

Charles M. English, Jr.
202.508.4159 Direct Dial
202.654.1842 Direct Fax
cenglish@thelenreid.com

September 22, 2008

VIA FEDERAL EXPRESS

Ms. Leslie Whitfield
Acting Hearing Clerk
United States Department of Agriculture
STOP-9200, Room 1031
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Re: **Motion to Re-Open Hearing; In the Matter of Proposed Amendments to Tentative Marketing Agreements and Order; Mideast Federal Milk Order No. 33; Docket No. AO-166-A77; DA-08-06**

Dear Ms. Whitfield:

Please find enclosed four copies of Motion to Re-Open Hearing in the above-referenced matter submitted on behalf of Dean Foods Company and National Dairy Holdings LLC.

If you have any questions regarding this submission, please contact this office.

Respectfully submitted,



Charles M. English, Jr.

CME/lar
Enclosures

cc: Judge Peter M. Davenport (via e-mail)
Garrett B. Stevens, Esq. (via e-mail)
Erin C. Taylor (via e-mail)
Bill Richmond (via e-mail)
Marvin Beshore, Esq. (via e-mail)
John H. Vetne, Esq. (via e-mail)
Ben Yale, Esq. (via e-mail)

DC #492967 v1

UNITED STATES DEPARTMENT OF AGRICULTURE

HEARING ON PROPOSED AMENDMENTS TO THE
MIDEAST FEDERAL MILK ORDER

DOCKET NOS.: AO-166-A77; DA-08-06

**MOTION TO RE-OPEN HEARING
FILED ON BEHALF OF
DEAN FOODS COMPANY
AND
NATIONAL DAIRY HOLDINGS LLC**

Charles M. English, Jr.
Thelen LLP
701 Eighth Street, N.W.
Washington, DC 20001

Attorneys for Dean Foods Company
and
National Dairy Holdings LLC

**MOTION TO RE-OPEN HEARING
FILED ON BEHALF OF
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AND
NATIONAL DAIRY HOLDINGS LLC**

Dean Foods Company (Dean) and National Dairy Holdings LLC (NDH) move to re-open this proceeding to take limited evidence as described, and for the reasons stated, in the transcript of this hearing at pages 586-588. For those reasons described there, but additionally for the reason described now in this new Motion, the request should be granted.

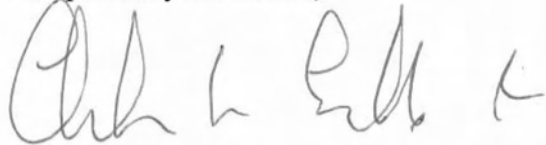
At the conclusion of the hearing, after the Judge had ruled against the motion to re-open, the attorney for the proponents asked to place into the record certain documents responsive to the proponents' 2007 data request. These documents were not actually at the hearing, but were referenced as part of the proponents' request that encompasses this hearing. It was only after opponents received copies of those documents that a significant, unexplained (in the record) discrepancy was noted by opponents. The hearing should be re-opened not only to received updated information regarding actual, rather than hypothetical, market impacts, but to explore, explain, understand and, if possible, resolve this discrepancy described below.

The data for "Available Milk" in Exhibit 5, DFA et al. Request 3-B for the months of January, April and August 2007 differs from the same data set that is now found in Attachment 4 to Exhibit 13 by 185,414,720 pounds (16% higher), 188,514,100 pounds (16.5% higher) and 293,460,196 pounds (28.9% higher) respectively (copies attached). While it appears that the proponents created Attachment 4 using the same Market Administrator data that is in this record, the results are totally different and tell a different story regarding available milk generally and in the Southern Region generally. Without re-opening the hearing, neither proponents, nor the

Secretary in making his decision, should rely on disputed numbers especially when the dispute was created by proponents and since the differences can and should be explained on the record.

Dean and NDH propose re-opening the hearing to address the data issues only. Moreover, Dean and NDH did not wait for briefing to raise this issue precisely in order to provide the Secretary a realistic opportunity to cure the problem.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles M. English, Jr.", written in a cursive style.

Charles M. English, Jr.

Thelen LLP
701 Eighth Street, N.W.
Washington, D.C. 20001
Attorneys for Dean Foods Company
and National Dairy Holdings LLC