

## 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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## I N D E X

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## P R O C E E D I N G S

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).

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

7 A Actually, in Table 2 and 4.

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

14 A (Inaudible) -- that is correct.

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

19 A That's correct.

20 Q And then based upon those -- the calculated  
21 seasonal reserves and the assumed operating reserves, you  
22 proceeded to determine what -- that you needed in this  
23 particular instance three plants of a certain size or four  
24 plants of a certain size to provide balancing, correct?

1           A     (Inaudible).

2           Q     All right. And one of the issues you were --  
3     you were dealing with was -- is the seasonal nature of  
4     milk, correct?

5           A     That is correct.

6           Q     And in that context, you were describing both  
7     the seasonality of milk production and the seasonality of  
8     Class 1 demand, is that right?

9           A     That is correct.

10          Q     All right. Now, am I correct that as a -- as a  
11     methodological matter, there's nothing unique to the  
12     Northeast Orders with respect to your methodology, is that  
13     right?

14          A     The methodology -- (inaudible).

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

18          A     Mm-hmm.

19          Q     -- your methodology would be exactly the same,  
20     correct?

21          A     That's correct.

22          Q     You have not identified any particular -- you -  
23     - you yourself have not identified any particular issues  
24     surrounding the Northeast Order as opposed to any other



1 order, is that correct?

2 A That's correct -- (inaudible).

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

5 A That's correct.

6 Q Okay. Now, as we've already discussed, you  
7 made two different assumptions as to operating reserves,  
8 one that it be 10 percent and one that it be 20 percent,  
9 correct?

10 A That's correct.

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

14 A The -- back in 1985 -- (inaudible) -- 10  
15 percent and 20 percent.

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

23 But in any event, this is your chart on page  
24 four of Exhibit 12 that shows what happens with respect to

1 total milk deliveries in the Northeast Orders, is that  
2 correct?

3 A That's correct.

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

6 A That's correct.

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

12 The -- the fluid demand is the bottom part,  
13 correct?

14 A That's correct.

15 Q And then you've got above that operating  
16 reserves, is that correct?

17 A That's correct.

18 Q And then seasonal reserves on top of that?

19 A That's correct.

20 Q And then excess reserves, right?

21 A That's correct.

22 Q Could you -- could you explain what you mean by  
23 excess reserves?

24 JUDGE BAKER: Mr. Rosenbaum, I think this is

1 the time for our bowing our heads for just a moment of  
2 silence. I think it's 8:46. If we could all do that,  
3 please?

4 (A moment of silence was observed.)

5 BY MR. ROSENBAUM:

6 A As I -- as I explained yesterday -- (inaudible)  
7 -- as a result of -- (inaudible) -- in cases of shortage  
8 or crisis in the milk supply.

9 Q Well, you -- you have on top of excess reserves  
10 Class 2, correct?

11 A That's correct.

12 Q And so, do I correctly interpret this figure to  
13 mean that if one takes total milk pooled on the order and  
14 subtracts what's called fluid demand, which would be Class  
15 1, and then subtracts Class 2, that one -- what one is  
16 left over with is Class 3 or Class 4?

17 A That's correct.

18 Q And am I correct that accordingly the total  
19 amount of Class 3 and 4 milk that is pooled on the  
20 Northeast Order is vastly in excess of what is needed to  
21 provide seasonal and operating reserves as you have  
22 calculated them?

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

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

4           A     The differences -- (inaudible) -- if that's  
5     what you mean.

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

9           A     That's correct.

10          Q     And Table 5 is methodologically identical  
11     except that there you are assuming a 20 percent operating  
12     reserve, is that correct?

13          A     That's correct.

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

19          A     That's correct.

20          Q     And in this context, necessary reserves is a  
21     combination of both seasonal reserves and operating  
22     reserves, is that correct?

23          A     That's correct.

24          Q     Now, I note that -- and I'm looking at page

1 four, that you are assuming that this plant would operate  
2 20 hours a day, correct?

3 A That's correct.

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

7 A That's correct.

8 Q Okay. All right. Now -- and am I also correct  
9 that you have sized these plants at 3 million pounds a day  
10 -- a day of capacity in order to handle what you have  
11 calculated to be necessary reserves -- peak daily volume  
12 of necessary reserves of 8.6 million pounds of milk?

13 A That's correct.

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

17 A That's correct.

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

22 A My reasoning of why I did that was it's quite -  
23 - it's just quite -- (inaudible) -- spread over the -- the  
24 plant capacity. But if you want the -- (inaudible) -- we

1 can do that.

2 Q I -- that is to say, when in January you were  
3 assuming or calculating that the unused capacity percent  
4 of peak necessary reserves is 38 percent, am I right that  
5 you're also saying that that plant is operating at 38  
6 percent under capacity?

7 A Under capacity, that's correct.

8 Q All right. And so that if one wanted to  
9 calculate the capacity --

10 A Mm-hmm.

11 Q -- utilization --

12 A Mm-hmm.

13 Q -- of that plant during January, one would  
14 simply engage in mathematics of 100 minus 38, correct? For  
15 January.

16 A That's correct.

17 Q So that -- and let me just run through the  
18 months. And -- and tell me if I get any of them wrong.  
19 Your calculation assumes that in January the plant would  
20 operate at 62 percent capacity, in February at 73 percent  
21 capacity, in March at 79 percent capacity, in April at 94  
22 percent capacity, in May at 97 percent capacity, in June  
23 at 100 percent capacity, in July at 75 percent capacity,  
24 in August at 61 percent capacity, in September at 36

1     percent capacity, in October at 34 percent capacity, in  
2     November at 38 percent capacity, and in December at 53  
3     percent capacity, is that correct?

4           A     (Inaudible) -- yeah, that's correct.

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

6           A     Yeah.

7           Q     And am I -- okay. And in -- on page five, when  
8     you talk about fixed and operating costs, you describe the  
9     fixed and overhead costs for the three plants as being  
10    estimated at \$9 million a year, correct?

11          A     That's correct.

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

16          A     That's correct.

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

20          A     I have to go through the calculation.

21                   (Pause)

22

23                   BY MR. ROSENBAUM:

24          A     (Inaudible) -- 7 million per day. And if you

1 divide that by -- by nine million -- (inaudible) -- what I  
2 get divided by 8.6. That will give you the percentage.

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

7 A That's correct.

8 Q And -- and -- and you have then prorated that  
9 cost to the milk volume represented by unused capacity,  
10 correct?

11 A That's correct.

12 Q And that unused capacity is the capacity that  
13 is providing the balancing function, correct?

14 A That's correct.

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

16 A Yeah.

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

22 A (Inaudible) -- percent, yeah.

23 Q I'm sorry?

24 A (Inaudible) -- 66 percent.



1 Q Sixty-six percent. All right.

2 A About that, I mean.

3 Q About that. All right. Thank you. And  
4 obviously, those plants are producing very substantial  
5 quantities of butter and nonfat dry milk operating at 67  
6 percent capacity, correct?

7 A That's correct.

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

12 A That's correct.

13 Q And -- and -- and -- and am I correct in  
14 understanding that your calculation is that for every 100  
15 pounds of milk that is processed through that plant, one  
16 will produce 4.48 pounds of butter and 8.13 pounds of  
17 nonfat dry milk?

18 A That's correct.

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

21 A That's correct.

22 Q -- in those quantities, correct?

23 A That's correct.

24 Q All right. And so that if I wanted to figure

1 out how much butter and how much nonfat dry milk is being  
2 produced by this plant at -- at 100 percent capacity,  
3 assuming it were run full out, am I correct that one would  
4 on a daily basis assume that there were 33,000  
5 hundredweight being run through it, correct?

6 A That's correct.

7 Q Thirty thousand hundredweight of milk, correct?

8 A That's correct.

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

11 A Yeah.

12 Q And then one would for those 30,000  
13 hundredweight assume that for each hundredweight one was  
14 producing 4.48 pounds of butter and -- and also 8.13  
15 pounds of nonfat dry milk, correct?

16 A That's correct.

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

22 A That's correct.

23 Q And if one then wanted to determine how much  
24 butter and cheese that plant would produce at the 67

1 percent utilization that you assume is going to be  
2 actually encountered due to the need to provide for  
3 necessary balancing, one would simply multiply that number  
4 by 67 percent, is that right?

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

6 Q If I said cheese, I didn't mean to. I'm sorry.  
7 Am I correct that one would take the annualized number of  
8 how much butter and nonfat dry milk would be produced at  
9 100 percent capacity based upon the approach we've just  
10 discussed and then multiply that number by 67 percent to  
11 determine how much butter and nonfat dry milk would be  
12 produced?

13 A That's correct.

14 Q Under the assumption, as you calculated it,  
15 that these plants would operate at 67 percent annual  
16 capacity in order to provide both seasonal and operating  
17 reserves?

18 A That's correct.

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

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

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

5           A     That's correct.

6           Q     The seasonality of milk production and  
7     seasonality of Class 1 demand that goes into Table 3 is --  
8     are -- is the exact same numbers that go into Table 5,  
9     correct?

10          A     That's correct.

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

15          A     That's correct. (Inaudible) -- Table 3.

16          Q     Okay. And the difference -- a difference  
17     between Table 3 and Table 5 is that for purposes of Table  
18     5 you were assuming four plants with daily capacity of 3  
19     million pounds a day as opposed to the three plants you  
20     were assuming in Table 3?

21          A     That's correct.

22          Q     And accordingly, you were assuming that the  
23     daily -- the daily capacity is now -- of the three plants  
24     -- excuse me. Start that again.

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

3           A     Yeah.  Twelve million pounds -- (inaudible)  
4   -- 8 million pounds --

5           Q     Okay.

6           A     (Inaudible) -- reserves.

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

13          A     Excuse me, but can you repeat that?

14          Q     Yes.  If one -- if one wants to determine the  
15   actual capacity utilization month by month in Table 5, one  
16   deducts from 100 percent the percentage shown in Column  
17   Number Two?

18          A     That's correct.

19          Q     And -- and once again, I'd like to go through  
20   the math and just make sure I've got it correct.  Tell me  
21   if I've got any of these numbers wrong.  My understanding  
22   is that in Table 5 you were assuming that the plants are  
23   operating at the following percentage of capacity:  in  
24   January 71 percent, in March -- in February 80 percent, in

1 March 85 percent, in April 96 percent, in May 99 percent,  
2 in June 100 percent, in July 80 percent, in August 69  
3 percent, in September 51 percent, in October 50 percent,  
4 in November 53 percent, and in December 64 percent?

5 A That's -- (inaudible) -- you're correct.

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

10 A (Inaudible).

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

15 A That's correct.

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

18 A That's correct.

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

23 A That's correct.

24 Q Hypothetically, they could be paid for by the

1 cooperative demanding from the Class 1 handler an extra  
2 service charge for the fact that the Class 1 handler is  
3 not taking milk seven days a week, correct?

4 A That's a hypothetical question I -- (inaudible)  
5 -- a hypothetical answer. I am not ready to -- I am not  
6 ready to -- (inaudible). I'm not prepared to answer a  
7 question -- (inaudible) -- you can ask co-ops for --  
8 (inaudible) -- to testify to that fact.

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) -- they had this problem and asked me if I can  
22 come up with a report for them to address this issue for  
23 estimating the cost of balancing, and that's what I did.  
24 I provided the methodology and put in some estimates and -

1 -

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).

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 (Inaudible).

14 Q I -- I --

15 A (Inaudible).

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

19 A (Inaudible).

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

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

5 A (Inaudible).

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

10 A (Inaudible) -- six years, yes.

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

14 A (Inaudible).

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

17 A That's correct.

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

23 A That's -- (inaudible).

24 Q The conclusion one would draw, therefore, is

1       that substantial quantities of milk from other states are  
2       flooding the Northeast Order at the time when they're  
3       least needed and that milk disappears at the time when  
4       it's most needed? Is that a fair conclusion?

5           A     (Inaudible) -- what I did in my report was --  
6       (inaudible).

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

10          A     I don't know what -- I don't know what -- when  
11       you say "most needed" -- (inaudible).

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

20          A     That's correct.

21          Q     And yet these are the months when in reality in  
22       2001 you had 108 million pounds coming in from other  
23       states?

24          A     (Inaudible) -- I'm not prepared to speak to

1       that.

2           Q     Okay. Well, I would like you simply to assume

3       --

4           A     (Inaudible).

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

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

16          Q     Okay.

17          A     But the -- how much is actual deliveries and --  
18      (inaudible) -- and so forth, I don't -- (inaudible) -- so  
19      I -- I cannot concur with that conclusion. That's -- it's  
20      -- (inaudible).

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

24          A     That's correct.

1           Q     And during the years 1994 through 1999,  
2     correct?

3           A     That's correct.

4           Q     And that's the same data set as we're looking  
5     at on page 87 except that on page 87 we're looking at     -  
6     -

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

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

10          A     Uh-huh.

11          Q     Is that -- is that right?

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

15               MR. ROSENBAUM: This is inappropriate. He is  
16     coaching the witness. And if I'm misreading Dr. Ling, he  
17     will tell me or you can bring it out in your own  
18     examination. I am not intentionally or otherwise  
19     misleading --

20               MR. BESHORE: -- objection.

21               MR. ROSENBAUM: Page 87 does not have aggregate  
22     pooled numbers for the pool. I mean, those are in Exhibit  
23     5 but they're not on page 87.

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



1 (Laughter)

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

6 BY MR. ROSENBAUM:

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

9 (Pause)

10 BY MR. ROSENBAUM:

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

18 A I assume that is -- (inaudible).

19 Q All right.

20 A (Inaudible) -- I have been studying --  
21 (inaudible) -- statistics so I'm -- (inaudible). If you  
22 want to -- (inaudible).

23 Q Well, let me just make sure that in Table 1  
24 what you were using was receipts of producer milk for

1 Orders 1, 2, and 4 for the years 1994 through 1999,  
2 correct?

3 A That's correct.

4 Q Okay. And to the extent that Mr. Fredericks  
5 for his page one of Exhibit 5 was using producer receipts  
6 for the new Northeast Order for the period 2000 through  
7 2002, then you're both using the same data set except that  
8 the years are different and he's using the Northeast Order  
9 as it now exists whereas you were using Orders 1, 2, and 4  
10 combined as they then existed?

11 A It's not exactly the same data set we're using  
12 because -- (inaudible). And so the two data sets are not  
13 the same because -- (inaudible) -- so it's not the same  
14 data set.

15 Q What -- what you're -- okay. What you're  
16 saying is economic conditions may have changed and the  
17 rules of pooling may have changed but the -- but the data  
18 set in both cases is pool receipts?

19 A They are both -- they are both pool receipts --  
20 (inaudible) -- so they are not the same data set.

21 Q Okay. But they are both pool receipts,  
22 correct?

23 A Yeah.

24 Q All right.

1           A     (Inaudible).

2           Q     And -- and -- and -- and yours were the old  
3 rules and his are the current rules, correct?

4           A     (Inaudible).

5           Q     Okay. You assume or estimate that each of  
6 these plants with 3 million pounds of milk a day capacity  
7 that would provide balancing would cost \$28 million,  
8 correct?

9           A     (Inaudible).

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

12          A     That's correct.

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

16          A     (Inaudible) -- basically a study I did --  
17 (inaudible).

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

20          A     That is correct.

21          Q     And there -- there -- the -- the -- your study  
22 does not mean to suggest that there needs to be more  
23 butter powder plants brought to the northeast to address  
24 balancing, correct?

1           A     (Inaudible) -- what is necessary --  
2     (inaudible), okay? The best way to estimate the ultimate  
3     cost is -- (inaudible) -- what I did in the report is --  
4     (inaudible) -- because the cost data is very difficult --  
5     (inaudible).

6           Q     Please don't give me --

7           A     (Inaudible).

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

10          A     (Inaudible) -- I'm trying to explain what I did  
11     --

12          Q     But -- but so --

13          A     (Inaudible).

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

16          A     Since the early '90s -- (inaudible).

17          Q     Okay. But -- but you're not -- you don't --  
18     your study in no way is suggesting that in fact any new  
19     plants need to be built in the northeast to provide  
20     balancing?

21          A     No, that's -- (inaudible).

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

1           A     New plants were built -- (inaudible).

2           Q     Okay. Do you know when the last new one was  
3 built?

4           A     I think -- (inaudible) -- people should know  
5 better than me.

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

8           A     That's correct.

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

12          A     That's correct. As I said -- (inaudible).

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

17          A     That's correct.

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

21          A     That's correct.

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

1           A     That's correct.

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

5           A     Plus overhead.

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

9           A     That's correct.

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

14          A     That's correct.

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

17          A     That's correct.

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

21          A     That's an interest cost figure.

22          Q     But -- but you're assuming that to be constant,  
23     right?

24          A     For the life of the loan, yes.

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

3           A     That's correct.

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

7           A     That's possible.

8           Q     Okay. In which case there would be no  
9     continuing annual capital costs for the land and for the  
10    plant, right?

11          A     That's correct.

12               MR. ROSENBAUM: That's all I have at this time.  
13    Thank you.

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

16               MR. ENGLISH: Thank you.

17                       CROSS EXAMINATION

18               BY MR. ENGLISH:

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

21               With respect to the request you received and  
22    the work you did on the study, did the cooperatives  
23    provide you with actual data or the utilization of the  
24    plants actually existing in the Northeast Orders?

1           A     (Inaudible).

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

6           A     They asked me to -- (inaudible).

7           Q     And your --

8           A     (Inaudible).

9           Q     But -- but by your own study, that estimate was  
10    based upon using exclusively butter powder operations,  
11    correct?

12          A     That's correct.

13          Q     And you acknowledge that plants that process  
14    cheese and whey could provide this service as well,  
15    correct?

16          A     In the real world, I think most people when  
17    they -- (inaudible).

18          Q     Do you -- do you have Exhibit 5 still in front  
19    of you from the market administrator's -- Mr. Rosenbaum  
20    asked you? If you could look for a moment at pages 74 and  
21    75?

22                   (Pause)

23                   BY MR. ENGLISH:

24          Q     Which are for May and November of 2001 total



1 volume of producer milk diverted to non-pool plants under  
2 the Northeast Order. And would you agree with me that the  
3 -- the number of pounds diverted in May exceeds the number  
4 of pounds in November by a significant quantity?

5 A (Inaudible).

6 Q By 170 but, I mean, the math is what it is.  
7 Does that not indicate that -- that there are other  
8 facilities being used in actuality in the Northeast Order  
9 with respect to the disposal of -- of milk in this  
10 marketplace?

11 A My report estimates the cost of doing the  
12 balancing. I didn't say who is actually doing the  
13 balancing.

14 Q Fine. That -- that was my question. And going  
15 back to the series of questions asked by Mr. Rosenbaum and  
16 the issue about pre-order reform and post-order reform,  
17 you have not attempted to make any study of how decisions  
18 to pool milk have changed since the advent of federal  
19 order reform, correct?

20 A That's correct.

21 Q And you similarly have made no study of the  
22 question of how distribution of packaged milk may have  
23 changed since the advent of federal order reform?

24 A That's correct.

1 Q And as to Table 1 --

2 A Exhibit --

3 Q -- Table 1 now in your Exhibit 12. In that  
4 Table 1, for the period that was pre-federal order reform  
5 you made no attempt to adjust for producer milk deliveries  
6 for milk, for instance, produced in New York that is  
7 delivered as producer milk to an order to the south for  
8 that time period, 1994 to 1999, correct?

9 A (Inaudible).

10 Q And just to be clear --

11 A (Inaudible).

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

17 A It's whatever -- (inaudible).

18 Q I realize that -- that following the federal  
19 order process may not be something you do on a daily  
20 basis, but are you aware or were you aware at the time you  
21 prepared this study that in the mid '90s a program was put  
22 in place in the southern federal orders to provide for  
23 transportation credits to move milk to the southeast, both  
24 producer milk and transferred milk? Were you aware of

1       that?

2           A     I was not aware.

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

7           A     No, I -- (inaudible).

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

13          A     It's whatever the Class 1 -- whatever milk  
14      pooled as Class 1 -- (inaudible) -- third party.

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

20          A     We looked at the Class 1 milk pooled in the  
21      -- (inaudible).

22          Q     Okay. So that means you agree with me that you  
23      didn't make an effort to alter the data -- to adjust the  
24      data based upon where the sales actually occurred,

1 correct?

2 A (Inaudible).

3 Q Is it your understanding that Class 1 milk  
4 pooled in the orders does not change based upon where the  
5 sales are?

6 A No, I -- I didn't -- I didn't -- I mean, I --  
7 (inaudible).

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

9 A No --

10 Q -- so you didn't --

11 A (Inaudible).

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

15 A I took the data from the publications.

16 Q And those publications were the Order 1, Order  
17 2, and Order 4 publications, correct?

18 A That's correct.

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

24 A Yeah, that's correct.

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

4           A     (Inaudible).

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

7           A     That's correct.

8                     (Pause)

9                     BY MR. ENGLISH:

10          Q     Exhibit 5, page 85 shows the actual total milk  
11 receipts at butter powder plants in the northeast. And if  
12 you compare that table to page five of Exhibit 5 -- to  
13 page five?

14                     SPEAKER: Page five of Exhibit 5?

15                     BY MR. ENGLISH:

16          Q     Page five, Exhibit 5 compared to page 85 of  
17 Exhibit 5. Page five is producer receipts by  
18 classification. Page 85 is milk powder and butter  
19 production. And if you look for a moment at May of 2000  
20 for -- for both those, May of 2000, would you agree that  
21 on page five Class 4 milk was 249,125,390 pounds and the  
22 same month, the actual milk receipts at butter powder  
23 plants was 454,385,205 pounds. Would you agree with me  
24 that that difference -- that some significant portion of

1       that difference represents milk coming in from outside the  
2       marketing area that is being pooled as Class 4 and  
3       classified that way for other orders?

4           A     Which number are you talking about in --

5           Q     May --

6           A     (Inaudible).

7           Q     Page -- I'm talking about the same month. May  
8       2000 --

9           A     Mm-hmm.

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

16                   (Pause)

17                   BY MR. ENGLISH:

18          A     (Inaudible).

19          Q     Would you agree --

20          A     (Inaudible).

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

23          A     Okay.

24          Q     Would you agree with me the total milk receipts

1 for May of 2000 for butter powder production is  
2 454,385,205 pounds?

3 A That's -- (inaudible).

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

7 A Okay.

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

11 A I don't -- (inaudible).

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).

23 Q And in doing that methodology, you made no  
24 attempt to adjust for this kind of data that appears on

1 page five and 85, correct?

2 A (Inaudible) -- questions.

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

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

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

22 MR. BESHORE: Oh, Your Honor, I object to that.  
23 That -- I mean, the -- the reality is in Table 1, among  
24 other things.



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

4           MR. BESHORE: Well --

5           MR. ENGLISH: And it's old.

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

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

13          BY MR. ENGLISH:

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

20          A     (Inaudible).

21          MR. ENGLISH: Your Honor --

22          THE WITNESS: Exhibit -- Exhibit 5 -- what is -  
23          - (inaudible) -- in Exhibit 5 is -- I mean it is possible  
24          -- (inaudible) -- so I didn't -- I didn't look at those

1 numbers --

2 BY MR. ENGLISH:

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

11 A What I did in my report is based on market  
12 order -- (inaudible) -- milk and Class 1 milk pool under  
13 those three orders.

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

16 MR. BESHORE: Your Honor --

17 JUDGE BAKER: -- and he did not -- he did not  
18 respond in a very positive fashion.

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

23 MR. ENGLISH: I think cross examination --

24 MR. BESHORE: -- completely rhetorical.

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

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

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

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

14               (Pause)

15          MR. ENGLISH: I have no further questions at  
16 this time.

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

20                   CROSS EXAMINATION

21           BY MR. VETNE:

22           Q     John Vetne appearing for Friendship. Dr. Ling,  
23 Table 1 of Exhibit 12 which is on the screen, you -- you  
24 testified that the column labeled "Fluid Demand" is -- is

1 nothing more and nothing less simply than Class 1 milk.

2 A Class 1 milk pooled under those three orders.

3 Q And it's Class 1 producer milk or Class 1  
4 receipts of the plants?

5 A (Inaudible) -- Class 1 milk in the -- in  
6 statistics.

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

14 A It's Class 1 milk reported in the -- in your  
15 statistics.

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

20 A No.

21 Q Okay. Now, I understand that you did not  
22 analyze fluid demand by reference to receipts of milk by  
23 fluid plants, correct?

24 A It's whatever -- (inaudible).

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

4           A     (Inaudible).

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

10          A     I didn't study that -- (inaudible).

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

14          A     That's correct.

15          Q     Okay.  And you also did not include Class 2  
16     milk.  Do you have any opinion on whether if Class 2 milk  
17     uses were included in the column "Fluid Demand," whether  
18     greater Class 2 use in June, for example, might offset  
19     lower Class 1 use in June?

20          A     (Inaudible).

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

1           A     That's correct.

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

4           A     That's correct.

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

11          A     (Inaudible) -- opinion because I didn't study  
12 that.

13          Q     Would you agree that if Class 2 -- that the  
14 result could cause costs to go up or could costs -- cause  
15 costs to go down?

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

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

19          A     That's correct.

20          Q     Okay. On page one of your exhibit -- of your  
21 report, Exhibit 12, you state that typically fluid  
22 processing plants operate fewer than seven days a week.  
23 This expression of what is typical at fluid processing  
24 plants is derived from your knowledge of fluid processing

1 plants from which period of time? Pre-1994, 1994 through  
2 1999, or current?

3 A It's pre-1999.

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

7 A I made a statement in my 1985 report and that  
8 was based on my -- (inaudible) -- Milk Order Number 2 --  
9 -- (inaudible).

10 Q Okay. So --

11 A And I assumed that since the fluid operation --  
12 (inaudible) -- customers and customers usually do weekend  
13 shopping. And so it's the -- the processing schedule had  
14 to cater to that.

15 Q Okay. So this statement is based on your  
16 hands-on experience and working knowledge from working in  
17 the Order 2 market administrator's in the mid 1980s?

18 A 1970s.

19 Q 1970s?

20 A Yeah.

21 Q Okay. Do you have any knowledge about changes  
22 in distributing plant capabilities since the 1970s to  
23 receive milk seven days a week and store it at the  
24 distributing plant rather than having it balanced

1 elsewhere?

2 A (Inaudible).

3 Q Would you agree with me that the number of  
4 distributing plants that survived post-reform are  
5 substantially fewer than those that existed in the 1970s  
6 and '80s?

7 A I haven't looked at the statistics.

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

11 A Nationally, yes.

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

15 A I have -- I haven't studied -- (inaudible).

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

19 A Which -- which schedule?

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



1           A     It -- (inaudible) -- includes -- (inaudible) --  
2     was based on a study back in 1994.

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

6           A     That -- 1994 -- (inaudible) -- study in 2002,  
7     so that's less than a decade.

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

10          A     That's correct. And -- (inaudible) -- what I  
11     have in the -- (inaudible).

12          Q     In -- let me ask you a general question about  
13     operating costs because you studied that quite a bit. If  
14     a plant -- a butter powder plant is operating at 90  
15     percent capacity in one month and if the following month  
16     drops to 90 percent capacity, is the cost of that unused  
17     five percent capacity the same as if the plant dropped  
18     from, say, 40 percent to 35 percent capacity?

19          A     Fixed operating costs -- (inaudible) -- total  
20     fixed overhead costs would be the same.

21          Q     The same per extra unit of powder?

22          A     (Inaudible). Not for -- (inaudible).

23          Q     No, okay.

24          A     For the entire plant, the total fixed and

1 overhead costs should be the same.

2 Q Okay.

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

5 A Yes.

6 Q It'd be higher because some of the direct cost  
7 is variable. Some semi-fixed. And then when you --  
8 (inaudible) -- those into fixed cost overhead over fewer  
9 units, then the cost per unit can be higher.

10 Q Okay. So let's see if I can paraphrase back to  
11 you. If -- if a plant is reducing its capacity or its  
12 used capacity from 40 percent to 35 percent, the -- the  
13 cost per pound of powder produced is going to be greater  
14 than if the reduction is from 90 percent to 85 percent?

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

17 Q The same --

18 A The reduction should be -- the (inaudible) --  
19 costs should be the same.

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

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

24 Q I understand that your report assumed that.

1 But I'm asking you whether in real life operation there is  
2 greater per production unit cost as used capacity goes  
3 down?

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

7 Q Okay. The estimated costs in Table 5 and in  
8 Table 3 are indicated by footnotes to be based on an  
9 assumption of the number of pounds of powder and of nonfat  
10 dry milk that can be produced. You use a constant yield  
11 throughout the year, correct?

12 A That's correct.

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

16 A The -- the yield factor is -- depends on  
17 composition of milk.

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

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

23 Q All right.

24 A The reason I used 4.48 -- (inaudible) -- those

1 are the numbers -- those are the -- (inaudible). They are  
2 convenient numbers to use.

3 Q All right.

4 A And if you don't like those numbers you can  
5 -- (inaudible).

6 Q No, I'm not -- I don't -- I don't want to get  
7 into how much yield there is. I'm trying to ascertain the  
8 cost effect by milk that would producer a greater yield or  
9 lesser yield. Let me ask it this way. If producer milk  
10 is a greater density of fat and nonfat solids, that is fat  
11 is higher and nonfat solids are higher, am I correct that  
12 that would tend to reduce the costs to the butter powder  
13 plant of producing a pound of powder and a pound of nonfat  
14 dry milk versus milk that has more water in it and get the  
15 best yield?

16 A I mean, it -- (inaudible) -- higher yield but -  
17 - yields should be higher.

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

20 A Considerably, yeah.

21 Q In response to a question by Steve Rosenbaum  
22 concerning excess reserves, you responded that excess  
23 reserves are pooled to promote orderly marketing. Can you  
24 --

1           A     That's my understanding.

2           Q     Can you elaborate on your understanding of why  
3     that is so?

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

10          JUDGE BAKER:   Well, the question, I think,  
11     related -- (inaudible).

12          MR. VETNE:    Pardon?

13          JUDGE BAKER:   You were relating your question  
14     to reserves.

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

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

22          MR. VETNE:    Why -- why -- why as a matter of  
23     economics it's a good idea to -- to do what he's testified  
24     to on answer to cross examination to pooled excess

1 reserves to promote orderly market -- how as an economist  
2 does pooling excess reserves promote orderly marketing.

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

5 MR. ENGLISH: I join that objection.

6 JUDGE BAKER: Pardon?

7 MR. ENGLISH: I join that objection. It is  
8 beyond the scope of --

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

10 (Laughter)

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

13 MR. VETNE: Yes.

14 JUDGE BAKER: As -- (inaudible) -- and whether  
15 or not the pooling of reserves is a factor which can enter  
16 into orderly marketing agreements.

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

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

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

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

4 BY MR. VETNE:

5 Q When you used the term "orderly marketing" then  
6 in response to the prior question, what did you have in  
7 mind as far as, you know, what is orderly marketing for  
8 that purpose?

9 A What I was -- (inaudible).

10 Q Pardon?

11 A Whatever -- whatever meant -- whatever is meant  
12 by orderly -- whatever "orderly marketing" meant in the  
13 statutes and in market orders. I think the --  
14 (inaudible).

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

17 MR. STEVENS: It's -- it's beyond the --

18 THE WITNESS: My report so I --

19 MR. STEVENS: Your Honor, I'm going to object  
20 now. Is -- is -- is the question of this witness who is  
21 an employee of the Department of Agriculture, now we're  
22 asking for his personal opinion about things or -- or  
23 his official position or what? I mean --

24 JUDGE BAKER: The question was raised as to

1       whether or not he has an opinion as to what an orderly  
2       market can be.

3               MR. STEVENS:   Well, I think he answered --

4               JUDGE BAKER:   -- broad.

5               MR. STEVENS:   -- and I think he answered it and  
6       he answered correctly that -- that this is for others to -  
7       - to state what the -- what the parts of orderly marketing  
8       are in any given order in any given time based on  
9       conditions as expressed many times by the secretary of  
10      Agriculture in many decisions and rulings.

11              JUDGE BAKER:   Yeah. I understand that, Mr.  
12      Stevens. But his answer reflects that he did not --  
13      (inaudible) -- make an analysis and a study and evaluate  
14      that with respect to what are orderly marketing conditions  
15      and what might or might not enter into them. He has not  
16      done that. He said he just looked at -- (inaudible) --  
17      and decided what he thought.

18              Now, if I misstated his testimony, I'd like it  
19      corrected now.

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



1 JUDGE BAKER: Mr. Vetne?

2 BY MR. VETNE:

3 Q We're looking at the screen here of Figure 1 in  
4 Exhibit 12. And there's a large green swathe -- not green  
5 in your Exhibit 12 -- there's a large green swathe that  
6 says "excess reserves." Does the presence of what you  
7 have identified as excess reserves affect in any way  
8 positively or negatively the balancing -- the costs to  
9 balance the Class 1 market in the northeast?

10 A The way I did it in my report is try to isolate  
11 or -- (inaudible) -- the minimum volume of milk that's  
12 necessary for balancing the Class 1 market.

13 Q Some --

14 A Anything beyond that I called excess reserve.

15 Q Some of those excess reserves may be Class 4  
16 milk, correct?

17 A That's correct.

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

22 A Could you please repeat that question?

23 Q Does the existence of capacity that is actually  
24 used to make butter and powder in the excess reserve

1 category either mitigate or aggravate costs to balance  
2 fluid demand?

3 A Again, I said that the reason I did it the way  
4 I did was to -- to focus and isolate the function --  
5 balancing function. Now -- (inaudible) -- balancing is  
6 not done -- (inaudible) -- but the cost is difficult to  
7 come by. So I had to use -- to isolate and assume it's  
8 done by -- (inaudible) -- problem than to have other  
9 witnesses speak to -- to that.

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

17 Now, was your question directed to the extent  
18 to which and the extent, if any, the cost of making powder  
19 would have on the fluid demand column, a relationship  
20 between the columns?

21 MR. VETNE: Sort of.

22 JUDGE BAKER: Well, what -- what was it you  
23 were speaking of?

24 MR. VETNE: The question -- the question is

1 directed to -- I'm trying to paraphrase it as many times  
2 as -- different ways as I can. Does the fact that there  
3 are plants that are making butter powder on a monthly  
4 basis from excess reserves tend to either increase or  
5 decrease the costs of those plants in handling butter and  
6 powder to balance the fluid market.

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

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

17 THE WITNESS: You have to look at the whole  
18 configuration of milk volumes and the configuration of  
19 plants to answer that question. I haven't done that so I  
20 cannot answer the question.

21 BY MR. VETNE:

22 Q Okay --

23 A -- the cost number -- cost -- is very difficult  
24 to come by. So I have -- since I didn't look at that, I

1 don't think I can answer your question.

2 Q Would I be correct in -- in assuming that  
3 there's likely an effect but we don't know from what  
4 you've looked at whether the effect is positive or  
5 negative?

6 A It's -- it can be positive, can be negative, it  
7 can be only interaction between necessary excesses.

8 MR. VETNE: Thank you.

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

11 CROSS EXAMINATION

12 BY MR. STEVENS:

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

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

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

19 A I did that.

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

21 A That's correct.

22 Q And you have a statement which you made into  
23 the record?

24 A That's correct.

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

3           A     (Inaudible) -- administrator.

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

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

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

11          A     That's correct.

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

14          A     By my supervisors.

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

18          A     No.

19          Q     It's just -- just to assist the parties in the  
20    conduct of the hearing?

21          A     That's correct.

22          Q     And for their use as they -- as they choose to  
23    use it?

24          A     As they see fit.

1 JUDGE BAKER: Thank you, Mr. Stevens. Yes, Mr.  
2 Tosi?

3 CROSS EXAMINATION

4 BY MR. TOSI:

5 Q Thank you, Dr. Ling, for coming back today.  
6 Appreciate your patience.

7 A It's my pleasure.

8 Q On the basis of your study, by coming up with  
9 the various cost estimates that you have based on a 10  
10 percent reserve margin or a 20 percent reserve margin -  
11 -

12 A Ten percent operating reserve.

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

21 A If you upgrade -- (inaudible) -- assumption in  
22 the cost estimate.

23 Q Right.

24 A That's correct.

1           Q     Okay. I was just wondering that if -- that if  
2     -- if -- if we look at it that way if that would be a  
3     number that would be legitimate in the context of your  
4     study?

5           A     Yeah. If you agree with my assumptions on the  
6     cost estimates.

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

14          A     Can you repeat that?

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

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

22          Q     Yes. I guess looked at another way your study  
23    examined costs but -- but the benefits that certain  
24    entities incur -- how is that -- if they're compensated

1       for that, how -- how would producers on the entire -- how  
2       are producers in the entire market benefiting from that --  
3       from that balancing function?

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

9               A     You mean for the balancing?

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

16              A     I -- I haven't studied that so I cannot answer  
17       the question.

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

22              A     That is correct.

23              Q     Okay.

24              A     Let me explain. Cost study's function is to



1 provide research, technical -- not assist in education,  
2 assistance to cooperatives. That's part of our charge.

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

8 A The milk volume -- (inaudible) -- probably none  
9 of the stated costs and no published numbers.

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.

22 Q Okay. Next to where it's just sort of -- I'm  
23 trying to test the witness of how we could perhaps rely on  
24 your study. Let's say, for example, Class 1 use increases

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

7 A Would you repeat that?

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

18 A If -- I had to study that, what -- on such a --  
19 (inaudible) -- if the deliveries -- (inaudible) -- might  
20 result -- (inaudible). But let me backtrack. I think I  
21 need to study that or perhaps -- (inaudible).

22 Q Another one is, let's say for example  
23 production costs -- excuse me, milk production increases  
24 and let's say the existing balancing plants, the butter

1 powder plants that we're referring to are such that they  
2 really can't handle the capacity and they make a decision  
3 to increase the -- the size of your balancing plants, the  
4 variable they handle a much larger volume of milk, okay?

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

14 A (Inaudible) -- used in my report -- put into  
15 the -- the volume of necessary reserves.

16 Q Mm-hmm.

17 A (Inaudible).

18 Q I'm just -- I respect the methodology in your  
19 study --

20 A Yeah -- yeah --

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

24 A (Inaudible).

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

11          A     Well, if I understand your question correctly,  
12    the balancing is -- should be done at the plant that's  
13    privy to the -- (inaudible) -- order.  If you --  
14    (inaudible).

15          Q     Also, in your conclusion -- I think it's on  
16    page nine of your -- of your study.  In the conclusions  
17    you -- if I may quote from it, "Therefore, knowing how  
18    much operating reserves are needed, it's typical for the  
19    cost estimation and that this report uses 10 and 20  
20    percent operating reserves above fluid demand for  
21    illustration."

22                   With respect to knowing how much operating  
23    reserves, you know, coming up with an answer for what are  
24    or what should be the operating reserves, do you have an

1 opinion with respect to how the secretary should determine  
2 what -- what would be legitimate, say, for the northeast  
3 marketing area?

4 A If the secretary agreed with all my  
5 assumptions, cost estimates, what I have here is pretty  
6 solid, I think.

7 Q Given that your outcomes are dependent upon  
8 -- this doesn't depend upon -- the level of the -- what  
9 percentage of operating reserves, in your opinion, should  
10 -- should we be thinking more of 10 percent or 20 percent  
11 or is that a number that you think perhaps might be policy  
12 -- a policy determination?

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

16 Q Okay.

17 A What -- what -- what's needed to satisfy the  
18 demand.

19 Q And were you here yesterday to -- to hear Mr.  
20 Gallagher's testimony --

21 A I was here --

22 Q -- some of the features of the -- of the  
23 northeast marketing area?

24 A I was here and I didn't pay him that much

1 attention.

2 (Laughter)

3 BY MR. TOSI:

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

12 A Thank you.

13 MR. TOSI: Thank you.

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

17 (Brief recess)

18 JUDGE BAKER: We're back in order after our  
19 morning recess.

20 (Pause)

21 JUDGE BAKER: The court reporter has informed  
22 me that he needs three additional copies of Exhibits 10  
23 and 11. Those were the -- (inaudible) -- exhibits of Mr.  
24 Gallagher. Does anyone have them --

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

2 JUDGE BAKER: The court reporter says he needs  
3 three, yes.

4 (Pause)

5 COURT REPORTER: I'm okay. He gave it to me  
6 earlier.

7 JUDGE BAKER: He gave them to you?

8 COURT REPORTER: Yes. Mr. Beshore did.

9 JUDGE BAKER: Oh, all right. Thank you very  
10 much, Mr. Beshore.

11 MR. BESHORE: You're welcome.

12 JUDGE BAKER: You're very helpful.

13 Very well. Dr. Ling is still on the stand.  
14 Are there any additional questions?

15 (No response)

16 JUDGE BAKER: Does anyone have any additional  
17 questions for Dr. Ling?

18 (No response)

19 JUDGE BAKER: There are none. Thank you very  
20 much.

21 THE WITNESS: You're welcome.

22 JUDGE BAKER: Thank you.

23 (Whereupon, the witness was excused.)

