MAINE MILK COMMISSION

PROPOSED PRICE ORDER #85-2

I. OVERVIEW

Pursuant to the Maine Milk Commission Law, 7 M.R.S.A., § 2951 et. seq. (1979 and 1984 supp.), the Commission conducted an investigation to determine what minimum milk prices should be established. This Order is the result of that investigation.

Our preparation for this order began even before the promulgation of Order #82-2, our most recent major pricing Order, on January 8, 1982. This preparation initially included the institution on an ongoing basis of our previously-developed uniform accounting and reporting system, the audit of this data and the submission of the audited dealer data to a consultant for tabulation and analysis. We next focused on the controversial question of whether the Commission should re-institute the butterfat differential for skim and lowfat milk which we declined to adopt in Order #82-2. (See 1982 tspt. July 15, 1982 and October 21,1982 and Commission Exhibit #11). We contracted with the University of Maine to prepare what, due to a multitude of Commission requests, turned out to be a seemingly endless stream of reports and data tabulations. In May, 1983, we convened investigative hearings at which Commission consultants were requested to testify. Intervenors and interested persons were also given the opportunity to testify and submit information to us. Some intervenors were subpoenaed by the Commission.

Twelve investigative hearing sessions were held, and a total of 1,080 pages of testimony was transcribed. To analyze and evaluate the information we amassed, we convened over 40 informational hearings and work sessions. The proposed Order which we prepared from this data was the subject of public hearings held on August 28,29,30, September 14,15 and November 26, 1984 and intervenors written comments. This Order, and the minimum prices contained herein, contain our resolutions of the various issued which we faced.

II. STATUTORY FRAMEWORK

The task before us is of course governed by the Milk Commission Law as interpreted in Cumberland Farms Northern, Inc. v. Maine Milk Commission, 377 A.2d 84 (Me. 1977) (Cumberland Farms 1977) and Cumberland Farms Northern, Inc. v. Maine Milk Commission, 428 A.2d 869 (Me. 1981) (Cumberland Farms 1981). Our perception of our responsibilities has not changed from the views we articulated at pp. 2-7 of Order #82-2.[1] Because these views are the foundation for the balance of this proposed order, we repeat them in large degree here:

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1) In Cumberland Farms Northern, Inc. vs Maine Milk Commission, dkt no. CV-82-93, the validity of Order #82-2 was sustained. The case is currently on appeal to the Law Court (Law Docket No. CUM-83-365) but has been stayed upon agreement of the parties.

Before establishing or changing minimum prices, the Commission must conduct an investigation into the financial condition of the Maine milk industry. With respect to minimum producer prices, the scope of that investigation is limited to an examination of whether increased costs of production justify the establishment of minimum prices above the prevailing Class I and Class II prices in Southern New England.

In the case of dealer prices, the Commission's investigation must elicit reliable information as to the operating costs and profitability of a representative sample of Maine's milk processors. Such information must be gathered according to an ongoing system of accounting and reporting prescribed by Commission rule. The system must be sufficiently detailed so as to enable the Commission to examine production costs which are associated with different types of containers (e.g., paper carton, plastic jug) different sizes of containers (e.g. quart, gallon), and other factors which make some packages of milk more expensive to process than others. It must also allocate these costs over various phases of the processing and delivery cycle so that the Commission may determine where operating efficiencies may be achieved. All in all, it must be sufficient to "provide the Commission with the independent critical perspective it (needs) to evaluate the complex and partisan testimony offered at the hearings". Cumberland Farms 1977, at 377 A2d 90.

The establishment of a minimum retail price plays a much less prominent role in the Milk Commission Law than does the establishment of minimum producer and dealer prices. In this investigation, we did not examine retail pricing, and we continue the existing retail margins.

Following investigation, the Commission is to hold public hearings. In this forum the results of its investigation are made available for

comment and examination, and the testimony of interested persons is taken. As noted by the Law Court in Cumberland Farms 1977, 377 A2d at 89, "properly employed, investigation and hearing are interrelated in effect: through information acquired from investigation the Commission becomes better able to evaluate the testimony of witnesses at the public hearings, while the hearing itself affords the Commission an opportunity to obtain additional data and to check the accuracy of the information it has received through its own inquiries and the reliability of any tentative conclusions it may have drawn".

The procedure for establishing minimum prices on the basis of all this information is prescribed in § 2954 (2). Because of its importance to these proceedings, we set it out in full below:

> "(2) In establishing and changing minimum wholesale and retail prices, the prices so established shall be just and reasonable taking into consideration the public health and welfare and the insuring of an adequate supply of pure and wholesome milk to the inhabitants of this State under varying conditions in various marketing areas; prevailing prices in neighboring states; seasonal production and other conditions affecting the costs of production, transportation and marketing in the milk industry including a reasonable return to producer, dealer and store; taking into consideration the public need for the establishment of retail milk prices at the lowest practicable levels.
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> > A. The minimum wholesale prices paid to producers shall be based on the prevailing Class I and Class II prices in Southern New England and, after investigation by the Maine Milk Commission, shall reflect as accurately as possible the increased costs of production.

> B. The minimum wholesale prices paid to dealers shall be established to reflect the lowest prices at which milk purchased from Maine producers at Maine minimum prices can be received, processed, packaged and distributed within the State of Maine at a just and reasonable return.
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> C. The minimum retail prices established for payment by consumers shall be based on the minimum wholesale price paid to dealers and a rate of return deemed just and reasonable by the Maine Milk Commission.

The establishment of minimum prices under this statute is a two-part procedure. First, tentative minimums must be established. Next, those tentative prices must be adjusted, but only if deviation from them is necessary to account for any of the Maine conditions contained in the unlettered omnibus paragraph of § 2954 (2).

The establishment of dealer prices is by far the most sensitive of these three tasks. The Law Court has twice told us that the prices tentatively established under § 2954 (2)(B) must represent the theoretically lowest achievable prices (TLAP) at which various classes and categories of milk purchased from Maine producers at Maine minimum producer prices can be received, processed, packaged and distributed in Maine at a just and reasonable return, regardless of whether any Maine dealer is in fact operating at such prices (see Cumberland Farms 1977 at 377 A2d 91).

Although these prices may be adjusted upward pursuant to the omnibus paragraph to bring them into line with actual Maine conditions, no adjustment may be made unless it is specifically required by one or more of the factors listed in the omnibus paragraph. The theoretically lowest achievable prices must serve as the baseline from which these adjustments to actually achievable prices are made, and must indeed be "reflected", as

per § 2954 (2)(B), in the prices finally established. The theoretically lowest achievable prices cannot be established and then ignored.

We now turn to the consideration within this framework which leads us to the establishment of minimum producer, dealer and retail prices.

III. MINIMUM PRICES TO BE PAID TO PRODUCERS

Pursuant to § 2954 (2)(A), the Commission finds the prevailing Class I and Class II prices in Southern New England under § 2954 (2)(A) to be those established by the federal market administrator for Zone I of the New England Marketing Area ("federal order)". We are cognizant of the directive in § 2954 (2)(A) to initially establish minimum producer prices which reflect the increased costs of production in Maine, but for reasons similar to those expressed at pages 7-12 of Order #82-2, are ultimately led by the adjustment factors in the omnibus paragraph of § 2954 (2) to establish Maine minimum producer prices no higher than their federal order counterparts.

In Order #82-2, we discussed a study[2] which concluded that the costs of producing milk on Maine farms in 1979 were 60 cents/cwt. higher than production costs incurred by farms in Connecticut, Massachusetts and New Hampshire. However, we nevertheless declined to establish minimum producer prices above the Class I, Zone I federal order prices. Our reasons were twofold.

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(2) Metzger, "The Cost of Producing Milk on Selected Maine Farms-1979", UMO ARE 339 (March, 1981)

Firstly, the higher production costs were almost evenly matched by the higher blend price received from Maine market dealers as compared to farmers shipping into the federal order. This phenomenon is a function of the much higher utilization rate experienced by individual Maine market dealers.

Our reluctance was secondly grounded on market considerations. Southern Maine milk dealers are located within reasonable hauling distance of large areas of New England which are subject to federal controls. If the Commission established minimum producer prices above the federal order class minimums, southern Maine dealers would have an incentive to purchase lower priced raw milk from sources outside of Maine--either directly from farms, or as surplus from federal order handlers.

In this investigation the Commission did not seek to update its 1979 data as to the higher production costs experienced by Maine dairy producers. But the factors which dissuaded us in Order #82-2 from setting Maine minimum producer prices higher than the federal order class prices, given those higher production costs, are still relevant. For example, during the months of January, February and March, 1984 the average producer blend price paid for Maine market milk was $14.98, $14.46 and $14.51. The Zone I federal order blend price minimums for the same months, as reported by the Market Administrator, were $14.11, $13.87 and $13.67. Higher Maine minimums again almost certainly offset whatever higher production costs exist.

The importation of out-of-state milk into Maine remains a possibility if the Commission were to raise the Maine producer minimums. Writing in August, 1982, Professor Homer B. Metzger estimated that a bid of only 20 cents above the federal order Zone 21 blend price would enable southern

Maine market dealers to divert federal order milk into Maine. Even after payment of the additional hauling charges, some Maine dealers would save substantial sums by purchasing out-of-state milk in this manner instead of milk produced on Maine farms.[3]

Then as now, this potential exists even when Maine producer minimums are established uniformly with the federal minimums. We are unwilling to exacerbate this difference by further increasing the "spread" between Maine minimum prices and the federal order minimum class prices. Especially in light of the modest dealer margins established in this Order, such action might finally overcome the various considerations which up to now have inhibited Maine dairies from buying any but a negligible amount of raw milk from out-of-state producers.

Thus, "prevailing prices in neighboring states"[4] and "other conditions affecting the costs of production,transportation and marketing in the milk industry" [5] lead us to continue our past practice of establishing minimum producer prices at the federal order levels, even though Maine dairy farmers may currently be experiencing higher production costs than dairy farms in Southern New England. Minimum wholesale prices to be paid to Maine producers for Class I and Class II milk shall accordingly be the respective Zone I prices as announced monthly by the market administrator for the New England marketing area. For January,1985 the announced Class I price is $15.72 per hundredweight.The Commission takes official notice of this price. This Class I price shall be paid to producers as of January, 1, 1985.

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(3) Metzger,"Impact of Producer Prices from Expanding the New England Marketing Area Federal Milk Order to Include the State of Maine,"UMO Bulletin 787 (August, 1982)(Ex. #46).
(4) Section 2954 (omnibus paragraph)
(5) Id.

Producer prices to be paid in succeeding months during the life of this order shall be adjusted to conform to the monthly announcements of the market administrator for the New England marketing area. Such adjusted prices shall be effective as of the first day of the month for which there is any adjustment. Until the adoption of any future pricing Order changing the dealer or retail margins established in this order, the minimum dealer and retail prices established herein shall be adjusted on a monthly basis to conform to changes in Class I producer prices. Such adjustments shall be made according to the formula contained in Appendix #A-1 through A-5. The price adjustments to dealer and retail prices shall be effective on the dates specified in the schedule attached in Appendix #B.

IV. MINIMUM PRICES TO BE PAID TO DEALERS

A. Commission Investigation of Actual Dealer Costs.

As required by § 2953, 5th par., the Commission adopted by rule an ongoing system of accounting and reporting to be maintained by Maine milk dealers and submitted to the Commission on a quarterly basis.[6] The McClain System, so-called, consists of eight forms, an accompanying instruction manual and two other forms added by the Commission.

The core of the McClain System, Schedule C, requires dealers to pigeonhole each expense they incur into 1 of 74 subaccounts. The amount of expense in each subcategory is then allocated according to set criteria

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(6) Maine Milk Commission Rule 5, "Dealer Accounting and Reporting" was originally adopted as an emergency rule effective September 22, 1981. With changes, the rule was permanently adopted effective December 14, 1981. It was further refined by amendments which went into effect on November 6, 1983.

among the various phases of dealer operations designated as cost centers. The most important of these cost centers include receiving, processing (i.e., cooling, pasteurizing and standardizing butterfat content), plastic handling, paper handling, cooler, wholesale delivery and administration.

Total expenses in each cost center are then allocated on a weighted basis to the various volumes and packages of milk which pass through the respective cost centers. Addition of these cost components for any given package size and type gives the per-package, or unit, cost of receiving, processing, packaging and delivering that container of milk. In its identification of subaccounts, its allocation of expenses among cost centers and its breakdown of this information into unit costs the McClain System requires all milk dealers to account for all their expenses in the same manner and to report them to the Commission on the same set of forms. The McClain System thus achieves the uniformity in dealer data which the Law Court declared to be an essential attribute of Commission investigations. Inasmuch as all significantly-sized dealers are required to report, past controversies as to the representativeness of the reporting dealers are no longer a consideration. The background, development and operation of the McClain System is further described at pp. 4-5 of Order #82-2 and 1983 tspt. 291, 297-298, 315-332, 342-47.

The McClain System was originally implemented in July 1981 by the retroactive collection of data by the Edward B. McClain Co., Inc. from five Maine dairies for the months of March, April and May, 1981. (See Order #82-2, pages 18-19.) Other significantly-sized Maine dairies were directed to complete McClain System forms for the same period accompanied by auditors' letters as to reliability. (Id.,p.20.) Since this initial implementation,

the McClain System has been put in place on a continuous, ongoing basis. Pursuant to Commission Rule 5, §2, all dealers processing more than 3,000,000 pounds of milk annually (6,700 gal/wk) are required to submit McClain System reports to the Commission on a quarterly basis.

The Commission chose as the base period for development of this pricing Order the most recent four quarters of dealer cost data that were available to it at the time its main round of informational hearings began in May, 1983. The data covering the last quarter of 1981 and first three quarters of 1982 was tabulated by the Edward B. McClain Co., Inc. to show the individual dealers' cost of receiving, processing and packaging milk in various size containers for each of the four quarters and for the four quarters overall (Commission Ex. #21). Dealers' annual average cost of putting out plastic gallons of whole milk ranged from $.46033 to $.91110. The average cost for all dealers (not by volume) was $.694855. McClain also compiled the quarterly profit or loss on sales for each dealer and the dealers' profit or loss for the four quarters overall from the quarterly data operating statements. (Commission Ex. #23). The annual average (by quarter) operating profit per gallon ranged from a loss of (.2580) to a profit of.1021. The overall dairy average was a profit of $.0102.

Since the promulgation of Order #82-2 the Commission has hired a full-time field examiner, Joseph Bennett, whose sole function is to audit the McClain reports submitted by the dealers. Mr. Bennett audited all the quarterly reports submitted by all dealers for the quarters under review. The scope of Mr. Bennett's work, which is fully discussed at 1983 tspt. 371-410, has satisfied us, subject to one exception, that the four quarterly reports

described herein accurately represent the sales, expenses, expense allocation and overall financial condition of the reporting dairies during the October 1, 1981-September 30,1982 period. We further find that as audited the McClain System reports provide a consistent representation, for comparison purposes, of the unit costs incurred by the reporting dealers.

The one dealer whose reports Mr. Bennett was unable to satisfactorily verify was H.P. Hood Inc. As a diversified multi-plant company doing only a small part of its milk processing in Maine, Hood is unique among dealers operating in Maine. Many of Hood's expenses are accounted for on a divisional or regional basis. Identification of these expenses, and allocation of a proportionate share of them to Hood's Portland, Maine plant, presented special difficulties which we did not encounter elsewhere.

Some of the information required by the McClain System Hood refused to publicly furnish the Commission absent a protective order, which we are unwilling to issue (assuming we have the authority to do so). In other respects the Hood submissions were incomplete or of questionable reliability.

To allay these concerns we scheduled inspection of documents at Hood's main office in Boston pursuant to Maine Milk Commission Rule 6, effective December 14,1981,and subpoenaed Hood to appear and testify before the Commission as to the preparation of the McClain System reports and the underlying data from which they were derived.

