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**TRANSCRIPT OF PROCEEDINGS**

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**SUPREME COURT OF QUEENSLAND**

**CIVIL JURISDICTION**

**BOND J**

**No 8609 of 2007**

**SANRUS PTY LTD and OTHERS**

**Plaintiffs**

**and**

**MONTO COAL 2 PTY LTD and OTHERS**

**Defendants**

**EXTRACT OF TRANSCRIPT OF PROCEEDINGS**

**BRISBANE**

**10.03 AM, FRIDAY, 18 OCTOBER 2019**

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**EXTRACT OF TRANSCRIPT OF PROCEEDINGS**

**[10.03 am]**

**CHRISTOPHER ROSS CRUMP, CONTINUING**

5

MR SHEAHAN: Just - - -

HIS HONOUR: Mr Sheahan.

10

MR SHEAHAN: Just looking ahead for the rest of the day, after this witness there are objections to the evidence of Mr Ben Hall.

HIS HONOUR: Yes.

15

MR SHEAHAN: They've been substantially reduced and I'm told that those responsible think that it will take about an hour to deal with. After that, assuming Ms Gothard is available on the other side, Ms Hoiberg and she were proposing to give a presentation to your Honour on the marking up of experts' reports. And it seemed to us that if – if that can be done, then that would fill out the day and we could start Mr Ben Hall clean, as it were, on Monday morning.

20

HIS HONOUR: Sounds wonderful. All right.

25 MR SHEAHAN: Thank you.

HIS HONOUR: Mr O'Shea. Where are we at, in terms of the last report of Mr Crump?

30 MR O'SHEA: Your Honour, I'll certainly go until lunchtime. And I think I will go after lunch.

HIS HONOUR: No, no, no.

35 MR O'SHEA: I'm sorry.

HIS HONOUR: The report to by you took objection and I granted leave.

MR O'SHEA: Sorry. Sorry, your Honour.

40

HIS HONOUR: Yes.

MR O'SHEA: Yes. We have no objections on an evidentiary basis to that report. Yes, your Honour.

45

HIS HONOUR: All right.

MR O'SHEA: I'm sorry.

HIS HONOUR: And are you prepared to continue with your cross-examination, including on anything that arises out of that report today?

5

MR O'SHEA: Yes, your Honour.

HIS HONOUR: Thank you. Then the – just let me open the right thing. The – I think when I admitted the supplementary report of Mr Crump, dated 16 October 2019, EXP.020.287.0001, I admitted it subject to objections, which would be notified by 10 am today. I've been informed by senior counsel for the plaintiffs that no such evidentiary objections have been notified. Accordingly, the qualification to the admission of that report is removed. I just have to open up the transcript, Mr O'Shea. Won't be long.

15

**CROSS-EXAMINATION BY MR O'SHEA**

**[10.07 am]**

20 MR O'SHEA: Thank you, your Honour. Could the operator please bring up document MON.004.001.0785.

Now, Mr Crump, you'll see this is another report from Mr Holcombe, whom we discussed yesterday?---Yes.

25

Could I ask the operator, please, to go to page 0786, page 2 of the PDF.

And, Mr Crump, could I ask you to read the section under the heading Mill Performance?---Yes.

30

Now, is that consistent with your understanding, in 2004, 2005, of the characteristics of Monto-type coal?---Yes.

And could I then ask the operator to go over to the next page, page 0787.

35

HIS HONOUR: I'm sorry, Mr O'Shea. There's something wrong with my transcript. It started working and now it's not receiving anything. Yes. It's working now.

40 MR O'SHEA: On page 0787, Mr Crump, could I ask you to look at the top heading and the two paragraphs under that, relationship between milling and burnout results. Could I ask you to read that?---Yes, I've read that.

45 And was that consistent with your understanding of the characteristics of Monto-type coals in 2004, 2005?---Yes.

And would you agree with me that a coal marketer trying to sell this coal would rely upon and use this document as part of the marketing strategy for Monto coal?---Yes, he would.

5 And do you agree that a coal marketer preparing a bankable feasibility study in 2005 would have regard to this document if it were available to him?---Of course he would, yes.

10 Thank you. Talking – if I could then just address this topic a little more generally, we’ve looked at a number of these ACIRL and UST reports. Do you agree that a reasonably qualified and competent coal marketer preparing a bankable feasibility study by May 2005 would consider advice from organisations like ACIRL and UST?---Yeah, he would consider that as part of his strategy and – and market development, yes.

15 And he would also have regard to it for the purpose of preparing a bankable feasibility study?---Yes, he would.

20 And do you agree that a reasonably qualified and competent coal marketer preparing a bankable feasibility study by May 2005 would take reports from ACIRL and UST into account when assessing the available markets for coal?---Yes, he would.

25 Do you agree that a reasonably qualified and competent coal marketer preparing a bankable feasibility study by May 2005 would treat reports from ACIRL and UST advising that the coal could be successfully utilised as positive factors in favour of marketability of the coal?---They’re a positive attribute, yes, they would be utilised as such.

30 Can I ask you this: coal marketers often seek advice from persons qualified to give opinions on the technical side of thermal coal and the technical side of power stations, do you agree?---Yes.

35 And do you agree that if a person so qualified advised a coal marketer that the low HGI coal could be successfully used by power stations, this would have an effect on their approach to marketing the coal?---You’d have influence, yes.

40 And if a person so qualified advised a coal marketer that low HGI could be successfully used in power stations not originally planned or designed to take low HGI coal, that would have an effect on their approach to marketing the coal?---Yes, you would take note of that.

If that document could be put away, please. Mr Crump, do you recall giving a presentation at a Coaltrans conference in March 2003?---Yeah. Yes, I do.

45 Have you looked at the presentation recently?---Not lately, no.

You haven't. Right. Okay. But can I suggest that in March 2003 that was just after Peabody's purchase of Wilkie Creek?---That's correct.

5 But you've given evidence that you, in fact, started investigating the characteristics of this coal during the – I suppose you'd say the merger and acquisition process?---In the latter half of 2002, yes.

10 Now, the Coaltrans conference was attended not only by producers but also by thermal coal customers; is that true?---That's correct.

And you, speaking about Wilkie Creek coal, presented an opportunity for you to persuade customers to use that coal?---Correct. Correct.

15 Could the operator please bring up SAN.001.032.0013. Now, could we – could the operator – and Mr Crump if you could give directions to the operator just to flick through this until you're happy?---Yeah, yeah, that's okay, till you get your appropriate part.

20 You're happy this looks like the presentation you gave?---From my recollection it looks like mine, yes.

Right. Thank you. Now, you would have been careful to make sure that what you said here was correct?---To the best of my ability, yes, I would have.

25 And if there are any documents referred to in here, you would have read those documents, if you referred to documents, would you have made sure that you knew what was in them?---Most likely, yes.

30 HIS HONOUR: This is a PowerPoint presentation, is it, Mr Crump?---Yes, your Honour.

MR O'SHEA: Could the operator please go to page 0018 of the document. This is referring to the acquisition of Wilkie Creek by Peabody?---That's correct.

35 And it states there that at that time it was a 1.3 million tonne per year coal mine?---Yeah, that's – yes, it says that, yes.

40 And that was the case at late 2002, early 2003; is that correct?---It hadn't attained that. That's what its projected production was when we were doing the acquisition, Mr O'Shea.

All right. So it wasn't in fact producing quite that much?---No, not at that point, no.

45 Right. How much was it producing?---Sub 1 million tonnes.

Right. It says there 680 million tonnes of in place resources. Do you see that?---Yes, that's correct.

You're familiar with the distinction between resources and reserves, aren't you?---Correct.

5 And I think you refer elsewhere to there being 680 million tonnes of reserves. Now, that wouldn't be correct, would it?---No, their resource was 680 million tonnes.

And a resource you don't hold as much confidence in its – firstly in its existence and secondly in it's - - -?---That's correct.

10 If I could say you don't necessarily hold confidence in your ability to economically mine it at a particular point in time?---That's correct.

15 Could I then ask you to go, please – the operator, please, to go to page 0026. This is a page which sets out a summary of attributes of the coal, do you agree?---Yes.

And could I just ask you this question: at the end of it, what does the B/C stand for at the end of the heading?---Sorry?

20 It says coal classified by ASTM as high volatile bituminous BC?---Under the ASTM standard this coal is bituminous B. I'm not sure what the oblique C is about, but it's in that category of bituminous coal.

25 Thank you. If you just look at these various characteristics that you've set out there?---Yes.

All of them were, to the best of your knowledge at the time, features of Surat premium coal qualities?---Yes, they were features.

30 And I think we've already spoken about carbon dioxide emissions and I think it was NOx emissions, but this also talks about – it does talk about NOx emissions, I'm sorry, and also SOx emissions?---Yes, that's sulphur dioxide. Yes.

35 And I think we've already spoken about carbon dioxide emissions, and I think it was NOx emissions, but this also talks about – it does talk about NOx emissions, I'm sorry. And also SOx emissions?---Yes. That's sulphur dioxide. Yes.

40 Yeah. And I think you referred to them yesterday as SOx and NOx, as they're commonly called in the industry; is that right?---That's generally what they're referred to, sir.

Then we have, if I go down to the fifth one, exceptional combustion efficiency, ignition, flame stability and turn-down characteristics?---Mmm.

45 And that was your understanding at the time, of the characteristics of this coal?---That's correct.

And the sixth one, no furnace slagging or fouling problems. That was also your  
- - -?---Yes.

5 And could I then ask you this. Would you agree, then, at the time, that your view  
was that Monto coal – I’m looking, really, here at the fifth one. It talks about certain  
things there to do with combustion. Would you agree that Monto coal – sorry,  
Monto – I’ll withdraw that?---Wilkie Creek.

10 Wilkie Creek coal?---Yes.

This type of coal - - -?---Yeah.

15 - - - had excellent combustion and burn-out characteristics?---There’s no question of  
that, no. Yes, it did.

Thank you. And that it had those characteristics, even if it was pulverised to a  
coarser grind than usual?---That’s correct.

20 Could I then – if that document could be put away, Mr Operator. And could I ask the  
operator to bring up document MON.010.001.0064.

Now, have you seen this publication before, Mr Crump?---Many years ago, yes, I  
have.

25 And was this a publication that was well known in the industry?---It was a  
publication that was known at the time we acquired that mine, yes.

And widely known, not just known?---Absolutely. Yes.

30 Now, is this a document which a coal marketer would have had access to and looked  
at, if they were preparing a bankable feasibility study in relation to Monto coal at  
about May 2005?---Yes. They would have referred to this, perhaps. Yeah.

35 Could I ask the operator, please, to go to page 0072. And – excuse me for a moment.  
And I’m actually interested in the last paragraph on the page. Perhaps the operator  
could blow that up.

40 And if you could look at the last paragraph on the page, Mr Crump. Was that  
consistent with your understanding of Walloon coals in the period, say, from 2003 to  
2005?---No. It’s – for power generation, yes, it is. But in industrial boilers, no, it’s  
not.

All right. So you’ve got that reservation?---Yeah. It is – it is - - -

45 Well, you don’t agree with it in relation to industrial boilers, but otherwise that’s  
consistent with your understanding?---Yes.

Thank you.

5 HIS HONOUR: In relation to both parts of that paragraph?---No. Your Honour, with respect to power generation in larger boilers, etcetera, that were – had the milling capacity, yes, that’s my understanding. With respect to smaller boilers that were used in industrial applications in the seaborne market, no, it’s not my understanding.

10 And what about the second sentence?---The coal is steadily winning acceptance?  
Yes?---Very steadily, yes, it was.

Thank you.

15 MR O’SHEA: And could I ask the operator, please, to go over to page 0075.

In relation to utilisation - - -?---Could you blow that up, sir?

20 I’m sorry?---Could that be blown up a little?

Yes.

OPERATOR: What section?

25 MR O’SHEA: Top paragraph, under utilisation, Mr Operator.

WITNESS: Thank you.

30 MR O’SHEA: Thank you.

And I’m, really, only interested in the first sentence. I’m not interested in the conversion to liquid fuels, Mr Crump?---I – that may have been what it said at the time, but it – in practice, that was not my understanding in the market development of the Wilkie Creek coals. The smaller boilers were not as stated there. Industrial  
35 boilers.

All right. So that wasn’t your experience. Nonetheless, I think you’d agree that a coal marketer would use this document - - -?---There as no – there is no doubt, Mr  
40 O’Shea, people would – a marketer would refer to these documents, yes.

Thank you. I tender that document, your Honour.

HIS HONOUR: The whole document?

45 MR O’SHEA: Yes, your Honour. I was proposing to do that.



HIS HONOUR: All right. The – well – okay. So is that the only relevant part of the document?

5 MR O'SHEA: I'd like to take the witness to one other part. And I'm happy to restrict it to the part that I'm taking the witness - - -

HIS HONOUR: Yes. I just - - -

10 MR O'SHEA: - - - to, your Honour.

HIS HONOUR: Well, look, if Mr Sheahan doesn't object to the tender of the whole document, the document - - -

15 MR SHEAHAN: I should note, though, I'm told that there's a version of the document already in evidence.

HIS HONOUR: Well, what is it?

20 MR SHEAHAN: I'm having that looked up.

HIS HONOUR: Well, I don't want a duplicate of it. If there's only one in evidence, I only want that one.

25 MR O'SHEA: Your Honour, we searched for that, because I thought it was in evidence too, and we just couldn't find it.

30 HIS HONOUR: All right. For the moment, the document can be – the entirety of MON.010.001.0064 can be admitted. If somebody finds that it's duplicated, then, unless there is a specific reason, one of them will go. Press on, please.

35 MR O'SHEA: Thank you, your Honour. Could the operator please go to page zero-zero-six – I'm sorry, 0083 of the document. And it's the paragraph underneath the table, in particular, that I'm interested in, if that could be blown up. The paragraph beginning, "As previously stated".

WITNESS: That's my understanding. Yes.

40 MR O'SHEA: Thank you. Now, in relation to the material in this document, and, indeed, in other documents we've seen, Mr Crump, it refers to the characteristics of what might be generally classed as combustion characteristics of the coal. And there are statements, such as here, that that can be achieved at a coarser than standard grind?---That's correct.

45 Now, you were aware of that at the time of this presentation?---This presentation?

Sorry, at the time of the presentation to the Coaltrans Conference. My apologies?---Absolutely.

Now, is it fair to say that when you made the presentation at the Coaltrans Conference you were cognisant of the fact that thermal coal buyers might have a reservation about the HGI level of the Wilkie Creek coal?---Yes. That's correct. And that's why it was omitted in that presentation.

5

That's why it was omitted?---I don't think there was too much reference to HGI in that presentation.

Had you been wishing to persuade people to take the coal, though, wouldn't you have said something of this nature, "You might think HGI is a problem, but it's not, because you don't have to grind it as finely as a standard fineness"?---Obviously, that's a line that was used consistently in the endeavours to market Wilkie Creek coal.

10

But it's not something that you presented at this Coaltrans conference?---It was presented to customers one on one in the development, yes, in the market development.

15

All right. But not at this conference?---No.

20

Can I suggest this to you, Mr Crump, that as at March 2003 Wilkie Creek had existing customers consuming the coal that it produced?---March 2003?

25

Two thousand and three?---Yes.

And as at March 2003 you didn't need to market Wilkie Creek coal to customers not already familiar with the coal?---That's not correct.

Can you explain why that's not correct?---In the acquisition of the mine, Mr O'Shea, our – our determination of what were the volumes that needed to be produced from that mine were targeted at in excess of 2.3 million tonnes. That was the maximum that we thought we could produce, and of course we had trial shipments and annual shipments that had been displaced – or had been placed with several customers and we had to develop markets beyond that level or expand upon those trials and annual cargoes that we had that had been shipped by AQC and ultimately performed by Peabody. So we had a greater aspiration for market than what was being produced, more than double.

30

35

All right. Excuse me a moment, your Honour. Your Honour, in relation to the duplicate, we seem to have discovered it now. I'm told that it is SAN.004.009.0041.

40

HIS HONOUR: Let me just have a quick look at it.

MR O'SHEA: Could that be brought up, please, Mr Operator.

45

HIS HONOUR: Let's just see that it contains the relevant passages that you cross-examined on.

MR O'SHEA: Yes, thank you, your Honour.

HIS HONOUR: And if it does then the previous one is no longer admitted.

5 MR O'SHEA: And could I ask the operator then to go to – excuse me – firstly page 00 – page 9 of the PDF.

HIS HONOUR: On the left.

10 MR O'SHEA: That was the production, and the cross-examination was on the - - -

HIS HONOUR: That's it.

MR O'SHEA: Sorry. That's a good way to do it, yes.

15

HIS HONOUR: Next page?

MR O'SHEA: Next one is page 12 of the PDF.

20 HIS HONOUR: Yep, that's it.

MR O'SHEA: And the next one was page 20 of the PDF.

25 HIS HONOUR: Yes. I'm satisfied that the cross-examination which occurred by reference to MON.010.001.0064 occurred in respect of a document – a copy of a document that's already in evidence as SAN.004.009.0041. Accordingly, although I said MON.010.001.0064 was admitted, it's not necessary and it is no longer admitted.

30 MR O'SHEA: Thank you, your Honour.

Mr Crump, you agree that coal is not an homogeneous substance; is that right?---Correct.

35 No chunk of coal, even from the same deposit, is exactly the same?---That's correct.

A particular piece of coal might, for example, have a higher maceral composition?---That's correct.

