

the Utah Farmers Union, also testified in support of Proposal 8.

A witness appearing on behalf of NDA, testified in opposition to Proposal 8. The witness stated that currently only one Federal order, the Upper Midwest order, has an assembly credit provision, stressing that the marketing conditions of that order are quite different from the Western order. In the Upper Midwest, the witness explained, farms tend to be significantly smaller and it is necessary to assemble milk from numerous farms in order to "assemble" a full tanker load of milk. The witness contrasted this by explaining that most farms in the Western order are large enough that a single farm is capable of shipping a full tanker load of milk. The witness concluded that it was therefore not appropriate to provide credit for the assembly of milk that does not need "assembling."

The NDA witness also asserted that the justification given for an assembly credit—the need to recover some of the balancing costs of the market—is itself inconsistent. Typically, the witness said, balancing functions are provided by manufacturing plants for processing milk when it is not needed at Class I plants. However, explained the witness, the proposed assembly credit would apply to those who deliver milk to Class I facilities and would not be limited to manufacturing plants that actually perform the balancing function. In this regard, the witness indicated, a credit for balancing should instead be paid to those pool plants that actually provide a balancing function and not to those who supply milk to Class I facilities.

The witness concluded that NDA was not aware of any difficulty of Western order distributing plants obtaining necessary milk supplies where milk must be assembled into a full tanker load before delivery to a pool distributing plant. Money should not be drawn from the Western order producer-settlement fund as an assembly credit because no "assembly" actually takes place, emphasized the witness.

The NDA witness also opposed the transportation credit feature of Proposal 8. While there are transportation credits in three other Federal orders, the witness said, they function in a different manner than that proposed for the Western order. In the Upper Midwest order transportation credits only apply to transfers of milk between plants, stated the witness, and not to direct shipments from farms to distributing plants. The witness also noted that in two southern orders where Class I use is high, transportation credits were established to fund bringing milk into the marketing area to fulfill all Class I

needs. However, the witness contrasted, Western order Class I utilization is relatively low and does not exhibit the need for a transportation credit to encourage shipments of milk to satisfy Class I demands.

The NDA witness also asserted that the Western order already has a \$0.30 difference in the level of applicable Class I differentials to encourage milk shipments towards population centers where most distributing plants are located. Accordingly, the witness maintained, there is no need to provide an additional incentive for moving milk to pool distributing plants.

The witness also predicted that adopting a transportation credit would give rise to disorderly marketing conditions because it would provide an incentive for milk located farther away to be delivered to distributing plants while milk located nearer would then need to be shipped to manufacturing plants located farther away. The NDA witness concluded that there are no cost disadvantages that would be corrected by providing the Western order with transportation and assembly credit provisions.

Two witnesses appearing on behalf of KDK and Gossner testified in opposition to Proposal 8. The witnesses were of the opinion that Western order producers should not be paying for assembly credit for a few pool plants that are unable to recoup their costs of balancing. They also stressed that it was inappropriate to establish a transportation credit to encourage the movement of distant milk when producers located nearer to pool distributing plants are willing and able to supply the market without a credit.

A witness appearing on behalf of River Valley also testified in opposition to Proposal 8. The witness stated that the order's blend price should not be reduced to pay for transportation and assembly credits. Instead, the witness said, Class I plants should pay their milk suppliers a direct delivery differential in lieu of a transportation credit and that the level of the Class I differential should be increased. In that way, the witness explained, the blend price paid to producers would be unaffected.

Objections by several parties were raised regarding evidence presented in support of some features of Proposal 8. The objecting parties argued that the testimony given equating balancing costs with assembly costs was beyond the scope of the hearing notice. The objectors moved that such testimony be stricken from the record. Objectors maintained that assembly costs and balancing costs are two entirely different concepts. Because the concept

of balancing was not noticed in the hearing notice, the objectors stressed, interested parties were not prepared to discuss the concept of balancing. The objectors also maintained that in previous Federal order hearings where assembly credits were proposed, balancing functions and associated costs were never presented in a context for explaining the need for an assembly credit.

The presiding Administrative Law Judge (ALJ) overruled the objection to strike evidence regarding balancing costs from the record. However, the presiding ALJ found that balancing is fundamentally different from assembly. Accordingly, the ALJ ruled the assembly credit feature of Proposal 8 as being beyond the scope of the proposal presented in the hearing notice.

The record lacks sufficient evidence for the adoption of the transportation and assembly credit proposal. The relative low Class I utilization of the Western marketing area characterizes the order as a market in which manufacturing predominates. In this regard, the record makes clear that the Class I needs of the market are sufficiently supplied, even though certain pooling provisions lack needed features. In fact, the record evidence which supports the adoption of a net diversions feature for diverted milk by distributing plants effectively undercuts the argument that somehow additional compensation or incentive should be provided to attract milk to distributing plants beyond that provided by the level of the Class I differential. If distributing plants engage in the behavior of physically receiving milk and then pumping the milk out of the plant and diverting it for uses other than Class I, it is abundantly clear that distributing plants are certainly adequately supplied with milk.

This decision finds that the evidence and testimony for the adoption of Proposal 8 has more to do with proponents responding to the Western order's improper and inadequate features of pooling provisions than in explaining how the "services" of a few are providing benefit for the entire market. Improper or inadequate features of pooling provisions do not provide justification for adopting this sort of mechanism by which to compensate for lower producer revenue resulting from improper or inadequate features of pooling provisions.

Additionally, this decision agrees with the ALJ's determination that the assembly credit portion of Proposal 8 is beyond the scope of the hearing notice. For this reason alone the proposal warrants denial. As indicated by NDA,