On May 23, 1983, the Commission Chairman Brunette and counsel verified the amount of officers' salaries and fringe benefits paid by Hood to its

corporate officers during the four quarters in question, verified the amount of the real estate rental reported by Hood at account 09-3 of the McClain System reports, and examined certain truck leases and counsulting agreements between Hood and John and Gerald Blake. On August 5, 1983, field examiner Bennett examined many of the Hood ledgers and work papers from which the Hood entries appearing on Schedule C were derived. Hood representatives appeared and testified in response to the subpoenas on July 7, 1983 and September 15, 1983. Additional correction, documentation and corroboration of Hood expenses attributable to the Portland plant were provided in correspondence between our counsel and Hood representatives. Those efforts have satisfied us that the Hood submissions as corrected accurately represent that company's unit costs of milk production in Maine. The changes in the Hood submissions made as a result of this intensive examination are explained and summarized in the letter from our Executive Secretary to James Clayton dated March 29, 1984 (Ex. #193) and the letter from counsel to Dr. Harry Wildasin dated April 3, 1984 (Ex. #194).

V. EFFICIENCY STUDY OF THREE MAINE DAIRIES

The Commission was not only interested in the costs actually being incurred by Maine dairies but also sought some assessment as to the cost savings potential within these plants. We hired the Edward B. McClain Company to examine the prospects of additional efficiencies in the operations of Old Tavern Farms, Oakhurst Dairy and Grant's Dairy. James Clayton was again primarily responsible for this study on behalf of the McClain Company.

The McClain report on these dairies (Commission Ex. #19) is based on observations and information gathered by James and Steven Clayton during their one-week visit to these plants in March of 1983. The report describes belt-tightening measures that these dairies instituted since the McClain Company last visited these plants in July, 1981. It also notes reductions in trucks and drivers (Grant's-Old Tavern), and consolidation of delivery systems (Oakhurst-Grant's) made possible by the drop-shipment delivery system first initiated in Order #82-2. For each plant Clayton also identified weak links in the flow of operations which prevented speedier or more steady output of product.

Clayton's overall impression was that the management of Oakhurst, Grant's and Old Tavern had taken steps to reduce costs since Clayton last visited them 20 months earlier. (1983 tspt. 308-310.) Clayton felt that these plants had to some degree implemented his earlier recommendations as to achievable efficiencies and doubted they could easily implement further efficiencies of similar magnitude absent increases in volume. Again comparing Grant's, Oakhurst and Old Tavern to other similar plants outside of Maine (See Order #82-2, pp. 22-24), Clayton's overall opinion was that the processing and packaging operations of the three Maine plants were comparable to operations of out-of-state plants he knew to be highly profitable and presumably highly efficient. In the area of delivery operations, Clayton's opinion was that the Maine plants, delivering four or five times per week, did not demonstrate delivery costs nearly as low as out-of-state plants delivering only three times per week in more populated areas. (Tspt. 311-312, 335-40.)

We will refer below to this review of operations in these three plants. Its usefulness is limited, however, in that it does not quantify efficiencies already achieved since July, 1981, in terms of cents per fluid gallon or cents per container.

VI. ESTABLISHMENT OF THEORETICALLY LOWEST ACHIEVABLE PRICES

The determination of theoretically lowest achievable prices accounted for the greatest amount of time expended by Commission members, Commission staff, intervenors and consultants in these proceedings. The primary but by no means exclusive sources which we utilized in developing the TLAP set forth below are the two following studies prepared by the Maine Agricultural Experiment Station: (1) Kezis, Anderson, Buitenhuys, A Theoretical Assembly, Processing, and Distribution System for the Maine Dairy Industry, UMO Misc. Rpt. 282 (April, 1983) (Commission Ex. #12) and (2) Criner, Kezis, Anderson, Allocating Costs to the Three Quart Milk Container, UMO Misc. Rpt. 291 (August, 1983) (Commission Ex. #13). The qualifications of Professor Kezis, Professor Criner and Mr. Anderson are set forth in their respective curriculum vitae (Commission Ex. #50,51 and 52).

A. MODEL PLANT COST

The UMO reports provide the basis for the most empirical approach to the establishment of TLAP, particularly plant costs, which this Commission has yet undertaken. With assistance from Commission staff, the authors first assembled the prevailing costs that would be entailed in building and

operating hypothetical dairy plants of three sizes--50,000 gallons/wk., 200,000 gallons/wk, and 400,000 gallons/wk.-- in five Maine cities which were intuitively judged to be feasible sites for dairy plants. The configurations of these plants and the amount of equipment, labor, energy usage, personnel and supplies necessary to operate them were drawn from the hypothetical model dairy plants of like sizes "created" by University of Minnesota researchers as examplars of state-of-the-art, top efficiency dairies in Fischer, Hammond, Hardie, Fluid Milk Processing and Distribution Costs, U. Minn. Agr. Exp. Sta. Bull. 530 (1979) (Commission Ex. #25). The UMO team concluded that the Minnesota model plants continue to represent the most efficient milk plants of their size that can be engineered. See Commission Ex. #12, pp. 5-12.

The costs of building, operating and staffing these hypothetical plants at the five sites included the following items: land acquisition, building construction, labor, container costs, supplies, maintenance, cases, energy/utilities and taxes. Although some of these costs were found to be uniform statewide, others varied by location.

The costs of receiving, processing and packaging milk in various size containers were accordingly calculated for these fifteen (3 sizes x 5 locations) plants. See Commission Ex. #12 pp. 15-17. Through an iteratively run mathematical programming model the UMO researchers tested out the various combinations of different-sized plants at the five sites to determine, in a theoretical system, which combination would be most economical overall in the collection of raw milk from farmers, processing of milk, and the delivery of that milk to consumers in the volume

necessary to meet Maine fluid milk needs. The lowest cost combination which emerged was the siting of 400,000 gallons/wk. plants in Portland and Bangor and the siting of a 200,000 gallon/wk. plant in Augusta. The unit costs of receiving, processing and packaging plastic gallons of milk at these three facilities initially reported by the UMO authors were:

400,000 gallon Portland plant $ .1946

400,000 gallon Bangor plant $ .1971

200,000 gallon Augusta plant $ .2648

(Commission Ex. #12,Table 11, p. 15).

These data permit the establishment of theoretically lowest achievable plant costs in several different ways. One option is the establishment of a separate theoretically lowest achievable cost for milk processed in each of the three plants. A second option is the establishment of theoretically lowest achievable plant costs as the weighted average of the unit costs experienced by the three plants. A third option is the establishment of theoretically lowest achievable plant costs at the lowest level which would be experienced by any of the three plants, and it is this approach which we choose.

We base this decision on our interpretation of TLAP as developed by the Law Court in Cumberland Farms 1977. To establish a TLAP which is an industry average, albeit an average price in a hypothetical industry, would be inconsistent with this mandate. We believe that TLAP must be based on

the absolutely lowest costs for milk processing which could theoretically prevail at any one place in the State, even though that price could not theoretically prevail throughout the State.

Other choices made by us having a direct bearing on TLAP relate to the breadth and mix of the product line put out by the model plant. UMO's initial formulations were for plants packaging milk in plastic gallon, paper half-gallon, quart, half-pint and bulk containers. Carried to its extreme, the concept of TLAP would require us to conceive of a plant which would package milk in no more than one or two container sizes, both paper or both plastic--unquestionably the lowest-cost method. However, in our opinion, the concept of TLAP is not inconsistent with our "designing" a plant which puts out a product mix more closely attuned to consumer preferences for milk packaged in a variety of container sizes and types. We consider the product line described above as too limited in that it does not include plastic half-gallons or the relatively new three-quart container recently marketed in Maine by H.P. Hood Inc.

The three-quart plastic container is the first new milk container offered in Maine in many years. Upon its introduction, the Commission established minimum prices for this container alone in separate Orders using the same methodology (i.e., investigation of actual costs, establishment of TLAP, adjustment for Maine conditions) followed here. See Orders #83-7, #83-10. Some suggestion has been made that because only one dealer distributes the three-quart container, we should ignore it. This we cannot do. As a practical matter, we must establish a minimum price for milk sold in three-quart containers so long as we continue to

establish minimum prices for the gallon and half-gallon containers with which the three-quart container competes. We regard the three-quart size as a potentially attractive alternative for many families and thus seek to price it on the same basis as other regulated products, without attempting to impede or enhance its success in the market.

At our request, the UMO researchers revised their projections of model plant costs based upon two projections of three-quart production: (1) 5% of total plant output and (2) 10% of total plant output. In either case it was assumed that total production would remain unchanged and that three-quart volume would come in equal shares from milk formerly packaged in gallons and half-gallons. We believe the 5% scenario more accurately reflects the present status of the three-quart container. Division of this volume raised theoretical plant costs of the gallon container at the lowest-cost (Portland) plant only slightly: from $.1946 to $.1971 Corresponding rises for other container sizes were also minimal.Compare Commission Ex. #12, Table 6, p. 15 and Commission Ex. #13, Table 11, p. 15.

We next instructed UMO to further assume that the 400,000 gallon Portland (and other) plants would also put up milk in the popular plastic half-gallon size, but that again no additional increase in consumption would exist. Under this scenario, 5% of plant volume would be packaged in the three-quart container, as aforesaid. Fifty-eight per cent of the formerly all-paper half-gallon volume would be put up in half-gallon paper cartons. The remaining 42% of half-gallon volume would be packaged in half-gallon plastic jugs. This addition to the product line did necessitate the hiring of an additional employee. It had a negligible effect on the price of the

gallon, but impact on the price of the paper half-gallon was substantial. Although the fixed costs associated with paper filling equipment allocated to the half-gallon container remained the same, the number of paper half-gallon units available to absorb these fixed costs was reduced by 42%. Unit filling costs for the paper half-gallon container hence rose[7]. Theoretically lowest achievable plant costs at the 400,000 gal/wk. Portland plant with an expanded product line would have been as follows:

	GALLON	3-QUART	½ GAL. PAPER	½ GAL. PLASTIC	QUART	BULK
Receive and Process	$.0360	$.0270	$.0180	$.0180	$.0090	$.1802
Package	.1539	.1473	.1343	.1256	.0790	.8299
Cold Storage	.0237	.0158	.0105	.0105	.0059	.0948
TOTAL	$.2136	$.1901	$.1628	$.1541	$.0939	$1.1047

(7) See Commission Ex. #13, Table 5 at p. 9 and Commission Ex. #43 , Table 5A. Commission Ex. #43 shows the addition of the half-gallon plastic container to the product line of the 400,000 gallon/wk. Portland plant. Because Commission Ex. #43 also incorporates other additions to plant costs which are not included in Commission Ex. #13 -- particularly officers' salaries and working capital--the unit costs associated with each container which are derivable from the two exhibits cannot be directly compared to show the pricing influence attributable solely to the addition of the half-gallon plastic container to the product line. Although we could rework from Ex. #43 to isolate the effects of this change alone, the effort would not be particularly helpful in light of the many changes in model plant operations
which are discussed below.

However, we do not establish theoretically lowest achievable plant costs at these levels. Though comprehensive, the Minnesota study on which the UMO recommendations were based omitted some expenses which would of necessity be incurred in the start-up and operation of even the most efficient new dairy plant. These omitted expenses consisted of:

1. Officers' Salaries. The labor expense itemized at P.11 of the Minnesota study (Commission Ex. #25) contemplated "working" foremen but did not include any expense for executive officers. We find that in a dairy the size of our hypothetical Portland plant at least three managers would be necessary: a chief executive officer, a financial officer, and a data processing specialist. Based on Commission staff discussion with Portland employment agencies on exhibits #170 and 174 and testimony from Donald Bennett and John Berry (August 28,29,30,1984, Tspt. 137-183, 184-85, 222-25), we have determined that an adequate annual salary for these officers would be $100,000 for the CEO, $60,000 for the financial officer and $40,000 for the data processing specialist (See also 1983 tspt., pp. 800-803). With the 25% cost of fringe benefits, the total expense for executive salaries is $250,000.

2. Working Capital. Even in the theoretical business environment we have created, our model plant must have access to short-term money for working capital. Our estimate is that a plant of this size would require a $2,812,708 revolving fund of working capital (See Ex. #15), to be obtained via short-term (i.e., 45- day) debt. The Commission concludes that a 12% interest rate is indicated for this type of indebtedness. Applying that rate, the annual cost of obtaining working capital would be $337,525.

3. Construction Period Interest. Although the UMO model, like the Minnesota model, assumed that the hypothetical dairy would be built from scratch, neither study included the interest cost or opportunity cost of

financing construction of the plant prior to commencement of operations. Construction financing typically accrues slowly at the beginning of a project and increases more quickly as work progresses. Relying in part on the construction schedule for an actual plant now being constructed in Oklahoma (See Commission Ex. #72), we find that construction-period interest incurred during the 30-month projected construction time for the model plant can be approximated by applying the prevailing interest rate against the entire amount of investment for one-half the construction period, less 5%. The total cost of building, land and equipment for the model plant was $6,017,573. At the late-1983 prevailing rate of 12%, construction period interest would be $902,635 ($6,017,573 x 1%/month x 15 months) less 5%, or $857,504. Construction period interest was also added to the basis for depreciation of the building and equipment and to the total investment on which a projected 12% return was calculated. (See Commission Ex. #97)

4. Liability And Fire Insurance. Based on discussions with two insurance agencies, Commission staff reported that fire and liability insurance for the model plant would cost $7,200 and $14,000 respectively and we have utilized these figures.

5. Site Preparation, Paving, Landscaping And Hook-ups. The UMO researchers had projected model plant construction costs of $40. per square foot. Commission Ex. #12, p. 9. These estimates were based upon consultant Mark Anderson's review of the floor plan, equipment list and overall design of the Minnesota configuration with Edward Spear, a building consultant employed by Sheridan Corp. Sheridan, located in Fairfield, Maine, builds commercial and factory structures throughout Maine.

Intervenor Maine Milk Dealers Association presented during informational hearings Arthur Blanding, general manager of the Omega Company, a consulting firm from Jonesville, Wisconsin, whose sole business is the planning for construction and renovation of dairy plants. Mr. Blanding testified with particular reference to a dairy plant which Omega had only recently designed for construction in Oklahoma. (See Commission Ex. #69-72) . In Blanding's opinion, the equipment and construction costs in the UMO model were generally understated and certain necessary items were not included.

Commission staff and counsel met with Edward Spear to discuss Blanding's testimony and to review the assumptions on which his (Spear's) construction costs were based. Spear contemplated a conventionally-built two-story general-purpose factory-type building, including basic electricity and plumbing. He was prepared to specifically tailor this structure to the needs of a dairy plant within the price ranges he had earlier quoted. Included in those bids was an allowance for changes and modifications that would encompass such special items as a cold-storage refrigeration room and an in-line conveyor system. He was confident that even if a large amount of extra work was necessitated, Sheridan could complete the project within 5% of the quoted price. We hence reject the position of the Maine Milk Dealers Association that construction of the UMO model for the price reflected in the UMO calculations is not a real-world possibility. It also appears that the Omega plant advanced by Blanding as a prototype of the theoretically most efficient dairy plant is a larger facility than the 400,000 gallon capacity Portland model plant.

However, from this discussion with Mr. Spear,some areas of unaccounted-for costs did emerge. Neither Spear's bid nor the UMO model included paving, modest landscaping and utility tie-in costs.

As further developed by Mr. Spear(See Commission Ex. #88),paving costs totaled $73,000, which included $8,000 for paving the employee parking area, $5,000 for walkways and $60,000 for the truck loading area. The employee parking area consists of spaces for the 34 employees plus space for six additional vehicles, at a cost of $6.00 per cubic yard and an assumption that each vehicle space occupies 300 square feet. The walkways required 500 square feet of 2" pavement at $10.00 per square foot, for the total cost of $5,000. The truck loading areas required 7,000+ cubic yards of 3" pavement at $8.50/cubic yard, for the total cost of +/- $60,000.

Also included is a landscaping cost of $5,272 for 2 acres, for seeding, figured at $.40/square yard, and a hydro-mulch cover at $3,872, thirty shrubs at $15.00 each and six trees at $75.00 each. The Commission allowed $500.00 for bulldozing and labor to spread seed, hydro-mulch, dig holes and plant bushes and trees.

Hook-ups for water, sewer, and electrical service came to $6,250. We assumed a minimum 50 foot setback. A 6" water main and a sewer line in the same trench cost $20.00 each per foot; allowing another $1,000 for hook-up at each end gives a total of $4,000. Electrical lines, requiring another trench, cost $30.00 per foot. A 25-foot allowance from the top of the pole to the trench brought the cost of this service to $2,250 (75 x $30.00).