24 MR. BESHORE: Our next witness is Bob

1 Wellington.

2 JUDGE BAKER: Very well. Mr. Wellington?

3 Whereupon,

4 ROBERT WELLINGTON

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

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

10 JUDGE BAKER: Very well. Are there any  
11 questions or objections?

12 (No response)

13 JUDGE BAKER: Hearing none, Exhibit 12 is  
14 admitted and received into evidence.

15 (The document previously  
16 marked for identification as  
17 Exhibit 12 was received in  
18 evidence.)

19 MR. BESHORE: I would also like to mark for  
20 identification with the next two consecutive numbers which  
21 I believe to be 13 and 14. Exhibit 13 is the testimony of  
22 Robert D. Wellington with respect to Proposal 7. I've  
23 made four copies available to the reporter and one for  
24 Your Honor. And there are copies in the room for all



1 participants.

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

5 JUDGE BAKER: Before -- before we continue --  
6 what you gave me right now relates to Mr. Gallagher, not  
7 Mr. Wellington. Do you want me to give it to the court  
8 reporter?

9 COURT REPORTER: That's the same here. Mr.  
10 Gallagher.

11 (Pause)

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

13 MR. BESHORE: This is --

14 JUDGE BAKER: That's --

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

16 JUDGE BAKER: That's his testimony.

17 MR. BESHORE: That's the testimony.

18 JUDGE BAKER: That's the testimony. Here are  
19 the exhibits.

20 MR. BESHORE: Right.

21 JUDGE BAKER: Right.

22 (Pause)

23 JUDGE BAKER: Mr. Beshore, according to your  
24 request, the testimony of Robert Wellington shall be

1 marked for identification as Exhibit 13 and the document  
2 marked "Exhibits" shall be marked for identification as  
3 Exhibit 14, and the testimony Exhibit 13.

4 MR. BESHORE: Thank you, Your Honor.

5 (The documents referred to  
6 were marked for identification  
7 as Exhibits 13 and 14.)

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

11 DIRECT EXAMINATION

12 BY MR. BESHORE:

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

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

17 Q And, Mr. Wellington, could you briefly tell us  
18 about your professional background, your educational  
19 degrees, and professional experience?

20 A I have a Bachelors and Masters degree in  
21 agricultural economics from Rutgers University where I  
22 also taught for a while. I worked for the market  
23 administrator's office in New York City after I obtained  
24 my Masters degree. And I worked there for approximately

1 11 years. I served as economist, senior economist, and  
2 then also chief of research and cooperative relations.

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

7 Q For how many years have you been employed by  
8 AgraMark in that capacity?

9 A Thirteen years.

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

12 A One too many.

13 (Laughter)

14 BY MR. BESHORE:

15 A Probably -- probably eight or -- eight or --  
16 eight or nine times during the time period.

17 Q You've also testified with respect to your  
18 areas of expertise before Congress -- committees of  
19 Congress?

20 A Several times.

21 Q And -- and other tribunals?

22 A Yes. And I also work very closely with the  
23 states' departments of agriculture, state legislatures,  
24 particularly in the six New England states but also in New

1 York state.

2 MR. BESHORE: I would offer Mr. Wellington for  
3 testimony -- testifying as an expert in agricultural  
4 economics and dairy marketing.

5 JUDGE BAKER: Are there any questions or  
6 objections or voir dire with respect thereto?

7 (No response)

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

10 MR. BESHORE: Thank you, Your Honor.

11 BY MR. BESHORE:

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

14 A Yes, I would. My name is Robert D. Wellington.  
15 I serve as senior vice president for economics,  
16 communications, and legislative affairs for AgraMark Dairy  
17 Cooperative. I have worked in that position for AgraMark  
18 for the last 13 years.

19 Prior to that, I was employed by the office of  
20 the market administrator, New York-New Jersey milk market  
21 area, for 11 years. My position with the market  
22 administrator's office included senior economist and chief  
23 of research and cooperative relations.

24 AgraMark is a Cappra Volstead cooperative

1       headquartered in -- Massachusetts with approximately 1350  
2       members located in six New England states and New York.  
3       We market about 2.5 billion pounds of milk annually. Our  
4       members own and operate three manufacturing plants,  
5       including -- Cheese plant in Middlebury, Vermont, a cheese  
6       and other dairy product plant in Cabot, Vermont, and a  
7       butter and powder plant in West Springfield,  
8       Massachusetts.

9               I am testifying here today in support of  
10       Proposal 7, which involves payments from the pool to  
11       handlers to perform marketwide services with respect to  
12       all purchasers in the order. This testimony is on behalf  
13       of the Association of Dairy Cooperatives of the Northeast,  
14       abbreviated ADCNE.

15              ADCNE consists of the following cooperatives:  
16       AgraMark, Dairy Farmers of America, Dairylea, Land O'  
17       Lakes, Maryland and Virginia Milk Producers, Oatka, St.  
18       Albans, and Up State Farms. These farms -- these  
19       organizations represent more than 65 percent of the milk  
20       pooled in the federal order -- in the Federal Order Number  
21       1.

22              Q       Mr. Wellington, before you go into the  
23       substance or the body of your testimony, I wonder if we  
24       could just briefly review the exhibits that you will be

1 referring to in your testimony which are compiled in  
2 Exhibit 14. And there are nine separate documents in  
3 Exhibit 14 as you identify in the index. And I wonder if  
4 you could just briefly go through those so we have a  
5 preview before you refer to them in more detail in your  
6 testimony.

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

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

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

24 And so we have about 85 percent of the milk

1 receipt that goes to distributing plants is usually around  
2 Class 1. I believe Mr. Fredericks testified to that level  
3 between 85 and 90. So we chose the 85 percent level to  
4 use there.

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

12 Non-cooperative producer receipts. That comes  
13 from the appendix table that Mr. Fredericks put in. And  
14 then we also, I believe -- refer back specifically to his  
15 table.

16 (Pause)

17 BY MR. BESHORE:

18 A Mr. Beshore, can I get a copy? I guess I  
19 didn't --

20 Q Exhibit 5?

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

24 SPEAKER: Page 88.

1 BY MR. BESHORE:

2 A Page 88? Thank you, Bill.

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

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

15 From those numbers, I estimated the volume  
16 today of non-cooperative receipts delivered to  
17 distributing plants. And basically, that's a simple  
18 computation. It's the 85.4 percent of January 2000, and  
19 that is multiplied by the 4.8 billion pounds per day  
20 figure in the -- in the column -- I guess that would be  
21 the fourth column of data. And I come up with 12.6  
22 billion pounds, 12.6 billion pounds per day.

23 The next column shows that 12.6 billion pounds  
24 as a percent of the low month. The low month in this case



1 was August. And so if we look at January of 2000 as a  
2 percent of the August number -- keep in mind this is  
3 rounded to one decimal place in terms of billion pounds so  
4 they're not exactly the same number. They would be 101  
5 percent for that month.

6 When I go to the last two columns, I get to the  
7 residual amount of milk at these distributing plants, that  
8 being 33.7 for January. I take away the 12.6 for the non-  
9 cooperative receipts, and I end up with 21.1 million,  
10 which is an estimation of the volume of cooperative  
11 receipts in distributing plants.

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

18 That's Table 1. That is by far the most  
19 complicated table I have.

20 Table 2. Table 2 is entitled, "Producer  
21 Receipts Classified as Class 4 in the Northeast Federal  
22 Order and Milk Used for Manufacturing at the AgraMark West  
23 Springfield, Massachusetts Plant." I've sort of combined  
24 a variety of information here just for simplicity's sake.

1 I used this a couple different times during the course of  
2 my - my written testimony.

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

7 The West Springfield pounds are the pounds that  
8 we use in West Springfield, the -- the combined pounds of  
9 product, which is basically milk and cream to make butter  
10 and nonfat dry milk.

11 And the last column is putting this as a  
12 percentage of the capacity. The capacity we have at the  
13 plant is 2.2 million pounds per day.

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

18 Table 3 are indices of seasonality of producer  
19 milk deliveries and milk demand. The Ling study in the  
20 year 2000 and 2001 averages for the Northeast Order. This  
21 duplicates what Dr. Ling had in his Table 1 of his  
22 exhibit, which I believe is Number 7.

23 Q Twelve.

24 A Twelve.

1           Q     Table 1 of Exhibit 12.

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

3                     I then took the producer deliveries that were  
4     under the order for the year 2000 and 2001. I took the  
5     average -- for example, the average for January year 2000  
6     and 2001, and I divided that by the 24-month average over  
7     that period to show basically how much -- how -- how those  
8     supplies differed from that average. And in January it  
9     was 102 percent of the average.

10                    I wanted to do that to try to get some  
11    comparison to the Ling study using 2000 and 2001 data.  
12    But once again, that data is straightforward market  
13    administrator data. The Class 1 -- on the, I'm sorry,  
14    producer receipts.

15                    I did the same thing in the last two columns,  
16    which are fluid demand. I took Dr. Ling's numbers from  
17    his Table 1 of Exhibit 12 and then I -- I also calculated  
18    from page five of Exhibit 5 using the two-month -- the  
19    same month two-year average divided by the average for the  
20    24-month period.

21                    And for example, I took the average of January  
22    2000 and January 2001 and I divided that by the average of  
23    the 24-month period of 2000 and 2001 on the Class 1  
24    receipts and came up with a number of 100 for the month of

1 January.

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

10 The second figure, the total producer receipts  
11 per day, which is basically the same number from that  
12 Table 5, Exhibit 5. I'm not -- the source is the same  
13 and it's producer receipts per day. Figure 3 is the  
14 difference between the two, producer receipts per day not  
15 classified as Class 1. Once again, all from Table 5,  
16 Exhibit 5.

17 Figure 4, producer receipts classified as Class  
18 4. These numbers are taken from page five of Exhibit 5,  
19 the -- the exact amount of producer receipts used as Class  
20 4.

21 Figure 5 is milk receipts used for  
22 manufacturing at the AgraMark West Springfield,  
23 Massachusetts, plant. And that's basically a graphic  
24 representation of the numbers for -- for the AgraMark

1 plant in Table 2 of my exhibit.

2 Figure 6 also comes from Table 2 of my exhibit  
3 and it represents the percent manufacturing capacity used  
4 at the AgraMark West -- West Springfield, plant, January  
5 2000 to June 2002.

6 Figure 7 shows the seasonal operating and  
7 necessary reserves for the Northeast Order. And that  
8 takes Dr. Ling's information and basically presents it in  
9 a slightly different fashion. It -- it isolates this  
10 information just on seasonal reserve and necessary  
11 reserve.

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

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

21 Q Yes, please.

22 A I structured my testimony to really answer --  
23 ask a series of questions that I thought that the  
24 department might be asking. I tried to anticipate some of

1       these. And basically, the -- the kind of questions that  
2       we were asking ourselves as we went through this process.

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

11             The Agricultural Marketing Agreement Act of  
12      1937 allows for the classification of milk and the pooling  
13      of the resultant value in order to create a common uniform  
14      price for all producers providing milk to the federal  
15      order market. Producer milk destined for Class 1 use is  
16      neither better nor worse than milk destined for any other  
17      class use at the time that milk is produced, at the time  
18      that it is shipped from the farm, nor at the time it's  
19      received at a Class 1 distributing plant. That milk only  
20      receives its higher value both under the order and reality  
21      when it is weighed and sold as a Class 1-assigned product.

22             Prior to the existence of federal orders,  
23      producers competed in an attempt to capture that higher --  
24      value and leave the lower value uses to the milk of their

1 neighbors. However, this strategy consistently failed as  
2 Class 1 distributors could and did obtain supplies from  
3 neighboring producers who were shipping to plants with  
4 lower value usage and were willing to accept a price only  
5 pennies above what they received at the manufacturing  
6 plants.

7 Any producer who believes that the current  
8 maximum price represents the value of his or her specific  
9 milk because it is received at a Class 1 distributing  
10 plant is mistaken. In the absence of the federal order,  
11 he or she would receive essentially the same price as his  
12 neighbor shipped -- who shipped to a manufacturing plant.

13 Assuring that the Class 1 needs of the market  
14 are met is a primary purpose of the federal order as  
15 defined in the Class -- in the 1937 act as well as the  
16 needs to maximize the price to all farmers who provide  
17 milk to the marketing area. This not only means having a  
18 sufficient total volume of producer milk available  
19 annually to meet the annual Class 1 sales, we also -- we  
20 believe it also means having the Class 1 milk available as  
21 it is needed on a daily basis all year long.

22 One of the intents of Class 1 differentials is  
23 to assure adequate supply of milk. These differentials  
24 tend to be higher in higher Class 1 utilization markets as

1 part of the reason they are higher is because more milk is  
2 needed to assure an adequate supply each day all year  
3 long.

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

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

20 Congress and President Reagan recognized that  
21 problem when they passed the Food Security Act of 1985 and  
22 specifically authorized market service payments under  
23 federal orders. The Dairy Division of the Agricultural  
24 Marketing Service of the USDA explained it well in the



1 following excerpt from its findings and conclusions of May  
2 1st, 1997.

3 "Federal Register," Volume 52, Number 84, for  
4 Friday, May 1st, 1987. "Proposed Rules for Docket Number  
5 AO-366828 et al, which involved a hearing on marketwide  
6 service -- marketwide payments for seven orders in the  
7 southern United States in 1986.

8 Quote, "Payments for services of marketwide  
9 benefit are specifically authorized under the Food  
10 Security Act of 1985. That law amended Section 8(c)(5) of  
11 the Agricultural Adjustment Act reenacted with amendments  
12 by the Agricultural Marketing Act of 1937 by adding the  
13 following provisions.

14 "Subsection (j), providing for the payment from  
15 the total sums payable by all handlers for milk to  
16 handlers that are cooperative marketing associations  
17 described in Paragraph F and to handlers with respect to  
18 which adjustment payments are made under Paragraph C or  
19 services of marketwide benefit, including but not limited  
20 to:

21 "One, providing facilities to furnish  
22 additional supplies of milk needed by handlers and to  
23 handle and dispose of milk supplies in excess of  
24 quantities needed by handlers;

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

3           "And three, transporting milk from one location  
4       to another for the purpose of fulfilling requirements for  
5       milk of a higher use classification or for providing a  
6       market outlet for milk of any use classification.

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

15          "Thus, the objective under marketwide service  
16      payment provisions is that the minimum uniform price for  
17      all producers who -- paren, (reduce), end paren, and all  
18      would share in the cost of providing the services. In  
19      this way, some market participants would not be able to  
20      maintain the advantage gained by receiving benefits but  
21      not having to pay the cost. Therefore, they would cease  
22      to be free riders," end of quote.

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

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

8           The second question we tried to address was,  
9       what are balancing costs and why are they even needed to  
10      be incurred. There are several types of balancing done in  
11      the milk market. Proposal 7 deals exclusively with two  
12      types of balancing.

13           The first is daily balancing of Class 1 needs  
14      and the second is seasonal balancing of Class 1 needs.  
15      Balancing does occur across the entire milk supply in a  
16      marketing order because the production of milk by  
17      handlers, particularly on season -- on a -- on a  
18      seasonally basis -- seasonal basis varies. And that  
19      production pattern must be accommodated.

20           One of our problems in the past with proposing  
21      marketwide service payments was to try to separate those  
22      costs of balancing the Class 1 market with the cost of  
23      balancing the entire supply of milk in the market. Our  
24      plants do not know whether the milk they receive or fail

1 to receive is intended to balance the Class 1 market or  
2 the entire market. Plant managers just know if their  
3 operations are full or empty to some degree.

4 We know what our total plant costs are but  
5 attributing those costs to explicit Class 1 balancing is  
6 almost impossible. That is why we turned to the approach  
7 used by Dr. Ling. His analysis used real data and  
8 reasonable assumptions to exclusively focus on the class-  
9 related balancing cost.

10 In reality, a butter powder plant may run at a  
11 little lower capacity level in the fall. That's dictated  
12 by Class 1 balancing in order to accommodate the total  
13 seasonal fluctuations in all producer supplies, including  
14 cooperative members.

15 The Ling study does not encounter any of those  
16 costs, nor should it. If such producer supply fluctuation  
17 resulted in the need for additional butter powder plants  
18 to facilitate constant volumes of milk at the Class 3  
19 plants all year long, that cost would also not be included  
20 in the Ling study.

21 The attached Figure 1 shows producer receipts  
22 per day classified as Class 1 under the federal order for  
23 January 1st, 2000, through June 2002. Figure 2 shows  
24 total receipts per day during the same period. And Figure

1       3 shows the difference between the two. These figures use  
2       the data presented by Mr. Fredericks of the market  
3       administrator's office, page five of Exhibit 5 and divide  
4       each monthly volume by the number of days in each month.

5               The monthly variation is apparent in these  
6       graphs. Clearly, there are times in the year when the  
7       volume of milk in excess of Class 1 needs is far greater  
8       than other times of the year and that month -- that milk  
9       must find a home.

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

15              The electricity utility sector provides an  
16       analogy that I believe is useful in understanding our  
17       problems in balancing milk supplies. This past summer,  
18       the New England region and many other areas of the country  
19       recorded record -- record -- record levels of electricity  
20       usage on a daily basis. The utility companies had to  
21       maintain sufficient electricity-producing capacity to meet  
22       the higher needed usage throughout the year even though  
23       that meant that on just about all other days they would  
24       have to have available and current fixed costs of unused

1 capacity. They could not look at the annual average  
2 amount of electricity per day. That figure is meaningless  
3 for capacity purposes. Even the monthly average per day  
4 provided little value for capacity purposes.

5 They must have the capacity to provide enough  
6 electricity on the peak day. Sure, they could try to buy  
7 some power from neighboring utilities to get them through  
8 the peak periods. But chances are that those other  
9 utilities are also facing -- facing -- demands and have  
10 little capacity to spare at the time it is needed.

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

18 In the past several years, several Class 1  
19 plants in the northeast have closed and further reduced  
20 the storage capacity of Class 1 milk in the market. Just  
21 like the peak of electricity, the peak of milk supply  
22 relative to the dam must be handled quickly.

23 Balancing milk in the northeast involves  
24 providing consistent and immediate outlets for surplus

1 milk as well as the ability to release or obtain  
2 additional milk when needed. Market balances in the  
3 northeast provide these services over a large volume of  
4 milk. Buying and selling a few spot loads of milk is not  
5 the same.

6 Next question is, why do cooperatives play a  
7 unique role in balancing in the northeast. Cooperatives  
8 have played the primary role in balancing the northeast  
9 market for more than 60 years. Ed Gallagher has already  
10 explained the unique marketing characteristics we face in  
11 this region.

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

16 They -- they number in excess of 4000 according  
17 to market administrator -- to the market administrator and  
18 market about 6 billion pounds of milk annually. I believe  
19 this can be seen in Appendix Table 16 of Exhibit 5.

20 There are dramatic differences in the northeast  
21 relative to how cooperative member and non-member milk is  
22 used. Most of the non-cooperative milk is dedicated to  
23 supplying distributing plants on a year-round basis. As  
24 shown in Appendix Table 15 and Market Administrator

1 Exhibit 5, the average classification of non-member milk  
2 in the Northeast is about 80 percent Class 1 despite the  
3 fact that the northeast is less than a 45 percent Class 1  
4 utilization market year-round.

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

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

17 What Class 1 producers providing milk from non-  
18 members usually do is buy a volume of milk that is no  
19 longer in the low month needs and use cooperative milk to  
20 balance their needs in the high -- in the high usage  
21 month. Table 1 takes the market -- market administrator  
22 data from page five of Exhibit 5 regarding producer  
23 receipts classified as Class 1 and shows a column  
24 representing 118 percent of those Class 1 volumes and



1 total and on an average daily basis. This suggestion  
2 represents one divided by -- this suggestion represents  
3 one divided by 0.85 and it's made because distributing  
4 plants have approximately 85 percent Class 1 milk on  
5 average.

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

15 Table 1 also gives the volume per day for non-  
16 cooperative and cooperative producers as a percent of the  
17 low month during the 18-month period. The non-cooperative  
18 producers -- a low point of receipt per day and uses Class  
19 1 milk from August 2001. The level of milk provided per  
20 day ranged from that low point to a 12 percent -- to 12  
21 percent higher in March and April of 2002. It is  
22 significant that the high point of deliveries of non-  
23 members was in the spring when Class 1 sales tend to be  
24 less than in the fall.

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

11           The next question is, how do we balance the  
12           Class 1 market. The Northeast Federal Order is an  
13           extremely large milk production and Class 1 demand area,  
14           as also indicated by Mr. Gallagher's testimony. Some  
15           areas, such as the upper midwest, have a large enough  
16           Class 2 industry -- Class 3 industry that their smaller  
17           Class 1 market can be balanced by slightly reducing the  
18           amount of milk received by a large number of cheese  
19           plants. Many of those plants, by the way, are owned by  
20           cooperatives.

21           However, even that market must have at least  
22           one or two powder plants. In the northeast, the Class 1  
23           market is too large -- large to be predominantly balanced  
24           by cheese plants on an economic basis. Cheese plants play

1 an important role, as I believe Mr. Gallagher will  
2 indicate in his testimony. However, butter and powder  
3 plants still play a dominant role in balancing the dairy -  
4 - the daily and seasonal needs of the market.

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

15 The overhead costs -- taking out the word  
16 "complete," the overhead costs per hundredweight are \$1.02  
17 per hundredweight of milk at our cheese facility and 61  
18 cents per hundredweight at our West Springfield plant. In  
19 other words, if we remove a hundredweight of milk from  
20 Middlebury served to the Class 1 market, we have \$1.02 in  
21 fixed costs that cannot be recovered. If we remove that  
22 same hundredweight of milk from West Springfield, we incur  
23 a 61 cent cost that cannot be recovered. Our cost of  
24 balancing are lower by 41 cents per hundredweight when we

1 use our butter powder facility. In addition, butter and  
2 powder are far more generic products than our award-  
3 winning Cheddar cheese produced at Middlebury.

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

6 (Laughter)

7 BY MR. BESHORE:

8 A Figure 4 shows the Class 4 volume of milk in  
9 the federal order. The data from this table originates  
10 from page five of the Market Administrator 5. I have  
11 duplicated that data in Table 2 because of its importance  
12 relative to this hearing. The extreme volatility -- can  
13 clearly be seen in both the figure and Table 2.

14 Class 2, our produce receipts are at or  
15 significantly 249 million pounds for the first five months  
16 of 2000, or at or below 100 million pounds during August  
17 and November of 2000. Based on our experiences at West  
18 Springfield, December 2000 likely has producer receipts in  
19 Class 4 at below 50 million pounds for the first half of  
20 the month. Those receipts then likely rose above 100  
21 million pounds for the second half as schools close and  
22 Class 1 and other plants reduce their bottling schedules  
23 during the holiday season.

24 In the year 2001, Class 4 receipts peaked at

1     230 million pounds in the spring and was below 150 million  
2     pounds throughout the late summer and fall. The  
3     volatility was less in 2001 because volatility of total  
4     milk receipts were less.

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

15            Class 4 volume had to fluctuate by 126 percent  
16    between the two halves of the year in order to accommodate  
17    the change in total producer receipts.

18            In -- in the year 2001, total milk receipts in  
19    the order were only 266 million pounds higher during the  
20    first six months of the year than in the last six months.  
21    That was a 2.2 percent difference. During the same era,  
22    Class 1 receipts were 250 million pounds higher during the  
23    same time periods. Class 4 milk once again absorbed more  
24    than 80 percent of the difference in producer receipts

1 even though it averaged less than nine percent of total  
2 producer receipts in 2001. Class 4 volume had to  
3 fluctuate by only 22 percent between the two halves of the  
4 year.

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

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

16 Table 2 also contains information on volume of  
17 milk manufactured at AgraMark's West Springfield,  
18 Massachusetts, plant. This plant has a manufacturing  
19 capacity of about 2.2 million pounds of milk per day. We  
20 were essentially at full capacity in April 2000 when we  
21 used 65.4 million pounds of milk in that 30-day period.

22 The low point that year and for the past two --  
23 years was 19.4 million pounds in November of 2000. We  
24 were operating at less than 30 percent of capacity that

1 month.

2                   Appendix Table 4 of market administrator  
3 Exhibit 5 shows total receipts of milk and cream at the  
4 seven plants operated by the cooperative members of ADCNE.  
5 These plants include AgraMark's West Springfield facility.  
6 Information for the months of May and November between  
7 1992 and May of 2002 is provided. These plants do a  
8 variety of activities, including reloading milk -- skim  
9 milk into a -- cream for sales to other handlers. Those  
10 activities as well as the production of specialized  
11 products, including on-demand specialized milk powders,  
12 tend to be more valuable products and are priorities to  
13 plants.

14                   The least priority is making skim milk powder  
15 and butter. Those are the two products that balance the  
16 Class 1 market. When one averages the amount of product  
17 into nonfat dry milk in each May since 1992, the average  
18 is 220 million pounds. The amount in November is about 97  
19 million pounds. But actually, it's closer to 100 million  
20 pounds when the 30 days in November are adjusted to 31  
21 days, such as in May.

22                   The amount of product used for nonfat dry milk  
23 is clearly more than double the production in May as it is  
24 in November over time. The extremes during this time were

1       60 million pounds in November of 1993 and 286 million  
2       pounds in May of 2002.

3               Butter production tends to have somewhat less  
4       volatility. Class 1 sales average about 2 percent  
5       butterfat needs to balance accordingly more skim milk than  
6       butterfat and producer milk since producer milk averages  
7       nearly twice the butterfat level. For example, when Class  
8       1 sales peak in the fall and the larger amounts of milk  
9       are needed for that classification, the producer milk  
10      received at distributing plants must be separated to  
11      generate milk averaging two percent butterfat. The  
12      separation produces a large volume of cream that is not  
13      needed for Class 1.

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

18              Product manufacturing of butter at the ADCNE  
19      plants averages -- averaged 14.2 million pounds in May and  
20      8.3 million pounds in November, or 8.6 million pounds in  
21      November when adjusted for a 31-day month. Thus, there  
22      were 60 percent more -- 66 percent more butter made in May  
23      than in November on average at ADCNE plants.

24              Cooperatives seek the lowest cost method to



1 balance reserve milk supplies in their areas. The use of  
2 supply arrangements with cheese plants may work in New  
3 York due to the proximity and number of such plants. That  
4 cost -- that cost increases in New England because we do  
5 not have a concentrated cheese industry and the high  
6 transportation costs of bringing the milk against federal  
7 order zones back into New York.

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

16 How can we measure the cost of balancing? It  
17 is very difficult to measure the cost of Class 1 balancing  
18 in an operating plant because it's almost impossible to  
19 isolate those costs and allocate them back to Class 1  
20 balancing functions.

21 Butter and powder manufacturing plants do many  
22 functions. They often reload for longer distance travel.  
23 They can separate milk and sell skim milk or cream. They  
24 can condense skim and sell that product directly. They

1 can combine condensed skim milk and cream in many  
2 combinations and sell them as blends. They can  
3 manufacture butter and they can manufacture dry milk  
4 powder. The powder also can be heightened -- for whole  
5 milk powder. Some operations, such as Oatka, also produce  
6 evaporated milk and package various milk-based drinks.

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

14 Table 2 shows the volume of milk manufactured  
15 in West Springfield as a percentage of full capacity. In  
16 year 2000, we ranged from running at 99 percent capacity  
17 in April to 29 percent capacity in November. In 2002, our  
18 spring peak was 75 percent capacity in May but we later  
19 peaked even higher, 81 percent in December.

20 Q Do you mean 2001?

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

22 In 2001 -- I'll repeat that -- our spring peak  
23 was 75 percent capacity in May, but we later peaked even  
24 higher at 81 capacity -- 81 percent capacity in December.

1 The low point was September 2001 at 37 percent capacity.

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

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

11 As already noted, there are so many complex  
12 activities taking place at a balancing -- at balancing  
13 facilities, it is very difficult to pinpoint what should  
14 be associated with balancing and to what degree. At  
15 AgraMark's West Springfield operation, the least valuable  
16 activities that involve balancing include receiving,  
17 condensing, and drying and churning milk. Other  
18 activities such as selling condensed milk, cream, and --  
19 usually generate more value and would have a higher value  
20 than drying and churning.

21 If you look at the plant running at full  
22 capacity and then remove milk volume from that plant, the  
23 removed product at West Springfield will impact the dryer  
24 and churn first. Therefore, we can look at the --

1 costs of reduced powder and butter production as a --  
2 measure of the costs of balancing in the matter reflected  
3 -- in the manner reflected in Ling's study.

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

13 In the real world, the system is not so perfect  
14 and there are additional costs. These additional costs  
15 include the extra hauling costs needed to move milk to the  
16 already established locations abounding -- of balancing  
17 plants, decided several years ago while the milk supply  
18 area of the order has shifted.

19 Dr. Ling begins his report with a discussion of  
20 the seasonal nature of milk in the marketplace. Table 1  
21 of his report, Exhibit 12, shows indices of seasonality of  
22 producer milk deliveries and fluid demand. Clearly, this  
23 table reflects the pattern we have seen in the  
24 marketplace. I have duplicated Ling's table using here

1       2000 and 2001 data from page five of the market  
2       administrator's exhibit, Exhibit 5.

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

9               Dr. Ling discusses three categories of milk  
10       reserves: operating reserves, seasonal reserves, and  
11       excess reserves. Operating reserves are seasonal --  
12       operating reserves and seasonal reserves are necessary to  
13       the function of the Class 1 market. Hence, Dr. Ling  
14       correctly refers to them in the combined categories of  
15       necessary reserves.

16              Milk production above the level of necessary  
17       reserves are referred to by Dr. Ling as excess reserves.  
18       This term was used because Dr. Ling's study focused on the  
19       Class 1 market exclusively. In reality, excess reserves  
20       are the milk supplies that are for the most part a crucial  
21       part of the manufacturing sector in the northeast. Most  
22       of the excess reserves -- Class 3 cheese uses. However,  
23       some go to Class 4.

24              However, those excess reserves are not a factor

1 in Dr. Ling's study nor in the ADCNE proposal. All of Dr.  
2 Ling's cost factors involve necessary reserves for the  
3 Class 1 market.

4 Further testimony by -- by Mr. Dennis Schad of  
5 Land O' Lakes will document the reasons why we believe  
6 that the northeast market conditions warrant the use of a  
7 20 percent operating reserve as discussed in Table 4 and 5  
8 of Dr. -- of Dr. Ling's report, Exhibit 12.

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

16 Dr. Ling's cost estimate are conservative. When  
17 he considers the balancing costs of handling reserve  
18 supply, he assumes a cost of \$28 million for a butter  
19 powder plant with a capacity of manufacturing 3 million  
20 pounds of milk per day. In 1999, when relocating our West  
21 Springfield plant, an estimated cost of \$33 million if we  
22 move much of the equipment to the new location. If we  
23 provided it with new equipment, the cost would approach  
24 \$40 million.

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

5           Dr. Ling uses an estimate that -- that for  
6           every one percent decrease in the plant capacity use  
7           product cost would increase one-tenth of one -- one-tenth  
8           of a cent per pound. Our costs at our West Springfield  
9           facility increase slightly over that, approximately 0.11  
10          cents per pound.

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

18          Next question, why can't we recoup those costs  
19          from the marketplace. Why do we need to go to the order  
20          to get the job done. Cooperatives who balance the Class 1  
21          market have been -- have been unable to recoup the cost of  
22          balancing these markets. Class 1 processors will not pay  
23          any more than they have to for -- milk supply and many  
24          believe that they pay a high enough price with the Class 1

1 differential, particularly after Option 1-A became  
2 effective in place of the recommended Option 1-B on  
3 January 1st, 2000.

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

16           One of the greatest problems we face in the  
17 industry is that the very price settings that -- that  
18 dairy price setting is extremely sensitive to the last  
19 hundredweight of milk in the market. If that milk does  
20 not have a -- home, it will depress all milk prices, both  
21 over-order and class prices. We see this both nationally  
22 and regionally when current milk production is just over  
23 two percent above a year ago and the market faces stagnant  
24 demand.



1           At most, the -- the supply-demand situation  
2       reflects from two to five percent more milk and milk  
3       products than last year, yet milk prices have fallen more  
4       than 25 percent as those additional suppliers of milk and  
5       dairy products have sought a home.

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

14           Cooperatives provide a home that protects the  
15      integrity of class prices to the greatest degree possible.  
16      All producers benefit from this orderly marketing. If not  
17      for the investments that AgraMark members have made in  
18      areas other than balancing, our members would face -- on a  
19      regular basis. We keep our members well informed  
20      concerning order minimum prices and any deviation from the  
21      minimum -- would be noticed immediately.

22           Why have cooperatives done balancing in the  
23      past and why do we need reimbursement of those costs under  
24      the order now. Cooperatives have balanced in the past

1       because it helped create an orderly marketing environment  
2       that allowed us to sell milk at or above federal order  
3       minimums. Our members did benefit from that action, but  
4       that action came at a cost that was not shared equitably  
5       with farmers in the order who encouraged milk balancing  
6       costs.

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

18             Equitable sharing of costs was the problem  
19      issue and according to USDA findings and conclusions,  
20      quote, "So -- that proceeding that it was concluded that  
21      further consideration of the proposal would serve no  
22      purpose," "Federal Register," Volume 52, Number 84, May  
23      1st, 1987, page 15959.

24             Proposal 7 differs from the marketwide service

1     proposal made for the seven northeast orders in many  
2     regards.  However, the primary difference is in regard to  
3     size and marketing characteristics of the Northeast Order.

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

14            From the late 1950s until January 2000,  
15    cooperative service payments existed in the New York-New  
16    Jersey Federal Order.  AgraMark and other cooperatives  
17    that operate in the northeast but not in the New York-New  
18    Jersey regularly discussed getting marketwide payments but  
19    cooperatives in the region could not agree on a way to  
20    proceed.  We did all agree to seek them as part of the  
21    Fair Act processed -- orders effective on January 1st,  
22    2000.  However, the Department denied our request.

23            In addition to cooperative payments in the  
24    former New York-New Jersey Order, we also had seasonal

1 price adjustments in all three northeast orders that  
2 lowered the Class 3 and Class 4 prices in the spring and  
3 raised them in the fall. This reduced our balancing cost  
4 by a small degree, however other organizations did not see  
5 the same benefits and the Department denied them also.

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

14 The six cents a hundredweight rate was  
15 determined using Dr. Ling's cost of balancing for the  
16 northeast. At a 20 percent operating reserve, total  
17 balancing on a conservative basis is estimated to be  
18 11,567,210. Cooperatives and other handlers who -- who  
19 provide balancing have approximately 76 percent, Market  
20 Administrator Exhibit 5 and 17, of total producer receipts  
21 of about two -- 24.5 billion pounds of milk annually, page  
22 five of the same exhibit. This represents about 18.6  
23 billion pounds of milk annually. When one divides one's  
24 cost by this milk volume, it results in a rate of 6 point

1       -- of 0.0622 dollars per hundredweight.

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

14              A three percent minimum of the total milk  
15 volume in the order for the month represents about 60  
16 million pounds of milk per month. This handler must have  
17 significant marketing relationships with at least one  
18 manufacturing plant but the Class 1 plants -- it's much  
19 more -- at least 20 percent of that volume or 12 million  
20 pounds per month at a Class 1 -- Class 1 milk in the fall.

21              Handlers who operate Class 3 or Class 4 plants  
22 and pool milk can qualify at a lesser milk volume of 1  
23 million pounds of milk per day each month. This million  
24 pound per day minimum was used in the cooperative payment

1 provisions of the former New York-New Jersey Order. It  
2 also represents about 20 -- of milk, which is a  
3 significant volume also.

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

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

15 Under Subsection (b), a qualifying handler can  
16 be required by the market administrator to ship extra  
17 volumes of milk to Class 1 plants if market conditions  
18 warrant. Such extra shipments would not necessarily be  
19 required of other handlers pooled in the Northeast Orders.  
20 Qualifying handlers who receive a marketwide balancing  
21 payment who would be going to take on additional  
22 responsibilities -- should be willing to take on  
23 additional responsibilities and additional costs when  
24 needed by the market.

1           The rate of the payment in Subsection (c) was  
2       previously discussed. Under this section, cooperatives --  
3       cooperatives can only receive payments on the milk of  
4       their members or the members of another qualified  
5       cooperative association. Those cooperative handlers can  
6       only receive payments on non-member milk that they pool.  
7       This --

8           Q     Bob? Is that --

9           A     -- non-cooperative --

10          Q     I'm sorry.

11          A     Non-cooperative handlers. Getting a little  
12       tongue-tied. None -- non-cooperative handlers can only  
13       receive payments on non-member milk that they pool. This  
14       will assist with accounting from the market administrator  
15       perspective and assure that the milk receiving payments is  
16       under the marketing control of the -- of the handler  
17       receiving the payment.

18                We would like to add a provision at the end of  
19       Subsection C that modifies our proposal and reads as  
20       follows:

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

24                The intent of this provision is to assure that

1 any milk receiving a marketwide service payment is  
2 committed to serving the northeast market. Milk that is  
3 moved to another market on a seasonal basis without a  
4 waiting period before qualifying for a marketwide service  
5 payment. This provision further addresses the primary  
6 problem issue based on the former southeast orders in  
7 1986.

8 In summary, large Class 1 markets such as the  
9 northeast require a substantial amount of balancing that  
10 benefits all producers. There is no question that  
11 balancing is needed given the pattern of Class 1 demand  
12 and sales as well as the pattern of producer receipts  
13 during the course of the year and even within a week.

14 There should also be no questions as to who  
15 performs the balancing and that there's a cost to that  
16 important service. Finally, there is also no question  
17 that the payment of marketwide services from the pool is  
18 allowed under the Agricultural Marketing Agreement of 1937  
19 and its subsequent amendments.

20 The key issues for the proponents of Proposal 7  
21 is that the economic returns for providing milk under the  
22 federal -- Northeast Federal Order for producer members of  
23 cooperatives who balance the Class 1 market are less than  
24 that of producers who do not participate in providing



1       those balancing services.

2               There have been problems in the past in  
3       considering marketwide service payments. Prior to January  
4       1, 2000, there were three federal orders with a combined  
5       marketing area less than the one -- less than the one  
6       Northeast Order has today. Although the issue of producer  
7       equity between orders was not as significant as in the  
8       former southeast orders, it was still a factor.

9               A second issue was the largest former -- was  
10       that the largest former order of the northeast, the New  
11       York-New Jersey Order, had provisions known as cooperative  
12       service payments that were linked to balancing.

13              The consolidation and expansion of the former -  
14       - of the three former orders in the Northeast into the  
15       largest federal order in the country addressed the  
16       producer equity issue between orders. Although the  
17       cooperatives both inside and outside of the New York-New  
18       Jersey Order all supported the continuation and expansion  
19       of cooperative payments under the order, the decision by  
20       the Department did not include those provisions and pushed  
21       the co-ops into working closer together to develop a fair  
22       workable marketwide service proposal.

23              Plants which perform significant Class 1  
24       balancing functions also perform many other functions       -

1     - plant costs and other costs that specifically relate to  
2     Class 1 balancing would be extremely difficult and, I  
3     would add, almost impossible, probably impossible. Many  
4     times the costs associated with balancing relate to not  
5     having milk and it's difficult to propose a payment on  
6     milk that is not in one's plant. Dr. Ling's study  
7     provided a way to isolate and quantify the costs using  
8     real-world data and a low-cost, high-economic efficiency  
9     model.

10           The Class 1 market is different in the  
11     northeast from all other markets. It is the largest in  
12     terms of both maximum sales volumes and producer receipts.  
13     However, the Northeast Order also has more than 4000 non-  
14     member producers that ship almost exclusively to Class 1  
15     distributing plants. The Order has more than 70  
16     cooperatives of all sizes that compete in the marketplace  
17     to sell their members' milk. Handlers such as  
18     cooperatives that balance Class 1 needs are unable to get  
19     reimbursed for the full cost of balancing due to  
20     competition in the marketplace among alternative suppliers  
21     of milk available to Class 1 distributors.

22           Class distributors already -- one of the  
23     highest Class 1 differentials in the order system and  
24     often pay those higher prices as -- and also often

1 consider those higher prices as covering the costs of  
2 providing milk to the Class 1 milk both as an aggregate  
3 supply and time-sensitive supply.

