

UNITED STATES DEPARTMENT OF AGRICULTURE

In the Matter of:)
)
) Docket No.
 THE NORTHEAST MILK MARKETING) AO-14-A70-DA-02-01
 ORDER)
)

Virginia Room
 Embassy Suites Hotel
 1900 Diagonal Road
 Alexandria, Virginia

Wednesday,
 September 11, 2002

The above-entitled matter came on for
 hearing, pursuant to adjournment, at 8:30 a.m.

BEFORE: HONORABLE DOROTHEA BAKER
 Administrative Law Judge

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I N D E X

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8:30 a.m.

JUDGE BAKER: -- Northeast Order. It is a public hearing in which all persons who have relevant and material evidence may offer the same and may offer testimony.

If there is anyone here who was not here yesterday and would like to testify or otherwise participate in the hearing or offer evidence, please let me know.

I shall remind the participants that each time you speak, would you be kind enough to identify yourself. This is for the purposes of obtaining an accurate transcript. And the reporter, as you can see, records voices but not necessarily appearances unless you state your name.

We are ready to have cross examination of Dr. Ling -- at 11 -- excuse me, at 8:46, which isn't too far distant. I think it appropriate that we observe a moment of silence. And I will announce that at that time.

Are there any matters to come before the hearing? Any questions?

(No response)

JUDGE BAKER: Very well. Dr. Ling?

1 Whereupon,

2

CHARLES LING

3

having previously been duly sworn, was recalled as a

4

witness herein and was examined and testified as follows:

5

JUDGE BAKER: Yes, Mr. Rosenbaum?

6

MR. ROSENBAUM: May I proceed -- may I proceed,

7

Your Honor?

8

JUDGE BAKER: Yes.

9

CROSS EXAMINATION

10

BY MR. ROSENBAUM:

11

Q Dr. Ling, you -- your report -- Steve Rosenbaum
12 appearing for the International Dairy Foods Association.

13

Dr. Ling, your report that's been marked as
14 Exhibit 12 states that the Northeast region must maintain
15 a certain level of necessary reserves in order to handle
16 milk that is not needed for Class 1 at certain times, is
17 that a fair characterization?

18

A That's correct.

19

Q Okay. And what you do in your report is in
20 Table 1 determine the seasonality of producer milk
21 deliveries and fluid demand for the Northeast Orders and
22 then proceed to make certain assumptions as to what
23 operating reserves are needed and then to determine what
24 kind of plants and what kind of operations are necessary

1 to provide balancing. Is that fair in terms of your
2 methodology?

3 A I assume that ~~—(inaudible)~~**two levels of**
4 **operating reserves, not necessarily those two levels**
5 **should be operating reserves for the markets.**

6 Q When it came to seasonality or seasonal
7 reserves, you actually did a calculation as set forth in
8 Table 1, correct?

9 A Actually, in Table 2 and 4.

10 Q No, I'm -- I'm -- I'm talking about -- well,
11 I'm trying to distinguish, initially at least, between
12 seasonal reserves and operating reserves. When it came to
13 seasonal reserves, you made that determination of what the
14 seasonal reserves were to provide balancing function based
15 upon the calculations set forth in Table 1, correct?

16 A ~~(Inaudible)~~ **Yes**, that is correct.

17 Q And then, when it came to operating reserves,
18 you had two different assumptions. One was a 10 percent
19 operating reserve and one was a 20 percent operating
20 reserve, correct?

21 A That's correct.

22 Q And then based upon those -- the calculated
23 seasonal reserves and the assumed operating reserves, you
24 proceeded to determine what -- that you needed in this

1 particular instance three plants of a certain size or four
2 plants of a certain size to provide balancing, correct?

3 A (Inaudible) You are basically correct. The
4 first thing computed was based on satisfying the Class I
5 demand and operating reserve and we will calculate the
6 seasonal reserve and the total operating reserves and
7 seasonal reserves is that I put -(inaudible)-. The total
8 reserves -(inaudible)--.

9 Q All right. And one of the issues you were --
10 you were dealing with was -- is the seasonal nature of
11 milk, correct?

12 A That is correct.

13 Q And in that context, you were describing both
14 the seasonality of milk production and the seasonality of
15 Class 1 demand, is that right?

16 A That is correct.

17 Q All right. Now, am I correct that as a -- as a
18 methodological matter, there's nothing unique to the
19 Northeast Orders with respect to your methodology, is that
20 right?

21 A The methodology -- (inaudible).

22 Q And -- and that's really the point I was going
23 to get at, which is other than plugging in different data
24 in Table 1 --

1 A Mm-hmm.

2 Q -- your methodology would be exactly the same,
3 correct?

4 A That's correct.

5 Q You have not identified any particular -- you -
6 - you yourself have not identified any particular issues
7 surrounding the Northeast Order as opposed to any other
8 order, is that correct?

9 A That's correct ~~---~~(inaudible) **except to say**
10 **that the seasonality is different in the Northeast order.**

11 Q And -- and that, once again, would be a
12 question of what data would go in Table 1, correct?

13 A That's correct.

14 Q Okay. Now, as we've already discussed, you
15 made two different assumptions as to operating reserves,
16 one that it be 10 percent and one that it be 20 percent,
17 correct?

18 A That's correct.

19 Q And I think you stated that there was economic
20 literature to support 10 percent and some to support 20
21 percent, is that right?

22 A The -- back in 1985 -- (inaudible) -- **when I**
23 **did -(inaudible)- butter-powder plants, there were several**
24 **papers reporting at the time, attempting to argue the**

1 various percentages of operating reserves. Now for the
2 purpose of the presentation I just picked 10 percent and
3 20 percent.

4 Q All right. Now, let me -- let me start with
5 the -- the calculations you performed based upon the
6 assumption of 10 percent op in your reserves. And I want
7 to -- want to focus on Table 3 as it appears on page five
8 of Exhibit 12. Now, you determined -- actually, before I
9 get to Table 3, let me -- let me focus on Figure 1, which
10 I'm not sure you discussed yesterday.

11 But in any event, this is your chart on page
12 four of Exhibit 12 that shows what happens with respect to
13 total milk deliveries in the Northeast Orders, is that
14 correct?

15 A That's correct.

16 Q And in this context, milk deliveries means the
17 quantity of milk pooled on the order, is that correct?

18 A That's correct.

19 Q And the fluid demand is -- appears -- well, it
20 appears in Exhibit 12 in black and so I think I probably
21 should follow that color even though the Power Point you
22 have up has a different color. It'd be confusing since
23 that's not in the record.

24 The -- the fluid demand is the bottom part,

1 correct?

2 A That's correct.

3 Q And then you've got above that operating
4 reserves, is that correct?

5 A That's correct.

6 Q And then seasonal reserves on top of that?

7 A That's correct.

8 Q And then excess reserves, right?

9 A That's correct.

10 Q Could you -- could you explain what you mean by
11 excess reserves?

12 JUDGE BAKER: Mr. Rosenbaum, I think this is
13 the time for our bowing our heads for just a moment of
14 silence. I think it's 8:46. If we could all do that,
15 please?

16 (A moment of silence was observed.)

17 BY MR. ROSENBAUM:

18 A As I -- as I explained yesterday -- (inaudible)
19 -- **excess reserves it's -(inaudible)-** as a result of ==
20 ~~(inaudible)~~== **Ultimately, reserve that isn't ordinarily**
21 **associated with cities in the Class I market can be called**
22 in cases of shortage or crisis in the milk supply.

23 Q Well, you -- you have on top of excess reserves
24 Class 2, correct?

1 A That's correct.

2 Q And so, do I correctly interpret this figure to
3 mean that if one takes total milk pooled on the order and
4 subtracts what's called fluid demand, which would be Class
5 1, and then subtracts Class 2, that one -- what one is
6 left over with is Class 3 or Class 4?

7 A That's correct.

8 Q And am I correct that accordingly the total
9 amount of Class 3 and 4 milk that is pooled on the
10 Northeast Order is vastly in excess of what is needed to
11 provide seasonal and operating reserves as you have
12 calculated them?

13 A I don't know what you mean "vastly" --
14 (inaudible).

15 Q I -- I'm -- I'm comparing the size of the -- of
16 the wedges so to speak on Figure 1 for excess reserves
17 versus seasonal reserves and operating reserves.

18 A The differences ~~---(inaudible)---~~ **are there** if
19 that's what you mean.

20 Q Now, going to -- to Table 3, that -- that is
21 where you have calculated the reserve balancing cost
22 assuming a 10 percent operating reserve, correct?

23 A That's correct.

24 Q And Table 5 is methodologically identical

1 except that there you are assuming a 20 percent operating
2 reserve, is that correct?

3 A That's correct.

4 Q Now, let me start with Table 3. Table 3, if I
5 understand correctly, is based upon your assumption that
6 the total necessary reserves for the Northeast Order could
7 be provided by three butter powder plants with a daily
8 capacity of about 3 million pounds of milk?

9 A That's correct.

10 Q And in this context, necessary reserves is a
11 combination of both seasonal reserves and operating
12 reserves, is that correct?

13 A That's correct.

14 Q Now, I note that -- and I'm looking at page
15 four, that you are assuming that this plant would operate
16 20 hours a day, correct?

17 A That's correct.

18 Q But am I right that you are assuming that
19 operating 20 hours a day it could handle 3 million pounds
20 of milk?

21 A That's correct.

22 Q Okay. All right. Now -- and am I also correct
23 that you have sized these plants at 3 million pounds a day
24 -- a day of capacity in order to handle what you have

1 calculated to be necessary reserves -- peak daily volume
2 of necessary reserves of 8.6 million pounds of milk?

3 A That's correct.

4 Q And -- all right. Looking at Table 3 --
5 column, you have a heading called "Unused Capacity,
6 Percent of Peak Necessary Reserves," correct?

7 A That's correct.

8 Q In -- given the fact that you have sized these
9 plants to meet peak necessary reserves, would it also be
10 accurate if this heading had been titled simply, "Unused
11 Capacity"?

12 A My reasoning of why I did that was it's quite -
13 - it's just quite -- (inaudible) -- ~~spread over the -- the~~
14 ~~plant capacity it's just spread, spread over all the milk,~~
15 **more than spread over the plant capacity.** But if you want
16 the -- (inaudible) -- we can do that.

17 Q I -- that is to say, when in January you were
18 assuming or calculating that the unused capacity percent
19 of peak necessary reserves is 38 percent, am I right that
20 you're also saying that that plant is operating at 38
21 percent under capacity?

22 A Under capacity, that's correct.

23 Q All right. And so that if one wanted to
24 calculate the capacity --

1 A Mm-hmm.

2 Q -- utilization --

3 A Mm-hmm.

4 Q -- of that plant during January, one would
5 simply engage in mathematics of 100 minus 38, correct? For
6 January.

7 A That's correct.

8 Q So that -- and let me just run through the
9 months. And -- and tell me if I get any of them wrong.
10 Your calculation assumes that in January the plant would
11 operate at 62 percent capacity, in February at 73 percent
12 capacity, in March at 79 percent capacity, in April at 94
13 percent capacity, in May at 97 percent capacity, in June
14 at 100 percent capacity, in July at 75 percent capacity,
15 in August at 61 percent capacity, in September at 36
16 percent capacity, in October at 34 percent capacity, in
17 November at 38 percent capacity, and in December at 53
18 percent capacity, is that correct?

19 A ~~(Inaudible)~~ == **53 percent, you say?** yeah,
20 that's correct.

21 Q All those numbers were correct, is that right?

22 A Yeah.

23 Q And am I -- okay. And in -- on page five, when
24 you talk about fixed and operating costs, you describe the

1 fixed and overhead costs for the three plants as being
2 estimated at \$9 million a year, correct?

3 A That's correct.

4 Q And -- and you say that if you prorate that
5 cost to the volume represented by unused capacity, the
6 reserve balancing costs are \$3 million a year for fixed
7 and overhead costs, correct?

8 A That's correct.

9 Q And -- and do I fairly infer from that that
10 your Table 3 calculates that on an annual basis the plant
11 will operate at 67 percent capacity?

12 A I have to go through the calculation.

13 (Pause)

14

15 BY MR. ROSENBAUM LING:

16 A ~~(Inaudible)~~ -- **While the total necessary**
17 **reserved flattened** 7 million per day. And if you divide
18 that by -- by nine million ~~-- (inaudible) --~~ **in the case**
19 what I get divided by 8.6. That will give you the
20 percentage.

21 Q Well, I -- I'm trying to focus on the
22 calculation which I think you already did, which is that
23 you said the fixed operating costs for the three plants
24 total is -- were \$9 million a year, correct?

1 A That's correct.

2 Q And -- and -- and you have then prorated that
3 cost to the milk volume represented by unused capacity,
4 correct?

5 A That's correct.

6 Q And that unused capacity is the capacity that
7 is providing the balancing function, correct?

8 A That's correct.

9 Q And you say that's \$3 million, correct?

10 A Yeah.

11 Q And -- and -- and get -- I'm simply saying that
12 given the ratio of 3 million to 9 million, am I correct
13 that the necessary conclusion is that Table 3 is assuming
14 or calculating I should say that on an annualized basis
15 these plants are operating at 67 percent capacity?

16 A ~~(Inaudible)~~ -- **About 66** percent, yeah.

17 Q I'm sorry?

18 A ~~(Inaudible)~~ -- 66 percent.

19 Q Sixty-six percent. All right.

20 A About that, I mean.

21 Q About that. All right. Thank you. And
22 obviously, those plants are producing very substantial
23 quantities of butter and nonfat dry milk operating at 67
24 percent capacity, correct?

1 A That's correct.

2 Q And indeed you in Footnote 2 of Table 3 make
3 certain assumptions as to -- as to how much butter and
4 nonfat dry milk can be made when that plant is actually
5 operating, correct?

6 A That's correct.

7 Q And -- and -- and -- and am I correct in
8 understanding that your calculation is that for every 100
9 pounds of milk that is processed through that plant, one
10 will produce 4.48 pounds of butter and 8.13 pounds of
11 nonfat dry milk?

12 A That's correct.

13 Q Okay. In other words, the same hundredweight
14 will produce both those products --

15 A That's correct.

16 Q -- in those quantities, correct?

17 A That's correct.

18 Q All right. And so that if I wanted to figure
19 out how much butter and how much nonfat dry milk is being
20 produced by this plant at -- at 100 percent capacity,
21 assuming it were run full out, am I correct that one would
22 on a daily basis assume that there were ~~33,000~~ **30,000**
23 hundredweight being run through it, correct?

24 A That's correct.

1 Q Thirty thousand hundredweight of milk, correct?

2 A That's correct.

3 Q Because 30,000 hundredweight and 3 million
4 pounds are the same thing, correct?

5 A Yeah.

6 Q And then one would for those 30,000
7 hundredweight assume that for each hundredweight one was
8 producing 4.48 pounds of butter and -- and also 8.13
9 pounds of nonfat dry milk, correct?

10 A That's correct.

11 Q And once again, that's on a daily basis, and
12 then one could annualize that to figure out what the total
13 production of that plant was assuming 100 percent capacity
14 operations by multiplying those numbers by 365 days a
15 year, correct?

16 A That's correct.

17 Q And if one then wanted to determine how much
18 butter and cheese that plant would produce at the 67
19 percent utilization that you assume is going to be
20 actually encountered due to the need to provide for
21 necessary balancing, one would simply multiply that number
22 by 67 percent, is that right?

23 A It's butter and nonfat dry milk, not cheese.

24 Q If I said cheese, I didn't mean to. I'm sorry.

1 Am I correct that one would take the annualized number of
2 how much butter and nonfat dry milk would be produced at
3 100 percent capacity based upon the approach we've just
4 discussed and then multiply that number by 67 percent to
5 determine how much butter and nonfat dry milk would be
6 produced?

7 A That's correct.

8 Q Under the assumption, as you calculated it,
9 that these plants would operate at 67 percent annual
10 capacity in order to provide both seasonal and operating
11 reserves?

12 A That's correct.

13 Q Okay. Now, let's turn if we could to Table 5,
14 which is, as we discussed earlier, the -- the table you
15 put together that -- that estimates the cost of balancing
16 assuming -- reserves are not 10 percent but 20 percent,
17 all right?

18 A That's -- that's correct.

19 Q I'm sorry. I misspoke that. Let me -- Table 5
20 is the -- is the same as Table 3 except in Table 5 you
21 have assumed 20 percent operating reserves whereas Table 3
22 had assumed 10 percent operating reserves, correct?

23 A That's correct.

24 Q The seasonality of milk production and

1 seasonality of Class 1 demand that goes into Table 3 is --
2 are -- is the exact same numbers that go into Table 5,
3 correct?

4 A That's correct.

5 Q All right. Now, I want to look at the second
6 column of Table 5 now and ask whether, as with Table 3,
7 the unused capacity percent of peak necessary reserves
8 here is also simply the unused capacity of the plants?

9 A That's correct. ~~(Inaudible)~~ -- **It's the same**
10 **as column 2, Table 3.**

11 Q Okay. And the difference -- a difference
12 between Table 3 and Table 5 is that for purposes of Table
13 5 you were assuming four plants with daily capacity of 3
14 million pounds a day as opposed to the three plants you
15 were assuming in Table 3?

16 A That's correct.

17 Q And accordingly, you were assuming that the
18 daily -- the daily capacity is now -- of the three plants
19 -- excuse me. Start that again.

20 You were assuming that the daily capacity of
21 the four plants combined is 12 million pounds, correct?

22 A Yeah. Twelve million pounds ~~-- (inaudible) --~~
23 ~~-- 8 million pounds --~~ **yeah, 11.8 million pounds.**

24 Q Okay.

1 A ~~(Inaudible)~~ == **Peak** reserves.

2 Q All right. And if one wanted to determine how
3 much -- well, let -- let -- am I correct once again, as I
4 was for Table 3, that with respect to Table 5, if one
5 wants to determine the actual capacity at which the plant
6 is assumed to be operating, one engages in the mathematics
7 of 100 minus the number set forth in Column 2?

8 A Excuse me, but can you repeat that?

9 Q Yes. If one -- if one wants to determine the
10 actual capacity utilization month by month in Table 5, one
11 deducts from 100 percent the percentage shown in Column
12 Number Two?

13 A That's correct.

14 Q And -- and once again, I'd like to go through
15 the math and just make sure I've got it correct. Tell me
16 if I've got any of these numbers wrong. My understanding
17 is that in Table 5 you were assuming that the plants are
18 operating at the following percentage of capacity: in
19 January 71 percent, in March -- in February 80 percent, in
20 March 85 percent, in April 96 percent, in May 99 percent,
21 in June 100 percent, in July 80 percent, in August 69
22 percent, in September 51 percent, in October 50 percent,
23 in November 53 percent, and in December 64 percent?

24 A That's ~~== (inaudible) ==~~ **very good**, you're

1 correct.

2 Q All right. And am I correct that if you -- if
3 you compare -- if you compare Tables 3 and 5, am I correct
4 that in Table 5 in every month the plant is operating at a
5 higher percentage of capacity than in Table 3?

6 A ~~(Inaudible)~~ **If you compare the two columns and**
7 **it comes out that way, then you can say that.**

8 Q Okay. So that although you are assuming a
9 higher operating reserve in Table 5, namely 20 percent as
10 opposed to 10 percent in Table 3, the plants are actually
11 operating at a higher percentage of capacity, correct?

12 A That's correct.

13 Q And that's really a reflection of the fact that
14 you've got four plants now --

15 A That's correct.

16 Q -- rather than three? All right. Now, I'm
17 correct, am I not, that your study nowhere addresses how
18 these necessary -- what you term to be reserve balancing
19 costs are being paid for, correct?

20 A That's correct.

21 Q Hypothetically, they could be paid for by the
22 cooperative demanding from the Class 1 handler an extra
23 service charge for the fact that the Class 1 handler is
24 not taking milk seven days a week, correct?

1 A That's a hypothetical question I ~~== (inaudible)~~
2 **== am not going to give you** a hypothetical answer. I am
3 not ready to -- I am not ready to ~~== (inaudible).~~ ~~I'm not~~
4 ~~prepared to answer a question -- (inaudible) -- you can~~
5 ~~ask co-ops for -- (inaudible) -- to testify to that fact I~~
6 **am not privy to the negotiations between cooperatives and**
7 **handlers. I'm not prepared to answer questions, it's**
8 **something you can ask coops or your members.**

9 Q Well, let -- let me just see if I can establish
10 this. And I don't mean by this to be criticizing in any
11 way. I just want to --

12 A I'm not saying you're criticizing.

13 Q I just want to --

14 A I just want to speak to my report, that's all.

15 Q And -- and I -- I think I do largely as well.
16 But I just want to make sure I'm right in understanding
17 that your -- the purpose of your report is not to in any
18 way address if or how the reserve balancing costs should
19 be paid for, correct?

20 A That's correct. Let me explain that ~~==~~
21 ~~(inaudible)~~ ~~==~~ **the association members came to me** they had
22 this problem and asked me if I can come up with a report
23 for them to address this issue for estimating the cost of
24 balancing, and that's what I did. I provided the

1 methodology and put in some estimates and --

2 Q Okay.

3 A -- and that's -- that's -- that's it.

4 Q And you have in no way attempted to determine
5 the profitability of the plants that you are assuming in
6 Tables 3 and 5, correct?

7 A That's correct.

8 Q And to -- to determine the profitability of
9 these plants, one would have to look at how much money
10 they make selling their finished products and -- and
11 engage in a -- in a series of calculations, correct?

12 A That's correct.

13 Q And -- and you've not -- you were not asked to
14 do that and you have not done that, correct?

15 A I haven't done that.

16 Q Now, it is your conclusion which you testified
17 to yesterday that every one percent increase in capacity
18 utilization results in a 0.1 cent decrease in variable
19 cost per pound of product produced, correct?

20 A That's correct.

21 Q And so that a plant that operates at 80 percent
22 capacity has variable costs two cents per pound of butter
23 or nonfat dry milk higher than a plant operating at 100
24 percent capacity, is that right?

1 A That's -- that's correct.

2 Q And a plant operating at 60 percent of capacity
3 has two cents per pound of butter or nonfat dry milk
4 higher variable costs than a plant operating at 80 percent
5 capacity, is that correct?

6 A That's correct.

7 Q Let me go back now for a moment to Table 1 on
8 page one of Exhibit 12. And there you have two separate
9 pieces of information. One is producer milk deliveries
10 and the other is fluid demand, correct?

11 A That's correct.

12 Q And the producer milk deliveries determines the
13 percent by which any given month is greater than or lesser
14 than the annual average, correct?

15 A That's correct.

16 Q And as your footnote states, you got this
17 information from pool statistics from 1994 to 1999,
18 correct?

19 A That's correct.

20 Q So this is data from before the creation of the
21 existing Northeast Order, correct?

22 A That's correct.

23 Q It's a compilation of data from old Orders 1,
24 2, and 4, correct?

1 A That's correct.

2 Q Now, in looking at producer milk deliveries,
3 you are simply looking at total volumes pooled on the
4 orders, correct?

5 A That's correct.

6 Q And you have made no effort in this table to
7 determine the extent to which this seasonality reflects in
8 whole or in part the association of additional farmers
9 with these orders during certain months?

10 A It's strictly the ~~---(inaudible)~~ **total volume.**

11 Q Do you have Exhibit 5, which was the -- the
12 data put into the record by Mr. Fredericks, I believe?

13 A Okay. I have it now.

14 Q If you could turn with me to page 87? This
15 document shows, as Mr. Fredericks explained it, the -- the
16 number of producers pooled on the order and the number of
17 those who are in states other than those covered by the
18 Northeast Order geographically. Do you see that?

19 A Yeah.

20 Q And do you see also that unlike Table 1, which
21 is based on historical data before the creation of the
22 Northeast Order -- your Table 1, I mean -- this -- page 87
23 of Exhibit 5 is based upon data since the creation of the
24 current Northeast Order? Am I right about that?

1 SPEAKER: Page 87?

2 MR. ROSENBAUM: Yes.

3 BY MR. ROSENBAUM:

4 A Yeah, that's -- that's correct.

5 Q And -- and I want to focus on 2001, which is
6 the year for which we -- the most current year for which
7 we have a whole year's information. Now, do you see that
8 -- well, let me back up. In your Table 1, the -- the
9 quantity of milk pooled on the orders is greatest in April
10 and May, correct?

11 A That's correct.

12 Q And --

13 A It's basically six years' statistics.

14 Q Right. And do you see that in page 87 of
15 Exhibit 5 we can see that in the real Northeast Order as
16 it now exists in the year for which we have the most
17 current data, we had -- and I'm going to round off
18 slightly -- 108 million pounds of milk pooled on that
19 order in both May and June separately from states other
20 than those states that are in the Northeast Order?

21 A Would you repeat that, please?

22 Q Yes. Am I correct -- we'll just -- am I
23 correct that this document shows that in May of 2001 there
24 were 108 million pounds of milk pooled on the Northeast

1 Order from states other than the states that are
2 geographically part of the Northeast Order?

3 A (Inaudible).

4 Q All right. And indeed, do you see that five
5 percent of all milk pooled on the Northeast Order came
6 from these other states in May and June and July?

7 A That's correct.

8 Q And -- and indeed, the -- those are so to speak
9 the flush months, correct? That is to say, when milk
10 production is highest? And those are also the months that
11 pool demand is the lowest according to your -- the second
12 column in your Table 1?

13 A **You're talking about 2001, there's no --**
14 (Inaudible).

15 Q I -- I --

16 A (Inaudible).

17 Q I appreciate that. You don't know the fluid
18 demand -- the seasonality of fluid demand has changed
19 though since you did your study. Do you know that?

20 A ~~(Inaudible)~~ **I didn't compare that.**

21 Q Okay. All right. Well, if you've seen that
22 fluid -- that the seasonality of fluid demand has not
23 changed since your study, am I right that what happened in
24 reality in the year 2001 was that a full five percent of

1 the Northeast pool was made up of milk from states outside
2 the geographic Northeast Order and that that's happening
3 during the period of time when milk production is at its
4 highest from the seasonal perspective and fluid milk
5 demand is at its lowest?

6 A ~~(Inaudible)~~ **Historically, yes.**

7 Q Now, do you also see that in terms of what
8 really happened in 2001 -- let me back up. In your -- in
9 your study, November is the trough so to speak in terms of
10 producer milk deliveries, correct?

11 A ~~(Inaudible)~~ **Based on** six years, yes.

12 Q All right. And do you see that in November of
13 2001 only 13 million pounds of milk were pooled on the
14 Northeast Order from other states?

15 A ~~(Inaudible)~~ **If that's what the statistic say.**

16 Q And that is less than one percent of the milk
17 pooled on the order during that month, correct?

18 A That's correct.

19 Q And -- and just to do simple mathematics, if
20 you compare May of 2001 to November of 2001, there were 95
21 million more pounds of out-of-state milk pooled on the
22 Northeast Order in the peak period, May, as compared to
23 the lowest period, November, correct?

24 A That's -- (inaudible).

1 Q The conclusion one would draw, therefore, is
2 that substantial quantities of milk from other states are
3 flooding the Northeast Order at the time when they're
4 least needed and that milk disappears at the time when
5 it's most needed? Is that a fair conclusion?

6 A (Inaudible) -- **Mathematically find what**
7 **happened to -(inaudible)- didn't -(inaudible)- come to a,**
8 what I did in my report was -- (inaudible).

9 Q You certainly would not challenge the accuracy
10 of the numbers in -- on page 87, would you? They're USDA
11 numbers.

12 A I don't know what -- I don't know what -- when
13 you say "most needed" **I didn't look at the numbers** --
14 (inaudible).

15 Q Well -- well, let -- let me use more technical
16 terms. I mean -- what I mean is that the -- you said that
17 the -- according to your calculations that the -- the --
18 let's look at -- let's look at -- let's look at Table 3 in
19 your Exhibit 12. You calculated that in May and June your
20 plants are running almost full out, correct? They're
21 running at 97 percent capacity and at 100 percent
22 capacity, correct?

23 A That's correct.

24 Q And yet these are the months when in reality in

1 2001 you had 108 million pounds coming in from other
2 states?

3 A (Inaudible) -- **Table 3 is based on**
4 **-(inaudible)- I don't want to compare the two tables, and**
5 **I haven't studied the statistics with regards to these**
6 **tables.** I'm not prepared to speak to that.

7 Q Okay. Well, I would like you simply to assume
8 --

9 A (Inaudible).

10 Q These are -- USDA put in these numbers. I have
11 nothing else to provide that's better than that. And I'm
12 simply -- since we are of course now in the post-reform
13 world trying to understand what the actual implications
14 are today and simply asking if I'm right that you said
15 that in order to handle -- you have said that the plants
16 are running at highest capacity in May and June and those
17 are the two months in which almost 108 million pounds per
18 month of other state milk is being pooled on the Northeast
19 Order in reality in 2001. Do you agree with that?

20 A That's -- that's what the statistics say, yes.

21 Q Okay.

22 A But the -- how much is actual deliveries and ==
23 ~~(inaudible)~~ == **pooled** and so forth, I don't == ~~(inaudible)~~
24 == **study them** so I -- I cannot concur with that

1 conclusion. That's -- it's **milk shipments between** --
2 (inaudible).

3 Q Well, if -- if your -- yeah. Let me be clear
4 about this. Your Table 1 is based upon how much milk was
5 pooled on the order, correct?

6 A That's correct.

7 Q And during the years 1994 through 1999,
8 correct?

9 A That's correct.

10 Q And that's the same data set as we're looking
11 at on page 87 except that on page 87 we're looking at -
12 -

13 A Eighty-seven of Exhibit -- Exhibit 5?

14 Q Yes. Except that on page 87 we're looking at
15 more recent data?

16 A Uh-huh.

17 Q Is that -- is that right?

18 MR. BESHORE: Your Honor, I don't know whether
19 Mr. Rosenbaum was intentionally attempting to confuse Dr.
20 Ling or what but --

21 MR. ROSENBAUM: This is inappropriate. He is
22 coaching the witness. And if I'm misreading Dr. Ling, he
23 will tell me or you can bring it out in your own
24 examination. I am not intentionally or otherwise

1 misleading --

2 MR. BESHORE: -- objection.

3 MR. ROSENBAUM BESHORE: Page 87 does not have
4 aggregate pooled numbers for the pool. I mean, those are
5 in Exhibit 5 but they're not on page 87.

6 JUDGE BAKER: Dr. Ling, are you confused?

7 (Laughter)

8 THE WITNESS: I'd rather stick to what I'm
9 stating in the report. And what I didn't study I -- I'm
10 not prepared to speak to. So that's -- I think I made
11 that point very clear.

12 BY MR. ROSENBAUM:

13 Q All right. Let me -- let me ask you this. If
14 you -- if you turn to page one of Exhibit 5?

15 (Pause)

16 BY MR. ROSENBAUM:

17 Q And if you assume with me that -- that Mr.
18 Fredericks testified that this document reflects milk
19 pooled on the Northeast Order, am I correct that that data
20 set is the same data set that you used for your Table 1
21 except that he's doing it for the period 2000 through --
22 the first few months of 2002 whereas you did it for 1994
23 through 1999?

24 A I assume that is -- (inaudible) **as long as this**

1 data set for 2000 post marketing order reform, if milk is
2 pooled -(inaudible).

3 Q All right.

4 A ~~(Inaudible) -- I have been studying --~~
5 ~~(inaudible) -- statistics so I'm -- (inaudible).~~ If you
6 want to ~~-- (inaudible).~~ I haven't studied post-reform
7 statistics, so I'm not -(inaudible)- If you want to
8 -(inaudible)- there's probably somebody qualified.

9 Q Well, let me just make sure that in Table 1
10 what you were using was receipts of producer milk for
11 Orders 1, 2, and 4 for the years 1994 through 1999,
12 correct?

13 A That's correct.

14 Q Okay. And to the extent that Mr. Fredericks
15 for his page one of Exhibit 5 was using producer receipts
16 for the new Northeast Order for the period 2000 through
17 2002, then you're both using the same data set except that
18 the years are different and he's using the Northeast Order
19 as it now exists whereas you were using Orders 1, 2, and 4
20 combined as they then existed?

21 A It's not exactly the same data set we're using
22 because -- (inaudible). And so the two data sets are not
23 the same because -- (inaudible) -- so it's not the same
24 data set, **post-reform was operating under a different est**

1 of rules from pre-reform. Pre-reform there were 3
2 marketing orders, 3 different sets of rules, and so the two
3 data sets are not the same, because people would say
4 what's better advantageous for them to ship their milk and
5 pool so it's not the same data set.

6 Q What -- what you're -- okay. What you're
7 saying is economic conditions may have changed and the
8 rules of pooling may have changed but the -- but the data
9 set in both cases is pool receipts?

10 A They are both -- they are both pool receipts --
11 ~~(inaudible)~~ -- **but they are pooled under different sets of**
12 **rules** so they are not the same data set.

13 Q Okay. But they are both pool receipts,
14 correct?

15 A Yeah.

16 Q All right.

17 A ~~(Inaudible)~~ **They're pool receipts under**
18 **different sets of rules.**

19 Q And -- and -- and -- and yours were the old
20 rules and his are the current rules, correct?

21 A ~~(Inaudible)~~ **You ask him that, mine was the old**
22 **rules.**

23 Q Okay. You assume or estimate that each of
24 these plants with 3 million pounds of milk a day capacity

1 that would provide balancing would cost \$28 million,
2 correct?

3 A (Inaudible) - **USDA data set, that's probably a**
4 **very conservative number.**

5 Q Well, it's conservative from the perspective of
6 what a plant would cost today, is that what you mean?

7 A That's correct.

8 Q It's -- it's not conservative from the
9 perspective of what a plant actually cost at the time you
10 did that study?

11 A ~~(Inaudible) -- basically a study I did --~~
12 ~~(inaudible).~~ **Well, as I explained earlier, the \$28 million**
13 **number was based on a study I did in 1984 for a**
14 **cooperative.**

15 Q And you're pretty confident that as of that
16 time frame that was a good number, is that right?

17 A That is correct.

18 Q And there -- there -- the -- the -- your study
19 does not mean to suggest that there needs to be **more new**
20 **butter powder plants** brought to the northeast to address
21 balancing, correct?

22 A ~~(Inaudible) -- what is necessary --~~
23 ~~(inaudible), okay? The best way to estimate the ultimate~~
24 ~~cost is -- (inaudible) -- what I did in the report is --~~

1 ~~(inaudible) -- because the cost data is very difficult --~~
2 ~~(inaudible)~~. I tried to isolate what is necessary for the
3 market, okay, and the best way to estimate the costs is,
4 as far as what I did in the report - (inaudible)- because
5 the costs data is very difficult to come by and so this
6 probably is the most correct.

7 Q Please don't give me --

8 A ~~(Inaudible)~~ **What I say is most correct.**

9 Q I don't mean this as a criticism. I'm just
10 trying --

11 A ~~(Inaudible) --~~ **No, no, no** I'm trying to explain
12 what I did --

13 Q But -- but so --

14 A ~~(Inaudible)~~ **So, everybody's clear and on the**
15 **same page.**

16 Q But you -- but you yourself said there hasn't
17 been a new butter plant built in how long?

18 A Since the early '90s ~~--(inaudible)~~ **until**
19 **recently, there has been just one new butter-powder plant**
20 **in Idaho, it's total producing number is higher than what**
21 **I have here, 28 million.**

22 Q Okay. But -- but you're not -- you don't --
23 your study in no way is suggesting that in fact any new
24 plants need to be built in the northeast to provide

1 balancing?

2 A No, that's ~~---(inaudible)~~ **correct.**

3 Q And indeed, we know that there have been no new
4 plants built in the northeast since when? When was the
5 last new plant built in the northeast?

6 A **No New new** plants were built ~~---(inaudible)~~ **but**
7 **there have been expansions of some plants.**

8 Q Okay. Do you know when the last new one was
9 built?

10 A I think ~~---(inaudible)---~~ **your** people should
11 know better than me.

12 Q Okay. But your \$28 million figure was current
13 as of 1994, is that right?

14 A That's correct.

15 Q All right. And -- and we certainly know that
16 there have been no new plants built in the northeast since
17 that time, correct?

18 A That's correct. As I said ~~---(inaudible)~~ **there**
19 **have been expansions.**

20 Q Right. Now, you take that \$28 million cost
21 -- let me back up. The \$28 million is on page five
22 described as covering the total capital costs on land,
23 building, machinery, and equipment, correct?

24 A That's correct.

1 Q And -- and you apply a nine percent interest
2 rate to that \$28 million to come up with your annual total
3 capital cost, correct?

4 A That's correct.

5 Q And -- and that's the number -- that's one of
6 the numbers that then feeds into your calculation of what
7 the total cost of balancing is, correct?

8 A That's correct.

9 Q Because essentially what you're doing is
10 applying to the unused capacity of that plant its
11 proportionate share of that \$2.52 million, correct?

12 A Plus overhead.

13 Q Plus overhead, right. But -- right. Now, in
14 the real world, of course, people pay off their loans over
15 time, correct?

16 A That's correct.

17 Q I mean, if -- if someone had borrowed \$28
18 million to build a butter powder plant at nine percent
19 interest, at some point they're going to pay that loan
20 off, right?

21 A That's correct.

22 Q And that depends upon -- well, depends upon the
23 -- the loan agreement how long that takes, correct?

24 A That's correct.

1 Q But for purposes of your calculations, you
2 simply are assuming a nine percent cost forever so to
3 speak, is that right?

4 A That's an interest cost figure.

5 Q But -- but you're assuming that to be constant,
6 right?

7 A For the life of the loan, yes.

8 Q Well, but you don't in your report try to
9 determine how long the loan will last, right?

10 A That's correct.

11 Q Hypothetically, balancing in the real world
12 might be provided by a plant that's already paid off its
13 loans entirely, correct?

14 A That's possible.

15 Q Okay. In which case there would be no
16 continuing annual capital costs for the land and for the
17 plant, right?

18 A That's correct.

19 MR. ROSENBAUM: That's all I have at this time.
20 Thank you.

21 JUDGE BAKER: Thank you, Mr. Rosenbaum. Are
22 there any questions? Yes, Mr. English?

23 MR. ENGLISH: Thank you.

24 CROSS EXAMINATION

1 BY MR. ENGLISH:

2 Q Charles English. Let me follow up at first on
3 a number of questions asked by Mr. Rosenbaum.

4 With respect to the request you received and
5 the work you did on the study, did the cooperatives
6 provide you with actual data or the utilization of the
7 plants actually existing in the Northeast Orders?

8 A ~~(Inaudible)~~ **No.**

9 Q And the co-ops did not ask you to look at any
10 of the numerous non-Class 4 facilities that could
11 potentially provide balancing in the northeast market,
12 correct?

13 A They asked me to ~~---(inaudible)~~ **estimate, to**
14 **come up with a number and then come up with an estimate**
15 **for the cost of balancing milk.**

16 Q And your --

17 A ~~(Inaudible)~~ **They didn't ask me to look at which**
18 **one.**

19 Q But -- but by your own study, that estimate was
20 based upon using exclusively butter powder operations,
21 correct?

22 A That's correct.

23 Q And you acknowledge that plants that process
24 cheese and whey could provide this service as well,

1 correct?

2 A In the real world, I think most people when
3 they ~~---(inaudible)~~ do use butter powder plants, to a
4 limited extent they might use cheese for a short period of
5 time and that, but I don't really know why people use
6 cheese plants to do balancing, that's why I picked butter
7 powder plants.

8 Q Do you -- do you have Exhibit 5 still in front
9 of you from the market administrator's -- Mr. Rosenbaum
10 asked you? If you could look for a moment at pages 74 and
11 75?

12 (Pause)

13 BY MR. ENGLISH:

14 Q Which are for May and November of 2001 total
15 volume of producer milk diverted to non-pool plants under
16 the Northeast Order. And would you agree with me that the
17 -- the number of pounds diverted in May exceeds the number
18 of pounds in November by a significant quantity?

19 A ~~(Inaudible)~~ 150 million pounds.

20 Q ~~By 170 but I had 170, but the,~~ I mean, the math
21 is what it is. Does that not indicate that -- that there
22 are other facilities being used in actuality in the
23 Northeast Order with respect to the disposal of -- of milk
24 in this marketplace?

1 A My report estimates the cost of doing the
2 balancing. I didn't say who is actually doing the
3 balancing.

4 Q Fine. That -- that was my question. And going
5 back to the series of questions asked by Mr. Rosenbaum and
6 the issue about pre-order reform and post-order reform,
7 you have not attempted to make any study of how decisions
8 to pool milk have changed since the advent of federal
9 order reform, correct?

10 A That's correct.

11 Q And you similarly have made no study of the
12 question of how distribution of packaged milk may have
13 changed since the advent of federal order reform?

14 A That's correct.

15 Q And as to Table 1 --

16 A Exhibit --

17 Q -- Table 1 now in your Exhibit 12. In that
18 Table 1, for the period that was pre-federal order reform
19 you made no attempt to adjust for producer milk deliveries
20 for milk, for instance, produced in New York that is
21 delivered as producer milk to an order to the south for
22 that time period, 1994 to 1999, correct?

23 A ~~(Inaudible)~~ **It's based on pool statistics of**
24 **whatever the milk was pooled.**

1 Q And just to be clear --

2 A ~~(Inaudible)~~ **In this order.**

3 Q Yeah. There's pool statistics for Order 5 and
4 Order 7, correct? You didn't look at those pool
5 statistics and add data in from those that might be milk
6 that's produced in New York or Pennsylvania or Maryland,
7 correct?

8 A It's whatever ~~---~~~~(inaudible)~~ **reported by Dairy**
9 **Programs is posted for Order 2 and Order 4.**

10 Q I realize that -- that following the federal
11 order process may not be something you do on a daily
12 basis, but are you aware or were you aware at the time you
13 prepared this study that in the mid '90s a program was put
14 in place in the southern federal orders to provide for
15 transportation credits to move milk to the southeast, both
16 producer milk and transferred milk? Were you aware of
17 that?

18 A I was not aware.

19 Q Were you aware that as a result of that
20 producer milk otherwise associated with Orders 1, 2, and 4
21 was in certain months in these years that are part of your
22 study pooled instead on orders to the south?

23 A No, I ~~---~~~~(inaudible)~~ **didn't study the**
24 **statistics.**

1 Q Turning to the second column, "Fluid Demand,"
2 did you make any effort in -- in discussing the need for
3 fluid demand in these orders to adjust for changes in the
4 data from month to month for milk that was packaged in the
5 northeast and shipped into other federal orders?

6 A It's whatever the Class 1 -- whatever milk
7 pooled as Class 1 ~~---(inaudible)---~~ **and reported by Dairy**
8 **Programs** third party.

9 Q So that means that if a -- if a Class 1 handler
10 or -- or all the Class 1 handlers reported more sales of
11 Class 1 outside their marketing area in October than in
12 June, you didn't take that in consideration because that
13 data was not something you looked at, correct?

14 A We looked at the Class 1 milk pooled in the
15 ~~==-(inaudible)~~ **under those 3 orders.**

16 Q Okay. So that means you agree with me that you
17 didn't make an effort to alter the data -- to adjust the
18 data based upon where the sales actually occurred,
19 correct?

20 A ~~(Inaudible)~~ **Well, as I said, it's based on**
21 **whatever Class I milk was pooled under those 3 orders.**

22 Q Is it your understanding that Class 1 milk
23 pooled in the orders does not change based upon where the
24 sales are?

1 A No, I -- I didn't -- I didn't -- I mean, I ==
2 (inaudible) **I don't know.**

3 Q So you didn't look at that issue?

4 A No --

5 Q -- so you didn't --

6 A (Inaudible) **Whatever was reported by the Dairy
7 Division pooled as Class I milk.**

8 Q And you made simply no effort to adjust that
9 data? You just took the data they gave you and didn't
10 adjust it in any way?

11 A I took the data from the publications.

12 Q And those publications were the Order 1, Order
13 2, and Order 4 publications, correct?

14 A That's correct.

15 Q On page two of your statement, in the second
16 full paragraph you have a statement that says, "The
17 reserves also cover shrinkage and the terms of packaged
18 products ordinarily experienced by processing plants."
19 Remember that statement?

20 A Yeah, that's correct.

21 Q Is -- is -- is the two percent allowance for
22 shrinkage and -- and returns of packaged products included
23 in the "Fluid Demand" portion of Table 1?

24 A (Inaudible).

1 Q So they would not be portion -- part of the
2 "Fluid Demand" in Column 2 of Table 1, correct?

3 A That's correct.

4 (Pause)

5 BY MR. ENGLISH:

6 Q Exhibit 5, page 85 shows the actual total milk
7 receipts at butter powder plants in the northeast. And if
8 you compare that table to page five of Exhibit 5 -- to
9 page five?

10 SPEAKER: Page five of Exhibit 5?

11 BY MR. ENGLISH:

12 Q Page five, Exhibit 5 compared to page 85 of
13 Exhibit 5. Page five is producer receipts by
14 classification. Page 85 is milk powder and butter
15 production. And if you look for a moment at May of 2000
16 for -- for both those, May of 2000, would you agree that
17 on page five Class 4 milk was 249,125,390 pounds and the
18 same month, the actual milk receipts at butter powder
19 plants was 454,385,205 pounds. Would you agree with me
20 that that difference -- that some significant portion of
21 that difference represents milk coming in from outside the
22 marketing area that is being pooled as Class 4 and
23 classified that way for other orders?

24 A Which number are you talking about in --

1 Q May --

2 A ~~(Inaudible)~~. **Page 85?**

3 Q Page -- I'm talking about the same month. May
4 2000 --

5 A Mm-hmm.

6 Q -- for page five, May 2000 for page 85. And
7 you can pick any month you want to. The fact of the
8 matter is that the -- the pounds of milk actually received
9 at butter powder plants is significantly different and
10 higher than the pounds of milk processed as Class 4 as
11 shown on page five.

12 (Pause)

13 BY MR. ENGLISH:

14 A ~~(Inaudible)~~ **Frankly, page 85 is kind of**
15 **confusing to me, so I'm not ready to answer questions.**

16 Q Would you agree --

17 A ~~(Inaudible)~~ **The captions and so forth, I don't**
18 **really understand them.**

19 Q I'm just looking at the first column, "Total
20 Milk Receipts."

21 A Okay.

22 Q Would you agree with me the total milk receipts
23 for May of 2000 for butter powder production is
24 454,385,205 pounds?

1 A That's ~~==~~(inaudible) **what you said is correct,**
2 **it's just a number there.**

3 Q I understand. And I'm asking you to compare
4 that number to these -- the number that appears on page
5 five for May of 2000 for Class 4 on this order.

6 A Okay.

7 Q And -- and ask you whether you have ~~a~~ **any**
8 explanation for the significant difference in those two
9 numbers?

10 A I don't ~~==~~(inaudible) **they didn't ask -**
11 **(inaudible) - to explain everything, to compare numbers.**

12 Q Isn't it a fact that in the real world the milk
13 that is processed at existing butter powder facilities on
14 the Northeast Order includes significant quantities of
15 milk that are pooled on other orders?

16 A I don't know that. I cannot answer that
17 question.

18 Q And for the purposes of your study, pre-federal
19 order reform, you made no attempt to look at that kind of
20 data, did you?

21 A My study is strictly to come up with a
22 methodology ~~==~~(inaudible) **for estimating the balancing**
23 **needs for the marketing order.**

24 Q And in doing that methodology, you made no

1 attempt to adjust for this kind of data that appears on
2 page five and 85, correct?

3 A ~~(Inaudible)~~ -- **What I said before, I don't**
4 **think I can answer these** questions.

5 Q I understand, sir. But I'm simply -- I'm
6 asking you did you or did you not adjust. I think it's a
7 simple question. I think the answer is, no, you didn't
8 because you didn't even think about this part of the
9 study. And I'm simply asking you to agree with that
10 statement.

11 MR. BESHORE: Your Honor, it's -- it's
12 repetitive and I object. He already testified that he
13 didn't base his study on actual receipts and utilization
14 at any actual plants. He based it on calculated demands.
15 So it's been asked and answered several times.

16 MR. ENGLISH: I think the point, Your Honor, is
17 to understand in each instance in which there is data that
18 could have been available and is available today that
19 might have been examined but wasn't examined and just to
20 confirm that it wasn't. I mean, otherwise, I'm not even
21 sure why this witness is up here. I mean, if the study is
22 completely theoretical and has no basis in reality, that's
23 great.