These paving, landscaping and utility hook-up costs hence total $84,522.

Additionally, the UMO model understated some of the expenses which even the 400,000 gallon Portland model plant would incur. These included:

1. Fringe benefits. The UMO authors included fringe benefits of 19.5% of payroll. The Commission's own investigation revealed that a more prevalent package in the Portland area would be:

a. 6.7% representing social security rate

b. 6.92% representing workers compensation

c. 3.6% representing unemployment insurance

d. 5.8% representing health insurance plan

e. 5.0% representing pension

Total 28.02%

Realizing that items d. and e. are discretionary, for purposes of establishing TLAP we reduced the rate of fringe benefits to 25%, the same rate used in the Minnesota model.

2. Taxes. The taxes factored into the UMO model were premised on 60% valuation of both building and equipment. Contact with the Portland tax assessor revealed that the proper valuation rates are 90% for real property, and 80% for plant equipment (first year). Annual tax expenses of the model were accordingly increased from $159,836 to $218,708.

3. Water and sewer charges. The UMO model assumed a water usage of 80,000 gallons per month and did not reflect the fact that Portland sewage charges to commercial establishments are partly determined by the biological oxygen demand ("BOD") of their discharge. The Omega Company

report and our review of the actual water usage of some Maine dairies leads us to conclude that at a minimum, the model plant would use 250,000 gallons/month. BOD of milk plants is calculated according to the amount of non-fat milk solids going into the system. At the .6% product loss assumed for the model plant, 1,775 pounds of non-fat solids would be discharged (.6% x 400,000 gallons = 206.4 cwt/wk, 206.4 x 8.6% = 1,775 lbs.). At 1983 rates sewer and water charges to the model plant would have been $72,529, not $21,900 as originally allowed. We have updated sewer charges to 3rd quarter, 1984, using actual cost increases provided by Portland Utility District. Sewer costs have increased 14% over the 1983 cost. This 14% increase results in an over all water and sewer cost increase of 9.9% for a total cost of $79,704.

The Commission asked the University to update the plant hourly wage rate from mid-1982 to mid-1983. We have increased this mid-1983 rate of $6.15/hr. to $7.00/hr., based on the Consumer Price Index increase through September, 1984 and considering actual wages being paid by Maine dairies as reported in the McClain Accounting and Reporting Schedules. The total plant wage cost is $679,418.

The Commission has updated other costs to 1984, using actual cost increases or an applicable index. As a result these costs are: supplies, $206,254 (Producer Price Index to August, 1984); repair and maintenance, $271,508 (same index); electricity, $197,297 (CMP actual cost increase of 10% through 3rd quarter,1984); fuel oil, $253,575 (actual cost decrease through 3rd quarter, 1984).

We further requested UMO to update to mid- 1983 the cost of half-gallon paper containers raising that cost from 6 1/2 to 7 cents (See Commission Ex. #73, p. 5), and established the theoretically lowest achievable cost of the half-gallon plastic container at 10 cents (See Commission Ex. #73, p. 6)

The UMO model costed the gallon plastic container at 8 1/2 cents, based on the testimony of Robert Havemeyer in 1981 (See Commission Ex.27-H to the proceedings which culminated in Order #82-2). This testimony was premised on the cost savings of blow-molding plastic gallon containers within the 525,000 gal/wk. plant theorized in Order #82-2 and reflects 1981 prices of plastic resin. If the price of a cap and silkscreen were added to Mr. Havemeyer's figures, the resulting container cost would be 9 1/2 cents.

However, the testimony of Arthur Blanding was that for plants of 400,000 gal/wk. capacity, blow-molding plastic gallon containers is no more economical than purchasing them. None of the Omega Company's client dairies of any size are actually able to blow-mold a container for less than 13 cents, and a per-container cost in the range of 13-14 cents is typical.(1983 tspt. pp. 945-47, 965, 983). The local purchase price of gallon plastic containers in late 1983 was $.1406 apiece, plus freight (Commission Ex. #73, 1-6). Recognizing the slim possibility of any appreciable savings in this plant's blow-molding of containers, we establish a theoretically lowest achievable cost of $.135 for the plastic gallon container.

Because the three-quart container used almost the same amount of resin as the plastic gallon container, we have costed it the same as the gallon.

We caused all of these changes in input data to be allocated across the spectrum of the cost centers of the model plant in which they were incurred. The theoretically lowest achievable plant costs, which include that portion of profit allowable to plant operations, were as follows:

ITEM Model Plant Cost	GALLON	3QUART	½GAL.PAPER	½GALPLASTIC	QUART	BULK
	$	$	$	$	$	$
1. Receive & Pro.	.0274	.0206	.0137	.0317	.0017	.1373
2. Package	.1542	.1401	.0970	.1101	.0244	.5876
3. Cold Room	.0180	.0121	.0080	.0080	.0014	.0721
4. Plant Overhead	.1127	.0845	.0564	.0564	.0070	.5635
	$	$	$	$	$	$
TOTAL	.3123	.2573	.1751	.1882	.0345	1.3605

B. Delivery costs. Commission Ex. #12 (UMO Report 282) again served as the primary source for our establishment of theoretically lowest achievable delivery prices. Table 8 of that report sets forth the author's projections of four route configurations that could theoretically exist in Maine. These are (1) a drop-shipment route in metropolitan counties, (2) a drop-shipment route in non-metropolitan counties, (3) a full-service route in metropolitan counties, and (4) a full-service route in non-metropolitan counties.[8]

The drop-shipment routes, particularly the metropolitan one, are characterized by a relatively small number of large, supermarket-size deliveries to stores located relatively close together.

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(8) For the difference bewteen drop-shipment and full-service routes, See Order #82-2, pp. 40-42 and Appendix A-1.

The full-service routes are designed to reflect the best remaining routes that could be structured by dairies that were serving their largest customers via one of the model drop-shipment routes. The full-service routes, then, represent lowest-cost projections for serving the higher-cost segment of a dairy's customers. Taken together, the four model routes constitute a high-efficiency theoretical delivery system.

To determine the costs of delivering milk on each of these four routes, the UMO authors referred to truck operating expenses compiled by the Hertz Corporation, wage information obtained from the Maine Department of Labor and selling overhead expenses based on the selling overhead expenses on delivery operations recognized in the Minnesota study. (The Hertz information includes an allowance for interest/profit).

The hourly wage rate for delivery drivers was increased from $6.91/hr. to $9.00/hr. on the basis of our staff's discussion with trucking companies. When these input data were applied to the structural features of the four model delivery routes as described in the UMO report, the resulting cost for delivering each case of milk was as follows: metropolitan county drop-shipment, $.3173; non-metropolitan county drop-shipment, $.6002; full-service metropolitan county, $.6383; full-service non-metropolitan county, $1.2590. Per package delivery rates are derived by dividing the above figures by the number of units contained in each case (e.g., four gallons, six three-quarts, nine half-gallons, sixteen quarts). Delivery costs per gallon would accordingly be $.0793; $.1500, $.1596 and $.3148, respectively, for the four routes. See replacement Table 10 (Commission Ex. #16) to Commission Ex. #12.[9] (Commission Ex. #16).9

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(9) This table was based on driver wages of $7.05/hr. rather than the $9.00/hr. we believe to be closer to the driver labor cost the model plant would most likely incur.

At this juncture, we are faced with the same decision we earlier faced in the context of establishing theoretically lowest achievable plant costs. Should theoretically lowest achievable prices be based solely on the metropolitan drop-shipment route, a phenomenon which could only exist in and around Portland? Or should theoretically lowest achievable delivery prices be established as a weighted average of the delivery costs of all four routes?

Commission staff compiled lists of each delivery route run by all significantly- sized Maine dairies and all subdealers during a representative week in May of 1983. For each route we recorded, among other data, the areas served, the number of stops, the miles driven per day and per week, the cases delivered per day and per week, the average number of cases per stop and the percentage of drop-shipment deliveries made on each route. (See Commission Ex. #8). From this information we compiled the percentage of drop-shipment and full-service deliveries made in each county (See Commission Ex. #74A). This data would allow us to establish theoretically lowest achievable delivery prices for the output of the model plant by looking to the actual mix of deliveries made by Maine dairies in the six counties which would be served by the Portland 400,000 gallon model plant. (See Commission Ex. 114 A-C and 116). The breakdown of all routes in this service area was 45% drop-shipment in metropolitan counties (Cumberland, Androscoggin, Sagadahoc, York); 6% drop-shipment in non-metropolitan counties (Franklin, Oxford); 40% full-service in metropolitan counties; and 9% full-service in non-metropolitan counties. The same composite could also be calculated from Commission Exhibits 8 and 74 on a state-wide basis.

We decline, however, to establish theoretically lowest achievable delivery prices on any sort of weighted-average basis. In developing the concept of TLAP from § 2954 (2)(B), the Law Court stressed the words "lowest" and "can be" from that paragraph. The Court noted that TLAP should be determined without regard for whether any Maine dealer is operating at those prices and characterized TLAP as representing the theoretical peak of efficiency. See Cumberland Farms 1977, 377 A.2d at 90-91; Cumberland Farms 1981, 428 A. 2d at 875-77.

Another basis for our choice is that the inclusion of full-service routes and non-metropolitan routes in the establishment of TLAP would rely on considerations that are more appropriately treated as adjustment factors under the omnibus paragraph of § 2954(2). Two of these considerations--"the character of Maine as a rural State" and "the lack in many parts of the State, of that density of population which fosters the economies of scale that are needed to develop lower costs of milk distribution attained by firms such as Cumberland Farms"--are explicitly identified as appropriate adjustment factors in Cumberland Farms 1977 at 93. The mention of Cumberland Farms' delivery system clearly refers to the drop-shipment method of delivery. See Cumberland Farms 1977 at 91. We believe that the impact of full-service route structures and non-metropolitan (i.e., rural) route structures in Maine milk prices are best considered only after TLAP have been established.

We hence establish theoretically lowest achievable delivery costs on the basis of the metropolitan drop-shipment route, but make two changes in the .3173 cost per case heretofore discussed. The $.03/gallon selling expense included in this figure was a subjective reduction of the .037 allowance for this item utilized in the Minnesota study which used cost

components at 1977-78 levels. We believe that $.03/gallon understates the selling costs that would currently prevail in 1984 in a highly-efficienct delivery system, and, based on the testimony and exhibits offered by the Maine Milk Dealers Association on August 28, 29, 1984 we have increased this allowance to $.05 per fluid gallon.

Additionally, it appears that both the plant and delivery staffing of the model dairy are extremely tight. We find upon our examination of table 8 of the Minnesota study and of the source documents relied upon by the UMO authors in preparing table 8 (Commission Ex. # 25,12,13), that the cost of supplemental dock workers and route delivery supervision is not reflected in the .3173/case delivery cost derived above. Relying on the methodology of the Minnesota study (p.10), we accordingly increase dealer delivery direct labor expenses by 20% to account for the extra necessary supervisory and dock personnel, for a total of .0044¢/gallon.

Adding theoretically lowest achievable delivery costs and theoretically lowest achievable plant costs yields the following theoretically lowest achievable cost of processing and delivery. (See also Commission Ex. #142 and Appendix C).

MODEL	GALLON	3 QUART	½ GALLON PAPER	½ GALLON PLASTIC	QUART	BULK
	$	$	$	$	$	$
Delivery	.0593	.0396	.0264	.0264	.0148	.2373
Selling	.0500	.0333	.0222	.0222	.0125	.2000
Supplemental Load out and Supervisor	.0044	.0029	.0019	.0019	.0011	.0175
TLA Delivery and Selling Total	$.1137	$.0758	$.0505	$.0505	$.0284	$.4548
TLA Plant Total	$.3123	$.2573	$.1751	$.1882	$.1011	$1.3605
TotaL TLA Plant and Delivery Cost	$ .4260	$ .3331	$ .2256	$ .2387	$ .1295	$ 1.8153

VII. ADJUSTMENT OF THEORETICALLY LOWEST ACHIEVABLE PRICES TO ACTUALLY ACHIEVABLE PRICES

We next consider whether any adjustment to these theoretically lowest achievable prices to account for Maine conditions is warranted by any of the considerations listed in the omnibus paragraph of §2954 (2). Although the Commission need not assign a precise dollar value to each adjustment factor relied upon (Cumberland Farms 1977 377 A.2d. et. 93,) it cannot make any adjustment unless the factor relied upon individually compels that such an adjustment be made. (Cumberland Farms 1981,428 A. 2d 877-78).

We opt to establish selling prices for all half-gallon containers at the lower paper-based price,but rounded upwards to the next higher cent.[10] Appendix A-3 shows the point in the sequence of our calculations of which this adjustment will be made.

Adjustment for Seasonality. The theoretically lowest achievable plant prices established herein assume a level output of product year round. The Minnesota study concluded that plant costs would increase 4-6% (including container cost) if the model plants engineered by its authors were operating 20% below their peak output at some times of the year. This difference was particularly acute in the smallest of the three model plants drawn up in that study.

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(10) The Commission's rounding practice in all other situations is to round off minimum dealer prices to the nearest cent, whether up or down.

Our review of the dealer data found a wide range of differences in volumes processed between the month of highest production and the month of lowest production. At the low end of the range, one dealer's reports showed a difference of 13.4%; the high end dealer showed a difference of 31.5%. Based on this data (See Commission memo #5 of October 25, 1984) the Commission made an adjustment for seasonality at 10% of model plant costs. The cost of containers was not included in computing the 10% adjustment, as we found no indication that container costs of any Maine dairy varied seasonally due to fluctuation in processing volume. The result of this adjustment for each container is reflected in Appendix A-1 through A-5.

We make no further adjustments to theoretically lowest achievable plant costs.

Adjustments to Delivery Costs. Review of the actual dealer data before us shows annual delivery costs ranging from $.18698 to $.49023 for the gallon. No dealer delivered his total output at a price which came close to the $.1137 theoretically lowest achievable delivery price established for the gallon. This disparity between theoretically lowest achievable and actual delivery costs underscores how far from the metropolitan drop-shipment ideal the fabric of Maine's milk delivery system really is. Our summary of route delivery information by dealer shows that as of May, 1983, 46% of the deliveries made by Maine dealers and major subdealers were being drop-shipped. By dealer, the drop-shipment deliveries accounted for from 0% to 85% of volume. (Commission Ex. #8 and 9). By county, drop-shipments accounted for from 23% to 54% of volume (Commission Ex. 74). Of all Maine dairies, only Oakhurst and Old Tavern had any routes which approximated the hypothetical metropolitan drop-shipment route in terms of low-cost delivery.

Even if the entire output of the model plant were to be delivered on a mix of the four hypothetical routes designed by the UMO authors, delivery costs would still be far below the delivery costs of actual Maine dairies. When weighted according to the actual prevalence of the four types of delivery systems in the counties that would be served by the Portland model plant, the resulting composite delivery cost would be .1428 for the gallon, which is less than the actual delivery experience of every Maine dairy for every quarter covered save Hemond's Dairy for the third quarter, 1982.

The principal reason for this difference is the lower number of cases delivered per stop by Maine dairies, which reflects the low population density and the network of small stores that typify the rural parts of the state.

Delivery of the model plant output via a composite of the four UMO model routes yields an average delivery of 33.7 cases per stop. (Commission Ex. 107) The metropolitan drop-shipment delivery route alone would leave an average of 140 cases at each stop. By contrast, the actual average of the five major dealers and subdealers serving southern Maine in mid-1983, was 10.7 cases per stop. That figure includes additional by-products that are delivered by actual Maine dealers and that would not be delivered by our model plant. For all Maine dealers and major subdealers the average delivery was 8.9 cases per stop. (See Commission Ex. #8 and 115B). The inability of actual Maine dairies to achieve distribution economies comparable to those of the metropolitan drop-shipment route is particularly acute outside southern Maine. In these other parts of the state, distant low-volume deliveries are more prevalent.

Comparison of these various delivery scenarios against the actual delivery costs reported for Maine dealers during the one-year period ending September 30, 1982, convinces us that a 44 cents per case adjustment to theoretically lowest achievable delivery prices is necessary because the higher costs of transporting milk (see § 2954 (2)), omnibus paragraph) experienced by Maine dairies reflect in part a structural limitation on these operations which even the most skilled managers will not be able to overcome.[11] The rural geography of Maine and the low population density in many parts of the State make it impossible for Maine's dairies overall to profitably deliver milk at $.1137/gallon.

