

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FULL COURT OF
THE SUPREME COURT OF QUEENSLAND
No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY
GENERATING BOARD

Appellant

– and –

NEW HOPE COLLIERIES PTY. LTD.

Respondent

RECORD OF PROCEEDINGS

PART II

WALTONS & MORSE,
Plantation House,
31/35 Fenchurch Street,
LONDON, EC3M 3NN.
Solicitors for the Appellant

GABRIELLE PRENTICE,
Bristol House,
80A Southampton Row,
LONDON, WC1B 4BA.
Solicitors for the Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FULL COURT OF
THE SUPREME COURT OF QUEENSLAND
No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY
GENERATING BOARD

Appellant

– and –

NEW HOPE COLLIERIES PTY. LTD.

Respondent

RECORD OF PROCEEDINGS
INDEX TO REFERENCE

PART I

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
1.	Writ of Summons (Endorsement of Claim Only)	28th February 1983	1 & 2
2.	Amended Statement of Claim	8th April 1983	3 – 9
3.	Further and Better Particulars of Statement of Claim	3rd May 1983	9 – 14
4.	Amended Defence and Counterclaim	16th June 1983	15 – 26b
5.	Amended Reply and Answer	17th June 1983	27 – 29f
6.	Notice of Trial	6th June 1983	30
7.	Affidavit of David John Baguley with Exhibits:–	14th June 1983	31 – 141

Exhibits

“A”	Copy Analysis of Power Station Merit order based on mid 1979 coal prices		42
“B”	Copy Report entitled “Management of Swanbank Coal Stockpile” from Generation Operations Fewster	5th October 1979	43 – 47

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
<u>Exhibits (Contd.)</u>			
	“C1” Copy letter, Defendant to Plaintiff	3rd March 1983	49
	“C2” Copy letter, Southern Cross Collieries to Plaintiff	3rd March 1983	51
	“D” Copy Invitation to Tender Specification No. CS/26	12th August 1980	52 – 102
	“E” Copy letter, Allied Queensland Coalfields Ltd. to Queensland Coal Board	8th October 1981	104 – 105
	“F” Copy Parasol Insurance Policy	9th November 1979	107 – 116
	“G” Copy Cost of Plant Outage Reports	from 31st August 1979 to 20th February 1981	118 – 137
	“H” Copy Declaration of Loss, Plaintiff to Insurance Company of North America (Australia) Ltd.	23rd June 1981	139 & 140
8.	Affidavit of Norman Ross Walker with Exhibits:–	15th June 1983	142 – 265
<u>Exhibits</u>			
	“A1” Copy letter, Plaintiff to State Electricity Commission with attachments	28th April 1978	146 – 175
	“A2” Copy letter, Plaintiff to State Electricity Commission with attachments	3rd April 1979	177 – 197
	“A3” Copy letter, Plaintiff to State Electricity Commission with attachments	31st March 1980	199 – 217
	“A4” Copy letter, Plaintiff to State Electricity Commission with attachments	1st April 1981	219 – 237
	“A5” Copy letter, Plaintiff to State Electricity Commission with attachments	6th April 1982	239 – 264

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
9.	Affidavit of Norman Ross Walker, with Exhibits:–	20th June 1983	266 – 294
	<u>Exhibits</u>		
	“A1” Copy Invoice No. 102, Defendant to Plaintiff	31st May 1982	269
	“A2” Copy Invoice No. 103, Defendant to Plaintiff	30th May 1982	271
	“B” Copy letter, Spry Walker & Co., Accountants, to Plaintiff	14th June 1982	273
	“C1” Copy calculations of Contract Price for month of March 1982		275 – 283
	“C2” Copy calculations of Contract Price for month of April 1982		285 – 294

PART II

10.	Affidavit of Gary Neville Maguire, with Exhibits:–	20th June 1983	295 – 387
	<u>Exhibits</u>		
	“A” Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	23rd December 1982	300
	“A1” Copy Notice of Dispute Defendant to Plaintiff	23rd December 1982	302 & 303
	“A2” Copy Notice of Dispute Southern Cross Collieries to Plaintiff	23rd December 1982	305 & 306
	“B” Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	29th December 1982	308
	“C” Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	6th January 1983	310

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
<u>Exhibits (Contd.)</u>			
“D”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	7th January 1983	312
“E”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	24th January 1983	314
“F”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	26th January 1983	316
“F1”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff with enclosure	4th February 1983	318 & 319
“F2”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff with enclosure	4th February 1983	320 & 321
“G”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	11th February 1983	323 & 324
“H1”	Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	15th February 1983	326 & 327
“H2”	Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	15th February 1983	329
“J”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	15th February 1983	331
“J1”	Copy Notice to appoint Arbitrator, Defendant to Plaintiff with attachment	15th February 1983	333 – 336
“J2”	Copy Notice to appoint Arbitrator, Defendant to Plaintiff with attachment	15th February 1983	338 – 341
“J3”	Copy Notice to appoint Arbitrator, Southern Cross Collieries to Plaintiff with attachment	15th February 1983	343 – 346

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
<u>Exhibits (Contd.)</u>			
“J4”	Copy Notice to appoint Arbitrator, Southern Cross Collieries to Plaintiff with attachment	15th February 1983	348 – 351
“K”	Copy letter, Solicitors to Plaintiff to Solicitors for Defendant	17th February 1983	353 & 354
“K1”	Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	17th February 1983	356
“L”	Copy letter, Solicitors for Plaintiff to Australasian Institute of Mining and Metallurgy	18th February 1983	358 & 359
“L1”	Copy letter, Solicitors for Plaintiff to Australasian Institute of Mining and Metallurgy	18th February 1983	361
“M”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	25th February 1983	363
“M1”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	25th February 1983	365
“N”	Copy letter, Solicitors for Defendant to R. Webster with attachments	25th February 1983	367 – 369
“O”	Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	28th February 1983	371 & 372
“O1”	Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	28th February 1983	374
“P”	Copy letter, Australasian Institute of Mining and Metallurgy to Solicitors for Plaintiff	29th February 1983	376
“Q”	Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	4th March 1983	378

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
<u>Exhibits (Contd.)</u>			
	“R” Copy letter, Solicitors for Defendant to Solicitors for Plaintiff	10th March 1983	380
	“S” Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	11th March 1983	382
	“S1” Copy letter, Solicitors for Plaintiff to Solicitors for Defendant	11th March 1983	384
	“T” Copy letter, Australasian Institute of Mining and Metallurgy to Solicitors for Defendant	31st March 1983	386
11.	Affidavit of Charles Linley Seymour	20 June 1983	388 & 389
12.	Affidavit of Charles Linley Seymour with Exhibits:—	20 June 1983	390 – 414
<u>Exhibits</u>			
	“A” Copy letter, Solicitors for Defendant to Australasian Institute of Mining and Metallurgy	15th February 1983	393 & 394
	“A1” Copy draft Notice of Appointment of Arbitrator	Undated	396
	“A2” Copy Notice of Dispute, Defendant to Plaintiff	23rd December 1983	398 & 399
	“B” Copy letter, Solicitors for Defendant to Australasian Institute of Mining and Metallurgy	15th February 1983	401 & 402
	“B1” Copy draft Notice of Appointment of Arbitrator	Undated	404
	“B2” Copy Notice of Dispute, Defendant to Plaintiff	7th January 1983	406 & 407
	“C” Copy letter, Solicitors for Defendant to R. Webster	25th February 1983	409

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
<u>Exhibits (Contd.)</u>			
	“D” Copy letter, Australasian Institute of Mining and Metallurgy to Solicitors for Defendant	29th February 1983	411
	“E” Copy letter, Australasian Institute of Mining and Metallurgy to Solicitors for Defendant	31st March 1983	413
13.	Transcript of Shorthand Notes:—	22nd February 1984	415 – 457
	VIERTEL, Keith Desmond Examination-in-Chief Cross-examination Re-examination		416 – 423
	BAGULEY, David John Examination-in-Chief Cross-examination Re-examination		424 – 450
	WALKER, Norman Ross Examination-in-Chief Cross-examination		451 – 457
14.	<u>Exhibits:—</u>		458 – 488
(1)	Coal Supply Agreement No. CS/29/2 between Defendant and Plaintiff	12th July 1978	489 – 498d
(2)	Variation Agreement between Defendant and Plaintiff	20th October 1981	499 – 509
(3)	Document acknowledging Agreement	1st December 1981	509 & 510
(4)	Copy letter, Defendant to Plaintiff	10th February 1982	511 & 512
(5)	Copy letter, Defendant to Plaintiff	19th March 1982	513 – 515
(6)	Copy letter, Plaintiff to Defendant	4th May 1982	516 & 517
(7)	Copy letter, Defendant to Plaintiff with annexures	17th June 1982	518 – 541

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
(8)	Firm Purchase Notice, Plaintiff to Defendant	30th June 1982	542 & 543
(9)	Letter, Plaintiff to Defendant	24th September 1982	544 & 545
(10)	Copy Letter, Defendant to Plaintiff	21st October 1982	546 & 547
(11)	Copy letter, Defendant to Plaintiff	4th November 1982	548 & 549
15.	Reasons for Judgment (McPherson J)	26th July 1983	550 – 552
16.	Formal Judgment	26th July 1983	553 – 576
17.	Reasons for Judgment of Full Court of Queensland	6th December 1983	577 – 579
18.	Formal Judgment	6th December 1983	580 – 594
19.	Order of Full Court of Queensland granting final leave to Appeal to Privy Council	7th February 1984	594 – 596

ERRATUM

The document commencing at p.550 and headed "Reasons for Judgment (McPherson, J.)" should be headed "Formal Judgment".

The document commencing at p.553 and headed "Formal Judgment" should be headed "Reasons for Judgment (McPherson, J.)".

The document commencing at p.577 and headed "Reasons for Judgment of Full Court of Queensland" should be headed "Formal Judgment".

The document commencing at p.580 and headed "Formal Judgment" should be headed "Reasons for Judgment of Full Court of Queensland".

The shoulder notes to these documents should be read accordingly. The index (supra) should read as follows:—

<u>No.</u>	<u>Document</u>	<u>Date</u>	<u>Page</u>
15.	<i>Formal Judgment</i>	<i>26th July 1983</i>	<i>550–552</i>
16.	<i>Reasons for Judgment (McPherson, J.)</i>	<i>26th July 1983</i>	<i>553–576</i>
17.	<i>Formal Judgment</i>	<i>6th December 1983</i>	<i>577–579</i>
18.	<i>Reasons for Judgment of Full Court of Queensland</i>	<i>6th December 1983</i>	<i>580–594</i>

DOCUMENTS EXCLUDED FROM THE RECORD

<u>No.</u>	<u>Document</u>	<u>Date</u>
1.	Writ of Summons (Other than Endorsement of Claim)	28th February 1983
2.	Entry of Appearance	2nd March 1983
3.	Summons	4th March 1983
4.	Affidavit of Charles Linley Seymour with Exhibits:—	4th March 1983
	<u>Exhibits</u>	
“A”	Coal Supply Agreement No. CS/29/3 between Southern Cross Collieries and Plaintiff	12th July 1978
“B”	Copy Notice of Dispute, Defendant to Plaintiff	3rd December 1982
“C”	Copy Notice of Dispute, Southern Cross Collieries to Plaintiff	23rd December 1982
“D”	Copy Notice of Dispute, Defendant to Plaintiff	7th January 1983
“E”	Copy Notice of Dispute, Southern Cross Collieries to Plaintiff	7th January 1983
5.	Order	14th March 1983
6.	Order	7th April 1983
7.	Order	18th April 1983
8.	Order	11th May 1983
9.	Affidavit of Charles Linley Seymour with Exhibits:—	18th May 1983
	<u>Exhibits</u>	
“A”	Copy Telex from Plaintiff to Defendant	3rd May 1983
“B”	Copy letter from Defendant to Plaintiff	3rd May 1983

<u>No.</u>	<u>Document</u>	<u>Date</u>
<u>Exhibits (Contd.)</u>		
	“C” Copy Telex from Defendant to Plaintiff	3rd May 1983
	“D” Copy letter from Plaintiff to Defendant	6th May 1983
	“E” Copy letter from Defendant to Plaintiff	10th May 1983
	“F” Copy letter from Plaintiff to Defendant	11th May 1983
	“G” Copy letter from Defendant to Plaintiff	11th May 1983
	“H” Copy letter from Defendant to Plaintiff	11th May 1983
	“I” Copy letter from Defendant to Plaintiff	13th May 1983
	“J” Copy letter from Defendant to Plaintiff	17th May 1983
	“K” Copy letter from Plaintiff to Defendant	17th May 1983
10.	Affidavit of Charles Linley Seymour with Exhibits:—	18th May 1983
<u>Exhibit</u>		
	“L” Copy letter, Defendant to Plaintiff	13th May 1983
11.	Order	19th May 1983
12.	Plaintiff’s List of Documents	25th May 1983
13.	Order	2nd June 1983
14.	Particulars of Allegations in Paragraph 15A of the Amended Defence and Counter-Claim	16th June 1983
15.	Record of Proceedings	19th October 1983
16.	Supplementary Record of Proceedings	19 October 1983
17.	Affidavit of Gary Neville Maguire	23 December 1983
18.	Notice of Motion for Conditional Leave to Appeal	23 December 1983
19.	Order of Full Court of Queensland for Conditional Leave to Appeal	23 December 1983

<u>No.</u>	<u>Document</u>	<u>Date</u>
20.	Notice of Payment Into Court of Security	6 January 1984
21.	Notice of Motion for Final Leave to Appeal	3 February 1984
22.	Original Draft Index to Reference	9 February 1984

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FULL COURT OF
THE SUPREME COURT OF QUEENSLAND
No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY
GENERATING BOARD

Appellant

– and –

NEW HOPE COLLIERIES PTY. LTD.

Respondent

RECORD OF PROCEEDINGS

PART II

WALTONS & MORSE,
Plantation House,
31/35 Fenchurch Street,
LONDON, EC3M 3NN.
Solicitors for the Appellant

GABRIELLE PRENTICE,
Bristol House,
80A Southampton Row,
LONDON, WC1B 4BA.
Solicitors for the Respondent

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983

IN THE SUPREME COURT OF QUEENSLAND

No. 902 of 1983

10

Handwritten notes: 20/6/83, 13/11/83, 19/7/83

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

AFFIDAVIT OF GARY NEVILLE MAGUIRE (Filed on behalf of the Plaintiff)

Stamp: SUPREME COURT 11. OCT. 1983 FILED BRISBANE

IN THE SUPREME COURT OF QUEENSLAND

No. 903 of 1983

20

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

SOUTHERN CROSS COLLIERIES

Defendant

Stamp: RECEIVED CHECKED

30

I, GARY NEVILLE MAGUIRE of 3/54 Brisbane Street, St. Lucia in the State of Queensland, Solicitor, being duly sworn, make oath and say as follows:-

1. I am a Solicitor of This Honourable Court and am employed by Messrs. Williams & Williams, Solicitors of Brisbane.

2. I have the carriage of these actions on behalf of the abovenamed Plaintiff and am duly authorised to swear this Affidavit.

3. Now produced and shown to me and marked respectively

40

WILLIAMS & WILLIAMS Solicitors National Bank House 255 Adelaide Street BRISBANE 4000 Telephone: 221.7899 GNM

50

Signature of Gary Neville Maguire, Deponent

FIRST SHEET

Signature of Justice of the Peace

60

copies of a letter dated 23rd December 1982 received by Messrs Williams & Williams from Messrs. Seymour Nulty & Co., 24th December 1982, copy Notice enclosed therewith and dated the 23rd December 1982 to the Plaintiff from the Solicitors for New Hope Collieries Pty. Ltd. and copy Notice enclosed therewith dated 23rd December 1982 to the Plaintiff from the Solicitors for the Southern Cross Collieries.

10

4. Now produced and shown to me and marked respectively with the letters "B" and "C" are true copies of a copy letter dated 29th December 1982 and a copy letter dated 6th January 1983 both sent to Messrs. Seymour Nulty & Co. from Messrs. Williams & Williams.

20

5. Now produced and shown to me and marked with respectively with the letters "D", "E" and "F" are true copies of a letter dated 7th January 1983, a letter dated 24th January 1983 and a letter dated 26th January 1983 each received by Messrs. Williams & Williams from Messrs. Seymour Nulty & Co.

30

6. Now produced and shown to me and marked respectively with the letters and figures "F1" and "F2" are true copies of letters each dated 4th February 1983 and enclosures thereto received by Messrs. Williams & Williams from Messrs. Seymour Nulty & Co.

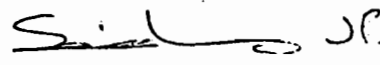
40

7. Now produced and shown to me and marked with the letter "G" is a true copy of a letter dated 11th February 1983 received by Messrs. Williams & Williams from Messrs. Seymour Nulty & Co.

50

SECOND SHEET


Deponent


A Justice of the Peace

60

8. Now produced and shown to me and marked respectively with the letters and figures "H1" and "H2" are true copies of copy letters each dated 15th February 1983 sent to Messrs. Seymour Nulty & Co. from Messrs. Williams & Williams.

9. Now produced and shown to me and marked respectively with the letters and figures "J", "J1", "J2", "J3" and "J4" are true copies of a letter and four (4) Notices enclosed therewith all dated 15th February 1983 received by Messrs. Williams & Williams from Messrs. Seymour Nulty & Co.

10. Now produced and shown to me and marked respectively with the letters and figures "K" and "K1" are true copies of two copy letters each dated 17th February 1983 sent to Messrs. Seymour Nulty & Co. from Messrs. Williams & Williams.

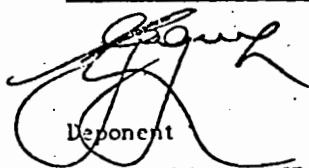
11. Now produced and shown to me and marked respectively with the letters and figures "L" and "L1" are true copies of two copies letters each dated 18th February 1983 sent to the Secretary of the Australasian Institute of Mining and Metallurgy from Messrs. Williams & Williams.

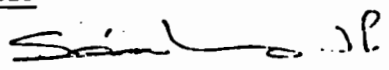
12. Now produced and shown to me and marked respectively with the letters and figures "M" and "M1" are true copies of two letters each dated 25th February 1983 received by Messrs. Williams & Williams from Messrs. Seymour Nulty & Co.

13. Now produced and shown to me and marked with the letter "N" is a true copy of a copy letter and enclosures thereto addressed to Mr. R. Webster from Messrs. Seymour Nulty & Co and received by Messrs. Williams & Williams.

14. Now produced and shown to me and marked respectively with the letters and figures "O" and "O1" are true copies of two copy letters each dated 28th February 1983 sent to Messrs.

50 THIRD SHEET


Deponent


A Justice of the Peace

Seymour Nulty & Co. from Messrs. Williams & Williams.

15. Now produced and shown to me and marked with the letter "P" is a true copy of a letter dated 29th February 1983 received by Messrs. Williams & Williams from C.R. Webster, the Chairman of the Southern Queensland Branch of the Australasian Institute of Mining and Metallurgy.

10

16. Now produced and shown to me and marked respectively with the letters "Q" and "R" are true copies of letters dated 4th March 1983 and 10th March 1983 respectively received by Messrs. Williams & Williams from Messrs. Seymour Nulty & Co.

17. Now produced and shown to me and marked respectively with the letters and figures "S" and "S1" are true copies of two copy letters each dated 11th March 1983 sent to Messrs. Seymour Nulty & Co. from Messrs. Williams & Williams.

20

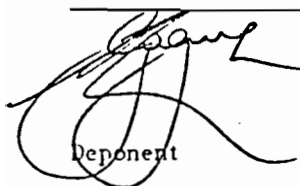
18. Now produced and shown to me and marked with the letter "T" is a true copy of a copy letter dated 31st March 1983 addressed to Messrs. Seymour Nulty & Co. from The Chairman of the Southern Queensland Branch of the Australasian Institute of Mining and Metallurgy and received by Messrs. Williams & Williams.

30

19. I verily believe that the correspondence exhibited to this my Affidavit and marked respectively with the letters and figures "B", "C", "H1", "H2", "K", "K1", "L", "L1", "O", "O1", "S" and "S1" were posted sent or delivered by Messrs Williams & Williams to the respective persons to whom they were addressed or required to be sent or delivered on or about the dates they respectively bear.

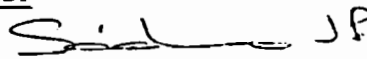
40

20. All the facts and circumstances herein deposed to are



Deponent

FOURTH SHEET



A Justice of the Peace

50

60

*In the Supreme
Court of
Queensland*
**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

within my own knowledge true save and except where
otherwise deposed to and my means of knowledge and sources
of information appears of the face of this my Affidavit.

20

SWORN by the abovenamed
Deponent at Brisbane
this 20th day of
June 1983, before me:



A Justice of the Peace

)
)
)
)
)
)
)
)
)
)
)


30

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

SEYMOUR NULTY & CO.

THE HONOURABLE JUSTICE
THE MASTER OF THE SUPREME COURT
OF QUEENSLAND
KENDY WILSON

SOLICITORS
SINDLEGATE
C/O DEPARTMENT
ONE QUEEN & GEORGE STREETS
BRISBANE

TELEPHONE 221111
POSTAL ADDRESS
PO BOX 111
BRISBANE
QUEENSLAND
4001

RECEIVED
OFFICE OF THE CLERK
OF THE SUPREME COURT
OF QUEENSLAND
11. OCT. 1983
FILED
BRISBANE

OUR REF 1/CMD
YOUR REF

23rd December, 1982

ATTENTION MR. L.G. WILLIAMS

Messrs. Williams & Williams,
Solicitors,
National Bank Building,
Adelaide Street,
BRISBANE, Q. 4000

RECEIVED
OFFICE OF THE CLERK
OF THE SUPREME COURT
OF QUEENSLAND
11. OCT. 1983
FILED
BRISBANE

Dear Sirs,

- Re: Southern Cross Collieries
- Re: New Hope Collieries Pty. Ltd.
- Re: Your client: Q.E.G.B.

We forward herewith Notice, the original of which has been or is about to be served upon your client, the Q.E.G.B. herein.

Yours faithfully,
SEYMOUR NULTY & CO.

Enc. [1]

10

20

30

40

50

Exhibit "A"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

20

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "A" mentioned
and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn
herein before me this 20th day of June 1983.

30



A Justice of the Peace

40

50

60

TO: QUEENSLAND ELECTRICITY GENERATING BOARD
Coal Supply Agreement CS/25/2 as varied
between Queensland Electricity Generating
Board and New Hope Collieries Pty. Ltd.

10

TAKE NOTICE that certain questions, disputes or differences having arisen between the Generating Board and New Hope Collieries Pty. Ltd. upon or in relation to or in connexion with the said agreement which question dispute or difference cannot be resolved by the Generating Board and New Hope Collieries Pty. Ltd. NEW HOPE COLLIERIES PTY. LTD. (pursuant to clause 13 of the said agreement) HEREBY GIVES NOTICE and calls for the point or points at issue nominated in the schedule hereto to be referred to arbitration.

20

THE SCHEDULE

(a) Whether the escalation provisions of the said agreement during all or part of that period of the said agreement until 31st December, 1982 properly reflected the effects of changes in costs on the cost of producing and supplying coal under the said agreement during such periods and, if not, in whole or in part, the manner and extent to which such escalation provisions have failed to properly reflect the effects of changes in costs on the cost of producing and supplying coal under the said agreement during such periods.

30

40

(b) Whether there should be any and if so what alterations in the price variation provisions

50

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

: 2 :

10

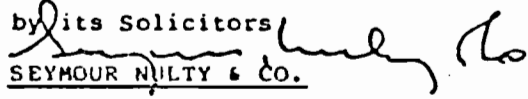
of the said agreement in respect of all or part of that
period of the agreement until 31st December, 1982.

DATED the 23rd day of December, 1982.

20

NEW HOPE COLLIERIES PTY. LTD.

by its Solicitors


SEYMOUR NULTY & CO.

30

The address for service of New Hope Collieries Pty.
Ltd. is at 9th floor, Citicorp House, Cnr. Queen and
George Streets, Brisbane.

40

50

Exhibit "A1"

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

10

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This and the preceding page are the paperwriting marked with the letter "A1" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day of June 1983.



A Justice of the Peace

30

40

50

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

TO: QUEENSLAND ELECTRICITY GENERATING BOARD
Coal Supply Agreement CS/29/A as varied
between Queensland Electricity Generation
Board and Southern Cross Collieries

10
11. OCT. 1983
FILED OF
BRISBANE

TAKE NOTICE that certain questions, disputed
question dispute or difference having arisen between the Generating
Board and Southern Cross Collieries upon or in relation
to or in connexion with the said agreement which
question dispute or difference cannot be resolved by
the Generating Board and Southern Cross Collieries
20 SOUTHERN CROSS COLLIERIES (pursuant to clause 13 of the
said agreement) HEREBY GIVES NOTICE and calls for the
point or points at issue nominated in the schedule
hereto to be referred to arbitration.

THE SCHEDULE

30 (a) Whether the escalation provisions of the said
agreement during all or part of that period of
the said agreement until 31st December, 1982
properly reflected the effects of changes in
costs on the cost of producing and supplying
coal under the said agreement during such
periods and, if not, in whole or in part, the
40 manner and extent to which such escalation
provisions have failed to properly reflect the
effects of changes in costs on the cost of
producing and supplying coal under the said
agreement during such periods.

50 (b) Whether there should be any and if so what
alterations in the price variation provisions

Exhibit "A2"

60

*In the Supreme
Court of
Queensland*

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

1 2 3

of the said agreement in respect of all or part of that
period of the agreement until 31st December, 1982.

10

DATED the 23rd day of December, 1982.

SOUTHERN CROSS COLLIERIES

20

by its Solicitors,
SEYMOUR RULTY & CO.

The address for service of Southern Cross Collieries is
at 9th floor, Citicorp House, Cnr. Queen and George
Streets, Brisbane.

30

40

50

Exhibit "A2"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

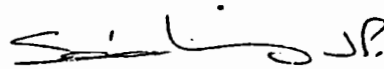
20

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This and the preceding page are the paperwriting marked with the
letter "A2" mentioned and referred to in the Affidavit of GARY
NEVILLE MAGUIRE sworn herein before me this 20th day of June
1983.

30



A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

SUPREME COURT
OF QUEENSLAND
11. OCT. 1983
FILED
BRISBANE

29th December 1982

LGW:VC

V/CMD

Messrs. Seymour Hultly & Co.,
Solicitors,
Citicorp House,
Cnr. Queen & George Streets,
BRISBANE, 4000.

20

Dear Sirs,

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD
NEW HOPE COLLIERIES PTY. LTD. and SOUTHERN CROSS COLLIERIES

We have your letter of 23rd December 1982. The issue that seems to
be raised by the Notice is really a question of retrospectivity which
is not properly a matter for arbitration.

30

We are however seeking our client's instructions and will be in touch
with you in due course.

Yours faithfully,
WILLIAMS & WILLIAMS

per:

40

c.c. The Queensland Electricity Generating Board
(and copy letter under reference)

50

Exhibit "B"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

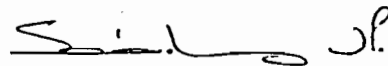
NEW HOPE COLLIERIES PTY. LTD.

20

Defendant

This is the paperwriting marked with the letter "B" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn ei: before me this 20th day of June 1983.

30



A Justice of the Peace

40

50

60

6th January 1983

LGW : VC QEGB822067

10

1/CMD

Messrs. Seymour Nulty & Co.,
Solicitors,
Ninth Floor,
Citicorp House,
Cnr. Queen & George Streets,
BRISBANE, 4000.

20

Dear Sirs,

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD
SOUTHERN CROSS COLLIERIES
NEW HOPE COLLIERIES PTY. LTD.

We refer to your letter of 23rd December last and to the two Notices enclosed therewith. Before we can properly advise our client in respect of the Notices we would like to know precisely what it is your clients are seeking to arbitrate and when your clients say that the question difference or dispute arose.

30

It seems to us that if there is any question difference or dispute relating to the Agreements then it will obviously involve the construction of the Agreements and the person to be appointed should be a Barrister-at-Law. Do you share this view? If you do and if we can be satisfied that there are questions differences or disputes which are properly matters the subject of arbitration then we will seek instructions to agree upon an arbitrator.

40

We understand further a representative of your clients has been making direct contact with our client regarding the matter. Our client has instructed us to say that any communications are to be between the respective solicitors.

Yours faithfully,
WILLIAMS & WILLIAMS

50

per:

Exhibit "C"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "C" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn before me this 20th day of June 1983.



A Justice of the Peace

10

20

30

40

50

60

SEYMOUR, NULTY & CO.

SOLICITORS

18th FLOOR
GILGOCRY HOUSE
ONE QUEEN & GEORGE STREETS
BRISBANE

TELEPHONE 221 503
POSTAL ADDRESS BOX 33, G.P.O.
BRISBANE, Q.L.D. 4001
DX 40124

CHRISTIE SEYMOUR
THOMAS A. NULTY, LL.B.
DAVID STAMMISH
WENDY J. McDONALD

SUPREME COURT
OF QUEENSLAND
11. OCT. 1983
FILED
BRISBANE

OUR REF. 1/CMD
YOUR REF.

7th January, 1983

Messrs. Williams & Williams,
Solicitors,
18th floor,
National Bank Building,
Adelaide and Creek Streets,
BRISBANE, Q. 4000

RECEIVED
17 JAN 1983

"SERVED" 3:22 PM

Dear Sirs,

Re: New Hope Collieries Pty. Ltd. and Southern Cross Collieries
Re: Your client - O.E.G.B.

We refer to your letter to us of the 29th December last. We do not agree that the issues raised by the Notice of the 23rd December are a question of retrospectivity. The Notice speaks for itself.

We therefore suggest, you advise us of the basis or bases by reason of which you suggest that the issues raised in the notice are not properly a matter for arbitration.

In the meantime, we suggest that without prejudice to both our clients' respective rights in relation to this matter, the parties confer with a view to appointment of an arbitrator so that ultimately if you cannot convince us that this is not properly a matter for arbitration, your client would retain its rights to go to the Court for interpretation or construction of the subject agreement or in such other way as it sees fit.

Otherwise it seems that our client has no alternative but to seek an appropriate order for the Court requiring the parties to submit to arbitration. Our client would, however, prefer to avoid, if possible, any unnecessary extension of the areas of dispute herein.

Yours faithfully,
SEYMOUR NULTY & CO.

Exhibit "D"

10

20

30

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

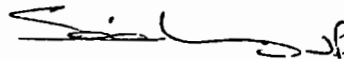
Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "D" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herei before me this 20th day of June 1983.



A Justice of the Peace

10

20

30

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

SEYMOUR, MULLY & CO.

SOLICITORS

NEEDLEGATE OFFICE BUILDING 658 QUEENSLAND STREET BRISBANE

TELEPHONE 22330 POSTAL ADDRESS 658 QUEENSLAND STREET BRISBANE Q. 4001

CHARLES SEYMOUR THOMAS MULLY & WENDY McDONALD

Supreme Court of Queensland 11. OCT. 1983 FILED BRISBANE

OUR REF. 1/CMD YOUR REF. QEGB 822067 LGW:VC

RECEIVED 25 JAN 1983

24th January, 1983

DELIVERY

Messrs. Williams & Williams, Solicitors, 18th floor, National Bank House, Adelaide Street, BRISBANE, Q. 4000

Dear Sirs,

- Re: New Hope Collicries Pty. Ltd. Re: Queensland Electricity Generating Board Re: Southern Cross Collieries

Our respective firms' letters (ours of the 7th January and yours of the 6th January last) obviously crossed.

As to the matters raised in the first paragraph of your letter we suggest our letter to you of the 7th January deals with that matter.

We agree that the matters of difference and dispute relating to the agreements involve construction of the agreement and consequently that the person to be appointed should be a Barrister-at-law.

We put forward as an arbitrator, Mr. C.E.K. Hampson Q.C. who, we understand, will be available in the near future having completed or been about to complete his duties with the inquiry to which he has been associated. Would you consider (subject to his availability) our suggestion in this regard and confirm or advise us otherwise of your agreement to him as an arbitrator.

Finally, as to the last paragraph of your letter of the 6th January, we cannot, with respect, see anything wrong with a representative of our clients making direct contact with your client, however, we have conveyed the contents of your letter in this regard to our clients.

Yours faithfully, SEYMOUR MULLY & CO.

Handwritten signature

-262-

Exhibit "E"

10

20

30

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

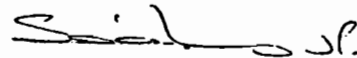
Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "E" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn in before me this 20th day of June 1983.



A Justice of the Peace

10

20

30

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

10

Handwritten initials and names: CHARLES L. SEYMOUR, THOMAS A. NULTY, KEVIN J. STANISH, WENDY J. McDONALD

SEYMOUR, NULTY & CO.

SOLICITORS

NINTH FLOOR CITY OFFICE ONE QUEEN & GEORGE STREETS BRISBANE

TELEPHONE 221 5033 POSTAL ADDRESS: 1005, ST. GEORGE'S ROAD, BRISBANE, Q.L.D. 4001

DX

1/CMD

OUR REF.

YOUR REF.

FILED IN SUPREME COURT OF QUEENSLAND 11. OCT. 1983 FILED BRISBANE

26th January, 1983

Messrs. Williams & Williams, Solicitors, National Bank Building, Adelaide Street, BRISBANE, Q. 4000

RECEIVED stamp: RECEIVED 11 JAN 1983

20

Dear Sirs,

Re: Q.E.G.B. - Our clients: New Hope Collieries Pty. Ltd. and Southern Cross Collieries

We refer to our letter to you of the 24th instant and the writer's subsequent discussions with your Mr. L. Williams.

We confirm your agreement to Mr. C.E.K. Hampson Q.C., acting as arbitrator. We have spoken to Mr. Hampson (not on the matters in issue of course) as to his availability and he confirmed he would be available subsequent to the 28th February next. He suggests if an arbitration is to proceed a meeting be held at his Chambers on a Friday afternoon for appropriate directions to be given. We tentatively propose in this regard, Friday, the 11th February. You might advise us of your attitude thereon.

30

We confirm our oral request that you forthwith order the record for the Full Court so that the appeal might be set down as early as possible.

40

Yours faithfully, SEYMOUR NULTY & CO.

Handwritten signature of Charles Seymour

50

Exhibit "F"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "F" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herei before me this 20th day of June 1983.



A Justice of the Peace

10

20

30

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

THOMAS & SUTHERLAND
LEASING MANAGERS
VENDY J. McDONALD

SEYMOUR, RULY & CO.

SOLICITORS
KENT HOUSE
CITICORP HOUSE
CNR QUEEN & GEORGE STREETS
BRISBANE

TELEPHONE 221500
POSTAL ADDRESS BOX 355, G.P.O. BRISBANE, QLD 4001
DX 4074

SUPREME COURT OF QUEENSLAND
11. OCT. 1983
FILED
BRISBANE

OUR REF. 1/TM/CMD
YOUR REF.

RECEIVED
11 OCT 1983

4th February, 1983

DELIVERY

Messrs. Williams & Williams,
Solicitors,
18th floor,
National Bank Building
Adelaide Street,
BRISBANE, Q. 4000

10

20

Dear Sir,

Re: New Hope Collieries Pty. Ltd.

Re: CS/29/2

We refer to your letter of 6th January, 1983 and to our letters of 7th and 24th January, 1983.

30

Our client contends that, in terms of Clause 9.1 of Coal Supply Agreement CS/29/2 the escalation provisions of the agreement did not properly reflect the effects of changes in costs on the cost of producing and supplying coal under that agreement in the period 1st January, 1979 to 31st December, 1982. It contends accordingly that the price variation provisions should be varied so that the escalation provisions in respect of that period properly reflect such changes.

We would also urge that these 'questions, disputes, or differences', which have been the subject of considerable discussion between the parties, arose not later than 14th July, 1982, the date on which our client gave your client formal notice under Clause 9.1 of the Coal Supply Agreement requiring a review of the price variation provisions of the Agreement.

40

Yours faithfully
SEYMOUR RULY & CO.
[Signature]

50

Exhibit "F1"

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

CHARLES SEYMOUR
THOMAS A. NULTY, LL.B.
KEVIN P. STANDISH

SEYMOUR, NULTY & CO.

SOLICITORS

NINTH FLOOR
CITICORP HOUSE
ENR. QUEEN & GEORGE STREETS
BRISBANE

TELEPHONE 331901
POSTAL ADDRESS BOX 33 G.P.O.
BRISBANE
QUEENSLAND
4000
DX 4000

OUR REF. 1/CMD
YOUR REF.

10

3rd February, 1983

Mr. C.E.K. Hampson Q.C.,
Inns of Court,
107 North Quay,
BRISBANE, Q. 4000

20

Dear Sir,

Re: Arbitration
Our clients: New Hope Collieries Pty. Ltd. and Southern
Cross Collieries

Williams & Williams' client: Q.E.G.B.

30

We refer to the preliminary discussion the writer had with you concerning the arbitration to be held between the abovenamed parties. We would confirm the tentative appointment made for 4.00 p.m. on Friday, the 11th February next for a preliminary meeting and the giving of directions in relation to such arbitration.

We will send a copy of this letter to Messrs. Williams & Williams in order that they might arrange for representation at such meeting.

Our Counsel are Mr. David Jackson Q.C. and J. Muir. No doubt Williams & Williams will advise you of their client's Counsel.

40

Yours faithfully,
SEYMOUR NULTY & CO.

50

Exhibit "F1"

60

In the Supreme Court of Queensland
No. 10
Affidavit of Gary Neville Maguire with Exhibits
20th June 1983
(Contd.)

[Handwritten initials]
CHARLES LEVINS
THOMAS A. RUSSELL
EVIN J. STANDISH
WENDY J. McDONALD

F-2
SEYMOUR, HULTY & CO.
SOLICITORS
18TH FLOOR
NATIONAL BANK BUILDING
400 BRISBANE STREET
BRISBANE

TELEPHONE 221 5033
POSTAL ADDRESS: BOX 455, G.P.O.
BRISBANE, Q.U.D. 4001
DIA 49124

10

4th February, 1983

SUPREME COURT
OF QUEENSLAND
11. OCT. 1983
FILED
BRISBANE
DELIVERY

OUR REF. 1/TM/CHD
YOUR REF.

Messrs. Williams & Williams,
Solicitors,
18th floor,
National Bank Building,
Adelaide Street,
BRISBANE, Q. 4000

RECEIVED
9 4 FEB 1983
RECEIVED

20

Dear Sir,

Re: Our client: Southern Cross Collieries

Re: CS/29/3

We refer to your letter of 6th January, 1983 and to our letters of 7th and 24th January, 1983.

30

Our client contends that, in terms of Clause 9.1 of Coal Supply Agreement CS/29/3 the escalation provisions of the agreement did not properly reflect the effects of changes in costs on the cost of producing and supplying coal under that agreement in the period 1st January, 1979 to 31st December, 1982. It contends accordingly that the price variation provisions should be varied so that the escalation provisions in respect of that period properly reflect such changes.

We would also urge that these 'questions, disputes, or differences', which have been the subject of considerable discussion between the parties, arose not later than 17th August, 1982, the date on which our client gave your client formal notice under Clause 9.1 of the Coal Supply Agreement requiring a review of the price variation provisions of the Agreement.

40

Yours faithfully,
SEYMOUR HULTY & CO.

[Handwritten signature]

50

Exhibit "F2"

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

CHARLES SEYMOUR
THOMAS A. NULTY, LL.B.
KAYE P. LEANING

SEYMOUR, NULTY & CO.

SOLICITORS

NINTH FLOOR
CITICORP HOUSE
200 QUEEN & GEORGE STREETS
BRISBANE

TELEPHONE: 271 5611
FACSIMILE: 271 5611
POSTAL ADDRESS: BOX 555, G.P.O.
BRISBANE,
Q.L.D. 4001
48124
DX

10

OUR REF. 1/CMD
YOUR REF.

3rd February, 1983

20

Mr. C.E.K. Hampson Q.C.,
Inns of Court,
107 North Quay,
BRISBANE, Q. 4000

Dear Sir,

Re: Arbitration
Our clients: New Hope Collieries Pty. Ltd. and Southern
Cross Collieries

Williams & Williams' client: Q.E.G.B.

30

We refer to the preliminary discussion the writer had with you concerning the arbitration to be held between the abovenamed parties. We would confirm the tentative appointment made for 4.00 p.m. on Friday, the 11th February next for a preliminary meeting and the giving of directions in relation to such arbitration.

We will send a copy of this letter to Messrs. Williams & Williams in order that they might arrange for representation at such meeting.

Our Counsel are Mr. David Jackson Q.C. and J. Muir. No doubt Williams & Williams will advise you of their client's Counsel.

40

Yours faithfully,
SEYMOUR NULTY & CO.

50

Exhibit "F2"

60

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

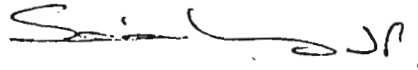
NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This and the preceding page are the paperwriting marked with the
letter "F2" mentioned and referred to in the Affidavit of GARY
NEVILLE MAGUIRE sworn herein before me this 20th day of June
1983.

30



A Justice of the Peace

40

50

60

In the Supreme Court of Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

THOMAS G. NULTY, SOLICITOR
THOMAS G. NULTY, LL.B.
LEVIN STANISSE
WENDY J. McGOVERN

SEYMOUR, NULTY & CO.

SOLICITORS
SOUTH TOWER
CITICORP TOWER
Cnr. QUEEN & GEORGE STREETS
BRISBANE

TELEPHONE: 214-33
FACSIMILE: 214-33
POSTAL ADDRESS: PO BOX 600
BRISBANE
QLD 4001
49124

DX

10

11th February, 1983

SUPREME COURT
OF QUEENSLAND
11. OCT. 1983
FILED
BRISBANE

OUR REF. 1/CMD

YOUR REF.

DELIVERY

RECORDED
11 FEB 1983
RECEIVED

20

Messrs. Williams & Williams,
Solicitors,
18th floor,
National Australia Bank Building,
Cnr. Adelaide and Creek Streets,
BRISBANE, Q. 4000

Dear Sirs,

Re: Our clients: Southern Cross Collieries and New Hope Collieries Pty. Ltd.
Your client: Q.E.G.B.

30

We refer to our letters to you of the 26th ultimo and the 3rd instant and the writer's telephone conversation with your Mr. Williams of yesterday's date.

Our understanding of our earlier telephone conversations was that:-

40

- 1) You agreed that questions of law were involved in the arbitrations, and that in consequence a Barrister should be appointed as arbitrator;
- 2) You agreed that the Barrister should be Mr. C.E.K. Hampson Q.C.; and
- 3) You did not agree that some of the matters referred to arbitration were proper subjects for an arbitration.

It is over two (2) weeks since we wrote confirming, as we thought, the matters referred to above.

Would you please advise:-

50

- 1) Whether you agree to the appointment of Mr. Hampson Q.C. as arbitrator;
- 2) If not, the names of other persons whom you nominate as arbitrators.

.../2

Exhibit "G"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

: 2 :

Messrs. Williams & Williams

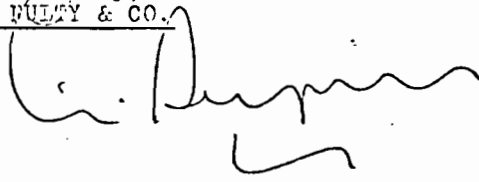
11th February, 1983

If you agree to the appointment of Mr. Hampson Q.C. as arbitrator, there is no reason why the appointment arranged with him for 4.30 p.m. today cannot proceed.

10

We would appreciate your urgent reply to this letter.

Yours faithfully,
SEYMOUR NULTY & CO.



20

30

40

50

Exhibit "G"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

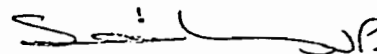
NEW HOPE COLLIERIES PTY. LTD.

20

Defendant

This and the preceding page are the paperwriting marked with the letter "G" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day of June 1983.

30



A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

THE SUPREME COURT
OF QUEENSLAND
11. OCT. 1983
FILED
BRISBANE

15th February 1983

LGW:VC QEG822057

1/CMD

Messrs. Seymour Nulty & Co.,
Solicitors,
Ninth Floor,
Citicorp House,
Cnr. George & Queen Streets,
BRISBANE, 4000.

20

Dear Sirs,

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD - NEW
HOPE COLLIERIES - CONTRACT NO. CS29/2

Our letter of 6th January 1983 indicated that if there was to be any arbitrati
involving any issue arising out of this Contract then in our view the
appropriate person to conduct it was a Barrister-at-Law. In the
conversation referred to in your recent correspondence the writer's only
comment was that our client would have no objection to Mr. C.E.K.
Hampson, Q.C., as a suitable person to conduct any arbitration. There
was no agreement in relation to the appointment of Mr. Hampson as
arbitrator and there remains none. We informed you we were awaiting
advice from Mr. Callinan of Counsel as to whether our client was
obliged to arbitrate and if it was, what issues.

30

In the same conversation you undertook to define precisely what it is
that you say are the questions, disputes or differences that have
arisen, when they have arisen, and what it is that you are seeking to
arbitrate. Your letter of 4th February 1983 is of no assistance in this
regard. Our recollection of your comment on this was that there were
four to six areas of dispute and that you would define the same.

40

We have at least two notices relating to arbitration one signed by you
on behalf of your client dated 23rd December 1982 and another signed
by D.J. Ireland on behalf of your client dated 7th January 1983. The
first Notice purports to seek to arbitrate what is essentially a question
of retrospectivity. Pursuant to that Notice your client is seeking to
re-write the whole of the financial terms of an agreement which has
been performed. The second Notice seeks to arbitrate the terms of
supply of the additional quantities of coal after December 1982.

50

Exhibit "H1"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

2.

Messrs. Seymour Hultly & Co.

15th February 1983

10

In respect of the first Notice our client's view is that your client has no right to arbitrate this issue and our client will not agree to any such arbitration.

On the second matter our client does not concede at this time that your client has complied with the terms of the Contract giving rise to the the right to arbitrate. We are still awaiting proper notice and proper definition of the issues.

20

We reiterate that if there is to be an arbitration Mr. Hampson, Q.C. is perfectly acceptable to our client.

Finally we refer to the various complaints/comments that have emanated from you/your client relating to this matter. We confirm and your correspondence fortifies our view that the only way to avoid future dissent and confusion is for the matter to be dealt with in writing between the Solicitors. In view of what has transpired to date we make no apology for this attitude.

Yours faithfully,
WILLIAMS & WILLIAMS

30

per:

40

50

Exhibit "H1"

60

IN THE SUPREME COURT
OF QUEENSLAND

10

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff


AND:

NEW HOPE COLLIERIES PTY. LTD.

20

Defendant

This and the preceding page are the paperwriting marked with the letter "K2" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day of June 1983.



30

A Justice of the Peace

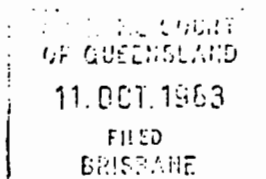
40

50

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)



15th February 1983

LGW:VC QEGB822067

1/CMD

20

Messrs. Seymour Nulty & Co.,
Solicitors,
Ninth Floor,
Citicorp House,
Cnr. George & Queen Streets,
BRISBANE, 4000.