24 MR. BESHORE: Oh, Your Honor, I object to that.

1 That -- I mean, the -- the reality is in Table 1, among
2 other things.

3 MR. ENGLISH: But the reality of Table 1 is
4 that it apparently doesn't reflect any real data of things
5 that were actually current in the marketplace.

6 MR. BESHORE: Well --

7 MR. ENGLISH: And it's old.

8 MR. BESHORE: The question to Dr. Ling has been
9 asked and answered several times and -- and I object to
10 it.

11 JUDGE BAKER: Well, I understand your
12 objection. I -- I think, Mr. English, if you'd sort of
13 formulate a question which would encompass what you have
14 just said you could get a response from the witness.

15 BY MR. ENGLISH:

16 Q Mr. Ling -- Dr. Ling, can you please confirm
17 that since you made a theoretical study only and didn't
18 look at actual utilization that the kind of data
19 difference that appears on page five of Exhibit 5 for May
20 of 2000 and on page 85 of Exhibit 5 for May of 2000 was
21 simply not considered in putting together your study?

22 ~~-----~~ A ~~-----~~ (Inaudible).

23 ~~MR. ENGLISH~~ MR. BESHORE: Your Honor --

24 THE WITNESS: Exhibit -- Exhibit 5 -- what is --

1 ~~---(inaudible)---~~ **referred to** in Exhibit 5 is -- I mean it
2 is **possible** ~~---(inaudible)---~~ **post reform** so I didn't -- I
3 didn't look at those numbers --

4 BY MR. ENGLISH:

5 Q I'm not asking post-reform, sir. If -- if you
6 had the same kind of data for May of '92, which actually
7 does appear in -- on page 85, you made no effort because
8 it wasn't part of your charge. Again, it's not a
9 criticism. I'm just understanding what it is. It's not
10 part of your charge and therefore please confirm that you
11 made no effort to look at that kind of data in making your
12 study.

13 A What I did in my report is based on market
14 order ~~---(inaudible)---~~ **pool milk, and the Class I milk**
15 **pooled** milk and Class 1 milk pool under those three
16 orders.

17 JUDGE BAKER: This is why the questions become
18 repetitive, because the witness is asked to respond --

19 MR. BESHORE: Your Honor --

20 JUDGE BAKER: -- and he did not -- he did not
21 respond in a very positive fashion.

22 MR. BESHORE: Well, Your Honor, it's a
23 rhetorical and -- you know, and repetitive question. And
24 I don't think Dr. Ling, you know, needs to respond in any

1 other way to --

2 MR. ENGLISH: I think cross examination --

3 MR. BESHORE: -- completely rhetorical.

4 MR. ENGLISH: It's not rhetorical. Did you
5 consider -- did you consider evidence that you've
6 testified you didn't consider? He's actually never
7 answered that question. If he would simply say that, I
8 would be able to move on.

9 MR. BESHORE: The report says it. His direct
10 testimony says it, says what he considered. It's been
11 asked and answered. He's said it many times.

12 JUDGE BAKER: It hasn't been answered that
13 directly, in my opinion.

14 MR. ENGLISH: I'll move on, Your Honor. I -- I
15 -- I agree with you, and if the answer is not in the
16 record, then the proponents won't have it.

17 (Pause)

18 MR. ENGLISH: I have no further questions at
19 this time.

20 JUDGE BAKER: Thank you, Mr. English. Are
21 there other questions for Dr. Ling? Mr. Vetne? I'll get
22 back to you, Mr. Stevens.

23 CROSS EXAMINATION

24 BY MR. VETNE:

1 Q John Vetne appearing for Friendship. Dr. Ling,
2 Table 1 of Exhibit 12 which is on the screen, you -- you
3 testified that the column labeled "Fluid Demand" is -- is
4 nothing more and nothing less simply than Class 1 milk.

5 A Class 1 milk pooled under those three orders.

6 Q And it's Class 1 producer milk or Class 1
7 receipts of the plants?

8 A ~~(Inaudible)~~ **Whatever is reported by the**
9 **Dairy Division as** Class 1 milk in the -- in statistics.

10 Q Okay. The statistics report for Class 1 plants
11 for distributing plants, Class 1 utilization pounds, and
12 then they also report Class 1 producer receipt -- producer
13 receipts that are allocated to Class 1. Do you know which
14 of those Class 1 numbers were used in your report, whether
15 it's Class 1 producer milk or total Class 1 milk at pool
16 plants?

17 A It's Class 1 milk reported in the -- in your
18 statistics.

19 Q Okay. If the annual statistics report Class 1
20 milk in two -- two different ways, one as producer milk
21 and one as Class 1 utilization of pool plants, you don't
22 recall right now which one you used?

23 A No.

24 Q Okay. Now, I understand that you did not

1 analyze fluid demand by reference to receipts of milk by
2 fluid plants, correct?

3 A It's whatever ~~---(inaudible)~~ **reported as Class**
4 **I milk pooled on the orders.**

5 Q I understand. You did not -- you did not look
6 at demand in terms of the milk required by fluid plants
7 for Class 1, Class 2, you know, whatever they want?

8 A ~~(Inaudible)~~ **It's Class I milk pooled.**

9 Q Do you -- do you have any information or any
10 judgment whatsoever on what the index under the column
11 "Fluid Demand" would look like if you examined receipts by
12 fluid milk plants as opposed to Class 1 use by fluid milk
13 plants?

14 A I didn't study that ~~---(inaudible)~~ **I don't**
15 **know.**

16 Q And you don't -- don't have any opinion on
17 whether the index would be different, whether it would
18 show greater seasonality or less seasonality?

19 A That's correct.

20 Q Okay. And you also did not include Class 2
21 milk. Do you have any opinion on whether if Class 2 milk
22 uses were included in the column "Fluid Demand," whether
23 greater Class 2 use in June, for example, might offset
24 lower Class 1 use in June?

1 A (Inaudible) **No, I don't.**

2 Q Okay. As I understand it, your -- your
3 analysis does not include Class -- any Class 2 milk as
4 part of the reserves, either operating reserves, seasonal
5 reserves, or excess reserves, am I correct?

6 A That's correct.

7 Q So all of the reserves come from Class 3 and 4,
8 correct?

9 A That's correct.

10 Q Okay. But nevertheless, there are -- there are
11 -- there is substantial Class 2 use in -- in the northeast
12 both pre- and post-reform. Do you have any judgment or
13 opinion on how the seasonal costs or the operating costs
14 of handling a balancing would be affected if Class 2 uses
15 of the market were included?

16 A (Inaudible) **I don't have an** opinion because
17 I didn't study that.

18 Q Would you agree that if Class 2 **= milk, which**
19 **is not considered reserves, were included in estimating**
20 **balancing cost** that the result could cause costs to go up
21 or could costs -- cause costs to go down?

22 A I didn't study the -- (inaudible).

23 Q You can't -- you can't say that it would go in
24 either direction?

1 A That's correct.

2 Q Okay. On page one of your exhibit -- of your
3 report, Exhibit 12, you state that typically fluid
4 processing plants operate fewer than seven days a week.
5 This expression of what is typical at fluid processing
6 plants is derived from your knowledge of fluid processing
7 plants from which period of time? Pre-1994, 1994 through
8 1999, or current?

9 A It's pre-1999.

10 Q Pre-1999. And did you actually gather any data
11 from fluid processing plants for 1999 and prior years to
12 verify your statement that that is typical?

13 A I made a statement in my 1985 report and that
14 was based on my ~~---(inaudible)---~~ **knowledge of working in**
15 **New York City in Federal Milk Order Number 2** --
16 ~~(inaudible)~~ **I had intimate knowledge about the provisions**
17 **of plants, fluid plants.**

18 Q Okay. So --

19 A And I assumed that since the fluid operation --
20 ~~(inaudible)---~~ **usually geared towards shopping patrons and**
21 customers and customers usually do weekend shopping. And
22 so it's the -- the processing schedule had to cater to
23 that.

24 Q Okay. So this statement is based on your

1 hands-on experience and working knowledge from working in
2 the Order 2 market administrator's in the mid 1980s?

3 A 1970s.

4 Q 1970s?

5 A Yeah.

6 Q Okay. Do you have any knowledge about changes
7 in distributing plant capabilities since the 1970s to
8 receive milk seven days a week and store it at the
9 distributing plant rather than having it balanced
10 elsewhere?

11 A ~~(Inaudible)~~ **No I don't.**

12 Q Would you agree with me that the number of
13 distributing plants that survived post-reform are
14 substantially fewer than those that existed in the 1970s
15 and '80s?

16 A I haven't looked at the statistics.

17 Q You're not aware based on the information that
18 comes across your desk that the number of distributing
19 plants in the country have decreased?

20 A Nationally, yes.

21 Q Nationally. And -- and is there any reason for
22 you to believe that that pattern has not also reflected in
23 the northeast?

24 A I have -- I haven't studied ~~==~~(inaudible) I

1 **can't say.**

2 Q On page five you refer to available information
3 on the cost of operating balancing plants. From what
4 period or periods of time is that --

5 A Which -- which schedule?

6 Q On page five of your report. Your second
7 column, "Fixed and Overhead Costs." Based on available
8 information, a butter powder plant with a capacity, et
9 cetera. Your reference to available information is
10 derived from what period or periods of time?

11 A ~~It -- (inaudible) -- includes -- (inaudible) --~~

12 **It was explained in a previous question, that the \$28**
13 **million** was based on a **my** study back in 1994.

14 Q So when you used the verb "is" as -- as present
15 tense, in fact it -- it's past tense. It's roughly a
16 decade old information?

17 A That -- 1994 ~~-- (inaudible) -- study in 2002 I~~
18 **did the study in 2000, 2001, 2002**, so that's less than a
19 decade.

20 Q Okay. Pardon me. As we sit here, it's eight
21 years old, the -- the --

22 A That's correct. And ~~-- (inaudible) -- what I~~
23 ~~have in the -- (inaudible)~~ **if you don't know what I have**
24 **the - (inaudible)- Plug in a number, anyone you want.**

1 Q In -- let me ask you a general question about
2 operating costs because you studied that quite a bit. If
3 a plant -- a butter powder plant is operating at 90
4 percent capacity in one month and if the following month
5 drops to 90 percent capacity, is the cost of that unused
6 five percent capacity the same as if the plant dropped
7 from, say, 40 percent to 35 percent capacity?

8 A Fixed operating costs ~~--- (inaudible) ---~~ **for the**
9 total fixed overhead costs would be the same.

10 Q The same per extra unit of powder?

11 A ~~(Inaudible). Not for --- (inaudible)~~ **Not per-**
12 **unit.**

13 Q No, okay.

14 A For the entire plant, the total fixed and
15 overhead costs should be the same.

16 Q Okay.

17 A The direct costs in the plant of unit -- you're
18 talking about per unit?

19 A Yes.

20 Q It'd be higher because some of the direct cost
21 is variable. Some semi-fixed. And then when you---
22 ~~(inaudible) ---~~ **spread** those into fixed cost overhead over
23 fewer units, then the cost per unit can be higher.

24 Q Okay. So let's see if I can paraphrase back to

1 you. If -- if a plant is reducing its capacity or its
2 used capacity from 40 percent to 35 percent, the -- the
3 cost per pound of powder produced is going to be greater
4 than if the reduction is from 90 percent to 85 percent?

5 A If -- if you use the rule of thumb I used, they
6 should be the same.

7 Q The same --

8 A The reduction should be ~~-- the (inaudible) --~~
9 **increase in per-unit** costs should be the same.

10 Q The increase per pound of powder would be the
11 same whether you're going from 90 to 85 or 40 to 35?

12 A That's -- that's if you follow the -- what I
13 had in the report, that's correct. But --

14 Q I understand that your report assumed that.
15 But I'm asking you whether in real life operation there is
16 greater per production unit cost as used capacity goes
17 down?

18 A I think the -- when you're talking about real
19 life, you'd better ask that question to real-life
20 operators. They can answer your question better than I.

21 Q Okay. The estimated costs in Table 5 and in
22 Table 3 are indicated by footnotes to be based on an
23 assumption of the number of pounds of powder and of nonfat
24 dry milk that can be produced. You use a constant yield

1 throughout the year, correct?

2 A That's correct.

3 Q And in fact, would you agree with me that the
4 yield per hundredweight of milk is greater in the fall
5 months than it is in the spring?

6 A The -- the yield factor is -- depends on
7 composition of milk.

8 Q And -- right. And composition of milk in terms
9 of fat and nonfat solids tends to be greater in producer
10 milk in the fall months, correct?

11 A I haven't looked at that number closely so I'm
12 not prepared to answer the question.

13 Q All right.

14 A The reason I used 4.48 ~~---(inaudible)---~~ **and**
15 **8.13** those are the numbers -- those are the ~~---(inaudible)---~~
16 **numbers used in CCC's price support calculation.** They are
17 convenient numbers to use.

18 Q All right.

19 A And if you don't like those numbers you can
20 ~~---(inaudible)---~~ **plug in your own numbers.**

21 Q No, I'm not -- I don't -- I don't want to get
22 into how much yield there is. I'm trying to ascertain the
23 cost effect by milk that would producer a greater yield or
24 lesser yield. Let me ask it this way. If producer milk

1 ~~is~~ **has** a greater density of fat and nonfat solids, that is
2 fat is higher and nonfat solids are higher, am I correct
3 that that would tend to reduce the costs to the butter
4 powder plant of producing a pound of powder and a pound of
5 nonfat dry milk versus milk that has more water in it and
6 get the best yield?

7 A I mean, it -- (inaudible) -- higher yield ~~but~~
8 = **if components are higher** yields should be higher.

9 Q And if the yields are higher, the cost to
10 produce a pound of butter and powder is lower, correct?

11 A ~~Considerably~~ **Conceptually**, yeah.

12 Q In response to a question by Steve Rosenbaum
13 concerning excess reserves, you responded that excess
14 reserves are pooled to promote orderly marketing. Can you
15 --

16 A That's my understanding.

17 Q Can you elaborate on your understanding of why
18 that is so?

19 MR. BESHORE: Could I -- I'd like to object to
20 that, Your Honor. That's -- that's a legal analysis. I
21 don't know. It's beyond the scope of Dr. Ling's study.
22 Why the secretary has -- why -- why he allows -- she
23 allows Class 3 and Class 4 milk to be pooled in various
24 orders or as a general matter, I mean, I object.

1 JUDGE BAKER: Well, the question, I think,
2 related ~~==~~(inaudible) to reserves.

3 MR. VETNE: Pardon?

4 JUDGE BAKER: You were relating your question
5 to reserves.

6 MR. VETNE: To -- to excess reserves. That
7 shows a big swathe on the -- on that one -- that one
8 graph. And I'm not asking him to put himself in the mind
9 of the secretary. I'm asking him to play the role of
10 economist for which he was qualified as an expert.

11 JUDGE BAKER: But what do you want him to do?
12 Explain why he thinks --

13 MR. VETNE: Why -- why -- why as a matter of
14 economics it's a good idea to -- to do what he's testified
15 to on answer to cross examination to pooled excess
16 reserves to promote orderly market -- how as an economist
17 does pooling excess reserves promote orderly marketing.

18 MR. BESHORE: I object to that. Beyond the
19 scope of Dr. Ling's testimony. Way beyond the scope.

20 MR. ENGLISH: I join that objection.

21 JUDGE BAKER: Pardon?

22 MR. ENGLISH: I join that objection. It is
23 beyond the scope of --

24 MR. VETNE: No, it's not.

1 (Laughter)

2 JUDGE BAKER: He's asking him about what
3 factors may enter into orderly market conditions.

4 MR. VETNE: Yes.

5 JUDGE BAKER: As ~~---(inaudible)---~~ **an economist**
6 and whether or not the pooling of reserves is a factor
7 which can enter into orderly marketing agreements.

8 MR. VETNE: I'm asking him about his prior
9 testimony when he said that excess reserves are pooled to
10 promote orderly marketing. Why is that so.

11 JUDGE BAKER: He made the statement to that
12 effect, that excess pools promote orderly marketing. Now
13 he can say whether he has any basis for it or he is simply
14 repeating something he's heard.

15 MR. VETNE: Yes, he can. Yes, he can.

16 THE WITNESS: That's my understanding. There's
17 -- why it's pooled and so forth, I think other people are
18 more qualified to answer that question.

19 BY MR. VETNE:

20 Q When you used the term "orderly marketing" then
21 in response to the prior question, what did you have in
22 mind as far as, you know, what is orderly marketing for
23 that purpose?

24 A What I was ~~---(inaudible)---~~ **Whatever it says in**

1 **the statute of marketing orders.**

2 Q Pardon?

3 A Whatever -- whatever meant -- whatever is meant
4 by orderly -- whatever "orderly marketing" meant in the
5 statutes and in market orders. ~~I think the --(inaudible)~~
6 **I simply read those and recited them.**

7 Q I see. So you have no economic opinion on what
8 constitutes orderly or disorderly marketing?

9 ~~MR. STEVENS:~~ **THE WITNESS:** It's -- it's beyond
10 the --

11 **THE WITNESS:** My report so I --

12 **MR. STEVENS:** Your Honor, I'm going to object
13 now. Is -- is -- is the question of this witness who is
14 an employee of the Department of Agriculture, now we're
15 asking for his personal opinion about things or -- or
16 his official position or what? I mean --

17 **JUDGE BAKER:** The question was raised as to
18 whether or not he has an opinion as to what an orderly
19 market can be.

20 **MR. STEVENS:** Well, I think he answered --

21 **JUDGE BAKER:** -- broad.

22 **MR. STEVENS:** -- and I think he answered it and
23 he answered correctly that -- that this is for others to -
24 - to state what the -- what the parts of orderly marketing

1 are in any given order in any given time based on
2 conditions as expressed many times by the secretary of
3 Agriculture in many decisions and rulings.

4 JUDGE BAKER: Yeah. I understand that, Mr.
5 Stevens. But his answer reflects that he did not ==
6 ~~(inaudible)~~ == **independently** make an analysis and a study
7 and evaluate that with respect to what are orderly
8 marketing conditions and what might or might not enter
9 into them. He has not done that. He said he just looked
10 at ~~==(inaudible)=~~ **something** and decided what he
11 thought.

12 Now, if I misstated his testimony, I'd like it
13 corrected now.

14 MR. STEVENS: I think I agree with what you
15 said, Your Honor. And in saying that, he's answered the
16 question to the best of his ability. And we just keep
17 asking questions now about orderly marketing which I think
18 is inappropriate from this witness.

19 JUDGE BAKER: Mr. Vetne?

20 BY MR. VETNE:

21 Q We're looking at the screen here of Figure 1 in
22 Exhibit 12. And there's a large green swathe -- not green
23 in your Exhibit 12 -- there's a large green swathe that
24 says "excess reserves." Does the presence of what you

1 have identified as excess reserves affect in any way
2 positively or negatively the balancing -- the costs to
3 balance the Class 1 market in the northeast?

4 A The way I did it in my report is try to isolate
5 or ~~---(inaudible)---~~ **quantify** the minimum volume of milk
6 that's necessary for balancing the Class 1 market.

7 Q Some --

8 A Anything beyond that I called excess reserve.

9 Q Some of those excess reserves may be Class 4
10 milk, correct?

11 A That's correct.

12 Q All right. Does the presence of operating
13 capacity and used capacity of excess milk in Class 4
14 operations either add to or subtract from the costs that
15 you have included in your report and your estimated costs?

16 A Could you please repeat that question?

17 Q Does the existence of capacity that is actually
18 used to make butter and powder in the excess reserve
19 category either mitigate or aggravate costs to balance
20 fluid demand?

21 A Again, I said that the reason I did it the way
22 I did was to -- to focus and isolate the function --
23 balancing function. Now ~~---(inaudible)---~~ **in real-life**
24 balancing is not done ~~---(inaudible)---~~ **by III plants, is**

1 **by several plants,** but the cost is difficult to come by.
2 So I had to use -- to isolate and assume it's done by --
3 ~~(inaudible)~~ **III plants. For the real-life processing**
4 **costs, I think it's a problem than you need** to have other
5 witnesses speak to -- to that.

6 JUDGE BAKER: Mr. Vetne, I just want to be sure
7 I understand your question. But there are costs
8 associated with the fluid demand, is that -- we all agree.
9 Do you agree with me on that? And now it's not -- I'm not
10 questioning you. I just want to be sure I understand this
11 witness's response. There is also a cost associated with
12 making powder.

13 Now, was your question directed to the extent
14 to which and the extent, if any, the cost of making powder
15 would have on the fluid demand column, a relationship
16 between the columns?

17 MR. VETNE: Sort of.

18 JUDGE BAKER: Well, what -- what was it you
19 were speaking of?

20 MR. VETNE: The question -- the question is
21 directed to -- I'm trying to paraphrase it as many times
22 as -- different ways as I can. Does the fact that there
23 are plants that are making butter powder on a monthly
24 basis from excess reserves tend to either increase or

1 decrease the costs of those plants in handling butter and
2 powder to balance the fluid market.

3 In other words, there's butter and powder there
4 already because we have a huge swathe of excess reserves
5 which includes butter and powder operations. Those plants
6 aren't there solely to balance the fluid market because we
7 have all of those excess reserves.

8 So my question is, does the existence of plants
9 that have used capacity and are processing butter and
10 powder on a monthly basis of excess reserves, does -- does
11 that function tend to decrease their costs when they get
12 that little bit of extra milk to balance the market.

13 THE WITNESS: You have to look at the whole
14 configuration of milk volumes and the configuration of
15 plants to answer that question. I haven't done that so I
16 cannot answer the question.

17 BY MR. VETNE:

18 Q Okay --

19 A -- the cost number -- cost -- is very difficult
20 to come by. So I have -- since I didn't look at that, I
21 don't think I can answer your question.

22 Q Would I be correct in -- in assuming that
23 there's likely an effect but we don't know from what
24 you've looked at whether the effect is positive or

1 negative?

2 A It's -- it can be positive, can be negative, it
3 can be only interaction between necessary ~~excesses~~
4 **reserves and excess reserves.**

5 MR. VETNE: Thank you.

6 JUDGE BAKER: Thank you, Mr. Vetne. Are there
7 other questions? Yes, Mr. Stevens?

8 CROSS EXAMINATION

9 BY MR. STEVENS:

10 Q Yes, Garrett Stevens, Office of General
11 Counsel, USDA. Dr. Ling, you were requested by parties at
12 the hearing to prepare the exhibit and your statement?

13 A I was asked by the Association of Dairy
14 Cooperatives in the Northeast to -- to estimate costs.

15 Q All right. And you did that? That's your --

16 A I did that.

17 Q -- that's your report, Exhibit 12?

18 A That's correct.

19 Q And you have a statement which you made into
20 the record?

21 A That's correct.

22 Q And you had the approval of your supervisors
23 there at USDA to come and appear today?

24 A ~~(Inaudible)~~ -- **I have the approval of my**

1 administrator.

2 Q Now -- so you prepared this document and your
3 statement. Was it prepared by you or -- did someone else
4 help you with it or did you prepare it yourself?

5 A I prepared it myself. Of course, it has to go
6 through the channels for approval.

7 Q Okay. So -- so prepared by you, then it was
8 approved by various channels in the Department?

9 A That's correct.

10 Q Various individuals in -- offices. Now, so it
11 was prepared by you and reviewed by -- in the Department?

12 A By my supervisors.

13 Q And -- and you're presenting this material here
14 today, it's not in favor or in opposition to any proposal,
15 is it?

16 A No.

17 Q It's just -- just to assist the parties in the
18 conduct of the hearing?

19 A That's correct.

20 Q And for their use as they -- as they choose to
21 use it?

22 A As they see fit.

23 JUDGE BAKER: Thank you, Mr. Stevens. Yes, Mr.
24 Tosi?

1 CROSS EXAMINATION

2 BY MR. TOSI:

3 Q Thank you, Dr. Ling, for coming back today.
4 Appreciate your patience.

5 A It's my pleasure.

6 Q On the basis of your study, by coming up with
7 the various cost estimates that you have based on a 10
8 percent reserve margin or a 20 percent reserve margin -
9 -

10 A Ten percent operating reserve.

11 Q Excuse me. Yes. I stand corrected. Would you
12 be able to use that number or could one use that number to
13 determine what the per hundredweight cost of balancing
14 would be for all milk on the market on the basis of those
15 costs? For example, if -- if -- at the 10 percent level,
16 if it's -- if the number was 9.7 million, if we divided
17 that by the total hundredweight of milk on the -- on the
18 market --

19 A If you upgrade ~~---(inaudible)---~~ **agree with the**
20 **formula and cost** assumption in the cost estimate.

21 Q Right.

22 A That's correct.

23 Q Okay. I was just wondering that if -- that if
24 -- if -- if we look at it that way if that would be a

1 number that would be legitimate in the context of your
2 study?

3 A Yeah. If you agree with my assumptions on the
4 cost estimates.

5 Q Okay. Also, I guess I'm not sure which one to
6 ask first. One is, you know, should your study be used to
7 determine a measure of benefit to all members who pool
8 milk on the market because of the existence of these
9 butter powder plants that perform this balancing function.
10 You know, should the -- should it be used or can it be
11 used?

12 A Can you repeat that?

13 Q Yes. Should your study or can your study be
14 used to determine a measure of -- of the degree of benefit
15 that accrues to all producers who are pooling milk or
16 handling milk on the northeast market because we have
17 these balancing plants?

18 A It's -- it's a benefit to the entire market,
19 producers and also consumers also.

20 Q Yes. I guess looked at another way your study
21 examined costs but -- but the benefits that certain
22 entities incur -- how is that -- if they're compensated
23 for that, how -- how would producers on the entire -- how
24 are producers in the entire market benefiting from that --

1 from that balancing function?

2 For example, we can determine on a per
3 hundredweight basis -- and I'm going to use a hypothetical
4 number. Let's say your study suggests that the cost per
5 hundredweight for all milk pooled on the northeast market,
6 let's say it's four cents a hundredweight, okay?

7 A You mean for the balancing?

8 Q Yes, for balancing. If that balancing didn't
9 occur, should -- given that that balancing occurs, how
10 much -- how much more money per hundredweight results from
11 having these balancing plants perform this function and
12 incur the cost, for example, of four cents per
13 hundredweight?

14 A I -- I haven't studied that so I cannot answer
15 the question.

16 Q So you were asked -- you testified that certain
17 parties at the hearing asked you to do a study to come up
18 with an estimate of the cost of -- of balancing in the
19 northeast, is that correct?

20 A That is correct.

21 Q Okay.

22 A Let me explain. ~~Cost study's~~ **Coop services**
23 function is to provide research, technical -- not assist
24 in education, assistance to cooperatives. That's part of

1 our charge.

2 Q Okay. And in that regard, would it be accurate
3 to say that all the information that is contained in your
4 study comes from published information? For example, the
5 **only normally** published and available milk marketing order
6 statistics or other studies that you referenced?

7 A The milk volume ~~== (inaudible) ==~~ **probably none**
8 ~~of the stated costs and no published numbers~~ **statistics**
9 **are public numbers, the costs are not published.**

10 Q Okay. And just coming up with -- I mean,
11 you're dealing with entities that have -- that operate
12 these balancing plants. And was there a reason offered to
13 you why no actual cost data was shared with you and that
14 you had to -- the people that are asking you to determine
15 what their costs are for balancing -- I don't know if any
16 real cost information was shared with you in being able to
17 do your study.

18 A I -- I didn't ask them for that. To my
19 knowledge, no plant operators -- I mean ~~== (inaudible) ==~~
20 ~~for balancing, which == (inaudible) == for constant~~
21 **production plant accounting people, markdown or balancing,**
22 **of costs for constant production.**

23 Q Okay. Next to where it's just sort of -- I'm
24 trying to test the witness of how we could perhaps rely on

1 your study. Let's say, for example, Class 1 use increases
2 dramatically or significantly for a -- let's say for a
3 year or for a very long period of time. And using your
4 study methodology, would you -- would you conclude that
5 any increase in the unused plant capacity that results
6 from the increase of Class 1 use represent an increased
7 balancing cost to the market?

8 A Would you repeat that?

9 Q Okay. Assume for a moment that Class 1 demand
10 in the northeast increases significantly for a long period
11 of time. By that I mean more than several months. On --
12 on the basis of the methodology of your study and you were
13 going to look at that period of time to come up with a
14 cost estimate for balancing, because Class 1 demand had
15 significantly increased, okay, that may result in unused -
16 - increased unused plant capacity at the balancing plants?
17 There's less milk available to keep those plants full, the
18 balancing plants?

19 A If -- I had to study that, what -- on such a --
20 ~~(inaudible) -- if the deliveries -- (inaudible) --~~
21 **essentially, if the deliveries was assigned** might result =
22 ~~=(inaudible)~~ **because.** But let me backtrack. I think I
23 need to study that or perhaps ~~=(inaudible)~~ **study that to**
24 **answer your question.**

1 Q Another one is, let's say for example
2 production costs -- excuse me, milk production increases
3 and let's say the existing balancing plants, the butter
4 powder plants that we're referring to are such that they
5 really can't handle the capacity and they make a decision
6 to increase the -- the size of your balancing plants, the
7 variable they handle a much larger volume of milk, okay?

8 And let's say for example that they make a
9 decision to increase in some size to some other larger
10 capacity. And -- and if the decisions they were -- they -
11 - they -- they added too much capacity such that they're
12 not entirely able to use all that, would your study then
13 characterize that additional unused plant capacity as a
14 balancing cost of the -- across the -- that it would be a
15 -- an increase in balancing costs or that it should be
16 considered a -- part of balancing costs to the market?

17 A ~~(Inaudible)~~ -- **The statistics that I** used in
18 my report -- put into the -- the volume of necessary
19 reserves.

20 Q Mm-hmm.

21 A ~~(Inaudible)~~ **That needs to be processed.**

22 Q I'm just -- I respect the methodology in your
23 study --

24 A Yeah -- yeah --

1 Q -- it is -- we have a different set of
2 information now because it's a new Northeast Order. And
3 what I'm trying to do is --

4 A ~~(Inaudible)~~ Um, um, um.

5 Q -- your methodology and the same conceptual
6 ideas in terms of how do we get a handle on balancing
7 costs, that if other things change, for example, increases
8 in production. If a plant decides to grow larger, Class 1
9 demand changes, and there's an impact on the volume of
10 milk that's going to be at balancing plants, if the
11 methodology of your study can be used then to transfer --
12 excuse me, to transfer the -- the fundamentals of your
13 methodology into this new era of order reform for the
14 northeast.

15 A Well, if I understand your question correctly,
16 the balancing is -- should be done at the plant that's
17 privy to the ~~---~~(inaudible)~~---~~ **necessary reserve** order.
18 If you ~~---~~(inaudible)~~---~~ **have a plant, that's a business**
19 **judgement, that's a, that should not be - (inaudible)-**
20 **balancing.**

21 Q Also, in your conclusion -- I think it's on
22 page nine of your -- of your study. In the conclusions
23 you -- if I may quote from it, "Therefore, knowing how
24 much operating reserves are needed, it's ~~typical~~ **pivotal**

1 for the cost estimation and that this report uses 10 and
2 20 percent operating reserves above fluid demand for
3 illustration."

4 With respect to knowing how much operating
5 reserves, you know, coming up with an answer for what are
6 or what should be the operating reserves, do you have an
7 opinion with respect to how the secretary should determine
8 what -- what would be legitimate, say, for the northeast
9 marketing area?

10 A If the secretary agreed with all my
11 assumptions, cost estimates, what I have here is pretty
12 solid, I think.

13 Q Given that your outcomes are dependent upon
14 -- this doesn't depend upon -- the level of the -- what
15 percentage of operating reserves, in your opinion, should
16 -- should we be thinking more of 10 percent or 20 percent
17 or is that a number that you think perhaps might be policy
18 -- a policy determination?

19 A I don't think it's a policy determination. It
20 should be the experience of the market, of what actually
21 happened in the market.

22 Q Okay.

23 A What -- what -- what's needed to satisfy the
24 demand.

1 Q And were you here yesterday to -- to hear Mr.
2 Gallagher's testimony --

3 A I was here --

4 Q -- some of the features of the -- of the
5 northeast marketing area?

6 A I was here and I didn't pay him that much
7 attention.

8 (Laughter)

9 BY MR. TOSI:

10 Q I was just -- I was going to probe a little bit
11 about your statement there in the conclusions that in real
12 life reserve balancing is carried out among many
13 manufacturing plants. And I was going to try to relate
14 that statement in your study to some of the
15 characteristics that Mr. Gallagher offered about the --
16 the nature of manufacturing plants in the northeast. But
17 I'll let it go. It's all right.

18 A Thank you.

19 MR. TOSI: Thank you.

20 JUDGE BAKER: Very well. Thank you. That
21 brings us to the time for our morning recess. We'll take
22 a 15-minute recess.

23 (Brief recess)

24 JUDGE BAKER: We're back in order after our

1 morning recess.

2 (Pause)

3 JUDGE BAKER: The court reporter has informed
4 me that he needs three additional copies of Exhibits 10
5 and 11. Those were the ~~---(inaudible)---~~ **testimony and**
6 exhibits of Mr. Gallagher. Does anyone have them --

7 SPEAKER: How many copies, Your Honor? Three?

8 JUDGE BAKER: The court reporter says he needs
9 three, yes.

10 (Pause)

11 COURT REPORTER: I'm okay. He gave it to me
12 earlier.

13 JUDGE BAKER: He gave them to you?

14 COURT REPORTER: Yes. Mr. Beshore did.

15 JUDGE BAKER: Oh, all right. Thank you very
16 much, Mr. Beshore.

17 MR. BESHORE: You're welcome.

18 JUDGE BAKER: You're very helpful.

19 Very well. Dr. Ling is still on the stand.

20 Are there any additional questions?

21 (No response)

22 JUDGE BAKER: Does anyone have any additional
23 questions for Dr. Ling?

24 (No response)

1 JUDGE BAKER: There are none. Thank you very
2 much.

3 THE WITNESS: You're welcome.

4 JUDGE BAKER: Thank you.

5 (Whereupon, the witness was excused.)

6 MR. BESHORE: Our next witness is Bob
7 Wellington.

8 JUDGE BAKER: Very well. Mr. Wellington?
9 Whereupon,

10 ROBERT WELLINGTON

11 having been first duly sworn, was called as a witness
12 herein and was examined and testified as follows:

13 MR. BESHORE: Before Mr. Wellington testifies,
14 Your Honor, I'd like to move the admission of Exhibit 12,
15 Dr. Ling's study, into evidence.

16 JUDGE BAKER: Very well. Are there any
17 questions or objections?

18 (No response)

19 JUDGE BAKER: Hearing none, Exhibit 12 is
20 admitted and received into evidence.

21 (The document previously
22 marked for identification as
23 Exhibit 12 was received in
24 evidence.)

1 MR. BESHORE: I would also like to mark for
2 identification with the next two consecutive numbers which
3 I believe to be 13 and 14. Exhibit 13 is the testimony of
4 Robert D. Wellington with respect to Proposal 7. I've
5 made four copies available to the reporter and one for
6 Your Honor. And there are copies in the room for all
7 participants.

8 Exhibit 14 would be the proposed exhibits with
9 respect to Proposal 7 separately collected as presented by
10 -- prepared for presentation by Mr. Wellington.

11 JUDGE BAKER: Before -- before we continue --
12 what you gave me right now relates to Mr. Gallagher, not
13 Mr. Wellington. Do you want me to give it to the court
14 reporter?

15 COURT REPORTER: That's the same here. Mr.
16 Gallagher.

17 (Pause)

18 JUDGE BAKER: Oh, I see. I see.

19 MR. BESHORE: This is --

20 JUDGE BAKER: That's --

21 MR. BESHORE: -- this is the --

22 JUDGE BAKER: That's his testimony.

23 MR. BESHORE: That's the testimony.

24 JUDGE BAKER: That's the testimony. Here are

1 the exhibits.

2 MR. BESHORE: Right.

3 JUDGE BAKER: Right.

4 (Pause)

5 JUDGE BAKER: Mr. Beshore, according to your
6 request, the testimony of Robert Wellington shall be
7 marked for identification as Exhibit 13 and the document
8 marked "Exhibits" shall be marked for identification as
9 Exhibit 14, and the testimony Exhibit 13.

10 MR. BESHORE: Thank you, Your Honor.

11 (The documents referred to
12 were marked for identification
13 as Exhibits 13 and 14.)

14 MR. BESHORE: And there are -- there are many
15 copies available in the room if anyone else needs copies
16 of Mr. Wellington's -- proposed Exhibits 13 and 14.

17 DIRECT EXAMINATION

18 BY MR. BESHORE:

19 Q To start, Mr. Wellington, would you please give
20 us your name and business address?

21 A My name is Robert D. Wellington. My business
22 address is 100 Milk Street in -- Massachusetts.

23 Q And, Mr. Wellington, could you briefly tell us
24 about your professional background, your educational

1 degrees, and professional experience?

2 A I have a Bachelors and Masters degree in
3 agricultural economics from Rutgers University where I
4 also taught for a while. I worked for the market
5 administrator's office in New York City after I obtained
6 my Masters degree. And I worked there for approximately
7 11 years. I served as economist, senior economist, and
8 then also chief of research and cooperative relations.

9 After I left the market administrator's office,
10 I became senior vice president for AgraMark Dairy
11 Cooperative. And my role there is to work in economics,
12 communications, and legislative affairs.

13 Q For how many years have you been employed by
14 AgraMark in that capacity?

15 A Thirteen years.

16 Q Do you have any idea how many times you've
17 testified in a federal order hearing?

18 A One too many.

19 (Laughter)

20 BY MR. BESHORE:

21 A Probably -- probably eight or -- eight or --
22 eight or nine times during the time period.

23 Q You've also testified with respect to your
24 areas of expertise before Congress -- committees of

1 Congress?

2 A Several times.

3 Q And -- and other tribunals?

4 A Yes. And I also work very closely with the
5 states' departments of agriculture, state legislatures,
6 particularly in the six New England states but also in New
7 York state.

8 MR. BESHORE: I would offer Mr. Wellington for
9 testimony -- testifying as an expert in agricultural
10 economics and dairy marketing.

11 JUDGE BAKER: Are there any questions or
12 objections or voir dire with respect thereto?

13 (No response)

14 JUDGE BAKER: Let the record reflect there is
15 no response. Your request is granted, Mr. Beshore.

16 MR. BESHORE: Thank you, Your Honor.

17 BY MR. BESHORE:

18 Q Mr. Wellington, would you proceed with your
19 testimony as distributed in Exhibit 13 -- Exhibits 14?

20 A Yes, I would. My name is Robert D. Wellington.
21 I serve as senior vice president for economics,
22 communications, and legislative affairs for AgraMark Dairy
23 Cooperative. I have worked in that position for AgraMark
24 for the last 13 years.

1 Prior to that, I was employed by the office of
2 the market administrator, New York-New Jersey milk market
3 area, for 11 years. My position with the market
4 administrator's office included senior economist and chief
5 of research and cooperative relations.

6 AgraMark is a Cappra Volstead cooperative
7 headquartered in -- Massachusetts with approximately 1350
8 members located in six New England states and New York.
9 We market about 2.5 billion pounds of milk annually. Our
10 members own and operate three manufacturing plants,
11 including -- Cheese plant in Middlebury, Vermont, a cheese
12 and other dairy product plant in Cabot, Vermont, and a
13 butter and powder plant in West Springfield,
14 Massachusetts.

15 I am testifying here today in support of
16 Proposal 7, which involves payments from the pool to
17 handlers to perform marketwide services with respect to
18 all purchasers in the order. This testimony is on behalf
19 of the Association of Dairy Cooperatives of the Northeast,
20 abbreviated ADCNE.

21 ADCNE consists of the following cooperatives:
22 AgraMark, Dairy Farmers of America, Dairylea, Land O'
23 Lakes, Maryland and Virginia Milk Producers, Oatka, St.
24 Albans, and Up State Farms. These farms -- these

1 organizations represent more than 65 percent of the milk
2 pooled in the federal order -- in the Federal Order Number
3 1.

4 Q Mr. Wellington, before you go into the
5 substance or the body of your testimony, I wonder if we
6 could just briefly review the exhibits that you will be
7 referring to in your testimony which are compiled in
8 Exhibit 14. And there are nine separate documents in
9 Exhibit 14 as you identify in the index. And I wonder if
10 you could just briefly go through those so we have a
11 preview before you refer to them in more detail in your
12 testimony.

13 A Okay. Table 1 is the first table and it's
14 entitled, "Estimated Milk Receipts at Class 1 Distributing
15 Plants by Members and Non-Members of the Northeast Order,
16 January 2001 to June 2002."

17 In this table, it contains basically
18 information that was from the government exhibit and that
19 I guess is Exhibit Number 5. That's where we got the
20 information for the first column, "Class 1 Producer
21 Receipts." That's a -- that's from that Table 5. It is
22 not adjusted by any other receipts from inside the order
23 or outside the order. It's a straightforward figure, much
24 to the way that Dr. Ling used.

1 The estimated total receipts of distributing
2 plants -- distributing plants do not just receive Class 1
3 producer receipts. They also receive milk that's used for
4 other classes. Their -- their receipts are used not just
5 for Class 1 is, I guess, a better way to put that.

6 And so we have about 85 percent of the milk
7 receipt that goes to distributing plants is usually around
8 Class 1. I believe Mr. Fredericks testified to that level
9 between 85 and 90. So we chose the 85 percent level to
10 use there.

11 So what we're trying to get to on that second
12 column is the estimated total receipts of distributing
13 plants. And then we tried to put that on an average per
14 day basis because, of course, you have different days of
15 the month and we wanted to take out that variation,
16 particularly in a month like February versus a month like
17 March.

18 Non-cooperative producer receipts. That comes
19 from the appendix table that Mr. Fredericks put in. And
20 then we also, I believe -- refer back specifically to his
21 table.

22 (Pause)

23 BY MR. BESHORE:

24 A Mr. Beshore, can I get a copy? I guess I

1 didn't --

2 Q Exhibit 5?

3 A It's -- it's Exhibit 5. It's either Appendix
4 Table 15 or -- thank you -- or -- or 70. I don't recall
5 now which --

6 SPEAKER: Page 88.

7 BY MR. BESHORE:

8 A Page 88? Thank you, Bill.

9 I just pulled the straightforward numbers from
10 there on non-cooperatives. Keep in mind I start on
11 January 2000. And that's that number, for example, in
12 January of 200, 5 -- 458 million is the number there. I
13 also did it on average per day.

14 Then I looked at Appendix Tables 15, which
15 contains producer deliveries to pool distributing plants,
16 and I applied those percentages that are receipts --
17 percentage of proprietary handler producer receipts
18 delivered to distributing plants. And that is that column
19 labeled, "Percent of Proprietary Handler Producer Receipts
20 Delivered to Distributing Plants."

21 From those numbers, I estimated the volume
22 today of non-cooperative receipts delivered to
23 distributing plants. And basically, that's a simple
24 computation. It's the 85.4 percent of January 2000, and

1 that is multiplied by the 4.8 billion pounds per day
2 figure in the -- in the column -- I guess that would be
3 the fourth column of data. And I come up with 12.6
4 billion pounds, 12.6 billion pounds per day.

5 The next column shows that 12.6 billion pounds
6 as a percent of the low month. The low month in this case
7 was August. And so if we look at January of 2000 as a
8 percent of the August number -- keep in mind this is
9 rounded to one decimal place in terms of billion pounds so
10 they're not exactly the same number. They would be 101
11 percent for that month.

12 When I go to the last two columns, I get to the
13 residual amount of milk at these distributing plants, that
14 being 33.7 for January. I take away the 12.6 for the non-
15 cooperative receipts, and I end up with 21.1 million,
16 which is an estimation of the volume of cooperative
17 receipts in distributing plants.

18 I also in the last column then took that
19 percentage of the low month. The low month in this case
20 was July of 2001. And I showed January as a percentage of
21 July, and that worked out to be 117 percent. In other
22 words, two -- 21 -- 21.1 million is 117 percent of 18
23 billion.

24 That's Table 1. That is by far the most

1 complicated table I have.

2 Table 2. Table 2 is entitled, "Producer
3 Receipts Classified as Class 4 in the Northeast Federal
4 Order and Milk Used for Manufacturing at the AgraMark West
5 Springfield, Massachusetts Plant." I've sort of combined
6 a variety of information here just for simplicity's sake.
7 I used this a couple different times during the course of
8 my - my written testimony.

9 The Class 4 pounds are the pounds that come
10 from I believe it's page five of the market administrator
11 data, Class 4 pounds. Also unadjusted by any movements of
12 the orders. It's a straightforward figure.

13 The West Springfield pounds are the pounds that
14 we use in West Springfield, the -- the combined pounds of
15 product, which is basically milk and cream to make butter
16 and nonfat dry milk.

17 And the last column is putting this as a
18 percentage of the capacity. The capacity we have at the
19 plant is 2.2 million pounds per day.

20 And so we figured the number of days in each
21 month divided by -- for example, January has 31 days. 2.2
22 times 31 divided by 55.3. That's how we got an 81 percent
23 figure in that one.

24 Table 3 are indices of seasonality of producer

1 milk deliveries and milk demand. The Ling study in the
2 year 2000 and 2001 averages for the Northeast Order. This
3 duplicates what Dr. Ling had in his Table 1 of his
4 exhibit, which I believe is Number 7.

5 Q Twelve.

6 A Twelve.

7 Q Table 1 of Exhibit 12.

8 A Twelve, right. I had the wrong number.

9 I then took the producer deliveries that were
10 under the order for the year 2000 and 2001. I took the
11 average -- for example, the average for January year 2000
12 and 2001, and I divided that by the 24-month average over
13 that period to show basically how much -- how -- how those
14 supplies differed from that average. And in January it
15 was 102 percent of the average.

16 I wanted to do that to try to get some
17 comparison to the Ling study using 2000 and 2001 data.
18 But once again, that data is straightforward market
19 administrator data. The Class 1 -- on the, I'm sorry,
20 producer receipts.

21 I did the same thing in the last two columns,
22 which are fluid demand. I took Dr. Ling's numbers from
23 his Table 1 of Exhibit 12 and then I -- I also calculated
24 from page five of Exhibit 5 using the two-month -- the

1 same month two-year average divided by the average for the
2 24-month period.

3 And for example, I took the average of January
4 2000 and January 2001 and I divided that by the average of
5 the 24-month period of 2000 and 2001 on the Class 1
6 receipts and came up with a number of 100 for the month of
7 January.

8 The figures that are next, they're very
9 simplistic figures. The first one is producer receipts
10 per day classified as Class 1. And this was taken from
11 page five of Exhibit 5. And I just plotted that out
12 during the period to show the movement of milk. This is
13 sort of a graphic demonstration of the movement of
14 producer receipts over time since the order was -- the
15 current order was promulgated on January 1st of 2000.

16 The second figure, the total producer receipts
17 per day, which is basically the same number from that
18 Table 5, Exhibit 5. I'm not -- the source is the same
19 and it's producer receipts per day. Figure 3 is the
20 difference between the two, producer receipts per day not
21 classified as Class 1. Once again, all from Table 5,
22 Exhibit 5.

23 Figure 4, producer receipts classified as Class
24 4. These numbers are taken from page five of Exhibit 5,

1 the -- the exact amount of producer receipts used as Class
2 4.

3 Figure 5 is milk receipts used for
4 manufacturing at the AgraMark West Springfield,
5 Massachusetts, plant. And that's basically a graphic
6 representation of the numbers for -- for the AgraMark
7 plant in Table 2 of my exhibit.

8 Figure 6 also comes from Table 2 of my exhibit
9 and it represents the percent manufacturing capacity used
10 at the AgraMark West -- West Springfield, plant, January
11 2000 to June 2002.

12 Figure 7 shows the seasonal operating and
13 necessary reserves for the Northeast Order. And that
14 takes Dr. Ling's information and basically presents it in
15 a slightly different fashion. It -- it isolates this
16 information just on seasonal reserve and necessary
17 reserve.

18 One of the issues we had when we looked at Dr.
19 Ling's very large table, the key point we're trying to
20 make here is seasonal and necessary -- seasonal operating
21 and necessary reserves, and that got lost in the size of
22 that table. So when you graphed it, you could see the
23 extreme situation that goes on here, and that's what we
24 really tried to show in this particular table.