4 To the extent that the Class 1 differential is  
5 meant to encourage supply of milk to the Class 1 market,  
6 there is already revenue in the pool relating to that  
7 function. However, that revenue is distributed to all  
8 producers equally even though it is not the individual  
9 producer who balances the Class 1 market. That revenue  
10 should go to the groups that actually perform the services  
11 that benefits the market.

12 The Association of Dairy Cooperatives of the  
13 Northeast, ADCNE, proposal calls for a six cent per  
14 hundredweight payment to those producers who balance the  
15 Class 1 market. It would be available to both  
16 cooperatives and proprietary handlers who qualify. The  
17 proposal provisions provide adequate criteria and  
18 qualifications so that payments only go to handlers that  
19 truly balance the Class 1 market. Handlers who receive  
20 this payment will be required to have additional  
21 responsibilities under the order relative to serving the  
22 Class 1 market they needed -- when needed.

23 ADCNE has also proposed a provision that  
24 mandates a three-month waiting period before producer milk

1 would qualify for the six cent per hundredweight payment.  
2 This additional provision is to assure that qualifying  
3 producer milk is dedicated to serving the northeast market  
4 on a consistent basis.

5 We ask that the Department implement Proposal 7  
6 as soon as possible. Thank you.

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

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

10 JUDGE BAKER: All right.

11 BY MR. BESHORE:

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

18 A I can provide some marginal information  
19 regarding that. St. Albans Cooperative is based out of  
20 St. Albans, Vermont, which is in Franklin County, Vermont,  
21 very close to the Canadian border. They operate one --  
22 one plant that's -- is -- it's a -- it's a powder plant.  
23 It's not a butter plant. They do not churn butter. They  
24 separate milk.

1           They're our major -- one of their major  
2       suppliers and one of the reason they can separate and  
3       operate in that manner is Ben and Jerry's. I believe  
4       they're exclusive supplier to cream for their ice cream  
5       for Ben and Jerry's. So they use the cream in that  
6       manner.

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

12          They -- like I said, they do -- they do not  
13      make butter at their plant. It's really exclusively for  
14      balancing. They have a very inefficient plant. Their --  
15      their dryer, my understanding is something -- about 25 or  
16      30 years old. And they use it when they have to but they  
17      really don't want to have to make that commitment for  
18      their -- for their milk.

19          They have about 500 members and they market  
20      approximately a billion -- a little over a billion pounds  
21      of milk a year.

22          Q     Their -- the -- the plant at St. Albans was one  
23      of the plants which was included in the data assembled by  
24      the market administrator and reflected in Appendix 14 of

1 Exhibit 5, is that your understanding?

2 A I believe so.

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

6 JUDGE BAKER: Very well. Thank you, Mr.  
7 Beshore. Are there any questions for Mr. Wellington?  
8 Yes, Mr. Rosenbaum?

9 CROSS EXAMINATION

10 BY MR. ROSENBAUM:

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

14 A Yes.

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

18 A Yes.

19 Q And those are --

20 A It's pounds used for butter. It's for skim  
21 milk and butter production. It's not total pounds  
22 received by the plant.

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

24 A Of that -- of that -- that milk goes into --

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

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

14 A Fifty-three percent in August.

15 Q I didn't mean to be --

16 A Oh, I'm sorry.

17 Q -- talking about ranges.

18 A Oh, I'm sorry.

19 Q I was going from the beginning of the year to  
20 the end of the year.

21 A Yes.

22 Q My simple question is whether you in fact know  
23 what the annual average is?

24 A I don't have that -- I could calculate that

1 number. I don't have that right -- in front of me.

2 Q Okay. It -- does -- does 67 percent sound  
3 about right?

4 A Probably. I was about to say around two-  
5 thirds.

6 Q Okay.

7 A It depends on -- it depends on the year  
8 involved. That year it's probably around two-thirds. I  
9 think in January it's probably around 60 percent. I'm  
10 sorry. In 2001 it was probably around 60 percent.

11 Q Okay. Now, I believe you've testified that the  
12 eight cooperatives that are members of ADCNE account for  
13 65 percent of the milk pooled in Order 1?

14 A Approximately, yes.

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

17 A Yes, I think those are -- I think those are --  
18 the 25 percent is reflected in the market administrator  
19 data and the 65 percent is from looking at our own pounds  
20 of our members.

21 Q So those two combined are 90 percent?

22 A Of 90 -- correct.

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



- 1           A     No.
- 2           Q     But do they represent some portion of the --
- 3           A     Oh, certainly.
- 4           Q     -- remaining 10 percent?
- 5           A     Certainly.
- 6           Q     Do you know how much?
- 7           A     No.
- 8           Q     Okay. There was testimony by Mr. Gallagher
- 9           yesterday about there being 78 cooperatives in the
- 10          northeast, do you recall that?
- 11          A     Yes.
- 12          Q     And -- and am I right that your eight that are
- 13          members of your group make up -- well, as you've already
- 14          testified, about 65 percent right there, correct?
- 15          A     Correct.
- 16          Q     So those remaining 73 co-ops combined cannot
- 17          exceed 10 percent?
- 18          A     Approximately, yes.
- 19          Q     And -- and -- and one of those is Allied, which
- 20          is a relatively major cooperative?
- 21          A     Allied is a federation of cooperatives composed
- 22          of a lot of much smaller cooperatives. But yes, that is
- 23          true.
- 24          Q     Okay.

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

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

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

13          Q     That leverage being limited by the amount of  
14 milk they have --

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

16          Q     Am I correct that in your proposal the only  
17 costs that you are trying to have covered in Proposal 7  
18 are the costs of balancing?

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

21          Q     And the -- the -- the costs that you've  
22 identified as -- in that respect are seasonal balancing  
23 and necessary reserves, correct?

24          A     The seasonal and operating and then the combine

1 to the necessary ones, yes.

2 Q So there are two elements, seasonal and  
3 operating, which combine --

4 A Yes.

5 Q -- are necessary?

6 A Yes.

7 (Pause)

8 BY MR. ROSENBAUM:

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

10 (Pause)

11 BY MR. ROSENBAUM:

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

16 A Correct.

17 Q And am I reading that correctly to show that  
18 in, say, April and May those non-co-op receipts are in  
19 excess of the low month?

20 A In April and May --

21 Q Of 2001, excuse me.

22 A Yes, because they're at the 104 and 105  
23 percent.

24 Q Okay. And for 2002, they are 112 percent and

1 108 percent of the low month, is that right?

2 A Yes. That -- that basically occurs because the  
3 -- the volume of milk by those non-cooperative producers  
4 is seasonally adjusted by their production, and their  
5 production tends to be higher in those particular months  
6 in the fall than it does in other parts of the year.

7 Q And as a result of delivering more -- more milk  
8 during those months?

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

10 Q On Table 3 you have -- have in essence  
11 attempted to replicate for the years 2000 and 2001 the  
12 data that -- that Dr. Ling had in his report for the years  
13 1994 through '99, is that correct?

14 A That's correct. It's a -- it's a rough  
15 estimate because Dr. Ling used a much longer period of  
16 time which actually smooths out the fluctuations. We  
17 wanted to focus in on the -- the -- the information we  
18 had. He used a rolling average, I believe. We only had  
19 two years so I couldn't roll anything. It had to be a  
20 very simple average.

21 Q All right. And what -- what you're showing  
22 here is that -- with respect to producer milk deliveries  
23 you have 104 percent of the simple average in May of -- in  
24 May, is that right?

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

4           Q     Now, in that respect, are you combining May of  
5     2000 and May of 2001?

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

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

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

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

14          A     I didn't make any adjustments on producer  
15    deliveries --

16          Q     So that --

17          A     -- to account for that.

18          Q     -- your producer deliveries include this,  
19    correct?

20          A     Yes.

21          Q     And -- and you'll agree with me, I'm sure, that  
22    in 2001, which is one of the periods that's included in  
23    your Table 3, there were over 100 million pounds of other  
24    state milk brought in to be pooled on the Northeast Order

1 in each of the months of May, June, and July?

2 A Only because I'm forced to agree because the  
3 numbers are actually in the report.

4 Q And as compared to a -- to a low of only 13  
5 million pounds in November of 2001, correct?

6 A Yes, that is correct.

7 Q And so, the seasonality portrayed in your Table  
8 3 reflects in part the fact that more -- other state milk  
9 is being pooled on the order?

10 A It certainly would impact those numbers.

11 Q Okay. And -- and impact it in the sense that  
12 it -- it -- it amplifies the seasonality?

13 A Amplifies the seasonality, I guess, on my  
14 particular numbers that are there. I don't know if it  
15 amplifies the seasonality of the amount of milk available  
16 in the market because not all that milk comes to this  
17 market. It might be pooled in the market but it might not  
18 be here. But in terms of those numbers, yes, it does have  
19 an adjustment. I think it would amplify it but I'd have  
20 to look at it.

21 Actually, you can recalculate these numbers  
22 with those, I would -- you know, your witness or a brief  
23 could do that.

24 Q Do you -- if you could -- if you could turn in

1 Exhibit 5 to -- and do you see there a list of supply  
2 plants operating under the Northeast Order?

3 A Yes.

4 Q And I'd like you to tell me if you could, if  
5 you know, when each of those plants was -- was built?

6 A When each of those plants was built?

7 Q Right.

8 A That I couldn't tell you. To be honest with  
9 you, I couldn't even tell you when our plants were built  
10 because they were well before my time. They've -- I  
11 can -- I can tell you, for example, if we go through the  
12 AgraMark Cabot facility -- actually, that plant was built  
13 in 1919 because we used it in an advertisement for Cabot.  
14 Although I imagine it has changed quite a bit since then,  
15 but I wasn't around to see it.

16 The Middlebury plant in Middlebury, Vermont,  
17 that was essentially rebuilt in about 1991. That plant  
18 was a Kraft Swiss cheese plant prior to that and then  
19 Kraft decided to close it and I guess get their product  
20 from elsewhere in the country. And we had an opportunity  
21 to purchase that plant and -- but Swiss cheese did not  
22 look like the appropriate market. So we spent quite a bit  
23 of money converting it to a Cheddar cheese plant at that  
24 point.

1           So to the extent that -- the building was still  
2       there. It was -- much of it was rebuilt at that point.

3           The West Springfield facility has changed over  
4       time. But to my knowledge, that has been there for at  
5       least 40 years or more. At one point we had several small  
6       balance -- butter powder plants. We even had one in  
7       Andover, Massachusetts, about 25 miles outside of Boston.  
8       But those were closed for efficiency purposes so we could  
9       balance out of one butter and powder plant.

10           But I'm sorry. I can't give you exact -- I  
11       really have -- don't have any knowledge of anybody else.

12           MR. ROSENBAUM: Thank you very much. That's  
13       all I have at this time.

14           JUDGE BAKER: Thank you, Mr. Rosenbaum. Are  
15       there other questions of Mr. Wellington? Yes, Mr.  
16       English?

17                           CROSS EXAMINATION

18           BY MR. ENGLISH:

19           Q     Mr. Wellington, turning to your Exhibit 14 and  
20       starting with Table 2 for a second.

21           A     Is that -- I -- is -- is -- are my exhibits  
22       with my tables for 14?

23           Q     Yes. Yes.

24           A     Okay. I'm sorry. I didn't write that down.



1 Q Glad to provide that for you, Bob.

2 A Thank you. What -- what table again, please?

3 Q Table 2.

4 A Table?

5 Q Two.

6 A Two. Yes.

7 Q The first question is a clarification question.  
8 Did the quantities included on Table 2 include purchased  
9 cream for butter production?

10 A It included all the -- the product that went  
11 into the -- the dryer and the churn. And so to the extent  
12 that we purchased cream that month, I couldn't segregate  
13 whether it was purchased cream or our own or whatever.  
14 But it did add to the supply. There was a total supply  
15 available to the plant.

16 It's another reason why we need -- it's very  
17 difficult to try to isolate these costs because we have so  
18 much -- so many things happening.

19 Q Do you have producer receipts -- I -- strike  
20 that.

21 Do you have receipts of milk at that plant that  
22 are not counted as producer receipts? Other than  
23 purchases of -- purchased cream?

24 A We have -- we have transfers of milk from other

1 handlers. Is that what you're saying?

2 Q Yes.

3 A In essence? Yes. Yes, we will have that.

4 Q Is that included in this chart?

5 A No, not specifically included except to the  
6 extent that if you could -- that that added to the supply  
7 available, that would also go into the butter and powder  
8 churn.

9 Q I guess what we're getting at is the first  
10 column is the total Class 4 pounds pooled on this order,  
11 correct?

12 A Yes.

13 Q But that might not be the total of product that  
14 would be classified as Class 4 somewhere that is produced  
15 in all the facilities that are represented on this,  
16 correct?

17 A Say that again. I've got to listen to that  
18 twice.

19 Q The quantity of milk that is classified as  
20 Class 4 under this Order 1.

21 A Okay.

22 Q Does not include product that may be processed  
23 at one or more facilities here that are classified as  
24 Class 4 under another order? Pooled under another order.

1           A     I don't -- I -- I think -- I think you're  
2     correct. But I'll -- I'll be honest with you. I don't --  
3     we don't receive at Springfield very much milk from --  
4     from other orders. I know they do -- that might be a good  
5     question to ask Mr. Schad, for example, in Pennsylvania.

6           Q     But for your purposes, to your knowledge, you  
7     receive some but not a lot, is that --

8           A     Some but -- yeah, relatively little milk. We  
9     do -- we receive producer milk directly. We might have  
10    milk that's -- that's sent to that plant, weekend milk or  
11    something, from a proprietary handler, you know, who wants  
12    to get rid of milk. And I believe that -- that would be  
13    producer milk. That wouldn't be included in what you're  
14    asking.

15          Q     That's correct. It sounds to me that -- that  
16    would be milk that would be included on Column 1?

17          A     Yes.

18          Q     Okay.

19          A     Keep in mind, we're talking about milk included  
20    on Column 1. There's a -- there's a volume of milk that  
21    comes into the plant, okay. And it comes from all  
22    different sources. And then there's a volume of milk that  
23    makes its way through the plant to the butter -- to the  
24    powder and butter churn, okay, and that's what I'm trying

1 to show here.

2 Now, I can't say this milk went to the churn,  
3 this milk didn't, this milk's Class 4. I can't do that.  
4 I can just say, here's what we tried to do.

5 And once again, you get to the point of trying  
6 to isolate what our costs were, I -- I -- in a way I can't  
7 do that because I can't say this milk should -- this cost  
8 should go to this milk, this cost should go to that milk.  
9 So Dr. Ling's study helps us to isolate those costs.  
10 That's really why -- why it's very, very important and one  
11 of the reasons we can be here today to look at this  
12 particular issue.

13 Q I guess what I'm trying to get at, though, and  
14 maybe -- and what you're telling me is maybe you're not  
15 the right person to ask. But let me ask a different type  
16 of question, which is --

17 A Sure.

18 Q -- do you have non-pool plant -- non-pooled  
19 milk at that plant?

20 A Do we have non-pool milk at that plant?

21 Q Is -- is this -- let me back up. Is this a  
22 split plant?

23 A No.

24 Q Is any portion of it non-pool plant?

1           A     No. I mean, we -- do we have -- do we have  
2 non-pool milk at that plant. I'm trying to think because  
3 back when Maine had plants that were non-pool -- that  
4 were non-pool plants, we would -- we would take milk from  
5 Maine and -- and -- and to some extent balance those  
6 plants. Now they're in the order.

7           Q     And that occurred pretty much January of --  
8 January and February of 2001, pretty much all those plants  
9 are in the order?

10          A     As of the change in the order I think just  
11 about everyone came in. I hope -- there's three plants in  
12 Maine, one in -- one in Portland. That's a hood plant,  
13 and that clearly was in the order. There's one in Bangor,  
14 Maine. That used to be called Grant's Dairy. It's now  
15 owned by Dean Foods. That's in the order. That's been in  
16 the order back then. And Oakhurst I think was in the  
17 order then. They are now. They have been for a period of  
18 time. I guess maybe some of the statistics you got from  
19 Mr. Fredericks would show that.

20          Q     Correct. I guess what I'm getting at is I'm  
21 trying to compare again page 85 --

22          A     Sure.

23          Q     -- of Exhibit 5, which is milk powder and  
24 butter production, and the first column, which is total

1 milk receipts. And I'm happy to look at any particular  
2 months. So I mean, just by example, looking at May of  
3 2000 --

4 A Sure.

5 Q -- which had 454,395,205 pounds of milk  
6 receipts.

7 A Okay. So we're at the bottom.

8 Q Versus May of 2000 Class 4 production of 249  
9 million pounds. So that there is -- what -- what's the  
10 source of that number?

11 A I'm -- I'm confused now.

12 Q The last number that was -- the last number I  
13 just read off Table 2 of Exhibit 14.

14 A Well, let's -- let's -- let's -- okay. We're  
15 looking at May --

16 Q May of 2000.

17 A May of 2000. Let me just focus in on that.  
18 Okay. Yep. We have 317 million pounds of Class 4 milk.  
19 Okay. You can also get that from Table 5 of Exhibit 5  
20 because that was my original source for that number.

21 Now, okay. So we have that number. Where are  
22 we going?

23 Q Well, okay. Now you confused me because you've  
24 given me a number that doesn't match with what I just

1 looked at.

2 A I'm sorry.

3 Q Where did you just get 317 million from?

4 A I thought you were looking at my Table 2.

5 Q I am looking at your Table 2 for May of 2000.

6 A Oh, I'm sorry. I'm -- I'm sorry. May of 2000.

7 Okay. It's 249.

8 Q Thank you. Okay.

9 A I was looking at 2002.

10 Q All right. So now we have 249 million pounds  
11 of Class 4.

12 A Okay.

13 Q Okay.

14 A Yep.

15 Q You're on that same page?

16 A You got it.

17 Q Now I'm looking at page 85 of Exhibit 5.

18 A Okay.

19 Q For May of 2000.

20 A 454 million pounds.

21 Q Correct.

22 A Are we good? Okay.

23 Q Yes.

24 A Yep.

1           Q     I'm asking, to the extent you know, what is the  
2     difference between those two numbers?

3           A     That's -- this is milk that is received at  
4     those plants. And that milk can be -- a variety of things  
5     can happen with that milk. It can be reloaded and -- and  
6     sent back out. It -- it -- in our case, it's very rarely  
7     reloaded and leaving the area. If we do in the month of  
8     May, it's a very costly proposition.

9                     That milk could be made into condensed skim,  
10    for example, or cream and it could be sold off. It  
11    obviously wasn't going to a Class 4 product so it was  
12    going elsewhere.

13                    May -- I don't think it's a coincidence, by the  
14    way, that when you look at that May number and you look at  
15    the month before, which is April, and you look at the  
16    third column of Table 2, Exhibit 14, we're at 99 percent  
17    of capacity in April, which means we were busting at the  
18    seams when we're at 99 percent of capacity. We went down  
19    to 85 percent probably because we had some issues in the -  
20    - part of the week.

21                    Last time -- at one point back several years  
22    ago I went through the numbers and I questioned our staff  
23    why we were at 106 or 107 percent of capacity and I was  
24    reminded that that was the time the plant blew up and we



1 had a serious problem.

2 So I think what happened that -- I can tell you  
3 what happened in our case for that month is that we  
4 probably -- because we had so much milk available clearly  
5 in April and I believe in May that we were reloading milk,  
6 we were selling condensed.

7 One of the biggest problems, by the way, of a  
8 balancing plant is if we sell condensed, we don't have a  
9 market for it. It's sort of the "we got you" principle,  
10 then. You have to -- if you've got it -- your milk's in,  
11 you've got to do something with it. You've got to get it  
12 off the trucks and you've got to move it, and condensing  
13 is a faster way because our limitation occurs at the  
14 dryer, not at the condenser. So we can bring the milk in.  
15 We can bring in about probably 90 million pounds of milk  
16 if we have to into our plant. And -- but we have to then  
17 either reload it, right, reload it, condense it, since we  
18 couldn't put it through the -- the dryer because we can  
19 only do 2.2 million pounds.

20 So I think that's part of the issue. There are  
21 a lot of things happening with the plant. There are a lot  
22 of things happening with our plant. We had quite a bit of  
23 milk that we received at the plant and then we try to do  
24 various things with those -- that milk.

1 Q Do you purchase milk from outside sources?

2 A Yes.

3 Q When you purchase milk from outside sources, is  
4 that sort of "got you" during April and May and you pay  
5 less than the order price for the milk from those outside  
6 sources?

7 A It depends. If we have a contract with those  
8 outside sources such as, you know, I have a contract with  
9 a Class 1 processor, then I wouldn't be a "got you"  
10 because we have an arrangement with them on that.

11 If it's somebody who's looking to pedal some,  
12 you know, a spot load of milk, we got them. I mean, it  
13 depends on -- it depends on --

14 Q So just like on the condensed on your side,  
15 then you've got them. And -- and if they're pedalling a  
16 spot load, you're going to pay them, you know, whatever --

17 A Right. Because chances are if we're taking  
18 that milk in and we can't handle it because we're near  
19 capacity that we're going to condense it and unload it at  
20 a very low cost. So I mean, I'm not saying -- we as an  
21 economic entity would try to make some money on that -- of  
22 course. But I mean, a lot of times even though we're  
23 paying them less, we're also getting less.

24 Q So if -- if somebody who is balancing their own

1 supply comes to you with a spot load of milk, that's an  
2 example where they may end up getting less than the order  
3 price for the milk, correct?

4 A Yes, that's true.

5 Q In 1991, going back now what -- you had a bad  
6 time, apparently -- the policy to pay somewhere in the  
7 neighborhood of between 50 cents and a dollar  
8 hundredweight under the class price for milk you purchased  
9 from other sources. Do you recall that?

10 A I've never -- (inaudible) -- pricing.

11 Q That's why I know about it.

12 A Yes. Yes, we did, because we were losing money  
13 on every hundredweight of milk that went through that  
14 plant, our own milk and everything else, and we had -- we  
15 had a 20 -- across our membership. Any milk that we were  
16 putting in, if we paid the class price with whose money?  
17 We just wouldn't -- why bother putting it in other than  
18 we've got the plant, we've got the fixed costs, and  
19 everything else. So yes, we did -- we did pay that  
20 amount.

21 I'll be honest with you. I don't recall the  
22 exact amount but I know we were paying well under and that  
23 certainly is well under.

24 Q If that's what -- what USDA in the published

1 decision said you said at the hearing, that would be, you  
2 know -- let me back up. You testified --

3 A Yes, I did testify. If you ask me what I --  
4 exactly what I said in 1991, I would say I'd have to  
5 reread it. But if -- if it's in that record, then yes, I  
6 said it.

7 Q Does -- does any member of ADCNE have  
8 agreements with large cheese plants to -- that help ADCNE  
9 balance through supply milk?

10 A I believe they do. We don't at AgraMark. I  
11 believe that Mr. Gallagher will address that issue in his  
12 testimony because I believe his organization does. But we  
13 do not.

14 Q Turning to Table 3, and I know you described  
15 this as a straightforward table but let me see in which  
16 way it's a straight table.

17 A I'm an economist.

18 Q Yeah. Well, let me see as a lawyer in which  
19 ways it is not perhaps so straightforward.

20 A Okay. I think these answers are fairly obvious  
21 but just to make it clear for the record, the -- the  
22 column for your study that is admittedly for a limited  
23 time frame of 2000, 2001, that column of producer milk  
24 deliveries would include milk that is pooled under this

1 order but was transferred or diverted to a plant -- a non-  
2 pool plant or to a plant outside the order, is that  
3 correct?

4 A Producer receipts pooled under this order, yes,  
5 it is included in this.

6 Q And that column does not include milk produced,  
7 for instance, in the state of New York that shows up on  
8 the -- market statistics as having been pooled on that  
9 order for a particular month, correct?

10 A If it was pooled on that order, then it is not  
11 included in these numbers.

12 Q And for the purposes of a fluid demand column,  
13 again, your study for 2000, 2001, the fluid demand would  
14 include packaged Class 1 distribution into other federal  
15 orders, correct? It doesn't matter. It includes all  
16 Class 1 packaged distribution regardless whether it's  
17 Order 1 or going down, say --

18 A By -- by a 7(a) distributing plant?

19 Q Yes.

20 A Yes. When I did this, Chip, my intentions were  
21 to try to use the easiest available data. You can make --  
22 you can recalculate this table with those other numbers.  
23 I --

24 Q To the extent they're available.

1       Unfortunately, sometimes they're restricted and that makes  
2       it tough --

3           A     That's -- that's the problem.  When I first  
4       looked at this, I did this a little bit of time ago.  And  
5       that's one of the issues that we had, too.

6           Q     Well, let me get to that -- that very question  
7       and let me ask you if you would turn to Exhibit 5, the  
8       market administrator's statistics, pages 79 and 80?

9           A     Yes.

10          Q     And before I ask the question, I'm going to  
11       preface it by saying I'm about to ask you for confidential  
12       information and I know that.  And I'm asking though as  
13       proponents of the proposal whether you're prepared to, you  
14       know, answer the questions.  If you're not, you're not.  
15       That's -- that would be fine.

16                But can you tell me whether, for instance, on  
17       page 79 for any month for which data is restricted either  
18       for transfers to other order plants or transfers from  
19       other order plants whether AgraMark made or received such  
20       a transfer?

21          A     I don't know.  I mean that's very detailed,  
22       okay.  I mean, to be honest with you, I have it right  
23       here.  I don't -- there's a lot of other things I would  
24       say is proprietary that I wouldn't give, but this I'd

1       probably give.  It's not -- it's not -- and keep in mind  
2       that one of the reasons I might be able to give it to you  
3       is because we don't do very much of that given our  
4       location.

5             Q       But -- but you don't know --

6             A       I -- I don't -- I don't have that.  I'd have to  
7       go back into our reports to see what that one is.

8             Q       And turning to page 80 for a moment, which is  
9       the diversions, and in essence the only restricted data is  
10      diversions to other order plants.  Would that be the same  
11      answer, you don't know?

12            A       I don't know.  Sorry.

13            Q       You discussed with Mr. Rosenbaum the -- some of  
14      the history of some of the facilities to the extent you  
15      knew them.

16            A       Yes.

17            Q       For the Springfield facility, again, if the  
18      Class 3-A decision reveals that an AgraMark witness, who I  
19      believe to be you, testified that that plant was expanded  
20      in 1984, whatever that testimony is, that would be  
21      accurate?

22            A       Yes.  In fact, I believe it was expanded in  
23      1984.  I knew it was expanded at the time.  I came to  
24      AgraMark in 1989 so prior to that I have just secondary

1 knowledge.

2 Q But nonetheless, that decision was made to  
3 expand that plant as opposed to make other decisions --

4 A I think at the time -- I'm not sure whether we  
5 closed any of the smaller plants at that time. I know we  
6 looked at the balancing issues on that. We're constantly  
7 looking at that.

8 I'll give you an example. Last June we looked  
9 at it and said, you know, West Springfield was operating  
10 at a much lower percent of capacity. There was less milk  
11 out there. Can we operate some other way.

12 One of the -- one of the unusual things about  
13 our West Springfield plant, that it's located in the town  
14 of West Springfield. For anyone who's been in West  
15 Springfield, it's above -- just above the Connecticut  
16 border near Hartford. And our plant is located right  
17 across from a huge shopping mall next to a 12- or 14-  
18 cinema complex by -- surrounded by four motels. We were  
19 there first, by the way, okay. And you would look at it  
20 and say, why would you want to be there, okay.

21 We are there because if you also look within a  
22 mile of the plant is the entrance to Route 91, which runs  
23 from the Canadian border down to New Haven, Connecticut.  
24 Also within a mile of the plant is the Massachusetts



1 Turnpike that runs from eastern New York to Boston, okay.  
2 We -- we were trying to be efficient and have one plant to  
3 balance our New England market at the time. That was the  
4 place to put it.

5 We could -- at other times we've had smaller  
6 plants but -- and the efficiencies of that. That has -  
7 - that -- that was the best way to go. But when that  
8 happens, you're still spending a lot of money moving milk  
9 around.

10 Q But you nonetheless made that economic decision  
11 --

12 A Absolutely we -- we made that. And in fact,  
13 Chip, if we made a bad economic decision, they also  
14 believe that that's one of the reasons we should look at  
15 Dr. Ling's study. Because the order shouldn't pay for bad  
16 economic decisions. We've got to look at it and say  
17 what's -- what's an economic, efficient way to look at it,  
18 focusing in on Class 1, not just did AgraMark do something  
19 or, you know, poor -- do we have higher costs or other  
20 factors.

21 Q Well, let's talk about Dr. Ling's study for one  
22 more moment.

23 A Sure.

24 Q AgraMark doesn't pay an interest rate anywhere

1 close to nine percent on its debt, does it?

2 A No, not -- not today. We -- we did in fact at  
3 points in the past but not today.

4 Q Okay. But -- but can you tell me what your  
5 interest rates actually are --

6 A Boy, that's a -- that's a good question. It  
7 depends on -- I'll try and go back and look at the last  
8 time I looked at those particular issues. I would say  
9 probably right now around four, five percent, somewhere in  
10 that area.

11 I would say at certain -- certain -- probably  
12 about half of the nine percent, somewhere in that  
13 vicinity, Chip.

14 Q Turn to page 13 of your testimony. And the  
15 statement in the -- just above the summary, the proposal  
16 to add a provision at the end of Subsection (c).

17 A Okay. Let me get there.

18 (Pause)

19 BY MR. ENGLISH:

20 A Yes. Which paragraph again? I'm --

21 Q The -- the paragraph that says, "We would like  
22 to add a provision at the end of Subsection (c)."

23 A Yes.

24 Q I take it you recognize that there is risk that

1 a producer could be pooled on order -- at the very  
2 critical time of the year when the milk is most needed in  
3 Order 1 and nonetheless come right back in a future month  
4 and receive marketwide service payment. That's --  
5 that's the underlying purpose of this --

6 A Well, it's not that we -- we perceive a risk.  
7 It occurs. It occurs and whether -- and it occurs  
8 throughout different times of the year. We're saying that  
9 you need a regular commitment to this order in order to do  
10 that.

11 The cooperative service payments, I think, had  
12 a year waiting period on it. But this -- this we looked  
13 at three months and the group agreed as a group to have  
14 three months.

15 Q And I was going to get at that. Why not a full  
16 year?

17 A Hmm?

18 Q Why not a full year for regular --

19 A Because it was a group consensus that they felt  
20 three months would be sufficient time.

21 Q Would you agree with me that as written -- and  
22 you were in the room yesterday for the testimony of Mr.  
23 Fredericks, right?

24 A Not -- only a small amount.

1           Q     Do you recall a discussion that I had with him  
2     with respect to the fact that producers can be -- can be  
3     pooled in the same month on two different orders?

4           A     No, I wasn't in for that discussion.

5           Q     Were you aware of that fact?

6           A     I knew because we were -- we were -- we're  
7     addressing some of those issues. In -- in our order can  
8     they be done? No, I wasn't aware of that. I -- we don't  
9     do it. And we don't have -- in our area we haven't done  
10    it in New England --

11          Q     To the extent the purpose of your proviso is to  
12    make sure that someone has -- you know, is maintaining a  
13    real connection with this market, wouldn't it make more  
14    sense to -- you know, it's not just be pooled on this  
15    order but it's pooled on this order and not pooled  
16    somewhere else?

17          A     Same producer?

18          Q     Same producer -- same producer managing the  
19    pool on two different orders in the same month.

20          A     It -- I'd have to go back to my group, but it  
21    makes sense to me. I mean, I can't say it's my group's  
22    position.

23               MR. ENGLISH: That's all I have. Thank you.

24               JUDGE BAKER: Very well. I realize there are

1 additional questions for Mr. Wellington, but this does  
2 bring us to our time for our luncheon recess. We'll take  
3 an hour for our luncheon recess.

4 (Whereupon, at 12:45 p.m., the proceedings were  
5 adjourned for lunch, to reconvene at 1:45 p.m., the same  
6 day.)

7 A F T E R N O O N S E S S I O N

8 1:45 p.m.

9 JUDGE BAKER: Could we all take our seats,  
10 please?

11 Whereupon,

12 ROBERT WELLINGTON

13 having previously been duly sworn, was recalled as a  
14 witness herein and was examined and testified as follows:

15 JUDGE BAKER: The hearing is in order after our  
16 luncheon recess.

17 I have been informed that there are two  
18 individuals who will need to be heard later on today. Are  
19 those individuals in the hearing room now?

20 MR. ENGLISH: Are these the dairy farmers I  
21 mentioned earlier?

22 JUDGE BAKER: Yes.

23 MR. ENGLISH: No, they're not in the room right  
24 this minute.

1 JUDGE BAKER: Very well.

2 MR. ENGLISH: I thought maybe after the  
3 afternoon break or something.

4 JUDGE BAKER: Very well. We'll hear them then,  
5 Mr. English.

6 Are there any others in the room who wish to be  
7 heard today or need to be heard today?

8 MR. ENGLISH: I have one other person if  
9 possible at the very end of the last -- Butch Miller of  
10 Queensboro Farms. He was here yesterday and today. He's  
11 --

12 JUDGE BAKER: Very well. Those who have to be  
13 heard, we'll hear them after the break then, our afternoon  
14 recess.

15 Now, Mr. English, I have here a note that  
16 Exhibit 9 was identified only and it relates to data from  
17 June to October you were to obtain from Ms. Ely.

18 (Laughter)

19 JUDGE BAKER: You have obtained it, I see.

20 MR. ENGLISH: She identified it yesterday.

21 JUDGE BAKER: Yes.

22 MR. ENGLISH: I had to make copies.

23 JUDGE BAKER: Very well.

24 MR. ENGLISH: And so I have done so. If this

1 is a convenient time, if you want to do it later, that's  
2 fine.

3 JUDGE BAKER: Well, why don't we do it now  
4 while it's on our minds.

5 This has been identified. Are there going to  
6 be any objections with respect to the admission into  
7 evidence?

8 MR. ENGLISH: It was my understanding  
9 yesterday, Your Honor, no, that -- that people had an  
10 opportunity to look at it.

11 JUDGE BAKER: Very well. Then Exhibit 9 is  
12 admitted and received into evidence. Four copies for him,  
13 the court reporter, please. Thank you.

14 (The document previously  
15 marked for identification as  
16 Exhibit 9 was received in  
17 evidence.)

18 JUDGE BAKER: Mr. Wellington is on the stand  
19 and is subject to cross examination. Are there any  
20 questions for him?

21 (Pause)

22 JUDGE BAKER: Mr. Vetne?

23 MR. VETNE: John Vetne appearing for  
24 Friendship.

1 (Pause)

2 CROSS EXAMINATION

3 BY MR. VETNE:

4 Q Let's see. Mr. Wellington, can you please turn  
5 to your Table 1 and have handy Exhibit 5?

6 A All right.

7 (Pause)

8

9 BY MR. VETNE:

10 Q As I understand it, data on your Table 1 is  
11 taken to some degree from Exhibit 5, page 86, which is  
12 Appendix 15?

13 A Yes.

14 Q Okay. And you identify that milk -- sorry.  
15 Milk from Appendix 15, Column -- numerical column two as  
16 non-cooperative milk, correct? That that column in Table  
17 5 is entitled, "Percentage of Proprietary Handler Producer  
18 Milk"?

19 A Yes.

20 Q Were you here when Mr. Fredericks described  
21 that -- that column as also including cooperative milk  
22 that for whatever reason was not marketed as 9(c)  
23 cooperative milk?

24 A No, I wasn't. In fact, I wasn't aware of that.



1           Q     Okay. Which of your columns would be affected  
2     by their characterization if you were to assume that  
3     Appendix 15, the last column, included some cooperative  
4     milk that happened not to be 9(c) milk?

5           A     Of course, it's the original column that I used  
6     it from, which is Column 6. That's the percent of  
7     proprietary handlers. And then that -- that percentage is  
8     used in the next column, which is the milk pounds of  
9     estimated volume, day of non-co-op receipts delivered to  
10    distributing plants. The next column of course is a  
11    percentage of that, the average, so if that number  
12    changed, that number would change.

13                Then the last -- I guess all the rest of the  
14    columns. The next-to-the-last column is the difference  
15    between the total amount of receipts at distributing  
16    plants that I've estimated and the -- the non -- what I  
17    call non-co-op receipts. So that column of course would  
18    change. And the percentage one.

19                If -- if these changed, all those -- rest of  
20    those numbers would change.

21           Q     Okay. To the extent that your Table 1 were to  
22    be -- be redesignated -- the columns redesignated as --  
23    where it says, "Cooperative Receipts" we designate them as  
24    "9(c) Handler Receipts," and the non-cooperative receipts

1 designated as "Non-9(c) Milk," that -- the numbers would  
2 be -- would be accurate? Is that essentially what you  
3 intended to do?

4 A I think essentially, yes, that's what I  
5 intended to do. I have no issue with characterizing it  
6 that way.

7 Q Your -- in Table 1 also my impression from your  
8 prior testimony, which I want to clarify because I'm not  
9 quite sure. The columns labeled, "Estimate of Total  
10 Receipts" is not based on any data that identifies  
11 receipts at distributing plants but it's imputed receipts  
12 based on an assumed percentage of Class 2?

13 A Class 1. Yes.

14 Q It's Class 1 plus an assumed percentage?

15 A Yes, it's -- well, okay. It's -- it's the  
16 Class 1 producer receipts, and I'm -- and it's adjusted to  
17 reflect that I'm making an assumption that 85 percent of  
18 the milk at a distributing plant is -- is a -- is assigned  
19 to Class 1.

20 Q Okay. And in -- in the amount that you assume  
21 is Class 2, is it merely an exercise in arithmetic or did  
22 you do any comparison to the seasonality of Class 2 use in  
23 the market?

24 A I did nothing on the seasonality of Class 2.

1           Q     Has there been any change in the capacity of  
2     the Springfield plant since 1999? I'm sorry. The nonfat  
3     dry milk and butter manufacturing capacity.

4           A     No. There's been some changes at the plant but  
5     not on capacity of nonfat dry milk.

6           Q     Okay. During the period of January 2000 to  
7     date, has the plant been either out of service or  
8     partially out of service in any month?

9           A     Normally so. When you say "out of service"  
10    -- we have not operated.

11          Q     Has it been out of service for reasons other  
12    than low -- low milk? For reasons of shut down,  
13    construction, improvement, that kind of thing?

14          A     Not for any extended period of time, more than  
15    a couple days. We have made some changes. We had some  
16    problems with our silos and we had to put a -- a new --  
17    replacement of the silos involved. So I mean, there were  
18    some issues on that but not more so than a couple days, if  
19    they were that much.

20          Q     In your Table 2, you've -- under -- under the  
21    "West Springfield" column and a million pounds, you've  
22    indicated that that represents milk used to produce nonfat  
23    dry milk and butter?

24          A     Yes.

1           Q     Is that milk equivalent pounds or is that  
2     product pounds received? The distinction that I have in  
3     mind is if you received, for example, a load of condensed  
4     skim from some source or if you received a load of cream,  
5     would -- would the million pounds here be product pounds  
6     of your receipts or would it be milk equivalent receipts?

7           A     I believe it was milk equivalent receipts.  
8     That's what I asked for.

9           Q     Okay. And there are occasions when West  
10    Springfield would receive skim condensed from other  
11    sources, for example?

12          A     Receive skim condensed, possibly but not on any  
13    kind of regular basis or to a -- to a large amount.

14          Q     But regularly, it would receive loads of cream?

15          A     Yes, definitely.

16          Q     And to the extent that's included, you believe  
17    it's converted to milk equivalent?

18          A     Yes.

19          Q     The production of West Springfield in -- in  
20    butter and nonfat dry milk, if you -- if you make an  
21    assumption of normal yields to which -- which Dr. Ling  
22    addressed, would West Springfield make more powder than --  
23    than butter than you would expect from normal yields or  
24    more butter than powder than you would expect from normal

1 yields?

2 A That really depends on the time of the year,  
3 okay, whether we're buying cream in and moving it to  
4 butter. But I would say on average -- I haven't done a  
5 calculation on that. My tendency would say probably a  
6 slightly more butter than proportion of nonfat dry milk.  
7 Because we do buy cream in on top of bringing milk that we  
8 buy in. We very rarely buy skim in.

9 I think it's a relatively small factor but I  
10 would say it would be a factor.

11 Q Okay. Let's see. Would it be the case that  
12 during the late spring and summer when the plant is  
13 operating at greater capacity it's proportionate use of --  
14 its proportionate use for making butter is lower because  
15 of ice cream demand?

16 A Yes, that's -- that's definitely possible.

17 Q And would the converse be true in the winter  
18 months? You would be making more condensed skim into  
19 powder than cream into butter? No, the other way around.

