

county—Pulaski—are in an area that is closely associated with the Tennessee Valley marketing area. He pointed out, for example, that two Order 11 pool plants—the Flav-O-Rich plant at London and the Southern Belle plant at Somerset—are in Laurel and Pulaski Counties, respectively.

The witness indicated that Southern Belle had sales in each of the counties proposed to be added to the marketing area. He also introduced data showing that 79 percent of the fluid milk sales in the seven-county area came from the Southern Belle and Flav-O-Rich plants. He said that a majority of the sales in Pulaski County also came from Order 11 plants.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

The six now-unregulated Kentucky counties should be added to the Order 11 marketing area and Pulaski County should be removed from the Order 46 marketing area and added to the Order 11 marketing area. This seven-county area is closely associated with the Tennessee Valley market and its addition to the Order 11 marketing area, in conjunction with the pooling standards adopted in this decision, will add regulatory stability for the plants with sales in this area. There are no plants in this seven-county area other than the Southern Belle and Flav-O-Rich plants and none outside of this area that would become regulated as a result of the addition of this territory to the Tennessee Valley marketing area.

A conforming change should be made in § 1011.52(a)(3) to include the counties of Jackson, Owsley, and Rockcastle with the other Kentucky counties now included in the minus 32-cent location adjustment zone. Although there are no plants located in these three counties, should a plant be built there the appropriate location adjustment should be minus 32 cents, the same location adjustment that is applicable in the neighboring counties of Laurel, Pulaski, Clay, and Breathitt.

## *2. Where To Regulate a Distributing Plant That Meets the Pooling Standards of More Than One Order*

The pooling standards of the Tennessee Valley and Carolina orders should be modified to fully regulate a distributing plant that is located within their respective marketing areas and that meets the pooling standards of §§ 1011.7(a) or 1005.7(a), respectively, even if the plant meets the pooling standards of another order and has more route disposition in such other order's marketing area.

These amendments will allow a distributing plant at Kingsport, Tennessee, that is located within the Tennessee Valley marketing area and that meets all of the pooling standards of the Tennessee Valley order to be regulated under that order rather than under the Carolina order, despite the plant's having greater sales in the Carolina marketing area. Similarly, they will allow a distributing plant located at Somerset, Kentucky—which, as recommended under Issue No. 1, would be part of the Order 11 marketing area—to be regulated under Order 11 even if the plant should develop greater sales in the marketing area of Order 46 or some other order's marketing area. Finally, the amendments will permit a plant located at Greenville, South Carolina (in the Order 5 marketing area), to be regulated under Order 5 even if the plant has more sales in the Southeast marketing area (Order 7).

These amendments and the proposals which prompted them stem from various pricing problems under these orders that have come about for a variety of reasons, including the fact that the marketing areas may not have grown as fast as handlers' distribution areas. The pricing problems identified on the record of this proceeding relate to Land-O-Sun Dairies, Inc., at Kingsport, Tennessee; Southern Belle Dairy Company at Somerset, Kentucky; and Superbrand Dairy Products, Inc., at Greenville, South Carolina.

Land-O-Sun Dairies, Inc., operates a plant at Kingsport, Tennessee, which is in the Tennessee Valley marketing area. Because of this plant's greater route disposition in the Carolina marketing area, it has been regulated under that order. During the past three years (January 1992–November 1994), the blend price at Kingsport under Order 5 has averaged 14 cents below the blend price at that location under Order 11. In some months, the difference has been as high as 32 cents. Although the Class I price at Kingsport is identical under both of these orders, the Tennessee Valley order's higher Class I utilization—e.g., 82.03 percent for Order 11 compared to 77.96 percent for Order 5 during the first 10 months of 1994—has led to a higher blend price under that order at Kingsport during nearly every month for the past three years.

A spokesman for Land-O-Sun testified that the Kingsport plant handles approximately 12 million pounds of milk per month and that about one-third of its Class I sales are distributed on routes within the Tennessee Valley marketing area and the remaining two-thirds within the Carolina marketing area.

The witness testified that Land-O-Sun purchases its raw milk supply from 140 dairy farmers located in northeast Tennessee and southwest Virginia within 100 miles of the Kingsport plant. He noted that this area is also the supply area for other Order 11 pool plants. As a result, he said, any blend price difference to producers in this common supply area leads to market instability. Because the Order 11 blend price is higher than the Order 5 blend price, he stated, Land-O-Sun is forced to pay over-order prices to retain its producers. He indicated that Land-O-Sun could not consistently pay these higher prices and remain a viable business entity.

Southern Belle Dairy at Somerset, Kentucky, has been regulated under Order 11 since 1989. In recent years, the plant has had nearly equal sales in the Order 46 and Order 11 marketing areas. If regulation of the plant had shifted to Order 46, the applicable Class I differential price would be 19 cents lower than under Order 11 (i.e., \$2.26 compared to \$2.45), but the blend price difference would be even more substantial. For example, in the past 35 months (January 1992–November 1994), the Order 46 blend price averaged 30 cents below the Order 11 blend price at Somerset. In some months during this period, the difference in blend prices was as much as 67 cents.

At the hearing, a Southern Belle spokesman testified that the handler sought the marketing stability that would be provided by regulating the plant under Order 11 based upon its location within the Order 11 marketing area. The spokesman stated that Southern Belle would experience procurement problems if it could only pay its producers the Order 46 blend price in competition with Order 11 handlers—such as the Flav-O-Rich plant at London, Kentucky, 37 miles east of Somerset—which also procure milk from the same supply area. He also cited the marketing instability that would result from the plant shifting back and forth between the two orders, particularly in view of the differing base and excess payment plans to producers in each of these orders.

Superbrand Dairy Products at Greenville, South Carolina, has been regulated under the Georgia order since May 1992 despite the fact that it is located within the marketing area of the Carolina order and meets the pooling standards of that order.

A spokesman for Mid-America Dairymen, Inc. (Mid-Am), which has a full supply contract with the Superbrand plant, testified that the Carolina order should be amended to