1 And that's my -- all the tables that are
2 figures in my exhibit. Shall I move on?

3 Q Yes, please.

4 A I structured my testimony to really answer --
5 ask a series of questions that I thought that the
6 department might be asking. I tried to anticipate some of
7 these. And basically, the -- the kind of questions that
8 we were asking ourselves as we went through this process.

9 Why did we ask for consideration of Proposal 7,
10 is the first question. The economic return for providing
11 milk under the Northeast Federal Order for producer
12 members of cooperatives who balance the Class 1 market is
13 less than that of producers who do not participate in
14 providing balancing services. This inequity has -- has
15 existed for many years but has grown since the current
16 order was promulgated on January 1st, the year 2000.

17 The Agricultural Marketing Agreement Act of
18 1937 allows for the classification of milk and the pooling
19 of the resultant value in order to create a common uniform
20 price for all producers providing milk to the federal
21 order market. Producer milk destined for Class 1 use is
22 neither better nor worse than milk destined for any other
23 class use at the time that milk is produced, at the time
24 that it is shipped from the farm, nor at the time it's

1 received at a Class 1 distributing plant. That milk only
2 receives its higher value both under the order and reality
3 when it is weighed and sold as a Class 1-assigned product.

4 Prior to the existence of federal orders,
5 producers competed in an attempt to capture that higher --
6 value and leave the lower value uses to the milk of their
7 neighbors. However, this strategy consistently failed as
8 Class 1 distributors could and did obtain supplies from
9 neighboring producers who were shipping to plants with
10 lower value usage and were willing to accept a price only
11 pennies above what they received at the manufacturing
12 plants.

13 Any producer who believes that the current
14 maximum price represents the value of his or her specific
15 milk because it is received at a Class 1 distributing
16 plant is mistaken. In the absence of the federal order,
17 he or she would receive essentially the same price as his
18 neighbor shipped -- who shipped to a manufacturing plant.

19 Assuring that the Class 1 needs of the market
20 are met is a primary purpose of the federal order as
21 defined in the Class -- in the 1937 act as well as the
22 needs to maximize the price to all farmers who provide
23 milk to the marketing area. This not only means having a
24 sufficient total volume of producer milk available

1 annually to meet the annual Class 1 sales, we also -- we
2 believe it also means having the Class 1 milk available as
3 it is needed on a daily basis all year long.

4 One of the intents of Class 1 differentials is
5 to assure adequate supply of milk. These differentials
6 tend to be higher in higher Class 1 utilization markets as
7 part of the reason they are higher is because more milk is
8 needed to assure an adequate supply each day all year
9 long.

10 Balancing is part of that assurance and to some
11 extent is included in the Class 1 differential. However,
12 the value of the higher Class 1 differential accrues from
13 all farmers in the marketplace for a higher uniform price.
14 While producers are crucial in providing for adequate
15 year-round supplies of milk to meet total Class 1 use,
16 producers do not balance Class 1 supplies in any way,
17 shape, or form.

18 Producers ship as much or as little milk as
19 they wish to make every day, and that will be shown in
20 typically produced milk in a seasonally production pattern
21 that actually runs counter to the Class 1 demand pattern.
22 It's part of higher class differentials that reflects
23 balancing costs does not go to the parties that provide
24 the -- that service to the marketplace and that problem

1 seems to be -- that problem needs to be corrected.

2 Congress and President Reagan recognized that
3 problem when they passed the Food Security Act of 1985 and
4 specifically authorized market service payments under
5 federal orders. The Dairy Division of the Agricultural
6 Marketing Service of the USDA explained it well in the
7 following excerpt from its findings and conclusions of May
8 1st, 1997.

9 "Federal Register," Volume 52, Number 84, for
10 Friday, May 1st, 1987. "Proposed Rules for Docket Number
11 AO-366828 et al, which involved a hearing on marketwide
12 service -- marketwide payments for seven orders in the
13 southern United States in 1986.

14 Quote, "Payments for services of marketwide
15 benefit are specifically authorized under the Food
16 Security Act of 1985. That law amended Section 8(c)(5) of
17 the Agricultural Adjustment Act reenacted with amendments
18 by the Agricultural Marketing Act of 1937 by adding the
19 following provisions.

20 "Subsection (j), providing for the payment from
21 the total sums payable by all handlers for milk to
22 handlers that are cooperative marketing associations
23 described in Paragraph F and to handlers with respect to
24 which adjustment payments are made under Paragraph C or

1 services of marketwide benefit, including but not limited
2 to:

3 "One, providing facilities to furnish
4 additional supplies of milk needed by handlers and to
5 handle and dispose of milk supplies in excess of
6 quantities needed by handlers;

7 "Two, handling on specific days quantities of
8 milk that exceed the quantities needed by handlers;

9 "And three, transporting milk from one location
10 to another for the purpose of fulfilling requirements for
11 milk of a higher use classification or for providing a
12 market outlet for milk of any use classification.

13 "Market balancing activities such as disposing
14 of surplus milk and obtaining supplemental supplies for
15 handlers are clearly identified in the new provisions as
16 services of marketwide benefit. The law also provides
17 that payments made under the order program for the purpose
18 of reimbursing the handlers who provide those services are
19 conveyed in the total sums payable by all handlers for
20 milk.

21 "Thus, the objective under marketwide service
22 payment provisions is that the minimum uniform price for
23 all producers who -- paren, (reduce), end paren, and all
24 would share in the cost of providing the services. In

1 this way, some market participants would not be able to
2 maintain the advantage gained by receiving benefits but
3 not having to pay the cost. Therefore, they would cease
4 to be free riders," end of quote.

5 Once again, that was a -- a quote from the
6 findings and conclusions by the Department.

7 We're here today in regard to Proposal 7
8 because all producers who pool their milk under the
9 Northeast Federal Order benefit from services that balance
10 the Class 1 market. Those services facilitate the -- to a
11 higher uniform price for all milk in the -- in the pool
12 but not all producers currently pay the fare for that
13 ride.

14 The second question we tried to address was,
15 what are balancing costs and why are they even needed to
16 be incurred. There are several types of balancing done in
17 the milk market. Proposal 7 deals exclusively with two
18 types of balancing.

19 The first is daily balancing of Class 1 needs
20 and the second is seasonal balancing of Class 1 needs.
21 Balancing does occur across the entire milk supply in a
22 marketing order because the production of milk by
23 handlers, particularly on season -- on a -- on a
24 seasonally basis -- seasonal basis varies. And that

1 production pattern must be accommodated.

2 One of our problems in the past with proposing
3 marketwide service payments was to try to separate those
4 costs of balancing the Class 1 market with the cost of
5 balancing the entire supply of milk in the market. Our
6 plants do not know whether the milk they receive or fail
7 to receive is intended to balance the Class 1 market or
8 the entire market. Plant managers just know if their
9 operations are full or empty to some degree.

10 We know what our total plant costs are but
11 attributing those costs to explicit Class 1 balancing is
12 almost impossible. That is why we turned to the approach
13 used by Dr. Ling. His analysis used real data and
14 reasonable assumptions to exclusively focus on the class-
15 related balancing cost.

16 In reality, a butter powder plant may run at a
17 little lower capacity level in the fall. That's dictated
18 by Class 1 balancing in order to accommodate the total
19 seasonal fluctuations in all producer supplies, including
20 cooperative members.

21 The Ling study does not encounter any of those
22 costs, nor should it. If such producer supply fluctuation
23 resulted in the need for additional butter powder plants
24 to facilitate constant volumes of milk at the Class 3

1 plants all year long, that cost would also not be included
2 in the Ling study.

3 The attached Figure 1 shows producer receipts
4 per day classified as Class 1 under the federal order for
5 January 1st, 2000, through June 2002. Figure 2 shows
6 total receipts per day during the same period. And Figure
7 3 shows the difference between the two. These figures use
8 the data presented by Mr. Fredericks of the market
9 administrator's office, page five of Exhibit 5 and divide
10 each monthly volume by the number of days in each month.

11 The monthly variation is apparent in these
12 graphs. Clearly, there are times in the year when the
13 volume of milk in excess of Class 1 needs is far greater
14 than other times of the year and that month -- that milk
15 must find a home.

16 Cooperatives have been providing balancing
17 services for so long in the northeast that most people
18 take them for granted and are not concerned with their
19 importance until, of course, if they disappeared one day
20 our distributors are asked to pay for them.

21 The electricity utility sector provides an
22 analogy that I believe is useful in understanding our
23 problems in balancing milk supplies. This past summer,
24 the New England region and many other areas of the country

1 recorded record -- record -- record levels of electricity
2 usage on a daily basis. The utility companies had to
3 maintain sufficient electricity-producing capacity to meet
4 the higher needed usage throughout the year even though
5 that meant that on just about all other days they would
6 have to have available and current fixed costs of unused
7 capacity. They could not look at the annual average
8 amount of electricity per day. That figure is meaningless
9 for capacity purposes. Even the monthly average per day
10 provided little value for capacity purposes.

11 They must have the capacity to provide enough
12 electricity on the peak day. Sure, they could try to buy
13 some power from neighboring utilities to get them through
14 the peak periods. But chances are that those other
15 utilities are also facing -- facing -- demands and have
16 little capacity to spare at the time it is needed.

17 The same happens in the dairy industry. Milk
18 is highly perishable and must be processed quickly.
19 Farmers cannot store it because the next milking must be
20 accommodated. You cannot keep it in pendency very long.
21 Plus, the pending trailers are usually needed to pick up
22 the next day's milking. Storage capacity at plants is
23 limited by health regulations and cost.

24 In the past several years, several Class 1

1 plants in the northeast have closed and further reduced
2 the storage capacity of Class 1 milk in the market. Just
3 like the peak of electricity, the peak of milk supply
4 relative to the dam must be handled quickly.

5 Balancing milk in the northeast involves
6 providing consistent and immediate outlets for surplus
7 milk as well as the ability to release or obtain
8 additional milk when needed. Market balances in the
9 northeast provide these services over a large volume of
10 milk. Buying and selling a few spot loads of milk is not
11 the same.

12 Next question is, why do cooperatives play a
13 unique role in balancing in the northeast. Cooperatives
14 have played the primary role in balancing the northeast
15 market for more than 60 years. Ed Gallagher has already
16 explained the unique marketing characteristics we face in
17 this region.

18 I again want to highlight that a key issue
19 cooperatives face is that the northeast has a huge number
20 of milk producers who do not belong to a cooperative. I
21 will refer to them as "non-members."

22 They -- they number in excess of 4000 according
23 to market administrator -- to the market administrator and
24 market about 6 billion pounds of milk annually. I believe

1 this can be seen in Appendix Table 16 of Exhibit 5.

2 There are dramatic differences in the northeast
3 relative to how cooperative member and non-member milk is
4 used. Most of the non-cooperative milk is dedicated to
5 supplying distributing plants on a year-round basis. As
6 shown in Appendix Table 15 and Market Administrator
7 Exhibit 5, the average classification of non-member milk
8 in the Northeast is about 80 percent Class 1 despite the
9 fact that the northeast is less than a 45 percent Class 1
10 utilization market year-round.

11 The milk from those non-member farms is
12 received at Class 1 distributing plants just about all the
13 time. Non-member farms shipping to Class 1 processors
14 make no special efforts to balance the seasonal or daily
15 needs of their handler or the Class 1 market. To my
16 knowledge, Class 1 handlers do not limit the volume of
17 milk picked up by those non-members in any way.

18 Class 1 handlers do not ask those shippers to
19 store milk below the mandate -- behind the mandates.
20 Those handlers don't refuse to accept their milk when
21 schools go out of session or demand producers expand their
22 herds in the fall and reduce it in the spring.

23 What Class 1 producers providing milk from non-
24 members usually do is buy a volume of milk that is no

1 longer in the low month needs and use cooperative milk to
2 balance their needs in the high -- in the high usage
3 month. Table 1 takes the market -- market administrator
4 data from page five of Exhibit 5 regarding producer
5 receipts classified as Class 1 and shows a column
6 representing 118 percent of those Class 1 volumes and
7 total and on an average daily basis. This suggestion
8 represents one divided by -- this suggestion represents
9 one divided by 0.85 and it's made because distributing
10 plants have approximately 85 percent Class 1 milk on
11 average.

12 This table then compares that with the product
13 of multiplying the volume of non-cooperative producer
14 receipts from Appendix Table 17 of the same market
15 administrator's exhibit, Exhibit 5, times the percentage
16 of proprietary handler producer milk receipts delivered to
17 distributing plants. Once again, from Appendix Table 15
18 of the same market administrator's Exhibit 5. The
19 difference is an estimate for the amount of Class 1 milk
20 that is supplied by non-members each month.

21 Table 1 also gives the volume per day for non-
22 cooperative and cooperative producers as a percent of the
23 low month during the 18-month period. The non-cooperative
24 producers -- a low point of receipt per day and uses Class

1 1 milk from August 2001. The level of milk provided per
2 day ranged from that low point to a 12 percent -- to 12
3 percent higher in March and April of 2002. It is
4 significant that the high point of deliveries of non-
5 members was in the spring when Class 1 sales tend to be
6 less than in the fall.

7 Cooperative member -- member receipts in the
8 Class 1 market was at a low point in July 2001. However,
9 the deliveries needed for the Class 1 market peaked in
10 November and needed to be 29 percent above the July low
11 point. The seasonal high of the cooperative receipts for
12 the Class 1 market was more than double that of non-member
13 receipts and occurred at a point when total milk producer
14 receipts was usually at a seasonally low point. Clearly,
15 cooperative milk does far more balancing of the Class 1
16 market.

17 The next question is, how do we balance the
18 Class 1 market. The Northeast Federal Order is an
19 extremely large milk production and Class 1 demand area,
20 as also indicated by Mr. Gallagher's testimony. Some
21 areas, such as the upper midwest, have a large enough
22 Class 2 industry -- Class 3 industry that their smaller
23 Class 1 market can be balanced by slightly reducing the
24 amount of milk received by a large number of cheese

1 plants. Many of those plants, by the way, are owned by
2 cooperatives.

3 However, even that market must have at least
4 one or two powder plants. In the northeast, the Class 1
5 market is too large -- large to be predominantly balanced
6 by cheese plants on an economic basis. Cheese plants play
7 an important role, as I believe Mr. Gallagher will
8 indicate in his testimony. However, butter and powder
9 plants still play a dominant role in balancing the dairy -
10 - the daily and seasonal needs of the market.

11 As previously noted, AgraMark operates a large
12 Cheddar -- Cheddar cheese plant in Middlebury, Vermont --
13 plant due to costs involved in doing so and the type of
14 market we have for the products produced there. The cost
15 and market type of product produced at West Springfield
16 are much preferable for balancing. The marketing and
17 operations staff we do at our current -- that's AgraMark's
18 marketing and operations staff --our current overhead
19 costs at both our Middlebury and West Springfield
20 operations.

21 The overhead costs -- taking out the word
22 "complete," the overhead costs per hundredweight are \$1.02
23 per hundredweight of milk at our cheese facility and 61
24 cents per hundredweight at our West Springfield plant. In

1 other words, if we remove a hundredweight of milk from
2 Middlebury served to the Class 1 market, we have \$1.02 in
3 fixed costs that cannot be recovered. If we remove that
4 same hundredweight of milk from West Springfield, we incur
5 a 61 cent cost that cannot be recovered. Our cost of
6 balancing are lower by 41 cents per hundredweight when we
7 use our butter powder facility. In addition, butter and
8 powder are far more generic products than our award-
9 winning Cheddar cheese produced at Middlebury.

10 Figure 4 shows the Class 4 -- time out for a
11 commercial.

12 (Laughter)

13 BY MR. BESHORE:

14 A Figure 4 shows the Class 4 volume of milk in
15 the federal order. The data from this table originates
16 from page five of the Market Administrator 5. I have
17 duplicated that data in Table 2 because of its importance
18 relative to this hearing. The extreme volatility -- can
19 clearly be seen in both the figure and Table 2.

20 Class 2, our produce receipts are at or
21 significantly 249 million pounds for the first five months
22 of 2000, or at or below 100 million pounds during August
23 and November of 2000. Based on our experiences at West
24 Springfield, December 2000 likely has producer receipts in

1 Class 4 at below 50 million pounds for the first half of
2 the month. Those receipts then likely rose above 100
3 million pounds for the second half as schools close and
4 Class 1 and other plants reduce their bottling schedules
5 during the holiday season.

6 In the year 2001, Class 4 receipts peaked at
7 230 million pounds in the spring and was below 150 million
8 pounds throughout the late summer and fall. The
9 volatility was less in 2001 because volatility of total
10 milk receipts were less.

11 In 2000, total receipts in the Northeast Order
12 were 1 billion 76 million pounds higher in the first six
13 months of the year than in the last six months. This was
14 a 9.4 percent difference. During the same year, Class 4
15 receipts were 901 pounds higher than the two time periods.
16 Class 4 plants absorb 84 percent, which is 901 divided by
17 1076 -- keep in mind that's a million pounds -- of the
18 difference of producer receipts even though Class 4 milk
19 averaged less than 10 percent of the total producer
20 receipts during the year.

21 Class 4 volume had to fluctuate by 126 percent
22 between the two halves of the year in order to accommodate
23 the change in total producer receipts.

24 In -- in the year 2001, total milk receipts in

1 the order were only 266 million pounds higher during the
2 first six months of the year than in the last six months.
3 That was a 2.2 percent difference. During the same era,
4 Class 1 receipts were 250 million pounds higher during the
5 same time periods. Class 4 milk once again absorbed more
6 than 80 percent of the difference in producer receipts
7 even though it averaged less than nine percent of total
8 producer receipts in 2001. Class 4 volume had to
9 fluctuate by only 22 percent between the two halves of the
10 year.

11 While that may look like a better economic
12 situation for Class 4 plants in 2001, it was actually a
13 far worse year since total Class 4 volume was down 200
14 million pounds during the year and plants had far less
15 volume to spread their fixed costs over.

16 Looking at the year 2002 so far, it is good
17 that we did not reduce Class 4 capacity last year.
18 According to the table on page five of the market
19 administrator's Exhibit 5, Class 4 pounds during the first
20 six months of 2002 are around 469 million pounds above the
21 same months in 2001 and even 35 million pounds above 2000.

22 Table 2 also contains information on volume of
23 milk manufactured at AgraMark's West Springfield,
24 Massachusetts, plant. This plant has a manufacturing

1 capacity of about 2.2 million pounds of milk per day. We
2 were essentially at full capacity in April 2000 when we
3 used 65.4 million pounds of milk in that 30-day period.

4 The low point that year and for the past two --
5 years was 19.4 million pounds in November of 2000. We
6 were operating at less than 30 percent of capacity that
7 month.

8 Appendix Table 4 of market administrator
9 Exhibit 5 shows total receipts of milk and cream at the
10 seven plants operated by the cooperative members of ADCNE.
11 These plants include AgraMark's West Springfield facility.
12 Information for the months of May and November between
13 1992 and May of 2002 is provided. These plants do a
14 variety of activities, including reloading milk -- skim
15 milk into a -- cream for sales to other handlers. Those
16 activities as well as the production of specialized
17 products, including on-demand specialized milk powders,
18 tend to be more valuable products and are priorities to
19 plants.

20 The least priority is making skim milk powder
21 and butter. Those are the two products that balance the
22 Class 1 market. When one averages the amount of product
23 into nonfat dry milk in each May since 1992, the average
24 is 220 million pounds. The amount in November is about 97

1 million pounds. But actually, it's closer to 100 million
2 pounds when the 30 days in November are adjusted to 31
3 days, such as in May.

4 The amount of product used for nonfat dry milk
5 is clearly more than double the production in May as it is
6 in November over time. The extremes during this time were
7 60 million pounds in November of 1993 and 286 million
8 pounds in May of 2002.

9 Butter production tends to have somewhat less
10 volatility. Class 1 sales average about 2 percent
11 butterfat needs to balance accordingly more skim milk than
12 butterfat and producer milk since producer milk averages
13 nearly twice the butterfat level. For example, when Class
14 1 sales peak in the fall and the larger amounts of milk
15 are needed for that classification, the producer milk
16 received at distributing plants must be separated to
17 generate milk averaging two percent butterfat. The
18 separation produces a large volume of cream that is not
19 needed for Class 1.

20 The column marked, "Total Cream Receipts" in
21 market administrator Appendix 14, Exhibit 5, reflects that
22 occurrence. Most -- is coming from Class 1 distributing
23 plants.

24 Product manufacturing of butter at the ADCNE

1 plants averages -- averaged 14.2 million pounds in May and
2 8.3 million pounds in November, or 8.6 million pounds in
3 November when adjusted for a 31-day month. Thus, there
4 were 60 percent more -- 66 percent more butter made in May
5 than in November on average at ADCNE plants.

6 Cooperatives seek the lowest cost method to
7 balance reserve milk supplies in their areas. The use of
8 supply arrangements with cheese plants may work in New
9 York due to the proximity and number of such plants. That
10 cost -- that cost increases in New England because we do
11 not have a concentrated cheese industry and the high
12 transportation costs of bringing the milk against federal
13 order zones back into New York.

14 We have predominantly always used butter powder
15 plants to balance the Class 1 market. At one point we had
16 several small butter powder plants in New England, but now
17 we operate only one large plant. For AgraMark, we do this
18 at the least cost possible. However, based on the -- on
19 their available -- availability thereby -- on their
20 available nearby plants and other factors, other co-ops
21 may employ other options.

22 How can we measure the cost of balancing? It
23 is very difficult to measure the cost of Class 1 balancing
24 in an operating plant because it's almost impossible to

1 isolate those costs and allocate them back to Class 1
2 balancing functions.

3 Butter and powder manufacturing plants do many
4 functions. They often reload for longer distance travel.
5 They can separate milk and sell skim milk or cream. They
6 can condense skim and sell that product directly. They
7 can combine condensed skim milk and cream in many
8 combinations and sell them as blends. They can
9 manufacture butter and they can manufacture dry milk
10 powder. The powder also can be heightened -- for whole
11 milk powder. Some operations, such as Oatka, also produce
12 evaporated milk and package various milk-based drinks.

13 At the AgraMark plant, we also package butter
14 in retail size containers in addition to the many
15 functions I just mentioned. However, we do not make any
16 whole milk powder nor do we produce any -- or package any
17 milk-based drinks. We also do a tremendous amount of
18 balancing with the Class 1 market at our plant in West
19 Springfield.

20 Table 2 shows the volume of milk manufactured
21 in West Springfield as a percentage of full capacity. In
22 year 2000, we ranged from running at 99 percent capacity
23 in April to 29 percent capacity in November. In 2002, our
24 spring peak was 75 percent capacity in May but we later

1 peaked even higher, 81 percent in December.

2 Q Do you mean 2001?

3 A I'm sorry. 2001. Thank you.

4 In 2001 -- I'll repeat that -- our spring peak
5 was 75 percent capacity in May, but we later peaked even
6 higher at 81 capacity -- 81 percent capacity in December.
7 The low point was September 2001 at 37 percent capacity.

8 Our peak so far in 2002 was at 92 percent
9 capacity in June. Figure 6 reflects that information
10 shown in Table 2.

11 When we do our overhead costs as they relate to
12 Dr. Ling's study at various levels of capacity, our cost
13 data show that the cost per pound of product increases
14 about 0.11 cents per pound for each one percent drop in
15 plant capacity use. This further verifies the information
16 used by Dr. Ling in his study.

17 As already noted, there are so many complex
18 activities taking place at a balancing -- at balancing
19 facilities, it is very difficult to pinpoint what should
20 be associated with balancing and to what degree. At
21 AgraMark's West Springfield operation, the least valuable
22 activities that involve balancing include receiving,
23 condensing, and drying and churning milk. Other
24 activities such as selling condensed milk, cream, and --

1 usually generate more value and would have a higher value
2 than drying and churning.

3 If you look at the plant running at full
4 capacity and then remove milk volume from that plant, the
5 removed product at West Springfield will impact the dryer
6 and churn first. Therefore, we can look at the --
7 costs of reduced powder and butter production as a --
8 measure of the costs of balancing in the matter reflected
9 -- in the manner reflected in Ling's study.

10 Next question is, why is Dr. Ling's study so
11 useful. Ling's study isolates the cost of balancing at a
12 plant from all other activities occurring at the plant.
13 His analysis uses real data and reasonable assumptions to
14 exclusively focus the Class 1-related balancing cost. The
15 Ling study is the least cost -- actual cost of balancing.
16 It assume a best-case, least-cost balancing scenario for
17 several large efficient butter powder plants handling the
18 entire northeast market balancing needs.

19 In the real world, the system is not so perfect
20 and there are additional costs. These additional costs
21 include the extra hauling costs needed to move milk to the
22 already established locations abounding -- of balancing
23 plants, decided several years ago while the milk supply
24 area of the order has shifted.

1 Dr. Ling begins his report with a discussion of
2 the seasonal nature of milk in the marketplace. Table 1
3 of his report, Exhibit 12, shows indices of seasonality of
4 producer milk deliveries and fluid demand. Clearly, this
5 table reflects the pattern we have seen in the
6 marketplace. I have duplicated Ling's table using here
7 2000 and 2001 data from page five of the market
8 administrator's exhibit, Exhibit 5.

9 In my Table 3, I use Class 1 volume per day as
10 my measure for demand. I use producer milk deliveries per
11 day for my production index. This is the same information
12 used to generate my Figures 1 and 2 of this statement,
13 although it only uses 24 months of the year 2000 and 2001.
14 This table mirrors Dr. Ling's table to a great degree.

15 Dr. Ling discusses three categories of milk
16 reserves: operating reserves, seasonal reserves, and
17 excess reserves. Operating reserves are seasonal --
18 operating reserves and seasonal reserves are necessary to
19 the function of the Class 1 market. Hence, Dr. Ling
20 correctly refers to them in the combined categories of
21 necessary reserves.

22 Milk production above the level of necessary
23 reserves are referred to by Dr. Ling as excess reserves.
24 This term was used because Dr. Ling's study focused on the

1 Class 1 market exclusively. In reality, excess reserves
2 are the milk supplies that are for the most part a crucial
3 part of the manufacturing sector in the northeast. Most
4 of the excess reserves -- Class 3 cheese uses. However,
5 some go to Class 4.

6 However, those excess reserves are not a factor
7 in Dr. Ling's study nor in the ADCNE proposal. All of Dr.
8 Ling's cost factors involve necessary reserves for the
9 Class 1 market.

10 Further testimony by -- by Mr. Dennis Schad of
11 Land O' Lakes will document the reasons why we believe
12 that the northeast market conditions warrant the use of a
13 20 percent operating reserve as discussed in Table 4 and 5
14 of Dr. -- of Dr. Ling's report, Exhibit 12.

15 Figure 1 in Dr. Ling's report, Exhibit 12,
16 contains a tremendous amount of information. The key
17 numbers, however, are the seasonal operating and necessary
18 reserves. Figure 7 isolates those amounts. The operating
19 reserve in Figure 7 is the area between the seasonal and
20 necessary reserves. The key issue here is the large
21 amount of reserves needed and their volatility.

22 Dr. Ling's cost estimate are conservative. When
23 he considers the balancing costs of handling reserve
24 supply, he assumes a cost of \$28 million for a butter

1 powder plant with a capacity of manufacturing 3 million
2 pounds of milk per day. In 1999, when relocating our West
3 Springfield plant, an estimated cost of \$33 million if we
4 move much of the equipment to the new location. If we
5 provided it with new equipment, the cost would approach
6 \$40 million.

7 Dr. Ling also estimates total fixed and
8 overhead costs at about \$3 million. Total fixed and
9 overhead costs at our West Springfield plant are in excess
10 of \$4 million per year.

11 Dr. Ling uses an estimate that -- that for
12 every one percent decrease in the plant capacity use
13 product cost would increase one-tenth of one -- one-tenth
14 of a cent per pound. Our costs at our West Springfield
15 facility increase slightly over that, approximately 0.11
16 cents per pound.

17 Based on our information, we believe that Dr.
18 Ling's estimate for the costs of balancing necessary
19 reserves, assuming a 20 percent operating reserve, are low
20 and therefore conservative. We are not suggesting
21 adjusting his estimates since each plant is different and
22 the Department has consistently learned -- leaned to
23 conservative estimates in the past.

24 Next question, why can't we recoup those costs

1 from the marketplace. Why do we need to go to the order
2 to get the job done. Cooperatives who balance the Class 1
3 market have been -- have been unable to recoup the cost of
4 balancing these markets. Class 1 processors will not pay
5 any more than they have to for -- milk supply and many
6 believe that they pay a high enough price with the Class 1
7 differential, particularly after Option 1-A became
8 effective in place of the recommended Option 1-B on
9 January 1st, 2000.

10 As already expressed by Mr. Gallagher in his
11 testimony and touched upon by mine, Class 1 processors
12 have alternatives to procuring the milk from cooperatives.
13 There are more than 4000 non-members in the region and
14 those producers supply more milk than -- pooled in certain
15 orders. Class 1 processors could balance their seasonal
16 needs by adding -- producers when needed. This is what
17 occurred prior to the AMAA of 1937. It created disorderly
18 marketing as -- as it then would again. However, even if
19 processors behaved in that manner, it would merely shift
20 the burden within the market and the costs would still
21 exist.

22 One of the greatest problems we face in the
23 industry is that the very price settings that -- that
24 dairy price setting is extremely sensitive to the last

1 hundredweight of milk in the market. If that milk does
2 not have a -- home, it will depress all milk prices, both
3 over-order and class prices. We see this both nationally
4 and regionally when current milk production is just over
5 two percent above a year ago and the market faces stagnant
6 demand.

7 At most, the -- the supply-demand situation
8 reflects from two to five percent more milk and milk
9 products than last year, yet milk prices have fallen more
10 than 25 percent as those additional suppliers of milk and
11 dairy products have sought a home.

12 Federal -- federal order prices are
13 specifically meant to be minimum prices. When small
14 amounts of milk are without a home, any existing old order
15 prices are the first to go. Class 1 prices are set
16 nationally, but if no one is willing to provide a ready
17 home for the milk, that milk is sold below the class
18 price. The only thing worse than a low price for milk is
19 no price for milk.

20 Cooperatives provide a home that protects the
21 integrity of class prices to the greatest degree possible.
22 All producers benefit from this orderly marketing. If not
23 for the investments that AgraMark members have made in
24 areas other than balancing, our members would face -- on a

1 regular basis. We keep our members well informed
2 concerning order minimum prices and any deviation from the
3 minimum -- would be noticed immediately.

4 Why have cooperatives done balancing in the
5 past and why do we need reimbursement of those costs under
6 the order now. Cooperatives have balanced in the past
7 because it helped create an orderly marketing environment
8 that allowed us to sell milk at or above federal order
9 minimums. Our members did benefit from that action, but
10 that action came at a cost that was not shared equitably
11 with farmers in the order who encouraged milk balancing
12 costs.

13 In 1985 Congress passed the Food Security Act
14 of 1985 that specifically allowed marketwide service
15 payments. These service payments were first sought by
16 Dairy -- Incorporated, the largest cooperative serving
17 seven southeast federal orders involved in the hearing.
18 Marketwide service payments were denied to those seven
19 orders because substantial volumes of milk moved between
20 those relatively small orders as well as nearby orders.
21 There was no way to assure that the producers in one order
22 did not pay more than their share of balancing the other
23 markets.

24 Equitable sharing of costs was the problem

1 issue and according to USDA findings and conclusions,
2 quote, "So -- that proceeding that it was concluded that
3 further consideration of the proposal would serve no
4 purpose," "Federal Register," Volume 52, Number 84, May
5 1st, 1987, page 15959.

6 Proposal 7 differs from the marketwide service
7 proposal made for the seven northeast orders in many
8 regards. However, the primary difference is in regard to
9 size and marketing characteristics of the Northeast Order.

10 The Northeast Order is one extremely large
11 market that is far more regionally contained than the
12 southeast orders were in 1986. In fact, the current
13 Northeast Order is not only the largest federal order in
14 terms of both producer receipts and Class 1 receipts as
15 noted by Mr. Gallagher, it is larger than all the former
16 sever -- seven federal orders combined. This is -- this
17 is relatively -- there is relatively very little movement
18 of milk between the Northeast and other orders on a
19 percentage basis.

20 From the late 1950s until January 2000,
21 cooperative service payments existed in the New York-New
22 Jersey Federal Order. ~~AgraMark~~ **Agrimark** and other
23 cooperatives that operate in the northeast but not in the
24 New York-New Jersey regularly discussed getting marketwide

1 payments but cooperatives in the region could not agree on
2 a way to proceed. We did all agree to seek them as part
3 of the Fair Act processed -- orders effective on January
4 1st, 2000. However, the Department denied our request.

5 In addition to cooperative payments in the
6 former New York-New Jersey Order, we also had seasonal
7 price adjustments in all three northeast orders that
8 lowered the Class 3 and Class 4 prices in the spring and
9 raised them in the fall. This reduced our balancing cost
10 by a small degree, however other organizations did not see
11 the same benefits and the Department denied them also.

12 The specifics of the ADCNE proposal, under
13 Proposal 1, qualifying organizations performing marketwide
14 services of balancing the Class 1 market would receive six
15 cents per hundredweight on qualified milk volumes which
16 they pool. Each month the market administrator would make
17 payments to the Producer Settlement Fund. Both
18 cooperative and proprietary handlers who performed those
19 duties would be eligible for payment.

20 The six cents a hundredweight rate was
21 determined using Dr. Ling's cost of balancing for the
22 northeast. At a 20 percent operating reserve, total
23 balancing on a conservative basis is estimated to be
24 11,567,210. Cooperatives and other handlers who -- who

1 provide balancing have approximately 76 percent, Market
2 Administrator Exhibit 5 and 17, of total producer receipts
3 of about two -- 24.5 billion pounds of milk annually, page
4 five of the same exhibit. This represents about 18.6
5 billion pounds of milk annually. When one divides one's
6 cost by this milk volume, it results in a rate of 6 point
7 -- of 0.0622 dollars per hundredweight.

8 In order to qualify for payments, the handler
9 would be required to first, number one, pool three percent
10 of a -- of the market's milk or, two, pool 1 million
11 pounds of milk per day and operate a pool manufacturing
12 plant, Class 3 or Class 4, located in the states of the
13 marketing area or a pool distributing plant as defined in
14 Section 7-A of Northeast Order. These percentages and
15 volumes of milk are supported as minimums because any
16 handler, cooperative or otherwise, who balances milk on a
17 daily or seasonal balance must have sufficient volume and
18 non-Class 1 designations for milk in order to meet market
19 needs.

20 A three percent minimum of the total milk
21 volume in the order for the month represents about 60
22 million pounds of milk per month. This handler must have
23 significant marketing relationships with at least one
24 manufacturing plant but the Class 1 plants -- it's much

1 more -- at least 20 percent of that volume or 12 million
2 pounds per month at a Class 1 -- Class 1 milk in the fall.

3 Handlers who operate Class 3 or Class 4 plants
4 and pool milk can qualify at a lesser milk volume of 1
5 million pounds of milk per day each month. This million
6 pound per day minimum was used in the cooperative payment
7 provisions of the former New York-New Jersey Order. It
8 also represents about 20 -- of milk, which is a
9 significant volume also.

10 Under Subsection A(2) of the provision of
11 Proposal 7, a qualifying handler could not deliver more
12 than 65 percent of his pooled milk to a distributing
13 plant. A handler who delivers 65 percent or more of his
14 milk to a Class 1 plant is not balancing to a great
15 degree. That milk is likely coming from a designated
16 source of non-member producers who's already discussed in
17 my testimony.

18 Adjustments A and B are included to limit the
19 ability of a handler to merely move around milk to qualify
20 for payment without balancing those supplies.

21 Under Subsection (b), a qualifying handler can
22 be required by the market administrator to ship extra
23 volumes of milk to Class 1 plants if market conditions
24 warrant. Such extra shipments would not necessarily be

1 required of other handlers pooled in the Northeast Orders.
2 Qualifying handlers who receive a marketwide balancing
3 payment who would be going to take on additional
4 responsibilities -- should be willing to take on
5 additional responsibilities and additional costs when
6 needed by the market.

7 The rate of the payment in Subsection (c) was
8 previously discussed. Under this section, cooperatives --
9 cooperatives can only receive payments on the milk of
10 their members or the members of another qualified
11 cooperative association. Those cooperative handlers can
12 only receive payments on non-member milk that they pool.
13 This --

14 Q Bob? Is that --

15 A -- non-cooperative --

16 Q I'm sorry.

17 A Non-cooperative handlers. Getting a little
18 tongue-tied. None -- non-cooperative handlers can only
19 receive payments on non-member milk that they pool. This
20 will assist with accounting from the market administrator
21 perspective and assure that the milk receiving payments is
22 under the marketing control of the -- of the handler
23 receiving the payment.

24 We would like to add a provision at the end of

1 Subsection C that modifies our proposal and reads as
2 follows:

3 Provided further that no payment shall be made
4 on the milk of any producer until such producer's milk has
5 been pooled for three consecutive months.

6 The intent of this provision is to assure that
7 any milk receiving a marketwide service payment is
8 committed to serving the northeast market. Milk that is
9 moved to another market on a seasonal basis without a
10 waiting period before qualifying for a marketwide service
11 payment. This provision further addresses the primary
12 problem issue based on the former southeast orders in
13 1986.

14 In summary, large Class 1 markets such as the
15 northeast require a substantial amount of balancing that
16 benefits all producers. There is no question that
17 balancing is needed given the pattern of Class 1 demand
18 and sales as well as the pattern of producer receipts
19 during the course of the year and even within a week.

20 There should also be no questions as to who
21 performs the balancing and that there's a cost to that
22 important service. Finally, there is also no question
23 that the payment of marketwide services from the pool is
24 allowed under the Agricultural Marketing Agreement of 1937

1 and its subsequent amendments.

2 The key issues for the proponents of Proposal 7
3 is that the economic returns for providing milk under the
4 federal -- Northeast Federal Order for producer members of
5 cooperatives who balance the Class 1 market are less than
6 that of producers who do not participate in providing
7 those balancing services.

8 There have been problems in the past in
9 considering marketwide service payments. Prior to January
10 1, 2000, there were three federal orders with a combined
11 marketing area less than the one -- less than the one
12 Northeast Order has today. Although the issue of producer
13 equity between orders was not as significant as in the
14 former southeast orders, it was still a factor.

15 A second issue was the largest former -- was
16 that the largest former order of the northeast, the New
17 York-New Jersey Order, had provisions known as cooperative
18 service payments that were linked to balancing.

19 The consolidation and expansion of the former -
20 - of the three former orders in the Northeast into the
21 largest federal order in the country addressed the
22 producer equity issue between orders. Although the
23 cooperatives both inside and outside of the New York-New
24 Jersey Order all supported the continuation and expansion

1 of cooperative payments under the order, the decision by
2 the Department did not include those provisions and pushed
3 the co-ops into working closer together to develop a fair
4 workable marketwide service proposal.

5 Plants which perform significant Class 1
6 balancing functions also perform many other functions -
7 - plant costs and other costs that specifically relate to
8 Class 1 balancing would be extremely difficult and, I
9 would add, almost impossible, probably impossible. Many
10 times the costs associated with balancing relate to not
11 having milk and it's difficult to propose a payment on
12 milk that is not in one's plant. Dr. Ling's study
13 provided a way to isolate and quantify the costs using
14 real-world data and a low-cost, high-economic efficiency
15 model.

16 The Class 1 market is different in the
17 northeast from all other markets. It is the largest in
18 terms of both maximum sales volumes and producer receipts.
19 However, the Northeast Order also has more than 4000 non-
20 member producers that ship almost exclusively to Class 1
21 distributing plants. The Order has more than 70
22 cooperatives of all sizes that compete in the marketplace
23 to sell their members' milk. Handlers such as
24 cooperatives that balance Class 1 needs are unable to get

1 reimbursed for the full cost of balancing due to
2 competition in the marketplace among alternative suppliers
3 of milk available to Class 1 distributors.

4 Class distributors already -- one of the
5 highest Class 1 differentials in the order system and
6 often pay those higher prices as -- and also often
7 consider those higher prices as covering the costs of
8 providing milk to the Class 1 milk both as an aggregate
9 supply and time-sensitive supply.

10 To the extent that the Class 1 differential is
11 meant to encourage supply of milk to the Class 1 market,
12 there is already revenue in the pool relating to that
13 function. However, that revenue is distributed to all
14 producers equally even though it is not the individual
15 producer who balances the Class 1 market. That revenue
16 should go to the groups that actually perform the services
17 that benefits the market.

18 The Association of Dairy Cooperatives of the
19 Northeast, ADCNE, proposal calls for a six cent per
20 hundredweight payment to those producers who balance the
21 Class 1 market. It would be available to both
22 cooperatives and proprietary handlers who qualify. The
23 proposal provisions provide adequate criteria and
24 qualifications so that payments only go to handlers that

1 truly balance the Class 1 market. Handlers who receive
2 this payment will be required to have additional
3 responsibilities under the order relative to serving the
4 Class 1 market they needed -- when needed.

5 ADCNE has also proposed a provision that
6 mandates a three-month waiting period before producer milk
7 would qualify for the six cent per hundredweight payment.
8 This additional provision is to assure that qualifying
9 producer milk is dedicated to serving the northeast market
10 on a consistent basis.

11 We ask that the Department implement Proposal 7
12 as soon as possible. Thank you.

13 JUDGE BAKER: Mr. Beshore, did you have any
14 questions before we -- him for cross examination?

15 MR. BESHORE: Just -- just one or two.

16 JUDGE BAKER: All right.

17 BY MR. BESHORE:

18 Q Bob, you've identified and explained AgraMark's
19 operations a bit in this statement. Could you provide
20 some information for the record about one of the other
21 ADCNE members that is in the New -- New England region
22 that you're familiar with? And I'm speaking of St. Albans
23 Cooperative Creamery.

24 A I can provide some marginal information

1 regarding that. St. Albans Cooperative is based out of
2 St. Albans, Vermont, which is in Franklin County, Vermont,
3 very close to the Canadian border. They operate one --
4 one plant that's -- is -- it's a -- it's a powder plant.
5 It's not a butter plant. They do not churn butter. They
6 separate milk.

7 They're our major -- one of their major
8 suppliers and one of the reason they can separate and
9 operate in that manner is Ben and Jerry's. I believe
10 they're exclusive supplier to cream for their ice cream
11 for Ben and Jerry's. So they use the cream in that
12 manner.

13 They separate and then they sell the skim milk
14 often to Class 1 markets. I don't know exactly who their
15 customers are. If they were here, I'd ask them. But I
16 don't know who their customers are, but they have a
17 variety of customers, as we do.

18 They -- like I said, they do -- they do not
19 make butter at their plant. It's really exclusively for
20 balancing. They have a very inefficient plant. Their --
21 their dryer, my understanding is something -- about 25 or
22 30 years old. And they use it when they have to but they
23 really don't want to have to make that commitment for
24 their -- for their milk.

1 They have about 500 members and they market
2 approximately a billion -- a little over a billion pounds
3 of milk a year.

4 Q Their -- the -- the plant at St. Albans was one
5 of the plants which was included in the data assembled by
6 the market administrator and reflected in Appendix 14 of
7 Exhibit 5, is that your understanding?

8 A I believe so.

9 MR. BESHORE: Don't have any other further
10 questions for Mr. Wellington on -- on direct, and he's
11 available for cross examination.

12 JUDGE BAKER: Very well. Thank you, Mr.
13 Beshore. Are there any questions for Mr. Wellington?
14 Yes, Mr. Rosenbaum?

15 CROSS EXAMINATION

16 BY MR. ROSENBAUM:

17 Q Mr. -- Steven Rosenbaum for the International
18 Dairy Foods Association. Mr. Wellington, if you could
19 turn to Table 2 of your Exhibit 14?

20 A Yes.

21 Q Which in the second and third column shows for
22 your West Springfield plant the pounds received as a
23 percentage of capacity, is that right?

24 A Yes.

1 Q And those are --

2 A It's pounds used for butter. It's for skim
3 milk and butter production. It's not total pounds
4 received by the plant.

5 Q And what other uses are made of that milk?

6 A Of that -- of that -- that milk goes into --
7 goes into nonfat dry milk production and butter. We -- we
8 -- we do receive additional milk at the plant and that
9 milk will go to a variety -- it could go into condensed
10 skim sales, it might go into cream sales. It might be
11 reloaded and sold somewhere else. Usually if we do that,
12 it's either sold to a Class 1 processor or else it's sold
13 because we have issues at the plant on -- on balancing
14 a particular day or so and we need to find another home
15 for it.

16 Q And you have here some monthly averages. Do
17 you know what the -- ranging from 81 percent of capacity
18 in January of 2000 for example to 54 percent in December
19 of that same year. Do you know if the --

20 A Fifty-three percent in August.

21 Q I didn't mean to be --

22 A Oh, I'm sorry.

23 Q -- talking about ranges.

24 A Oh, I'm sorry.

1 Q I was going from the beginning of the year to
2 the end of the year.

3 A Yes.

4 Q My simple question is whether you in fact know
5 what the annual average is?

6 A I don't have that -- I could calculate that
7 number. I don't have that right -- in front of me.

8 Q Okay. It -- does -- does 67 percent sound
9 about right?

10 A Probably. I was about to say around two-
11 thirds.

12 Q Okay.

13 A It depends on -- it depends on the year
14 involved. That year it's probably around two-thirds. I
15 think in January it's probably around 60 percent. I'm
16 sorry. In 2001 it was probably around 60 percent.

17 Q Okay. Now, I believe you've testified that the
18 eight cooperatives that are members of ADCNE account for
19 65 percent of the milk pooled in Order 1?

20 A Approximately, yes.

21 Q And I think you've also testified that
22 independent milk is about 25 percent?

23 A Yes, I think those are -- I think those are --
24 the 25 percent is reflected in the market administrator

1 data and the 65 percent is from looking at our own pounds
2 of our members.

3 Q So those two combined are 90 percent?

4 A Of 90 -- correct.

5 Q Just adding those together. Now, Allied is not
6 a member of your organization, correct?

7 A No.

8 Q But do they represent some portion of the --

9 A Oh, certainly.

10 Q -- remaining 10 percent?

11 A Certainly.

12 Q Do you know how much?

13 A No.

14 Q Okay. There was testimony by Mr. Gallagher
15 yesterday about there being 78 cooperatives in the
16 northeast, do you recall that?

17 A Yes.

18 Q And -- and am I right that your eight that are
19 members of your group make up -- well, as you've already
20 testified, about 65 percent right there, correct?

21 A Correct.

22 Q So those remaining 73 co-ops combined cannot
23 exceed 10 percent?

24 A Approximately, yes.

1 Q And -- and -- and one of those is Allied, which
2 is a relatively major cooperative?

3 A Allied is a federation of cooperatives composed
4 of a lot of much smaller cooperatives. But yes, that is
5 true.

6 Q Okay.

7 A Most of those co-ops, by the way, tend to be
8 much smaller co-ops.

9 Q Right. And so the quantity of milk that they
10 could provide to a handler is relatively modest?

11 A The quantity of milk, yes, it is. And in fact,
12 we view that in some of the smaller co-ops -- I think Mr.
13 Gallagher referred them to sort of almost like independent
14 co-ops. I don't necessarily like that term, but they
15 almost operate as one large partnership of farms without -
16 - when they market their milk. But yes, they can't
17 provide too much of the milk although they can be used as
18 leverage against other supplies.

19 Q That leverage being limited by the amount of
20 milk they have --

21 A It's -- of course it's limited. Absolutely.

22 Q Am I correct that in your proposal the only
23 costs that you are trying to have covered in Proposal 7
24 are the costs of balancing?

1 A Costs of balancing the Class 1 market, that's
2 correct.

3 Q And the -- the -- the costs that you've
4 identified as -- in that respect are seasonal balancing
5 and necessary reserves, correct?

6 A The seasonal and operating and then the combine
7 to the necessary ones, yes.

8 Q So there are two elements, seasonal and
9 operating, which combine --

10 A Yes.

11 Q -- are necessary?

12 A Yes.

13 (Pause)

14 BY MR. ROSENBAUM:

15 Q On -- on Table 3 -- no, excuse me. One moment.

16 (Pause)

17 BY MR. ROSENBAUM:

18 Q On Table 1 you have a column toward the right.
19 It's the next-to-the-last column that reads, "Estimated
20 Volume Per Day of Non-Co-Op Receipts Delivered to
21 Distributing Plants," correct?