20 A Other way around.

21 Q Other way around, yeah. The other way around.

22 A Yes, I believe so.

23 Q Okay.

24 (Pause)

1 BY MR. VETNE:

2 Q Your Figure 6. You may have answered this and  
3 I apologize if you have. The percent of -- manufacturing  
4 capacity is the capacity limited to your nonfat dry milk  
5 and butter capacity, correct?

6 A Yes. We have a capacity to receive about 3  
7 million pounds a milk about a day, about 90 million pounds  
8 or so at the plant. But then something else has to be  
9 done with that milk. Sometimes it's reloaded,  
10 particularly if it's going to be traveling a greater  
11 distance because the trucks have to get back to the farm.  
12 Or it could be condensed products. We don't really get  
13 that level in but we have that capacity if we have to.  
14 But we can only process about 2.2 million pounds a day.

15 Q Okay. Since Kraft sold its Middlebury plant to  
16 AgraMark, does AgraMark have a supply commitment to any  
17 other cheese plant?

18 A Yes.

19 Q Is the Springfield butter powder plant also  
20 used to balance the demands of the cheese plants, both  
21 AgraMark cheese plants and other cheese plants?

22 A Yes, it is. That's -- that's one of the  
23 reasons why we just couldn't look at our -- our -- our  
24 costs at our plant, because it does -- a lot of other

1 factors.

2 Q During the year 2000 and the first part of  
3 2001, was the Springfield plant used to receive milk as an  
4 accommodation to producers in New York so that those  
5 producers would be eligible for dairy compact  
6 participation?

7 A It might have been to a small degree. That was  
8 an issue at the very beginning of the compact, early 1997  
9 and 1998. By the time we got further into the compact, it  
10 wasn't used as much because there was direct shipments and  
11 New York producers found -- found markets in New England.

12 So it wasn't -- it was to a small degree,  
13 though, John.

14 Q Were there also accommodation shipments to a  
15 small degree or any degree to the AgraMark plants in  
16 Vermont?

17 A To the Middlebury and Cabot plants?

18 Q Yeah. The Middlebury and Cabot plants from New  
19 York sources.

20 A Cabot, no, not to my knowledge. Middlebury,  
21 probably yes to some small degree. Mainly milk from up  
22 that northern tier of New York.

23 Q All right.

24 (Pause)

1 BY MR. VETNE:

2 Q Your proposal includes the possibility and  
3 intention that folks that receive marketwide service  
4 payments would have first line responsibility to supply  
5 supplemental milk when it's needed. Is that a fair  
6 characterization?

7 A Yes.

8 Q In your experience, may it occur that parts of  
9 the northeast have a need for supplemental milk while  
10 other parts of the northeast may not have the same need?

11 A That is my understanding at times.

12 Q Okay. For a very large market, geographically  
13 large --

14 A Yes.

15 Q -- and other things. Would it be consistent  
16 with your intention for the market administrator to be  
17 able to call on supplies from market service-qualified  
18 organizations on a geographic basis fitting -- fitting the  
19 need wherever it might be?

20 A Formally do that?

21 Q Pardon?

22 A Former -- a formal request? I mean, to raise  
23 that percentage?

24 Q Yes, to raise that percentage for plants --



1           A     That's not what we had -- we had considered in  
2     doing that. I can tell you right now that we -- the -- I  
3     can at least talk to my co-op. If we have a Class 1 need  
4     that needs to be fulfilled and there's a problem in the  
5     marketplace and the market administrator talks to us about  
6     it, we try to help out that situation. If we had co-op  
7     service payments, I think we would probably even try  
8     harder because we would feel a further obligation.

9           So in that sense, informally I think, you know,  
10    the market administrator could do that. But on a formal  
11    basis, no, we have not considered that.

12          Q     All right. Would you agree with me, for  
13    example, that the need may arise for supplemental milk to  
14    Baltimore, Washington, Philadelphia area when there's no  
15    comparable need in Boston, for example?

16          A     Yes, that's true.

17          Q     And if there were an across-the-board  
18    percentage increase in everybody, you might have to  
19    scramble to -- to -- to find a way to comply with that  
20    even though your milk is not economically or logically  
21    located to meet that demand?

22          A     There is that possibility.

23          Q     Would you suggest that the market administrator  
24    should have authority to be geographically discreet in

1 exercising this provision?

2 A I -- we don't have a -- I don't have a position  
3 on that.

4 (Pause)

5 BY MR. VETNE:

6 Q In the northeast, cooperatives serve as the  
7 marketing agent for considerable non-member milk, is that  
8 correct?

9 A We do not, but other -- some other co-ops do.

10 Q Okay. In the middle of page 13 of your  
11 statement you would appear to preclude the payment of  
12 marketwide service funds to cooperatives who have  
13 marketing control of non-member milk?

14 A That's exactly what it does.

15 Q That's what it does. And yet, in the last  
16 sentence of the middle paragraph, you want to assure that  
17 milk receiving payments is under the marketing control of  
18 the handler receiving the payment. What I want to ask you  
19 is, if a cooperative association markets non-member milk  
20 and includes that milk in supplying Class 1 customers when  
21 needed and it goes into surplus uses when not needed, why  
22 should it not be included in the volume of milk for which  
23 service payments are eligible?

24 A Because we feel that the control and the

1 commitment is stronger when you have a relationship  
2 through membership than when you have it just through a  
3 marketing arrangement. With membership, it's a marketing  
4 arrangement and a membership. We have -- we have annual  
5 contracts so we -- we feel that that's a closer tie to  
6 what's involved.

7 And like I said, from my perspective, I don't -  
8 - I don't do any of that so it wasn't really an issue.

9 Q All right. If -- if in aggregate a cooperative  
10 association performs balancing functions and includes in  
11 its marketing and balancing non-member milk, why should  
12 not some provision be made for those non-members who are  
13 part of the cooperative's marketing supply to receive some  
14 of the payments?

15 A Well, keep in mind, the members do not receive  
16 payments, okay. It's the -- it's the -- the -- the  
17 handler who qualifies that receives the payments. So the  
18 question is, should they receive payments on that milk --

19 Q Yes.

20 A -- doing balancing. And that -- that is an  
21 option under this. I can tell you that our position was  
22 that that -- that that should not occur, that we believe  
23 that there should have been a membership commitment is  
24 that stronger tie that's needed. That's our position,

1 John.

2 Q In the market that you're most intimately  
3 familiar with, New England, has there been a reduction in  
4 the percentage of milk that is marketed independently  
5 since 1999?

6 A You're not asking for a reduction in the  
7 percentage of independent producers or non-members.  
8 You're saying market --

9 Q I'm sorry. Yeah. Let me -- let me ask both  
10 questions. Good point.

11 Okay. Has there been a reduction in -- in the  
12 percentage of the market represented by non-member  
13 producers?

14 A Non-member producers, I don't believe so.  
15 There's been no rush to co-ops -- for members to join  
16 cooperatives.

17 Q How about since 1995?

18 A I don't recall a particular incident.

19 Q Maybe it's not your milk but you probably do  
20 know. Weren't a lot of the Garelic plants independently -  
21 - supplied by independent producers?

22 A Yes.

23 Q Okay. And at some point since they've become  
24 totally supplied by cooperatives?

1           A     But, no, that milk still goes -- is marketed by  
2     those cooperatives. Those independents are still  
3     independents. They're not members of cooperatives and few  
4     of them have joined cooperatives, to my knowledge. They  
5     haven't joined my cooperative.

6           Q     Okay. So the plants now have a -- have a  
7     supply commitment with a cooperative but the cooperative  
8     markets at least some of that milk as in -- by independent  
9     producers through the cooperative, is that correct?

10          A     Yes. They might -- I'm don't -- I'm not  
11     familiar with those because we don't do that. In my role  
12     of a witness whose cooperative is involved with that,  
13     there might be a better person to ask the questions of.

14          Q     And who's that?

15          A     -- suggestion. Mr. Gallagher.

16          Q     Okay.

17                     (Pause)

18                     BY MR. VETNE:

19          Q     Who -- who -- what cooperative, any -- if any,  
20     is responsible for marketing milk up to Bangor, Maine?

21          A     That plant is -- is part of the dean system.

22          Q     Yeah.

23          A     So I gather it's the Dairy Market Services,  
24     which is Mr. Gallagher's group, that -- that does that.

1       They have -- they have -- they were -- they were  
2       previously almost exclusively supplied by independent  
3       producers. There was a co-op group called Boston Market  
4       Shippers. I'm not even sure -- I don't think they were  
5       Cappra Volstead-qualified. I'm not sure. They were sort  
6       of a rough independent kind of group.

7           Q     Maine -- Maine Market -- Maine Dairy Farm --  
8       what's that name?

9           A     The Boston Market Shippers was the name of  
10      them.

11          Q     Uh-huh.

12          A     So there was a group there that went to  
13      Westland Creamery, okay, and part of that milk also  
14      started going back to the plant in Bangor when Westland  
15      was purchased by Dean.

16                 But primarily, that plant in Bangor, Maine, was  
17      -- was supplied by independents. We did some of it.  
18      Usually, it ended up being some type of balancing or  
19      whatever if we did something involved.

20          Q     There's a cooperative that operates in Maine  
21      exclusively?

22          A     No, not that I'm aware of. A dairy  
23      cooperative, no. Exclusively, you mean?

24          Q     Well, virtually exclusively.

1           A     No. I mean, virtually exclusively. I -- no,  
2     we operate in Maine. The Dairy Market Services, DFA,  
3     Dairylea group operate in Maine. And I know NFO at one  
4     point did. I'm not sure if they do anymore, though that  
5     probably is marketed by that DMS group. And then is there  
6     somebody else? Like I said, there's those Boston Market  
7     Shippers, but that's a very loose-knit group. I'm not  
8     even sure if I would call them a cooperative. I'm not  
9     sure -- you have to look on the list. I'm not sure if the  
10    market administrator calls them a cooperative, but they're  
11    the only ones I'm aware of, John.

12           Q     Okay.

13           A     Oakhurst Dairy is supplied by primarily  
14    independents, non-members, if that's a help.

15           Q     You refer on page 14 to the preexisting New  
16    York-New Jersey Order and describe that as being linked to  
17    balancing.

18           A     Cooperative service payments.

19           Q     Cooperative service payments, yes.

20           A     Yes.

21           Q     Was there a requirement under the prior order,  
22    to your recollection, and forgive me for not looking it up  
23    or having it in front of me. Was there a requirement that  
24    organization that received those payments be willing to

1 accept surplus milk when there is a surplus?

2 A No, I don't think there was a requirement they  
3 had to receive surplus milk. They had -- there -- there  
4 was two levels or tiers, and I hope I'm correct on this  
5 because I haven't done this in a long time. And we didn't  
6 receive them -- in -- for them.

7 But I believe it was four cents all total,  
8 three cents and a penny. And the -- the extra penny was  
9 if you owned a -- a cheese or nonfat dry milk plant, okay,  
10 at -- that could process at least a million pounds a day.  
11 So that was -- that piece of it was linked to balancing.

12 Q Okay. You don't recall whether there was a  
13 condition of receipt to -- to make your plant available to  
14 --

15 A No, I don't --

16 Q -- surplus production?

17 A -- I don't believe so, okay. However, there  
18 was a provision with -- that if a producer lost his market  
19 that you had to -- you had to have a market available and  
20 the same conditions you would do for a member for a  
21 limited period of time. I mean, in other words, if they  
22 lost their market because of poor quality, you weren't  
23 required to do that. But if they were dropped by a  
24 handler and their quality was fine and all the health



1 restrictions, the market administrator could ask you to  
2 pick up that producer for a certain period of time.

3 So there was that --

4 Q Okay.

5 A -- piece but I don't believe there was any  
6 other piece.

7 Q Okay. And with respect to Proposal 7 at this  
8 hearing, if a handler, including a cooperative association  
9 that doesn't operate plants -- manufacturing plants, if a  
10 handler has surplus milk that it needs to dispose of and  
11 comes knocking at the door of AgraMark or anybody else  
12 that's receiving marketwide service payments, the  
13 marketwide service payment recipient could refuse to  
14 process that milk even though they had available capacity  
15 and still not become ineligible to receive payments for  
16 marketwide services?

17 A Well, John, everything -- when someone is  
18 knocking at the door, okay, one of the first things you  
19 discuss is price. Now, what -- if -- if we have capacity,  
20 they can find a home. Now, the question is -- I think  
21 would be would they get a discount price. Is that what  
22 you're asking?

23 Q Maybe my question has two tiers.

24 A Okay. Maybe I'm helping you too much.

1 Q Okay.

2 A The answer to that, by the way, is "no." I  
3 mean, if we -- you know, I mean to the extent that if we  
4 needed to do more for the Class 1 market or other things,  
5 yes, we would do that. But if -- if -- if this amount is  
6 going to be used as a leverage to lower handling charges  
7 and other charges, okay, then we have some issues with  
8 that. We're already incurring these costs.

9 So, no, I don't believe that's the case. That  
10 wasn't our intention, in -- in all honesty.

11 (Pause)

12 BY MR. VETNE:

13 Q Both you and -- and Mr. Gallagher made  
14 reference to what you believe to be a large -- relatively  
15 large proportion of non-cooperative members in the  
16 northeast. Is there -- geographical concentration of non-  
17 members in the northeast or is it fairly uniform, the  
18 percentage identified throughout the northeast?

19 A In New England it's fairly uniform.

20 Q And is it --

21 A In the rest of the northeast, I'm not sure.  
22 You might have to ask somebody who has more members out in  
23 those areas.

24 Q In New England is it the same percentage

1 approximately or a greater percentage or a lesser  
2 percentage than the rest of the northeast?

3 A I would say it's probably the same percentage.  
4 If you ask me geographically if there is, I'd be inclined  
5 to say that because we tend to go to Class 1 processors,  
6 they're probably closer to the Class 1 market. Producers  
7 who are out in the north country of New York, for -- for  
8 example above the Adirondacks, tend to be more co-op  
9 members because the Class 1 processors don't get a large  
10 volume. They may get some volume of milk but they don't  
11 get a large volume. So there may be some geographic  
12 nature to that.

13 We don't have that nature because we don't have  
14 that large a geographic area, excluding Maine, in New  
15 England. So that's never really been an issue.  
16 Operations are fairly spread out.

17 I don't think we're a higher percentage than  
18 the rest of the northeast, though.

19 Q Okay. Now I want to address for a while your  
20 qualification threshold of a million pounds a day.

21 A Sure.

22 Q A million pounds a day -- let's -- let's say  
23 that an organization is supplying a single distributing  
24 plant. A million pounds a day would represent operations

1 of a fairly large distributing plant, correct?

2 A Above average, I believe.

3 Q Above average somewhat. The three plants in  
4 Maine are about 10 million pounds each, not more, right?

5 A No, they're more than that now. I think you're  
6 about five -- five years behind.

7 Q Pardon?

8 A You're about five years behind on extensions  
9 that have -- Hood has now more sales, for example. I  
10 don't know the exact amount. Probably couldn't tell you  
11 if I did. But you know, they have a plant in Boston,  
12 Charlestown -- some of those sales. Same types of  
13 expansions. I think Oakhurst business is doing well. I'm  
14 not sure about the Grant's business. But I would say  
15 they're probably closer to 15 to 20 million pounds.

16 Q They who?

17 A The three plants up there.

18 Q Okay. I -- I notice in the market --

19 A But still less than a million pounds a day.

20 Q Less than a million pounds --

21 A Yes.

22 Q And I do note that the producer milk by state  
23 of origin data for -- in Exhibit 5 for early 2001, which  
24 was the -- the period in which Oakhurst became regulated,

1       increased by about 8 million pounds. That doesn't seem  
2       like a lot. So, is Oakhurst smaller than Garelic or --

3           A     Well, keep in mind that Oakhurst already had  
4       non-pool -- had sales in the order, okay, but it was less  
5       than the 25 percent --

6           Q     Yes.

7           A     -- that would trigger them in. So there could  
8       have been another 2 million pounds or something like that  
9       that would -- maybe --

10          Q     Well --

11          A     I thought -- that's a good point. I -- I don't  
12       know what Oakhurst's volume is. I know what Hood is. And  
13       Oakhurst is a major presence. I -- I happen to live in  
14       New Hampshire and Oakhurst is a presence in New Hampshire.  
15       I assumed that they were somewhere around Hood's size  
16       based upon other information I saw, but they could be 10  
17       million pounds.

18          Q     Okay. But even when applied as partially  
19       regulated, it has two, three percent of its sales in the  
20       markets, it's still one of -- its producer supply is  
21       included in the market data.

22          A     Okay, yeah. I have -- for that. I believe  
23       Oakhurst clearly is over 8 million pounds from everything  
24       I've seen. That would surprise me very much if it wasn't,

1 but I don't have any proprietary information on that.

2 Q Okay. Would you not agree that a -- an  
3 organization can balance a plant say the size of Oakhurst?

4 A What size organization? When you're saying an  
5 organization can balance?

6 Q A -- a supplier to Oakhurst, whether it's a co-  
7 op dedicated to Oakhurst or a proprietary supplier or --  
8 or Oakhurst itself, can take care of balancing that plant.  
9 In a smaller way, the same way that Agramark, for example,  
10 balances many plants.

11 A Well, they could possibly do that. They -- if  
12 you're talking about a co-op you mentioned that has  
13 dedicated supply, then I'm not sure how they're going to  
14 do that unless they go out and find a home for that milk  
15 such -- you know, in another plant or something when they  
16 don't need it. But when you see the seasonality of it, I  
17 don't know if Oakhurst is any different from the rest of  
18 the Class 1 processors, but I -- I believe it probably is  
19 not.

20 So there are -- I mean, there are ways -- other  
21 ways to balance if -- you know.

22 Q One way of balancing, for example, would be to  
23 put a small dryer some place to take care of balancing any  
24 small Class 1 or 2 operation?

1           A     Absolutely.  And if Class 1 processors want to  
2     put in dryers and churns and do their own balancing, I  
3     think it's a great idea.

4           Q     Yeah.  And that performs the same service to  
5     the whole market on a small scale as the service that  
6     you've described to the market on a large scale, correct?

7           A     Yes, and I think they should get six cents if  
8     they do that and they -- less than 65 percent.

9           Q     Okay.

10          A     I'm saying -- I'm not -- we're not against them  
11     getting it if they serve that.  If -- if -- if you're --  
12     if you have a Class 1 operation and you balance your  
13     operation, particularly putting in a dryer or something  
14     like that, they haven't done that because it's not very  
15     cost effective to do it.

16          Q     Okay.  Well, my -- okay.  My -- my question  
17     -- is let's say that that is done on a smaller scale than  
18     three percent of the market or a million pounds a day.  
19     Why shouldn't such an organization also receive modest  
20     marketwide service payments?

21          A     That's a good point.  We had long discussions  
22     of that within our lone group on that.  We needed to come  
23     up with some area we felt that was a significant volume of  
24     milk serving the market that had -- that had, like you

1       said, multiple customers that could balance in that  
2       degree. And we felt that a million represented it. It  
3       was a million pounds -- I was also familiar with the order  
4       before because we had a million pound requirement.

5               So we used that as the number, okay, and that  
6       became our group consensus and we thought that that was a  
7       fair number. If you said to me, should it be 900,000  
8       pounds, why not? I mean, I could just tell you that our  
9       group consensus was here. We had some history with that  
10      number. It's a significant number, and that's what we  
11      were really looking at.

12             Q     Okay. My -- another of my questions then is,  
13      why does it have to be a significant number if the service  
14      actually provided is a balancing service? Whether it's a  
15      pound or 2 million pounds, if -- if the -- if a balancing  
16      is made, it's still a balance. It is something that --

17             A     We think that -- because our -- our issue is  
18      that if it becomes very small and you're just balancing a  
19      few loads a month that -- we don't think that really  
20      serves the market, particularly a market of this size,  
21      that you need to have some large presence to do that.

22             Q     Well, it -- it's -- it's a few loads per month  
23      that -- that you wouldn't have to balance, for example.  
24      You know, or Dairylea or Land O' Lakes. It's -- it's --



1 if we're looking at the aggregate market, they either  
2 burden the market with -- with your surplus to dispose of  
3 it or with supplemental milk or you don't. And if you  
4 avoid burdening the total market, you're providing a  
5 service, correct?

6 A Yes, to a degree. Yes. I guess our -- our  
7 -- our issue here was that we felt that you should have  
8 the -- if you have -- you should have relationships with  
9 Class 1 processors, with -- with -- with manufacturers  
10 that can balance, and so you need to move a sufficient  
11 volume of milk to have that.

12 If in a circumstance like this you have a  
13 smaller volume of milk, there's a case in point on that.  
14 I don't know too many of those. Perhaps your client's one  
15 of them. But that's -- you know, I'm not -- I'm not aware  
16 of that.

17 I can just tell you that we looked at this and  
18 we had to come up with a position and our position was  
19 that we felt that that would be a level of significance in  
20 the marketplace.

21 Q All right. Let me -- let me go to another  
22 supply scenario. A small cooperative association or  
23 supply plant for that matter commits to supply and balance  
24 a single plant. It does not operate a manufacturing

1 facility but it takes upon itself the burden to --  
2 supplemental milk were needed or to sell surplus milk when  
3 the fluid plant doesn't need it. And as you described,  
4 that would frequently be at a loss, at a price discount.  
5 Why shouldn't such an organization who has assumed the  
6 economic burden of balancing by marketing to somebody else  
7 or receiving supplemental from somebody else, why  
8 shouldn't such an organization receive some benefit for  
9 their balancing service?

10 A A key issue, John, is that -- that they  
11 balance. You're saying this is somebody who does balance,  
12 okay. They balance to a smaller degree. We -- you  
13 know, like I said, our position is on -- that they have to  
14 be significant in the marketplace. If -- if that's -- if  
15 the Department decides it should be a different level than  
16 that based on testimony of someone who comes in and says  
17 they do balance, perhaps they should take that in  
18 consideration. I'm sure they will.

19 I'm just -- I -- I don't think I can give much  
20 more than that's our position on it and I explained why we  
21 came out with that position.

22 Q Some of the balancing that your organization  
23 and other -- in fact include not something manufacturing  
24 milk locally but also sometimes sending milk far away from

1 here in order to find a manufacturing home for it,  
2 including the -- the midwest, correct?

3 A That's true. We -- we do that very rarely. We  
4 try not to do that. I know some other areas, probably  
5 other co-ops, do that more. But we don't. But yes, that  
6 does occur.

7 Q Then AgraMark has in fact on occasion sent milk  
8 to Ohio or --

9 A Absolutely.

10 Q -- even Wisconsin?

11 A Absolutely.

12 MR. VETNE: Okay. Thank you.

13 JUDGE BAKER: Thank you. Are there other  
14 questions for Mr. Wellington? The -- the -- Mr. Tosi?

15 CROSS EXAMINATION

16 BY MR. TOSI:

17 Q A few questions regarding your testimony. The  
18 -- at the top of page two, your testimony indicates that  
19 in the absence of a federal order, a dairy farmer would  
20 likely receive the same price as his neighbor who ships to  
21 a manufacturing -- in the absence of a federal order.

22 A Yes.

23 Q Okay. Over -- on page one at the bottom, at  
24 the same time you're saying that in the four orders,

1 producers competed, and I assume that you mean here with  
2 each other, to capture a higher Class 1 value.

3 A Yes. And they were -- they were really not  
4 able to do that. They would try to get a Class 1 customer  
5 if they could because they tended to have more value for  
6 their milk.

7 Q I understand that. I guess the -- the point  
8 is, is that your testimony suggests that in the absence of  
9 an order a Class 1 handler would not pay something more  
10 than the manufacturing price when all this competition  
11 that producers engaged with with each other was to get a  
12 higher price. So somebody was paying a higher price.

13 A That's why I say I believe it was -- when I say  
14 he would receive essentially the same price, okay. Yes,  
15 that Class 1 processor in the absence of an order would  
16 still get their milk. It might be five cents a  
17 hundredweight, it might be 10 cents a hundredweight. It  
18 would not be \$3.25 Class 1 differential.

19 Q Why would the handler pay -- why would -- in  
20 the absence of an order, why would the handler pay --  
21 Class 1 handler be willing to pay more?

22 A Because they need to procure a supply of milk.  
23 And so competition would drive that price. It'd be -- and  
24 it would be really what the manufacturers would be willing

1 to pay for that to drive that price, particularly -- and a  
2 lot of it would -- depends on the time of the year and how  
3 much milk was available.

4 If there was plenty of milk available, the  
5 processor may not pay a premium. If -- if the milk was --  
6 was supply -- supplies were tight and someone came to his  
7 producer and said, I want to pool your milk into a cheese  
8 plant, there's no federal order, I'll give you 20 cents.  
9 And maybe he will give them 25 cents.

10 I'm just saying that that happens right now  
11 with over-order premiums to procure a supply of milk on  
12 top of the order. I'm just saying that the underlying  
13 order piece would -- would be gone and I don't think you  
14 can retrieve that. You would still have competition to  
15 procure a supply of milk.

16 Did that answer your question? I don't mean to  
17 be -- it.

18 Q I -- I -- I'll read through that later.

19 A Okay.

20 Q Now, given that before federal orders Class 1  
21 handlers were known to pay more for milk than the  
22 manufacturing price, albeit with all the caveats that you  
23 just indicated, now, bingo, we have milk marketing orders  
24 and we set class prices and we have the Class 1 price that

1       has a differential. And that differential when we set up  
2       orders was intended to capture and reflect the prevailing  
3       marketing conditions of what it took to get milk from  
4       where it was produced to where it was needed for Class 1  
5       use. Would that be your understanding of -- of that?

6           A     You need to keep in mind that one of the things  
7       they were looking at was the distance from reserve supply  
8       areas during parts of the year when you had -- when milk  
9       was the tightest. That's why those crises were -- the  
10      differentials were often tied into the Eau Claire,  
11      Wisconsin, mentality of the distance there. That -- that  
12      was the home of the ultimate reserve supplies that you --  
13      if you had to go get milk, you could go there. Class 1  
14      processors didn't necessarily always have to do that, that  
15      distance.

16          Q     Okay. If you'd please look at the bottom of  
17      page two of your testimony when you quote from the act?

18          A     Yes.

19          Q     Is it -- is -- is the word "producer" ever used  
20      in the act, that a handler can charge producers for  
21      something for marketwide benefit?

22          A     They can charge the pool and when you charge  
23      the pool it comes from producers who participate in the  
24      pool.

1           Q     But --

2           A     The language of "producers," I don't know,  
3     Gino.

4           Q     Well, if your proposal is going to take money  
5     off the top of the pool that would otherwise go to --  
6     equitably to all members in the market, whether they be  
7     co-op or independent, in essence cooperatives in their  
8     capacity as handlers are charging producers for a service,  
9     that -- that you are asserting has marketwide benefit.

10          A     There's a transfer of money, yes.

11          Q     And I'm just wondering how you come to the  
12     conclusion that there's an authority for a handler to  
13     charge a producer for a service that they assert is a  
14     marketwide benefit.

15          A     Because I think that's in this document right  
16     here on page two when it says that by -- it adds the  
17     following provisions, providing for the payment from the  
18     total sums payable by all handlers for milk to handlers  
19     that are cooperative market associations and to handlers  
20     with respect to adjustments and payments for services of  
21     marketwide benefit, including but not limited to. It says  
22     that you can -- that you can take these sums that are  
23     payable by all handlers for milk. By payable for all  
24     handlers, that's coming from the pool.

1           Q     No. Excuse me. I'm sorry. Let me resay that.

2                     By taking money out of the pool, we're removing  
3 money that would ultimately be distributed to producers.  
4 And I'm puzzled by the lack of the word "producers" when  
5 the language of the act seems to suggest that we're  
6 talking about services that are provided for handlers for  
7 the benefit of the market and we're talking about handler  
8 and handler, not handler and producer.

9           A     I think one of the interpretations that I  
10 talked about was that the Class 1 differential is -- is  
11 one of the reasons behind it is to bring forth an adequate  
12 supply of milk. And the Class 1 differential of \$3.24,  
13 one of the factors the Class 1 processors are paying into  
14 that I think is -- is relating back to these balancing.  
15 That's sort of my interpretation of part of that cost that  
16 goes to the pool from those Class 1 processors. And it  
17 should go to the organizations who actually do that  
18 balancing and provide that adequate supply on a timely  
19 basis.

20           Q     Well, in the -- the handler --

21           A     But --

22           Q     -- goes to producers. The handler is paying or  
23 accounts to the pool at the Class 1 price. So the handler  
24 is paying already even though the factor is perhaps not as



1 specific that you can say out of a \$2.00 differential, you  
2 know, 12.5 cents is a balancing function, okay?

3 But we know and your testimony even admits  
4 that, that the notion of balancing is built in there.

5 A Right.

6 Q So that other handlers or producers would be  
7 willing to pool milk up to make it available for Class 1  
8 use where it's demanded.

9 A That's true. I don't understand --

10 Q So why are handlers charging producers for --  
11 for something that handlers have already paid for in the  
12 price -- in the classified price that they're charged for  
13 milk?

14 A The -- they're paying -- they're paying that  
15 money into the pool, okay. That money is -- the higher  
16 Class 1 differential accrues to all producers. We're  
17 saying that there's specific functions of balancing that -  
18 - that we're allowed to under the law to charge. And so  
19 that's -- and it should come from the pool. I mean, I  
20 thought it was -- I thought it was pretty clear that the  
21 law allows this and the act allows it.

22 Q I would say that here it's pretty clear that  
23 the act says that there's a provision for marketwide  
24 services. I'm just struck by the interpretation, how you

1 can arrive at the interpretation that -- the word  
2 "producer" is never used in that provision and we're  
3 talking about handlers being able to charge other handlers  
4 for a service that they're providing --

5 A I mean --

6 Q -- make a compelling argument that somehow the  
7 entire market benefits from.

8 A We're -- we're asking to make a charge against  
9 the pool, okay. And the pool's a clearinghouse between  
10 handlers and producers. So to the extent that it's a  
11 clearinghouse that handlers put in and producers take out,  
12 before that process is complete from handlers to  
13 producers, we're asking for these market service payments  
14 to go to cover the -- the cost of this service.

15 That's why I say, it's not a -- it's not a  
16 charge against producers. It's a charge against the pool.  
17 Maybe it's just a formal way of doing it. There's no  
18 doubt that this will affect the pool. There's no doubt  
19 that it will lower the amount of money in the pool. I'm  
20 not trying to get around that. And that the producers  
21 will be receiving a lower uniform price as a result of  
22 this.

23 So I mean, I'm not trying to get around saying  
24 that they're not going to be impacted by this. But the --

1 we talk about taking the money from the pool because  
2 that's where the money is coming in from. In from the  
3 pool and before it goes out to producers it comes out to -  
4 - to compensate for that service.

5 Q Okay. I'd like to move on, then. Who benefits  
6 from the balancing function that's provided by  
7 cooperatives in the northeast market?

8 A I think all producers benefit by this in that  
9 it allows for us to use the term of orderly marketing,  
10 which allows us to remove milk from the market when it's -  
11 - when it's needed to be removed from the market. It also  
12 facilitates the higher Class 1 use of this -- Class 1 use  
13 available to Class 1 processors.

14 Q Okay. Do handlers benefit from this?

15 A Class 1 processors certainly do.

16 Q Okay. In what way do they benefit?

17 A This is a service that -- that allows them to  
18 basically have available I would say low-cost alternatives  
19 for their milk supplies, ways to balance out their milk  
20 supplies. So certainly, they benefit by it. We have a  
21 difficult time charging them directly back for that cost  
22 to it because of competition in the marketplace. But they  
23 certainly do benefit by it.

24 But we also believe producers benefit by it,

1 including our own producers. I'm not saying this is a  
2 benefit that only accrues to non-members. This is a  
3 benefit that accrues to all producers. Our issue has been  
4 it's only our members who are paying the price of that  
5 issue.

6 Q Are you able to determine how much more the  
7 blend price is enhanced by cooperatives? The blend price  
8 that's paid to all producers. How much more is the blend  
9 price enhanced because of the balancing function? Are you  
10 able to -- the type -- the record so far has a lot of  
11 information about costs. We haven't talked yet about  
12 benefits yet.

13 A I think that there are two types of benefits  
14 that accrue back to farmers. One is to make sure that the  
15 balancing needs of Class 1 processors are met. If they're  
16 not met, there's problems with having, for example, Class  
17 1 milk on the supermarket shelf on the weekend. That  
18 would lower the utilization.

19 Can I calculate that from that point of view?  
20 No, that's very difficult to calculate. I know -- it's  
21 like one of those things I know -- you know when you see  
22 it. But you know, what -- what it is and how do you  
23 calculate it.

24 I could more easily calculate over-order or at

1     least get a better handle on over-order. The orders are  
2     supposed to be minimum prices. And on the over-order side  
3     of this, all it takes -- look at the situation we have  
4     right now when we have -- milk production over last year  
5     is a little over two percent. But we have stagnant  
6     demand. So we have at most two to four percent more  
7     demand relative to supply than a year ago and we have  
8     prices that are 10-year record lows or have fallen 25, 30  
9     percent because we have that small additional volume of  
10    milk setting the price.

11                 So that -- I mean, that -- the same thing  
12    happens on the over-order price side, although not to that  
13    large a degree because there aren't that many handler  
14    premiums to that large degree out there. It's the same  
15    type of principle to the tune of, can it be -- those over-  
16    order premiums could be 10, 20, 30, 40 cents, okay. That  
17    would draw off the amount of co-op service payments.

18                 To the tune of what it would do to blend price,  
19    I haven't made a calculation on that. I think it has some  
20    benefits. Can I calculate it per -- per hundredweight,  
21    no. I don't have a -- I can't think of a way to do that,  
22    Gino.

23                 Q     To the extent that you can't determine benefit,  
24    then, how is the secretary in fully considering Proposal 7

1 going to be able to -- be able to determine that there's  
2 some marketwide benefit that's -- that's occurring here?

3 A Well, I think that's where you have to -- you  
4 have to look at the -- what our case has been in terms of  
5 putting together our -- the amount of balancing that's  
6 being done and the amount of servicing to the Class 1  
7 market, what kind of case that we've made in that regard.  
8 Is it -- can you say that we should do this provision  
9 because it's going to cost producers five cents and  
10 they're going to gain 10? No, I think you should do this  
11 provision because there's a service toward producers and  
12 to orderly marketing, okay. And I know that's a nebulous  
13 term.

14 But to making sure there's outlets for milk  
15 that -- that need to be -- that need to be accommodated,  
16 okay. And yes, it comes at a cost but we need to  
17 accommodate that even though there may not be a net  
18 benefit at the end of the month in the pool to it. There  
19 are a lot of other secondary benefits one can make. It's  
20 up to the Department whether they want to factor those in  
21 or not.

22 But clearly, in terms of being able to balance  
23 the market, producer supplies -- producers -- here's a  
24 benefit. Producers are -- are free to basically produce

1 any pattern of milk they want. And -- and no one tells  
2 them, you have -- you have to produce less milk, I'm only  
3 going to pick up 90 percent of your milk in the spring and  
4 I want you to put on some cows in the fall or I'm not  
5 going to pick up your milk.

6 The producer basically is free to market any  
7 amount of milk he wants, okay. But we know that we have  
8 producer receipt patterns on a seasonal basis. We know we  
9 have Class 1 sales patterns on a seasonal basis, okay.  
10 There has to be some way to -- to allow the producer the  
11 freedom to do that and accommodate the Class 1 sales at  
12 the same time. That's what I'm trying to do.

13 Q Let's go down that road for a second.

14 A Sure.

15 Q Are you able or your organization -- over-order  
16 premiums for servicing in Class 1 market?

17 A Yes, we do.

18 Q And in being able to enjoy being able to  
19 negotiate for those things. Is any of that part of an  
20 attempt to offset your balancing costs?

21 A Absolutely. All -- all attempts to offset all  
22 our costs, okay. That's what we're trying to do, Gino.  
23 The problem has been that -- the handling charges that we  
24 do charge, okay, will cover transportation costs. We

1       apply those against those first. And they assist us to  
2       help be competitive in the field with our members. That's  
3       a -- that's problem that we have with making sure there's  
4       a competitive pay price out there.

5               At the end, there is -- our -- our losses at  
6       our West Springfield plant on that -- on that balancing --  
7       it depends on where you want to apply it. We have a cost  
8       here. You could apply it against all different costs, all  
9       different pieces at a time. But it -- it depends --  
10      really, it depends on where you want to apply that --  
11      apply that cost.

12             Q     Let me make sure that I understand this to make  
13      sure that this is part of your testimony.

14             A     Sure.

15             Q     When a Class 1 handler does not need milk  
16      because of daily changes in demand, the reality is, is  
17      that that Class 1 handler's, for example, non-member  
18      producers, that milk still has to go somewhere because of  
19      its perishability.

20             A     Correct.

21             Q     And so would it be correct to say then that  
22      that Class 1 handler diverts to -- milk to -- to you?

23             A     Not -- not necessarily. Not necessarily. If  
24      you look at the daily patterns -- and Dennis Schad from



1 Land O' Lakes will be putting some numbers in on that.

2 We're not saying that -- for example, that  
3 producer handlers don't take -- I'm sorry, distributing  
4 plants don't take any milk. Like on Sunday's the low day.  
5 They don't take -- it's not as if they're taking no milk  
6 on Sunday, okay. They -- they -- they would probably just  
7 put their own milk into their plant on a Sunday and not  
8 buy from outside.

9 So you -- there can be diversions. That's  
10 certainly a possibility.

11 Q Okay. Let's -- let's talk about where there  
12 can be, okay? When that -- when that Class 1 handler  
13 submits its report at the end of the month, when it  
14 reports on its report a diversion of milk that -- that  
15 ends up going to, for example, a butter powder plant.

16 A Okay.

17 Q Okay. At what price does that plant account to  
18 the pool for? The Class 1 plant, I'm sorry.

19 A The Class 1 plant?

20 Q Right.

21 A The -- what was the assignment back to it? I  
22 don't -- Class 4?

23 Q Okay. I'll accept that.

24 A Okay.

1           Q     Okay. Now, since the Class 1 handler is  
2     accounting to the pool at that class price given how the  
3     milk was used, what -- what are you paying? What -- do  
4     you -- do you pay Class 4 back to the Class 1 handler or  
5     do you charge something or are you able to force a payment  
6     that's --

7           A     It depends on --

8           Q     -- less than the limit -- less than the minimum  
9     class prices?

10          A     It depends on the market conditions that are  
11     out there and it depends on our arrangement with that -  
12     - that handler. Some handlers we have arrangements that  
13     we will supply them with some balancing.

14                 And if we -- for example, if our plant is empty  
15     and we have all these fixed costs to cover, okay, we may  
16     pay them a premium to get that milk. I mean, what's  
17     happening in the marketplace.

18                 If milk supplies are -- are in surplus and we  
19     don't -- you know, the plant's operating at some very high  
20     level of capacity, then they might receive under the class  
21     price. It really depends on the market conditions, Gino.

22          Q     To the extent that you're able to buy milk at  
23     below class, wouldn't that in essence -- one of the  
24     reasons that you would be -- able to do that would be that

1       you're being inconvenienced by performing balancing  
2       function for the market?

3           A     Absolutely.  Absolutely.

4           Q     And that would be a way of recouping some of  
5       that cost?

6           A     That is.  It's a very small -- let me tell you,  
7       it's a few percentage points of the -- of what goes into  
8       our plant in terms of volume.  But certainly, we would try  
9       to do that.  Absolutely.

10          Q     Okay.  One minute.  Let me check my questions.

11                   (Pause)

12                   BY MR. TOSI:

13          Q     This kind of steps -- takes a little bit of  
14       -- goes back to an earlier question about the level of the  
15       Class 1 differentials being designed in some way to  
16       attract a supply of milk for Class 1 use.  And reflected  
17       in that would be the notion that a balancing plant incurs  
18       a cost to give that milk up to have it go service the  
19       Class 1 market because your plant's not operating now at  
20       full capacity.  Is that a fair characterization?

21          A     Can -- can you repeat that?

22          Q     Okay.  We discussed earlier here that the Class  
23       1 differential -- the level of the differential is  
24       designed to attract an adequate supply of milk for fluid

1 use, okay. And when the balancing plant responds to that  
2 by shipping milk for Class 1 use, isn't its cost of  
3 balancing already implied in -- that they in fact have  
4 covered their costs to go out and do this service to the  
5 Class 1 market. Otherwise, you wouldn't have given the  
6 milk up, I would think.

7 A No. Our -- our problem is that it's not just a  
8 question of giving milk up. If it's spot loads, yes,  
9 okay. Those are small arrangements with that.