Dear Sirs,

30

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD - SOUTHERN
CROSS COLLIERIES PTY. LTD. - CONTRACT NO. CS29/3

As you are well aware it has consistently been our client's stated position that it will not agree to arbitrate any issue arising out of this Contract. The matter is presently before the Court and no discussions or negotiations will be entered into pending a final decision by the Courts.

Your statement as to agreement on our part relating to the appointment of an arbitrator is totally false and in all the circumstances quite incredibl

40

Yours faithfully,
WILLIAMS & WILLIAMS

per:

50

Exhibit "H2"

CL 012112

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

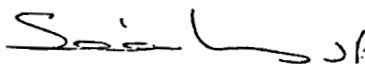
AND:

NEW HOPE COLLIERIES PTY. LTD.

20

Defendant

This is the paperwriting marked with the letter "H" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herei before me this 20th day of June 1983.



30

A Justice of the Peace

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

SEYMOUR, MULLY & CO. SOLICITORS

SEYMOUR, MULLY & CO. SOLICITORS 250 QUEEN STREET BRISBANE

TELEPHONE 221993 POSTAL ADDRESS: BOX 330, G.P.O. BRISBANE, QUEENSLAND 4001

10

15th February, 1983

SUPREME COURT OF QUEENSLAND 11.OCT.1983 FILED BRISBANE

OUR REF. 1/CMD YOUR REF. LGW

DELIVERY

20

Messrs. Williams & Williams, Solicitors, 18th floor, National Australia Bank House, Adelaide Street, BRISBANE, Q. 4000

RECEIVED 15 FEB 1983

Dear Sirs,

Re: Our clients: Southern Cross Collieries and New Hope Collieries Pty. Ltd. Your client: Q.E.G.B.

30

Re: Arbitration Act Reference to Arbitration

In the above matters we forward herewith:-

- 1) Copies of our letters (4) to the Secretary, Committee of the Southern Queensland Branch of The Australasian Institute of Mining and Metallurgy; 2) By way of service Notice pursuant to the Arbitration Act 1973 (Section 17).

40

It seems to us that in the absence of agreement the arbitrator should be appointed by the Committee of the Southern Queensland Branch for the time being of The Australasian Institute of Mining and Metallurgy [vide clause 13.2(ii)]. In case that Committee is unable to act or for any other reason an arbitrator cannot be so appointed we serve you herewith with the Notice.

Yours faithfully, SEYMOUR MULLY & CO.

[Handwritten signature]

50

Enc. [2]

Exhibit "J"

60

IN THE SUPREME COURT
OF QUEENSLAND

10

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

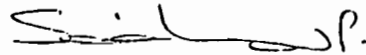
AND:

NEW HOPE COLLIERIES PTY. LTD.

20

Defendant

This is the paperwriting marked with the letter "J" mentioned and
referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn here
before me this 20th day of June 1983.



A Justice of the Peace

30

40

50

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

ARBITRATION ACT 1973

NOTICE TO APPOINT AN ARBITRATOR

Section 17

To: QUEENSLAND ELECTRICITY GENERATING BOARD,
C/- Williams & Williams,
Solicitors,
11.00 National Australia Bank House,
Adelaide and Creek Streets,
BRISBANE, Q. 4000
Re: Coal Supply Contract - CS/29/2
New Hope Collieries Pty. Ltd.

TAKE NOTICE that NEW HOPE COLLIERIES PTY. LTD., a party to the above Coal Supply Contract to an "Agreement to Arbitrate" within the meaning of that term as used under the Arbitration Act 1973 (as amended) (hereinafter referred to as "the Act") to which Agreement you are the other party and which Agreement contains provision for arbitration in the terms of clause 13 HEREBY REQUIRES YOU, pursuant to the Act, to concur in the appointment of an arbitrator pursuant to the provisions of the Act and advises you that if you do not so concur within fourteen (14) clear days after the service of this Notice upon you it is the intention of NEW HOPE COLLIERIES PTY. LTD. to apply to the Court for appointment of an arbitrator.

The "questions, disputes or differences" to be referred to arbitration are those set out in the attached Notice.

NEW HOPE COLLIERIES PTY. LTD. suggests the appointment of C.E.K. Hampson Q.C. as such arbitrator

Exhibit "J1"

: 2 :

as aforesaid but will consider any other person or persons you may nominate. NEW HOPE COLLIERIES PTY. LTD. understands you agree that there are questions of law which arise in the arbitration and therefore the proviso to clause 13.2(ii) requiring the appointment of a Barrister-at-Law practising in Brisbane to be the arbitrator.

10

DATED the 15th day of February, 1983.

20

NEW HOPE COLLIERIES PTY. LTD.

by its Solicitors,



30

SEYMOUR NULTY & CO.

The address for service of New Hope Collieries Pty. Ltd. is care of its Solicitors, Messrs. Seymour Nulty & Co. of 9th floor, Citicorp House, Cnr. Queen and George Streets, Brisbane.

40

50

Exhibit "J1"

60

*In the Supreme
Court of
Queensland*

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

TO: QUEENSLAND ELECTRICITY GENERATING BOARD
Coal Supply Agreement CS/29/2 as varied
Between Queensland Electricity Generating
Board and New Hope Collieries Pty. Ltd.

10 TAKE NOTICE that certain questions, disputes
or differences having arisen between the Generating
Board and New Hope Collieries Pty. Ltd. upon or in
relation to or in connexion with the said agreement
which question dispute or difference cannot be resolved
by the Generating Board and New Hope Collieries Pty.
20 Ltd. NEW HOPE COLLIERIES PTY. LTD. (pursuant to clause
13 of the said agreement) HEREBY GIVES NOTICE and calls,
for the point or points at issue nominated in the
schedule hereto to be referred to arbitration.

THE SCHEDULE

30 (a) Whether the escalation provisions of the said
agreement during all or part of that period of
the said agreement until 31st December, 1982
properly reflected the effects of changes in
costs On the cost of producing and supplying
coal under the said agreement during such
periods and, if not, in whole or in part, the
40 manner and extent to which such escalation
provisions have failed to properly reflect the
effects of changes in costs On the cost of
producing and supplying coal under the said
agreement during such periods.

50 (b) Whether there should be any and if so what
alterations in the price variation provisions

Exhibit "J1"

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

: 2 :

of the said agreement in respect of all or part of that
period of the agreement until 31st December, 1982.

10

DATED the 23rd day of December, 1982.

20

NEW HOPE COLLIERIES PTY. LTD.

by its Solicitors,
Seymour Nulty & Co.
SEYMOUR NULTY & CO.

The address for service of New Hope Collieries Pty.
Ltd. is at 9th floor, Citicorp House, Cnr. Queen and
George Streets, Brisbane.

30

40

50

Exhibit "J1"

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

10

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

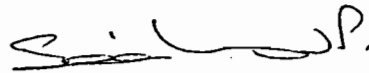
AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This and the preceding pages are the paperwriting marked with
the letter "J1" mentioned and referred to in the Affidavit of GARY
NEVILLE MAGUIRE sworn herein before me this 20th day of June
1983.



A Justice of the Peace

30

40

50

60

ARBITRATION ACT 1973

NOTICE TO APPOINT ARBITRATOR

Section 17 OF GOVERNMENT

11 OCT 1983

To: QUEENSLAND ELECTRICITY GENERATING BOARD,
C/- Williams & Williams,
Solicitors,
National Australia Bank House,
Adelaide and Creek Streets,
BRISBANE, Q. 4000

10

Re: Coal Supply Contract - CS/29/2
New Hope Collicries Pty. Ltd.

TAKE NOTICE that NEW HOPE COLLIERIES PTY. LTD., a party to the above Coal Supply Contract to an "Agreement to Arbitrate" within the meaning of that term as used under the Arbitration Act 1973 (as amended) (hereinafter referred to as "the Act") to which Agreement you are the other party and which Agreement contains provision for arbitration in the terms of clause 13 HEREBY REQUIRES YOU, pursuant to the Act, to concur in the appointment of an arbitrator pursuant to the provisions of the Act and advises you that if you do not so concur within fourteen (14) clear days after the service of this Notice upon you it is the intention of NEW HOPE COLLIERIES PTY. LTD. to apply to the Court for appointment of an arbitrator.

20

30

40

The "questions, disputes or differences" to be referred to arbitration are those set out in the attached Notice.

NEW HOPE COLLIERIES PTY. LTD. suggests the appointment of C.E.K. Hampson Q.C. as such arbitrator

50

Exhibit "J2"

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

: 2 :

as aforesaid but will consider any other person or persons you may nominate. NEW HOPE COLLIERIES PTY. LTD. understands you agree that there are questions of law which arise in the arbitration and therefore the proviso to clause 13.2(ii) requiring the appointment of a Barrister-at-Law practising in Brisbane to be the arbitrator.

10

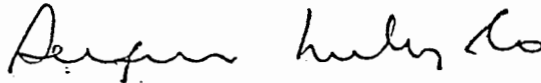
DATED the 15th day of February, 1983.

20

NEW HOPE COLLIERIES PTY. LTD.

by its Solicitors,

30



SEYMOUR NULTY & CO.

The address for service of New Hope Collieries Pty. Ltd. is care of its Solicitors, Messrs. Seymour Nulty & Co. of 9th floor, Citicorp House, Cnr. Queen and George Streets, Brisbane.

40

50

Exhibit "J2"

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

10

NEW HOPE COLLIERIES PTY. LTD.
(Incorporated in Queensland)

13 17 LOWRY STREET, BRISBANE,
QUEENSLAND 4001, AUSTRALIA

Company No. —
P.O. BOX 47,
BRISBANE, Q.L.D. 4001, AUSTRALIA
Telephone — (07) 262 1100
Telex — NUHOPE A2 4461E

TO: QUEENSLAND ELECTRICITY GENERATING BOARD

Coal Supply Agreement CS/29/2 as varied between Queensland Electricity Generating Board and New Hope Collieries Pty. Ltd.

20

TAKE NOTICE that certain questions, disputes or differences having arisen between the Generating Board and New Hope Collieries Pty. Ltd. upon or in relation to or in connexion with the said agreement which question dispute or difference cannot be resolved by the Generating Board and New Hope Collieries Pty. Ltd. NEW HOPE COLLIERIES PTY. LTD. (pursuant to clause 13 of the said agreement) HEREBY GIVES NOTICE and calls for the point or points at issue nominated in the schedule hereto to be referred to arbitration.

30

THE SCHEDULE

The terms of supply of the additional quantities of coal after 31st December, 1982 and, in particular, but without limitation the manner and extent to which the price or prices for such additional quantities of coal shall reflect all the changes in costs to NEW HOPE COLLIERIES PTY. LTD. including economies resulting from the amortisation of capital items still in use, technological advances, and items of expenditure not repeated, including the restoration of any open-cut workings for which special allowances have been made in the Base Price, as well as

40

50

Exhibit "J2"

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

: 2 :

changes in costs resulting from changes in mining conditions, new
mining plant and the scale of operations.

10

DATED this 4th day of January, 1983.

NEW HOPE COLLIERIES PTY. LTD.

20



for D.J. Ireland,
Company Secretary

30

40

50

Exhibit "J2"

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

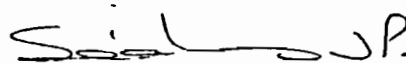
Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This and the three preceding pages are the paperwriting marked
with the letter "J2" mentioned and referred to in the Affidav of
GARY NEVILLE MAGUIRE sworn herein before me this 20th day of
June 1983.



A Justice of the Peace

10

20

30

40

50

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

ARBITRATION ACT 1975

NOTICE TO APPOINT ARBITRATOR
OF QUEENSLAND Section 17
11. OCT. 1983

To: QUEENSLAND ELECTRICITY GENERATING BOARD,
107-111 Williams & Williams,
Solicitors,
National Australia Bank House,
Adelaide and Creek Streets,
BRISBANE, Q. 4000

Re: Coal Supply Contract - CS/29/3
Southern Cross Collieries

TAKE NOTICE that SOUTHERN CROSS COLLIERIES, a party to the above Coal Supply Contract to an "Agreement to Arbitrate" within the meaning of that term as used under the Arbitration Act 1975 (as amended) (hereinafter referred to as "the Act") to which Agreement you are the other party and which Agreement contains provision for arbitration in the terms of clause 13 HEREBY REQUIRES YOU, pursuant to the Act, to concur in the appointment of an arbitrator pursuant to the provisions of the Act and advises you that if you do not so concur within fourteen (14) clear days after the service of this Notice upon you it is the intention of SOUTHERN CROSS COLLIERIES to apply to the Court for appointment of an arbitrator.

The "questions, disputes or differences" to be referred to arbitration are those set out in the attached Notice.

SOUTHERN CROSS COLLIERIES suggests the appointment of C.E.K. Hampson Q.C. as such arbitrator

Exhibit "J3"

: 2 :

as aforesaid but will consider any other person or persons you may nominate. SOUTHERN CROSS COLLIERIES understands you agree that there are questions of law which arise in the arbitration and therefore the proviso to clause 13.2(ii) requiring the appointment of a Barrister-at-Law practising in Brisbane to be the arbitrator.

10

DATED the 15th day of February, 1983.

20

SOUTHERN CROSS COLLIERIES

by its Solicitors,



SEYMOUR NULTY & CO.

30

The address for service of Southern Cross Collieries is care of its Solicitors, Messrs. Seymour Nulty & Co. of 9th floor, Citicorp House, Cnr. Queen and George Streets, Brisbane.

40

50

Exhibit "J3"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

TO: QUEENSLAND ELECTRICITY GENERATING BOARD
Coal Supply Agreement CS/29/3 as varied
between Queensland Electricity Generating
Board and Southern Cross Collieries

10 TAKE NOTICE that certain questions, disputes
or differences having arisen between the Generating
Board and Southern Cross Collieries upon or in relation
to or in connexion with the said agreement which
question dispute or difference cannot be resolved by
the Generating Board and Southern Cross Collieries
20 SOUTHERN CROSS COLLIERIES (pursuant to clause 13 of the
said agreement) HEREBY GIVES NOTICE and calls for the
point or points at issue nominated in the schedule
hereto to be referred to arbitration.

THE SCHEDULE

- 30 (a) Whether the escalation provisions of the said
agreement during all or part of that period of
the said agreement until 31st December, 1982
properly reflected the effects of changes in
costs ~~in~~ the cost of producing and supplying
coal under the said agreement during such
periods; and, if not, in whole or in part, the
manner and extent to which such escalation
40 provisions have failed to properly reflect the
effects of changes in costs ~~in~~ the cost of
producing and supplying coal under the said
agreement during such periods.
- 50 (b) Whether there should be any and if so what
alterations in the price variation provisions

Exhibit "J3"

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

: 2 :

of the said agreement in respect of all or part of that
period of the agreement until 31st December, 1982.

10

DATED the 23rd day of December, 1982.

20

SOUTHERN CROSS COLLIERIES

by its Solicitors, *Seymour Nulty & Co.*
SEYMOUR NULTY & CO.

The address for service of Southern Cross Collieries is
at 9th floor, Citicorp House, Cnr. Queen and George
Streets, Brisbane.

30

40

50

Exhibit "J3"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

IN THE SUPREME COURT
— OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

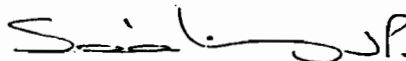
Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This and the three preceding pages are the paperwriting marked with the letter "J3" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day of June 1983.



A Justice of the Peace

10

20

30

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

ARBITRATION ACT 1973

NOTICE TO APPOINT AN ARBITRATOR
OF QUEENSLAND

11. OCT. 1983 Section 17

To: QUEENSLAND ELECTRICITY GENERATING BOARD,
C/-Williams & Williams,
Solicitors,
National Australia Bank House,
Adelaide and Creek Streets,
BRISBANE, Q. 4000

10

Re: Coal Supply Contract - CS/29/3
Southern Cross Collieries

TAKE NOTICE that SOUTHERN CROSS COLLIERIES, a party to the above Coal Supply Contract to an "Agreement to Arbitrate" within the meaning of that term as used under the Arbitration Act 1973 (as amended) (hereinafter referred to as "the Act") to which Agreement you are the other party and which Agreement contains provision for arbitration in the terms of clause 13 HEREBY REQUIRES YOU, pursuant to the Act, to concur in the appointment of an arbitrator pursuant to the provisions of the Act and advises you that if you do not so concur within fourteen (14) clear days after the service of this Notice upon you it is the intention of SOUTHERN CROSS COLLIERIES to apply to the Court for appointment of an arbitrator.

20

30

40

The "questions, disputes or differences" to be referred to arbitration are those set out in the attached Notice.

SOUTHERN CROSS COLLIERIES suggests the appointment of C.E.K. Hampson Q.C. as such arbitrator

50

Exhibit "J4"

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

: 2 :

as aforesaid but will consider any other person or persons you may nominate. SOUTHERN CROSS COLLIERIES understands you agree that there are questions of law which arise in the arbitration and therefore the proviso to clause 13.2(ii) requiring the appointment of a Barrister-at-Law practising in Brisbane to be the arbitrator.

10

DATED the 15th day of February, 1983.

20

SOUTHERN CROSS COLLIERIES

by its Solicitors,



SEYMOUR NULTY & CO.

30

The address for service of Southern Cross Collieries is care of its Solicitors, Messrs. Seymour Nulty & Co. of 9th floor, Citicorp House, Cnr. Queen and George Streets, Brisbane.

40

50

Exhibit "J4"

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

SOUTHERN CROSS COLLIERIES (INCORPORATED IN QUEENSLAND) Registered Office - 13-17 LOWRY STREET, IPSWICH, QUEENSLAND 4305, AUSTRALIA.

General Manager - P.O. BOX 77, IPSWICH, Q.L.D. 4305, AUSTRALIA Telephone - (07) 702 1100 Telex - NEMOPE AA 44118

TO: QUEENSLAND ELECTRICITY GENERATING BOARD

10

Coal Supply Agreement CS/29/3 as varied between Queensland Electricity Generating Board and Southern Cross Collieries

TAKE NOTICE that certain questions, disputes or differences having arisen between the Generating Board and Southern Cross Collieries upon or in relation to or in connexion with the said agreement which question dispute or difference cannot be resolved by the Generating Board and Southern Cross Collieries SOUTHERN CROSS COLLIERIES (pursuant to clause 13 of the said agreement) HEREBY GIVES NOTICE and calls for the point or points at issue nominated in the schedule hereto to be referred to arbitration.

20

30

THE SCHEDULE

The terms of supply of the additional quantities of coal after 31st December, 1982 and, in particular, but without limitation the manner and extent to which the price or prices for such additional quantities of coal shall reflect all the changes in costs to SOUTHERN CROSS COLLIERIES including economies resulting from the amortisation of capital items still in use, technological advances, and items of expenditure not repeated, including the restoration of any open-cut workings for which special allowances have been made in the Base Price, as well as changes in costs resulting

40

50

Exhibit "J4"

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983

: 2 :

10

(Contd.) from changes in mining conditions, new mining plant and the scale
of operations.

DATED this 7th of January, 1983.

20

SOUTHERN CROSS COLLIERIES

30



For D.J. Ireland
Company Secretary

40

50

Exhibit "J4"

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This and the three preceding pages are the paperwriting marked
with the letter "J4" mentioned and referred to in the Affidavit of
GARY NEVILLE MAGUIRE sworn herein before me this 20th day of
June 1983.



A Justice of the Peace

10

20

30

40

50

60

*In the Supreme
Court of
Queensland*

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

10

17th February, 1983

LGW QEGB82666

1/CMD

Messrs. Seymour Nulty & Co.,
Solicitors,
Citicorp House,
Cnr. George & Queen Streets,
BRISBANE, 4000.

20

Dear Sirs,

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD -
NEW HOPE COLLIERIES PTY. LTD.

re: ARBITRATION

30

We acknowledge receipt of your Notices pursuant to Section 17 of the Arbitration Act and a copy of the letter which you have forwarded to the Secretary of the Australasian Institute of Mining and Metallurgy. Before we advise our client in relation thereto we ask for the third time what it is that you are seeking to arbitrate. The correspondence and Notices imply that you are seeking two arbitrations:

(i) In respect of the terms of the supply of coal after 31st December 1982; and

(ii) In respect of the financial terms of the Agreement during the five years completed on 31st December 1982.

40 Is this correct?

Are you seeking to arbitrate other matters?

We remind you of your undertaking to answer our two previous queries in this regard. If you can confirm the above we will be able to advise our client as to its position. If not we will bring the appropriate applications to the Court.

re: THE ORDER - IN-COUNCIL

50

We acknowledge receipt of your latest letter of 10th February 1983 together with enclosures. We agree with the position as stated by the Crown Solicitor.

../2

Exhibit "K"

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

Our view is that the Order-in-Council is only a preliminary administrative step to a further reorganisation of the industry with a view to amalgamating the State Electricity Commission and The Queensland Electricity Generating Board. The Queensland Electricity Generating Board has not been abolished as an electricity authority. The Order was to substitute the Commissioner for the members of the Board.

If the Electricity Act is re-written to amalgamate the various authorities it should (as it did in 1976) include transitional provisions to cover the sort of interim situation which you seem to be adverting to. As to your reference to discussions between us and the Crown Law Office on the subject we have no idea of what you are referring to.

20

As far as we are concerned we see no necessity to join the State Electricity Commission.

Yours faithfully,
WILLIAMS & WILLIAMS

30

per:

40

Exhibit "K"

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

20

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This and the preceding page are the paper writing marked with the
letter "K" mentioned and referred to in the Affidavit of GARY NEVILLE
MAGUIRE sworn herein before me this 20th day of June 1983.

30

A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

10

17th February, 1983

LGW: VC QEGB822067

1/CMD

Messrs. Seymour Nulty & Co.,
Solicitors,
Ninth Floor,
Citicorp House,
Cnr. George & Queen Streets,
BRISBANE, 4000.

20

Dear Sirs,

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD
AND SOUTHERN CROSS COLLIERIES - ARBITRATION

Our client's position is that you have no right to arbitrate this claim while the matter is still before the Court. It is our client's view that the Contract has expired and that no arbitration will be entered into. This matter will however be resolved when the Appeal is heard.

30

Yours faithfully,
WILLIAMS & WILLIAMS

per:

Exhibit "K1"

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "K1" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn before me this 20th day of June 1983.

30



A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

18th February 1983

LGW QEGB822067

ATTENTION: MR. R. COLEMAN

The Secretary,
Australasian Institute of Mining and
Metallurgy,
C/-Queensland Institute of Technology,
George Street,
BRISBANE, 4000.

20

Dear Sir,

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD - NEW HOPE
COLLIERIES PTY. LTD. - COAL SUPPLY AGREEMENT CS29/2

We have been supplied with a copy of Seymour Nulty & Co.'s letters to you
of 15th February 1983.

30

Our client has for some months been seeking clarification of what it is New
Hope Collieries Pty. Ltd. are attempting to arbitrate. The letters seem to
imply that they are seeking two arbitrations arising out of the Coal Supply
Agreement.

Our client's attitude is that it will not agree to arbitrate until it has
proper definition of the matters which are sought to be arbitrated and until
it can be satisfied on legal advice that it is obliged to arbitrate.

40

As you will appreciate before our client is obliged to consider the
appointment of an arbitrator certain procedural steps in relation to
disputes and the like have to be complied with.

We are writing to enquire whether it is your Association's intention to deal
with the question of an arbitration and if so when. We should also say that
our client has been served with Notices under the Arbitration Act which
provide that if no arbitration is agreed within fourteen days then New Hope
Collieries Pty. Ltd. can apply to the Court for an order.

50

../2

Exhibit "L"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

Our client will not agree to any appointment at this time.

Yours faithfully,
WILLIAMS & WILLIAMS

per:

20

30

Exhibit "L"

40

50

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

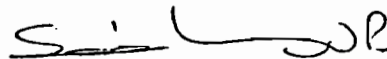
AND:

NEW HOPE COLLIERIES PTY. LTD.

20

Defendant

This and the preceding page are the paperwriting marked with the letter "L" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day of June 1983.



30

A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

10

18th February 1983

LGW QEGB822067

ATTENTION: MR. R. COLEMAN

20

The Secretary,
Australasian Institute of Mining and
Metallurgy,
C/-Queensland Institute of Technology,
George Street,
BRISBANE, 4000.

Dear Sir,

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD
SOUTHERN CROSS COLLIERIES - COAL SUPPLY AGREEMENT CS29/3

30

Our client sees no obligation to arbitrate this matter and that specific issue is presently being considered by the Supreme Court of Queensland. A decision was made on the point by Mr. Justice Dunn in December last year which is presently on appeal to the Full Court of Queensland.

Additionally any arbitration as sought by Southern Cross necessarily deals with matters which are subject to decision by the Full Court and our client will not agree to nor observe the appointment of an arbitrator while the matter is before the Court.

40

We draw these matters to your attention in the event that your Association were disposed to make some appointment at the request of the Solicitors for Southern Cross.

We do not believe they have properly stated the position to you in the correspondence which has been forwarded to you to date.

Yours faithfully,
WILLIAMS & WILLIAMS

50

per:

Exhibit "L1"

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

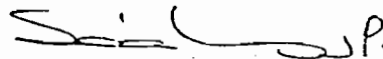
AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "L1" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn to in before me this 20th day of June 1983.


A Justice of the Peace

30

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

10

SEYMOUR, NULTY & CO.

SOLICITORS

SIXTH FLOOR CITY ONE HOUSE ONE QUEEN & GEORGE STREETS BRISBANE

TELEPHONE 221 900 POSTAL ADDRESS BOX 25, GPO BRISBANE QLD 4001

CHIEF CLERK THOMAS F. NULTY, LL.B. LEVIN PASTORINI WENDY J. McDONALD

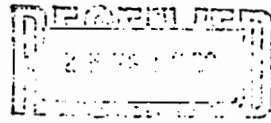
SUPREME COURT OF QUEENSLAND 11. OCT. 1983 FILED BRISBANE

OUR REF. 1/CMD YOUR REF.

25th February, 1983

DELIVERY

Messrs. Williams & Williams, Solicitors, 18th floor, National Bank House, Adelaide and Creek Streets, BRISBANE, Q. 4000



20

Dear Sirs,

Re: New Hope Colliceries Pty. Ltd. and the Queensland Electricity Generating Board

Re: Arbitration

We refer to your letter to us of the 17th February herein. Concerning the matter of arbitration we would refer you to the Notices dated the 23rd December, 1982 and the 7th January, 1983 respectively and our letter to you of the 4th February, 1983. We feel that these Notices and the letter set out fully the matters our client desires to arbitrate and clearly these are matters which the arbitration provisions of the subject agreement contemplate should be referred to arbitration.

30

Our letter of the 4th February was written in reply to your request for details of the matters to be submitted to arbitration. Your letter suggests that our letters and Notice imply we are seeking two (2) arbitrations:-

- 1) In respect of the terms of the supply of coal after 31st December, 1982; and
2) In respect of the financial terms of the Agreement during the five years completed on 31st December, 1982.

40

We would not entitle the matters to go to arbitration under either of the foregoing headings but would say the matters to be arbitrated are those set out in the Notices above referred to in our letter of the 4th February. You may entitle them as you wish.

We will submit to you, within the next few days, a draft Deed of Reference to Arbitration. You might care to seek to amend the same and that could well resolve the queries which you seem to have. Any undertakings we gave we consider we have satisfied.

50

Yours faithfully, SEYMOUR NULTY & CO.

[Handwritten signature]

Exhibit "M"

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

20

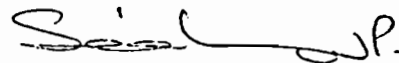
AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "M" mentioned
and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn
herein before me this 20th day of June 1983.

30



A Justice of the Peace

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

CHARLES L. SLYMOOR THOMAS A. NULTY, LL.B. KEVIN F. STANDISH WENDY J. McDONALD

SOLICITORS 18TH FLOOR NATIONAL BANK HOUSE 201 QUEEN & CREEK STREETS BRISBANE

TELEPHONE 231 5033 POSTAL ADDRESS: BOX 535, G.P.O. BRISBANE, QLD 4001

Supreme Court of Queensland 11.OCT.1983 FILED BRISBANE

OUR REF. 1/CMD YOUR REF.

10

25th February, 1983

DELIVERY

Messrs. Williams & Williams, Solicitors, 18th floor, National Bank House, Adelaide and Creek Streets, BRISBANE, Q. 4000

RECORDED

20

Dear Sirs,

Re: Southern Cross Collieries and the Queensland Electricity Generating Board

Re: Arbitration

We refer to your letter of the 18th February last concerning the above matters.

30

It is our client's contention:-

- (a) That the matters to be arbitrated and as set out in our client's Notice to your client of the 23rd December, last have nothing to do with and are completely independent of the matters involved in the appeal from the decision of Dunn J. AND (b) Such matters should proceed to arbitration forthwith.

As to the matters to be arbitrated and detailed in our Notice to you of 7th January, 1983 it is possible that a successful appeal from the decision of Dunn J. might affect the matters to be arbitrated. At the same time our client is entitled to the benefit of the judgment of Dunn J. while it stands and it is our contention that your client cannot delay arbitration pending the outcome of an appeal which might be some months away.

40

Our seeking to refer the matter to arbitration does not involve your client conceding any matter subject to appeal.

We suggest that the most appropriate course would be for the arbitration to proceed in the preliminary stages at least. When a hearing is imminent (dependent upon the then state of your appeal) our respective clients can consider their positions then. Kindly advise us of your attitude towards this suggestion.

50

Yours faithfully, SEYMOOR NULTY & CO. [Signature]

Exhibit "M1"

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

20

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "M1 " mentioned
and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn
herein before me this 20th day of June 1983.

30



A Justice of the Peace

40

50

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

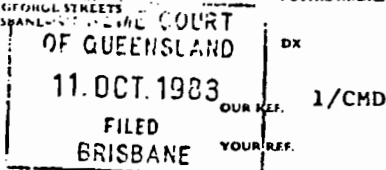
CHARLES L. SEYMOUR
THOMAS A. NULTY, LL.B.
KEVIN P. STANUSH
WENDY J. McDONALD

SEYMOUR, NULTY & CO.

SOLICITORS

NINTH FLOOR
CHICORY HOUSE
CNR QUEEN & GEORGE STREETS
BRISBANE

TELEPHONE 221 5031
POSTAL ADDRESS BOX 111, G.P.O.
BRISBANE
QLD 4001
40124



10

25th February, 1983

PERSONAL

20

Mr. R. Webster,
17th floor,
M.I.M. Building,
Ann Street,
BRISBANE, Q. 4000

Dear Sir,

Re: Our clients: New Hope Collieries Pty. Ltd. and Southern
Cross Collieries

We write to you as President of the Australasian Institute of
Mining and Metallurgy.

30

We would confirm that through an inadvertance on our part two (2)
of the Notices attached to our letters of the 15th February
addressed to the secretary of your Institute were incorrect in
that they contained in their last line, the date the 23rd
December, 1982 whereas such date should have read the 7th
January, 1983.

We cannot see that any party is prejudiced or affected by this
error. We confirm we have now corrected same by replacing these
Notices with two (2) Notices showing the correct date (copies
attached).

40

We will send a copy of this letter to the Solicitors for the
Q.E.G.B., Messrs. Williams & Williams. We would appreciate an
advice, as soon as possible, as to your Committee's decision on
matters raised in our earlier letters.

Yours faithfully,
SEYMOUR NULTY & CO.

Enc. [2]

50

c.c. Williams & Williams

Exhibit "N"

60

*In the Supreme
Court of
Queensland*

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)
10

To: NEW HOPE COLLIERIES PTY. LTD.
C/- Seymour Nulty & Co.,
Solicitors,
Cnr. Queen and George Streets,
BRISBANE, Q. 4000

And to: QUEENSLAND ELECTRICITY GENERATING BOARD,
C/- Williams & Williams,
Solicitors,
18th floor,
National Australia Bank,
Adelaide Street,
BRISBANE, Q. 4000

20

TAKE NOTICE that pursuant to a resolution passed on
the day of , 1983 the Committee of the
Southern Branch of the Australian Institute of Mining and
Metallurgy having been requested so to do by New Hope Collieries
Pty. Ltd. APPOINTS Mr. C.E.K. Hampson Q.C. arbitrator in respect
of the questions disputes or differences the subject of the
attached notice by New Hope Collieries Pty. Ltd. dated 7th
January, 1983.

30

The Committee for the Southern
Queensland Branch of the
Australasian Institute of Mining
and Metallurgy

40

per:

Chairman

50

Exhibit "N"

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

10

To: SOUTHERN CROSS COLLIERIES
C/- Seymour Nulty & Co.,
Solicitors,
Cnr. Queen and George Streets,
BRISBANE, Q. 4000

And to: QUEENSLAND ELECTRICITY GENERATING BOARD,
C/- Williams & Williams,
Solicitors,
18th floor,
National Australia Bank,
Adelaide Street,
BRISBANE, Q. 4000

20

TAKE NOTICE that pursuant to a resolution passed on
the day of , 1983 the Committee of the
Southern Branch of the Australian Institute of Mining and
Metallurgy having been requested so to do by Southern Cross
Collieries APPOINTS Mr. C.E.K. Hampson Q.C. arbitrator in respect
of the questions disputes or differences the subject of the
attached notice by Southern Cross Collieries dated 7th January,
1983.

30

The Committee for the Southern
Queensland Branch of the
Australasian Institute of Mining
and Metallurgy

40

per:

Chairman

50

Exhibit "N"

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

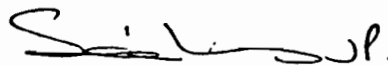
AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This and the preceding two pages are the paperwriting marked
with the letter "N" mentioned and referred to in the Affidavit of
GARY NEVILLE MAGUIRE sworn herein before me this 20th day of
June 1983.



30

A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

10

28th February, 1983

LGW:GRC:QEGD822
1/CMD

20

Messrs Seymour Nulty & Co.,
Solicitors,
Citicorp House,
Cnr. Queen & George Streets,
BRISBANE. 4000

DELIVER

Dear Sirs,

re: The Queensland Electricity Generating Board - New Hope
Collieries Pty. Ltd.

re: Arbitration

30

We have your letter of the 25th February, 1983 in relation
to this matter.

40

We remind you that you are obliged in terms of Clause 13
of the Agreement between our respect clients', to specify the
nature of any question, dispute or difference which you are seeking
to arbitrate. We still find the two matters outlined in your
letter of the 25th February, to be imprecise, however, doing the
best we can to interpret what it is that you are seeking to
arbitrate, we take it that your reference to "the terms of the
supply of coal after the 31st December, 1982", simply refers to
the price of coal supplied after that time. We take it that
there is no dispute in relation to quantities or any other matter
other than price.

50

In respect to the second point, namely, the financial terms
of the agreement during the five (5) years completed on the 31st
December, 1982, we again have no idea over what period you are
seeking to arbitrate, or what it is that you contend "the
financial terms of the agreement", are. In any event, it probably
matters little, because our client does not propose to enter into
any arbitration on that issue, and is taking the necessary steps
to protect its rights in that regard.

In respect of the first issue, and on the basis that the only
matter your client is seeking to arbitrate is the question of
price, we advise that our client would be prepared to agree to

Exhibit "O"

60

*In the Supreme
Court of
Queensland*
**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

Messrs Seymour Nulty & Co.

28th February, 1983

10

an arbitration or determination of the price, subject to compliance by your client with its obligations under the contract. In this regard, we are instructed that your client has not provided to our client, sufficient or adequate information, to enable our client to conduct a review of the price formula, nor to consider properly any demand made by your client for an increase in price. The reviews conducted by our client to date, certainly do not justify an increase, but a decrease.

However, in an endeavour to obtain some resolution to the various demands that have been made upon our client, our client advises that it will agree to an arbitration on the issues, subject to compliance by your client with the terms of the contract. It is our client's view, that as the only issue to be determined, is that of price, then the proper arbitrator is clearly the Queensland Coal Board, or its properly qualified nominee.

20

We would appreciate your confirmation of the enclosed, and your advices to the acceptance by your client as the Coal Board for the purposes of the arbitration.

30

Your early response would be appreciated.

Yours faithfully,
WILLIAMS & WILLIAMS

Per:

40

50

Exhibit "O"

60

*In the Supreme
Court of
Queensland*

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

20

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This and the preceding page are the paperwriting marked with the
letter "O" mentioned and referred to in the Affidavit of GARY
NEVILLE MAGUIRE sworn herein before me this 20th day of June
1983.

30



A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

28th February, 1983

LGW:GRC:QEGD82206
1/CMD

Messrs Seymour Nulty & Co.,
Solicitors,
Citicorp House,
Cnr. Queen & George Streets,
BRISBANE. 4000

DELIVER

20

Dear Sirs,

re: The Queensland Electricity Generating Board -
Southern Cross Collieries

re: Arbitration

30

We reiterate on behalf of our client the attitude previously
expressed, namely, that our client will entertain no question of
arbitration until the issues before the Court are disposed of.

Your proposals to advance the matter to a preliminary stage of
arbitration, are in our view, simply an unnecessary expense.

As previously advised, we shall be applying for a stay of proceedings
in this matter.

40

Yours faithfully,
WILLIAMS & WILLIAMS

Per:

50

Exhibit "01"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

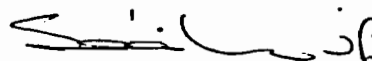
NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "O1" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn to in before me this 20th day of June 1983.

30



A Justice of the Peace

40


50

60

In the Supreme Court of Queensland

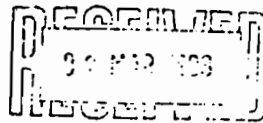
No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.) 10

The Australasian Institute of Mining and Metallurgy
Head Office: Cloues Ross House, 191 Royal Parade, Parkville, Victoria, Australia, 3052


 SUPREME COURT OF QUEENSLAND
 Incorporated by Royal Charter 1859
 TELEPHONE: 347 3126 (3 lines)
 Cables & Telegrams: "AUSINAMET", Melbourne
 Telex: Austro AA33552
 11.OCT.1983
 FILED
 BRISBANE

SOUTHERN QUEENSLAND BRANCH

file



CRW/LAD

February 29, 1983

Williams & Williams
Solicitors
G.P.O. Box 381
Brisbane QLD 4001

20

Dear Sir,

Re your letters QEGB 822067 dated February 18, 1983

At a committee meeting of the Southern Queensland Branch of the Australasian Institute of Mining and Metallurgy held in Brisbane on February 28, 1983 your letters, together with those from Seymour Nulty & Company were tabled.

It was concluded, after referring to the Bye-Laws of the Institute, and specifically Bye-Law No. 67 which states

30

"No committee shall publish or communicate to any party or parties who are not members of the Institute any matter which may purport to represent the policy of the Institute, or any Branch or Division, without the expressed sanction of the Council."

that the committee is unable to act regarding the appointment of the Arbitrator. The documents have been forwarded to the Chief Executive Officer of the Institute, Mr. W.E. Vance for consideration by Council.

Yours sincerely,

40

C.R. Webster
C.R. Webster
Chairman, Southern Queensland Branch
Aus.I.M.M.

50

Exhibit "P"

60

In the Supreme
Court of
Queensland

No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

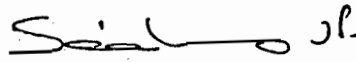
Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "P" mentioned and referred to
in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day
of June 1983.


A Justice of the Peace

10

20

30

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)

10

SEYMOUR, NULTY & CO.

SOLICITORS

CHARLES L. SEYMOUR
THOMAS A. NULTY, JR.
KEVIN P. STANDISH
WENDY J. McDONALD

NINTH FLOOR
LITICORP HOUSE
CNR. QUEEN & GEORGE STREETS
BRISBANE

TELEPHONE 221 9433
POSTAL ADDRESS BOX 111, G.P.O.
BRISBANE, QLD. 4001
DX 40134

SUPREME COURT
OF QUEENSLAND
11.OCT.1983
FILED
BRISBANE

4th March, 1982

1/CMD

OUR REF.

YOUR REF.

DELIVERY

Messrs. Williams & Williams,
Solicitors,
18th floor,
National Australia Bank House,
255 Adelaide Street,
BRISBANE, Q. 4000

RECORDED
0 - MAR 1983

20

Dear Sirs,

Re: New Hope Collieries Pty. Ltd.

We refer to your letter dated 28th February, 1983 relating to this matter. Our instructions are:-

- 1. It is not correct to say that "the terms of supply of coal after 31st December, 1982" refer only to "the price of coal supplied after that time".

30

The terms of clauses 2.5, 8.7 and 9.1 of the Coal Supply Agreement CS/29/2 make it apparent that the terms of the supply of the quantities of coal include not merely price, but also provision for variation in price. It may be that other matters are involved, but since nothing has been agreed between the parties, it is impossible to deal with the matter more precisely.

- 2. Our clients do not agree that the Queensland Coal Board, or its nominee, is an appropriate arbitrator indeed the adoption of such a course seems quite inappropriate.

40

- 3. In relation to what your letter described as "the financial terms of the agreement during the five (5) years completed on the 31st December, 1982" there is little point in discussing the matter further in view of the fact that your client does not propose to enter into any arbitration on the issues.

We are serving herewith a Summons and Affidavit in support returnable before Dunn J. at 10.00 a.m. on 14th March next.

50

Yours faithfully,
SEYMOUR NULTY & CO.

Enc. [2]

Exhibit "Q"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

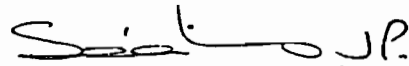
NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "Q" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day of June 1983.

30


A Justice of the Peace

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.) 10

SEYMOUR, NULTY & CO.

THE SUPREME COURT QUEENSLAND 11. OCT. 1983 FILED BRISBANE

SOLICITORS NINTH FLOOR CITICORP HOUSE CNR QUEEN & GEORGE STREETS BRISBANE

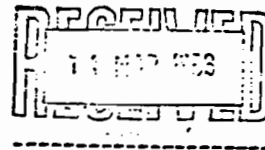
TELEPHONE 371 5033 POSTAL ADDRESS BOX 335, C.P.O. BRISBANE, Q.L.D. 4001 DX 40124 TELELEX: AA42448

OUR REF. 1/CMD YOUR REF.

10th March, 1983

DELIVERY

Messrs. Williams & Williams, Solicitors, 18th floor, National Australia Bank, Adelaide Street, BRISBANE, Q. 4000



20

Dear Sirs,

Re: Arbitration - Q.E.G.B., Southern Cross and New Hope

We sent you copies of our letters of 15th February to the Australasian Institute of Mining and Metallurgy. We understand you wrote to them as well but did not extend to us the same courtesy.

30

Would you kindly let us have copies of your letters to the Institute.

Yours faithfully, SEYMOUR NULTY & CO.

[Handwritten signature]

40

50

Exhibit "R"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

20

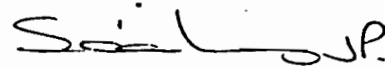
AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "R" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn hereon before me this 20th day of June 1983.

30


A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)
10**

11th March, 1983

LGW:VC QEGB822067
1/CMD

Messrs Seymour Nulty & Co.,
Solicitors,
Citicorp House,
Cnr. Queen & George Streets,
BRISBANE. 4000

20

Dear Sirs,

re: THE QUEENSLAND ELECTRICITY GENERATING BOARD
YOUR CLIENT: NEW HOPE COLLIERIES PTY. LTD. - ARBITRATION

We have your letter of 10th March 1983. We would have thought this
is a dead issue by now and do not propose to waste costs by a ceaseless
exchange of paper.

30

Your request is denied

Yours faithfully,
WILLIAMS & WILLIAMS

Per:

40

50

Exhibit "S"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

10

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

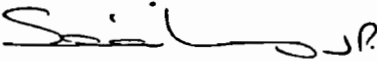
NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "S" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day of June 1983.

30


A Justice of the Peace

40

50

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

11th March, 1983

LGW:VC QEGB822067
1/CMD

Messrs Seymour Nulty & Co.,
Solicitors,
Citicorp House,
Cnr. Queen & George Streets,
BRISBANE. 4000

20

Dear Sirs,

re: SOUTHERN CROSS COLLIERIES - ARBITRATION

We have your letter of 10th March 1983. We would have thought this
is a dead issue by now and do not propose to waste costs by a ceaseless
exchange of paper.

30

Your request is denied

Yours faithfully,
WILLIAMS & WILLIAMS

Per:

40

50

Exhibit "S1"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

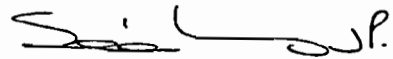
Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "S1" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn herein before me this 20th day of June 1983.



A Justice of the Peace

10

20

30

40

50

60

In the Supreme Court of Queensland

No. 10 Affidavit of Gary Neville Maguire with Exhibits 20th June 1983 (Contd.)



The Australasian Institute of Mining and Metallurgy

Head Office: Clonica Ross House, 191 Royal Parade, Parkville, Victoria 3052, Australia

Incorporated by Royal Charter 1931
44007 1983

TELEPHONE: 347 3166 FILED
Cable & Telegrams: BRISBANE
"AUSIMANET" Melbourne
Telex: Ausim AA33552

Postal Address: P.O. Box 310, Carlton South Victoria 3053, Australia

2.25/WEV:JMW
Your Ref: 1/AW/CMD

31 March 1983

Seymour, Nulty & Co.,
Solicitors,
G.P.O. Box 535,
BRISBANE QLD 4001.

20

Dear Sirs,

Re: Contract CS/29/3 dated 12 July 1978 between Southern Cross Collieries and the Queensland Electricity Generating Board

30

We have received your letter dated 15 February 1983. The Committee of the Southern Queensland Branch does not consider it is competent to appoint an Arbitrator under the terms of the agreement as set out in your letter.

We have forwarded a copy of this letter to Messrs. Williams & Williams for their information.

40

Yours faithfully,

Chairman
Southern Queensland Branch
The Australasian Institute of Mining and Metallurgy.

50

c.c.to: Messrs. Williams & Williams

Exhibit "T"

60

*In the Supreme
Court of
Queensland*

**No. 10
Affidavit of
Gary Neville
Maguire
with Exhibits
20th June 1983
(Contd.)**

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

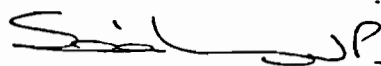
Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "T" mentioned and referred to in the Affidavit of GARY NEVILLE MAGUIRE sworn before me this 20th day of June 1983.


A Justice of the Peace

10

20

30

40

50

60

No. 11

Affidavit of Charles Linley Seymour – 20th June 1983

IN THE SUPREME COURT

OF QUEENSLAND

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

10

20

I, CHARLES LINLEY SEYMOUR of 311 Cavendish Road, Coorparoo, Brisbane in the State of Queensland, Solicitor, being duly sworn, make oath and say as follows:-

1. I am a Solicitor of the Supreme Court of Queensland and a member of the firm of Seymour Nulty & Co., Solicitors.

30

2. I have the carriage of this action on behalf of the abovenamed Defendant. I am duly authorised to make this affidavit.

3. In the month of January, 1983 I contacted C.E.K. Hampson Q.C. and enquired as to his availability to act as arbitrator in the matters in dispute between the Queensland Electricity Generating Board on the one hand and New Hope Collieries Pty. Ltd. and Southern Cross Collieries on the other.