22 A Correct.

23 Q And am I reading that correctly to show that
24 in, say, April and May those non-co-op receipts are in

1 excess of the low month?

2 A In April and May --

3 Q Of 2001, excuse me.

4 A Yes, because they're at the 104 and 105
5 percent.

6 Q Okay. And for 2002, they are 112 percent and
7 108 percent of the low month, is that right?

8 A Yes. That -- that basically occurs because the
9 -- the volume of milk by those non-cooperative producers
10 is seasonally adjusted by their production, and their
11 production tends to be higher in those particular months
12 in the fall than it does in other parts of the year.

13 Q And as a result of delivering more -- more milk
14 during those months?

15 A In those months, yes. In the spring months.

16 Q On Table 3 you have -- have in essence
17 attempted to replicate for the years 2000 and 2001 the
18 data that -- that Dr. Ling had in his report for the years
19 1994 through '99, is that correct?

20 A That's correct. It's a -- it's a rough
21 estimate because Dr. Ling used a much longer period of
22 time which actually smooths out the fluctuations. We
23 wanted to focus in on the -- the -- the information we
24 had. He used a rolling average, I believe. We only had

1 two years so I couldn't roll anything. It had to be a
2 very simple average.

3 Q All right. And what -- what you're showing
4 here is that -- with respect to producer milk deliveries
5 you have 104 percent of the simple average in May of -- in
6 May, is that right?

7 A In -- in May, yes, for -- for my numbers for
8 the year 2000 and 2001. That's what we're referring to,
9 correct?

10 Q Now, in that respect, are you combining May of
11 2000 and May of 2001?

12 A Yes, I am. I'm taking the average of both.

13 Q Okay. And I'm sure, since I've asked other
14 witnesses, you have looked at Appendix 16 in Exhibit 5
15 which provides data as to how much milk in each month is
16 coming from other states, correct?

17 A I'm -- I'm aware of that table and it's not
18 factored into this table, though.

19 Q It's not factored into in what sense?

20 A I didn't make any adjustments on producer
21 deliveries --

22 Q So that --

23 A -- to account for that.

24 Q -- your producer deliveries include this,

1 correct?

2 A Yes.

3 Q And -- and you'll agree with me, I'm sure, that
4 in 2001, which is one of the periods that's included in
5 your Table 3, there were over 100 million pounds of other
6 state milk brought in to be pooled on the Northeast Order
7 in each of the months of May, June, and July?

8 A Only because I'm forced to agree because the
9 numbers are actually in the report.

10 Q And as compared to a -- to a low of only 13
11 million pounds in November of 2001, correct?

12 A Yes, that is correct.

13 Q And so, the seasonality portrayed in your Table
14 3 reflects in part the fact that more -- other state milk
15 is being pooled on the order?

16 A It certainly would impact those numbers.

17 Q Okay. And -- and impact it in the sense that
18 it -- it -- it amplifies the seasonality?

19 A Amplifies the seasonality, I guess, on my
20 particular numbers that are there. I don't know if it
21 amplifies the seasonality of the amount of milk available
22 in the market because not all that milk comes to this
23 market. It might be pooled in the market but it might not
24 be here. But in terms of those numbers, yes, it does have

1 an adjustment. I think it would amplify it but I'd have
2 to look at it.

3 Actually, you can recalculate these numbers
4 with those, I would -- you know, your witness or a brief
5 could do that.

6 Q Do you -- if you could -- if you could turn in
7 Exhibit 5 to -- and do you see there a list of supply
8 plants operating under the Northeast Order?

9 A Yes.

10 Q And I'd like you to tell me if you could, if
11 you know, when each of those plants was -- was built?

12 A When each of those plants was built?

13 Q Right.

14 A That I couldn't tell you. To be honest with
15 you, I couldn't even tell you when our plants were built
16 because they were well before my time. They've -- I
17 can -- I can tell you, for example, if we go through the
18 ~~AgraMark~~ **Agrimark** Cabot facility -- actually, that plant
19 was built in 1919 because we used it in an advertisement
20 for Cabot. Although I imagine it has changed quite a bit
21 since then, but I wasn't around to see it.

22 The Middlebury plant in Middlebury, Vermont,
23 that was essentially rebuilt in about 1991. That plant
24 was a Kraft Swiss cheese plant prior to that and then

1 Kraft decided to close it and I guess get their product
2 from elsewhere in the country. And we had an opportunity
3 to purchase that plant and -- but Swiss cheese did not
4 look like the appropriate market. So we spent quite a bit
5 of money converting it to a Cheddar cheese plant at that
6 point.

7 So to the extent that -- the building was still
8 there. It was -- much of it was rebuilt at that point.

9 The West Springfield facility has changed over
10 time. But to my knowledge, that has been there for at
11 least 40 years or more. At one point we had several small
12 balance -- butter powder plants. We even had one in
13 Andover, Massachusetts, about 25 miles outside of Boston.
14 But those were closed for efficiency purposes so we could
15 balance out of one butter and powder plant.

16 But I'm sorry. I can't give you exact -- I
17 really have -- don't have any knowledge of anybody else.

18 MR. ROSENBAUM: Thank you very much. That's
19 all I have at this time.

20 JUDGE BAKER: Thank you, Mr. Rosenbaum. Are
21 there other questions of Mr. Wellington? Yes, Mr.
22 English?

23 CROSS EXAMINATION

24 BY MR. ENGLISH:

1 Q Mr. Wellington, turning to your Exhibit 14 and
2 starting with Table 2 for a second.

3 A Is that -- I -- is -- is -- are my exhibits
4 with my tables for 14?

5 Q Yes. Yes.

6 A Okay. I'm sorry. I didn't write that down.

7 Q Glad to provide that for you, Bob.

8 A Thank you. What -- what table again, please?

9 Q Table 2.

10 A Table?

11 Q Two.

12 A Two. Yes.

13 Q The first question is a clarification question.
14 Did the quantities included on Table 2 include purchased
15 cream for butter production?

16 A It included all the -- the product that went
17 into the -- the dryer and the churn. And so to the extent
18 that we purchased cream that month, I couldn't segregate
19 whether it was purchased cream or our own or whatever.
20 But it did add to the supply. There was a total supply
21 available to the plant.

22 It's another reason why we need -- it's very
23 difficult to try to isolate these costs because we have so
24 much -- so many things happening.

1 Q Do you have producer receipts -- I -- strike
2 that.

3 Do you have receipts of milk at that plant that
4 are not counted as producer receipts? Other than
5 purchases of -- purchased cream?

6 A We have -- we have transfers of milk from other
7 handlers. Is that what you're saying?

8 Q Yes.

9 A In essence? Yes. Yes, we will have that.

10 Q Is that included in this chart?

11 A No, not specifically included except to the
12 extent that if you could -- that that added to the supply
13 available, that would also go into the butter and powder
14 churn.

15 Q I guess what we're getting at is the first
16 column is the total Class 4 pounds pooled on this order,
17 correct?

18 A Yes.

19 Q But that might not be the total of product that
20 would be classified as Class 4 somewhere that is produced
21 in all the facilities that are represented on this,
22 correct?

23 A Say that again. I've got to listen to that
24 twice.

1 Q The quantity of milk that is classified as
2 Class 4 under this Order 1.

3 A Okay.

4 Q Does not include product that may be processed
5 at one or more facilities here that are classified as
6 Class 4 under another order? Pooled under another order.

7 A I don't -- I -- I think -- I think you're
8 correct. But I'll -- I'll be honest with you. I don't --
9 we don't receive at Springfield very much milk from --
10 from other orders. I know they do -- that might be a good
11 question to ask Mr. Schad, for example, in Pennsylvania.

12 Q But for your purposes, to your knowledge, you
13 receive some but not a lot, is that --

14 A Some but -- yeah, relatively little milk. We
15 do -- we receive producer milk directly. We might have
16 milk that's -- that's sent to that plant, weekend milk or
17 something, from a proprietary handler, you know, who wants
18 to get rid of milk. And I believe that -- that would be
19 producer milk. That wouldn't be included in what you're
20 asking.

21 Q That's correct. It sounds to me that -- that
22 would be milk that would be included on Column 1?

23 A Yes.

24 Q Okay.

1 A Keep in mind, we're talking about milk included
2 on Column 1. There's a -- there's a volume of milk that
3 comes into the plant, okay. And it comes from all
4 different sources. And then there's a volume of milk that
5 makes its way through the plant to the butter -- to the
6 powder and butter churn, okay, and that's what I'm trying
7 to show here.

8 Now, I can't say this milk went to the churn,
9 this milk didn't, this milk's Class 4. I can't do that.
10 I can just say, here's what we tried to do.

11 And once again, you get to the point of trying
12 to isolate what our costs were, I -- I -- in a way I can't
13 do that because I can't say this milk should -- this cost
14 should go to this milk, this cost should go to that milk.
15 So Dr. Ling's study helps us to isolate those costs.
16 That's really why -- why it's very, very important and one
17 of the reasons we can be here today to look at this
18 particular issue.

19 Q I guess what I'm trying to get at, though, and
20 maybe -- and what you're telling me is maybe you're not
21 the right person to ask. But let me ask a different type
22 of question, which is --

23 A Sure.

24 Q -- do you have non-pool plant -- non-pooled

1 milk at that plant?

2 A Do we have non-pool milk at that plant?

3 Q Is -- is this -- let me back up. Is this a
4 split plant?

5 A No.

6 Q Is any portion of it non-pool plant?

7 A No. I mean, we -- do we have -- do we have
8 non-pool milk at that plant. I'm trying to think because
9 back when Maine had plants that were non-pool -- that
10 were non-pool plants, we would -- we would take milk from
11 Maine and -- and -- and to some extent balance those
12 plants. Now they're in the order.

13 Q And that occurred pretty much January of --
14 January and February of 2001, pretty much all those plants
15 are in the order?

16 A As of the change in the order I think just
17 about everyone came in. I hope -- there's three plants in
18 Maine, one in -- one in Portland. That's a hood plant,
19 and that clearly was in the order. There's one in Bangor,
20 Maine. That used to be called Grant's Dairy. It's now
21 owned by Dean Foods. That's in the order. That's been in
22 the order back then. And Oakhurst I think was in the
23 order then. They are now. They have been for a period of
24 time. I guess maybe some of the statistics you got from

1 Mr. Fredericks would show that.

2 Q Correct. I guess what I'm getting at is I'm
3 trying to compare again page 85 --

4 A Sure.

5 Q -- of Exhibit 5, which is milk powder and
6 butter production, and the first column, which is total
7 milk receipts. And I'm happy to look at any particular
8 months. So I mean, just by example, looking at May of
9 2000 --

10 A Sure.

11 Q -- which had 454,395,205 pounds of milk
12 receipts.

13 A Okay. So we're at the bottom.

14 Q Versus May of 2000 Class 4 production of 249
15 million pounds. So that there is -- what -- what's the
16 source of that number?

17 A I'm -- I'm confused now.

18 Q The last number that was -- the last number I
19 just read off Table 2 of Exhibit 14.

20 A Well, let's -- let's -- let's -- okay. We're
21 looking at May --

22 Q May of 2000.

23 A May of 2000. Let me just focus in on that.

24 Okay. Yep. We have 317 million pounds of Class 4 milk.

1 Okay. You can also get that from Table 5 of Exhibit 5
2 because that was my original source for that number.

3 Now, okay. So we have that number. Where are
4 we going?

5 Q Well, okay. Now you confused me because you've
6 given me a number that doesn't match with what I just
7 looked at.

8 A I'm sorry.

9 Q Where did you just get 317 million from?

10 A I thought you were looking at my Table 2.

11 Q I am looking at your Table 2 for May of 2000.

12 A Oh, I'm sorry. I'm -- I'm sorry. May of 2000.

13 Okay. It's 249.

14 Q Thank you. Okay.

15 A I was looking at 2002.

16 Q All right. So now we have 249 million pounds
17 of Class 4.

18 A Okay.

19 Q Okay.

20 A Yep.

21 Q You're on that same page?

22 A You got it.

23 Q Now I'm looking at page 85 of Exhibit 5.

24 A Okay.

1 Q For May of 2000.

2 A 454 million pounds.

3 Q Correct.

4 A Are we good? Okay.

5 Q Yes.

6 A Yep.

7 Q I'm asking, to the extent you know, what is the
8 difference between those two numbers?

9 A That's -- this is milk that is received at
10 those plants. And that milk can be -- a variety of things
11 can happen with that milk. It can be reloaded and -- and
12 sent back out. It -- it -- in our case, it's very rarely
13 reloaded and leaving the area. If we do in the month of
14 May, it's a very costly proposition.

15 That milk could be made into condensed skim,
16 for example, or cream and it could be sold off. It
17 obviously wasn't going to a Class 4 product so it was
18 going elsewhere.

19 May -- I don't think it's a coincidence, by the
20 way, that when you look at that May number and you look at
21 the month before, which is April, and you look at the
22 third column of Table 2, Exhibit 14, we're at 99 percent
23 of capacity in April, which means we were busting at the
24 seams when we're at 99 percent of capacity. We went down

1 to 85 percent probably because we had some issues in the -
2 - part of the week.

3 Last time -- at one point back several years
4 ago I went through the numbers and I questioned our staff
5 why we were at 106 or 107 percent of capacity and I was
6 reminded that that was the time the plant blew up and we
7 had a serious problem.

8 So I think what happened that -- I can tell you
9 what happened in our case for that month is that we
10 probably -- because we had so much milk available clearly
11 in April and I believe in May that we were reloading milk,
12 we were selling condensed.

13 One of the biggest problems, by the way, of a
14 balancing plant is if we sell condensed, we don't have a
15 market for it. It's sort of the "we got you" principle,
16 then. You have to -- if you've got it -- your milk's in,
17 you've got to do something with it. You've got to get it
18 off the trucks and you've got to move it, and condensing
19 is a faster way because our limitation occurs at the
20 dryer, not at the condenser. So we can bring the milk in.
21 We can bring in about probably 90 million pounds of milk
22 if we have to into our plant. And -- but we have to then
23 either reload it, right, reload it, condense it, since we
24 couldn't put it through the -- the dryer because we can

1 only do 2.2 million pounds.

2 So I think that's part of the issue. There are
3 a lot of things happening with the plant. There are a lot
4 of things happening with our plant. We had quite a bit of
5 milk that we received at the plant and then we try to do
6 various things with those -- that milk.

7 Q Do you purchase milk from outside sources?

8 A Yes.

9 Q When you purchase milk from outside sources, is
10 that sort of "got you" during April and May and you pay
11 less than the order price for the milk from those outside
12 sources?

13 A It depends. If we have a contract with those
14 outside sources such as, you know, I have a contract with
15 a Class 1 processor, then I wouldn't be a "got you"
16 because we have an arrangement with them on that.

17 If it's somebody who's looking to pedal some,
18 you know, a spot load of milk, we got them. I mean, it
19 depends on -- it depends on --

20 Q So just like on the condensed on your side,
21 then you've got them. And -- and if they're pedalling a
22 spot load, you're going to pay them, you know, whatever --

23 A Right. Because chances are if we're taking
24 that milk in and we can't handle it because we're near

1 capacity that we're going to condense it and unload it at
2 a very low cost. So I mean, I'm not saying -- we as an
3 economic entity would try to make some money on that -- of
4 course. But I mean, a lot of times even though we're
5 paying them less, we're also getting less.

6 Q So if -- if somebody who is balancing their own
7 supply comes to you with a spot load of milk, that's an
8 example where they may end up getting less than the order
9 price for the milk, correct?

10 A Yes, that's true.

11 Q In 1991, going back now what -- you had a bad
12 time, apparently -- the policy to pay somewhere in the
13 neighborhood of between 50 cents and a dollar
14 hundredweight under the class price for milk you purchased
15 from other sources. Do you recall that?

16 A ~~I've never~~ **I imagine that was before the** --
17 (inaudible) -- **of 3A** pricing.

18 Q That's why I know about it.

19 A Yes. Yes, we did, because we were losing money
20 on every hundredweight of milk that went through that
21 plant, our own milk and everything else, and we had -- we
22 had a 20 -- across our membership. Any milk that we were
23 putting in, if we paid the class price with whose money?
24 We just wouldn't -- why bother putting it in other than

1 we've got the plant, we've got the fixed costs, and
2 everything else. So yes, we did -- we did pay that
3 amount.

4 I'll be honest with you. I don't recall the
5 exact amount but I know we were paying well under and that
6 certainly is well under.

7 Q If that's what -- what USDA in the published
8 decision said you said at the hearing, that would be, you
9 know -- let me back up. You testified --

10 A Yes, I did testify. If you ask me what I --
11 exactly what I said in 1991, I would say I'd have to
12 reread it. But if -- if it's in that record, then yes, I
13 said it.

14 Q Does -- does any member of ADCNE have
15 agreements with large cheese plants to -- that help ADCNE
16 balance through supply milk?

17 A I believe they do. We don't at AgraMark. I
18 believe that Mr. Gallagher will address that issue in his
19 testimony because I believe his organization does. But we
20 do not.

21 Q Turning to Table 3, and I know you described
22 this as a straightforward table but let me see in which
23 way it's a straight table.

24 A I'm an economist.

1 Q Yeah. Well, let me see as a lawyer in which
2 ways it is not perhaps so straightforward.

3 A Okay. I think these answers are fairly obvious
4 but just to make it clear for the record, the -- the
5 column for your study that is admittedly for a limited
6 time frame of 2000, 2001, that column of producer milk
7 deliveries would include milk that is pooled under this
8 order but was transferred or diverted to a plant -- a non-
9 pool plant or to a plant outside the order, is that
10 correct?

11 A Producer receipts pooled under this order, yes,
12 it is included in this.

13 Q And that column does not include milk produced,
14 for instance, in the state of New York that shows up on
15 the -- market statistics as having been pooled on that
16 order for a particular month, correct?

17 A If it was pooled on that order, then it is not
18 included in these numbers.

19 Q And for the purposes of a fluid demand column,
20 again, your study for 2000, 2001, the fluid demand would
21 include packaged Class 1 distribution into other federal
22 orders, correct? It doesn't matter. It includes all
23 Class 1 packaged distribution regardless whether it's
24 Order 1 or going down, say --

1 A By -- by a 7(a) distributing plant?

2 Q Yes.

3 A Yes. When I did this, Chip, my intentions were
4 to try to use the easiest available data. You can make --
5 you can recalculate this table with those other numbers.
6 I --

7 Q To the extent they're available.
8 Unfortunately, sometimes they're restricted and that makes
9 it tough --

10 A That's -- that's the problem. When I first
11 looked at this, I did this a little bit of time ago. And
12 that's one of the issues that we had, too.

13 Q Well, let me get to that -- that very question
14 and let me ask you if you would turn to Exhibit 5, the
15 market administrator's statistics, pages 79 and 80?

16 A Yes.

17 Q And before I ask the question, I'm going to
18 preface it by saying I'm about to ask you for confidential
19 information and I know that. And I'm asking though as
20 proponents of the proposal whether you're prepared to, you
21 know, answer the questions. If you're not, you're not.
22 That's -- that would be fine.

23 But can you tell me whether, for instance, on
24 page 79 for any month for which data is restricted either

1 for transfers to other order plants or transfers from
2 other order plants whether AgraMark made of received such
3 a transfer?

4 A I don't know. I mean that's very detailed,
5 okay. I mean, to be honest with you, I have it right
6 here. I don't -- there's a lot of other things I would
7 say is proprietary that I wouldn't give, but this I'd
8 probably give. It's not -- it's not -- and keep in mind
9 that one of the reasons I might be able to give it to you
10 is because we don't do very much of that given our
11 location.

12 Q But -- but you don't know --

13 A I -- I don't -- I don't have that. I'd have to
14 go back into our reports to see what that one is.

15 Q And turning to page 80 for a moment, which is
16 the diversions, and in essence the only restricted data is
17 diversions to other order plants. Would that be the same
18 answer, you don't know?

19 A I don't know. Sorry.

20 Q You discussed with Mr. Rosenbaum the -- some of
21 the history of some of the facilities to the extent you
22 knew them.

23 A Yes.

24 Q For the Springfield facility, again, if the

1 Class 3-A decision reveals that an ~~AgraMark~~ **Agrimark**
2 witness, who I believe to be you, testified that that
3 plant was expanded in 1984, whatever that testimony is,
4 that would be accurate?

5 A Yes. In fact, I believe it was expanded in
6 1984. I knew it was expanded at the time. I came to
7 ~~AgraMark~~ **Agrimark** in 1989 so prior to that I have just
8 secondary knowledge.

9 Q But nonetheless, that decision was made to
10 expand that plant as opposed to make other decisions --

11 A I think at the time -- I'm not sure whether we
12 closed any of the smaller plants at that time. I know we
13 looked at the balancing issues on that. We're constantly
14 looking at that.

15 I'll give you an example. Last June we looked
16 at it and said, you know, West Springfield was operating
17 at a much lower percent of capacity. There was less milk
18 out there. Can we operate some other way.

19 One of the -- one of the unusual things about
20 our West Springfield plant, that it's located in the town
21 of West Springfield. For anyone who's been in West
22 Springfield, it's above -- just above the Connecticut
23 border near Hartford. And our plant is located right
24 across from a huge shopping mall next to a 12- or 14-

1 cinema complex by -- surrounded by four motels. We were
2 there first, by the way, okay. And you would look at it
3 and say, why would you want to be there, okay.

4 We are there because if you also look within a
5 mile of the plant is the entrance to Route 91, which runs
6 from the Canadian border down to New Haven, Connecticut.
7 Also within a mile of the plant is the Massachusetts
8 Turnpike that runs from eastern New York to Boston, okay.
9 We -- we were trying to be efficient and have one plant to
10 balance our New England market at the time. That was the
11 place to put it.

12 We could -- at other times we've had smaller
13 plants but -- and the efficiencies of that. That has -
14 - that -- that was the best way to go. But when that
15 happens, you're still spending a lot of money moving milk
16 around.

17 Q But you nonetheless made that economic decision
18 --

19 A Absolutely we -- we made that. And in fact,
20 Chip, if we made a bad economic decision, they also
21 believe that that's one of the reasons we should look at
22 Dr. Ling's study. Because the order shouldn't pay for bad
23 economic decisions. We've got to look at it and say
24 what's -- what's an economic, efficient way to look at it,

1 focusing in on Class 1, not just did AgraMark do something
2 or, you know, poor -- do we have higher costs or other
3 factors.

4 Q Well, let's talk about Dr. Ling's study for one
5 more moment.

6 A Sure.

7 Q AgraMark doesn't pay an interest rate anywhere
8 close to nine percent on its debt, does it?

9 A No, not -- not today. We -- we did in fact at
10 points in the past but not today.

11 Q Okay. But -- but can you tell me what your
12 interest rates actually are --

13 A Boy, that's a -- that's a good question. It
14 depends on -- I'll try and go back and look at the last
15 time I looked at those particular issues. I would say
16 probably right now around four, five percent, somewhere in
17 that area.

18 I would say at certain -- certain -- probably
19 about half of the nine percent, somewhere in that
20 vicinity, Chip.

21 Q Turn to page 13 of your testimony. And the
22 statement in the -- just above the summary, the proposal
23 to add a provision at the end of Subsection (c).

24 A Okay. Let me get there.

1 (Pause)

2 BY MR. ENGLISH:

3 A Yes. Which paragraph again? I'm --

4 Q The -- the paragraph that says, "We would like
5 to add a provision at the end of Subsection (c)."

6 A Yes.

7 Q I take it you recognize that there is risk that
8 a producer could be pooled on order -- at the very
9 critical time of the year when the milk is most needed in
10 Order 1 and nonetheless come right back in a future month
11 and receive marketwide service payment. That's --
12 that's the underlying purpose of this --

13 A Well, it's not that we -- we perceive a risk.
14 It occurs. It occurs and whether -- and it occurs
15 throughout different times of the year. We're saying that
16 you need a regular commitment to this order in order to do
17 that.

18 The cooperative service payments, I think, had
19 a year waiting period on it. But this -- this we looked
20 at three months and the group agreed as a group to have
21 three months.

22 Q And I was going to get at that. Why not a full
23 year?

24 A Hmm?

1 Q Why not a full year for regular --

2 A Because it was a group consensus that they felt
3 three months would be sufficient time.

4 Q Would you agree with me that as written -- and
5 you were in the room yesterday for the testimony of Mr.
6 Fredericks, right?

7 A Not -- only a small amount.

8 Q Do you recall a discussion that I had with him
9 with respect to the fact that producers can be -- can be
10 pooled in the same month on two different orders?

11 A No, I wasn't in for that discussion.

12 Q Were you aware of that fact?

13 A I knew because we were -- we were -- we're
14 addressing some of those issues. In -- in our order can
15 they be done? No, I wasn't aware of that. I -- we don't
16 do it. And we don't have -- in our area we haven't done
17 it in New England --

18 Q To the extent the purpose of your proviso is to
19 make sure that someone has -- you know, is maintaining a
20 real connection with this market, wouldn't it make more
21 sense to -- you know, it's not just be pooled on this
22 order but it's pooled on this order and not pooled
23 somewhere else?

24 A Same producer?

1 individuals who will need to be heard later on today. Are
2 those individuals in the hearing room now?

3 MR. ENGLISH: Are these the dairy farmers I
4 mentioned earlier?

5 JUDGE BAKER: Yes.

6 MR. ENGLISH: No, they're not in the room right
7 this minute.

8 JUDGE BAKER: Very well.

9 MR. ENGLISH: I thought maybe after the
10 afternoon break or something.

11 JUDGE BAKER: Very well. We'll hear them then,
12 Mr. English.

13 Are there any others in the room who wish to be
14 heard today or need to be heard today?

15 MR. ENGLISH: I have one other person if
16 possible at the very end of the last -- Butch Miller of
17 Queensboro Farms. He was here yesterday and today. He's
18 --

19 JUDGE BAKER: Very well. Those who have to be
20 heard, we'll hear them after the break then, our afternoon
21 recess.

22 Now, Mr. English, I have here a note that
23 Exhibit 9 was identified only and it relates to data from
24 June to October you were to obtain from Ms. Ely.

1 (Laughter)

2 JUDGE BAKER: You have obtained it, I see.

3 MR. ENGLISH: She identified it yesterday.

4 JUDGE BAKER: Yes.

5 MR. ENGLISH: I had to make copies.

6 JUDGE BAKER: Very well.

7 MR. ENGLISH: And so I have done so. If this
8 is a convenient time, if you want to do it later, that's
9 fine.

10 JUDGE BAKER: Well, why don't we do it now
11 while it's on our minds.

12 This has been identified. Are there going to
13 be any objections with respect to the admission into
14 evidence?

15 MR. ENGLISH: It was my understanding
16 yesterday, Your Honor, no, that -- that people had an
17 opportunity to look at it.

18 JUDGE BAKER: Very well. Then Exhibit 9 is
19 admitted and received into evidence. Four copies for him,
20 the court reporter, please. Thank you.

21 (The document previously
22 marked for identification as
23 Exhibit 9 was received in
24 evidence.)

1 JUDGE BAKER: Mr. Wellington is on the stand
2 and is subject to cross examination. Are there any
3 questions for him?

4 (Pause)

5 JUDGE BAKER: Mr. Vetne?

6 MR. VETNE: John Vetne appearing for
7 Friendship.

8 (Pause)

9 CROSS EXAMINATION

10 BY MR. VETNE:

11 Q Let's see. Mr. Wellington, can you please turn
12 to your Table 1 and have handy Exhibit 5?

13 A All right.

14 (Pause)

15

16 BY MR. VETNE:

17 Q As I understand it, data on your Table 1 is
18 taken to some degree from Exhibit 5, page 86, which is
19 Appendix 15?

20 A Yes.

21 Q Okay. And you identify that milk -- sorry.
22 Milk from Appendix 15, Column -- numerical column two as
23 non-cooperative milk, correct? That that column in Table
24 5 is entitled, "Percentage of Proprietary Handler Producer

1 Milk"?

2 A Yes.

3 Q Were you here when Mr. Fredericks described
4 that -- that column as also including cooperative milk
5 that for whatever reason was not marketed as 9(c)
6 cooperative milk?

7 A No, I wasn't. In fact, I wasn't aware of that.

8 Q Okay. Which of your columns would be affected
9 by their characterization if you were to assume that
10 Appendix 15, the last column, included some cooperative
11 milk that happened not to be 9(c) milk?

12 A Of course, it's the original column that I used
13 it from, which is Column 6. That's the percent of
14 proprietary handlers. And then that -- that percentage is
15 used in the next column, which is the milk pounds of
16 estimated volume, day of non-co-op receipts delivered to
17 distributing plants. The next column of course is a
18 percentage of that, the average, so if that number
19 changed, that number would change.

20 Then the last -- I guess all the rest of the
21 columns. The next-to-the-last column is the difference
22 between the total amount of receipts at distributing
23 plants that I've estimated and the -- the non -- what I
24 call non-co-op receipts. So that column of course would

1 change. And the percentage one.

2 If -- if these changed, all those -- rest of
3 those numbers would change.

4 Q Okay. To the extent that your Table 1 were to
5 be -- be redesignated -- the columns redesignated as --
6 where it says, "Cooperative Receipts" we designate them as
7 "9(c) Handler Receipts," and the non-cooperative receipts
8 designated as "Non-9(c) Milk," that -- the numbers would
9 be -- would be accurate? Is that essentially what you
10 intended to do?

11 A I think essentially, yes, that's what I
12 intended to do. I have no issue with characterizing it
13 that way.

14 Q Your -- in Table 1 also my impression from your
15 prior testimony, which I want to clarify because I'm not
16 quite sure. The columns labeled, "Estimate of Total
17 Receipts" is not based on any data that identifies
18 receipts at distributing plants but it's imputed receipts
19 based on an assumed percentage of Class 2?

20 A Class 1. Yes.

21 Q It's Class 1 plus an assumed percentage?

22 A Yes, it's -- well, okay. It's -- it's the
23 Class 1 producer receipts, and I'm -- and it's adjusted to
24 reflect that I'm making an assumption that 85 percent of

1 the milk at a distributing plant is -- is a -- is assigned
2 to Class 1.

3 Q Okay. And in -- in the amount that you assume
4 is Class 2, is it merely an exercise in arithmetic or did
5 you do any comparison to the seasonality of Class 2 use in
6 the market?

7 A I did nothing on the seasonality of Class 2.

8 Q Has there been any change in the capacity of
9 the Springfield plant since 1999? I'm sorry. The nonfat
10 dry milk and butter manufacturing capacity.

11 A No. There's been some changes at the plant but
12 not on capacity of nonfat dry milk.

13 Q Okay. During the period of January 2000 to
14 date, has the plant been either out of service or
15 partially out of service in any month?

16 A Normally so. When you say "out of service"
17 -- we have not operated.

18 Q Has it been out of service for reasons other
19 than low -- low milk? For reasons of shut down,
20 construction, improvement, that kind of thing?

21 A Not for any extended period of time, more than
22 a couple days. We have made some changes. We had some
23 problems with our silos and we had to put a -- a new --
24 replacement of the silos involved. So I mean, there were

1 some issues on that but not more so than a couple days, if
2 they were that much.

3 Q In your Table 2, you've -- under -- under the
4 "West Springfield" column and a million pounds, you've
5 indicated that that represents milk used to produce nonfat
6 dry milk and butter?

7 A Yes.

8 Q Is that milk equivalent pounds or is that
9 product pounds received? The distinction that I have in
10 mind is if you received, for example, a load of condensed
11 skim from some source or if you received a load of cream,
12 would -- would the million pounds here be product pounds
13 of your receipts or would it be milk equivalent receipts?

14 A I believe it was milk equivalent receipts.
15 That's what I asked for.

16 Q Okay. And there are occasions when West
17 Springfield would receive skim condensed from other
18 sources, for example?

19 A Receive skim condensed, possibly but not on any
20 kind of regular basis or to a -- to a large amount.

21 Q But regularly, it would receive loads of cream?

22 A Yes, definitely.

23 Q And to the extent that's included, you believe
24 it's converted to milk equivalent?

1 A Yes.

2 Q The production of West Springfield in -- in
3 butter and nonfat dry milk, if you -- if you make an
4 assumption of normal yields to which -- which Dr. Ling
5 addressed, would West Springfield make more powder than --
6 than butter than you would expect from normal yields or
7 more butter than powder than you would expect from normal
8 yields?

9 A That really depends on the time of the year,
10 okay, whether we're buying cream in and moving it to
11 butter. But I would say on average -- I haven't done a
12 calculation on that. My tendency would say probably a
13 slightly more butter than proportion of nonfat dry milk.
14 Because we do buy cream in on top of bringing milk that we
15 buy in. We very rarely buy skim in.

16 I think it's a relatively small factor but I
17 would say it would be a factor.

18 Q Okay. Let's see. Would it be the case that
19 during the late spring and summer when the plant is
20 operating at greater capacity it's proportionate use of --
21 its proportionate use for making butter is lower because
22 of ice cream demand?

23 A Yes, that's -- that's definitely possible.

24 Q And would the converse be true in the winter

1 months? You would be making more condensed skim into
2 powder than cream into butter? No, the other way around.

3 A Other way around.

4 Q Other way around, yeah. The other way around.

5 A Yes, I believe so.

6 Q Okay.

7 (Pause)

8 BY MR. VETNE:

9 Q Your Figure 6. You may have answered this and
10 I apologize if you have. The percent of -- manufacturing
11 capacity is the capacity limited to your nonfat dry milk
12 and butter capacity, correct?

13 A Yes. We have a capacity to receive about 3
14 million pounds a milk about a day, about 90 million pounds
15 or so at the plant. But then something else has to be
16 done with that milk. Sometimes it's reloaded,
17 particularly if it's going to be traveling a greater
18 distance because the trucks have to get back to the farm.
19 Or it could be condensed products. We don't really get
20 that level in but we have that capacity if we have to.
21 But we can only process about 2.2 million pounds a day.

22 Q Okay. Since Kraft sold its Middlebury plant to
23 ~~AgraMark~~ **Agrimark**, does ~~AgraMark~~ **Agrimark** have a supply
24 commitment to any other cheese plant?

1 A Yes.

2 Q Is the Springfield butter powder plant also
3 used to balance the demands of the cheese plants, both
4 ~~AgraMark~~ **Agrimark** cheese plants and other cheese plants?

5 A Yes, it is. That's -- that's one of the
6 reasons why we just couldn't look at our -- our -- our
7 costs at our plant, because it does -- a lot of other
8 factors.

9 Q During the year 2000 and the first part of
10 2001, was the Springfield plant used to receive milk as an
11 accommodation to producers in New York so that those
12 producers would be eligible for dairy compact
13 participation?

14 A It might have been to a small degree. That was
15 an issue at the very beginning of the compact, early 1997
16 and 1998. By the time we got further into the compact, it
17 wasn't used as much because there was direct shipments and
18 New York producers found -- found markets in New England.

19 So it wasn't -- it was to a small degree,
20 though, John.

21 Q Were there also accommodation shipments to a
22 small degree or any degree to the AgraMark plants in
23 Vermont?

24 A To the Middlebury and Cabot plants?

1 Q Yeah. The Middlebury and Cabot plants from New
2 York sources.

3 A Cabot, no, not to my knowledge. Middlebury,
4 probably yes to some small degree. Mainly milk from up
5 that northern tier of New York.

6 Q All right.

7 (Pause)

8 BY MR. VETNE:

9 Q Your proposal includes the possibility and
10 intention that folks that receive marketwide service
11 payments would have first line responsibility to supply
12 supplemental milk when it's needed. Is that a fair
13 characterization?

14 A Yes.

15 Q In your experience, may it occur that parts of
16 the northeast have a need for supplemental milk while
17 other parts of the northeast may not have the same need?

18 A That is my understanding at times.

19 Q Okay. For a very large market, geographically
20 large --

21 A Yes.

22 Q -- and other things. Would it be consistent
23 with your intention for the market administrator to be
24 able to call on supplies from market service-qualified

1 organizations on a geographic basis fitting -- fitting the
2 need wherever it might be?

3 A Formally do that?

4 Q Pardon?

5 A Former -- a formal request? I mean, to raise
6 that percentage?

7 Q Yes, to raise that percentage for plants --

8 A That's not what we had -- we had considered in
9 doing that. I can tell you right now that we -- the -- I
10 can at least talk to my co-op. If we have a Class 1 need
11 that needs to be fulfilled and there's a problem in the
12 marketplace and the market administrator talks to us about
13 it, we try to help out that situation. If we had co-op
14 service payments, I think we would probably even try
15 harder because we would feel a further obligation.

16 So in that sense, informally I think, you know,
17 the market administrator could do that. But on a formal
18 basis, no, we have not considered that.

19 Q All right. Would you agree with me, for
20 example, that the need may arise for supplemental milk to
21 Baltimore, Washington, Philadelphia area when there's no
22 comparable need in Boston, for example?

23 A Yes, that's true.

24 Q And if there were an across-the-board

1 percentage increase in everybody, you might have to
2 scramble to -- to -- to find a way to comply with that
3 even though your milk is not economically or logically
4 located to meet that demand?

5 A There is that possibility.

6 Q Would you suggest that the market administrator
7 should have authority to be geographically discreet in
8 exercising this provision?

9 A I -- we don't have a -- I don't have a position
10 on that.

11 (Pause)

12 BY MR. VETNE:

13 Q In the northeast, cooperatives serve as the
14 marketing agent for considerable non-member milk, is that
15 correct?

16 A We do not, but other -- some other co-ops do.

17 Q Okay. In the middle of page 13 of your
18 statement you would appear to preclude the payment of
19 marketwide service funds to cooperatives who have
20 marketing control of non-member milk?

21 A That's exactly what it does.

22 Q That's what it does. And yet, in the last
23 sentence of the middle paragraph, you want to assure that
24 milk receiving payments is under the marketing control of

1 the handler receiving the payment. What I want to ask you
2 is, if a cooperative association markets non-member milk
3 and includes that milk in supplying Class 1 customers when
4 needed and it goes into surplus uses when not needed, why
5 should it not be included in the volume of milk for which
6 service payments are eligible?

7 A Because we feel that the control and the
8 commitment is stronger when you have a relationship
9 through membership than when you have it just through a
10 marketing arrangement. With membership, it's a marketing
11 arrangement and a membership. We have -- we have annual
12 contracts so we -- we feel that that's a closer tie to
13 what's involved.

14 And like I said, from my perspective, I don't -
15 - I don't do any of that so it wasn't really an issue.

16 Q All right. If -- if in aggregate a cooperative
17 association performs balancing functions and includes in
18 its marketing and balancing non-member milk, why should
19 not some provision be made for those non-members who are
20 part of the cooperative's marketing supply to receive some
21 of the payments?

22 A Well, keep in mind, the members do not receive
23 payments, okay. It's the -- it's the -- the -- the
24 handler who qualifies that receives the payments. So the

1 question is, should they receive payments on that milk --

2 Q Yes.

3 A -- doing balancing. And that -- that is an
4 option under this. I can tell you that our position was
5 that that -- that that should not occur, that we believe
6 that there should have been a membership commitment is
7 that stronger tie that's needed. That's our position,
8 John.

9 Q In the market that you're most intimately
10 familiar with, New England, has there been a reduction in
11 the percentage of milk that is marketed independently
12 since 1999?

13 A You're not asking for a reduction in the
14 percentage of independent producers or non-members.
15 You're saying market --

16 Q I'm sorry. Yeah. Let me -- let me ask both
17 questions. Good point.

18 Okay. Has there been a reduction in -- in the
19 percentage of the market represented by non-member
20 producers?

21 A Non-member producers, I don't believe so.
22 There's been no rush to co-ops -- for members to join
23 cooperatives.

24 Q How about since 1995?

1 A I don't recall a particular incident.

2 Q Maybe it's not your milk but you probably do
3 know. Weren't a lot of the Garelic plants independently -
4 - supplied by independent producers?

5 A Yes.

6 Q Okay. And at some point since they've become
7 totally supplied by cooperatives?

8 A But, no, that milk still goes -- is marketed by
9 those cooperatives. Those independents are still
10 independents. They're not members of cooperatives and few
11 of them have joined cooperatives, to my knowledge. They
12 haven't joined my cooperative.

13 Q Okay. So the plants now have a -- have a
14 supply commitment with a cooperative but the cooperative
15 markets at least some of that milk as in -- by independent
16 producers through the cooperative, is that correct?

17 A Yes. They might -- I'm don't -- I'm not
18 familiar with those because we don't do that. In my role
19 of a witness whose cooperative is involved with that,
20 there might be a better person to ask the questions of.

21 Q And who's that?

22 A -- suggestion. Mr. Gallagher.

23 Q Okay.

24 (Pause)

1 BY MR. VETNE:

2 Q Who -- who -- what cooperative, any -- if any,
3 is responsible for marketing milk up to Bangor, Maine?

4 A That plant is -- is part of the dean system.

5 Q Yeah.

6 A So I gather it's the Dairy Market Services,
7 which is Mr. Gallagher's group, that -- that does that.
8 They have -- they have -- they were -- they were
9 previously almost exclusively supplied by independent
10 producers. There was a co-op group called Boston Market
11 Shippers. I'm not even sure -- I don't think they were
12 ~~Cappra~~ **Capper** Volstead-qualified. I'm not sure. They
13 were sort of a rough independent kind of group.

14 Q Maine -- Maine Market -- Maine Dairy Farm --
15 what's that name?

16 A The Boston Market Shippers was the name of
17 them.

18 Q Uh-huh.

19 A So there was a group there that went to
20 Westland Creamery, okay, and part of that milk also
21 started going back to the plant in Bangor when Westland
22 was purchased by Dean.

23 But primarily, that plant in Bangor, Maine, was
24 -- was supplied by independents. We did some of it.

1 Usually, it ended up being some type of balancing or
2 whatever if we did something involved.

3 Q There's a cooperative that operates in Maine
4 exclusively?

5 A No, not that I'm aware of. A dairy
6 cooperative, no. Exclusively, you mean?

7 Q Well, virtually exclusively.

8 A No. I mean, virtually exclusively. I -- no,
9 we operate in Maine. The Dairy Market Services, DFA,
10 Dairylea group operate in Maine. And I know NFO at one
11 point did. I'm not sure if they do anymore, though that
12 probably is marketed by that DMS group. And then is there
13 somebody else? Like I said, there's those Boston Market
14 Shippers, but that's a very loose-knit group. I'm not
15 even sure if I would call them a cooperative. I'm not
16 sure -- you have to look on the list. I'm not sure if the
17 market administrator calls them a cooperative, but they're
18 the only ones I'm aware of, John.

19 Q Okay.

20 A Oakhurst Dairy is supplied by primarily
21 independents, non-members, if that's a help.

22 Q You refer on page 14 to the preexisting New
23 York-New Jersey Order and describe that as being linked to
24 balancing.

1 A Cooperative service payments.

2 Q Cooperative service payments, yes.

3 A Yes.

4 Q Was there a requirement under the prior order,
5 to your recollection, and forgive me for not looking it up
6 or having it in front of me. Was there a requirement that
7 organization that received those payments be willing to
8 accept surplus milk when there is a surplus?

9 A No, I don't think there was a requirement they
10 had to receive surplus milk. They had -- there -- there
11 was two levels or tiers, and I hope I'm correct on this
12 because I haven't done this in a long time. And we didn't
13 receive them -- in -- for them.

14 But I believe it was four cents all total,
15 three cents and a penny. And the -- the extra penny was
16 if you owned a -- a cheese or nonfat dry milk plant, okay,
17 at -- that could process at least a million pounds a day.
18 So that was -- that piece of it was linked to balancing.

19 Q Okay. You don't recall whether there was a
20 condition of receipt to -- to make your plant available to
21 --

22 A No, I don't --

23 Q -- surplus production?

24 A -- I don't believe so, okay. However, there

1 was a provision with -- that if a producer lost his market
2 that you had to -- you had to have a market available and
3 the same conditions you would do for a member for a
4 limited period of time. I mean, in other words, if they
5 lost their market because of poor quality, you weren't
6 required to do that. But if they were dropped by a
7 handler and their quality was fine and all the health
8 restrictions, the market administrator could ask you to
9 pick up that producer for a certain period of time.

10 So there was that --

11 Q Okay.

12 A -- piece but I don't believe there was any
13 other piece.

14 Q Okay. And with respect to Proposal 7 at this
15 hearing, if a handler, including a cooperative association
16 that doesn't operate plants -- manufacturing plants, if a
17 handler has surplus milk that it needs to dispose of and
18 comes knocking at the door of AgraMark or anybody else
19 that's receiving marketwide service payments, the
20 marketwide service payment recipient could refuse to
21 process that milk even though they had available capacity
22 and still not become ineligible to receive payments for
23 marketwide services?

24 A Well, John, everything -- when someone is

1 knocking at the door, okay, one of the first things you
2 discuss is price. Now, what -- if -- if we have capacity,
3 they can find a home. Now, the question is -- I think
4 would be would they get a discount price. Is that what
5 you're asking?

6 Q Maybe my question has two tiers.

7 A Okay. Maybe I'm helping you too much.

8 Q Okay.

9 A The answer to that, by the way, is "no." I
10 mean, if we -- you know, I mean to the extent that if we
11 needed to do more for the Class 1 market or other things,
12 yes, we would do that. But if -- if -- if this amount is
13 going to be used as a leverage to lower handling charges
14 and other charges, okay, then we have some issues with
15 that. We're already incurring these costs.

16 So, no, I don't believe that's the case. That
17 wasn't our intention, in -- in all honesty.

18 (Pause)

19 BY MR. VETNE:

20 Q Both you and -- and Mr. Gallagher made
21 reference to what you believe to be a large -- relatively
22 large proportion of non-cooperative members in the
23 northeast. Is there -- geographical concentration of non-
24 members in the northeast or is it fairly uniform, the

1 percentage identified throughout the northeast?

2 A In New England it's fairly uniform.

3 Q And is it --

4 A In the rest of the northeast, I'm not sure.

5 You might have to ask somebody who has more members out in
6 those areas.

7 Q In New England is it the same percentage
8 approximately or a greater percentage or a lesser
9 percentage than the rest of the northeast?

10 A I would say it's probably the same percentage.
11 If you ask me geographically if there is, I'd be inclined
12 to say that because we tend to go to Class 1 processors,
13 they're probably closer to the Class 1 market. Producers
14 who are out in the north country of New York, for -- for
15 example above the Adirondacks, tend to be more co-op
16 members because the Class 1 processors don't get a large
17 volume. They may get some volume of milk but they don't
18 get a large volume. So there may be some geographic
19 nature to that.

20 We don't have that nature because we don't have
21 that large a geographic area, excluding Maine, in New
22 England. So that's never really been an issue.
23 Operations are fairly spread out.

24 I don't think we're a higher percentage than

1 the rest of the northeast, though.

2 Q Okay. Now I want to address for a while your
3 qualification threshold of a million pounds a day.

4 A Sure.

5 Q A million pounds a day -- let's -- let's say
6 that an organization is supplying a single distributing
7 plant. A million pounds a day would represent operations
8 of a fairly large distributing plant, correct?

9 A Above average, I believe.

10 Q Above average somewhat. The three plants in
11 Maine are about 10 million pounds each, not more, right?

12 A No, they're more than that now. I think you're
13 about five -- five years behind.

14 Q Pardon?

15 A You're about five years behind on extensions
16 that have -- Hood has now more sales, for example. I
17 don't know the exact amount. Probably couldn't tell you
18 if I did. But you know, they have a plant in Boston,
19 Charlestown -- some of those sales. Same types of
20 expansions. I think Oakhurst business is doing well. I'm
21 not sure about the Grant's business. But I would say
22 they're probably closer to 15 to 20 million pounds.

23 Q They who?

24 A The three plants up there.

1 Q Okay. I -- I notice in the market --

2 A But still less than a million pounds a day.

3 Q Less than a million pounds --

4 A Yes.

5 Q And I do note that the producer milk by state
6 of origin data for -- in Exhibit 5 for early 2001, which
7 was the -- the period in which Oakhurst became regulated,
8 increased by about 8 million pounds. That doesn't seem
9 like a lot. So, is Oakhurst smaller than Garelic or --

10 A Well, keep in mind that Oakhurst already had
11 non-pool -- had sales in the order, okay, but it was less
12 than the 25 percent --

13 Q Yes.

14 A -- that would trigger them in. So there could
15 have been another 2 million pounds or something like that
16 that would -- maybe --

17 Q Well --

18 A I thought -- that's a good point. I -- I don't
19 know what Oakhurst's volume is. I know what Hood is. And
20 Oakhurst is a major presence. I -- I happen to live in
21 New Hampshire and Oakhurst is a presence in New Hampshire.
22 I assumed that they were somewhere around Hood's size
23 based upon other information I saw, but they could be 10
24 million pounds.

