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HEARING FOR LOUISIANA SUGARCANE PROCESSORS REGARDING THE APPLICATION OF THE ANDINO ENERGY ENTERPRISES, LLC FOR A CANE MARKETING ALLOCATION FOR THE 2008 CROP YEAR

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TAKEN AT HOWARD JOHNSON

MARIA LOUISA RIENZA ROOM

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THIBODAUX, LOUISIANA 70301

ON THURSDAY, JUNE 26, 2008

BEGINNING AT 9:09 A.M.

REPORTED BY:

LESLEY H. CROCHET, CCR

APPEARANCES:

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MR. DAN COLACICCO:

I'm Dan Colacicco for Farm Service Agency. Barbara Fecso, of course, is here with me. Willie Cooper said he'd be hidden in the background someplace. We're here to listen to you today to review this application we have from Andino Energy Corporation.

Unlike most of the programs that FSA administers, decisions that effect one processor can negatively affect other processors. That doesn't happen generally when we're handing out checks through our other programs. But marking allotments is a zero-sum gain. And as one entrant comes in, we know there might be negative affects on the other ones. That's mainly what this hearing is about today.

We also are looking for comments on the evidence required to demonstrate the applicant's eligibility. I think Barbara might discuss a little bit of what these three components of the law to become a new processor.

The hearing is in response to a request by affected sugar cane processors as according to the law. The results of the hearing would not be implemented until FY 2009. Generally, in August -- hopefully in August, sometimes late July, sometimes early September -- we'll announce the marking allotments for FY '09. And that's when we would make this allotment final.

And as we said in our notice, we have a new farm bill.

The new farm bill changed the rules with regard to Louisiana somewhat. And any decision we make, we will have to take into effect the new farm bill. We had already scheduled this hearing prior to the farm bill being enacted, so we're kind-of in transition, which makes it a little bit messier than we would otherwise prefer. But in deference to the applicant, you know, they requested that we consider giving them a new entrance allocation. We felt the government had to go forth and give them their due hearing.

Now, our format. First, CCC sugar marking allotment program manager, Barb, will present the application as it was presented to USDA. Then all commenters will have five minutes to make their statements. FSA will accept written comments by today, close of business. The applicant will begin. Will make the first presentation and make their case first. Then other interested parties will present their opinions and supporting information. And then Barb and I can ask questions as we want to.

If you have a concern with what somebody else has said, you can of course respond to us in writing today. Or, I was thinking, you could sign up again and make your rebuttal at the end. We're not going to have a debate, though. Everybody is going to get their five minute say. Any questions on the format before we begin?

(No response.)

MR. DAN COLACICCO:

Okay. Barb?

MS. BARBARA FECSO:

Good morning. Just a brief history of how this went down. About a year ago, St. James approached USDA and asked them if they could temporarily close their factory so that we did not permanently reassign their allocation to other mills. And there is no provision in the law that allows us to temporarily close a factory.

So we looked at the facts, and we said, "You told us that you cannot open this mill in the last fall. You told us that." And because they could not open the factory last fall, we determined that they were closed. And we told them that if they could come up with a cane supply and be able to produce and process sugar and market the sugar, then they could see new entrant status again and we would consider giving them an allocation. So that is where we are.

We just finished transferring St. James' allocation to four mills. It took us several months to do that, so that's just finished. And now the factory, Andino, is asking for a new allocation.

So in their application, they mentioned that they own the St. James factory, and that for crop year 2008, which is coming up, that they plan to have 10,000 acres to produce 500,000 tons of cane; and in 2009, 15,000 acres and 600,000 tons of cane; and 2010 crop, 20,000 acres and 800,000 tons of cane; in 2011, 25,000 acres and a million tons of cane; and 2012, 30,000 acres and 1.2 million tons of cane. So they're asking for an allocation of 50,000 tons next year; 60 the following year; 80 the following year; 100,000 by 2011; 120,000 tons of sugar allocation by 2012.

So you are here to listen to -- we'll have Andino come up first and tell their story. And then we will announce speakers in the order they've signed up. And the purpose of the hearing is to have you express any adverse affects that this new entrant would have on the marketplace, and also to give us recommendations on the type of criteria we should consider before granting them a new allocation. Let's start. Roddy, do you want to come up first?

MR. RODDY HULETT:

Good morning to all. Barbara, Dan, thank you for allowing us this opportunity. I'm Roddy Hulett. Most of you know me here as chief operations officer for Louisiana Green Fuels Louisiana Company. Andino Energy is a subsidiary of Louisiana Green Fuels.

Barbara's given you a little of the history. Andino bought St. James last year late in the year. Andino saw the factory. The condition of the factory. The equipment in the factory. The physical location of the factory, in the middle of the sugar, cane away from any city, on the banks of the river and right next to the railroad tracks. They said, "Why is this mill closing down?"

They bought it with the intention of running it. This is not a last minute decision. The main reason they felt to run it was to provide to the farmers in that area the mill, or giving back their mill, that they had built some years back. Keep distances at a minimum. We've since had diesel went up to 4.50 a gallon. And in general, provide milling capacity that's not in excess. You're going to hear a lot of people say today it's excess milling capacity. We actually had an allotment of 120,000 tons of sugar at some stage not too many years ago.

The crop last year ran longer than people expected, even with the lower yield. And there is concern, we have talked to a number of farmers that are very concerned about the length of the crop. Not only the beginning of the crop, where we are now spraying Polado a month earlier than we ever have to get some sugar in the cane. We're cutting seed cane a month earlier, increasing the number of acres that go to seed. And we're extending the crop until the end of December and putting the farmers at risk. None of these risks apply to the mill. The mills are immune to most of these. It's the farmer that's being affected.

Our thrust here is really a benefit to the farmers in the area. Let me also state that Andino Energy's purpose is not to produce sugar. It is an energy company. It is created here. And once we erect an ethanol plant at St. James, all of the production will go towards ethanol.

We applied -- as Barbara said, we had discussions last year and applied for a marking allotment so that we could run the mill for the two years approximately while we erect the distillery.

Yesterday, we spent the whole day here. I heard several speakers. I missed some. But pretty much everybody said we need to look beyond sugar in this industry. We're prison to your 20 cents a pound. There's some talk now of the price of sugar going up. Speculation. Things that happened in Florida and what have you. But I think we all have to agree: If we stay in business of 20 cents a sugar, this room's going to be a lot emptier in the next few years.

The sugar industry is facing difficult times. We are offering at St. James, and we will be in other parts. We are doing it at Lacassine. We have equipment already arrived for an ethanol plant. We are offering something beyond sugar.

Prices of fuel, prices of fertilizer have gone absolutely out of control. I had a farmer this morning say to me that he thought he might plow his cane out and grow beans because fertilizer has gone up to $670 a ton. These are very desperate times. These are times when we have to consider what's in the future. Where are we going?

The other thing that we're very excited about, and I have spent time with the USDA in Maryland, on the development of sweet sorghum as a second crop. The numbers we're looking at in some instances are so good, the people are saying, "Why are we growing sugar cane? Why don't we grow sorghum?" But that's down the line. There's a lot of research that needs to be done.

But it does offer a grower a second crop that can be grown on the fallow land here. Can be grown on black land. And a lot of you are saying now you should not be in sugar cane, that it's costing you too much money.

Sweet sorghum can be harvested with your equipment. It can be milled with the milling equipment. It's a very good fix. It's a very exciting fix. LSU is excited. USDA is excited. Texas A & M is doing a lot of work.

So I guess in summary, we feel that we are offering something here that's positive. It is not negative. We feel that any additional or the milling capacity that we're going to put back in operation will do nothing but shorten the crop some to the benefit of the grower. To the benefit of all of us. Get away from spraying all this Polado and killing our subsequent crops. And allow us to get into the better land and get out of the land that you're losing money on.

And we submit this. And again, we ask for this allotment so that we can get into operation. And in a way, I guess, show you all that we're serious. That the growers will be paid. That they will be paid better. And that the future holds something more promising than 20-cent sugar.

As I have said, we're looking to the future beyond sugar. I have with me today two of the second generation owners of Louisiana Green Fuels. We have Louis Santacoloma. Louis is head of all projects. We have several projects going on. The major project right now is the construction of the distillery in Lacassine. And Mauricio Santacoloma, who is involved in the agricultural side. In control of all agriculture.

I don't know if they want to make a statement. They're a little nervous because of their accent. They both speak good English, but they're still a little self-conscious. Louis, would you like to say something after me. Your names are on the list. If I may just hand it over to them. Thank you.

LOUIS SANTACOLOMA:

Good morning, everyone. Like he said, my name is Louis Santacoloma. I'm chief projects officer of Louisiana Green Fuels, a company related with Andino Energy. Today, I want to let you know, on behalf of our group, some reasons we have decided to invest in St. James sugar cane mill.

Our group has its origins in Columbia, a country who has been following the procedure model for several years. As you may know, Brazil is the largest sugar and ethanol producer in the world. And its model has demonstrated that many years an efficient, affordable, and sustainable formula for the sugar cane farmers and the sugar industry.

That formula is nothing but the production of sugar and ethanol integrated in an economic model that allows to replace part of the energy demand of those countries. How they make it? Through the energy production. Energy in the form of sugar for the human being, and energy in the form of fuels for automobiles.

In St. James mill, we have found an excellent opportunity to produce this energy. Because when visiting this area, we discovered that the mill has a lot of tradition and a long demonstrated history in production of raw sugar. The machinery, in very good shape. Besides, it's surrounded with some magnificent sugar cane plantations and very good farmers.

The idea from the first moment the mill was bought was to operate it and to continue with the production of raw sugar. For that reason, in 2007, some analysis and provisions were made looking for not to stop the processing of the sugar cane. But however, at the moment the mill was acquired, it was late to organize and plan everything for 2007 harvest.

But here we are again with the same idea and purpose. By today's date, a great part of the maintenance has already been completed. Personnel has been hired for the operations, and the commitment of the company with Louisiana and the farmers continues, and it will be this way for a lot of time. Thank you.

MS. BARBARA FECSO:

Mauricio, are you speaking?

MR. MAURICIO SANTACOLOMA:

No.

MS. BARBARA FECSO:

Jessie Breaux.

MR. JESSIE BREAUX:

Good morning, Dan and Barb. My name is Jessie Breaux. I'm a cane farmer from Franklin, Louisiana, and I'm speaking on behalf of the American Sugar Cane League. You will hear testimony from many of our members today, each describing the direct impact your decision will have on their farming and processing operations. I know you will weigh their concerns carefully.

Let me emphasize that our growers and processors share the dream of fully utilizing the energy potential of our crop, particularly a farmer seeing a greater net return per acre. We want to see renewable energy projects succeed here in Louisiana, and I hope that nothing else I said here today will obscure that point.

Louisiana sugar cane farmers are caught in a vice between the sharp increase and input costs, and a stagnant price for what we produce. We must receive a greater return for the crop we grow and process in order to survive, and we will continue to make painful choices to improve our efficiencies.