40

4. I did not discuss the matters of substance with Mr. Hampson.

50

C Seymour

Deponent

FIRST SHEET

J Thomas JP
A Justice of the Peace

FILED FOR
RECORD
INDEXED
SERIALIZED
FILED

AFFIDAVIT BY
CHARLES LINLEY
SEYMOUR

SEYMOUR NULTY &
CO., Solicitors,
4th floor,
Citicorp House,
100 Queen and
George Streets,
BRISBANE.

tel: 221 5033

LS:CLW
S8 20jun83[i]
AffCLSQ902]

In the Supreme
Court of
Queensland

No. 11
Affidavit of
Charles Linley
Seymour

20th June 1983
(Contd.)

10

: 2 :

5. Mr. Hampson advised me that he would be available early in the year 1983 to act as such arbitrator, and he consented to act in such capacity.

6. As an initial step in the proposed arbitration I arranged with Mr. Hampson for the respective parties to call upon him at some time early in the month of February on a Friday (to be arranged) to arrange a calendar and/or programme for the said arbitration.

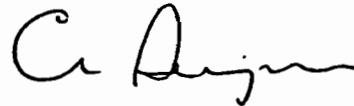
20

7. Subsequently, early in the month of February, 1983 I again confirmed with Mr. Hampson that he was prepared to act as such arbitrator as aforesaid.

ALL the facts and circumstances above referred to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

30

SWORN by the abovenamed)
Deponent at Brisbane this)
20th day of June, 1983)
before me:)



40


A Justice of the Peace

50

60

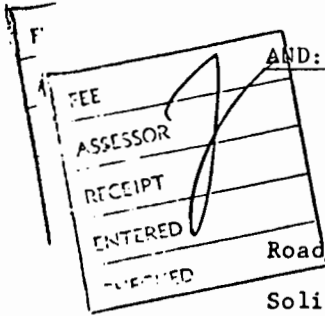
Affidavit of Charles Linley Seymour with Exhibits - 20th June 1983

In the Supreme Court of Queensland

No. 12 Affidavit of Charles Linley Seymour with Exhibits 20th June 1983

IN THE SUPREME COURT OF QUEENSLAND 11. OCT. 1983 No. 902 of 1983 FILED BRISBANE QUEENSLAND ELECTRICITY GENERATING BOARD Plaintiff

10



AND: NEW HOPE COLLIERIES PTY. LTD. Defendant

I, CHARLES LINLEY SEYMOUR of 311 Cavendish Road, Coorparoo, Brisbane in the State of Queensland, Solicitor, being duly sworn, make oath and say as follows:-

20

AFFIDAVIT BY CHARLES LINLEY SEYMOUR

1. I am a Solicitor of the Supreme Court of Queensland and a member of the firm of Seymour Nulty & Co., Solicitors.

30

2. I have the carriage of these actions on behalf of the abovenamed Defendant. I am duly authorised to make this affidavit.

SEYMOUR NULTY & CO., Solicitors, 9th floor, Citicorp House, Cnr. Queen and George Streets, BRISBANE.

Tel: 221 5033

CLS:CMD CS8 [AffCLSQGB]

3. Now produced and shown to me and marked respectively with the letters and figures "A", "A1" and "A2" are true copies of:

"A" Copy of letter I caused to be written to the Secretary, the Committee of the Queensland Branch Australian Institute of Mining and Metallurgy;

40

"A1" Copy draft notice addressed to both the

FIRST SHEET

Handwritten signature of Charles Linley Seymour

Deponent

Handwritten signature of a Justice of the Peace

A Justice of the Peace

50

60

: 2 :

abovenamed Plaintiff and the abovenamed
Defendant to be given by the Committee;

"A2" Copy of Notice referring certain questions,
disputes or differences to arbitration.

4. Now produced and shown to me and marked
respectively with the letters and figures "B", "B1" and
"B2":

"B" Copy of letter I caused to be written to the
Secretary, the Committee of the Queensland
Branch Australian Institute of Mining and
Metallurgy;

"B1" Copy draft notice addressed to both the
abovenamed Plaintiff and the abovenamed
Defendant to be given by the Committee;

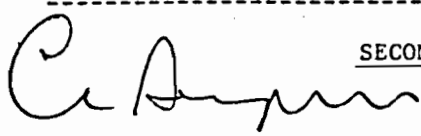
"B2" Copy of Notice referring certain questions,
disputes or differences to arbitration.

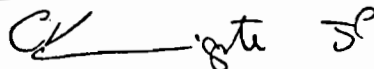
5. Now produced and shown to me and marked with
the letter "C" is a true copy of a letter which I
caused to be written and which I delivered to R.
Webster, Chairman of the Australian Institute of Mining
and Metallurgy dated the 25th February, 1983.

6. On or about the 25th February, 1983 I
discussed the subject matter with the said R.
Webster. He advised me and/or said to me words to the
following effect:

(a) That his Committee was meeting on the 28th
February, 1983;

SECOND SHEET


Deponent


A Justice of the Peace

: 3 :

- (b) That at that Committee meeting the matters raised would be considered;
- (c) That he had been contacted by Messrs. Williams & Williams, Solicitors for the Plaintiff;
- (d) That in view of that contact that he was of the view that the Committee would not appoint an arbitrator.

7. Now produced and shown to me and marked with the letter "D" is a true copy of a letter I received from the Australian Institute of Mining and Metallurgy dated the 29th February, 1983.

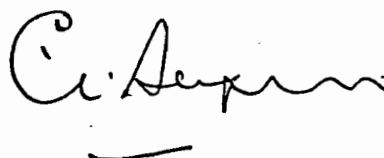
20

8. Now produced and shown to me and marked with the letter "E" is a true copy of a letter I received from the Australian Institute of Mining and Metallurgy dated the 31st March, 1983.

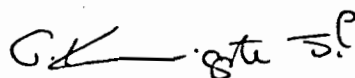
30

ALL the facts and circumstances above referred to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

SWORN by the abovenamed)
Deponent at Brisbane this)
20th day of June, 1983)
before me:)



40



A Justice of the Peace

50

60

In the Supreme
Court of
Queensland

No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)

10

SEYMOUR
NULTY, LL.B.
AND SONS

SEYMOUR, NULTY & CO.

SOLICITORS

NINTH FLOOR
CITICORP HOUSE
CNR QUEEN & GEORGE STREETS
BRISBANE, Q.L.D.

OF QUEENSLAND

11. OCT. 1983

FILED
BRISBANE

TELEPHONE 231 9033
POSTAL ADDRESS BOX 535 G.P.O.
BRISBANE,
Q.L.D. 4001
DX 48124

OUR REF. 1/AW/CMD

YOUR REF.

th February, 1983

20

ATTENTION MR. R. COLEMAN

e Secretary,
Committee of the Southern Queensland Branch,
Australasian Institute of Mining and Metallurgy,
- Queensland Institute of Technology,
George Street,
BRISBANE, Q. 4000

Dear Sir,

30

: Contract CS/29/2 dated 12th July, 1978 between New Hope
Collieries Pty. Ltd. and the Queensland Electricity
Generating Board

are the solicitors for New Hope Collieries Pty. Ltd. a party
to the above agreement. A "dispute, question or difference"
within the meaning of this agreement has arisen between our
client and the other party to the agreement, the Queensland
Electricity Generating Board, which cannot be resolved. The copy
of the notice requiring the matter to be referred to arbitration
is attached for your information.

Our client wishes to refer the matter to arbitration pursuant to
the provisions of clause 13.2 of the agreement which provides:

40

arbitration shall be effected:

-) By an Arbitrator agreed upon between the parties, or
failing agreement upon such an Arbitrator;
- 1) By an arbitrator appointed by the Committee of the
Southern Queensland Branch for the time being of the
Australasian Institute of Mining and Metallurgy,
provided always that in any case wherein the question,
dispute or difference involves a matter of law, the
person to be appointed by the said Committee shall be a
barrister at law practising in Brisbane".

50

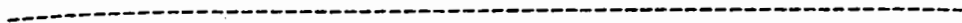
As the parties have failed to agree on the appointment of an
arbitrator to effect the arbitration.

.... /2

Exhibit "A"

60

: 2 :



10

The matters in dispute involve substantial sums of money and questions of law. Accordingly, pursuant to clause 13.2 we request that you appoint Mr. C.E.K. Hampson Q.C. arbitrator in accordance with the enclosed suggested notice of appointment. Mr. Hampson is a former president of the Queensland Bar Association and has extensive experience as a commercial lawyer. He has indicated his willingness to act. There are in fact four separate references to arbitration: two for New Hope Collieries Pty. Ltd. and two for Southern Cross Collieries. The matters are closely related and may be dealt with together. We have sent separate letters in respect of each of them.

20

We have forwarded a copy of this letter to Messrs. Williams & Williams the solicitors for the Queensland Electricity Generating Board. For your convenience, we set out below an appropriate form of resolution should you accede to our request.

DRAFT RESOLUTION

RESOLVED THAT the Committee having been requested so to do by New Hope Collieries Pty. Ltd. appoint C.E.K. Hampson Q.C. arbitrator in respect of the questions disputes or differences the subject of the notice tabled at the meeting by the Chairman and that the Chairman and/or any other member of the Committee be and is hereby authorised to sign and/or give a notice of appointment of arbitrator in accordance with the form of notice tabled at the meeting.

30

Yours faithfully,
SEYMOUR NULTY & CO.

40

Enc. [1]

50

Exhibit "A"

60

In the Supreme
Court of
Queensland

No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)

10

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

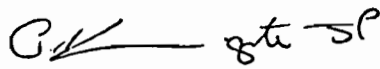
Defendant

20

This is the paperwriting marked with the letter "A"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this 20th day of June, 1983.

30


A Justice of the Peace

40

50

60

To: NEW HOPE COLLIERIES PTY. LTD.
C/- Seymour Nulty & Co.,
Solicitors,
Cnr. Queen and George Streets,
BRISBANE, Q. 4000

10

And to: QUEENSLAND ELECTRICITY GENERATING BOARD,
C/- Williams & Williams,
Solicitors,
18th floor,
National Australia Bank, FILED
Adelaide Street, BRISBANE
BRISBANE, Q. 4000

11.OCT.1983

TAKE NOTICE that pursuant to a resolution passed on the _____ day of _____, 1983 the Committee of the Southern Branch of the Australian Institute of Mining and Metallurgy having been requested so to do by New Hope Collieries Pty. Ltd. APPOINTS Mr. C.E.K. Hampson Q.C. arbitrator in respect of the questions disputes or differences the subject of the attached notice by New Hope Collieries Pty. Ltd. dated 23rd December, 1982.

20

30

The Committee for the Southern Queensland Branch of the Australasian Institute of Mining and Metallurgy

per:

40

Chairman

50

Exhibit "A1"

60

*In the Supreme
Court of
Queensland*

No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "A1"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this day of June, 1983.

A Justice of the Peace

TO: QUEENSLAND ELECTRICITY GENERATING BOARD

Coal Supply Agreement CS/29/2 as varied between Queensland Electricity Generating Board and New Hope Collieries Pty. Ltd.

TAKE NOTICE that certain questions, disputes or differences having arisen between the Generating Board and New Hope Collieries Pty. Ltd. upon or in relation to or in connexion with the said agreement which question dispute or difference cannot be resolved by the Generating Board and New Hope Collieries Pty. Ltd. NEW HOPE COLLIERIES PTY. LTD. (pursuant to clause 13 of the said agreement) HEREBY GIVES NOTICE and calls for the point or points at issue nominated in the schedule hereto to be referred to arbitration.

THE SCHEDULE

(a) Whether the escalation provisions of the said agreement during all or part of that period of the said agreement until 31st December, 1982 properly reflected the effects of changes in costs on the cost of producing and supplying coal under the said agreement during such periods and, if not, in whole or in part, the manner and extent to which such escalation provisions have failed to properly reflect the effects of changes in costs on the cost of producing and supplying coal under the said agreement during such periods.

(b) Whether there should be any and if so what alterations in the price variation provisions

Exhibit "A2"

*In the Supreme
Court of
Queensland*

No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)

: 2 :

of the said agreement in respect of all or part of that
period of the agreement until 31st December, 1982.

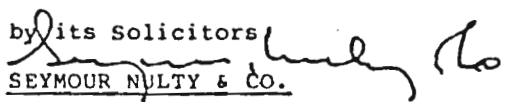
10

DATED the 23rd day of December, 1982.

20

NEW HOPE COLLIERIES PTY. LTD.

by its Solicitors


SEYMOUR NULTY & CO.

The address for service of New Hope Collieries Pty.
Ltd. is at 9th floor, Citicorp House, Cnr. Queen and
George Streets, Brisbane.

30

40

50

Exhibit "A2"

60

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

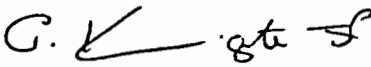
NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "A2"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this 20th day of June, 1983.


A Justice of the Peace

30

40

50

60

In the Supreme Court of Queensland

No. 12 Affidavit of Charles Linley Seymour with Exhibits 20th June 1983 (Contd.)

CHARLES E. SEYMOUR THOMAS A. NULTY, LL.B. KEVIN P. STANDISH

SEYMOUR, NULTY & CO. SOLICITORS

NINTH FLOOR CITYCORP HOUSE ONE QUEEN & GEORGE STREETS BRISBANE

TELEPHONE 221 9633 POSTAL ADDRESS BOX 115 G.P.O. BRISBANE Q. 4001

11.OCT.1983 FILED BRISBANE

OUR REF. 1/AW/CMD YOUR REF.

15th February, 1983

ATTENTION MR. R. COLEMAN

The Secretary, Committee of the Southern Queensland Branch, Australasian Institute of Mining and Metallurgy, C/- Queensland Institute of Technology, George Street, BRISBANE, Q. 4000

Dear Sir,

Re: Contract CS/29/2 dated 12th July, 1978 between New Hope Collieries Pty. Ltd. and the Queensland Electricity Generating Board

We are the solicitors for New Hope Collieries Pty. Ltd. a party to the above agreement. A "dispute, question or difference" within the meaning of this agreement has arisen between our client and the other party to the agreement, the Queensland Electricity Generating Board, which cannot be resolved. The copy of the notice requiring the matter to be referred to arbitration is attached for your information.

Our client wishes to refer the matter to arbitration pursuant to the provisions of clause 13.2 of the agreement which provides:

"Arbitration shall be effected:

- (i) By an Arbitrator agreed upon between the parties, or failing agreement upon such an Arbitrator; (ii) By an arbitrator appointed by the Committee of the Southern Queensland Branch for the time being of the Australasian Institute of Mining and Metallurgy, provided always that in any case wherein the question, dispute or difference involves a matter of law, the person to be appointed by the said Committee shall be a barrister at law practising in Brisbane".

The parties have failed to agree on the appointment of an arbitrator to effect the arbitration.

.... /2

Exhibit "B"

: 2 :

10

The matters in dispute involve substantial sums of money and questions of law. Accordingly, pursuant to clause 13.2 we request that you appoint Mr. C.E.K. Hampson Q.C. arbitrator in accordance with the enclosed suggested notice of appointment. Mr. Hampson is a former president of the Queensland Bar Association and has extensive experience as a commercial lawyer. He has indicated his willingness to act. There are in fact four separate references to arbitration: two for New Hope Collieries Pty. Ltd. and two for Southern Cross Collieries. The matters are closely related and may be dealt with together. We have sent separate letters in respect of each of them.

20

We have forwarded a copy of this letter to Messrs. Williams & Williams the solicitors for the Queensland Electricity Generating Board. For your convenience, we set out below an appropriate form of resolution should you accede to our request.

DRAFT RESOLUTION

RESOLVED THAT the Committee having been requested so to do by New Hope Collieries Pty. Ltd. appoint C.E.K. Hampson Q.C. arbitrator in respect of the questions disputes or differences the subject of the notice tabled at the meeting by the Chairman and that the Chairman and/or any other member of the Committee be and is hereby authorised to sign and/or give a notice of appointment of arbitrator in accordance with the form of notice tabled at the meeting.

30

Yours faithfully,
SEYMOUR NULTY & CO.

40

Enc. [1]

50

Exhibit "B"

60

In the Supreme
Court of
Queensland

No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

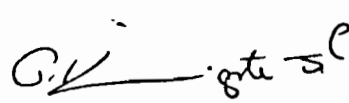
AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "B"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this *20th* day of June, 1983.


A Justice of the Peace

10

20

30

40

50

60

In the Supreme Court of Queensland

No. 12 Affidavit of Charles Linley Seymour with Exhibits 20th June 1983 (Contd.)

To: NEW HOPE COLLIERIES PTY. LTD.
C/- Seymour Nulty & Co., 1983
 Solicitors,
 Cnr. Queen and George Streets,
 BRISBANE, Q. 4000

FILED
 SUPREME COURT OF QUEENSLAND

10

And to: QUEENSLAND ELECTRICITY GENERATING BOARD,
C/- Williams & Williams,
 Solicitors,
 18th floor,
 National Australia Bank,
 Adelaide Street,
 BRISBANE, Q. 4000

TAKE NOTICE that pursuant to a resolution passed on the _____ day of _____, 1983 the Committee of the Southern Branch of the Australian Institute of Mining and Metallurgy having been requested so to do by New Hope Collieries Pty. Ltd. APPOINTS Mr. C.E.K. Hampson Q.C. arbitrator in respect of the questions disputes or differences the subject of the attached notice by New Hope Collieries Pty. Ltd. dated 7th January, 1983.

20

30

The Committee for the Southern Queensland Branch of the Australasian Institute of Mining and Metallurgy

40

per:

Chairman

50

Exhibit "B1"

60

In the Supreme
Court of
Queensland

No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)

10

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

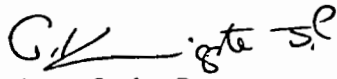
Defendant

20

This is the paperwriting marked with the letter "B1"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this 20th day of June, 1983.

30


A Justice of the Peace

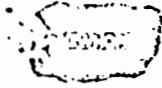
40

50

60

In the Supreme Court of Queensland

No. 12 Affidavit of Charles Linley Seymour with Exhibits 20th June 1983 (Contd.) 10



NEW HOPE COLLIERIES PTY. LIMITED

(Incorporated in Queensland)

RACEVIEW SHOPPING CENTRE,
RACEVIEW STREET, RACEVIEW, IPSWICH, QUEENSLAND 4300, AUSTRALIA

P.O. BOX 47,
IPSWICH, QLD. 4305, AUSTRALIA
Telephone — (07) 285 8733
Telex — NUHOPE AA 44618

OF QUEENSLAND
11. OCT. 1983
BRISBANE

TO: QUEENSLAND ELECTRICITY GENERATING BOARD
BRISBANE

Coal Supply Agreement CS/29/2 as varied between Queensland Electricity Generating Board and New Hope Collieries Pty. Ltd.

20

TAKE NOTICE that certain questions, disputes or differences having arisen between the Generating board and New Hope Collieries Pty. Ltd. upon or in relation to or in connexion with the said agreement which question dispute or difference cannot be resolved by the Generating Board and New Hope Collieries Pty. Ltd. NEW HOPE COLLIERIES PTY. LTD. (pursuant to clause 13 of the said agreement) HEREBY GIVES NOTICE and calls for the point or points at issue nominated in the schedule hereto to be referred to arbitration.

30

THE SCHEDULE

The terms of supply of the additional quantities of coal after 31st December, 1982 and, in particular, but without limitation the manner and extent to which the price or prices for such additional quantities of coal shall reflect all the changes in costs to NEW HOPE COLLIERIES PTY. LTD. including economies resulting from the amortisation of capital items still in use, technological advances, and items of expenditure not repeated, including the restoration of any open-cut workings for which special allowances have been made in the Base Price, as well as

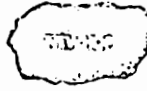
40

50

Exhibit "B2"

60

In the Supreme
Court of
Queensland
No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)



: 2 :

10

changes in costs resulting from changes in mining conditions, new
mining plant and the scale of operations.

DATED this 7th day of January, 1983.

NEW HOPE COLLIERIES PTY. LTD.

20

30

for D.J. Ireland,
Company Secretary

40

50

Exhibit "B2"

60

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

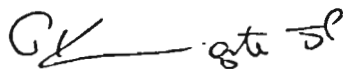
NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "B2"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this 20th day of June, 1983.


A Justice of the Peace

30

40

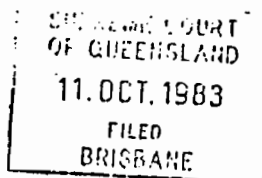
50

60

In the Supreme
Court of
Queensland

No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)

10



1/CHD

25th February, 1983

PERSONAL

20

Mr. R. Webster,
17th floor,
H.I.H. Building,
Ann Street,
BRISBANE, Q. 4000

Dear Sir,

Re: Our clients: New Hope Collieries Pty. Ltd. and Southern
Cross Collieries

30

We write to you as President of the Australasian Institute of Mining and Metallurgy.

We would confirm that through an inadvertance on our part two (2) of the Notices attached to our letters of the 15th February addressed to the secretary of your Institute were incorrect in that they contained in their last line, the date the 23rd December, 1982 whereas such date should have read the 7th January, 1983.

We cannot see that any party is prejudiced or affected by this error. We confirm we have now corrected same by replacing these Notices with two (2) Notices showing the correct date (copies attached).

40

We will send a copy of this letter to the Solicitors for the O.E.G.B., Messrs. Williams & Williams. We would appreciate an advice, as soon as possible, as to your Committee's decision on matters raised in our earlier letters.

Yours faithfully,
SEYMOUR HULF & CO.

Enc. [2]

50

C.C. Williams & Williams

Exhibit "C"

60

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

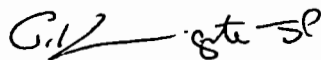
AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

This is the paperwriting marked with the letter "C"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this 20th day of June, 1983.



A Justice of the Peace

10

20

30

40

50

60

In the Supreme
Court of
Queensland

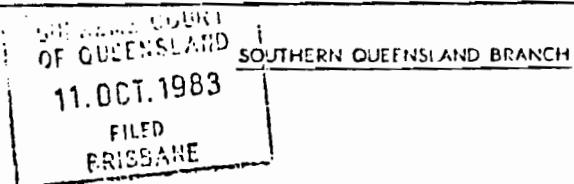
No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)



The Australasian Institute of Mining and Metallurgy
Head Office: Clunies Ross House, 191 Royal Parade, Parkville, Victoria, Australia, 3010

10

Incorporated by Royal Charter, 1958
TELEPHONE: 347 3166 (3 lines)
Cables & Telegrams:
"AUSIMMET", Melbourne
Telex: Ausim AA33552



CRW/LAD

February 29, 1983

20

Seymour Nulty & Company
Solicitors
G.P.O. Box 535
Brisbane QLD 4001

Attention: Mr. C. Seymour

Dear Sir,

I am in receipt of your letters Ref 1/AW/CMD February 15, 1983 to Mr. R. Coleman and Ref 1/CMD February 25, 1983 to Mr. R. Webster.

30

At a committee meeting of the Southern Queensland Branch of the Australasian Institute of Mining and Metallurgy held in Brisbane on February 28, 1983 your letters, together with those from Williams and Williams were tabled.

It was concluded, after referring to the Bye-Laws of the Institute, and specifically Bye-Law No. 67 which states

"No committee shall publish or communicate to any party or parties who are not members of the Institute any matter which may purport to represent the policy of the Institute, or any Branch or Division, without the expressed sanction of the Council."

40

that the committee is unable to act regarding the appointment of the Arbitrator. The documents have been forwarded to the Chief Executive Officer of the Institute, Mr. W.E. Vance for consideration by Council.

Yours sincerely,

C.R. Webster
Chairman, Southern Queensland Branch
Aus.I.M.M.

50

Exhibit "D"

60

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "D"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this *20th* day of June, 1983.

C. K. [Signature]

A Justice of the Peace

30

40

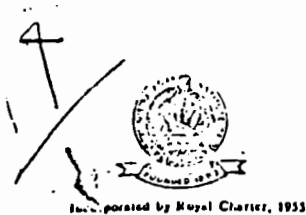
50

60

In the Supreme
Court of
Queensland

No. 12
Affidavit of
Charles Linley
Seymour
with Exhibits
20th June 1983
(Contd.)

10



The Australasian Institute of Mining and Metallurgy

Head Office: Clarendon House, 191 Royal Parade, Parkville, Victoria 3052, Australia

OF QUEENSLAND

11 OCT 1983

TELEPHONE: 347 3166
Cable & Telegrams
"AUSIMAMET", Melbourne
Telex: Ausim AA33552

FILED
BRISBANE

Postal Address: P.O. Box 310, Carlton South
Victoria 3053, Australia

2.25/WEV:JMW
Your Ref: 1/AW/CMD

31 March 1983

20

Seymour, Nulty & Co.,
Solicitors,
G.P.O. Box 535,
BRISBANE QLD 4001.

Dear Sirs,

30

Re: Contract CS/29/3 dated 12 July 1978 between
Southern Cross Collieries and the Queensland
Electricity Generating Board

We have received your letter dated 15 February 1983. The Committee of the Southern Queensland Branch does not consider it is competent to appoint an Arbitrator under the terms of the agreement as set out in your letter.

We have forwarded a copy of this letter to Messrs. Williams & Williams for their information.

40

Yours faithfully,

Chairman
Southern Queensland Branch
The Australasian Institute of
Mining and Metallurgy.

50

c.c.to: Messrs. Williams & Williams

Exhibit "E"

60

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

AND:

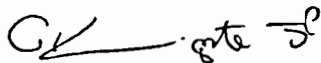
NEW HOPE COLLIERIES PTY. LTD.

Defendant

20

This is the paperwriting marked with the letter "E"
referred to in the Affidavit of CHARLES LINLEY SEYMOUR.

SWORN at Brisbane this 20th day of June, 1983.



A Justice of the Peace

30

40

50

60

RECORDING OF EVIDENCE ACT OF 1962

IN THE SUPREME COURT OF QUEENSLAND

COMMERCIAL CAUSES

10

BEFORE MR. JUSTICE McPHERSON

BRISBANE, 20 JUNE 1983

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY
GENERATING BOARD Plaintiff

- and -

NEW HOPE COLLIERIES PTY. LTD. Defendant

20

and

No. 903 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY
GENERATING BOARD Plaintiff

- and -

SOUTHERN CROSS COLLIERIES Defendant

DECLARATION VERIFYING TRANSCRIPT OF SHORTHAND NOTES

30

Lillian Rhyl Smith,
Dragica Andreis,
We, Maria Celine Nugent and of Brisbane, being shorthand
James Edwin Berman

reporters duly sworn in accordance with the provisions of
section 7 of the above Act, do hereby certify that the
transcription annexed hereto is a faithful transcript of
such parts of the shorthand notes as each of us recorded
of those portions of the proceedings in the above matter
and constitutes a faithful report thereof.

40

DATED this _____ day of _____ 1984.

I, Earle Rawlings, Chief Court Reporter, Court Reporting Bureau,
hereby certify that the portions of this transcript recorded
and transcribed by Lillian Rhyl Smith, Dragica Andreis,
Maria Celine Nugent and James Edwin Berman who are unavailable
to certify to their transcript, were recorded and transcribed
by these officers in conformity with accepted Court Reporting
Bureau standards.

50

DATED this 22nd day of February 1984.



60

(Issued subject to correction upon revision.)

IN THE SUPREME COURT OF QUEENSLAND

COMMERCIAL CAUSES JURI DICTION

BEFORE MR. JUSTICE McPHERSON

BRISBANE, 20 JUNE 1983

(Copyright in this transcript is vested in
the Crown. Copies thereof must not be made
or sold without the written authority of the
Chief Court Reporter, Court Reporting Bureau.)

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY
GENERATING BOARD Plaintiff

- and -

NEW HOPE COLLIERIES PTY. LTD. Defendant

and

No. 903 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY
GENERATING BOARD Plaintiff

- and -

SOUTHERN CROSS COLLIERIES Defendant

Mr. Callinan Q.C., with him Mr. Russell and Mr. Campbell
(instructed by Messrs. Williams & Williams), for the
plaintiff.

Mr. Jackson Q.C., with him Mr. Muir (instructed by Messrs.
Seymour, Nulty & Co.), for the defendants.

MR. CALLINAN: I wonder if I might raise some ground
rules, as it were, with you? Your Honour will recollect we
handed up - I don't know whether we formally filed, but we
handed up to Your Honour the other day originals of three
affidavits. We would formally file those in so far as it is
necessary.

HIS HONOUR: Let me see what they are so I can be sure of
them. You read which affidavits?

MR. CALLINAN: I read the affidavit of David Baguley. I think that was sworn on 14 June, and I read two affidavits of Norman Walker which, I would think, were filed on 15 June - no, the second one was a little later than that, I'm sorry. In addition to that, we have a further affidavit of Gary Neville Maguire sworn today, which really only exhibits correspondence. I would seek to file that.

HIS HONOUR: Has Mr. Jackson seen that?

MR. JACKSON: I have seen it just now. It is true to say it exhibits correspondence. It exhibits a great deal, but I have not had a chance to appreciate what is in or what is not in - if anything be not in that is relevant.

HIS HONOUR: Shall I give Mr. Callinan leave to read it and you can maintain any objections that you wish, or do you not want me to give him leave at this stage?

MR. JACKSON: As far as I can tell it just relates to correspondence, but can I perhaps reserve the relevance of some of it?

HIS HONOUR: Yes, certainly. Leave to read affidavit of G.N. Maguire subject to all questions of relevance.

MR. CALLINAN: What I would intend to do with those deponents is to call them to explain some matters. I think it is right to say they won't be giving any evidence which is additional to the material contained in their affidavits. I think I can say fairly accurately that it is only explanation; but in any event we will see when we come to it whether it exceeds that.

HIS HONOUR: I would be grateful if, when you do this, you could give them a copy of the affidavit, or at any rate me one, so I can follow what they say.

MR. CALLINAN opened the case for the plaintiff.

KEITH DESMOND VIERTTEL, sworn and examined:

BY MR. CALLINAN: Is your full name Keith Desmond Vierttel.--Yes.

Are you the Deputy State Electricity Commissioner - Administration?--Yes.

Where do you live?--35 Richmond Street, Kedron.

For how long have you held that position?-- 10 years.

Is one of your responsibilities the control of the tariffs section of the Commission?--Yes.

Does that involve your advising the Commissioner on tariff determinations that he is required to make, as you understand it?--Yes.

Do you advise him on bulk supply tariffs of the Queensland Electricity Generating Board?--Yes.

What is the procedure? Does the Board submit a financial forecast each year?--Yes.

In the last five years, when has the Board in practice done that?--Well, it is supposed to do it late in March. It may be early in April.

Has that in fact happened either in early April or late March?--Yes.

That the forecast has been submitted?--Yes.

Do you examine that forecast?--The Commission's budget section would examine the forecast.

Do you consider what the results of that examination are?--Yes.

What do you seek to satisfy yourself of?--That the budget is a reasonable estimate of the costs that the Generating Board is likely to incur in operating its undertaking, and that the revenue that it receives from sources other than the bulk supply tariffs has been properly estimated. These sources are revenue from bulk users and interest on investments.

Once you are satisfied on those matters, do you advise the Board?--Yes.

Does the Commission then fix the tariff?--Yes.

Did that happen in the last five and six years?--Yes.

Is the fixed price for bulk supply electricity then incorporated in the budget which is adopted by the Board in August each year?--Yes.

CROSS-EXAMINATION:

BY MR. JACKSON: The Commission has to fix the price, does it not, under the Act?--Yes.

And in fixing the price, it has to ensure that the price as such - that the receipts from bulk supply will, together with the other moneys of the QEGB, be enough to pay the amounts that are to be met from the QEGB's operating fund and certain other things?--Yes.

The cost of coal for the coal firing stations is considered by you, is it not, as being a cost of operating the stations?--Yes.

And under the Act, of course, the QEGB is required to keep a number of funds, is it not?--Yes.

One of them being an operating fund?--Yes.

Another, a capital works fund?--Yes.

Has the cost of coal used by the QEGB ever been submitted to the SEC as being a cost which has to be met from the capital works fund?--The position is that all coal purchases are charged in the first instance to the capital works fund, but the usage of coal is then charged to the operating fund; so, in other words, the stock of coal is a capital item.

That is the way it is charged, but the cost of buying coal is one of the costs that the QEGB has, is it not, each year in carrying out its powers and functions - the cost of buying coal?--Yes.

Coal to use?--Yes.

Or stockpile as it chooses?--Yes.

In working out what price you think should be the price for bulk electricity, the information that is given to you is information supplied just by QEGB, is it?--Yes, but we would have means of checking that information.

And if they are not happy with the determination, of course, they can appeal to the Industrial Court, can they not?--Yes.

Has there been any appeal since the start of 1978 against a determination of the bulk supply price?--No.

I wonder if the witness might see the affidavit of Mr. Walker sworn on 15 June 1983 including the exhibits?--
(Handed to witness.)

Would you agree that one of the features of difficulty in working out the price is to predict the cost of fuel with accuracy?--I suppose that fuel, wages or anything else that causes prices to fluctuate - there are difficulties, but overall our budgetary results are usually within one per cent of the estimate, and I think that is fairly good.

An estimate has to be made for the ensuing year, does it not?--Yes.

And of course, if the budget did not work out, then you would have to reconsider the price during the year?--There is power for us to reconsider the price during the year, but I feel that the practice that has been adopted recently - it would be more likely that we would allow the year to run its course and a deficit or surplus that resulted from the inaccuracy would be taken into account in fixing the next year's price.

BY HIS HONOUR: When you say "price", you mean the price to consumers; that is what you are talking about, are you?--Yes, in the context that the consumers of the Generating Board are mainly the other electricity boards.

BY MR. JACKSON: So far as the cost of fuel consumed is concerned, however, is it right to say that most of the contracts for supply of coal to the power stations operated by the QEGB are contracts which operate for a number of years?--Yes.

They are not spot sales?--No.

And generally speaking they contain the provisions for escalation by reason of various changes in the cost of producing coal?--Yes.

And also provisions for review of the price variation mechanism?-----

MR. CALLINAN: I object on two bases, that it is not relevant to the construction of this contract or to any issue in this case, and also upon the basis that it is secondary evidence of documents.

MR. JACKSON: I shall not pursue that point.

BY MR. JACKSON: So far as the escalation clauses are concerned, you know at the time when you are fixing the price for the supply of electricity in bulk by the QEGB that it is likely there will be some alteration in the actual price to be paid for coal during the year by reason of the operation of those clauses?-----

MR. CALLINAN: Again I object because it really seeks to do what I think my learned friend was not pursuing. There are two lots of escalation provisions, as I understand it. It becomes rather important to have them identified, and really I am objecting to it. That is the reason for it. The grounds of my objection are that again it involves either a construction of the document or the secondary evidence of the document.

MR. JACKSON: The witness has already given evidence that in the contracts for supply of coal it is a common thing to have escalation clauses. All I am asking him about is whether in the course of the year, in fixing the price, they take into account the possibility of alteration in the price payable for coal by the operation of escalation clauses.

3/3 lrs/76

-5-

K.D. Viertel
Cross-examination

HIS HONOUR: Yes, I will allow that.

BY MR. JACKSON: You have heard the question. During the year, in fixing the price for the year, do you take into account the possibility for ~~maximise~~ alteration of the price of coal by reason of the operation of escalation clauses in coal supply contracts?--Only during the budget the likely escalation will be taken into account.

And it is the fact, is it not, that the QEGB suggests a figure as being its estimate of what the escalation in the cost of coal might be?--Yes.

And you can either agree or disagree with that?--Yes.

I take it sometimes you disagree?--Well, it is a little hard to answer that one exactly yes or no, but I can explain that we would not always agree on the figure given for coal used. We may have doubts about the quantities, we may have doubts about the escalation anticipated.

In any event, you make up your own mind?--Yes, after discussion and consultation.

Sofar as the QEGB is concerned, you said to me before that the price of the cost of buying coal was debited to the capital works fund?--Yes.

And it was not debited to the operating fund until the coal was used?--Yes.

Are you responsible for that practice or is that something done by QEGB?--It would have been done by QEGB's predecessor; and most electric authorities in Australia, for at least the last 20 years to my knowledge.

That is before and after the Electricity Act came into force in 1976?--Yes.

BY HIS HONOUR: Is there any reason for that? It seems unusual, because it is one of the prime operating costs. You would expect it to be brought into account on the revenue or against the revenue side rather than as a capital cost?--Probably in the days of the private electricity companies where the price was fixed, there was a desire to charge to the year's operations only the actual coal burnt and to regard the stock as working capital and a legitimate part of the company's capital on which they would be entitled to some sort of return.

It seems to be historical rather than analytical, anyway?

Well, you'd have to say it's historical rather than analytical because we thought at various times it might be a good idea to change it.

BY MR. JACKSON: Have you been involved at all in discussions with representatives of New Hope Collieries about the price of coal under their coal supply agreement?-- Once, in about 1978.

10 Was that before or after? Was that at the time the
current coal supply agreement was being negotiated, or what?-- 10
No, it would be -----

MR. CALLINAN: I object on the grounds of irrelevance. It is not relevant, in my submission, on the key -----

(Argument ensued.)

20 HIS HONOUR: I don't think that matters. He asked ^{not} what
the content of the discussion was - we may find ourselves in
another field. 20

BY MR. JACKSON: I don't want you to tell me what was said. I was just asking was it in relation to the negotiations of the agreement, the current agreement?-- The answer is no.

30 Well, the time when you were involved in these negotiations,
had the current agreement been entered into or not?-- I wasn't
involved in any negotiations, but ^{at} the time I was involved in
discussions - the current agreement had been entered into. 30

The discussions that took place at that time, were they the discussions at which the Board was represented?-- Yes.

Can you tell me this: was the discussion in relation to the price of coal?-- The discussions were in relation to one element of the escalation formula.

40 Before I go any further, can you tell me this: did the
discussions result in the variation of the agreement or not?-- 40
I don't know, and I don't know whether I ever did know. It was
a case of there was a dispute on a matter of professional
accounting judgment between Touschruss, who are the accountants
advising New Hope, and the Generating Board on this matter of
accounting principle, and that's how I came to be involved.

MR. JACKSON: I have nothing further.

50 RE-EXAMINATION: 50

BY MR. CALLINAN: You said at one stage that there was sometimes discussions and consultations. Do you remember saying that -----?-- Yes.

60 - with respect to submissions? With whom were the
discussions and consultations held?-- Principally with the
Generating Board, but we may have had discussions with the
Queensland Coal Board in respect to coal. 60

10 Can you tell me - and say whether you can't - the extent
to which, in general, over the last five years there has been
any correspondence between the cost of coal as estimated by the
Board and the cost of coal as allowed by you - that is, the
Commission - in the fixation of price? Surely, how often, if
at all, have you altered their estimates on the cost of coal?--
From memory, we would not have altered their estimates on the
price of coal as distinct from the cost of coal. We may have
altered the estimates of the cost of coal burnt because we felt
that, more or less, coal would be used in particular stations
and that affects the price. I think that would be the only
changes we've made. 10

Perhaps, to make it clearer, I should have asked you the
extent to which you altered their estimate of the unit price
per tonne of coal from the various suppliers in fixing the price?--
The answer is, "I don't know", and for that reason it must be
only very minor changes or I would have known.

15 MR. CALLINAN: May Mr. Viertell be excused? 20

MR. JACKSON: No objection. 20

HIS HONOUR: Thank you, Mr. Viertell. You are free to go.

MR. CALLINAN continued to open the case for the plaintiff.

During the opening -

MR. CALLINAN: I tender the New Hope coal supply agreement dated 12 July 1978, and there is a variation agreement dated 20 October 1981. I am actually tendering the stamped document - it has been stamped.

HIS HONOUR: The actual supply agreement Number CS-29-2 ~~from~~ for the supply of coal - Swanbank Power Station - I suppose between plaintiff and defendant, is it?

MR. CALLINAN: Yes.

HIS HONOUR: And a further agreement bearing the stamp 20 October 1981 are together Exhibit 1.

Ex. 1 (Admitted and marked "Exhibit 1".)

MR. CALLINAN: I am sorry, there are two variations pinned together.

HIS HONOUR: Is one of them embodied in the bound volume?

MR. CALLINAN: I think they are both separate.

MR. JACKSON: The position is on the pleadings that there are filed ~~xxxxxx~~ variations alleged in paragraph 3 of the statement of claim, those variations being 15 August 1978, 5 June 1980, 20 October 1981, and I suppose, there again, we admit those variations, then, alleged on 1 December 1982 - we admit executing our document but deny this variation. It does not seem to me that the document is material; if it is not, then the issue disappears.

HIS HONOUR: I have the bound volume . . . 12 July 1978. I have the agreement made 20 October 1981, and I think on second thoughts I will make that Exhibit 2 - the variation agreement - and attached to it is another document which has 1 December 1982 upon it.

Ex. 2 (Admitted and marked "Exhibit 2".)

MR. JACKSON: That is the one that is in issue.

HIS HONOUR: It is attached to Exhibit 2 but is a separate sheet, and the only reference to 1 December 1982 is in the testimonial that accompanies the seal.

MR. CALLINAN: We do not think it is relevant. We notice that it has not been admitted. Could it be tendered for the time being as a document that has been admitted, to be signed or executed by the defendant?

HIS HONOUR: It might be advisable to give it a separate exhibit number. Exhibit 3 is a document bearing seal and date 1/12/82.

Ex. 3 (Admitted and marked "Exhibit 3".)

MR. CALLINAN continued opening the case for the plaintiff.

During the opening -

MR. CALLINAN: Before I call Mr. Baguley, can I simply say this: We think that these are the questions in the end: (1) whether the defendant is entitled to retrospective increases; (2) whether the agreement provides any operable mechanism for the calculation of retrospective increases. I put it that way because it will be our submission that whether it is a valuation or an arbitration it is just inoperable; it cannot be done. (3) whether there is any obligation on the Board to do anything to ensure ~~the~~ reviews to settle terms for the supply of coal beyond 1982; (4) to what extent, if any, may the Court compel the parties to do anything to submit to a review or participate therein; (5) assuming that as a matter of construction there had been an entitlement to retrospective increases, is the defendant now estopped from obtaining them, and I think it is right to say that the last one is the only one which raises questions. There may be a different view of it on the other side, but we think those are the matters that you would be directing your attention to. We call Mr. Baguley.

DAVID JOHN BAGULEY, sworn and examined:

BY MR. CALLINAN: Your full name is David John Baguley; you live at 3 Malata Close, Westlake, and you are an engineer by profession; is that so?-- That is right.

What field of engineering?-- Mechanical engineering.

How long have you been an engineer?-- Thirteen years.

You are employed by the Queensland Electricity Generating Board as the Operations Resources Engineer?-- That is correct.

You have sworn an affidavit in this matter; do you remember that?-- I do.

Have you a copy of that affidavit with you?-- No, I don't (Handed to witness.)

I am going to take you through it all. Paragraph 10: you say that the merit order is varied from time to time and decisions based upon it are made frequently, and then in paragraphs 11 to 19, you set out an example of such a variation and decision; is that correct?-- That is correct.

cp
pw

During the course of the last five years approximately how many times would the decisions have been varied?--It is very difficult to say. The minor decisions could be made weekly at different times.

But the ones which concern you then are taken as more important decisions; is that correct?--I am probably involved in probably a dozen occasions. This is just one example of these.

You deal with an occasion that had to be considered during the financial year ending June 1980; is that so?--That's right.

If you would go to paragraph 12 where you say, "The defendant and its subsidiary companies supplied approximately 46.7 per cent of the coal required by the plaintiff in the West Moreton region." The subsidiary companies supplied, as you understood it, coal pursuant to which agreement?--C.S. 29/3.

Can you tell me something of the proportions of that 46 per cent which would have been supplied by New Hope?--400 over 720, what that is; between 55 and 60 per cent or something like that.

55 to 60 per cent of the total amount supplied by New Hope and its subsidiaries; is that correct?--Right, yes.

Which would be something of the order of approximately 25 per cent of the coal acquired by the plaintiff in the Swanbank area, that is from the West Moreton field?--Yes.

Something of that order?--Yes.

You have provided a figure of \$13.47 per tonne for West Moreton coal - if I can say the defendant's coal - and the Callide coal of 12.54?--That's right.

A schedule has been annexed which sets out various costs. Would you look at Schedule A? Have you found that document?--Yes.

I wonder if you could tell us something about the column which is "Energy Cost at Load Centre". You have got a figure for Callide of 6.87. Do you see that?--Yes.

What is "Energy Cost at Load Centre"? How is that calculated?--That is the cost of providing one megawatt hour to the main load centre, which in this case we were looking at south-east Queensland.

So, although it comes from up at Gladstone, that is the cost of provision for southeastern Queensland; right?--Yes.

Then Swanbank A is 6.17 and Swanbank 5.67, again the cost of supply to southeastern Queensland?--That's correct.

Why is Swanbank B cheaper than both? Why is it able to supply at a lower rate than either Gladstone or Swanbank A?--In the case of comparison between the Swanbank A and Swanbank B,

Turn 6 lrs/76

-11-

D.S. Baguley
Exam.-In-chief

Swanbank B is a more modern, more efficient plant, so the difference there is purely the difference in efficiency of the plant. In the case of Callide compared with Swanbank B, apart from not only being a more efficient plant, there is also transmission losses involved in transferring energy from central Queensland down to the load centre, therefore the cost of producing or supplying energy to the load centre for Callide is higher than Swanbank B.

10 Would you look at Exhibit B, the report by your office
of 5 October 1979? Do you see that document?--Yes. 10

You discuss availability of coal, and then in paragraph 3 you say - or the author says - "Measures to ensure a high level of generation at Swanbank B have been taken to optimise system operating cost. However, it is not likely even with Swanbank B at high load level that the weekly burn would exceed the delivery load and the stockpile could be expected to continue growing." Do you see that?--Yes.

20 And then at the end of paragraph 6 there is: "If there is
no other alternative at Swanbank other than to double handle
coal, given the current order of merit it would be more
economical to load up Swanbank A units ... rather than create
auxillary stockpile at Swanbank." Who had to take the relevant
decision on that? Was it you?--This report was written by me.
I then wrote the notes on the bottom of the page, which was
handed on to our system control centre at Belmont who handle
day to day running. That is virtually my recommendation which
was countersigned by my superior for instigation. 20

30 That was done?--Yes. 30

Swanbank A was loaded up to avoid the cost of double handling?--Yes.

40 BY HIS HONOUR: What is involved in double handling?--
In this particular case we had run out of space within the
confines of the power station and we had to create a stockpile.
The cost we looked at here was purely the cost of putting the
stock on the ground and picking it up again, a pick up and
put down situation. 40

BY MR. CALLINAN: In fact, I think it is costed in the report on page 2, the station estimate of the cost of stockpiling is 45 c a tonne?--That's right.

50 BY HIS HONOUR: What is meant by "loading up" in this
context ?--Sorry? 50

60 You say it would be more economic - or rather you say it
is preferable to load Swanbank A units rather than to load
Gladstone units. What is meant by that?--Simplifying things
slightly, we have a merit order that puts plants on line,
and we might just sit it through at minimum load and when we
have another it will load it up to full load; because some of
our plant provides reserves, so we load up the most economic
units to full load and keep the other ones slightly below
full load so they can pick up losses. We had the Swanbank A
units on line, but it is cheaper to load them up and bring back
19718/82- 60

2/6 lrs/76

D.J. Baguley

-12-

Exam.-In-chief

the units for minimum burning coal, then vice versa.

BY MR. CALINAN: Is the decision taken to do what you did to save the 45c a tonne double handling charge?--We actually saved 40c a tonne because there was a penalty in burning the Callide against burning the Swanbank load.