An additional efficiency reflected in the UMO model route is the authors' assumption that only one dairy will be delivering to any given store. In the actual marketplace a store's purchases may be split among any number of dairies, all of whom incur individual selling and delivery costs. On an aggregate basis, the selling and delivery costs of delivering a given amount of milk to one point from multiple sources must be greater than the expense that would be incurred if only one dairy were bringing a truck carrying that volume to the loading dock. The absence of such monopoly conditions in the actual Maine milk marketplace is a condition affecting the costs of marketing in the milk industry § 2954(2),(omnibus paragraph) which compels an upward adjustment of theoretically lowest achievable delivery prices in the amount of 2 cents per gallon, which roughly corresponds to 20% of theoretically lowest achievable selling and delivery costs.

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(11) Other such constraints are time-of-day delivery limitations imposed by large Southern Maine retailers on dairies and the added expense of maintaining depots for delivery to outlying areas.

This 20% adjustment reflects the information we obtained that customers of Oakhurst Dairy were served by an average of 1.2 dealers. Although we have not independently verified the accuracy of this figure, we note that the Law Court does not require that we assign precise dollar-and-cent values to any of the adjustment factors which we find require change in the theoretically lowest achievable prices.

At this stage of our examination, theoretically lowest achievable dealer margins adjusted for Maine conditions would be as follows:

	GALLON	3QUART	½GAL.PAPER	½GAL.PLASTIC	QUART	BULK
T.L.A. Plant Costs Total	$.3123	$.2573	$.1751	$.1882	$.1011	$1.3605
Adjustments to Plant Costs						
1. Seasonality (10%)	$.0178	$.0132	$.0109	$.0088	$.0058	$.0876
Subtotal total T.L.A. Plant Cost with Adjustment	$.3301	$.2705	$.1860	$.1970	$.1069	$1.4481
T.L.A. Delivery and Selling Cost Total	$.1137	$.0758	$.0505	$.0505	$.0284	$.4548
Adjustment to Delivery & Selling						
1. Delivery (Maine Conditions)	.1100	.0733	.0489	.0489	.0275	.4400
2.Adjustment for Monopoly Conditions	$.0200	$.0133	$.0089	$.0089	$.0050	$.0800
Subtotal T.L.A. Delivery and Selling with Adjustment	$.2437	$.1624	$.1083	$.1083	$.0609	$.9748
Dealer Margin	$.5738	$.4329	$.2943	$.3053	$.1678	$2.4229

VIII ZONE PRICING, DROP SHIPMENT AND VOLUME DELIVERY

Throughout these proceedings Grant's Dairy, Inc. advocated that we establish higher minimum milk prices for the less densely populated parts of the State. Grant's, based in Bangor, is Maine's third largest dealer in terms of processing volume and is the largest dealer north of Portland. (Commission Ex. #5). The dairy serves large expanses of rural Maine in Penobscot, Piscataquis, Washington, Aroostook, Hancock Counties, Knox and Waldo Counties.

Section 2954 (5) specifically permits us but does not require us to establish minimum prices "which may vary in the several market areas of the State". Our investigation suggested several methods by which this could be done. One approach would be the adoption of the UMO criteria for distinguishing metropolitan from non-metropolitan counties, and the establishment of separate sets of minimum prices for high-density and low-density counties.

Another approach is that recommended by Thomas Craig, a consultant employed by Agribusiness Associates, who on Grant's behalf urged the establishment of varying minimums based on the miles driven to deliver each case within the various counties. (Commission Ex. #38;1983 Tspt. pp. 231-282). In exhibit 74A, following the methodology set out in Craig's report, we calculated the miles per delivered case on a county-by-county basis. On this exhibit some counties which we know to be moderately dense show high miles per case, and vice versa. In our view, miles per case calculated in this manner reflect not only the relative density of milk

deliveries, but also the number of dealers presently serving those routes. This information hence obscures the structural characteristics of milk delivery in the various counties, because it also reflects the current marketing patterns of milk delivery within the counties. Because we cannot separate these two factors we decline to establish minimum prices on any miles-per-case basis.

We do not believe that much, if any, difference in delivery costs is due to geography per se. Rather, we think that other factors, perhaps somewhat influenced by geography, have a greater effect on costs and that there are more direct approaches to adjustment of costs to reflect those effects. While we agree that it is necessary to the continued viability of Maine dealers, and hence to the existence of a Maine market for producers, to reflect variations in delivery costs, we are not convinced that geographic differentials are the only or even the best way to do so.

We acknowledge Grant's contention that the theoretically lowest achievable prices established in the Order are more oriented to the efficiencies achievable in southern Maine than those achievable in the Northern part of the State. Yet in adjusting the theoretically lowest achievable prices to Maine conditions we expressly took note of the rural characteristics of service areas such as Grant's which preclude him from realization of the efficiencies on which the theoretically lowest achievably prices are based.

In making adjustments to delivery costs, the Commission considered various ways of reflecting factors which affect those costs. One obvious factor is the cost difference between drop-shipment and full-service deliveries. In Order #82-2, we instituted a $.06 per gallon price differential to reflect this cost difference and we continue that differential in this Order. Its relationship to volume pricing is discussed below.

A second factor affecting delivery costs is the volume delivered. We are not able to ignore the compelling information demonstrating the cost savings associated with higher volume deliveries. These savings are amply documented in the record. See, e.g. Commission Ex. #s 26, 27, 38, 122, 181, 185. Initially, we considered recognizing these savings by making the drop-shipment price available only where at least 20 cases of price-regulated products were received each week.

In the course of our deliberative sessions following the August and September hearings, we began to consider relating to the volume delivered the minimum price which dealers could charge their customers. We had evolved and were evaluating different volume delivery pricing schedules when a large number of the smaller retail grocers asked that we reconvene rulemaking hearings so that they could be heard on this issue. The additional hearing and comment period did not change our decision to institute volume-related pricing but did lead us to rethink the pricing schedule.

We here adopt a volume delivery price schedule which has four volume price levels, based on number of cases delivered per week to a given customer at a given location. The price levels are set at 0-10 cases, 11-20 cases, 21-65 cases, and 66 cases or more. The price spread between the highest volume delivery (66 and more cases) and the lowest (0-10 cases) is $.12 per gallon. The full-service price is identical to the drop- shipment price at the lowest volume level and it applies to any full-service delivery regardless of number of cases delivered. While this means that buyers of lower volumes will pay the same price whether they take drop shipment or full service, we note that it appears from testimony and comments received in the volume pricing hearing that the cost savings ordinarily associated with drop shipment are minimal in low volume deliveries.

The decisions set out above constitute the volume delivery provisions of Order #85-2. Because of the great concern expressed by small retailers and by some of the dairy industry and because we wish to be able to assess in a measured way the impacts of these provisions, from the effective date of this Order through September, 1985, volume delivery pricing is implemented at a price spread of one-half the full amount that is, at a $.06 per gallon difference between the highest and lowest volume deliveries.

In order to continue the drop-shipment - full-service price differential and because there is no need to phase in this differential with which the industry and retailers have lived for more than two years, the full-service price during the February-through-September period will be $.03 per gallon higher than the price of the lowest volume category.[12]

The Commission intends to conduct one or more route delivery surveys for each major dairy between February and October 1, 1985, in order to evaluate the impacts of volume delivery pricing. If indicated, further rulemaking proceedings can be held. In the absence of changes, the full volume delivery price spread of 12¢ per gallon becomes effective October 1, 1985. As these decisions suggest, the Commission has not been persuaded that volume pricing is going to be catastrophic, as some sections of the industry would have us believe. In fact, the Commission's view is that volume pricing will result in an overall benefit to the Maine dairy industry.

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(12) It may be worth noting that, as a result of the adoption of the $.12 volume delivery price spread and of the decision to initially implement volume delivery pricing at a $.06 spread, the minimum retail price will be $.03 higher during the phase-in period than it will be under the fully implemented Order. This is because the retail margin remains constant and is also $.12.

The following table shows what the adjustments for volume delivery pricing will be for the gallon container for Order #85-2 at full implementation and during the phase-in period from February, 1985 through September, 1985.

VOLUME DELIVERY PRICE ADJUSTMENT OF GALLON CONTAINER

(WHOLE MILK)

	ORDER #85-2 (FINAL PRICES BASED ON JANUARY,1984 RAW PRODUCT COST)	PHASED-IN PERIOD
Base Dealer Margin	$ .5738	$ .5738
Raw Product Cost (Jan.1985)	$1.3995	$ 1.3995
Base Wholesale Price	$1.9733	$ 1.9733
VOLUME DELIVERY ADJUSTMENT		
Full-Service	.0678	.0300
Drop-Shipment		
0-10 Cases	$0678	$ .0339
11-20 Cases	.0278	.0139
21-65 Cases	(.0122)	(.0061)
66 and Over Cases	(.0522)	(.0261)
MINIMUM WHOLESALE PRICE		
Full-Service	$2.04	$2.04
Drop-Shipment		
0-10 Cases	$2.04	$2.01
11-20 Cases	2.00	1.99
21-65 Cases	1.96	1.97
66 and Over Cases	1.92	1.95
MINIMUM RETAIL PRICE (at .12¢ margin)	$2.04	$2.07

IX BUTTERFAT DIFFERENTIAL

Order #82-2, the Commission's most recent major pricing order, did not continue the Commission's past practice of setting lower minimum prices for skim and lowfat milk than for whole milk. For the seven years prior to the promulgation of Order #82-2 in January, 1982, this so-called butterfat differential had been fixed in the amount of three cents per fluid quart. The Commission's reasons for not continuing the butterfat differential at that time are set forth at page 54 of Order #82-2.

In response to a petition submitted by Robert Underwood, Director of Food and Nutritional Services, Maine Medical Center, the Commission initiated rulemaking proceedings for the reestablishment of butterfat differentials. In order to prepare this proposed rule the Commission engaged a consultant, Mark Anderson, to report to it on the conceptual underpinnings of the butterfat differential and how it could be calculated. Mr. Andersons' report, entitled "Proposed Differential Pricing for Whole, Skim and Lowfat Milk Processed and Sold by Maine Dairies", was presented to the Commission in July, 1982. On July 15, 1982, the Commission held a public hearing, at which time Mr. Anderson amplified his written report and answered questions from Commission members and other interested parties in attendance. Representatives of various dairies and Commission staff offered written and oral testimony as well. (The complete record of proceedings is on file at the Commission's office). We incorporated this record by reference into the investigation underlying this Order.

Following this hearing Mr. Anderson revised some aspects of his report and re-shaped much of his mathematical calculations. The Commission received follow-up information from one witness who testified at the

hearing and recieved written post-hearing comments from the Maine Milk Dealers Association and Cumberland Farms Northern, Inc.

On August 19, September 1 and September 16, 1982, the Commission deliberated on whether a butterfat differential should be established, how any such differential should be established, and the amount any such differential should consist of. The Commission declined at that time to establish a differential, feeling that the issue was better dealt with in the context of a major milk pricing order when possible increases as well as decreases in the minimum milk prices would be explored. That time has arrived. In this Order we reinstitute butterfat differentials.

Our rationale for adopting these differentials follows the two-part pricing process set forth in this Order. First, we have attempted to determine the theoretically lowest achievable price at which skim and lowfat fluid milk could be sold by Maine dealers. Secondly, we examine whether any adjustment of these prices for Maine conditions is mandated by any of the individual criteria set forth in the omnibus paragraph of 7 M.R.S.A., § 2954 (2). The formula used to establish differentials is shown in Table III, pages 52A & 52B to this Order. It is in essence a substantial simplification of Mr. Andersons' recommendations and is largely the work of Commission member Dr. Carl Schwinn, Professor of Economics at Bates College.

A. THEORETICALLY LOWEST ACHIEVABLE PRICES

The minimum producer price established by the Commission is based on raw milk consisting of 3.5% butterfat by weight. Under Maine's dairy labeling law, 7 M.R.S.A., § 2901 et. seq., a product containing as little as 3.25% butterfat may also be sold as "milk", i.e., whole milk. For pricing purposes, we classify these lower-butterfat products into two categories, lowfat milk and skim milk, and we attach to those categories the butterfat levels which are specified for them in the feneral statutes pertaining to milk. (See 7 M.R.S.A. s 2901, sub-§§ 15-A and 28.) Thus, skim milk is milk with less than .5% butterfat and lowfat milk is milk with butterfat in the range from .5% to 2.5%.

Under traditional concepts of raw milk purchasing, the value of unprocessed milk is determined primarily by the weight of butterfat content within it, and only secondarily by the value of the skim milk which constitutes the balance of fluid-milk volume. The butterfat component of raw milk for November, 1984 is valued at $1.82 per pound by the Federal Market Administrator for the Boston market. Under this traditional method, the raw product price of milk of varying butterfat content in gallon packages for the month of October, 1982 would be as follows:

TABLE I

% Butterfat	.5%	1%	1.5%	2%	3.25%	3.5%
Raw Product Price	$.81	$.90	$.99	$1.08	$1.31	$1.35
Price differential between butterfat value		$.09	$.09	$.09	$.23	$.04
Total price differential between .5% and 3.5% butterfat				$.54		

Subtracting these price differentials from the price formula contained in this Order results in the following minimum dealer prices for drop-shipment delivery of the gallon package at the highest volume category.

TABLE II

.5%	1%	1.5%	2%	3.25%	3.5%
$1.41	$1.48	$1.56	$1.63	$1.81	$1.85

A similar pattern would emerge for minimum full-service delivery prices and for other package sizes and types. The differentials in Table I thus lead to the theoretically lowest achievable prices, shown in Table II, at which milk of lower butterfat content can conceivably be sold by Maine dealers.

B. ADJUSTMENT OF THEORETICALLY LOWEST ACHIEVABLE PRICES FOR MAINE CONDITIONS

However, we do not believe that skim and lowfat milk can be profitably sold by Maine dealers at these prices under actual Maine conditions. Four adjusments factors to these prices are discussed below. The first three of these factors justify decreasing the amount of these differentials, thereby increasing the minimum dealer prices for lowfat and skim milk. The fourth factor justifies an increase in the differentials, thereby lowering the minimum prices.

(1) Fluid Shrinkage. A certain amount of fluid milk is lost during pick-up from the farm, transfer into the plant, and during the various stages of processing, packaging and delivery. The UMO model plant assumed only .6% product loss. We added an additional 1.4% shrinkage in the calculation of minimum prices. This is in accordance with the practice of

the Market Administrator of Federal Milk Order No. 1. This adjustment is a condition affecting the costs of production, transportation and marketing in the milk industry (See § 2954 (2)).

(2) Cream Shrinkage. The fluid milk picked up by dealers during 1983 was of butterfat content which averaged 3.678 percent. (Commission Ex. 147). To make milk with a lower butterfat content (e.g., skim milk), the excess butterfat must be removed from the raw milk. Due to the relatively high viscosity and the smaller amounts of cream handled at any given time, the shrinkage of cream exceeds that of raw milk. Cream shrinkage is thus another actual condition affecting the costs of production, transportation and marketing in the milk industry (See § 2954 (2)). We find that a 3.5 percent shrinkage of the excess cream volume to be reasonable. We hence recognize this unavoidable loss of the cream product as a cost to the dealers of selling excess cream.

(3) Prices and Costs of Sales of Excess Cream. As noted earlier, under traditional dairy pricing methodology the butterfat content of raw milk is accorded greater value than the "skim" which carries it. We adopt the value of this butterfat as announced monthly for Southern New England by the Market Administrator of Federal Milk Order No. 1. For October, 1982, the posted price was $1.70 per pound of butterfat.

The theoretically lowest achievable prices are shown in Table II. The raw product costs for each percentage of butterfat content are shown on Table I. Milk of .5% butterfat content has the lowest total value. Milk of higher butterfat content has increasingly greater total value. The differentials shown in Table I and II assume that the dealer's lower selling price for milk of lower butterfat content will be made up upon his sale of the excess butterfat which is removed from these products. But in fact, the prices dealers are required to pay producers for the butterfat

content of their raw milk may not equal the prices dealers receive when they sell excess cream on the market. Accordingly, the butterfat differential paid by consumers should reflect the actual prices dealers can obtain for their excess cream on the market.