Since 2003, we have closed nearly 50 percent of the mills in the state. Many of the mills that have survived have increased productivity by investing in more efficient boilers and other improvements, allowing them to increase production while reducing per unit costs. In the current budgetary climate, Congress and the Department are rightfully concerned about holding programming costs at or below based line projections.

Mexican sugar imports could inflict a tremendous level of uncertainty on the sugar program at any time with costs escalating as a result. In this environment, and given our own efforts to increase the efficiencies of the Louisiana sugar industry, adding another sugar producer to the mix would seem a backwards step towards greater uncertainty, inefficiency, and costs.

This is a zero-sum process with established mills losing allocation to the new entrants. So it is important that the applicant provide substantial proof in the form of contracts with growers that the new entrant has a realistic chance of filling any obligation provided. If allocations is provided, and the new entrant fails to operate its plan for whatever reason, growers could be in dire straits. Remedies for the non-performance should be carefully considered in the decision making progress.

USDA should also require a firm declaration of minimum throughput required by the applicant to operate the facility this year. If the acreage committed to the project cannot produce the gain needed to achieve this throughput, the application should be denied.

The League agrees with the points raised in the 2003 new entrant's hearing in opposition to unconditional provisional allocation. That was not contemplated in the statute. From a practical standpoint, provisional allocation creates uncertainty for the sugar cane growers and processors in planning and harvesting, processing, marketing of the crop in question.

The Arizona request involved an attempt to create the cane production processing and marketing system from scratch. So it's fair to say that all interested parties within the state felt speculative interest in the outcome. This is certainly not the case in Louisiana. And the 2003 decision should not be considered as a precedent for considering this request.

To limit potential disruptions, the start of planting, harvesting, and grinding season, and to ensure a fair and equitable distribution of allocation, the League strongly urges the Department to make this decision on the request based on the abilities that can be demonstrated now, in addition to considering the adverse affects of other growers and processors.

Delaying that decision increases the potential of costly disruption in the coming harvest season, while making the decision on evidence presented at this new entrant's hearing provides the industry with much needed time to rationalize planting, harvesting, and delivery schedules before the season begins. The longer you delay, the greater the potential for costly disruptions.

This new entrant's request is ostensibly related to plans to operate St. James Mill, closed in 2007. But the application and any allocation is tied to the entity rather than the facility. Andino is preparing to re-open the old Iberia Sugar Cooperative, and it's safe to assume that Andino plans to use some of the allocation to operate that facility.

The grower-owned cooperative that closed these facilities were grinding more each year than the 120,000 tons the application envisions after five years of wrapping up. So it's fair to ask the group to provide a viable plan to properly operate the facilities at the requested allocation level, including evidence of growing commitments sufficient to produce sugar to fill the allocation.

Finally, the industry is concerned that an informed comment on potential affects of your decision phase are possible without the clear understanding of how the Department will implement the substantial change in the operation of the sugar program in Louisiana.

The recent enactment of the farm bill repealing Louisiana's specific clause requiring approval of the original mill to allow a grower to shift its production and allocation to another mill. This change will allow Louisiana producers to shift their production from one mill to another, assuming the additional production does not exceed the second mill's capacity without the approval of the original mill.

In implementing this provision, we anticipate that the USDA will sharpen definitions of such terms as "mill" and "sugar processors" to avoid confusing the 11 remaining mills in Louisiana with the 35 processing facilities that have closed in the past 40 years, and with any new facility that might perceive a speculative interest in the future. Otherwise, the 2008 farm bill change could have the unintended consequence nullifying application of new entrant's provision in Louisiana among other effects. Thank you.

MS. BARBARA FECSO:

Will Terry.

MR. WILL TERRY:

Good morning. Thank you for the opportunity. My name is Will Terry. I farm 1600 acres in St. Mary Parish. I'm speaking in opposition to the application and ask that you consider the following: Louisiana history has been to close small mills, less efficient factories, and move to larger, more competitive factories. The free market will determine where growers move their cane. When South Louisiana Sugar Cooperative closed its remaining factory, we, the growers and millers of Teche, weren't impacted.

However, the law says that the new entrant allocation is taken from everybody. And that's wrong. This will impact everybody in the state. I need to sell every pound to pay for production costs. Louisiana cane industry initiated and supports a change the legislation to allow free movement. This mechanism should be allowed to work. I urge you to deny this application.

MR. DAN COLACICCO:

I can make a point on that. The current law does require that the allocation of everybody else is reduced. However, the new law, as Jessie Breaux mentioned, gives much greater rights to the grower in Louisiana. They can move their cane voluntarily. In the previous law, the 2002 farm bill, they needed to request and they needed approval from the mill they were leaving. Now they no longer do. Obviously, that gives growers a lot more flexibility, at least in our mind.

Therefore, part of the issue we're facing is if growers that already have base, that already have an allocation somewhere, go to a new entrant, then it only makes sense to us that that history would be part of their contribution to the new entrant. It's not feasible to reduce everybody's allocation proportionately when these growers are moving the allocation associated with their land.

That's why I said the messiness and the fact that this application came in, and we're caught between two farm bills. We will make our decision based on this. But one thing I know won't happen is that there will be no double counting of allocation. We haven't decided yet how exactly we're going to implement this new requirement about voluntary movement of allocation by farmers between mills. But certainly, a farm or an acre, however we decide it's done, there will be a fixed allocation that goes along with it, and that will total to the current allocation for the mills within the state.

So there is some -- I guess the bottom line is, if Andino is using growers that have base or have allocations associated with them, it will not be an equal distribution, or an equal reduction in allocation across. I'm sorry it's complicated, but that's the way it is.

MR. BRIAN GRUNYARD:

Just so we can get that straight, Dan, that would not affect the mills on the west end, if I'm understanding what you're saying, because none of those growers would be shipping cane to the St. James Mill, so that would not affect their allocation; is that correct? Since I'm now allowed to move my allocation, under the new farm bill.

MR. DAN COLACICCO:

Since you move it, any farmers that sign up for -- I just want to say, if any farmers sign up for the new entrant and they have allocation with their land, then all they have to do is request us to move that allocation to the new mill. That is that simple in the law. Okay? Now, whether that affects you further out, you know, there might be shifting. As a new entrant, particularly a new entrant in the center of the cane, the other mills need throughput. Everybody needs throughput. That's what the name of the game is, trying to get the cost down. So there might be effects going out.

MR. RONALD GUILLOT:

If you give them a 50,000 ton and only 10,000 that has base moves, and you're giving them the privilege of selling 40,000 tons that has no base history, then eventually that will affect us to sell our sugar that does have base history. Am I correct in that assumption

MR. DAN COLACICCO:

Yes.

MR. RONALD GUILLOT:

They can sell with no base history up to that 50,000.

MR. DAN COLACICCO:

That is a point. That is a point. The law does say though that we have to supply proportionate shares commensurate with the allocation that we give them. We have never done this. We don't -- we will resolve that in these regulations, if it can be done. So I mean, it says we can give proportionate shares. It doesn't say we can give base. It doesn't say we can create any base. So there's some uncertainty associated with that. But you can't assume that we would give them allocation with no proportionate shares behind it. Okay? There's a law that specifically says that we have to give them proportionate shares.

MR. RODDY HULETT:

Can I add to that, please? That it was never our intention to do or accept double dipping or anything like that. There's been indications that we're doing that. It was never our intention. We have followed the procedure as laid down by CCC. And the law has to be interpreted by CCC; not us.

MR. DAN COLACICCO:

Yes. I mean, we're not going to -- this program is fairly complicated throughout the country. It's very complicated in Louisiana. It has to make sense to all of us. At the end of the day, it has to make sense. I like to think, I've been doing this since the early Nineties, that we're not going to end up with a camel by committee. But unfortunately, we're caught between the two farm bills, so we can't answer everything as solid as we would like.

On that point, I'll mention something. Barb and I are PhD economist analysts. USDA's economic analysis for the next farm bill leads us to believe that as a point estimate, our best guess is Louisiana will never exceed its allotment. It will never fulfill its allotment. It hasn't in the past couple of years. And I guess you all heard about what might be happening over in Florida that would enlarge the allotment pool.

So as a point estimate, of course, hurricanes are never predicted tomorrow. But we know over the next ten years, there's going to be a hurricane tomorrow. So we have to plan for the exception. But our expectation is that allocations in general will not be an issue over this farm bill. That takes a little bit of the bite off of the allocation issue. It doesn't take the bite off of the adverse impacts that you may be suffering. And that's actually what we want to hear.

Thank you.

MR. LONNIE CHAMPAGNE:

For clarification, you said you will not grant a new entrant and the growers that want to move there, that history to the same person?

MR. DAN COLACICCO:

This is the way I see it simply: If a grower in the St. James area - how many miles do you have to get away from St. James to find growers that have no base?

MR. LONNIE CHAMPAGNE:

A long way.

MR. DAN COLACICCO:

A long, long way?

MR. LONNIE CHAMPAGNE:

Everybody has a base.

MR. DAN COLACICCO:

Okay. Everybody's got base. So that means that all the farmers that go there will have base. Well, now with this new provision that says if a farmer requests USDA to move an allocation associated with their base to any mill, we have to do it. That means, just prima fascia, just thinking of it, that's where this allocation is going to end up coming from. It's going to come from the acres that are moving there.

Although there is a provision that we have to give proportionate shares for the new entrant. We haven't fully interpreted that yet. But I don't know that's relevant here. Because if you think that all the farmers that are going to go over there are going to have base, then you have written a farm bill that's going to handle their allocation.

Now, they do need, to become a new entrant to be considered a mill, to get an allotment. We made that decision in several court cases under the previous farm bill. So if a farmer should move there, you must apply for a new entrant and you must be granted new entrant.

MR. RONALD GUILLOT:

You're talking about, they can only open in St. James? Iberia cannot, open since they are owned by Andino? And Lacassine, if they decide to start making sugar? They have acreage that can be new acreage in that area. So this is just strictly St. James, this hearing? Or is it all three mills that Andino owns?

MR. DAN COLACICCO:

Good question.

MS. BARBARA FECSO:

We can't say anything firmly on that.

MR. DAN COLACICCO:

Well, I can say that we give allocation to companies. Now, in this case, they were specific about requesting it for St. James. Okay? So when we go in there and we're asking for your cane supply and we take a look at the equipment to make sure that it can run, we're looking at St. James right now. That's my understanding.

MR. RODDY HULETT:

That's our understanding, too. I don't know where all these ghosts are coming from, but our application is for St. James only.

MS. BARBARA FECSO:

Warren Harang, III.

MR. WARREN HARANG, III:

Good morning. Before I start, I want to thank Dan and Barbara for being here. I want to extend our southern hospitality. I hope you're not disappointed in our hospitality or our cuisine. My name is Warren Harang, III. I'm a grower in Assumption and Ascension Parishes. I am a tri-shipper. That means that I send my sugar cane to three different sugar houses on a daily basis.

I appreciate the opportunity given to me as a grower to speak in opposition of this application. I, as a grower, need two things: I need a home for my sugar cane; and I need a fair price for my sugar. I, as a grower, would like to have 40 sugar houses in the State of Louisiana because of the high cost of production and hauling my product. I understand from an economic standpoint that we are an industry. The grower needs the mill and the mill needs the grower.