40 And macerals are a factor which can affect the HGI score of the coal?---Yes.

Now, your evidence in your first report was that Monto coal's market would be limited to the markets to which – sorry – would be – let me start again. Is it your evidence that Monto coal's markets would be limited to the markets to which Wilkie  
45 Creek was sending its coal?---Not only Wilkie Creek, Mr O'Shea, but the – the Walloon-type low HGIs of bituminous B type coal, yes.

All right. And which mines then were producing that other than Wilkie Creek?---There were – New Hope were operating coal mines within the West Moreton area, Jeebropilly, etcetera, New Oakleigh, Rosewood I think was another pit that they opened and subsequently closed, and Ebenezer operated a mine adjacent to one of the New Hope mines, Ebenezer, which ultimately closed in 2012, and for 30 or 40 years before there were a number of other mines which names escape me now that operated in the Ipswich area generally mining Walloon coals.

Right. So you say that the customers of those mines were potential customers for Monto coal?---For Wilkie Creek and Monto, yes.

Yes. Yes. Now, would you agree with me – we’ve spoken about the HGI’s for thermal coal from Ebenezer, Jeebropilly and New Oakleigh, for example?---Yes.

And I think you’ve said you thought their HGI level was 40?---That’s anecdotally as I understand it and what I’ve observed when I was involved, yes.

Do you accept that the HGI’s for that thermal coal might, in fact, have been less than 40?---Could possibly have been, yes.

Could I ask the operator, please, to bring up document ALL.501.002.0221. And are you familiar with this publication?---Very familiar. That’s the last green book ever published.

Right. And the green book was, what, something of a Bible for the industry?---It was – it had been published for those 13 edition – yeah, it was a bit of a Bible under the Queensland coal measures, yes.

Thank you. Could I ask the operator, please, to go to page 0230. And if the top page, I think, could be blown up. So you’re familiar with the fact that this publication set out characteristics of coal from various mines - - -?---Yes.

- - - in Queensland?---Yes.

And indeed one sees at the top of the page Wilkie Creek and referred to there as AQC, isn’t it?---That’s correct.

Because this is a 2001 publication, so it was still - - -?---Yes.

- - - operated by AQC?---Yep.

And if we go down to the bottom line we have Ebenezer mining company Pty Ltd and we have there two values given for Ebenezer, 39 and 40?---That’s correct.

Could we go then to the next page, please, which is page 0231, and we see there under New Hope Coal Australia entries for Jeebropilly?---That’s correct.

And in relation to one of the mines, Tivoli, it's said to be #40E. The other one, Bremer, it's 38 to 40?---Yes, that's what it reads, yes.

5 And these – this publication was accepted generally as being about as authoritative as you could get in relation to coal properties?---It reflected the indicative qualities generally for the mines, yes.

And it was accepted as that - - -?---Yes.

10 - - - by people in the industry?---Yes.

If that could be put away, thank you. Now, do you agree that a shipment of coal stated to have an HGI of 40 may in fact contain within it coal that has an HGI of less than 40?---Yes, it could do.

15

And there could be a number of reasons for that?---Elaborate.

20 Could I suggest to you that, for example, because coal is not homogeneous, there might be some part of a load that's 40 and there might be another bit of the load that actually comes up with an HGI of less than 40?---That could be correct. Yes.

You referred yesterday to the fact that sometimes something might be said to be a particular HGI when, in fact, it's a lower HGI?---Yes. I did.

25 So that might be another reason?---Could be. Yes.

HIS HONOUR: Well, I think yesterday's suggestion was "falsely recorded", rather than just "recorded", wasn't it?

30 MR O'SHEA: Yes. That's so.

And perhaps I should make it clear that – when I said that, that it was stated to be 40, but the - - -?---It could – yeah. Could be less.

35 - - - person shipping it, whoever that might be, knew that it was less than HO and falsely represented that it was 40?---Correct.

And I think you said you were aware that that happened?---With a specific customer, yes.

40

Sorry, with a specific case?---Well, you asked me yesterday in regard to the development of coal into Taiwan, and that – we were discussing that specific customer having a quality attribute for HGI of 40. And my understanding was that's what it was shipped at.

45

Right. I might come back to that. But can I suggest to you that because of variation in the coal and because of the fact that coal – sorry, I withdraw that. We've accepted

that an HGI level might not apply to all of even one coal shipment, because the quality of coal can vary, because it's an organic substance, essentially?---Yeah, it could vary. It could be mined from multiple seams, generally, within an open cut and have variation. Yes.

5

Can I suggest also that the precise HGI level of coal can vary with other parameters, things like moisture and the way in which the coal is actually tested?---Are you referring to the HGI test?

10 Yes?---Yes. There's conjecture about that and has been for 30 years.

Now, you would accept that a coal – and, for the moment, could we leave out the deliberate falsification case?---Yep. Okay.

15 If we could leave that out for the moment?---Okay.

You accept that it's possible that a coal stated to have an HGI of 40 might, in fact, be tested again to have an HGI lower than 40?---Depends on how much lower you refer, sir. What is your definition of lower?

20

Well, a smaller number, but perhaps you can tell me. In your experience - - -?---If it were 37 or 38, it could be. Yes.

25 And if it were said to be 37 or 38, it could, in fact, be 36 or even 35?---That is possible.

Because another thing about the HGI test is – I think it's called reproducibility, but you would probably understand this better than me, Mr Crump - - -?---There are - - -

30 - - - which is you can, in fact, test exactly the same coal more than once and you won't necessarily get the same result?---Yeah. It depends on – there are two terms, reproducibility and repeatability, on the same sample. You could get a different result on the same sample and you can get – reproducibility is on a different sample from the same cargo. So, yes, you can get variation.

35

All right. Thank you?---And there are – sorry, I might add – there are standards under the various quality accreditations, ASTM, ISO, etcetera, that regulate the certification of coal. There are various allowances for that matter that you've just raised, Mr O'Shea.

40

All right. Now, I think you said ASTM and I didn't pick up what you said – I think you just said etcetera?---ASTM, ISO, international standards, and – that's two, anyway.

45 Is there a testing standard which is known as ASCRM, to your knowledge?---AS - - -

CRM?---Can you give me – I don't know that. No.

No, I'm asking you?---I don't know it.

All right. Good. Now, it's the case, isn't it, Mr Crump, that you can't say for certain – I withdraw that. You can't identify for certain all of the customers who took New  
5 Acland coal, could you?---In what period are you referring, sir?

Well, let's say 2003 to 2005, firstly?---I think New Acland only came into production in 2005.

10 All right?---Two thousand and four, '05.

After that period, let's say 2004 to 2010, would you be able to identify for certain who all of the customers of New Acland were?---Not all of the customers. No.

15 And I suggest the same would be for the other Walloon coal mines, mines like Ebenezer, Jeebropilly, New Oakleigh and so on.

HIS HONOUR: Is this a question that's addressed to the present time or the time  
20 when Mr Crump was actively doing this?

MR O'SHEA: I should make that clear, your Honour.

WITNESS: Yep.

25 MR O'SHEA: In 2003, 2005, while you were working at Wilkie Creek - - -?---Yes.

- - - you wouldn't be able to identify for certain who the customers of those other mines were, the other mines being Ebenezer, Jeebropilly and New Oakleigh?---Not  
30 100 per cent, no.

And with – again, looking at those three mines, in the period, let's say, 2005 to 2010, would you be able to identify who all the customers of those mines were?---Not 100  
per cent, no.

35 But you agree that the customers who had been purchasing from those mines must have been able to utilise coal with an HGI of 40 or less?---Yes.

Now, it's possible that the customers of those mines, as at 2003, 2004, included customers other than EPDC, Tohoku and JJPC; correct?---They did.

40 Could I ask you to look at - - -

HIS HONOUR: Sorry. What did you mean by saying – when you said “utilise coal with an HGI of 40 or less” – what range did you intend to encompass by that  
45 answer?---With respect to the New Hope mines, I – I believe it was in that range that was illustrated in the Queensland book there. My understanding of, sort of – it's in the 38, 39 – sorry, 39, 40, Tivoli, Bremer and – Jeebropilly coal, Tivoli brand, and

Jeebropilly coal, Bremer brand, were basically marketed, as I understand, at 40 or at 39 – 38 – that 39 level that was illustrated earlier in Mr O’Shea’s 13<sup>th</sup> edition of the Queensland Thermal book.

5 Thank you.

MR O’SHEA: Could I ask you to turn up your first report, Mr Crump, and go to paragraph – and the first report – sorry. Mr Crump’s first report, EXP.020.160.0001. And could we go, please, to page 0012.

10

And paragraph 8.3, Mr Crump. If you could just look at paragraph 8.3?---Yes.

And you say there that the options for market acceptance were limited to the primary end user of Wilkie Creek and New Hope’s mines, namely – and you set out three customers there?---That’s correct.

15

But you accept that Wilkie Creek and New Hope corporation were selling similar coal – thermal coal types to other customers as well as those?---Yes. They were.

20 And we’re talking here about the period August 2004 to May 2005?---That’s correct.

So can I suggest to you that the options for market acceptance were, in fact, broader than just those three customers?---Yes. There were other customers. Yes.

25 So you’re agreeing with my proposition? Or is there - - -?---They were the major customers from Brisbane, yes, these ones that I’ve identified. And there were other smaller customers.

30 And so just to make sure I’m not misunderstanding, Mr Crump, you would agree that the options for market acceptance were somewhat wider than those three customers?---Yes. But they were not large consumers.

Thank you. Now - - -

35 HIS HONOUR: So - - -

MR O’SHEA: - - - if I can just ask - - -

40 HIS HONOUR: It’s not correct so then you – it’s not correct to say that the options for market acceptance were limited to those three major customers because they extended to some other possible customers?---Sorry. There were other smaller customers taking coal from Brisbane, your Honour, but they were the major customers.

45 MR O’SHEA: Could I just talk about the Wilkie Creek mine for a moment, Mr Crump. Transporting coal from Wilkie Creek mine to the port of Brisbane was not a simple operation, was it?---No, it was not.



Firstly it had to be – the coal had to be trucked from the mine to a stockpile area and a rail load out?---That's correct.

5 About 14 kilometres. Is that about right?---That's correct, Macallister was the load out terminal.

And the train line used by Wilkie Creek was the Moreton rail system?---Sorry, what was the name?

10 The Moreton rail system?---Yes.

And Wilkie Creek coal had to travel about 250 kilometres to the port of Brisbane?---That's correct.

15 And the Moreton rail system was also a general transport line. It wasn't a dedicated coal transport line, was it?---That's correct.

20 Do you agree that the Moreton rail system was a limited capacity rail line?---It was limited, yes.

In terms of the weight, I suppose I'd say, the weight of the train loads that could carry – could be carried on the Moreton rail line?---It was limited by the mountain range specifically that had a direct effect on what weight could be carried down the mountain from Toowoomba.

25 Right. And I think we've already agreed that there were also port limitations at the port of Brisbane. We discussed that yesterday?---In 2003 and four there were limitations which were being addressed, as I understood.

30 Just to talk about those issues, the issue to do with the dead weight tonnage of the ships which could load in Brisbane, that wasn't being addressed at that time, was it?---There was no dredging at the Brisbane port, but I qualify that by typically saying the customers from the Brisbane port were Panamax and larger Panamax type – well, handy size to larger Panamax 90,000 as we discussed yesterday that could safely load at that port.

35 Right. But not the larger vessels, which I think you said are called Capesize vessels?---There was an exception which – where we light loaded Capes in Brisbane or part loaded Capes and topped up elsewhere.

40 Right. But you couldn't - -?---We did as Wilkie Creek, yes.

You couldn't fully load a Cape?---You could not fully 100 per cent load a Cape in Brisbane because of the restriction of draft.

45 Okay. So if you partly loaded a Cape vessel in Brisbane and then you were saying you could fill it up from elsewhere?---That was an option. You could part load a

cape to 100,000 tonnes plus out of, say, 130 as an example and the ship would go back with that short loading, or you could load several holds in a cape, maybe five holds and send to Brisbane to top up with another coal – send to Gladstone or Dalrymple Bay to top up in a two port loading situation.

5

So the holds in the ship are quite separate, are they?---Correct. There's nine holds in a Capesize vessel.

Now, there was also, in 2004/2005, a capacity constraint at the port of Brisbane in terms of maximum annual loading capacity; correct?---There was.

10

And is that the limitation which you say was being addressed?---It was being addressed by QBH with additional stockpile capability, yes.

HIS HONOUR: QBH?---Queensland bulk terminals, your Honour, were the operators that were basically the New Hope corporation owned and managed that facility and later took over 100 per cent.

15

MR O'SHEA: In 2004, 2005, though, the annual loading capacity was restricted to about 5 million tonnes; is that correct?---Thereabouts.

20

Now, your evidence is that in selling Creek, you never had any difficulties with the capacity constraint at the port of Brisbane?---No, as I said earlier when we purchased the Wilkie Creek mine we were producing less than one million in 2003 and that ramped up, I think it was some years after I left to 2.3, I think it maxed out at.

25

I think you've said that 2.3 was as far as you intended to expand the mine?---That was the original objective when I was working for Peabody, yes.

In the time you were working there were you aware of any proposal to expand it beyond 2.3 million?---No, I was not.

30

And is that to do with – was there some reason why further expansion wasn't considered at that time?---It was – it was operational as geological constraints at the mine, as I understand, that we could not truck and shuffle operation, it was not very cost effective to go beyond those levels.

35

I think we've seen before that when Peabody purchased Wilkie Creek it was producing about 1.3 million tonnes?---No, it was not producing 1.3 million.

40

Yes, you said that. I think in your presentation you said it was a 1.3 million tonnes, but that was more a statement of intent rather than a statement of existing fact?---That's correct.

All right.

45

HIS HONOUR: He said less than one?---Less than 1 million was the operational capacity when we finally took over the mine in March or whatever it was, April 2003.

5 MR O'SHEA: Now, you say in your report that in 2004, as a result of EPDC withdrawing an offer to some coal – to purchase some coal, Peabody had about 400,000 tonnes per annum to place?---That's correct.

10 And you say that the steps you took in 2004 to canvas possible customers were taken because you had that 400,000 tonnes per annum to dispose of?---We had a surplus of coal, yes.

15 Now, you did in fact successfully sell all of the production from Wilkie Creek in 2004, didn't you?---That's correct.

And the production from Wilkie Creek mine was all sold on the export market, wasn't it?---It was all sold in the export market.

20 Could I ask the operator, please, to bring up document PEA.001.001.0030. I'm sorry. I'm sorry, Mr Crump and your Honour. Could that document be put away, please. Then if we – sorry, if we consider then 2004 and 2005, there were customers who sought tonnages from Wilkie Creek mine and Wilkie Creek mine couldn't fulfil that demand, could it?---Which customer are you specifically referring to, Mr O'Shea?

25 Well, perhaps if I take you to your report, Mr Crump?---If you're referring to KOSEP.

30 That's what I had in mind?---We could not supply what we negotiated and supplied was supplemented by buying in coal from our competitors down the road, New Hope.

35 Right. So – and we'll come to the KOSEP sale shortly, but at that point in time, 2004/5 the mine simply couldn't produce that tonnage of coal that KOSEP were interested in, which was 700,000 tonnes, wasn't it?---It was – I think it was seven to 750 over a period of 12 months or so.

40 Right. Thank you. Now, you also say in your report that in 2004 there were other Japanese power utilities who you believed had traditionally consumed low HGI coal from Australia who might have been able to take Wilkie Creek coal?---Yes, there were.

45 And of course in 2004 there were other Walloon coal mines selling coal as well as Wilkie Creek?---That's correct.

Now, in 2004, you're aware that Ebenezer had previously been supplying coal on the seaborne coal market to Asia?---Ebenezer was primarily a domestic mine for CS

Energy and it was supplying approximately 50 per cent of its coal to the export market. Yes.

5 And Ebenezer closed down in 2002. I think you might have said 2012 before, but  
- - - No, no, no.

- - - it was 2002?---Two thousand and two.

10 Yes?---And the last coal was purchased by myself.

Right. Now, in two – would you agree with me that in 2002 the export thermal coal price was, really, at its lowest point in that period, say, in the early 2000s?---Yes. It had got to that level. Yes.

15 And it had fallen from – sorry, I withdraw that. Can I suggest to you that Ebenezer closed down because of the very low coal price in about 2002?---That was one factor.

20 All right?---The other factor was it had lost its contract with CS Energy Swanbank.

Right?---Which was an 800,000-tonne contract, a not-insignificant proportion, almost 50 per cent of their production.

25 All right?---And the reserves were depleted.

And at the time when it closed down, who actually operated Ebenezer?---Ebenezer? Idemitsu.

30 And, presumably – sorry. Idemitsu is both a coal trader and run power stations in Japan; is that correct?---No, no, no. Idemitsu is an oil company out of Japan that operates a number of mines in Australia. They have a coal division that operates the Ensham mine and the Boggabri mine today. And in those days they operated the Ebenezer mine.

35 And - - -?---And Muswellbrook.

And they were responsible for disposing of the coal on the export market?---Yeah. Idemitsu marketed that coal. Yes.

40 I'm sorry?---Idemitsu in Japan - - -

Yep?--- - - - marketed the coal. Yes.

45 Marketed the coal. Yep?---As the owners of Ebenezer.

Thank you. Now, I think you identify in your report that Hokkaido EPC and Kyushu EPC had previously obtained coal from Ebenezer?---That was my belief, yes.

All right. And there may, indeed, have been others purchasing coal - - -?---There could have been. Yes.