We find that the prevailing price for sales of most surplus cream by Maine dealers during the months of October, 1983, January, 1984 and June, 1984 equaled or exceeded the Chicago Mercantile Exchange price for AA butter as reported weekly by the U.S. Department of Agriculture in Dairy Market News and by the National Milk Producers Federation in News for Dairy Co-ops. The prices actually paid to Maine dealers depends in part upon the quantity of cream sold, with higher prices paid for greater volumes of cream. In fact, the largest seller of excess cream received prices which were well within the range of prices quoted for Eastern Area Print Butter-Grade AA (1 lb. prints). Over the months examined, the Eastern Print Butter price was consistently higher than the Chicago price.

If the highest price for excess cream were used as the basis for the butterfat differential, those dealers who were unable to market their cream at the most favorable price will have an incentive to reduce their purchases of raw milk from their existing producers and to turn to alternative sources for skim milk. Such skim milk purchases are used to reduce the average butterfat content of their milk purchases to a level which corresponds to the average butterfat content of the milk sold to their customers. In this way the dealer is not forced to sell excess cream at a loss. In order to limit the incentive for dealers to substitute market purchases of skim milk for their existing sources, we accept the Chicago Mercantile Exchange price for AA butter as the price for butterfat.

The market price for the most current period available to us (December,1984) is 1.4400 to 1.4325 per pound. The sale price we recognize for rulemaking purposes is hence the average 1.43625 per pound.

Excess cream is sold in 40% concentration. The remaining 60% of this solution is skim milk which serves as the carrier for the cream. The dairies are not paid anything for the skim carrier and this must also be considered as an additional expense in the sale of excess cream.

(4) Sales of Excess Cream and the Cost of Raw Milk. An additional factor which influences the butterfat differential is the extent to which a dealer's payment to the producer is reduced as a consequence of the dealer's sale of excess cream. By selling excess cream, the dealer reduces the percentage of raw milk that is used for fluid consumption. Accordingly, as less of the producer's milk is sold for fluid (Class I) use, the dealer reduces the payment to the producer. This reduced payment reflects what is commonly referred to as the blend price. Inasmuch as the utilization rate is influenced by sales of excess cream, and the utilization rate influences the cost to the dealer of raw milk, this factor must influence the costs of production, transportation and marketing in the milk industry (See § 2954 (2)).

Before explaining the pricing formula, we now consider an intervening issue. Should the upper pole of any skim and lowfat differentials be the dealer price for 3.25% milk, 3.5% milk, or some other figure? We feel that the upper pole for any differential pricing should be 3.678 milk. The key consideration which leads us to this decision is our examination of Commission producer records which show the prevailing butterfat content of Maine market milk to be 3.678. This Order and future orders will accordingly price whole milk at its actual producer average butterfat test purchase price.

We now turn to an explanation of the formula we adopt for determining the raw product cost of milk according to butterfat content. The average cost to dealers per cwt. of raw milk for fluid consumption, based on January, 1985 Class I prices, is found to be:

$15.72 + (3.678-3.5)($1.82) = $15.72 + .3240 = $16.0440

With the 1.4% fluid shrinkage, the cost of obtaining a cwt. for resale is 1.4% higher:

($16.0440) (1.014) = $16.2686

The calculation of cost for the raw milk purchased by the dealer, depending on the butterfat content, will be described for skim milk. (Comparable calculations for other concentrations of butterfat are provided in Table III, pages 5 and 50b.)

From the cost of $16.2686 we subtract two amounts:

(1) the value of excess butterfat sold, as adjusted for the 3.5% shrinkage:

(3.678-0.5)(.965) = 3.0668 lb. butterfat sold

(3.0668)($1.43625) = $4.4047

(note that for pricing purposes we assume skim milk has 0.5% butterfat)

(2) the reduction in raw product cost to the dealer that follows from the reduced utilization of fluid (Class I) milk. The reduction is influenced by the Class I-Class II differential ($15.72 - 12.78 = $2.94/cwt. or $0.0294/lb) and the quantity of product sold [3.178 lb cream + 4.767 skim carrier = 7.945 lb., where (3.178)/(7.945) = 40% concentration]. The Class I-Class II differential times the quantity of raw product sold is: (7.945) ($.0294) = $.2336. Therefore, after buying a cwt. of 3.678 percent butterfat milk, selling the excess cream (adjusted for shrinkage) and reducing the purchase price because of the lower Class I

TABLE III

RAW MILK COST AND BUTTERFAT DIFFERENTIAL

Summary of Assumptions:

Class I Price= $15.72(Jan.,1985) Class II Price= $12.78(Nov.,1984)

Average Maine Butterfat= 3.678%

Butterfat Differential-Differential Per Percentage Point=$1.82(Nov.,1984)

Chicago Butterfat Price= $1.43625 (Dec. 10-14,1984)

Cream Shrinkage Factor= 0.965

----------RESULTS----------

Dealer Cost Per Cwt. of 3.678 Milk: $16.2686

$16.2686 - ($1.43625)*(3.678 - 0.50)*(.965)-(($15.72 - $12.78)/100)*
(7.677) = $11.63825

For 0.50% milk, 3.967lb. of cream are sold, 7,667 lb. of total product are sold, leaving $11.63825 invested in the remaining 92,333 lb. of milk.

$16.2686 - ($1.43625)*(3.678 - 1.00)*(.965) -(($15.72 - $12.78)/100)*
(6.461) =$12.36699

For 1.00% milk, 2,584 lb. of cream are sold, 6,461 lb. of total product are sold, leaving $12.36699 invested in the remaining 93,539 lb. of milk.

$16.2686 - ($1.43625)*(3.678 - 1.50)*(.965)-(($15.72 - $12.78)/100)*
(5.254) =$13.09547

For 1.50% milk, 2,102 lb. of cream are sold, 5,254 lb. of total product are sold, leaving $13.09547 invested in the remaining 94,746 lb. of milk.

(PAGE 2) RAW MILK COST AND BUTTERFAT DIFFERENTIAL

$16.2686 - ($1.43625)*(3.678-2.00)*(.965)-(($15.72 - $12.78)/100)*
(4.048) =$13.82391

For 2.00% milk, 1.619 lb. of cream are sold, 4,048 lb. of total product are sold, leaving $13.82391 invested in the remaining 95,952 lb. of milk.

$16.2686 - ($1.43625)*(3.678 - 3.25)*(.965)-(($15.72 - $12.78)/100)*
(1.033) =$15.64503

For 3.25% milk, 0.413 lb. of cream are sold, 1.003 lb. of total product are sold, leaving $15.64503 invested in the remaining 98,967 lb. of milk.

$16.2686 - ($1.43625)*(3.678 - 3.50)*(.965)-(($15.72 - $12.78)/100)*
(0.429) =$16.00928

For 3.50% milk, 0.172 lb. of cream are sold, 0.429 lb. of total product sold, leaving $16.00928 invested in the remaining 99,571 lb of milk.

$11.63825/(92.333)/(8.634))=$1.0883for 1 gallon of 0.50% milk.

$12.36699/(93.539)/(8.631)=$1.1411 for 1 gallon of 1.00% milk.

$13.09547/(94.746)/(8.627)=$1.1924 for 1 gallon of 1.50% milk.

$13.82391/(95.952)/(8.624)=$1.2425 for 1 gallon of 2.00% milk.

$15.64503/(98.967)/(8.616)=$1.3620 for 1 gallon of 3.25% milk.

$16.00928/(99.571)/(8.611)=$1.3845 for 1 gallon of 3.50% milk

utilization, the dealer has $10.4371 invested in the remaining 92.055 lb. of 0.5 (skim) milk:

$16.2686- ($1.43625)(3.678-0.5) (.965) - ($0.0294)(7.945)=$11.6304

Because 0.5 percent milk weighs 8.634 lb/gal., the dealer will be able to obtain 10.6619 gallons of .5% milk, (i.e.(92.055)/(8.634) =10.6619) from each cwt. of 3.678% milk purchased from the producer. (It should be noted that the number of pounds in a gallon of milk depends on, among other things, the butterfat content of milk. Accordingly, the number of gallons to be obtained from the milk remaining after the excess cream has been withdrawn will depend on the butterfat remaining. This is reflected in Table III above).

With $11.4058 invested in the 10.6619 gal. of milk, the cost to be passed on to consumers is ($11.4058)/(10.6619) = $1.0698 per gallon of skim milk.

Through this procedure we have adjusted the dealers' theoretically lowest achievable raw product costs for skim and low-fat milk to actual Maine conditions. Table III presents this calculation for milk of .5%, 1%, 1.5%, 2%, 3.25% and 3.5% butterfat content. Accordingly, if the Commission were to adopt the full differentials as given in Table II, there might be substantial changes in the pattern of demand for milk of various butterfat content. In order to facilitate a smooth market adjustment, the Commission establishes the price of lowfat milk (.5% to 2.5% butterfat) at 10 cents below the whole milk price (i.e., $1.2801) and establishes the price of skim milk (.5% butterfat and less) at 16 cents below the whole milk price (i.e., $1.2201).

The Commission adopts these 10 and 16 cent price differentials with the expectation that we will move to recognition of the full differentials in the future. The Commission also notes that the adequacy of the Chicago butterfat price must be monitored. If Maine dairies are not able to obtain prices comparable to the Chicago butterfat price, then the Commission will institute proceedings to insure that Maine dairies do not have an incentive to purchase skim milk for reblending purposes.

IX. COMPARING ACTUAL DEALER COST WITH ORDER #85-2

MINIMUM WHOLESALE PRICES

We now compare the minimum prices contained in this Order with those costs which dealers actually experience. We make this comparison on the basis of the analysis made by the McClain Co. of the data submitted by the dealers in the Commission's ongoing system of accounting and reporting. These data were reported for four quarters consisting of fourth quarter 1981 through third quarter 1982. (Commission Ex. #21).

This Order sets the base dealer margins for the following controlled items as follows:

	GALLON	THREE-QUART	HALF-GALLON	QUART	BULK
Dealer Margin	$.5738	$.4329	$.2943	$.1678	$2.4229

However, to make this comparison meaningful, we must first subtract from the above dealer margins that amount which is the return on investment for equipment, land and building (See Commission Ex. #146). This step is necessary because the McClain unit cost figures have no corresponding return. Therefore:

Gallon Order #85-2 Dealer Margin

$.5738 - $.0297 = $.5441

McClain Dealer Unit Cost Averages for the 4 Quarters

High	Low
$.91110	$.46033

In the case of the gallon the high cost dealer was Hancock while the low cost dealer was Hemonds. We take note of the fact that Hemonds is a producer- dealer and is not a full line dairy. We therefore turn to the next lowest cost dairy, Hood, at a corrected figure of $.54450 (Commission Ex. #135). Comparing Hood with this Order find that the Order sets the dealer margin at $.0004 cents per gallon less than this full line multi-state dairy. This convinces us that the process and the steps we have taken to reach this dealer margin are correct and meet the requirements of the statute and the Law Court.

Three-Quart Order #85-2 Dealer Margin

$.4329 - $.02175 = $.41115

McClain Dealer Unit Cost Averages for the Three-Quart Container

no data; no three-quart container sold until 2nd quarter, 1983.

Half-Gallon Order #85-2 Dealer Margin

$.2943 - $.014503 = $.2797

McClain Dealer Unit Cost Averages for the Paper ½ Gallon

High	Low
$.42749	$.24770

With paper half-gallons we find, as we did with gallons, that the low cost dealer is Hemonds. We again turn to the next lowest cost dealer and again find it to be Hood, at $.27462. This is lower than our proposed base dealer margin by only $.005. We are again confident that the process is correct and we find the $.005/half-gallon difference is too small to require further adjustment.

Quart Order #85-2 Dealer Margin

$.1678 - $.015950 = $.15185

McClain Dealer Unit Cost Averages for the Quart

High	Low
$.22438	$.13200

Again we find Hemonds the low cost dealer and we look to the next lowest cost dealer which again is Hood, at $.15107. This is lower than our proposed base dealer margin by only $.00058. We do note, however, there are 13 dealers with quart costs higher than our base margin. Again we are confident of the process that led us to establish the margins and, therefore, keep this margin as developed.

Bulk Order #85-2 Dealer Margins

$2.4229- $.092962 = $2.329938 =$.116497/qt.

McClain Dealer Unit Cost Averages for the Bulk

No data analysis done by McClain on bulk container.

With the bulk container, as with the three-quart,our confidence in the process and the confirmation obtained by the comparisions we have made on the other containers satisfy us that the margins are correct though there is no McClain data with which to compare them.

X. NEIGHBORING STATES ADJUSTMENT

The neighboring states adjustment made in Order #82-2 is not continued in this Order. When the Commission looked at neighboring states' retail prices as reported monthly by the International Association of Milk Control Agencies(I.A.M.C.A.) Supermarket Price Survey (Commission Ex. #59) and its own supermarket survey of supermarkets in New Hampshire and Massachusetts (Commission Ex. #2) it found that Maine's minimums were generally lower for the quart and the half-gallon while our gallon price was generally within the range. More recently the IAMCA survey shows Maine's prices even closer. The Commission notes that a milk price war has been going on in southern New England and that the retail pricing in neighboring states may be more a function of marketing techniques than of cost. Because the Commission has no accurate data on wholesale prices in neighboring states and because Maine's minimums are close to what present prices are in these states and, finally, because this Order establishes lower minimums for skim and lowfat milk in all containers, we are assured that no adjustment either up or down is presently warranted at either the wholesale or retail levels. We hence delete the 4 cent downward adjustment in gallon pricing (2 cents from dealer and retail margins, respectively) and the 3 cent upward adjustment in quart pricing contained in Order #82-2. This, however, will be an area the Commission plans to closely monitor.

XI. MINIMUM RETAIL MARGINS

In these proceedings the Commission did not investigate whether retail margins should change. We accordingly continue the retail margins contained in Order #82-2 as the foundation for minimum retail pricing. These retail minimums are:

GALLON =	$.12
HALF-GALLON =	$.06
QUART =	$.04

The $.08 margin set for the three-quart container in Order #82-13 of remains. This Order establishes one price for both paper and plastic the half-gallon, based on the dealer margin set for the paper container.

XII. MISCELLANEOUS

Other items require but brief mention. The bulk dispenser sales follow the volume discount drop-shipment requirement and price. This bulk container price is set by the same process of determining the theoretically lowest achievable prices and making adjustments to it, whereas in past orders the bulk price was set simply by multiplying the quart price by the number of quarts in the bulk container. The result of utilizing the theoretically lowest achievable prices process is that the bulk container quart price is even lower than the special high-volume sales price that Order #82-2 set.

The paper gallon twin-pack container is priced the same as the plastic gallon. This container is put up by only a few dairies. It competes against the plastic gallon and the total market share is small.

We do not establish minimum prices for milk sold in half-pint containers though the model studies did cost this container out.

Flavored and unflavored milk are treated alike for minimum pricing purposes.

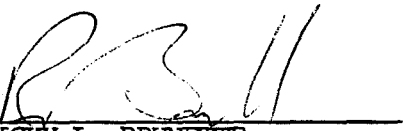
The minimum dealer and retail prices finally established in this Order are set forth in Appendix A-1 to A-10.

DATED: January 16, 1985

STATUTORY AUTHORITY: 7 M.R.S.A., CHAPTER 603

EFFECTIVE DATE: February 3, 1985

MAINE MILK COMMISSION

BY: 

RICKY L. BRUNETTE
CHAIRMAN

01- DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

01-015- MAINE MILK COMMISSION

CHAPTER PRICE ORDER #85-2

BASIS FOR ADOPTION

Pricing Order #85-2, adopted under the mandate of 7 M.R.S.A., § 2951 et seq., was developed in investigations, informational hearings, rulemaking proceedings and deliberative sessions over a 20-month period, as discussed in detail in the Order itself. During that period, the Commission became thoroughly acquainted with the points of view of persons whose interests were affected by the Order. In the actual rulemaking proceedings, these points of view were submitted formally as testimony and written comments. This basis statement responds to those comments and, in doing so, lays out the factual and policy basis for the Order.