10 We try to have -- because of the order and  
11 having a minimum of 20 percent in the fall plus serving  
12 the Class 1 market, we have an arrangement with customers  
13 to balance their needs. We give them -- for pool supply  
14 customers, some of our processors -- our 7(a) plants. So  
15 we supply their needs.

16 We try to put our handling cost in to cover  
17 that, but if that handling cost gets to be too high and we  
18 try to put it to a point where we can cover those costs,  
19 we're unable to do that because they can go to somebody  
20 else and get milk. They can go balance -- on the seasonal  
21 basis, they could balance with producers if they want.  
22 There are other cheaper alternatives out there if we try  
23 to pass that cost along.

24 That -- that's our problem. On a -- what

1     you're talking about, Gino, is -- is on the margin, okay.  
2     A load of milk that comes in. Can we get it on the class  
3     market conditions are right. Sure. We're going to get it  
4     under class, okay. Milk supplies are tight. Someone who  
5     never uses us for balancing says, I'm really tight and I  
6     need a hundredweight of milk. And we say, well, plant's  
7     empty. I want to -- we're going to charge an extra buck a  
8     hundredweight or something. That happens. Absolutely,  
9     okay.

10                 We have more costs when we try to do those  
11     things and that -- maybe that smaller volumes will help  
12     contribute to balancing. But for the -- when we look at  
13     our total amount of dollars available and what we are --  
14     our costs that we incur and our payment back to our  
15     farmers to be competitive, we -- we don't have sufficient  
16     money -- in fact, we don't have sufficient money even at  
17     the end even if we apply nothing toward balancing. We end  
18     up being a net loss on that.

19                 That's a problem for us in our -- I don't want  
20     to get into detailed proprietary stuff. But what happens  
21     with us is that we have a very successful cheese business  
22     with our Cabot cheese. And what happens is that the --  
23     the benefits of that go to end up covering these other  
24     costs involved in the balancing.

1 Q So your butter powder operations lose money?

2 A Yes. Yes.

3 Q Okay.

4 A I mean, overall it does. We try to minimize  
5 the losses, so we try to do other things and do whatever  
6 you can business-wise to do it. But those take other  
7 investments, too. That's why, Gino, we try to say, let's  
8 look at Dr. Ling's study and try to isolate those costs.  
9 If we could isolate what those costs are.

10 And if you're making -- whatever business  
11 decisions you're making at the plant, good, bad,  
12 indifferent, okay, they're your decisions, okay. But if  
13 you can show that you are doing the balancing, that --  
14 that's the important -- balancing -- you're doing it as a  
15 cost and we can reflect back on those costs.

16 Q Speaking of that, that's the other thing that  
17 kind of troubles me. I really enjoyed your written  
18 testimony and you have very good numbers. You're like my  
19 boss. He wants numbers.

20 And you're able to adjust numbers back to  
21 calendar composition and everything else. Yet, when you  
22 talk about what it costs for you to balance, that's nearly  
23 impossible. And -- but yet, at the same time, you  
24 identify what all those other factors are that make it

1       difficult. So I mean, did you really expect that -- that  
2       the secretary would believe that the lack of primary cost  
3       information, the impossibility of that can be somehow  
4       created using secondary data from the study that Charlie  
5       Ling has done?

6               The basis here is --

7           A     I can --

8           Q     -- plant capacity. And to the extent that you  
9       have unused plant capacity, that's the basis for your  
10      costs. And it seems to me that you would be able to know  
11      what your unused plant capacities are from month to month  
12      over a period of time and then attribute to that's  
13      AgraMark's cost of balancing my operating -- your plant at  
14      West Springfield.

15          A     A problem with that is having to then go over  
16      and allocate those costs when we do a lot of other things  
17      at our plant. It's probably a little easier to do it at  
18      Springfield than it would be at Oatka and some of the  
19      other locations. And that's the problem, because there's  
20      so many different activities.

21                If I stood here before you and said, here are  
22      my costs at West Springfield, we would then spend a few  
23      days going over, well, how'd you allocate this cost.  
24      Don't you do this, and that's not balancing. Don't you do

1       that, and that's not balancing.

2               We've strived to do a variety of things because  
3       we don't want to have these losses from balancing. But  
4       we'd love to get them from the marketplace, we can't do  
5       it. We'd love to find other ways to -- find ways to  
6       minimize the losses available at it. You know, one of the  
7       things we've done is if you look at our plant -- butter  
8       powder plants.

9               I mean, if you walk through our plant, you're  
10      going to see two or three people. And it's -- you know,  
11      it can handle, you know, 2.2 million pounds a day at its  
12      peak. And you're going to see hardly anybody there  
13      because we've tried to lower those costs.

14              So we've tried to do that. But our problem is  
15      that to try to get back and allocate it, we need to go  
16      back and say, here's a uniform way to do that. Plus, I  
17      believe you asked somebody, one of the other witnesses,  
18      about bad marketing. If you make a bad decision.

19              So we could sit there and say, if we make a bad  
20      decision, should the order pay for the bad decision.  
21      We're saying in Charlie Ling's study -- we're not --  
22      trying not to say it focuses in on a bad decision. It  
23      says, whatever your decisions are, we look at it -- we're  
24      looking at a review. And Charlie used the time as an



1 efficient operation and here's the costs involved for that  
2 efficient operation.

3 Beyond that, whatever decisions we make, good,  
4 bad, or indifferent, we get to live with. But the -- we --  
5 -- we can show we do balancing. We -- we -- we show the  
6 benefit involved. We use -- Dr. Ling's study to show  
7 there's a cost on it.

8 That's really why -- that's one of the reasons  
9 we came back to this hearing, because we felt we had a way  
10 to try to address some of these issues that we've had in  
11 the past because we were looking at the -- some of the  
12 reasons why the Department said we didn't get it last  
13 time.

14 Why didn't we get it. Actually, some of the  
15 wording I thought the Department said was kind of  
16 encouraging. I believe their final decision said you  
17 shouldn't get them at this time, okay, which is like  
18 hanging, you know, a little law in front of you. And --  
19 and we tried to address those issues, and one of which was  
20 the cost issue. What's the cost of balancing when you  
21 have so many other activities going on. That -- that's  
22 our problem, Gino.

23 Q Thank you. One last question. On page four of  
24 your testimony in the paragraph that begins with, "This

1 happens in the dairy industry." Your testimony indicates  
2 that in the past several years, several Class 1 plants in  
3 the northeast have closed and further reduced the storage  
4 capacity of Class 1 milk in the market.

5 A Sure.

6 Q Can -- any of the plants that survived, have  
7 any them gotten larger?

8 A To my knowledge, yes, one of them has gotten  
9 larger. But not to the extent that he's making up the  
10 difference for all the other plants that went out. My  
11 understanding is that the Dean's Food plant in Franklin,  
12 who used to be Garelic Farms, has gotten larger. I don't  
13 know to the degree it's gotten larger. But I also know  
14 that there were eight or 10 plants that shut down.

15 Q Your response to this is that -- is that your  
16 intention to increase your storage capacity at your  
17 balancing plants?

18 A Our -- our -- our concern is that, particularly  
19 the daily balancing, that because we don't have that  
20 available place to put the milk that it becomes a problem.  
21 And so do we have plans on doing that? No. I mean, we  
22 actually have done some work on our silos but we have not  
23 expanded.

24 I'm not sure. I think Land O' Lakes has done

1       some changes and some other things but we have not in our  
2       market, no.

3           Q     Okay. I do have another question. When a  
4       Class 1 handler is buying milk from a non-member,  
5       negotiates a price with that non-member for whole milk,  
6       and to the extent that the Class 1 handler cannot receive  
7       a class price for what he diverts, nevertheless that Class  
8       1 handler is accounting to the pool at class. Would it --  
9       do you think it would be fair or that it would be  
10      reasonable to conclude that in that price that the Class 1  
11      handler comes up with takes into account the costs it  
12      can't recover because it's selling milk for less than what  
13      it has to account to the pool for?

14           A     Are you saying it should pay less than the  
15      Class 1 price?

16           Q     What I'm saying is, is that the Class 1 handler  
17      is going to pay Class 1 for what it uses at Class 1. And  
18      on those days that it diverts milk, okay, and it cannot  
19      gain a -- they cannot sell that milk to a butter powder  
20      plant at the Class 4 price, they have to sell it for  
21      something less, --

22           A     I can just --

23           Q     -- don't you think that -- that in the price  
24      then that the Class 1 handler is negotiating to pay his

1 independent supplier, it kind of factors in that you know  
2 there are times when I can't recover all of my costs  
3 either because, you know, gee, three days a week I've got  
4 to divert my milk and I'm getting a buck below class. But  
5 I'm having to account to everybody at a buck higher.

6 A I don't --

7 Q I mean, in that regard -- I mean, I -- could --  
8 could that argument be made that in effect the independent  
9 shippers are -- are incurring some of the costs of the  
10 balancing function because the Class 1 handler is  
11 accounting for a price different than what it -- what it  
12 can receive?

13 A The class handler pays the price and use to  
14 procure a supply of milk, okay. I don't think -- I've  
15 never known of a Class 1 handler to go back to a producer  
16 and say, gee, I've got to balance your milk, I'm not going  
17 to pay you the premium and you're going to allow me to pay  
18 you under the cooperative but isn't that okay, buddy,  
19 because I incur this cost. No. He pays what he -- what  
20 he pays.

21 Okay. I -- so I don't think the -- I don't  
22 think the proprietary producer -- I mean, to -- to the  
23 extent that you're saying how much money does that handler  
24 have available, okay. I mean, like there's a pool of

1 money that he's willing to give producers. He's going to  
2 give producers only what he needs to do to procure a  
3 supply of milk. I guess that's -- that's really where our  
4 issue is, that I don't -- I don't believe it goes back and  
5 impacts it.

6 Plus, there's -- our operations and what we  
7 pay. I can't talk about the other organizations.

8 But it's a very small relative quantity of milk  
9 that we would pay under the class price, okay. It might  
10 happen at certain times of the year when the plant is  
11 full. But particularly, looking at some of the numbers,  
12 we -- you know, we don't -- it's not a regular basis that  
13 any milk that a Class 1 processor wants to give us we pay  
14 under class. No. No, we pay the class, okay, when it's -  
15 - when it's involved.

16 There are times when that happens. I won't  
17 deny that. But it's a relatively small percentage at our  
18 operation, okay. I -- you'd have to ask the other  
19 witnesses at theirs.

20 MR. TOSI: Okay. Thanks for your patience,  
21 Robert. Appreciate it.

22 JUDGE BAKER: Thank you, Mr. Tosi. Mr.  
23 Rosenbaum, did you have some questions?

24 MR. ROSENBAUM: I do not, Your Honor.

1 JUDGE BAKER: Very well. Are there other  
2 questions for Mr. Wellington? Yes? Yes, sir.

3 MR. ARMS: David Arms, economic consultant.  
4 One thing -- just sitting back, Your Honor, a little bit  
5 further is that I find that when Gino Tosi was asking  
6 questions the -- the discussion going back and forth was  
7 such that it was very difficult to hear in the back of the  
8 room.

9 JUDGE BAKER: Oh, I'm sorry. I --

10 MR. ARMS: At least it was for me. And so I  
11 would ask that the witness speak into the microphone if  
12 possible.

13 JUDGE BAKER: Actually, that isn't a  
14 microphone. I don't believe it is.

15 SPEAKER: It is.

16 JUDGE BAKER: Is it a microphone? Oh, all  
17 right.

18 MR. ARMS: It was an interaction between Gino  
19 and -- (inaudible).

20 MR. TOSI: What couldn't you hear? Was it --  
21 was it -- was it my questions or was it Bob's --

22 MR. ARMS: No, Bob's responses.

23 THE WITNESS: Oh, I'm sorry. Want to do it  
24 again, Gino?

1 (Laughter)

2 THE WITNESS: I'll -- I'll -- is this better?

3 Can you hear me now?

4 MR. ARMS: Yes.

5 THE WITNESS: Okay.

6 (Pause)

7 CROSS EXAMINATION

8 BY MR. ARMS:

9 Q I'm looking for the table -- here it is. Table  
10 1 of your exhibit, Exhibit 14.

11 A I have it.

12 Q Specifically and for clarification of the  
13 record, Bob, it's my understanding that you used a factor  
14 of 85 percent as a general application of all milk  
15 received at pool distributing plants?

16 A Yes, as an estimate. Yes.

17 Q Okay. In your own operation, one of the  
18 handlers that you -- your organization supplies is located  
19 in New York, mainly the -- plant in Vernon, New York?

20 A Yes.

21 Q And serving that handler you are aware of what  
22 is produced at that plant?

23 A For the most part, yes.

24 Q And could you tell -- put on the record what --

1       what you think that is?

2           A     Vernon, I believe, is a soft product  
3       manufacturer, basically a Class 2 plant.

4           Q     Basically a Class 2 plant.

5           A     That's what I understand.

6           Q     So, would you agree with me then that most of  
7       the milk received at the Hood Vernon plant then is  
8       classified in a class something other than Class 1?  
9       Mainly Class 2?

10          A     I'm really uncomfortable testifying about what  
11       happens at one of my customers' plants.

12          Q     Okay. I'm just saying --

13          A     -- representative. If you want them to come up  
14       --

15          Q     Okay. Well, again, for clarification of the  
16       record, are you aware that the plant is in fact classified  
17       as a pool distributing plant?

18          A     I understand that it has -- does have some  
19       Class 1 sales. I know Nider was, but I wasn't sure on  
20       Vernon. I would have to look it up on Vernon.

21          Q     So -- but would you agree with me that perhaps  
22       to the extent there are some plants that are classified as  
23       pool distributing plants that their receipts could be much  
24       less than the 85 percent assignment to Class 1?



1           A     Oh, yes. Absolutely.

2           Q     And to the extent that happens, it tends to  
3     affect your -- your calculations here?

4           A     Absolutely. I was going -- this is sort of  
5     looking at the market -- the entire market, not an  
6     individual. I imagine there are some handlers --  
7     distributing plants who are 90 percent or more. I was --  
8     I believe that Mr. Fredericks answered 85 or 90 percent to  
9     that question, and so I was trying to use that response.

10          Q     I believe you testified or responded on cross  
11     that in the calculations you made in the table showing  
12     capacities, your relative capacities --

13          A     You're referring to Table 2 of my exhibit?

14          Q     Table 2, yes. Am I correct in assuming here  
15     that your capacity then has to be pretty close to the 65  
16     million that is shown that and -- and was discussed for  
17     April 2000?

18          A     In April of 2000 -- what are you -- what are  
19     you -- our capacity in April would be 66 million based  
20     upon our --

21          Q     66 million. So that was pretty close?

22          A     Yes, absolutely.

23          Q     Now, in determining the capacity level, is that  
24     based on your production capacity of making butter out --

1       where's the bottleneck forming. On this -- on this  
2       bottleneck it's the dryer. And it's -- you do 130 pounds  
3       of milk an hour.

4           A     I -- I talked to our -- reminded myself --  
5       about this last week. But it's -- it's -- the capacity is  
6       right there, Dave, on -- on it.

7           Q     Okay. So are you saying that your evaporator  
8       runs at a faster rate of capacity than the dryer?

9           A     Yes.

10          Q     Okay. That being the case, that enables you,  
11       AgraMark -- AgraMark's West Springfield plant to move  
12       extra amounts of condensed milk that you might make on  
13       that evaporator?

14          A     It does, but condensed is a two-edged sword.  
15       If you've got a customer for condensed, it could be a good  
16       sale. If you have to move condensed for other reasons,  
17       they've got you.

18          Q     Okay. But is it true that where you are coming  
19       up close to your capacity butter powder operations that at  
20       times when there is a very large flush that you may have  
21       to run your condenser extra --

22          A     Absolutely.

23          Q     -- and move the milk on sometimes at a loss?

24          A     Oh -- oh, absolutely. Probably -- I don't have

1       -- good monthly figures here for that -- for that month.  
2       But if we were at 99 percent capacity, keep something in  
3       mind. That's like running full out, almost no break  
4       during the month other than for cleaning and other things.

5               So if that's the case, we had daily  
6       fluctuations of other stuff coming into that plant, we had  
7       to find -- we had to -- and that was not just the total  
8       amount of milk coming into that plant. There was  
9       additional milk -- so, absolutely, we did condense. In  
10      that kind of market environment, usually condensed goes at  
11      a loss.

12             Q     So to the extent you have or are forced by  
13      surplus conditions to move a lot of condensed, then you in  
14      effect are increasing your capacity -- number one,  
15      increasing your capacity limits, and number two,  
16      exacerbating your losses, is that correct, on -- on the  
17      handle, the surplus?

18             A     In this table I tried to focus in just on  
19      butter powder because that relates to the balancing that  
20      we did. That's what I -- that's what my focus was. I  
21      don't disagree with your statement, okay.

22             Q     From your experience in the marketing situation  
23      in New England, did you find that when the regional  
24      compact was in effect that the payments under that compact

1 provision enabled AgraMark to have a premium charge to  
2 their handlers at a somewhat lower rate than prevailed in  
3 New York-New Jersey area?

4 A I know that there were higher premiums to keep  
5 milk from entering into the compact in New York. I don't  
6 know about Pennsylvania.

7 Q So, no.

8 A And I don't know what our -- I don't know what  
9 our customers paid relative to other people. I know there  
10 was discussion on higher premium levels to do that.

11 Q I guess my question is, was it your experience  
12 that the level of premiums charged to handlers in New  
13 England was considerably lower than that charged by -- in  
14 New York-New Jersey by other cooperatives?

15 A I don't believe we charged their customers any  
16 different. Others may have.

17 Q Others may have? Probably to meet the  
18 competition --

19 A I would -- I don't -- I would say that probably  
20 occurred. If you ask me who did it and how much, I  
21 couldn't --

22 Q Okay. I understand. Also from your experience  
23 at AgraMark operations, is it fair to say that the great  
24 majority of your milk that your members produce is in fact

1 utilized at your own plants?

2 A It is not the majority of -- of our milk. It  
3 is a very high proportion of our milk but it is not the  
4 majority.

5 Q Can you -- would you care to tell us, you know,  
6 what percentage that might be?

7 A It probably -- it's over 40 percent. Keep in  
8 mind that we have 40 percent Class 1 utilization, 35, 40  
9 percent depending on the month. So we -- we're a large  
10 supplier to Class 1 bottling plants. And then we have --  
11 it was mentioned that there was a cheese plant that we --  
12 we work with. We work with other Class 2 plants and  
13 others.

14 So, probably, I would say it isn't -- it isn't  
15 the majority. It's over a third -- clearly over a third.

16 Q The fact then that you are an operating  
17 cooperative with a large -- a very large quantity of milk  
18 that you're utilizing yourself, do you find at times then  
19 that if there's a race on premium -- that you wind up  
20 paying -- having to pay it for your own milk?

21 A We pay our -- we have to beat the competitive  
22 premiums across all our membership.

23 Q Mm-hmm.

24 A So, yes, it ends up being charged back to our

1 operations. It's another thing if we're making butter and  
2 powder. Our -- skim milk making powder -- selling to the  
3 government and those premiums out there. We could -- we  
4 have to pay that cost even though we're balancing.

5 Q It is a factor in your determination on  
6 premiums that you do have to pay them yourself on milk you  
7 utilize in your own operation?

8 A Right. Like I said, we -- we pay it across for  
9 all our members equally. We don't say, your milk goes to  
10 our plant so you don't get the same -- we don't -- we do  
11 not say that.

12 MR. ARMS: Okay. Thank you very much.

13 JUDGE BAKER: Thank you, Mr. Arms. Are there  
14 other questions for Mr. Wellington? There appear to --  
15 oh, Mr. Buelow?

16 MR. BUELOW: Yes, Your Honor. Jim Buelow with  
17 Elmhurst Dairy.

18 CROSS EXAMINATION

19 BY MR. BUELOW:

20 Q Turning to Table 2 of your exhibit, am I  
21 interpreting this right in looking at the percentages of  
22 utilization of your plant that in the last two and a half  
23 years there has been four times to -- there has been only  
24 two times where the plant has been utilized more than 90

1 percent?

2 A On a monthly basis. Keep that in mind. If I  
3 were to look at it over shorter periods of time. We just  
4 happen to be looking at a month where it could be very  
5 cool for a week or two or three weeks, okay. And there  
6 might be some holiday or other things involved. But on a  
7 monthly basis that is correct.

8 Q Okay. Over the same period of time, is it  
9 correct that the plant monthly utilization only four times  
10 has been 85 percent or higher?

11 A I'd have to count the numbers. I would say if  
12 you've counted them already, I'll -- whatever the numbers  
13 show -- I -- I would say -- if this might help, Jim,  
14 whenever -- whenever we're above 80 percent capacity, it  
15 means we are running at full capacity for a good part of  
16 the month, okay. And then what we -- then what -- what  
17 happens is the main days for Class 1 sales are usually  
18 Thursdays and Fridays. We might be running at 80 percent  
19 of capacity, meaning full capacity for five days and then  
20 we're running at just partial capacity for those two days.

21 Q There seems to be a lot of attention paid in  
22 your testimony to costs associated with not running at  
23 full capacity. Could you share with us -- you run two  
24 other plants. Could you share with us maybe not as

1       precisely as these numbers but what capacity does  
2       Middlebury Center run month-in and month-out and does it  
3       vary throughout the year?

4           A     It does vary throughout the year. I would say  
5       generally we try to run Middlebury on the demand, almost  
6       like those cheese plants. Usually we try to do -- in our  
7       market. Not all do but most do.

8                   Middlebury usually runs about six days a week.  
9       If we -- if have additional supplies of milk such as we  
10      mentioned have to be condensed at distressed prices,  
11      Middlebury will pick up and run seven days a week, okay.  
12      If there's a short, we might run five days a week. But we  
13      don't -- we don't consider Middlebury a balancing.

14                  Cabot is not a balance-share at all. Cabot  
15      does soft products, small amounts of specialty cheese.  
16      Cabot does not balance the market at all. Cabot gets the  
17      milk it needs.

18           Q     I understand that, but that's not really the  
19      point of my question.

20           A     Okay.

21           Q     I'll try asking it another way. Every plant  
22      that you run I'm sure you try to assess the cost of  
23      running that plant --

24           A     Yes.



1           Q     -- correct? And I don't believe that there's  
2 many plants or there are no plants or -- or anywhere in  
3 the country that truly run at 100 percent of capacity all  
4 the time. Is that correct?

5           A     That's correct.

6           Q     Okay. In looking at your cost of operations  
7 for instance of the Middlebury plant, if it should run at  
8 85 percent of capacity, wouldn't you take your total  
9 operating costs and spread that over those -- those type  
10 of pounds that would be most associated with what would go  
11 through that plant?

12          A     Yes, that's what we would do. I guess it  
13 depends on your definition of capacity. When I say, for  
14 example, that we work -- we use Middlebury six days a  
15 week, in many ways we would consider that to be capacity  
16 for labor reasons and other reasons. And then suddenly we  
17 run over capacity when we run seven. So a lot of it  
18 depends on your definition of what that capacity is.

19                I -- at West Springfield, we handle that a  
20 little bit -- it -- it's handled differently in terms of  
21 we're not a determinant -- I want to say this right.  
22 We're not a determinant of capacity so much at West  
23 Springfield as we are at the other plants. We make  
24 conscious decisions at the other plants.

1           West Springfield, you know, I was -- I was  
2     talking to our plant manager a couple days ago and they  
3     had a week when they thought they would be getting -- a  
4     few weeks ago they were getting about 15 million pounds of  
5     milk. And they got a call and they had 11 million pounds  
6     of milk after they had scheduled everything and -- and we  
7     had to -- so capacity is sort of a -- a rough target to  
8     shoot at. I had to shoot at it. I had to come up with a  
9     number.

10           Q     Okay. The point of my question, the -- this  
11     type of question, wouldn't it be more realistic in  
12     accounting for your costs at -- at the butter powder plant  
13     in West Springfield to use a number that -- that is more  
14     consistent with the pounds of milk that would normally go  
15     through that plant, not the maximum capacity?

16           A     Well, we do. Normally we get 60 or 65 percent  
17     and we have a loss. So, yeah, we -- we -- we do look at  
18     that. How -- how do you attribute that loss? I mean,  
19     that really becomes the issue. It's another reason why we  
20     went back to the Ling study, so we could really just focus  
21     in on what the balancing needs were.

22                     Yeah, -- can account for costs ultimately.  
23     That's --

24           MR. BUELOW: Thank you.

1 JUDGE BAKER: Thank you, Mr. Buelow. Are there  
2 other questions for Mr. Wellington? Yes, Mr. Beshore?

3 REDIRECT EXAMINATION

4 BY MR. BESHORE:

5 Q Bob, you were asked a question by Mr. English  
6 with respect to whether you were aware a producer could be  
7 pooled on more than one order at the same time.

8 A Okay.

9 Q Now, with respect to the modification in -- in  
10 language that you have advanced on behalf of ADCNE to  
11 exclude the payment of marketwide -- marketwide -- the  
12 eligibility for marketwide service payments --

13 A Right.

14 Q -- of a producer who is just coming on to the  
15 order for a three-month period of time, was it your intent  
16 to exclude and are you willing to adapt the language in  
17 whatever way is necessary to exclude all of the producer's  
18 milk during that three-month period of time?

19 A If he's not fully on the order and -- and if  
20 he's on another order, I don't think he should be on. I  
21 said I didn't have an issue with that. We had to go back  
22 to the -- I went back to the group and discussed that and,  
23 yes, I think we would -- we clearly agree the Department  
24 should do that. They have to be -- they -- they have to

1 be fully and exclusively on the order for that three-month  
2 period.

3 Q Okay. So just as we're proposing to eliminate  
4 the split-plant provision and other --

5 A Right.

6 Q -- provisions here, you'd -- you're not  
7 advocating a split producer pool of milk?

8 A I don't -- no. I don't have split producers in  
9 my organization, but the more I hear about it, the more  
10 I'm going to look at it.

11 (Laughter)

12 BY MR. BESHORE:

13 A But I don't -- we don't have -- that's one of  
14 my issues, was I -- I don't deal with them, so.

15 Q Along -- along that same line, is it -- you  
16 were -- the pool of milk from outside the defined  
17 geographic marketing area was -- was called to your  
18 attention by Mr. Rosenbaum and perhaps Mr. English also.  
19 Would it be your view -- well, are there other proposals  
20 advanced by ADCNE in this hearing which would have some --  
21 which, if adopted, would have some impact on the ability  
22 of -- of any handlers to pool milk from any area that is  
23 not performing year-round on the market?

24 A Yes. There are proposals. And in fact,

1 basically, that's one of the reasons our proposal was  
2 written the way it was. You have -- Mr. Gallagher will be  
3 testifying in -- in support of those proposals.  
4 Basically, our -- our hope is that they will limit some of  
5 those pounds that are coming onto the pool.

6 Q At least if the pounds are not performing --

7 A The pounds are not performing and serving the  
8 market, yes.

9 Q Okay. Presently, for instance, there is the  
10 language in the order at least that allows milk associated  
11 with supply plants to be pooled from January through July  
12 without any performance requirements whatsoever if the  
13 plant has been pooled the previous August through  
14 December?

15 A At 20 percent, correct.

16 Q Correct. And -- and those provisions would be  
17 -- if -- if in fact they accommodated any of the large  
18 volumes of milk in prior flushes, that would be subject to  
19 different rules going forward if those proposals are  
20 adopted?

21 A Our -- our -- our intent is not to exclude that  
22 milk. It's to make sure that milk is actually serving the  
23 market.

24 Q Now, the -- you were asked a question or two by

1 Mr. Vetne, I think, with respect to the language in the  
2 marketwide service payment -- Proposal 7 which  
3 disqualifies or excludes from payment non-member milk  
4 that's pooled by a co-op or cooperative member milk that's  
5 pooled by a proprietary handler. You're -- you're aware  
6 of that?

7 A Yes.

8 Q And the -- the prohibition in -- in Proposal 7  
9 as it's written applies to -- applies both ways? That is,  
10 a cooperative handler cannot collect on non-member milk  
11 and a proprietary handler cannot collect on cooperative  
12 member milk, correct? It was one of the intents of that  
13 language to prohibit in essence the arrangement that could  
14 be entered into solely for the purpose of collecting money  
15 and not for the purpose of balancing?

16 A Yes.

17 Q You were asked a few questions with respect to  
18 the seasonal indices which Dr. Ling calculated and which -  
19 - which you calculated also with respect to either  
20 producer receipts or Class 1 demand. And you noted, I  
21 think, that those indices could be -- could be  
22 recalculated with any adjustments that may be deemed  
23 appropriate by the recalculator, whether it be an  
24 interested party on a brief or -- or the Department.

1           A     There's a tremendous amount of data in the  
2     record that we could -- you certainly could do that.

3           Q     And -- and those -- any such recalculations  
4     could also then be input into -- into Dr. Ling's tables if  
5     one chose to to determine what impact, if any, that might  
6     have upon the isolated cost of balancing the Class 1 milk?

7           A     Something like the indices, yes. Other members  
8     I'm not sure. But the indices certainly --

9           Q     Would you turn to page 85 of Exhibit 5 briefly?  
10    You were asked a couple questions about it. And that's  
11    the 7(a) plant aggregate receipts and utilization  
12    information that's -- was prepared by the market  
13    administrator --

14          A     Yes.

15          Q     -- on the basis of the handler reports of the  
16    plants indicated in the -- in the footnotes on the  
17    exhibit.

18          A     (Inaudible).

19          Q     Okay. Now, West Springfield is one of the  
20    plants that's involved, correct?

21          A     Yes.

22          Q     So that, as you've testified, your total  
23    receipts at West Springfield of milk and cream do not go -  
24    - do not all go into skim milk powder or butter, correct?

1           A     Correct.

2           Q     Okay.  The -- the shaded column to the right on  
3     this exhibit is essentially just the pounds used to  
4     produce Class 4 products at those facilities?

5           A     Yes.

6           Q     And to the extent that West Springfield, for  
7     instance, and any of these other plants have production of  
8     condensed that's marketed elsewhere, the volumes that went  
9     into that are on the receipt side but they're not showing  
10    as skim milk or -- or other powder or butter manufacturer  
11    because they didn't go to that end use, correct?

12          A     Unless they ended up in that end use.  If we  
13    moved skim to another powder plant.  That's the only thing  
14    I can say in that -- that that happens.

15          Q     Well, if you moved -- if you moved condensed to  
16    another powder plant, it wouldn't -- those volumes  
17    wouldn't show up in the used to produce --

18          A     Yes, that's true.  That is true.

19          Q     -- information which is what Mr. Fredericks  
20    testified is the gray columns?

21          A     That's true.  This isn't total amount of  
22    product this is used to produce, yes.

23          Q     Okay.  And so in effect, it's just the -- it's  
24    the residual volumes that get -- at these plants that go



1 to the least -- essentially the balancing and true  
2 balancing uses. The last -- as you testified, the last  
3 uses you make of it or the first uses that milk gets taken  
4 out of it when it's demanded from the commercial market?

5 A That's true.

6 Q Would you turn to page three of your testimony,  
7 please? Exhibit 13.

8 (Pause)

9 BY MR. BESHORE:

10 Q Page three?

11 A Yep.

12 Q Exhibit 13. Okay. Now, I want to draw your  
13 attention to the first full paragraph on page three of  
14 your testimony. And going back to page -- the bottom of  
15 page two for a moment, is it not correct that you are in  
16 your testimony there quoting the decision of the secretary  
17 from the 1986 decision?

18 A Yes, I am quoting.

19 Q Okay. So that in the first full paragraph on  
20 page three, which begins, "Market balancing activities,"  
21 those are not your words, those are words of the secretary  
22 in explaining what the statute provides for?

23 A The secretary's finding and conclusions, yes.

24 Q And the secretary found that market balancing

1 activities such as disposing of surplus milk and obtaining  
2 supplementals from Class 1 handlers are clearly identified  
3 in the new provisions as services of marketwide benefit,  
4 correct?

5 A Yes.

6 Q And the secretary also found that the law,  
7 which is the law we're proceeding under here with respect  
8 to Proposal 7, also provides that payments made under the  
9 order program for the purpose of reimbursing the handlers  
10 who provide those services are to be made from the total  
11 sums payable by all handlers for milk, correct?

12 A Correct.

13 Q And that's pooled, correct?

14 A Yes.

15 Q And the secretary went on to find thus the  
16 objective under marketwide service payment provisions is  
17 that the minimum uniform price to all producers would be  
18 evenly affected, reduced, and all would share the cost of  
19 providing those services. That wasn't your interpretation  
20 of what would happen; it was the secretary's finding with  
21 respect to how these types of provisions would work?

22 A Yes, that's true.

23 Q And the secretary also found that in this way  
24 some market participants would not be able to maintain an

1 advantage gained by receiving benefits but not having to  
2 pay the costs therefore, correct?

3 A Correct.

4 Q And that's the objective of Proposal 7 --

5 A Exactly.

6 Q -- is it not?

7 MR. BESHORE: Thank you. That's all I have.

8 JUDGE BAKER: Very well. Are there any other  
9 questions? If -- determine how long they're going to be.  
10 Yes, Mr. Rosenbaum?

11 MR. ROSENBAUM: Less than two minutes.

12 JUDGE BAKER: All right. Go ahead.

13 MR. BESHORE: He's on the clock.

14 RECROSS EXAMINATION

15 BY MR. ROSENBAUM:

16 Q Just to follow up on the last question from Mr.  
17 Beshore, you agree that the language in the statute  
18 provides that the order shall contain one or more of the  
19 following provisions, one of which is marketwide service  
20 payments? That's the way the structure is set up,  
21 correct?

22 A I don't know.

23 Q You -- okay. You're not -- you're not  
24 suggesting that it's required that there be marketwide

1 service payments, only that the secretary has the  
2 discretion if he deems them appropriate to put in place,  
3 is that right?

4 A -- say they're required by my interpretation --  
5 required. Certainly, the secretary has the option.

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

7 JUDGE BAKER: Thank you. Are there any other  
8 questions for Mr. Wellington?

9 (No response)

10 JUDGE BAKER: Let the record reflect that there  
11 are none. Thank you very much, sir.

12 (Whereupon, the witness was excused.)

13 JUDGE BAKER: That does bring us to the time  
14 for our afternoon recess, after which we will hear from  
15 those two individuals who have to be heard today.

16 MR. BESHORE: May I move the admission of  
17 Exhibits 13 and 14 before we break?

18 JUDGE BAKER: Are there any questions or  
19 otherwise or objections with respect to 13 and 14?

20 (No response)

21 JUDGE BAKER: Let the record reflect there's no  
22 response. Exhibits 13 and 14 are admitted and received  
23 into evidence.

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(The documents previously  
marked for identification as  
Exhibits 13 and 14 were  
received in evidence.)

JUDGE BAKER: Yes, Mr. --

MR. ENGLISH: I just wanted -- you said there  
were two people that need to be heard today. There's  
really three. There are two dairy farmers who I'd like to  
take up after the afternoon recess and there's one other  
person, Mr. Miller of Queensboro Farms, who's been here  
both days. And if I could accommodate him, he can be at  
the end of the day today. I -- it's a fairly short  
statement. I don't think it's overly complicated. Maybe  
-- I don't think so. And hopefully we can accommodate him  
as well.

But at least the two dairy farmers now, and if  
you want to take Mr. Miller right afterward, that's fine.  
But I don't want to continue interrupting the flow of Mr.  
Beshore's --

MR. BESHORE: Well, we're certainly prepared to  
yield to the dairy farmers and accommodate Mr. Miller as  
well.

JUDGE BAKER: Thank you -- we'll take a 15-

1 minute recess at this time and come back to proceed.

2 (Brief recess)

3 (The document referred to was  
4 marked for identification as  
5 Exhibit 15.)

6 JUDGE BAKER: Are there any questions or  
7 objections -- yes, Mr. English?

8 MR. ENGLISH: I understand there are none, so I  
9 was going to move the its submission.

10 JUDGE BAKER: All right. Well, I -- I --

11 MR. ENGLISH: (Inaudible).

12 JUDGE BAKER: -- consideration now -- not going  
13 to object.

14 SPEAKER: We did have the opportunity to review  
15 it and to not have any objection to its admission.

16 JUDGE BAKER: Very well. Thank you. I -- take  
17 Mr. English's word. I just wanted to be -- (inaudible).

18 MR. BESHORE: Thank you, Your Honor.

19 (The document previously  
20 marked for identification as  
21 Exhibit 15 was received in  
22 evidence.)

23 MR. ENGLISH: Your Honor, I would call Mr.  
24 Travis Finn --

1 JUDGE BAKER: Very well.

2 MR. ENGLISH: -- to the stand.

3 Whereupon,

4 TRAVIS J. FINN

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. BESHORE:

9 Q Mr. Finn, could you state your full name and  
10 spell it for the record, please?

11 A Travis J. Finn. T-R-A-V-I-S, "J" as in James,  
12 Finn, "F" as in Frank-I-N-N.

13 Q And what is your address? Would you speak in  
14 the microphone?

15 A Sure. I can do that.

16 Q Pull it to you.

17 A I live at 9195 Jones Road, Holland Patent, New  
18 York. Holland Patent is a little town northeast of  
19 Syracuse, home of the Syracuse Orangemen. And --

20 Q You're here today -- are you here on your own  
21 behalf as well as on behalf of an entity?

22 A On behalf of several organizations I would  
23 include.

24 Q The --

1           A     The first thing, my own farm, -- Farms. The  
2     second being Holland Patent Farmers Co-Op, of which I'm  
3     vice president. And that is the cooperative that we  
4     market our farm's milk through. Also, on behalf of  
5     Elmhurst Dairy, who has purchased our co-op's milk for the  
6     last few years.

7           Q     And for the record, Elmhurst Dairy will also  
8     have a -- a witness for themselves, correct?

9           A     Correct.

10          Q     Before you give your -- your statement that  
11     you'd like to give, there was a witness yesterday from the  
12     New York Farm Bureau who testified. Are -- are you or is  
13     your farm a member of New York Farm Bureau?

14          A     Yes, we are.

15          Q     And were you, to your knowledge, consulted  
16     about the proposals at issue here today by the New York  
17     Farm Bureau as to taking a position?

18          A     To my knowledge, I wasn't aware of any trying  
19     on their part to get our opinion.

20          Q     And do you have some things you'd like to say  
21     today about marketwide service payments?

22          A     Yes, I do -- I do.

23          Q     Why don't you go ahead and have your say?

24          A     First of all, Your Honor, I'd like to thank you



1       for -- and the -- the people from the Department of  
2       Agriculture for holding this hearing and -- and giving me  
3       a chance to -- to come and give my -- my feelings on it --  
4       (inaudible) -- the order.

5               I won't take much of your time. I realize  
6       everybody's time is valuable, but I just thought it may be  
7       of some benefit to hear what some of the producers that  
8       are actually out there in the farms milking the cows feel  
9       about this proposal.

10              I stated where I was from. I -- I farm there  
11       with my brother and father. We milk 420 cows. It's still  
12       very much a family operation.

13              And I guess -- this wouldn't be my first choice  
14       of places to be today. But I expect to be farming for the  
15       next 30 years and I realize that this is probably the most  
16       important place for me to be today.

17              I have two small children, six and four, that I  
18       think maybe some day will take the farm over. If they do,  
19       I would be happy to feel that I maybe encouraged a better  
20       environment for them to farm in.

21              At any rate, that's how I got here and why I'm  
22       here. And I'm just going to give you my quick take on it.

23              Kind of -- to put it bluntly, I -- I just don't  
24       think it's a very realistic amendment to the Northeast

1 Marketing Order because I see it as being discriminatory  
2 in a couple of different senses. The first being that  
3 we're taking money from farmers here in the northeast and  
4 putting it in the hands of larger cooperatives whose scope  
5 of operation extends from coast to coast.

6 Now, were the tables turned and we were going  
7 to skim money off of all the other federal order pools and  
8 return that to an organization that I was part of, I would  
9 be very much in favor of that. But one -- wondering why  
10 they dipped into my pool to support organizations that go  
11 well beyond the Northeast Marketing Order. Doesn't look  
12 like such a great deal to me.

13 Feeling why these -- these co-ops are  
14 supposedly providing a marketing service, it's kind of a  
15 vague term and -- and not a real lot of hard evidence that  
16 -- that I have seen as to exactly what they're doing for  
17 this service. Then, to make it even harder is to put the  
18 numbers on -- of the services they are supposedly  
19 supplying to us.