5 - - - from Ebenezer. And so when Ebenezer closed, and I think you refer to this in your report - - -?---I do.

10 - - - there was a potential for supplying those customers who were previously supplied from Ebenezer?---Yes. And those customers were approached, as I've said in my report.

Now, were you aware, in about 2003 or 2004, that the Chubu power station had previously been supplied with coal from Ebenezer?---It may well have done, yes.

15 So if – if there's other evidence before the court to show that it was supplied, you wouldn't dispute that?---Sorry?

You wouldn't dispute that, that Chubu - - -?---I'm not disputing that other utilities took cargos.

20 Right?---Ad hoc. Yes.

So only on an ad hoc basis, you think?---To my understanding, yes.

25 All right. Could the operator please bring up document MON.004.001.0272.

Now, I'm not sure if you've looked at this document or not?---I've seen this document, yes.

30 Yes. Could we please – could the operator please go to page 14 of PDF.

And you see there, at the bottom of the page, Chubu Electric Power Company?---Yes. I know it well.

35 And it refers, in the last paragraph on the page, to purchasing Queensland coals from a number of mines, including from Ebenezer?---That's correct.

So that would not be inconsistent with your understanding?---No. They may have had Panamax size shipments from Ebenezer.

40 And there's certainly nothing there to indicate that these were just ad hoc shipments, is there?---I beg to differ, sir.

45 And - - -?---I know the Hekinan power stations very well. As also in my report, we were a million-tonne supplier to the Hekinan power stations, as was Newlands. We were the two major suppliers, so I know those power stations very well. And - - -

I'm sorry. There's a reference there to a power station which I don't think the shorthand writer has picked up?---Hekinan, H-e-k-i-n-a-n. That's the only - - -

5 All right?--- - - - power station operated by Chubu Electric, which is - - -  
Right?--- - - - six units.

10 Thank you. Now, you didn't mention Chubu in your report as a destination for Walloon coals, did you?---No. I did not.

Is that because you weren't aware of it when you - - -?---No.

15 - - - prepared your report?---I was fully aware of Chubu's requirements, Mr O'Shea. I had dealt with Chubu for more than 10 years. And through Mitsubishi Corporation, our trading house, they were one of the entities that we approached.

And did you know that Ebenezer was being supplied - - -?---I knew there'd been spasmodic shipments to other utilities. And I'll explain that, if you would allow me.

20 Yes. Go ahead, by all means?---So traditionally – we've talked about traditional units, which you mentioned somewhere yesterday, and the – a number of the obligations of the continuing supply of domestic coal in Japan was an absolute obligation by government to take some coal from the existing Kushiro mine, which  
25 closed in 2002 – indigenous bituminous type B coal consistent with the Walloon coal. So every power station or every utility, almost without exception, was obliged to take some coal from that particular entity in Japan up until about 2002. And it is likely that they would have had to consume that coal, and this may have been a cargo to replace that coal. I don't know.

30 So certainly, at any rate, Chubu Electric Power Company was taking coal from the Ebenezer mine?---Had taken. Quantification was small, as far as I recollect.

All right. Now, if we could go, then, to the year ending 30 September 2005. Forward a little bit - - -?---Yes.

35 - - - Mr Crump. And let me just put some figures to you, and tell me if you think this is right and I can – we can then take you to a document, if need be. Can I suggest that in that 12 month period, to 30 September 2005, Wilkie Creek sold 1.823 million tonnes of coal?---By my recollection, that's approximately right. Yeah.

40 And for that 12-month period, the budget for the sale of coal was 1.6 million?---I can't recall the budget, but that sounds reasonable.

45 So I'm suggesting to you, at any rate, in 30 September – that 12 months, to 30 September 2005, that sales were ahead of budget?---Yes. They were, because we'd acquired alternative market with KOSEP, as I recollect.

So at that point there wasn't a problem for Wilkie Creek in selling its production; correct?---At those levels, no.

5 And so can I suggest to you that in that 12-month period, to September 2005 – or, let's say, first half of 2005, it wasn't necessary for you to persuade other customers to purchase Wilkie Creek coal because you had sufficient customers for your production?---We had one specific customer that had agreed to take some 700-odd thousand that overcame the deficiency that we had immediately prior to that budget, yes.

10 All right. So it's true, then, that having acquired the contract – and this is the contract with KOSEP – you didn't need to persuade any other customers to take coal?---We didn't need to, but that didn't stop us talking to other customers, because we believed that the KOSEP situation was short-lived.

15 Now, you've spoken about the fact that Idemitsu was responsible for marketing the Ebenezer coal?---Yes.

20 And if we could take a cut-off date, say, of the beginning of 2004, January 2004 - - -?---Mmm.

- - - was Wilkie Creek supplying coal to Idemitsu at that time?---Yes. We had done. It was a contract we inherited when we took over AQC prior to 2004. I think it was in 2003. We supplied tonnage to supplement New Hope's requirements.

25 Now, you didn't mention that sale in your reports either; correct?---That was a one-off local sale, as far as we understood. And it was there on our books when we took over the mine.

30 All right. Did you make any – take any steps to convert that one-off sale into something more permanent?---It was quite the opposite. We bought coal from them to satisfy KOSEP. Our endeavours were to sell our coal in our own right.

35 And you say you inherited a contract, whereby Wilkie Creek coal was sold to Idemitsu?---The AQC management had sold unsold tonnage that was in their projections of production to New Hope. Yes. They had.

40 Now, bear with me, what does Idemitsu have to do with New Hope?---Sorry. Sorry. AQC, the person – the company from which we acquired Wilkie Creek, had sold prior to our acquisition and had a contract performance that we were obligated to supply to New Hope. And that was unfulfilled at the time of our takeover. I shouldn't have used the word Idemitsu. It was New Hope. And my understanding as to why that tonnage was supplied from Wilkie Creek was that New Hope had acquired the supply contract for Swanbank power station. And to overcome their  
45 deficiencies for their export quantity, they had to buy some coal from us.

So that was a contract with – that you inherited – that Wilkie Creek had with New Hope - - -?---Yes.

- - - in relation to Swanbank; correct?---Well, I – the - - -

5

Have I understood that correctly?---Well, I believe it was to replace coal that they had to supply to Swanbank. They had insufficient coal at that particular time in the development of their mines, Mr O’Shea, that – they had a deficiency.

10 And so what’s the relationship in all of that with Idemitsu?---Well, the only thing that happened there is Idemitsu had a contract, which was overtaken by New Hope, to supply the Swanbank power station at Ipswich. They’d take over the contract – New Hope had taken it over, which was – it’s my understanding it was 800,000 tonnes. They had insufficient coal, so they purchased coal from AQC to supplement  
15 their requirement.

Okay. So Wilkie Creek, in fact, wasn’t providing coal to Idemitsu when you – when Peabody took over Wilkie Creek, was it?---Not to my knowledge, no.

20 No. All right. And didn’t, in fact, have – Wilkie Creek, when Peabody took it over, didn’t have a contract with Idemitsu?---Not to my knowledge, no.

And is it the case that if we’re looking at, say, the beginning of 2004, January 2004, Wilkie Creek didn’t have any contract with Idemitsu at that point?---Not by my  
25 recollection, no.

All right. Now, do you recall that Peabody secured a contract with Idemitsu for Wilkie Creek coal in 2004?---Maybe a one-off, yes.

30 All right. So just an ad hoc sale, you think?---I believe.

All right. If it were a contract of a longer term, then, it didn’t take long to secure that contract, did it?---No. It would have been a spot contract, as far as I remember.

35 All right. If – so you would say if – to the extent of your recollection, Wilkie Creek wasn’t supplying coal to Idemitsu at about the start of 2004, didn’t have a contract with them. And if a contract were to be negotiated, it would take some time to negotiate?---In 2003, we had no contracts with Idemitsu. If there was a spot coal sales, which may have occurred in 2004, yes, it would – wouldn’t have taken long  
40 because they’d know the coal qualities.

Sorry, wouldn’t have taken long to - - -?---It would not have taken long. It was a spot sale. They were familiar with the coal qualities from the Wilkie Creek mine.

45 On the basis that it was very similar to the Ebenezer mine. Is that the reason?---Correct. Correct.



All right. Now, do you recall actually securing and signing a contract with Idemitsu in 2004?---I don't have an absolute recollection of that contract, no.

5 Could the operator please bring up PEA.001.001.0078. And for – perhaps we could start by going to page 20 of the PDF, please, which should be page 0097.

And is that your signature there?---Absolutely. That's my signature.

10 All right. Could we go back, please, to page 3 of the PDF, page 0080.

Now, this agreement was made on 1 September 2004. Do you agree?---Yeah, that – if that's when it happened, yes.

15 And if we could bring up, side by side, pages 4 and 5 of the PDF – that's pages 0081 and 0082.

And we can see there that, on page 0081, there's contract years 1, 2 and 3. Do you see that?---Yeah. Yeah. Yeah. Yes.

20 And they're each from April one year to March the next year?---Yes.

And that's the Japanese financial year?---Correct.

25 And in terms of the quantity, can I suggest that's in article 3, on page 0082?---Article 4, 80,000 per - - -

Sorry?---Per annum.

30 You're quite correct. Eighty thousand tonnes per annum for those three years?---Yes.

So you, in fact, signed a contract which was not a spot contract?---Mmm.

35 It was a term contract, wasn't it?---It was three years for 80,000 – one-off, I guess, shipments.

40 Well, it's not a one-off shipment. It's a quantity of 80,000 tonnes for - - -?---Eighty thou – I don't recall whether it was one shipment or two shipments per annum. Does it say on the lifting? Please go forward with the contract and show me what the lifting was.

Be my guest in flicking forward through the contract. I can't help you on that, Mr - - -

45 WITNESS: Just back – back, please. Please go forward. Go forward. Please continue. Continue. Continue. Continue. It refers to one vessel. It refers to a vessel on 0088.

MR O'SHEA: What article, Mr Crump?---That's 11.2, I think, Mr O'Shea.

So you draw from that conclusion that there was just to be one vessel each year?---I think it was one vessel per annum.

5

All right?---I don't recollect totally this contract.

I'm sorry, you don't recollect the - - -?---I don't recollect the absolute detail of this contract.

10

All right. All right. But, in any event, it was a contract for 80,000 tonnes for each of three years?---For one shipment per annum, yes - - -

Yes?--- - - - by the looks of this.

15

So this was, I suggest to you, a terms contract?---It's termed for 80,000. Yes.

Yes. And this, obviously, was another purchaser available for the type of coal sold from Wilkie Creek?---Yes.

20

And can I suggest to you that, in fact, the tonnage was increased?---It may well have been. I don't recollect.

Could the operator please bring up PEA.001.001.0011. Now, this is an addendum, and I'll come to the date in a moment, Mr Crump, but these addendums to contracts were quite a common way of, for example, extending or changing the tonnage of a contract?---Yes, they were. Yes, they were.

25

And if we could – we can see here that this is addendum 3, referring to the contract which is identified as PwC 20040109. Do you see that right at the top of the first page?---Yes, yes, yes, yes.

30

And that's the contract which we were just looking at?---That's correct.

35

Thank you. Now, if we go down to article 4 we see there there's an increase from 80,000 to 120,000 in contract year 2?---You perhaps have to go to the next page, Mr O'Shea, because I can't see – oh, yes, I can see that, yes.

And if we could bring up the next page alongside it, please. Excuse me a moment. Sorry, if – that was the increase in tonnage. If that could be put away. Could I suggest that by another addendum the term of the contract was extended?---I don't know. I wasn't there.

40

All right. Could the operator - - -?---I certainly wasn't there in 2006 with that addendum that you just showed me.

45

5 Yes. And I should have – I mentioned that I didn't draw that specifically to your attention?---It was an interesting observation in the last paragraph of that. That had to be agreed annually, Mr O'Shea, if you go back to that document. It was not a firm commitment until the year in question of delivery. Buyer shall not be obliged to purchase this tonnage and seller shall not be obliged to supply this tonnage. Availability of that tonnage will be subject to agreement between the buyer and seller prior to the commencement of the contract year. So it's a – not necessary a firm commitment, but I was not involved in that latter discussion.

10 Is that uncommon in the coal industry, that parties enter into contracts setting out proposals but with each party reserving the right to change the arrangement?---That's not usual, no.

15 It's not. All right. If I could just suggest this to you, again this is after your time, that Idemitsu in 2007 extended the terms of the contract so that it extended until 31 March 2011. Now, you don't know that?---No.

20 There's documents which say – did?---That was privileged information to Peabody or whoever operating the mine.

25 Right. Can I suggest, though, that what those contracts show is that the sales to Idemitsu were more than just ad hoc sales as it turned out certainly?---Not by my understanding of that statement that's in the latter part of that document. There weren't firm sales, sir, because they were not committed until the beginning of the year. It was based on production availability.

30 So you would – even though there were these contracts containing that clause, extending over a number of years, that you would still regard that as essentially just an ad hoc sale?---It's an annual contract. It's not a three year – it's a three year term in the outline, but it's an annual contract based on agreement at the beginning of each contract year, Mr O'Shea.

35 All right. And was that the case with the initial contract, do you know?---Well, you have to go back and read. I can't recollect every paragraph of the first contract.

All right. Anyway, that would be apparent on the face of the - - -?---Well, perhaps we should go back and have a look, Mr O'Shea. It may have been that way.

40 Right. Could we do that. Could that document be put away, please, and could we bring up again PEA.001.001.0078. Now, this is the 2004 contract which you did sign?---Yeah. Yeah.

And perhaps you could - - -?---If you just flick through the contract, Mr O'Shea.

45 HIS HONOUR: If you look at clause 4.2 you'll see the comparative wording. Although a question arises in my mind as to whether the second paragraph in 4.2

relates only to the first paragraph of 4.2 and not to 4.1, and a similar proposition of construction arguably arose in the addendum that the witness was talking about.

5 WITNESS: This – your Honour and Mr O’Shea, the second – the second paragraph at 4.2 still has the proviso that it’s agreement prior to the commencement of each contract year. It’s an annual contract in real terms.

10 HIS HONOUR: But in making that statement are you attributing the sense of that second paragraph to both clause 4.1 and 4.2? Because a potential different meaning it - - -?---Yeah, I see what you mean.

- - - that 4.1 is the base annual tonnage and the option only applies to extending it by another 80?---In second reading that’s probably in relation to the second option so it was an 80,000 three year contract.

15 MR O’SHEA: With the expressly recognised option that in years 2 and 3 it may increase from 80 to 160?---Yes.

20 Thank you. Are you aware, Mr Crump – sorry, you’ve referred, Mr Crump, to the fact that Peabody also supplied coal from Wilkie Creek to JJPC?---Job and joint power, yes, they consistently supplied coal there.

25 Now, again this is dealing with after you left Peabody, but can I suggest to you that after you left Joban increased the tonnage it purchased in Wilkie Creek. Were you aware of that at all?---Yes, absolutely. That was the coal at the outset. They were a foundation contract for the Wilkie Creek mine.

30 Now, in your report you refer in paragraph 7.3 to a tonnage of – an AI union contract, as you say, with quotes in annual of 260,000 tonnes per annum?---We were discussing annual terms at the time of – when I was at – Peabody coal trade looking after Wilkie, we were discussing an annual contract of 260,000, yes.

And you’ve got annual there in quotes. What do you mean by that?---Sorry?

35 In 7.3 you say that what was being - - -?---Well, at that particular point in time we hadn’t entered into a long-term or more than one year type contract. What was acquired were annual contracts and we were in the – progressively between 2003 and four and were converted into multiple year contracts were all of those parties.

40 Right. Now - - -

HIS HONOUR: When it’s convenient, Mr O’Shea, we’ll take a break.

45 MR O’SHEA: Yes. Thank you, your Honour.

HIS HONOUR: Is it convenient now or do you wish to - - -

MR O'SHEA: No, no, now is convenient, your Honour.

HIS HONOUR: We'll adjourn for 10 minutes.

5

**ADJOURNED**

**[11.29 am]**

10

**RESUMED**

**[11.43 am]**

**CHRISTOPHER ROSS CRUMP, CONTINUING**

15

**CROSS-EXAMINATION BY MR O'SHEA**

MR O'SHEA: We're talking about Joban Power Station and JJPC. Could the operator please bring up PEA.001.001.0004. Now, this is an addendum, Mr Crump. I can't show you the original contract?---Mmm.

But this is an addendum to a contract, and under background one can see there reference to an agreement dated the 1<sup>st</sup> of April 2004?---Yeah, I can see that reference, yes.

25

And is that consistent with your recollection that Peabody and Joban joint power company entered into a contract in about April 2004?---Yes.

And what I suggest clause 4.1 shows is that the tonnage in 2004 was 300,000 tonnes?---That was the ultimate tonnage, yes.

30

That was agreed in April 2004?---Yes.

Just by way of clarification - - -

35

HIS HONOUR: Sorry, just a moment. You say that this – you're putting to the witness that this clause records that – which is the addendum agreement records that it was – that that's accurate in 2004 when the introductory words delete the original agreement article and replace it entirely with that. So how is it fair to say to the witness that it must be that it provide at 2004300?

40

MR O'SHEA: I'll ask the witness that directly.

Can you recall, Mr Crump, whether the contract signed on 1 April 2004 provided for a tonnage of 300,000 tonnes in the 2004 Japanese financial year?---That was under discussion in 2004. The original contract was, I believe, 240,000, Mr O'Shea, four shipments of 65 – 260,000, and we had an option for an additional shipment which is obviously been cemented into this agreement past – after my – after I departed, but we did ship somewhere around 300,000 tonnes in that year.