1 Q Okay. But even when applied as partially
2 regulated, it has two, three percent of its sales in the
3 markets, it's still one of -- its producer supply is
4 included in the market data.

5 A Okay, yeah. I have -- for that. I believe
6 Oakhurst clearly is over 8 million pounds from everything
7 I've seen. That would surprise me very much if it wasn't,
8 but I don't have any proprietary information on that.

9 Q Okay. Would you not agree that a -- an
10 organization can balance a plant say the size of Oakhurst?

11 A What size organization? When you're saying an
12 organization can balance?

13 Q A -- a supplier to Oakhurst, whether it's a co-
14 op dedicated to Oakhurst or a proprietary supplier or --
15 or Oakhurst itself, can take care of balancing that plant.
16 In a smaller way, the same way that Agramark, for example,
17 balances many plants.

18 A Well, they could possibly do that. They -- if
19 you're talking about a co-op you mentioned that has
20 dedicated supply, then I'm not sure how they're going to
21 do that unless they go out and find a home for that milk
22 such -- you know, in another plant or something when they
23 don't need it. But when you see the seasonality of it, I
24 don't know if Oakhurst is any different from the rest of

1 the Class 1 processors, but I -- I believe it probably is
2 not.

3 So there are -- I mean, there are ways -- other
4 ways to balance if -- you know.

5 Q One way of balancing, for example, would be to
6 put a small dryer some place to take care of balancing any
7 small Class 1 or 2 operation?

8 A Absolutely. And if Class 1 processors want to
9 put in dryers and churns and do their own balancing, I
10 think it's a great idea.

11 Q Yeah. And that performs the same service to
12 the whole market on a small scale as the service that
13 you've described to the market on a large scale, correct?

14 A Yes, and I think they should get six cents if
15 they do that and they -- less than 65 percent.

16 Q Okay.

17 A I'm saying -- I'm not -- we're not against them
18 getting it if they serve that. If -- if -- if you're --
19 if you have a Class 1 operation and you balance your
20 operation, particularly putting in a dryer or something
21 like that, they haven't done that because it's not very
22 cost effective to do it.

23 Q Okay. Well, my -- okay. My -- my question
24 -- is let's say that that is done on a smaller scale than

1 three percent of the market or a million pounds a day.
2 Why shouldn't such an organization also receive modest
3 marketwide service payments?

4 A That's a good point. We had long discussions
5 of that within our lone group on that. We needed to come
6 up with some area we felt that was a significant volume of
7 milk serving the market that had -- that had, like you
8 said, multiple customers that could balance in that
9 degree. And we felt that a million represented it. It
10 was a million pounds -- I was also familiar with the order
11 before because we had a million pound requirement.

12 So we used that as the number, okay, and that
13 became our group consensus and we thought that that was a
14 fair number. If you said to me, should it be 900,000
15 pounds, why not? I mean, I could just tell you that our
16 group consensus was here. We had some history with that
17 number. It's a significant number, and that's what we
18 were really looking at.

19 Q Okay. My -- another of my questions then is,
20 why does it have to be a significant number if the service
21 actually provided is a balancing service? Whether it's a
22 pound or 2 million pounds, if -- if the -- if a balancing
23 is made, it's still a balance. It is something that --

24 A We think that -- because our -- our issue is

1 that if it becomes very small and you're just balancing a
2 few loads a month that -- we don't think that really
3 serves the market, particularly a market of this size,
4 that you need to have some large presence to do that.

5 Q Well, it -- it's -- it's a few loads per month
6 that -- that you wouldn't have to balance, for example.
7 You know, or Dairylea or Land O' Lakes. It's -- it's --
8 if we're looking at the aggregate market, they either
9 burden the market with -- with your surplus to dispose of
10 it or with supplemental milk or you don't. And if you
11 avoid burdening the total market, you're providing a
12 service, correct?

13 A Yes, to a degree. Yes. I guess our -- our
14 -- our issue here was that we felt that you should have
15 the -- if you have -- you should have relationships with
16 Class 1 processors, with -- with -- with manufacturers
17 that can balance, and so you need to move a sufficient
18 volume of milk to have that.

19 If in a circumstance like this you have a
20 smaller volume of milk, there's a case in point on that.
21 I don't know too many of those. Perhaps your client's one
22 of them. But that's -- you know, I'm not -- I'm not aware
23 of that.

24 I can just tell you that we looked at this and

1 we had to come up with a position and our position was
2 that we felt that that would be a level of significance in
3 the marketplace.

4 Q All right. Let me -- let me go to another
5 supply scenario. A small cooperative association or
6 supply plant for that matter commits to supply and balance
7 a single plant. It does not operate a manufacturing
8 facility but it takes upon itself the burden to --
9 supplemental milk were needed or to sell surplus milk when
10 the fluid plant doesn't need it. And as you described,
11 that would frequently be at a loss, at a price discount.
12 Why shouldn't such an organization who has assumed the
13 economic burden of balancing by marketing to somebody else
14 or receiving supplemental from somebody else, why
15 shouldn't such an organization receive some benefit for
16 their balancing service?

17 A A key issue, John, is that -- that they
18 balance. You're saying this is somebody who does balance,
19 okay. They balance to a smaller degree. We -- you
20 know, like I said, our position is on -- that they have to
21 be significant in the marketplace. If -- if that's -- if
22 the Department decides it should be a different level than
23 that based on testimony of someone who comes in and says
24 they do balance, perhaps they should take that in

1 consideration. I'm sure they will.

2 I'm just -- I -- I don't think I can give much
3 more than that's our position on it and I explained why we
4 came out with that position.

5 Q Some of the balancing that your organization
6 and other -- in fact include not something manufacturing
7 milk locally but also sometimes sending milk far away from
8 here in order to find a manufacturing home for it,
9 including the -- the midwest, correct?

10 A That's true. We -- we do that very rarely. We
11 try not to do that. I know some other areas, probably
12 other co-ops, do that more. But we don't. But yes, that
13 does occur.

14 Q Then ~~AgraMark~~ **Agrimark** has in fact on occasion
15 sent milk to Ohio or --

16 A Absolutely.

17 Q -- even Wisconsin?

18 A Absolutely.

19 MR. VETNE: Okay. Thank you.

20 JUDGE BAKER: Thank you. Are there other
21 questions for Mr. Wellington? The -- the -- Mr. Tosi?

22 CROSS EXAMINATION

23 BY MR. TOSI:

24 Q A few questions regarding your testimony. The

1 -- at the top of page two, your testimony indicates that
2 in the absence of a federal order, a dairy farmer would
3 likely receive the same price as his neighbor who ships to
4 a manufacturing -- in the absence of a federal order.

5 A Yes.

6 Q Okay. Over -- on page one at the bottom, at
7 the same time you're saying that in the four orders,
8 producers competed, and I assume that you mean here with
9 each other, to capture a higher Class 1 value.

10 A Yes. And they were -- they were really not
11 able to do that. They would try to get a Class 1 customer
12 if they could because they tended to have more value for
13 their milk.

14 Q I understand that. I guess the -- the point
15 is, is that your testimony suggests that in the absence of
16 an order a Class 1 handler would not pay something more
17 than the manufacturing price when all this competition
18 that producers engaged with with each other was to get a
19 higher price. So somebody was paying a higher price.

20 A That's why I say I believe it was -- when I say
21 he would receive essentially the same price, okay. Yes,
22 that Class 1 processor in the absence of an order would
23 still get their milk. It might be five cents a
24 hundredweight, it might be 10 cents a hundredweight. It

1 would not be \$3.25 Class 1 differential.

2 Q Why would the handler pay -- why would -- in
3 the absence of an order, why would the handler pay --
4 Class 1 handler be willing to pay more?

5 A Because they need to procure a supply of milk.
6 And so competition would drive that price. It'd be -- and
7 it would be really what the manufacturers would be willing
8 to pay for that to drive that price, particularly -- and a
9 lot of it would -- depends on the time of the year and how
10 much milk was available.

11 If there was plenty of milk available, the
12 processor may not pay a premium. If -- if the milk was --
13 was supply -- supplies were tight and someone came to his
14 producer and said, I want to pool your milk into a cheese
15 plant, there's no federal order, I'll give you 20 cents.
16 And maybe he will give them 25 cents.

17 I'm just saying that that happens right now
18 with over-order premiums to procure a supply of milk on
19 top of the order. I'm just saying that the underlying
20 order piece would -- would be gone and I don't think you
21 can retrieve that. You would still have competition to
22 procure a supply of milk.

23 Did that answer your question? I don't mean to
24 be -- it.

1 Q I -- I -- I'll read through that later.

2 A Okay.

3 Q Now, given that before federal orders Class 1
4 handlers were known to pay more for milk than the
5 manufacturing price, albeit with all the caveats that you
6 just indicated, now, bingo, we have milk marketing orders
7 and we set class prices and we have the Class 1 price that
8 has a differential. And that differential when we set up
9 orders was intended to capture and reflect the prevailing
10 marketing conditions of what it took to get milk from
11 where it was produced to where it was needed for Class 1
12 use. Would that be your understanding of -- of that?

13 A You need to keep in mind that one of the things
14 they were looking at was the distance from reserve supply
15 areas during parts of the year when you had -- when milk
16 was the tightest. That's why those crises were -- the
17 differentials were often tied into the Eau Claire,
18 Wisconsin, mentality of the distance there. That -- that
19 was the home of the ultimate reserve supplies that you --
20 if you had to go get milk, you could go there. Class 1
21 processors didn't necessarily always have to do that, that
22 distance.

23 Q Okay. If you'd please look at the bottom of
24 page two of your testimony when you quote from the act?

1 A Yes.

2 Q Is it -- is -- is the word "producer" ever used
3 in the act, that a handler can charge producers for
4 something for marketwide benefit?

5 A They can charge the pool and when you charge
6 the pool it comes from producers who participate in the
7 pool.

8 Q But --

9 A The language of "producers," I don't know,
10 Gino.

11 Q Well, if your proposal is going to take money
12 off the top of the pool that would otherwise go to --
13 equitably to all members in the market, whether they be
14 co-op or independent, in essence cooperatives in their
15 capacity as handlers are charging producers for a service,
16 that -- that you are asserting has marketwide benefit.

17 A There's a transfer of money, yes.

18 Q And I'm just wondering how you come to the
19 conclusion that there's an authority for a handler to
20 charge a producer for a service that they assert is a
21 marketwide benefit.

22 A Because I think that's in this document right
23 here on page two when it says that by -- it adds the
24 following provisions, providing for the payment from the

1 total sums payable by all handlers for milk to handlers
2 that are cooperative market associations and to handlers
3 with respect to adjustments and payments for services of
4 marketwide benefit, including but not limited to. It says
5 that you can -- that you can take these sums that are
6 payable by all handlers for milk. By payable for all
7 handlers, that's coming from the pool.

8 Q No. Excuse me. I'm sorry. Let me resay that.

9 By taking money out of the pool, we're removing
10 money that would ultimately be distributed to producers.
11 And I'm puzzled by the lack of the word "producers" when
12 the language of the act seems to suggest that we're
13 talking about services that are provided for handlers for
14 the benefit of the market and we're talking about handler
15 and handler, not handler and producer.

16 A I think one of the interpretations that I
17 talked about was that the Class 1 differential is -- is
18 one of the reasons behind it is to bring forth an adequate
19 supply of milk. And the Class 1 differential of \$3.24,
20 one of the factors the Class 1 processors are paying into
21 that I think is -- is relating back to these balancing.
22 That's sort of my interpretation of part of that cost that
23 goes to the pool from those Class 1 processors. And it
24 should go to the organizations who actually do that

1 balancing and provide that adequate supply on a timely
2 basis.

3 Q Well, in the -- the handler --

4 A But --

5 Q -- goes to producers. The handler is paying or
6 accounts to the pool at the Class 1 price. So the handler
7 is paying already even though the factor is perhaps not as
8 specific that you can say out of a \$2.00 differential, you
9 know, 12.5 cents is a balancing function, okay?

10 But we know and your testimony even admits
11 that, that the notion of balancing is built in there.

12 A Right.

13 Q So that other handlers or producers would be
14 willing to pool milk up to make it available for Class 1
15 use where it's demanded.

16 A That's true. I don't understand --

17 Q So why are handlers charging producers for --
18 for something that handlers have already paid for in the
19 price -- in the classified price that they're charged for
20 milk?

21 A The -- they're paying -- they're paying that
22 money into the pool, okay. That money is -- the higher
23 Class 1 differential accrues to all producers. We're
24 saying that there's specific functions of balancing that -

1 - that we're allowed to under the law to charge. And so
2 that's -- and it should come from the pool. I mean, I
3 thought it was -- I thought it was pretty clear that the
4 law allows this and the act allows it.

5 Q I would say that here it's pretty clear that
6 the act says that there's a provision for marketwide
7 services. I'm just struck by the interpretation, how you
8 can arrive at the interpretation that -- the word
9 "producer" is never used in that provision and we're
10 talking about handlers being able to charge other handlers
11 for a service that they're providing --

12 A I mean --

13 Q -- make a compelling argument that somehow the
14 entire market benefits from.

15 A We're -- we're asking to make a charge against
16 the pool, okay. And the pool's a clearinghouse between
17 handlers and producers. So to the extent that it's a
18 clearinghouse that handlers put in and producers take out,
19 before that process is complete from handlers to
20 producers, we're asking for these market service payments
21 to go to cover the -- the cost of this service.

22 That's why I say, it's not a -- it's not a
23 charge against producers. It's a charge against the pool.
24 Maybe it's just a formal way of doing it. There's no

1 doubt that this will affect the pool. There's no doubt
2 that it will lower the amount of money in the pool. I'm
3 not trying to get around that. And that the producers
4 will be receiving a lower uniform price as a result of
5 this.

6 So I mean, I'm not trying to get around saying
7 that they're not going to be impacted by this. But the --
8 we talk about taking the money from the pool because
9 that's where the money is coming in from. In from the
10 pool and before it goes out to producers it comes out to -
11 - to compensate for that service.

12 Q Okay. I'd like to move on, then. Who benefits
13 from the balancing function that's provided by
14 cooperatives in the northeast market?

15 A I think all producers benefit by this in that
16 it allows for us to use the term of orderly marketing,
17 which allows us to remove milk from the market when it's -
18 - when it's needed to be removed from the market. It also
19 facilitates the higher Class 1 use of this -- Class 1 use
20 available to Class 1 processors.

21 Q Okay. Do handlers benefit from this?

22 A Class 1 processors certainly do.

23 Q Okay. In what way do they benefit?

24 A This is a service that -- that allows them to

1 basically have available I would say low-cost alternatives
2 for their milk supplies, ways to balance out their milk
3 supplies. So certainly, they benefit by it. We have a
4 difficult time charging them directly back for that cost
5 to it because of competition in the marketplace. But they
6 certainly do benefit by it.

7 But we also believe producers benefit by it,
8 including our own producers. I'm not saying this is a
9 benefit that only accrues to non-members. This is a
10 benefit that accrues to all producers. Our issue has been
11 it's only our members who are paying the price of that
12 issue.

13 Q Are you able to determine how much more the
14 blend price is enhanced by cooperatives? The blend price
15 that's paid to all producers. How much more is the blend
16 price enhanced because of the balancing function? Are you
17 able to -- the type -- the record so far has a lot of
18 information about costs. We haven't talked yet about
19 benefits yet.

20 A I think that there are two types of benefits
21 that accrue back to farmers. One is to make sure that the
22 balancing needs of Class 1 processors are met. If they're
23 not met, there's problems with having, for example, Class
24 1 milk on the supermarket shelf on the weekend. That

1 would lower the utilization.

2 Can I calculate that from that point of view?
3 No, that's very difficult to calculate. I know -- it's
4 like one of those things I know -- you know when you see
5 it. But you know, what -- what it is and how do you
6 calculate it.

7 I could more easily calculate over-order or at
8 least get a better handle on over-order. The orders are
9 supposed to be minimum prices. And on the over-order side
10 of this, all it takes -- look at the situation we have
11 right now when we have -- milk production over last year
12 is a little over two percent. But we have stagnant
13 demand. So we have at most two to four percent more
14 demand relative to supply than a year ago and we have
15 prices that are 10-year record lows or have fallen 25, 30
16 percent because we have that small additional volume of
17 milk setting the price.

18 So that -- I mean, that -- the same thing
19 happens on the over-order price side, although not to that
20 large a degree because there aren't that many handler
21 premiums to that large degree out there. It's the same
22 type of principle to the tune of, can it be -- those over-
23 order premiums could be 10, 20, 30, 40 cents, okay. That
24 would draw off the amount of co-op service payments.

1 To the tune of what it would do to blend price,
2 I haven't made a calculation on that. I think it has some
3 benefits. Can I calculate it per -- per hundredweight,
4 no. I don't have a -- I can't think of a way to do that,
5 Gino.

6 Q To the extent that you can't determine benefit,
7 then, how is the secretary in fully considering Proposal 7
8 going to be able to -- be able to determine that there's
9 some marketwide benefit that's -- that's occurring here?

10 A Well, I think that's where you have to -- you
11 have to look at the -- what our case has been in terms of
12 putting together our -- the amount of balancing that's
13 being done and the amount of servicing to the Class 1
14 market, what kind of case that we've made in that regard.
15 Is it -- can you say that we should do this provision
16 because it's going to cost producers five cents and
17 they're going to gain 10? No, I think you should do this
18 provision because there's a service toward producers and
19 to orderly marketing, okay. And I know that's a nebulous
20 term.

21 But to making sure there's outlets for milk
22 that -- that need to be -- that need to be accommodated,
23 okay. And yes, it comes at a cost but we need to
24 accommodate that even though there may not be a net

1 benefit at the end of the month in the pool to it. There
2 are a lot of other secondary benefits one can make. It's
3 up to the Department whether they want to factor those in
4 or not.

5 But clearly, in terms of being able to balance
6 the market, producer supplies -- producers -- here's a
7 benefit. Producers are -- are free to basically produce
8 any pattern of milk they want. And -- and no one tells
9 them, you have -- you have to produce less milk, I'm only
10 going to pick up 90 percent of your milk in the spring and
11 I want you to put on some cows in the fall or I'm not
12 going to pick up your milk.

13 The producer basically is free to market any
14 amount of milk he wants, okay. But we know that we have
15 producer receipt patterns on a seasonal basis. We know we
16 have Class 1 sales patterns on a seasonal basis, okay.
17 There has to be some way to -- to allow the producer the
18 freedom to do that and accommodate the Class 1 sales at
19 the same time. That's what I'm trying to do.

20 Q Let's go down that road for a second.

21 A Sure.

22 Q Are you able or your organization -- over-order
23 premiums for servicing in Class 1 market?

24 A Yes, we do.

1 Q And in being able to enjoy being able to
2 negotiate for those things. Is any of that part of an
3 attempt to offset your balancing costs?

4 A Absolutely. All -- all attempts to offset all
5 our costs, okay. That's what we're trying to do, Gino.
6 The problem has been that -- the handling charges that we
7 do charge, okay, will cover transportation costs. We
8 apply those against those first. And they assist us to
9 help be competitive in the field with our members. That's
10 a -- that's problem that we have with making sure there's
11 a competitive pay price out there.

12 At the end, there is -- our -- our losses at
13 our West Springfield plant on that -- on that balancing --
14 it depends on where you want to apply it. We have a cost
15 here. You could apply it against all different costs, all
16 different pieces at a time. But it -- it depends --
17 really, it depends on where you want to apply that --
18 apply that cost.

19 Q Let me make sure that I understand this to make
20 sure that this is part of your testimony.

21 A Sure.

22 Q When a Class 1 handler does not need milk
23 because of daily changes in demand, the reality is, is
24 that that Class 1 handler's, for example, non-member

1 producers, that milk still has to go somewhere because of
2 its perishability.

3 A Correct.

4 Q And so would it be correct to say then that
5 that Class 1 handler diverts to -- milk to -- to you?

6 A Not -- not necessarily. Not necessarily. If
7 you look at the daily patterns -- and Dennis Schad from
8 Land O' Lakes will be putting some numbers in on that.

9 We're not saying that -- for example, that
10 producer handlers don't take -- I'm sorry, distributing
11 plants don't take any milk. Like on Sunday's the low day.
12 They don't take -- it's not as if they're taking no milk
13 on Sunday, okay. They -- they -- they would probably just
14 put their own milk into their plant on a Sunday and not
15 buy from outside.

16 So you -- there can be diversions. That's
17 certainly a possibility.

18 Q Okay. Let's -- let's talk about where there
19 can be, okay? When that -- when that Class 1 handler
20 submits its report at the end of the month, when it
21 reports on its report a diversion of milk that -- that
22 ends up going to, for example, a butter powder plant.

23 A Okay.

24 Q Okay. At what price does that plant account to

1 the pool for? The Class 1 plant, I'm sorry.

2 A The Class 1 plant?

3 Q Right.

4 A The -- what was the assignment back to it? I
5 don't -- Class 4?

6 Q Okay. I'll accept that.

7 A Okay.

8 Q Okay. Now, since the Class 1 handler is
9 accounting to the pool at that class price given how the
10 milk was used, what -- what are you paying? What -- do
11 you -- do you pay Class 4 back to the Class 1 handler or
12 do you charge something or are you able to force a payment
13 that's --

14 A It depends on --

15 Q -- less than the limit -- less than the minimum
16 class prices?

17 A It depends on the market conditions that are
18 out there and it depends on our arrangement with that -
19 - that handler. Some handlers we have arrangements that
20 we will supply them with some balancing.

21 And if we -- for example, if our plant is empty
22 and we have all these fixed costs to cover, okay, we may
23 pay them a premium to get that milk. I mean, what's
24 happening in the marketplace.

1 If milk supplies are -- are in surplus and we
2 don't -- you know, the plant's operating at some very high
3 level of capacity, then they might receive under the class
4 price. It really depends on the market conditions, Gino.

5 Q To the extent that you're able to buy milk at
6 below class, wouldn't that in essence -- one of the
7 reasons that you would be -- able to do that would be that
8 you're being inconvenienced by performing balancing
9 function for the market?

10 A Absolutely. Absolutely.

11 Q And that would be a way of recouping some of
12 that cost?

13 A That is. It's a very small -- let me tell you,
14 it's a few percentage points of the -- of what goes into
15 our plant in terms of volume. But certainly, we would try
16 to do that. Absolutely.

17 Q Okay. One minute. Let me check my questions.

18 (Pause)

19 BY MR. TOSI:

20 Q This kind of steps -- takes a little bit of
21 -- goes back to an earlier question about the level of the
22 Class 1 differentials being designed in some way to
23 attract a supply of milk for Class 1 use. And reflected
24 in that would be the notion that a balancing plant incurs

1 a cost to give that milk up to have it go service the
2 Class 1 market because your plant's not operating now at
3 full capacity. Is that a fair characterization?

4 A Can -- can you repeat that?

5 Q Okay. We discussed earlier here that the Class
6 1 differential -- the level of the differential is
7 designed to attract an adequate supply of milk for fluid
8 use, okay. And when the balancing plant responds to that
9 by shipping milk for Class 1 use, isn't its cost of
10 balancing already implied in -- that they in fact have
11 covered their costs to go out and do this service to the
12 Class 1 market. Otherwise, you wouldn't have given the
13 milk up, I would think.

14 A No. Our -- our problem is that it's not just a
15 question of giving milk up. If it's spot loads, yes,
16 okay. Those are small arrangements with that.

17 We try to have -- because of the order and
18 having a minimum of 20 percent in the fall plus serving
19 the Class 1 market, we have an arrangement with customers
20 to balance their needs. We give them -- for pool supply
21 customers, some of our processors -- our 7(a) plants. So
22 we supply their needs.

23 We try to put our handling cost in to cover
24 that, but if that handling cost gets to be too high and we

1 try to put it to a point where we can cover those costs,
2 we're unable to do that because they can go to somebody
3 else and get milk. They can go balance -- on the seasonal
4 basis, they could balance with producers if they want.
5 There are other cheaper alternatives out there if we try
6 to pass that cost along.

7 That -- that's our problem. On a -- what
8 you're talking about, Gino, is -- is on the margin, okay.
9 A load of milk that comes in. Can we get it on the class
10 market conditions are right. Sure. We're going to get it
11 under class, okay. Milk supplies are tight. Someone who
12 never uses us for balancing says, I'm really tight and I
13 need a hundredweight of milk. And we say, well, plant's
14 empty. I want to -- we're going to charge an extra buck a
15 hundredweight or something. That happens. Absolutely,
16 okay.

17 We have more costs when we try to do those
18 things and that -- maybe that smaller volumes will help
19 contribute to balancing. But for the -- when we look at
20 our total amount of dollars available and what we are --
21 our costs that we incur and our payment back to our
22 farmers to be competitive, we -- we don't have sufficient
23 money -- in fact, we don't have sufficient money even at
24 the end even if we apply nothing toward balancing. We end

1 up being a net loss on that.

2 That's a problem for us in our -- I don't want
3 to get into detailed proprietary stuff. But what happens
4 with us is that we have a very successful cheese business
5 with our Cabot cheese. And what happens is that the --
6 the benefits of that go to end up covering these other
7 costs involved in the balancing.

8 Q So your butter powder operations lose money?

9 A Yes. Yes.

10 Q Okay.

11 A I mean, overall it does. We try to minimize
12 the losses, so we try to do other things and do whatever
13 you can business-wise to do it. But those take other
14 investments, too. That's why, Gino, we try to say, let's
15 look at Dr. Ling's study and try to isolate those costs.
16 If we could isolate what those costs are.

17 And if you're making -- whatever business
18 decisions you're making at the plant, good, bad,
19 indifferent, okay, they're your decisions, okay. But if
20 you can show that you are doing the balancing, that --
21 that's the important -- balancing -- you're doing it as a
22 cost and we can reflect back on those costs.

23 Q Speaking of that, that's the other thing that
24 kind of troubles me. I really enjoyed your written

1 testimony and you have very good numbers. You're like my
2 boss. He wants numbers.

3 And you're able to adjust numbers back to
4 calendar composition and everything else. Yet, when you
5 talk about what it costs for you to balance, that's nearly
6 impossible. And -- but yet, at the same time, you
7 identify what all those other factors are that make it
8 difficult. So I mean, did you really expect that -- that
9 the secretary would believe that the lack of primary cost
10 information, the impossibility of that can be somehow
11 created using secondary data from the study that Charlie
12 Ling has done?

13 The basis here is --

14 A I can --

15 Q -- plant capacity. And to the extent that you
16 have unused plant capacity, that's the basis for your
17 costs. And it seems to me that you would be able to know
18 what your unused plant capacities are from month to month
19 over a period of time and then attribute to that's
20 AgraMark's cost of balancing my operating -- your plant at
21 West Springfield.

22 A A problem with that is having to then go over
23 and allocate those costs when we do a lot of other things
24 at our plant. It's probably a little easier to do it at

1 Springfield than it would be at Oatka and some of the
2 other locations. And that's the problem, because there's
3 so many different activities.

4 If I stood here before you and said, here are
5 my costs at West Springfield, we would then spend a few
6 days going over, well, how'd you allocate this cost.
7 Don't you do this, and that's not balancing. Don't you do
8 that, and that's not balancing.

9 We've strived to do a variety of things because
10 we don't want to have these losses from balancing. But
11 we'd love to get them from the marketplace, we can't do
12 it. We'd love to find other ways to -- find ways to
13 minimize the losses available at it. You know, one of the
14 things we've done is if you look at our plant -- butter
15 powder plants.

16 I mean, if you walk through our plant, you're
17 going to see two or three people. And it's -- you know,
18 it can handle, you know, 2.2 million pounds a day at its
19 peak. And you're going to see hardly anybody there
20 because we've tried to lower those costs.

21 So we've tried to do that. But our problem is
22 that to try to get back and allocate it, we need to go
23 back and say, here's a uniform way to do that. Plus, I
24 believe you asked somebody, one of the other witnesses,

1 about bad marketing. If you make a bad decision.

2 So we could sit there and say, if we make a bad
3 decision, should the order pay for the bad decision.
4 We're saying in Charlie Ling's study -- we're not --
5 trying not to say it focuses in on a bad decision. It
6 says, whatever your decisions are, we look at it -- we're
7 looking at a review. And Charlie used the time as an
8 efficient operation and here's the costs involved for that
9 efficient operation.

10 Beyond that, whatever decisions we make, good,
11 bad, or indifferent, we get to live with. But the -- we --
12 -- we can show we do balancing. We -- we -- we show the
13 benefit involved. We use -- Dr. Ling's study to show
14 there's a cost on it.

15 That's really why -- that's one of the reasons
16 we came back to this hearing, because we felt we had a way
17 to try to address some of these issues that we've had in
18 the past because we were looking at the -- some of the
19 reasons why the Department said we didn't get it last
20 time.

21 Why didn't we get it. Actually, some of the
22 wording I thought the Department said was kind of
23 encouraging. I believe their final decision said you
24 shouldn't get them at this time, okay, which is like

1 hanging, you know, a little law in front of you. And --
2 and we tried to address those issues, and one of which was
3 the cost issue. What's the cost of balancing when you
4 have so many other activities going on. That -- that's
5 our problem, Gino.

6 Q Thank you. One last question. On page four of
7 your testimony in the paragraph that begins with, "This
8 happens in the dairy industry." Your testimony indicates
9 that in the past several years, several Class 1 plants in
10 the northeast have closed and further reduced the storage
11 capacity of Class 1 milk in the market.

12 A Sure.

13 Q Can -- any of the plants that survived, have
14 any them gotten larger?

15 A To my knowledge, yes, one of them has gotten
16 larger. But not to the extent that he's making up the
17 difference for all the other plants that went out. My
18 understanding is that the Dean's Food plant in Franklin,
19 who used to be Garelic Farms, has gotten larger. I don't
20 know to the degree it's gotten larger. But I also know
21 that there were eight or 10 plants that shut down.

22 Q Your response to this is that -- is that your
23 intention to increase your storage capacity at your
24 balancing plants?

1 A Our -- our -- our concern is that, particularly
2 the daily balancing, that because we don't have that
3 available place to put the milk that it becomes a problem.
4 And so do we have plans on doing that? No. I mean, we
5 actually have done some work on our silos but we have not
6 expanded.

7 I'm not sure. I think Land O' Lakes has done
8 some changes and some other things but we have not in our
9 market, no.

10 Q Okay. I do have another question. When a
11 Class 1 handler is buying milk from a non-member,
12 negotiates a price with that non-member for whole milk,
13 and to the extent that the Class 1 handler cannot receive
14 a class price for what he diverts, nevertheless that Class
15 1 handler is accounting to the pool at class. Would it --
16 do you think it would be fair or that it would be
17 reasonable to conclude that in that price that the Class 1
18 handler comes up with takes into account the costs it
19 can't recover because it's selling milk for less than what
20 it has to account to the pool for?

21 A Are you saying it should pay less than the
22 Class 1 price?

23 Q What I'm saying is, is that the Class 1 handler
24 is going to pay Class 1 for what it uses at Class 1. And

1 on those days that it diverts milk, okay, and it cannot
2 gain a -- they cannot sell that milk to a butter powder
3 plant at the Class 4 price, they have to sell it for
4 something less, --

5 A I can just --

6 Q -- don't you think that -- that in the price
7 then that the Class 1 handler is negotiating to pay his
8 independent supplier, it kind of factors in that you know
9 there are times when I can't recover all of my costs
10 either because, you know, gee, three days a week I've got
11 to divert my milk and I'm getting a buck below class. But
12 I'm having to account to everybody at a buck higher.

13 A I don't --

14 Q I mean, in that regard -- I mean, I -- could --
15 could that argument be made that in effect the independent
16 shippers are -- are incurring some of the costs of the
17 balancing function because the Class 1 handler is
18 accounting for a price different than what it -- what it
19 can receive?

20 A The class handler pays the price and use to
21 procure a supply of milk, okay. I don't think -- I've
22 never known of a Class 1 handler to go back to a producer
23 and say, gee, I've got to balance your milk, I'm not going
24 to pay you the premium and you're going to allow me to pay

1 you under the cooperative but isn't that okay, buddy,
2 because I incur this cost. No. He pays what he -- what
3 he pays.

4 Okay. I -- so I don't think the -- I don't
5 think the proprietary producer -- I mean, to -- to the
6 extent that you're saying how much money does that handler
7 have available, okay. I mean, like there's a pool of
8 money that he's willing to give producers. He's going to
9 give producers only what he needs to do to procure a
10 supply of milk. I guess that's -- that's really where our
11 issue is, that I don't -- I don't believe it goes back and
12 impacts it.

13 Plus, there's -- our operations and what we
14 pay. I can't talk about the other organizations.

15 But it's a very small relative quantity of milk
16 that we would pay under the class price, okay. It might
17 happen at certain times of the year when the plant is
18 full. But particularly, looking at some of the numbers,
19 we -- you know, we don't -- it's not a regular basis that
20 any milk that a Class 1 processor wants to give us we pay
21 under class. No. No, we pay the class, okay, when it's -
22 - when it's involved.

23 There are times when that happens. I won't
24 deny that. But it's a relatively small percentage at our

1 operation, okay. I -- you'd have to ask the other
2 witnesses at theirs.

3 MR. TOSI: Okay. Thanks for your patience,
4 Robert. Appreciate it.

5 JUDGE BAKER: Thank you, Mr. Tosi. Mr.
6 Rosenbaum, did you have some questions?

7 MR. ROSENBAUM: I do not, Your Honor.

8 JUDGE BAKER: Very well. Are there other
9 questions for Mr. Wellington? Yes? Yes, sir.

10 MR. ARMS: David Arms, economic consultant.
11 One thing -- just sitting back, Your Honor, a little bit
12 further is that I find that when Gino Tosi was asking
13 questions the -- the discussion going back and forth was
14 such that it was very difficult to hear in the back of the
15 room.

16 JUDGE BAKER: Oh, I'm sorry. I --

17 MR. ARMS: At least it was for me. And so I
18 would ask that the witness speak into the microphone if
19 possible.

20 JUDGE BAKER: Actually, that isn't a
21 microphone. I don't believe it is.

22 SPEAKER: It is.

23 JUDGE BAKER: Is it a microphone? Oh, all
24 right.

1 MR. ARMS: It was an interaction between Gino
2 and -- (inaudible).

3 MR. TOSI: What couldn't you hear? Was it --
4 was it -- was it my questions or was it Bob's --

5 MR. ARMS: No, Bob's responses.

6 THE WITNESS: Oh, I'm sorry. Want to do it
7 again, Gino?

8 (Laughter)

9 THE WITNESS: I'll -- I'll -- is this better?
10 Can you hear me now?

11 MR. ARMS: Yes.

12 THE WITNESS: Okay.

13 (Pause)

14 CROSS EXAMINATION

15 BY MR. ARMS:

16 Q I'm looking for the table -- here it is. Table
17 1 of your exhibit, Exhibit 14.

18 A I have it.

19 Q Specifically and for clarification of the
20 record, Bob, it's my understanding that you used a factor
21 of 85 percent as a general application of all milk
22 received at pool distributing plants?

23 A Yes, as an estimate. Yes.

24 Q Okay. In your own operation, one of the

1 handlers that you -- your organization supplies is located
2 in New York, mainly the -- plant in Vernon, New York?

3 A Yes.

4 Q And serving that handler you are aware of what
5 is produced at that plant?

6 A For the most part, yes.

7 Q And could you tell -- put on the record what --
8 what you think that is?

9 A Vernon, I believe, is a soft product
10 manufacturer, basically a Class 2 plant.

11 Q Basically a Class 2 plant.

12 A That's what I understand.

13 Q So, would you agree with me then that most of
14 the milk received at the Hood Vernon plant then is
15 classified in a class something other than Class 1?
16 Mainly Class 2?

17 A I'm really uncomfortable testifying about what
18 happens at one of my customers' plants.

19 Q Okay. I'm just saying --

20 A -- representative. If you want them to come up
21 --

22 Q Okay. Well, again, for clarification of the
23 record, are you aware that the plant is in fact classified
24 as a pool distributing plant?

1 A I understand that it has -- does have some
2 Class 1 sales. I know Nider was, but I wasn't sure on
3 Vernon. I would have to look it up on Vernon.

4 Q So -- but would you agree with me that perhaps
5 to the extent there are some plants that are classified as
6 pool distributing plants that their receipts could be much
7 less than the 85 percent assignment to Class 1?

8 A Oh, yes. Absolutely.

9 Q And to the extent that happens, it tends to
10 affect your -- your calculations here?

11 A Absolutely. I was going -- this is sort of
12 looking at the market -- the entire market, not an
13 individual. I imagine there are some handlers --
14 distributing plants who are 90 percent or more. I was --
15 I believe that Mr. Fredericks answered 85 or 90 percent to
16 that question, and so I was trying to use that response.

17 Q I believe you testified or responded on cross
18 that in the calculations you made in the table showing
19 capacities, your relative capacities --

20 A You're referring to Table 2 of my exhibit?

21 Q Table 2, yes. Am I correct in assuming here
22 that your capacity then has to be pretty close to the 65
23 million that is shown that and -- and was discussed for
24 April 2000?

1 A In April of 2000 -- what are you -- what are
2 you -- our capacity in April would be 66 million based
3 upon our --

4 Q 66 million. So that was pretty close?

5 A Yes, absolutely.

6 Q Now, in determining the capacity level, is that
7 based on your production capacity of making butter out --
8 where's the bottleneck forming. On this -- on this
9 bottleneck it's the dryer. And it's -- you do 130 pounds
10 of milk an hour.

11 A I -- I talked to our -- reminded myself --
12 about this last week. But it's -- it's -- the capacity is
13 right there, Dave, on -- on it.

14 Q Okay. So are you saying that your evaporator
15 runs at a faster rate of capacity than the dryer?

16 A Yes.

17 Q Okay. That being the case, that enables you,
18 ~~AgraMark~~ **Agrimark** -- ~~AgraMark's~~ **Agrimark's** West
19 Springfield plant to move extra amounts of condensed milk
20 that you might make on that evaporator?

21 A It does, but condensed is a two-edged sword.
22 If you've got a customer for condensed, it could be a good
23 sale. If you have to move condensed for other reasons,
24 they've got you.

1 Q Okay. But is it true that where you are coming
2 up close to your capacity butter powder operations that at
3 times when there is a very large flush that you may have
4 to run your condenser extra --

5 A Absolutely.

6 Q -- and move the milk on sometimes at a loss?

7 A Oh -- oh, absolutely. Probably -- I don't have
8 -- good monthly figures here for that -- for that month.
9 But if we were at 99 percent capacity, keep something in
10 mind. That's like running full out, almost no break
11 during the month other than for cleaning and other things.

12 So if that's the case, we had daily
13 fluctuations of other stuff coming into that plant, we had
14 to find -- we had to -- and that was not just the total
15 amount of milk coming into that plant. There was
16 additional milk -- so, absolutely, we did condense. In
17 that kind of market environment, usually condensed goes at
18 a loss.

19 Q So to the extent you have or are forced by
20 surplus conditions to move a lot of condensed, then you in
21 effect are increasing your capacity -- number one,
22 increasing your capacity limits, and number two,
23 exacerbating your losses, is that correct, on -- on the
24 handle, the surplus?

1 A In this table I tried to focus in just on
2 butter powder because that relates to the balancing that
3 we did. That's what I -- that's what my focus was. I
4 don't disagree with your statement, okay.

5 Q From your experience in the marketing situation
6 in New England, did you find that when the regional
7 compact was in effect that the payments under that compact
8 provision enabled ~~AgraMark~~ **Agrimark** to have a premium
9 charge to their handlers at a somewhat lower rate than
10 prevailed in New York-New Jersey area?

11 A I know that there were higher premiums to keep
12 milk from entering into the compact in New York. I don't
13 know about Pennsylvania.

14 Q So, no.

15 A And I don't know what our -- I don't know what
16 our customers paid relative to other people. I know there
17 was discussion on higher premium levels to do that.

18 Q I guess my question is, was it your experience
19 that the level of premiums charged to handlers in New
20 England was considerably lower than that charged by -- in
21 New York-New Jersey by other cooperatives?

22 A I don't believe we charged their customers any
23 different. Others may have.

24 Q Others may have? Probably to meet the

1 competition --

2 A I would -- I don't -- I would say that probably
3 occurred. If you ask me who did it and how much, I
4 couldn't --

5 Q Okay. I understand. Also from your experience
6 at ~~AgraMark~~ **Agrimark** operations, is it fair to say that
7 the great majority of your milk that your members produce
8 is in fact utilized at your own plants?

9 A It is not the majority of -- of our milk. It
10 is a very high proportion of our milk but it is not the
11 majority.

12 Q Can you -- would you care to tell us, you know,
13 what percentage that might be?

14 A It probably -- it's over 40 percent. Keep in
15 mind that we have 40 percent Class 1 utilization, 35, 40
16 percent depending on the month. So we -- we're a large
17 supplier to Class 1 bottling plants. And then we have --
18 it was mentioned that there was a cheese plant that we --
19 we work with. We work with other Class 2 plants and
20 others.

21 So, probably, I would say it isn't -- it isn't
22 the majority. It's over a third -- clearly over a third.

23 Q The fact then that you are an operating
24 cooperative with a large -- a very large quantity of milk

1 that you're utilizing yourself, do you find at times then
2 that if there's a race on premium -- that you wind up
3 paying -- having to pay it for your own milk?

4 A We pay our -- we have to beat the competitive
5 premiums across all our membership.

6 Q Mm-hmm.

7 A So, yes, it ends up being charged back to our
8 operations. It's another thing if we're making butter and
9 powder. Our -- skim milk making powder -- selling to the
10 government and those premiums out there. We could -- we
11 have to pay that cost even though we're balancing.

12 Q It is a factor in your determination on
13 premiums that you do have to pay them yourself on milk you
14 utilize in your own operation?

15 A Right. Like I said, we -- we pay it across for
16 all our members equally. We don't say, your milk goes to
17 our plant so you don't get the same -- we don't -- we do
18 not say that.

19 MR. ARMS: Okay. Thank you very much.

20 JUDGE BAKER: Thank you, Mr. Arms. Are there
21 other questions for Mr. Wellington? There appear to --
22 oh, Mr. Buelow?

23 MR. BUELOW: Yes, Your Honor. Jim Buelow with
24 Elmhurst Dairy.

1 CROSS EXAMINATION

2 BY MR. BUELOW:

3 Q Turning to Table 2 of your exhibit, am I
4 interpreting this right in looking at the percentages of
5 utilization of your plant that in the last two and a half
6 years there has been four times to -- there has been only
7 two times where the plant has been utilized more than 90
8 percent?

9 A On a monthly basis. Keep that in mind. If I
10 were to look at it over shorter periods of time. We just
11 happen to be looking at a month where it could be very
12 cool for a week or two or three weeks, okay. And there
13 might be some holiday or other things involved. But on a
14 monthly basis that is correct.

15 Q Okay. Over the same period of time, is it
16 correct that the plant monthly utilization only four times
17 has been 85 percent or higher?

18 A I'd have to count the numbers. I would say if
19 you've counted them already, I'll -- whatever the numbers
20 show -- I -- I would say -- if this might help, Jim,
21 whenever -- whenever we're above 80 percent capacity, it
22 means we are running at full capacity for a good part of
23 the month, okay. And then what we -- then what -- what
24 happens is the main days for Class 1 sales are usually

1 Thursdays and Fridays. We might be running at 80 percent
2 of capacity, meaning full capacity for five days and then
3 we're running at just partial capacity for those two days.

4 Q There seems to be a lot of attention paid in
5 your testimony to costs associated with not running at
6 full capacity. Could you share with us -- you run two
7 other plants. Could you share with us maybe not as
8 precisely as these numbers but what capacity does
9 Middlebury Center run month-in and month-out and does it
10 vary throughout the year?

11 A It does vary throughout the year. I would say
12 generally we try to run Middlebury on the demand, almost
13 like those cheese plants. Usually we try to do -- in our
14 market. Not all do but most do.

15 Middlebury usually runs about six days a week.
16 If we -- if have additional supplies of milk such as we
17 mentioned have to be condensed at distressed prices,
18 Middlebury will pick up and run seven days a week, okay.
19 If there's a short, we might run five days a week. But we
20 don't -- we don't consider Middlebury a balancing.

21 Cabot is not a balance-share at all. Cabot
22 does soft products, small amounts of specialty cheese.
23 Cabot does not balance the market at all. Cabot gets the
24 milk it needs.

1 Q I understand that, but that's not really the
2 point of my question.

3 A Okay.

4 Q I'll try asking it another way. Every plant
5 that you run I'm sure you try to assess the cost of
6 running that plant --

7 A Yes.

8 Q -- correct? And I don't believe that there's
9 many plants or there are no plants or -- or anywhere in
10 the country that truly run at 100 percent of capacity all
11 the time. Is that correct?

12 A That's correct.

13 Q Okay. In looking at your cost of operations
14 for instance of the Middlebury plant, if it should run at
15 85 percent of capacity, wouldn't you take your total
16 operating costs and spread that over those -- those type
17 of pounds that would be most associated with what would go
18 through that plant?

19 A Yes, that's what we would do. I guess it
20 depends on your definition of capacity. When I say, for
21 example, that we work -- we use Middlebury six days a
22 week, in many ways we would consider that to be capacity
23 for labor reasons and other reasons. And then suddenly we
24 run over capacity when we run seven. So a lot of it

1 depends on your definition of what that capacity is.

2 I -- at West Springfield, we handle that a
3 little bit -- it -- it's handled differently in terms of
4 we're not a determinant -- I want to say this right.
5 We're not a determinant of capacity so much at West
6 Springfield as we are at the other plants. We make
7 conscious decisions at the other plants.

8 West Springfield, you know, I was -- I was
9 talking to our plant manager a couple days ago and they
10 had a week when they thought they would be getting -- a
11 few weeks ago they were getting about 15 million pounds of
12 milk. And they got a call and they had 11 million pounds
13 of milk after they had scheduled everything and -- and we
14 had to -- so capacity is sort of a -- a rough target to
15 shoot at. I had to shoot at it. I had to come up with a
16 number.

17 Q Okay. The point of my question, the -- this
18 type of question, wouldn't it be more realistic in
19 accounting for your costs at -- at the butter powder plant
20 in West Springfield to use a number that -- that is more
21 consistent with the pounds of milk that would normally go
22 through that plant, not the maximum capacity?

23 A Well, we do. Normally we get 60 or 65 percent
24 and we have a loss. So, yeah, we -- we -- we do look at

1 that. How -- how do you attribute that loss? I mean,
2 that really becomes the issue. It's another reason why we
3 went back to the Ling study, so we could really just focus
4 in on what the balancing needs were.

5 Yeah, -- can account for costs ultimately.

6 That's --

7 MR. BUELOW: Thank you.

8 JUDGE BAKER: Thank you, Mr. Buelow. Are there
9 other questions for Mr. Wellington? Yes, Mr. Beshore?

10 REDIRECT EXAMINATION

11 BY MR. BESHORE:

12 Q Bob, you were asked a question by Mr. English
13 with respect to whether you were aware a producer could be
14 pooled on more than one order at the same time.

15 A Okay.

16 Q Now, with respect to the modification in -- in
17 language that you have advanced on behalf of ADCNE to
18 exclude the payment of marketwide -- marketwide -- the
19 eligibility for marketwide service payments --

20 A Right.

21 Q -- of a producer who is just coming on to the
22 order for a three-month period of time, was it your intent
23 to exclude and are you willing to adapt the language in
24 whatever way is necessary to exclude all of the producer's

1 milk during that three-month period of time?

2 A If he's not fully on the order and -- and if
3 he's on another order, I don't think he should be on. I
4 said I didn't have an issue with that. We had to go back
5 to the -- I went back to the group and discussed that and,
6 yes, I think we would -- we clearly agree the Department
7 should do that. They have to be -- they -- they have to
8 be fully and exclusively on the order for that three-month
9 period.