20 Granted, they handle a large volume of the milk  
21 but I feel the small cooperatives and proprietary  
22 organizations are -- are also contributing to balancing  
23 the -- the fluid one pool. One sure example, we signed a  
24 contract with Elmhurst Dairy last -- last fall and agreed

1 to send our milk to three different locations. The  
2 markets change substantially during the year and we were  
3 contacted and they asked if it would be okay to send it to  
4 some other locations. The reason they contacted us was  
5 because we always agreed to take care of our own hauling.  
6 So that had an impact on us once it starts moving  
7 location.

8 But in the end we agreed to do that. And by  
9 the time the end of the year had rolled around, we had  
10 shipped our milk to eight different locations. But we got  
11 what we had wanted. The contract was -- the way we  
12 intended it to, and I feel that the combination of our own  
13 co-op and Elmhurst Dairy both contributed in trying to  
14 balance the market.

15 We didn't necessarily make dry powder and  
16 butter out of it per se, but we had to alter the locations  
17 to soft product manufacturing plants. Who's to say that's  
18 not a service provided within the order to balance the  
19 marketing?

20 Then -- a little more on the -- the dollars and  
21 cents issue. It's -- it's a huge amount of money that's  
22 taken out of the pool. We're just a small producer in a  
23 very large pool. But that still means \$3500 a year to me  
24 on my farm. Thirty-five hundred to me is the difference

1       between funding my retirement and not. Being able to  
2       afford health insurance so that my wife can stay home and  
3       raise our kids. I just need -- I need some very good  
4       evidence and support that this is a necessary thing before  
5       I'm going to stand up and say, yeah, you can have my four  
6       cents or six cents or whatever it boils down -- coming to.

7               One of my final points will be that I kind of  
8       feel that this -- these milk handlers are running the  
9       business, much as I run my business. And they should know  
10      going into this how they're going to cover their expenses.

11             Kind of an analogy, if I don't think I'm  
12      capable of running a cropping operation, I'd better not  
13      buy a full line of equipment to put behind my dairy to  
14      feed my cows if I don't think I can manage that aspect of  
15      it. I'd better buy feed or custom hire somebody else to  
16      come manage it.

17             And I kind of feel the same way about this.  
18      These handlers know when they sit down and talk to me and  
19      want to buy my milk what the deal is. And it's their  
20      problem there on out. And to this point, I feel like  
21      they've met it. I've never had anybody leave me with a  
22      tank full of milk yet.

23             In conclusion, I'd just like to say that I  
24      almost feel like this proposal -- it's kind of an

1 enticement to encourage people to participate in balancing  
2 the fluid market. When I look back at history, I'm not  
3 sure we need that. As far as I can see, the -- the market  
4 is being balanced. I don't -- I've never had trouble  
5 getting a gallon of milk out a grocery store. I've never  
6 had a problem with milk being left in my bulb tank.

7           So I have to ask myself, why are we doing the -  
8 - skimming money off the top of the market pool to perform  
9 some service that has, to me, obviously been happening  
10 along the way. And I'm sure it's much more complicated  
11 than I just reiterated it, but I'm just giving you my  
12 layman's view of what's happening from the farm.

13           With that, I'd just like to say thank you for  
14 your time.

15           JUDGE BAKER: Thank you for appearing and  
16 participating in the hearing. I shall now ask for  
17 questions. Are there any questions for Mr. Finn?

18           BY MR. BESHORE:

19           Q     Thank you for -- for your testimony, Mr. Finn.  
20 How you alluded to, I guess, hearing some of the testimony  
21 or -- have you been -- have you been here -- how -- how  
22 much testimony have you heard?

23           A     Just today. I got on a flight at 6:00 this  
24 morning and what I've got so far is what I've got. I

1       tried to educate myself as best I could before I got here,  
2       but I -- (inaudible) -- to do.

3           Q       How many members does Holland Patent have in --  
4       cooperative have?

5           A       We currently have 47 members shipping milk. It  
6       was established back in the early 1930s and did have a  
7       bottling plant of its own. The bottling plant closed up.  
8       I don't know the exact date. I'm going to say in the mid  
9       '60s, so we've basically been -- well, not totally a paper  
10      co-op. We still own the land, the buildings, and run a  
11      farm store out of the old bottling plant. But we don't --  
12      we don't actually bottle any milk or manufacture any milk  
13      of our own. It's strictly set up to gain market clout and  
14      try to negotiate milk prices.

15          Q       What monthly volume do the 47 farms produce?

16          A       We do about 40 million pounds a year. So break  
17      that down. Three and a half million pounds a month.

18          Q       Is -- is all of your production contracted to  
19      Elmhurst?

20          A       Yes, it is right now.

21          Q       Your -- your farm with 420 cows, how much milk  
22      do you produce a year? Around 20,000 per cow?

23          A       Seven and a half million pounds. Probably  
24      closer to 8 million pounds this year.

1           Q     So your -- your 8 million is about 20 percent  
2     of the co-op?

3           A     We figure around six.

4           Q     Are you -- you're the vice president I think  
5     you said?

6           A     Yes.

7           Q     And you bargain in selling the 40 million  
8     pounds a year to Elmhurst. Do you receive an over-order  
9     premium for the -- the -- your milk?

10          A     Yes.

11          Q     And does that premium vary with respect to  
12     where it's sold -- where it's delivered?

13          A     Somewhat.

14          Q     Does it vary by the class of utilization?

15          A     I guess that's a question that's beyond my  
16     scope of knowledge.

17          Q     Okay. How many plants does Elmhurst have?

18          A     That I don't know either. But I'm sure there's  
19     somebody here that could help you with that one.

20          Q     The Elmhurst witness, I assume.

21          A     I would think so.

22          Q     Okay.

23          A     I would hope so.

24          Q     Now, you don't supply Elmhurst all its needs?

1           A     Not even close.

2           Q     But Elmhurst -- your milk is all -- your  
3 cooperative's milk is all under contract to Elmhurst and  
4 they direct you where to deliver the milk?

5           A     Yeah.

6           Q     You have -- do you contract on a yearly basis -  
7 - the cooperative, that is -- for your milk?

8           A     Yeah.

9           Q     Previously you've contracted with some to --  
10 some of the cooperatives in the market -- one other  
11 question. Are you -- do you hold any elected position in  
12 the New York Farm Bureau?

13          A     No.

14          Q     But it does have a structure of board members -  
15 -

16          A     Oh, a very sound structure. It's my brother's  
17 department. He is an elected official. I proposed to him  
18 what I was going to do and he said, sound all right to me  
19 -- so. He stayed home. I guess maybe he didn't know a  
20 Farm Bureau stake was -- (inaudible).

21               MR. BESHORE: Thank you very much.

22               JUDGE BAKER: Thank you. Are there any other  
23 questions for Mr. Finn? Mr. Vetne?

24                       CROSS EXAMINATION



1 BY MR. VETNE:

2 Q I'm John Vetne. I represent Friendship. The  
3 market administrator gave us some information at the  
4 beginning of the hearing showing all the co-ops for the  
5 producers pooled in the order. Holland Patent doesn't  
6 appear in that list of some 40 or 50 or 90 co-ops. Do you  
7 have any idea why? HP Farmers Cooperative, is that it?  
8 Never mind.

9 A That's good because I didn't have any idea why.  
10 (Laughter)

11 MR. VETNE: Okay.

12 JUDGE BAKER: I don't think the -- (inaudible).

13 MR. BESHORE: For the record, there's a "H  
14 period P period Farmers Cooperative." And is that the  
15 same as Holland Patent?

16 THE WITNESS: Yeah, that's shorthand for  
17 Holland Patent.

18 JUDGE BAKER: Very well. Thank you. Are there  
19 any other questions for Mr. Finn?

20 (No response)

21 JUDGE BAKER: There appear to be none. Thank  
22 you again.

23 THE WITNESS: Okay.

24 MR. BESHORE: Thank you again.

1 JUDGE BAKER: (Inaudible).

2 (Whereupon, the witness was excused.)

3 MR. ENGLISH: The next witness --

4 (Pause)

5 JUDGE BAKER: Do you want to call the next  
6 witness?

7 MR. ENGLISH: Mr. Scholte.

8 JUDGE BAKER: Very well.

9 Whereupon,

10 ARIE SCHOLTE

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

13 DIRECT EXAMINATION

14 BY MR. ENGLISH:

15 Q Mr. Scholte, would you please state your full  
16 name and spell it for the record?

17 A My name is Arie W. Scholte. A-R-I-E, W, S-C-H-  
18 O-L-T-E.

19 Q And would you please tell us why you're here  
20 today?

21 A Last week -- Wednesday, I guess -- I was  
22 informed the six cents per hundredweight marketing balance  
23 charge for the payment imposed by a milk handler, Mr. --  
24 (inaudible) -- suggested that I get together with dairy --

1 (inaudible) -- Council of New York Association and see if  
2 I would come down and testify as an independent producer.  
3 And that's what I'm doing here today.

4 Q It was your choice to come down, correct?

5 A Oh, absolutely.

6 Q And the statement you're to give today is your  
7 statement, correct?

8 A Absolutely.

9 Q Now, could you please speak into the  
10 microphone?

11 A Sorry. How's this?

12 Q Pull it towards you.

13 A All right?

14 Q Go ahead. Why don't you proceed -- I'm sorry.  
15 What's the -- do you operate a dairy farm?

16 A Yes, I do.

17 Q And where is that dairy farm?

18 A Located in Balmville, New York, which is about  
19 seven miles outside of Syracuse, close to Syracuse.

20 Q Why don't you proceed with your statement then?

21 A Basically, the same as Travis. Yesterday I was  
22 out in the field chopping corn. Today, on 9/11, I'm  
23 sitting here before you expressing my opposition to this  
24 six cents market service charge.

1 I'll give you a brief history of myself.

2 Married, one daughter, dairy farmer all my life. I owned  
3 a farm supply business for five years. Presently serving  
4 my second term -- (inaudible).

5 My family started farming in Orange County, New  
6 York, on a farm -- farming career started in Orange  
7 County, New York, when my parents came to the U.S. from  
8 Holland in 1954. We also farmed in Middlebury, Vermont,  
9 for six years before moving to our present farm, which is  
10 located in Balmville, New York, near Syracuse.

11 Dairy consists of 300 acres -- 300 cows, 300  
12 head of young stock, a farm about 1000 acres. And for the  
13 past 17 years, Vernon Dairy has been coming to our yard  
14 every day to pick up our milk.

15 My reason for traveling here today on 9/11 is  
16 to express my opposition to the six cent per hundred  
17 marketwide service payment that is being proposed by 7(a)  
18 markets and dairy co-ops.

19 Paying -- northeastern dairy co-ops six cents  
20 per hundred on the members' volume would reduce our -- our  
21 -- our net farm price by four and a half cents per  
22 hundred. This equates to \$2700 per year. That would -  
23 - that would be subtracted from our farm's bottom line.  
24 \$2700 is not a huge sum of money, but on a yearly basis,

1       for example, it pays for Christmas bonuses for our  
2       employees, school taxes on my house, a nice IRA  
3       contribution for myself, or my life insurance payment.

4               These are examples on a yearly basis. I think  
5       what is important -- more important to look at in this  
6       issue is the long term. For example, investing \$2700 in a  
7       conservative mutual fund, even taking the downturn in the  
8       market today, we could easily be looking at a 90- to  
9       100,000 dollar nest egg which could be used to fund  
10      retirement or to pay off debt in the future.

11             Now, this is just our farm. Let's look at the  
12      big picture. Four and a half percent -- four and half  
13      cents assessed over the whole Northeast Order, we're  
14      looking at 2 billion pounds per month -- per month, which  
15      means that the farmers in the Northeast Order would pay  
16      these 7(a) co-ops \$1 million per month or \$12 million per  
17      year or -- in the long term, 120 million over 10 years.  
18      This is for providing unspecified market balancing  
19      services.

20             In my opinion, this brings us to the real issue  
21      -- (inaudible), their documented need for providing this  
22      proposed marketing service. Would there be financial  
23      reports detailing use of the money? Would the money be  
24      held in escrow accounts if it's not needed? Will there be

1 some sort of third party oversight? That's how -- that's  
2 how -- as to how this money is spent. Would this four and  
3 a half cent charge would be better spent on advertising?  
4 I think that's a real good question.

5 How will this four and a half cent benefit the  
6 independent producers like myself which make up 25 percent  
7 of the milk production in the Northeast Order? What will  
8 be our return on investment? These are fair questions  
9 and, in my opinion, should be answered.

10 I think my testimony shows that if this  
11 marketwide service payment is adopted, northeast farmers  
12 will just be investing millions of dollars into a program  
13 that has no proof of return on investment. And with no  
14 proof of return, shouldn't this money stay on a farm where  
15 it can be put to use keeping future generations on the  
16 farm.

17 In closing, I want to thank the representatives  
18 of the USA for your time. I hope my testimony will help -  
19 - help you make a good decision.

20 JUDGE BAKER: Thank you very much, Mr. Scholte.  
21 Are there any questions for Mr. Scholte? Yes, Mr.  
22 Beshore?

23 CROSS EXAMINATION

24 BY MR. BESHORE:

1           Q     Mr. Scholte, I just have one question. I think  
2     -- your milk -- you sell your milk to Vernon Dairy?

3           A     Right.

4           Q     Is that correct? Which is in Syracuse?

5           A     Right.

6           Q     Did you say they -- you're on a daily pickup  
7     schedule with them?

8           A     Right.

9           Q     Okay. Do you know where your milk goes?

10          A     Vernon Dairy.

11          Q     And that's a bottling plant in Syracuse?

12          A     Right.

13          Q     They pick it up every day at your farm?

14          A     (Inaudible).

15          Q     Take it to the plant in Syracuse every day?

16          A     Right.

17          Q     Three hundred sixty-five days a year?

18          A     Three hundred sixty-five days, snow, wind,  
19     storm, whatever.

20                 MR. BESHORE: Thank you.

21                 JUDGE BAKER: Thank you. Are there any other  
22     questions?

23                 (No response)

24                 JUDGE BAKER: There appear to be none. Thank

1       you very much.

2                   (Whereupon, the witness was excused.)

3                   (Discussion held off the record.)

4                   MR. ENGLISH: Your Honor, the parties' pleasure  
5       is, again, Mr. Miller can get done some time before the  
6       close of business today. And I don't know when that is,  
7       either. But if -- if Mr. Gallagher wants to go now --

8                   JUDGE BAKER: Why don't we have -- why don't  
9       you --

10                  MR. ENGLISH: Okay. Is that all right, Mr.  
11       Beshore?

12                  MR. BESHORE: Yes.

13                  MR. ENGLISH: Mr. Miller is going to testify  
14       both on Proposal 7 and on some of the pooling proposals.

15                  JUDGE BAKER: Very well. Thank you.

16                  MR. ENGLISH: I would emphasize on those that  
17       the technical people will be coming later.

18

19

20       Whereupon,

21                               LEWIS BUTCH MILLER

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

24                  MR. ENGLISH: There's two statements -- two and



1 a half page and one under one page, but it seems like we  
2 may have run out of the one-pager.

3 (Pause)

4 DIRECT EXAMINATION

5 BY MR. ENGLISH:

6 Q Mr. Miller, would you state your full name for  
7 the record?

8 A Lewis Butch Miller.

9 Q And by whom are you employed?

10 A I'm employed by Queensboro Farm Products. I'm  
11 the executive vice president. And I'm here today also  
12 representing New York Dairy Foods, of which I'm the vice  
13 president.

14 Q And it's, again, your understanding that there  
15 will be other factual witnesses on these proposals and --  
16 and also some technical people to talk about the  
17 technical. You're going to talk about both Proposal 7 and  
18 Proposal 1, is that correct?

19 A Yes, sir.

20 Q Why don't you proceed with both statements?

21 A Start with Proposal Number 1. That's the one-  
22 page.

23 In regard to the required timing for market  
24 administrator reporting dates, we believe that the

1 reporting dates ought to be moved back one day to the 10th  
2 of the month. Simply stated, we do not have enough  
3 information supplied to us in a timely manner to report  
4 accurately on the 9th of the month.

5 Four of the last six months, we did not receive  
6 the necessary data in time. The information has arrived  
7 at our office at about noon or after on the 9th of the  
8 month.

9 We're a small business and a manufacturer. Our  
10 market administrator department consists of one extremely  
11 competent employee who must disseminate all of the -- all  
12 of the information at the last minute in order to file a  
13 complex market administration report on time. This  
14 rushing leads to error, estimating on occasion, and  
15 compromises the accuracy and veracity of such important  
16 information.

17 This in turn leads to orders adjustments, more  
18 work for the Department, and more time for producers and  
19 handlers to get accurate financial accounting with pool  
20 information and funds. This makes no sense.

21 If the reporting date and the other payment  
22 dates were to be adjusted accordingly as per the New York  
23 State Dairy-approved proposal which you'll hear later, the  
24 reporting and financial dissemination of information and

1 funds would be handled in a more orderly and consistent  
2 manner. Both the producer and the handler would benefit  
3 from this small change.

4 JUDGE BAKER: Very well. Are there any  
5 questions with respect to this testimony relative to  
6 Proposal 1?

7 MR. ENGLISH: I'd ask a few additional  
8 questions.

9 JUDGE BAKER: Oh, all right.

10 BY MR. ENGLISH:

11 Q Mr. Miller, as it happens, this week was pool  
12 reporting, correct?

13 A That's correct.

14 Q And in fact Monday was the deadline for getting  
15 information to the market administrator, correct?

16 A That's correct.

17 Q At what time did you receive the information?  
18 Actually -- start -- what date did you receive information  
19 from this fund?

20 A Monday the 9th, after the close of business,  
21 around 5:30 p.m.

22 Q And you've discovered that this is fairly  
23 typical since federal order reform?

24 A Yes, sir.

1 MR. ENGLISH: That's the only questions I have.

2 JUDGE BAKER: Thank you. Are there any other  
3 questions to respect -- with respect to Proposal 1?

4 (No response)

5 JUDGE BAKER: Let the record reflect that there  
6 are none. (Inaudible) -- Proposal 7.

7 (Pause)

8 THE WITNESS: Queensboro Farm Products is a  
9 diversified dairy manufacturer and distributor. The  
10 company operates a pool supply manufacturing plant in  
11 Canastota, New York, an economically depressed area on the  
12 outskirts of Syracuse, New York, as well as a distribution  
13 business in Jamaica, New York, another economically  
14 depressed area.

15 We're a small business with 75 employees but  
16 provide much needed employment in the geographic locations  
17 in which we operate. Our company was established in 1909  
18 and has been providing an outlet for independent dairy  
19 farmers and small co-ops ever since.

20 We are a seller and therefore a balancer of  
21 Class 1 milk and skim milk in excess of needs of the  
22 bottling plants as well as a manufacturer of a variety of  
23 non-Class 1 dairy products.

24 Our company is fundamentally opposed to any

1     proposal that removes money from the pool and in effect  
2     from the checks of independent producers, which are the  
3     lifeblood of our existence. The way the proposal for  
4     marketwide service payments is now worded, all producers  
5     would lose about four and a half cents a hundred from  
6     their milk chips. The only participants able to qualify  
7     for the six cent per hundredweight marketing service  
8     payments would be the cooperatives, the architects of the  
9     proposal.

10             This would create a procurement advantage for  
11     qualified cooperatives and a procurement disadvantage for  
12     proprietary plants sourcing milk from independent dairy  
13     farms. These independent dairy farmers are an integral  
14     part of Order 1 milk shed. And the proprietary handlers  
15     that receive and balance these Class 1 supplies should not  
16     be discriminated against.

17             As an independent handler in the business for  
18     many years, we must object to the language as proposed.  
19     They've already made significant investments in our plants  
20     and equipment. Although we have fewer than 500 employees,  
21     we still incur the same volatile costs of running a milk  
22     manufacturing plant and suffer the same burdens of unused  
23     capacity.

24             We too know the cost of idle capacity in the

1 middle of each and every week, only to work around the  
2 clock on weekends and holidays when our Class 1 customers  
3 are shut down.

4 We ceaselessly balance the flush Class 1 milk  
5 in central New York. If the three major cooperatives and  
6 proprietary handlers in that general area have too much  
7 milk can come to us to process that milk so that their  
8 truckers can empty their milk tanks.

9 When schools shut down for the summer vacation  
10 and for holidays, we balance Class 1 supply. By  
11 manufacturing non-Class 1 products, the cooperatives would  
12 qualify for marketwide service payments, but we would not  
13 even though we are the ones providing the balancing  
14 function.

15 The proposal for marketwide service payments as  
16 proposed excludes my company and lets cooperatives who  
17 have no investment in the bricks and mortar of milk  
18 manufacturing facilities qualify for six cents a  
19 hundredweight from the pool. This discriminates against  
20 small business that cannot qualify because they do not  
21 pool a quantity of milk equal to three percent of the  
22 total volume of milk pooled on the order for the month or  
23 they do not pool a million pounds of milk per day.

24 We believe the qualification level should be

1 changed and lowered to 400,000 pounds of milk per day and  
2 the wording in Part 2 be modified to say, "Class 1  
3 transfers and diversions assigned to Class 1 pool  
4 distributing plants shall be not more than 80 percent of  
5 the total quantity of producer milk which such handler  
6 pools."

7 This change is warranted because of the  
8 preponderance of non-Class 1 transfers to pool  
9 distributing plants that have emerged under the new  
10 order. In this manner, perhaps smaller plants that  
11 balance Class 1 needs of the marketplace shall be  
12 recognized as well. When Class 1 plants cannot receive  
13 producer milk, that milk must go some place. We are able  
14 to handle that milk just as larger cooperatives do. It is  
15 not reasonable to preclude smaller plants performing  
16 similar functions from the same entitlement as larger  
17 ones. The playing field should be a level one.

18 JUDGE BAKER: Thank you, Mr. Miller. Mr.  
19 English?

20

21 BY MR. ENGLISH:

22 Q Now, Mr. Miller, just to be clear, you've  
23 indicated that you have 75 employees. And for the record,  
24 that is under the standard set by the Department for what

1       qualifies as a small business. So one of your points is  
2       that you qualify as a small business under the Regulatory  
3       Flexibility Act, correct?

4           A     Yes.

5           Q     And were you here earlier today when Mr.  
6       Wellington testified and stated that while the proposal  
7       was for a million pounds, he himself was prepared to  
8       listen to proposals that -- that altered that number in  
9       some way?

10          A     (Inaudible) -- I heard that.

11          Q     And you agree?

12          A     Certainly I agree.

13               MR. ENGLISH: The witness is available for  
14       cross examination.

15               JUDGE BAKER: Very well. Are there any  
16       questions for Mr. Miller? Mr. Vetne?

17                       CROSS EXAMINATION

18               BY MR. VETNE:

19           Q     Mr. Miller, John Vetne for Friendship. Could  
20       you identify the non-Class 1 products that Queensboro  
21       manufactures?

22           A     Condensed milk, whole condensed milk, sour  
23       cream, cottage cheese, cream cheese, farmers cheese,  
24       butter. That's it. Cream.



1           Q     Do you have any capacity to produce dried milk  
2 products?

3           A     No, we do not.

4           Q     Have you had that capacity in the past?

5           A     Perhaps -- yes, we did. Not in the last 22  
6 years. I've been doing this too long.

7                     (Laughter)

8                     BY MR. VETNE:

9           Q     Your choice of 400,000 pounds of milk per day,  
10 is that intended to be an average?

11          A     I think that the way it's worded it's on a  
12 monthly basis that this proposal is to be evaluated, so  
13 it's a per month figure -- 400,000.

14          Q     And your choice of 400,000 milk -- pounds of  
15 milk per day is motivated by the fact that Queensboro  
16 would qualify if that's -- if that were the threshold?

17          A     Yes, that's correct.

18          Q     You don't have any other reason to choose  
19 400,000 pounds over 300,000 pounds, for example?

20          A     No.

21          Q     You wouldn't object to 300,000 pounds if other  
22 companies performing similar balancing -- balancing  
23 service would also qualify?

24          A     No, we would not object.

1           Q     What -- what is the intent of your discussion  
2     here of a preponderance of non-Class 1 transfers to pool  
3     distributing plants? That has emerged under the new  
4     order. What are you trying to target there and to  
5     apparently exclude from qualifying percentage?

6           A     Apparently, we believe the way this was written  
7     was to target Class 1 milk. And the way -- the way this  
8     is -- the way we read this, and we're not 100 percent  
9     certain we're right, is that if there's a transfer of milk  
10    to a non-Class 1 distributing plant, it counts the same as  
11    if it were Class 1 the way that's written. If we're  
12    wrong, then I guess there's not a need for this. But if  
13    we're right, we believe there should be a need for this.

14          Q     You mean a plant that is pooled as part of a  
15    unit of distributing plants? That is actually an ice  
16    cream plant, for example?

17          A     I think the wording as it was given to -- to me  
18    by our market administrator -- the individual said that if  
19    there was a non-Class 1 transfer we're in effect covered.  
20    And if -- if -- if it's not put in there, then transfers  
21    to pool distributing plants that are not Class 1 count the  
22    same as -- as if it is Class 1. If I'm repeating myself,  
23    that's my understanding.

24                So therefore, it would change the percentage if

1 the wording were not changed.

2 Q So, under your proposed modification, the  
3 volume credited as a condition for marketwide service  
4 payments would be only that volume that's assigned to  
5 Class 1, the 80 percent?

6 A Eighty percent.

7 Q And if your customer happens to be a plant with  
8 20 percent Class 2 and 80 percent Class 1 and it's  
9 allocated equally, you get credit for only 80 percent of  
10 both shipments. You'd have to ship 88 percent -- you  
11 could go up to 88 percent, is that correct? Is that your  
12 intent?

13 A No, I'm not -- I'm not sure that that's true.

14 Q Is it -- is it your intention that if you ship  
15 a load of milk to a distributing plant any portion of  
16 which is allocated to Class 1, that the whole load ought  
17 to be counted?

18 A I'm not prepared to answer that.

19 MR. VETNE: Thanks.

20 JUDGE BAKER: Are there any other questions of  
21 Mr. Miller? Yes, Mr. Beshore?

22

23

24

CROSS EXAMINATION

1 BY MR. BESHORE:

2 Q Thank you. Good afternoon, Mr. Miller. Tell -  
3 - tell us a little bit more about Queensboro Farm  
4 Products. The -- I understand you operate a pool supply  
5 manufacturing plant in Canastota which is listed on -- on  
6 Proposal 5. What is the nature of the distribution  
7 business at Jamaica?

8 A It's a milk route -- byproduct distribution  
9 business operating in New York City. And -- operating  
10 there probably since the 1920s.

11 Q So you're what's probably called a New York sub  
12 dealer?

13 A That's correct.

14 Q Your distribution business, you acquire  
15 packaged products from other manufacturers or processing  
16 package plant or handlers, perhaps some of your own. Do  
17 you -- do you distribute any of your own products?

18 A Yes, we do.

19 Q You -- some of your own non-Class 1 products --  
20 by the way, do you make any Class 1 products at -- at  
21 Canastota?

22 A -- buttermilk.

23 Q And you distribute your own buttermilk?

24 A Well, we distribute some of it.

1           Q     Some of the buttermilk. So your distribution  
2 business is not regulated by Order 1, correct?

3           A     No. It is regulated by Order 1.

4           Q     You're not a pool handler. The Jamaica  
5 facility --

6           A     The Jamaica facility is but it's a -- we're a  
7 sub-dealer of a pool handler.

8           Q     Do you file monthly reports on the Jamaica  
9 distribution business with the market administrator?

10          A     We -- we file them all in one report. It's  
11 -- it's filed -- (inaudible).

12          Q     I guess my confusion is, I don't see the  
13 Jamaica business listed in the market administrator's  
14 documents anywhere as a plant or a handler or -- or any  
15 other entity on the order.

16          A     Maybe I should clarify. We're a sub-dealer of  
17 Elmhurst Dairy. Does that make it clear?

18          Q     I -- yeah. Who you deal with I don't --  
19 doesn't really matter. I just wanted to know whether that  
20 was a regulated facility or not. And I take it it's not.  
21 That is -- the sub -- oh, is -- is your location as a sub-  
22 dealer operator at the Elmhurst plant in -- in Jamaica?

23          A     Yes.

24          Q     Okay. But Elmhurst distributes products

1 through other -- through its own dealers or other sub-  
2 dealers as well or through you?

3 A (Inaudible).

4 Q Okay. Okay. Now -- now I think I -- I  
5 understand. How many independent producers do you have?

6 A In the vicinity of 200.

7 Q And what is -- what's the monthly -- your  
8 monthly volume that you require of those independent  
9 producers?

10 A Nineteen million pounds.

11 Q Now, that -- let's assume that's roughly  
12 600,000 pounds a day, sound right?

13 A Yeah.

14 Q How much of -- what proportion of the  
15 independent producer milk that you require is processed at  
16 your Canastota facility?

17 A (Inaudible).

18 Q Do you -- does your supply plant qualify as a  
19 supply plant through sales of milk to the Elmhurst plant  
20 in Jamaica, New York?

21 A Is your question is that the basis for which  
22 your qualify? The answer to that is "no."

23 Q Well, it wasn't exactly is it the basis. Do  
24 you sell -- do you supply milk from the supply plant to

1 the Elmhurst distributing plant in Jamaica?

2 A (Inaudible).

3 Q Do you sell milk from your supply plant to  
4 other Class 1 handlers?

5 A Yes.

6 Q What portion on an annual basis of the 19  
7 million pounds a month that you require from producers do  
8 you sell to Class 1 distributing plants?

9 A I don't have that figure -- (inaudible).

10 Q Can you give us your best information with  
11 respect to that number? You have some idea, I assume?

12 A I think it's somewhere between 9 and 10 million  
13 pounds.

14 Q A year?

15 A A month.

16 Q A month. Okay. So 40 to 50 percent of your 19  
17 million pounds of monthly receipts from producers is  
18 resold to distributing plants, correct?

19 A Yes.

20 Q Now I'm puzzled as to what your concern with  
21 the 65 percent qualification criteria for marketwide  
22 services payments might be. If you're -- you're -- you're  
23 doing -- you're providing balancing services to your  
24 distributing plant customers as you testified, I believe,

1 correct?

2 A Correct.

3 Q And so there's --

4 A Well, again, I'm not certain that my figures  
5 are -- are 100 percent accurate as far as how that milk is  
6 broken up between Class 1 sales and Class 2 supply.

7 Q I'm not asking Class 1 sales or Class 2 sales.  
8 I'm just asking for sales to the distributing plants  
9 because that's the way the proposal's written. It's just  
10 written in terms of sales to distributing plants.

11 Is that a -- the 9 to 10 million a month on  
12 average, is that an average approximate portion of your  
13 milk supply that's sold to distributing plants?

14 A I believe that is the figure.

15 Q Does that vary from spring to fall?

16 A Yes, it does.

17 Q Less in the spring?

18 A Yes, it's normally less in the spring.

19 Q Okay. And greater in the fall.

20 A Certainly greater in the fall.

21 Q Okay. And does it vary -- I think your  
22 testimony reflects it but I want to be certain. It varies  
23 by day of the week quite substantially?

24 A Yes, very much.



1           Q     And you have to meet your customer's demands  
2     for -- for milk when they need it?

3           A     Yes, certainly we do.

4           Q     And backs -- they back milk out of their  
5     distributing plants back into your manufacturing plant on  
6     the weekends I think you've indicated?

7           A     That's correct.

8           Q     At your distributing plant you said you make  
9     butter but you do not dry any skim solids. What's your  
10    ultimate disposition for skim solids if you've got more  
11    supply than you need for your commercial sales of  
12    perishable Class 2 products?

13          A     Class 3 condensed.

14          Q     Okay. So you condense it and sell it to a  
15    cheese plant?

16          A     That's correct.

17                   (Pause)

18                   BY MR. BESHORE:

19          Q     Do you -- do you purchase sales from --  
20    purchase raw milk from other suppliers at your Canastota  
21    plant from time to time?

22          A     Yes, we do.

23          Q     Does your purchase price vary as Mr. Wellington  
24    testified theirs does on the basis of market conditions at

1 the time of sale?

2 A Sometimes it does.

3 Q Some -- some of your purchases might be on  
4 long-term contracts as stated --

5 A That's correct.

6 Q -- price?

7 A -- stated price.

8 Q And others would be at spot market prices  
9 depending on market conditions, correct?

10 A That's correct.

11 Q Sometimes you have to pay a premium and  
12 sometimes you get the milk in at a discount, I assume?

13 A No, it's always class price as a floor.

14 Q Well, when you're buying from other handlers it  
15 doesn't have to always be class price, does it?

16 A The cooperative's class price. For handlers  
17 that's correct.

18 Q Okay. And -- and if you buy it from other  
19 handlers, you can acquire it at less than class price if  
20 marketing conditions make that possible?

21 A If that's the case.

22 Q At what level of -- let's see. You have a --  
23 an evaporator but not a dryer at Canastota, I take it?

24 A That's correct.

1           Q     What's the capacity of the plant to -- what's  
2     the capacity of the condenser in terms of handling --  
3     (inaudible)?

4           A     Three to four loads a day -- (inaudible).

5           Q     150- to 200,000 pounds a day?

6           A     -- it's probably about -- (inaudible).

7           Q     135,000 pounds of condensed goes out. How much  
8     raw milk would go in to generate that volume of condensed?

9           A     About four -- four to one in relationship.

10          Q     So you could -- four times 130,000 is 520,000  
11     pounds of raw milk you could take in?

12          A     We can take in more than that -- we can process  
13     into condensed.

14          Q     How much could you take -- take in?

15          A     We've taken in over a million pounds a day on  
16     many occasions.

17          Q     Do you have some -- some storage capacity then  
18     to --

19          A     Yes.

20          Q     process what you receive over more than one  
21     day?

22          A     That's true.

23          Q     Within the limits established by the regulatory  
24     authorities for -- for how long you can hold milk before

1       it has to be processed?

2           A     Correct.

3           Q     Those Class 2 products that you manufacture,  
4       are -- they all require Grade A milk?

5           A     Yes.

6           Q     What level of capacity does your plant -- your  
7       condenser generally run at? Do you know?

8           A     It would vary seasonally. We have some  
9       preexisting business as a core and then depending on the  
10      milk supply and the market conditions. There are days it  
11      doesn't run at all in the fall and there are days in the  
12      spring it's running around the clock. Weekends it's  
13      running almost all the time.

14          Q     Do you have -- do you have any business which -  
15      - referred to as Tollman milk?

16          A     We do.

17          Q     Okay. On a regular basis?

18          A     Some is regular, some is subject to market  
19      conditions.

20          Q     Okay. Now, those -- those volumes are over and  
21      above your -- your producer milk volumes?

22          A     That's correct.

23          Q     Okay. What are the volumes of regular --  
24      tolling business -- volumes which would be received and

1 processed through your plant over and above the -- the  
2 volumes for your producers?

3 A That varies. It could be 15 million pounds a  
4 month.

5 Q Okay. Now, if you assume with me -- if those  
6 15 million pounds a month are received at your plant and  
7 processed for a fee, correct? That's what we mean by  
8 tolling?

9 A Yes, but this is not necessarily always  
10 condensed.

11 Q Any --

12 A Any product.

13 Q Okay. Any product?

14 A Yes.

15 Q I'm not limiting it to any product. But it  
16 would be milk that would be received at your plant and  
17 processed. Now -- okay. So if that averages around 15  
18 million pounds, you've got 19 million of your own producer  
19 milk, you've got more than a million a day, do you not,  
20 Mr. Miller?

21 A Some of that is co-op milk which doesn't  
22 qualify. And some of that is pooled by other handlers,  
23 which we believe doesn't qualify.

24 Q Okay. So you wouldn't -- you don't have a

1 million --

2 A The way this is written.

3 Q You don't have a million pounds a day that you  
4 pool under your own pool report?

5 A That's correct.

6 Q Okay.

7 (Pause)

8 MR. BESHORE: Thank you very much.

9 JUDGE BAKER: Very well. Are there any other  
10 questions for Mr. Miller? Yes -- (inaudible).

11 MR. ENGLISH: We'll -- (inaudible).

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).

14 A (Inaudible).

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 RECROSS 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).

18                 MR. TOSI: Excuse me, Your Honor. I wasn't  
19     sure if you were looking at me.

20                 JUDGE BAKER: Oh, I'm sorry. I was looking at  
21     you.

22                 MR. TOSI: Okay. Thank you.

23                         RE CROSS EXAMINATION

24                 BY MR. TOSI:

1           Q     Mr. Miller, I guess this is a little bit of a  
2 follow-up to what Mr. Beshore was asking you. Your --  
3 your Canastota plant is a pool supply plant. And in that  
4 regard, all your milk receipts at that plant Queensboro  
5 Farm has attained an obligation to producers?

6           A     Yes, that's correct.

7           Q     And can you just explain a little bit for the  
8 record here, at Jamaica, that's primarily a Class 1  
9 facility where you're processing Class 1 milk?

10          A     That's correct.

11          Q     So -- and you receive milk from dairy farmers  
12 or from cooperatives?

13          A     That's correct.

14          Q     And in that regard, all your milk receipts  
15 there, you also are incurring payment obligation under the  
16 order to producers?

17          A     That is correct.

18          Q     What -- what do you pay for milk -- what do you  
19 pay your non-members for -- for milk? For example, you --  
20 are you paying just the Class 1 price? Do you pay  
21 something more than that?

22          A     You mean do we pay our producers a premium?

23          Q     Yes.

24          A     Is that your question?

1 Q Yes.

2 A When necessary, we pay our producers a premium.

3 Q And when you receive milk from co-ops when they  
4 have too much milk, are you in fact buying milk then or  
5 are you just tolling?

6 A There are times that we do both. Most of the  
7 time it's tolling. There are times that we buy it.

8 Q And when you buy from co-ops, are you buying at  
9 class or are you buying at something less than class?

10 A No, we're buying at class.

11 MR. TOSI: Thank you. That's all I have.

12 JUDGE BAKER: Thank you, Mr. Tosi. Are there  
13 any other questions?

14 (No response)

15 JUDGE BAKER: Apparently there are none.

16 MR. BESHORE: Your Honor?

17 JUDGE BAKER: Yes?

18 MR. BESHORE: I'm sorry.

19 JUDGE BAKER: Oh -- (inaudible).

20 MR. BESHORE: Thank you.

21 RECROSS EXAMINATION

22 BY MR. BESHORE:

23 Q Just a couple of other questions, Mr. Miller.  
24 Do you -- does Queensboro Farm Products, Inc., have an

1 ownership interest in Elm -- Elmhurst Dairy in Jamaica?

2 A No.

3 Q So Elmhurst Dairy is a separate -- do you  
4 personally have an ownership interest in Elmhurst Dairy?

5 A No.

6 Q All right. So it's a completely separate  
7 entity?

8 A That's correct.

9 Q Jamaica. You just operate a distribution sub-  
10 dealer business --

11 A That's correct.

12 Q -- out of the same location, correct?

13 A Yes.

14 Q Could you give us a -- tolling is processing  
15 milk for a fee. You don't buy the milk, you just run it  
16 through your plant and process it for a fee, correct?

17 A Yes, that's correct.

18 Q Now, when you're condensing -- condensing is  
19 the primary tolling service that you provide I think  
20 you've indicated, correct?

21 A Well, normally, the way that is -- is  
22 instructed is they get both the condensed and the cream.

23 Q Condensed skim?

24 A Yeah.

1           Q     And the cream. Okay. And then the owner of  
2     the milk, which you've indicated is primarily cooperatives  
3     in the tolling arrangements --

4           A     Not only cooperatives, but -- but cooperatives  
5     certainly are a part of it.

6           Q     Okay. They own the condensed and the cream  
7     from out of your plant at the other end, correct?

8           A     Yes.

9           Q     Can you provide information for the record with  
10    respect to what the charge might be for tolling milk in  
11    that fashion for a customer?

12          A     I just don't remember what -- what that figure  
13    -- (inaudible). I don't remember.

14          Q     You don't have any idea what you charge per  
15    hundredweight?

16          A     I don't remember the toll, no.

17          Q     At your small business? You -- you're the  
18    operator and you do not --

19          A     I don't want to give you an erroneous figure.

20          Q     Well, how about a range that would capture some  
21    accurate information for the record? In excess of a  
22    dollar a hundredweight?

23          A     (Inaudible).

24          Q     Thank you. And when you find it -- by the way,

1 do you currently find it necessary -- I think you said you  
2 pay premiums to your independent producers when you find  
3 it necessary. Is it currently necessary to -- to be  
4 paying premiums to your independent producers?

5 A It's -- the answer is "yes" as a function of  
6 what our competition has done.

7 Q And what is the current necessary range of --  
8 or necessary premium prevailing in the -- in the market  
9 where you -- milk from producers?