If you had known at that stage that the cost of coal would have been increased by more than 40c per tonne, would you have taken the decision that you did?--No. In this particular case we were trying to decide whether we should create that auxiliary stockpile, but we decided it was better for us to transfer this energy than to create an auxiliary stockpile.

What would have been the feasibility or economic desirability of creating a stockpile if, in fact, the cost of New Hope coal was to be more than 40c per tonne increase - was to be increased by more than 40c per tonne?--The 40c a tonne is the average price, so if the average price of Swanbank coal had risen by more than 40c then the decision we would have taken would have been to create an auxiliary stockpile.

In paragraph 16 you refer to marginal costs of energy. I am not too clear about what you mean when you say that?--In this particular period of time we looked at the fact that the West Moreton contracts were operating at 90 per cent of their - of the capability of each colliery. If we looked at the average costs of the coal - which in Schedule A this is what the schedule is trying to show, that the average price is made up of two components, a fixed price and a variable price, the fixed price being the price you pay no matter what tonnage you take, the variable price being the increment to take us up to the next level, and the marginal price we are talking about is looking at the amount of that variable component of the price per tonne, and then converting that through the various delivery charges, transfer penalties, to a marginal cost per megawatt hour of energy produced.

Then you say in paragraph 18: "Thus a 40" - I think it should be "cents" - should it not?--40c.

"Corresponds to a 70c per tonne increase"; is that correct?--That's right.

"In average prices, and \$1.50 increase in the price ... and its subsidiary companies." Bearing in mind that of the 46 per cent approximately of the coal supplied by the defendant and its subsidiaries to Swanbank about 55 per cent approximately to 60 per cent is actually supplied by New Hope, can you give us a figure instead of the \$1.50?--Something like between \$3.50 and \$4. That is a very rough-off the top of the head.

You have done a calculation upon the basis of the total claim - retrospective claim for more than nine million dollars and the results of that are shown in paragraph 19; is that correct?--That's right. That is a very general claim. We just divided the total quantum of the claim by the number of tonnes in that period.

Is it possible for you to be precise about that?--Not from my knowledge of the claims, no.

If I can take you then to paragraph 22 or paragraphs 21 and 22 which exhibit an invitation to tender. Were, in fact, those tenders explored?--What do you mean by "explored"?

10 What did you do? Did you accept any of these?--We didn't accept these tenders. We went right through the process but did not accept tenders. 10

Sofar as New Hope was concerned, did anything New Hope did or was doing have any influence upon the decision not to accept those tenders?--New Hope meaning -----

The defendant?--At that particular point in time?

20 What they were doing in relation to the actual price of coal under the agreement?--No, not at that stage. There was nothing they were doing that would have influenced us. 20

30

30

40

40

50

50

60

60

1971/82--Govt. Printer, Qld.

4/6 lrs/76

-14-

D.J. Baguley

Exam.-in-chief

What about the quantity being taken from New Hope? Were they affected in any way by the decision in relation to the tenders?-- The decision taken at that point in time not to continue with the tenders was based more on an uncertainty of the industry going into a seven-year project. It was contracted that it seemed better for us to remain with existing contracts. There would have been a slight downturn in demand.

Why was it better to remain with existing contracts?-- At that point in time there wasn't enough - there wasn't any economic advantage in continuing with the CS26 contracts at that particular point in time.

In paragraphs 26 to 31, you deal with a particular insurance claim which you say is an incidence of various claims. Assume that New Hope becomes entitled or actually recovers the amount which it has claimed. To what extent would your insurance settlement have fallen short of actual cost, leaving aside -----

MR. JACKSON: With respect, that is a matter of speculation.

MR. CALLINAN: Can I ask the witness?

BY MR. CALLINAN: Are you able to make an estimate of that based upon the claim which has been made without knowing of the \$9 million, approximately?-- Surely, on New Hope - I could - it would have to be around about the \$100,000.

Just on New Hope alone?-- Something between \$80,000 and \$100,000.

Were there any other such claims?-- Insurance claims?

Yes?-- There were several other insurance claims.

Have they been settled?-- The replacement energy side of these claims has been finalised, but we are still haggling over some material damages side of it.

But the replacement energy claim has been settled. Have they been settled in the same way as the one which is exhibited to your affidavit?-- Not to the extent - we only sign the release for the whole claim, right; we haven't sort of - I think we'd have trouble going back to argue the other parts.

So far as you know, the replacement energy costs have been negotiated?-- Mmm, that's right.

The other outstanding matters are other items of damage?-- That's right.

One other thing I wanted to ask of you -----

MR. CHILLINAK: Thank you.

CROSS-EXAMINATION:

BY MR. JACKSON: Would you look, please, at the document which is Exhibit "D" to that affidavit? That is a tender?-- (Witness does as requested.)

That was a tender, was it not, for the supply of coal for power stations in Brisbane?-- That's correct.

10 And at the time, of course, you were already committed to buy coal from New Hope under its contract?-- That's correct. 10

Subject to these proceedings, and the way of buying coal under that was to give a firm purchase order for an ensuing calendar year, the confirmed purchase order being given by the middle of the preceding year?-- That's correct.

20 At the time when you invited tenders, you had not - is it the position - turned your attention at all to Clause 9.1 of the terms of the agreement presently in question?-- Sorry, 9.1 being ----- 20

The agreement with New Hope presently in question?-- The turndown -----

You hadn't turned your mind to the terms of Clause 9.1 of the agreement presently in question?-- I'm afraid I'm not fully - I can't put what 9.1 -----

30 BY HIS HONOUR: Perhaps if we put it before him. Show this to the witness?-- (Handed to witness.) 30

BY MR. JACKSON: Now, you are familiar with that clause, aren't you?-- Right; yes.

Since this case started, you have looked at it many times?-- I had a few looks, yes.

40 And you have sworn affidavits, exhibiting this document?-- Mmm. 40

And at the time when you invited - were you the person responsible, by the way, for the invitations to tender?-- No, that's the function of the State Electricity Commission.

You are committed?-- I was assisting with it.

50 You were familiar with the invitation of the terms to tender?-- In this way, yes. 50

And the invitation to tender made provision for increases in the price of coal supplied by reason of changes in cost and in the cost of producing and supplying coal under that agreement?-- It would have done. It was an invitation to tender, not a contract. 50

60 But it was in the form, a form which set out the contractual terms, didn't it?-- It would have a format which came through to a similar sort of contract. 60

If you look at Exhibit "D" to your affidavit, which is the invitation to tender -----?-- (Witness does as requested.)

... at page 20 of the document it made provision for there to be escalation provisions which properly reflected the changes in the costs on the cost of producing and delivering coal in accordance with the agreement made pursuant to specification, and then it went on to say, "Further, if either party to such agreement at any time ... Section 16.1." Do you see that there?-- Yes.

And then it went on to say, where the agreement had been reached, the matter was to be decided by arbitration?-- Yes.

If you look at page 30, provisions made for arbitration in relation to such matters -----

HIS HONOUR: Did you say 13?

MR. JACKSON: I said 30, Clause 16. 1.

WITNESS: I see that, yes.

BY MR. JACKSON: Now, at the time when you were evaluating the tenders, can you tell me this: you were familiar with the existence of Clause 9.1 of the agreement presently in question in these proceedings?-- I was aware of its existence, not quite familiar as I am now.

Did you pay any attention to it at all in working out the prices of coal?-- Sorry, in working out which price of coal?

Working out the prices of coal, how suitable they were in terms of that tender?-- No, I don't understand your question.

Well, at the time when you were working out whether the tender should or should not be accepted, what attention did you pay to Clause 9.1 of this agreement?-- I don't believe we got as far involved in the escalation formula at that point in time.

At the time when you were working out whether the tender should or should not be accepted, or whether any tender should be accepted, did you pay any attention to Clause 9.1 of this agreement when you had -----?-- Not that I recollect, no.

It was relevant for those purposes, wasn't it?-- At that point in time, I would say - certainly in relevance.

Completely in relevance?-- I'm not sure. I would have, from my point of view - I was looking more at the technical side of things at this stage.

Might the witness hand back that Exhibit 1?-- (Witness does as requested.)

Can you tell me this: in relation to that tender, the tender that was lodged by New Hope, it wasn't a tender for coal from the same mines as are involved in supplying under the coal supply agreement in question here, was it?-- It was from the Jeebropilly mines.

Which is an open cut mine?-- It is an open cut mine.

Which, of course, you would expect to be much cheaper than an underground mine?-- One would expect so, yes.

And the coal being supplied under the coal supply agreement in question here in these proceedings is produced by underground mining?-- Underground and open cut, I believe.

10 Principally underground?-- Well, I wouldn't use the word "principally". All I could say is that it is underground and open cut. It varies from time to time.

The price of coal paid to New Hope under the agreement presently in question here has been the highest, would you agree, of the coal, highest of the prices paid to the suppliers and to the Swanbank from the West Moreton field?-- That's right.

That's common knowledge, isn't it?-- That's common knowledge.

20 --So that the New Hope coal has been the most expensive, throughout the time of the agreement?-- That's correct. 20

And at the time, of course, other agreements were entered into with other suppliers in that field?-- There were, yes; that's right.

30 The coal that was the subject of the tender by New Hope that you refer to in that agreement was coal which couldn't be utilised in Swanbank in large quantities?-- There were problems, technical problems why we couldn't utilise it in those quantities; that's correct.

40 There is really no comparison between the price that you would expect for coal from an open cut at Walloon pit, which was the subject of the tender, and the coal - the price you would expect for coal being supplied to Swanbank under the present agreement?-- It depends on how you mean "comparison". When you are talking about the tender in general, there were other coals that were not Walloon series coals. 40

But the coal that was supplied, that was said to be going to be supplied as tender by New Hope -----?-- There is always a comparison. I'm just - the proposal would then be where it was being burnt.

You would expect it to be much cheaper, wouldn't you?-- One would expect it to be much cheaper because -----

50 Tell me, then: why do you go to such length in your affidavit to discuss that tender?-- In my affidavit, I'm purely pointing out that there were other coals available at that point in time which we didn't take. 50

You didn't take any of it?-- That's correct.

60 And, of course, you had some contractual obligations towards New Hope, didn't you, to take coal?-- Within a certain range, yes. 60

Not just contractual rights; you had contractual obligations, didn't you?-- That's right.

And during the period that you were taking coal from New Hope - I'm sorry, I'll start that again. From the period of 1 January 1978, each year you gave and had given the firm purchase notices?-- That's correct.

Including one for 1983?-- That's correct.

10

10

20

20

30

30

40

40

50

50

60

60

And during that time, the amount that you had taken has been the amount of about 400,000 tonnes, is it not, with perhaps one exception?-- I think around about 1979, we went back to the whatever - 360,000.

And during that time, you didn't ever, apart from that one occasion, exercise your right to go down to 90 per cent?-- No.

10 You had seen, I take it, various documents setting out the price of coal that came from New Hope?-- When - yes, I have seen them. 10

The time when you were fixing your merit order?-- Right, yes.

You have had a merit order throughout this time?-- We have them all the time.

20 You had a merit order from 1 January 1978, at least?-- Yes. We always have merit orders. 20

In relation to the merit order, can you tell me this: you relied, you say, on the price being charged by New Hope for coal in fixing your merit?-- We had, partially, in combination with the others.

30 And the price that was used in fixing the merit order was the price that was worked out in accordance with the agreement?-- That is correct. 30

What attention did you pay to the possibility that the price might be changed?-- No attention.

Did not consider it?-- No. We just used the escalation formula to push it through.

40 It did not occur to your mind that there might be some application for review under Clause 9.1?-- Not under Clause 9.1, no. 40

And the first time you considered that was after the claims were made; is that right?-- That is correct.

In fact, the fact that claims for a review were likely to be made was made clear quite some time ago, wasn't it?-- Sorry, but which review are you talking about?

50 Talking about the review in respect of coal supply after the first five year period?-- We always knew that there would be a review at the end of five years, yes. 50

But claims for review in respect of coal which had been and which might be supplied during the five year period - the first five year period?-- Sorry. This is - we knew that at the end of five years we would be having a review of prices for the ensuing five years.

60 But you knew - it was made clear to you, wasn't it, in the 60

period prior to the end of 1982 that a claim was made - was being made for an increase in respect of the price of coal supplied, also prior to the date on which the claim was made?-- No. Sometime in early mid-1981, there was a claim served on us.

There was a claim served on you - a mere formal claim served on you - on 14 July 1982, wasn't there?-- Sorry, 1982, yes.

But before that, there had been discussions between officers of the Q.E.G.B. and officers of New Hope in relation to the cost pressures that New Hope said it was feeling and the fact that it wanted an increase in price?-- They were foreshadowed before that date - a notice that we would be making some claims.

And the discussions started in the latter part of 1981, did they not?-- Yes, I believe so.

So, can you tell me when it was in 1981?-- I think it was just before Christmas - November, or something like that.

From at least November 1981, you knew that there was likely to be a claim in respect of the increased costs of coal?-- We knew that they had foreshadowed that there was claims. We weren't sure how the claims would be put forward, no.

At that time, it was apparent, was it not, that the coal supply, at least after that time, was coal in respect of which it was likely that they would seek to have the price reviewed?-- They would seek to. It was possible. It didn't say the claim was necessarily paid.

Of course not. You knew, did you not, from the latter part of 1981 - from November 1981 - that New Hope was claiming that the price should be reviewed?-- It didn't have a formal - we knew there was a possibility of them reviewing the price - of asking for a review of the price.

So, you went on with your merit order on the basis that the price would not change?-- On the merit order, yes. I would say that, yes.

At least from 1981, you thought it possible that the price would change?-- It was possible, yes.

And you did not know how far back that would go?-- We didn't even know it was going to go back - there was any possibility of it going back.

You had not thought about it going back, had you?-- Not at that stage, no.

Just talking about your merit order, I want you to look at paragraph 7 of your affidavit. In that affidavit, you say that you sought at all material times to place maximum dependence upon those generating facilities at the lowest cost?-- That is correct.

Whether you in fact used Swanbank or not during the period you are talking about, you had to take coal from New Hope, didn't you?-- We had a commitment under the contract, that is correct.

ep
19718:82-Govt 2/8:2-d

b1/60

-21-

D.J. Baguley

Cross-examination

And you had to take each year coal which was at least 90 per cent of the previous year's firm purchase?-- That is correct.

And the decision to take that coal - the decision fixing the quantity - was the decision which you made by the end of June in the preceding year?-- That is right.

And, as I think I asked you before, there was only one year during that period when the firm purchase declined from the preceding year?-- That is correct.

And in fact, more was being considered - you were considering taking more?-- More than the 100 per cent?

Yes?-- There was a period where we were interested to find out ~~what~~ the incremental price would have been for more.

In 1979, you were seeking to take, in an ensuing year, more from the commitment for the firm purchase - you were interested in it?-- We showed interest in making an inquiry.

You mentioned in paragraph 10 of your affidavit that your merit order was varied from time to time, and you make various decisions on it, but the merit order applies, does it not, to coal - the use of coal which you have already acquired in the sense of having it or which you ordered the previous year?-- No.

You tell me why it does not?-- Not necessarily. We try to look at what the replacement coal would cost in respect of saying that if you are committed to a coal, it is the make-up whether you make the purchase decision for future coal, that could determine the merit order for a particular point of time, or whether we could get cheaper coal by asking for another 10 per cent, so we are looking at what the next bit will cost us, so that in the case of asking New Hope and the West Moreton Mines whether they could produce more than 100 per cent, we would then get an indication from that price what the coal - what coal price was used to slot Swanbank in.

So, the merit order is fixed at the time you give the firm purchase order?-- The merit order changes a fair bit during the time we make a decision on that firm purchase order of our plan - on our calculations of what the planned merit order would be in the future.

And
/ What happens ~~is~~ you get changes to that merit order, depending on the cost of coal elsewhere, don't you?-- You have got a fair range, but there was only a couple of days where it was a bit grey, so if we run short of coal in a particular station, then the next - whenever we had to buy the coal to fill it up would determine the merit order, but when we give our firm purchase by notification, we have got to plan where our coal is coming, to reach the power station. We know how much coal is being taken to make up the full requirement of that station. That becomes our merit order setting price.

Is it right to say that if, contrary to the Q.E.G.B.'s view, a review had taken place which alters the cost of coal already

supplied, then that cannot affect, I take it, the merit order that is already applied in respect of the coal that is being used. It cannot affect it, can it?-- Not to what has been used, no.

And in respect of coal in the future, it will alter the merit order - that's right, isn't it?-- You are saying if -----

10 Put it another way: why does the merit order matter - just ~~is it a question of costs~~ a question of costs, isn't it?-- The merit order gives our operating personnel the way in which they should schedule the plan on line which will then determine the amount of ~~coal~~ coal at each particular station.

And they do that because of the cost, don't they?-- It is based on the fuel costs, yes.

- 20 If it be that the price of the coal supplied in the past to Swanbank and already used increases by reason of a review, all that ~~xxx~~ happens, is it not, is just that, under the terms of the contract, you had to pay more than you had to?-- But we made decisions in the past which would have changed, if we would have known the price at that particular time. 20

Put it on somewhere cheaper?-- That's right, the total overall. We are still looking at the overall system costs - the total costs of the basic electricity consumer would have changed.

30 But at the best, you would have still had to take 90 per cent of the previous year's firm purchase?-- That's correct, but there is a lot of difference of staying 100 per cent and going down 10 per cent. 30

But in any event, you did not turn your mind to the possibility of price increase, did you?-- No.

40 The merit order is an internal thing, is it not, worked out in Q.E.G.B.?-- Yes. 40

You did not consult New Hope about the merit order?-- No.

They all would not know what it is, I suppose?-- Some of them may do.

You do not ever say, "This is the merit order we have now."?-- No.

50 The only thing you expect people to know about it is to assume that you have some order of bringing your power station to overload capacity?-- The only way is when we give them a notification. That is the only indication we give them as to using more coal. 50

What notification are you talking about?-- The notification for the following year. That would be the only indication they would get of how we are running our system.

60 You would not get too much indication on your merit order. 60

60
18/82- Govt. Printer, Qld.
4/8

b1/60

-23-

D.J. Baguley

Cross-examination

if all you are getting is an order for the same amount every year, except for one year; would you agree with that?-- You wouldn't get much, no.

In any event, you do not communicate your merit order to New Hope?--No.

In how many years since 1978 would your merit order have changed if the amount of the claim had been allowed?--I have got no idea.

10 It would only have been 1980, would it not?--Sorry, you mean at what point in time? 10

No, not at what point in time, what years? It would only have been 1980, would it not?--Late 1979 we would have made decisions whether we were able to buy the incremental coal from West Moreton, and 1980 such that the difference in price, in marginal price between Gladstone and Swanbank were very close. They would have been the major payments. There may have been other times, but I am not sure without calculating.

20 In relation to what has been called retroactivity, have other claims been made - claims under clauses equivalent to clause 9.1 - by other suppliers on the field?--There was 20

MR. CALLINAN: I am objecting on the grounds of irrelevance.

HIS HONOUR: On what basis are you putting it?

30 MR. JACKSON: Only in this sense, it is a question of reliance on the matters that constitute the estoppel, and that involves a question of knowledge of the subject matter. 30

HIS HONOUR: I really cannot see that a representation by B that he was entitled to a higher cost would justify the conclusion that the plaintiff was not acting on a representation which had been got from A that no higher cost was being asked, or something of that kind.

40 MR. JACKSON: I shall not pursue the point. Might the witness see the affidavit by Mr. Walker which is the later of the two? 40

(Shown to witness.)

BY MR. JACKSON: Just have a look at that document?--(Witness looks.)

50 You will see that that document is an affidavit made by Mr. Walker. In paragraph 2 he says that on or about the end of each month the defendant furnished to the finance department of the plaintiff a pro forma invoice relating to the delivery of coal in that month, and then he exhibits two of them, Exhibits A1 and 2. In the ordinary course of events did you see those invoices?--Not normally, no. 50

Apart from preparation for this case, have you seen them?-- I have seen them before, but I do not see them normally. I do not see them each month. These particular ones, no.

60 Leaving aside the particular ones, it is not normally your 60

function to see them?--No.

You have seen some, in fact?--I have seen example of them, yes.

For what purpose have you seen them?--Just when we have queries on prices, or if there is any query on whether it should be paid or not they might send it up to us for query.

But in the ordinary course of events what department would they go to?--It would go to the finance department.

When it went to the finance department, who is the person who looks after it there? Is that Mr. Walker?--Mr. Walker is head of the department.

Who is the person who ordinarily looks after it, where it would normally go?--I believe it is the clerk for payment - John Dooley, I believe it is. If I want any prices on coal, I ring him up and he tells me the latest price.

Do you know what system operates in that department for dealing with these documents as they come in?--Only superficially. We receive a copy of a calculation from Spry Walker which tells us what the price is that should be paid under the escalation provisions of the contract, and that is sent to the finance department. I think it is a copy of what is sent to the actual mines themselves. Then the colliery itself just sends the account in based on information from Spry Walker, and the price according to the escalation provisions.

Are you the officer of QEGB who really has the conduct of this case so far as QEGB is concerned?--When you say "conduct"?

Are you the person who deals with the solicitors and so on on behalf of QEGB?--I am a bit of a middle man, you might say, in that respect.

You have seen, I take it, the amended statement of claim that QEGB has in this case?--I am a little bit confused by all the statements of claim.

You are not on your own in that regard. May the witness see the amended statement of claim?

HIS HONOUR: One has not been filed. I have a copy. There should be two, of course, one for the judge and one for the file. There is only one so far.

BY MR. JACKSON: Have a look at paragraph 16 of that document. It refers in the last three lines to the cost of coal as notified by the defendant to the plaintiff and adjusted from time to time?-- (Witness looks.)

Sofar as the notifications of the cost of coal and adjustments to it that have been given by New Hope over the years are concerned, are they the documents that are Exhibits A1 and 2 - documents of that type to Mr. Walker's affidavit to which I took you a moment ago?--I would tend to think they were more the other ones. A1 and 2 are adjusted for quality, so they are not really the straight contract prices. The contract prices would be

the ones that come from Spry Walker even though it comes via a third party. It is still really coming from the colliery.

Is there an arrangement between QEGB and all the coal suppliers who have contracts similar to this with Spry Walker?-- Do all the calculations. They cost -----

In accordance with the agreement and then notify both sides?-- Right.

And then, of course, the contract itself contemplates that there will have to be adjustments to it once further information becomes available?--This is just on indices, yes.

And the way in which all that has happened over the years it has been going has been that Spry Walker work out the price in accordance with the contract and tell both parties?--That is right. That is how I understand it, yes.

Those are the notifications of the price that have been given by New Hope so far as you are aware?--That would be my interpretation.

Perhaps you could hand back that statement of claim?-- (Witness does as requested.)

If New Hope's quantities were cut down under the agreement; in other words, if you gave them a 90 per cent firm purchase notice rather than one for an amount which was the same as the preceding year, then the result would be that its unit price per tonne of coal would go up?--The average price would change, yes.

And it would depend on the amount involved in the sense that it might not be worthwhile for you to give us a 90 per cent notice one year rather than 100 per cent because of the fact that you pay at a higher rate?--That is correct. That is the marginal price I was talking about before.

Would you look at Exhibit B to your affidavit where you talk about the position at Swanbank? So far as Swanbank was concerned, did it have small or relatively small stockpile facilities?--550,000 tonnes is a fairly large stockpile.

550,000 tonnes capacity?--That is right. 10,000 is in the bunkers. I am thinking of the bunkers as part of the stacks.

When you speak about double handling being a possibility, does the double handling come about because of the fact that the stockpile capacity is exhausted?--That is right.

The stockpile capacity becoming exhausted is caused by the orders that have been placed by the QEGB?--It comes about because the consumption is less than the deliveries, and deliveries are what we are notifying.

And the consumption being less than deliveries comes about because of the operation of your merit order, on the one hand, does it not?--No, it is more the level of demand in the system. If we haven't accurately forecast the system at Swanbank, because it was lower in the merit order it would tend to vary a lot more

than some of the other stations higher up the merit order,
and so variations would be felt there.

You do not want to create an additional stock ile at
Swanbank?--No. We were looking at the cost of putting an
auxiliary stock ile there, just comparing that with shifting
energy.

10 And at the time when that was being considered, which was,
I think, in 1979, to what extent were you familiar with the
price being charged for New Hope coal?--I would only be
familiar with whatever the latest notifications were. 10

You did not often see the notifications themselves, did
you?--Every year we had regular reviews. We just ask the latest
price and use that to price our escalations from then on into
the future.

You would just be told what the price was?--That is right.

20 You did not go and see the original document?--No, I
believed the clerk. 20

The Court adjourned from 1 p.m. till 2.30 p.m.

30

30

40

40

50

50

60

60

18718/82-- Govt. Printer, Qld.

4/9 h8/76

-28-

D.J. Barclay
Cross-examination

The Court resumed at 2.31 p.m.

DAVID JOHN BAGULEY, further cross-examined:

BY MR. JACKSON: I was asking you a little earlier about the discussions that had taken place in relation to the claim for retrospectivity, and you mentioned that it was in November 1981 that those discussions first took place?-- November 1981 there was the first meeting for the five-year review, and it was foreshadowed - my memory doesn't exactly serve because we are talking about two separate things, but that was when it was first raised, I think.

In any event, the price was not fixed for the five years after 1982 prior to the end of 1981, was it?-- That is 1983 to 1988 you are talking about?

1983 onwards, at any rate?-- At that point in time, no.

The contract suggested it had to be fixed by the end of December 1981?-- Yes.

And the parties discussed that through 1982?-- That's right.

HIS HONOUR: It has not been fixed at all, has it?

MR. JACKSON: No.

BY MR. JACKSON: The position, of course, is that the company is still supplying coal pursuant to the firm purchase order given in respect of 1983?-- That's correct.

In the discussions that took place from November 1981 onwards, the question of retrospectivity - to use that expression - was one that loomed large, was it not?-- Certainly brought up several times, yes.

You participated in those discussions?-- I was in the discussions when it was mentioned.

MR. JACKSON: I call for a letter dated 10 February 1982 from the defendant to the plaintiff.

MR. CALLINAN: At the moment I am sorry, we cannot produce that. I wonder if my learned friend has a copy?

MR. JACKSON: Yes. I am afraid it is rather ragged. I tender a letter dated 10 February 1982 from the defendant to the plaintiff.

Ex. 4

(Admitted and marked "Exhibit 4".)

MR. JACKSON: May the witness see that?

MR. CALLINAN: I wonder if I could see it first?

(Exhibit 4 handed to Mr. Callinan and then to witness.)

BY MR. JACKSON: That was one of the letters received, was it not, by the Board in relation to the claim that was foreshadowed

in relation to the costs of coal already delivered under the contract?-- Yes.

MR. JACKSON: I call for a letter dated 19 March 1982, again from the defendant to the plaintiff. Again I will tender a copy.

Ex.5 (Admitted and marked "Exhibit 5".)

MR. CALLINAN: May I see that?

(Exhibit 5 handed to Mr. Callinan.)

MR. CALLINAN: I object to this letter. Your Honour will appreciate I had not seen it before it was admitted and marked. It is simply not, in my submission, relevant.

(Letter handed to His Honour.)

HIS HONOUR: Yes, Mr. Jackson?

MR. JACKSON: I tendered the document as being a document which indicates clearly that it is part of correspondence in which the claim for more money payable under the contract is being made - is or is likely to be made.

HIS HONOUR: Mr. Callinan?

MR. CALLINAN: It may depend in the end, of course, what is the material time. I would concede that if it can be put upon that basis in its relevance, so far as time is concerned, it could be received. Your Honour appreciates that what I am objecting to really consists of all the complaints about the contracts.

HIS HONOUR: I don't think it prejudices you much, so I will permit it to remain an exhibit although its ultimate relevance may be one we may hear argument about.

(Exhibit 5 handed to witness.)

BY MR. JACKSON: You have got that letter there, have you?-- Yes.

That again is one of the letters that was received from the defendant?-- I believe so; yes, it would be.

In fact, you replied to it, did you not, by a letter dated 4 May 1982? Would you look at this document?-- (Handed to witness.)

That is a letter which you caused to be sent, is it not-- the one I have just handed to you?-- Yes, that's right.

MR. JACKSON: I tender that.

HIS HONOUR: Do you want to see it?

MR. CALLINAN: May I?

(Letter handed to Mr. Callinan and then to His Honour.)

HIS HONOUR: That letter of 4 May 1982 from the plaintiff to the defendant is Exhibit 6.

Ex.6

(Admitted and marked "Exhibit 6".)

BY MR. JACKSON: May the witness see that one that has been marked?-- (Handed to witness.)

10 Would you look at the third paragraph of that letter? That refers to claims for retrospective price adjustments; do you see that?-- That's correct. 10

It was clear to your mind at least on that day, 4 May 1982, that claims might be made in respect of price adjustments for coal supply at the time when the adjustment was to be made?-- It was clear to my mind at that point in time that if there were going to be any retrospective claims then information was required.

20 But it had been indicated to you, had it not, that there were likely to be claims which were retrospective in that sense?-- At this point in time I was aware of the fact that there may be retrospective claims, and I made a statement in the letter to say that if we were to entertain retrospective claims we would need at least this information I asked for in this letter. 20

You would want actual costs and conditions, as you say there, over the full period?-- That's right.

30 The full period of the contract. I take it you mean there from 1 January 1978?-- Not necessarily. It would be the full period of which they wanted to claim the retrospective claims. 30

Actual costs and conditions over the full period, you refer to?-- I am referring to the claim for retrospective price adjustments.

40 You will see you refer in that paragraph to the start of the contract, and you refer in the preceding paragraph to the start of the contract also, do you not?-- Yes. 40

In fact, you did receive a submission setting out a claim which was retrospective and which also sought a revised base price from 1 August 1981 - after that?-- I'm not sure of the dates. I would have to see what you sent to us.

50 MR. JACKSON: I call for a letter and annexures dated 17 June 1982 from the defendant to the plaintiff. I tender a copy of that document. 50

MR. CALLINAN: May I see it? I am fairly confident I know which document it is, but if I could look at it quickly?

(Letter handed to Mr. Callinan.)

60

Govt. Printer, Qld.

3/10 LRS/42

-31-

D.J. Baguley
Cross-examination

MR. CALLINAN: Your Honour, I object to the tendering of that as an exhibit, the same as Exhibit 5.

HIS HONOUR: I will record you as objecting to the relevance of the document. Subject to that, I admit it as Exhibit 7, letter of 17/6/82 as enclosure sent to plaintiff.

Ex.7 (Admitted and marked "Exhibit 7".)

BY MR. JACKSON: That document, of course, was one that was received by the Board, was it not?-- Yes.

And, of course, after that, discussions took place on a number of occasions concerning it?--That's correct.

HIS HONOUR: I infer, Mr. Jackson, that is the letter, or something referred to in your pleadings?

MR. JACKSON: No, that is the letter of 14 July. That document is set out in full in the pleadings and has been admitted.

BY MR. JACKSON: And then, on 30 June 1982, a firm purchase order was given to New Hope for 1983?-- To New Hope, yes.

Would you look at this document, please?-- (Handed to witness.)

That is the firm purchase notice, isn't it?-- That's correct.

MR. JACKSON: I tender that.

HIS HONOUR: Firm purchase notice in form of letter of 30 June 1982 from plaintiff to defendant is Exhibit 8.

Ex.8 (Admitted and marked "Exhibit 8".)

BY MR. JACKSON: The quantity which was the firm purchase for 1983 was 400,000 tonnes?-- That's correct.

Which was no reduction on the previous year?-- That's correct.

Although you were aware of the fact that a claim at that point had been made in respect of retrospective increases?-- It was a claim that had been made, yes.

There were discussions which took place after 30 June 1982 up to October 1982 dealing with claims for a retrospective increase that had been made, discussions between the Board and New Hope?-- At some stage in that period the Board wrote to New Hope saying that they wouldn't entertain any retrospective claims.

It wasn't until much later?-- I can't remember any dates.

There were discussions which took place after 30 June 1982 with New Hope in relation to New Hope claiming for a retrospective increase?-- I think I must explain at this stage that we employed the--the State Electricity Commission came in as a

consultant for us to look at this claim, and I was only peripherally involved, so I can't really be totally sure of it, the facts and everything that was discussed. The letters were posted - purely put through me more as a post box than anything else, to make sure that they were quite properly recorded.

MR. JACKSON: I call for and also tender a letter dated 21 October 1982 from the defendant to the plaintiff.

HIS HONOUR: Letter of 21 October 1982 to the plaintiff will be Exhibit 9. I will record an objection if you want to.

MR. CALLINAN: Can I see that one, Your Honour?

HIS HONOUR: Yes.

(Handed to Mr. Callinan.)

MR. CALLINAN: I make the same objection.

MR. JACKSON: Before that document is marked, I missed a letter that I wanted to tender which precedes it in date. It might be convenient to tender that first. I tender a letter dated 24 September 1982 from the Board to the defendant.

HIS HONOUR: Letter of 24 September 1982 from the Board to the defendant will be Exhibit 9.

Ex. 9

(Admitted and marked "Exhibit 9".)

MR. JACKSON: And I tender, and also call for, a letter dated 4 November 1982 from the defendant to the plaintiff. I tender in that regard.

HIS HONOUR: Just to make it clear, because I don't think I have formally said I have altered the exhibit numbers, Exhibit 9 will become Exhibit 10. Exhibit 9 is the letter of 24 September '82 and the letter of 21 October '82, that's the one that is changed to Exhibit 10. This one now is Exhibit 11, that's the letter of 4 November 1982 from the defendant to the plaintiff.

Ex. 10

(Admitted and marked "Exhibit 10".)

Ex. 11

(Admitted and marked "Exhibit 11".)

BY MR. JACKSON: I want to turn your attention, please, to the tender that was sought from people in relation to the Brisbane powerhouses. That tender was for a period commencing on 1 January '83, wasn't it?-- That's correct.

After the period which would be after the first five year period of the New Hope agreement?-- That's correct.

During 1980, the Board in fact asked New Hope to provide about 8,000 tonnes of coal in addition to the coal that it was to supply them in the last three months of the year?-- We had certainly at some time - I'm not sure of the time - but we did ask for additional coal, whether it was 8,000 tonnes or whether it was -----

It was at the higher price than you would have otherwise had to pay?-- My recollection of any extra purchases was at contract prices, but I could be wrong.

The merit order you were talking about before lunch, the merit order is, itself, subject to a number of constraints, is it not, which sometimes prevent the optimum situation from being obtained?-- That's correct. We would have a long - what you are talking about is a long term merit order, that we plan merit order - yes.

In fact, the transmission system limitations themselves are a problem?-- On occasions, yes.

And of course you have got the start-up costs of various units?-- These are taken into consideration. We virtually have two merit orders: a merit order to get it on line and a merit order once it is on line.

Where you have got system loading, which dictates that some units should be shut down overnight, have you got to take into account the cost of restarting it in the morning?-- That's right.

You have got, also, powerhouses like Tennyson B, which have got spreader/stoker boilers, hasn't it?-- That's correct.

And they have got significantly lower start-up costs than Swanbank A?-- That's correct.

And Swanbank A has a different type of boiler?-- Pulverised fuel with oil for start-up.

The working of the merit order, of course, is subject to black bans and industrial problems?--At times, yes.

The power workers have not been unenthusiastic about having strikes from time to time, have they? --They have had their occasions, yes.

The merit order, of course, in practice is very much subject to major plant outages?--That's correct.

That could force the operation of less economic plants?-- Sorry, just on what I said there, the merit order stays the same--just because something/out of service - it drops down - it still stays in the same area.

What is the purpose of having the record books?--So, you know each one next should step into the breach.

Then, of course, in the working out of power stations you have problems with the storage of coal at stations which are high up on the list, which can occur? They can occur in relation to mine production and transportation?--They can occur, yes.

And they can force rescheduling?--That's virtually when you make a change in the merit order when something happens in the system.

That also is subject to the nature of the particular coal contracts you have got: that is, in the sense that short term ones might come to an end and you might not have one to replace it immediately?--Yes, if we have a short term contract that could be the situation.

Also, of course, if you have increased operations at a particular station then the coal consumption there is increased?-- Correct.

That can give rise to shortages, making you go elsewhere?-- Right, yes, that could happen.

You can also have other constraints arising where you have fixed tonnage coal contracts, can't you?--We certainly can. There are fixed tonnages with no variations whatsoever.

You have contracts that have a range?--Yes.

You would order the coal, in a case like this, six months before the year in which it is to be delivered?--Right.

If you have an area with where the load growth falls and the total system estimates are less than budgeted for, then the lowest merit order would operate at a reduced output?--That's correct.

If you are committed to accepting fixed coal quantities, then they may have to be dealt, in servicing, at the expense of some lower cost power stations?--Or stockpiled.

MR. JACKSON: I have nothing further.

RE-EXAMINATION:

BY MR. CALLINAN: You were asked some questions to the effect of whether you saw all of the pro forma invoices and indeed, I think, the adjusted changes by the accountants on behalf of the defendant. Do you remember being asked those questions?--Yes.

Did you know the price being charged for coal by the defendant when you actually did your merit rankings?--Yes, we asked for the latest prices and the projections on escalation factors in the future to arrive at our planned merit order.

You had to know that and had to find that out before you did it, is that correct?--That's correct.

You were, I think, informed by the clerk in charge of that and you said, "I would use the latest price, I believe, that the clerk gave." Do you remember saying that?--That's correct.

Did you at any time when you did any merit orders know anything - or merit rankings - know anything in respect of retrospective claims?--Not with those merit times we did, the merit order calculations, no.

MR. CALLINAN: Might the witness be excused?

HIS HONOUR: You are free to go, witness.

NORMAN ROSS WALKER; sworn and examined:

BY MR. CALLINAN: Your full name is Norman Ross Walker and you live at 11 Balmore Street, Indooroopilly and you are a Corporate Economist by profession, is that so?--Yes.

You are the chief financial officer of the plaintiff corporation?--Yes.

How long have you held that position?--Two and a half years.

Before you held that position, what was your position?-- Budget co-ordination officer with the same organisation.

Were you involved, before you obtained your present position, in the preparation of annual budget forecasts for the plaintiff corporation; that is, before and now?-- Yes.

You have sworn two affidavits in these matters. You are aware now, of course, that the defendant is seeking, in fact, retrospective reviews?--Yes.

When did you first learn of that?--The matter was discussed with me in a formal sense some three months ago, from memory.

In an informal sense did you know of that, or of that possibility, before then?--Yes, but I can't recall the exact time at which I became aware that the case was -----

Can you tell me this: the Board actually sells bulk electricity, or electricity in bulk?--Yes.

The purchasers of that bulk electricity ^{have} remained the same since the inception of the contract, the subject of this case?-- No. We have had two additional bulk supply purchasers added in that time.

Who are they and when were they added?--The two in question are two aluminium smelters, QAL and Comalco. The dates -----

Approximate dates would do?--It was 1979 for QAL and 1980 for Comalco, I think.

You may be familiar with the documents. Do you remember the documents which were exhibited to that second, shorter affidavit which you swore as being a pro forma invoices and a document from Spry Walker and Company and Touche-Ross and Company?--Yes.

I want you to look, for example, at the one which is the account dated 14 June 1982?--(Handed to witness.)

Do you see the form of that document?--Yes.

It has, "Month", "Provisional Price", "Current Provisional Price", "Final Price", and "Price to be invoiced." Was that a standard form? Did you receive such documents before 14 June 1982? Yes.

For what period of time did you receive documents in that form?--To the best of my knowledge this is the form that invoices have been presented to the Board from Spry Walker and Company to Touche-Ross and Company.

Whose accountants are they, to your knowledge?--I am assuming I don't know.

Did you act upon those in any way in preparing budgetary forecasts?--These prices, together with our estimates of the movements in the indices in the contract, formed the basis of price estimates that were used in determining forward forecasts.

You do not employ these accountants, do you?--No.

HIS HONOUR: I think it is in one of the letters, actually.

MR. CALLINAN: What was in one of the letters, Your Honour?

HIS HONOUR: One of the letters says who belonged to Spry Walker.

MR. CALLINAN: I think my learned friend asked a question of Mr. Baguley and that he gave an answer to it. It was probably an unnecessary question.

HIS HONOUR: It is Exhibit 4. "Anticipated company officers ... C.S. 29 contract."

MR. CALLINAN: That is the oral evidence of this witness.

CROSS-EXAMINATION:

BY MR. JACKSON: When did you first read the contract, C.S. 29?-- When I first took my current position I read all of the contracts within the purview of the Department to which I was made the head. I haven't looked at them since.

When did you become head of your Department?-- In November 1981.

The documents that are exhibited to your shorter affidavit set out two invoices in the form of an invoice and also set out a letter of 14 June 1982 from Spry Walker and Company and the enclosures to it. Am I right in thinking that that form of document had been used throughout the first five years of the contract?-- To the best of my knowledge, yes.

The prices set out there are, from your understanding, the coal prices escalated according to the provisions of the contract?-- Yes.

In other words, the amount calculated in accordance with the contract?-- Yes.

And it is that which you use in preparing budgets?-- We use those as bases on which then we estimate anticipated increases during the period of the forecast.

And anticipated increases under the contract?-- Yes.

For whatever reason under the contract?-- I don't think I understand the question.

You put a percentage, I take it, on to the cost of coal actually being charged at that time?-- Yes.

And the percentage that you put on, was that a percentage covering the whole of Queensland?-- In making estimates of coal prices for inclusion in the five-year forecasts and the annual budgets, each contract - the price to be paid under each contract was estimated separately and worked out in accordance with the changes which were estimated to be purchased during that period.

So you did not just take the current prices and expected tonnages and then, once you got the resulting figure, add a percentage on to that?-- No.

You then applied an estimate of what the increase might be in respect of particular contracts during the budget period?-- Yes.

What percentage did you apply in respect of New Hope?-- I would be unable to recall the exact percentage increases that were used in the calculations for each of the five years for any one of the estimates that were done for the five-year period.

Did you apply the same percentage to the West Moreton producers to Swanbank or did you apply different ones for each producer?-- Without checking working papers I would not be able to give an answer to that question.

The percentage that you applied to various contracts varied, is that the case?-- Yes.

Varied by what order?-- We have some contracts for coal delivered to power stations not dependent on cost of supply of coal from the West Moreton fields which do have different indices and different formulas.

Have a look at Exhibit A(1) to your longer affidavit. Item I(k) states, "Estimates for the years 1979-80 and 1982-83 are shown in Appendix 4 and then calculated with allowances of 5 per cent for escalation of coal costs and 10 per cent for fuel oil costs."?-- Yes.

I suggest to you that that would make the uninitiated reader think you had applied 5 per cent to the total of the coal costs for the preceding year. Do you agree with that?-- Yes, I will agree with your statement.

1
That would be quite wrong? Had it not been done in that
simple way?-- Certainly during the period this particular
document - as you can see, it pre-dates my employment by the
Q.E.G.B. and certainly my position that I currently hold or
did hold. Certainly in my time we have not calculated
escalations in the way that is set out in paragraph I(k).

10
You would agree with me that it is a pretty rough and
ready way of making an estimate, namely, by adding a percentage
on?-- It may appear to be a rough and ready way, but in 1978-79¹⁰
at the time of inflation and escalation that was currently then
in place, it may not have been a rough and ready way.

Over a period of five years the estimate was made?-- Yes.

Did you play any part in preparing Exhibit A(1)?-- No.

What about Exhibit A(2)?-- No.

20
Exhibit A(2) refers to the cost of fuel in item 14. Do
you agree with the proposition contained there that the cost of
fuel consumed is an item which is extremely difficult to
predict with an accuracy better than about 5 per cent either
way?-- Yes.

You agree with that?-- Yes.

Look at Exhibit A(3). Is that your work?-- I don't appear
to have a copy of A(3). To answer your question, yes.

30
Have a look at this copy?-- (Witness does as requested.)

In paragraph 13 you say, "As explained in previous reports
to the Board the cost of fuel consumed is difficult to predict
as it can be affected by a number of factors including plant
availability, station efficiency, hydro production and coal
heat values."?-- Yes.

40
I take it you are still of the view that it is difficult
to predict?-- Yes.

And, of course, one factor you did not mention there is
the amount payable under the contract?-- We have always
regarded, I think, one of the easiest things to predict being
coal price.

Because of the contract?-- Yes.

50
I will not take you through Exhibits A(4) and A(5), but
they were prepared by you?-- Yes, under my direction.

And one sees in those documents remarks to the same effect
as those to which I have just referred?-- Yes.

Is it also right that the Board has not charged to its
operating fund the cost of coal when purchased?-- The Board,
in common with most large generating -----

60
I am asking about the Board?-- The Board buys coal through
its capital fund. It pays for fuel consumed through its

operating fund at the time it consumes the fuel.

It pays itself, you mean?-- Yes.

The documents that you have exhibited to your shorter affidavit, do you see those as they come in month by month?-- No, I don't.

Who looks after those?-- The finance clerk in the creditors' section of the finance department.

10 Before you had to look at them in connection with this case, when had you last seen them?-- I had never seen them. 10

If you want to find out the price of coal for the moment from the New Hope contract, how would you go about finding that out?-- I would go to the head of the creditors' section and ask how much we are paying for coal.

To New Hope?-- Yes.

20 And he would tell you the price?-- Yes. 20

MR. CALLINAN: I have no re-examination. I have Mr. Maguire here. I do not know whether my learned friend wants him for cross-examination.

MR. JACKSON: I would not want him.

MR. CALLINAN: That is our case.

MR. JACKSON opened the case for the defendant.

During the opening -

MR. JACKSON: If I could turn then to the defence and counterclaim, the only evidence we intend to adduce in that regard is evidence from Mr. Seymour. Mr. Seymour has sworn an affidavit dated 20 June 1983 and also another affidavit dated 20 June 1983 which I would seek to file and read. Subject to that, that is the evidence I propose to call.

HIS HONOUR: You have no objection to these affidavits being read?

MR. CALLINAN: No.

HIS HONOUR: Just for the sake of distinguishing them, I am going to call the shorter, two-page one number 1, and the other one I will call number 2. That is simply so we know what we are talking about.

MR. CALLINAN: I should, I think, take an objection to the first affidavit of Mr. Seymour. I object to paragraph 6.

HIS HONOUR: On what basis?

MR. CALLINAN: It is hearsay.

HIS HONOUR: But isn't there an issue in this case as to whether this institute will or will not deal with the matter?

MR. CALLINAN: I should make my position clear. I would not object to A and B. The real thing I am objecting to is D. Your Honour can see why. It is something I would really want explored with the maker of the statement. It is not, in other words, just a technical objection.

HIS HONOUR: Do you wish to be heard, Mr. Jackson?

MR. JACKSON: In our submission it is a matter for cross-examination, really, rather than anything else.

HIS HONOUR: I am inclined to think it could be relevant. It is either designed to show that your client, Mr. Callinan, has been muddying the water

MR. CALLINAN: It does not really quite say that, if I might say.

HIS HONOUR: Or in which event it goes to the points raised by the pleading, namely that you have procured or taken steps to prevent the matter from proceeding, or else if it does not bear that inference it does not seem to be terribly relevant. It does not seem to go to the extent of establishing that the Committee will not act but rather that a chairman of it is of the view that the committee might not or would not appoint someone. I regard it as a rather doubtful relevance or utility. I doubt if the case is likely to be decided on it one way or the other; but anyway, you have objected to paragraph 6D. of what I call the number 2 affidavit of Mr. Seymour.