10 Q Okay. So just as we're proposing to eliminate
11 the split-plant provision and other --

12 A Right.

13 Q -- provisions here, you'd -- you're not
14 advocating a split producer pool of milk?

15 A I don't -- no. I don't have split producers in
16 my organization, but the more I hear about it, the more
17 I'm going to look at it.

18 (Laughter)

19 BY MR. BESHORE:

20 A But I don't -- we don't have -- that's one of
21 my issues, was I -- I don't deal with them, so.

22 Q Along -- along that same line, is it -- you
23 were -- the pool of milk from outside the defined
24 geographic marketing area was -- was called to your

1 attention by Mr. Rosenbaum and perhaps Mr. English also.
2 Would it be your view -- well, are there other proposals
3 advanced by ADCNE in this hearing which would have some --
4 which, if adopted, would have some impact on the ability
5 of -- of any handlers to pool milk from any area that is
6 not performing year-round on the market?

7 A Yes. There are proposals. And in fact,
8 basically, that's one of the reasons our proposal was
9 written the way it was. You have -- Mr. Gallagher will be
10 testifying in -- in support of those proposals.
11 Basically, our -- our hope is that they will limit some of
12 those pounds that are coming onto the pool.

13 Q At least if the pounds are not performing --

14 A The pounds are not performing and serving the
15 market, yes.

16 Q Okay. Presently, for instance, there is the
17 language in the order at least that allows milk associated
18 with supply plants to be pooled from January through July
19 without any performance requirements whatsoever if the
20 plant has been pooled the previous August through
21 December?

22 A At 20 percent, correct.

23 Q Correct. And -- and those provisions would be
24 -- if -- if in fact they accommodated any of the large

1 volumes of milk in prior flushes, that would be subject to
2 different rules going forward if those proposals are
3 adopted?

4 A Our -- our -- our intent is not to exclude that
5 milk. It's to make sure that milk is actually serving the
6 market.

7 Q Now, the -- you were asked a question or two by
8 Mr. Vetne, I think, with respect to the language in the
9 marketwide service payment -- Proposal 7 which
10 disqualifies or excludes from payment non-member milk
11 that's pooled by a co-op or cooperative member milk that's
12 pooled by a proprietary handler. You're -- you're aware
13 of that?

14 A Yes.

15 Q And the -- the prohibition in -- in Proposal 7
16 as it's written applies to -- applies both ways? That is,
17 a cooperative handler cannot collect on non-member milk
18 and a proprietary handler cannot collect on cooperative
19 member milk, correct? It was one of the intents of that
20 language to prohibit in essence the arrangement that could
21 be entered into solely for the purpose of collecting money
22 and not for the purpose of balancing?

23 A Yes.

24 Q You were asked a few questions with respect to

1 the seasonal indices which Dr. Ling calculated and which -
2 - which you calculated also with respect to either
3 producer receipts or Class 1 demand. And you noted, I
4 think, that those indices could be -- could be
5 recalculated with any adjustments that may be deemed
6 appropriate by the recalcuator, whether it be an
7 interested party on a brief or -- or the Department.

8 A There's a tremendous amount of data in the
9 record that we could -- you certainly could do that.

10 Q And -- and those -- any such recalculations
11 could also then be input into -- into Dr. Ling's tables if
12 one chose to to determine what impact, if any, that might
13 have upon the isolated cost of balancing the Class 1 milk?

14 A Something like the indices, yes. Other members
15 I'm not sure. But the indices certainly --

16 Q Would you turn to page 85 of Exhibit 5 briefly?
17 You were asked a couple questions about it. And that's
18 the 7(a) plant aggregate receipts and utilization
19 information that's -- was prepared by the market
20 administrator --

21 A Yes.

22 Q -- on the basis of the handler reports of the
23 plants indicated in the -- in the footnotes on the
24 exhibit.

1 A (Inaudible).

2 Q Okay. Now, West Springfield is one of the
3 plants that's involved, correct?

4 A Yes.

5 Q So that, as you've testified, your total
6 receipts at West Springfield of milk and cream do not go -
7 - do not all go into skim milk powder or butter, correct?

8 A Correct.

9 Q Okay. The -- the shaded column to the right on
10 this exhibit is essentially just the pounds used to
11 produce Class 4 products at those facilities?

12 A Yes.

13 Q And to the extent that West Springfield, for
14 instance, and any of these other plants have production of
15 condensed that's marketed elsewhere, the volumes that went
16 into that are on the receipt side but they're not showing
17 as skim milk or -- or other powder or butter manufacturer
18 because they didn't go to that end use, correct?

19 A Unless they ended up in that end use. If we
20 moved skim to another powder plant. That's the only thing
21 I can say in that -- that that happens.

22 Q Well, if you moved -- if you moved condensed to
23 another powder plant, it wouldn't -- those volumes
24 wouldn't show up in the used to produce --

1 A Yes, that's true. That is true.

2 Q -- information which is what Mr. Fredericks
3 testified is the gray columns?

4 A That's true. This isn't total amount of
5 product this is used to produce, yes.

6 Q Okay. And so in effect, it's just the -- it's
7 the residual volumes that get -- at these plants that go
8 to the least -- essentially the balancing and true
9 balancing uses. The last -- as you testified, the last
10 uses you make of it or the first uses that milk gets taken
11 out of it when it's demanded from the commercial market?

12 A That's true.

13 Q Would you turn to page three of your testimony,
14 please? Exhibit 13.

15 (Pause)

16 BY MR. BESHORE:

17 Q Page three?

18 A Yep.

19 Q Exhibit 13. Okay. Now, I want to draw your
20 attention to the first full paragraph on page three of
21 your testimony. And going back to page -- the bottom of
22 page two for a moment, is it not correct that you are in
23 your testimony there quoting the decision of the secretary
24 from the 1986 decision?

1 A Yes, I am quoting.

2 Q Okay. So that in the first full paragraph on
3 page three, which begins, "Market balancing activities,"
4 those are not your words, those are words of the secretary
5 in explaining what the statute provides for?

6 A The secretary's finding and conclusions, yes.

7 Q And the secretary found that market balancing
8 activities such as disposing of surplus milk and obtaining
9 supplementals from Class 1 handlers are clearly identified
10 in the new provisions as services of marketwide benefit,
11 correct?

12 A Yes.

13 Q And the secretary also found that the law,
14 which is the law we're proceeding under here with respect
15 to Proposal 7, also provides that payments made under the
16 order program for the purpose of reimbursing the handlers
17 who provide those services are to be made from the total
18 sums payable by all handlers for milk, correct?

19 A Correct.

20 Q And that's pooled, correct?

21 A Yes.

22 Q And the secretary went on to find thus the
23 objective under marketwide service payment provisions is
24 that the minimum uniform price to all producers would be

1 evenly affected, reduced, and all would share the cost of
2 providing those services. That wasn't your interpretation
3 of what would happen; it was the secretary's finding with
4 respect to how these types of provisions would work?

5 A Yes, that's true.

6 Q And the secretary also found that in this way
7 some market participants would not be able to maintain an
8 advantage gained by receiving benefits but not having to
9 pay the costs therefore, correct?

10 A Correct.

11 Q And that's the objective of Proposal 7 --

12 A Exactly.

13 Q -- is it not?

14 MR. BESHORE: Thank you. That's all I have.

15 JUDGE BAKER: Very well. Are there any other
16 questions? If -- determine how long they're going to be.
17 Yes, Mr. Rosenbaum?

18 MR. ROSENBAUM: Less than two minutes.

19 JUDGE BAKER: All right. Go ahead.

20 MR. BESHORE: He's on the clock.

21 RE-CROSS EXAMINATION

22 BY MR. ROSENBAUM:

23 Q Just to follow up on the last question from Mr.
24 Beshore, you agree that the language in the statute

1 provides that the order shall contain one or more of the
2 following provisions, one of which is marketwide service
3 payments? That's the way the structure is set up,
4 correct?

5 A I don't know.

6 Q You -- okay. You're not -- you're not
7 suggesting that it's required that there be marketwide
8 service payments, only that the secretary has the
9 discretion if he deems them appropriate to put in place,
10 is that right?

11 A -- say they're required by my interpretation --
12 required. Certainly, the secretary has the option.

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

14 JUDGE BAKER: Thank you. Are there any other
15 questions for Mr. Wellington?

16 (No response)

17 JUDGE BAKER: Let the record reflect that there
18 are none. Thank you very much, sir.

19 (Whereupon, the witness was excused.)

20 JUDGE BAKER: That does bring us to the time
21 for our afternoon recess, after which we will hear from
22 those two individuals who have to be heard today.

23 MR. BESHORE: May I move the admission of
24 Exhibits 13 and 14 before we break?

1 JUDGE BAKER: Are there any questions or
2 otherwise or objections with respect to 13 and 14?

3 (No response)

4 JUDGE BAKER: Let the record reflect there's no
5 response. Exhibits 13 and 14 are admitted and received
6 into evidence.

7

8

9

10 (The documents previously
11 marked for identification as
12 Exhibits 13 and 14 were
13 received in evidence.)

14 JUDGE BAKER: Yes, Mr. --

15 MR. ENGLISH: I just wanted -- you said there
16 were two people that need to be heard today. There's
17 really three. There are two dairy farmers who I'd like to
18 take up after the afternoon recess and there's one other
19 person, Mr. Miller of Queensboro Farms, who's been here
20 both days. And if I could accommodate him, he can be at
21 the end of the day today. I -- it's a fairly short
22 statement. I don't think it's overly complicated. Maybe
23 -- I don't think so. And hopefully we can accommodate him
24 as well.

1 But at least the two dairy farmers now, and if
2 you want to take Mr. Miller right afterward, that's fine.
3 But I don't want to continue interrupting the flow of Mr.
4 Beshore's --

5 MR. BESHORE: Well, we're certainly prepared to
6 yield to the dairy farmers and accommodate Mr. Miller as
7 well.

8 JUDGE BAKER: Thank you -- we'll take a 15-
9 minute recess at this time and come back to proceed.

10 (Brief recess)

11 (The document referred to was
12 marked for identification as
13 Exhibit 15.)

14 JUDGE BAKER: Are there any questions or
15 objections -- yes, Mr. English?

16 MR. ENGLISH: I understand there are none, so I
17 was going to move the its submission.

18 JUDGE BAKER: All right. Well, I -- I --

19 MR. ENGLISH: ~~(Inaudible)~~ **Actually, I think.**

20 JUDGE BAKER: -- consideration now -- not going
21 to object.

22 SPEAKER: We did have the opportunity to review
23 it and to not have any objection to its admission.

24 JUDGE BAKER: Very well. Thank you. I -- take

1 Mr. English's word. I just wanted to be -- (inaudible).

2 MR. BESHORE: Thank you, Your Honor.

3 (The document previously
4 marked for identification as
5 Exhibit 15 was received in
6 evidence.)

7 MR. ENGLISH: Your Honor, I would call Mr.
8 Travis Finn --

9 JUDGE BAKER: Very well.

10 MR. ENGLISH: -- to the stand.

11 Whereupon,

12 TRAVIS J. FINN

13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BESHORE:

17 Q Mr. Finn, could you state your full name and
18 spell it for the record, please?

19 A Travis J. Finn. T-R-A-V-I-S, "J" as in James,
20 Finn, "F" as in Frank-I-N-N.

21 Q And what is your address? Would you speak in
22 the microphone?

23 A Sure. I can do that.

24 Q Pull it to you.

1 A I live at 9195 Jones Road, Holland Patent, New
2 York. Holland Patent is a little town northeast of
3 Syracuse, home of the Syracuse Orangemen. And --

4 Q You're here today -- are you here on your own
5 behalf as well as on behalf of an entity?

6 A On behalf of several organizations I would
7 include.

8 Q The --

9 A The first thing, my own farm, -- Farms. The
10 second being Holland Patent Farmers Co-Op, of which I'm
11 vice president. And that is the cooperative that we
12 market our farm's milk through. Also, on behalf of
13 Elmhurst Dairy, who has purchased our co-op's milk for the
14 last few years.

15 Q And for the record, Elmhurst Dairy will also
16 have a -- a witness for themselves, correct?

17 A Correct.

18 Q Before you give your -- your statement that
19 you'd like to give, there was a witness yesterday from the
20 New York Farm Bureau who testified. Are -- are you or is
21 your farm a member of New York Farm Bureau?

22 A Yes, we are.

23 Q And were you, to your knowledge, consulted
24 about the proposals at issue here today by the New York

1 Farm Bureau as to taking a position?

2 A To my knowledge, I wasn't aware of any trying
3 on their part to get our opinion.

4 Q And do you have some things you'd like to say
5 today about marketwide service payments?

6 A Yes, I do -- I do.

7 Q Why don't you go ahead and have your say?

8 A First of all, Your Honor, I'd like to thank you
9 for -- and the -- the people from the Department of
10 Agriculture for holding this hearing and -- and giving me
11 a chance to -- to come and give my -- my feelings on it --
12 ~~(inaudible)~~ -- the order **for whatever they may be worth.**

13 I won't take much of your time. I realize
14 everybody's time is valuable, but I just thought it may be
15 of some benefit to hear what some of the producers that
16 are actually out there in the farms milking the cows feel
17 about this proposal.

18 I stated where I was from. I -- I farm there
19 with my brother and father. We milk 420 cows. It's still
20 very much a family operation.

21 And I guess -- this wouldn't be my first choice
22 of places to be today. But I expect to be farming for the
23 next 30 years and I realize that this is probably the most
24 important place for me to be today.

1 I have two small children, six and four, that I
2 think maybe some day will take the farm over. If they do,
3 I would be happy to feel that I maybe encouraged a better
4 environment for them to farm in.

5 At any rate, that's how I got here and why I'm
6 here. And I'm just going to give you my quick take on it.

7 Kind of -- to put it bluntly, I -- I just don't
8 think it's a very realistic amendment to the Northeast
9 Marketing Order because I see it as being discriminatory
10 in a couple of different senses. The first being that
11 we're taking money from farmers here in the northeast and
12 putting it in the hands of larger cooperatives whose scope
13 of operation extends from coast to coast.

14 Now, were the tables turned and we were going
15 to skim money off of all the other federal order pools and
16 return that to an organization that I was part of, I would
17 be very much in favor of that. But one -- wondering why
18 they dipped into my pool to support organizations that go
19 well beyond the Northeast Marketing Order. Doesn't look
20 like such a great deal to me.

21 Feeling why these -- these co-ops are
22 supposedly providing a marketing service, it's kind of a
23 vague term and -- and not a real lot of hard evidence that
24 -- that I have seen as to exactly what they're doing for

1 this service. Then, to make it even harder is to put the
2 numbers on -- of the services they are supposedly
3 supplying to us.

4 Granted, they handle a large volume of the milk
5 but I feel the small cooperatives and proprietary
6 organizations are -- are also contributing to balancing
7 the -- the fluid one pool. One sure example, we signed a
8 contract with Elmhurst Dairy last -- last fall and agreed
9 to send our milk to three different locations. The
10 markets change substantially during the year and we were
11 contacted and they asked if it would be okay to send it to
12 some other locations. The reason they contacted us was
13 because we always agreed to take care of our own hauling.
14 So that had an impact on us once it starts moving
15 location.

16 But in the end we agreed to do that. And by
17 the time the end of the year had rolled around, we had
18 shipped our milk to eight different locations. But we got
19 what we had wanted. The contract was -- the way we
20 intended it to, and I feel that the combination of our own
21 co-op and Elmhurst Dairy both contributed in trying to
22 balance the market.

23 We didn't necessarily make dry powder and
24 butter out of it per se, but we had to alter the locations

1 to soft product manufacturing plants. Who's to say that's
2 not a service provided within the order to balance the
3 marketing?

4 Then -- a little more on the -- the dollars and
5 cents issue. It's -- it's a huge amount of money that's
6 taken out of the pool. We're just a small producer in a
7 very large pool. But that still means \$3500 a year to me
8 on my farm. Thirty-five hundred to me is the difference
9 between funding my retirement and not. Being able to
10 afford health insurance so that my wife can stay home and
11 raise our kids. I just need -- I need some very good
12 evidence and support that this is a necessary thing before
13 I'm going to stand up and say, yeah, you can have my four
14 cents or six cents or whatever it boils down -- coming to.

15 One of my final points will be that I kind of
16 feel that this -- these milk handlers are running the
17 business, much as I run my business. And they should know
18 going into this how they're going to cover their expenses.

19 Kind of an analogy, if I don't think I'm
20 capable of running a cropping operation, I'd better not
21 buy a full line of equipment to put behind my dairy to
22 feed my cows if I don't think I can manage that aspect of
23 it. I'd better buy feed or custom hire somebody else to
24 come manage it.

1 And I kind of feel the same way about this.
2 These handlers know when they sit down and talk to me and
3 want to buy my milk what the deal is. And it's their
4 problem there on out. And to this point, I feel like
5 they've met it. I've never had anybody leave me with a
6 tank full of milk yet.

7 In conclusion, I'd just like to say that I
8 almost feel like this proposal -- it's kind of an
9 enticement to encourage people to participate in balancing
10 the fluid market. When I look back at history, I'm not
11 sure we need that. As far as I can see, the -- the market
12 is being balanced. I don't -- I've never had trouble
13 getting a gallon of milk out a grocery store. I've never
14 had a problem with milk being left in my bulb tank.

15 So I have to ask myself, why are we doing the -
16 - skimming money off the top of the market pool to perform
17 some service that has, to me, obviously been happening
18 along the way. And I'm sure it's much more complicated
19 than I just reiterated it, but I'm just giving you my
20 layman's view of what's happening from the farm.

21 With that, I'd just like to say thank you for
22 your time.

23 JUDGE BAKER: Thank you for appearing and
24 participating in the hearing. I shall now ask for

1 questions. Are there any questions for Mr. Finn?

2 BY MR. BESHORE:

3 Q Thank you for -- for your testimony, Mr. Finn.
4 How you alluded to, I guess, hearing some of the testimony
5 or -- have you been -- have you been here -- how -- how
6 much testimony have you heard?

7 A Just today. I got on a flight at 6:00 this
8 morning and what I've got so far is what I've got. I
9 tried to educate myself as best I could before I got here,
10 but I ~~--- (inaudible) ---~~ **will admit that's tough** to do.

11 Q How many members does Holland Patent have in --
12 cooperative have?

13 A We currently have 47 members shipping milk. It
14 was established back in the early 1930s and did have a
15 bottling plant of its own. The bottling plant closed up.
16 I don't know the exact date. I'm going to say in the mid
17 '60s, so we've basically been -- well, not totally a paper
18 co-op. We still own the land, the buildings, and run a
19 farm store out of the old bottling plant. But we don't --
20 we don't actually bottle any milk or manufacture any milk
21 of our own. It's strictly set up to gain market clout and
22 try to negotiate milk prices.

23 Q What monthly volume do the 47 farms produce?

24 A We do about 40 million pounds a year. So break

1 that down. Three and a half million pounds a month.

2 Q Is -- is all of your production contracted to
3 Elmhurst?

4 A Yes, it is right now.

5 Q Your -- your farm with 420 cows, how much milk
6 do you produce a year? Around 20,000 per cow?

7 A Seven and a half million pounds. Probably
8 closer to 8 million pounds this year.

9 Q So your -- your 8 million is about 20 percent
10 of the co-op?

11 A We figure around six.

12 Q Are you -- you're the vice president I think
13 you said?

14 A Yes.

15 Q And you bargain in selling the 40 million
16 pounds a year to Elmhurst. Do you receive an over-order
17 premium for the -- the -- your milk?

18 A Yes.

19 Q And does that premium vary with respect to
20 where it's sold -- where it's delivered?

21 A Somewhat.

22 Q Does it vary by the class of utilization?

23 A I guess that's a question that's beyond my
24 scope of knowledge.

1 Q Okay. How many plants does Elmhurst have?

2 A That I don't know either. But I'm sure there's
3 somebody here that could help you with that one.

4 Q The Elmhurst witness, I assume.

5 A I would think so.

6 Q Okay.

7 A I would hope so.

8 Q Now, you don't supply Elmhurst all its needs?

9 A Not even close.

10 Q But Elmhurst -- your milk is all -- your
11 cooperative's milk is all under contract to Elmhurst and
12 they direct you where to deliver the milk?

13 A Yeah.

14 Q You have -- do you contract on a yearly basis --
15 - the cooperative, that is -- for your milk?

16 A Yeah.

17 ~~Q Previously you've contracted with some to~~
18 ~~some of the cooperatives in the market -- one other~~
19 ~~question. Are you -- do you hold any elected position in~~
20 ~~the New York Farm Bureau?~~

21 Q Previously you've contracted to sell to some
22 of the cooperatives in the market?

23 A Yeah, we've contracted to sell to some of the
24 cooperative in the market

1 Q You got a better deal with Elmhurst I take
2 it?

3 A Yeah

4 Q One other question. Are you - do you hold any
5 elected position in the New York Farm Bureau?

6 A No.

7 Q But it does have a structure of board members -
8 -

9 A Oh, a very sound structure. It's my brother's
10 department. He is an elected official. I proposed to him
11 what I was going to do and he said, sound all right to me
12 -- so. He stayed home. I guess maybe he didn't know a
13 Farm Bureau stake was ~~---(inaudible)~~ **on this.**

14 MR. BESHORE: Thank you very much.

15 JUDGE BAKER: Thank you. Are there any other
16 questions for Mr. Finn? Mr. Vetne?

17 CROSS EXAMINATION

18 BY MR. VETNE:

19 Q I'm John Vetne. I represent Friendship. The
20 market administrator gave us some information at the
21 beginning of the hearing showing all the co-ops for the
22 producers pooled in the order. Holland Patent doesn't
23 appear in that list of some 40 or 50 or 90 co-ops. Do you
24 have any idea why? HP Farmers Cooperative, is that it?

1 Never mind.

2 A That's good because I didn't have any idea why.

3 (Laughter)

4 MR. VETNE: Okay.

5 JUDGE BAKER: I don't think the ~~---~~(inaudible)
6 **record's going to understand why either, so explain.**

7 MR. BESHORE: For the record, there's a "H
8 period P period Farmers Cooperative." And is that the
9 same as Holland Patent?

10 THE WITNESS: Yeah, that's shorthand for
11 Holland Patent.

12 JUDGE BAKER: Very well. Thank you. Are there
13 any other questions for Mr. Finn?

14 (No response)

15 JUDGE BAKER: There appear to be none. Thank
16 you again.

17 THE WITNESS: Okay.

18 MR. BESHORE: Thank you again.

19 JUDGE BAKER: (Inaudible).

20 (Whereupon, the witness was excused.)

21 MR. ENGLISH: The next witness --

22 (Pause)

23 JUDGE BAKER: Do you want to call the next
24 witness?

1 MR. ENGLISH: Mr. Scholte.

2 JUDGE BAKER: Very well.

3 Whereupon,

4 ARIE SCHOLTE

5 having been first duly sworn, was called as a witness
6 herein and was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ENGLISH:

9 Q Mr. Scholte, would you please state your full
10 name and spell it for the record?

11 A My name is Arie W. Scholte. A-R-I-E, W, S-C-H-
12 O-L-T-E.

13 Q And would you please tell us why you're here
14 today?

15 A Last week -- Wednesday, I guess -- I was
16 informed the six cents per hundredweight marketing balance
17 charge for the payment imposed by a milk handler, Mr. --
18 ~~(inaudible)~~ Arms suggested that I get together with
19 **dairy Dairy** ~~--(inaudible)--~~ Council of New York
20 Association and see if I would come down and testify as an
21 independent producer. And that's what I'm doing here
22 today.

23 Q It was your choice to come down, correct?

24 A Oh, absolutely.

1 Q And the statement you're to give today is your
2 statement, correct?

3 A Absolutely.

4 Q Now, could you please speak into the
5 microphone?

6 A Sorry. How's this?

7 Q Pull it towards you.

8 A All right?

9 Q Go ahead. Why don't you proceed -- I'm sorry.
10 What's the -- do you operate a dairy farm?

11 A Yes, I do.

12 Q And where is that dairy farm?

13 A Located in Balmville, New York, which is about
14 seven miles outside of Syracuse, close to Syracuse.

15 Q Why don't you proceed with your statement then?

16 A Basically, the same as Travis. Yesterday I was
17 out in the field chopping corn. Today, on 9/11, I'm
18 sitting here before you expressing my opposition to this
19 six cents market service charge.

20 I'll give you a brief history of myself.
21 Married, one daughter, dairy farmer all my life. I owned
22 a farm supply business for five years. Presently serving
23 my second term ~~---(inaudible)~~ **on the Van Buren Town Board.**

24 My family started farming in Orange County, New

1 York, on a farm -- farming career started in Orange
2 County, New York, when my parents came to the U.S. from
3 Holland in 1954. We also farmed in Middlebury, Vermont,
4 for six years before moving to our present farm, which is
5 located in Balmville, New York, near Syracuse.

6 Dairy consists of 300 acres -- 300 cows, 300
7 head of young stock, a farm about 1000 acres. And for the
8 past 17 years, Vernon Dairy has been coming to our yard
9 every day to pick up our milk.

10 My reason for traveling here today on 9/11 is
11 to express my opposition to the six cent per hundred
12 marketwide service payment that is being proposed by 7(a)
13 markets and dairy co-ops.

14 Paying -- northeastern dairy co-ops six cents
15 per hundred on the members' volume would reduce our -- our
16 -- our net farm price by four and a half cents per
17 hundred. This equates to \$2700 per year. That would -
18 - that would be subtracted from our farm's bottom line.
19 \$2700 is not a huge sum of money, but on a yearly basis,
20 for example, it pays for Christmas bonuses for our
21 employees, school taxes on my house, a nice IRA
22 contribution for myself, or my life insurance payment.

23 These are examples on a yearly basis. I think
24 what is important -- more important to look at in this

1 issue is the long term. For example, investing \$2700 in a
2 conservative mutual fund, even taking the downturn in the
3 market today, we could easily be looking at a 90- to
4 100,000 dollar nest egg which could be used to fund
5 retirement or to pay off debt in the future.

6 Now, this is just our farm. Let's look at the
7 big picture. Four and a half percent -- four and half
8 cents assessed over the whole Northeast Order, we're
9 looking at 2 billion pounds per month -- per month, which
10 means that the farmers in the Northeast Order would pay
11 these 7(a) co-ops \$1 million per month or \$12 million per
12 year or -- in the long term, 120 million over 10 years.
13 This is for providing unspecified market balancing
14 services.

15 In my opinion, this brings us to the real issue
16 -- ~~(inaudible)~~ **at hand**, their documented need for
17 providing this proposed marketing service. Would there be
18 financial reports detailing use of the money? Would the
19 money be held in escrow accounts if it's not needed? Will
20 there be some sort of third party oversight? That's how
21 -- that's how -- as to how this money is spent. Would
22 this four and a half cent charge would be better spent on
23 advertising? I think that's a real good question.

24 How will this four and a half cent benefit the

1 independent producers like myself which make up 25 percent
2 of the milk production in the Northeast Order? What will
3 be our return on investment? These are fair questions
4 and, in my opinion, should be answered.

5 I think my testimony shows that if this
6 marketwide service payment is adopted, northeast farmers
7 will just be investing millions of dollars into a program
8 that has no proof of return on investment. And with no
9 proof of return, shouldn't this money stay on a farm where
10 it can be put to use keeping future generations on the
11 farm.

12 In closing, I want to thank the representatives
13 of the USA for your time. I hope my testimony will help -
14 - help you make a good decision.

15 JUDGE BAKER: Thank you very much, Mr. Scholte.
16 Are there any questions for Mr. Scholte? Yes, Mr.
17 Beshore?

18 CROSS EXAMINATION

19 BY MR. BESHORE:

20 Q Mr. Scholte, I just have one question. I think
21 -- your milk -- you sell your milk to Vernon Dairy?

22 A Right.

23 Q Is that correct? Which is in Syracuse?

24 A Right.

1 Q Did you say they -- you're on a daily pickup
2 schedule with them?

3 A Right.

4 Q Okay. Do you know where your milk goes?

5 A Vernon Dairy.

6 Q And that's a bottling plant in Syracuse?

7 A Right.

8 Q They pick it up every day at your farm?

9 A (Inaudible) **Twice a day.**

10 Q Take it to the plant in Syracuse every day?

11 A Right.

12 Q Three hundred sixty-five days a year?

13 A Three hundred sixty-five days, snow, wind,
14 storm, whatever.

15 MR. BESHORE: Thank you.

16 JUDGE BAKER: Thank you. Are there any other
17 questions?

18 (No response)

19 JUDGE BAKER: There appear to be none. Thank
20 you very much.

21 (Whereupon, the witness was excused.)

22 (Discussion held off the record.)

23 MR. ENGLISH: Your Honor, the parties' pleasure
24 is, again, Mr. Miller can get done some time before the

1 close of business today. And I don't know when that is,
2 either. But if -- if Mr. Gallagher wants to go now --

3 JUDGE BAKER: Why don't we have -- why don't
4 you --

5 MR. ENGLISH: Okay. Is that all right, Mr.
6 Beshore?

7 MR. BESHORE: Yes.

8 MR. ENGLISH: Mr. Miller is going to testify
9 both on Proposal 7 and on some of the pooling proposals.

10 JUDGE BAKER: Very well. Thank you.

11 MR. ENGLISH: I would emphasize on those that
12 the technical people will be coming later.

13

14

15 Whereupon,

16

LEWIS BUTCH MILLER

17 having been first duly sworn, was called as a witness
18 herein and was examined and testified as follows:

19 MR. ENGLISH: There's two statements -- two and
20 a half page and one under one page, but it seems like we
21 may have run out of the one-pager.

22 (Pause)

23

DIRECT EXAMINATION

24

BY MR. ENGLISH:

1 Q Mr. Miller, would you state your full name for
2 the record?

3 A Lewis Butch Miller.

4 Q And by whom are you employed?

5 A I'm employed by Queensboro Farm Products. I'm
6 the executive vice president. And I'm here today also
7 representing New York Dairy Foods, of which I'm the vice
8 president.

9 Q And it's, again, your understanding that there
10 will be other factual witnesses on these proposals and --
11 and also some technical people to talk about the
12 technical. You're going to talk about both Proposal 7 and
13 Proposal 1, is that correct?

14 A Yes, sir.

15 Q Why don't you proceed with both statements?

16 A Start with Proposal Number 1. That's the one-
17 page.

18 In regard to the required timing for market
19 administrator reporting dates, we believe that the
20 reporting dates ought to be moved back one day to the 10th
21 of the month. Simply stated, we do not have enough
22 information supplied to us in a timely manner to report
23 accurately on the 9th of the month.

24 Four of the last six months, we did not receive

1 the necessary data in time. The information has arrived
2 at our office at about noon or after on the 9th of the
3 month.

4 We're a small business and a manufacturer. Our
5 market administrator department consists of one extremely
6 competent employee who must disseminate all of the -- all
7 of the information at the last minute in order to file a
8 complex market administration report on time. This
9 rushing leads to error, estimating on occasion, and
10 compromises the accuracy and veracity of such important
11 information.

12 This in turn leads to orders adjustments, more
13 work for the Department, and more time for producers and
14 handlers to get accurate financial accounting with pool
15 information and funds. This makes no sense.

16 If the reporting date and the other payment
17 dates were to be adjusted accordingly as per the New York
18 State Dairy-approved proposal which you'll hear later, the
19 reporting and financial dissemination of information and
20 funds would be handled in a more orderly and consistent
21 manner. Both the producer and the handler would benefit
22 from this small change.

23 JUDGE BAKER: Very well. Are there any
24 questions with respect to this testimony relative to

1 Proposal 1?

2 MR. ENGLISH: I'd ask a few additional
3 questions.

4 JUDGE BAKER: Oh, all right.

5 BY MR. ENGLISH:

6 Q Mr. Miller, as it happens, this week was pool
7 reporting, correct?

8 A That's correct.

9 Q And in fact Monday was the deadline for getting
10 information to the market administrator, correct?

11 A That's correct.

12 Q At what time did you receive the information?
13 Actually -- start -- what date did you receive information
14 from this fund?

15 A Monday the 9th, after the close of business,
16 around 5:30 p.m.

17 Q And you've discovered that this is fairly
18 typical since federal order reform?

19 A Yes, sir.

20 MR. ENGLISH: That's the only questions I have.

21 JUDGE BAKER: Thank you. Are there any other
22 questions to respect -- with respect to Proposal 1?

23 (No response)

24 JUDGE BAKER: Let the record reflect that there

1 are none. ~~(Inaudible)~~ -- **We shall proceed to** Proposal 7.

2 (Pause)

3 THE WITNESS: Queensboro Farm Products is a
4 diversified dairy manufacturer and distributor. The
5 company operates a pool supply manufacturing plant in
6 Canastota, New York, an economically depressed area on the
7 outskirts of Syracuse, New York, as well as a distribution
8 business in Jamaica, New York, another economically
9 depressed area.

10 We're a small business with 75 employees but
11 provide much needed employment in the geographic locations
12 in which we operate. Our company was established in 1909
13 and has been providing an outlet for independent dairy
14 farmers and small co-ops ever since.

15 We are a seller and therefore a balancer of
16 Class 1 milk and skim milk in excess of needs of the
17 bottling plants as well as a manufacturer of a variety of
18 non-Class 1 dairy products.

19 Our company is fundamentally opposed to any
20 proposal that removes money from the pool and in effect
21 from the checks of independent producers, which are the
22 lifeblood of our existence. The way the proposal for
23 marketwide service payments is now worded, all producers
24 would lose about four and a half cents a hundred from

1 their milk chips. The only participants able to qualify
2 for the six cent per hundredweight marketing service
3 payments would be the cooperatives, the architects of the
4 proposal.

5 This would create a procurement advantage for
6 qualified cooperatives and a procurement disadvantage for
7 proprietary plants sourcing milk from independent dairy
8 farms. These independent dairy farmers are an integral
9 part of Order 1 milk shed. And the proprietary handlers
10 that receive and balance these Class 1 supplies should not
11 be discriminated against.

12 As an independent handler in the business for
13 many years, we must object to the language as proposed.
14 They've already made significant investments in our plants
15 and equipment. Although we have fewer than 500 employees,
16 we still incur the same volatile costs of running a milk
17 manufacturing plant and suffer the same burdens of unused
18 capacity.

19 We too know the cost of idle capacity in the
20 middle of each and every week, only to work around the
21 clock on weekends and holidays when our Class 1 customers
22 are shut down.

23 We ceaselessly balance the flush Class 1 milk
24 in central New York. If the three major cooperatives and

1 proprietary handlers in that general area have too much
2 milk can come to us to process that milk so that their
3 truckers can empty their milk tanks.

4 When schools shut down for the summer vacation
5 and for holidays, we balance Class 1 supply. By
6 manufacturing non-Class 1 products, the cooperatives would
7 qualify for marketwide service payments, but we would not
8 even though we are the ones providing the balancing
9 function.

10 The proposal for marketwide service payments as
11 proposed excludes my company and lets cooperatives who
12 have no investment in the bricks and mortar of milk
13 manufacturing facilities qualify for six cents a
14 hundredweight from the pool. This discriminates against
15 small business that cannot qualify because they do not
16 pool a quantity of milk equal to three percent of the
17 total volume of milk pooled on the order for the month or
18 they do not pool a million pounds of milk per day.

19 We believe the qualification level should be
20 changed and lowered to 400,000 pounds of milk per day and
21 the wording in Part 2 be modified to say, "Class 1
22 transfers and diversions assigned to Class 1 pool
23 distributing plants shall be not more than 80 percent of
24 the total quantity of producer milk which such handler

1 pools."

2 This change is warranted because of the
3 preponderance of non-Class 1 transfers to pool
4 distributing plants that have emerged under the new
5 order. In this manner, perhaps smaller plants that
6 balance Class 1 needs of the marketplace shall be
7 recognized as well. When Class 1 plants cannot receive
8 producer milk, that milk must go some place. We are able
9 to handle that milk just as larger cooperatives do. It is
10 not reasonable to preclude smaller plants performing
11 similar functions from the same entitlement as larger
12 ones. The playing field should be a level one.

13 JUDGE BAKER: Thank you, Mr. Miller. Mr.
14 English?

15

16 BY MR. ENGLISH:

17 Q Now, Mr. Miller, just to be clear, you've
18 indicated that you have 75 employees. And for the record,
19 that is under the standard set by the Department for what
20 qualifies as a small business. So one of your points is
21 that you qualify as a small business under the Regulatory
22 Flexibility Act, correct?

23 A Yes.

24 Q And were you here earlier today when Mr.

1 Wellington testified and stated that while the proposal
2 was for a million pounds, he himself was prepared to
3 listen to proposals that -- that altered that number in
4 some way?

5 A ~~(Inaudible)~~ -- **Yes**, I heard that.

6 Q And you agree?

7 A Certainly I agree.

8 MR. ENGLISH: The witness is available for
9 cross examination.

10 JUDGE BAKER: Very well. Are there any
11 questions for Mr. Miller? Mr. Vetne?

12 CROSS EXAMINATION

13 BY MR. VETNE:

14 Q Mr. Miller, John Vetne for Friendship. Could
15 you identify the non-Class 1 products that Queensboro
16 manufactures?

17 A Condensed milk, whole condensed milk, sour
18 cream, cottage cheese, cream cheese, farmers cheese,
19 butter. That's it. Cream.

20 Q Do you have any capacity to produce dried milk
21 products?

22 A No, we do not.

23 Q Have you had that capacity in the past?

24 A Perhaps -- yes, we did. Not in the last 22

1 years. I've been doing this too long.

2 (Laughter)

3 BY MR. VETNE:

4 Q Your choice of 400,000 pounds of milk per day,
5 is that intended to be an average?

6 A I think that the way it's worded it's on a
7 monthly basis that this proposal is to be evaluated, so
8 it's a per month figure -- 400,000.

9 Q And your choice of 400,000 milk -- pounds of
10 milk per day is motivated by the fact that Queensboro
11 would qualify if that's -- if that were the threshold?

12 A Yes, that's correct.

13 Q You don't have any other reason to choose
14 400,000 pounds over 300,000 pounds, for example?

15 A No.

16 Q You wouldn't object to 300,000 pounds if other
17 companies performing similar balancing -- balancing
18 service would also qualify?

19 A No, we would not object.

20 Q What -- what is the intent of your discussion
21 here of a preponderance of non-Class 1 transfers to pool
22 distributing plants? That has emerged under the new
23 order. What are you trying to target there and to
24 apparently exclude from qualifying percentage?

1 A Apparently, we believe the way this was written
2 was to target Class 1 milk. And the way -- the way this
3 is -- the way we read this, and we're not 100 percent
4 certain we're right, is that if there's a transfer of milk
5 to a non-Class 1 distributing plant, it counts the same as
6 if it were Class 1 the way that's written. If we're
7 wrong, then I guess there's not a need for this. But if
8 we're right, we believe there should be a need for this.

9 Q You mean a plant that is pooled as part of a
10 unit of distributing plants? That is actually an ice
11 cream plant, for example?

12 A I think the wording as it was given to -- to me
13 by our market administrator -- the individual said that if
14 there was a non-Class 1 transfer we're in effect covered.
15 And if -- if -- if it's not put in there, then transfers
16 to pool distributing plants that are not Class 1 count the
17 same as -- as if it is Class 1. If I'm repeating myself,
18 that's my understanding.

19 So therefore, it would change the percentage if
20 the wording were not changed.

21 Q So, under your proposed modification, the
22 volume credited as a condition for marketwide service
23 payments would be only that volume that's assigned to
24 Class 1, the 80 percent?

1 A Eighty percent.

2 Q And if your customer happens to be a plant with
3 20 percent Class 2 and 80 percent Class 1 and it's
4 allocated equally, you get credit for only 80 percent of
5 both shipments. You'd have to ship 88 percent -- you
6 could go up to 88 percent, is that correct? Is that your
7 intent?

8 A No, I'm not -- I'm not sure that that's true.

9 Q Is it -- is it your intention that if you ship
10 a load of milk to a distributing plant any portion of
11 which is allocated to Class 1, that the whole load ought
12 to be counted?

13 A I'm not prepared to answer that.

14 MR. VETNE: Thanks.

15 JUDGE BAKER: Are there any other questions of
16 Mr. Miller? Yes, Mr. Beshore?

17

18

19

CROSS EXAMINATION

20

BY MR. BESHORE:

21

22

23

24

Q Thank you. Good afternoon, Mr. Miller. Tell -
- tell us a little bit more about Queensboro Farm
Products. The -- I understand you operate a pool supply
manufacturing plant in Canastota which is listed on -- on

1 Proposal 5. What is the nature of the distribution
2 business at Jamaica?

3 A It's a milk route -- byproduct distribution
4 business operating in New York City. And -- operating
5 there probably since the 1920s.

6 Q So you're what's probably called a New York sub
7 dealer?

8 A That's correct.

9 Q Your distribution business, you acquire
10 packaged products from other manufacturers or processing
11 package plant or handlers, perhaps some of your own. Do
12 you -- do you distribute any of your own products?

13 A Yes, we do.

14 Q You -- some of your own non-Class 1 products --
15 by the way, do you make any Class 1 products at -- at
16 Canastota?

17 A -- buttermilk.

18 Q And you distribute your own buttermilk?

19 A Well, we distribute some of it.

20 Q Some of the buttermilk. So your distribution
21 business is not regulated by Order 1, correct?

22 A No. It is regulated by Order 1.

23 Q You're not a pool handler. The Jamaica
24 facility --

1 A The Jamaica facility is but it's a -- we're a
2 sub-dealer of a pool handler.

3 Q Do you file monthly reports on the Jamaica
4 distribution business with the market administrator?

5 A We -- we file them all in one report. It's
6 -- it's filed ~~---~~(inaudible) **with the Market**
7 **Administrator.**

8 Q I guess my confusion is, I don't see the
9 Jamaica business listed in the market administrator's
10 documents anywhere as a plant or a handler or -- or any
11 other entity on the order.

12 A Maybe I should clarify. We're a sub-dealer of
13 Elmhurst Dairy. Does that make it clear?

14 Q I -- yeah. Who you deal with I don't --
15 doesn't really matter. I just wanted to know whether that
16 was a regulated facility or not. And I take it it's not.
17 That is -- the sub -- oh, is -- is your location as a sub-
18 dealer operator at the Elmhurst plant in -- in Jamaica?

19 A Yes.

20 Q Okay. But Elmhurst distributes products
21 through other -- through its own dealers or other sub-
22 dealers as well or through you?

23 A ~~(Inaudible)~~ **That's correct.**

24 Q Okay. Okay. Now -- now I think I -- I

1 understand. How many independent producers do you have?

2 A In the vicinity of 200.

3 Q And what is -- what's the monthly -- your
4 monthly volume that you require of those independent
5 producers?

6 A Nineteen million pounds.

7 Q Now, that -- let's assume that's roughly
8 600,000 pounds a day, sound right?

9 A Yeah.

10 Q How much of -- what proportion of the
11 independent producer milk that you require is processed at
12 your Canastota facility?

13 A ~~(Inaudible)~~ **That number varies.**

14 Q Do you -- does your supply plant qualify as a
15 supply plant through sales of milk to the Elmhurst plant
16 in Jamaica, New York?

17 A Is your question is that the basis for which
18 your qualify? The answer to that is "no."

19 Q Well, it wasn't exactly is it the basis. Do
20 you sell -- do you supply milk from the supply plant to
21 the Elmhurst distributing plant in Jamaica?

22 A ~~(Inaudible)~~ **Yes.**

23 Q Do you sell milk from your supply plant to
24 other Class 1 handlers?

1 A Yes.

2 Q What portion on an annual basis of the 19
3 million pounds a month that you require from producers do
4 you sell to Class 1 distributing plants?

5 A I don't have that figure -- (inaudible).

6 Q Can you give us your best information with
7 respect to that number? You have some idea, I assume?

8 A I think it's somewhere between 9 and 10 million
9 pounds.

10 Q A year?

11 A A month.

12 Q A month. Okay. So 40 to 50 percent of your 19
13 million pounds of monthly receipts from producers is
14 resold to distributing plants, correct?

15 A Yes.

16 Q Now I'm puzzled as to what your concern with
17 the 65 percent qualification criteria for marketwide
18 services payments might be. If you're -- you're -- you're
19 doing -- you're providing balancing services to your
20 distributing plant customers as you testified, I believe,
21 correct?

22 A Correct.

23 Q And so there's --

24 A Well, again, I'm not certain that my figures

1 are -- are 100 percent accurate as far as how that milk is
2 broken up between Class 1 sales and Class 2 supply.

3 Q I'm not asking Class 1 sales or Class 2 sales.
4 I'm just asking for sales to the distributing plants
5 because that's the way the proposal's written. It's just
6 written in terms of sales to distributing plants.

7 Is that a -- the 9 to 10 million a month on
8 average, is that an average approximate portion of your
9 milk supply that's sold to distributing plants?

10 A I believe that is the figure.

11 Q Does that vary from spring to fall?

12 A Yes, it does.

13 Q Less in the spring?

14 A Yes, it's normally less in the spring.

15 Q Okay. And greater in the fall.

16 A Certainly greater in the fall.

17 Q Okay. And does it vary -- I think your
18 testimony reflects it but I want to be certain. It varies
19 by day of the week quite substantially?

20 A Yes, very much.

21 Q And you have to meet your customer's demands
22 for -- for milk when they need it?

23 A Yes, certainly we do.

24 Q And backs -- they back milk out of their

1 distributing plants back into your manufacturing plant on
2 the weekends I think you've indicated?

3 A That's correct.

4 Q At your distributing plant you said you make
5 butter but you do not dry any skim solids. What's your
6 ultimate disposition for skim solids if you've got more
7 supply than you need for your commercial sales of
8 perishable Class 2 products?

9 A Class 3 condensed.

10 Q Okay. So you condense it and sell it to a
11 cheese plant?

12 A That's correct.

13 (Pause)

14 BY MR. BESHORE:

15 Q Do you -- do you purchase sales from --
16 purchase raw milk from other suppliers at your Canastota
17 plant from time to time?

18 A Yes, we do.

19 Q Does your purchase price vary as Mr. Wellington
20 testified theirs does on the basis of market conditions at
21 the time of sale?

22 A Sometimes it does.

23 Q Some -- some of your purchases might be on
24 long-term contracts as stated --

1 A That's correct.

2 Q -- price?

3 A -- stated price.

4 Q And others would be at spot market prices
5 depending on market conditions, correct?

6 A That's correct.

7 Q Sometimes you have to pay a premium and
8 sometimes you get the milk in at a discount, I assume?

9 A No, it's always class price as a floor.

10 Q Well, when you're buying from other handlers it
11 doesn't have to always be class price, does it?

12 A The cooperative's class price. For handlers
13 that's correct.

14 Q Okay. And -- and if you buy it from other
15 handlers, you can acquire it at less than class price if
16 marketing conditions make that possible?

17 A If that's the case.

18 Q At what level of -- let's see. You have a --
19 an evaporator but not a dryer at Canastota, I take it?

20 A That's correct.

21 Q What's the capacity of the plant to -- what's
22 the capacity of the condenser in terms of handling ==
23 ~~(inaudible)~~ **dealing of monthly volume?**

24 A Three to four loads a day == ~~(inaudible)~~

1 **condensed.**

2 Q 150- to 200,000 pounds a day?

3 A -- it's probably about ~~---~~(inaudible) **130,000**
4 **or 3 loads of condensed a day, or around 135.**

5 Q 135,000 pounds of condensed goes out. How much
6 raw milk would go in to generate that volume of condensed?

7 A About four -- four to one in relationship.

8 Q So you could -- four times 130,000 is 520,000
9 pounds of raw milk you could take in?

10 A We can take in more than that -- we can process
11 into condensed.

12 Q How much could you take -- take in?

13 A We've taken in over a million pounds a day on
14 many occasions.

15 Q Do you have some -- some storage capacity then
16 to --

17 A Yes.

18 Q process what you receive over more than one
19 day?

20 A That's true.

21 Q Within the limits established by the regulatory
22 authorities for -- for how long you can hold milk before
23 it has to be processed?

24 A Correct.

1 Q Those Class 2 products that you manufacture,
2 are -- they all require Grade A milk?

3 A Yes.

4 Q What level of capacity does your plant -- your
5 condenser generally run at? Do you know?

6 A It would vary seasonally. We have some
7 preexisting business as a core and then depending on the
8 milk supply and the market conditions. There are days it
9 doesn't run at all in the fall and there are days in the
10 spring it's running around the clock. Weekends it's
11 running almost all the time.