If the Secretary sees fit to grant this application, then it should take the necessary steps to make the grant contingent upon the applicant's ability to: First, demonstrate an adequate and reliable supply of sugar cane. The Department should not rely on verbal or letters of commitment from producers. Signed contracts and requests for allocation transfers should be secured.

Demonstrate the entity as a viable processor with a sufficient work force to repair and operate the factory. The applicant should be allowed to fill a sell potential allocation or fill from other sources as this will circumvent the fair and equitable redistribution as prescribed by the law.

Demonstrate the venue is self-sufficient and can operate without continued inputs of capital from wealthy owners. I humbly ask the Secretary to consider these requests in his determination. Thank you very much for having me.

MS. BARBARA FECSO:

Wilbert Waguespack.

MR. WILBERT WAGUESPACK:

Good morning. My name is Wilbert Waguespack. I'm a full-time sugar cane farmer who has been farming in St. James Parish for over 40 years. I am also president of South Louisiana Sugar Cooperative, the organization that owned the St. James factory prior to the Andino Energy Group.

I stand before you today to express my views both personally and on behalf of the board of directors of South Louisiana Sugar Cooperative. We are in favor of reopening the St. James mill. The mill is strategically located along the lower Mississippi River, providing a local mill for the sugar cane farmers of the river parishes.

With the price of fuel increasing to record levels, I see transportation problems in the future. For those of us who are 25-plus miles from the nearest mill, the day is coming when farmers will be required to supplement the cost of transporting sugar cane to the remaining mills. This will further reduce the bottom line of our farming operation. Our individual fuel operations will be more efficient with the reopening of St. James.

The additional milling capacity will provide insurance to all farmers of this region in the event of an early freeze that threatens the Louisiana sugar industry on an annual basis. We had a dry harvest last season, so we were lucky. We were able to finish early.

Just like other mill operators in Louisiana, the Andino Energy group has made a significant investment in south Louisiana and St. James Parish. When they are provided an allotment to market sugar domestically, they will begin plans to construct the first sugar ethanol facility in this region. This will require a substantial investment with the opportunity to provide a renewable energy source and has become a major incentive in America. Thank you.

MS. BARBARA FECSO:

Harold Rodrigue.

MR. HAROLD RODRIGUE:

Good morning. My name is Harold Rodrigue and I been farming for all my career. I've been sending my cane to St. James. And also, I'm the manager of Rodrigue Planning Company, which operates and will have at least 1800 acres of cane for this mill this year. We feel that it's important for this sugar mill to operate this fall.

The fact is, we have the difference of hauling our cane would be 10 miles as compared to at least maybe 60, 65 miles. Rather than having to ship that cane these long distances, to having have to work a little bit longer during the days, and also prolong on our grinding for a few days.

And also for the liability purposes. It would take some trucks and trailers off of the road for these long distances. And especially this road, LA 20, which isn't a very good one, going through Chackbay and over the Bayou Chevere and everything else.

So we are very much in favor of having the group, the application for Andino Energy Group, so that they can harvest our cane this year.

And I was under the understanding also that they're going to put in an ethanol plant which will provide maybe a little bit more revenue for your farmers, which will help us with whatever expenses that we can have and defer them for. So we'd appreciate it very much that this application would be granted to them. Thank you.

MS. BARBARA FECSO:

Mr. James Brazan.

MR. JAMES BRAZAN:

How are you all doing? I don't many people here. I'm not a sugar cane farmer, and I don't have any interest in the sugar cane bill. But my dad farmed most of his life. I know a lot of you guys. Maybe you don't recognize me. My dad was Dick Brazan. My father-in-law's been farming most of his life, Roland Gaubert, out of St. Charles Parish. So I do have some interest in what goes on here. I farmed most of my life, and you know, the sugar cane industry has been very good to my family and to my community.

But just a couple of things. Lenny Waguespack had come by the store the other day. We weren't even talking about this. He mentioned something else, and he brought up the fact that they were having this meeting. This group has never approached me to speak for them. Lenny, never. But I've been in the business a long time. My family has. I know what it can do for communities. So I'm here to speak for the community.

We got two PhD economists right here, I think is what he said, and he said everything has to make sense. And if the farmers are going to put their cane up at this mill, it's because it makes sense to them. And if it's gotta make sense, it's gonna make sense because those farmers are going to send their cane to this mill. And if they don't send their cane to the mill, it's because it doesn't make sense to them.

Again, I'm the St. James Parish councilman. I'm speaking on the side of government. The sugar house has brought economic growth to the parish for many, many years. It's almost 60 years old. I don't know how much that pertains to USDA. I don't know how much it helps. It's in a poverty area. They have been in the area almost 60 years. We all know the people that work a lot of these mills are part-time. Wives that just work part-time. So it has economic development.

My understanding is they're talking about $20 million worth of sugar cane they're hoping to get, so it would be $20 million in the community. Not to mention the jobs.

Also, when the company first came in - and I forgot to mention that. As a government agency, as the USDA, they're always looking for something. What can the community give back to them? This company, to my knowledge, has never come to the parish and asked for anything, you know. They're putting up their own money, to my knowledge. And I can't speak, because I don't know a lot about it. But I know from a government agency, they haven't come to us and asked for any money. They're out there. They're putting up their own money. They're putting their own effort, their own sweat into it. And so, you know, that's just some of the reasons.

As a government agency, we're in charge of maintaining the roads and keeping the infrastructure up. The farther these trucks have to go, the more weight they carry, the more they tear up the roads. If they're local and they stay local, you don't need as high a quality of truck on the road. If all these guys in these sugar houses know that some of the truckers out there -- the problems, the price of gas, the price of fuel -- the closer it is, the more opportunity our low income people have to get involved in the industry of transporting the cane and stuff.

A lot of people came up with handwritten things. I came in late. So I'm just trying to put a few ideas together. But basically what I'm trying to say is: We think they're good for St. James Parish. The mill has only been closed one year. They still have a history in the parish. They still have a backbone in that area that they'd be willing to work at that mill. It would be good for the parish, and we support them coming in. Thank you.

MS. BARBARA FECSO:

Brian Grunyard.

MR. BRIAN GRUNYARD:

(Shaking had negatively.)

MS. BARBARA FECSO:

Okay. Charlie Schudmak.

MR. CHARLES SCHUDMAK:

Good morning. My name is Charlie Schudmak. I'm C.O.O. and partner in Cor-Texas Manufacturing Company, LLC. Thank you for this opportunity this morning. They say 10 percent of your customers take up 90 percent of your time. And I think that might be true for Louisiana for USDA. I've got a prepared statement. I'm going to skip over everything that's already been covered, and I'll submit it before the end of the day.

A couple of things that haven't been covered. The commitment of the supply of sugar cane large enough to cover these type of fixed costs of a sugar cane operation. Our facility processed about a million and a half tons last year of sugar cane. We didn't reach our break even point until a little after a million tons. These fixed costs are not dramatically reduced for smaller factories, although variable costs are. The cost of processing cane is very expensive. I think without leverage at the million-two level that they're talking about down the road, maybe that could work. But that's a long way at one facility. Certainly 400,000 or

500,000 tons, it's impossible to break even.

As far as capacity in the states, we do have the capacity for about another half million tons of cane in the state currently at about a hundred-day grind. One thing that we certainly wouldn't want to see come out of this -- come out of any kind of new entrant approval -- would be something that allowed over-allocation totals to be made from processors who were producing sugar over their allocation, possibly because sugar was removed from their portion for this facility, and for this facility to be able to take advantage of that. So just please keep that in mind.

As far as the negative affect on our factory, of 50,000 tons of sugar -- roughly 80 percent for each factory -- 4,000 tons would be about $1.6 million if we were in a situation where we could not market all our sugar. And $1.6 million could very easily be the difference in cash flowing in one year or not. So I just ask you to please take those reasons into consideration for our opposition to the new entrant.

MS. BARBARA FECSO:

Mr. Craig Callais.

MR. CRAIG CALLAIS:

Thank you, folks. Thanks, Barb and Dan. Before I carry on, I signed up as multiple factories, you'll notice, in the event that I ramble on for longer than five minutes. Don't hit the buzzer. I won't read from the prepared statement -- I'll submit it to you -- but certainly will make points that we think are important in this consideration.

As part of the application though, I noticed that they're requesting -- well, they're suggesting that they will have 500,000 tons of sugar cane in year one all the way up to a 1,200,000 tons in 2012. Bases the acres that they're saying will be committed, I suggest that Louisiana has never averaged 50 tons of sugar cane per acre as is being suggested in '08, and certainly not 40 tons per acre as suggested in years 2009 through 2012. I wish that were the case. Unfortunately, it is not.

My name is Craig Callais, and I represent M.A. Patout & Son, Limited; Sterling Sugars, Incorporated; and Raceland Raw Sugar Corporation; along with Patout Brothers Farming, LLC. As stated just in introduction of the factories, we operate three factories in the state of Louisiana and currently produce over 250,000 tons of sugar cane on our farmland where we actively farm. We receive sugar cane from 15 different parishes in the state of Louisiana at three factories.

We're making a public statement, we respectfully oppose the allotment of any sugar cane marketing allocation to Andino Energy. The opposition will include two parts. One is a discussion on the impact of the existing processors and producers in the state of Louisiana, along with evidence that we think should be required of Andino Energy to demonstrate that they're a new entrant eligible for an allocation.

Louisiana, in my 25 years and talking to the seniors in this industry, has been on the brink of extinction probably since its beginnings. Diseases, weather related problems, government regulations, has put this industry in jeopardy since its inception in 1790. We have seen multiple mill closures through bankruptcies, mergers, consolidations, basically ceasing operations. And we have certainly seen our share of grower operations going out of business. Our farming operation of 250,000 tons of cane was not by design. It happened because of bankruptcies and growers simply going out of business, unwilling to risk.

The beginning of the 20th century, there were over 300 sugar factories in the state of Louisiana. In 1988, that number was 21. In 1998, that number was 20. In 2008, ten years after that, we're down to 11. And mills are at risk. You can anticipate additional mill closures, either through bankruptcies, mergers, acquisitions, the like. There's a reason for it. We're in economic distress. And that reason has basically been the static price of our product. The only thing we sell primarily, raw sugar, for at least 35 years. We're not telling you anything you don't know or haven't heard before.

Part of our reasons of distress have been weather related. In 2005, we had two devastating hurricanes, Hurricane Katrina and Hurricane Rita. All sugar factories, all sugar farms throughout the state, were impacted in one way or another, some more severe than others. Some farms had 100 percent crop failures. Growers have a difficult time rebounding and recovering from these type of events.

A hurricane is bad enough. In our area, in St. Mary Parish and Iberia Parish, along Highway 14 in Vermillion Parish, they had an added insult to injury, and that was saltwater intrusion. As many folks in here experienced, and we have doctors who can tell you, you don't recover from saltwater intrusion in one year. A factory can. A factory can downsize, they can do things necessary to cut their costs to be able to accommodate a lower volume for one year. But a grower cannot. It takes multiple years to recover from a hurricane. Even more so, many years after saltwater intrusion.