That's the 2004/05 Japanese year?---Correct.

Right. And part of it was an option, but otherwise there was actually, in 2004, a firm contract in place for the - - -?---It was performance, yes, and that was converted into a multiple year contract post my departure. It had been under discussion during my tenure.

And so are you saying that the contract in April 2004 was simply for one year?---In April 2004 we had commenced having had an annual contract, Mr O'Shea, for I think it was originally when we took over the mine it was three shipments, and in – at the takeover of the mine in or about March, April 2003 we began discussion with Joban for a longer term agreement and the first year from my recollection was 240,000 with an option for an additional shipment, which was converted and would have meant 300 odd thousand tonnes in the fiscal year JFY 2004.

Thank you. And you were in discussion with Joban at this time to convert it to a multi-year contract?---That's correct.

And is it then consistent with your understanding that after you left in fact this addendum was signed putting that into effect?---It was consummated, yes, after my departure.

All right. And we can also see there that by – I withdraw that. When you were involved in the discussions, can you remind me when it was in 2005 that you left Peabody?---I left in 23<sup>rd</sup> of September 2005.

Right. So really not long before this agreement was signed?---That's correct.

So were negotiations fairly well advanced by the time you left?---Absolutely they were.

And what you had been negotiating was not only a multi-year contract, but also a contract with quite significantly increased tonnages?---Yes, over the period of two years that's what we were trying to achieve to match the production profile of Wilkie Creek.

And so this was a contract which extended out some five years or so?---That's correct.

So is it fair to say that until your sales to KOSEP in 2004, Wilkie Creek had continued to sell low HGI thermal coal to existing users of low HGI coal known to it? Is that fair?---That's correct.

5 So if I could pass to the sale to KOSEP. Now, is it correct to say that you approached KOSEP about this in about 2004 some time? Is that right?---In the second half of 2003 we would have – I think it was the second half of 2003, Mr O'Shea.

10 All right. Now, KOSEP told you that it had the ability to consume 700,000 tonnes per annum of low HGI thermal coal from Wilkie Creek at its Yong Hong power station?---After we proposed the supply of such quantity, yes, they did.

15 And I think - - -?---There's two spellings, it's Y-o-n-g H-u-n-g if you're Australian and it's H-e-u-n-g if you're Korean.

Perhaps the shorthand writer can pick the first one.

20 HIS HONOUR: So KOSEP is a Korean entity?---It's one of the five coal-burning Gencos in Korea, yes, your Honour.

25 MR O'SHEA: What does KOSEP, K-O-S-E-P, stand for?---It stood for Korean Southern Electric Power Corporation. It's been renamed subsequently, if you see reference toss it today to KOEN, K-O-E-N, but in those days it was KOSEP.

Thank you. Now, was that 700,000 tonnes per annum the full requirements of the Yong Hung power station?---Absolutely not. Very small portion.

30 Now, the Yong Hung power station came online in 2004, didn't it?---Thereabouts, yes.

And I suggest to you that Wilkie Creek didn't have 700,000 tonnes of coal to sell in 2004?---You don't have to suggest it. We didn't.

35 And so you blended some Wilkie Creek with another low HGI thermal coal to get to the 700,000 tonnes?---Multiple coals from New Hope, yes.

40 What mines did they come from?---Well, to my recollection it was the West Moreton mines of Jeebopilly and a proportion perhaps from Acland.

45 HIS HONOUR: When you say you blended them, did you actually blend them or what does that mean?---What that means, your Honour, is that we – all of the mines that operated out of Brisbane delivered in 2000 tonne train lots. They were combined on to a singular stockpile coming from both mines up to the desired quantity for the ship way was 100,000, might have been 50,000 of theirs and 50,000 of Wilkie Creek's were combined and blended on to the stockpile.

MR O'SHEA: So the blending was done at the Port of Brisbane?---At the port, Mr O'Shea, yes.

5 Right. And can I suggest – sorry, you referred to the Acland mine. There's no distinction between Acland and New Acland; there or is there a distinction?---I don't think there's a distinction. It's referred either way, sir.

10 Right. Now, it was through these discussions with KOSEP that you first learned customers to adjust millions to use low HGI thermal coal, wasn't it?---Please repeat your question.

15 It was through your discussions with KOSEP that you first learned that customers could adjust their millions to use low HGI thermal coal?---That's not correct. That's not when I first observed that practice.

Right. And when did you first observe that practice?---Well, that practice was evident within the customer base that we had in Japan.

20 And which customers are you referring to?---Well, I'm referring to the three base customers of Wilkie Creek.

Right. But they were – those – according to your evidence, those power stations were set up from the start, if you like, to take low HGI - - -?---That's correct.

25 So while there might have been some adjusting to do there was nothing major to do so far as HGI was concerned in configuring those power stations to take low HGI coal?---Well, the pulverising millions that consumed the Wilkie Creek low HGI coal, Mr O'Shea, also consumed regular coals from time to time. So there were – the capabilities of those three base contract receivers to consume our coal with the mill  
30 configuration to suit the low HGI.

So when you spoke about the traditional units, I'm adopting your phrase here?---Yes.

35 Are you saying that the traditional units not only used low HGI coal, but used more standard specification thermal coal as well?---The traditional units were a residue, if you like, from the discontinuation of mining in Japan as I mentioned earlier in approximately 2000, 2002 there was total – basically nil mining after 2002 at Kashior. They were the residual units. Others had been replaced within the configurations of the individual power stations to consume, if you like, standard coal.  
40

But those units that you're talking about could also consume low HGI coal?---Yes.

45 Right. And some adjustment would be needed - - -?---Well, it's my understanding, yes, that's the case.

If you're converting – let's say you had in particular a mill – because you agree with me, I think, this is essentially a pulverising problem?---That's exactly right.



You'd have a mill within a power station and it was, let's say, taking Wilkie Creek coal, feeding that through, pulverising it and blowing it into the furnace and then perhaps at some point, for whatever reason, the power station would say, well, we're not going to use Wilkie Creek coal for the moment. We're going to swap over to, say, to use another coal that you were responsible for, to Warkworth coal?---Yeah.

We'll use some Warkworth coal and that could be done?---It could be, yes.

And then if they wanted to swap back to Wilkie Creek coal that could be done as well?---Correct.

HIS HONOUR: And is the answer you're just giving, that applying to the traditional units or applying to when you said some of the configurations replace the traditional with new ones, is it just applying to – what you've just - - -?---Traditional units, your Honour, that's applying to those units.

Right. So they could be adjusted to allow Wilkie Creek coal and a different coal and back to Wilkie Creek?---Yep, but generally by configuration, your Honour, they were very small and they – but they were never 100 per cent reliant on the low HGI coal supply from Australia. They had the ability to consume other coal if needed.

MR O'SHEA: I may have misunderstood your evidence, Mr Crump. I thought you said that the new units which replaced the traditional units could also be adjusted to use either low HGI coal or more standard specification?---No, not to my – not my recollection, no.

All right. So when KOSEP approached you in 2004 your view was that - - -?---Sorry. Sorry, KOSEP didn't approach me. I approached them.

Right. When you had your discussions with KOSEP?---Yes.

Your view at that time was if a power station had one of these traditional units they could take Wilkie Creek coal and could take other coal as well, but if the power station had a new unit then it couldn't take low HGI coal?---In the case of KOSEP that was proven to be correct, yes.

Proven to be correct?---That they could take low HGI coal for a period.

If we could just stop for a moment, I'm trying to understand your state of mind when you started having discussions with KOSEP, and I thought what you have just said was that at that time you thought that traditional units could use low HGI coal and more standard HGI coal?---Yeah.

But that the newer units which had been built, say in the 1990s and 2000s, couldn't take low HGI coal?---Were reluctant to take it, yes.

Well, but could they use low HGI coal in their power stations?---The only evidence I have of that is KOSEP.

5 Right. And so before you had your – started your discussions with KOSEP you were of the view that you couldn't use a low HGI coal in a new power station?---Yeah, I was – I'd formed that view, yes.

10 All right. Now, you found out, however, from KOSEP that that could happen; correct?---Yes.

And I think you – you say as much in your report, don't you?---Yeah, I do.

15 And if I can just – and in – I can't find it for the moment, Mr Crump, but let's leave it there because you've agreed with the proposition. So this was in your discussions with KOSEP that you found out that adjustments could be made to the mills in a new power station so that it could process both low HGI coal and standard HGI coal?---Yes.

20 Now, if you knew that those adjustments could be made, this would change your view on the marketability of low HGI coals, wouldn't it?---It did to a limited basis, Mr O'Shea. We did attempt to trial to other Gencos and – we trialled half cargos and were – had a trial and that was it. Others wouldn't touch.

25 Did you find out more details, then, of how KOSEP about able to adjust their mills in order to pulverise the low HGI coal?---They obviously revised their pulverisation rate. They reduced the feed, the throughput, and had some inefficiencies because of that, but because they were consuming, by my recollection, 3 million tonnes at each of those first two units, six million, and they had shortages of supply and I was a major supplier from Australia of two and a-half million otherwise, they consented to trial our coal for a period, which they did, and I believe it went on for 12 months after my departure from Peabody. But after that I don't believe it was extended.

30 I think we've seen after you left, after 2005, that sales to South Korea in fact continued out of the Port of Brisbane, didn't they?---Only for a short time, Mr O'Shea.

All right. Now, did you discuss with KOSEP – I think it's Mr Park and Mr Lee at KOSEP that you spoke to?---Mr YG Park and Mr YJ Lee, yes.

40 Any details of how they were proposing to adjust their mills? I think you said they were going to reduce the throughput of the mills?---Well, this he reduced the throughput – throughput at that particular stage.

45 Did they say that to you that that's what they were doing?---Basically, yes.

All right. Did they discuss how they might burn a coarser grind of coal?---No, they didn't.

Did that he discuss?---That was not an option for them. They just had to reduce and lose capacity to take the coal.

5 All right. So you didn't attempt to persuade them that in fact - - -?---Of course we tried to persuade everyone to do that that we were talking to in the market, Mr O'Shea, but that was not an option from the receiver's side.

10 In any event, from 2004 you understood that mills could be adjusted to accommodate low HGI coal?---It's not so much adjustment, it was through put limitations. To grind to the 70 micron that it was – the normal PF fuel for an individual power station then there were reduced capacities.

15 You don't - - -?---You could not grind the same amount of coal in the timeframe to have full load capacity with the Hardgrove sub 40.

HIS HONOUR: You could still grind it to the requisite size?---Absolutely, your Honour.

20 It was less efficient to get there?---That's one of the key issues, yes.

I had in my mind that they just couldn't get it to the right?---No, no, no, sir, they can – your Honour, they can grind, but the through put does not allow, and it has restrictions on the efficiency of the boiler on maximum load. They just can't keep up the PF fuel from the grinding plant to sustain full load in the boiler.

25 Thanks.

30 MR O'SHEA: In any event we've got – sorry, we don't. We'll come to the KOSEP contract in a moment, but can I suggest that the price you got for the coal sale to KOSEP was comparable to the price you were getting elsewhere with other customers?---It would have been comparable, yes.

35 So whatever detriment there was to its milling throughput was not something which was reflected in the price which you obtained?---I think we were in the transition of a very significant price rise at that time. It was availability of that as an alternative which was a serious condition that KOSEP had taken the coal, availability of other coals and the price rise that was imminent.

40 This is when, first quarter 2004 you're talking about?---Yeah, somewhere in the late 2003s into 2004 when our market went from mid-twenties or whatever it was to \$40.

45 Indeed that's reflected somewhat in this contract up on the screen with Joban Joint Power which records at any rate, leaving aside whether it was did I contracted price, a price of \$42 US?---That's correct.

And so that was about the price of coal, the spot price at that time or was that closer to the benchmark price?---In 2004 that was closer to the benchmark. That coal is

5 nominally around – that’s 6125 GAR, 6322 GAR is the benchmark price, so that – benchmark price would have been around about 43 to 44 based on that.

5 Do you know what the spot price was at that time?---I can’t recall off the cuff, but it would have been rising towards those levels.

But still underneath those levels you think?---I think it was, yes.

10 All right. Now, in 2004 to the best of your knowledge KOSEP had not historically taken low HGI coal, had it?---They hadn’t because of – to give you more colour on that, the Korean Gencos, all five, had a flotilla of Capesize vessels which had draft – needed maximum drafts of sort of 14 and a-half metres which couldn’t be provided at the Brisbane port for low HGI, so therefore they were reluctant. They did operate flotillas of Panamaxes which they took coal from Indonesia generally, not Australia.  
15 They operated Capes on the long haul for efficiencies of landed cost.

20 So are you saying that’s the reason why KOSEP in fact hadn’t purchased Australian low HGI coal prior to 2004?---I’m not saying it’s the only reason. It was one of the restrictions that was evident.

25 That was the one that came to your mind when you wanted to explain that question?---Well, we had to encourage the operators of QBH in Brisbane port to accept 130,000 vessels and light load them to the maximum drafts to attain that agreement with KOSEP.

30 And – all right. Could we just look at some of the contracts between KOSEP and Peabody. Could we please bring up PEA.001.001.0042. Now, this is, as we can see, a contract between KOSEP and Peabody. Could we go over to page 2 of the PDF, please, page 0 – excuse me, I’ve got the wrong one. Thank you. Sorry. I was mistaken. Could we go back to the front page, please. That has KOSEP 2004 SP 05. Does that indicate it’s a spot contract?---Yes, it does.

35 All right. And could we go then to page 2 of the PDF, page 0043, and the contract there isn’t actually dated. Do you know – can you recall when this contract was entered into?---I’m not sure. In or around about early 2004 the contract was finalised, but we’d had discussions progressively in the latter part of 2003 post EPDCs indication they were taking no coal in 2004.

40 All right. So - - -?---Progressively over the period late – last quarter 2003 through first quarter 2004.

All right?---The contract may have never been signed for six to 12 months later.

45 Could we then please go to page 7 of the PDF, page 0048. And we can see here quality Macalister. Do you see that? I think you said yesterday you couldn’t recall that term, Macalister?---Well, yeah, I couldn’t, but that’s probably what we called it because of the blend.

Right. Now - - -

HIS HONOUR: Sorry, I'm just – I see. Quality Macalister. All right. Thank you.

5 MR O'SHEA: If we could go, please, to page – could we open up page 47 with page 48. Thank you.

So the quantity of coal under this contract was 265,000 tonnes?---Correct.

10 And if we can – if I could – I'll come to it later. I'll come to it later, but would you accept that you signed this contract?---Yes. I must – yes. I would have signed this contract.

15 And that's – perhaps on the left-hand side, Mr Operator, on – leave the right-hand side there. Could we go to page 0077 on the left-hand side, please.

And we see there that you, in fact, have signed this contract?---Yeah, but there's still no date. Yeah. But I - - -

20 Yes?--- - - - don't know when I signed it, honestly.

I understand that. But it appears to be – it's signed by you and we don't - - -?---And Mr Y.K. Bae, who was the GM. Yep.

25 All right. Going, then, back, to look at page 0048, Mr Crump, we're looking there at the bituminous coal specification. Do you see that?---Yes.

30 And the columns there – there's, sort of, the item, the unit, then there's limit of range and seller's guaranteed quality?---Yes.

Now, the limit of range is what the power station says, in relation to these various specifications, "This is the sort of coal we can take." Is that - - -?---That's correct.

35 All right. Now, if we look at grindability there, it says:

*Limit of range minimum, 45. Seller's guaranteed quality, 35.*

?---That's correct.

40 So could I ask you, firstly, that minimum of 45 is less than the figure of 47, which you refer to in your report?---In relation 47, typically standard coal?

Yes?---Yes.

45 But, perhaps more importantly, this contract shows that the guaranteed quality which KOSEP were getting was, in fact, 35?---That's correct.

And they were, in fact, prepared to do that?---For this contract, yes.

Could I also ask you about this. We're talking yesterday about net calorific value. Do you recall that?---NCV. Yes.

5

And I think you were saying that the minimum NCV for a Japanese power utility – I think we were talking about Japan at the time - - -?---Was around 59, 59.50. Yes.

10 Yes. It's considerably lower under this contract, isn't it, if we look down to net calorific value on an as-received basis?---Yes. The GENCOs are characterised by a lesser energy, yes - - -

So - - -?--- - - - requirement.

15 That – the coal from Wilkie Creek was more than adequate to satisfy the limit of range for KOSEP?---For the energy, yes.

20 The energy. And I think we – would you agree with me that the Monto coal net calorific value on an as-received basis is about 58.20?---That's what we've been advised. Yes.

Now, could we then go, please, to another document, which does have a date, PEA.001.001.0099.

25 Now, one can see this is a differently-identified contract on the first page. And we'll come to the details of it. If we go over to the second page, 0100, we see that this contract is made on the 24<sup>th</sup> of March 2004?---Correct.

30 So does that accord with your general recollection of when these contractual arrangements with KOSEP were entered in - - -?---I have no idea about the 24<sup>th</sup> of March 2004. I'd gone. But they obviously converted to a term contract, my successors.

35 I don't – you were still there on the 24<sup>th</sup> of March 2004?---Sorry. Sorry. Twenty-fourth of March 2004, that – yeah. So – no, that's okay. We converted.

Good. Thank you. And could we quickly flick over to page 0136, please, Mr Operator.

40 You had, in fact, signed - - -?---Yeah. Yeah.

- - - this contract?---Sorry. My apologies. I'm think – I was reading 2005 – 2006.

