are a Class I operation --

18 A. I'm sure they will -- or are.

19 Q. Then they are required to pay the Class I
20 differential, correct?

21 A. Yes. Yes.

22 Q. Okay. And you are aware, I think there was
23 testimony earlier today from Mr. Schilter, that organic
24 milk pays a price significantly higher than the Federal
25 Order price, correct?

26 A. Yes. Significant is subjective, but, yes.

27 Q. And you said DFA does not have organic milk in
28 Colorado, correct?



1 A. We have a very small amount of organic milk in
2 Colorado, from two producers.

3 Q. Small enough that it could not really make a
4 difference for a large organic processor located in
5 Aurora -- located in Boulder, Colorado, correct?

6 A. That is correct.

7 Q. So if USDA is to consider the uniqueness of any
8 private relationship, for instance, between DFA and a
9 cheese processor, shouldn't USDA also consider the
10 uniqueness of the organic milk market when considering
11 where to set Class I differentials?

12 A. Mr. English, I think that's been a question asked
13 for a lot of organic processors that are producers for
14 more than a decade, but I can't answer that.

15 Q. Isn't it particularly relevant in Colorado, if you
16 are going to ask for an increase in the Class I
17 differential over and above the model, when organic milk
18 can't draw from the conventional market and just pays into
19 the producer settlement fund, money that does not benefit
20 the organic market?

21 A. I don't think that's far to say. The organic milk
22 does receive a benefit from the conventional milk
23 throughout the country.

24 Q. What is the benefit that organic milk gets from
25 conventional milk throughout the country?

26 A. On the promotion side, which organic does not
27 participate in, is a big one.

28 Q. How about in the Federal Order, how does it get



1 benefits from the Federal Order?

2 A. None that I know of.

3 Q. But your proposal would simply require organic
4 milk to pay even more into the pool even though it doesn't
5 benefit under the Federal Order, correct?

6 A. Correct on the surface of that. I don't know how
7 organic would handle it.

8 Q. In your table on page 11, how, if at all, have you
9 accounted for organic milk?

10 A. I have not. I was talking about DFA there, not
11 all of Colorado.

12 MR. ENGLISH: Your Honor, I -- I'm sorry, there's
13 no way this is going to get done today, and I know
14 Mr. Miltner, I think, needs to go.

15 MS. TAYLOR: Well, then there's Monday. I don't
16 know when he can return on Monday.

17 THE COURT: You want to finish today, correct?

18 THE WITNESS: Wanted to, but I live in Salt Lake,
19 so it's a long ways. But I can come back Monday.

20 MS. TAYLOR: I would add, Mr. Stout, for your
21 patience, you can come back next week at what day suits
22 you, and we will make sure we can fit you in.

23 THE WITNESS: Okay.

24 MS. TAYLOR: I don't know your schedule, so if
25 Monday doesn't work, we can certainly work on Tuesday or
26 something like that.

27 THE WITNESS: Okay.

28 THE COURT: I'm sorry.



1 THE WITNESS: That's fine.

2 MR. ENGLISH: And I am, too, but I'm not the one
3 who -- but anyway, it's fine. We're here.

4 THE COURT: Well, wait a minute, we all
5 contributed.

6 MR. ENGLISH: Yeah, okay. We all contributed, but
7 I'm not going to take sole responsibility.

8 THE COURT: We weren't blaming you.

9 MR. ENGLISH: Somebody might have.

10 THE COURT: All right. Let's end up Mr. Stout's
11 testimony because we have got a few housekeeping things to
12 take care of, and we have five minutes before we stop the
13 hearing and clear this room.

14 So thank you so much, and work through Ms. Hancock
15 as to when you would come back.

16 THE WITNESS: Thank you.

17 THE COURT: Now, those exhibit copies you have,
18 you will probably just want to keep those with you as
19 marked. All right.

20 I'm going to ask the Agricultural Marketing
21 Service to take over from here.

22 MS. TAYLOR: Thank you, Your Honor.

23 We will reconvene next week on Monday, starting at
24 8:00 a.m., but it will not be in this location. As
25 noticed in the Notice of Reconvening Public Hearing on
26 Proposed Rulemaking that was published in the Federal
27 Register on Monday, November 6, 2023, Federal Register
28 Volume 88, page 76143, we will convene next week at the



1 Palomino Ballroom, at 481 South County Road, 1200 East, in
2 Zionsville, Indiana, 46077.

3 For those who are participating every day, that is
4 a little bit further from here, so you might want to
5 account for your travels on Monday morning to get there on
6 time. I think it's maybe about 20 minutes away or so.

7 So we will start at 8 o'clock. We will run to
8 5 o'clock each day, except on Friday. I recognize the
9 Hearing Notice said that we would recess at 5:00 on next
10 Friday, but we actually need to be out and finished by
11 3 o'clock for the venue. They have another event, so we
12 will need to finish up by 3 o'clock on next Friday.

13 The question was, do we know what time they open
14 the venue? I do not, but we can ask, and then for the
15 attorneys present and attending in person each day, let
16 you know via e-mail if that would suffice.

17 THE COURT: Would you name the event location's
18 name?

19 MS. TAYLOR: It's called the Palomino Ballroom.

20 THE COURT: Very good.

21 And do we want to talk about the witnesses that we
22 expect to hear from that day? Are there any that must
23 testify on Monday, for example?

24 Now, I wrote down Jeff Sims Monday. Is he -- and
25 I wrote that down yesterday.

26 MS. HANCOCK: Yes. So he will be here on Monday.
27 We will have Jeff Sims, Brad Parks, Ed Gallagher. We will
28 check with Mr. Stout on when he's coming back, but it



1 could be him as well, and Peter Vitaliano.

2 THE COURT: Excellent. Great.

3 MS. HANCOCK: And we have just as a reminder, I
4 have said it before, but I have learned to say it again,
5 we have Mr. Brown that is scheduled for Wednesday.

6 MS. TAYLOR: Yes. And I also have Mr. Mike
7 Sumners that will be here on Wednesday as well, according
8 to Mr. English. He is a dairy producer, so we would like
9 him to testify when he arrives.

10 THE COURT: And I spelled him when we talked about
11 him before. I spelled that S-U-M-A-R-E-S? Is that what
12 you have?

13 MS. TAYLOR: S-U-M-N-E-R-S.

14 THE COURT: Sumners.

15 MS. TAYLOR: Yes.

16 THE COURT: Thank you. I got the wrong thing.
17 All right. I thank you all.

18 MS. HANCOCK: I'm so sorry, Your Honor, one
19 clarification. It might not be in that exact order
20 because we're going to go dealing with people traveling.
21 Some combination.

22 MS. TAYLOR: Okay.

23 THE COURT: Very good. Thank you. All right. We
24 convene Monday morning at 8:00. We go off record at
25 5:00 p.m. Thank you all.

26 (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

9

10 DATED: January 10, 2024

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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