10 A That's proprietary information.

11 Q You don't -- you don't care to provide  
12 information for the record with respect to what you're  
13 paying your two other independent producers to supply -  
14 - maintain a supply relationship with Queensboro rather  
15 than anyone else?

16 A I think that question implies something that's  
17 unnecessary, especially from a non-proponent, especially  
18 in terms of the fact that it's competitive information.  
19 There's some stigma attached to that question. I --

20 Q I didn't mean to imply anything.

21 A -- but --

22 Q I wonder what the -- I just wonder -- A  
23 -- information. I'm sure you and your clients would  
24 like to know.

1           Q     Well, you're assuming -- the record doesn't  
2     --

3           JUDGE BAKER:   (Inaudible) -- the pending  
4     question relates to whether or not the -- (inaudible)     -  
5     - to respond to the amount paid -- (inaudible) -- is that  
6     not correct?

7           THE WITNESS:   That's correct.

8           JUDGE BAKER:   And you are declining to answer?

9           THE WITNESS:   I am.

10          JUDGE BAKER:   Very well.

11          MR. ENGLISH:   Thank you.   That's all I have.

12          JUDGE BAKER:   Are there any other questions?

13          (No response)

14          JUDGE BAKER:   There are none.   Thank you very  
15     much, Mr. Miller.

16          (Pause)

17          JUDGE BAKER:   Mr. Beshore, do you have another  
18     witness we can do for tonight?

19          MR. BESHORE:   We have two further witnesses.  
20     Mr. Schad is our next witness, and he's prepared to -- to  
21     go forward with his testimony.

22          JUDGE BAKER:   Very well.   Thank you.

23          (Pause)

24          MR. BESHORE:   Your Honor, while the -- Mr.

1       Schad's testimony and the exhibits which accompany it are  
2       being distributed in the room, I would like to request  
3       that the statement of testimony be marked as the next  
4       consecutive exhibit number.

5               JUDGE BAKER:   Sixteen.

6               MR. BESHORE:   Sixteen?

7               JUDGE BAKER:   Yes.

8                               (The document referred to was  
9                               marked for identification as  
10                              Exhibit 16.)

11              MR. BESHORE:   And the testimony is with respect  
12      to Proposal 7, although there's a typo on the cover sheet  
13      where it says Proposal 4.  The exhibits are with respect  
14      to Proposal 7, and I would ask that they     -- the seven  
15      exhibits numbered one through six be marked as Proposed  
16      Exhibit 17.

17              JUDGE BAKER:   Very well.  They shall be so  
18      marked.

19                              (The documents referred to  
20                              were marked for identification  
21                              as Exhibit 17.)

22              JUDGE BAKER:   Are these -- (inaudible) -- the  
23      testimony should be marked as 16 and the exhibits would be  
24      17.



1 MR. BESHORE: That --

2 JUDGE BAKER: (Inaudible).

3 MR. BESHORE: That is what I intended, Your  
4 Honor.

5 JUDGE BAKER: Thank you.

6 MR. BESHORE: Thank you.

7 Whereupon,

8 DENNIS SCHAD

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

11 JUDGE BAKER: The witness has been sworn.

12 MR. BESHORE: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. BESHORE:

15 Q Mr. Schad, could you please identify yourself  
16 and state your business address, please?

17 A My name is Dennis J. Schad. I -- my business  
18 address is 405 Park Drive, Carlisle, Pennsylvania.

19 Q Mr. Schad, could you briefly tell us about your  
20 educational and professional background?

21 A Professionally, I've worked for Land O' Lakes  
22 and its predecessor cooperatives for the last 21 years.  
23 I'm currently -- current title is economist and director  
24 of mid-atlantic marketing. I have worked transportation,

1 regulatory affairs, and marketing within the cooperative  
2 for that period of time.

3 I have a bachelors degree in history from the  
4 College of William and Mary and also a masters degree in  
5 business administration from Virginia Tech.

6 Q Have you previous -- previously testified in  
7 federal order hearings?

8 A Yes.

9 Q And in other governmental regulatory  
10 proceedings?

11 A In the state -- state for milk marketing order  
12 -- (inaudible) -- state legislator.

13 MR. BESHORE: We ask that Mr. Schad's -- Mr.  
14 Schad be recognized as an expert witness in dairy  
15 economics and milk marketing and that his testimony be  
16 received as an expert in those fields.

17 JUDGE BAKER: Very well. Dairy economist, is  
18 that what you said?

19 MR. BESHORE: Yes.

20 JUDGE BAKER: And milk --

21 MR. BESHORE: Marketing.

22 JUDGE BAKER: -- marketing? An expert as a  
23 dairy economist and milk marketing. Is that what you want  
24 him --

1 MR. BESHORE: Yes.

2 JUDGE BAKER: Very well. Are there any  
3 questions or objections with respect thereto?

4 (No response)

5 JUDGE BAKER: Let the record reflect that there  
6 are none. He shall be so recognized, Mr. Beshore.

7 MR. BESHORE: Thank you, Your Honor.

8 BY MR. BESHORE:

9 Q Now, before you proceed with the body of your  
10 testimony, could you briefly describe for us the six  
11 tables which are assembled in the seven exhibits  
12 identified as Proposed Exhibit 17?

13 A Yes. Tables 1-A and 1-B are very similar.  
14 Table 1-A is for the month of May 2001. The deliveries to  
15 7(a) plants by six cooperatives who are mentioned in the  
16 body of my testimony.

17 What I do is -- aggregated -- each of the  
18 cooperatives sent the information to me on their 7(a)  
19 deliveries -- Order 1 7(a) deliveries. For each day I've  
20 aggregated it and I've found the monthly average.

21 So -- in Column 3 you'll see the daily  
22 aggregate for the six cooperatives. Column 4 is the ratio  
23 of each day to the monthly average.

24 Q Okay. And that's --

1           A     -- in Table 1-D except we do it for the month  
2 of November 2001.

3           Q     Thank you. And Table 2?

4           A     Table 2. Table 2 is a graph of those -- of  
5 those same daily deliveries for both May and November  
6 2001.

7           Q     Okay.

8           A     Table 3. Table 3 is the -- is, what, four  
9 pages long. Four pages long. And is an -- an exhaustive  
10 estimate by our engineering department on the cost of the  
11 3 million pound per day butter powder plant.

12                  Table 4. I'll read from the table of contents.  
13 It's manufacturing costs at Land O' Lakes' Carlisle butter  
14 powder plant. And it's the monthly per pound total solids  
15 cost and percent plant capacity.

16                  Table -- a second to explain a little bit  
17 there. We used -- we defined 100 percent capacity by the  
18 month in which we -- we delivered milk equal to the  
19 designed capacity of the plant. We took the total solids  
20 of that month, and that's what is 100 percent capacity.

21                  The 19 other months during the specified time,  
22 we took -- the percent capacity was the percentage of the  
23 -- of that month against that -- the 100 percent capacity  
24 month, which was actually May 2002.

1           And Table 5 is a listing of the percent  
2       capacity for -- for the Land O' Lakes plant over -- over  
3       the 19 months.

4           Q     Okay. With that, would you proceed with your  
5       testimony with respect to Proposal 7, Mr. Schad?

6           A     I'll start with the second paragraph. Land O'  
7       Lakes is a Cappa Volstead cooperative with a nationally  
8       known ship base. In the northeast, Land O' Lakes has over  
9       2200 members who are pooled under Order 1. The  
10      cooperative owns and operates an Order 1 pool butter  
11      powder plant located in Carlisle, Pennsylvania.

12                I am testifying at this hearing on behalf of  
13      the Association of Dairy Farmers of the Northeast.

14                And this is under the heading, "ADCNE  
15      demonstrates a 20 percent operating reserve in Order 1."

16                In its report, the "Cost of Balancing Milk  
17      Supplies, Northeast Regional Market," Charles Ling defines  
18      two levels of reserves required for the efficient  
19      operation of the northeast Class 1 market. Dr. Ling  
20      defines those reserves as operating reserves and seasonal  
21      reserves. He defines operating reserves as those milk  
22      reserves that ensure sufficient supply of milk for the  
23      daily fluctuating fluid demands encountered by  
24      distributing companies. Exhibit 12, page two.

1           The daily deliveries of milk to Class 1 plants  
2     reflect the daily purchasing behavior of consumers. In  
3     the northeast, market -- market cooperatives -- in the  
4     northeast market, cooperatives balance the Class 1 plants  
5     by delivering varying daily volumes to those plants. Dr.  
6     Ling was specific and stated that the operating reserve  
7     must carry -- cover the daily fluctuations of fluid milk  
8     processing.

9           The concept of operating reserves in a dairy is  
10    much like the requirements of the electrical industry.  
11    The electrical industry must have sufficient power  
12    reserves for its highest day usage. The consequences of  
13    inadequate reserves of electricity power are brownouts and  
14    blackouts. The consequence of inadequate reserve milk  
15    supply is empty store shelves.

16           Dr. Ling's study calculates the market costs of  
17    balancing the northeast market under two assumptions.  
18    First, that the required operating reserve is 10 percent.  
19    And another assumption is that the required operating  
20    reserve is 20 percent.

21           While Dr. Ling could calculate the seasonal  
22    reserve from published monthly market data, no such data  
23    exists for the day of the week milk deliveries in Federal  
24    Order 1.

1           Data from the proponent cooperatives show that  
2   the northeast market requires a 20 percent operating  
3   reserve. The market administrator has presented data  
4   which shows that -- that milk from non-members is  
5   disproportionately delivered to distributing plants.  
6   Market Administrator Appendix 15 reveals that as much as  
7   80 percent of the non-member milk associated with Order 1  
8   is delivered to Order 1 distributing plants -- (inaudible)  
9   -- non-member milk supply Order 1 provides little of the  
10   operating reserves for the market. If receipts --  
11   (inaudible) -- daily basis, then the extent of those  
12   fluctuations, the operating reserves, are accommodated by  
13   the cooperatives.

14           (Inaudible) -- recognizing that there is no  
15   published day of the week delivery data for the Northeast  
16   Order, ADCNE surveyed its members for day of the week  
17   distributing plant delivery demands. Each cooperative  
18   sent to me its daily deliveries to Order 1 pool  
19   distributing plants for May and November 2001. Exhibit  
20   17, page 1-A and 1-B.

21           Table 1 lists the aggregate deliveries to  
22   distributing plants by the cooperatives: AgraMark; Dairy  
23   Marketing Services, which include Dairylea and DFA, Land  
24   O' Lakes; Maryland and Virginia; and St. Albans. Column 4

1 of the table compares each day's deliveries to the monthly  
2 daily average.

3 On Thursday, May 17th, distributing plants  
4 ordered from our cooperative 19 million pounds of milk,  
5 which was 16.6 percent greater than the daily average of  
6 16.4 million pounds for the month.

7 On Monday, November 19th, the cooperatives  
8 delivered 21.8 million pounds to Order 1 distributing  
9 plants, which was 17.5 percent greater than the daily  
10 monthly average of 18.6 million pounds.

11 The extremes of Class 1 balancing are shown  
12 -- range of cooperative deliveries to distributing -- to  
13 the distributing -- distributing plants for a month.

14 During both months, the cooperatives -- plant  
15 customers required a 70.5 million pound swing between a  
16 low delivery day and a high delivery day.

17 On May 27, the -- the distributing plant  
18 demanded 11.5 million pounds, while on May 17th -- while  
19 the May 17th high delivery day was 19.5. Similarly, the  
20 low demand date in November was the 22nd, when  
21 distributing plants required only 15.3 million pounds  
22 compared to the 21.8 million pounds demanded on the 19th.

23 Moreover, the cooperatives are expected to  
24 accommodate their Class 1 customers. The difference



1 between the low day -- the low day in May, 11.5 million  
2 pounds, and the high day in November, 21 -- 21.8 million  
3 pounds. Again, Exhibit 7 -- 17, Table 2.

4 This 11.5 million pound range in deliveries  
5 roughly equal to the four 3 million pound per day butter  
6 powder plants identified by Dr. Ling is required to  
7 balance the northeast market with a 20 percent operating  
8 reserve.

9 Next heading. "Land O' Lakes" -- that should  
10 read, "Experience" -- supports Dr. Ling's estimates for a  
11 balancing plant. Land O' Lakes operates a butter powder  
12 plant in Carlisle, Pennsylvania -- plants pool -- is a  
13 supply plant. There are three operational dryers and  
14 three evaporators located in the plant. It has a design  
15 throughput of about 165 million pounds of milk per month  
16 and a storage capacity of around 5 million pounds of milk.

17 During the last two and a half years, the  
18 period since the commissioning of the new dryers, milk  
19 receipts have ranged from a low 62.5 million pounds during  
20 October of 2000 to a higher of 165.7 million pounds during  
21 May of 2002.

22 Dr. Ling estimates that the cost of --  
23 (inaudible) -- butter powder plant with the capacity to  
24 dry 3 million pounds of milk per day would be \$28 million.

1 Land O' Lakes' engineering staff estimates that such a  
2 plant today would cost \$47 million. Exhibit 17, Table 3.

3 Land O' Lakes' estimate is confirmed by west --  
4 Idaho. As reported in the August 6, 2002, edition of the  
5 "Cheese Reporter," a West Farm representative stated that  
6 their 3.3 million pound per day powder drying plant  
7 recently opened in July cost \$50 million. The Land O'  
8 Lakes estimate includes the purchase of land, the  
9 evaporator, the dryer for 3 million pounds of milk per  
10 day, and a churn capacity for 15,000 pounds of butter per  
11 hour.

12 Additionally, with butter we would have -- I'm  
13 sorry. Additionally, the plant would have three loading  
14 bays and adequate -- (inaudible) -- treatment plant and  
15 silo capacity for 3 million pounds.

16 Dr. Ling defines -- manufacturing costs as the  
17 costs directly associated with manufacturing milk to its  
18 end products, butter and powder. Those costs include  
19 labor, electricity, fuel, water, sewage, plant and  
20 cleaning supplies, repair and maintenance, depreciation,  
21 taxes and insurance, and miscellaneous expenses.

22 He knows that the union -- I'm sorry, that the  
23 unit costs increase as plant volume decreases. In  
24 previous studies -- (inaudible) -- product, Dr. Ling

1 estimates that for every one percent decrease in plant  
2 capacity there is a corresponding increase -- increase to  
3 product cost of one-tenth per pound. That's Exhibit 12,  
4 page six.

5 Q One-tenth of a cent per pound?

6 A Yes. While the Ling study compares the  
7 relationship between plant capacity and product costs,  
8 Land O' Lakes tracks the same costs as Ling's, in quotes,  
9 "semi-variable and semi-fixed costs," as he -- as he calls  
10 it, on a per pound of milk solids basis. Additionally,  
11 the USDA's study assumes that a butter powder plant with  
12 no immediate product inputs or sales.

13 The Land O' Lakes plant at Carlisle buys and  
14 sells cream, condensed, and milk. During the year 2000,  
15 the Land O' Lakes plant in Carlisle sold about 20 percent  
16 of its total solids as condensed skim or cream -- and/or  
17 cream.

18 Exhibit 17, Table 4 is a graph that plots the  
19 Land O' Lakes experience at Carlisle for the period of  
20 January 2001 through July 2002. The period was chosen for  
21 the depreciation of the 2000 -- 2000 expansion starting to  
22 be fully charged against the plant in January 2001. The  
23 months -- the months cost per pound of solids is plotted  
24 against the relationship of plants receipts over plant

1 capacity, and I defined that earlier.

2 For instance, as already noted, Carlisle  
3 processed over 165 million pounds, 100 percent capacity,  
4 on a -- (inaudible) -- basis -- of milk during May 2002.  
5 During that month, the cost per pound of solids was just  
6 over 10 cents per pound. Thus, the furthest -- a further  
7 -- (inaudible) -- right data pool plant graph represents  
8 May 2002.

9 Similarly, the other 18 months were so plotted.  
10 The best-fit line -- realizes the variations between  
11 plants was also plotted. The line estimates that for  
12 every one percent change in Carlisle plant capacity, there  
13 is a 7.7 hundredths cent increase in cost per pound in  
14 total size.

15 Again, the Land O' Lakes report substitutes the  
16 relationship of capacity utilization to cost -- substitute  
17 the relationship of capacity utilization to cost per pound  
18 of product for the relationship of capacity to cost per  
19 pound of total solids. Also, the Carlisle plant buys and  
20 sells -- products while the Ling study addressed the cost  
21 change for hard -- products only.

22 Dr. Ling had modeled the most efficient method  
23 to balance the seasonal and operating reserves of the  
24 Order 1 Class 1 market. He has calculated that it would

1       require three butter powder plants with a capacity of 3  
2       million pounds per day to accomplish the balancing of the  
3       necessary reserves for the northeast market.

4               Dr. Ling's optimal balancing model does not  
5       reflect the actual balancing operations of the northeast.  
6       There are seven balancing plants in the northeast of  
7       varying sizes. Dr. Ling assumes that each plant receives  
8       an equal volume of milk. Due to the ownership and  
9       logistics -- due to ownership and logistic reasons, that  
10      assumption does not reflect reality in the northeast.  
11      Other testimony will show that the balancing capacity of  
12      the -- of the -- of the order is not equally utilized.

13              Land O' Lakes' relatively high capacity  
14      utilization does not reflect the operations of the other  
15      northeastern balancing plants. Thus, costs at the Land O'  
16      Lakes plant are probably lower than other Order -- less  
17      utilized northeastern balancing plants.

18              Land O' Lakes replicated Dr. Ling's methodology  
19      for finding the cost of unused capacity at Carlisle during  
20      the last 19 months and compared that cost to the amount  
21      Land O' Lakes would have received had Proposal 7 been in  
22      effect during that period. The cost of unused capacity  
23      was 2.3 times greater than the amount Land O' Lakes would  
24      have received.

1           ADCNE believes that the experience at Land O'  
2       Lakes' Carlisle plant provides a real-world validation for  
3       Dr. -- Dr. Ling's observations relative to the effect of  
4       plant capacity and -- costs.

5           Q     Mr. Schad, I'd just like to ask -- ask you a  
6       couple additional questions on direct. Is -- one of the  
7       members of the Association of Dairy Cooperatives in the  
8       Northeast is Maryland and Virginia Milk Producers  
9       Association Co-Op. One producers cooperative association.  
10      Are you familiar and can you describe for us the  
11      operations of -- of Maryland and Virginia -- (inaudible)?

12           A     Yes, I can describe the operations generally.  
13      Maryland and Virginia Milk Producers Cooperative brings  
14      two balancing plants. One pool -- one in -- one supply  
15      plant at Laurel, Maryland. The second one they own in  
16      partnership with a -- a group called -- (inaudible).  
17      That's -- Strasburg, Virginia. That is pooled on --  
18      (inaudible) -- processing plant.

19                   Both plants are butter powder and skim  
20      condensed. Also, both plants try very hard to dry as  
21      little powder as necessary and try to do as much skim  
22      condensed as possible.

23           Q     Does Maryland and Virginia also own and operate  
24      a distributing plant which shows up as a partially

1 regulated handler from time to time in Order 1?

2 A Yes.

3 Q (Inaudible) -- operation?

4 A Morganmaid --

5 Q Approximately how many members does Maryland  
6 and Virginia have or what milk volume do they  
7 approximately represent in Order 1?

8 A I'd say over -- (inaudible) pounds.

9 Q (Inaudible). Now, Land O' Lakes -- you just  
10 indicated Maryland and Virginia has an Order 5 --  
11 processing plant. Obviously, markets some milk on Order  
12 5, correct?

13 A Yes.

14 Q Okay. Land O' Lakes, does it also market milk  
15 on Order 5 as well as Order 1?

16 A Land O' Lakes -- markets milk in Order 5 as  
17 pool shippers and -- (inaudible).

18 Q Now, earlier today Bob Wellington testified to  
19 the proposed modification of Proposal 7. The language  
20 that was to be added that ADCNE -- at the end of Proposal  
21 7 to exclude payment of marketwide service payments on  
22 producers who on -- pooled on Order 1 until they have been  
23 pooled for three consecutive months, fully pooled for  
24 three consecutive months. You know what I'm talking

1 about?

2 A Yes.

3 Q Okay. Now, you market in both Order 5 and  
4 Order 1 and you've heard -- you've been here through the  
5 entire hearing so far, have you not?

6 A Yes.

7 Q And you've noted that there is some interest in  
8 the hearing record with respect to whether milk from the  
9 Order 1 marketing area is sometimes pooled on Order 5 or  
10 may be pooled on Order 5?

11 A Correct.

12 Q Now, can you indicate from your knowledge as a  
13 marketer of milk in both orders what impact there will be  
14 if the marketwide service payments cannot be made from  
15 Order 1 for three consecutive months as we have proposed?

16 A There is a tradition in Order 5 which allows  
17 dairy farmers basically within the entire milk shed of the  
18 northeast to collect market service payments in the period  
19 of July through December, which are called transportation  
20 credits -- market service payments. In order to be  
21 eligible for that -- for those payments, the -- the -- the  
22 dairy -- the dairy farmer cannot be pooled on the -- on  
23 Order 5 for all 12 months. They must during the February,  
24 March, April, and May period, they must be pooled on



1 another order other than Order 5 in order for that dairy  
2 farmer to be eligible for the transportation credits.

3 So there is a -- an incentive for marketers who  
4 are -- who are connected with Order 5 to take dairy  
5 farmers off Order 5 and possibly put them on Order 1  
6 during that period of time to make them dairy farmer  
7 transportation credit-eligible. Again, you've got to be  
8 off two months out of four.

9 Our proposal recognizes that there is a --  
10 there is that incentive between two orders and that any --  
11 any dairy -- any -- and we use the three months, which is  
12 one more than the two months, to basically say any  
13 producers who are pooled on Order 1 during that period of  
14 time they've got -- that they would be ineligible on --  
15 for the Order 1 market service fees because they're pooled  
16 for a shorter period.

17 Q So essentially, that language was intended to  
18 and would generally eliminate the possibility that  
19 producers could draw supplemental transportation credits  
20 out of Order 5 during the fall and come back to Order 1  
21 and draw marketwide service payments -- that a handler  
22 could arrange their -- their milk pooling in a manner  
23 that, you know, you'd reap payments out of Order 5 in the  
24 fall and you'd reap payments out of Order 1 in the spring.

1 That wouldn't be possible?

2 A It would not be possible.

3 MR. BESHORE: Thank you. I have no other  
4 questions on direct of Mr. Schad. He is available for  
5 cross examination.

6 JUDGE BAKER: Very well. Are there any  
7 questions? Yes, Mr. Rosenbaum?

8 CROSS EXAMINATION

9 BY MR. ROSENBAUM:

10 Q Mr. Schad, in Table 3 you provided what you  
11 describe as a cost estimate for building a 3 million pound  
12 per day milk powder butter plant, correct?

13 A Correct.

14 Q Was that prepared for purposes of this hearing?

15 A It was.

16 Q Does Land O' Lakes have any current plans to  
17 build such a plant in the northeast?

18 A (Inaudible).

19 Q The -- Land O' Lakes has three supply plants  
20 currently pooled on the Northeast Order, correct?

21 A I would take issue with the word "currently."  
22 The -- if you had the order statistics for the month of  
23 August, you would see that there is more -- (inaudible).

24 Q All right. As of May 2002, you have three --

1           A     That's correct.

2           Q     -- data provided by USDA Exhibit 5, page 45,  
3 correct?

4           A     That's correct.

5           Q     And those plants are located in Greenwood,  
6 Wisconsin; Mount Olive Springs, Pennsylvania; and Fernham,  
7 Minnesota; is that right?

8           A     (Inaudible) -- Fernham.

9           Q     Fernham, I appreciate that.

10          A     Okay.

11          Q     -- correction. Could you tell me when the  
12 Greenwood, Wisconsin, plant was constructed?

13          A     No, I can't.

14          Q     How long have you been with Land O' Lakes?

15          A     I've been with Land O' Lakes since the  
16 predecessor cooperatives for 21 years. I was employed by  
17 a -- (inaudible) -- Dairy Cooperative which merged with  
18 Land O' Lakes in 1997. So I have been with Land O' Lakes  
19 since 1997.

20          Q     And do you have a rough idea as to when  
21 Greenwood was built?

22          A     No, sir, I do not.

23          Q     Is it decades and decades old or you don't  
24 know?

1           A     I can't answer your question.

2           Q     And do you know whether that facility has paid  
3 off the entirety of its construction costs at this point  
4 in time?

5           A     I have no idea.

6           Q     All right. The Mount Olive Springs,  
7 Pennsylvania plant.

8           A     I also refer to that as Carlisle.

9           Q     All right. The Carlisle plant. Do you know  
10 how old that plant is?

11          A     It was built just before my tenure as -- in the  
12 20- to 25-year range.

13          Q     Is that a plant that used to be owned by --

14          A     (Inaudible).

15          Q     -- Dairy?

16          A     Yes.

17          Q     And do you know when that plant is paid off  
18 -- strike that. Do you know whether that plant was built  
19 with a loan from a bank?

20          A     No, I do not.

21          Q     This next question may be obvious, but do you  
22 know whether if there was a bank loan it's been paid off  
23 by now?

24          A     It's been expanded, and I refer to the

1 expansion in my testimony and tell you that the expansion  
2 -- I -- Land O' Lakes is a large corporation. I don't  
3 know that the -- there are specific bonds that are --  
4 specific to that -- to that expansion project or not.

5 Q All right. And -- and then the firm, I think,  
6 you said is -- (inaudible). When -- do you know when --  
7 (inaudible)?

8 A No, I didn't.

9 Q And these are the three plants that would be  
10 actually receiving marketwide service payments if that  
11 provision -- Proposal 7 were approved?

12 A No. Plants don't receive -- (inaudible).  
13 Again, as of August 1st, there is no -- there are no  
14 supply plants up in the upper midwest -- Land O' Lakes nor  
15 are there -- nor are there any dairy farmers pooled on the  
16 order -- (inaudible).

17 So Land O' Lakes is a handler -- (inaudible).  
18 The Department -- (inaudible) -- Proposal 7 on January  
19 1st, Land O' Lakes is a handler -- (inaudible) --  
20 collecting marketwide service payments on any -- any milk  
21 in the upper midwest as it stands today.

22 Q Today. And --

23 A (Inaudible).

24 Q As it stood as recently as May, you would have,

1 correct?

2 A Had the proposal been in effect in May, yes.

3 Q And you --

4 A (Inaudible).

5 Q And the milk handled by all three of these  
6 supplies plants would have qualified for marketwide  
7 service payments?

8 A The dairy farmers pooled on the order would  
9 -- would --

10 Q Right. The dairy farmers pooled on the order  
11 qualify for --

12 A (Inaudible) -- would define the payment.

13 Q All right.

14 A The volume that the dairy farmers pooled on the  
15 order.

16 Q You probably have seen some statistics showing  
17 that there was a lot of out-of-state milk pooled on Order  
18 1 in the May-June time period 2001.

19 A I -- I think you pointed that out.

20 Q I'll do it again. Just ask you --

21 A I'm -- I --

22 Q Are --

23 A Are you going to point me to the page?

24 Q Sure. It's Exhibit 5, page 87.

1           A     Yes.

2           Q     Land O' Lakes -- (inaudible) -- principally  
3 responsible for that?

4           A     I do not know.

5                     (Pause)

6                     BY MR. ROSENBAUM:

7           Q     This -- this -- in Table 3 of your Exhibit 15  
8 where -- which is the estimated cost of a butter powder  
9 plant -- a new butter powder plant, is the -- did the  
10 people who prepared it know it would be prepared for  
11 purposes of this hearing?

12          A     Yes.

13          Q     And I notice that one of the line items on page  
14 -- on the first page is \$9.1 million for what's called  
15 "general and land." Do you see that?

16          A     "General and land" under "contract" --  
17 (inaudible).

18          Q     Right.

19          A     (Inaudible). I think it was page three.

20                     (Pause)

21                     BY MR. ROSENBAUM:

22          Q     And you've included over \$6 million of costs  
23 for what you call contingency, is that right?

24          A     My engineering department has experienced --

1 (inaudible).

2 Q Meaning there's a possibility but not the  
3 projected expenditure of that much money?

4 A My -- my engineering department would probably  
5 tell you it was a high probability.

6 Q And -- has Land O' Lakes considered actually  
7 building a new plant in the northeast?

8 A As I -- as I -- as my testimony says, Land O'  
9 Lakes expanded our current plant at Mount Olive Springs in  
10 May 2000.

11 Q And so you're not thinking about building a new  
12 plant, is that right?

13 A I have -- I have to say something here that  
14 Land O' Lakes has bonds and is registered by SEC --  
15 (inaudible) -- things that I can say. They can't tell me  
16 about insider trading and such. So I'm afraid to answer.  
17 They keep telling me about forward-looking statements. I  
18 think I've answered that once.

19 Q Now, in Table 4 you presented -- strike that.  
20 Table 4 shows -- among other things, I think it shows the  
21 percent --

22 A The X-axis is the percent capacity as defined  
23 by when I -- when I introduced the exhibit. And price per  
24 pound -- (inaudible) -- solids.



1 Q And -- and am I right that the -- do the dots,  
2 if you will, represent actual experience?

3 A (Inaudible).

4 Q Yes. And are they on a -- on a -- are those  
5 particular months?

6 A There are 19 months that I -- I looked through  
7 2001 through July 2002.

8 Q All right. And so do I correctly conclude that  
9 -- and -- and this is one plant you're applying here, is  
10 that right?

11 A That's correct. The Carlisle plant.

12 Q The Carlisle plant, which is also called the  
13 Mount Olive Springs plant, correct?

14 A (Inaudible).

15 Q And am I correct in interpreting this as  
16 showing that there has never been a month in the 19 months  
17 covered where plant capacity fell below 50 percent?

18 A During that 19 months, that's correct.

19 Q And you actually show some months and month  
20 data on the next page, Table 5. And am I -- am I correct  
21 that the annual average capacity -- percent of capacity is  
22 64 percent?

23 A I do not know the answer. On -- if you're  
24 telling me you averaged those numbers to get the number --

1 (inaudible) -- it might be stated that it's -- it is the  
2 average -- the arithmetic average of -- we're saying  
3 January 2001 through December 2002? I'm not -- I'm not  
4 sure that that -- without thinking about it for a long  
5 time whether that describes anything other than the  
6 arithmetic average.

7 Q How would you calculate it if you were asked  
8 what the annual average capacity utilization was at that  
9 plant during the year 2001?

10 A Well, I think I'd sit down with about three or  
11 four different people and I'd get their input before I  
12 would just -- just -- (inaudible).

13 Q That -- those numbers aren't far off the  
14 utilization that Dr. -- Mr. Wellington testified to for  
15 the AgraMark plant -- (inaudible)?

16 A I believe he said this -- he -- he calculated --  
17 -- (inaudible) -- I believe he said that he would --  
18 (inaudible) -- the 60 to 70 percent range. (Inaudible).

19 Q Okay. And in -- in -- let me look at Table 1-A  
20 if I could for a minute. Am I correct in interpreting  
21 this to show that Class 1 handlers deliver -- strike that.  
22 Let me start from the beginning.

23 Am I right in interpreting this to show that  
24 Class 1 handlers receive at their Class 1 plants the

1 lowest percentage of milk on Sundays?

2 A I think you're probably correct in that. And  
3 again, just so -- just so the record's clear, it's data  
4 from six cooperatives. They're 7(a) plant deliveries for  
5 two specific months.

6 Q But even on Sundays they receive 70 percent or  
7 more --

8 A Of the monthly average.

9 Q -- of the monthly average. Is that right?

10 A Yes, sir.

11 Q How do you calculate the monthly average, by  
12 the way?

13 A The monthly average is the sum -- the total  
14 divided by the days in the month.

15 Q Your -- your Carlisle plant sells butter, is  
16 that right?

17 A My Carlisle plant produces butter.

18 Q Okay. And -- and who sells that?

19 A Organizationally, there is a division called  
20 Value Added within Land O' Lakes. They are in charge of  
21 the marketing logistics. They are -- the industrial  
22 division sells it to the value added division and it  
23 creates the price which is pretty much equal to what the  
24 value added can buy it outside because we do buy it from

1 sources other than our own plants.

2 MR. ROSENBAUM: That's all I have for now.

3 Thank you.

4 JUDGE BAKER: Thank you, Mr. Rosenbaum. Are  
5 there other questions? Yes, Mr. English?

6

7

8 CROSS EXAMINATION

9 BY MR. ENGLISH:

10 Q Following up on that last question, if the  
11 product is cold -- is sold in the value added division,  
12 does that mean that when it's sold in the marketplace it  
13 is sold for something other than commodity prices?

14 A Land O' Lakes butter -- (inaudible) -- higher  
15 than commodity prices, yes, sir.

16 Q That product is a -- is a well known, well  
17 recognized, well regarded brand that commands a price -  
18 - a premium price above commodity, correct?

19 A Mr. Wellington had to do his own commercial.  
20 And I can rely on that, thank you.

21 Q I'll send you both a bill.

22 (Laughter)

23 BY MR. ENGLISH:

24 Q Following up the question for -- from Mr.

1 Beshore about the proposed modification, if -- and the  
2 availability of the pool milk on Order 5 or Order 7 and  
3 Order 1. Is three months really enough? I guess I ask  
4 that in the context of if a producer ships milk down to  
5 Order 5 and collects -- or his handler collects a  
6 transportation credit for the fall months and then that  
7 producer comes back on in January and February and March -  
8 - in May -- (inaudible) -- June. The first few months  
9 from this proposal they wouldn't be eligible. But for the  
10 very months that Dr. Ling discussed and your statement  
11 shows -- (inaudible) -- testimony from Mr. Wellington  
12 shows -- (inaudible) -- May, June, July, they still would  
13 be able to -- to receive a payment?

14 A A handler would more than likely put that  
15 producer back on Order 5 after they became transportation  
16 credit-eligible so that the -- you only had to have -- you  
17 would really have to exclude that producer from the Order  
18 5 market for two months.

19 Q Is there any follow-up with a safety valve  
20 making sure that in case they've decided not to it's not  
21 there? You know, okay, if you're going to say they would  
22 go back and take it back and it's not going to matter, the  
23 volume's not going to be there. But what if the handler  
24 decides to -- (inaudible) -- up on Order 1, having

1 collected the transportation credit for the -- for the  
2 five or six months of the previous year?

3 A I would say that as that -- as that handler  
4 leaves -- (inaudible) -- the order, especially given the  
5 fact that we are the group proposing tighter restriction  
6 on the pool, then that milk pooled under the order would  
7 have to perform. The handler who has that milk pooled on  
8 the order would have to perform.

9 Q Nonetheless, it's going to be eligible for the  
10 very months that the greatest supply --

11 A You're assuming that they -- I don't know which  
12 of the two months of the four that the handler would  
13 choose not to -- would choose to exclude a possible pool  
14 on Order 1.

15 Q With respect to the facility in Carlisle that  
16 was expanded in October -- expanded in 2000, 165 million  
17 pounds, prior to that time -- was it expanded at all in  
18 the 1990s?

19 A There was a -- late '80s we -- we started off  
20 with one -- one evaporator, one dryer.

21 Q When you built the plant in 1977?

22 A Yes. Or thereabouts. I'm not sure it was '77,  
23 but thereabouts. Started off with one dryer and one  
24 evaporator. I would say in the '80s there was -- there

1 was the inclusion of a second evaporator. The plan was to  
2 build a dryer --

3 Q (Inaudible)?

4 A I would think that we probably got into the  
5 '90s when we built the -- the dryer, put the second dryer  
6 in. There was a -- an expansion to the -- to the butter  
7 side of the business -- (inaudible).

8 Q And so, starting with the facility being built  
9 in the '70s and expansion of the evaporator which the  
10 documents I'm looking at indicate added in 1984, a dryer  
11 which you think was probably added in the '90s, a butter  
12 capacity, and then the capacity in 2000. Land O' Lakes --

13 A Do you also have our press releases from the  
14 time? I just need to know -- go on. I'm sorry.

15 Q Land O' Lakes has made a series of investment  
16 decisions with respect to that facility, correct?

17 A Yes.

18 Q And I take it Land O' Lakes has a -- a business  
19 venture with the SEC, you know, makes various reviews  
20 first before they make those decisions concerning the  
21 financial consideration for -- for those investment  
22 decisions?

23 A Every prudent business organization does.

24 Q And without the existence of these marketwide

1 service payments Land O' Lakes chose to make those  
2 investments in 1977, 1984, the early '90s, the butter -  
3 - in the late '90s, and then the expansion in 2000,  
4 correct?

5 A That's correct.

6 Q You -- you answer to questions from Mr. Beshore  
7 indicated that you also had some information, and --  
8 (inaudible) -- that's probably not all the information.  
9 But you have some information regarding Maryland and  
10 Virginia. Do you have information --

11 A I have a general knowledge --

12 Q General knowledge. The plants in rural  
13 Virginia, do you know what happened --

14 A I'm sorry. Rural Maryland.

15 Q Rural Maryland. Sorry. Rural Maryland. Do  
16 you know what -- (inaudible)?

17 A The -- (Inaudible) -- very old. Could you --  
18 (inaudible)?

19 Q Yeah. It predates the 1977 facility that Land  
20 O' Lakes built in -- in Mount Olive, right?

21 A The genesis of -- (inaudible).

22 Q And Maryland and Virginia serves a variety of  
23 customers in the southeast in addition to being pooled on  
24 Order 1, correct?



1           A     Yes.

2           Q     And do you know whether Maryland and Virginia  
3 causes milk to be either transferred or reverted back  
4 from, say, Orders 5 or 7 to their facility in Maryland  
5 from time to time?

6           A     I can't answer that question but -- but I'd  
7 like to -- I'd like to say -- (inaudible) -- the plant  
8 that they are part-owners of, which is a reserve  
9 processing plant in Order 5, there are provisions in Order  
10 5 which make it advantageous for Order 5 milk to be  
11 delivered to Order 5 pool plant. In this case, a pool  
12 supply plant.

13                     So my guess -- and I'm not speaking for  
14 Maryland and Virginia in any way, shape, or form. My  
15 guess is that they would put those who dealt Order 5 milk  
16 into their -- their plant in Strasburg, Virginia.

17           Q     But it is a fact, is it not, that at times that  
18 fills up and they -- the milk into --

19           A     Right.

20           Q     -- the plant in Maryland?

21           A     You'd have to have a Maryland -- (inaudible) --  
22 representative to answer that.

23           Q     Does Land O' Lakes have agreements with cheese  
24 facilities on Order 1 with regard to supply --

1 (inaudible)?

2 A What is -- what are cheese facilities on Order  
3 1?

4 Q Located in Order 1. Cheese plants that are  
5 located in the marketing area that is Order 1.

6 A The -- is the question, does Land O' Lakes sell  
7 milk to cheese plants --

8 Q Yes.

9 A -- whose plants are -- is located in the  
10 marketing area of Order 1?

11 Q Yes.

12 A Yes.

13 Q And are those contracts for committed supply of  
14 milk?

15 A Again, what is your definition of "committed"?

16 Q Do those agreements provide for Land O' Lakes  
17 to provide a set supply of milk each month of the year?

18 A There -- there -- as I think about it, the two  
19 plants that are -- are -- have agreements that have  
20 parameters around monthly delivery. Does that answer your  
21 question?

22 Q The parameters would be that --

23 A That's a --

24 Q -- you would buy sort of a minimum and maximum

1 amount? Minimum that you would supply and they could ask  
2 for a certain amount, up to a certain amount, and --

3 A I think that -- yes. I would agree to that.

4 Q And you say that's two facilities that -- two  
5 facilities that you -- Land O' Lakes provide, to your  
6 knowledge?

7 A Yes.

8 MR. ENGLISH: That's all the questions I have.  
9 Thank you.

10 JUDGE BAKER: Thank you, Mr. English. Are  
11 there any other questions for Mr. Schad? Mr. Vetne?

12 CROSS EXAMINATION

13 BY MR. VETNE:

14 Q Mr. Schad, I -- I may have spaced out, but did  
15 you identify those two facilities that you supply? Maybe  
16 you did, but well, would you do it again?

17 A I don't -- I don't think there's any problem  
18 doing it. They're the two -- cheese facilities in --  
19 well, one's in Maryland, one's in Pennsylvania.

20 Q And -- and do the parameters work in such a way  
21 that if the plant falls above or falls below or demands  
22 above the parameter that there's simply an additional  
23 cost? Extra parameter cost?

24 A Well, if their requirements are greater than

1 the specified maximum, it is at a rate higher than that --  
2 (inaudible).