MR. JACKSON: Mr. Seymour is the only witness I have.

MR. CALLINAN: I do not require Mr. Seymour for cross-examination.

MR. JACKSON addressed His Honour (3.40 p.m. -)

10

10

20

20

30

30

40

40

50

50

60

60

EXHIBITS

In the Supreme Court of Queensland

AGREEMENT made the *Twelfth* day of *July* 1976.

No. 14 Exhibit (1) Coal Supply Agreement No. CS/29/2 between Defendant and Plaintiff 12th July 1978

BETWEEN:

NEW HOPE COLLIERIES PTY. LTD., a company duly incorporated in Queensland and having its registered office at 25th Floor, Watkins Place, 288 Edward Street, Brisbane in the State of Queensland (hereinafter with its successors and assigns called "the Company") of the first part

10

AND:

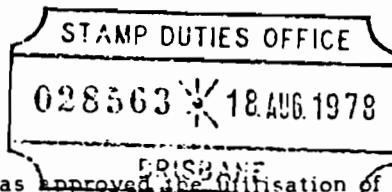
THE QUEENSLAND ELECTRICITY GENERATING BOARD, a statutory corporation created pursuant to the Electricity Act, 1976 having its office at 255 Adelaide Street, Brisbane in the said State (hereinafter with its successors and assigns called "the Generating Board") of the second part

20

with the consent and approval of THE STATE ELECTRICITY COMMISSION OF QUEENSLAND, a corporation sole created pursuant to provision of The Electricity Act, 1976 (hereinafter called the "Commission") and THE QUEENSLAND COAL BOARD, a body corporate created pursuant to the provisions of the Coal Industry (Control) Act of 1948 (hereinafter called the "Coal Board")

30

WHEREAS:



- A. The Governor in Council has approved the utilisation of West Moreton coal for electricity generation on the basis outlined herein as agreed between the Company and the Generating Board and approved by the Commission and the Coal Board
- B. Both the various companies operating coal mines in the Ipswich district on the one hand and the Generating Board on the other

40

50

60

10

hand recognise that the continued demands of the Generating Board for the supply of coal to its Swanbank power station is basic to resolve uncertainties concerning the future of the Ipswich coal field and to provide an orderly and predictable market for coal for the companies and as a result both the companies and the Generating Board have agreed on long term coal supply arrangements and the companies have agreed to grant the Generating Board first call on specified supply and specified reserves

20

C. After negotiations between the Commission, the Generating Board and the Companies the Generating Board with the approval of the Coal Board has agreed to purchase from the Companies operating mines in the Ipswich District a Total Minimum Quantity of 16,000,000 tonnes of coal over a period of approximately fifteen years commencing on the first day of January, 1978, of which quantity the Generating Board will purchase during the first five year period commencing on the first day of January, 1978 a minimum of 6,837,000 tonnes of coal. The Generating Board has entered into the long term Agreements on the basis that the quantities referred to therein are minimum quantities only and that the Companies have the capability to supply and are prepared to make available for purchase specified quantities well in excess of the Generating Board's minimum requirements

30

40

D. The Company is engaged in mining in areas in the Ipswich coal fields holding certain coal mining leases and having proven reserves, methods of coal mining, available machinery, methods of preparation, plant capacity and bulk storage capacity and ability to deliver, all of which details appear in the Schedules to this Agreement

50

60

E. The Company has agreed with the Generating Board for the supply of quantities of coal of specified quality with provisions for variation in quantity and quality over the period of the Agreement and with provisions for changes in price with respect thereto

10

F. The approvals of the Commission on the one hand and the Coal Board on the other have been given to the said Agreement to buy and sell

G. The Generating Board and the Company have agreed that the pricing structure be reviewed at least each five years as herein provided but that there be variations in price related to changes in cost, it being the clear intention of the parties that any clauses of the Agreement relating thereto are intended to reflect the effects of changes in cost of producing and supplying coal under this Agreement.

20

30

NOW THIS AGREEMENT WITNESSES AND IT IS HEREBY MUTUALLY AGREED:

1. INTERPRETATION

The terms and expressions where used in this Agreement shall have the meanings set out against such terms and expressions respectively as follows:

40

- (a) "Basic Standard Quality" shall be the quality of coal defined in Clause 6.1.
- (b) "Base Date" shall be the thirtieth day of June, 1977, or such date as may be substituted by any amendment of Schedule C.
- (c) "Base Price" shall be the price determined in accordance with Clause 8 applicable at the Base Date.

50

60

10

20

30

40

50

60

- (d) "Coal" or "Product Coal" shall be coal prepared and processed to meet the quality requirements contained in Clauses 6.1 and 6.2 hereof.
- (e) "Commencement Date" shall be the first day of January, 1978.
- (f) "The Companies": Wm McQueen & Co. Pty. Ltd.
New Hope Collieries Pty. Ltd.
Southern Cross Collieries.
Rhondda Collieries Pty. Ltd.
Westfalen Colliery Pty. Ltd.
Aberdare Collieries Pty. Ltd.
(short term purchase only.)
- (g) "Contract Minimum Purchase" shall be the minimum quantity of Coal that the Generating Board has agreed to purchase from the Company under this Agreement, being the quantity stated in Clause 3.1.
- (h) "Contract Price" shall be the price per tonne payable for Coal of Basic Standard Quality determined from time to time by the application of all relevant escalation factors to the Base Price and any review thereof.
- (i) "Delivery", "Delivered" or "Deliver" shall relate to the supply by the Company to the Generating Board of Coal to and onto transport arranged by the Generating Board which transport could be automotive truck, rail waggon, conveyor belt, river barge or other means.
- (j) "Dollar" shall be an Australian dollar.
- (k) "Firm Deliveries" shall be that quantity of coal required to be delivered in any Half Year determined in accordance with Clause 4.2.

- (l) "Firm Purchase" shall be the quantity of Coal required to be delivered pursuant to the Firm Purchase Notice given by the Generating Board for any Year commencing with the tonnage ascribed to the term in Clause 3.1 hereof.
- (m) "Firm Purchase Notice" shall be the notice given in accordance with Clause 4 for any particular Year after 1978. 10
- (n) "Guaranteed Minimum Purchase" shall be the minimum quantity of Coal that the Generating Board has contracted to purchase for any Year, as provided herein.
- (o) "Half Year" shall mean a period of six consecutive calendar months commencing on 1 January or 1 July. . . . 20
- (p) "Month" shall be a calendar month.
- (q) "Scale of Base Prices" shall be the scale of prices for various quantities of coal of Basic Standard Quality as stated in Schedule C applicable at the Base Date.
- (r) "Scale of Contract Prices" shall be the scale of prices determined from time to time by the application of all escalation factors to the Scale of Base Prices and any review thereof. 30
- (s) "Swanbank power station" shall be the coal fired power stations A and B owned and operated by the Generating Board at Swanbank in the State of Queensland.
- (t) "Tonne" shall be 1,000 kilograms. 40
- (u) "Tonne Equivalent" or "Tonne Eq." shall be a quantity of coal with an as received heat content of 23.72 Gigajoules.
- (v) "Total Minimum Quantity" shall be the Total Minimum Quantity of Coal which the Generating Board has agreed to purchase from the Company over approximately 15 years from 1 January, 1978. 50
- (w) "Year" shall be calendar year.

2. GENERAL

- 2.1 Agreement having been reached with Companies operating coal mines in the Ipswich District, the Generating Board agrees to purchase from the Companies over a period of approximately 15 years from 1 January 1978, a Total Minimum Quantity of 16 million Tonnes Eq. of Coal including Guaranteed Minimum Purchases for the five year period from 1 January 1978 to 31 December 1982 totalling 6,837,000 Tonnes Eq.
- 2.2 The Total Minimum Quantity comprises the Contract Minimum Purchases from individual Companies together with additional purchases to be advised by the Generating Board subject to the approval of the Coal Board.
- 2.3 The total of the Firm Purchases from individual Companies for 1978 is approximately 83% of the Coal Board allocations for 1977 and divided amongst the Companies in approximately the same proportion as applied with the Coal Board allocations.
- 2.4 Thereafter the Firm Purchase in any Year shall be not less than 90% of the Firm Purchase in the preceding Year, except by agreement. Subject to additional purchases by the Generating Board as provided herein, the aggregate of the Guaranteed Minimum Purchases over the first five Year period, and the Contract Minimum Purchase over 15 Years, as stated in Clause 3, have been determined accordingly.
- 2.5 The general terms of this Agreement apply to the quantity of coal agreed to be purchased by the Generating Board under this Agreement whereas the Base Prices and provisions for Variation in Prices for Changes in Costs apply only to purchases in the first five year period from 1 January 1978 to 31 December, 1982. The Base Price and provisions for variations in prices for changes in costs for purchases after 31 December 1982 shall be agreed by the parties prior thereto in accordance with Clause 8.

3. COAL QUANTITIES

3.1 Subject to these presents the Company agrees to supply to the Generating Board and the Generating Board agrees to purchase and take from the Company from the Commencement Date the following minimum quantities of coal over the following periods:

Firm Purchase for 1978 400,000 Tonnes Eq.

Aggregate of the Guaranteed

Minimum Purchases over the

five Years from 1 Jan. 1978

to 31 Dec. 1982 1,645,000 Tonnes Eq.

Contract Minimum Purchase

for the 15 years from 1 Jan.

1978 to 31 Dec. 1992 3,290,000 Tonnes Eq.

3.2 Subject to these presents the Company agrees to supply to the Generating Board and the Generating Board agrees to purchase and take from the Company the Firm Purchase from Year to Year as provided in this Agreement. The Firm Purchase for 1978 is that stated in Clause 3.1. The Firm Purchase for any subsequent Year shall be notified in accordance with Clause 4.

3.3 Except by agreement, or as hereinafter provided the Firm Purchase for any Year subsequent to 1978 shall be not less than 90% nor greater than 110% of the Firm Purchase in the preceding Year subject to the Guaranteed Annual Production Capabilities of the Company and the Total Quantity Available for Purchase over the term of the Agreement as provided in Clause 5 and Schedule B.

The Guaranteed Minimum Purchases in each of the first five years, and the equivalent average daily delivery rates based on 220 normal working days per year, shall be not less than the following, subject to Clauses 11.2 and 11.3:

10

20

30

40

50

60

*In the Supreme
Court of
Queensland*

No. 14
Exhibit (1)
Coal Supply
Agreement
No. CS/29/2
between
Defendant
and Plaintiff
12th July 1978
(Contd.)

YEAR	GUARANTEED MIN. PURCHASE (Tonnes Eq./annum)	EQUIVALENT AV. DELIVERY RATE (Tonnes Eq./day)
1978	400,000	1,820
1979	360,000	1,640
1980	325,000	1,480
1981	290,000	1,320
1982	270,000	1,230

3.4 The Company agrees to make available for purchase the total quantity of Coal stated in Schedule B as the Total Quantity Available for Purchase over approximately 15 Years from 1 January 1978, subject to the Generating Board agreeing to purchase pursuant to the procedures provided herein.

4. NOTIFICATION PROCEDURES - DELIVERY OF COAL

4.1 Notice in writing of the Firm Purchase for a particular Year subsequent to 1978 shall be given to the Company at least six months prior to the commencement of that Year, or as provided in Clause 4.6, or such lesser times as the parties shall agree. Notice shall be deemed to have been given and received of the Firm Purchase for 1978 as stated in Clause 3.1.

4.2 Following receipt of the Firm Purchase Notice, the parties shall not later than three months prior to the commencement of each Year agree on the Firm Deliveries for each Half Year which shall be subject to the provisions of Clause 11 hereof. In the absence of agreement the Firm Deliveries for each Half Year shall be half the Firm Purchases for that Year.

4.3 The Generating Board shall take and pay for deliveries of Coal supplied on a regular basis at an agreed rate of supply consistent with the Firm Deliveries for that particular Half Year.

4.4 Written indication of the estimated Coal requirements for each of the ensuing five Years shall be given to the Companies at the same time as the notice of Firm Purchases each Year.

- 4.5 In the event that the Company fails to deliver Coal at such a rate as is necessary to fulfil its obligations under this Agreement the Generating Board shall have the right to revise the Firm Purchase in any Year in accordance with Clause 11, and the Firm Deliveries in each Half Year will be amended accordingly. 10
- 4.6 If the Company is able to guarantee to supply Coal in excess of the quantities listed in Schedules B & C, the Company shall notify the Generating Board accordingly and additional purchases may be arranged as provided herein. 20
- 4.7 Should the Generating Board intend to purchase from the Company in any year more than 10% in excess of the Firm Purchase in the preceding year, it shall give to the Company at least twelve months notice of its requirements (or such other period as the parties may agree). The Company shall notify the Generating Board within one month of this notice whether it can supply the increased quantity and the price therefor. The Base Price to apply shall be consistent with the then prevailing scale of Base Prices set out in Schedule C, the parties having agreed that there shall be no increase in Base Price for such increased quantities unless special circumstances exist, having regard to the basic purpose of the Agreement to provide for the requirements of Swanbank power station, and also the guaranteed capability of the Company and quantity available for purchase by the Generating Board as stated herein. As soon as possible thereafter the parties shall complete the arrangements for supply of the increased quantities which shall then be incorporated in the Firm Purchase for the particular year. 30
40
- 4.8 The Generating Board shall have the right to make short term additional purchases from the Company to meet special requirements. 50

Provided the Company shall agree to supply the additional quantity requested, it shall supply the same. The Base Price to apply shall, unless otherwise agreed, be consistent with the Scale of Base Prices set out in Schedule C hereto.

4.9 Delivery of Coal under this Agreement shall be deemed to have commenced on the first normal working day of January 1978.

4.10 Coal shall be made available by the Company for transport by the Generating Board on normal Monday to Friday working days and deliveries shall be spread as uniformly as possible between the hours of 7 a.m. and 11 p.m. on each normal working day. Coal will not be accepted outside these hours unless otherwise agreed, such arrangements applying to specific consignments only.

4.11 Coal deliveries shall be made at an agreed daily rate approximating the Firm Deliveries for that Half Year divided by the number of normal working days in that Half Year. The Company shall ensure that its delivery bin is of adequate capacity to avoid undue delays in transportation arranged as provided herein.

4.12 Subject to Clause 11, nothing herein shall affect the right of the Company to make up any shortfall necessary to complete its obligations in respect to the total Firm Deliveries in any Year.

5. NOMINATION OF RESERVES - COLLIERY CAPABILITY

5.1 It is a condition of this Agreement that the information contained in Schedule A, in particular the Company's reserves, mine facilities, and capability of its operations, are correctly stated and that the Generating Board has entered into this Agreement on the basis of the information contained therein.

5.2 It is a condition of this Agreement that the measured reserves of the Company stated in Schedule A exceed by at least 25% the Contract Minimum Purchase and that the Generating Board has first call on such measured reserves.

- 5.3 It is a condition of this Agreement that the Guaranteed Annual Production Capability of the Company to produce Coal and the Total Quantity Available for Purchase over approximately 15 Years from 1 January 1978 are as stated in Schedule B hereto.
- 5.4 It is a condition of this Agreement that the Company will if requested satisfy the Generating Board as to its continued capability to meet its quantity commitments arising pursuant to this Agreement. In the event that the Generating Board is not so satisfied the provisions of Clause 11 shall apply.
6. QUALITY OF COAL - GUARANTEES
- 6.1 The Basic Standard Quality of Coal for price adjustment purposes shall be (on an as-received basis) :
- | | | |
|------------------------|---|------------|
| Total Moisture Content | - | 7% |
| Ash Content | - | 21% |
| Gross Heat Value | - | 24.2 MJ/kg |
- There shall be a price adjustment as provided in Clause 10 hereof if there is any variation from the Basic Standard Quality.
- 6.2 The Company warrants to the Generating Board that Coal supplied by the Company to the Generating Board will conform to the Coal properties as stated in Schedule B.
- 6.3 In the event that the Coal being delivered is in the opinion of the Generating Board outside the limits of acceptability as specified in this Clause, the Generating Board may instruct the Company to suspend deliveries of all Coal or Coal from a particular source until the Company is able to satisfy the Generating Board that the quality of Coal to be delivered is within the limits of acceptability. Under such circumstances the Generating Board shall make available to the Company the evidence on which the suspension of coal deliveries is based. All mine production costs associated with suspension of coal deliveries shall be borne by the Company.

10

20

30

40

50

60

10

Gross Heat Value : not less than 22.9 MJ/kg

Ash Content : not greater than 24.5%

Total Moisture Content : not greater than 10%

Sulphur Content : not greater than 0.8%

Ash Fusion Flow Temp.
(in reducing atmosphere): not less than 1,500°C

Volatile Matter : not less than 25%

20

Hardgrove Grindability
Index : not less than 55

Nominal Top Size : 32 mm

Fines Content : not greater than 40% minus 3 mm

7. WEIGHING, SAMPLING AND ANALYSIS OF COAL

7.1 The weight of Coal on which payment is to be based shall be ascertained by :

30

(a) Weight obtained from the certified weighbridge at the power station; or

(b) Weight obtained from certified weighers on conveyor belts supplying the power station; or

(c) Other means as shall be mutually agreed from time to time.

40

7.2 Testing and certification of weighers shall be carried out in accordance with the requirements of the Inspector of Weights and Measures and all matters in relation to the accuracy of weighing shall be subject to his adjudication.

50

7.3 The sampling, sample preparation and analysis and testing procedures shall conform to the relevant parts of Australian Standards K152, K164, 1038 and 1676 or as agreed from time to time. Sampling and analysis of the Coal shall be carried out by the Generating Board's authorised representatives.

- 7.4 A representative sample shall be obtained from each day's delivery. Surface moisture and residual moisture determinations shall be carried out on each day's sample. A representative portion of each day's air-dried sample shall then be set aside to form part of a composite sample for analysis as outlined below. 10
- 7.5 In each Month, the representative daily samples shall be made up into composite samples representative of up to five periods of approximately an equal number of working days. (These are nominally weekly samples). Not less than three suitable portions shall be prepared from each composite sample, one for the purpose of quality determination by the Generating Board, one to be made available to the Company if required for its own analyses, and the other portion to be held for possible independent analysis for four weeks from the date on which the Generating Board notifies the Company in writing of the quality determinations for that Month. 20
- 7.6 As soon as practicable after the preparation of each composite sample, the Generating Board shall determine the ash content and the gross heat value of a representative portion, and advise the Company of these determinations and also the moisture determinations in that period. 30
- 7.7 The results of these composite sample tests shall be adjusted to a total moisture content of 7%. The results of analyses so calculated in each Month shall be arithmetically averaged to determine the Monthly quality for the determination of coal quality price adjustments described in Clause 10. In the case of gross heat value and ash content, the average quality shall be determined on the basis of composite sample analyses and in the case of moisture content on the basis of daily sample analyses. 40 50

*In the Supreme
Court of
Queensland*
No. 14
Exhibit (1)
Coal Supply
Agreement
No. CS/29/2
between
Defendant
and Plaintiff
12th July 1978
(Contd.)

10

7.8 In the event of short periods of unavailability of the sampling equipment or the testing equipment, the monthly average coal properties shall be calculated from those samples which are available, provided that samples are available for not less than one third of the normal daily deliveries and not more than four consecutive daily samples are omitted. In the event of extended unavailability of automatic sampling equipment, intermittent sampling by hand will be carried out to obtain the minimum number of samples as outlined above.

20

7.9 In the event of a disagreement with the determination of any coal properties apart from total moisture content, the Company shall notify the Generating Board in writing within two weeks of the Generating Board's written advice of such determination. In that event, the third portion shall be made available to a mutually agreed independent laboratory for umpire analysis, and in the event that the umpire's determination is outside the inter-laboratory tolerance of the Generating Board's original determination the umpire's analysis shall be adopted. The costs incurred in carrying out any umpire's determination shall be borne by the Company, unless the umpire's determination is adopted as above, in which case the Generating Board will bear the costs of the umpire's analysis.

30

40

7.10 There shall be no provision for the umpire analysis of free moisture content, but the Company shall be entitled to satisfy itself that moisture content is determined in accordance with this Agreement by nominating a representative to be present at normal moisture determinations at the Generating Board's laboratory.

50

60

- 7.11 The Company shall be entitled to any reasonable inspection or check on the weighing, sampling or testing facilities, and to have reasonable access for witnessing weighing, sampling and analysis of Coal. 10
8. PRICE AND PAYMENT FOR COAL DELIVERED
- 8.1 Unless otherwise provided herein, the Base Price per tonne to be paid by the Generating Board to the Company for Coal of Basic Standard Quality shall be in accordance with the Scale of Base Prices stated in Schedule C. 20
- 8.2 The Base Price from Schedule C to apply in any Year shall be that corresponding to the Firm Purchase as notified in accordance with Clause 4.
- 8.3 The Scale of Base Prices relates to the costs of labour, materials and supplies, and all other cost factors incurred by the Company in the production and supply of the Coal applying at the Base Date. The Components of the Base Prices applicable to each cost factor, for the various quantities and Base Prices stated in Schedule C, are stated in Schedule D. All the prices in the Scale of Base Prices shall be subject to increase or decrease for changes in costs as specified in Clause 9. 30
- 8.4 If the Firm Purchase for any Year does not conform with any of the quantities listed in Schedule C, the Base Price and the Components of the Base Price shall be agreed between the parties but shall be consistent with the Scale of Base Prices set out in Schedule C. 40
- 8.5 As soon as possible after the commencement of each Year, the Company shall advise the Generating Board of any reductions that could be made to the Scale of Base Prices for the following Year. Subject to agreement between the parties the revised Scale 50

10

of Base Prices and any change in the Base Date related thereto shall be incorporated in a Schedule which shall be substituted for Schedule C.

8.6 The price per Tonne of Coal of Basic Standard Quality and the scale of prices for various quantities, resulting from the application of all escalation factors to the Base Prices and any review agreed to in accordance with the above shall be referred to as the Contract Price and the Scale of Contract Prices.

20

8.7 The terms of supply of additional quantities beyond the initial five Year period (from the Commencement Date to 31 December 1982) shall be finalised before 31 December 1981. The new pricing structure to apply to such additional quantities shall reflect all the changes in costs to the Company including economies resulting from the amortisation of capital items still in use, technological advances, and items of expenditure not repeated, including the restoration of any open cut workings for which special allowances have been made in the Base Price, as well as changes in costs resulting from changes in mining conditions, new mining plant, and the scale of operations. The Generating Board shall have the right to satisfy itself that the new pricing structure reasonably reflects all such factors.

30

8.8 Either party may at any time request a renegotiation of new Guaranteed Minimum Purchases under terms to replace the existing Guaranteed Minimum Purchases. Such negotiations shall be entered into without prejudice to the existing entitlements of either party.

40

8.9 The Agreement may be changed by agreement between the parties.

8.10 Claims for payment shall be submitted to the Generating Board each Month by the Company for Coal delivered during the previous Month, and the Generating Board shall make payment by the

50

- end of the Month following that during which the Coal is delivered or within 14 days of receipt of the claim, whichever is the later date. Payment will be on the basis of the quantity of Coal delivered during the previous month at the Contract Price determined in accordance with the Agreement and adjusted in accordance with the provisions of Clause 10. 10
- 8.11 If the appropriate indices or determinations which establish the price variations applicable under the Agreement are not available at the time of submitting an account, pro forma invoices shall be submitted on the basis of previous information available. Subsequent adjustments shall be made when final invoices are submitted at some later date. 20
9. VARIATION IN PRICE FOR CHANGES IN COST
- 9.1. It is a fundamental condition of this Agreement that the escalation provisions shall properly reflect the effects of changes in costs on the cost of producing and supplying Coal under the Agreement. If the formulae employed are not properly reflecting such changes or if indices used for the purposes of this Clause cease to be available or continue to be unavailable for a period of six months, a review of the price variation provisions shall take place upon request by either party. Where the parties agree to an alteration it will be incorporated in the Agreement and will apply thenceforth. In any event such review shall take place at not more than five yearly intervals. Should the award working hours be reduced from 35 hours per week, then such review shall be undertaken forthwith, especially to assess the impact on non labour components. 30 40
- 9.2 Base Prices for various quantities stated in Schedule C shall be subject to adjustment to the extent of changes as from the Base Date in the cost components contained in Schedule D. For 50

10

Base Prices apart from those included in Schedule C, the cost components for price adjustment purposes shall be consistent with those stated in Schedule D.

9.3 The Components of Base Prices shall be subject to adjustment monthly and shall apply from the beginning of the Month immediately following that in which the change in cost factor or index occurs with the exception of adjustments to the statutory charges components which shall apply from the date upon which the change in the cost factor occurs.

20

9.4 All adjustments to prices made in accordance with this Clause shall be supported by such documentary evidence thereof as is available to the Company.

9.5 Adjusted components shall be expressed to four decimals of \$/Tonne and the Contract Price applicable at any time shall be rounded to the nearest cent per Tonne with 0.50 cents per Tonne rounded up.

30

9.6 Should any statutory or other similar regulatory body affecting the Coal Mining Industry:

(a) insert any new type of remuneration or new condition in any Industrial Awards set out in Schedule E; or

(b) make any variation or deletion of the existing awards set out in Schedule E; or

40

(c) impose any new cost, tax, (other than income tax), or like charge or any new obligation resulting in the same, or vary any such existing cost, tax, charge or obligation;

then in that event a factor will be inserted in the formula to cover any variation in cost, provided however that the components of the price applicable to any additional cost factor shall be agreed between the parties.

50

60

9.7 Except for variations, increases or costs that arise from rulings by the Coal Industry Tribunal or the Conciliation and Arbitration Commission or their respective successors or result from any arbitration or hearing, no variation, increase or cost arising from any registered or unregistered Industrial Agreement or Consent Awards made by the Company without the consent of the Generating Board shall be included in any factor inserted into any formula without the consent of the Generating Board.

9.8 The Base Price shall be adjusted for changes in costs by the following formula :

$$P = \left(A_B \frac{Q}{Q_B} + C_B \frac{S}{S_B} + D_B + E_B \frac{U}{U_B} + Z + Y \right)$$

where

P = Contract Price per tonne to apply from beginning of the next Month.

A_B = Component of Base Price applicable to labour and labour related costs.

Q_B = The weighted weekly labour rate (as defined later) applicable at the Base Date.

Q = The escalated value of Q_B.

C_B = Component of Base Price applicable to materials, supplies and consumables, electricity, sub-contracted repairs and depreciation on replaceable plant.

S_B = A composite index (as defined later) based on indices for imported materials, domestic materials and sub-contracted labour, at the Base Date.

S = The escalated value of S_B.

10

20

30

40

50

60

*In the Supreme
Court of
Queensland*

No. 14
Exhibit (1)
Coal Supply
Agreement
No. CS/29/2
between
Defendant
and Plaintiff
10 12th July 1978
(Contd.)

- D_B = Component of Base Price applicable to all non-escalating components.
- E_B = Component of Base Price applicable to other items including profit.
- U_B = The Consumer Price Index - All Groups - Brisbane, applicable at the Base Date.
- U = The escalated value of U_B .
- Z = Component of Base Price applicable to Statutory Charges.
- 20 Y = The actual variation per tonne in the defined statutory charges since the Base Date plus the cost per tonne of any additional statutory charge imposed.
- P_B = Base Price per tonne based on costs and conditions applying at the Base Date.
- 30 = $A_B + C_B + D_B + E_B + Z$

A schedule of components of the Contract Prices for various rates of delivery, similar to Schedule D, shall be prepared from time to time based on variations up to the end of a particular Month and applicable from the beginning of the next Month. This shall be termed the Schedule of Components of the Contract Prices.

40 9.9 Labour Component (A)

The Labour Components of the Base Prices include direct and indirect elements of labour costs at the Base Date and are based on the "weighted weekly labour rate" obtained from a specified weighting of selected labour classifications, at the Labour Rates for the prescribed working week for each classification payable under relevant industrial Awards together with indirect charges as detailed in Schedule E, pages 1, 2 and 3.

50

At the end of any Month in which a variation in the Award Labour Rates and conditions, including associated indirect charges as in Schedule E, has occurred, the adjusted "weighted weekly labour rate" (Q) shall be recalculated by applying the adjusted Labour Rates at the specified weighting for each classification as detailed in Schedule E.

10

The adjusted Labour Components shall be calculated by varying the Labour Components of the Base Prices in the same proportion as the variation between the "weighted weekly labour rate" at the end of any Month and the "weighted weekly labour rate" applying at the Base Date, and shall apply from the beginning of the next Month.

20

WEIGHTED WEEKLY LABOUR RATE (Q)

The weighted weekly labour rate (Q)

$$= W1(AC1) + W2(AC2) + W3(AC3)$$

Weighting shall be :

$$W1 = 0.7$$

30

$$W2 = 0.2$$

$$W3 = 0.1$$

$$\underline{\quad}$$

$$1.0$$

$$\underline{\quad}$$

Award classifications :

AC1 = The weekly labour rate for a coal cutting machine man - Classification No. 4 in the Coal Miners Award - Southern Division.

40

AC2 = The weekly labour rate for an Electrical Fitter - Classification No. 2 in the Electrical and Engineering Trades Award - Southern Division.

AC3 = The weekly labour rate for an Undermanager in Charge - Classification No. 2(b) in the Colliery Staffs Award - Division "A" - Southern Division.

50

60

The weekly labour rate for each award classification shall
be :

AC1 = F+G+H+J+K+L+M+N+P+R+T+U+V+W+X

AC2 = F+G+H+J+K+L+M+N+P+R+T+U+V+W+X

AC3 = F+G+H+J+K+L+M+N+R+T+U+V+W+X

Where :

F = Award rate per week.

G = District allowance per week.

H = Award rate per week x award percentage shift
allowance for afternoon shifts x proportion
of employees on the afternoon shift at the
Base Date.

J = Award rate per week x award percentage shift
allowance for night shifts x proportion of
employees on the night shift at the Base Date.

K = (The sum of the award rate per week plus
the District Allowance) x award weeks of annual
leave ÷ working weeks per annum.

L = Award rate per week x the award annual leave
percentage loading x award weeks of annual
leave ÷ working weeks per annum.

M = (The sum of the award rate per week plus
the District Allowance) x number of annual
statutory holidays ÷ 5 ÷ working weeks per
annum.

N = Award rate per week x (the number of award
sickpay days per annum less the number of
award sickpay days per annum at the Base
Date) ÷ 5 ÷ working weeks per annum.

P = Overtime payment based on the prescribed working week of 47 hours (consisting of 4 days x 10 hours plus one day x 7 hours) less the award hours per week (35 hours at the Base Date) x award overtime factor (time and one half for the first 3 hours of overtime and double time thereafter at the Base Date) x award rate per week ÷ award hours per week.

R = The sum of factors F to P above x proportion of employees on underground work at the Base Date x relevant workers compensation percentage rate for underground coal miners (SGIO Code 330202).

T = The sum of factors F to P above x proportion of employees on surface work at the Base Date x relevant workers compensation percentage rate for surface work (SGIO Code 331002).

V = The sum of factors F to P above x the special Section 14B workers compensation percentage rate.

W = The sum of factors F to P above x payroll tax percentage rate.

X = Employer's contribution to the miners' pension fund per week for an adult employee x 52 ÷ working weeks per annum.

The Base Date award provisions applicable to the calculation of Q_B are as tabulated in Schedule E - Page 3 and the calculation of Q_B is set out on Pages 1 and 2 of that Schedule.

10

20

30

40

50

60

9.10 Materials Component (C)

The Materials Components of the Base Prices include the cost per tonne of coal, of materials, supplies and consumables, electricity, sub-contracted repairs and depreciation on replaceable plant as at the Base Date and shall be varied in the same proportion as variations in the following Materials Index, (S), based on indices published monthly by the Australian Bureau of Statistics to represent as closely as possible actual changes in the costs at the Company's mine of imported and domestic materials and equipment and sub-contracted labour.

Materials Index (S)

Ch
[Signature]
blu.

$$= 0.2 \frac{TA}{TA_B} + 0.4 \frac{TB}{TB_B} + 0.4 \frac{SA \times SC_B \times SD_B}{SA_B \times SC \times SD}$$

where :

TA_B = The value at the Base Date of the index published monthly by the Australian Bureau of Statistics most appropriate for imported materials used at the Company's mine, being the "Metal Manufactures etc." segment of the "Manufactured Materials (Imported)" component of the "Price Index of Materials used in Manufacturing Industry".

TA = The escalated value of TA_B .

TB_B = The value at the Base Date of the index published monthly by the Australian Bureau of Statistics most appropriate for domestic materials used at the Company's mine, being the "All Manufacturing Industry Index" of "Articles Produced by Manufacturing Industry".

TB = The escalated value of TB_B .

SA_B = The weekly wage rate, Queensland - Adult
Males - for the industry group Engineering,
Metals, Vehicles at the Base Date, as published
monthly by the Australian Bureau of Statistics.

10

SA = The escalated value of SA_B .

SC_B = The award working weeks of the engineering
industry at the Base Date.

SC = The escalated value of SC_B .

SD_B = The award weekly hours of the engineering
industry at the Base Date.

20

SD = The escalated value of SD_B .

The indices applicable to the calculation of S_B at the Base
Date of 30 June 1977 are :

TA_B = 231.7

TB_B = 205.0

SA = \$143.49 per week

30

SC = 46 weeks per year

SD = 40 hours per week

The value of SB at the Base Date of 30 June 1977 is 1.0.

9.11 Non-Escalating Component (D_B)

The Non-Escalating Components of the Base Prices include depre-
ciation and amortisation of capital items not replaced over
the duration of contract and other items and shall remain constant
for the duration of this Agreement at five per cent of the Base
Prices.

40

9.12 Statutory Charges Component (Z)

The Statutory Charges Component of the Base Prices comprise
Royalties, Excise, Levies and any other imposts payable to
Statutory Authorities or Funds, expressed on a cost per tonne
basis.

50

60

At the Base Date of 30 June, 1977, the Statutory Charges component is \$0.093 per tonne consisting of :-

Royalty	\$0.05
Commonwealth Excise	\$0.043

In the event of any variation in Royalties and Excise or the imposition of new imposts (including severance fund levies) payable to Statutory Authorities or Funds in addition to those included in the Base Price Component, the Base Price will be varied by an equivalent amount (Y) calculated on a cost per tonne basis, and will apply from the date of such variation.

9.13 Other Component (E)

The Other Components of the Base Prices shall include all cost components not included in the Labour, Materials, Statutory Charges and Non-Escalating Components as at the Base Date, and including profit, and shall be varied in the same proportion as variation in the Consumer Price Index - All Groups - Brisbane published by the Australian Bureau of Statistics.

The Consumer Price Index - All Groups - Brisbane, applicable at the Base Date of 30 June 1977, is 226.6.

10. VARIATION IN PRICE FOR CHANGES IN QUALITY

10.1 Analytical results shall be calculated to a moisture content of 7.0 percent, and the results of analyses so calculated for all the composite samples prepared in each calendar month shall be arithmetically averaged.

10.2 The Contract Price for any Month determined in accordance with Clause 9 shall apply to Coal which, after sampling, analysis and averaging, as hereinbefore described, yields results which show ash percentage between 19.5% and 22.5% and gross heat value in excess of 23.72 MJ/kg. Should the average of results of analyses lie outside these limits, payment shall be adjusted in accordance with the following table:

Range of % Ash Content at 7% Constant Moisture	Minimum Heat Value MJ/kg at 7% Constant Moisture	Payment Adjustment
16.4 or below	25.56	+8%
16.5 - 17.4	25.26	+6%
17.5 - 18.4	24.96	+4%
18.5 - 19.4	24.66	+2%
19.5 - 22.5	23.72	No adjustment
22.6 - 23.5	23.38	-2%
23.6 - 24.5	23.02	-4%
24.6 - 25.5	22.80	-5.5%
25.6 - 26.5	22.52	-10%
26.6 or above	Below 22.52	-15%

10

20

10.3 Ash percentage shall be used as the primary bases for quality evaluation, but shall be accepted only if the corresponding minimum heat values do not reach the minimum appropriate to the range in which the average ash percentage falls, then the coal shall be graded for evaluation in the category corresponding to its heat value.

30

10.4 If analysis of any daily sample yields a total moisture percentage in the coal received at the power station in excess of 9%, the total tonnage of coal received on that day shall be recalculated in weight by reducing the weight by 2% plus the percentage moisture content in excess of 9% and payment shall be made on the basis of the recalculated tonnage of coal.

40

11. FAILURE TO DELIVER COAL

11.1 Should the Company fail to deliver Coal in each of three consecutive months at such a rate as is necessary to fulfil its obligation under this Agreement, the Generating Board shall have the right to obtain any resulting shortfall from other sources, and the Company shall not be entitled to make up the shortfall.

50

60

10

11.2 Should the Company continue to fail to deliver Coal in each of the following three months at such a rate as is necessary to fulfil its obligations under this Agreement or fail to comply with the provisions of Clause 5.4, ~~for reasons other than as provided for in Clause 12,~~ the Generating Board shall have the further right to reduce the Firm Purchase in the following Year by the actual shortfall in supplies over six or more consecutive months, the shortfall in any month being determined by subtracting the quantity actually delivered from the quantity calculated by dividing the Firm Deliveries for the particular Half Year by the number of normal working days in that Half Year and multiplying by the number of normal working days in that month.

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

20

11.3 In any event the Firm Purchase in any Year may be reduced to the actual deliveries in the preceding Year where this is more than 10% below the Firm Purchase for that preceding Year as a result of shortfall in supplies of more than 5% in three or more months.

30

12. FORCE MAJEURE

12.1 Should the Generating Board or the Company be delayed or prevented from carrying out the whole or any part of its obligations under this Agreement by reason of force majeure then the obligations of the Generating Board and/or the Company shall be suspended by the extent made necessary by such force majeure and during its continuance provided that the effect of such force majeure is eliminated as far as practicable with all reasonable despatch.

40

12.2 The term "force majeure" shall include:

- (a) Strikes, illegal stoppages or labour or union organised reduction of production.
- (b) Interference by some Statutory Authority or Government.

50

60

- (c) Lock outs.
- (d) Failure or serious interruption of electricity supply.
- (e) Fires, floods, explosions, and mine collapses, which could not reasonably have been prevented by the affected party.
- (f) Civil commotion, insurrection or riots, acts of sabotage, terrorism or any similar act by one or more persons.
- (g) Acts of war whether declared or not.
- (h) Storm or tempest.
- 12.3 In the event that either party is unable to or likely to be unable to carry out its obligations because of force majeure the party directly affected shall immediately notify the other party in writing giving particulars of the relevant cause. 20
- 12.4 Notwithstanding any other provisions contained in the Agreement deliveries that otherwise would have been made under the Agreement during any period in which the performance of either party is so prevented as aforesaid may be made at such time or times as the Generating Board and the Company mutually agree. 30
13. ARBITRATION
- 13.1 If at any time any questions, dispute or difference whatsoever shall arise between the Generating Board and the Company upon, or in relation to, or in connection with the Agreement, which cannot be resolved by the contracting parties within a period of 3 months either party may as soon as reasonably practicable thereafter by notice in writing to the other party specify the nature of such question, dispute or difference, and call for the point or points at issue to be referred to Arbitration. 40
- 13.2 Arbitration shall be effected : 50
- (i) By an Arbitrator agreed upon between the parties, or failing agreement upon such an Arbitrator;

*In the Supreme
Court of
Queensland*

No. 14
Exhibit (1)
Coal Supply
Agreement
No. CS/29/2
between
Defendant
and Plaintiff
12th July 1978
(Contd.)

10

(ii) By an Arbitrator appointed by the Committee of the Southern Queensland Branch for the time being of The Australasian Institute of Mining and Metallurgy, provided always that in any case wherein the question, dispute or difference involves a matter of law, the person to be appointed by the said Committee shall be a barrister at law practising in Brisbane.

20

13.3 The submission to Arbitration shall be deemed to be a submission to Arbitration within meaning of the Arbitration Act of 1973 or any statutory modification thereof.

13.4 The award of the Arbitrator shall be final and binding on the parties.

13.5 Any reference to Arbitration howsoever made shall not exclude the jurisdiction of any competent court in the State of Queensland in particular the Supreme Court of Queensland on any matter of fact or law.

30

13.6 Pending decision on awards hereunder the parties shall so far as it is reasonably practicable so to do continue to perform and comply with their respective rights and obligations under this Agreement.

14. COAL INDUSTRY CONTROL ACTS

40

The provisions of the Coal Industry (Control) Acts 1948 to 1965 shall apply and this Agreement shall be construed as subject to that Act and subsequent amendments. In the event that any future amendment to that Act should alter materially the established interests of either the Generating Board or the Company in coal supplies referred to herein then at the request of either party the parties shall confer and make such further agreement as may then be necessary and lawful to implement the intent of this Agreement.

50

60

15. SCHEDULES

The schedules annexed hereto marked A (pages 1 and 2), B, C, D and E (pages 1, 2 and 3) are intended to be incorporated in this Agreement and form part hereof.

20

30

40

50

60

In the Supreme
 Court of
 Queensland
 No. 14
 Exhibit (1)
 Coal Supply
 Agreement
 No. CS/29/2
 between
 Defendant
 and Plaintiff
 12th July 1978
 (Contd.)

COAL SUPPLY AGREEMENT CS/29/2

FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATION

SCHEDULE A - GENERAL INFORMATION (as at the Base Date of 30 June, 1977)

10

1. Name of Colliery .. New Hope Colliery
- Address .. Mail Service 460,
- IPSWICH. Q. 4305
2. Location .. Adjacent to Swanbank Power Station
3. Details of Coal Mining Leases held
 ...697, 423, 464, 508, 695, 711, 737, 742, 744 (Pending).....
 ...750 (Pending).....

20

4. Reserves of Workable Coal

<u>Name of Seam</u>	<u>Thickness</u>	<u>Measured Reserves</u>	<u>Indicated Reserves</u>	<u>Measured Reserves</u>
				<u>Salcable</u>
(a) Lagoon	15'	12 379 000	4 300 000	6 276 000
(b) Bluff	25'	9 000 000	-	2 925 000
(c) Rob Roy	26'	3 600 000	3 659 000	1 008 000
(d)				

30

5. Method of Calculating Reserves
 .. By Independent Mining Engineer and Colliery Survey Staff
-
-
-

40

6. Plans
 (a) Areas designated as reserves for guaranteed quantity. (Attachment
 (b) Areas designated as reserves for 25% excess. (Attachment 2)
 (c) Current workings and development. (Attachment 3)
 (d) Proposed future working and development. (Attachment 4)

50

7. Mining
 (a) Method of coal mining
 .. Bord & Fillar Underground ans small open cut operations
-
- (b) Machines available
 .. 5 only 48H Lee Norse continuous miners
- 60H
- 40 " " 40SC6 JOY Shuttle Cars
- 2 " " Noyes Hydro Cars
- (c) Machines Required
 .. Replacemnt. Only
-

60

SCHEDULE A cont'd

8. Coal Preparation

(a) Method of coal preparation

Dense Medium and Water Cyclones.....
.....

(b) Capacity of Plant

250 tonnes per hour.....
.....

9. Product Coal Live Storage

(a) Type

Consumer Bin.....

(b) Capacity

600 Tonnes.....

10. Mine Stockpile

Proposed Holding 9,200tonnes of product coal
..... NILtonnes of R.O.M. coal

11. Sizing of Product Coal

Typical Analysis:

+32.00 mm square mesh 6.8%
-32.00 to 3 mm square mesh .. 57.7%
- 3 mm square mesh 35.5%

12. Consistent Daily Delivery Capability of Product Coal

<u>Name of Mine</u>	<u>Tonnes per day</u>
New Hope Colliery.....	1 820
.....
.....
.....

10

20

30

40

50

60

10

COAL SUPPLY AGREEMENT NO. CS/29/2

FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATION

SCHEDULE B - GUARANTEES

20

30

40

		Guaranteed Value
<u>Guaranteed Quality of Coal</u>		
(a)	Gross Heat Value MJ/kg	22.90
(b)	Ash Content %	24.50
(c)	Total Moisture Content %	10.0
(d)	Sulphur Content %	.4
(e)	Ash Fusion "Flow" Temperature (Reducing Atmosphere) °C	1600°C
(f)	Ash Fusion "Deformation" Temperature (Oxidising Atmosphere) °C	1400°C
(g)	Volatile Matter %	26.0
(h)	Hardgrove Grindability Index	55
(i)	Nominal Top Size mm	32
(j)	Minus 3.0mm Size %	35.5
<u>Guaranteed Annual Production Capability (1)</u>		
	1978	400 000 tonnes
	1979	400 000 tonnes
	1980	400 000 tonnes
	1981	400 000 tonnes
	1982	400 000 tonnes
	after 1982	400 000 tonnes
	Total Quantity Available for Purchase over approximately 15 Years from 1 January, 1978 (1)	6 000 000 tonnes

(1) The Guaranteed Annual Production Capabilities and the Total Quantity Available for Purchase are subject to the provisions of Clauses 3 and 4 hereof.

50

60

COAL SUPPLY AGREEMENT NO. CS/29/2
FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATION
SCHEDULE C - SCALE OF BASE PRICES AT BASE DATE OF 30 JUNE 1977

YEAR	SCALE OF BASE PRICES FOR VARYING QUANTITIES	
	Firm Purchase Notified in Accordance with Clause 4 (tonnes per annum)	Price of Coal of Basic Standard Quality (\$/tonne)
1978	400 000	23.67
1979	360 000 400 000	25.71 23.67
1980	325 000 400 000 360 000	26.38 23.67 25.71
1981	290 000 325 000 360 000 400 000	28.67 26.38 25.71 23.67
1982	270 000 290 000 325 000 360 000 400 000	29.66 28.67 26.38 25.71 23.67

10

20

30

40

50

60

In the Supreme
Court of
Queensland

No. 14
Exhibit (1)
Coal Supply
Agreement
No. CS/29/2
between
Defendant
and Plaintiff
12th July 1978
(Contd.)