12 Q Do you have -- do you have any business which -
13 - referred to as Tollman milk?

14 A We do.

15 Q Okay. On a regular basis?

16 A Some is regular, some is subject to market
17 conditions.

18 Q Okay. Now, those -- those volumes are over and
19 above your -- your producer milk volumes?

20 A That's correct.

21 Q Okay. What are the volumes of regular --
22 tolling business -- volumes which would be received and
23 processed through your plant over and above the -- the
24 volumes for your producers?

1 A That varies. It could be 15 million pounds a
2 month.

3 Q Okay. Now, if you assume with me -- if those
4 15 million pounds a month are received at your plant and
5 processed for a fee, correct? That's what we mean by
6 tolling?

7 A Yes, but this is not necessarily always
8 condensed.

9 Q Any --

10 A Any product.

11 Q Okay. Any product?

12 A Yes.

13 Q I'm not limiting it to any product. But it
14 would be milk that would be received at your plant and
15 processed. Now -- okay. So if that averages around 15
16 million pounds, you've got 19 million of your own producer
17 milk, you've got more than a million a day, do you not,
18 Mr. Miller?

19 A Some of that is co-op milk which doesn't
20 qualify. And some of that is pooled by other handlers,
21 which we believe doesn't qualify.

22 Q Okay. So you wouldn't -- you don't have a
23 million --

24 A The way this is written.

1 Q You don't have a million pounds a day that you
2 pool under your own pool report?

3 A That's correct.

4 Q Okay.

5 (Pause)

6 MR. BESHORE: Thank you very much.

7 JUDGE BAKER: Very well. Are there any other
8 questions for Mr. Miller? Yes ~~---(inaudible)~~ **very back**
9 **row, Mr Arms.**

10 MR. ENGLISH: We'll ~~---(inaudible)~~ , **we'll**
11 **figure it out.**

12 JUDGE BAKER: All right.

13 REDIRECT EXAMINATION

14 BY MR. ENGLISH:

15 Q Just to clarify a question from -- from before
16 with respect to the pool handler status, the Queensboro
17 Farm Products location in Canastota is a pool supply
18 plant?

19 A Right.

20 Q And that files a pool report?

21 A Yes.

22 Q And with reference to the statement on page two
23 of your statement that when -- when the three major
24 cooperatives of proprietary handlers in that area -- milk

1 and come to us to process that milk, under the provision
2 as presently written that milk that you would purchase
3 from co-ops would be eligible to receive the six cents at
4 their end but you'd be ineligible to receive it at your
5 end, correct?

6 A That's correct.

7 Q And with respect to the discussion you were
8 having with Mr. -- Beshore, the whole point about this --
9 the 80 percent provision that you put in is your concern
10 that 65 percent may be too low and would apply to all
11 transfers or diversions to a distributing plant could
12 capture circumstances which other -- nonetheless --
13 ~~(inaudible)~~ **are what you consider to be balancing.**

14 A ~~(Inaudible)~~ **Yes, that's exactly correct.**

15 MR. ENGLISH: That's all I have. Thank you.

16 JUDGE BAKER: Thank you, Mr. English.

17 MR. ARMS: David Arms for New York State Dairy
18 Foods.

19 RE CROSS EXAMINATION

20 BY MR. ARMS:

21 Q Mr. Miller, could you identify for the record -
22 - you mentioned that you do tolling, considerable tolling,
23 in your bank. Could you identify for the record
24 cooperatives that might be involved in that such tolling?

1 A DMS, Allied, AgraMark.

2 Q To the extent that you handle this extra milk
3 for the cooperatives, are you in effect greatly extending
4 their capacities?

5 A I guess the answer to that is "yes." They come
6 when they need the help to balance milk. I don't know if
7 -- I don't know which order they take to which facilities.
8 But when we're asked if we can handle the milk, we comply.

9 Q They do come to you, do they not, Mr. Miller,
10 when they are -- their plants are tending to go toward
11 full capacity and they just simply don't have enough room
12 themselves?

13 A I believe that to be the case.

14 Q So the milk that you -- would you agree with me
15 then that the milk that you would be tolling for them
16 would be subject to cooperative service payments for them
17 --

18 A For them.

19 Q -- but not for you?

20 A I think I said that -- testified --

21 Q I just wanted to clarify for the record. Your
22 principal outlet for the tolled milk for cooperatives is
23 condensed milk, is it not?

24 A That's correct.

1 Q And in the marketing of that condensed milk,
2 which is, I assume, handled by the cooperatives, is it?
3 Do they direct the market --

4 A Yes. They pick it up at our plant.

5 Q Do you know if that condensed product moves out
6 of the market to another cheese plant, large cheese plant,
7 operated by another cooperative?

8 A Some have gone there. I don't think every one
9 goes there.

10 Q Is it your opinion that the tolled Class 3
11 condensed moves to the ultimate outlet at the pool class
12 price?

13 A We don't get involved in the marketing of that
14 condensed so it would be just be conjecture on my part.

15 Q So you don't know? Thank you.

16 JUDGE BAKER: Thank you, Mr. Arms. Are there
17 any other questions for Mr. Miller? ~~(Inaudible)~~ **Yes, Mr.**
18 **Tosi.**

19 MR. TOSI: Excuse me, Your Honor. I wasn't
20 sure if you were looking at me.

21 JUDGE BAKER: Oh, I'm sorry. I was looking at
22 you.

23 MR. TOSI: Okay. Thank you.

24 RECROSS EXAMINATION

1 BY MR. TOSI:

2 Q Mr. Miller, I guess this is a little bit of a
3 follow-up to what Mr. Beshore was asking you. Your --
4 your Canastota plant is a pool supply plant. And in that
5 regard, all your milk receipts at that plant Queensboro
6 Farm has attained an obligation to producers?

7 A Yes, that's correct.

8 Q And can you just explain a little bit for the
9 record here, at Jamaica, that's primarily a Class 1
10 facility where you're processing Class 1 milk?

11 A That's correct.

12 Q So -- and you receive milk from dairy farmers
13 or from cooperatives?

14 A That's correct.

15 Q And in that regard, all your milk receipts
16 there, you also are incurring payment obligation under the
17 order to producers?

18 A That is correct.

19 Q What -- what do you pay for milk -- what do you
20 pay your non-members for -- for milk? For example, you --
21 are you paying just the Class 1 price? Do you pay
22 something more than that?

23 A You mean do we pay our producers a premium?

24 Q Yes.

1 A Is that your question?

2 Q Yes.

3 A When necessary, we pay our producers a premium.

4 Q And when you receive milk from co-ops when they
5 have too much milk, are you in fact buying milk then or
6 are you just tolling?

7 A There are times that we do both. Most of the
8 time it's tolling. There are times that we buy it.

9 Q And when you buy from co-ops, are you buying at
10 class or are you buying at something less than class?

11 A No, we're buying at class.

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

13 JUDGE BAKER: Thank you, Mr. Tosi. Are there
14 any other questions?

15 (No response)

16 JUDGE BAKER: Apparently there are none.

17 MR. BESHORE: Your Honor?

18 JUDGE BAKER: Yes?

19 MR. BESHORE: I'm sorry.

20 JUDGE BAKER: Oh ---(inaudible) **Mr. Beshore.**

21 MR. BESHORE: Thank you.

22 RECROSS EXAMINATION

23 BY MR. BESHORE:

24 Q Just a couple of other questions, Mr. Miller.

1 Do you -- does Queensboro Farm Products, Inc., have an
2 ownership interest in Elm -- Elmhurst Dairy in Jamaica?

3 A No.

4 Q So Elmhurst Dairy is a separate -- do you
5 personally have an ownership interest in Elmhurst Dairy?

6 A No.

7 Q All right. So it's a completely separate
8 entity?

9 A That's correct.

10 Q Jamaica. You just operate a distribution sub-
11 dealer business --

12 A That's correct.

13 Q -- out of the same location, correct?

14 A Yes.

15 Q Could you give us a -- tolling is processing
16 milk for a fee. You don't buy the milk, you just run it
17 through your plant and process it for a fee, correct?

18 A Yes, that's correct.

19 Q Now, when you're condensing -- condensing is
20 the primary tolling service that you provide I think
21 you've indicated, correct?

22 A Well, normally, the way that is -- is
23 instructed is they get both the condensed and the cream.

24 Q Condensed skim?

1 A Yeah.

2 Q And the cream. Okay. And then the owner of
3 the milk, which you've indicated is primarily cooperatives
4 in the tolling arrangements --

5 A Not only cooperatives, but -- but cooperatives
6 certainly are a part of it.

7 Q Okay. They own the condensed and the cream
8 from out of your plant at the other end, correct?

9 A Yes.

10 Q Can you provide information for the record with
11 respect to what the charge might be for tolling milk in
12 that fashion for a customer?

13 A I just don't remember what -- what that figure
14 ~~---(inaudible)~~ **what those figures are. I don't want to**
15 **give you and erroneous figure.** I don't remember.

16 Q You don't have any idea what you charge per
17 hundredweight?

18 A I don't remember the toll, no.

19 Q At your small business? You -- you're the
20 operator and you do not --

21 A I don't want to give you an erroneous figure.

22 Q Well, how about a range that would capture some
23 accurate information for the record? ~~In excess of a~~
24 ~~dollar a hundredweight?~~

1 A (Inaudible) **In excess of a dollar a**
2 **hundredweight.**

3 Q Thank you. And when you find it -- by the way,
4 do you currently find it necessary -- I think you said you
5 pay premiums to your independent producers when you find
6 it necessary. Is it currently necessary to -- to be
7 paying premiums to your independent producers?

8 A It's -- the answer is "yes" as a function of
9 what our competition has done.

10 Q And what is the current necessary range of --
11 or necessary premium prevailing in the -- in the market
12 where you -- milk from producers?

13 A That's proprietary information.

14 Q You don't -- you don't care to provide
15 information for the record with respect to what you're
16 paying your two other independent producers to supply -
17 - maintain a supply relationship with Queensboro rather
18 than anyone else?

19 A I think that question implies something that's
20 unnecessary, especially from a non-proponent, especially
21 in terms of the fact that it's competitive information.
22 There's some stigma attached to that question. I --

23 Q I didn't mean to imply anything.

24 A -- but --

1 Q I wonder what the -- I just wonder -- A
2 -- information.

3 A I'm sure you and your clients would like to
4 know.

5 Q Well, you're assuming -- the record doesn't
6 --

7 JUDGE BAKER: ~~(Inaudible)~~ **The witness can**
8 **decline to answer** the pending question relates to whether
9 or not the ~~---(inaudible)---~~ **the witness wishes to,** to
10 respond to the amount paid ~~---(inaudible)---~~ **to these 200**
11 **producers** is that not correct?

12 THE WITNESS: That's correct.

13 JUDGE BAKER: And you are declining to answer?

14 THE WITNESS: I am.

15 JUDGE BAKER: Very well.

16 MR. ENGLISH: Thank you. That's all I have.

17 JUDGE BAKER: Are there any other questions?

18 (No response)

19 JUDGE BAKER: There are none. Thank you very
20 much, Mr. Miller.

21 (Pause)

22 JUDGE BAKER: Mr. Beshore, do you have another
23 witness we can do for tonight?

24 MR. BESHORE: We have two further witnesses.

1 Mr. Schad is our next witness, and he's prepared to -- to
2 go forward with his testimony.

3 JUDGE BAKER: Very well. Thank you.

4 (Pause)

5 MR. BESHORE: Your Honor, while the -- Mr.
6 Schad's testimony and the exhibits which accompany it are
7 being distributed in the room, I would like to request
8 that the statement of testimony be marked as the next
9 consecutive exhibit number.

10 JUDGE BAKER: Sixteen.

11 MR. BESHORE: Sixteen?

12 JUDGE BAKER: Yes.

13 (The document referred to was
14 marked for identification as
15 Exhibit 16.)

16 MR. BESHORE: And the testimony is with respect
17 to Proposal 7, although there's a typo on the cover sheet
18 where it says Proposal 4. The exhibits are with respect
19 to Proposal 7, and I would ask that they -- the seven
20 exhibits numbered one through six be marked as Proposed
21 Exhibit 17.

22 JUDGE BAKER: Very well. They shall be so
23 marked.

24 (The documents referred to

1 Q Mr. Schad, could you briefly tell us about your
2 educational and professional background?

3 A Professionally, I've worked for Land O' Lakes
4 and its predecessor cooperatives for the last 21 years.
5 I'm currently -- current title is economist and director
6 of mid-atlantic marketing. I have worked transportation,
7 regulatory affairs, and marketing within the cooperative
8 for that period of time.

9 I have a bachelors degree in history from the
10 College of William and Mary and also a masters degree in
11 business administration from Virginia Tech.

12 Q Have you previous -- previously testified in
13 federal order hearings?

14 A Yes.

15 Q And in other governmental regulatory
16 proceedings?

17 A In the state -- state for milk marketing order
18 ~~---(inaudible)---~~ **hearing as will as a** state legislator.

19 MR. BESHORE: We ask that Mr. Schad's -- Mr.
20 Schad be recognized as an expert witness in dairy
21 economics and milk marketing and that his testimony be
22 received as an expert in those fields.

23 JUDGE BAKER: Very well. Dairy economist, is
24 that what you said?

1 MR. BESHORE: Yes.

2 JUDGE BAKER: And milk --

3 MR. BESHORE: Marketing.

4 JUDGE BAKER: -- marketing? An expert as a
5 dairy economist and milk marketing. Is that what you want
6 him --

7 MR. BESHORE: Yes.

8 JUDGE BAKER: Very well. Are there any
9 questions or objections with respect thereto?

10 (No response)

11 JUDGE BAKER: Let the record reflect that there
12 are none. He shall be so recognized, Mr. Beshore.

13 MR. BESHORE: Thank you, Your Honor.

14 BY MR. BESHORE:

15 Q Now, before you proceed with the body of your
16 testimony, could you briefly describe for us the six
17 tables which are assembled in the seven exhibits
18 identified as Proposed Exhibit 17?

19 A Yes. Tables 1-A and 1-B are very similar.
20 Table 1-A is for the month of May 2001. The deliveries to
21 7(a) plants by six cooperatives who are mentioned in the
22 body of my testimony.

23 What I do is -- aggregated -- each of the
24 cooperatives sent the information to me on their 7(a)

1 deliveries -- Order 1 7(a) deliveries. For each day I've
2 aggregated it and I've found the monthly average.

3 So -- in Column 3 you'll see the daily
4 aggregate for the six cooperatives. Column 4 is the ratio
5 of each day to the monthly average.

6 Q Okay. And that's --

7 A -- in Table 1-D except we do it for the month
8 of November 2001.

9 Q Thank you. And Table 2?

10 A Table 2. Table 2 is a graph of those -- of
11 those same daily deliveries for both May and November
12 2001.

13 Q Okay.

14 A Table 3. Table 3 is the -- is, what, four
15 pages long. Four pages long. And is an -- an exhaustive
16 estimate by our engineering department on the cost of the
17 3 million pound per day butter powder plant.

18 Table 4. I'll read from the table of contents.
19 It's manufacturing costs at Land O' Lakes' Carlisle butter
20 powder plant. And it's the monthly per pound total solids
21 cost and percent plant capacity.

22 Table -- a second to explain a little bit
23 there. We used -- we defined 100 percent capacity by the
24 month in which we -- we delivered milk equal to the

1 designed capacity of the plant. We took the total solids
2 of that month, and that's what is 100 percent capacity.

3 The 19 other months during the specified time,
4 we took -- the percent capacity was the percentage of the
5 -- of that month against that -- the 100 percent capacity
6 month, which was actually May 2002.

7 And Table 5 is a listing of the percent
8 capacity for -- for the Land O' Lakes plant over -- over
9 the 19 months.

10 Q Okay. With that, would you proceed with your
11 testimony with respect to Proposal 7, Mr. Schad?

12 A I'll start with the second paragraph. Land O'
13 Lakes is a Cappa Volstead cooperative with a nationally
14 known ship base. In the northeast, Land O' Lakes has over
15 2200 members who are pooled under Order 1. The
16 cooperative owns and operates an Order 1 pool butter
17 powder plant located in Carlisle, Pennsylvania.

18 I am testifying at this hearing on behalf of
19 the Association of Dairy Farmers of the Northeast.

20 And this is under the heading, "ADCNE
21 demonstrates a 20 percent operating reserve in Order 1."

22 In its report, the "Cost of Balancing Milk
23 Supplies, Northeast Regional Market," Charles Ling defines
24 two levels of reserves required for the efficient

1 operation of the northeast Class 1 market. Dr. Ling
2 defines those reserves as operating reserves and seasonal
3 reserves. He defines operating reserves as those milk
4 reserves that ensure sufficient supply of milk for the
5 daily fluctuating fluid demands encountered by
6 distributing companies. Exhibit 12, page two.

7 The daily deliveries of milk to Class 1 plants
8 reflect the daily purchasing behavior of consumers. In
9 the northeast, market -- market cooperatives -- in the
10 northeast market, cooperatives balance the Class 1 plants
11 by delivering varying daily volumes to those plants. Dr.
12 Ling was specific and stated that the operating reserve
13 must carry -- cover the daily fluctuations of fluid milk
14 processing.

15 The concept of operating reserves in a dairy is
16 much like the requirements of the electrical industry.
17 The electrical industry must have sufficient power
18 reserves for its highest day usage. The consequences of
19 inadequate reserves of electricity power are brownouts and
20 blackouts. The consequence of inadequate reserve milk
21 supply is empty store shelves.

22 Dr. Ling's study calculates the market costs of
23 balancing the northeast market under two assumptions.
24 First, that the required operating reserve is 10 percent.

1 And another assumption is that the required operating
2 reserve is 20 percent.

3 While Dr. Ling could calculate the seasonal
4 reserve from published monthly market data, no such data
5 exists for the day of the week milk deliveries in Federal
6 Order 1.

7 Data from the proponent cooperatives show that
8 the northeast market requires a 20 percent operating
9 reserve. The market administrator has presented data
10 which shows that -- that milk from non-members is
11 disproportionately delivered to distributing plants.
12 Market Administrator Appendix 15 reveals that as much as
13 80 percent of the non-member milk associated with Order 1
14 is delivered to Order 1 distributing plants ~~---(inaudible)~~
15 **-- obviously the** non-member milk supply Order 1 provides
16 little of the operating reserves for the market. If
17 receipts ~~---(inaudible)---~~ **at distributing plants differ**
18 **on a** daily basis, then the extent of those fluctuations,
19 the operating reserves, are accommodated by the
20 cooperatives.

21 ~~(Inaudible)---~~ recognizing that there is no
22 published day of the week delivery data for the Northeast
23 Order, ADCNE surveyed its members for day of the week
24 distributing plant delivery demands. Each cooperative

1 sent to me its daily deliveries to Order 1 pool
2 distributing plants for May and November 2001. Exhibit
3 17, page 1-A and 1-B.

4 Table 1 lists the aggregate deliveries to
5 distributing plants by the cooperatives: AgraMark; Dairy
6 Marketing Services, which include Dairylea and DFA, Land
7 O' Lakes; Maryland and Virginia; and St. Albans. Column 4
8 of the table compares each day's deliveries to the monthly
9 daily average.

10 On Thursday, May 17th, distributing plants
11 ordered from our cooperative 19 million pounds of milk,
12 which was 16.6 percent greater than the daily average of
13 16.4 million pounds for the month.

14 On Monday, November 19th, the cooperatives
15 delivered 21.8 million pounds to Order 1 distributing
16 plants, which was 17.5 percent greater than the daily
17 monthly average of 18.6 million pounds.

18 The extremes of Class 1 balancing are shown
19 -- range of cooperative deliveries to distributing -- to
20 the distributing -- distributing plants for a month.

21 During both months, the cooperatives -- plant
22 customers required a 70.5 million pound swing between a
23 low delivery day and a high delivery day.

24 On May 27, the -- the distributing plant

1 demanded 11.5 million pounds, while on May 17th -- while
2 the May 17th high delivery day was 19.5. Similarly, the
3 low demand date in November was the 22nd, when
4 distributing plants required only 15.3 million pounds
5 compared to the 21.8 million pounds demanded on the 19th.

6 Moreover, the cooperatives are expected to
7 accommodate their Class 1 customers. The difference
8 between the low day -- the low day in May, 11.5 million
9 pounds, and the high day in November, 21 -- 21.8 million
10 pounds. Again, Exhibit 7 -- 17, Table 2.

11 This 11.5 million pound range in deliveries
12 roughly equal to the four 3 million pound per day butter
13 powder plants identified by Dr. Ling is required to
14 balance the northeast market with a 20 percent operating
15 reserve.

16 Next heading. "Land O' Lakes" -- that should
17 read, "Experience" -- supports Dr. Ling's estimates for a
18 balancing plant. Land O' Lakes operates a butter powder
19 plant in Carlisle, Pennsylvania -- plants pool -- is a
20 supply plant. There are three operational dryers and
21 three evaporators located in the plant. It has a design
22 throughput of about 165 million pounds of milk per month
23 and a storage capacity of around 5 million pounds of milk.

24 During the last two and a half years, the

1 period since the commissioning of the new dryers, milk
2 receipts have ranged from a low 62.5 million pounds during
3 October of 2000 to a higher of 165.7 million pounds during
4 May of 2002.

5 Dr. Ling estimates that the cost of ==
6 ~~(inaudible)~~ == a **"greenfield"** butter powder plant with the
7 capacity to dry 3 million pounds of milk per day would be
8 \$28 million. Land O' Lakes' engineering staff estimates
9 that such a plant today would cost \$47 million. Exhibit
10 17, Table 3.

11 Land O' Lakes' estimate is confirmed by west --
12 Idaho. As reported in the August 6, 2002, edition of the
13 "Cheese Reporter," a West Farm representative stated that
14 their 3.3 million pound per day powder drying plant
15 recently opened in July cost \$50 million. The Land O'
16 Lakes estimate includes the purchase of land, the
17 evaporator, the dryer for 3 million pounds of milk per
18 day, and a churn capacity for 15,000 pounds of butter per
19 hour.

20 Additionally, with butter we would have -- I'm
21 sorry. Additionally, the plant would have three loading
22 bays and adequate == ~~(inaudible)~~ == **wastewater** treatment
23 plant and silo capacity for 3 million pounds.

24 Dr. Ling defines -- manufacturing costs as the

1 costs directly associated with manufacturing milk to its
2 end products, butter and powder. Those costs include
3 labor, electricity, fuel, water, sewage, plant and
4 cleaning supplies, repair and maintenance, depreciation,
5 taxes and insurance, and miscellaneous expenses.

6 He knows that the union -- I'm sorry, that the
7 unit costs increase as plant volume decreases. In
8 previous studies ~~---(inaudible)---~~ **and assuming no**
9 **shipments of intermediate** product, Dr. Ling estimates that
10 for every one percent decrease in plant capacity there is
11 a corresponding increase -- increase to product cost of
12 one-tenth per pound. That's Exhibit 12, page six.

13 Q One-tenth of a cent per pound?

14 A Yes. While the Ling study compares the
15 relationship between plant capacity and product costs,
16 Land O' Lakes tracks the same costs as Ling's, in quotes,
17 "semi-variable and semi-fixed costs," as he -- as he calls
18 it, on a per pound of milk solids basis. Additionally,
19 the USDA's study assumes that a butter powder plant with
20 no immediate product inputs or sales.

21 The Land O' Lakes plant at Carlisle buys and
22 sells cream, condensed, and milk. During the year 2000,
23 the Land O' Lakes plant in Carlisle sold about 20 percent
24 of its total solids as condensed skim or cream -- and/or

1 cream.

2 Exhibit 17, Table 4 is a graph that plots the
3 Land O' Lakes experience at Carlisle for the period of
4 January 2001 through July 2002. The period was chosen for
5 the depreciation of the 2000 -- 2000 expansion starting to
6 be fully charged against the plant in January 2001. The
7 months -- the months cost per pound of solids is plotted
8 against the relationship of plants receipts over plant
9 capacity, and I defined that earlier.

10 For instance, as already noted, Carlisle
11 processed over 165 million pounds, 100 percent capacity,
12 on a ~~---(inaudible)---~~ **per hundredweight** basis -- of milk
13 during May 2002. During that month, the cost per pound of
14 solids was just over 10 cents per pound. Thus, the
15 furthest -- ~~a further---~~ ~~(inaudible)---~~ **furthermost** right
16 data pool plant graph represents May 2002.

17 Similarly, the other 18 months were so plotted.
18 The best-fit line -- realizes the variations between
19 plants was also plotted. The line estimates that for
20 every one percent change in Carlisle plant capacity, there
21 is a 7.7 hundredths cent increase in cost per pound in
22 total size.

23 Again, the Land O' Lakes report substitutes the
24 relationship of capacity utilization to cost -- substitute

1 the relationship of capacity utilization to cost per pound
2 of product for the relationship of capacity to cost per
3 pound of total solids. Also, the Carlisle plant buys and
4 sells -- products while the Ling study addressed the cost
5 change for hard -- products only.

6 Dr. Ling had modeled the most efficient method
7 to balance the seasonal and operating reserves of the
8 Order 1 Class 1 market. He has calculated that it would
9 require three butter powder plants with a capacity of 3
10 million pounds per day to accomplish the balancing of the
11 necessary reserves for the northeast market.

12 Dr. Ling's optimal balancing model does not
13 reflect the actual balancing operations of the northeast.
14 There are seven balancing plants in the northeast of
15 varying sizes. Dr. Ling assumes that each plant receives
16 an equal volume of milk. Due to the ownership and
17 logistics -- due to ownership and logistic reasons, that
18 assumption does not reflect reality in the northeast.
19 Other testimony will show that the balancing capacity of
20 the -- of the -- of the order is not equally utilized.

21 Land O' Lakes' relatively high capacity
22 utilization does not reflect the operations of the other
23 northeastern balancing plants. Thus, costs at the Land O'
24 Lakes plant are probably lower than other Order -- less

1 utilized northeastern balancing plants.

2 Land O' Lakes replicated Dr. Ling's methodology
3 for finding the cost of unused capacity at Carlisle during
4 the last 19 months and compared that cost to the amount
5 Land O' Lakes would have received had Proposal 7 been in
6 effect during that period. The cost of unused capacity
7 was 2.3 times greater than the amount Land O' Lakes would
8 have received.

9 ADCNE believes that the experience at Land O'
10 Lakes' Carlisle plant provides a real-world validation for
11 Dr. -- Dr. Ling's observations relative to the effect of
12 plant capacity and -- costs.

13 Q Mr. Schad, I'd just like to ask -- ask you a
14 couple additional questions on direct. Is -- one of the
15 members of the Association of Dairy Cooperatives in the
16 Northeast is Maryland and Virginia Milk Producers
17 Association Co-Op. One producers cooperative association.
18 Are you familiar and can you describe for us the
19 operations of -- of Maryland and Virginia ~~---~~(inaudible)?

20 A Yes, I can describe the operations generally.
21 Maryland and Virginia Milk Producers Cooperative brings
22 two balancing plants. One pool -- one in -- one supply
23 plant at Laurel, Maryland. The second one they own in
24 partnership with a -- a group called ~~---~~(inaudible) **Lake**

1 **Utz.** That's -- Strasburg, Virginia. That is pooled on --
2 (inaudible) -- **Federal Order 5, a reserve** processing
3 plant.

4 Both plants are butter powder and skim
5 condensed. Also, both plants try very hard to dry as
6 little powder as necessary and try to do as much skim
7 condensed as possible.

8 Q Does Maryland and Virginia also own and operate
9 a distributing plant which shows up as a partially
10 regulated handler from time to time in Order 1?

11 A Yes.

12 Q (Inaudible) -- **Morganmaid** operation?

13 A Morganmaid --

14 Q Approximately how many members does Maryland
15 and Virginia have or what milk volume do they
16 approximately represent in Order 1?

17 A I'd say over -- (inaudible) pounds **100, 125**
18 **million pounds a month.**

19 Q (Inaudible). Now, Land O' Lakes -- you just
20 indicated Maryland and Virginia has an Order 5 --
21 processing plant. Obviously, markets some milk on Order
22 5, correct?

23 A Yes.

24 Q Okay. Land O' Lakes, does it also market milk

1 on Order 5 as well as Order 1?

2 A Land O' Lakes -- markets milk in Order 5 as
3 pool shippers and -- (inaudible).

4 Q Now, earlier today Bob Wellington testified to
5 the proposed modification of Proposal 7. The language
6 that was to be added that ADCNE -- at the end of Proposal
7 7 to exclude payment of marketwide service payments on
8 producers who on -- pooled on Order 1 until they have been
9 pooled for three consecutive months, fully pooled for
10 three consecutive months. You know what I'm talking
11 about?

12 A Yes.

13 Q Okay. Now, you market in both Order 5 and
14 Order 1 and you've heard -- you've been here through the
15 entire hearing so far, have you not?

16 A Yes.

17 Q And you've noted that there is some interest in
18 the hearing record with respect to whether milk from the
19 Order 1 marketing area is sometimes pooled on Order 5 or
20 may be pooled on Order 5?

21 A Correct.

22 Q Now, can you indicate from your knowledge as a
23 marketer of milk in both orders what impact there will be
24 if the marketwide service payments cannot be made from

1 Order 1 for three consecutive months as we have proposed?

2 A There is a tradition in Order 5 which allows
3 dairy farmers basically within the entire milk shed of the
4 northeast to collect market service payments in the period
5 of July through December, which are called transportation
6 credits -- market service payments. In order to be
7 eligible for that -- for those payments, the -- the -- the
8 dairy -- the dairy farmer cannot be pooled on the -- on
9 Order 5 for all 12 months. They must during the February,
10 March, April, and May period, they must be pooled on
11 another order other than Order 5 in order for that dairy
12 farmer to be eligible for the transportation credits.

13 So there is a -- an incentive for marketers who
14 are -- who are connected with Order 5 to take dairy
15 farmers off Order 5 and possibly put them on Order 1
16 during that period of time to make them dairy farmer
17 transportation credit-eligible. Again, you've got to be
18 off two months out of four.

19 Our proposal recognizes that there is a --
20 there is that incentive between two orders and that any --
21 any dairy -- any -- and we use the three months, which is
22 one more than the two months, to basically say any
23 producers who are pooled on Order 1 during that period of
24 time they've got -- that they would be ineligible on --

1 for the Order 1 market service fees because they're pooled
2 for a shorter period.

3 Q So essentially, that language was intended to
4 and would generally eliminate the possibility that
5 producers could draw supplemental transportation credits
6 out of Order 5 during the fall and come back to Order 1
7 and draw marketwide service payments -- that a handler
8 could arrange their -- their milk pooling in a manner
9 that, you know, you'd reap payments out of Order 5 in the
10 fall and you'd reap payments out of Order 1 in the spring.
11 That wouldn't be possible?

12 A It would not be possible.

13 MR. BESHORE: Thank you. I have no other
14 questions on direct of Mr. Schad. He is available for
15 cross examination.

16 JUDGE BAKER: Very well. Are there any
17 questions? Yes, Mr. Rosenbaum?

18 CROSS EXAMINATION

19 BY MR. ROSENBAUM:

20 Q Mr. Schad, in Table 3 you provided what you
21 describe as a cost estimate for building a 3 million pound
22 per day milk powder butter plant, correct?

23 A Correct.

24 Q Was that prepared for purposes of this hearing?

1 A It was.

2 Q Does Land O' Lakes have any current plans to
3 build such a plant in the northeast?

4 A ~~(Inaudible)~~ **No.**

5 Q The -- Land O' Lakes has three supply plants
6 currently pooled on the Northeast Order, correct?

7 A I would take issue with the word "currently."
8 The -- if you had the order statistics for the month of
9 August, you would see that there is more ~~---~~~~(inaudible)~~
10 **supply plants.**

11 Q All right. As of May 2002, you have three --

12 A That's correct.

13 Q -- data provided by USDA Exhibit 5, page 45,
14 correct?

15 A That's correct.

16 Q And those plants are located in Greenwood,
17 Wisconsin; Mount Olive Springs, Pennsylvania; and Fernham,
18 Minnesota; is that right?

19 A ~~(Inaudible)~~ ~~---~~ Fernham.

20 Q Fernham, I appreciate that.

21 A Okay.

22 Q -- correction. Could you tell me when the
23 Greenwood, Wisconsin, plant was constructed?

24 A No, I can't.

1 Q How long have you been with Land O' Lakes?

2 A I've been with Land O' Lakes since the
3 predecessor cooperatives for 21 years. I was employed by
4 a ~~---(inaudible)---~~ Dairy Cooperative which merged with
5 Land O' Lakes in 1997. So I have been with Land O' Lakes
6 since 1997.

7 Q And do you have a rough idea as to when
8 Greenwood was built?

9 A No, sir, I do not.

10 Q Is it decades and decades old or you don't
11 know?

12 A I can't answer your question.

13 Q And do you know whether that facility has paid
14 off the entirety of its construction costs at this point
15 in time?

16 A I have no idea.

17 Q All right. The Mount Olive Springs,
18 Pennsylvania plant.

19 A I also refer to that as Carlisle.

20 Q All right. The Carlisle plant. Do you know
21 how old that plant is?

22 A It was built just before my tenure as -- in the
23 20- to 25-year range.

24 Q Is that a plant that used to be owned by --

1 A (Inaudible).

2 Q -- Dairy?

3 A Yes.

4 Q And do you know when that plant is paid off
5 -- strike that. Do you know whether that plant was built
6 with a loan from a bank?

7 A No, I do not.

8 Q This next question may be obvious, but do you
9 know whether if there was a bank loan it's been paid off
10 by now?

11 A It's been expanded, and I refer to the
12 expansion in my testimony and tell you that the expansion
13 -- I -- Land O' Lakes is a large corporation. I don't
14 know that the -- there are specific bonds that are --
15 specific to that -- to that expansion project or not.

16 Q All right. And -- and then the firm, I think,
17 you said is ~~---(inaudible)~~ **how you pronounce it**. When --
18 do you know when ~~---(inaudible)~~ **that plant was built**?

19 A No, I didn't.

20 Q **Do you know whether or not that was financed**
21 **by a bank loan?**

22 A No

23 Q And these are the three plants that would be
24 actually receiving marketwide service payments if that

1 provision -- Proposal 7 were approved?

2 A No. Plants don't receive -- (inaudible).

3 Again, as of August 1st, there is no -- there are no
4 supply plants up in the upper midwest -- Land O' Lakes nor
5 are there -- nor are there any dairy farmers pooled on the
6 order ~~---(inaudible)~~ **from the Upper Midwest.**

7 So Land O' Lakes is a handler ~~---(inaudible)~~
8 **okay.** The Department ~~---(inaudible)---~~ **well, they gave us**
9 Proposal 7 on January 1st, Land O' Lakes is a handler ~~---~~
10 ~~(inaudible)---~~ collecting marketwide service payments on
11 any -- any milk in the upper midwest as it stands today.

12 Q Today. And --

13 A ~~(Inaudible)~~ **In September.**

14 Q As it stood as recently as May, you would have,
15 correct?

16 A Had the proposal been in effect in May, yes.

17 Q And you --

18 A (Inaudible).

19 Q And the milk handled by all three of these
20 supplies plants would have qualified for marketwide
21 service payments?

22 A The dairy farmers pooled on the order would
23 -- would --

24 Q Right. The dairy farmers pooled on the order

1 qualify for --

2 A (Inaudible) -- would define the payment.

3 Q All right.

4 A The volume that the dairy farmers pooled on the
5 order.

6 Q You probably have seen some statistics showing
7 that there was a lot of out-of-state milk pooled on Order
8 1 in the May-June time period 2001.

9 A I -- I think you pointed that out.

10 Q I'll do it again. Just ask you --

11 A I'm -- I --

12 Q Are --

13 A Are you going to point me to the page?

14 Q Sure. It's Exhibit 5, page 87.

15 A Yes.

16 Q Land O' Lakes ~~--- (inaudible) ---~~ **the entity is**
17 principally responsible for that?

18 A I do not know.

19 (Pause)

20 BY MR. ROSENBAUM:

21 Q This -- this -- in Table 3 of your Exhibit 15
22 where -- which is the estimated cost of a butter powder
23 plant -- a new butter powder plant, is the -- did the
24 people who prepared it know it would be prepared for

1 purposes of this hearing?

2 A Yes.

3 Q And I notice that one of the line items on page
4 -- on the first page is \$9.1 million for what's called
5 "general and land." Do you see that?

6 A "General and land" under "contract" --- **income**
7 **specific** (inaudible).

8 Q Right.

9 A (Inaudible). I think it was page three.

10 (Pause)

11 BY MR. ROSENBAUM:

12 Q And you've included over \$6 million of costs
13 for what you call contingency, is that right?

14 A My engineering department has experienced --
15 (inaudible) **before that there are such things as**
16 **"contingency"**.

17 Q Meaning there's a possibility but not the
18 projected expenditure of that much money?

19 A My -- my engineering department would probably
20 tell you it was a high probability.

21 Q And -- has Land O' Lakes considered actually
22 building a new plant in the northeast?

23 A As I -- as I -- as my testimony says, Land O'
24 Lakes expanded our current plant at Mount Olive Springs in

1 May 2000.

2 Q And so you're not thinking about building a new
3 plant, is that right?

4 A I have -- I have to say something here that
5 Land O' Lakes has bonds and is registered by SEC ==
6 ~~(inaudible)~~ == **and I am continually cautioned by my**
7 **finance department** things that I can say. They can't tell
8 me about insider trading and such. So I'm afraid to
9 answer. They keep telling me about forward-looking
10 statements. I think I've answered that once.

11 Q Now, in Table 4 you presented -- strike that.
12 Table 4 shows -- among other things, I think it shows the
13 percent --

14 A The X-axis is the percent capacity as defined
15 by when I -- when I introduced the exhibit. And price per
16 pound == ~~(inaudible)~~ == **is total** solids.

17 Q And -- and am I right that the -- do the dots,
18 if you will, represent actual experience?

19 A ~~(Inaudible)~~ **Absolutely.**

20 Q Yes. And are they on a -- on a -- are those
21 particular months?

22 A There are 19 months that I -- I looked through
23 2001 through July 2002.

24 Q All right. And so do I correctly conclude that

1 -- and -- and this is one plant you're applying here, is
2 that right?

3 A That's correct. The Carlisle plant.

4 Q The Carlisle plant, which is also called the
5 Mount Olive Springs plant, correct?

6 A ~~(Inaudible)~~ **Yeah.**

7 Q And am I correct in interpreting this as
8 showing that there has never been a month in the 19 months
9 covered where plant capacity fell below 50 percent?

10 A During that 19 months, that's correct.

11 Q And you actually show some months and month
12 data on the next page, Table 5. And am I -- am I correct
13 that the annual average capacity -- percent of capacity is
14 64 percent?

15 A I do not know the answer. On -- if you're
16 telling me you averaged those numbers to get the number --
17 ~~(inaudible)~~ -- **I think that since I** it might be stated
18 that it's -- it is the average -- the arithmetic average
19 of -- we're saying January 2001 through December 2002?
20 I'm not -- I'm not sure that that -- without thinking
21 about it for a long time whether that describes anything
22 other than the arithmetic average.

23 Q How would you calculate it if you were asked
24 what the annual average capacity utilization was at that

1 plant during the year 2001?

2 A Well, I think I'd sit down with about three or
3 four different people and I'd get their input before I
4 would just -- just ~~== (inaudible) ==~~ **plug in some numbers in**
5 **a calculator.**

6 Q That -- those numbers aren't far off the
7 utilization that Dr. -- Mr. Wellington testified to for
8 the ~~AgraMark~~ **Agrimark** plant ~~== (inaudible) ==~~ **are they?**

9 A I believe he said this -- he -- he calculated =
10 ~~== (inaudible) ==~~ **for Boise** I believe he said that he would
11 ~~== (inaudible) ==~~ **was in** the 60 to 70 percent range.
12 ~~(Inaudible)~~ **Is that correct.**

13 Q Okay. And in -- in -- let me look at Table 1-A
14 if I could for a minute. Am I correct in interpreting
15 this to show that Class 1 handlers deliver -- strike that.
16 Let me start from the beginning.

17 Am I right in interpreting this to show that
18 Class 1 handlers receive at their Class 1 plants the
19 lowest percentage of milk on Sundays?

20 A I think you're probably correct in that. And
21 again, just so -- just so the record's clear, it's data
22 from six cooperatives. They're 7(a) plant deliveries for
23 two specific months.

24 Q But even on Sundays they receive 70 percent or

1 more --

2 A Of the monthly average.

3 Q -- of the monthly average. Is that right?

4 A Yes, sir.

5 Q How do you calculate the monthly average, by
6 the way?

7 A The monthly average is the sum -- the total
8 divided by the days in the month.

9 Q Your -- your Carlisle plant sells butter, is
10 that right?

11 A My Carlisle plant produces butter.

12 Q Okay. And -- and who sells that?

13 A Organizationally, there is a division called
14 Value Added within Land O' Lakes. They are in charge of
15 the marketing logistics. They are -- the industrial
16 division sells it to the value added division and it
17 creates the price which is pretty much equal to what the
18 value added can buy it outside because we do buy it from
19 sources other than our own plants.

20 MR. ROSENBAUM: That's all I have for now.

21 Thank you.

22 JUDGE BAKER: Thank you, Mr. Rosenbaum. Are
23 there other questions? Yes, Mr. English?

24

1 CROSS EXAMINATION

2 BY MR. ENGLISH:

3 Q Following up on that last question, if the
4 product is cold -- is sold in the value added division,
5 does that mean that when it's sold in the marketplace it
6 is sold for something other than commodity prices?

7 A Land O' Lakes butter ~~---(inaudible)---~~ **in**
8 **printed containers with its brand on it is sold** higher
9 than commodity prices, yes, sir.

10 Q That product is a -- is a well known, well
11 recognized, well regarded brand that commands a price -
12 - a premium price above commodity, correct?

13 A Mr. Wellington had to do his own commercial.
14 And I can rely on that, thank you.

15 Q I'll send you both a bill.

16 (Laughter)

17 BY MR. ENGLISH:

18 Q Following up the question for -- from Mr.
19 Beshore about the proposed modification, if -- and the
20 availability of the pool milk on Order 5 or Order 7 and
21 Order 1. Is three months really enough? I guess I ask
22 that in the context of if a producer ships milk downs to
23 Order 5 and collects -- or his handler collects a
24 transportation credit for the fall months and then that

1 producer comes back on in January and February and March -
2 - in May ~~---(inaudible)---~~ **that or** June. The first few
3 months from this proposal they wouldn't be eligible. But
4 for the very months that Dr. Ling discussed and your
5 statement shows ~~---(inaudible)---~~ **of your** testimony from
6 Mr. Wellington shows ~~---(inaudible)---~~ **has the greatest**
7 **quantity of milk** May, June, July, they still would be able
8 to -- to receive a payment?

9 A A handler would more than likely put that
10 producer back on Order 5 after they became transportation
11 credit-eligible so that the -- you only had to have -- you
12 would really have to exclude that producer from the Order
13 5 market for two months.

14 Q Is there any follow-up with a safety valve
15 making sure that in case they've decided not to it's not
16 there? You know, okay, if you're going to say they would
17 go back and take it back and it's not going to matter, the
18 volume's not going to be there. But what if the handler
19 decides to ~~---(inaudible)---~~ **leave it** up on Order 1,
20 having collected the transportation credit for the --
21 for the five or six months of the previous year?

22 A I would say that as that -- as that handler
23 leaves ~~---(inaudible)---~~ **them on** the order, especially
24 given the fact that we are the group proposing tighter

1 restriction on the pool, then that milk pooled under the
2 order would have to perform. The handler who has that
3 milk pooled on the order would have to perform.

4 Q Nonetheless, it's going to be eligible for the
5 very months that the greatest supply --

6 A You're assuming that they -- I don't know which
7 of the two months of the four that the handler would
8 choose not to -- would choose to exclude a possible pool
9 on Order 1.

10 Q With respect to the facility in Carlisle that
11 was expanded in October -- expanded in 2000, 165 million
12 pounds, prior to that time -- was it expanded at all in
13 the 1990s?

14 A There was a -- late '80s we -- we started off
15 with one -- one evaporator, one dryer.

16 Q When you built the plant in 1977?

17 A Yes. Or thereabouts. I'm not sure it was '77,
18 but thereabouts. Started off with one dryer and one
19 evaporator. I would say in the '80s there was -- there
20 was the inclusion of a second evaporator. The plan was to
21 build a dryer - **at a later date.**

22 ~~Q~~ (Inaudible)?

23 A I would think that we probably got into the
24 '90s when we built the -- the dryer, put the second dryer

1 in. There was a -- an expansion to the -- to the butter
2 side of the business ~~---(inaudible)~~ **probably middle 90's.**

3 Q And so, starting with the facility being built
4 in the '70s and expansion of the evaporator which the
5 documents I'm looking at indicate added in 1984, a dryer
6 which you think was probably added in the '90s, a butter
7 capacity, and then the capacity in 2000. Land O' Lakes --

8 A Do you also have our press releases from the
9 time? I just need to know -- go on. I'm sorry.

10 Q Land O' Lakes has made a series of investment
11 decisions with respect to that facility, correct?

12 A Yes.

13 Q And I take it Land O' Lakes has a -- a business
14 venture with the SEC, you know, makes various reviews
15 first before they make those decisions concerning the
16 financial consideration for -- for those investment
17 decisions?

18 A Every prudent business organization does.

19 Q And without the existence of these marketwide
20 service payments Land O' Lakes chose to make those
21 investments in 1977, 1984, the early '90s, the butter -
22 - in the late '90s, and then the expansion in 2000,
23 correct?

24 A That's correct.

1 Q You -- you answer to questions from Mr. Beshore
2 indicated that you also had some information, and ==
3 ~~(inaudible)~~== **I admit** that's probably not all the
4 information. But you have some information regarding
5 Maryland and Virginia. Do you have information --

6 A I have a general knowledge --

7 Q General knowledge. The plants in ~~rural~~ **Laurel**,
8 Virginia, do you know what happened --

9 A I'm sorry. ~~Rural~~ **Laurel**, Maryland.

10 Q ~~Rural~~ **Laurel**, Maryland. Sorry. ~~Rural~~ **Laurel**,
11 Maryland. Do you know what ~~---~~~~(inaudible)~~ **when that was**
12 **built?**

13 A The ~~---~~~~(inaudible)~~== **genesis of that plant**
14 very old. Could you ~~---~~~~(inaudible)~~?

15 Q Yeah. It predates the 1977 facility that Land
16 O' Lakes built in -- in Mount Olive, right?

17 A The genesis of ~~---~~~~(inaudible)~~ **that, yes.**

18 Q And Maryland and Virginia serves a variety of
19 customers in the southeast in addition to being pooled on
20 Order 1, correct?

21 A Yes.

22 Q And do you know whether Maryland and Virginia
23 causes milk to be either transferred or reverted back
24 from, say, Orders 5 or 7 to their facility in Maryland

1 from time to time?

2 A I can't answer that question but -- but I'd
3 like to -- I'd like to say ~~---(inaudible)---~~ **one other**
4 **thing** the plant that they are part-owners of, which is a
5 reserve processing plant in Order 5, there are provisions
6 in Order 5 which make it advantageous for Order 5 milk to
7 be delivered to Order 5 pool plant. In this case, a pool
8 supply plant.

9 So my guess -- and I'm not speaking for
10 Maryland and Virginia in any way, shape, or form. My
11 guess is that they would put those who dealt Order 5 milk
12 into their -- their plant in Strasburg, Virginia.

13 Q But it is a fact, is it not, that at times that
14 fills up and they -- the milk into --

15 A Right.

16 Q -- the plant in Maryland?

17 A You'd have to have a Maryland ~~---(inaudible)---~~
18 **Virginia** representative to answer that.

19 Q Does Land O' Lakes have agreements with cheese
20 facilities on Order 1 with regard to supply ~~---(inaudible)---~~
21 **their milk?**

22 A What is -- what are cheese facilities on Order
23 1?

24 Q Located in Order 1. Cheese plants that are

1 located in the marketing area that is Order 1.