The plight that we're dealing with fuel costs has been well chronicled. We all understand it. In 2006, our farm diesel for running our tractors was $1.27 a gallon. Today, it's $4.03 a gallon. Our highway diesel to bring the cane from the fields to the factory was $1.70 per gallon. Today that cost is $4.50 per gallon. A farmer with a 100-gallon fuel tank in a tractor will put $430 worth of diesel in that tractor to work the day's work.

Adding to that, things you heard already about -- the cost of fertilizer has more than doubled; the cost of pot ash has more than tripled -- all causing difficulties for the farmers. The mills are not insulated from that problem. Our cost to get sugar from the factory to the marketplace has more than tripled in the last 12 months. That impact is passed along to our growers.

Traditionally in Louisiana, we had a 60/40 split. 60 percent of the sale of the proceeds from the sale of raw sugar went to the grower, and 40 percent was retained by the mills. Over the course of time, the mills have increased the capacity of their factories in an effort to return more money to the growers, recognizing that we're going to have inflationary costs that we're going to have to keep up with knowing that the price of our raw product wasn't going up.

And you've seen that in the mills. The mills and the growers have a partnership that can't be destroyed. That relationship must maintain itself. So mills have gone up to 61 percent to the growers, 62, in some cases, it's 65 percent, as our Sterling mill does currently. We are able to do that because of volume. Without volume, we're unable to pass along these higher payments to the growers.

We continue to fight through the problems. We had conditions in the last four or five years where our major variety, 384, showed its decline. It's weaknesses with red rust. Researchers did a tremendous job, and they continue to work hard on behalf of the industry to provide more choices to the growers in planting. Higher yielding varieties. More vigorous varieties. For those too play out, and soon they'll lose their profitability. So it's up to the researchers and the scientists to continue to look for those type of advances.

We have the same in the factories. There's no magic wand out there. There's nothing on the horizon. There's nothing rumored as to what possibly could come in and save our industry with sugar.

The key to our survival is volume. It's been well known in our industry. It's a great arrangement we have with our growers. Without volume, we cannot survive. As Charlie stated, the break even point for a lot of these mills is well over a million tons of sugar cane. Last year, basically all 11 of our factories processed a million tons of sugar cane. And no one is out there saying how wealthy we are, how much money we made. Everybody is struggling. They're trying to create more revenue so they can pass some of these funds back to their growers.

Without the volume, without the million tons of sugar cane committed to each factory, those factories definitely will close. It's been demonstrated in the past and it will be demonstrated again. Any reduction in allocation that any mill receives as a result of a new entrant allocation will be devastating to those factories, and certainly definitely will cause additional factories to go out of business.

Andino Energy has requested a new entrant allocation. They're within the law to do so. When Andino Energy purchased St. James after the closing of 2006, the sugar cane that was delivered to that factory had already found homes. Those factories that received the cane spent a great deal of money getting their plants in condition to accept the cane. Not just from the standpoint of capacity, but also from the standpoint of ability to get sugar cane from the field to the factory.

At our Raceland Raw Sugar Company, one of the factories that received cane from the closed mill in St. James, in order to be able to accept the additional cane supply, we had to go into a great capital cost. We acquired trailers. We built, repaired, at a cost of $902,000 to be able to receive the cane from St. James. We installed an additional boiler to provide the capacity and steam requirements needed to process the juice from that cane at a cost of $5.1 million. And this year, we're installing evaporators to allow us to more efficiently handle the material from the crushing of that additional cane at a cost of $750,000.

In two years, total capital costs from Raceland Raw Sugars as a result of the accepting of the cane from the closed factory of St. James was $6,752,000. This expansion and these costs took place in anticipation of having this cane. If we had any notion that St. James factory would reopen in such a short period of time, a period of time we can certainly not amortize the cost that we put in, we would never have undertaken those type of costs. That type of expansion.

Andino Energy is owned by the Santacoloma family. They have invested a great deal of money in south Louisiana. As it's been stated, they own St. James Sugar Factory, they own Iberia Sugar Company -- both closed factories -- and they own the St. James Syrup Plant in Lacassine, Louisiana.

From the very beginning of their presence in Louisiana, their business plan has been ethanol. It's been published in the newspapers. It's been well chronicled in every acquisition, every move they have made, that their interests are ethanol. And we applaud that. We welcome it, and we support it. There's significance in the name, Andino Energy. It is proposed to be an energy company producing ethanol. Our three companies, and I'm sure many of the other factories in the state of Louisiana, welcome their presence.

We welcome to work with them in their efforts to produce ethanol. If they can do it economically and if it works for them, it'll certainly work for everybody else. There is a partnership that can be developed through the sale of molasses and bagasse to produce ethanol, all of which would support additional funds to the grower. Everything that we're trying to achieve. Keep the grower in business. This partnership between the mill and the growers.

We offer this as evidence for Andino Energy that they should be given an allocation as a new entrant. First, Andino Energy should demonstrate that the St. James raw sugar factory is in operable condition for the 2008 sugar cane crop. They should demonstrate they have sufficient work force capable of operating the factory during the 2008 crop. That is has all of the environmental permits as necessary in order to operate the factory during the 2008 crop. That it has enforceable contractual obligations for the delivery of sugar cane in quantities sufficient to feasibly operate during the 2008 crop and has a market for the sugar cane product.

Commodity Credit Corporation should request and require an economic feasibility study as to the propriety of allowing a new entrant. The feasibility study should be provided by a qualified entity well all familiar with Louisiana raw sugar industry. It is respectfully requested and suggested that Louisiana State University has readily available all the disciplines necessary for the production of such a feasibility study, as well as abundant historical knowledge about the Louisiana raw sugar industry. Such a study would show the impact on the existing Louisiana sugar factories and producers.

In conclusion, for all foregoing reasons, it is respectfully requested that the request by Andino Energy for a marketing allotment be denied. Thank you.

MS. BARBARA FECSO:

Gerald Wood.

MR. GERALD WOOD:

Thank you. Gerald Wood. Welcome, Incorporated. I'm a sugar farmer from St. James, about eight miles from the factory. The main thing that I want to see here is competition. There's nothing wrong with another mill coming in, or an existing mill. We all need to create competition. It's always been good for business.

The other thing is, the dead end 20-cent price. I've been in the business all my life. We have adjusted over the last 28 years. And at this time, they're still saying we're gonna get 28 cents. Why not accompany them as further visions? Thank you.

MS. BARBARA FECSO:

Dan Safford.

MR. DAN SAFFORD:

I'm Dan Safford. I'm a retired FSA employee. And I came out of retirement to tackle this job. I work for Andino Energy. I've been trying to secure sugar cane for the sugar mill.

In working with the Ascension, St. James, St. John, and St. Charles farmers for the past 25 years. I know these guys. They're hard working farmers, and they're good people. They want this mill to reopen. It's going to be more efficient for them, and for the community. This is gonna bring big bucks back into St. James Parish. They need it.

I don't have a big prepared speech. I jotted some notes down to make some comments on some different things that were said. I've been working with over 70 producers in the last couple of months. Most of the people that are speaking here today are mill people, or are speaking on behalf of the mill. Now, there are farmers that are speaking here, too. But this is more mill-oriented. This whole thing is mill-oriented.

It's kind-of ironic that last year when they made a run at reopening St. James sugar mill and purchasing it, some of the same people that were for it and pushing to do it, here today are against it. It's kind-of a farce.

I mean, I've worked with the farmers. I've worked with the sugar mills. There's good people in farming. There's good people in mills. But this is about the farmers. And I know the two gotta work together. But this is needed. This is the same mills that fought to close St. James. And not saying anything bad about it, they were trying to do a business thing to improve their position. I understand that.

But in doing that, the farmers that owned this co-op were the ones that were hurt.

So you know, this is why I came out of - I don't want to say came out of retirement. But this is why I took this job. Because I believe it's needed, and I believe in these farmers.

And a farmer is a farmer. He's not a politician. That's why you don't see a bunch of farmers here today. The farmers that you do see here today that are strictly farmers and not tied to the mill are a lot of the farmers that went to St. James. And they know what they went through. A lot of the growers that were at St. James and left, yeah, they had to find another home. And they went to other mills because they had to. Somebody had to grind their cane.

St. James is a good mill, and it's always been a good mill. A lot of these farmers didn't sign contracts. So a lot of them don't have a written signed contract at another mill. They go there. And you talk to a lot of them, they say, "Look, I'm going to send you some cane. I'm going to send you some cane, but I ain't signing nothing. Whoever sends the trucks is gonna get it." So with transportation as it is today, this mill is in a strategic location with the river, the rail, to be a lot more efficient than some of these other mills.

In talking with these growers that I've talked to, a lot of them have expressed concerns already that some of the mills are gonna start assessing them a transportation fee if they gotta truck it too far. Some of the mills are a little more hardball. Play a little more hardball, I guess, than other mills. And that's just different people's personalities as to how they operate.

This mill needs to reopen. They need the allocation. The farmers need it. The farmers want it. The farmers' big concern, aside from the increase in money that they would make if the mill opened, this is a big insurance policy for them if it opens. You know, years ago, they used to start grinding around the 12th or middle of October. Well, today they're talking grinding's gonna start the end of September. The 22nd or 23rd. So who takes the loss with the early grinding? I mean, the mills' getting as much sugar as they can out of it because of Polado, but you see a pretty big yield drop in that early Polado cane. You gotta get it out earlier.

The same thing if we have a freeze. And they talked about a hundred-day grinding. Well, when you start in September, you gotta put Polado out in August, and you run into January, we were blessed for last year in that we didn't have a hard freeze like the year before, so the cane didn't sour. But if we do get a hard freeze, then the cane sours, and you still looking at grinding in the middle of January, what's gonna happen? The mill's going to close. The mill will lose a little revenue, but the farmer's the one that's gonna get stuck.

So with that, I'm gonna close. I'm not gonna carry on too much with anything else. But I want to say that of the 70-plus growers that I've talked to, not one grower has said, "Dan, I hope that mill don't make it." Every one of them is behind it.

A lot of them would like to come here. Some of these growers are scared. I'll be honest with you. Some of these growers are intimidated by the mill people that they go to. They're intimidated about retaliation. If I pull some cane, they're gonna come back and go to my landlord. They're gonna do this. They're gonna do that. You can't change life. That's some people's personality. But with the cane that they have now, they can easily grind 500,000 tons. And once it grinds this year, they could hit 1.2 very easily. I thank you.

MR. DAN COLACICCO:

Are there any more comments? We want to give everybody the opportunity.

MR. RANDAL JOHNSON:

I'm Randal Johnson. I represent the group Southern Association of Agriculture and Forestry Endeavors. I also have been working with the sugar mills in the state.

And some of you know, for almost 20 years I served the state in the Department of Agriculture and Forestry under our previous commissioner. I left two years ago as the deputy commissioner of agriculture.