COAL SUPPLY AGREEMENT NO. CS/29/2

FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATION
SCHEDULE D - COMPONENTS OF BASE PRICES
STATED IN SCHEDULE "C"

10

20

COMPONENTS OF BASE PRICES (\$/TONNE) FOR THE VARIOUS QUANTITIES STATED IN SCHEDULE C					
ANNUAL RATE OF DELIVERY (tonnes per annum)	400 000	360 000	325 000	290 000	270 000
Labour	11.0500	12.2808	12.3522	13.7016	13.8952
Materials	6.0965	6.8989	6.9115	7.5921	7.9902
Statutory Charges	0.0930	0.0930	0.0930	0.0930	0.0930
Non-Escalating	1.1835	1.2855	1.3190	1.4335	1.4830
Other	5.2470	5.1518	5.7043	5.8498	6.1985
Total	23.67	25.71	26.38	28.67	29.66

30

40

50

60

COAL SUPPLY AGREEMENT NO. CS/29/2
FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATION
SCHEDULE E - PAGE 1
CALCULATION OF WEIGHTED WEEKLY LABOUR RATE
At Base Date of 30 June, 1977

Award Classification No. (G.C.O.A.)	Nominated Labour Force		Weekly Labour Rate (refer Schedule E Page 2)	Weighted Weekly Labour Rate \$/week
	Classification of Labour	Weighting		
	--	--		
No. 4 in Coal Miners'	Coal Cutting Machineman	0.70	404.1339	282.8937
No. 2 in Elec. & Engrs.'	Electrical Fitter	0.20	403.5427	80.7055
No. 2(b) Colliery Staffs'	Undermanager in Charge	0.10	504.0961	50.4096
	TOTAL	1.00	Weighted Weekly Labour Rate	414.0118

COAL SUPPLY AGREEMENT NO. CS/29/2
FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATIONS
SCHEDULE E - PAGE 2
CALCULATION OF WEEKLY LABOUR RATE
AT BASE DATE AT 30 JUNE 1977

10

CLASSIFICATION	COAL CUTTING MACHINE MAN	ELECTRICAL FITTER	UNDERMANAGER IN CHARGE
Award (Detailed in Clause 9.9 hereof) A.C.O.A. Classification No. Prescribed Working Hours Per Week Percentage of Labour Force : - on Afternoon Shift - on Night Shift - Underground - Surface	COAL MINERS 4 47 36.7% 13.7% 67% 53%	ELEC. & ENGIN. 2 47 36.7% 13.7% 67% 53%	COLLIERY STAFFS. 2(b) 35 36.7% 13.7% 67% 53%
<u>COMPOSITION OF WEEKLY LABOUR RATE (\$per week at Base Date)</u>			
(1) Award Wage for Award Hours District Allowance Per Week	F 190.80 G 10.00	190.50 10.00	342.10 10.00
(2) SUB TOTAL Shift Allowance - Afternoon 36.7% @ 15% x (1) - Night 13.7% @ 25% x (1) Loadings For : - Annual Leave 4/46 x (2) plus 4/46 x 17 1/2% x (1) - Statutory Hols. 2/46 x (2) - Sick Pay 0/46 x (1) - Overtime	H 200.80 J 10.5035 K 6.5349 L 17.4609 M 2.9035 N 8.7304 P 98.1257	200.50 10.4870 6.5246 17.4348 2.8989 8.7174 97.9714	352.10 18.8326 11.7169 30.6174 5.2059 15.3087 -
(3) SUB TOTAL Workers' Compensation : - Underground 8.91% x 67% x (3) - Surface 2.48% x 33% x (3) - Section 14B 0.88% x (3) Payroll Tax 5% x (3) Miner's Pension \$13.59 x 52/46	R 345.0589 T 20.5990 U 2.8240 V 3.0365 W 17.2529 X 15.3626	344.5341 20.5677 2.8197 3.0319 17.2267 15.3626	433.7815 25.8955 3.5501 3.8173 21.6891 15.3626
Weekly Labour Rate	404.1339	403.5427	504.0961

20

30

COAL SUPPLY AGREEMENT CS/29/2
FOR THE SUPPLY OF COAL FOR SWANLANK POWER STATION
SCHEDULE E - PAGE 3
AWARD AND OTHER CONDITIONS
AT BASE DATE OF 30 JUNE 1977

10

1. Award Rate per Week :

(a)	Coal Cutting Machineman	- \$190.80
(b)	Electrical Fitter	- £190.50
(c)	Undermanager in Charge	- \$342.10

2. Award Hours per Week : 35

20

3. Prescribed Working Week :

	<u>Award Hours per Week</u>	<u>Prescribed</u>	<u>Overtime</u>	<u>Hours/Week</u>	<u>Prescribed</u>
		<u>At</u>	<u>At</u>	<u>Equivalent</u>	<u>Working</u>
		<u>1 1/2</u>	<u>2</u>	<u>Ordinary</u>	<u>Week</u>
		<u>Time</u>	<u>Time</u>	<u>Hours</u>	<u>(Hrs/Week)</u>
Coal Cutting Machineman	35	12	--	18	47
Electrical Fitter	35	12	--	18	47
Undermanager in Charge	35	--	--	--	35

4. District Allowance per Week : \$10.00

30

5. Annual Leave :	Leave per Annum	- 4 weeks
	Loading	- 17 1/2% of Award Rate

6. Statutory Holidays, Days per Annum : 10

7. Sick Days per Annum : 10

8. Working Weeks per Annum :	Weeks per Annum	52
	less Annual Leave	4
	less Statutory Holidays	2
		<u>6 = 46</u>

9. Workers Compensation :	Underground Workers	- 8.91%
	Surface Workers	- 2.48%
	Section 14B	- .88%

40

10. Payroll Tax : 5% of Total Wage

11. Miners Pension : \$13.59 per week

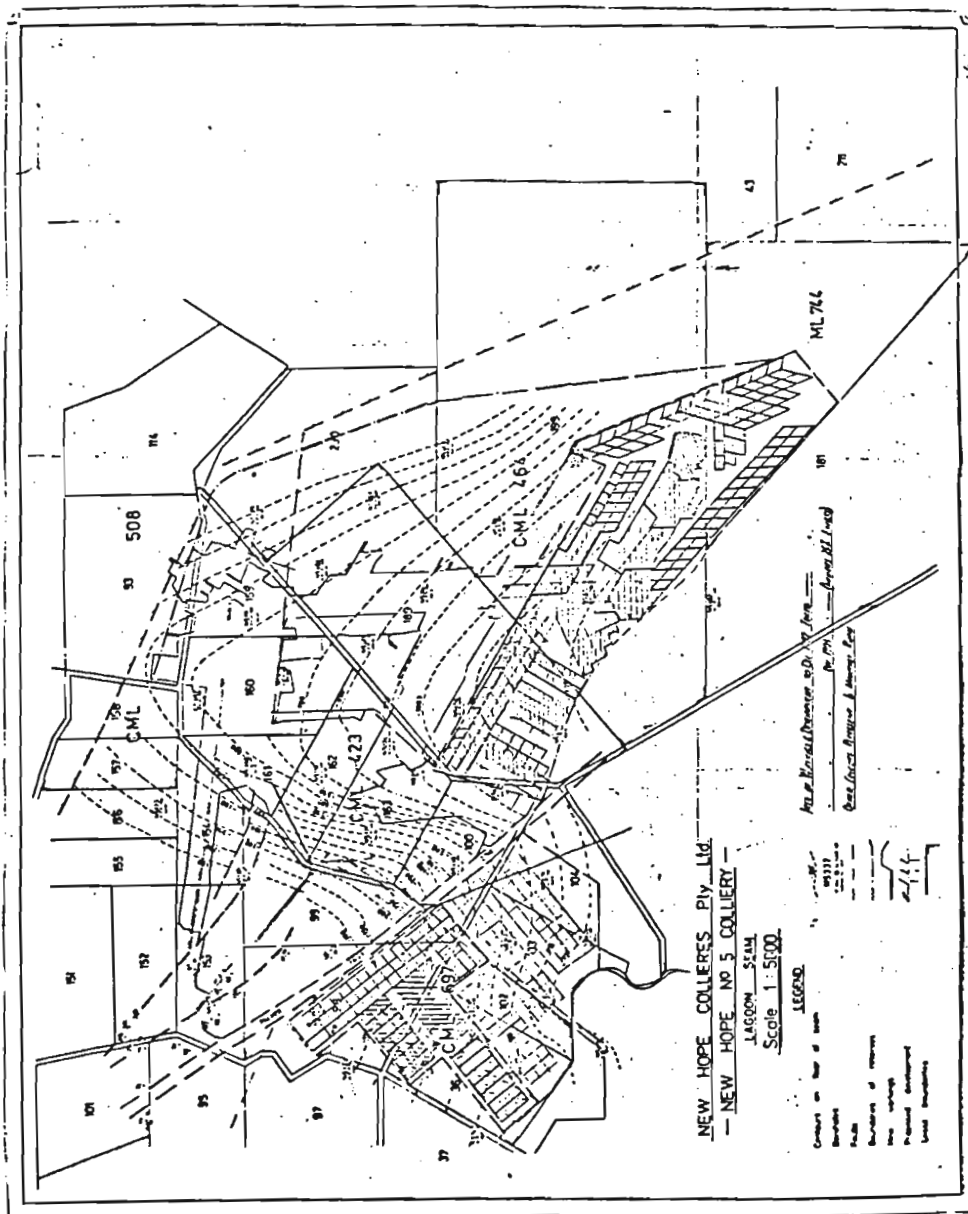
12. Shift Allowances :	Percentage Loading	
	afternoon	- 15%
	night	- 25%

50

60

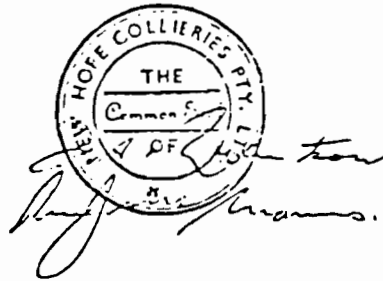
In the Supreme Court of Queensland

No. 14 Exhibit (1) Coal Supply Agreement No. CS/29/2 between Defendant and Plaintiff 12th July 1978 (Contd.)



IN WITNESS WHEREOF NEW HOPE COLLIERIES PTY. LTD. and THE QUEENSLAND ELECTRICITY GENERATING BOARD have executed this Agreement on the day and year first hereinbefore written.

THE COMMON SEAL of NEW HOPE COLLIERIES PTY. LTD. was hereunto affixed in accordance with the Articles of Association and by the authority of a resolution of the board of directors previously given in the presence of FRANK ALBERT ROBERTSON a director and PAUL WILLIAM JAMES M. M. 211.10 the secretary



10

THE OFFICIAL SEAL of THE QUEENSLAND ELECTRICITY GENERATING BOARD was hereunto affixed by FREDERICK ALEXANDER MCKAY The General Manager of The Queensland Electricity Generating Board under the authority of a resolution of The Generating Board and in the presence of IAN WILSON The Secretary of The Generating Board.

Frederick Alexander McKay

Ian Wilson

20

1978-79 29/17 S. 11. 10-11-025

15 THE STATE ELECTRICITY COMMISSION OF QUEENSLAND and THE QUEENSLAND COAL BOARD hereby consent to and approve of the within Agreement between the Company and THE QUEENSLAND ELECTRICITY GENERATING BOARD

THE STATE ELECTRICITY COMMISSION OF QUEENSLAND by EDWARD DOUGLAS MURRAY State Electricity Commissioner

Edward Douglas Murray

THE QUEENSLAND COAL BOARD by GEORGE WILLIAM COOK Chairman

George William Cook

40

50

VARIATION OF CONTRACT NO CS/29/2 BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD

AND NEW HOPE COLLIERIES PTY. LTD. dated 12th July, 1978

10

Pursuant to the provision of clause 9.6 of the abovementioned agreement dated 12th July, 1978 the parties hereby agree to the insertion of a factor in the formula contained in clause 9.9 to cover a variation in cost which has taken place.

20

1. The parties agree that the weekly labour rate AC3 shall now read as follows:

$$A C 3 = F + G + H + J + K + L + M + N + P1 + R + T + U \\ + V + W + X$$

30

2. The definitions of F, G, H, J, K, L, M, N, P, R, T, U, V, W and X shall remain the same but there shall be inserted a factor P1 after P as follows:

40

P1 = Overtime payment for excess hours worked by Colliery Staff "A" Division based on the prescribed working week of 47 hours (consisting of 4 days x 10 hours plus one day x 7 hours) less the notional hours per week for Colliery Staff "A" Division "In charge" employees (40 hours from 31st March, 1978) x award excess hours payment factor (double time over 40 hours per week based on a 4 week average) x award rate per week ÷ award hours per week.

50

3. Schedule E of the agreement on page 3 "Award and other Conditions" shall be amended as to paragraph 3 thereof to provide as follows:

3. Prescribed Working Week:

	Award Hours per Week	Notional Hours per Week	Prescribed At 1½ Time	Overtime At 2 Time	Hours/Week Equivalent Ordinary Hours	Prescribed Working Week (Hrs/Week)	
Coal Cutting Machine-man	35	-	12	-	18	47	20
Electrical Fitter	35	-	12	-	18	47	
Under-manager in	35	40	-	7	14	47	30

DATED the 15th day of August 1978.

NEW HOPE COLLIERIES PTY. LTD.

Per: 

40

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Per: 
IAN WILSON, Secretary

50

VARIATION OF CONTRACT NO CS/29/2 BETWEEN :

THE QUEENSLAND ELECTRICITY GENERATING BOARD

AND NEW HOPE COLLIERIES PTY LTD dated 12 July 1978

10

Pursuant to the provisions of Clause 9.6 of the abovementioned agreement dated 12 July 1978 the parties hereby agree to the insertion of an amended factor in the formula contained in Clause 9.9 to cover a variation in cost which has taken place.

20

1. The parties agree that the weekly labour rate AC3 shall now read as follows:

$$A C 3 = F + G + H + J + K + L + M + N + P1 + R + T + U \\ + V + W + X$$

30

2. The definitions of F, G, H, J, L, M, N, P, R, T, U, V, W and X shall remain the same but there shall be inserted a factor P1 after P as follows:

P1 = Overtime payment for excess hours worked by Colliery Staff "A" Division based on the prescribed working week of 46 hours (consisting of 4 days x 10 hours plus one day x 6 hours) less the notional hours per week for Colliery Staff "A" Division "In charge" employees (40 hours from 31 March 1978) x award excess hours payment factor (double time over 40 hours per week based on a 4 week average) x award rate per week ÷ award hours per week.

40

50

3. Schedule E of the agreement on page 3 "Award and other Conditions" shall be amended as to paragraph 3 thereof to provide as follows:

3. Prescribed Working Week:

	<u>Award Hours Per</u>	<u>Notional Hours Per</u>	<u>Prescribed At 1½ Time</u>	<u>Overtime At 2 Time</u>	<u>Hours/Week Equivalent Ordinary Hours</u>	<u>Prescribed Working Week (Hrs/Week)</u>
Coal Cutting Machine- man	35	-	12	-	18	47
Electrical Fitter	35	-	12	-	18	47
Under- manager in charge	35	40	-	6	12	46

DATED the *5th* day of *June* 1980.

NEW HOPE COLLIERIES PTY LTD

Per : *J. Ireland.*
Secretary

THE QUEENSLAND ELECTRICITY GENERATING BOARD

Per : *I. Wilson.*
IAN WILSON, Secretary

20

30

40

50

No. 14
Exhibit (2)
Variation
Agreement
between
Defendant
and Plaintiff
20th October
1981



AGREEMENT made the *Twelfth* day of *October* 1981

BETWEEN:

NEW HOPE COLLIERIES PTY. LTD., a company duly incorporated in the State of Queensland and having its registered office at Shop 9, Raceview Shopping Centre, Raceview Street, Raceview in the State of Queensland (hereinafter with its successors and assigns called "the Company") of the first part

AND:

THE QUEENSLAND ELECTRICITY GENERATING BOARD, a statutory corporation created pursuant to the Electricity Act, 1976-1980 having its office at 255 Adelaide Street, Brisbane in the said State (hereinafter with its successors and assigns called "the Generating Board") of the second part

with the consent and approval of THE STATE ELECTRICITY COMMISSION OF QUEENSLAND, a corporation sole created pursuant to provision of the Electricity Act, 1976-1980 (hereinafter called "the Commission") and THE QUEENSLAND COAL BOARD, a body corporate created pursuant to the provisions of the Coal Industry (Control) Act 1948-1978 (hereinafter called "the Coal Board").

WHEREAS:

A. By an Agreement dated the Twelfth day of July 1978 the Generating Board agreed to purchase and the Company agreed to supply to the Generating Board certain quantities of coal over a period of approximately 15 years.

Exhibit No. 2

- B. Clause 9.6 of the aforementioned Agreement lists certain events which may be initiated by a statutory or other similar body affecting the coal mining industry which may result in variations in cost including the imposition of any new obligation effecting such variation. Clause 9.6 further provides for the inclusion of a factor in the formula to cover any such variation in cost providing the components of the price applicable thereto shall be agreed between the parties. 10
- C. At the time of signing the aforementioned Agreement, employees of cartage contractors used by the Company were employed under the Carting Trade Award. The Coal Industry Tribunal has now directed that from 18 June 1979 these employees be employed under the conditions of the Coal Miners Award. 20
- D. The Generating Board and the Company have agreed that prices be increased to reflect variations in cost as a result of the said change in award. 30

NOW THIS AGREEMENT WITNESSES AND IT IS HEREBY MUTUALLY
AGREED:

1. That Schedule C contained in the aforementioned Agreement and entitled "Scale of Base Prices at Base Date of 30th June 1977" be amended by deleting same and substituting a new Schedule C attached hereto and entitled "Scale of Base Prices at Base Date of 30th June 1977 effective from 1 July 1979". 40
2. That Schedule D contained in the aforementioned Agreement and entitled "Components of Base Prices stated in Schedule 'C'" be amended by deleting same and substituting a new Schedule D attached hereto and entitled "Components of Base Prices stated in Schedule 'C' effective from 1 July 1979". 50

Exhibit No. 2

10

3. That the changes in price effected by the aforementioned amendments to Schedule C and Schedule D shall be effective as from the First day of July 1979.
4. That existing Clause 9.8 be deleted and substituted by Clause 9.8 below.

9.8 The Base Price shall be adjusted for changes in costs by the following formula as from 1 July 1979.

$$P = (A_B \frac{Q}{Q_B} + C_B \frac{S}{S_B} + D_B + E_B \frac{U}{U_B} + Z + Y + T_B \frac{L_0}{L_B})$$

where

20

P = Contract Price per tonne to apply from beginning of the next Month.

A_B = Labour Component of Base Price applicable to labour and labour related costs (excluding transport labour).

30

Q_B = The weighted weekly labour rate (as defined later) applicable at the Base Date.

Q = The escalated value of Q_B.

C_B = Materials Component of Base Price applicable to materials, supplies and consumables, electricity, subcontracted repairs and depreciation on replaceable plant.

40

S_B = A composite index (as defined later) based on indices for imported materials, domestic materials and subcontracted labour (excluding transport labour), at the Base Date.

S = The escalated value of S_B.

D_B = Non-escalating Component of Base Price applicable to all non-escalating components.

50

E_B = Other Component of Base Price applicable to other items including profit.

Exhibit No. 2

60

- U_B = The Consumer Price Index - All Groups -
Brisbane, applicable at the Base Date.
- U = The escalated value of U_B .
- Z = Statutory Charges Component of Base Price
applicable to Statutory Charges.
- Y = The actual variation per tonne in the
defined statutory charges since the Base
Date plus the cost per tonne of any
additional statutory charge imposed.
- T_B = Transport Labour Component of Base Price
applicable to transport labour.
- L_B = The weekly labour rate for transport
labour (as defined later) applicable at
the Base Date.
- L_0 = The escalated value of L_B .
- P_B = Base Price per tonne based on costs and
conditions applying at the Base Date.

$$= A_B + C_B + D_B + E_B + Z + T_B$$

5. That existing Clause 9.13 be deleted and substituted
by Clause 9.13 below.

9.13 Transport Labour Components (T_B)

The Transport Labour Components of the Base
Prices include direct and indirect elements of
transport labour costs at the Base Date and are
escalated in accordance with the twenty-seven (27)
tonne truck drivers weekly labour rate under the
Coal Miners Award as detailed in Schedule F.

6. That a new Clause 9.14 be inserted as follows :

9.14 Other Component (E)

The Other Components of the Base Prices shall
include all cost components not included in the
Labour, Materials, Statutory Charges, Non-Escalating
and Transport Labour Components as at the Base Date,
and including profit and shall be varied in the same
proportion as variation in the Consumer Price Index
- All Groups - Brisbane published by the Australian
Bureau of Statistics.

Exhibit No. 2

The Consumer Price Index - All Groups - Brisbane,
applicable at the Base Date of 30 June 1977, is
226.6.

7. That a new Schedule F entitled "Transport Labour
Weekly Labour Rate at Base Date of 30 June 1977" be
included as attached hereto.
8. That this Agreement shall be deemed to be
incorporated in and form part of the
aforementioned Agreement dated the Twelfth day of
July 1978.

10

20

30

40

50

Exhibit No. 2

60

COAL SUPPLY AGREEMENT NO. CS/29/2
FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATION
SCHEDULE C - SCALE OF BASE PRICES AT BASE DATE OF
30 JUNE 1977 EFFECTIVE FROM 1 JULY 1979

10

Year	SCALE OF BASE PRICES FOR VARYING QUANTITIES	
	Firm Purchase Notified in Accordance with Clause 4 (tonnes per annum)	Price of Coal of Basic Standard Quality (\$/tonne)
1978	400 000	23.84
1979	360 000	25.88
	400 000	23.84
1980	325 000	26.55
	360 000	25.88
	400 000	23.84
1981	290 000	28.84
	325 000	26.55
	360 000	25.88
	400 000	23.84
1982	270 000	29.83
	290 000	28.84
	325 000	26.55
	360 000	25.88
	400 000	23.84

20

30

40

50

Exhibit No. 2

60

COAL SUPPLY AGREEMENT NO. CS/29/2

FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATION

SCHEDULE D - COMPONENTS OF BASE PRICES STATED IN

SCHEDULE 'C' EFFECTIVE FROM 1 JULY 1979

10

20

30

40

50

60

COMPONENTS OF BASE PRICES (\$/TONNE) FOR THE VARIOUS QUANTITIES STATED IN SCHEDULE C					
ANNUAL RATE OF DELIVERY (tonnes per annum)	400 000	360 000	325 000	290 000	270 000
LABOUR	11.0500	12.2808	12.3522	13.7016	13.8952
MATERIALS	5.8264	6.6288	6.6414	7.3220	7.7201
STATUTORY CHARGES	0.0930	0.0930	0.0930	0.0930	0.0930
NON-ESCALATING	1.1835	1.2855	1.3190	1.4335	1.4830
TRANSPORT LABOUR	0.4422	0.4422	0.4422	0.4422	0.4422
OTHER	5.2470	5.1518	5.7043	5.8498	6.1986
TOTAL	23.84	25.88	26.55	28.84	29.83

Exhibit No. 2

COAL SUPPLY AGREEMENT NO. CS/29/2
FOR THE SUPPLY OF COAL FOR SWANBANK POWER STATION
SCHEDULE F - TRANSPORT LABOUR WEEKLY LABOUR RATE
AT BASE DATE OF 30 JUNE 1977

<u>AWARD</u>	<u>COAL MINERS</u>	10
A.C.O.A. Classification	Motor Lorry Drivers (vi)	
Tonnage	27	
Prescribed Working Hours per Week	45	
Percentage of Labour Force :		
- on Afternoon Shift	50%	
- Surface	100%	
<hr/>		
COMPOSITION OF WEEKLY LABOUR RATE		
(1) Award Wage for Award Hours	193.50	
District Allowance per Week	10.00	
(2) SUB TOTAL	203.50	
Shift Allowance - Afternoon 50% @ 15% x (1)	14.5125	
Loadings for :		30
- Annual Leave 4/46 x (2) plus	17.6957	
4/46 x 17½% x (1)	2.9446	
- Statutory Hols 2/46 x (2)	8.8478	
- Overtime 15 hours x (1) /35	82.9286	
(3) SUB TOTAL	330.4292	
Workers Compensation		
Driver 4.59% x (3)	15.1667	40
Payroll Tax 5% x (3)	16.5215	
Miners Pension 52/46 x \$13.59	15.3626	
WEEKLY LABOUR RATE	\$377.4800	
	=====	

50

Exhibit No. 2

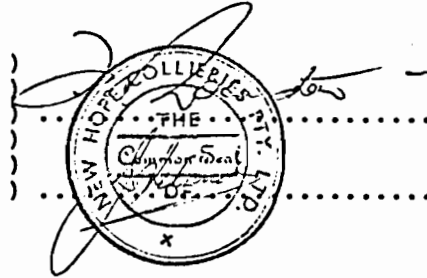
No. 14 Exhibit (2) Variation Agreement between Defendant and Plaintiff 20th October 1981 (Contd.)

IN WITNESS WHEREOF NEW HOPE COLLIERIES PTY. LTD. and THE QUEENSLAND ELECTRICITY GENERATING BOARD have executed this Agreement on the day and year first hereinbefore written.

10

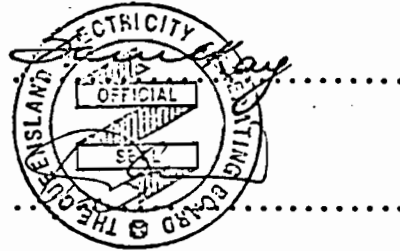
THE COMMON SEAL of NEW HOPE COLLIERIES PTY. LTD. was hereunto affixed in the presence of :

[Handwritten signature]



20

THE OFFICIAL SEAL of THE QUEENSLAND ELECTRICITY GENERATING BOARD was hereunto affixed by FREDERICK ALEXANDER MCKAY, the General Manager of the Queensland Electricity Generating Board under the authority of a resolution of The Generating Board and in the presence of IAN WILSON, the Secretary of the Generating Board:



30

THE STATE ELECTRICITY COMMISSION OF QUEENSLAND and THE QUEENSLAND COAL BOARD hereby consent to and approve of the within Agreement between the Company and THE QUEENSLAND ELECTRICITY GENERATING BOARD

40

THE STATE ELECTRICITY COMMISSION OF QUEENSLAND by NEIL ARTHUR GALWEY

[Handwritten signature: N. Galwey]

50

THE QUEENSLAND COAL BOARD by

[Handwritten signature: J. Woods]

Exhibit No. 2

60

Ex 2
Lor Mr (Mason) 20/10/83
QEOB - v - New Way

EX 2
Banani Angus

10

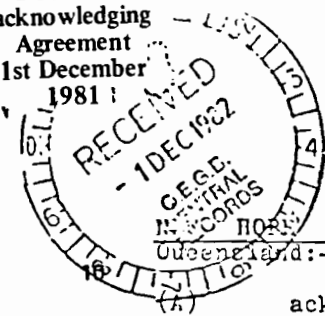
20

30

40

50

No. 14
Exhibit (3)
Document
acknowledging
Agreement
1st December
1981



COAL SUPPLY AGREEMENT CS29/2

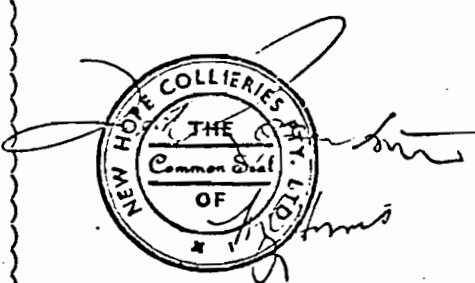
NEW HOPE COLLIERIES PTY. LTD., a company registered in Queensland:-

acknowledges that The Queensland Electricity Generating Board has agreed (subject to the following signed guarantees) to pay an interim price increase of \$2.24 per tonne for all coal supplied under the terms and conditions of coal supply agreement CS29/2 during the period 1 July 1982 to 31 December, 1982;

(B) guarantees:-

- (1) that the company will continue to supply The Queensland Electricity Generating Board the contracted tonnages up to 31 December 1982, and
- (2) the company agrees that all moneys paid in the form of an interim price increase together with any interest charges incurred by the Board shall be repaid to The Queensland Electricity Generating Board in the form of a deduction from the cost of any coal purchased by the Board from this company after 1 January, 1983, or such other method as determined by The Queensland Electricity Generating Board.
- (3) If the company ceases to trade, curtails output or restricts production in any way, 14 day's notice in writing shall be given to The Queensland Electricity Generating Board and the amount of the interim price increase and interest costs shall be a legitimate claim by the Board on the company or its assets.

40 GIVEN under the Common Seal of
NEW HOPE COLLIERIES PTY. LTD.
this *first day of December*, 1982,
by authority of a resolution of
the Board of Directors and in the
manner prescribed by the Articles
of Association of the company and
in the presence of the persons
whose signatures are subscribed
hereto (and who by their
signatures hereto certify that
they are the proper Officers of
the Company to attest the fixing
of the Common Seal) and in the
50 presence of:-



Ci. Superior
A Justice of the Peace
Salvador

653-277-45
D. BAGULEY
2 J. MANDERS

Law MacPherson 20/6/82
CR 68-0-1000 18-1-82

Ex 14

Dariusz Anzys

10

20

30

40

50

In the Supreme
Court of
Queensland

No. 14
Exhibit (4)
Copy letter,
Defendant
to Plaintiff
10th February
1982

35

FROM: LC

10

February 10, 1982.

The Secretary,
Old. Electricity Generating Board,
National Bank House,
255 Adelaide Street,
BRISBANE QLD. 4000

20

Attention: Mr. F.A. McKay

Dear Sir,

RE: CONTRACTS C529/2/3

30

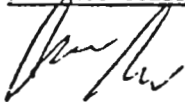
We refer to discussions held last year between your Mr. F.A. McKay, Chairman of the Queensland Electricity Generating Board, and Messrs. Robertson and Harris of this Company. Reference was made at these discussions to continuing cost pressures being experienced by Southern Cross Collieries and New Hope Collieries in fulfilling the supply of coal to Swanbank Power Station under the above contract. It was thought these cost pressures related to a combination of changes in mining conditions and circumstances and to the Board's request for coal supplies to continue at the 1978 rate and not on the declining tonnage set out in the contract. It is now very apparent that the last mentioned factor has had a considerable effect on the cost structure of the operation of Southern Cross Collieries and that it is responsible for very real financial strains on the operations.

40

Examination of these matters and their effects has taken considerable time - much longer to evaluate and to document than was envisaged when undertaken last year. It is anticipated that the company's officers will be in a position shortly to place details before Messrs. Spry Walker & Co., Chartered Accountants who act as the advisors to the company in matters of cost and escalations under the C529 contract. We anticipate that detailed submissions for increases in the selling price of coal under the abovementioned contract on behalf of Southern Cross Collieries and New Hope Collieries Pty. Ltd., will be ready for the consideration of the Board immediately thereafter.

50

Yours faithfully,
NEW HOPE COLLIERIES GROUP



P.W.J. McMANUS
Deputy General Manager
(Finance & Administration)

60

10

20

Cor Mr. Pearson 20/1/82
Q.E.B. - v. New Hope
EX 3
Basil Angus
Assoc.

EX 3

30

40

50

60

PHCM:LC

March 19, 1982

10

The Secretary,
Queensland Electricity Generating Board,
National Bank House,
255 Adelaide Street,
BRISBANE QLD. 4000

Dear Sir,

RE: CONTRACT CS29/2

20

Further to our letter of February 10, 1982 we advise that as part of our cost investigation we have reviewed events leading up to the letting of the contract and in particular discussions surrounding finalisation of the base price as at June 30, 1977 which disclose factors now requiring urgent remedy. At the same time we would emphasise that cost increases are still under review and could be the subject of a further submission.

30

Reference to the Company Tender indicates that it tendered a price of \$26.96 per tonne and that the composition of this price was set out in a letter accompanying its' tender and dated September 29, 1977. Subsequent discussions were held with officers of the State Electricity Commission and the Board relating to the justification of and background to the tendered price. The further submissions requested and reconciliations of the then price approved by the Queensland Coal Board and the tendered price, were made. The major items which encompass areas of opinion of this Company as compared with those of the officers of the Board and the Commission, related to the mining risk factor and the level of profitability accepted as a rate of return per tonne detailed in the tendered price.

40

Subsequent discussions between Mr. St. Baker and our Mr. F.A. Robertson, clearly indicate that in Mr. St. Baker's opinion the price tendered was too high and that the mining risk factor was not required and should be excluded from the price. In essence, Mr. St. Baker, acting for the Power Generating Authority, made it quite clear that he was seeking a reduction in price to enable New Hope to participate in the contract to supply coal to the Swanbank Power Station. This reduction amounted to \$3.29 per tonne and essentially eliminated any reserve for risks and hazards associated in mining.

50

The Company had indicated as part of its' tender submissions that it could suffer a recurrence of a rock creep mining condition arising from a syncline earth movement and that this was one of the factors considered by the Company in making an estimate of an allowance for mining hazards in its' tendered price as referred to above. On April 2, 1979, the Company was forced to close its' main mine known as New Hope No.5 (operating four continuous miner units), as a result of a heating problem which could have occurred as a possible part of this syncline problem.

4 3-4 = 1 4 6..

.../2

Exhibit No. 5

60

.../2

March 19, 1982

TO: QLD. ELECTRICITY GENERATING BOARD RE: CONTRACT CS29/2 (cont'd)

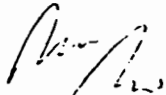
The closure of its' main operating mine required the Company to open additional mines to continue supply under the CS29/2 Contract. The cost factors involved, using alternative replacement mining methods with considerably lower yielding seams, have been far higher than the current price and were off-set initially by the mining of open cut coal. The Company's open cut reserves are now substantially depleted and the accumulation of cost pressures arising from a disparate underground mining operation has been in evidence with rising intensity for at least 18 months.

10

The Company considers that as the mining risk factor was removed from its' price it must apply for the reinstatement of that amount into its' base price with effect from June 30, 1977. It is respectfully submitted that had this sum been permitted to remain in its' selling price the existing gap between underground costs and the current selling price would be narrowed significantly and would have placed the Company in a position where it would have been able to continue supply without incurring losses.

20

Yours faithfully,
NEW HOPE COLLIERIES PTY. LTD.



P.W.J. McMANUS
Deputy General Manager
(Finance & Administration)

30

40

Exhibit No. 5

50

60

In the Supreme
Court of
Queensland

No. 14
Exhibit (5)
Copy letter,
Defendant
to Plaintiff
19th March
1982
(Contd.)

in MacPhee v New Hope 20/1/82

QELP v New Hope

EY5

Darius Amey
Account

10

20

30

40

50

60



Queensland Electricity Generating Board

Head Office
255 Adelaide St., Brisbane, Q. 4000 Australia
G.P.O. Box 1424, Brisbane, Q. 4001 Australia
Telephone 228 2111 Telex 42308
Cables 'Generator' Brisbane.

Ref. G53/227/60
G53/277/45

RECEIVED
6 MAY 1982

10

4 May 1982

Ans'd.....

① FAR

① MJH

Mr. R.W.J. McManus,
Deputy General Manager,
New Hope Collieries,
P.O. Box 47,
IPSWICH Q. 4305

Dear Sir,

REVIEW OF COAL SUPPLY AGREEMENTS CS 29/2/3

20

In reply to your letters of 10 February and 19 March regarding the submissions for coal price increases we would like to emphasise the following points which should be adequately covered to justify any increases.

1. Any new pricing structure to take effect from 1 January, 1983 should reflect all the changes in costs to the Company not adequately reflected in the existing agreements.
2. Present and estimated future costs and conditions should be compared with costs and conditions existing at the start of the contract or anticipated at that time.
3. With any claims for retrospective price adjustments, actual costs and conditions over the full period should be compared with costs and conditions existing at the start of the contract or anticipated at that time.
4. Only on the basis of changes in these costs and conditions can any coal price increase be justified.

30

40

With this in mind we request that you submit a detailed submission on the points raised setting out the changes and how they affect the cost of producing coal so that any request for a price increase can be properly analysed and justified.

Yours faithfully,


I. Wilson
SECRETARY

50

ENQUIRIES: Mr. D. Baguley
Telephone 228 2521

Exhibit No. 6

10

20

LOU MAC PHELAN J 20/6/83

Q.E.G.B. - v - Maura Hope

Ex 6

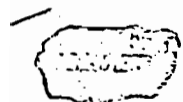
Donaire Angus
A.O.S.

30

40

50

60



NEW HOPE COLLIERIES PTY. LIMITED

(Incorporated in Queensland)

13-17 LOWRY STREET, IPSWICH,
QUEENSLAND 4305, AUSTRALIA

FILE COPY

Correspondence —
P.O. BOX 47,
IPSWICH, (QLD) 4305, AUSTRALIA
Telephone — (07) 202 1100
Telex — NUHOPE AA 44618

PMcM:LC

June 17, 1982.

10

The Secretary,
Queensland Electricity Generating Board,
National Bank Building,
255 Adelaide Street,
BRISBANE QLD. 4000

Attention: Mr. D. Baquley

Dear Sir,

20

Re: Contract CS/29/2

A. INTRODUCTION

We refer to discussions between officers of the Queensland Electricity Generating Board, the State Electricity Commission and our Company concerning the under recoupment of the costs of mining coal supplied to the Queensland Electricity Generating Board under the above contract and herein submit our request for a variation in the price of coal with respect for the period up to July 31, 1981, together with a request for a revised base price from August 1, 1981.

B. BACKGROUND TO THE CLAIM

30

(i) Geological factors affecting the No.5 Mine.

Under the mining plan which was in operation at the time of the tender and planned to be valid for the period of the CS/29/2 contract, the main producing mine for New Hope Collieries was No.5 Mine with access via the New Hope No.5 Tunnel and New Hope No.6 Tunnel, a new entry being developed to the inbye areas of the mine to bypass a rock creep area which had stopped development of the No.5 Tunnel extensions. The rock creep area was a geological phenomenon which occurred over a period of time commencing from 1972 and was brought to the attention of officials of the Coal Board and the S.E.A.Q. and inspections were made by officials of these statutory bodies during 1973/74.

40

On April 2, 1979, an occurrence of spontaneous combustion was detected in No.3 South West dips section of No.6 Tunnel which was also connected through the rock creep area to No.5 Tunnel for ventilation purposes. The heating occurred in an area adjacent to the rock creep area. Prior to this occurrence the seam had been regarded as being not liable to spontaneous combustion - there being no previous record of any heating in the Lagoon Seam in the Swanbank area.

At the time of the sealing the mine on April 2, 1979, the Company had four continuous miner units in production with coal being conveyed from three units via No.6 Tunnel and by one unit through No.5 Tunnel. Also at this time the Company had commenced a development tunnel called No.7 mine into the Rob Roy Seam beneath the Lagoon Seam but the seam was found to be very dirty and only capable of being worked with a very low yield of approximately 40% coal recovery. As a result of the unexpected closure of the mine on April 2, 1979, the Company was forced into the following actions in order to continue operations:

50

Exhibit No. 7

.../2

60

.../4

TO: Queensland Electricity Generating Board
RE: Contract CS/29/2

June 17, 1982

10

(a) Initially in order to deploy all labour, the Company had to work No.7 mine with its extremely low yield on a three shift basis.

(b) A Punch Mine (No.21 Mine) was commenced into the highwall of Area 6 open cut into a seam with a lower yield than the Lagoon Seam. Equipment for this purpose was borrowed from Southern Cross Colliery which became a subsidiary of New Hope in May 1979.

20

(c) The Company had worked an open cut area involving the removal of a portion of the railway loop line prior to the heating. Development of No.23 mine was undertaken once the backfilling of this open cut was completed, however, because of a major fault and underground water, it proved impracticable to continue development of this mine and it had to be abandoned, notwithstanding the considerable expense incurred on the project.

(d) A small open cut called Area 2 was developed beneath the main power line in the area adjacent to No.21 and subsequently a small Punch Mine No.21A, was established in the highwall. This mine was on the Lagoon Seam but production was affected by steep grades and underground water while the area available for extraction became limited by faults.

(e) As a result of the closure of No.5 mine the Company had to accelerate extraction from open cut areas at a far greater rate than provided for under the contract and also had to utilise open cut reserves outside those envisaged in the original submission.

30

(ii) General Comments.

We believe that the Company's action in utilising the external open cut reserves together with the establishment of the replacement mines in a very short time provided stability in a crisis situation which otherwise could have had serious repercussions throughout the coal mining and power industries. It also maintained a regular supply of coal to the Swanbank Power Station which we believe to be consistent with the main objective of the long term contractual arrangements arising from the West Moreton Coal Study. Abridged details of the original agreement are as set out in Appendix A.

40

The Company has provided previous written comments on the situation relating to negotiation of the contract and the settlements finally achieved which led to the acceptance of a base price of \$23.67. It is stated here as a matter of record that negotiations by officers of the State Electricity Commission led to a reduction of \$3.29 from the price tendered of \$26.96. The reduction effectively represented part of the factor included in the tendered price relative to an allowance for costs associated with mining hazards. This has been referred to in previous correspondence. The Company was most reluctant to accept this reduced negotiated price and only did so under extreme pressure and on the understanding that it could look to Clause 9 of the contract to provide the necessary protection should a mining disaster of major magnitude occur.

50

In summary, the Company supplied coal for 1978, the first year of the contract, and the first quarter of 1979, on April 2, 1979 it suffered a heating problem in No.5 mine which led to its being finally abandoned in August 1981 despite continuous recovery attempts. The No.5 mine consisted of four continuous miners double-shift unit operation and produced 75 - 80% of the Company's output from the high yielding Lagoon Seam. The effect of the loss of this mine in broad terms, in relation to the contract, was to remove the major plank upon which the tender and subsequent contract was submitted and entered into, the criteria on which the base price had been determined was no longer relevant.

Exhibit No. 7

.../3

60

.../3

TO: Queensland Electricity Generating Board
RE: Contract CS/29/2

June 17, 1982

On April 2, 1979, the Inspectorate of the Mines Department issued an instruction prohibiting entry to No.5 mine with the result that the production of coal from that mine ceased forthwith.

10

In order to limit disruption of mining activities and avoid the attendant industrial problems the Company proceeded to establish emergency underground and open cut mining activities which resulted in continued supply of the contract tonnage.

At the outset of the problem the indications were that No.5 mine would be recoverable in the short term and in fact recovery procedures commenced in mid August 1979 and expectations of recommissioning continued progressively thereafter, in consultation with the Mines Inspectorate, the Loss Adjusters and their Mining Advisers. However, as time ran on it became apparent that the deteriorating mining conditions would prevent recovery as originally envisaged, culminating in the decision by the Underwriters to abandon recovery of the inbye area in August 1981.

20

The outcome of these events has been that the temporary open cut and underground mining activities have become the permanent base for production for the time being, with resulting higher costs and higher rates of depletion of open cut reserves than was included in the contract. The situation which emerged is that production from lower yielding seams mined by underground methods was so costly that the offsetting effects from open cut coal were insufficient to produce a product mix at a price comparable with the escalated negotiated base price. In this regard we believe that item 7a of Schedule A of the agreement CS/29/2 is specifically relevant, it states "Method of Coal Mining - Bord and Pillar Underground and small Open Cut operations".

30

(iii) Outline and data supporting this request.

Until the decision by the Company's Insurance Underwriters to abandon recovery of No.5 mine effective August 6, 1981, it has been well nigh impossible to come to grips with the problem of full examination of the effect of the closure on all the cost elements of CS/29/2. Even so with constant application to the task it has taken over six months to assemble and satisfactorily investigate in detail the factors involved.

The outcome of this study is set out in the various schedules and appendices herein which we believe provide all the data necessary to support our request for a variation of the price at which coal has been sold with effect from April 2, 1979. The principle the Company is seeking, by way of recovery, is to maintain the profit margin of some \$2.75 (in 1977 dollar terms as escalated to current dollar values) throughout the period from April 1, 1979 to July 31, 1981 together with appropriate recognition of the accelerated use of both dedicated and undedicated open cut coal reserves.

40

The Company also then seeks to revise the base price applicable from August 1, 1981 based on the current costs of mining and management account results to April 30, 1982. These results are also set out on the accompanying schedules.

.../4

50

Exhibit No. 7

TO: Queensland Electricity Generating Board
RE: Contract CS/29/2

June 17, 1982

C. VARIATIONS IN COST OF PRODUCING COAL

		<u>Schedule No.</u>
10	The cost effects of the change in geological mining conditions on producing coal are set out in the attached schedules. The schedules enclosed are:	
	. The cost of producing coal per quarter (and agreed to the Coal Board accounts) after adjustments for the items in C(i) expressed in current dollar values.	1
	. Dissection of the above costs into underground and open cut costs in current dollars.	2
20	. Escalation factors per quarter taken from the monthly coal selling price calculations.	3
	. Underground mining costs in 1977 dollar prices.	4
	. Open cut mining costs & Total Underground and Open cut mining costs in 1977 dollar prices.	5
	. Adjustments to production costs for capital expenditure and exploration costs.	6
30	. Price shortfall in coal sales to Swanbank adjusted for the contract profit margin of \$2.75 per tonne to give the price shortfall in 1977 dollar values.	7
	. Revenue shortfall from the Board in both 1977 dollar values and also escalated to current dollar values.	8
	. Cost structure for CS/29/2 contract.	9
	. Summary of net excess mining costs in constant 1977 dollar values escalated to current July 1981 dollar values.	10
	. Statement of calculation of claim.	11
40	. Quarterly Sales Revenue Shortfalls for the nine months ended April 30, 1982 at current value.	12

Comments on the cost effects are:

(i) Variation in production volumes from Contract Base -

Appendix B discloses that the saleable output per shift from April 1979 through to December 31, 1981, from all mines is inferior to that achieved in No.5 mine for calendar year 1978, the first year of the contract.

50 The attached schedules which support the request by the Company are based as follows:

Full disclosure of accounting results which have been reconciled with both the half yearly accounts supplied to the Queensland Coal Board and also with the Company's formal audited accounts.

Exhibit No. 7

.../5

TO: Queensland Electricity Generating Board
RE: Contract CS/29/2

June 17, 1982

- . The costs have been prepared on a quarterly basis as this gives the Board a clear view of the movement in costs. 10
- . Open cut and underground mining costs have been separated for clarity.
- . Reductions have been made to the costs for:
 - . cost reimbursements received from Southern Cross Colliceries; ..
 - . exploration expenses over and above the requirements of contract supply;
 - . depreciation of items lost through the heating problem;
 - . insurance reimbursements of operating costs for recovery and loss minimisation work. 20

D. REQUEST FOR RECOUPMENT

Schedule 11 sets out the basis of calculation of the sum of \$4,093,000 for which the Company seeks reimbursement.

The Company needs to recoup amounts due as a result of this claim as a matter of great urgency as the shortfall has resulted in the Company being extremely short of the funds and cash flow to maintain a continuing operation. In order to carry on beyond the 30th June 1982, the Company will require a lump sum payment in the first week of July of at least \$2,500,000 with the balance as a lump sum settlement within 30 days thereafter. 30

In view of the urgency of the matter, this claim has been submitted for data up to July 1981; a further claim in respect of the continuity of the trend shown in respect of the nine months ended April 30, 1982 is presently being prepared and will be submitted by June 25, 1982. A brief outline of this trend is shown on Schedule 12 enclosed with this letter.

We have had the benefit of extensive assistance and advice from Messrs. Spry Walker & Co., Chartered Accountants in preparation of this submission and who are available for joint consultation.

We should be pleased to provide whatever further information and assistance as may be required to enable the urgent consideration of this request. 40

Yours faithfully,
NEW HOPE COLLIERIES PTY. LTD.



P.W.J. McMANUS
Deputy General Manager
(Finance & Administration)

cc. F A L
M. J. H.
S. W. G.
P. W. J. M.
E. L.

Exhibit No. 7

50

60

ABBREVIATED DETAILS OF CS29/2 CONTRACT

10

<u>MINES:</u>	<u>ML:</u>	<u>Location</u>
	697	Swanbank
	423	Swanbank
	464	Swanbank
	508	Swanbank
	695	Swanbank
	711	Swanbank
	737	Swanbank
	742	Swanbank
	744	Swanbank
	750	North Ipswich

20

RESERVES:

<u>Name of Seam</u>	<u>Thickness</u>	<u>Measured Reserves</u>	<u>Indicated Reserves</u>	<u>Measured Reserves</u>
a) Lagoon	15'	12,379,000	4,300,000	6,276,000
(b) Bluff	25'	9,000,000	-	2,925,000
(c) Rob Roy	26'	3,600,000	3,659,000	1,008,000

BASE PRICES & QUANTITIES

30

<u>YEAR</u>	<u>SCALE OF BASE PRICES FOR VARYING QUANTITIES</u>	
	<u>Firm Purchase Notified in Accordance with Clause 4 (tonnes per annum)</u>	<u>Price of Coal of Basic Standard Quality (\$/tonne)</u>
1978	400,000	23.67
1979	360,000	25.71
	400,000	23.67
1980	325,000	26.38
	400,000	23.67
	360,000	25.71
1981	290,000	28.67
	325,000	26.38
	360,000	25.71
	400,000	23.67
1982	270,000	29.66
	290,000	28.67
	325,000	26.38
	360,000	25.71
	400,000	23.67

40

50

60

APPENDIX B

NEW HOPE COLLIERIES PTY. LTD.