2 A The -- is the question, does Land O' Lakes sell
3 milk to cheese plants --

4 Q Yes.

5 A -- whose plants are -- is located in the
6 marketing area of Order 1?

7 Q Yes.

8 A Yes.

9 Q And are those contracts for committed supply of
10 milk?

11 A Again, what is your definition of "committed"?

12 Q Do those agreements provide for Land O' Lakes
13 to provide a set supply of milk each month of the year?

14 A There -- there -- as I think about it, the two
15 plants that are -- are -- have agreements that have
16 parameters around monthly delivery. Does that answer your
17 question?

18 Q The parameters would be that --

19 A That's a --

20 Q -- you would buy sort of a minimum and maximum
21 amount? Minimum that you would supply and they could ask
22 for a certain amount, up to a certain amount, and --

23 A I think that -- yes. I would agree to that.

24 Q And you say that's two facilities that -- two

1 facilities that you -- Land O' Lakes provide, to your
2 knowledge?

3 A Yes.

4 MR. ENGLISH: That's all the questions I have.
5 Thank you.

6 JUDGE BAKER: Thank you, Mr. English. Are
7 there any other questions for Mr. Schad? Mr. Vetne?

8 CROSS EXAMINATION

9 BY MR. VETNE:

10 Q Mr. Schad, I -- I may have spaced out, but did
11 you identify those two facilities that you supply? Maybe
12 you did, but well, would you do it again?

13 A I don't -- I don't think there's any problem
14 doing it. They're the two -- cheese facilities in --
15 well, one's in Maryland, one's in Pennsylvania.

16 Q And -- and do the parameters work in such a way
17 that if the plant falls above or falls below or demands
18 above the parameter that there's simply an additional
19 cost? Extra parameter cost?

20 A Well, if their requirements are greater than
21 the specified maximum, it is at a rate higher than that ==
22 (inaudible) **specified maximum.**

23 Q Are there distributing plants in the northeast
24 that are supplied exclusively by Land O' Lakes?

1 A Yes, there are.

2 Q Did you identify which ~~---(inaudible)---~~ **companies**
3 **those are?**

4 A Sure. Wawa Dairy Farms and Dutch Valley Foods.

5 Q Wawa and Dutch Valley?

6 A ~~(Inaudible)~~ **Foods.**

7 Q Pardon?

8 A Dutch Valley Foods.

9 Q And you have pool supply agreements with those
10 plants?

11 A Yes.

12 Q And you balance their needs, right?

13 A Yes.

14 Q Do those plants have any unique marketing
15 practices which makes their supply either more seasonal or
16 less seasonal than the average distributor?

17 A One -- one ~~---(inaudible)---~~ **is a super** market.

18 I think their -- their seasonal demands probably peak the
19 same as the demands -- the typical market demand.

20 The other is ~~---(inaudible)---~~ **a convenience**
21 **store. I think that you would** recognize that because they
22 have a lot of stores on the -- along the Jersey shore --
23 ~~(inaudible)~~ **their demand peaks during the summer months.**

24 Q So the -- the Wawa customer actually would help

1 balance your -- your corequirements because they require
2 more when the market as a whole requires less?

3 A Except that the -- the cows usually react to
4 the -- to the heat the same as the consumers. ~~(Inaudible)~~
5 == **Consumers go to the shore,** the cows lower the
6 production. So to that extent, it's not only the sales
7 side. You have to look at the supply side.

8 Q And that -- that summer bump in sales would
9 start in about May?

10 A Probably more when schools are out.

11 Q Middle of June?

12 A Yeah.

13 Q You -- do you ever supply those two customers
14 with milk marketed through Land O' Lakes from any other
15 producer or producer organization?

16 A Ask me the question again?

17 Q Is your supply to either Wawa or Dutch Valley
18 ever supplemented by milk from any other producer or
19 cooperative association?

20 A We market the milk of another cooperative
21 called Cumberland Valley. ~~If they possibly == (inaudible)~~
22 == **There's a possibility that** some of their milk would be
23 on our trucks to go to those plants. That would be the
24 only instance. A year-round agreement that we had for ==

1 (*inaudible*) **5, 6 years.**

2 Q Is Cumberland Valley a -- a cooperative that
3 does not operate manufacturing facilities?

4 A That's correct.

5 Q And is Land O' Lakes the -- the pooling handler
6 for that milk?

7 A No.

8 Q They pool their own milk?

9 A They do their own handler report.

10 Q They do their own handler report.

11 A Which means they pool their own milk.

12 Q Do they market some of their milk outside of
13 Land O' Lakes?

14 A Not to my knowledge.

15 Q Does Land O' Lakes direct that --

16 A No.

17 Q Do the other -- the other members of ADCNE, to
18 your knowledge, also ~~supply pooling~~ **fluid milk** plants,
19 distributing plants that receive milk pool supply
20 contracted by ~~--~~ (*inaudible*) **is that correct?**

21 A You'll have to ask them on those -- on those
22 answers. I -- I don't know the answer and can't speak --
23 ADCNE is more a -- it's not a marketing agency requirement
24 so we're not trending that kind of information --

1 ~~(inaudible)~~ **by ourselves.** We find joint positions ~~like~~
2 ~~slave labor~~ **legislatively** or regulatory and try to find
3 joint positions on those.

4 Q All right. And -- and beyond your
5 participation with ADCNE, you have no knowledge, direct or
6 indirect?

7 A I probably have confidentiality agreements ==
8 ~~(inaudible)~~ == **with** Mr. Rosenbaum's group. I don't --
9 you'll have to ask them.

10 Q They're not all here though, are they?
11 Maryland and Virginia?

12 A I see -- I see no representatives from Maryland
13 and Virginia.

14 Q ~~(Inaudible)~~ **Well then.** With respect to Table
15 1, Sub-Parts A and B.

16 A Yes.

17 Q You identified those as deliveries by the six
18 agency cooperatives to 7(a) plants. Those are cold pounds
19 delivered to and retained by distributing plants, am I
20 correct?

21 A They're 7(a) deliveries. I don't know what
22 "retained by" means.

23 Q Well, what I mean is it doesn't involve any
24 milk that's pumped in and pumped out. Or might it include

1 such milk?

2 A I -- I don't even know where things like that
3 happen.

4 (Laughter)

5 BY MR. VETNE:

6 Q Okay. All right. So, to your knowledge, these
7 are end -- these are end receipts retained by the
8 distributing plant?

9 A Yes, sir.

10 Q And -- and the two plants that are supplied by
11 Land O' Lakes are included in those volumes?

12 A Sure, yes. Plants -- these were partial
13 suppliers --

14 Q Okay. If ~~---(inaudible)---~~ **the plants to which**
15 **are partial** suppliers, do they include plants that are
16 supplied by other ADCNE cooperatives?

17 A Yes, I believe so. I believe that's ==
18 ~~(inaudible)~~ == **right** in all instances all over --
19 (inaudible).

20 Q All right. Your supply -- any partial supply
21 through plants that are primarily supplied by independent
22 producers, non-member producers?

23 A Land O' Lakes?

24 Q Yes. Does Land O' Lakes supply any

1 distributing plant where the plant is primarily supplied
2 by the farmers who are not members of any dairy
3 cooperative?

4 A On a seasonal basis, yes. I can't think of any
5 on a regular basis.

6 Q On a seasonal basis. Are you referring to spot
7 requests for milk?

8 A Yes.

9 Q Do you have any contractual commitment to
10 plants that are supplied primarily by non-member
11 producers?

12 A I'm trying to ~~---(inaudible)~~ **go back**. I -- as
13 I think, I do have also deliver to plants that -- that do
14 have their own -- probably better safe. I'll stick with
15 my -- my earlier characterization. On a seasonal basis --
16 (inaudible) - **move on to the next question**.

17 Q The plants that Land O' Lakes supplies that you
18 share in supply obligations to ~~==-(inaudible)~~
19 **distributors**, is balancing of those plants also shared
20 with the other cooperatives?

21 A Yes and no. Not -- not in all cases.

22 Q Okay. So there's -- there's -- there may be
23 some cases, for example, where Land O' Lakes has a
24 committed supply and another cooperative balances

1 supplemental and surplus milk?

2 A Yeah.

3 Q And vice versa? Does that also happen?

4 A Probably, yes.

5 Q The deliveries to (7)a plants on Tables 1-A and
6 1-B, to the extent that they represent Land O' Lakes milk,
7 what percentage of those deliveries is classified as Class
8 1?

9 A I do not know.

10 Q You don't have any -- any function in either
11 filling out or reviewing the reports that are filed on a
12 monthly basis with the market administrator?

13 A No.

14 Q And with respect to the total volume of
15 deliveries to 7(a) plants by the six cooperatives, do you
16 have any -- any knowledge or a good estimate as to what
17 the Class 1 utilization of those deliveries are?

18 A No, sir, I don't know ~~---(inaudible)---~~
19 **exactly** on the partial, I surely don't know ~~---(inaudible)---~~
20 **it right off hand.**

21 Q Do you have any reason to believe that it would
22 be any different than it had previously been testified
23 that Class 1 typically is in excess of 85 or 90 percent?

24 A No. I think Mr. Fredericks' characterization -

1 - speaks for itself.

2 Q There is a provision in the -- the order for
3 what's called a 7(b) plant, which is a -- a locked-in UHT
4 plant, as I recall?

5 A No, I understand it is not.

6 Q Do the six cooperatives -- any of the six
7 cooperatives market milk through any locked-in 7(b) plant?

8 A To my knowledge, there are no 7(b) plants --
9 ~~(inaudible)~~ **on the Northeast Federal order.**

10 Q Some of the 7(a) plants, however, do make UHT
11 milk products?

12 A ~~(Inaudible)~~ **Extended shelf life.**

13 Q To --

14 A To answer your question, not to my knowledge.

15 Q All right.

16 (Pause)

17 MR. VETNE: I don't have any more questions
18 right now.

19 JUDGE BAKER: Are there any other questions for
20 Mr. Schad? Yes, Mr. English?

21 CROSS EXAMINATION

22 BY MR. ENGLISH:

23 Q Going back to the question about what happens -
24 - Order 5, there's two different ways that the money is to

1 be paid out of the Order 5 pool for milk delivery to the
2 southeast, correct? ~~(Inaudible)~~ -- **In Order 5 and Order 7**
3 orders have -- one is producer milk and another is
4 transferred milk, correct?

5 A My understanding under the transfer
6 transportation credit, both -- both are eligible for
7 transportation credits.

8 Q And so to the extent milk is transferred,
9 received first at an Order 1 plant and then transferred to
10 an Order 5 or an Order 7 plant and receives a
11 transportation credit for that, if that occurs in the
12 fall, that has effectively increased the quantity of milk
13 needed for Class 1 in Order 1 while drawing a
14 transportation credit for the different pool, correct?

15 A I'm not -- if part of your question stated that
16 the -- the Class 1 utilization of the -- of the
17 transferred milk from the Order 1 pool plant should be --
18 to the Order 5 or Order 7 plant, yes, the -- yes, indeed
19 the Class 1 revenues come back to the Order 1 pool.

20 Q But --

21 A I mean, that's probably a question that --

22 Q I understand the revenues come back, but the
23 milk -- the milk went somewhere else?

24 A The milk went somewhere else.

1 Q And --

2 A And that milk -- and assuming that they crossed
3 all the other T's, the milk -- it would be eligible for
4 the transportation credit.

5 Q Correct. And -- and simultaneously in this
6 crossroads, it is not being ~~---(inaudible)---~~ **needed and**
7 **is cause for your alleged** marketwide service payment --
8 (inaudible) -- it is nevertheless going to draw a
9 marketwide service payment under your proposal, is that
10 correct?

11 A I think you're -- you mischaracterize our need
12 for that. Our need for the marketwide service payment has
13 to do with unused capacity, so I don't think -- think
14 you'll find ~~---(inaudible)---~~ **that in most spring months**
15 we don't have that issue ~~---(inaudible)---~~ **of unused**
16 **capacity.**

17 Q But isn't the -- the reason behind these
18 capacity in reverse, that the milk wasn't available in the
19 fall because it got routed down to the southeast?

20 A In -- in my case, when -- when I ~~---(inaudible)---~~
21 ~~---~~ **show total** solids, I include the ~~---(inaudible)---~~ **number**
22 **that got transferred out of my plant.**

23 Q I understand, and that's my point. It didn't
24 actually -- it doesn't use the Class 1 to serve the Order

1 market, did it?

2 A The -- the revenue came back to the Order 1
3 market. From that extent -- from -- from the producer
4 pool standpoint, it's all the same whether it's delivered
5 on the ramps in Lancaster County or sent to a plant in
6 Atlanta, Georgia.

7 Q But it nonetheless has created a ~~---~~(inaudible)
8 **-- greater** unused capacity in the four months for Order 1
9 for which you're asking Order 1 producers to pay, correct?

10 A Again, I -- simplistically, yes. But there's
11 more to it than that. And you're not even looking at, you
12 know, the Charlie Ling study. And we're basing it on the
13 theoretical model, not the -- the experience of each of
14 the plants.

15 The things that I -- I brought to you, the
16 experiences of the plants, the Carlisle plant --
17 (inaudible) -- some numbers to try and ~~---~~(inaudible) **that**
18 **Charlie Ling uses in his study.**

19 Q And you've also told us that Land O' Lakes
20 sells milk into Order 5, correct?

21 A Land O' Lakes ~~---~~(inaudible)~~---~~ **pool in the**
22 **Northeast has producers pooled** on Order 5, correct.

23 Q And you're familiar with the fact that in -- in
24 at least Order 5 and perhaps many other market orders the

1 -- does Order 5 have a ~~---(inaudible)---~~ **premium structure**
2 place ~~---(inaudible)---~~ **over-order premium structure** for
3 deliveries of milk to Class 1 handlers?

4 A There's a DCNA premium.

5 Q And does the DCNA premium have a provision in
6 it for receiving credit for the purpose of encouraging
7 Class 1 handlers to receive milk on a basis that is much -
8 - that is more uneven than what it shown on Table 1-A of
9 Exhibit 17?

10 A Yes.

11 Q ~~(Inaudible)---~~ **And do you have an over-order**
12 **premium structure in** place for your milk delivered to
13 Order 1 Class 1 processors?

14 A Yes.

15 Q And does that include receiving credit for
16 receiving milk on a uniform basis?

17 A In most cases, no.

18 Q And the Class 1 premium -- there's a Class 2
19 premium in -- in this order, Order 1, correct? Is there a
20 premium for deliveries of -- premium Class 2?

21 A I do not believe there is a published --
22 (inaudible) -- much of the agency -- publishes Class 2
23 premium.

24 Q Do you know whether Class 2 premiums are

1 charged, whether -- whether premiums are charged for Class
2 2 milk?

3 A I -- yes, Class 2 -- Class 2 is sold above
4 federal order minimums.

5 Q Do you know whether the Class 1 premium is
6 higher than the Class 2 premium above order minimums on a
7 general basis in Order 1?

8 A In my experience with Order 1, Class 1 premiums
9 are -- they are geographically defined so that I can
10 answer that question "yes" and "no." In some places the
11 Class 1 premiums are higher. In other places in my
12 experience in the Order 1 marketing area ~~---(inaudible)~~
13 ~~-- of Class 2~~ **the over-order premium for Class II is**
14 **higher.**

15 Q Are those places in your experience where the
16 Class 1 premium is higher -- is part of the justification
17 for that in order to compensate for costs of balancing?

18 A ~~(Inaudible)~~ **Quite frankly there's a**
19 Pennsylvania Milk Marketing Board which sets the milk
20 order premium. And there's a regulatory over-order
21 premium in Pennsylvania.

22 Q Well, you beat me to it. For instance, on the
23 milk that you deliver to Wawa, to the extent that's
24 Pennsylvania produced and Pennsylvania processed and

1 Pennsylvania distributed milk, there is an over-order
2 premium presently in place at \$1.65 a hundredweight for
3 Class 1 milk, correct?

4 A That's correct.

5 Q Do you have Exhibit 5, the market administrator
6 exhibit?

7 A ~~(Inaudible)~~ -- **Exhibits**, yes, I do.

8 Q Would you open to page 79 and 80?

9 A ~~(Inaudible)~~. **Page 79?**

10 Q Seventy-nine and 80.

11 (Pause)

12 BY MR. ENGLISH:

13 A Seventy-nine and 80.

14 Q Starting on page 79 and -- almost a "yes" or
15 "no" answer if at all possible. And again, as I prefaced
16 with Mr. -- Dr. Wellington, I'm -- I know I'm asking for
17 confidential information. If that's the answer, that's
18 the answer.

19 But could you tell me whether in any month on
20 page 79 were transfers to other order plants -- whether
21 Land O' Lakes transfers milk to plants rated under Order
22 6, which is Florida?

23 A I think that's confidential information.

24 Q And so if I asked further detailed questions

1 like quantities, you -- you would say that that's
2 confidential?

3 A I think that would follow from my earlier
4 question.

5 Q And if I asked you about page 80 similar
6 questions, the answer would be confidential? Questions
7 about diversions to other order plants? If I asked
8 questions about details about the numbers for months for
9 which there's restricted data, you would -- it would be
10 confidential?

11 A Yes, sir.

12 Q That's fine.

13 MR. ENGLISH: I have no further questions.

14 JUDGE BAKER: Are there any other questions for
15 Mr. Schad? Let the record -- Mr. Arms?

16 CROSS EXAMINATION

17 BY MR. ARMS:

18 Q In response to a question raised by Mr. Vetne
19 regarding plants --

20 A I'm sorry. Mr. Vetne --

21 Q Asked you about 7(b) plants. You, I believe ==
22 ~~(inaudible)~~ **designated** the term as ESL plants?

23 A No, I --

24 Q Expanded shelf-life plants?

1 A His question was were there any other UHT
2 plants. I said I -- I stated I thought there were ESL
3 plants. Then I came back and I said in response to your
4 specific question of UHT, not to my knowledge ==
5 ~~(inaudible)~~ **there aren't any in the Northeast order.**

6 Q No UHT plants?

7 A Not to my knowledge.

8 Q You do supply, do you not, plants -- a plant
9 located in Winchester, Virginia, operated by ==
10 ~~(inaudible)~~?

11 A Yes, I do.

12 Q And in your -- since you've been doing that,
13 how would you classify that plant? Is it a 7(a) plant?

14 A Yes.

15 Q Located outside the marketing area?

16 A Yes.

17 Q In other words, a distributing plant -- 7(a)
18 distributing plant?

19 A It's my understanding that's how it is.

20 Q But you're not aware whether or not their
21 output is extended shelf-life or UHT product?

22 A It's my understanding that it's ESL, it is not
23 ~~== (inaudible) ==~~ **aseptically packaged UHT, which** they do
24 non-refrigerated stuff ~~== (inaudible) ==~~ **stored on store**

1 shelves next to cereal.

2 Q Okay. So you are saying that it's an ESL 7(a)
3 plant basically, is that correct?

4 A To my knowledge -- that's how it is classified,
5 to my knowledge.

6 Q And the other --

7 A That is a ~~---(inaudible)---~~ **line of products**
8 the products that they make.

9 Q They are in Federal Order 1?

10 A I ~~---(inaudible)---~~ **know that for sure.**

11 Q Likewise, there's an ESL plant, is there not --
12 ~~(inaudible)---~~ **located in** Steuben Foods in Elwood, New
13 York?

14 A I have no knowledge of Steuben Foods.

15 Q On your table showing capacities --

16 A Table 5 --

17 (Pause)

18 BY MR. ARMS:

19 Q Did you run a special situation this year with
20 regard to a major supply into your plant that affected --
21 greatly affected your capacities -- capacity levels
22 influencing -- influencing this table?

23 A We could play cat and mouse, but I think you're
24 alluding to the fact that Hershey Foods -- **went on strike.**

1 Q Hershey Foods ~~== (inaudible) .~~

2 A ~~== (inaudible) == dairy market used to as~~
3 **reported in Dairy Market News.**

4 Q Correct.

5 A ~~== (inaudible) == a supply ==~~ **For whom we are a**
6 **supplier.**

7 Q But that's why --

8 A -- Hershey --

9 Q -- this table --

10 A And -- yes.

11 Q Affected the ~~== (inaudible) ==~~ **your** capacity?

12 A In the -- due to the strike, Land O' Lakes
13 basically lost that customer for the duration of the
14 strike.

15 Q Can you -- can you identify the months involved
16 there, the period?

17 A I can identify just like -- I mean, all you
18 have to do is read the newspaper. I believe it was April,
19 part of April, all of May, part of June.

20 MR. ARMS: That's all I have. Thank you.

21 JUDGE BAKER: Very well. Mr. Tosi ==
22 ~~(inaudible)~~ **Do you have any questions.**

23 MR. TOSI: Yes, I do, Your Honor. Thank you.

24 CROSS EXAMINATION

1 BY MR. TOSI:

2 Q Dennis, thank you for in your testimony trying
3 to relate the -- the costs applicable to Carlisle and
4 comparing and contrasting them to Dr. Ling's study.

5 You -- you related your costs back to so many =
6 ~~---(inaudible)---~~ **how much per pound of** product.

7 A I -- I did pounds of total size. Dr. Ling did
8 pounds of ~~---(inaudible)---~~ **total solids**.

9 Q Okay. Excuse me. I stand corrected. Did you
10 -- could you or would you know if you wanted to convert
11 that back to the hundredweight cost?

12 A Historians do it. And because of the ~~---~~
13 ~~(inaudible)---~~ **intermediate** products sold and the
14 different costs ~~---(inaudible)---~~ **it's** starting to look
15 really, really strange. Our accounting is set up for the
16 total ~~size~~ **solids**. We do total ~~---~~ ~~(inaudible)---~~ **solids**
17 accounting, yes. That's the way we **basically** --
18 ~~(inaudible) ---California---~~ ~~(Inaudible)~~ **the LOL plant in**
19 **Solea, California, we basically have the same setup.**

20 So, could I do it? I'm -- I'm just not sure
21 what happens when you start to do cream and do condensed
22 milk coming in and out. You know, I think it's better
23 that I don't.

24 Q Okay. Also in your testimony, you indicated

1 that other testimony will show that the balancing capacity
2 of the -- of the order is not equally realized. Are --
3 are there going to be more witnesses to --

4 A Mr. Gallagher is going to testify.

5 Q -- come back? Okay. Who in the northeast
6 market benefits from the existence of butter powder plants
7 that are performing the balancing function?

8 A I think all participants in the market benefit
9 in that ~~---(inaudible)--- market sort of speaks--- that's---~~
10 ~~(inaudible)---~~ **clearing the market, so to speak, so that**
11 **milk is** not out chasing -- (inaudible). Mr. Wellington
12 said he ~~---(inaudible)---~~ **said, that the only thing worse**
13 **than a low price is no price.** I think that it enhances
14 the credibility of the class prices in a -- in a large,
15 large sense in the marketwide sense and also enhances the
16 ability for all to ~~---(inaudible)---~~ **receive over-order**
17 **premiums.**

18 Q Do you think it's a good policy to ==
19 ~~(inaudible)---~~ **, if the Secretary should determine , that**
20 **the handlers should charge to---charge** producers for
21 services that you're providing?

22 A Handlers charge producers -- getting back to --
23 if you're asking if the legislation allows us to do it ==
24 ~~(inaudible)---~~ **it has** to be compensated from the pool

1 prior to the -- to the disposition to producers.

2 If handlers are providing a service to the
3 benefit of all, this is a way to -- to get that ==
4 ~~(inaudible)~~== **payment** back to the handlers who are
5 providing that service. It is the place where we all draw
6 from, the pool.

7 Q I want to probe that just a little bit more.
8 Do you have an opinion about whether or not the act
9 provides us the authority to regulate producers in this
10 capacity as producers?

11 A I'm -- I'm not sure of the question. Can you
12 expand on the question?

13 Q Marketing orders or the -- the act -- the
14 Agricultural Marketing Agreement Act of 1937 that
15 authorizes milk orders. Are you of the opinion that the
16 act provides us the authority to regulate producers in
17 their capacity as producers?

18 A I thought that the underlying theory is you
19 regulate handlers.

20 Q Okay. To the extent then that you ==
21 ~~(inaudible)~~== **that your opinion is that** the law
22 authorizes handlers to charge producers for a service that
23 they're providing, would it be reasonable to conclude that
24 if you're an independent producer you -- whether you like

1 it or not, you're being forced to pay for a service in
2 that regard? You're being regulated?

3 A It's not ~~---(inaudible)---~~ **a semantic argument**
4 it's not a ~~---(inaudible)---~~ **argument**. Is there much
5 difference between ~~---(inaudible)---~~ **going to** independent
6 producer and -- and requiring them to pay for the services
7 ~~---(inaudible)---~~ **of the Market Administrator**.

8 Q I'm sorry. I -- I didn't hear you.

9 A I -- I said it -- I think it's a semantic
10 argument. But I -- I -- I question is there any
11 difference between the -- the Department going to
12 independent ~~pools~~ **producers** and requiring them to pay a
13 fee for the services of the market administrator.

14 Q I can't ~~imagine there is~~ **answer you**.

15 (Laughter)

16 BY MR. TOSI:

17 Q Okay. One other thing. To the extent that
18 -- this kind of builds off of ~~---(inaudible)---~~ **the reason**
19 **I'm asking** Mr. Gallagher suggested that maybe you would be
20 the one better able to answer this question.

21 Mr. Gallagher's testimony indicated that there
22 was about 184 non-pool plants scattered throughout the
23 northeast marketing area. And while any one of them may
24 ~~have the~~ **not be** singularly meaningful -- and I guess in

1 that context ~~it would probably come out of~~ **we're talking**
2 **about** Queensboro -- Queensboro Farms that perhaps taken as
3 a whole that the existence of -- of those plants providing
4 outputs. Is ~~a very~~ **there a** significant balancing function
5 being performed by those entities as well?

6 A I -- I ~~== (inaudible) ==~~ **I guess I'll have to**
7 **pass this back** to Mr. Gallagher.

8 (Laughter)

9 ~~BY MR. TOSI:~~

10 A I think ~~== (inaudible) ==~~ **Mr. Gallagher**, Land
11 O' Lakes operation is centered around investment in
12 Carlisle. (Inaudible) -- to this in my testimony here. I
13 think Mr. Gallagher may have a different methodology ~~==~~
14 ~~(inaudible)~~ **for balancing milk**. I think that to the
15 extent that he plays -- (inaudible). I think he's better
16 answering. And, Gino, I promise ~~== (inaudible) ==~~ **if he**
17 **doesn't answer it, I'll come back**.

18 Q Okay. Going a little bit off of Mr.
19 Wellington's testimony, should the Department --

20 JUDGE BAKER: ~~(Inaudible) ==~~ **Can you** speak a
21 little more loudly ~~== (inaudible) ==~~ **please into the mikes**.

22 THE WITNESS: Okay.

23 JUDGE BAKER: Thank you.

24 BY MR. TOSI:

1 Q Should we tend to discount the ~~---(inaudible)---~~
2 = **of perhaps even ignore**, the role of cheese plants in
3 balancing the northeast market?

4 A I think Mr. Wellington probably could answer
5 that question better, and I think he did.

6 Q Yeah. I know -- I know that he did. I'm just
7 asking your -- another participant in all this and I was
8 hoping to hear the Land O' Lakes slant.

9 A I think in -- in this marketplace there are
10 -- there are cheese plants that probably ~~---(inaudible)---~~
11 **offer balancing services**. But the -- the ~~---(inaudible)---~~
12 = **result of the** of their 21 years I've had in the dairy
13 cooperative in this market, you don't balance with cheese.

14 The example of Lehigh Dairy Farms as the owner
15 of the cheese plant in Allentown, Pennsylvania. They sold
16 ~~---(inaudible)---~~ **that, I think**. It's very hard for a
17 cooperative entity to balance with cheese. That doesn't
18 say that to some extent they do have the ability to -- to
19 work the extra day to ~~---(inaudible)---~~ **pay the bills**. Mr.
20 Miller talked about tolling ~~---(inaudible)---~~ **which I**
21 **understand in New York you can do** that to do a tolling
22 arrangement you need the milk processed and the price
23 won't -- price won't cover ~~---(inaudible)---~~ **it, they'll turn**
24 **it into cheese for you, you can sell it for cheese..**

1 Q Can you tell me how all producers in the market
2 benefit by the existence of butter powder plants to
3 perform the balancing function? Can you put a value on
4 that, how much the blend price is enhanced, for example?

5 A How much is the blend price enhanced on -- by
6 butter powder plants. I guess -- during his -- during Mr.
7 Ling's study he says that you can give -- you could have
8 done a whole thing for cheese -- an equal number of cheese
9 plants. If he had input a different set of numbers into
10 the cost -- cost relationship.

11 Mr. Wellington's testimony said that it's too
12 ~~expansive -- (inaudible) --~~ **expensive with cheese than it**
13 **is** to balance the butter powder.

14 So butter powder is the more efficient way of
15 doing it. However, there have been cases of producer
16 prices that when ~~== (inaudible) ==~~ **secretary in the wisdom**
17 **of the Secretary**, she ~~rates grants~~ market service payments
18 and it will be based on the Ling study of butter powder
19 plants rather than cheese plants.

20 Q That's assuming she fully considers it this
21 time.

22 A That assumption ~~== (inaudible) ==~~ **is right.**

23 Q Okay. So to the extent that the secretary may
24 believe that she needs to be shown how the market

1 benefits, you have no measure to offer her other than your
2 costs? So we're -- we're very well ~~indicated~~ **educated**
3 here on the costs.

4 A It's again --

5 Q -- ask the secretary to make the pool a little
6 light on benefits?

7 A If you agree there is a market benefit to
8 balancing ~~---(inaudible)---~~ **the market, and to show** to the
9 extent that the -- the market needs to be balanced, we
10 show that the cooperatives are doing it, and that -- that
11 is a factor. I can't ~~---(inaudible)---~~ **put an enhancement**
12 **on the blend price for the** activities that we're doing.
13 We can put a cost on -- if we agree that all benefit
14 because the -- the ~~---(inaudible)---~~ **sub-group of** the
15 whole incur several costs. That's -- that's the best we
16 can do.

17 Q Thank you. Just a little bit here on your
18 marketwide service payments -- excuse me, the
19 transportation credit payments, the former marketwide
20 service from Order 5. Did I understand your testimony to
21 say that -- that the payments from the transportation fund
22 somehow goes back to the Order 1 pool given certain
23 conditions?

24 A No. No, it wasn't the transportation dollars.

1 I was talking about the Class 1 value. If milk is taken -
2 - taking a hypothetical, if milk is transferred out of
3 Carlisle, which is a pool supply plant, to an Order 1 --
4 I'm sorry, to an Order 5 plant in North Carolina, the --
5 the higher -- the plant with the lower utilization ==
6 ~~(inaudible)~~== would go back to the Order 1 pool.

7 Q I understand. I'm sorry. I misunderstood you
8 before. Under the southeast transportation credit
9 provisions, are producers' fee prices at all reduced
10 because of the marketwide service fee for transportation
11 credits?

12 A It's my understanding that the -- the amount is
13 financed by the increase in the Class 1 price over a
14 period of months in the year. If -- if you can -- if you
15 -- if you want to make the jump that the -- the dairy
16 farmers -- document value, in the absence of
17 transportation credit there would be over-order premiums
18 or through the Department providing a different Class 1
19 price. And if you say that there was that opportunity.
20 But to answer the specific question, it does not come out
21 of it.

22 Q ~~(Inaudible)~~== **So in that regard** would be an
23 example of handlers charging other handlers for a service
24 that's for marketwide benefit? Handler to handler?

1 A Yes.

2 Q The producer is left out ~~== (inaudible) the~~
3 **producer is not charged.**

4 A Except for the opportunity.

5 MR. TOSI: Thank you. That's all I have.
6 Thank you. I appreciate it.

7 JUDGE BAKER: Does that complete your
8 questioning, Mr. Beshore?

9 MR. BESHORE: Yes. I -- I do have a few
10 questions for Mr. Schad on redirect.

11 REDIRECT EXAMINATION

12 BY MR. BESHORE:

13 Q Mr. Schad, on the -- picking up on that last
14 question, are you familiar at all with the marketwide
15 service payments paid out of the Order 30 pool?

16 A I am generally familiar.

17 Q There's no -- there's no supplemental -- you
18 would be -- you might know then that there's no
19 supplemental assessment on handlers in Order 30 to -- to
20 raise a fund to make marketwide service payments?

21 A That's correct.

22 Q But the --

23 A ~~(Inaudible)~~ **The answer is yes.**

24 Q -- handlers who assemble milk in the Class 1

1 market are paid eight cents a hundredweight on those
2 assembled volumes?

3 A That's my understanding.

4 Q Okay. Out of the pool, reducing the price?

5 A That's my understanding.

6 Q Okay. And handlers who move milk for Class 1
7 purposes within the order from one point to another are
8 reimbursed out of the pool for supplemental transportation
9 charges in Order 30?

10 A My understanding is that's correct.

11 Q Okay. And that's -- Mr. Wellington testified
12 that's what the act specifically authorizes with respect
13 to marketwide service provisions?

14 A Correct.

15 Q Okay. Now, if you just think about those
16 provisions for -- for a minute -- you probably don't know
17 the answer to this question but let me ask you. Do you
18 know whether the -- before eight cents a hundredweight was
19 allowed, what -- when it was promulgated to be paid out of
20 the pool to handlers who assemble milk for Class 1 use in
21 Order 30, a benefit -- a benefit was quantified with
22 respect to what benefit that was to the producers in the
23 market?

24 A I -- I have no knowledge that such a study was

1 done or such evidence was put into the hearing ==
2 (inaudible). That provision == (inaudible) **was left out.**

3 Q Okay. Now, let's stay in the upper midwest
4 just a little bit then. I think you testified but I want
5 it to be absolutely clear that the Land O' Lakes plants at
6 Greenwood, Wisconsin, and Fernham, Minnesota, are not
7 supply plants on Order 1 commencing in August of 2002?

8 A That's correct.

9 Q Keeping -- keeping mindful of the SEC, are
10 there any present intentions to repool those plants as
11 pool supply plants on Order 1?

12 A We have no -- no intentions that I know of.

13 Q Okay. The -- the handler list reflects that
14 over -- since 2000 of the -- you know, I guess maybe three
15 plants, Minnesota, Wisconsin -- pooled on the order, the
16 two -- (inaudible) -- **LOL** plants and a -- and a DFA plant
17 for some period of time in Burks Falls, Minnesota, I
18 think?

19 A That's correct.

20 Q Is -- does Order 1 require under its provisions
21 those -- milk assembled through those units to perform for
22 the market from plant -- from states outside the market?

23 A ~~(Inaudible)~~ == **Of course it does** and it has --
24 it's a state by state regulation ~~== (inaudible) ==~~ **cannot**

1 **use** milk from within the marketing area qualifies **to**
2 **qualify itself**. Each state, Minnesota and Wisconsin, had
3 to qualify shipments from those particular ~~---(inaudible)~~
4 **states**.

5 Q To your knowledge, during the spring months of
6 2001 with respect to the Land O' Lakes milk from Minnesota
7 or Wisconsin, was the minimum 10 percent required shipping
8 percentage under the order met with physical deliveries
9 from Minnesota and Wisconsin into Order 1 during those
10 periods of time?

11 A The record would show that those -- those --
12 all three of those plants were not pooled on the order I
13 guess it would have been August of 2000 until December of
14 2000, which meant that those plants would not have been
15 under what we're calling today the lock-in provision. So
16 throughout the entire year of 2001, those plants performed
17 at -- at the percentages specified in the order or as
18 amended by the market administrator.

19 Q And those percentages -- when you say
20 "perform," that means deliveries from those plants was --
21 supplies to those plants to Order 1 distributing plants?

22 A That's correct.

23 Q Mr. Schad, I think the -- let's look at Table 5
24 of Exhibit 17 for a minute. You were asked several

1 questions about the utilization of Land O' Lakes' plant at
2 Carlisle in Mount Olive Springs, Pennsylvania. You
3 provided some -- much -- much information in your
4 testimony and in your exhibits.

5 By the way, this is probably the largest
6 balancing plant in the northeast, to the best of your
7 knowledge?

8 A I would -- I would -- yes. The answer to that
9 is "yes."

10 Q You don't know anybody else -- any other plants
11 in the northeast that have the capability of -- of
12 handling over 5 million pounds a day?

13 A No.

14 Q Do the capacity figures shown -- the monthly
15 capacity figures shown on Table 5 of Exhibit 17 mask the
16 daily and -- and weekly fluctuations in capacity
17 utilization at the plant?

18 A Yes. There are -- these are monthly numbers.
19 If you took Table 1-A and 1-B, deliveries to Carlisle
20 probably ~~---(inaudible)---~~ **influenced those numbers** we
21 also have Class 2 and Class 2 3 customers which would --
22 (inaudible) **them**. But the answer to your question is,
23 yes, they would mask the daily and weekly fluctuations of
24 ~~received --- (inaudible) ---~~ **receipts at plant.**

1 Q Okay. And they probably -- you know, something
2 like the delivery patterns shown on the inverse or the --
3 the other side of the delivery patterns shown on Tables 1-
4 A and 1-B probably?

5 A Sure. Yes.

6 Q Now, let's talk about benefit to the market of
7 this -- your balancing services which are reflected on
8 Table 1-A and 1-B. If the ADCNE cooperatives did not
9 deliver on the 19th of November 2001, 21.8 million pounds
10 of milk to those -- those distributing plants but -- by
11 the way, in November I assume there would have been plant
12 capacity at -- at Carlisle and other facilities in the
13 market to retain that 21.8 million pounds?

14 A Yes.

15 Q Now, if that was not the least delivered to
16 those 7(a) plants, would there have been losses suffered
17 in the marketplace? Your Order 1 market, would there have
18 been some marketing challenges?

19 A Sure. As -- as hypothesized with --
20 (inaudible) -- instead of the trucks going to the Class 1
21 plants, they were -- they could only go to the balancing
22 plants. Those sales would be lost.

23 Q Let's say there wasn't -- let's say the weather
24 was fine but the plants ordered the milk and you just

1 decided to -- keep it and manufacture it. What would --
2 what would happen to the marketplace?

3 A What would happen? In the short term, sales
4 would be lost. On a longer term, handlers would have to
5 go beyond the -- the market we own. Given the -- part of
6 the things we're talking about in ~~---(inaudible)---~~
7 **pooling rights**, right, I would think it would be harder to
8 have the -- the pool to pay for milk coming across the
9 distance. I don't think it ~~---(inaudible)---~~ **the increase**
10 **in PPD** of Minnesota ~~---(inaudible)---~~ **\$1.80 to \$2.05 in**
11 **new York** ~~of the order~~ would pay for the transportation. I
12 think we're looking at ~~---(inaudible)---~~ **historically** the
13 amount that -- taking the qualification -- (inaudible) --
14 the handler would have to pay more out of pocket. So ~~---~~
15 ~~(inaudible)~~ **the over order premiums would have to go up a**
16 **little.**

17 I guess the question would be whether the --
18 the marketplace, if he's in it, would pay the higher
19 prices for that. And if not, maybe the -- the handler
20 would go to his independent supplier and tell him that
21 there's a -- I'm going to pay the same dollars to get the
22 same milk but it's going to cost me to get it from the
23 further plants.

24 Q By the way, are premiums paid to -- over-order

1 premiums paid to independent producers in the area of the
2 Order 1 milk shed that you're familiar with?

3 A Yes, they are.

4 Q Very substantial premiums?

5 A Yes, they are.

6 Q So a handler who had independent suppliers
7 wasn't provided -- if the cooperatives didn't release milk
8 from -- from their milk supplies to meet those surge needs
9 of the handlers on the -- you know, on that Monday in
10 November when they were the highest, they have to possibly
11 go out in the area and replace that milk at higher
12 expense, correct?

13 A Yes.

14 Q Or if they were going to try to get the milk
15 somewhere else in the Order 1 marketplace, where might
16 they go to get it and at what cost?

17 A I guess they would get the -- the alternative
18 answer is what Mr. Ling calls the excess supply. And you
19 would go to a --

20 Q Cheese plants?

21 A -- the cheese plants and look for ==
22 ~~(inaudible)~~ == **loads our of** milk, and we'd be talking --
23 give up charges to a -- for a corporation.

24 Q Give up charges to a corporation. In other

1 words, if you're going to -- if you have to take milk out
2 of Kraft's cheese plant and now they're not going to be
3 able to make their brand and value added cheese products
4 but they're going to give it up for -- for a fluid
5 processor, it's going to cost them money?

6 A Yes.

7 Q Okay. Substantial money?

8 A That would be my -- that would be my -- my
9 expectation, yes.

10 Q In all likelihood, in your judgment and on the
11 basis of your experience, more money than you're able to
12 get on a regular basis for your Class 1 sales?

13 A Sure.

14 Q Now, let's look at the flip side. In May, the
15 27th of May 2001, ADCNE cooperatives had 10 million-plus
16 less pounds of requests for deliveries to those 7(a)
17 plants. First of all, let's assume that you all insisted
18 that --

19 A Just so the record's clear, 10 million -- I
20 think you made a comparison. Ten million less than?

21 Q Than the Monday, November 19th volume that I
22 was previously referring to, okay? What if you insisted
23 that the -- you know, you want that 10 million pounds
24 back, so to speak. You wanted the handlers -- somebody

1 else in the market to handle that 10 million pounds that
2 were required by the pool market in November. What would
3 happen in the marketplace?

4 A I guess your --

5 Q -- pounds of -- milk a day?

6 A You're asking --

7 Q I'm asking you to use your market experience
8 and your judgment to tell us what would happen in the
9 marketplace so we can understand the benefit in as --

10 A -- crash.

11 Q What prices would crash?

12 A The prices that would be -- milk would be sold,
13 given -- given the volume we're talking about, at a
14 substantial discount to the -- to the class price.

15 Q Would there be the same funds available to pay
16 the available order premiums to independent producers in
17 the Order 1 milk shed that there are today?

18 A No, I wouldn't expect so.

19 Q Is that a benefit that's tangible that's in the
20 -- in the milk check of those producers every month under
21 the present marketing conditions?

22 A Yes.

23 Q With respect to LOL's -- Land O' Lakes'
24 capacity at Carlisle, what -- Bob Wellington talked about

1 evaluating capacity in terms of the plant bottle neck.
2 What -- what's the limitation at Carlisle?

3 A I guess that'd be evaporating.

4 Q And what's the maximum evaporation capacity?

5 A Five -- 5 million pounds per day. Closer to 5
6 to 5.5 million pounds per day.

7 Q Now, you referred to -- I think Mr. English
8 perhaps asked you some questions about premiums in Order 5
9 and you referred to DCMA.

10 A Yes.

11 Q Can you tell us what DCMA is?

12 A I think it's Dairy Cooperative Marketing
13 Agency.

14 Q And that's -- it's an over-order --

15 A A marketing --

16 Q Agency -- (inaudible). Which is opposed to
17 cooperatives marketing milk in -- in order -- in the
18 southeastern United States?

19 A Five, seven, probably six as well.

20 Q Is there DCMA in Order 1 or its equivalent?

21 A ~~(Inaudible)~~ -- **Yes, the** northeast marketing
22 agency.

23 Q Is it established --

24 A Which --

1 Q -- pool and account for premiums and over-order
2 payments and daily delivery -- daily milk delivery
3 credits, et cetera, the same way DCMA does?

4 A Yeah, yeah.

5 Q Has that ever been possible in the northeastern
6 United States?

7 A No.

8 Q In your -- in your lifetime?

9 A In my lifetime, no.

10 Q Has it been tried and been unsuccessful?

11 A I don't even know if it got to the point of
12 trying. The parties -- the parties ~~---~~(inaudible) **have**
13 **not been able to agree.**

14 Q And you've got a large proportion of
15 independent producers in the marketplace?

16 A Absolutely, sure.

17 Q ~~(Inaudible)~~ **I'm not sure whether you were**
18 **specifically asked if Land O' Lakes has occasional volumes**
19 **of milk received at Carlisle that are regulated on other**
20 **than Order 1. Do you have some limited volumes?.**

21 A Yes, we do.

22 Q **Occasionally milk from un-regulated, non**
23 **Federally regulated Pennsylvania sources, I assume?**

24 A **Alright, I asked a question to my plants and**

1 expect Mr. English would ask me as well in anticipation,
2 how much milk in the year 2001 was delivered to Land O'
3 Lakes plant in Carlisle that was not pooled on Order 1?
4 The answer came back 5.6%.

5 Q And that would include surplus cream from
6 distributing plants?

7 A No, I don't think so, I phrased the question
8 "producer milk."

9

10 A ~~(Inaudible)~~ -- And would include any other
11 federal order or -- or unregulated ~~---(inaudible)~~ milk.

12 MR. BESHORE: May I have just a moment, Your
13 Honor?

14 (Pause)

15 MR. BESHORE: I'm being directed to cease
16 further questions by my clients.

17 JUDGE BAKER: By -- by your clients.

18 (Laughter)

19 JUDGE BAKER: Are there any other questions?

20 (No response)

21 JUDGE BAKER: Let the record reflect that there
22 are none. Thank you very much, Mr. Schad.

23 (Whereupon, the witness was excused.)

24 JUDGE BAKER: It's now 7:12 and we shall recess

1 until 8:30 -- (inaudible) **tomorrow morning.**

2 Mr. Beshore, you have one more witness?

3 MR. BESHORE: Yes, I do. Mr. Gallagher.

4 JUDGE BAKER: ~~(Inaudible)~~ **He will appear**
5 **tomorrow?.**

6 MR. BESHORE: Yes.

7 JUDGE BAKER: All right. Then ~~==~~(inaudible)
8 **who will we hear after that?-**

9 MR. BESHORE: I would assume it would lead to
10 any other -- non-proponent testimony with respect to
11 Proposal 7 which --

12 JUDGE BAKER: ~~(Inaudible)~~

13 MR. BESHORE: -- maybe there won't be any and
14 then we could move to the other proposals.

15 JUDGE BAKER: Very well. ~~(Inaudible)~~ **That's**
16 **what I was wondering, whether we're** going to be able to
17 take up the rest of these proposals.

18 (Laughter)

19 MR. ENGLISH: Another month.

20 MR. BESHORE: I think we could -- perhaps we
21 could just bypass the opposition to Proposal 7 --

22 MR. ENGLISH: Or turn down Proposal 7.

23 JUDGE BAKER: All right **We will start in the**
24 **morning.** ~~(Inaudible)~~.

1 (Laughter)

2 JUDGE BAKER: (Inaudible) -- **We will hear the**
3 **other** witness and -- (inaudible) -- any other testimony
4 on Proposal 7. ~~Again~~ **Then**, I think ~~---(inaudible)---~~ **we**
5 **can begin** Proposals 1, 2, 3, 4, 5.

6 MR. ENGLISH: That's fine, Your Honor. I -- I
7 guess I'm just wondering in advance, given the term, I
8 think ~~---(inaudible)---~~ **everyone wants to** get done on
9 Friday. Whether it makes sense to plan in advance to go
10 even a little later tomorrow than seven -- than 10 after
11 seven, say to eight or 8:30 to try to push everybody. My
12 experience was the Thursday session comes and we go all
13 day, it tends to make sure we get done on Friday.

14 And so I guess I would advocate planning our
15 schedule tomorrow being even lunch a little later so that
16 people won't get -- aren't going to be hungry and then
17 pushing at least until, say, 8:30 tomorrow if we could.

18 SPEAKER: Can we start at eight?

19 MR. ENGLISH: I can start at eight.

20 SPEAKER: What's the witness schedule for
21 tomorrow?

22 MR. ENGLISH: We've got -- we've got a number.

23 SPEAKER: What's the order?

24 MR. ENGLISH: I'm not sure. We'll discuss that

1 this evening. There's -- there's plenty of witnesses.

2 MR. BESHORE: We -- Mr. Gallagher would be
3 prepared to go, you know, at 8:00 if that were the
4 convenience of everyone.

5 JUDGE BAKER: Is there any objection to
6 starting at 8:00?

7 (No response)

8 JUDGE BAKER: No objection. We shall reconvene
9 tomorrow at 8 a.m. And we shall **proceed to** --
10 (inaudible) --

11 MR. ENGLISH: Thank you, thank you.

12 (Whereupon, at 7:20 p.m., on September 11,
13 2002, the proceedings were adjourned, to reconvene at 8:00
14 a.m., on September 12, 2002.)

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