45 Yes. Because you were still there in March 2005, weren't you?---That's correct. I was - - -

Yep?--- - - - there till September.

All right. Now, could we then go, please, to page 0104. And we can see from 2.01 that the term of this contract is for one year?---Basically, yes.

5 And over on the next page, page 0105, the base quantity of coal is 500,000 tonnes per annum under this contract?---With an option of an extra 30, yes – 150.

And can you identify where that is?---Three point O-two. There's a 30 per cent plus or minus option.

10 Right?---Mutual.

Now, this is part of the overall arrangement to supply the coal to KOSEP; is that correct?---Correct. First contract was spot; then there was a term for one year.

15 Right. Now, could we then go over, please, to page 0106.

In terms of quality. Now, this doesn't say Macalister coal, does it?---No. It doesn't say any coal. It just says quality.

20 But is your understanding that this, in fact, was coal which was mined from Wilkie Creek, this part of the contract?---No, this was a blend of coal from both parties. From - - -

25 All right. So - - -?--- - - - New Hope and Wilkie Creek.

30 Could I – bear with me for a moment. Can I suggest to you that, in fact, this contract was for coal mined from the Wilkie Creek mine?---My recollection was, at the time of negotiation with KOSEP on spot and term, there was an ongoing commitment to buy New Hope coal to sustain that volume, because we had insufficient production. And we had annual contracts, as I recall, from New Hope, for both the spot and the term.

35 And my suggestion to you is that the spot contract may have been or included the New Hope coal, but this contract was for coal mined from Wilkie Creek?---Not to my recollection.

Could we go then, please, to page 0103 of the document.

40 And just the definition of coal there?---That's correct.

So we could crack through the various contract provisions, but what you agreed to sell, I suggest, was "Coal", with a capital C?---That's correct.

45 And so what you were agreeing to sell was coal mined from the Wilkie Creek coal mine?---That's what the contract says there. Yes.

And that the Macalister may have been different, but what this contract - - -?---It's specified Wilkie Creek, sir. Yeah.

5 Thank you. So if we could go, then, back to page 0106, please.

The specification – we have similar columns as we saw previously?---Mmm.

And in relation to HGI it says limit of range minimum 40. You see that?---Correct.

10 Now, the previous – the spot contract we looked at had limit of range of 45, didn't it?---That's correct.

Which suggests that there's not any precise magic in the limit of range for HGI?---That's an interpretation, yeah.

15

Was that your understanding at the time?---I'd understood that we could deliver this coal into Yong Hung from Brisbane at around the high 30s to 40.

20 I'm just concentrating on the moment on the limit of range and these are contracts signed by a customer - - -?---Correct.

- - - at about the same time. One of them says – sorry, I withdraw that. And designed to be used in the same unit in a power station - - -

25 HIS HONOUR: Are you putting to the witness they were signed at about the same time?

MR O'SHEA: Yes.

30 HIS HONOUR: He hasn't accepted that yet, in fact said he didn't know and it could have been signed up to six months later.

35 MR O'SHEA: Perhaps if I could ask you again, Mr Crump. Was the spot contract and this contract signed at about the same time?---No, this one was subsequent to the trialling in Brisbane, sometime after.

40 All right. So is it the case then that for KOSEP the limit of range in relation to HGI might have come down over the period between the spot contract and this contract?---That was the subject of discussions with KOSEP, yes, it had come down for this specific contract.

All right. So what is then said here in relation to the seller's guaranteed quality was 40?---Was?

45 Forty?---That's what it said, yes.



And I don't think there's any dispute that Wilkie Creek coal didn't have an HGI of 40, did it?---Wilkie Creek did not have a HGI of 40.

5 Can you explain why you signed a contract that said that the guaranteed quality so far as HGI was concerned was 40?---Because there was a supportive supply arrangement with New Hope in that period as part of the overall 750,000 that we delivered that more than 400,000 tonnes was coming from within their West Moreton mines.

10 And what – the HGI of those mines was about 40?---Correct.

So you were blending that coal with an HGI of 40 with Wilkie Creek coal with an HGI of about 35?---Plus or minus, yes.

15 So I suggest to you that the HGI value of that blend could not have got as high as 40?---Possibly, yes.

20 Did you investigator consider that at the time of signing this contract?---It was understood between us and KOSEP that that coal would be in line with the quality that it had been supplied previously. That was a condition for the commercial department of KOSEP to have in their contract.

A condition that the contract state that the HGI be 40?---Correct.

25 But your understanding - - -?---With the receivers.

- - - with the people that you dealt with on the technical side, if you like - - -?---Yep.

30 - - - was that with the previous shipment it would have an HGI of 35?---It may well have had HGIs in the range of 35 to 40.

All right.

35 HIS HONOUR: Because you were blending it with something - - -?---Wilkie Creek and Jeebropilly type West Moreton coals would nominally give you a lesser number than 40, but commercially for the acceptance of this term contract, that was the determination by the receivers.

40 MR O'SHEA: And so – that, of course, is all on the assumption that this contract, contrary to its terms, provided for a blend to be supplied?---Coal came from other mines, yes.

45 Even though the contract says it's from the Wilkie Creek - - -?---That's common practice.

To have a statement in the contract that is incorrect?---The statement is incorrect.

You say it was common practice for that to be done in the industry?---Well, producers have multiple mines that they blend coal from and typically that – that determination at that particular time was not so much an enforceable issue as far as the receivers. Coals could be mined, purchased otherwise.

5

In any event, Mr Crump, you agree that if this was a blend, this coal - - -?---Yeah.

- - - that the blend was – the blend would in fact have an HGI level of less than 40?---May well have done. It depends.

10

This was done with the knowledge of the people with whom you were dealing?---Absolutely.

At KOSEP?---Correct.

15

But the people in the commercial department insisted that in fact an HGI level of 40 be specified?---That's correct.

All right.

20

HIS HONOUR: So you'd run the risk, though, wouldn't you, that the contract says it has to be 40, but somebody might sample it and find out it wasn't and reject your shipment?---Well, the history of this particular contract was the first contract for Macalister, which included blends was at 35 and they had consumed the coal. It was hopefully from our point of view in a strategy of moving towards an ongoing supply which did not come into fruition after I left, that basically they had consumed that coal and it was – it was a – if you like a first step in an ongoing situation to try and have a commercial agreement ongoing for term at 35, but that did not eventuate to my knowledge.

25

MR O'SHEA: So what – are you saying this, that coal with an HGI guaranteed level of 35 was delivered, the technical people, if I can call them that, found the coal was satisfactory for their purposes and said we'll take that coal and then when you went to sign the contract the commercial department said listen you've got to say it's 40?---The commercial department had negotiated with their combustion department to lower that 45 down to 40 and for your reference today still I think the Genci – 40 is in line with Indonesian coal which I was also supplying at that time, Mr O'Shea, but today Australian coal is typically limited to 45, and it was a condition based on their experience at Yong Hung on – the 265,000 consisted of three cargos. So there was an ability for the commercial department, based on availability, to negotiate a term arrangement and they got consideration from within to get that down to 40, about you they had to put that on the contract as the guarantee at 40, which was never – never, to my knowledge, enforced.

30

Why did they have to put 40 into the contract?---That was their own internal commercial between fuel department and commercial department.

Did you have any understanding of why that was a requirement or not?---I think it was a move to adapt to other supply of coal and that was the first second step, if you like. They'd taken our coal previously.

5 That's why they were prepared to take the coal, but I was really asking you did you have any idea why the commercial department required the guaranteed quality to be 40 when, in effect, everyone knew it was likely to be less than 40?---Well, I would guess – I would only surmise, and I didn't see firsthand. Yong Hung was a new power station, as you mentioned earlier, and they would have had specific guarantees  
10 on Hardgrove as far as boiler manufacturers and probably that's what the level was that was consented to by the boiler department with the commercial department.

So notwithstanding those guarantees, they were still prepared to buy the coal which was at less than the required specification for the - - -?---They had a limited  
15 preparedness at this stage, yes.

I'm sorry?---They had very limited preparedness.

Yes. Can I suggest to you that that was because they were satisfied, having done the  
20 trial burns, that in fact this performed satisfactorily?---You don't have to suggest that. That – that happened, yes. That's a matter of fact.

So that's the reason, of course, why they took the further tonnage?---One of the  
25 reasons, yes.

One of the reasons?---Yes.

But an important reason? Yes?---Yes, it was.

30 Now, in relation to this contract we've seen how it defines coal as bituminous coal mined from the Wilkie Creek mine. Could we just go back briefly to the spot contract, please. Perhaps if it could be brought up – don't bring it up side by side. If we could just close that and bring up PEA.001.001.0042. This is the spot contract that we looked at earlier, Mr Crump?---Yes.

35 Could we go to page 0046, please. Now, the definition of coal in this contract is the bituminous coal mined in Australia?---That's correct.

40 This isn't limited to coal mined from Wilkie Creek?---That's correct.

So I suggest that the spot contract may well have been a blend, but the other contract was in fact for coal mined from Wilkie Creek?---No, I don't agree.

45 And when I say the other contract, I'm not referring to just the terms of the contract, I mean that was the arrangement - - -?---The specifics in the contract said Wilkie Creek, but there was supplemental supply from Jeebropilly and other mines of New Hope.

Now, could I please – we’ve spoken about addendum - - -?---Yes.

- - - to contracts?---Yes.

5 Were memoranda of understanding also entered into with customers?---Sorry, just repeat?

10 Were memoranda of understandings – sorry, memoranda of understanding entered into by Wilkie Creek with customers?---With respect to ongoing supply post 2003, not to my recollection. We may have had one all right. Could we bring up, please – that document can be put away – PEA.001.001.0098. This is a memorandum of understanding with KOSEP signed by yourself, Mr Crump?---Yes.

15 And it says – the document itself isn’t dated, but it says that it’s further to a meeting held in Newcastle, New South Wales, on 8 December 2004. Do you see that at the top?---Yes.

Then can I ask you to look at paragraph 1 in the memorandum?---Yes.

20 So this contemplated, towards the end of 2004, that the contract would be extended under a multi-year arrangement from 2005 to February 2008?---It contemplated that, yes.

25 And that was certainly the position in December 2004, that that was what was in the contemplation of the parties?---Correct.

And in paragraph 3 – sorry, paragraph 2 fleshes out the proposal in a little more detail?---In what sense?

30 Well, it refers to a nominal one million tonnes per year over a three year period?---Paragraph 3?

Yes?---I’m not reading that.

35 I’m sorry, paragraph 2?---Yes, it talked about a million tonnes, yep.

I’m sorry. Paragraph 2 in fact is talking about Newcastle coal, isn’t it?---That’s correct.

40 That’s right. I’m sorry. I knew there was a reason I hadn’t highlighted it, Mr Crump. Now, then – so that’s – the first paragraph is referring to Wilkie Creek or Macalister coal, second paragraph is referring to Newcastle?---Correct.

45 And the third paragraph, I suggest, applies to both, recognising KOSEP’s rapid growth in future demand the parties agreed to work together?---Yes, we did.

Now, could we then look at an addendum to the KOSEP contract. Could we please bring up PEA.001.001.0001. Now, this is an addendum to the contract, which is the 500,000 tonnes per year contract?---Yes.

5 And in terms of article - - -

HIS HONOUR: I'm not clear what you're putting to the witness. We started this exercise with looking at a spot contract and then we can look at a term contract.

10 MR O'SHEA: Yes, your Honour.

HIS HONOUR: And now we're looking at a head of agreement that suggests an expansion. Are you suggesting that the head of agreement – sorry, the memorandum of understanding related to the spot contract, distinguishing the spot contract from  
15 the term contract or are you saying it related to both?

MR O'SHEA: No, the memorandum of understanding, and perhaps if I ask you this question, Mr Crump, refers to a current contract for 500,000 tonnes per annum. That's not on the screen at the moment?---Mmm.

20

And that, of course, is the term contract, the one year contract, not the spot contract.

HIS HONOUR: Well, I'm not sure about that because I just went back and looked at them, spot contract said 500 plus or minus 30 per cent and I didn't get to, before I  
25 asked the question, what the term contract dealt with. So your question was imprecise and I thought that I wanted to distinguish whether you were saying the memorandum of understanding related to one or other or both of the previous two contracts.

30 MR O'SHEA: Can you recall this, Mr Crump, the spot contract was for 265,000 tonnes?---Originally it was the first three shipments which was based on success of part loading out of Brisbane, yes.

That was the spot contract and then the term contract, or the annual contract, was for  
35 500,000 tonnes. Is that your recollection?---Yes, and equally we had contracts from Newcastle.

Yes.

40 HIS HONOUR: No, I confused them. I see. So the proposition – spot was for 265, the first term contract was for 500.

MR O'SHEA: That's so.

45 HIS HONOUR: And your questions are relating the memorandum of understanding with the first term contract.

MR O'SHEA: That's so.

HIS HONOUR: Thank you. I'm suggesting, Mr Crump, that this addendum is relating to the term contract?---Could we go to the second page? You're only  
5 showing me the first page.

Could we bring up pages 1 and 2 together, please?---One, two - - -

I think it's three pages in total. Can we just flick over to the third page? I'm not sure  
10 that – yes, so that's just the signing page which you have signed?---Mmm.

So could we bring up pages 1 and 2 again. Thank you. This is now referring to the term of the contract continuing until February 2008; correct?---That's what it says, yes.  
15

As we've seen we've – you signed that contract. Could that document now be put away, please. Now, at this point in 2004, 2005, Mr Crump, you were in a position where you really had more demand for coal than you could supply, hence your need to buy the coal in from New Hope?---That was my recollection, yes.  
20

So I suggest to you that you didn't have any need at that point to find out whether other customers could, like KOSEP, take low HGI coal?---That's not correct.

You had – you knew, though, that they could – KOSEP could process a coal down to an HGI level of 35?---Yes, we – we knew that, yes. At one station.  
25

There was no reason to think that that station was unique in any way, was there?---Yes, there was. They would not consider taking the coal to their other two stations. They were the largest consumer and they specifically elected to take that coal at Yong Hung. They would not take at Sang Chung Poe or the other station.  
30

I see, but for Yong Hung Power Station, it was a very large one, wasn't it?---It was large and getting larger. It was four by 1,000 megawatt units eventually.

And if one takes that power station, what's its annual demand for coal approximately?---At that time it was about six million tonnes rising to 12 over the next 10 years.  
35

So a very substantial quantity of coal?---Very substantial.  
40

Yes. Now, if we then ask you to put yourself in the position of preparing a bankable feasibility study in May 2005, I suggest that it wasn't correct to say that market acceptance for Monto coal was limited to EPDC, JJPC and Tohoku, because, for example, Wilkie Creek was successfully exporting to KOSEP?---That's reflected in table 2 of the conclave report that we would – we had estimated a market in Korea.  
45

Right. So that's really departing somewhat from what you say in paragraph 8.3 of your report?---In – that – at that particular stage, and by my recollections by the end of my tenure at Peabody, the ability to sell coal continually into KOSEP was changing. The commercial practices were changing and the longevity of those contracts was in question.

But - - -?---Not in spite of some acceptance at Yong Hun power station.

All right. Now, if I could then ask you a general question about these newer units, the non-traditional units?---Yes.

And you've said that they were, really, designed for Hunter Valley coal?---It depends on – but typically if you're talking about Japan, is that what you're talking about?

Well, Japan first?---Yeah. Well, Japan traditionally the units that were constructed throughout the latter part of eighties, nineties into 2000 were predominantly based around typical Hunter Valley-type coals.

What about other countries in Asia?---The only similar coals that were – well, similar coals that were available were available from one particular large mine in Indonesia, Kaltim Prima, and also there were coals of a similar type being exported from Shin Won Dow from the Chinese exporters. And at that stage there was a very small amount of Russian comb coming out of Vladivostok.

Thank you for that. I was more interested in the power stations, rather than the suppliers, elsewhere in Asia. You said in Japan, for the reasons you gave, they were designed with Hunter Valley coal in mind. What about power stations elsewhere in Asia?---Well, in Korea it was – they had a mix of coals that were based primarily around the Australian coals. And they had a lower energy, as you identified earlier, in the qualities that we supplied from Wilkie Creek. But typically their predominant supply source for up to 30 per cent of their coals was from Australia and then Indonesia at lower energies. Taiwan, similarly, had Australian coals as their primary source for up to 30 per cent, Taipower and FPG, probably 30 per cent from Australia and, again, 30 per cent plus from Indonesia with a mix of – in the case of Taiwan no Chinese, but other coals. South Africa and Columbia.

Are you saying that all those various coals, supplied, say, to Taiwan, were all consistent with a Hunter Valley specification?---Typically, yes. And that's evidenced by the Taipower invested in the Bengalla mine for a high proportion of their Australian securitisation.

And what about the low HGI Indonesian coals?---Low is – again, we're talking 40 plus?

Certainly in terms of calorific value much lower?---The calorific value is much less than Australia, yes.

And in terms of moisture, much higher?---Much higher.

So they were not – they didn't have a specification of the typical Hunter Valley coals, did they?---No. No. No. No.

5

Yet, nonetheless, those lower HGI Indonesian coals were sold into Taiwan, Japan, Korea. Is that correct?

MR SHEAHAN: I object. If my learned friend's going to use low HGI all the time and the witness has to think about correcting him - - -

10

HIS HONOUR: I think it should be made more precise. I'm in no doubt as to what the witness means by his answer, but it should be made more precise.

MR SHEAHAN: It's just the pressure on the witness, your Honour.