For that 20 years, I also sat on the state emergency response commission. And one thing that we noticed constantly, as the environment changed, as the weather changed, was that we frequently had to work with FSA, with USDA, with our governor, in order to submit letters to Washington because of different circumstances that befell the state. And when it came to trying to harvest our agricultural crops, particularly when it came to harvesting sugar cane, because the harvest season there coincided with hurricane season, with the rainy season, with also the droughts that we had.

Very particularly, we were trying to keep the cane in the field later in the year in order to maximize your sugar and get it out where you folks could be home prior to Christmas there. That fell upon the mills there to be maximizing their production.

We worked with folks for a number of years as mills would close throughout the state, as there would be advances in technology, as people would attempt to improve of what they were doing from those mills. And we saw that St. James tried to stay open for a number of years, but was saddled with debt that they were unable to overcome.

They don't have that opportunity or that struggle right now. They have the opportunity there to be wholly owned and not have to make that debt payment, but can also work to provide that community around it with a mill for its sugar.

It's the only sugar mill in the state that's completely surrounded by sugar land. It's the closest sugar mill in the state to one of our two sugar refineries, which sits just across the river from it. And we know as a number of you in the room and folks who were in here appeared in Baton Rouge last fall and through the early part of this year seeking bonds to be issued by the state, allowed to be issued by the state, for the production of what Cargill represents will be its largest sugar refinery in the nation, that the one reason that was endorsed by the state was because it offered competition in our agricultural endeavors that we had here. It offered competition there where we could hopefully see there would be some increase in price that the farmer would be able to get for his product.

And I think that those farmers around St. James have also seen that what's offered by Andino is competition in the forms of premium payments as being offered to them for bringing their sugar there to St. James. So we are putting competition back in the marketplace for a number of farmers.

We know the Bunkie farmers for a half dozen years, if not more, have been fighting the increased costs that they have for transporting their cane to two mills in south Louisiana. While this isn't going to benefit those Bunkie farmers, we can learn from the struggles that they've had. That they're having to share an increased cost of hauling their cane there. Craig Callais let us know again, reminding us of what the increased costs have had with both the input of diesel on the farm at tax-free, and also on the roadways.

We have an opportunity for a mill to come in as a new entrant. A mill that's got more than 60 years in history. A mill that has been properly maintained throughout its history. If you would visit that mill, you would see that it has been properly prepared to reopen this fall. That this mill is giving those farmers the opportunity to not only have an increased income through the payment for the sugar, but also to reduce their costs of production. To be able to reduce their costs of hauling. To be able to keep their sugar in the field a little bit longer.

And that impacts not just those St. James farmers, but sugar farmers throughout the state that won't have competition for that mill space that it's going to take to rush their crops to harvest that's going to impact them not just this year, but in future years. But to rush those crops to harvest, allow them to get a greater sugar weight from their crop, to allow us to be protected additionally if we have additional times of hurricanes or storms that are going to limit the production capacity we have. And that's before we even consider the new development of the state of Florida and what they're doing by basically taking one half of Louisiana's sugar production -- an amount equal to one half of Louisiana sugar production -- out of the marketplace. And what's that going to mean?

We have suffered. We've struggled in Louisiana for a number of years with the allocations. And while we haven't made our allocations, haven't made those quotas in a few years because of hurricanes and such, we've also looked at what could we do to increase our opportunities. Well, now I think that we will find every mill in the state joining together to come to you to say, "What can we do to get some more of that allocation? Can we expand with these changing weather conditions to fill up that space between Bunkie and the Gulf Coast that isn't in sugar production now with sugar production that will allow us to continue to feed the marketplace we've had in Louisiana and in this nation?"

We know that basically that Florida extraction is going to be 9 or 10 percent of the removal of sugar from the marketplace in this nation. Is that a market that we, in Louisiana, can join together with all of our mills here being able to enjoy an increased capacity in fill? But I wanted to offer those comments as someone who has been working in this state on behalf of our agricultural producers for, you know, two and a half decades there. And I appreciate the opportunity.

MR. DAN COLACICCO:

Any more comments?

MS. BARBARA FECSO:

Any questions?

MR. WILL TERRY:

I have a question. When will this determination be made?

MR. DAN COLACICCO:

The final determination will be made when we make the allocations for FY '09. What we did in the past, we had a process where we made a conditional approval. But then the applicant didn't pursue it, so we didn't go any further. But it will certainly be made - we normally make the announcement in August.

MS. BARBARA FECSO:

As soon as possible. We're going to make it as soon as possible to get the growers some certainty.

MR. DAN COLACICCO:

Well, we've heard a lot of things here. And we'll take this back and think over it and maybe talk to the applicant more about some of the things. But we don't -- I don't know that we have a deadline.

In terms of process, Barb and I are full-time staff professionals. Bureaucrats. So any sugar decisions, USDA, are made at some of the highest levels. So we'll package it and take it up and try to get a decision made as soon as possible.

One thing I think we will be asking for is - I would think, because I've heard it from both sides - is when does a decision have to be made? And in order to have a reasonable expectation of what's going to happen with this upcoming campaign, when does USDA have to make a decision? See, I turned it around into a question. Any other comments?

(No response.)

DAN COLACICCO:

Well, we appreciate your time and your effort. I must say, USDA is wholeheartedly into seeing a future for the Louisiana sugar cane industry. We do have comments. The comment period does close today. But you all have never been bashful in the past of giving us comments. And don't be in the future.

I mean, we are very concerned here. We saw a major, major sugar company in Florida just decide to get out of business. Obviously, we're really concerned about the future of sugar overall in Louisiana. So if there's anything you can do, let us know. Anything we can do to facilitate your issue, Barbara is always available. I am, too. But Barbara spends a good portion of her time and knows many of you personally in Louisiana. Thank you very much. We appreciate your time this morning. Thanks for coming.

(Hearing was ended at 10:37 a.m.)

COURT REPORTER'S CERTIFICATE

I, Lesley H. Crochet, Certified Court Reporter for the State of Louisiana, duly commissioned and qualified in and for the State of Louisiana, authorized by the laws of said State to administer oaths and to take the depositions of witnesses, hereby certify that the foregoing hearing was taken before me at the time and place hereinabove stated; said hearing being recorded in my presence, and thereafter transcribed at my direction; that the foregoing fifty-three pages contain a true and correct transcript of the hearing as thus given.

I further certify that I am not of counsel or related to any parties in this cause, or in the employ of any of them, and that I am in no wise interested in the result of said cause.

WITNESS my hand and official seal this 28th day of June, 2008.

Lesley H. Crochet, CCR
LOUISIANA LICENSE NO.20079

From: Roddy Hulett [roddy.hu@lagreenfuels.com]
Sent: Monday, June 30, 2008 9:57 AM
To: Fecso, Barbara - Washington, DC
Subject: St James allotment request
Dear Barbara,

Our sincere thanks to you and Dr. Dan for the way in which you conducted the above hearing last Thursday.

One of the points that we could have stressed more is the fact that last season was the driest on record, which means approximately 15% less material arrived at the factories for processing, and the length of the season was still too long, with too early starts and exposure on the back end to freezing temperatures. 15% additional material means approximately 15 days more of crop, which is totally unacceptable to the farmers. This indicates to us that even with the money spent on expansions, there is not adequate milling capacity in the area, and this has been supported by every farmer that we have spoken to. Any lengthening of the crop negatively impacts the farmer and not the processor.

We will be forwarding to you as soon as possible the commitments that we have obtained from growers.

It would be a great help to us in our staffing, and other preparations if we were to get a preliminary indication of the Department's position on this matter.

Best regards,

Roddy

Louisiana Green Fuels
Roddy Hulett
Chief Operations Officer
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Cell: (225) 806-0782
Fax: (337) 588-4493
14342 Walker Kimbrough
Lacassine, Louisiana 70650, USA

June 26, 2008

My name is Will Terry. I am a grower. Thank you for the opportunity to provide you with some information about my farm. I'm going to speak in opposition to the application and ask that you consider the following.

I farm 1,600 acres in St. Mary Parish, Louisiana. Louisiana history has been to close smaller less efficient factories and move to larger more competitive factories. The free market will determine where growers move their sugar cane. When South Louisiana Sugars Cooperative closed its remaining factory, we the growers and millers in the Teche area were not impacted.

However, the law says that a new entrant allocation is taken from everybody with in a state. This will impact all farmers in Louisiana. It's wrong. My fellow growers and I need to sell every pound of sugar we produce to pay for the high cost of fuel and fertilizer.

The Louisiana sugar cane industry initiated and supports a change in legislation to allow free movement of allocation by growers between viable processors. This mechanism should be allowed to work. I urge you to deny this application.

Thank You

Will Terry

June 26, 2008

My name is Warren Harrang. I am a grower from Ascension Parish, Louisiana. Thank you for the opportunity to give you a Louisiasna growers' perspective as you weigh the application for cane sugar markcting allocation for the 2008 crop year and beyond. I'm going to speak in opposition to the application and ask that you consider these requests.

As a grower, I need a home for my sugar cane and a fair price for my sugar. I wish we still had 100, 40, or even 20 sugar factories, but we understand economies of scale and recognize that fewer larger factories are the future.

If the Secretary sees fit to grant this application then it should take the necessary steps or make the grant contingent upon applicant's ability to:

1. Demonstrate an adequate and reliable supply of sugar cane. The Department should not rely on verbal or letters of commitments from producers. Signed contracts and request for allocation transfers should be secured.

2. Demonstrate that the St James Factory is a viable processor with a sufficient work force to repair and operate the factory. The Applicant should not be allowed to fill a sell potential allocation or fill from other sources as this will circumvent the fair and equitable redistribution as prescribed by the law.

3. Demonstrate that the venture is self sufficient and can operate without continued inputs of capital from wealthy owners.

I humbly ask that the Secretary consider these request in his determination.

Thank You

Warren Harrang

June 26, 2008

My name is Charlie Schudmak. I am a factory owner/operator from White Castle, Louisiana. Thank you for the opportunity to provide you some perspective from a Louisiana miller as you consider the application of the Andino Energy Enterprises, L.L.C., (Andino Energy) for cane sugar marketing allocation for the 2008 crop year and beyond. I'm going to speak in opposition to the application and ask that you consider the following.

When the 2002 Farm Security and Rural Investment Act (Farm Bill) was signed into law it provided for three tests that must be applied to any applicant asking for a new entrant allocation. First the law seeks to assure that any new entrant is a viable processor that has an adequate supply of sugar cane. Second, it seeks to confirm the new entrant has a facility capable of processing sugar cane into enough raw sugar to fill an allocation. Third, it provides that before a new entrant application is granted the Secretary must consider any adverse effects the granting of an allocation will have on existing sugar cane processors and producers.

Today, our understanding is that there is very little sugar cane committed to be delivered to the St James Factory, certainly not enough to operate a factory profitably. Since the closure of the St James facility by the Cooperative, its growers have found homes at neighboring factories. Also, per the growers request the allocation for the sugar has been assigned to those Factories. Granting a new entrant application would potentially destabilize these factories that have made significant investments in reliance on this closure.