Model Plant Cost Inputs

For purposes of determining the theoretically lowest achievable (TLA) costs of receiving, processing and packaging milk, the model plant is its cost inputs. As described in detail in the Order, the Commission expended a great deal of effort in obtaining and analyzing information on which to base its decisions on these cost inputs. It is safe to say that while some commenters are satisfied with some cost input decisions and some are satisfied with other decisions, no commenter is entirely satisfied with all of those decisions. The comments of course reflect the dissatisfactions.

Officer's Salaries

One commenter argued that the proposed total of $100,000 for three officers' salaries was inadequate, pointing to record testimony to that effect. Further investigation by staff persuaded us that this view is correct and the Order reflects the revised input.

Working Capital, Construction Period Interest and Return on Investment

The same commenter argued that the 12% interest rate used to calculate the cost of working capital, construction period interest and return on investment was too low, citing a higher prime rate, greater risks and the need for an entreprenurial incentive. We have declined to change the figure, noting declining interest rates and concluding that the 12% rate adequately accounts for these costs.

Fringe Benefits

This commenter also urged that fringe benefits be computed as 30% of wages. We have concluded that that figure would be uncharacteristically generous in the Portland area and have retained the 25% figure as proposed.

Wages

The same commenter also argued that the in-plant hourly wage was too low. Our review of actual wages paid by Maine dairies and of wages paid in other Portland area industries persuaded us to retain the proposed rate, updated by the Consumer Price Index to September, 1984.

Allocation of Overhead

While not a cost-input issue, the allocation of plant overhead is appropriately discussed at this point. We are persuaded to allocate overhead on a volume basis, as urged by one commenter, and the Order reflects that decision. Another commenter disagreed, at least in part,

with this approach, arguing that it is simply a "convenient" method and that superior theory supports allocation on the basis of what is "directed and supported" by overhead expenditures. We have chosen to use the volume-basis approach because we are persuaded that it is at least equally rational and sound.

Delivery Cost Inputs

The commenters emphatically took very different positions on the issues involved in determining delivery costs. One commenter urged that the TLA cost unputs for driver wages, truck rates and selling expense were too low. While we have not adopted the cost figures urged by this commenter, we have updated truck rates and raised the driver wage rates to reflect what we believe to be appropriate current figures. We also concluded that the proposed selling expense was inadequate to reflect those expenses in 1984 and have raised that cost. Further, this commenter and our own closer analysis of the Minnesota study persuaded us that certain labor costs connected with delivery were not reflected in the selling expense as proposed and we have adjusted delivery costs upward by 20% to reflect these additional labor costs. This same commenter argued that the 20% was applied to a delivery cost which was itself too low and that the adjustment was therefore inadequate. We are not persuaded that we have erred in setting the cost.

Updating of Costs

In response to the comments and because it has been made necessary by the longer-than-anticipated time it has taken to promulgate this Order, we have generally updated cost inputs to the third or fourth quarter of 1984, using appropriate indices or actual costs, as

specifically indicated in the Order.

Adjustments to TLA Plant and Delivery Costs

Plant Costs Adjustments:Seasonality

Here again the commenters took up opposite positions, arguing that the adjustment for seasonality was either too great or too small. The commenter who urged that the adjustment was too great pointed to a method by which he felt it ought to be calculated and which, he thought, would yield a smaller adjustment. The commenter who urged that the adjustment was too small argued that it failed to recognize that the model plant was operating at peak capacity and failed to recognize the effect of seasonality on delivery costs. As reflected in the Order, our review of dealer data on volumes processed persuades us that the 10% adjustment for seasonality made in the proposed Order is appropriate. We have eliminated the cost of containers from the seasonality computation, in response to a comment that container cost does not in fact fluctuate seasonally.

Delivery Cost Adjustment:Actual Dealer Data

Here again the commenters occupied opposite poles of argument. Some asserted that we failed in the proposed Order to account adequately for the real costs imposed on delivery by Maine conditions of geography and population and that we had either ignored or improperly utilized actual delivery data from dealers. Other commenters asserted that we had overly-accounted for such costs by giving too much weight to actual dealer data and by being led by that data to conclude that greater efficiencies and thus lower costs could not be achieved. The available delivery information, including actual dealer data, is capable of being

analyzed and interpreted in a variety of ways: witness the comments and the resolution reflected in the Order. We are aware that additional data might go far to clarify many of the delivery issues, but we must act on the information presently available to us. As we are not persuaded that the approach that we have taken to delivery cost adjustments for Maine conditions is wrong, nor that either of the other approaches is better, we have declined to make any changes.

Delivery Cost Adjustments:Monopoly Conditions

The same polar positions were taken up by the commenters on this issue. As the model plant represents a monopolistic market, we found it necessary to upwardly adjust delivery costs to reflect the increased costs of a non-monopoly system. One commenter faulted the adjustment made as far too small, arguing that the minimum competitive situation would be to assume two plants sharing the model plant market. Another commenter pointed out that some Maine dairies report delivery routes and volumes which closely mimic the model plant's most efficient routes. He argued that therefore the adjustment for monopoly conditions was misconceived. Again acknowledging that a variety of approaches are logically defensible, we have retained the approach taken in the proposed rule.

Butterfat Differential

The discussion in the text of the Order describes both the approach we have taken to the establishment of the differentials between whole, lowfat and skim milk prices and the rationale for that approach. The commenters argued on one hand for recognition of the full value of the butterfat differential and on the other for no differential at all or for an offsetting increase in the price of whole milk. We will not repeat here the rationale laid out in the Order, but will simply note

that we remain persuaded to recognize the butterfat differential, but to do so at less then its full value presently, with the intention to move toward full recognition in future Orders.

While we initially decided to establish different butterfat-level breakpoints to which the differential prices would relate, we were persuaded by comments to use the definitions of lowfat and skim milk found in the general statutes pertaining to the dairy industry. These comments asserted that to do so would be less confusing and disruptive and would lessen any economic inpact of the differentials on dealers.

Volume Pricing

The minimum prices in the proposed Order did not differentiate between the size of a dealer's delivery to a retailer. That is, save for the drop-shipment/full-service differential, the delivery cost component of the proposed minimum prices was the same for a large delivery as for a small one. In both oral testimony and written comments on the proposed Order, Grant's Dairy, Inc. contended that recognition of a unitary or average delivery cost created an undesirable pattern of cost allocation among a dairy's customers by failing to recognize the relative economy of large deliveries vis-a-vis the relative costliness of small deliveries. Grant's argued that the averaging of delivery costs reflected in the proposed Order resulted in minimum prices for supermarket deliveries that were far higher than the true costs of such deliveries and conversely, minimum prices for small-store deliveries that did not allocate to such stops their full share of the costs incurred in making them. (August 28, 29, 20, 1984 tspt. pp. 278-337; Ex. 176-192; Grant's Dairy's letters of 9/24/84, 10/8/84, 10/22/84, 10/26/84 and accompanying attachments; see also Grant's

Dairy's earlier letters of 3/26/84, 5/21/84 and 6/27/84, and accompanying attachments). Other commenters also joined Grant's in urging us to stagger minimum prices by reducing them for large deliveries and progressively increasing them as delivery size declined. See the oral testimony of Woodson Moffett at August 28, 29 and 30, 1984 tspt. at 377-78 and the written comments of James B. Longley, Jr., Esq., counsel for Grant's, dated 10/8/84; Hannaford Bros. Co., dated October 8, 1984; and David M. Cohen, Esq., counsel for Cumberland Farms, dated October 98, 1984.

We have attempted to incorporate into this pricing Order economic efficiencies prevalent in the milk industry in other States that are consistent with our own regulatory framework. Examples are the drop-shipment differential inaugurated in Order #82-2 and the butterfat differential re-introduced here. From information presented to us in these proceedings it appears that discounts for volume deliveries are the norm in Vermont, Massachusetts, Pennsylvania, Nevada and North Dakota. We believe that this correlation between delivery cost and delivery volume deserves recognition in Maine milk pricing as well. The rationale for this decision is similar to that which underlies the cost-center approach of the UMO reports and the McClain System: that the overall costs of milk delivery should be allocated more heavily to those categories of milk delivery which are more cost-intensive, and less so to more efficient types of milk deliveries. By structuring our minimum prices to reflect in part the cost differences attributable to delivery volume, we hope to foster as much economic choice as possible within a regime of regulated prices. We believe that such choices can promote an

efficient Maine milk industry consistent with the protection and stability provided by minimum milk pricing.

The data we received in these proceedings amply illustrated the correlation of higher delivery volumes and lower delivery costs. Our initial formulation of a volume discount pricing structure consisted of an eighteen-cent difference in minimum prices evenly spaced over four categories of average weekly delivery volume: 0-10 cases, 11-20 cases, 21-65 cases and 66- or more cases. (November 26, 1984 tspt. p. 617). This eighteen-cent spread was chosen as being within the range of volume discounts in other States and was also informed by cost differences developed by individual dairies (Grant's and Idlenot). In allocating this spread among the four delivery categories, we were also concerned with the effect on the net revenue to Maine's dairies and we were able to prepare and analyze information on the basis of which we felt reasonably certain that the revenue effects would not be great.

As noted at p. 58 above, this Order leaves the twelve cents / gallon retail margin of Order #82-2 unchanged. Consistent with our treatment of the drop-shipment/full-service differential, we decided that there should be only one minimum retail price for each butterfat-type milk in any given container size, and that the retail minimum price should be calculated by adding the retail margin to the lowest-cost (i.e., highest volume) minimum wholesale price. Application of the twelve-cent retail margin to the eighteen-cent volume discount schedule that we first formulated meant that retailers in the smallest volume category (0-10 cases) would pay a wholesale minimum price for gallon containers six cents over the retail minimum. Retailers in the 11-20 case category would be paying a minimum wholesale price equal to

the retail minimum. Only retailers in the two largest delivery categories were guaranteed any return on sales if they bought at minimum wholesale prices and sold at minimum retail prices.

At the public hearing held on November 26, 1984 and in voluminous written comments, small storeowners, the Maine State Grocers Association, Associated Grocers of Maine, Inc., the Maine Milk Dealers Association, several Maine dairies, several consumers, several legislators and other interested parties objected vociferously to both the concept of volume pricing and to the particular schedule proposed by the Commission. Only two Maine grocers voiced support for our proposal at this stage of proceedings.

The chief objection raised was that the volume discount schedule represented an unjustifiable discrimination against small stores and the customers who patronize them. Many witnesses and commentators disputed our belief that small stores do not compete for milk sales with supermarkets on the basis of price. They contended that any raising of retail prices by small stores to offset higher purchase costs would result in milk sales lost to supermarkets and in an overall loss of revenue to the small stores. Many storeowners testified as to the importance of milk profits to their businessess. Other objections were that the pressure on small retailers to increase delivery size by dropping one or more dairies would deprive customers of a choice of product; that many stores are unable to increase delivery size by decreasing delivery frequency due to limited cooler space; that if Maine dairies were not achieving sufficient returns on their deliveries to small stores, they could simply increase their prices; that if any volume discounting was indicated, the amounts chosen by the Commission

were too large; and that reliance on delivery size alone was an inadequate basis for varying prices among customers.

We recognize the validity of many of these concerns but do not accept them uncritically. We do find that there may be more competition between small and large stores for the milk dollar than we previously thought, and now realize that we may have underestimated the importance of milk revenues to small stores. We agree that miles driven per route could be considered as well as delivery size per stop in setting different minimum delivery prices for different types of wholesale customers. And we took note of the oral and written comments of one Maine food wholesaler to the effect that the proposed discount schedule represented a far larger percentage of wholesale price than delivery discounts in Maine's wholesale grocery industry generally. However, we cannot fail to recognize that without volume pricing, minimum retail prices for milk sold in supermarkets will remain far higher than they should be. While we do not ignore the present realities of small-store food merchandising, (such as limited cooler space) we cannot allow those limitations to impede us from establishing consumer prices "at the lowest practicable levels" (§ 2954 (21).

Our response is to narrow the discount schedule from eighteen cents to twelve cents, and to structure the discount schedule so that the minimum wholesale price for the smallest delivery category will not be less than the retail minimum. Additionally, we have decided to implement the volume discount schedule in the form of a six-cent rather than a twelve-cent spread for the first eight months of the Order. (See pps. 40-41 of the Order). This schedule, like its proposed predecessor, also appears to not severely impact dairies' revenue. We find that the

implementation of volume discount pricing on this modified basis will pass on demonstrable savings in delivery costs to consumers who purchase milk in the most efficient delivery channels available in Maine and will benefit Maine's dairies by recognizing the extra cost associated with small deliveries. These modifications to our original proposal will mitigate the impact that this new feature of our pricing policy will have on those stores and customers who participate in more costly avenues of milk distribution. Additional detail concerning the integration of the volume pricing schedule and the drop-shipment/ full-service differential is contained in the body of this Order.

Other Concerns

In addition to comments concerning the Commission's selection of input data and particular decisions made in the course of formulating theoretically lowest achievable prices and adjusting them for Maine conditions, we also received many comments of a more general nature. These came from producers and other interested persons who expressed concern that the proposed minimum pricing Order, especially insofar as it contained the 10 - and 16 - cent butterfat differential, jeopardized the livelihood of producers due to the threat it posed to dairies they sell to. Some producers especially stated that the existence of market choices for producers was essential if farmers who were not members of a producer cooperative were to have any bargaining power with dairies.

During the two half-days of hearings in Presque Isle, we heard a particularly focused presentation from the producers, dairies, business and farm community and public officials of Aroostook County. They asked us to consider the financial hardship that the proposed Order would work on Aroostook County's two dairies, M.P.G. and Houlton Farms. They

pointed out to us that some producers selling to those dairies were too geographically removed from any other market and that collapse of their current buyer would put an immediate end to their dairying operations. They also criticized our interpretation of the Milk Commission Law and asked us to delay promulgation or implementation of any new Order until the commencement of the then-upcoming session of the 112th Legislature.

On this last point, while we do not believe it consistent with our statutory mandate to delay promulgation of this Order, we note that the intervening volume pricing hearing and subsequent further work on the Order have resulted in its promulgation after the commencement of the Legislative session. With respect to our interpretation of the Milk Commission Law, we believe that our reliance on cost data of a theoretical plant is what is required by the 1977 and 1981 Cumberland Farms decisions.

This Order mandates a base dealer margin of $.5738 on the gallon container--a 7.53% increase over the $.5336 margin contained in the proposed Order. Additionally, the volume discount schedule we adopt today will afford added revenues to dairies like those in Aroostook County whose customer mix leans heavily towards small, rather than large stores.

We decline to further increase the minimum prices in this Order on general grounds or to reduce the butterfat differentials. If these minimums do not provide revenues deemed adequate by dairy managers they are free to increase their selling prices over them. As much as we sympathize with the farmers who appeared before us and wrote comment letters to us, we ar prohibited by our statute, as twice interpreted by the Law Court, from giving more recognition to the costs of small,

economically inefficient dairies in the formulation of minimum prices than we have already done.

We agree that in determining the value of the Aroostook dairies to our State, many considerations other than the stark and cold one of economic efficiency come into play. And if such considerations matter to Aroostook consumers, milk buyers there may be willing to pay a few cents more per gallon for the pride and good feeling of buying locally-produced milk. However, the Milk Commission Law is simply not the vehicle for the preservation of small local dairies irrespective to cost considerations.

The Commission notes that the transportation costs incurred by Grant's Dairy in moving milk to the Caribou depot from Bangor are at least 7.5 cents/gallon.[1] Yet, the cost disadvantage faced by Grant's when competing in the Aroostook market appears to be offset by the higher plant and administrative costs per gallon of the two Aroostook dairies. The most recent audited financial data avialable to the Commission covers the 4th quarter of 1981 through the 3rd quarter of 1982. The total plant and administrative costs per gallon averaged 49.8 cents/gallon for Houlton Farms and 49.3 cents/gallon for MPG.

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(1) The transportation mileage for supplying the Caribou depot from Bangor is 1440 miles/week, or 74,880 miles/year. (See "Dairy Route Delivery Information," Bob Plummer, 8/10/84.) Vehicle operating costs for a tractor-trailer are $1.2285/mile for 50,000 miles/year and $0.8234/mile for 100,000 miles/year, according to information from Hertz. (See Kezis, Anderson and Buitenhuys, p. 22) The simple average for a 75,000 mile/year route would be $1.03/mile, for a transportation cost for the Caribou depot of $1483.20/week. With 4894 cases/week delivered to the depot, the cost per gallon is 7.5 cents.