15

MR O'SHEA: Perhaps if I could be clear about that. Well, by low HGI coals I think you say they had an HGI of at least 40?---Correct.

What about subbituminous coals from Indonesia?---Typically 40 plus.

20

But there were subbituminous coals from Indonesia of a lower HGI; correct?---There may well have been, but typical coals going into the markets that you've asked me about were 40 plus.

25

So did you have no awareness of what the HGI levels of subbituminous Indonesian coal were?---Yes, I had awareness.

And what were they?---Well, predominant – the predominant suppliers from Indonesia were from three particular mines. One was operated by Rio Tinto, Kaltim Prima, which on their high quality coal was a look alike to Australian Hunter Valley coals, and on their lower Pinang brand, still had a higher HGI than 45, but was a much lower landed cost coal into Japan. The other mines were BHP's Sinui and Senakin mines in the southern part of Kalimantan all had a HGI greater than 40 and were bituminous coal, not subbituminous. They were the predominant suppliers throughout the eighties and nineties. And Adaro and those mines which still had a HGI greater than 40 and lower energies at 5000 or thereabouts came into play in the mid-nineties as an alternative low cost fuel, but they did not have HGIs in our predominant markets of Japan, Korea, Taiwan that were lower than 40.

30

35

40

But often were at the 40 level?---To my knowledge, they were 40 and above.

All right?---I've not seen coals of less than 40 at that particular time in the time period we're referring to going into those traditional markets.

45



Now, can I make this suggestion to you, that limits on coal quality, which were advised were often not strictly applied. And we've seen an example, for example, with the - - -?---KOSEP.

5 - - - KOSEP contract?---Correct.

I think you also gave an example of it yesterday about Formosa Plastics?---I did.

10 Could I also suggest that what one sees in, for example, industry publications did not necessarily reflect actual practice either. And I'll give you an example if I may?---Yeah. Please do.

Could I ask the operator, please - - -

15 HIS HONOUR: Before you do that, there was a question asked which had two parts. I want to clarify your answer, please?---Sorry.

The question was:

20 *Can I make this suggestion to you, that limits on coal quality which were advised were often not strictly applied. And we've seen an example, for example, with the KOSEP contract.*

25 And you said, "Correct." Now, were you agreeing to the proposition that the limits were often not strictly applied?---I was – sorry, your Honour. I was agreeing to the proposition that it did occur, not often. I guess I missed a clear response on that. It happens, but not as a rule of thumb.

30 MR O'SHEA: Could the operator please bring up ALL.001.004.0875. Now, are you familiar with this publication? I think it was an annual sort of publication, wasn't it?---I may well have seen it, but I'm – familiarity 19 years, 20 years later is not there.

35 Sure. Could I ask you to – could I ask the operator, please, to go to page 0097 of this document, please. Sorry. I got the number wrong – 0997. My apologies. Indicative coal quality requirements of Asian consumers. Do you see that, Mr Crump?---Can you blow it up a little? It's a very fine document.

40 Certainly. Could we blow up the top?---Yeah. Yeah. That's great. Thank you.

Asian consumers?---Yep.

45 And one aspect, if we – that you had experience with when you were at Wilkie Creek is EPDC?---Yes.

And it says there minimum HGI 45?---Correct.

Now, you knew that that in fact wasn't accurate, because you were supplying Wilkie Creek coal to EPDC, weren't you?---I'd go further than that, Mr O'Shea. I'd supplied coal to EPDC's eight power stations, nine power stations since 1981. I intimately know their power stations. So I knew that not to be correct, including the  
5 Wilkie Creek supply that was sub 40.

All right. Thank you. That can be put away. Thank you. Now, are you aware that, starting really in about the mid-1990s, many power stations in Queensland utilised low HGI thermal coal?---Yes.  
10

And those that were existing in the mid-nineties were similar to the power stations used overseas at the time?---In the mid-nineties?

Yes?---You'll have to be more specific. Which power stations are you talking  
15 about?

Well, perhaps if I could ask you which power stations from the mid-nineties in Queensland utilised low HGI thermal coal?---Swanbank power station.

All right. Was Swanbank fairly typical of power stations, say, in Japan at that time from the mid-nineties?---No.  
20

How is it different?---It was, basically, supplied almost from mine mouth operations, singular coal type, locale being Ebenezer and in the Ipswich coalfields, West  
25 Moreton coalfields.

And was Swanbank originally designed to accommodate coals of that nature?---To my knowledge, yes.

All right. Now, could I just take you to blending and that topic, just to make sure that I understand it, Mr Crump. Blending is where coals from different sources are mixed together into a blend. Is that a reasonable description?---Could be from a singular mine, sir. They're not necessarily different sources. They might be – the nature of our business is that each mine mines multiple seams, typically in an open  
30 cut situation. We can mine up to 45 seams in a particular coal mine. They are  
35 blended together to the specification to deliver the brand, if you will, from that mine.

All right. So blending is a very common thing to do?---Happens at a mine, happens at a port, and happens in the stock yard of the customers sometimes, depending on  
40 their configuration.

So there are – they are the three – well, three primary places at which coal can be blended. Is that fair comment?---Correct.

Now, you've referred, I think, to blending being done in the case of that KOSEP contract at the Port of Brisbane?---That was correct.  
45

And can I suggest to you that in 2005 there were good blending facilities at the Gladstone port, as well?---Absolutely.

5 And it is possible, for example, to blend a low HGI coal with a higher HGI coal – sorry – let me withdraw that. To blend a coal with an HGI below 40 with a coal which had an HGI above 40, if that produced an acceptable blend?---That possibility was there, but the coal types you would be blending with from Gladstone by my recollection, as I was a trader from Gladstone, sir, and had blended coals there, was that the typical coals that you would be able to blend that with would not necessarily  
10 give you an outcome greater than 40 with a Monto coal.

And is this based on your understanding of that non-linear relationship - - -?---That's absolutely right. We have a similar problem in the Hunter Valley, with a coal that comes from Austar, one of the Yancoal mines, which is similar – different type of  
15 coal, but very low volatile, can be used very sparingly. For example, in a 130,000-tonne ship, very high energy, but you're lucky if you can put 6000 in without reflecting on the HGI of the overall ship.

Now, you spoke in your report about the inability to blend coal. You were told by  
20 customers that you spoke to that there was an inability to blend coal?---Would you  
- - -

Do you recall that?--- - - - like me to clarify that?

25 Per – if you could perhaps go to your report, paragraph 7.7?---Seven - - -

Point 7 of – this is your first report?---Mmm.

Paragraph 7.7(b)?---Yep.  
30

Now, I think you've just referred, in fact, to blending in the stockyard and referred to the fact that not every power station has a stockyard in which the power station can blend coal?---Correct.

35 Correct? So an inability to blend might, in fact, result from that; is that correct?---From the stockyard configuration?

Yes?---And the coal types. Yes.

40 And then – though, when Mr Fuse - - -?---Fuse.

Sorry. I'm referring now, in particular, to 7.7(b)?---Yep.

After Mr Fuse said that, you then said:  
45

*I understood, from my discussions and dealings with those in the thermal coal industry –*

Do you see that?---Yes.

That inability to blend meant something?---Yep.

5 Now, could I ask you, firstly – well, you say here:

*The alternative to milling low-HGI coal for a pulverised fuel at coarser fractions (150 micron).*

10 Do you see that?---Yes.

Can you describe any more precisely what you mean by 150 microns? What does that - - -?---It's the size of the particle for injection.

15 And does all – are you saying that that would be the maximum size of the - - -?---No, no. No. The ideal situation to pulverise these low-HGI coals is to a larger particle, right? But the larger particle is constrained by the injection process into the boilers. There are very few plants that can accept 150 micron. And to have equivalent energy from consumption, if you like, within a pulverising mill, to my  
20 understanding, that would be the best outcome – if you could crush to 150. And no one, to my knowledge, had the capacity to introduce that coal into the blast – into the boiler.

25 All right. So that was, really, the – the governing problem was getting - - -?---It was one of the problems.

- - - the coarser coal - - -?---Yeah.

- - - into the boiler?---Yes.

30

HIS HONOUR: So you – bearing in mind what we discussed earlier, you could grind it to get to the 70 micron, or whatever was requisite, but that would have downstream problems, in terms of efficiency - - -?---Correct.

35 - - - of the boiler?---Yes, your Honour.

So the – to get the efficiency meant you got the 150, which caused the problem?---That's right.

40 Yes?---Yeah. You simply – if you – even if you had a refit to grind to that problem, you couldn't inject it, because all your tubing, everything that injected the fuel, to burn, was configured around standard-type coals.

Thanks.

45

MR O'SHEA: So when you're then – I think the word you used was tubing?---Mmm.

So you're talking about, if I could use that word generally, tube, through which the pulverised fuel is blown into the furnace?---For burning.

5 Is that what you're referring to?---For burning, to create heat. Yep. For steam.

And so, as I understand your evidence, you're saying that, typically, in that coal delivery system from the mill into the furnace, they were injected through tubes, where 150 micron sized coal particles, in fact, wouldn't fit; is that right?---Well, nominally, they would provide a problem. They could end up in blockages at that size.

10 Right?---It wasn't designed for that size fraction. They were designed for 75-type micron or less.

15 And, in particular, you're saying it was designed for the smaller size of particles, on the basis that that was a restriction on actually injecting the pulverised fuel into the furnace. It was that which was the problem with using coarser fractions?---Yes.

20 Now, can I suggest to you that that's quite wrong?---Please.

And can I suggest to you that, in fact – and I can't give you a precise figure at that stage, but the tubes through which the pulverised fuel is blown are, really, some significant diameter, at least in terms of, let's say, six inches or something like that?---That's correct.

25 Whereas 150 microns, it's double 75 microns, but it's - - -?---Correct.

- - - still tiny, isn't it?---Yes.

30 What would 150 microns be? About the width of a human hair or thereabouts?---Something like that. Yeah.

Yeah. So it's that fine, isn't it?---Mmm.

35 Yes. All right. So I suggest then, in fact, injection was not a limiting factor in relation - - -?---It was – I disagree with you, sir, in that - - -

40 All right?--- - - - the understanding is it comes, then, to the coal properties of what's in the ash chemistry of that coal and the risk of, you know, fouling, as they call it, if that coal does – starts to burn within the tubing, which it heats as it gets into the furnace – if that starts to foul the system, that's not – that's a very negative outcome to that coal, and that's the problem with the greater size. That's why it's pulverised to such a small size. So that there is, in the case of standard Hunter Valley coal, optimum burnout of that particular coal.

45 Can I suggest to you that, in truth, it's pulverised, let's say, to 70 per cent, passing 75 microns?---Correct.

To ensure that you get as close as possible to complete burnout is one reason?---Yep. A typical Hunter Valley is about 97 per cent. Yes.

5 And it's also done to make sure that you get the maximum energy out of that coal, which is, of course, related to the burnout?---Yes. You don't want carbon in the bottom of the boiler, no.

No?---You want to use all the carbon as best you can.

10 And when you say boiler, you're referring, really, to the furnace?---Correct.

Is that a fair way - - -?---That heats the steam. Yep.

15 And that, in fact, if the coarser size has superior burnout characteristics, you don't need to burn it – sorry, you don't need to pulverise it as finely. And, in fact, that's what those various articles that we've been looking at have been saying?---Well, we all understand that, Mr O'Shea. Yes. That's one of the attributes of this coal.

20 And so the problem, I suggest, is in no way related to the injection process?---It is, in that two coals – the injection process – the determination by the combustion engineers are such, in the conservative way, typically in the Japanese side, that if you – if you do not pulverise to the so-called design, such as the Hunter Valley coals that these plants are designed around – if you get partial combustion within the process of injection, then you potentially end up with fouling problems.

25 All right. Now, you've referred here to - - -

HIS HONOUR: Mr O'Shea - - -

30 MR O'SHEA: Could I – I'm just about to finish this topic, if - - -

HIS HONOUR: All right.

35 MR O'SHEA: - - - that's convenient, your Honour.

To mill plant refits?---Yes.

40 And can I suggest to you that the difficulty with using lower-HGI coal and coarser fractions is to do with the design and operation of the classifiers?---Please continue.

45 Well, are you – can you agree with that or offer any view on that?---The issue – the simple understanding that I have is that, because of the coarseness of the fraction, the hardness of the coal, that if there – there is an inability within – if you classify the coals into a one-to-one blend or whatever you do, at the end of the day, the pulverisers have a vibration problem with the hardness if you try to blend a low Hardgrove with a high Hardgrove. And that's one of the constraints and, therefore, they have to reduce the capacity; therefore, they lose efficiency within those mills.

All right. Thank you, your Honour.

HIS HONOUR: Adjourn till 2.30.

5

**ADJOURNED**

**[1.05 pm]**

10

**RESUMED**

**[2.32 pm]**

**CHRISTOPHER ROSS CRUMP, CONTINUING**

15

**CROSS-EXAMINATION BY MR O'SHEA**

20

MR O'SHEA: All right. Could I turn to a different topic, Mr Crump, the spot market?---Yes. That's okay.

Now, customers for thermal coal can choose to purchase coal on the spot market, can't they?---Yes. Of course.

25

And, indeed, it was industry practice for some customers, generally, to buy on the spot market?---Lots of customers did that. Yes.

On the other hand, it was also industry practice for some customers to decide to enter into contracts for terms; correct?---Yes. Typically. Yes.

30

And it could be anywhere from one year to five years, perhaps even longer?---Ten years it can be up to. Yes.

35

And generally, for at least the first one to two years of the contract, the price would be locked in, as a general rule?---Annually, it would be locked in. Yes.

You could get contracts which have a fixed price for longer than one year or not?---That has occurred and was evidenced by the JJPC. We fixed a price for multiple years.

40

Good. Now, the benefit of selling on a longer term contract is that sales are secured in advance?---Correct.

And, to the extent that your price is locked in, that might be a benefit as well, because you know what price you're going to get for the coal?---Yes.

5 So that even if the price of coal falls after you enter into the contract, you're still getting the price that was fixed under the contract?---In theory, yes.

But, of course, coal prices generally can rise after a contract is entered into as well, can't they?---They can get either way, sir.

10 So, for example, if you – let's assume a person enters into a contract in January for a particular coal, at a particular price?---Mmm.

And if we could assume for the moment that that's entered into at somewhere around the prevailing market price for coal?---Yes.

15 Then, if the prevailing market price for coal, let's say, in June, is higher, then that – the contract price will be lower than the prevailing market?---That follows. Yes.

20 And when I speak about the prevailing market price, you understand I'm talking, really, about the spot price, the price at which, from time to time, coal changes hands?---Yes.

25 So sometimes the price agreed under a contract could be less than the spot price and sometimes it can be more?---Typically, at the time of agreement it would be unusual for a term price to be less than the spot price when it was priced.

Yes?---That would be very unusual. But it does follow that a price may have been set and a price – spot price could go higher than the term price.

30 And – so depending on the market, the spot price might be quite advantageous for a producer or it might be disadvantageous, it just all depends?---Yeah. That's correct.

35 Now, there's also, of course, the benchmark price, which is important with coal sales?---Yes.

And that was a benchmark price agreed by negotiation between the Japanese, in this case, power utilities; is that correct?---It was - - -

40 On the one hand, and the coal producers on the other hand – in Australia?---Basically, that price was agreed between the major representative JPU in Japan, which was Chubu Electric throughout the late nineties up until about 2003, with a suite of Australian suppliers regarded as the major suppliers, and that was in – around the time we're talking about here, in 2002/3, that was MIM, Shell and Warkworth, with Chubu. And then it was superseded, subsequently, with Tohoku  
45 being the lead negotiator in Japan, with Glencore in Australia.



That's something which, really, followed on from the Japanese steel mills, wasn't it, who had similar negotiating arrangements?---The Japanese steel mills had a suite of representation, together with a group of Australian suppliers of – particularly in Newcastle, semi-soft. In Queensland, that was different. It was individual  
5 discussions with the major hard coking coal suppliers.

Right.

10 HIS HONOUR: With the benchmark price for coal, is it just an agreement on a price to be called the benchmark price or is it a price set for an actual transaction, an actual coal sale?---It – it's – traditionally, your Honour, it was a price agreed, which was passed to other buyers in the Japanese utility market, between a champion negotiator, shall we say, in the case of Chubu that I mentioned earlier, and a suite of  
15 Australian suppliers. So, therefore, nominally, if there were 60 million tonnes going into those utilities from various suppliers, then that price would be followed by the utilities to buy that coal for that year. For the - - -

So the negotiation would be, "For the contemplated transactions that we're going to enter into, this is what the price is going to be"?---Well, typically, the contract –  
20 there would be – it was more a term price, your Honour. It was – parties may have a contract for one to 10 years or five years, for example, and that price would be negotiated annually and would follow from so-called benchmark negotiated by Australia's major suppliers and the one receiver, typically, in Japan.

25 I see.

MR O'SHEA: And then that price flowed through to people who had contracts with the JPU's on that sort of basis?---That's correct, Mr O'Shea.

30 And the price was set for 12 months; correct?---Generally 12 months. Yes.

So from 1 April in one year to 31 March in the next?---That's correct.

35 And when was the price struck, as a general rule?---Depending on the market circumstances, generally, it was finalised pre-31<sup>st</sup> of March, but, historically, that has gone over into a later period when the parties could not agree. But, typically, in my experience, it's been pre-31 March for JFY.

40 And that then is the price – what's called the benchmark price that applies for the next 12 months?---Yes. That's the benchmark reference price.