To be a viable processor a factory must have a committed supply of sugarcane. Either through contracts and economics a factory must be able to demonstrate an adequate supply of sugar cane. Today, the smallest Louisiana Factories or processing over 900,000 tons of sugar cane. A 1994 study by Dr. Salassi and Mr. Champagne concluded that economies of scale exists in the Louisiana sugar cane processing industry and that current expansion in capacity is economically warranted and should result in more competitive and financially viable processing industry.

Last year 11 Factories crushed 13,372,561 tons of sugarcane and produced 2,834,210,739 pounds of raw sugar. Based on a last year's performance and a 100 day campaign all of the current Louisiana facilities could crush 13,904,500 tons of sugar cane. There is ample capacity to process the entire Louisiana crop. Furthermore, let's look at the situation for the lower river parishes. Factories in Lafourche, Assumption, Iberville have a daily collective capacity of 58,477 per day or could process 5,847,700 tons in 100 days.

The second test is to have a facility capable of processing sugar cane into marketable raw sugar. Sugar cane factory closures are usually permanent. While probably technically feasible, the ability to hire a qualified labor force, make repairs and reopen a closed facility is highly suspect.

Last, the legislation provided that the adverse effect on other process must be considered. History has shown that smaller mills will not be economically feasible. The law requires that a new entrant allocation be taken from all viable processors in a state where applicable. In this case, you have a factory that closed for economic reasons, mainly cane supply. Its growers migrated to nearby factories and the allocation distributed according to the grower's movement. The majority of Louisiana's factories received none of the growers from the closed factory and none of the allocation. And yet all viable processors will lose some of their allocation if this new entrant is granted.

The legislation was clear in that: A new entrant must be a viable processor. Capable of paying its growers a fair price and sustain itself as a sugar cane processor. A new entrant must be able to show a sugar cane supply large enough to fill its allocation and be economically feasible. As in the Arizona Sugar Company case, a new entrant must not be allowed to sell over-allocation sugar to permit another processor to meets its allocation nor may a new entrant be able to buy over-allocation sugar to meet its allocation. This clearly violates the intent and sprit of the law to redistribute allocation in a fair and equitable manner.

Permitting this new entrant will have an adverse effect on other processors. By way of example, an average Louisiana Factory with 8% of Louisiana's production could lose the ability to market 4,000 tons of raw sugar. Today with the higher cost and many growers on the fence, the estimated value of that over allocation sugar would be $1.6 million dollars. Ladies and Gentlemen, that $1.6 million dollars might be the difference in a grower staying in business or leaving the farm.

I respectfully ask you to deny this application

Thank You

Charlie Schudmak

M. A. Patout & Son, Ltd.

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PRODUCERS OF
SUGAR • MOLASSES • SYRUP

ESTABLISHED 1825

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via
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June 26, 2008

Ms. Barbara Fecso
Dairy and Sweeteners Analysis Group
Economic Policy and Analysis Staff
Farm Service Agency
USDA
1400 Independence Avenue, SW, Stop 0516
Washington, DC 20250-0516

RE: Public Hearing
Andino Energy Enterprises, L.L.C. application
For a sugar cane marketing allocation for 2008
Crop year, and thereafter

Dear Ms. Fecso:

M. A. Patout & Son, Ltd., Sterling Sugars, Inc. and Raceland Raw Sugar Corp. respectfully oppose the allotment of any sugar cane marketing allocation to Andino Energy Enterprises, L.L.C. ("Andino Energy"). This opposition will include in Part I a discussion of the impact on existing sugarcane producers and processors. It will also include in Part II comments as to evidence which should be required of Andino Energy in order to demonstrate, as a new entrant, eligibility for a marketing allocation.

Part I. The Impact on Existing Cane Processors and Producers.

The Louisiana sugar cane industry has been in existence since the mid 1790s. For most of that time the industry has been on the brink of extinction. With respect to producers, abstracts of land titles tracing the legal history of farmland in the industry from its beginning to the present clearly show periods of time wherein the industry struggled for survival, followed by brief periods of profitability, and then periods of time during which there were clusters of bankruptcies. Typically, the bankruptcy clusters are in approximately twenty year cycles. While the cycles in the last sixty or so years have lengthened, bankruptcies have nevertheless occurred in regular intervals and in clusters. Currently, (2006-2008) bankruptcies, and/or cessations of businesses by producers have increased at an alarming rate.

With respect to processors, at the beginning of the 20th century there were over 300 raw sugar factories in Louisiana. In 1988, only twenty years ago, there were twenty-one (21) raw sugar factories in Louisiana. In 1998 there were twenty (20) raw sugar factories in Louisiana. In 2008 there are only eleven (11) raw sugar factories in Louisiana. It is reasonably anticipated that at least one raw sugar factory will be required to cease operations in the relatively near future for reasons set forth hereinafter.

As can be seen by the foregoing, the Louisiana sugar industry has been experiencing very serious economic difficulties over the years, which difficulties have become exacerbated very recently, and continuing to the present. The forecast for the future is also bleak.

The reasons for the economic distress are numerous, and with few exceptions, apply equally to producers and processors. They are as follows:

1. The first reason for economic distress in the industry is the price of raw sugar. The price of raw sugar has remained static for over thirty-five (35) years, hovering at about twenty cents per pound. There are probably very few industries, if any, in the United States which have survived and remained in business wherein the commercial value of its product has remained basically the same for thirty-five (35) years. While during that same period of time the consumer price index has gone up. It is undeniable that the cost of goods and materials necessary to operate a business either as a producer or a processor has gone up with the ever increasing consumer price index, while the value of the end product in the Louisiana raw sugar industry has remained basically the same. It is nearly impossible to understand how the Louisiana raw sugar industry remains, but it does, for the reasons set forth hereinafter.

2. The second reason for economic distress in the industry is catastrophic weather. In 2005, there were two (2) devastating hurricanes which damaged almost every sugar cane crop to some extent. Some producers' crops were severely damaged, and some were totally destroyed. The damage was caused by wind and by salt water intrusion. Crops damaged by wind do not fully recover in one year, but by the second year it has usually recovered. Crops damaged by salt water require a longer period of time to recover. During recovery for any cause, crop yields are below average resulting in less product available for sale by the producer, and hence the processor. Nevertheless, the cost to produce the crop continues to increase at the inflationary rate. The cost to process the crop is reduced only proportionately by the amount of time required to complete the harvest season based on crop volume. However, the idle season costs to prepare the raw sugar factory for the harvest season also increase at the inflationary rate. The end result is that for the year of the hurricanes and for a period thereafter, the production of product is reduced while costs increase, resulting in reduced income for producers and processing. There is a special category of cost increases which requires special discussion here. That special category is the cost of fuel for both producers and processors. In 2006, the cost of diesel fuel, that which is used for farm machinery, was as follows: (a) off road fuel - $ 1.27 per gallon; (b) highway fuel - $ 1.70 per gallon. In 2008, the cost of diesel fuel is as follows: (a) off road fuel - $4.03 per gallon; (b) highway fuel - $4.50 per gallon. Therefore, typically it now costs approximately $430.00 to fill a tractor for a single work day in the field. The result is that producers cannot afford to husband the land in the manner in which they have historically done so. Reduced field work results in a reduction of crop yield and a reduction in income. A similar example exists with fertilizer, which is manufactured from energy products. Typically, average fertilizer costs in 2006 were $219.00 per ton for nitrogen/ $264.00 per ton for potash. In 2008, that average cost was $350.00 per ton for nitrogen and $$475.00 per ton for potash. As a result, producers are applying less fertilizer, with the result that yields are less, and income is likewise reduced. Fuel costs are also an important factor in the cost of getting the product, raw sugar, to market. In

2006, the cost of shipping sugar from: (a) M.A. Patout & Son, Ltd. was $5.75 per ton; (b) Sterling Sugars, Inc. was $5.50 per ton; and (c) Raceland Raw Sugar Corp. was $8.36 per ton. In 2008, the cost of shipping sugar from: (a) M.A. Patout & Son, Ltd. was $ 15.00 per ton; (b) Sterling Sugars, Inc. was $ 14.75 per ton; and (c) Raceland Raw Sugar Corp. was $10.28 per ton. Yet the price of raw sugar remained static, as indicated above.

3. The increased costs as a result of the two recent hurricanes were much more damaging to the producers than they were to the processors. Processors are able to recover from hurricane damage by the next year, while the producer suffers the effects for more than one year. Also, the dramatic increase in fuel costs are absolutely devastating the producers because the planting, fertilizing and cultivating of sugarcane is extremely energy dependent. Historically, the custom of the trade in the Louisiana raw sugar industry has been that the producer receives sixty percent (60%) of the value of the sugar produced and the processor receives forty percent (40%). In order to allow the producers to survive, the processors have reduced their share of the value of the sugar produced in order to increase the share of the producers. In addition, it has been necessary for land owners to reduce the historic landowner rent share of one-fifth (1/5) of the value of the crop to something less in order to keep the producer in business. The result is that neither the landowner nor the producers are receiving the return on investment which has been the custom of the trade in the Louisiana raw sugar industry for over 200 years.

As can be seen, the producers are in extremely dire circumstances, and are being kept in business, in part, by unilateral action of landowners and processors. However, the processors are suffering from the same inflationary costs indicated hereinabove while the price of raw sugar remains static. The only way that the producers have stayed in business in spite of the facts shown above is because of the rugged individualism and resourcefulness of the Louisiana sugarcane farmers, the ingenuity of the scientists in the industry who have developed more productive varieties of sugar cane which have greater yields. However, the new varieties historically and invariably decrease in yields over time, and it rests with fortune as to whether a new variety will be developed consistently in the future to replace the latest variety when its yield declines below profitability. Finally, to date, volume increases have been as a result of better farming methods and more efficient machinery. However, that avenue of progress has been maximized and nothing new has come forth in the recent past, nor is anything new in that area on the horizon, or even rumored.

4. The key to survival then is volume. With volume comes economy. The greater the volume, the lower the unit cost of the end product, the pound of sugar, for after all is said and done, the producers and the processors are relegated to sharing the value of the raw sugar on a basis such that both can survive. Neither can survive without the other. It is a dependence that cannot be destroyed.

As stated, there are only eleven (11) raw sugar factories left in Louisiana. Each of those factories process at or above one million tons of sugarcane each year. No factory can break even with any amount of sugar cane less than one million tons per year. It was also stated that it is anticipated that a sugar factory will go out of business in the not too distant future. That is because with the current trend of increasing costs and static raw sugar price, there will not be enough sugarcane such that every factory will have one million or more tons per year. The reduction in volume of sugar cane is due to producers going out of business because of increased costs (fuel) or are changing to alternate, less profitable but less costly crops, resulting in a reduced gross domestic product for the industry and the state. A reduction in allocation of sugar to an existing factory in order to give an allocation to a new entrant factory will undeniably cause the closing of one or probably two existing factories for the reasons stated above. The most specific and direct reason is that as volume at a factory goes down, unit costs go up, profit goes down, and there is less to share between the producers and processors. The result is more producer bankruptcies followed by more factory closings. The Louisiana raw sugar industry simply cannot stand volume reductions at raw sugar factories. Volume is the last protection against producer bankruptcy.