SALEABLE OUTPUT PER MACHINE SHIFT

Time Periods 12 Mths 1978	No.5 Mine 194	No.7 Mine 169	No.21 Mine	No.23 Mine	No.4A Mine	Western Leases	TOTAL 187
Quarter							
31.03.1979	180	159	-	-	-	-	176
30.06.1979	60	81	101	-	-	-	86
30.09.1979	-	76	161	46	-	-	92
31.12.1979	-	105	156	24	-	-	106
	178	96	138	37	-	-	118
31.03.1980	-	152	138	47	-	-	141
30.06.1980	-	140	98	30	-	-	118
30.09.1980	-	109	80	5	-	-	103
31.12.1980	-	111	89	-	-	-	103
	-	127	97	32	-	-	122
31.03.1981	-	104	113	-	-	-	107
30.06.1981	-	94	177	-	60	-	119
30.09.1981	198	116	153	-	137	-	133
31.12.1981	180	122	142	-	144	14	129
	189	108	147	-	120	14	122

In the Supreme
Court of
Queensland
No. 14
Exhibit (7)
Copy letter,
Defendant
to Plaintiff
with
annexures
17th June 1982
(Contd.)

GEN. RATE COLLECTORS PRY. LTD. - SCHEDULE OF QUARTERLY PRODUCTION COSTS - DECEMBER 1978 TO JULY 1981												
1	2	3	4	5	6	7	8	9	10	11	12	13
TIME PERIOD		11/12/78		12/1/79		10/6/79		30/9/79		31/12/79		31/3/80
1												
2	U/G Washed Production	79,409		80,699		79,101		15,129		18,919		50,784
3		Cost per Tonne		Cost per Tonne		Cost per Tonne		Cost per Tonne		Cost per Tonne		Cost per Tonne
4												
5												
6	WAGES & ONCOSTS	1,075,486		1,012,833		971,121		33,114		881,779		25,110
7												
8	DEPRECIATION	140,111		159,404		151,987		5,119		150,096		4,510
9												
10	AMORTISATION	6,772		9,800		8,229		0,28		9,688		0,28
11												
12												
13	REPAIRS & MAINTENANCE	256,997		341,252		168,131		5,74		265,185		7,55
14												
15	W/OVERHAULS	76,233		77,470		27,206		0,93		36,647		0,99
16												
17												
18	ELECTRICITY	61,880		68,669		41,329		1,41		52,895		1,51
19												
20	CONSUMABLE STORES	125,677		112,460		145,883		4,98		202,087		5,75
21												
22												
23	GENERAL PRODUCTION COSTS	179,132		181,135		252,668		8,62		321,025		9,20
24												
25												
26												
27	ADMIN & FINANCIAL COSTS	64,557		77,162		175,160		5,98		90,553		2,58
28												
29												
30	NO. OF PROD'n DAYS WEEK	2,002,647		2,052,748		1,949,940		66,55		2,042,219		58,09
31												
32	NO. OF POSSIBLE PROD'n DAYS	54		50		55		51		51		48
33												
34	PER MONTH	211		208		202		201		200		200
35	PER PROD'n DAY	1,471		1,391		513		1,089		828		1,058
36												
37												
38												
39												
40												
41												
42												
43												
44												
45												
46												
47												
48												
49												
50												
51												
52												
53												
54												
55												
56												
57												
58												
59												
60												
61												
62												
63												
64												
65												
66												
67												
68												
69												
70												
71												
72												
73												
74												
75												
76												
77												
78												
79												
80												
81												
82												
83												
84												
85												
86												
87												
88												
89												
90												
91												
92												
93												
94												
95												
96												
97												
98												
99												
100												

	2	3	4	5	6	7	8	9	10	11	12	13	14
1		30/6/80		30/9/80		31/12/80		31/3/81		31/7/81			
2		48,167		42,603		49,184		51,092		81,101			
3		Cost per Tonne		Cost per Tonne		Cost per Tonne		Cost per Tonne		Cost per Tonne			
4													
5	1,159,799	24.08	1252925	29.41	1229422	24.90	1349480	26.41	2150319	26.51			
6													
7													
8	181,844	3.78	174359	4.09	188805	3.82	192801	3.77	272642	3.39			
9	11,629	0.24	10277	0.24	5012	0.10	5127	0.10	8019	0.10			
10	193,473	4.02	184636	4.33	193817	3.92	197928	3.87	280661	3.49			
11													
12	416,717	8.65	367356	8.62	248812	5.04	213722	4.18	547430	6.75			
13	48,167	1.00	42603	1.00	61730	1.25	63865	1.25	55982	0.69			
14	464,884	9.65	409959	9.62	310542	6.29	277587	5.43	603412	7.44			
15	59,604	1.24	53579	1.26	77638	1.57	71826	1.41	173011	2.13			
16	179,045	3.72	279110	6.55	207813	4.21	148781	2.91	433325	5.34			
17	238,649	4.96	332689	7.81	285451	5.78	220607	4.32	606336	7.47			
18	409,909	8.51	545,412	12.80	189693	3.84	325431	6.37	300769	3.71			
19	2,466,714	51.22	2725621	63.97	2208925	44.73	2371033	46.40	3941497	48.62			
20	16,006	0.33	20467	0.48	11300	0.23	15926	0.31	17556	0.22			
21													
22	112,737	2.34	235422	5.53	137884	2.79	221115	4.31	328215	4.05			
23													
24	2,595,457	53.89	2981510	69.98	2358109	47.75	2608074	51.04	4287288	52.89			
25		53	55	55	57	57	56	56	81	81			
26		65	65	58	58	58	56	56	83	83			
27		218	218	218	215	215	229	229	239	239			
28		909	775	866	866	866	112	112	1,001	1,001			
29													
30													
31													
32													
33													
34													
35													
36													
37													
38													
39													
40													
41													
42													
43													
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													
55													
56													
57													
58													
59													
60													
61													
62													
63													
64													
65													
66													
67													
68													
69													
70													
71													
72													
73													
74													
75													
76													
77													
78													
79													
80													
81													
82													
83													
84													
85													
86													
87													
88													
89													
90													
91													
92													
93													
94													
95													
96													
97													
98													
99													
100													

NEW HARBOR COLLIERIES PTY. LTD. - SCHEDULE OF QUARTERLY OPEN CUT & COMBINED PRODUCTION COSTS - DECEMBER 1978 TO JULY 1981

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
TIME PERIOD		31/12/78		31/1/79		30/6/79		30/9/79		31/12/79		31/3/80		
1														
2														
3		12,410		16,144		23,339		39,596		33,199		49,564		137,613
4														
5	109,053	8.79	201,463	17,413	205,874	8.82	566,662	11,413	418,486	12,611	356,552	7,119		11,577
6	3,929	0.32	5304	0.33	8698	0.37	20580	0.41	11750	0.35	7010	0.14		35,870
7	33,262	2.67	31325	1.94	30035	1.29	25014	0.50	26611	0.80	28372	0.57		753,665
8	146,244	11.78	318092	19,70	244607	10.48	612256	12,34	456847	13,76	391534	7,90		2
9														91
10														10
11		91,819		96,843		52,640		84,725		72,118		100,248		11
12														12
13														13
14														14
15														15
16														16
17														17
18														18
19														19
20														20
21														21
22														22
23														23
24														24
25														25
26														26
27														27
28														28
29														29
30														30
31														31
32														32
33														33
34														34
35														35
36														36
37														37
38														38
39														39
40														40
41														41
42														42
43														43
44														44
45														45
46														46
47														47
48														48
49														49
50														50
51														51
52														52
53														53
54														54
55														55
56														56
57														57
58														58
59														59
60														60
61														61
62														62
63														63
64														64
65														65
66														66
67														67
68														68
69														69
70														70
71														71
72														72
73														73
74														74
75														75
76														76
77														77
78														78
79														79
80														80
81														81
82														82
83														83
84														84
85														85
86														86
87														87
88														88
89														89
90														90
91														91
92														92
93														93
94														94
95														95
96														96
97														97
98														98
99														99
100														100

SCHEDULE 2

	11	12	13	14	2	3	4	5	6	7	8	9	10	11	12	13	14
1	17/12/79		31/3/80					30/9/80		31/12/80		31/3/81		31/7/81			
2						68,489		69,320		75,475		49,812		52,576			
3	2,159		45,564														
4	2,61	358552	7.19		737,619	10.77	303770	4.38	792364	10.50	650133	13.05	569371	10.83			
5	2,35	7015	0.14		11,577	0.17	10014	0.14	16123	0.21	14695	0.30	47637	0.91			
6	0.80	26372	0.57		35,870	0.52	40355	0.58	38023	0.50	41737	0.84	66508	1.26			
7	3,76	391934	7.90		785,066	11.46	354159	5.10	846510	11.21	706565	14.19	683516	13.00			
8																	
9																	
10																	
11	2,115		130,348			116,656		111,923		124,859		100,904		133,677			
12																	
13		2374290			12,595,457		2981510		2358109		2608074		4287288				
14					785,066		354159		846510		706565		683516				
15	3,350	2786224	27.57		14,380,523	28.98	3335669	29.80	3204619	25.67	3314639	32.85	4970804	37.19			
16																	
17																	
18																	
19																	
20																	
21																	
22																	
23																	
24																	
25																	
26																	
27					2	3	4	5	6	7	8	9	10	11	12	13	14

10

20

30

In the Supreme Court of Queensland
 No. 14
 Exhibit (7)
 Copy letter, Defendant to Plaintiff with annexures
 17th June 1982
 (Contd.)

HFB HCPE COLLECTRIES PTY. LTD. - ESCALATION FACTORS FROM 30/6/1977

SCHEDULE 3

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27		
1		BASE	31/12/78	31/3/79	30/6/79	30/9/79	31/12/79	31/3/80	30/6/80	30/9/80	31/12/80	31/3/81	31/7/81																
2																													
3		Escalation Factors (by type)																											
4	Labour	414,0118	453,0239	469,9460	469,9460	484,6749	484,6749	525,2915	522,6302	555,0086	562,8185	582,5096	621,6148																
5	Materials	1.0	1.1152	1.1521	1.1790	1.2173	1.2355	1.2982	1.3217	1.3707	1.3844	1.4231	1.4518																
6	Other	226.60	249.80	257.60	259,3000	265.20	271.20	279.70	287.10	293.90	298.50	305.6000	320.5000																
7	Stat. Charges	0.093	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36																
8	Transport Labour	377,4800	N/A	N/A	N/A	428,6838	428,6838	465,3058	465,3098	494,6393	494,6393	511,7670	547,8103																
9																													
10																													
11																													
12	Escalation as a Factor (by type)																												
13	of 30/6/77 Base																												
14	Labour		1.094	1.135	1.135	1.171	1.171	1.269	1.262	1.341	1.359	1.407	1.501																
15	Materials		1.115	1.152	1.179	1.217	1.236	1.298	1.322	1.371	1.384	1.423	1.455																
16	Other		1.102	1.137	1.144	1.170	1.197	1.234	1.267	1.297	1.319	1.349	1.419																
17	Stat. Charges																												
18	Transport Labour					1.136	1.136	1.232	1.232	1.310	1.310	1.356	1.451																
19																													
20																													
21	Escalation of Overall Price																												
22	Tonnage per Annum		400,000	360,000	360,000	360,000	360,000	400,000	400,000	400,000	400,000	400,000	400,000																
23	Base Price		23.67	25.71	25.71	25.88	25.88	23.84	23.84	23.84	23.84	23.84	23.84																
24	Escalated Price		26.22	29.39	29.61	30.62	30.88	30.15	30.39	31.73	32.13	33.06	34.67																
25																													
26	Overall Escalation Factor		1.1077	1.1431	1.1517	1.1832	1.1932	1.2647	1.2742	1.3310	1.3417	1.3867	1.4513																
27																													

PEY ROBE COLLIERIES PTY. LTD. - UNDERGROUND COSTS AT 1977 PRICES

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
			31/12/76 3 Mths		31/3/79 3 Mths		30/6/79 3 Mths		30/9/79 3 Mths		31/12/79 3 Mths		31/3/80 3 Mths		30/6/80 3 Mths
1			79,409		80,699		29,301		35,129		38,919		50,784		69,167
2	U/G WASHED PRODUCTION														
3															
4															
5															
6	LABOUR (L)		12.38		11.06		29.20		21.43		17.28		11.81		9.09
7															
8	DEPRECIATION (M)		1.58		1.72		4.40		3.70		3.57		2.69		2.44
9	AMORTISATION (M)		0.08		0.10		0.24		0.23		0.15		0.15		0.13
10															
11															
12	REPAIRS & MTCE (M)		2.91		3.67		4.87		6.20		3.61		7.67		5.54
13	MAJOR OVERHAULS (L)		0.88		0.35		0.82		0.85		0.85		0.79		0.79
14															
15	ELECTRICITY (M)		0.72		0.74		1.20		1.24		1.35		0.51		0.94
16	CONSUMABLE STORES (M)		1.42		1.21		4.22		4.72		3.18		2.19		2.81
17															
18	OTHER PROD'N COSTS (M)		2.03		1.94		7.31		7.86		4.34		5.44		6.44
19															
20	LEVIES		0.17		0.16		0.28		0.63		0.35		0.17		0.33
21															
22	ADMIN & FINANCIAL (O)		0.74		0.84		5.23		2.21		2.58		3.78		1.85
23															
24	TOTAL	1,819,260	22.91	1798781	22.29	1692719	57.77	1723780	49.07	1457906	37.46	1894243	37.30	241	41.82
25															
26															
27															
28															
29															
30															
31															
32															
33															
34															
35															
36															
37															
38															
39															
40															
41															
42															
43															
44															
45															
46															
47															
48															
49															
50															
51															
52															
53															
54															
55															
56															
57															
58															
59															
60															
61															
62															
63															
64															
65															
66															
67															
68															
69															
70															
71															
72															
73															
74															
75															
76															
77															
78															
79															
80															
81															
82															
83															
84															
85															
86															
87															
88															
89															
90															
91															
92															
93															
94															
95															
96															
97															
98															
99															
100															

In the Supreme Court of Queensland
 No. 14
 Exhibit (7)
 Copy letter,
 Defendant to Plaintiff
 with annexures
 17th June 1982
 (Contd.)

PER 1978 TO JULY 1981

	10	11	12	13	14	3	4	5	6	7	8	9	10	11	12	13	14
1	31/12/79 3 Mths			31/1/80 3 Mths		30/6/80 3 Mths		30/9/80 3 Mths		31/12/80 3 Mths		31/3/81 3 Mths		31/7/81 4 Mths			
2		33,199		49,564		68,489		69,320		75,475		49,812		52,576			
3		10,77		5,67		8,53		3,22		7,73		9,28		7,22			
4		0,28		0,11		0,13		0,10		0,15		0,21		0,63			
5		0,68		0,45		0,41		0,97		0,37		0,60		0,84			
6		389,424		308,784		621,195		300,849		622,669		502,603		456,885			
7		11,73		6,23		9,07		4,34		8,25		10,09		8,59			
8		72,118		100,348		116,656		111,923		124,859		100,904		133,677			
9																	
10																	
11																	
12																	
13		145,7906		189,4243		201,4344		221,1522		1,728,934		185,7705		291,2337			
14		389,424		308,784		621,195		300,849		622,669		502,603		456,885			
15																	
16		184,730		220,027		253,5539		251,2371		235,1601		236,0308		336,9222			
17		25,62		21,95		22,59		22,45		18,83		23,39		25,20			
18																	
19																	
20																	
21																	
22																	
23																	
24																	
25																	
26																	
27																	

10

20

30

In the Supreme Court of Queensland

No. 14 Exhibit (7) Copy letter, Defendant to Plaintiff with annexures 17th June 1982 (Contd.)

NEM HOPE COLLIERIES PTY. LTD. - OPEN CUT COSTS - TOTAL COSTS AT 1977 PRICES - BY QUARTER/DECEMBER 1978 TO JULY 1981

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
1			31/12/78		31/3/79		30/6/79		10/9/79		31/12/79		31/3/80															
2	Time PERIOD		3 Mths		3 Mths		3 Mths		3 Mths		3 Mths		3 Mths															
3	OPEN CUT																											
4	Production (Tonnes)		12,410		16,144		23,339		49,596		33,199		49,564															
5	Extraction Costs (L)		8.03		15.36		7.77		9.76		10.77		5.67															
6	Explosives (M)		0.29		0.29		0.31		0.34		0.28		0.11															
7	Wages (2.34) (L)		2.44		1.71		1.14		0.43		0.68		0.45															
8	TOTAL COST		133532		280260		215186		522246		389424		308784															
9	COST PER TONNE		10.76		17.36		9.22		10.53		11.73		6.23															
10	TOTAL PRODUCTION (TONNES)		91,819		96,843		52,640		84,725		72,118		100,348															
11																												
12																												
13																												
14	UNDERGROUND		1819260		1798781		1692719		1723780		1457906		1894243															
15	OPEN CUT		133532		280260		215186		522246		389424		308784															
16																												
17	TOTAL COST		1952792		2079041		1907905		2246026		1847230		2203027															
18	COST PER TONNE		21.27		21.47		36.24		26.51		25.62		21.95															
19																												
20																												
21																												
22																												
23																												
24																												
25																												
26																												
27																												

30

20

10

NEW ROPE COLLIERIES PTY. LTD. - ADJUSTMENTS TO PRODUCTION COSTS (CURRENT DOLLARS)		SCHEDULE 6																						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
1		30/6/79	30/9/79	31/12/79	31/3/80	30/6/80	30/9/80	31/12/80	31/3/81	1/3 31/7/81														
2	INSURANCE																							
3	(Recovered)																							
4																								
5																								
6																								
7																								
8	CAPITAL EXPENDITURE																							
9	Dep'n on lost items @ 10% P.A. (M)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)
10		10,602	10,271	10,113	9,630	9,455	9,117	9,032	8,784	8,591														
11																								
12																								
13																								
14	EXPLORATION																							
15	A to P 242C																							
16	4 mchs. 31/7/81														(122,333)									
17															83,447									
18																								
19	TOTAL (CURRENT \$)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(134,833)									
20																								
21																								
22																								
23																								
24																								
25																								
26																								
27																								

10

20

30

In the Supreme Court of Queensland
 No. 14
 Exhibit (7)
 Copy letter, Defendant to Plaintiff with annexures
 17th June 1982
 (Contd.)

30

20

10

NEW HOPE COLLIERY'S PTK. LTD. - PRICE SHORTFALL ON QCCB COAL - BY QUARTER/PRTR. 1979 TO JULY 1981 (CALCULATED IN 1977 \$)														SCHEDULE 7		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14		
1			30/6/79	30/9/79	31/12/79	31/3/80	30/6/80	30/9/80	21/12/80	31/3/81						
2	PRODUCTION (Washed)															
3	Total O/C & U/G		52,640	84,725	72,118	100,348	116,656	111,923	124,859	100,904	133,677					
4	Less export -		-	-	-	-	-	-	-	-	-					
5	QCCB Production		52,640	84,725	72,118	100,348	116,656	111,923	124,859	100,904	133,677					
6																
7	COST OF PRODUCTION															
8	Total Costs		1907905	2246026	1847330	2203027	2635539	2512371	2351603	2360308	3369222					
9	Less Adjustments		(10,602)	(10,271)	(10,113)	(9,630)	(9,455)	(9,117)	(9,032)	(8,784)	(92,038)					
10	Net Production Costs		1897303	2235755	1837217	2193397	2626084	2503254	2342571	2351524	3277184					
11																
12																
13	COST PER TONNE		36.04	26.39	25.48	21.86	22.51	22.37	18.76	23.31	24.52					
14																
15	PROFIT MARGIN/TONNE		2.75	2.75	2.75	2.75	2.75	2.75	2.75	2.75	2.75					
16																
17	ADJUSTED BASE PRICE		38.79	29.14	28.23	24.61	25.26	25.12	21.51	26.06	27.27					
18																
19	BASE PRICE RECEIVED		25.71	25.88	25.88	23.84	23.84	23.84	23.84	23.84	23.84					
20																
21	PRICE SHORTFALL PER TONNE		13.08	1.26	2.35	0.77	1.42	1.28	(2.33)	2.22	3.43					
22																
23																
24																
25																
26																
27																

NEW LIFE COLLIERIES PTY. LTD. - REVENUE SHORTFALL FROM SALES TO QECB - BY QUARTER/APRIL 1979 TO JULY 1981 (1981 Dollars) SCHEDULE 8

1	2	3	4	5	6	7	8	9	10	11	12	13	14
TIME PERIOD	30/6/79	30/9/79	31/12/79	31/3/80	30/6/80	31/9/80	31/12/80	31/3/81	31/7/81	TOTAL			
2													
3	13.08	3.26	2.35	0.77	1.42	1.28	(2.33)	2.22	3.43				
4													
5	1.1517	1.1832	1.1932	1.2647	1.2747	1.3310	1.3477	1.3867	1.4543				
6													
7	15.06	3.86	2.80	0.97	1.81	1.70	(3.14)	3.08	5.00				
8													
9													
10	82,290	96,896	83,248	100,703	115,930	103,192	110,292	100,408	144,803				
11													
12													
13	1239287	374019	233094	97682	209833	175426	(346317)	309257	724,015	\$ 30,6254			
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
24													
25													
26													
27													

10

20

30

In the Supreme Court of Queensland
 No. 14 Exhibit (7)
 Copy letter, Defendant to Plaintiff with annexures
 17th June 1982 (Contd.)

*In the Supreme
Court of
Queensland*

**No. 14
Exhibit (7)
Copy letter,
Defendant
to Plaintiff
with
annexures
17th June 1982
(Contd.)**

SCHEDULE 9

10

NEW HOPE COLLIERIES PTY. LTD.

ASSUMED ORIGINAL COST STRUCTURE (400,000 T.P.A.)

U/G - 320,000 t x \$23.62 7,558,400

O/C - 80,000 t x \$10.00 800,000

8,358,400

20

∴ Cost 8,358,400
 400,000 20.90/tonne

Add Profit 2.75

SALES PRICE 23.65

30

40

50

60

SCHEDULE 10

NEW HIDE COLLIERIES PTY. LTD. - SUMMARY OF NET EXCESS MINING COSTS

1	2	3	4	5	6	7	8	9	10	11	12	13	14
		h	h	h	h	h	h	h	h	h	h	h	h
		30/6/79	30/9/79	31/12/79	31/3/80	30/6/80	30/9/80	31/12/80	31/3/81	31/7/81 (Mths)			
2	SUBSIDIARY 1977 \$												
3	Historic U/G Production	80.1	80.1	80.1	80.1	80.1	80.1	80.1	80.1	106.8			
4	Actual U/G Production	29.3	35.1	38.9	50.8	48.2	42.6	49.4	51.1	81.1			
5	U/G Shortfall	50.8	45.0	41.2	29.3	31.9	37.5	30.7	29.0	25.7			
6													
7													
8	U/G (Actual 1977) Costs	1,693	1,724	1,458	1,894	2,014	2,212	1,729	1,858	2,912			
9	Less U/G Production at Historic costs \$23.62 per tonne	692	829	919	1,200	1,138	1,006	1,167	1,207	1,916			
10	EXCESS U/G COSTS	1,001	895	539	694	876	1,206	562	651	996			7,420
11													
12													
13													
14													
15	U/G Historic Cost/Tonne	23.62	23.62	23.62	23.62	23.62	23.62	23.62	23.62	23.62			
16	O/C Cost/Tonne	9.22	10.53	11.73	6.23	9.07	4.34	8.25	10.09	8.69			
17	O/C Benefit/Tonne	14.40	13.09	11.89	17.39	14.55	19.28	15.37	13.53	14.93			
18													
19	O/C (Benefit) - U/G	(732)	(589)	(490)	(510)	(464)	(723)	(472)	(392)	(384)			(4,756)
20													
21													
22	NET EXCESS COSTS (1977 \$)	269	306	49	184	412	483	90	259	612			2,664
23	ESCALATION FACTOR	1,1517	1,1812	1,1932	1,2647	1,2747	1,3310	1,3477	1,3867	1,4543			
24													
25	NET EXCESS COSTS (current \$)	310	362	58	233	525	643	121	359	890			3,501
26													
27													
28													
29													
30													
31													
32													
33													
34													
35													
36													
37													
38													
39													
40													
41													
42													
43													
44													
45													
46													
47													
48													
49													
50													
51													
52													
53													
54													
55													
56													
57													
58													
59													
60													
61													
62													
63													
64													
65													
66													
67													
68													
69													
70													
71													
72													
73													
74													
75													
76													
77													
78													
79													
80													
81													
82													
83													
84													
85													
86													
87													
88													
89													
90													
91													
92													
93													
94													
95													
96													
97													
98													
99													
100													

10

20

30

In the Supreme Court of Queensland
 No. 14
 Exhibit (7)
 Copy letter, Defendant to Plaintiff with annexures
 17th June 1982
 (Contd.)

30

NEW HOPE COLLIERIES PTY. LTD. - STATEMENT OF CALCULATION OF CLAIM												DATE	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
TIME PERIOD		30/6/79	30/9/79	31/12/79	31/3/80	30/6/80	30/9/80	31/12/80	31/3/81	31/7/81	TOTAL	COMMENT	
1													
2													
3		1,1517	1,1832	1,1932	1,2647	1,2747	1,3310	1,3477	1,3867	1,4543			
4													
5	Excess Underground Costs	1,001	895	539	694	876	1,206	562	651	996	7,420	See Schedule 10	
6	(1977 \$)												
7													
8	Excess Underground Costs	1,153	1,059	643	878	1,116	1,605	757	903	1,448	9,562	As calculated	
9	(Current \$)												
10													
11	LESS: Open Cut Benefit												
12	Received from Q.E.C.B.												
13	(Current \$)	(843)	(697)	(585)	(645)	(591)	(962)	(636)	(544)	(558)	(6,061)	Escalated	
14	Claim	310	362	58	233	525	643	121	359	890	3,501		
15													
16													
17	JULY 1981 PRESENT VALUE												
18	FACTOR AT 15%	0.719	0.756	0.774	0.803	0.833	0.864	0.896	0.929	0.964			
19													
20	REIMBURSEMENT DUE	431	479	75	290	630	744	135	386	923	34,093		
21													
22													
23													
24													
25													
26													
27													
28													
29													
30													

NEW ROPE COLLIERIES PTY. LTD. SALES REVENUE SHORTFALL FROM Q.E.G.B. (CURRENT PRICES)
BY QUARTER-OCTOBER 1981 - APRIL 1982 (1981-1982 Dollars)

1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	TIME PERIOD	31/10/81	31/1/82	30/4/82			TOTAL						
2													
3	PRICE SHORTFALL (1977\$)	1.13	24.89	7.66									
4	Per tonne												
5	ESCALATION FACTORS	1.4635	1.6137	1.6346									
6													
7	PRICE SHORTFALL	1.65	40.16	12.52									
8	(in current \$)												
9													
10	TONNES SOLD TO Q.E.G.B.	108,203	50,109	96,689									
11													
12	SALES REVENUE SHORTFALL												
13	(in current \$)	178,535	202,377	12,10546			\$ 3401458						
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
24													
25													
26													
27													

SCHEDULE 12

In the Supreme Court of Queensland

No. 14
Exhibit (7)
Copy letter,
Defendant
to Plaintiff
with
annexures
17th June 1982
(Contd.)

In the Supreme
Court of
Queensland

No. 14
Exhibit (7)
Copy letter,
Defendant
to Plaintiff
with
annexures
17th June 1982
(Contd.)

10

See Attachment 20/6/82
Q 86 B - v - New Hope

EV7
Barbara Amey
1982

20

30

40

50

60



Queensland Electricity Generating Board

Head Office
255 Adelaide St., Brisbane, Q. 4000 Australia
G.P.O. Box 1424, Brisbane, Q. 4001 Australia
Telephone 228 2111 Telex 42308
Cables "Generator" Brisbane.

Ref. G53.277.45

30 June 1982

The Secretary,
New Hope Collieries Pty. Ltd.,
P.O. Box 47,
IPSWICH. Q. 4305

Dear Sir,

RECEIVED
30 JUL 1982
D. PARKER
CC FRA ✓
MTH ✓
GKR ✓
PVT ✓
FILE ✓
2/7/82

10

NOTIFICATION OF COAL REQUIREMENTS

In accordance with Clause 4 of Coal Supply Agreement CS/29/2 notice is hereby given of the Firm Purchase for 1983.

Firm Purchase for 1983 400,000 tonnes

Estimated coal requirements for:

	Tonnes
1984	400,000
1985	400,000
1986	360,000
1987	324,000
1988	292,000


30

It should be pointed out that the estimated coal requirements for the period 1984 to 1988 are only guidelines to a large extent and are dependent on the outcome first of the 5 yearly review of the Agreement currently in progress.

It is proposed that the Firm Delivery for each half year of 1983 be half the Firm Purchase for 1983. The Manager Generation Operations Southern at Swanbank Power Station will arrange suitable delivery rates for each half year in accordance with the terms of the Agreement.

40

Yours faithfully,


I. Wilson
SECRETARY

50

ENQUIRIES: Mr. S. Verma
Telephone 228 2527

*In the Supreme
Court of
Queensland*

**No. 14
Exhibit (8)
Firm
Purchase
Notice,
Plaintiff to
Defendant
30th June 1982
(Contd.)**

10

20

30

*Case 1722 - Plaintiff - 20/6/83
Q.E.C. - v. Plaintiff
R.V.C.
Doreen Armitage
A.S.S.*

40

50

60

In the Supreme
Court of
Queensland

No. 14
Exhibit (9)
Letter,
Plaintiff to
Defendant
24th September
1982

Queensland Electricity Generating Board

Head Office
255 Adelaide St., Brisbane, Q 4000, Australia
G.P.O. Box 1424, Brisbane, Q 4001, Australia
Telephone 228 2111 Telex 42308
Cables 'Generator' Brisbane.

Ref. G53.277.45

24 September 1982

RECEIVED

29 SEP 1982

Ans'd. P.M.C.

OFAR ✓
MSH ✓

10

The Secretary,
New Hope Collieries Pty. Ltd.,
P.O. Box 47,
IPSWICH Q. 4305

Dear Sir,

COAL SUPPLY AGREEMENT - CS/29/2

20

The Board is concerned with the delay in receiving the information requested in the letter of 27 July, 1982. Until this information on mine plans, drill hole data, mining methods, equipment and labour is received it is impossible to continue with the investigation of your claim for a price variation.

Only after this information has been received and evaluated can negotiation proceed to allow the claim to be finalised.

In a telex from your Director, Mr F.A. Robertson on 9 July 1982, he stated that, "Management of the group is ready to assist as from Monday July 12".


30

It is suggested that as soon as any part of the information becomes available it should be sent rather than waiting until all the required information is collected.

As stated at several meetings and indicated in the letter of 25 June 1982, the industry has considered your claim for retrospective payments and considers that this claim is not allowable under the terms of the agreement.

40

Yours faithfully,



I. Wilson
SECRETARY

ENQUIRIES: Mr D. Baguley
Telephone 228 2521

50

*In the Supreme
Court of
Queensland*

**No. 14
Exhibit (9)
Letter,
Plaintiff to
Defendant
24th September
1982
(Contd.)**

10

20

30

*Letter Plaintiff 20/6/83
Q 66 B - v M... K... R...*

EY. G

Dorcas Amago

40

50

60

NEW HOPE COLLIERIES GROUP

13-17 LOWRY STREET, IPSWICH,
QUEENSLAND 4305, AUSTRALIA

Correspondence — 25
P.O. BOX 47,
IPSWICH, QLD. 4305, AUSTRALIA
Telephone — (07) 267 1100
Telex — NUHOE AA 4461E

21st October, 1982

The Secretary,
Queensland Electricity Generating Board,
255 Adelaide Street,
BRISBANE, Q. 4000

10

Dear Sir,

Re: Coal Supply Agreement

C.S. 29/2 and CS 29/3

We refer to your letters of 27th July, 30th July and 24th September, 1982 and advise that following suggestions made at the conferences with officers of the Board and the State Electricity Commission on 7th July and 9th July, 1982 representations were made to the Queensland Coal Board for an interim-price increase pending conclusion of the detailed review of claims formally submitted to you on 10th May on behalf of Southern Cross Collieries and on 17th June from New Hope Collieries Pty. Ltd.

20

As you are well aware this submission has required commitment of the group's available administrative resources and involved much detail which would be common to both reviews. Your Board was to be given access to this information as approved at the meeting held at the offices of the Queensland Coal Board on 31st August chaired by Coal Board Member, Mr. M. Noume and attended by officers of the State Electricity Commission and the Board.

30

We have today received a letter dated 20th October from the Queensland Coal Board advising that its assessment was complete and advice had been forwarded to the Board and the State Electricity Commission.

We feel that an early conference with Officers of the Board and the Commission would now be appropriate to establish the parameters and timetable for continuation of the reviews as referred to in your letters of 2nd August, 1982. In the interim we have examined a number of alternative formulae in relation to escalation of the base prices so as to reflect the increases in the costs of mining under the Supply Agreement and would propose to present our conclusions to the meeting.

40

Would you let us know when it would be convenient to reconvene.

Yours faithfully,

F.A. Robertson
Executive Director

-126-

Exhibit No. 10

50

10

20

30

40

50

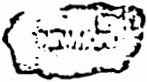
60

Cor Mr. Pherson 20/10/82

QEBB - u - new. keep

EXB

Bondie Angus
Assoc.



NEW HOPE COLLIERIES PTY. LIMITED

(Incorporated in Queensland)

12-17 LOWRY STREET, IPSWICH,
QUEENSLAND 4305, AUSTRALIA

Correspondence —
P.O. BOX 47,
IPSWICH, QLD 4305, AUSTRALIA
Telephone — (07) 702 1100
Telex — NUHOPL AA 4461E

22

*In the Supreme
Court of
Queensland*

**No. 14
Exhibit (11)
Copy Letter,
Defendant
to Plaintiff
4th November
1982**

4th November, 1982

The Secretary,
Queensland Electricity Generating Board,
255 Adelaide Street,
BRISBANE, Q. 4000

10

Dear Sir,

**Re: Coal Supply Agreement CS 29/2 - New Hope Collieries Pty.
Ltd.**

We refer to your letter of 28th October, 1982 and advise acceptance of your offer of an interim price adjustment on the basis set out therein.

It is apparent that the assessment by the Queensland Coal Board has been made without regard to its (the assessments) adequacy to meet all the requirements for which an interim price increase was sought. We welcome your offer to reconvene immediately our meetings at the specialist staff level to continue the evaluation of our claim pursuant to CS 29/2.

20

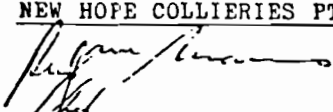
Geological information in respect of the review will be delivered to you immediately and Paul McManus, our financial controller assisted by Mr. Ian Ovens of Spry Walker & Company has been directed to confer with your specialist staff in an effort to have the review of the claim finalised forthwith.

We would like to take this opportunity of repeating what we believe has been made clear in the past. It is that the company seeks a review of the price variation provisions consequent upon the escalation provisions not properly reflecting the effects of changes in costs on the cost of producing and supplying coal under this agreement. It will be appreciated that the company alleges that this situation has obtained for a considerable period, from in or about the month of April, 1979.

30

Yours faithfully,
NEW HOPE COLLIERIES PTY. LTD.

40


By D.J. IRELAND
Company Secretary

50

Exhibit No. 11

*In the Supreme
Court of
Queensland*

**No. 14
Exhibit (11)
Copy Letter,
Defendant
to Plaintiff
4th November
1982
(Contd.)**

10

20

30

*... ..
G.S.A. v.*

*R.
Edmund
...*

40

50

60

Reasons for Judgment (McPherson J) – 26th July 1983

No. 15
Reasons for Judgment
(McPherson J)
26th July 1983

IN THE SUPREME COURT

OF QUEENSLAND

No. 902 of 1983

16. AUG. 1983
FILED
BRISBANE
INDEXED

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

10

NEW HOPE COLLIERIES PTY. LTD.

Defendant

BEFORE THE HONOURABLE MR. JUSTICE MCPHERSON

THE TWENTYSIXTH DAY OF JULY, 1983

RECEIVED
DEPT
FILED
INDEXED

THIS ACTION having been tried before the Honourable Mr. Justice McPherson without a jury on the 20th, 21st and 22nd days of June, 1983, Mr. Callinan of Queen's Counsel and with him Messrs. Russell and Campbell of Counsel having been heard for the Plaintiff and Mr. Jackson of Queen's Counsel and with him Mr. Muir of Counsel having been heard for the Defendant

20

JUDGMENT

IT IS THIS DAY ADJUDGED that the Plaintiff's claims in this action be dismissed

30

AND IT IS THIS DAY DECLARED:-

- That the Defendant is entitled to have determined by arbitration, pursuant to the agreement made between the Plaintiff and the Defendant dated the twelfth day of July, 1978 as subsequently varied, the following questions disputes or difference, namely whether during the period from First day of July, 1978, to Thirty-first day of December, 1982, the escalation provisions referred to in Clause 9.1 of the said agreement properly reflected the effects of changes in costs on the cost of

40

50

SEYMOUR NULTY & CO.
Solicitors
9th Floor
Citicorp House
Cnr Queen and
George Streets
BRISBANE. Q.
4000.

Telephone No. 221
5033 - Dr. Box
41024

CLS:JAT:TM
S8NHC 15883 [v]
[JudgeQEGB]

: 2 :

10

producing and supplying coal under the said agreement as so varied and whether there should be any and if so what alterations in the price variation provisions of the said agreement as so varied in respect of all or part of such period.

20

2. That the Defendant is entitled to have determined by arbitration, pursuant to the said agreement as so varied, the following question dispute or difference, namely, the terms of supply of the additional quantities of coal after 31st December, 1982 and, in particular, but without limitation the manner and extent to which the price or prices for such additional quantities of coal shall reflect all the changes in costs to the Defendant, including economies resulting from the amortisation of capital items still in use, technological advances, and items of expenditure not repeated, including the restoration of any open-cut workings for which special allowances have been made in the Base Price, as well as changes in costs resulting from changes in mining conditions, new mining plant and the scale of operations.

30

40

50

AND IT IS DIRECTED that either party hereto shall have liberty to apply to this Honourable Court

upon three (3) clear days' notice to the other party

AND IT IS ORDERED THAT THE DEFENDANT DO RECOVER

against the Plaintiff its costs of and incidental to

60

: 3 :

both the claim and counter-claim in this action
including reserved costs to be taxed.

BY THE COURT

10



20

30

40



50

60

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

QUEENSLAND ELECTRICITY GENERATING BOARD

Plaintiff

10

AND:

NEW HOPE COLLIERIES PTY. LTD.

Defendant

JUDGMENT - McPHERSON J.

20

Delivered the 26th day of July 1983.

The plaintiff Board, which is constituted a body corporate by s. 80 of the Electricity Act 1976-1980 ("the Act"), has as its principal function under s. 99 of the Act the supply and generation of electricity. The defendant is a colliery company with a coal mine or mines located in the Ipswich district of Queensland. By written agreement dated 12th July 1978 the parties entered into a contract for the supply by the defendant to the plaintiff of coal over an extended period. The agreement was one of, it appears, a number of such contracts in nearly identical terms, one of which was recently the subject of detailed consideration by a Full Court, of which I was a member, in Southern Cross Collieries v. The Queensland Electricity Generating Board & Anor. (O.S. 850/1982: June 8th 1983). I am therefore to some extent relieved of the need to refer with particularity to many of the provisions of the subject agreement considered in the judgments in that matter; but it is desirable to point out that at least one problem of importance that arose in that case does not arise in this. That is that in the case of the Southern

30

40

50

Reasons for Judgment

60

Cross agreement there was a question about the quantity of coal to be purchased from the colliery after supply of the specified minimum quantity for the first five years. It is for present purposes enough to say that no such question arises in the present case, which is concerned primarily with the matter of prices payable for coal supplied or to be supplied under the written agreement.

10

So far as is here relevant the agreement after its recitals is divided into series of clauses, of which cl. 1 contains interpretation provisions; cl. 2 is headed "General"; cl. 3 "Coal quantities"; cl. 8 "Price and payment for coal delivered"; and cl. 9 "Variation in price for changes in cost". Being, as it is, an agreement to sell, the contract requires for its validity that the three essentials of parties, subject-matter, and price be determined or determinable. No difficulty exists about either of the first two matters. The quantity of coal, which the defendant Company agrees to supply and the Board agrees to purchase and take from the Company, is specified in cl. 3.1 in respect of the year 1978 as 400,000 tonnes and as an aggregate minimum for the 5 years from 1st January 1978 to 31st December 1982 of 1,645,000 tonnes. For the period of 15 years from 1st January 1978 to 31st December 1992 the minimum quantity agreed to be purchased is 3,290,000 tonnes.

20

30

40

Both from this and from other provisions of the agreement, it emerges that the parties envisaged that their agreement had a potential 15 year existence. With respect to the first 5 years, the provisions of the agreement as to price were reasonably specific. No doubt because of the difficulty of making accurate predictions with respect to cost factors affecting the production

50

Reasons for Judgment

60

of coal in the future, the agreement is thereafter less specific about the matter of price. As regards the first 5 years, cl.

8.1 provides:-

10

"8.1 Unless otherwise provided herein, the Base Price per tonne to be paid by the Generating Board to the Company for Coal of Basic Standard Quality shall be in accordance with the Scale of Base Prices stated in Schedule C."

20

Clause 8.1 is not by its own terms confined to coal supplied during the first 5 year period, but it is introduced by the words "unless otherwise provided herein", and it is clear from other provisions of the agreement that it is intended to be so confined. One of those provisions is cl. 2.5 which is as follows:-

30

"2.5 The general terms of this Agreement apply to the quantity of coal agreed to be purchased by the Generating Board under this Agreement whereas the Base Prices and provisions for Variation in Prices for Changes in Costs apply only to purchases in the first five year period from 1 January 1978 to 31 December, 1982. The Base Price and provisions for variations in prices for changes in costs for purchases after 31 December 1982 shall be agreed by the parties prior thereto in accordance with Clause 8."

40

The expression "Base Price" is defined in cl. 1(c) as the price determined in accordance with cl. 8, and the provisions for variation in price for changes in cost are, clearly enough, those to be found in cl. 9. The other provision which makes plain the division between the first quinquennium and the balance period of the agreement is cl. 8.7:-

50

"8.7 The terms of supply of additional quantities beyond the initial five Year period (from the Commencement Date to 31 December 1982) shall be finalised before 31 December 1981. The new pricing structure to apply to such additional quantities shall reflect all the changes in costs to the Company including economies resulting from the amortisation of capital items still in use, technological advances, and items of expenditure not repeated, including the

Reasons for Judgment

" restoration of any open cut workings for which special allowances have been made in the Base Price, as well as changes in costs resulting from changes in mining conditions, new mining plant, and the scale of operations. The Generation Board shall have the right to satisfy itself that the new pricing structure reasonably reflects all such factors."

10

These provisions will serve as an introduction to the disputes which divide the parties, and which are capable of being reduced essentially to two in number. The first is whether in respect of coal delivered by the defendant to the plaintiff, and paid for by the latter, during the period of the first quinquennium ending on 31st December 1982, the defendant is entitled, as it claims, to a review of the price variation provisions in cl. 9 of the agreement. The second is whether the defendant is entitled to a determination of the terms of supply of, and in particular the prices or prices to be paid by the plaintiff for, additional quantities of coal after 31st December 1982.

20

30

As regards the first matter of dispute, reference has already been made to cl. 8.1, which states that the base price per tonne to be paid for the coal is to be in accordance with the Scale of Base Prices in Schedule C. That Schedule sets out the price to be paid in each of the years 1978 to 1982 in respect of coal of basic standard quality. Schedule D comprises details of the components of base prices stated in Schedule C, those components consisting of labour, materials, statutory charges, non-escalating, and "other", together with a total that corresponds with a figure in Schedule C. The purpose of identifying the components in Schedule D appears from cl. 8.3:-

40

"8.3 The Scale of Base Prices relates to the costs of labour, materials and supplies, and all

50

Reasons for Judgment

60

10 " other cost factors incurred by the Company in the production and supply of the Coal applying at the Base Date. The Components of the Base Prices applicable to each cost factor, for the various quantities and Base Prices stated in Schedule C, are stated in Schedule D. All the prices in the Scale of Base Prices shall be subject to increase or decrease for changes in costs as specified in Clause 9."

Clause 9.1 contains a provision which is critical to the defendant's claimed review of the price paid during the first 5 years. It is in the following terms:-

20 "9.1 It is a fundamental condition of this Agreement that the escalation provisions shall properly reflect the effects of changes in costs on the cost of producing and supplying Coal under the Agreement. If the formulae employed are not properly reflecting such changes or if indices used for the purposes of this Clause cease to be available or continue to be unavailable for a period of six months, a review of the price variation provisions shall take place upon request by either party. Where the parties agree to an alteration it will be incorporated in the Agreement and will apply thenceforth. In any event such review shall take place at not more than five yearly intervals. Should the award working hours be reduced from 35 hours per week, then such review shall be undertaken forthwith, especially to assess the impact on non labour components."

30

This provision carries into effect in the contract itself the common intention that is expressed in recital G of the agreement:-

40 "G. The Generating Board and the Company have agreed that the pricing structure be reviewed at least each five years as herein provided but that there be variations in price related to changes in cost, it being the clear intention of the parties that any clauses of the Agreement relating thereto are intended to reflect the effects of changes in cost of producing and supplying coal under this Agreement."

50 Having regard to these and other provisions of the agreement, the scheme of the contract, at least as regards price, appears to be reasonably clear. It is that the base price of coal in

Reasons for Judgment

respect of each year of the first quinquennium is to be that specified in Schedule C: see cl. 8.1. That base price consists of the components or "cost factors" identified in Schedule D: see cl. 8.2. There is express provision in cl. 9.2 for adjustment of the base price "to the extent of changes . . . in the cost components contained in Schedule D", and adjustment is to be effected monthly and to apply from the beginning of the ensuing month: cl. 9.3. The adjustment for changes in costs is to be effected by the application of a formula set out in cl. 9.8, and there are specific provisions in cll. 9.9, 9.10, 9.11, 9.12 and 9.13 defining each of the components concerned: see also cl. 9.6, which provides that in certain defined circumstances a new factor will be inserted in the formula. It is worthy of note that the "other component" is expressed to include profit, and is to vary in the same proportion as variations in the consumer price index.