45 Yes. And there would be adjustments to that, for example, for calorific value, to take one example?---There could be adjustments to that for calorific value. There could be adjustments for other volume matters. It's not just limited to the CV of the coal.

And impurities like ash, sulphur, that sort of thing?---Not so much sulphur, sir. There was – generally, in the contracts there were penalties for some aspects of the

coal that were contained – that may represent some negative impurity for the buyer, and they may have had a built-in contractual term for that.

5 And so if we have a benchmark price – and let’s assume it was fixed on the 1<sup>st</sup> of April, just for simplicity?---Yes. Yeah. Okay.

Then, over the course of the next 12 months, the spot price might vary. It might go up or down, mightn’t it?---Generally, yes. Yes.

10 And so at various times the spot price might be above the benchmark and at certain times it might well be below the benchmark?---That can be the case. Yes.

Now, could I just talk a little about globalCOAL?---Yes.

15 And that’s – I think it’s probably best described for – as a trading platform for spot sales. Is that a fair way to describe it?---That’s one aspect of it. The genesis of the globalCOAL trading platform was to bring in a lot more subjectivity to what was the spot – the spot price, with real bids and offers on a medium that could be identified by both buyer and seller to identify the price. So offers and – bids and offers and  
20 actual transactions, both physical, provided a means to dictate what was a monthly index or a price that was relevant in the market at that particular time.

HIS HONOUR: You said subjectivity. Did you mean more transparency?---Sorry, your Honour?

25 The word you used was “subjectivity” and I wonder whether transparency - - -?---Well, transparency was another aspect of that particular medium, because prior to that there had been, you know, anecdotal buyers and sellers in the market that were not able to be just – to be identified. You know, I could say I sold you a  
30 tonne of coal at \$100 and no one can validate that. So it was – it was a transparent medium, to take your point, sir.

MR O’SHEA: Now, globalCOAL was something people have to subscribe to and pay for; is that correct?---Yes. It had market members. Yes.

35 And buyers and sellers of coal on the spot market were not, of course, bound to use globalCOAL, were they?---By no means, no. No. They didn’t have to use it.

40 All right. And if a coal doesn’t meet the globalCOAL – one of the globalCOAL specifications, then it doesn’t mean you can’t otherwise sell that coal in the spot market, does it?---It’s not a preclusion, no.

45 Now, you’ve said that the spot price is – or your estimate is that it’s 80 to 85 per cent of the benchmark price, and you say that that 80 to 85 per cent figure is characteristic of globalCOAL?---Typically, yes, in – over a period of time. Yes.

Now, we've already discussed that spot prices can either be at about the benchmark level or - - -?---Or - - -

- - - above the benchmark or below the benchmark?---Correct.

5

So if we take, for example, a period when spot prices exceeded the benchmark price - - -?---Mmm.

- - - then you wouldn't say that globalCOAL traded at 80 to 85 per cent of the benchmark price, would you?---There were exceptions in the ten – over the last 20 years, yes.

10

So my suggestion to you is the spot prices which people pay are not always 80 to 85 per cent of the benchmark price?---Not always.

15

Now, there are, I suggest, other trading platforms like globalCOAL. It's not the only one in the world?---No. People relate to other published indexes.

And during the period from 2003 to 2005, for example, you entered into spot contracts with customers in Asia, not using globalCOAL terms?---In my trading business, yes, I did.

20

What about in selling any sort of coal from Wilkie Creek?---Production?

Sorry?---From production from Wilkie Creek - - -

25

Yes?--- - - - is that what you're asking me?

Yes?---No. Typically, they were related to benchmark pricing in Japan.

30

All right. And to take an example, the KOSEP spot contract was not done on globalCOAL, was it?---No. No.

And it wasn't done on benchmark pricing either?---No.

35

Well, it may have been done by reference to benchmark pricing, but - - -?---It - - -

- - - it wasn't sold at a benchmark price?---No. It was done in recognition of the market, which would have included globalCOAL and other reference prices at that time.

40

Now, it's the case, isn't it, also that globalCOAL do offer what they call a bespoke brokerage service for non-standardised coal cargos?---Yes.

And that would be outside what you call the SCoTA terms of trade?---Yes.

45

And I should note – what does SCoTA stand for?---Standard coal operating trading agreement I think is the words. Standard coal operating trading – operating and trading agreement.

5 Good. Okay. Thank you. Now, it's also the case that while you might have observed trends, you don't know what actual percentage of spot contracts entered into, let's say in 2005, were sold on globalCOAL?---You mean independent of the platform?

10 Yes?---No, I'm not aware of how – whether people sold internally on that basis or otherwise. I didn't have privilege to everyone's sales book, no.

And there would be people selling coal on the spot market who didn't use globalCOAL?---There's no question that's the case.

15

Yes. And so you don't know what the relative volumes are, do you?---I do know the physical traded volume on SCoTA coal, on platform, yes.

But you don't know what proportion - - -?---No, I have no idea.

20

Right. All right. Just to finish my question, to make sure we're not at cross-purposes, you don't know what percentage of the coal sold on a spot basis is sold on the globalCOAL platform?---No.

25 All right. Thank you. Could I ask you this question to see if you can recall, and otherwise I'll ask you to make an assumption, that the – sorry, let me rephrase that. The benchmark price, what was the calorific value for the benchmark price?---It changed in the period we're talking about. Pre-2000 it was – 2001, and even still today some contracts are still negotiated on a GAR basis, gross as received, and  
30 that's still the predominant settlement of the benchmark price to my knowledge, which is 6322 which is a standard Hunter Valley coal. That translates to an equivalent 6063 NAR.

35 And can I suggest to you, and you can agree, disagree or say you've got no idea, that the benchmark price in the year 2004, 2005, and my note is that it's a 6000 kCal figure which I think is probably the net as received price approximately, was \$26.75 US per tonne?---He'd had come off to that level, yes, around – but I don't think it was on a 6000 basis, sir. I think it was on 6322 GAR.

40 All right. Well, assuming that - - -?---I will assume what you're tell me, but I disagree that it was that basis.

Could I suggest that the prices in the KOSEP spot contract were higher than that?---Correct.

45

Could I ask you some questions, please, about China Huaneng, and I think we've spoken about that. You're aware of China Huaneng, a Chinese power utility?---I know some parts of it, yes.

5 But - - -?---I'm not intimately aware of their operations, etcetera, but – yep.

Now, are you able to say that it is the largest power generator in China or would that surprise you if that was said?---That would surprise me, but they may well be these days. I don't know.

10

In any event to your knowledge they're a substantial power generator?---They're one of the big five, yes.

Right. Thank you.

15

HIS HONOUR: Was that question deliberately asked by reference to the present day?

MR O'SHEA: No. I'm talking about 2005. I'm sorry. Thank you, your Honour.  
20 Was that the - - -?---They were one of the top five, yes.

In 2005?---Correct.

25 Thank you. Now, were you aware when you wrote your report that in 2005 a subsidiary of China Huaneng entered into an agreement with Monto Coal 2?---Yes, that had been advised to me.

I'm sorry?---That had been advised to me in my instructions, yes.

30 And were you aware that the agreement related to the purchase of a 25 and a-half per cent interest in the Monto Coal joint venture for a bit under \$30 million?---I was understanding it was an LOI of such thing that indicated that offtake, yes.

35 And can I suggest to you that in fact while it was conditional, it was in fact an executed agreement?---Yes.

40 Now, the agreement, of course, enabled China Huaneng to take its share of the coal at its equivalent from in the coal. You would accept that would be the usual thing in a joint venture?---That would be usual. That would be usual.

And can I suggest to you that in the agreement there was also a provision - - -

HIS HONOUR: Is that a correct summary?

45 MR O'SHEA: I'm sorry.

HIS HONOUR: That it enabled – I thought it was a whole lot – I mean I remember you making this point in some sort of objection or cross-examination line. Did it buy – it didn't – did it bind them or did it contemplate a further agreement?

5 MR O'SHEA: No, my point is simply that as the 25 – as a 25 – sorry, I'll start again. As a party holding a 25 and a-half per cent interest in the joint venture it had an – if it did get to that position, it would have an entitlement to 25 and a-half per cent of the production. Could I suggest that there was also a provision for the parties to negotiate a further offtake agreement between the joint venture and China  
10 Huaneng?---My understanding is that, but it was not a formalised agreement at that particular point in time, as I understand.

All right. And are you aware that China Huaneng intended that its share of the coal, at any rate, would be used in China?---Was I aware that it would?

15 Of that?---That was what was contemplated as I understand, yes.

Yes. Thank you. Now, can I suggest then that that is a large power company from China taking an interest in a project with a view to sending coal for use in China.  
20 Would you disagree with that?---Yeah, they were one of many doing the same thing at the time.

Right. Now, can I suggest that awareness of those facts in 2005 would have been an important consideration for a coal marketer considering the marketing of Monto  
25 coal?---It would be one – one of the considerations, yes.

And could I suggest that it would be an important consideration for a competent coal marketer to take into account in preparing input into a bankable feasibility study?---It would be one - - -  
30

In 2005?---It would be one aspect based on the due diligence of the eventuality of that contract, sir. There had been many contracts at that time talked about with different utilities in China that did not eventuate.

35 And I think in the same way – or a similar way, I should say, Mr Crump, you thought it would have been positive if EPDC had taken an interest in the Wilkie Creek project; is that correct?---That I would – please – are you asking me did I think it was a positive?

40 Yes?---No, we did not.

Not necessarily a 50 per cent interest, but an interest in the project together with some prospect of obtaining sales to EPDC?---We never countenanced anything other than what was proposed to us of 50 per cent.  
45

All right. Could I ask the operator to bring up document ACO.001.001.0350. Now, are you familiar with this document at all, Mr Crump?---No, I'm not, but I know one of the authors.

5 Could I ask you then to look at a table in here and I just like your comment on a particular table. Could we go, please, to page 0361 of the document. Now, you may not be able to answer this, Mr Crump. Please tell me if you can't. What is referred to here are design coals and if one looks at the plants set out there, they're all Japanese power plants?---Yeah, I can identify them as all Japanese, yes.

10

And I'm particularly interested, then, in the bottom table?---Mmm.

Dealing with various specification matters?---Yes.

15 And in particular the first column after the name of the plant, the minimum calorific value?---Yes.

Now, that's set out there as kCal per kilogram, AR, as received?---Yes.

20 In your understanding that gross as received or net as received?---That's gross as received.

Right. Now, can I suggest then of those – would you agree with me that the calorific value of the Monto coal on a gross as received basis was about 6120?---Yes.

25

So I suggest to you that of those eight stations one of them, of course, Shinchi doesn't have a minimum calorific value set out here, but of the others I think four of the remaining seven have a minimum calorific value of 6000 or less. Would you agree with that?---Yeah.

30

So in terms of calorific value it wouldn't appear that Monto would have enormous difficulties in selling to at least those Japanese power utilities?---On the proposition that they're the numbers from the individual utilities. That appears to be the case.

35 Yes. Thank you. And I realise you don't – you don't vouch for the accuracy of that?---I have no idea of the accuracy of that.

Yes, of course?---Interestingly have a minimum HGI too.

40 Yes, that's there as well. Sales to north Asian general industry, Mr Crump?---Yes.

Now, you've commented on that in your latest report, haven't you?---Which one are you referring to?

45 This is the one of the 16th of October?---We made some comment, yes.

And you say that in 2005 you would have estimated a zero to 25 per cent chance of any sales to that segment of the market of Monto coal?---Yes.

5 And can I suggest that you are taking far too pessimistic a view in relation to that segment of the market?---You can suggest that, but that's not my experience.

10 And can I suggest then that your view in 2005 as to what were the prospects is inconsistent with what turned out to be the case which was the sale to Formosa Plastics by New Acland?---That ultimately occurred four years later, yes.

That's true, yes.

15 And I suggest – I'm not suggesting you knew about the sale to Formosa Plastics in 2005, but if your expectation in 2005 were based on factors then in a sense those factors were controverted by that sale to Formosa Plastics?---In – we had direct relationships with that particular customer and at that particular time I'm being asked to express an opinion at May 2005, and we were of the view, having had discussions directly with them in relation to their [indistinct] that they would not take our coal from Brisbane, namely the Wilkie Creek coal. We had direct relationships in supply 20 with FPG and at that stage contemplation of coal from Brisbane was not on the agenda, nor was it with Taiwan Cement, who was the other IPP promoter at Taiwan at the time with the Hoe Ping project. We could not fulfil their expectations.

25 And that was your experience in dealing with them. At a subsequent time, other people had a different experience, didn't they?---New Hope developed the business over the subsequent three to four years.

Thank you?---Four years later.

30 One other matter that you – sorry, if I could then go to questions really of I think you describe them as marketing strategy, Mr Crump?---Yes. Yes. Yes.

35 And perhaps it's best if we go to your second report, and it's paragraph 42?---Fourth of September?

HIS HONOUR: Yes.

MR O'SHEA: Yes, that's it?---What paragraph, sir?

40 Forty-two. That document on the screen can be put away, Mr Operator. This is EXP.020.253.0010. In 42(a) you talk about the initial contact?---Yes.

45 And you say there that personal relationships are important in the coal marketing industry?---Absolutely, yes, they are.

You talk about building that up, you talk about preliminary evaluation by the potential customer?---Yes.



Including evaluation of the mine development timeline?---Correct.

So you're talking about contact made before the project is in production?---Yeah, bilateral – both ways, visitation either party, yes.

5

And of course that's what you do if you were developing a project?---Absolutely.

You wouldn't wait until you were in production before you started contacting customers?---That's exactly right. You would not.

10

And as you say there then mine or project visits by targeted customers, and there you're recognising if it's a mine that's one thing, if it's a project that's another thing?---That's to satisfy their due diligence, their side, as much as we satisfy our side, yes.

15

And you say in your report there's a period of initial contact which you think would take a minimum of one year?---Absolutely.

20

Were you aware that Monto had started undertaking that initial contact stage in 2002?---Not aware of who did that, no.

So you didn't take that into account in any sense? Perhaps I withdraw that.

25

I'm not sure - - -?---I'm not sure who you visited or what you're proposing to me.

Only that if initial contact had commenced in 2002, then by the time of the feasibility study in 2005 you would be able to say, well, we know that that has occurred?---Well, it depends on who that contact was with, Mr O'Shea. I - - -

30

Yes?---If you can tell me the detail I'll make a comment.

I don't know that I can give you details on the spot, but would you accept that if they were – if it was contact with major Japanese power utilities, that that would fulfil - - -?---No.

35

- - - the purpose?---Doesn't constitute a relationship at all.

40

No, but in terms of this period of initial contact and building up a personal relationship. I accept that what – whether you had successfully built that up would be a question of fact in every case, but I'm suggesting to you that when you say it takes a minimum of one year, one important thing is to work out when you start the process?---I don't disagree with your proposition, but I need – you know, it depends who they spoke to and what they did as to what that – and whether they had any existing relationships. The – there's lots of factors in that relationship building.

45

Now, paragraph 42(c) you talk about trial windows, Mr Crump?---Yes.

Have you delivered trial shipments to customers in Asia outside of the spring and autumn windows?---No, not – no. No.

5 Some hesitation there. Do you think - - -?---I was thinking about – well, I didn't deliver the cargo to Tepco. It was delivered by AQC before we took over the Wilkie Creek mine and I'm just trying to recall what month it was delivered. But basically, my experience at Warkworth and in subsequent years with Excel and Whitehaven, etcetera, has been to deliver coals in those periods. That's been typically the experience

10

HIS HONOUR: Is the spring and autumn reference – is that the northern spring and autumn?---Northern spring and Autumn, your Honour.

15 Tell me what it means in months, please?---It means the period from, probably, September through November.

Yes. And that's - - -?---Yep.

20 What's that, autumn?---That's the autumn in – winter.

Yes?---Autumn to winter. And, thereafter, sort of, Mar – late March, April, May, spring period, when there's lesser demand for power generation, particularly coal, being, typically, 25 to 30 per cent of the load in those northern countries, who are the – Japan, Korea and Taiwan. And that's the low-demand period, when they do

25 maintenance and trials, typically.

Thank you.

30 MR O'SHEA: And, of course, customers can trial a coal whenever they please, can't they?---That's their volition. Yes.

Then, could I ask you some questions about trial burns and evaluating trial burns?---Yes.

35 Now, if we could consider it just in terms of a trial burn in one unit of a power station, accepting that – and we'll come to, say, your experience with Chubu in a moment?---Mmm.

40 But to trial a coal in one unit, in general, how long does the – does it take to conduct the trial?---You mean from producing to - - -

45 Sorry. When the coal is at the power station and the power station says, "Right. We're going to give this coal a trial. Press the button and start feeding that coal in"?---Okay. So the coal's arrived at the particular plant; that can take anything up to a month to two months sometimes, depending on what – the configurations of what they want to do, whether they want to blend it with another coal firstly, so that they don't have outages, whether they want to try burn it as a single burn.

Ultimately, the objective is that they want to use that coal in its own right and know the characteristics. So it takes more than, you know, instantaneous burning of that coal when it's arrived at the power station. They have to fit it in with their other requirements of continuation.

5

So are you saying that you might do, with a particular type of coal, more than one trial burn? So you might do one trial burn as a blend and one by itself? Is that what you're saying?---Typically, if you refer to my report, I've talked about 30,000 trials and 60 to 75 thousand trials. The first one might be half cargo that might go to be used. And they would use it as a blend, typically. And they then would go on to subsequent trials, where they had sufficient volume to test that in multiple boilers rather than just one, but to then consume it, potentially in its own right, so that they knew the entire characteristics of the coal as it performed in its own right – single burn.