5. There is also a particular impact on certain processors in the event that the allocation requested by Andino Energy is granted. Andino Energy requests that it be granted an allocation so that it may reopen what was formerly St. James Sugar Cooperative, Inc. (St. James), which it purchased after its closure in 2006. In order to accommodate the producers who had previously shipped sugarcane to St. James, the remaining processors in that area purchased equipment and made capital improvements in order to process the cane that was formerly processed at St. James. While the extent of the expenditures made by other processors in order to accept the St. James sugarcane is unknown to the undersigned, the expenditures made by Raceland Raw Sugar Corp. in order to accept a portion of the St. James cane were as follows:

(a) acquire trailers, in order to haul the cane, at a cost of $902,000;

(b) install an additional boiler, in order to have sufficient steam capacity to handle the additional sugarcane, at a cost of $5,100,000; and

(c) install additional evaporators, in order to process the sugarcane, at a cost of $750,000.

Therefore, the total cost of the capital improvements incurred by Raceland Raw Sugar Corp. in order to accept the St. James sugarcane was $6,752,000. The capital improvements were also undertaken in order to increase the volume at the factory, thereby reducing the unit cost per pound of sugar, all in order to increase the value of the producers' share of the value of the end product. Certainly, it is understood that such a great capital improvement cost cannot be amortized and recovered in the short period of time since St. James was closed and acquired by Andino Energy. Also, the capital improvement cost would never have been undertaken had there been any notion that there was a risk of a reduction in volume immediately after the costs were incurred, especially in a Louisiana sugar industry environment where raw sugar factories were being systematically closed because of lack of sufficient volume of sugarcane in order to operate at a profitable level. In the event that the allocation is granted to Andino Energy because of the proximity of its St. James factory to Raceland Raw Sugar Corp, and since there are only six raw sugar factories from which the allocation given to Audino Energy can be taken due to the economy of the logistics in the raw sugar industry, the reduction in volume at Raceland Raw Sugar Corp. will be catastrophic to all of the producers who deliver sugarcane to Raceland Raw Sugar Corp. and in all probability will be proportionally damaging to every other processor similarly situated. The damage to the Louisiana raw sugar industry in that entire area of the industry will be extreme, if not fatal to some processors.

6. There is another equitable reason why any adverse impact upon Louisiana producers and processors should be avoided by refusing to grant an allocation to Andino Energy. Andino Energy is owned and operated by individuals who are from Columbia, South America who have come to the United States and have made large cash investments in facilities which have historically been involved in the Louisiana raw sugar industry. They have purchased the Iberia Sugar Cooperative, Inc. raw sugar factory, the St. James raw sugar factory and the Lacasine Syrup factory, all for the published purpose of producing ethanol. Apparently, then these enterprises are for the avowed purpose of producing ethanol, not raw sugar. Since the production of ethanol is the business plan of these enterprises, then their effort should be focused on the purchase of bagasse and molasses from the existing eleven raw sugar factories for the production of ethanol since there is an abundance of those byproducts available in the Louisiana raw sugar industry. It is entirely feasible that Andino Energy (there is significance in the name) can quite successfully pursue its business plan by purchasing bagasse and molasses from the existing raw sugar factories, and by that purchase enhance the profitability of the existing raw sugar factories, instead of insuring their demise, as well as that of many producers, by decreasing the crucial volume of sugarcane so very necessary for the survival of those existing producers and processors.

<u>Part II. Evidence CCC Should Require from a New Entrant in Order to Demonstrate Eligibility a Marketing Allocation.</u>

It is respectfully recommended that:

1. Commodity Credit Corporation require an economic feasibility study as to the propriety of allowing a new entrant, Andino Energy, to obtain a sugarcane marketing allocation. That feasibility study should be provided by a qualified entity, well familiar with the Louisiana raw sugar industry. It is respectfully suggested that Louisiana State University has readily available, all of the disciplines necessary for the production of such a feasibility study, as well as an abundant historical knowledge about the Louisiana raw sugar industry. Accordingly, Andino Energy should be required to commission Louisiana State University to produce a report as to the feasibility of granting a marketing allocation to Andino Energy.

2. As stated, Andino Energy has previously acquired another raw sugar factory in Louisiana. Iberia Sugar Cooperative, Inc., and a sugar cane syrup factory in Lacasine, Louisiana. Andino Energy should be required to file a report in these proceedings as to its plans for the use of Iberia Sugar Cooperative, Inc., and in particular, as to whether it intends to apply for a marketing allotment for that factory.

3. The St. James raw sugar factory has been closed since 2006 and has not been operated as a raw sugar factory since that time. Andino Energy should be required to demonstrate that the St. James raw sugar factory:

a) is in operable condition for the 2008 sugar cane crop,

b) has a sufficient work force capable of operating the factory during the 2008 crop year,

c) has all of the environmental permits which are necessary in order to operate the factory during the 2008 crop year,

d) has enforceable contractual obligations for the delivery of sugar cane in quantities sufficient to feasibly operate during the 2008 crop year, and

e) has a market for the cane sugar product.

In conclusion, for all of the foregoing reasons, it is respectfully requested that the request by Andino Energy for a marketing allotment be denied.

M. A. PATOUT & SON, LTD.

STERLING SUGARS, INC.

RACELAND RAW SUGAR CORP.

By: ______________________________
Craig P. Caillier

June 23, 2008

Testimony of Mr. Ryan Weston

Representing

The Members of the
Florida Sugar Cane League,
Rio Grande Valley Sugar Growers, and
Hawaii Sugar Farmers

Before the
Farm Service Agency
United States Department of Agriculture

Regarding the Consideration of
New Entrant's 2008 Crop Cane Sugar Marketing Allotment

June 26, 2008

INTRODUCTION

My name is Ryan Weston. I am pleased to present this testimony on behalf of the members of the Florida Sugar Cane League, the Rio Grande Valley Sugar Growers, and the Hawaii Sugar Farmers, regarding the implications that the granting of cane sugar marketing allotments to new entrants will have on the above named interests. My contact information is appended to the end of this testimony for your information.

We are pleased that the Department of Agriculture has convened this hearing today to review the pending application of Andino Energy Enterprises, L.L.C. (Andino Energy) for a cane sugar marketing allocation for the 2008 crop year.

We believe that the application submitted by Andino Energy must be denied at this time. The noticed application raises several issues about how the Department will consider and address the many factual and competitive issues raised by this application. This is not the first such applicant asking for allotment based on meeting the necessary statutory and regulatory requirements in only a speculative way. Based on the past experience with such speculative new entrant applications, we urge the Department to carefully weigh these speculative claims, and the adverse impacts the application would have on other industry participants in connection with this application as well as those applications that may be made in the future for cane allocations and allotments.

In response to your request, we will also offer comments on the evidence that CCC should require from a new entrant to demonstrate eligibility for a marketing allocation in the future.

BACKGROUND

When Congress passed and the President signed the Farm Security and Rural Investment Act of 2002, the sugar marketing allotment provisions of the Agricultural Adjustment Act of 1938 were amended to provide for "new entrant" processors to obtain processing allotments. Congress wisely provided that these new entrant allotments may only be granted under narrowly specified circumstances.

The legislation seeks to assure that any new entrants are viable companies that are processing sugarcane and that can demonstrate a real world ability to produce and market sufficient raw cane sugar to fulfill the allocation.

In the case of sugarcane, the law requires that the Secretary of Agriculture shall take into consideration any adverse effects that the provision of the allocation or allotment may have on existing cane processors and producers.

These adverse effects must be carefully considered and weighed before the Secretary grants an initial allocation to any new entrant processor or an initial allotment to a new entrant State.

THE PENDING APPLICATION SHOULD BE DENIED

At the present time, we are opposed to the granting of allotment to Andino Energy pursuant to their application April 29, 2008 and as noticed in the Federal Register.

It is our understanding that Andino Energy has requested an allotment for raw cane sugar in Louisiana of 50,000 short tons raw value (STRV) for crop year 2008, with that allotment expanding to 120,000 STRV by crop year 2012. Our understanding of the status of the applicant is that as of today there is no sugarcane processing facility that is in operation by Andino Energy. There has been no demonstration that the applicant has a certain, existing supply of sugarcane to supply the processing facility. There has been no demonstration of the applicant's ability to harvest and transport the sugarcane, and to process, transport, and market the cane sugar that this venture may produce, with all that these enterprises entail.

Based on the facts as we know them, we believe that this venture presently fails the tests contemplated by Congress and the Department in the authorizing statute and the implementing regulations. We will address some of these tests specifically later in our testimony. The granting of any allotment allocation to Andino Energy at the present time would be premature, contrary to the requirements of law, and adversely affect existing processors and producers.

We understand that there has been some discussion of deferring the long-term decision on the Andino Energy application until a later date, but in the mean time granting the applicant a "provisional" allotment for crop year 2008. Presumably, some subsequent review by the Department in the next 3 months, prior to the beginning of crop year 2008, would determine whether the applicant meets the appropriate statutory and regulatory requirements.

Without a subsequent, duplicative hearing on the application, this course of action will deprive other interested industry participants of the due process envisioned in the statute. Commercially, the granting of a provisional allotment will announce that the government intends to take allotment away from existing cane processors in Louisiana and grant it to a speculative business venture. The adverse effects that such a policy will impose on viable, existing cane processors and producers will be manifold, and are addressed in some detail below.

We are strongly opposed to such a course of action. The administrative invention of a “provisional” allotment is not authorized in or contemplated by the statute. In June of 2003, such a provisional allotment was granted to the Arizona Sugar Factory in the amount of 50,000 tons for the 2004 crop. We opposed the granting of the Arizona Sugar Factory allotment as well. In time, the facts bore out our concern that the granting of a provisional allotment to an applicant that otherwise does not meet the necessary statutory and regulatory requirements adversely affects existing processors and producers, with no offsetting benefits. We believe that it was the wrong policy then, and it is the wrong policy now. We strongly urge that the Andino Energy application be judged on the facts in existence presently, as reviewed at today’s hearing. We believe that these facts are insufficient to justify the granting of allotment allocation to Andino Energy.

SETTING AN EQUITABLE PROCEDURAL PRECEDENT

We oppose the granting of some sort of “provisional allocation" to the applicant – or to any applicant – based on the expectation that the statutory tests for a new entrant may be met at some later date. We do not believe that this is consistent with the statute. Such a course of action will harm existing sugar producers and processors for the speculative enrichment of possible new entrants.

Perhaps more importantly, we are very concerned with the precedent that will be set by the granting of a “provisional allocation”. The granting of a “provisional allocation” may appear to be an administrative convenience in the case of a single processor application. However, when viewed through the prism of the precedent that it sets, it will have serious and far-reaching adverse consequences.

ADVERSE IMPACTS ON EXISTING PRODUCERS

It must be recognized that the allocation of allotments is a zero sum game. The granting of any new allotment, even to an immature or speculative new venture, by definition reduces the allotment available to existing sugarcane processors and producers that are mature, on-going business concerns.