3 Q Are there distributing plants in the northeast  
4 that are supplied exclusively by Land O' Lakes?

5 A Yes, there are.

6 Q Did you identify which -- (inaudible)?

7 A Sure. Wawa Dairy Farms and Dutch Valley Foods.

8 Q Wawa and Dutch Valley?

9 A (Inaudible).

10 Q Pardon?

11 A Dutch Valley Foods.

12 Q And you have pool supply agreements with those  
13 plants?

14 A Yes.

15 Q And you balance their needs, right?

16 A Yes.

17 Q Do those plants have any unique marketing  
18 practices which makes their supply either more seasonal or  
19 less seasonal than the average distributor?

20 A One -- one -- (inaudible) -- market. I think  
21 their -- their seasonal demands probably peak the same as  
22 the demands -- the typical market demand.

23 The other is -- (inaudible) -- recognize that  
24 because they have a lot of stores on the -- along the

1 Jersey shore -- (inaudible).

2 Q So the -- the Wawa customer actually would help  
3 balance your -- your corequirements because they require  
4 more when the market as a whole requires less?

5 A Except that the -- the cows usually react to  
6 the -- to the heat the same as the consumers. (Inaudible)  
7 -- the cows lower the production. So to that extent, it's  
8 not only the sales side. You have to look at the supply  
9 side.

10 Q And that -- that summer bump in sales would  
11 start in about May?

12 A Probably more when schools are out.

13 Q Middle of June?

14 A Yeah.

15 Q You -- do you ever supply those two customers  
16 with milk marketed through Land O' Lakes from any other  
17 producer or producer organization?

18 A Ask me the question again?

19 Q Is your supply to either Wawa or Dutch Valley  
20 ever supplemented by milk from any other producer or  
21 cooperative association?

22 A We market the milk of another cooperative  
23 called Cumberland Valley. If they possibly -- (inaudible)  
24 -- some of their milk would be on our trucks to go to

1       those plants. That would be the only instance. A year-  
2       round agreement that we had for -- (inaudible).

3           Q     Is Cumberland Valley a -- a cooperative that  
4       does not operate manufacturing facilities?

5           A     That's correct.

6           Q     And is Land O' Lakes the -- the pooling handler  
7       for that milk?

8           A     No.

9           Q     They pool their own milk?

10          A     They do their own handler report.

11          Q     They do their own handler report.

12          A     Which means they pool their own milk.

13          Q     Do they market some of their milk outside of  
14       Land O' Lakes?

15          A     Not to my knowledge.

16          Q     Does Land O' Lakes direct that --

17          A     No.

18          Q     Do the other -- the other members of ADCNE, to  
19       your knowledge, also supply pooling plants, distributing  
20       plants that receive milk pool supply contracted by --  
21       (inaudible)?

22          A     You'll have to ask them on those -- on those  
23       answers. I -- I don't know the answer and can't speak --  
24       ADCNE is more a -- it's not a marketing agency requirement

1 so we're not trending that kind of information --  
2 (inaudible). We find joint positions like slave labor or  
3 regulatory and try to find 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) -- Mr. Rosenbaum's group. I don't -- you'll  
9 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). With respect to Table 1, Sub-  
15 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) -- suppliers, do they  
15       include plants that are supplied by other ADCNE  
16       cooperatives?

17          A     Yes, I believe so. I believe that's --  
18       (inaudible) -- in all instances all over -- (inaudible).

19          Q     All right. Your supply -- any partial supply  
20       through plants that are primarily supplied by independent  
21       producers, non-member producers?

22          A     Land O' Lakes?

23          Q     Yes. Does Land O' Lakes supply any  
24       distributing plant where the plant is primarily supplied



1 by the farmers who are not members of any dairy  
2 cooperative?

3 A On a seasonal basis, yes. I can't think of any  
4 on a regular basis.

5 Q On a seasonal basis. Are you referring to spot  
6 requests for milk?

7 A Yes.

8 Q Do you have any contractual commitment to  
9 plants that are supplied primarily by non-member  
10 producers?

11 A I'm trying to -- (inaudible). I -- as I think,  
12 I do have also deliver to plants that -- that do have  
13 their own -- probably better safe. I'll stick with my --  
14 my earlier characterization. On a seasonal basis --  
15 (inaudible).

16 Q The plants that Land O' Lakes supplies that you  
17 share in supply obligations to -- (inaudible), is  
18 balancing of those plants also shared with the other  
19 cooperatives?

20 A Yes and no. Not -- not in all cases.

21 Q Okay. So there's -- there's -- there may be  
22 some cases, for example, where Land O' Lakes has a  
23 committed supply and another cooperative balances  
24 supplemental and surplus milk?

1 A Yeah.

2 Q And vice versa? Does that also happen?

3 A Probably, yes.

4 Q The deliveries to (7)a plants on Tables 1-A and  
5 1-B, to the extent that they represent Land O' Lakes milk,  
6 what percentage of those deliveries is classified as Class  
7 1?

8 A I do not know.

9 Q You don't have any -- any function in either  
10 filling out or reviewing the reports that are filed on a  
11 monthly basis with the market administrator?

12 A No.

13 Q And with respect to the total volume of  
14 deliveries to 7(a) plants by the six cooperatives, do you  
15 have any -- any knowledge or a good estimate as to what  
16 the Class 1 utilization of those deliveries are?

17 A No, sir, I don't know -- (inaudible) -- on the  
18 partial, I surely don't know -- (inaudible).

19 Q Do you have any reason to believe that it would  
20 be any different than it had previously been testified  
21 that Class 1 typically is in excess of 85 or 90 percent?

22 A No. I think Mr. Fredericks' characterization -  
23 - speaks for itself.

24 Q There is a provision in the -- the order for

1       what's called a 7(b) plant, which is a -- a locked-in UHT  
2       plant, as I recall?

3           A     No, I understand it is not.

4           Q     Do the six cooperatives -- any of the six  
5       cooperatives market milk through any locked-in 7(b) plant?

6           A     To my knowledge, there are no 7(b) plants --  
7       (inaudible).

8           Q     Some of the 7(a) plants, however, do make UHT  
9       milk products?

10          A     (Inaudible).

11          Q     To --

12          A     To answer your question, not to my knowledge.

13          Q     All right.

14                   (Pause)

15               MR. VETNE: I don't have any more questions  
16       right now.

17               JUDGE BAKER: Are there any other questions for  
18       Mr. Schad? Yes, Mr. English?

19                       CROSS EXAMINATION

20               BY MR. ENGLISH:

21           Q     Going back to the question about what happens -  
22       - Order 5, there's two different ways that the money is to  
23       be paid out of the Order 5 pool for milk delivery to the  
24       southeast, correct? (Inaudible) -- orders have -- one is

1 producer milk and another is transferred milk, correct?

2 A My understanding under the transfer  
3 transportation credit, both -- both are eligible for  
4 transportation credits.

5 Q And so to the extent milk is transferred,  
6 received first at an Order 1 plant and then transferred to  
7 an Order 5 or an Order 7 plant and receives a  
8 transportation credit for that, if that occurs in the  
9 fall, that has effectively increased the quantity of milk  
10 needed for Class 1 in Order 1 while drawing a  
11 transportation credit for the different pool, correct?

12 A I'm not -- if part of your question stated that  
13 the -- the Class 1 utilization of the -- of the  
14 transferred milk from the Order 1 pool plant should be --  
15 to the Order 5 or Order 7 plant, yes, the -- yes, indeed  
16 the Class 1 revenues come back to the Order 1 pool.

17 Q But --

18 A I mean, that's probably a question that --

19 Q I understand the revenues come back, but the  
20 milk -- the milk went somewhere else?

21 A The milk went somewhere else.

22 Q And --

23 A And that milk -- and assuming that they crossed  
24 all the other T's, the milk -- it would be eligible for

1 the transportation credit.

2 Q Correct. And -- and simultaneously in this  
3 crossroads, it is not being -- (inaudible) -- marketwide  
4 service payment -- (inaudible) -- it is nevertheless going  
5 to draw a marketwide service payment under your proposal,  
6 is that correct?

7 A I think you're -- you mischaracterize our need  
8 for that. Our need for the marketwide service payment has  
9 to do with unused capacity, so I don't think -- think  
10 you'll find -- (inaudible) -- we don't have that issue --  
11 (inaudible).

12 Q But isn't the -- the reason behind these  
13 capacity in reverse, that the milk wasn't available in the  
14 fall because it got routed down to the southeast?

15 A In -- in my case, when -- when I -- (inaudible)  
16 -- solids, I include the -- (inaudible).

17 Q I understand, and that's my point. It didn't  
18 actually -- it doesn't use the Class 1 to serve the Order  
19 1 market, did it?

20 A The -- the revenue came back to the Order 1  
21 market. From that extent -- from -- from the producer  
22 pool standpoint, it's all the same whether it's delivered  
23 on the ramps in Lancaster County or sent to a plant in  
24 Atlanta, Georgia.

1           Q     But it nonetheless has created a -- (inaudible)  
2     -- unused capacity in the four months for Order 1 for  
3     which you're asking Order 1 producers to pay, correct?

4           A     Again, I -- simplistically, yes. But there's  
5     more to it than that. And you're not even looking at, you  
6     know, the Charlie Ling study. And we're basing it on the  
7     theoretical model, not the -- the experience of each of  
8     the plants.

9                     The things that I -- I brought to you, the  
10    experiences of the plants, the Carlisle plant --  
11    (inaudible) -- some numbers to try and -- (inaudible).

12          Q     And you've also told us that Land O' Lakes  
13    sells milk into Order 5, correct?

14          A     Land O' Lakes -- (inaudible) -- pool on Order  
15    5, correct.

16          Q     And you're familiar with the fact that in -- in  
17    at least Order 5 and perhaps many other market orders the  
18    -- does Order 5 have a -- (inaudible) -- place --  
19    (inaudible) -- for deliveries of milk to Class 1 handlers?

20          A     There's a DCNA premium.

21          Q     And does the DCNA premium have a provision in  
22    it for receiving credit for the purpose of encouraging  
23    Class 1 handlers to receive milk on a basis that is much -  
24    - that is more uneven than what it shown on Table 1-A of

1 Exhibit 17?

2 A Yes.

3 Q (Inaudible) -- place for your milk delivered to  
4 Order 1 Class 1 processors?

5 A Yes.

6 Q And does that include receiving credit for  
7 receiving milk on a uniform basis?

8 A In most cases, no.

9 Q And the Class 1 premium -- there's a Class 2  
10 premium in -- in this order, Order 1, correct? Is there a  
11 premium for deliveries of -- premium Class 2?

12 A I do not believe there is a published --  
13 (inaudible) -- much of the agency -- publishes Class 2  
14 premium.

15 Q Do you know whether Class 2 premiums are  
16 charged, whether -- whether premiums are charged for Class  
17 2 milk?

18 A I -- yes, Class 2 -- Class 2 is sold above  
19 federal order minimums.

20 Q Do you know whether the Class 1 premium is  
21 higher than the Class 2 premium above order minimums on a  
22 general basis in Order 1?

23 A In my experience with Order 1, Class 1 premiums  
24 are -- they are geographically defined so that I can

1       answer that question "yes" and "no." In some places the  
2       Class 1 premiums are higher. In other places in my  
3       experience in the Order 1 marketing area     -- (inaudible)  
4       -- of Class 2.

5           Q     Are those places in your experience where the  
6       Class 1 premium is higher -- is part of the justification  
7       for that in order to compensate for costs of balancing?

8           A     (Inaudible) -- Pennsylvania Milk Marketing  
9       Board which sets the milk order premium. And there's a  
10      regulatory over-order premium in Pennsylvania.

11          Q     Well, you beat me to it. For instance, on the  
12      milk that you deliver to Wawa, to the extent that's  
13      Pennsylvania produced and Pennsylvania processed and  
14      Pennsylvania distributed milk, there is an over-order  
15      premium presently in place at \$1.65 a hundredweight for  
16      Class 1 milk, correct?

17          A     That's correct.

18          Q     Do you have Exhibit 5, the market administrator  
19      exhibit?

20          A     (Inaudible) -- yes, I do.

21          Q     Would you open to page 79 and 80?

22          A     (Inaudible).

23          Q     Seventy-nine and 80.

24                   (Pause)



1 BY MR. ENGLISH:

2 A Seventy-nine and 80.

3 Q Starting on page 79 and -- almost a "yes" or  
4 "no" answer if at all possible. And again, as I prefaced  
5 with Mr. -- Dr. Wellington, I'm -- I know I'm asking for  
6 confidential information. If that's the answer, that's  
7 the answer.

8 But could you tell me whether in any month on  
9 page 79 were transfers to other order plants -- whether  
10 Land O' Lakes transfers milk to plants rated under Order  
11 6, which is Florida?

12 A I think that's confidential information.

13 Q And so if I asked further detailed questions  
14 like quantities, you -- you would say that that's  
15 confidential?

16 A I think that would follow from my earlier  
17 question.

18 Q And if I asked you about page 80 similar  
19 questions, the answer would be confidential? Questions  
20 about diversions to other order plants? If I asked  
21 questions about details about the numbers for months for  
22 which there's restricted data, you would -- it would be  
23 confidential?

24 A Yes, sir.

1 Q That's fine.

2 MR. ENGLISH: I have no further questions.

3 JUDGE BAKER: Are there any other questions for  
4 Mr. Schad? Let the record -- Mr. Arms?

5 CROSS EXAMINATION

6 BY MR. ARMS:

7 Q In response to a question raised by Mr. Vetne  
8 regarding plants --

9 A I'm sorry. Mr. Vetne --

10 Q Asked you about 7(b) plants. You, I believe --  
11 (inaudible) -- the term as ESL plants?

12 A No, I --

13 Q Expanded shelf-life plants?

14 A His question was were there any other UHT  
15 plants. I said I -- I stated I thought there were ESL  
16 plants. Then I came back and I said in response to your  
17 specific question of UHT, not to my knowledge --  
18 (inaudible).

19 Q No UHT plants?

20 A Not to my knowledge.

21 Q You do supply, do you not, plants -- a plant  
22 located in Winchester, Virginia, operated by --  
23 (inaudible)?

24 A Yes, I do.

1           Q     And in your -- since you've been doing that,  
2     how would you classify that plant? Is it a 7(a) plant?

3           A     Yes.

4           Q     Located outside the marketing area?

5           A     Yes.

6           Q     In other words, a distributing plant -- 7(a)  
7     distributing plant?

8           A     It's my understanding that's how it is.

9           Q     But you're not aware whether or not their  
10    output is extended shelf-life or UHT product?

11          A     It's my understanding that it's ESL, it is not  
12    -- (inaudible) -- they do non-refrigerated stuff --  
13    (inaudible) -- store shelves next to cereal.

14          Q     Okay. So you are saying that it's an ESL 7(a)  
15    plant basically, is that correct?

16          A     To my knowledge -- that's how it is classified,  
17    to my knowledge.

18          Q     And the other --

19          A     That is a -- (inaudible) -- the products that  
20    they make.

21          Q     They are in Federal Order 1?

22          A     I -- (inaudible).

23          Q     Likewise, there's an ESL plant, is there not --  
24    (inaudible) -- Steuben Foods in Elwood, New York?

1 A I have no knowledge of Steuben Foods.

2 Q On your table showing capacities --

3 A Table 5 --

4 (Pause)

5 BY MR. ARMS:

6 Q Did you run a special situation this year with  
7 regard to a major supply into your plant that affected --  
8 greatly affected your capacities -- capacity levels  
9 influencing -- influencing this table?

10 A We could play cat and mouse, but I think you're  
11 alluding to the fact that Hershey Foods --

12 Q Hershey Foods -- (inaudible).

13 A -- (inaudible) -- dairy market used to --

14 Q Correct.

15 A -- (inaudible) -- a supply --

16 Q But that's why --

17 A -- Hershey --

18 Q -- this table --

19 A And -- yes.

20 Q Affected the -- (inaudible) -- capacity?

21 A In the -- due to the strike, Land O' Lakes  
22 basically lost that customer for the duration of the  
23 strike.

24 Q Can you -- can you identify the months involved

1       there, the period?

2           A     I can identify just like -- I mean, all you  
3       have to do is read the newspaper. I believe it was April,  
4       part of April, all of May, part of June.

5           MR. ARMS: That's all I have. Thank you.

6           JUDGE BAKER: Very well. Mr. Tosi --  
7       (inaudible).

8           MR. TOSI: Yes, I do, Your Honor. Thank you.

9                       CROSS EXAMINATION

10          BY MR. TOSI:

11          Q     Dennis, thank you for in your testimony trying  
12       to relate the -- the costs applicable to Carlisle and  
13       comparing and contrasting them to Dr. Ling's study.

14                You -- you related your costs back to so many -  
15       - (inaudible) -- product.

16          A     I -- I did pounds of total size. Dr. Ling did  
17       pounds of -- (inaudible).

18          Q     Okay. Excuse me. I stand corrected. Did you  
19       -- could you or would you know if you wanted to convert  
20       that back to the hundredweight cost?

21          A     Historians do it. And because of the --  
22       (inaudible) -- products sold and the different costs --  
23       (inaudible) -- starting to look really, really strange.  
24       Our accounting is set up for the total size. We do total

1 -- (inaudible) -- accounting, yes. That's the way we --  
2 (inaudible) -- California. (Inaudible).

3 So, could I do it? I'm -- I'm just not sure  
4 what happens when you start to do cream and do condensed  
5 milk coming in and out. You know, I think it's better  
6 that I don't.

7 Q Okay. Also in your testimony, you indicated  
8 that other testimony will show that the balancing capacity  
9 of the -- of the order is not equally realized. Are --  
10 are there going to be more witnesses to --

11 A Mr. Gallagher is going to testify.

12 Q -- come back? Okay. Who in the northeast  
13 market benefits from the existence of butter powder plants  
14 that are performing the balancing function?

15 A I think all participants in the market benefit  
16 in that -- (inaudible) -- market sort of speaks -- that's  
17 -- (inaudible) -- not out chasing -- (inaudible). Mr.  
18 Wellington said he -- (inaudible). I think that it  
19 enhances the credibility of the class prices in a -- in a  
20 large, large sense in the marketwide sense and also  
21 enhances the ability for all to -- (inaudible).

22 Q Do you think it's a good policy to --  
23 (inaudible) -- to charge producers for services that  
24 you're providing?

1           A     Handlers charge producers -- getting back to --  
2     if you're asking if the legislation allows us to do it --  
3     (inaudible) -- to be compensated from the pool prior to  
4     the -- to the disposition to producers.

5                 If handlers are providing a service to the  
6     benefit of all, this is a way to -- to get that --  
7     (inaudible) -- back to the handlers who are providing that  
8     service. It is the place where we all draw from, the  
9     pool.

10           Q     I want to probe that just a little bit more.  
11     Do you have an opinion about whether or not the act  
12     provides us the authority to regulate producers in this  
13     capacity as producers?

14           A     I'm -- I'm not sure of the question. Can you  
15     expand on the question?

16           Q     Marketing orders or the -- the act -- the  
17     Agricultural Marketing Agreement Act of 1937 that  
18     authorizes milk orders. Are you of the opinion that the  
19     act provides us the authority to regulate producers in  
20     their capacity as producers?

21           A     I thought that the underlying theory is you  
22     regulate handlers.

23           Q     Okay. To the extent then that you --  
24     (inaudible) -- the law authorizes handlers to charge

1 producers for a service that they're providing, would it  
2 be reasonable to conclude that if you're an independent  
3 producer you -- whether you like it or not, you're being  
4 forced to pay for a service in that regard? You're being  
5 regulated?

6 A It's not -- (inaudible) -- it's not a --  
7 (inaudible). Is there much difference between --  
8 (inaudible) -- independent producer and -- and requiring  
9 them to pay for the services -- (inaudible).

10 Q I'm sorry. I -- I didn't hear you.

11 A I -- I said it -- I think it's a semantic  
12 argument. But I -- I -- I question is there any  
13 difference between the -- the Department going to  
14 independent pools and requiring them to pay a fee for the  
15 services of the market administrator.

16 Q I can't imagine there is.

17 (Laughter)

18 BY MR. TOSI:

19 Q Okay. One other thing. To the extent that  
20 -- this kind of builds off of -- (inaudible) -- Mr.  
21 Gallagher suggested that maybe you would be the one better  
22 able to answer this question.

23 Mr. Gallagher's testimony indicated that there  
24 was about 184 non-pool plants scattered throughout the



1 northeast marketing area. And while any one of them may  
2 have the singularly meaningful -- and I guess in that  
3 context it would probably come out of Queensboro --  
4 Queensboro Farms that perhaps taken as a whole that the  
5 existence of -- of those plants providing outputs. Is a  
6 very significant balancing function being performed by  
7 those entities as well?

8 A I -- I -- (inaudible) -- to Mr. Gallagher.

9 (Laughter)

10 BY MR. TOSI:

11 A I think -- (inaudible) -- Land O' Lakes  
12 operation is centered around investment in Carlisle.  
13 (Inaudible) -- to this in my testimony here. I think Mr.  
14 Gallagher may have a different methodology -- (inaudible).  
15 I think that to the extent that he plays -- (inaudible).  
16 I think he's better answering. And, Gino, I promise --  
17 (inaudible).

18 Q Okay. Going a little bit off of Mr.  
19 Wellington's testimony, should the Department --

20 JUDGE BAKER: (Inaudible) -- speak a little  
21 more loudly -- (inaudible).

22 THE WITNESS: Okay.

23 JUDGE BAKER: Thank you.

24 BY MR. TOSI:

1           Q     Should we tend to discount the -- (inaudible) -  
2     - the role of cheese plants in balancing the northeast  
3     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    But the -- the -- (inaudible) -- of their 21 years I've  
12    had in the dairy cooperative in this market, you don't  
13    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). It's very hard for a cooperative entity  
17    to balance with cheese. That doesn't say that to some  
18    extent they do have the ability to -- to work the extra  
19    day to -- (inaudible). Mr. Miller talked about tolling --  
20    (inaudible) -- that to do a tolling arrangement you need  
21    the milk processed and the price won't -- price won't  
22    cover -- (inaudible).

23           Q     Can you tell me how all producers in the market  
24    benefit by the existence of butter powder plants to

1 perform the balancing function? Can you put a value on  
2 that, how much the blend price is enhanced, for example?

3 A How much is the blend price enhanced on -- by  
4 butter powder plants. I guess -- during his -- during Mr.  
5 Ling's study he says that you can give -- you could have  
6 done a whole thing for cheese -- an equal number of cheese  
7 plants. If he had input a different set of numbers into  
8 the cost -- cost relationship.

9 Mr. Wellington's testimony said that it's too  
10 expansive -- (inaudible) -- to balance the butter powder.

11 So butter powder is the more efficient way of  
12 doing it. However, there have been cases of producer  
13 prices that when -- (inaudible) -- secretary, she rates  
14 market service payments and it will be based on the Ling  
15 study of butter powder plants rather than cheese plants.

16 Q That's assuming she fully considers it this  
17 time.

18 A That assumption -- (inaudible).

19 Q Okay. So to the extent that the secretary may  
20 believe that she needs to be shown how the market  
21 benefits, you have no measure to offer her other than your  
22 costs? So we're -- we're very well indicated here on the  
23 costs.

24 A It's again --

1           Q     -- ask the secretary to make the pool a little  
2     light on benefits?

3           A     If you agree there is a market benefit to  
4     balancing -- (inaudible) -- to the extent that the -- the  
5     market needs to be balanced, we show that the cooperatives  
6     are doing it, and that -- that is a factor. I can't --  
7     (inaudible) -- activities that we're doing. We can put a  
8     cost on -- if we agree that all benefit because the -- the  
9     -- (inaudible) -- the whole incur several costs. That's -  
10    - that's the best we can do.

11          Q     Thank you. Just a little bit here on your  
12    marketwide service payments -- excuse me, the  
13    transportation credit payments, the former marketwide  
14    service from Order 5. Did I understand your testimony to  
15    say that -- that the payments from the transportation fund  
16    somehow goes back to the Order 1 pool given certain  
17    conditions?

18          A     No. No, it wasn't the transportation dollars.  
19    I was talking about the Class 1 value. If milk is taken -  
20    - taking a hypothetical, if milk is transferred out of  
21    Carlisle, which is a pool supply plant, to an Order 1 --  
22    I'm sorry, to an Order 5 plant in North Carolina, the --  
23    the higher -- the plant with the lower utilization --  
24    (inaudible) -- would go back to the Order 1 pool.

1           Q     I understand. I'm sorry. I misunderstood you  
2 before. Under the southeast transportation credit  
3 provisions, are producers' fee prices at all reduced  
4 because of the marketwide service fee for transportation  
5 credits?

6           A     It's my understanding that the -- the amount is  
7 financed by the increase in the Class 1 price over a  
8 period of months in the year. If -- if you can -- if you  
9 -- if you want to make the jump that the -- the dairy  
10 farmers -- document value, in the absence of  
11 transportation credit there would be over-order premiums  
12 or through the Department providing a different Class 1  
13 price. And if you say that there was that opportunity.  
14 But to answer the specific question, it does not come out  
15 of it.

16          Q     (Inaudible) -- would be an example of handlers  
17 charging other handlers for a service that's for  
18 marketwide benefit? Handler to handler?

19          A     Yes.

20          Q     The producer is left out -- (inaudible).

21          A     Except for the opportunity.

22               MR. TOSI: Thank you. That's all I have.

23 Thank you. I appreciate it.

24               JUDGE BAKER: Does that complete your

1       questioning, Mr. Beshore?

2                   MR. BESHORE:  Yes.  I -- I do have a few  
3       questions for Mr. Schad on redirect.

4                   REDIRECT EXAMINATION

5                   BY MR. BESHORE:

6           Q       Mr. Schad, on the -- picking up on that last  
7       question, are you familiar at all with the marketwide  
8       service payments paid out of the Order 30 pool?

9           A       I am generally familiar.

10          Q       There's no -- there's no supplemental -- you  
11       would be -- you might know then that there's no  
12       supplemental assessment on handlers in Order 30 to -- to  
13       raise a fund to make marketwide service payments?

14          A       That's correct.

15          Q       But the --

16          A       (Inaudible).

17          Q       -- handlers who assemble milk in the Class 1  
18       market are paid eight cents a hundredweight on those  
19       assembled volumes?

20          A       That's my understanding.

21          Q       Okay.  Out of the pool, reducing the price?

22          A       That's my understanding.

23          Q       Okay.  And handlers who move milk for Class 1  
24       purposes within the order from one point to another are

1       reimbursed out of the pool for supplemental transportation  
2       charges in Order 30?

3           A       My understanding is that's correct.

4           Q       Okay. And that's -- Mr. Wellington testified  
5       that's what the act specifically authorizes with respect  
6       to marketwide service provisions?

7           A       Correct.

8           Q       Okay. Now, if you just think about those  
9       provisions for -- for a minute -- you probably don't know  
10      the answer to this question but let me ask you. Do you  
11      know whether the -- before eight cents a hundredweight was  
12      allowed, what -- when it was promulgated to be paid out of  
13      the pool to handlers who assemble milk for Class 1 use in  
14      Order 30, a benefit -- a benefit was quantified with  
15      respect to what benefit that was to the producers in the  
16      market?

17          A       I -- I have no knowledge that such a study was  
18      done or such evidence was put into the hearing --  
19      (inaudible). That provision -- (inaudible).

20          Q       Okay. Now, let's stay in the upper midwest  
21      just a little bit then. I think you testified but I want  
22      it to be absolutely clear that the Land O' Lakes plants at  
23      Greenwood, Wisconsin, and Fernham, Minnesota, are not  
24      supply plants on Order 1 commencing in August of 2002?

1           A     That's correct.

2           Q     Keeping -- keeping mindful of the SEC, are  
3     there any present intentions to repool those plants as  
4     pool supply plants on Order 1?

5           A     We have no -- no intentions that I know of.

6           Q     Okay. The -- the handler list reflects that  
7     over -- since 2000 of the -- you know, I guess maybe three  
8     plants, Minnesota, Wisconsin -- pooled on the order, the  
9     two -- (inaudible) -- plants and a -- and a DFA plant for  
10    some period of time in Burks Falls, Minnesota, I think?

11          A     That's correct.

12          Q     Is -- does Order 1 require under its provisions  
13    those -- milk assembled through those units to perform for  
14    the market from plant -- from states outside the market?

15          A     (Inaudible) -- and it has -- it's a state by  
16    state regulation -- (inaudible) -- milk from within the  
17    marketing area qualifies. Each state, Minnesota and  
18    Wisconsin, had to qualify shipments from those particular  
19    -- (inaudible).

20          Q     To your knowledge, during the spring months of  
21    2001 with respect to the Land O' Lakes milk from Minnesota  
22    or Wisconsin, was the minimum 10 percent required shipping  
23    percentage under the order met with physical deliveries  
24    from Minnesota and Wisconsin into Order 1 during those



1 periods of time?

2 A The record would show that those -- those --  
3 all three of those plants were not pooled on the order I  
4 guess it would have been August of 2000 until December of  
5 2000, which meant that those plants would not have been  
6 under what we're calling today the lock-in provision. So  
7 throughout the entire year of 2001, those plants performed  
8 at -- at the percentages specified in the order or as  
9 amended by the market administrator.

10 Q And those percentages -- when you say  
11 "perform," that means deliveries from those plants was --  
12 supplies to those plants to Order 1 distributing plants?

13 A That's correct.

14 Q Mr. Schad, I think the -- let's look at Table 5  
15 of Exhibit 17 for a minute. You were asked several  
16 questions about the utilization of Land O' Lakes' plant at  
17 Carlisle in Mount Olive Springs, Pennsylvania. You  
18 provided some -- much -- much information in your  
19 testimony and in your exhibits.

20 By the way, this is probably the largest  
21 balancing plant in the northeast, to the best of your  
22 knowledge?

23 A I would -- I would -- yes. The answer to that  
24 is "yes."

1           Q     You don't know anybody else -- any other plants  
2     in the northeast that have the capability of -- of  
3     handling over 5 million pounds a day?

4           A     No.

5           Q     Do the capacity figures shown -- the monthly  
6     capacity figures shown on Table 5 of Exhibit 17 mask the  
7     daily and -- and weekly fluctuations in capacity  
8     utilization at the plant?

9           A     Yes. There are -- these are monthly numbers.  
10    If you took Table 1-A and 1-B, deliveries to Carlisle  
11    probably -- (inaudible) -- we also have Class 2 and Class  
12    2 customers which would -- (inaudible). But the answer to  
13    your question is, yes, they would mask the daily and  
14    weekly fluctuations of received -- (inaudible).

15          Q     Okay. And they probably -- you know, something  
16    like the delivery patterns shown on the inverse or the --  
17    the other side of the delivery patterns shown on Tables 1-  
18    A and 1-B probably?

19          A     Sure. Yes.

20          Q     Now, let's talk about benefit to the market of  
21    this -- your balancing services which are reflected on  
22    Table 1-A and 1-B. If the ADCNE cooperatives did not  
23    deliver on the 19th of November 2001, 21.8 million pounds  
24    of milk to those -- those distributing plants but -- by

1 the way, in November I assume there would have been plant  
2 capacity at -- at Carlisle and other facilities in the  
3 market to retain that 21.8 million pounds?

4 A Yes.

5 Q Now, if that was not the least delivered to  
6 those 7(a) plants, would there have been losses suffered  
7 in the marketplace? Your Order 1 market, would there have  
8 been some marketing challenges?

9 A Sure. As -- as hypothesized with --  
10 (inaudible) -- instead of the trucks going to the Class 1  
11 plants, they were -- they could only go to the balancing  
12 plants. Those sales would be lost.

13 Q Let's say there wasn't -- let's say the weather  
14 was fine but the plants ordered the milk and you just  
15 decided to -- keep it and manufacture it. What would --  
16 what would happen to the marketplace?

17 A What would happen? In the short term, sales  
18 would be lost. On a longer term, handlers would have to  
19 go beyond the -- the market we own. Given the -- part of  
20 the things we're talking about in -- (inaudible) -- right,  
21 I would think it would be harder to have the -- the pool  
22 to pay for milk coming across the distance. I don't think  
23 it -- (inaudible) -- of Minnesota -- (inaudible) -- of the  
24 order would pay for the transportation. I think we're

1 looking at -- (inaudible) -- the amount that -- taking the  
2 qualification -- (inaudible) -- the handler would have to  
3 pay more out of pocket. So -- (inaudible).

4 I guess the question would be whether the --  
5 the marketplace, if he's in it, would pay the higher  
6 prices for that. And if not, maybe the -- the handler  
7 would go to his independent supplier and tell him that  
8 there's a -- I'm going to pay the same dollars to get the  
9 same milk but it's going to cost me to get it from the  
10 further plants.

11 Q By the way, are premiums paid to -- over-order  
12 premiums paid to independent producers in the area of the  
13 Order 1 milk shed that you're familiar with?

14 A Yes, they are.

15 Q Very substantial premiums?

16 A Yes, they are.

17 Q So a handler who had independent suppliers  
18 wasn't provided -- if the cooperatives didn't release milk  
19 from -- from their milk supplies to meet those surge needs  
20 of the handlers on the -- you know, on that Monday in  
21 November when they were the highest, they have to possibly  
22 go out in the area and replace that milk at higher  
23 expense, correct?

24 A Yes.

1           Q     Or if they were going to try to get the milk  
2     somewhere else in the Order 1 marketplace, where might  
3     they go to get it and at what cost?

4           A     I guess they would get the -- the alternative  
5     answer is what Mr. Ling calls the excess supply. And you  
6     would go to a --

7           Q     Cheese plants?

8           A     -- the cheese plants and look for --  
9     (inaudible) -- milk, and we'd be talking -- give up  
10    charges to a -- for a corporation.

11          Q     Give up charges to a corporation. In other  
12    words, if you're going to -- if you have to take milk out  
13    of Kraft's cheese plant and now they're not going to be  
14    able to make their brand and value added cheese products  
15    but they're going to give it up for -- for a fluid  
16    processor, it's going to cost them money?

17          A     Yes.

18          Q     Okay. Substantial money?

19          A     That would be my -- that would be my -- my  
20    expectation, yes.

21          Q     In all likelihood, in your judgment and on the  
22    basis of your experience, more money than you're able to  
23    get on a regular basis for your Class 1 sales?

24          A     Sure.

1           Q     Now, let's look at the flip side. In May, the  
2     27th of May 2001, ADCNE cooperatives had 10 million-plus  
3     less pounds of requests for deliveries to those 7(a)  
4     plants. First of all, let's assume that you all insisted  
5     that --

6           A     Just so the record's clear, 10 million -- I  
7     think you made a comparison. Ten million less than?

8           Q     Than the Monday, November 19th volume that I  
9     was previously referring to, okay? What if you insisted  
10    that the -- you know, you want that 10 million pounds  
11    back, so to speak. You wanted the handlers -- somebody  
12    else in the market to handle that 10 million pounds that  
13    were required by the pool market in November. What would  
14    happen in the marketplace?

15          A     I guess your --

16          Q     -- pounds of -- milk a day?

17          A     You're asking --

18          Q     I'm asking you to use your market experience  
19    and your judgment to tell us what would happen in the  
20    marketplace so we can understand the benefit in as --

21          A     -- crash.

22          Q     What prices would crash?

23          A     The prices that would be -- milk would be sold,  
24    given -- given the volume we're talking about, at a

1 substantial discount to the -- to the class price.

2 Q Would there be the same funds available to pay  
3 the available order premiums to independent producers in  
4 the Order 1 milk shed that there are today?

5 A No, I wouldn't expect so.

6 Q Is that a benefit that's tangible that's in the  
7 -- in the milk check of those producers every month under  
8 the present marketing conditions?

9 A Yes.

10 Q With respect to LOL's -- Land O' Lakes'  
11 capacity at Carlisle, what -- Bob Wellington talked about  
12 evaluating capacity in terms of the plant bottle neck.

13 What -- what's the limitation at Carlisle?

14 A I guess that'd be evaporating.

15 Q And what's the maximum evaporation capacity?

16 A Five -- 5 million pounds per day. Closer to 5  
17 to 5.5 million pounds per day.

18 Q Now, you referred to -- I think Mr. English  
19 perhaps asked you some questions about premiums in Order 5  
20 and you referred to DCMA.

21 A Yes.

22 Q Can you tell us what DCMA is?

23 A I think it's Dairy Cooperative Marketing  
24 Agency.

1 Q And that's -- it's an over-order --

2 A A marketing --

3 Q Agency -- (inaudible). Which is opposed to  
4 cooperatives marketing milk in -- in order -- in the  
5 southeastern United States?

6 A Five, seven, probably six as well.

7 Q Is there DCMA in Order 1 or its equivalent?

8 A (Inaudible) -- northeast marketing agency.

9 Q Is it established --

10 A Which --

11 Q -- pool and account for premiums and over-order  
12 payments and daily delivery -- daily milk delivery  
13 credits, et cetera, the same way DCMA does?

14 A Yeah, yeah.

15 Q Has that ever been possible in the northeastern  
16 United States?

17 A No.

18 Q In your -- in your lifetime?

19 A In my lifetime, no.

20 Q Has it been tried and been unsuccessful?

21 A I don't even know if it got to the point of  
22 trying. The parties -- the parties -- (inaudible).

23 Q And you've got a large proportion of  
24 independent producers in the marketplace?



1           A     Absolutely, sure.

2           Q     (Inaudible).

3           A     (Inaudible) -- would include any other federal  
4 order or -- or unregulated -- (inaudible).

5           MR. BESHORE: May I have just a moment, Your  
6 Honor?

7                 (Pause)

8           MR. BESHORE: I'm being directed to cease  
9 further questions by my clients.

10          JUDGE BAKER: By -- by your clients.

11                 (Laughter)

12          JUDGE BAKER: Are there any other questions?

13                 (No response)

14          JUDGE BAKER: Let the record reflect that there  
15 are none. Thank you very much, Mr. Schad.

16                 (Whereupon, the witness was excused.)

17          JUDGE BAKER: It's now 7:12 and we shall recess  
18 until 8:30 -- (inaudible).

19          Mr. Beshore, you have one more witness?

20          MR. BESHORE: Yes, I do. Mr. Gallagher.

21          JUDGE BAKER: (Inaudible).

22          MR. BESHORE: Yes.

23          JUDGE BAKER: All right. Then -- (inaudible).

24          MR. BESHORE: I would assume it would lead to

1 any other -- non-proponent testimony with respect to  
2 Proposal 7 which --

3 JUDGE BAKER: (Inaudible)

4 MR. BESHORE: -- maybe there won't be any and  
5 then we could move to the other proposals.

6 JUDGE BAKER: Very well. (Inaudible) -- going  
7 to be able to take up the rest of these proposals.

8 (Laughter)

9 MR. ENGLISH: Another month.

10 MR. BESHORE: I think we could -- perhaps we  
11 could just bypass the opposition to Proposal 7 --

12 MR. ENGLISH: Or turn down Proposal 7.

13 JUDGE BAKER: All right. (Inaudible).

14 (Laughter)

15 JUDGE BAKER: (Inaudible) -- witness and --  
16 (inaudible) -- any other testimony on Proposal 7. Again,  
17 I think -- (inaudible) -- Proposals 1, 2, 3, 4, 5.

18 MR. ENGLISH: That's fine, Your Honor. I -- I  
19 guess I'm just wondering in advance, given the term, I  
20 think -- (inaudible) -- get done on Friday. Whether it  
21 makes sense to plan in advance to go even a little later  
22 tomorrow than seven -- than 10 after seven, say to eight  
23 or 8:30 to try to push everybody. My experience was the  
24 Thursday session comes and we go all day, it tends to make

1       sure we get done on Friday.

2               And so I guess I would advocate planning our  
3       schedule tomorrow being even lunch a little later so that  
4       people won't get -- aren't going to be hungry and then  
5       pushing at least until, say, 8:30 tomorrow if we could.

6               SPEAKER: Can we start at eight?

7               MR. ENGLISH: I can start at eight.

8               SPEAKER: What's the witness schedule for  
9       tomorrow?

10              MR. ENGLISH: We've got -- we've got a number.

11              SPEAKER: What's the order?

12              MR. ENGLISH: I'm not sure. We'll discuss that  
13       this evening. There's -- there's plenty of witnesses.

14              MR. BESHORE: We -- Mr. Gallagher would be  
15       prepared to go, you know, at 8:00 if that were the  
16       convenience of everyone.

17              JUDGE BAKER: Is there any objection to  
18       starting at 8:00?

19              (No response)

20              JUDGE BAKER: No objection. We shall reconvene  
21       tomorrow at 8 a.m. And we shall -- (inaudible) --

22              MR. ENGLISH: Thank you, thank you.

23              (Whereupon, at 7:20 p.m., on September 11,  
24       2002, the proceedings were adjourned, to reconvene at 8:00

1 a.m., on September 12, 2002.)

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