These costs are more than 10 cents/gallon above the Grant's average of 38.5 cents/gallon. Whether the sum of the transportation costs to the depot (7.5 cents/gallon) and the per gallon costs of operating the depot exceed 10 cents/gallon can not be determined from data presently available to the Commission. If we assume the total depot costs are approximately 10 cents/gallon, or less, then Grant's can compete on roughly equal terms in Aroostook County with the Aroostook dairies. [2] The natural locational advantage enjoyed by the Aroostook dairies appears to be offset by their relatively high plant and administrative costs.

It is not surprising that the Aroostook dairies oppose a reduction in price on lowfat and skim milk. Grant's could lower prices as easily as the Aroostook dairies and the consequence would be reduced revenues for all without any reduction in costs. Likewise, it is not surprising that the Aroostook dairies oppose the introduction of zone pricing which would elevate milk prices in Aroostook County above prices elsewhere in Maine. Such a price differential would only make it more desirable for Grant's to ship milk into their local market, thereby increasing the competitive pressure from Grant's.

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(2) Evidence that Grant's can compete on equal terms in Aroostook County, in spite of the added costs of running a depot, is that Grant's sells approximately one-third of the milk in Aroostook County.

The Commission, then, is faced with a dilemma. A reduction in milk prices will reduce their revenues, thereby threatening bankruptcy for one or both Aroostook dairies. A price increase created by zone pricing would only continue, perhaps at a slower rate, the erosion of their economic vitality as they face continued competitive pressure from Grant's Dairy. Instead of taking either action, the testimony in Aroostook was practically unanimous in calling for a delay of any new pricing Order until the Legislature could act. However, it is the Commission's view that it lacks the authority to delay a pricing Order which is clearly called for under the law. Even if a delay were possible, there was no testimony in Aroostook as to what form that legislative solution would take. It is the Commission's view that the solution is not likely to lie in the hands of either the Commission, or the Legislature. Rather, the solution is most likely to lie in the hands of the Aroostook dairies.

The most reasonable solution that needs to be explored is the consolidation of the two Aroostook dairies. The Commission is willing to assume, for the sake of argument, that neither MPG or Houlton Farms could increase their efficiency much beyond present levels, given their present volumes of production. However, it is reasonable to expect that their total plant and administrative costs per gallon could be reduced through consolidation. Yet, the Commission has neither the data nor the responsiblity to determine what economies could be achieved through consolidation of two privately owned dairies. Instead, the dairies have that responsibility. Their responsibility is especially acute when the poroducers in Aroostook rely on the Aroostook dairies to provide a market for their milk. Responsibility certainly lies with MPG, a

cooperative started in the milk business with financial capital supplied by Aroostook dairy farmers.

The Aroostook dairies should note that when they oppose lowering the price on lowfat and skim milk, they are favoring the continuation of a pricing policy which facilitates the shipment of milk into Aroostook County. The costs faced by Grant's in operating the Caribou depot are paid for, in part, by the premiums all dairies are presently getting on the lowfat and skim milk they sell to consumers at the whole milk price. If the price of lowfat and skim milk is lowered, Grant's may find it necessary to stop shipping as much milk into Aroostook. The Aroostook dairies could expand their own sales in the county and increase their demand for milk from Aroostook farmers. The Commission is well aware that the ability of the Aroostook dairies to expand their volume is dependent on lowering per unit plant and administrative costs. If consolidation can achieve such economies, it is clear that the health of the Aroostook dairy industry would be strengthened as more local milk is used for local consumption.

This whole episode illustrates a problem with minimum price regulation. As long as dairies are protected from free competition, they will fail to seek out, with the same vigor that characterizes other sectors of the economy, new, more efficient ways of doing business. The consequence is a prolonged, inefficient use of resources that reduces the welfare of the community and ultimately threatens, in this case, the long term survivability of the dairy industry in Aroostook County.

MAINE MILK COMMISSION

APPENDIX A

CALCULATION FOR DETERMINING COST OF RAW MILK AT BUTTERFAT TEST OF 3.678%

	PRESENT MONTH	PRESENT MONTH
3.678% Milk =	$ Class I Price + (3.678 - 3.50)	(Butterfat Cost)
	x (1.4% shrink) = $ Cwt. or = $ Gallon	

MONTH - YEAR

FOR _____

3.678% Milk = _____ + (3.678 - 3.50) _____ = _____

_____ (1.014) = _____

GALLON
3 QUART
HALF-GALLON
QUART
BULK (2.325)

FORMULA FOR COMPUTING MINIMUM PRICES BASED ON ORDER

APPENDIX A-1

DATE_____

GALLON

WEEKLY AVERAGE OF CASE CONTROLLED ITEMS DELIVERED	0-10 CASES AND ANY FULL-SERVICE**	11-20 CASES	21-65 CASES	66-Over CASES
1. Base Dealer Margin	$ .5738	$ .5738	$ .5738	$ .5738
2. Raw Product Cost_____* Cwt. ÷ 11.625				
3. Base Wholesale Price (rounded to nearest cent)				
4. Minimum Wholesale Price				
A. Whole Milk (3.25% b.f.)	0	0	0	0
B. Lowfat Milk	($.10)	($.10)	($.10)	($.10)
C. Skim Milk	($.16)	($.16)	($.16)	($.16)
5. Volume Delivery Adjustments				
A. Between Feb.-Sept.,1985	$ .0339	$ .0139	($.0061)	($.0261
B. October,1985 and after	$ .0678	$ .0278	($.0122)	($.0522)
6. Minimum Wholesale				
A. Full-Service Price (between Feb.-Sept.,1985)	WILL ALWAYS BE 3 CENTS/GALLON MORE THAN THE 0-10 CASE GALLON PRICE			
7. Minimum Wholesale Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				
8. Minimum Retail Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				

* For milk at 3.678% butterfat at 1.4% shrink

** After September, 1985

FORMULA FOR COMPUTING MINIMUM PRICES BASED ON ORDER

APPENDIX A-2

DATE_____

THREE-QUART

WEEKLY AVERAGE OF CASE CONTROLLED ITEMS DELIVERED	0-10 CASES AND ANY FULL-SERVICE**	11-20 CASES	21-65 CASES	66-Over CASES
1. Base Dealer Margin	$ .4329	$ .4329	$ .4329	$ .4329
2. Raw Product Cost_____* Cwt. ÷ $15.50				
3. Base Wholesale Price (rounded to nearest half-cent)				
4. Minimum Wholesale Price				
A. Whole Milk (3.25% b.f.)	0	0	0	0
B. Lowfat Milk	($.057)	($.057)	($.057)	($.057)
C. Skim Milk	($.120)	($.120)	($.120)	($.120)
5. Volume Delivery Adjustment				
A. Between Feb.--Sept.,1985	$ .0243	$ .0105	($.0046)	($.0196)
B. October,1985 and after	$ .0486	$ .0209	($.0092)	($.0392)
6. Minimum Wholesale Full-Service Price (between Feb.-Sept.,1985)_ WILL ALWAYS BE $.0225 CENTS/3 QUART MORE THAN THE 0-10 CASE GALLON PRICE_				
7. Minimum Wholesale Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				
8. Minimum Retail Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				

* For milk at 3.678% butterfat at 1.4% shrink

** After September, 1985

FORMULA FOR COMPUTING MINIMUM PRICES BASED ON ORDER

APPENDIX A-3

DATE_____

HALF-GALLON

WEEKLY AVERAGE OF CASE CONTROLLED ITEMS DELIVERED	0-10 CASES AND ANY FULL-SERVICE**	11-20 CASES	21-65 CASES	66-Over CASEE
1. Base Dealer Margin	$ .2943	$ .2943	$ .2943	$ .2943
2. Raw Product Cost_____* Cwt. - $23.25				
3. (A) Base Wholesale Price				
(B) Base Wholesale Price (rounded-up)				
4. Minimum Wholesale Price				
A. Whole Milk (3.25% b.f.)	0	0	0	0
B. Lowfat Milk	($.05)	($.05)	($.05)	($.05)
C. Skim Milk	($.08)	($.08)	($.08)	($.08)
5. Volume Delivery Adjustments				
A. Between Feb.-Sept.,1985	$ .0169	$ .0069	($.0031)	($.0130)
B. October,1985 and after	$ .0339	$ .0139	($.0061)	($.0261)
6. Minimum Wholesale Full-Service Price (between Feb.-Sept.,1985) WILL ALWAYS BE $.105 MORE/HALF-GALLON THAN THE 0-10 CASE PRICE				
7. Minimum Wholesale Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				
8. Minimum Retail Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				

* For milk at 3.678% butterfat at 1.4% shrink

** After September,1985

FORMULA FOR COMPUTING MINIMUM PRICES BASED ON ORDER

DATE_____ QUART

WEEKLY AVERAGE OF CASE CONTROLLED ITEMS DELIVERED	0-10 CASES AND ANY FULL-SERVICE**	11-20 CASES	21-65 CASES	66-Over CASES
1. Base Dealer Margin	$ .1678	$ .1678	$ .1678	$ .1678
2. Raw Product Cost_____* Cwt. ÷ $46.5				
3. Base Wholesale Price (rounded to nearest half-cent)				
4. Minimum Wholesale Price				
A. Whole Milk (3.25% b.f.)	0	0	0	0
B. Lowfat Milk	($.025)	($.025)	($.025)	($.025)
C. Skim Milk	($.040)	($.040)	($.040)	($.040)
5. Volume Delivery Adjustments				
A. Between Feb.-Sept.,1985	$ .0084	$ .0034	($.0015)	($.0065)
B. October,1985 and after	$ .0169	$ .0069	($.0031)	($.0130)
6. Minimum Wholesale Full-Service Price (between Feb.-Sept.,1985) _____	WILL ALWAYS BE $.0075 MORE/QUART THAN THE 0-10 CASE PRICE_____			
7. Minimum Wholesale Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				
8. Minimum Retail Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				

* For milk at 3.678% butterfat at 1.4% shrink

** After September, 1985

FORMULA FOR COMPUTING MINIMUM PRICES BASED ON ORDER

APPENDIX A-5

DATE_____

BULK (20 QUART)

WEEKLY AVERAGE OF CASE CONTROLLED ITEMS DELIVERED	0-10 CASES AND ANY FULL-SERVICE**	11-20 CASES	21-65 CASES	66-Over CASES
1. Base Dealer Margin	$ 2.4229	$ 2.4229	$ 2.4229	$ 2.4229
2. Raw Product Cost_____* Cwt. ÷ 2.325				
3. Base Wholesale Price (rounded to nearest cent)				
4. Minimum Wholesale Price				
A. Whole Milk (3.25% b.f.)	0	0	0	0
B. Lowfat Milk	($.50)	($.50)	($.50)	($.50)
C. Skim Milk	($.80)	($.80)	($.80)	($.80)
5. Volume Delivery Adjustments				
A. Between Feb.-Sept.,1985	$ .1695	$ .0695	($.0305)	($.1305)
B. October,1985 and After	$ .3390	$ .1390	($.0610)	($.2610)
6. Minimum Wholesale Full-Service Price (between Feb.-Sept.,1985)	_____WILL BE $.15 MORE/CONTAINER THAN THE 0-10 CASE PRICE_____			
7. Minimum Wholesale Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				
8. Minimum Retail Price				
A. Whole Milk				
B. Lowfat Milk				
C. Skim Milk				

* For milk at 3.678% butterfat at 1.4% shrink

01- MAINE DEPARTMENT OF AGRICULTURE

015- MAINE MILK COMMISSION

CHAPTER 3 SCHEDULE OF MINIMUM PRICES FOR MILK ORDER #85-2

SUMMARY: The Maine Milk Commission does hereby establish the producer Class I price for the period at _____ cwt. and fix the minimum wholesale and retail prices in the following markets designated by the Commission as natural marketing areas, effective _____ and continuing until superseded.

1.MARKETS:
SOUTHERN MAINE MARKET AREA: includes all the townships in the counties of Cumberland, Knox, Lincoln, Sagadahoc and York. It includes all the townships in Androscoggin, except Livermore and Livermore Falls. There are 12 townships in Kennebec County, 20 townships in Oxford County and 5 townships in Waldo County also included in this market area.
WESTERN MAINE MARKET AREA: includes the following numbers of townships in the designated counties: Androscoggin (2),Franklin (6),Kennebec (17),Oxford (10),Penobscot (3),and Somerset (24).
CENTRAL MAINE MARKET AREA: includes the following numbers of townships in the designated counties: Aroostook (1),Hancock (35),Penobscot (19), Piscataquis (11),Somerset (1),Waldo (16),and Washington (9).
EASTERN MAINE MARKET AREA: includes 32 townships in Washington County.
NORTHERN MAINE MARKET AREA: includes the following number of towns in the designated counties: Aroostook (54),Penobscot (2),and Washington (1).

2. PRODUCER-TO-DEALER-SALES:
Dealers within the above-named market areas shall pay for milk purchases from producers, f.o.b. dealer's plant.

	PER CWT.	PER QT.
For all milk not tested for butterfat content		
For Class I milk of 3.5% test and for skim milk and cultured buttermilk sold for fluid consumption		

For Class II milk-the price for all zones as announced by the U.S. Department of Agriculture for the New England Marketing Area. Such Class II prices may be reduced by 26¢ per hundredweight for that volume of milk sold by licensed Maine Dealers to federally regulated plants, and sold for milk in excess of the Class I and Class II needs of the originating purchasing dealers and sold for manufacturing to any Class II plant as so designated by the Commission.

Such prices except skim and buttermilk shall be increased by the announced butterfat differential for each 1/10 of 1% average butterfat content above said test and decreased a like amount for each 1/10 of 1% average butterfat content below said test.

Violation of those rules therein contained will result in a revocation of license and a fine.

SALES TO CONSUMERS EFFECTIVE

The schedule of prices listed in the chart on Page 3 shall be the minimum wholesale and retail prices to be charged for milk distributed within the market areas in the attached for fluid consumption wherever produced, and shall hold until further revision by the Commission.

BASIS STATEMENT The Federal Milk Order #1, New England Marketing Area, has announced the Class I price to be paid to producers for_____ in Zone I as _____for 3.5% milk. This results in a _____ per hundredweight _____ to the producers over last month. These minimum prices reflect the results of the Commissions investigation, public hearings and work sessions held in 1983-1984. In summary, the Commission has identified new margins for each container and established butterfat differential pricing of 10¢ less than the whole milk price for lowfat milk and 16¢ less than the whole milk price for skim milk. Also new in this order is the case volume minimum wholesale pricing based on:

0-10 cases at $.0339 or $.0678/gallon over base wholesale price.
11-20 cases at $.0139 or $.0278/gallon over base wholesale price.
21-65 cases at ($.0061) or ($.0122)/gallon less base wholesale price.
66 and over at ($.0261) or ($.0522)/gallon less base wholesale price.
From February, 1985 through September, 1985 any full-service must be at $.03 more per gallon than the 0-10 case gallon price. After September, 1985, any full-service will be at the 0-10 case gallon price.

SEE PAGES THREE AND FOUR FOR REQUIREMENTS NECESSARY TO RECEIVE THE DISCOUNT MINIMUM WHOLESALE DROP-SHIPMENT

There shall be a minimum deposit to and by wholesale customers and stores purchasing milk for resale in returnable containers as follows:
GALLON $.25 HALF-GALLON $.15 QUART $.10

Violation of those rules herein established will result in the revocation of license and a fine.

AUTHORITY: 7 M.R.S.A., Section 2954-2961
EFFECTIVE DATE:

Section 1 & 2 =
Section 3 =

DATE _____

APPENDIX A-8

	MINIMUM WHOLESALE ANY FULL-SERVICE (FEB-SEPT.,1985	MINIMUM WHOLESALE 0-10 CASES AND ANY FULL-SERVICE AFTER OCTOBER,1985	MINIMUM WHOLESALE 11-20 CASES	MINIMUM WHOLESALE 21-65 CASES	MINIMUM WHOLESALE 66-PLUS CASES	MINIMUM RETAIL PRICES
GALLON/PLASTIC						
Whole.....						
Lowfat.....						
Skim.....						
THREE(3) QUART						
Whole.....						
Lowfat.....						
Skim.....						
HALF-GALLON						
Whole.....						
Lowfat.....						
Skim.....						
QUART						
Whole.....						
Lowfat.....						
Skim.....						
BULK CONTAINER FOR 20/QUART						
Whole.....						
Lowfat.....						
Skim.....						