If several applicants were to be granted “provisional allocations” it will create great uncertainty and instability in the market for sugar in the United States. Preventing such uncertainty and instability was one of the primary reasons that Congress enacted marketing allotments for sugar in the 2002 farm bill, and extended those allotments in the 2008 Act.

Business Uncertainty and Market Disruptions.

The uncertainty created by the granting of “provisional allocations” could lead to disruptions in every facet of the business of existing sugar processors, from the security of their lines of credit from lenders all the way down to the jobs of their workers in the fields and on the production line. In addition, great uncertainty will be cast upon the planting intentions and preparations of sugarcane growers. This uncertainty and caution will affect the sales of the many input suppliers that depend on the business of sugarcane growers to remain solvent. Jobs could be threatened at every step of the supply chain, from input suppliers to sugarcane growing operations, to sugarcane processors, to marketers and food manufacturers.

These disruptions should not be imposed on this array of individuals and concerns in order to satisfy an applicant’s desire to have a “provisional allocation” locked up *before* the applicant has proven that it meets the requisite tests as a sugarcane processor under the law.

The uncertainty created by “provisional allocations” will create obvious difficulties for the nation’s sugarcane growers and processors in planning their crop plantings, processing capacities, and marketing plans for the “provisional” 2008 crop year. It will not be known which, if any, applicants fulfill the statutory requirements to receive their allocations until days before the crop year begins (but well after planting, with harvest fast approaching). Consequently, the potential allotment amounts for existing allotment holders will be an unknown (and subject to further reduction) until the last possible moment.

The injection of this kind of administrative volatility into the production, supply, and marketing of sugar is unwarranted.

A more subtle, but no less damaging effect of the granting of “provisional allocations” is the serious implication for the availability of financing for existing sugarcane producers and processors. As administrative volatility is increased surrounding the allotment allocation process, lenders will likely view their lending risk as increasing as well. Thus, the ability of existing producers and processors to maintain production financing will be diluted in favor of speculative ventures that are granted “provisional allocations”. This is likely to damage the interests of the agricultural lending community as well as sugarcane producers and processors.

The granting of “provisional allocations” will garner similar negative effects for the ability of sugarcane processors to fulfill sales contracts for their products. In order to avoid the possibility of having to unwind contracts due to uncertain and possibly declining allotment allocations, existing processors will likely respond by forward contracting less sugar. This will lead to increased volatility and reduced certainty in the supply and pricing of sugar commercially. These effects will likely manifest themselves in increased supply and price volatility in the food manufacturing and consumer sectors.

How should existing producers and processors respond to this provisional allocation that could affect their operations? Should existing processors ask their growers to sign “provisional” grower agreements to sell their cane to the processor, contingent on whether the new entrant is granted allotment? Should growers’ and processors’ lenders be asked to provide “provisional” financing? Should processors sign "provisional" contracts for the sale of raw cane sugar to refiners? Should sugar users be expected to contract to buy sugar on a "provisional" basis? The granting of a "provisional" allotment raises all of these issues, and more.

Existing commercial enterprises should not be asked to bear the burden of the uncertainty occasioned by a new entrant's inability to meet the legal requirements to be granted an allotment allocation. The applicant is seeking the benefit of the allotment. It is only fair that the same applicant should bear the burden of any uncertainty raised by the shortcomings of its application.

We believe that when the allocation of allotment is contemplated to speculative or immature ventures, or on a "provisional" basis, the many adverse impacts on mature, ongoing concerns dictate a decision against the granting of such allocations.

Circumvention of Due Process.

In addition, the granting of any provisional allocation is likely to circumvent the carefully considered process for the open public consideration of the facts surrounding an application for allotments by the Department and the industry.

The Andino Energy application before us today is a good example of this problem. There are no facts on which to conclude that the applicant meets any of the legal requirements to be a viable processor. If the applicant were to be granted a "provisional allocation" following this hearing, the statutory requirement for a hearing regarding the facts on which the allocation was granted will not have been satisfied. That requirement can hardly be satisfied if the only fact surrounding the issue of whether or not the applicant is a qualified "processor" is the fact that the processor does not yet exist.

Under this circumstance, the only way to fulfill the hearing requirement is to hold a second hearing on the facts of the applicant's status as an eligible processor. Presumably, this second hearing would need to take place some time *after* the processor arguably achieves "eligible" status but *before* the allotment is actually granted. For example, if an initial hearing and the granting of a provisional allocation now means that there cannot or will not practically be another hearing on the Andino Energy application to determine whether the applicant factually fulfills the necessary requirements, then we believe that today's hearing will have been premature. The statutory hearing requirement will have been rendered useless and other interested industry participants will have been disenfranchised.

The position taken by the CCC in its August 23, 2007 letter to Mr. Roddy Hulett of South Louisiana Sugars Cooperative is consistent with our position, as the following excerpt demonstrates:

> "You asked that CCC temporarily close the factory and simply reassign its allocation to other processors for the 2007 crop year.

> "The regulations do not have provisions with respect to "temporary closures." Because South Louisiana Cooperative does not have a sugarcane supply or a viable processing facility for the 2007 crop year, it will be unable to commercially produce sugar for the upcoming allotment year."[1]

Just as the regulations do not provide for "temporary closures", neither do they provide for "provisional allocations".

EVIDENCE THAT CCC SHOLD REQUIRE FROM A NEW ENTRANT TO DEMONSTRATE ELIGIBILITY FOR A MARKETING ALLOCATION

In the public announcement regarding this hearing, USDA suggested that it might be helpful if we addressed the issue as to what the evidence of legitimacy should be for an applicant seeking an allocation of allotment. In other words, what does it take to be a processor, a marketer, and a producer of sugar?

We believe that a good starting point for this discussion is the definitions for these terms used in the Department's implementing regulations (7 CFR 1435.2). These regulations define a "sugarcane processor" to mean

> "…a person who commercially produces sugar, directly or indirectly, from sugarcane, has a viable processing facility, and a supply of sugarcane for the applicable allotment year."

All of the terms in this definition assume that the processor currently "*produces* sugar", "*has* a viable processing facility", and "*has* a supply of sugarcane". Neither the statute nor the regulations contemplate that an allotment may be granted to an applicant that merely *plans* to produce sugar, *seeks to construct* a viable processing facility, or *may have* a supply of sugarcane.

It is also worth noting that the definition lays out a conjunctive test. All three requirements must be met before an applicant can meet the test as a sugarcane processor.

In sum, we believe that before an applicant can be considered a producer eligible for the granting of allotment, the applicant must show that they have the land, water, labor, management skill and capacity to grow a crop of sugarcane; the processing capacity, capital investment, labor, and skill to operate a processing facility; and the marketing expertise and capacity to profitably market the sugar on a competitive basis. Clearly, Andino Energy does not presently meet this test. It lacks an assured supply of sugarcane locked in with grower contracts or other binding commitments. Its ability to process sugar in the quantities requested is speculative. It has no dedicated transportation system to bring cane to the mill or raw cane sugar to refineries. It has no demonstrated ability to market any sugar that it may produce.

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[1] Letter to Mr. Roddy Hulett from Barbara Fecso dated August 23, 2007 (available at http://www.fsa.usda.gov/Internet/FSA_File/letter_to_roddy_hulett.pdf.

We urge that any applicant for an allocation also meet the many regulatory requirements a processor must meet to be eligible for the sugar loan program. These requirements act as evidence of a processor's viability, and include:

- A sugarcane processor is eligible for loans only if it has agreed to all of the terms and conditions in the applicable USDA loan application, and has executed a note and security agreement, and storage agreement with the Commodity Credit Corporation (7 CFR 1435.102(b)).

- All sugar pledged as collateral must be derived from that of eligible producers, processed and owned by the eligible processor, stored in a CCC-approved warehouse, and meet minimum quality requirements (7 CFR 1435.102(c) and (d)).

- A processor receiving a loan must meet the minimum grower payment requirements for the crop year (7 CFR 1435.104).

- The processor must certify to CCC that the processor intends to share its allocation among its producers fairly and equitably, and in a manner reflecting each producer's production history (7 CFR 1435.310).

Similarly, the regulations define the term "ability to market" to mean

> "the estimated quantity of sugar, raw value, as CCC determines, that *will be produced* in the cane State or by the sugarcane processor, as appropriate, during the applicable crop year." *(emphasis added)*.

Like the definition of "processor", the "ability to market" definition requires the Commodity Credit Corporation to estimate the quantity of sugar that *"will be produced"* by the processor. In the context of an application for an allocation of sugar marketing allotment, this definition does not allow room for conjecture that a speculative processing venture meets the "ability to market" requirement. Only a concrete factual showing that the processor will with certainty be producing sugar sufficient to fulfill an allocation of marketing allotment will meet this definitional test.

The definition of the term "market" in the regulations provides further guidance as to the requirements that a processor must meet to be eligible for an allotment allocation. The term "market" is defined to mean

> "the transfer of title associated with the sale or other disposition of sugar in United States commerce, including the forfeiture of sugar loan collateral under [the loan program], and for any integrated processor and refiner, the movement of raw cane sugar into the refining process. Marketings do not include sales for nondomestic or nonhuman use, or sales of sugar to enable another processor to fulfill an allocation established for such processor."

This definition makes clear that to be eligible a processor's ability to market must be measured by actual sales and transfers of title of loan-eligible sugar produced by the processor. Sales or other dispositions of sugar that are ineligible for the loan program do not constitute marketings for purposes of the marketing allotments. Thus, a processor must meet the requirements of the sugar loan program, in addition to other requirements, before being considered for an allotment allocation.

In addition, the loan program regulations define the term "eligible producer" as owners of the crop both at the time of harvest and at the time of delivery to the processor. Producers determined to be ineligible as a result of regulations governing highly erodible land and wetland conservation, crop insurance, or controlled substance violations are not eligible under the sugar program (7 CFR 1435.102(a)).

In conclusion, we do not believe that Andino Energy has demonstrated its ability to meet the tests for an allocation as laid out by the CCC in its determination with regard to the Arizona Sugar Factory application, to wit:

> "CCC will need evidence of: 1) 2004-crop sugarcane acreage sufficient to fulfill the allocation, 2) the means to harvest the crop and transport cane to the mill, 3) the mill's ability to process the sugarcane into marketable raw sugar, 4) a transportation system to transport raw sugar to a refinery, and 5) a marketing agreement for the raw cane sugar."[2]

Failing this test, the Andino Energy application should be denied. Any suggestion that Andino Energy should be granted a "provisional allocation" of allotment should also be denied, as such a course of action shifts the burden associated with the allocation from the applicant to others in the sugar industry.

Thank you again for convening this important hearing. I am available to answer any questions that you may have.

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[2] Commodity Credit Corporation Decision on Arizona Sugar Factory Plea for a Cane Sugar Marketing Allocation – June 5, 2003 (available at http://www.fsa.usda.gov/Internet/FSA_File/cccdecisionarizonasugar.pdf.