10

15

Could we then, for simplicity, just refer to a single-burn case. And let's assume there are a number of burns happening. The trial burn of it as a single-use coal, how long would the trial burn continue for? In other words, once they started burning that coal, for how long would they burn it?---It depends on the power station, but, typically, that coal could be consumed within a week. It could be consumed in some power plants within a day.

20

25

All right. But it's of that – that sort of order? The trial burn doesn't continue for six months?---No, no, no, no.

No. All right. Thank you?---No.

That's what I wanted to find out, Mr Crump. Now - - -

30

HIS HONOUR: When you talk about a unit, what's a unit?---A unit in a power station, your Honour, is, typically, a power-generating unit. There will be – in a particular Japanese utility, there might be four units, there might be six units. They might each have a capacity of megawatts; for example, 500 megawatts times six, there's 3000 megawatts, so it's burning 9 million tonnes of coal. It's about three tonnes of coal per megawatt. So each unit – so there's redundancy in the – in the case of some problem with coal, it's very rare to find a single unit operating in its own right with a power station in Asia. There's multiple, for redundancy purposes.

35

40

Thanks.

MR O'SHEA: And is it right to say that, in a reasonably-modern power station, there's quite a lot of monitoring equipment in the control rooms of a power station which would monitor the trial burn?---Yes.

45

And so it would monitor there things like performance of the pulverising mill, it would monitor combustion, energy produced, fouling or slagging, those various things - - -?---Emissions, whatever. Yes.

And that electronic information, really, shows up in real time?---To the operators at the plant, the combustions - - -

Yep?--- - - - engineers, yes.

5

Yes. So can I suggest to you that after a trial burn the combustion engineers would have a pretty good idea of how the coal was performing?---Yes. They do, but they don't buy the coal.

10 That's right. So then, the combustion engineers prepare a report and give it to the - - -?---It goes back to - - -

People – people who - - -?--- - - - the commercial - - -

15 - - - buy the coal?---Purchasing department gets that report some period after the combustion has been completed, yes.

Right?---I might say that doesn't happen the next day, though.

20 No. No, I'm not suggesting it happens the next day. Could I ask you, then, about the trial you talk about when you're with Warkworth, for the Chubu?---Hekinan power station. Yes.

25 And what you were negotiating there was a 10-year contract for about 1 million tonnes a year. That's what it was - - -?---That was what was at stake when we commenced those trials. Yes.

30 Yes. So that's a significant contract, in terms of volume and term. Would you agree?---It was the most significant contract. We were – we were at a stage of development, that we were doubling our production. It was an underpinning contract absolutely required to develop the Warkworth mine.

35 And those negotiations, I think you say, went on for about three – negotiations and trials and so on went on for about three years?---We started in 1994 and we completed that contract in 1996. Early '97, I think we delivered.

40 All right. Now, would you agree with me that the more significant the contract, in terms of volume and duration, the more thorough the testing of the coal would be?---Significant volume is one thing, but the – the most important thing to recognise with these JPU utilities, Mr O'Shea, is that, typically, each power station with multiple units is not necessarily configured – that one supplier provides the boiler and the equipment for each unit. Typically, the Japanese buy from a number of boiler and manufacturers, such as MHI, such as IHI, such as Hitachi Babcock. So the – the operating controls for each one of those units are individual. It's as if you are dealing with an individual power station to trial that coal in the – in my – in the case we're talking about, Hekinan. So that was one of the issues, particularly, with the power utilities – if they had multiple providers of boiler and turbines.

45

And the power station you were negotiating in relation to had quite a number of separate - - -?---It had three different - - -

5 - - - units, didn't it?---Three different boiler and turbine manufacturers.

And how many units did it have? Six?---Six.

10 So that was, by its nature, then, a fairly lengthy exercise, compared with a smaller power station which didn't have six units and didn't necessarily have three different boiler manufacturers?---I – cite me an example. I can speak to only what I know what I've operated with. I know most of those utilities. I had the same issues with a number of the utilities, because there's multiple units generally at each of the utilities power stations.

15 But the smaller the number of units, the less time that would be required; correct?---It follows that that could be the case.

20 Yeah. So can I suggest to you that if you're negotiating to supply a new coal – which the coal to Chubu was, wasn't it? That was a coal they hadn't previously taken?---That's correct.

Not every negotiation and trial will take three years?---No.

25 And, for example, the one that we know about with Wilkie Creek, the KOSEP negotiation didn't take anything like three years, did it?---No. It was initially a spot contract. But it took a period of more than 12 months, ultimately.

30 So when did – I thought we'd agreed earlier that, really, the negotiations with KOSEP started in earnest when EPDC said they weren't - - -?---Mid-2003.

I'm sorry, when?---Mid-2003.

Right?---That order.

35 And the contract was signed by March 2004, wasn't it?---I don't think it was signed then, but the negotiations had proceeded. Might have been dated that date. It was signed later.

40 The plan was, though, that the contract operation would commence in - - -?---Correct.

- - - March 2004. Is that a fair way to put it?---That was the intentions. Yes.

45 So I would suggest a period of about nine months, in that case?---Yes.

When you were looking for what might be called their home for the 400,000 tonnes per annum - - -?---Yeah.

- - - I think you said you and your marketing colleagues at Peabody coal traders canvassed a lot of consumers?---Absolutely. As did Mitsubishi Corporation, our trading-house representatives.

5 And you didn't conduct all of the investigations yourself, did you?---No.

Could you just have a look at paragraph 19 of your second report, which is EX – that's the one dated 4 September, EXP.020.253.0001. And – so in paragraph 19, on page 0005.

10

Now, you weren't suggesting there that you made each approach to the JPUs during 2004?---In your que – did I approach each? Is that the question?

15

Yes. Yes?---Not necessarily myself. My subordinate staff and the trading company did that.

All right. Thank you. Now, I think – I'm sorry. I'll withdraw that. Do you agree that you often give a discount to a customer, in order to encourage them to start taking a new coal?---Absolutely.

20

Would you also agree that discounts are sometimes used to compensate customers for figuring out how to utilise the coal?---Normally, the consideration is to attract them to take the coal. To eat the coal, as they say.

25

Now, you say that a discount is necessary for Monto coal because of its low HGI?---That was obvious to me in the – at the time, in the representations to the utilities, that they would not accept that this coal was an equivalent to a Hunter Valley coal and pay the full price.

30

And when you say that was apparent to you, you're really – you're basing that on your experience with Wilkie Creek?---Yes.

35

Yes. Now, can I suggest that you say it's necessary, in part, because, in your view, the market for low-HGI coals was restricted to a relatively few consumers who were already familiar with utilising that coal?---It was at that time, yes.

So that it was, really, a product of supply and demand, if you like, the discount?---It was – it was a situation of finding customers that would consume that coal, yes.

40

Then, if, in fact, the market for low-HGI coal was not, in fact, restricted to a few customers who were already familiar with utilising such coal - - -?---Mmm.

45

- - - a discount might not be necessary; correct?---It depended on the availability of other competing sources at that time, because it wasn't just restricted to the individual specification of the coal, Mr O'Shea. There were other developing mines that have not been taken account in these discussions. You haven't asked me about the supply side, but there were many mines coming on stream at this very time that

were also competing for market share that did not have negative attributes, such as HGI. And they may well be discounting, so you're competing with others, not with like coal.

5 All right. And have you referred to that in your reports?---I talked – I have referred to competing sources and suppliers, yes.

All right. Thank you. Now, in your first report, you refer to a sale of Wilkie Creek coal to a customer in Chile?---Yeah. That's correct.

10

And I think you say that Noble placed that coal for you?---Noble took that coal into Chile, yeah.

And it's a trader; correct?---It's a what?

15

Trader?---Noble was a tra – is a trader. Yes.

And do you agree that you might not have been able to sell that tonnage of Wilkie Creek coal into Chile without Noble's assistance?---That contract, I think, was already in place when we took over the mine. It had – it was a formal – the contract to supply that particular customer in Chile was, sort of, semi-broked before we took over the mine.

20

But it was brokered by Noble; is that correct?---Correct.

25

So would you agree that a trader might have access to different customers than a miner?---They have access to all the same customers as the miner.

They might, in fact, because - - -?---They – they - - -

30

- - - of wider market presence, have access to further customers than a particular coal miner?---They may – yeah, they may have access – where they will take a greater risk than a coal producer, yes.

35 But they might simply just have – not access for a greater risk. They might have, if you like, a greater contact book of people to contact, to sell coal to, because, in fact, they're a trader selling coal around the world?---That contention could be right, yes.

Excuse me a moment. Now, in the joint report you give your opinion in relation to the size of the market for coal, like Monto coal?---The size of?

40

The market?---Yes. Yes.

And we've already discussed this, the question of – you think market acceptance of that coal was limited in the way you described?---Yes. It was agreed at 4 to 5 million in that joint experts report. Yes.

45

And – but your view about market acceptance was that it was limited to existing consumers of low-HGI coal?---Approximately 3 million to 4 million in Japan, and 1 million because of my direct experience and knowledge of the GENCO market. That was where we ca – where I came up with the 5 million.

5

But if there were customers additional to those, whom you haven't referred to, then, presumably, your view would be different about the size of the market?---Well, those customers weren't apparent at that particular time – juncture, up until May 2005.

10 So are you saying that your view of the customers was based solely on those existing Japanese producers that you list, being EPDC, JJPC and Tohoku? And then, I think KOSEP was – was that – you're saying that's the limit of the market?---No. I mentioned elsewhere, in other reports, Hokkaido, Kyushu, those customers of Ebenezer. There was other customers in Japan that would take that coal, which  
15 eventually gave rise to the view of 3 to 4 million tonnes.

Now - - -?---In – in that particular market.

20 Would you agree with me that if the – if, in fact, it was possible for the pulverising mills in other power stations, other than the ones that we're dealing with, could be adjusted to take low-HGI coal, that would affect your view?---Of course it would affect my view, but it was not apparent at that time.

25 All right. Could I just ask a couple of questions about the transcript, where there – I think there are some errors there which aren't apparent but which I think will be readily apparent to you, Mr Crump. Could we go - - -

HIS HONOUR: Is this yesterday's?

30 MR O'SHEA: Yesterday. Yes, your Honour.

HIS HONOUR: Okay. Okay.

35 MR O'SHEA: Could we go to transcript day 85, please. And could we go to page 64, please.

Now, at about line 20, your answer is:

40 *The HGI limit on the importer of that coal for –*

something –

45 *...Plastics Group was 40.*

And there's a word there, indistinct?---Formosa Plastics Group is the entity.



Thank you?---I've discussed that with the young lady in the break.

Yes.

5 HIS HONOUR: F-o-r-m-o-s-a?---Your Honour, F-o – Formosa, F-o-r-m-o-s-a, yes. Correct.

Thanks?---Plastics Group, commonly known as FPG, if it's referred anywhere else in the transcripts.

10

Thank you.

MR O'SHEA: Could we then go, please, to page 83.

15 And, line 26, you were asked this question:

*Can I suggest to you that, in fact, if you are blending two lots of bituminous coal, that there is approximately a linear relationship if you blend?*

20 And you then said:

*If you –*

something –

25

*...in excess of 40.*

I wonder if you could explain that, what that word was?---If you blend those – I'm not sure what the singular word was. The construction – your question and my answer was related – if coals were above 40 was much easier to blend, so I'm presuming if you blend two coals or such in excess of 40 then, yes, it is lineal.

30

So while the answer might have a bit of shorthand in it, you think the word there was probably "blend"?---I'm pretty sure we were referring to like-for-like type coals - - -

35

Yes?--- - - - Mr O'Shea.

Yes. That's the cross-examination, your Honour

40 HIS HONOUR: Thank you.

**RE-EXAMINATION BY MR SHEAHAN**

**[3.26 pm]**

45

MR SHEAHAN: Mr Crump, a few questions, just to pick up some matters you've been asked today, and a couple – and one from yesterday?---Okay.

Most recently, you were asked about the globalCOAL trading platform and the SCoTA trade terms that are used on that platform?---Yes.

5 You recall some questions about that? In answer to a question from my learned friend about the extent to which you were aware of the proportions of the spot market that - - -?---Mmm.

- - - were traded on the platform, you said:

10 *I know what the physical volume was that was traded on the platform.*

Can you tell us, as at 2004, 2005, what - - -?---It was approximately – it had risen from around about 4 million tonnes to around 8 to 9 million tonnes of physical trades by that – the time of this opinion in May 2005.

15 Thank you. Now, this morning you were asked some questions about a QTHERM document, SAN.004.009.0041. And, in particular, about a sentence on 0049, I think. The last sentence on that page, where it's asserted that the coal is steadily winning greater acceptance in export markets. You were asked if you agreed and you said:

20 *Very steadily.*

I was wondering if you could explain what you meant by very steadily?---Oh, sorry. I meant that it – I guess it – the word steadily was used in the text of the document  
25 that I was being questioned on, and very steadily meant that there'd been no leap forward for the development of these – or the market penetration of these types of coal. Very steadily, meaning slow.

30 Okay. Thanks?---And that's evident by subsequent history.

Thank you. That document can be taken down.

Then you were asked quite a few questions about the KOSEP contract?---Yes.

35 You – I think this is about page 41 of the transcript today. It was suggested to you that the coal supplied by Wilkie Creek to KOSEP had performed satisfactorily. This is the coal under the spot contract?---Yes.

40 And you agreed with that - - -?---Mmm.

- - - I think. And it was suggested to you that that was the reason why they took more. And you said:

45 *One of the reasons.*

?---Yes.

Okay. What were the other reasons you had in mind?---Well, at that particular juncture in time, 2004/5, Peabody coal trade was one of the most significant suppliers to KOSEP's entire 13 million tonnes of consumption. We were supplying approximately two and a-half million tonnes of coal from elsewhere. And that included multiple ports in Australia and it was at the early stages of supplying sub-bituminous coal from Indonesia and beyond that. So we were a significant supporter/supplier of Korea southern electric power.

10 All right. I see?---And the relationship was probably three years old at that time.

I see. All right. So it with was a relationship fact that was also important?---Absolutely.

15 You were also asked some questions about KOSEP and you, in answer you said that by the time you left Peabody you said three things. One was that the ability to sell continue to KOSEP was changing. You said commercial practices were changing?---Correct.

20 And you said that the longevity of the contract was in question?---That's correct.

Can I ask you just – we'll just take those one at a time, if you would, to elaborate on what you meant by each of those. So the first was you said that by the time you left Peabody the ability to sell continually into KOSEP was changing. What did you mean?---Well, their buying practices were becoming more closely scrutinized such as the issue between the boiler department and the commercial department with what Mr O'Shea asked me about the HGI, the fact that they could accept it, but there was increasing scrutiny about taking or having commercial relationships outside of what was on that prescribed limitations.

30 I understand. Thank you. And you said commercial practices were changing. Is that a reference to the same thing or something different?---They were ever changing in Korea, but basically they'd become a lot more – of that similar auditing of the relationships such that I think I was asked a question yesterday, for example, about – or somewhere in this about negotiating outside tonnages. That had become less and less of an avenue to develop more coal. You were pretty much restricted to the contract volumes.

40 Okay. And the third point was the longevity of the contract was in question?---Well, the longevity was in reference to pricing because typically the GENCO market was a well sought after – it was sought after by everyone that had lesser energy type coals, but the buying practices had astronomically changed to a lot more tender. So if you had a contract, for example, it might be a three year contract but you might have a price for one year and then subsequently trying to price the second year became a problem. You were then out to the market and your competitors trying to obtain that market you would have to match the price or beat the price so that change happened very much around the time of May – not just May, but within 2005. So a contract

might be three years in summary, might only be one year, because if you didn't price it in the subsequent year, you didn't have it.

5 Thank you. Just one question, I think, from yesterday. You were asked some questions about this document, MON.003.003.0181. It's a letter from a company called MYK - - -?---Yeah.

- - - to Monto that I think - - -?---Mr Talbot.

10 That you hadn't seen before. And Mr Yahiro was the author. If that could be brought up. MON.003.003.0181. That's it. You were asked specifically about some of the text.

15 HIS HONOUR: Item 6, wasn't it?

MR SHEAHAN: Yes, item 6. Thank you, your Honour. "Their new power station will adopt latest technically developed facility, therefore they will be able to do combustion of low HGI coal without any trouble and will highly appreciate our environment friendly coal", and you were asked whether that was a sentiment that you shared and you said, "It surprises me that that sentiment has been expressed by a trading company". Why does it surprise you that a trading company would have expressed that sentiment?---Well - - -

25 In 2002?--- - - - in re-reading this letter, Mr Sheahan, this is a trading company trying to win favour with the prospective Monto people and they talk about Nippon Steel merging with Kobe which never happened, which is, you know, blue sky, and then they talk about low HGI to get the attention of the promoters, but the reality was those particular power stations, IPPs of Kobe which we mentioned yesterday, 700 megawatts, were totally reliant upon two coal suppliers and they were both Rio Tinto  
30 to my knowledge.

Thank you?---And they were standard coal. They weren't low HGI coal at all and they still are standard coal to my knowledge.

35 Your Honour, that's the re-examination. Might Mr Crump be excused?

HIS HONOUR: Mr Crump, thank you for your attendance. You're excused?---Thank you, your Honour.

40

**WITNESS EXCUSED**

**[3.36 pm]**

**END OF EXTRACT**