MAINE MILK COMMISSION
AFFIDAVIT OF COMPLIANCE

I_____, THE_____
(NAME) (POSITION)

OF_____, LOCATED AT_____
(STORE OR DEALER) (ADDRESS)

_____TELEPHONE NUMBER_____

HEREBY CERTIFY AND SWEAR UNDER PENALTY OF PERJURY THAT THIS STORE/PLANT IS IN FULL COMPLIANCE WITH ALL MILK COMMISSION ELIGIBILITY REQUIREMENTS FOR THE CASE VOLUME DELIVERY MINIMUM WHOLESALE PRICING OF THE COMMISSIONS PRICING ORDER #84-X.

DATED AT_____,MAINE, THIS_____DAY OF

_____,198

_____
(OWNER/OFFICER)

STATE OF MAINE

,§

PERSONALLY APPEARED BEFORE ME THE ABOVE NAMED_____

AND_____WHO ACKNOWLEDGED THAT THEY ARE THE

PRESIDENT AND SALES MANAGER OF_____DAIRY AND

THAT ALL STATEMENTS MADE BY THEM AND CONTAINED IN THIS AFFIDAVIT ARE

TRUE.

_____
NOTARY PUBLIC

APPENDIX A-10

MAINE MILK COMMISSION

DEALERS VOLUME DELIVERY REPORT

NAME_____
(Dealer)

1. DATE_____
(Week of)

2. ACCOUNT_____
(NAME)

3. ADDRESS_____
(Number) (Street) (City) (Zip)

4. TELEPHONE NUMBER_____

5. DAY AND TIME OF DELIVERY WITH NUMBER OF CASES CONTROLLED ITEMS DELIVERED

	A.M.	# OF CASES	P.M.	# OF CASES
SUNDAY				
MONDAY				
TUESDAY				
WEDNESDAY				
THURSDAY				
FRIDAY				
SATURDAY				

APPENDIX A-11

MAINE MILK COMMISSION

RETAILERS VOLUME DELIVERY REPORT

NAME _____
(RETAILER)

ADDRESS _____

1. DATE _____

2. DAIRY _____
(NAME)

3. DAY AND TIME OF DELIVERY WITH NUMBER OF CASES CONTROLLED ITEMS DELIVERED

	A.M.	# OF CASES	P.M.	# OF CASES
SUNDAY				
MONDAY				
TUESDAY				
WEDNESDAY				
THURSDAY				
FRIDAY				

MAINE MILK COMMISSION

REQUIREMENTS FOR DELIVERY AND RECEIVING OF VOLUME DELIVERY PRICES TO QUALIFY FOR MINIMUM CASE VOLUME DELIVERY WHOLESALE PRICES WILL INCLUDE THE FOLLOWING:

A. DAIRY

1. Will unload the truck bringing milk cases into the stores storage cooler area.
2. Will not carry milk into areas of the store other than the coolers.
3. Will not stamp prices on milk container (either at the plant or at the store).
4. Will not remove container from milk cases.
5. Will not stock the display cases or perform any stocking, rotation, pull-up or culling.
6. Will not clean the display case.
7. Will not provide any call-back service, or special delivery or second delivery. Any special or second deliveries provided will be at drop-shipment conditions but subject to full-service minimum price.
8. Will not write up invoices at the point of delivery.
9. Credit may be given for defective packages or for contaminated or spoiled product (i.e. outdated packages) may be allowed only for products not manufactured by the dairy for which the dairy also received full credit.
10. Will not perform any function in the store other than unloading milk into the storage cooler.
11. Will not load dispenser machines.

B. GENERAL

1. Deliveries that have not been pre-ordered from at least the close of business of the previous business day will not qualify for the case volume delivery wholesale pricing.
2. A dealer may not provide any of the in-store services listed above with respect to non-regulated dairy and non-dairy products (e.g. half-pints, cottage cheese, orange juice) it delivers.
3. Store will make payment to the dairy within 27 days from delivery.

C. EXCEPTION

1. For stores not having storage coolers, dealers may bring bases to such place within the store as the retailer directs, but may not remove the cartons from the case or perform any of the services listed above.

MAINE MILK COMMISSION ORDER #84-X

APPENDIX B

CLASS I-DEALER PRICE EFFECTIVE THE FIRST DAY OF EACH MONTH		CONSUMER-WHOLESALE AND RETAIL MINIMUM PRICES EFFECTIVE THE FIRST SUNDAY OF THE FIRST WEEK OF THE MONTH	
1984			
January	1	January	1
February	1	January	29
March	1	February	26
April	1	April	1
May	1	April	29
June	1	June	3
July	1	July	1
August	1	July	29
September	1	September	2
October	1	September	30
November	1	October	28
December	1	December	2
1985			
January	1	December	30
February	1	February	3
March	1	March	3
April	1	March	31
May	1	April	28
June	1	June	2
July	1	June	30
August	1	August	4
September	1	September	1
October	1	September	29
November	1	November	3
December	1	December	1
1986			
January	1	December	29
February	1	February	2
March	1	March	2
April	1	March	30
May	1	May	4
June	1	June	1
July	1	June	29
August	1	August	3
September	1	August	31
October	1	September	28
November	1	November	2
December	1	November	30

DISSENTING OPINION

Maine Milk Commission Law Title 7, Chapter 603, Sec. 2954

para.1 "...The Commission shall hold...a public hearing...to determine whether the minimum wholesale and retail prices then established should be changed. In addition to data received through...information gathering procedures...as a basis for its determinations, the Commission shall solicit...oral and written testimony...to determine whether the minimum wholesale and retail prices then established should be changed and whether the proposed minimum wholesale and retail prices are just and reasonable."

para.2 "...the prices so established shall be just and reasonable taking into due consideration the public health and welfare and the insuring of an adequate supply of pure and wholesome milk to the inhabitants of this State under varying conditions in various marketing areas;...including a reasonable return to producer, dealer and store;..."

sub para.
B. "The minimum wholesale prices paid to dealers shall be established to reflect...milk purchased from Maine producers at Maine minimum prices...received, processed, packaged and distributed within the State of Maine at a just and reasonable return."

After reading Section 2954 of the Maine Milk Commission Law, portions of which I have highlighted above, it is clear that the first duty of the Commission in reviewing prices then in effect is to see whether those prices should be changed. In preparing this Order the Commission used it's last quarter, 1981 thru third quarter, 1982 McClain System data for the 13 significant sized dairies in the State. The profit and loss operating statements showed 7 dairies operating at a loss. Since the third quarter of 1982 4 dairies have gone out of the milk processing business. Two were operating at a profit and two at a loss. That is more than a 30% loss of processors under the current price Order (#82-2). Some may argue that loss of processors is appropriate,

excessive or not sufficient. My position is that any new Order should at least not accellerate the rate of decline in the processing industry. Barring any evidence to the contrary in the investigation and hearings (and I found none), that means that the prices in any new Order should approximate those under Order #82-2.

Another major duty Section 2954 imposes on the Commission is to see "whether the proposed minimum wholesale and retail prices are just and reasonable." The preponderance of evidence, testimony and comments declares that the prices proposed are not just and reasonable to the dealers, producers, small stores and the majority of consumers. The prices contained in this Order are unfair to the dealers because they will drastically reduce revenues. If dealers go out of business it will reduce the choice of markets for producers and in some cases (especially outlying areas including Aroostook County) may totally eliminate markets. This is unfair to the producers. The small stores will be regulated into an unfair competitive situation. Approximately 60% of the milk is purchased in small stores. Since, in most cases, the store will mark up its milk prices as a result of the volume pricing system contained in this Order a majority of milk consumers will pay more for their milk. It is unreasonable to have a majority of consumers to subsidize lower prices for a small minority. Remember that supermarkets sell 40% of the milk, but generally only the store brand is sold at minimum prices. Store brand is generally 25-75% of the volume in a store, so only 10-30% of the consumers will benefit under this volume pricing scheme.

The Commission closely followed the 1977 and 1981 Cumberland Farms Law Court Decisions spending a great deal of time and money to create a theoretical model dairy system and theoretical prices. The emphasis in these 2 court decisions is on a narrow interpretation of the statute and miss some other important points in the statute which I have emphasized in the beginning of this dissenting opinion. Milk pricing using a theoretical model is possible but an example of what the Commission did with the system our consultant presented to us exemplifies how ridiculour it is to use theoretical models. Our consultant presented us with the mathematically most efficient milk processing and delivery system possible for the State of Maine. The

"system" contained 3 processing plants with 3 different operating costs. The Commission set its theoretically lowest achievable price on the lowest cost plant only, not the entire system. Adjustments to Maine conditions eventually compensated for this initially too low TLA price. Audited data from the McClain System could be used to set prices in conjunction with statutory guidelines in a much less time consuming and expensive useless academic way than with theoretical models.

It is ironic to note who will benefit from this Order which is based so heavily on the 1977 and 1981 Law Court dicisions. Those decisions resulted from cases brought by Cumberland Farms which convinced the court that lower prices for consumers at the expense of mainly the dairies is what the Legilsature intended in the 1975 revisions to the Milk Commission Law. The large supermarkets will gain additional competitive advantage over small stores. A minority of the consuemrs will pay lower prices-the approximate 10-30% who buy store brand milk in supermarkets. Most ironically, Cumberland Farms will benefit. Even though Cumberland Farms stores sell less milk than supermarkets they will not pay more for their milk under this Order. This is because they are vertically integrated stores owned by an out of state firm. Cumberland Farms stores will gain a competitive advantage over other small stores.

A butterfat differential is introduced in this Order that I feel compelled to comment upon. Some nutritionists expound upon the dangers of calories and cholesterol in butterfat while others maintain that butterfat is needed and enhances the body's absorption of calcium and minerals. Since the nutritionists disagree I can not say whether pricing that reflects a butterfat differential and would induce increased lowfat milk consumption should be instituted, but I can say that if a differential is introduced it should be done fairly. If the dairies have indeed been surviving on the value of the butterfat under Order #82-2 and evidence does not exist in the record that these dairies have been exhorbitantly profitable then introduction of a differential should warrant an increase in the price of whole milk while decreasing lowfat and skim milk prices. On January 8, 1985 Commission member Carl Schwinn stated that under the proposed butterfat differential the dairies would experience an 18% reduction in

revenues. The 18% reduction figure did not account for expected increase in less profitable lowfat milk sales. This revenue reduction is entirely too large and is uncalled for.

A volume discount system is also introduced in this Order and needs commenting upon. Volume discounting is one way to accurately reflect the delivery costs of the dairies, however, it has several important drawbacks. First, the system is cumbersome and difficult to explain,implement and enforce. Second, it is nearly 'politically' impossible to fully reflect the range of costs involved so that the dairies could truly recoup their costs. While a case could be made for a 20 to 30¢ price spread to cover different volume deliveries, witness the great amount of negative comments the Commission received from store owners, legislators, the public and in editorials when an earlier proposal suggested an 18¢ spread. Third, as mentioned before, a majority of Mainers would pay more for milk under this system. Fourth, while a volume pricing system is expected to enhance dairies' revenues, there is potential for disasterous impact. As stores kick dairies out in order to up its volume purchases from another dairy, it is conceivable that 1 or more dairies could lose enough accounts to force them out of business altogether. Last, the phase-in provision is not gradual enough. The more price brackets there are the more potential for market place disruption (i.e. more dairies losing more accounts). A 2 price system immediately rather than 4 would have been better.

On January 8th Commission member Carl Schwinn presented a series of tables designed to show the effects of various volume discount prices on the revenue of the dairies. The object was to find prices that would be revenue-neutral (that is the revenue under the volume price system would be roughly equivalent to the previously set dealer margin in this Order prior to the decision to implement volume pricing). In the process Mr. Schwinn compared the effects of this Order with the existing conditions under #82-2. The effect of the butterfat differential alone is a loss of 18% of revenue from the present prices under #82-2. Pages 1 and 2 of Mr. Schwinn's work-up show what would happen under this Order at these prices. Considering the effects of the butterfat differential and volume pricing assuming a 20% consolidation of store

accounts (but no shift towards higher lowfat milk consumption) the projected revenue loss to dealers is 12 -13%.

I totally disagree with the suggestion made in the comment section of this Order that the Aroostook dairies should consider a merger. The proper role of the Milk Commission is to set prices not suggest how or if dairies should operate. The prices set by the Commission may suggest the course of action of dairies, but it is not for the Commission to say what that course of action should be. More importantly, in this situation certain facts and figures have been misinterpreted and or overlooked. Grant's dairy cost to get milk to its depot in Caribou may or may not be 10¢, but the entire cost for operating the dairies in question must be considered. Both Houlton Farms Dairy and M.P.G. Dairy have lower total cost per gallon than does Grant's Dairy. Both dairies have lower selling and delivery costs than does Grants. Because Grants Dairy has higher selling and delivery costs and higher total costs, it can not be said that Grants is competing in Aroostook County with Aroostook dairies on "roughly equal economic terms". Other facts and figures that have been overlooked include: (1) the Aroostook dairies total selling and delivery costs are approximately 15 and 18¢ less than Grants (2) M.P.G. has lower administrative costs than Grants and (3) McClain System profit and loss statements show Grants with a per gallon loss three times greater than M.P.G's, while Houlton had the highest per gallon profits of all Maine dairies.

However, Grants has chosen to sell milk in Aroostook for some reason - perhaps for marginal costing purposes, where the extra volume sold in Aroostook helps lower unit costs for all milk processed in the plant. Since Grants is a larger dairy than M.P.G. and Houlton and can thus sustain selling at a loss longer, perhaps there is hope that one or both Aroostook dairies will go out of business there by increasing Grants total volume and profitability. At any rate, in the interest of a choice of markets for producers, a choice of brands for consumers, and as much free market competition (i.e. service, variety, price, etc.) as is possible in a minimum price regulated system, the Maine Milk Commission should not be encouraging a merger of Aroostook dairies.

My objections to this Order up to this point have been to what I feel are errors in judgement by the Commission on purely economic grounds. There are things happening in the dairy industry that happen for reasons other than exact costs for immediate profits and losses. Price setting should not be done in an atmosphire of 'how close can we cut to the bone' with the expectation that, of course, the desired results will be obtained. For example, under Order #82-2, two apparently profitable dairies chose to stop processing milk. A common line given by critics of the Commission who say our minimum prices are too high is that dairies are free to charge above the minimum price. However, within the last year the only dairy (sub-dealer) serving Route #9 (the airline) in Washington County decided the route was unprofitable, but rather than charge more for his products he has discontinued the route. Store and restaurant owners now have to find their own way to get milk or have stopped selling it altogether. Another dairy has stopped delivering to individual stores and a school in the Vanceboro area. They must pick up their milk from a drop off point twenty miles away. Is that milk properly refridgerated during transportation in private vehicles? Price setting should be conducted in an atmosphire of caution. The Commission should err slightly in the direction of beneficial dealer margins-to quote the statute again..."the prices so established shall be just and reasonable taking into due consideration the public health and welfare and the insuring of an adequate supply of pure and wholesome milk to the inhabitants of this State under varying conditions in various marketing areas...".

There are other points contained in this Order with which I disagree, but none so grievous as those contained in this dissent. In past Orders the Commission has reduced revenues to dealers but only in conjunction with price cutting mechanisms such as the full-service/ drop-shipment pricing system. In this Order, as a statement in the Response to Comments regarding reducing the price of lowfat and skim milk,"...the consequence would be reduced revenue for all without any reduction in the costs". The volume pricing system, which has many faults and with which I disagree, only offsets approximately one-third of the loss in revenue. The proper way to treat the butterfat differential would be to increase homogenized milk prices (to their proper levels for the Maine Dairy Industry) while decreasing the lowfat and skim prices.

For all the above reasons, I can not, in good conscience, support this pricing Order.

DATED January 16, 1985

BY Linda Bright
Linda Bright, Commission Member