10

20

30

Monthly adjustments in respect of changes in costs were in fact calculated by Messrs Touche Ross & Co., chartered accountants, acting on behalf of the defendant company: see e.g. the letter dated 14th June 1982 (ex. B to the affidavit of N.R. Walker sworn 20.6.1983), and their calculations were accepted by the plaintiff for the purpose of paying for coal supplied in the first 5 years. No question arises about the accuracy of those calculations or the payments made on the faith thereof. However, by the middle of 1982 the defendant had evidently reached the conclusion that "escalation provisions" did not, to use the language of cl. 9.1, "properly reflect the effects of changes in costs on the cost of producing and supplying coal under the agreement". On 14th July 1982 (see para. 6(a) of the amended

40

50

Reasons for Judgment

60

10 defence), and again on 23rd December 1982 (see para. 10 of
the amended statement of claim) the defendant gave notice of
their claim in that regard, requesting a review of the price
variation provisions, and ultimately a reference to arbitration
pursuant to cl. 13 of the ensuing dispute. Some steps were
taken in the direction of having the matter determined by
arbitration; but in the end these did not proceed, and the
present action was instituted by the plaintiff Board in order
to have it decided whether the defendant was entitled, and the
plaintiff obliged to submit, to such a determination.

20 For the plaintiff Board a number of grounds was advanced
by Mr Callinan Q.C. in opposition to the defendant's claim to
require a review of prices of coal already delivered during the
first 5 years. A principal objection was that the agreement did
not, it was submitted, contemplate or provide for a retrospective
30 review of the price or prices of coal supplied and paid for by
the plaintiff either during the first 5 years or at all. It is
in my opinion not possible to accept this submission in so far
as it concerns a review within the first quinquennium. Clause
9.1 in its second sentence is directed to three contingencies
in which "a review of the price variation provisions shall take
40 place upon request by either party". The first is if the
formulae employed are not properly reflecting changes in costs.
The second and third are if the indices used for the purposes
of that clause (cl. 9) either (i) cease to be available or
(ii) continue to be unavailable for a period of six months.
Among the indices concerned are the materials index: cl. 9.10,
50 and the consumer price index: cl. 9.13. Either of those indices
might have ceased to be available within the first quinquennium,

Reasons for Judgment

or continued during that time to be unavailable for a period of six months. In either of those events a review might have been required during the first 5 years. It is impossible to sever these two instances from the first, which is concerned with the failure of the formulae, such as those in cl. 9.8, properly to reflect changes in cost. All three events are referred to in the same sentence and entail the same potential consequence. There is therefore no reason either of logic or of language for excluding the right of review under cl. 9.1 during the first 5 years of the agreement.

10

The submission in relation to what may be called the retrospectivity point is rested partly on the language of cl. 9.1, partly on the language of the Act itself, and partly on considerations of convenience or inconvenience. As regards cl. 9.1, the relevant provision is expressed in what I believe is called the continuing present tense ("... are not properly reflecting such changes..."). No doubt this tense was chosen because it was supposed, and probably correctly, that the failure of the formulae to reflect changes was itself likely to be a continuing process, becoming manifest or emergent over a period of time, and not spontaneously or suddenly becoming apparent as a single observable event. Some element of retrospectivity is inherent in cl. 9.1 or at least in the procedure for determining the question by arbitration under cl. 13 if no agreement be reached. In the nature of things it would be impossible to refer to arbitration and obtain an award forthwith, and both cl. 13.6 and cl. 8.11 require the agreement to continue in the meantime. More formidable perhaps is the language of the third sentence of cl. 9.1 which provides that "where the parties agree

20

30

40

50

Reasons for Judgment

60

10 to an alteration it will be incorporated in the agreement and
will apply thenceforth". That is doubtless designed to ensure
that the relevant new formula is substituted so that it becomes
part of the agreement and applies to future coal deliveries until
a further review takes place. It does not however in terms
exclude the possibility of a review which, when accomplished, has
a retrospective application to prices already paid for coal
delivered. If it did so provide, it would be necessary to fix
a date at, but not before which, the substituted formula was to
commence its operation. Would that date be the date of the award
20 under the reference to review? Or the date when the review was
requested? Or the date when the change became manifest, or when
it in fact first began to occur? The first of the dates suggested
would tend to encourage delay by the Board. The second would
imply that time was of the essence of the making of the request.
That would be inconsistent with the approach recently adopted
30 by the House of Lords in the case of a rent review provision:
see United Scientific Holdings Ltd. v. Buraby Borough Council
[1978] A.C. 904. The provisions in question there and in other
such cases are by no means identical with cl. 9.1, but they share a
common purpose. Their Lordships in that case evinced no
particular reluctance to holding that a rent review might produce
40 a retrospective liability for rent. As an aid to construction
Mr Jackson Q.C. relied on the decision of the Court of Appeal in
England in Superior Overseas Development Corporation v. British
Gas Corporation [1982] 1 Lloyd's Rep. 262, which concerned a
25 year agreement for sale of North Sea gas, providing for a
review for adjustment of prices on request "if at any time or from
50 time to time during the contract period there has been any

Reasons for Judgment

substantial change in the economic circumstances relating to this agreement . . . causing . . . substantial economic hardship . . .". Waller L.J. at p. 266, col. 2, analysed the various possible dates to which the adjustment might relate, and on the following page of the report concluded that there was no good reason for not going back to the beginning of the substantial hardship. With his view the other Lords Justices of Appeal evidently agreed. There are, of course, differences of language and form between that agreement and this; but both the problem, and the purpose of the relevant provisions, are common to both, and regarding as I do, the English decision as of assistance in the present context I propose to follow it. In consequence, I conclude that the language of this agreement, and in particular of cl. 9.1, affords no obstacle to the determination of the question whether the escalation provisions of the agreement during all or part of that period of the agreement to 31st December 1982 properly reflect the effects of changes in costs, etc.

10

20

30

What I referred to earlier as considerations of convenience or inconvenience can readily be considered in conjunction both with the provisions of the Act itself and with the plaintiff's other major submission on this aspect, which is that the defendant is estopped from claiming further payment pursuant to a review of prices such as is now sought. The inconvenience of increasing the price of coal ex post facto its supply and the payment therefor is plain enough. It means that someone, and presumably it will be the ultimate consumers of electricity, will have to pay for that increase, and will almost certainly have to do so in the form of higher charges for electricity to be consumed in the future. That means, as Mr Callinan more than once

40

50

Reasons for Judgment:

60

10

emphasised, that future consumers will be paying for electricity consumed in the past and in the consumption of which not all of them participated. No consumer is likely to underrate the force of such an argument. But a consideration of the effects of an interpretation upon the fortunes of those who in the end may have to meet its financial consequences is almost if not wholly irrelevant to the agreement between the parties. The Act in s. 99A requires the Board to conduct its operations "efficiently and economically and in such manner as to avoid waste and extravagance". It would be the profound hope of all consumers that the Board would do so even without this statutory exhortation. Section 99A does, however, impose no direct sanction or consequence for its infringement, and the plaintiff in its submissions expressly, and in my opinion correctly, disavowed reliance upon it or any other provision of the Act, as constituting the subject agreement either illegal or ultra vires or not enforceable according to its terms. What it was sought to do was to rely on the Act as in some sense an interpretative background or context for the agreement and the submission with respect to estoppel that was advanced by the plaintiff. I am in any event satisfied that there is nothing in the Act that affects the validity or enforceability or, in any relevant respect, the interpretation of the agreement between the parties.

20

30

40

50

The matter of estoppel is raised by the plaintiff's pleaded reply. It requires for its success findings that the plaintiff took and acted upon a number of decisions in the conduct of its operations which were motivated by a belief as to the cost of electricity generated by one or more power stations using coal supplied by the plaintiff. It may fairly be concluded that

Reasons for Judgment

decisions were on occasions made, and actions taken, which might have been differently made or taken had the plaintiff or its officers been aware that the relevant coal or electricity might in the end be going to cost more than was supposed. But that is not enough to give rise to an estoppel, whether at common law or in the equitable or promissory form. What is required in any such case is a representation "which must be clear before it can found an estoppel": see Legione v. Hately (1983) 57 A.L.J.R. 292, 303, per Mason, Deane JJ., citing Low v. Bouverie [1891] 3 Ch. 82, 106, 113, et al. What is meant by this appears from the ensuing passages quoted in the reasons of their Honours, i.e., "a statement of such a nature that it would have misled a reasonable man, and that the plaintiff was in fact misled by it". It is at this point that a serious difficulty emerges in the plaintiff's submission with respect to estoppel. The statement relied upon to found the estoppel consists of the contents of the invoices, as they have been called, of which the letter dated 14th June 1982 from the accountants is an example. It encloses copies of calculations made by the accountants and on its face refers to various figures in columns headed "provisional price" and others in a column headed "final price". It is these latter words that are relied upon. The word "price" is by itself quite neutral or innocuous, and it is only its collocation with the word "final" that might be said to achieve the result contended for. In the context of the letter, or others like it, I find it impossible to regard the expression "final price" as capable of constituting an unambiguous representation by the defendant of its intention never to seek a review of the amounts claimed in the invoice. But the

10

20

30

40

50

Reasons for Judgment

10 fundamental difficulty for the plaintiff is that there is in the
end not a shred of evidence that any of the officers of the plaintiff
who saw or knew of invoices of that kind was induced by the
presence of the words "final price" to assume, or to act on the
assumption, that no review of that price or its components
would ever be claimed by the defendant. It would, in any event,
have been unreasonable for the plaintiff or its officers so to
assume or act, the more so when regard is had not only to the
provisions of the agreement with respect to such a review, but
20 also to cl. 8.11, which, after referring to the submission of
pro forma invoices on the basis of information available,
concludes by saying that "subsequent adjustments shall be made
when final invoices are submitted at some later date". The
author of the invoice/letter dated 20th June 1983, and others
like it, was therefore simply repeating the language of cl. 8.11,
and that clause is merely one part of an agreement which in
30 cl. 9.1 and elsewhere contemplates the possibility of a review
of a price even though it is referred to as "final". In my
judgment, therefore, it is not possible to regard the expression
in question as a representation capable of reasonably leading
to the specified conduct of the plaintiff, or to find as a fact
that it did so. It follows that the alleged estoppel is not
40 established.

From this I turn to the second and, in my opinion, more
difficult of the two questions earlier referred to in this
judgment. That question is whether the defendant is entitled
to a determination of the terms of supply, and in particular
the price to be paid for, the coal to be supplied after 31st
50 December 1982.

Reasons for Judgment

As I have already said, cl. 2.5 draws a firm line between the base price per tonne to be paid for coal in the first 5 years to 31st December 1982 (which is the price specified in cl. 8.1 as adjusted in accordance with the variations provided in cl. 9), and the base price and provisions for variations in prices for changes in costs for purchases after that date. Clause 2.5 expressly declares that the former are to apply "only" to purchases in the first quinquennium, while the latter "shall be agreed by the parties . . . in accordance with Clause 8". The words omitted from this extract are "prior thereto", which refer to 31st December 1982. The parties did not agree on new prices and variation provisions prior to that date, but it had before then become evident that agreement would not be reached, and reference of the matter to arbitration was sought by the defendant before the end of 1982. Since then coal has, I understand, continued to be ordered, supplied, and accepted, but I was invited not to concern myself with this circumstance or with the terms as to price on which it has been provided.

10

20

30

The reader of cl. 2.5 is referred by the terms of its last sentence to cl. 8. The only provision of cl. 8 which deals with the price of additional quantities of coal beyond the first 5 year period is cl. 8.7. Its terms are set out earlier in this judgment. It presents what may be regarded as two slight interpretational difficulties and one difficulty of legal principle. The former consists of its emphasis on "economics" of various kinds in the costs to the Company. Nevertheless, its fundamental requirement is that there shall be a "new pricing structure" applicable to the additional quantities, and that this shall reflect "all the changes in costs to the Company including"

40

50

Reasons for Judgment

the economies. I do not think that the detailed reference to
the possible forms of such economies can be regarded as qualifying
the fundamental requirement that the new price shall reflect all
costs to the Company. The other matter of interpretation arises
10 from the presence at the end of cl. 8.7 of a provision giving the
Board the right to satisfy itself that new pricing structure
reasonably reflects all the factors of economy. It was argued
that this meant that the Board could never be bound to buy
additional quantities of coal because the right so conferred is
at most one that is to be exercised only with honesty and not
20 reasonably. Even if this were so, it would not in my view in
law preclude an effective and enforceable agreement one term of
which being that the Board undertook to make its decision or
exercise a discretion honestly. But in any event I do not consider
that the provision in question is directed to a stage after the
new pricing structure has been fixed, whether by agreement or
30 otherwise, but to an earlier stage, i.e., where the parties are
still in the process of negotiation about that new structure.
The provision may, as Mr Jackson suggested, go so far as to enable
the Board to require production of evidence or of documents in
the possession of the defendant Company, said to justify the
new pricing structure sought by the defendant. But whether or not
40 it extends so far, it is I think clear that its function is
simply to emphasise that the plaintiff Board is not bound simply
to accept what is put before it as an appropriate new pricing
structure said by the defendant to reflect all changes in costs,
including economies, but is entitled to insist upon the right to
50 satisfy itself of the accuracy of such a proposal. I cannot
regard the relevant provision as one that might operate as some

Reasons for Judgment

kind of condition subsequent enabling the Board to reject the new pricing structure after it has been agreed upon or has been determined by arbitration. That would tend to make a nullity of cl. 8.7 and is therefore an interpretation which for that reason a court would naturally strive to avoid if the reproach of being a destroyer of bargains is not to be incurred.

10

The difficulty of legal principle which I said arises from cl. 8.7 is that it appears to import an agreement to agree, and that, for reasons which I set out in the Southern Cross Collieries case, does not constitute an enforceable agreement. There however the problem concerned the consequences of omission to specify the additional quantities (if any) of coal to be purchased after the first quinquennium. Because of the different provisions of cl. 3.1 of the agreement in the present case, no comparable difficulty arises here. The question remains of how the price is to be determined. There seem to me to be several possible solutions. One is to be found in s. 11 of The Sale of Goods

20

Act of 1896, which, after providing in s. 11(1) that the price in a contract of sale may be fixed by the contract, or left to be fixed in manner thereby agreed, proceeds in s. 11(2) to provide that, when not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price, which is said to be a question of fact dependent on the circumstances of each particular case. The statutory implication by s. 11(2) of an agreement to pay a reasonable price was held by Viscount Dunedin to be excluded where, instead of simply being silent on the point, the contract provides that the price is to be agreed: May & Butcher v. The King [1934] 2 K.B. 17n (H.L.) at p. 21. It might be argued that the same would apply in the case of cl. 2.5

30

40

50

Reasons for Judgment

10 and cl. 8.7, both of which contemplate an agreement between the parties to agree the price. But in my opinion the short answer to that lies in the fact that, in the case of both of those clauses, what is expressly provided is that the pricing arrangements will be "agreed" (cl. 2.5) or "finalised" (cl. 8.7) before 31st December 1982. That has in fact not occurred and, the express provision for agreement being confined to that period, there is no relevant contractual provision now applicable. The contract is silent as to the position after that date, and that means that there is no obstacle to the statutory implication by 20 s. 11(2) of a reasonable price in respect of future coal supplies by the defendant to the plaintiff.

The agreement is therefore a valid contract for the sale of the additional quantities at a reasonable price. I am aware that in Hall v. Busst (1960) 106 C.L.R. 206 Fullagar J. (with whom Dixon C.J. agreed) expressed the view that s. 11(2) might 30 apply only to a contract for the sale of goods which had been executed by delivery of the goods. Menzies J. in his judgment appears to have adopted a similar attitude. But Hall v. Busst (supra) was a case of sale of land, not goods, and the remarks of their Honours, which are in sharp contrast to those of Kitto J. and Windeyer J. in the same case, are therefore strictly 40 obiter. They were not followed by the Full Court of New South Wales in Wenning v. Robinson (1964) 64 S.R. (N.S.W.) 157, nor more recently by Connolly J. in Timmerman v. Nervina Industries (International) Pty. Ltd. [1983] Qd. R. 1; and they are as Professor Sutton implies (The Law of Sale of Goods, 2nd ed., at p. 92) inconsistent with the statutory definition of a 50 "contract of sale" as including both an agreement to sell as well

Reasons for Judgment

as a sale: see s. 3 and cf. s. 4.

If, however, the agreement is, even after 31st December 1982, to be regarded as an agreement to agree on the price, it is nevertheless an agreement that provides for arbitration in the event of failure of the parties to agree. To the details of the arbitration clause I shall come in due course. For present purposes it is enough to say that for reasons given in the Southern Cross decision I remain of the view that an agreement which provides simply for the determination of the price by arbitration is not a valid contract, if by arbitration what is intended in this context is arbitration in the strict sense; that is to say, a judicial or quasi-judicial proceeding involving the determination of a formulated question, and not simply the fixing of the price by a third person acting in the office of a valuer. It is true that in Attorney-General v. Barker Bros. Ltd. [1976] 2 N.Z.L.R. 495, the New Zealand Court of Appeal considered that an agreement that a rent should be fixed by arbitration was valid and binding. Their Honours in this regard relied upon Foley v. Classique Coaches Ltd. [1934] 2 K.B. 1 as authority for the proposition that the presence of an arbitration clause expressed in sufficiently wide terms operated to displace the principle in May & Butcher v. The King (*supra*). But the better view of Foley v. Classique Coaches Ltd. (*supra*) is, I think, that the decision there turned on the circumstance that, although there were to be sales of petrol over a period of some years "at a price to be agreed", the parties had in fact performed the agreement for some three years before the dispute arose. In the light of that circumstance, it would have been artificial for the law to insist that no agreement existed when the parties had

Reasons for Judgment

10 by their conduct demonstrated a contrary intention, and accord-
ingly an agreement for a reasonable price was implied. Once that
implication was made there was a matter (namely, the determination
of a reasonable price) that was capable of forming the subject
of the arbitration clause, and an enforceable contract existed.
The case may therefore be taken as an illustration of the
principle that, where an agreement is not merely executory but
is executed wholly or at least in part, the courts will, by
resort to implication or otherwise, treat the parties as bound
by a valid contract notwithstanding that the agreement may other-
20 wise be wanting in finality or certainty. Of this principle
the decision in Brogden v. Metropolitan Ry. Co. (1877) 2 App.
Cas. 666 affords a leading example.

This view of Foley v. Classique Coaches Ltd. (supra) has
the support of a number of subsequent decisions. An instance is
British Bank for Foreign Trade v. Novimex Ltd. [1949] 1 K.B. 623,
30 629-630. The two opposing views of Foley's case appear in the
report of the argument in those proceedings and, although the
case itself is not referred to in the judgment, it is clear that
the Court of Appeal reached their conclusion because the contract
before them was fully executed. More recently, the same approach
commended itself to that Court in Beer v. Bowden [1981] 1 W.L.R.
40 .522 (note), where Goff L.J. specifically rejected the submission
that the presence of an arbitration clause was the critical factor
in the decision of that case; cf. also F. & G. Sykes (Wessex)
Ltd. v. Fine Fare Ltd. [1967] 1 Lloyd's Rep. 53. In the present
instance it is not, I think, possible to regard the agreement as
50 qualifying for description as an executed agreement. As to the
first five years the agreement is, it is true, entirely executed.

Reasons for Judgment

Put the parties envisaged that after that period had expired a new pricing regime should prevail. It is a nice question whether the analogy in this case is with the renewal of a lease pursuant to an option; or of a lease containing a rent review clause: cf. United Scientific Holdings Ltd. v. Buraby Borough Council [1978] A.C. 904, 961, per Lord Simon. The resemblance seems closer to the former; but, whichever it is, it is clear that, without a determined or determinable price, the agreement for additional quantities of coal in the ensuing five year period will not be enforceable: cf. Randazzo v. Golding [1968] Qd. R. 433; King's Motors (Oxford)Ltd. v. Lax [1970] 1 W.L.R. 426.

10

20

What is required, in order to make that agreement valid is either "some means or some standard" by which the essential term of price can be fixed. The words quoted are taken from the opinion of Lord Wilberforce in delivering the advice of the Judicial Committee in Cudgen Rutile (No. 2) Pty. Ltd. v. Chalk [1975] A.C. 520, 536. I have already rejected the presence of the arbitration clause, standing alone, as a sufficient "means" in the context of this agreement. Is there a sufficient standard to enable the price to be determined by an arbitrator acting in a judicial capacity? The answer to that must be found by an examination of cl. 8.7 and cl. 9 of the agreement, and, again, what is required is an objective standard capable of being ascertained or determined by reference to evidence, and not merely as a result of experience or intuitive judgment or perhaps even caprice. The requirement of an objective standard was emphasised by Hutley A.J.A. in Australian Mutual Provident Society v. Overseas Telecommunications Commission [1972] 2 N.S.W.L.R.

30

40

50

Reasons for Judgment

806, 817, 818; and cf. also Booker Industries Ltd. v. Wilson
Parking (Old.) Pty. Ltd. (1980 no. 3048: unrep.) per Andrews J.,
whose decision was ultimately affirmed by the High Court: see
(1982) 56 A.L.J.R. 825. It is of the essence of the distinction
10 between an arbitration stricto sensu and a "merc" valuation
or price-fixing by a third party. Whether such an objective
standard or criterion exists in the present case depends primarily
upon the provisions and content of cl. 8.7 and cl. 9. The
former requires that the new pricing structure applicable to the
additional quantities of coal "shall reflect all changes in costs
20 to the Company". Prima facie such changes are susceptible of
objective ascertainment and assessment. Modern accounting
methods are quite capable of exposing the extent to which costs
have varied over a period of 5 years, and this is so even in
the case of what may be the complex activity of producing
coal from underground workings. Clause 9 does, as I have said,
30 contain in cll. 9.6 to 9.13 a series of provisions incorporating
variation factors including published indices by reference to
which both past and current costs, as well as likely costs in
the future, are capable of being determined or rendered deter-
minable. It would not, I think, be inconsistent with the
fundamental requirement of cl. 8.7, or with the judicial nature
40 of his function, for the arbitrator to take as a starting point
the existing structure and to determine whether and to what
extent, if it at all, it accurately reflects the changes in costs
to the Company, which can only refer to the cost of producing
and supplying coal under the agreement: cf. cl. 9.1. That it
is legitimate for this purpose to refer to what the parties have
50 done in the previous period of the contract seems to me to be

Reasons for Judgment

supported as a matter of authority by the approach adopted by the House of Lords in Hillas & Co. Ltd. v. Arcos Ltd. (1932) 147 L.T. 503; [1932] All E.R. Rep. 494, but in any event it appears to be implicit in the reference to "changes in costs". By this means all changes in costs, and appropriate escalation factors therefor, are in my view capable of being determined. The only items which might be thought to present a difficulty are in cl. 9.13, "Other Components", which, as I have said, expressly include a profit factor. This factor alone might be thought to introduce a subjective element into the determination; but it does not seem to be going too far to expect that evidence may be available of prevailing or comparative profit rates in the coal extractive or other like industries; and, again, the standard agreed upon by the parties in the first 5 years may, in the absence of such evidence, be thought to provide some guide to the assessment of the profit factor in the future. In Thomas Bates and Son Ltd. v. Wyndhams (Lingerie) Ltd. [1981] 1 W.L.R. 505, the English Court of Appeal concluded that the amount that a reasonable tenant and landlord would agree upon as the rent of premises, taking account of "all considerations which would affect the mind of either party in connection with the negotiation of such a rent", not being simply a market rent, was a fit subject for arbitration: see [1981] 1 W.L.R. 505, 517, per Buckley L.J. If that does not go too far, the present case falls well within the boundaries of what may legitimately be made the subject of a reference to arbitration.

My conclusion therefore is that the matter of review of the pricing structure of the additional quantities of coal to be supplied in the 5 years commencing after 31st December 1982 is,

Reasons for Judgment

like the matter of the prices in respect of coal delivered during those first 5 years, capable in law of being submitted to arbitration. The provisions of cl. 3.1 are, as Mr Jackson Q.C. has pointed out, most extensive in their terms and include "any questions, dispute or difference whatsoever . . . which cannot be resolved by the contracting parties within a period of 3 months". Attorney General v. Barker Bros. Ltd. (supra) on this point suggests that a narrow interpretation should not be imposed on such a provision, and, indeed, it was not before me submitted as a matter of construction that cl. 13.1 was not wide enough to cover the matters here sought to be arbitrated. What was submitted was that cl. 13.2 was, in view of the decision in National Enterprises Ltd. v. Facal Communications Ltd. [1975] 1 Ch. 397, not capable of sustaining an order under s. 17(a) of the Arbitration Act 1973 for the appointment of an arbitrator by the court. There are verbal differences between the arbitration clause in that case, and that in cl. 13.2, which may well render that decision distinguishable; but I am here relieved of the need to decide that point because in the end Mr Jackson for the defendant did not press his claim for a present order for such appointment. It seems to me in all the circumstances to be a prudent course not to make such an order now because the parties may, in the light of this judgment, agree on the identity of the arbitrator to be appointed; or if, as seems more likely, the decision proceeds to an appeal or appeals, it will certainly be some time before such appointment falls to be considered. To make an order now appointing a specific individual as arbitrator therefore involves the risk that when he is ultimately called upon to act he may no longer be available

Reasons for Judgment

or willing to do so, and a further appointment will then become necessary. In all the circumstances it appears to me to be preferable to leave that matter for another day.

In the result, I propose to make the declarations sought in paragraphs 1(a) and 2(a) of the amended defence and counterclaim; but before doing so I will give the parties a further opportunity of being heard on the form of those declarations. Apart from that, there will be judgment in the action with costs for the defendant and against the plaintiff on both the claim and counterclaim.

10

20

30

40

50

Reasons for Judgment

60

No. 17
Reasons for Judgment of Full Court of Queensland
6th December 1983

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD
(Plaintiff) Appellant

AND:

NEW HOPE COLLIERIES PTY. LTD.
(Defendant) Respondent

FULL COURT BEFORE: THEIR HONOURS MR. JUSTICE DOUGLAS,
MR. JUSTICE D.M. CAMPELL, MR. JUSTICE DEMACK

THE SIXTH DAY OF DECEMBER, 1983

10

FILE
ASSESSOR
RECEIPT
INDEXED
SEARCHED

20

THIS ACTION having on the 24th, 25th, 26th and 27th days of October, 1983 and this day come on for hearing by way of appeal from the judgment of the Honourable Mr. Justice McPherson pronounced at Brisbane on the 26th July, 1983, whereby it was adjudged that the Plaintiff's claims in the action be dismissed

Order
MAGISTRATES

30

SUPREME COURT
OF QUEENSLAND
15 DEC 1983
FILED
BRISBANE

AND WHEREBY IT WAS THIS DAY DECLARED:-

That the Defendant is entitled to have determined by arbitration, pursuant to the agreement made between the Plaintiff and the Defendant dated the twelfth day of July, 1978 as subsequently varied, the following questions, disputes or difference, namely whether during the period from first day of July, 1978 to thirty first day of December, 1982, the escalation provisions referred to in clause 9.1 of the said agreement properly reflected the effects of changes in costs on the cost of producing and supplying coal under the said agreement as so varied and whether

40

SEYNOUR NULTY &
CO. Solicitors,
9th floor,
Citicorp House,
Cnr. Queen and
George Streets,
BRISBANE.

Tel: 221 5033

CLS:CMD
NS8 15d83[ii]
[JudQEGB3]

50

(DH)

d/

60

there should be any and if so what alterations in the price variation provisions of the said agreement as so varied in respect of all or part of such period.

2. That the Defendant is entitled to have determined by arbitration, pursuant to the said agreement as so varied, the following question, dispute or difference, namely, the terms of supply of the additional quantities of coal after 31st December, 1982, and, in particular, but without limitation the manner and extent to which the price or prices for such additional quantities of coal shall reflect all the changes in costs to the Defendant, including economies resulting from the amortisation of capital items still in use, technological advances, and items of expenditure not repeated, including the restoration of any open-cut workings for which special allowances have been made in the Base Price, as well as changes in costs resulting from changes in mining conditions, new mining plant and the scale of operation.

AND WHEREBY IT WAS DIRECTED that either party hereto shall have liberty to apply to this Honourable Court upon three (3) clear days' notice to the other party

AND WHEREBY IT WAS ORDERED THAT THE DEFENDANT DO RECOVER against the Plaintiff its costs of and incidental to both the claim and counter-claim in this

10

20

30

40

50

60

*In the Supreme
Court of
Queensland*

No. 17
Reasons for
Judgment
of Full Court
of Queensland
6th December
1983
(Contd.)

10

action including reserved costs to be taxed.

AND UPON HEARING Mr. Callinan of Queen's
Counsel with him Messrs. Russell and Campbell for the
Appellant and Mr. D. Jackson of Queen's Counsel and
with him Mr. J. Muir of Counsel for the Respondent:-

IT IS THIS DAY ORDERED that the said appeal be
dismissed and that the Respondent recover against the
Appellant its costs of the appeal to be taxed.

20

BY THE COURT


DEPUTY REGISTRAR

30

40

50

60

No. 18
Formal Judgment – 6th December 1983

*In the Supreme
Court of
Queensland*
**No. 18
Formal
Judgment
6th December
1983**

IN THE SUPREME COURT
OF QUEENSLAND

No. 902 of 1983

BETWEEN:

THE QUEENSLAND ELECTRICITY
GENERATING BOARD

10

(Plaintiff) Appellant

AND:

NEW HOPE COLLIERIES PTY. LTD.

(Defendant) Respondent

JUDGMENT - D.M. CAMPBELL J.

20

Delivered the *6th* day of *December* 1983.

The appellant, The Queensland Electricity Generating Board, entered into a coal supply agreement with the respondent, New Hope Collieries Pty. Ltd., for the supply of coal to the Swanbank power station. The agreement No. CS-29-2 was dated July 12, 1978, and was amended from time to time, and was one of several agreements entered into by the appellant with companies operating mines in the Ipswich District providing for the supply of a total minimum quantity of coal over a fifteen year period. The minimum quantity contracted to be supplied by the respondent over the first five year period from January 1, 1978 (the nominated commencement date), up to December 31, 1982, was 1,645,000 Tonnes Eq. and over the whole period of the contract 3,290,000 Tonnes Eq.. A "tonne eq." is a quantity of coal with an as received heat content of 23.72 gigajoules.

30

40

As the cost of producing coal was obviously not going to be the same from year to year, or even from month to month, the agreement took the form of a "cost-plus" contract. The parties

50

fixed on a base date and agreed on a base price for different annual quantities of coal of standard quality. They introduced escalation provisions and provided for a review of the pricing structure at five yearly intervals and of the price variation provisions upon request by either party. Accordingly, the term "contract price" is defined in cl. 1(g) to mean the price per tonne for coal of standard quality determined from time to time by the application of all relevant escalation factors to the base price and any review thereof.

10

There is an arbitration clause, cl. 13, couched in wide terms covering "any questions, dispute or differences whatsoever" between the parties.

20

In the preamble to the agreement it is recited as follows:

"G. The Generating Board and the company have agreed that the pricing structure be reviewed at least each five years as herein provided but that there be variations in price related to changes in cost, it being the clear intention of the parties that any clauses of the Agreement relating thereto are intended to reflect the effects of changes in cost of producing and supplying coal under this Agreement."

30

An attempt was not made to lay down a base price for a period beyond the first five years. Clause 2.5 provides that "the Base Prices and provisions for Variation in Prices for Changes in costs apply only to purchases in the first five year period from 1 January 1978 to 31 December 1982". The sub-clause continues:

40

"The Base Price and provisions for variation in prices for changes in costs for purchases after 31 December 1982 shall be agreed by the parties thereto in accordance with Clause 8."

50

On July 14, 1982, the respondent gave a notice in writing

60

to the appellant under cl. 9.1 of the agreement requesting a review of the price variation provisions. Clause 9.1 provides (so far as is presently material):

"It is a fundamental condition of this Agreement that the escalation provisions shall properly reflect the effects of changes in costs on the cost of producing and supplying Coal under the Agreement. If the formulae employed are not properly reflecting such changes or if indices used for the purposes of this Clause cease to be available or continue to be unavailable for a period of six months, a review of the price variation provisions shall take place upon request by either party. Where the parties agree to an alteration it will be incorporated in the Agreement and will apply thenceforth. In any event such review shall take place at not more than five yearly intervals."

10

20

Since the parties were unable to agree upon a review, the respondent gave a second notice in writing to the appellant on December 23, 1982, calling for the points at issue between them to be referred to arbitration. The points at issue were stated to be whether during the period until December 31, 1982, the escalation provisions of the agreement properly reflected the effects of changes in costs on the cost of producing and supplying coal under the agreement, and whether there should be any alteration in the price variation provisions of the agreement in respect of the aforementioned period.

30

A third notice was given by the respondent to the appellant on January 7, 1983, calling for other points in issue to be referred to arbitration relating to the terms of supply of additional quantities of coal after December 31, 1982, and the extent to which the price or prices for such additional quantities of coal should reflect all the changes in cost to the respondent. Clause

40

50

8.7 provides as follows:

10 "The terms of supply of additional quantities beyond
the initial five year period (from the Commencement
Date to 31 December 1982) shall be finalised before
31 December 1981. The new pricing structure to apply
to such additional quantities shall reflect all the
changes in costs to the Company including economies
resulting from the amortisation of capital items still
in use, technological advances, and items of expenditure
not repeated, including the restoration of any open
cut workings for which special allowances have been
20 made in the Base Price, as well as changes in mining
conditions, new mining plant, and the scale of operations.
The Generating Board shall have the right to satisfy
itself that the new pricing structure reasonably
reflects all such factors."

The appellant's response to the notices was to commence an
action on February 28, 1983, seeking declarations to the effect
30 that the respondent was not entitled under the agreement upon
request to a review of the price variation provisions in respect
of coal delivered prior to December 31, 1982. No issue was
raised concerning future deliveries. However, such an issue
was raised by the respondent by way of a counter-claim in which
a declaration was sought based on the notice of January 7, 1983.

40 In reply to the respondent's defence the appellant pleaded
that the respondent was estopped from asserting any right to any
increased payments for coal delivered prior to December 31, 1982,
or, as an alternative, for coal delivered prior to July 14, 1982,
when the review was sought. In support of an estoppel the appellant
pleaded that, in fixing "the merit orders" dealing with the order
50 of preferred use of its generating facilities, and in making
"the purchase decisions" dealing with the sources of supply of
coal, and in settling insurance claims dealing with increased

costs due to mechanical breakdowns or outage, it relied on the prices of coal as notified to it by the respondent in pro forma invoices and as adjusted later in final invoices submitted pursuant to cl. 8.11. This sub-clause reads:

10

"If the appropriate indices or determinations which establish the price variations under the Agreement are not available at the time of submitting an account, pro forma invoices shall be submitted on the basis of previous information available. Subsequent adjustments shall be made when final invoices are submitted at some later date."

20

Although uncertainty was not pleaded it was nevertheless argued on behalf of the appellant on the hearing of the appeal and at the trial of the action that the agreement was uncertain being an agreement to agree and was unenforceable. The appellant's contention now is that the agreement is at an end.

Declarations were made by the trial judge that the respondent was entitled to have determined by arbitration pursuant to the agreement as varied points in issue stated in the notices of December 23, 1982, and January 7, 1983, and the question is whether these declarations should have been made. The former notice refers to the period of the agreement ending on December 30, 1982, and the latter refers to the period after that date.

30

With respect to the earlier period, the starting point is cl. 2.5. The base prices and the provisions for variation in prices apply only to the first five year period. Both are dealt with in cl. 8. The base prices are to be determined in accordance with a scale of Base Prices in Schedule C (cl. 8.1). The base price which is to apply in any year is that corresponding with the Firm Purchase (cl. 8.2). The firm purchase in 1978 is 400,000 tonnes, but, in succeeding years, is the annual quantity which the

40

50

appellant notifies the respondent will be required by a Firm Purchase Notice (cl. 4).

10 While on the subject of the firm purchase, it is necessary to say, firstly, that guaranteed minimum purchases for each of the years 1979-1982 are laid down and it is stipulated that the firm purchase in any year subsequent to 1978 shall not be less than 90% nor greater than 110% of the firm purchase in the preceding year subject to certain guarantees about production capability and quality; and, secondly, that written estimates of the coal
20 requirements for each of the ensuing five years are to be given at the same time as the notices of firm purchase are given. See cls. 3, 5 & 6. These provisions serve to underline the long-term nature of the contract.

Base prices are built around the cost components set out in Schedule D (cl. 8.3). The components are listed under the heads
30 of "Labour", "Materials", "Statutory Charges", "Non-Escalating", and "Other". (As to "Other" see cl. 9.13). An escalating provision is included in cl. 8.3 which states, "All the prices in the Scale of Base Prices shall be subject to increase or decrease for changes in costs as specified in Clause 9".

Monthly adjustments of base prices are provided for in
40 cls. 9.2 and 9.3 in addition to the wider review of the price variation provisions of the agreement provided for in cl. 9.1. Formulae are laid down by cls. 9.8, 9.9 and 9.10 for adjusting the base price to reflect changes in costs taking into account variations in cost components and, by the clause, indices are made use of, such as the Consumer Price Index and the Materials
50 Index(S). In the event of changes in the quality of coal, there is a table enabling adjustments to be made in the contract price (cl. 10).

In putting the case for the appellant Mr Callinan submitted that on the proper construction of the contract the respondent was not entitled to retrospective reviews of price. He referred to the use of the present tense in the opening sentence of cl. 9.1 - to the term that the escalation provisions are to "properly reflect the effects of changes in costs on the cost of producing and supplying Coal under the Agreement". But the monthly adjustments to take care of increasing (or decreasing) costs will be mainly brought about by the indices and are clearly retrospective, and I do not think any great significance can be placed on the use of the present tense. The sub-clause goes on to provide for a review, upon request, of the price variation provisions if the formulae are not properly reflecting such changes or if indices used for the purposes of the clause cease to be available. This would seem to contemplate periodical reviews of the pricing structure being undertaken with para. G of the preamble in mind. The restriction is that there must be an interval of five years between reviews. A review might not result in a price alteration with a retrospective operation. It might be made to operate prospectively, as Mr Jackson pointed out, to accommodate past deficiencies. However, considerable reliance was placed by Mr Callinan on the terms of cl. 9.1 providing that "where the parties agree to an alteration it will be incorporated in the agreement and will apply 'thenceforth'". But the sub-clause is here referring to alterations by agreement; and there would be nothing to prevent the parties agreeing to an alteration having a retrospective operation. In my opinion, there is no implication that an alteration of the price variation provisions can only be made to take effect with regard to future deliveries. Indeed, there is a clear indication in the escalation provisions of the agreement that

10

20

30

40

50

60

retrospectivity was not meant to be excluded. We are not, of course, concerned with the question - and the point should be emphasised - whether the review sought is justifiable because of changes in costs contemplated by the agreement.

10

The restriction in cl. 9.1 that a review is not to take place more frequently than once every five years is subject to award working hours not being reduced below 35 hours per week. An argument was foreshadowed but was not pursued before us that with this exception the agreement does not envisage a review until five years have elapsed.

20

The decision of the Court of Appeal in Superior Overseas Development Corporation v. British Gas Corporation (1982) 1 Lloyd's Rep. 262 was much debated, as it was before the judge at first instance who purported to follow it in interpreting the language of cl. 9(1). Under an agreement a panel of experts was entitled to adjust the price of gas to off-set or alleviate any substantial hardship caused to sellers by any substantial change in economic circumstances. It was held that the hardship referred to was hardship from the beginning. Waller L.J. said (at p. 267) that the adjustment could include a two-tier award, with a price being fixed to remove substantial hardship for the future together with a limited extra price to compensate for the cumulative effects of substantial hardship between the date of the request and the date when the award was to take effect. The case was not concerned with a review having retrospective effect but partly with compensation by imposing a surcharge on future sales and is readily distinguishable from the present case.

30

40

50

As I have already mentioned, an estoppel based on representation is pleaded. The representation relied on was found in final invoices. These invoices were prepared by the respondent's

60

accountants, Spry Walker & Co., Touche Ross & Co., each invoice showing how monthly adjustments of the price of coal delivered in the previous month were calculated in arriving at current coal prices. The current price for the previous month was displayed in each final invoice under the heading "Final Price". It is around the word "final" that the submission about an estoppel revolves. The submission was that the presence of the word conveys that no review of the price variation provisions under cl. 9.1 could be had in the circumstances. 10

Provision was made in cl. 8.11 (set out above) for submitting pro forma invoices and final invoices. The procedure adopted was explained by the chief finance officer of the appellant, Mr Walker. Towards the end of each month the respondent forwarded to the Finance Department of the appellant a pro forma invoice relating to the quantity of coal delivered in that month. This was followed during the next month by a final invoice in which payment was sought of a price differential in respect of coal delivered in previous months due, as a rule, to changes in the indices used in the formulae and in the price of coal delivered in the prior month at the then current provisional price. 20

The final invoice was a copy letter with enclosures from the respondent's accountants, and took the form of the sample invoice which was produced dated June 14, 1982. Prices are expressed in dollars per tonne. The substance of the letter is: 30

" Enclosed for your attention are copies of the calculations of the current coal prices escalated according to the provisions of the above contract. 40

The provisional price for the current month and details of the adjustments necessary to prior 50

"months that should be invoiced to the Generating Board are as follows:

<u>Month</u>	<u>Previous Provisional Price</u>	<u>Current Provisional Price</u>	<u>Final Price</u>	<u>Price to be Invoiced</u>
10 March	38.58		38.64	.06
April	38.81		38.97	.16
May		38.97		38.97

A copy of this letter and the calculations has been sent to the Generating Board."

20 The evidence was that the cost of coal is the major item of expenditure in generating electricity. In its pleading the appellant claims to have acted to its prejudice in the following ways in reliance on final prices notified in the invoices:-
(1) By placing Swanbank Power Station ahead of the Collinsville and Gladstone Power Stations at full output in determining the merit order of its generating facilities. (2) By preferring to buy coal from the respondent in excess of the quantity which it was required to buy from the respondent under the agreement. (3) By failing to settle insurance claims upon terms which reflected higher generating costs, in particular the claim in connection with the breakdown of Unit 5 at Collinsville B.

40 In addition Mr Walker deposed that he relied on current coal prices in preparing budgetary forecasts which were submitted to the State Electricity Commission each year to determine bulk supply prices under s. 71 of the Electricity Act 1976-1980.

No specific findings were made by the trial judge in relation to any of these matters, though he intimated that he was prepared to conclude that decisions and actions were made or taken on occasions which might not have been made or taken "had the plaintiff

or its officers been aware that the relevant coal or electricity might in the end be going to cost more than was supposed". But, referring to the sample invoice of June 14, 1982, he held that it was impossible to regard the expression "final price" as capable of constituting an unambiguous representation by the respondent of its intention never to seek a review of the amounts claimed in the invoice, or to regard the expression as capable of reasonably leading to the "specified" conduct on the part of the appellant. His Honour pointed to what he termed a fundamental difficulty, namely, that "There is in the end not a shred of evidence that any of the officers of the plaintiff who saw or knew of invoices of that kind was induced by the words 'final price' to assume, or act on the assumption, that no review of that price or its components would ever be claimed by the dependants".

10

20

In order to raise an estoppel the representation must have been acted on in the manner it was meant to be acted on or in a manner that a reasonable man would suppose it was meant to be acted on. Mr Baguley, the operations resources engineer of the appellant, conceded that he did not turn his mind to cl. 9.1 in making recommendations as to the preferred use of facilities, or as to coal purchases above the 90% of the last year's firm purchase that the appellant was bound to take, or as to the settlement of insurance claims. Mr Walker's evidence was that he worked on current coal prices in preparing budgetary forecasts merely adding on a percentage to take care of inflation and escalating costs. There was no evidence of him having formed any view about the operation of cl. 9.1 which influenced his decisions. The view he expressed was that because of the terms of the contract one of the easiest things to predict in making

30

40

50

(Contd.) their forecasts was the price of coal.

10 It was strongly argued for the appellant that the inference was that it was induced to act on the statement of the final price appearing in the final invoices. Some remarks of Mason and Deane JJ. in Legione v. Hately (1983) 57 A:L.J.R. 292 at p. 304 were quoted which read:

20 "The requirement that a representation as to existing fact or future conduct must be clear if it is to found an estoppel in pais or a promissory estoppel does not mean that the representation must be express. Such a clear representation may properly be seen as implied by the words used or to be adduced from either failure to speak where there was a duty to speak or from conduct."

If an estoppel were recognised to exist in this case I would think it would fall into the class of promissory estoppel. However the words "final price" do not, in my opinion, amount 30 to a representation that the respondent would not seek a retrospective price review. The words refer to the current coal price for a particular month escalated, as the accountants explain in their letter, according to the provisions of the contract.

It follows from what I have said that I think the learned trial judge was right in making the first declaration.

40 Now, with regard to the next five year period, the starting point again is cl. 2.5. The sub-clause looks to cl. 8 and the question is whether the judge was right in concluding that the matter of the review of the pricing structure governing the price to be paid for "additional" quantities of coal (i.e. coal additional to the quantities supplied up to December 31, 1982) is capable in 50 law of being submitted to arbitration. For a question, dispute or difference to be submitted to arbitration it must be justiciable

by reference to the contract so that there is a subject matter for judicial inquiry. Clause 8.7 is the relevant sub-clause for present purposes. It states that the new pricing structure shall reflect all the changes in costs to the company. But the changes in costs are to include certain "economies" if brought about by the company. These economies are envisaged, as possibly resulting from the amortisation of capital items still in use, technical advances, and items of expenditure not repeated (including the restoration of any open cut workings for which special allowances have been made in the base price) as well as any changes in costs resulting from changes in mining conditions, new mining plant and the scale of operations. The appellant is given the right to satisfy itself that the new pricing structure reasonably reflects all such factors. I do not agree that this means that the appellant may in the end accept or reject the new pricing structure out of hand, as Mr Callinan seemed to suggest. I am of the opinion that the object of the provision was to give the appellant access to information when the parties were in the process of trying to finalise a new pricing structure.

10

20

30

It was pointed out in Council of the Upper Hunter County District v. Australian Chilling & Freezing Co. Ltd. (1967) 118 C.L.R. 429 that the fact that the application of a clause providing for variations in price to reflect changes in costs will occasion difficulty does not make the clause uncertain. Coincidentally, the case concerned the supply of bulk electricity. By the clause it was provided that if the supplier's costs should vary "in other respects than has been hereinbefore provided" the supplier should have the right to vary the price payable by the purchaser. The agreement also contained an arbitration clause. Barwick C.J. (with whom McTiernan, Kitto and Windeyer JJJ. agreed)

40

50

said (at p. 431):

10 "A contract of which there can be more than one possible
meaning or which when construed can produce in its
application more than one result is not therefore
void for uncertainty. As long as it is capable
of meaning, it will ultimately bear that meaning
which the courts, or in an appropriate case, an
arbitrator decides on its proper construction; and
the court or arbitrator will decide its application.
The question becomes one of construction, of
ascertaining the intention of the parties, and of
applying it."

20 If price is left to be agreed upon between the parties
there is no contract, but it may be left to be determined by a
qualified third person. The distinction has become well recognised;
see, for instance, May & Butcher v. The King (1934) 2 K.B. 17
and Booker Industries Pty. Ltd. v. Wilson Parking (Qld.) Pty. Ltd.
30 (1982) 56 A.L.J.R. 825. Mr Jackson submitted that the trial
judge was wrong in assuming, as he did, that where the price is
left to an arbitrator what is required to make the agreement valid
is "some means or standard" by which the price can be fixed:
Cudgen Rutile No. 2 Pty. Ltd. v. Chalk (1975) A.C. 520 at p. 536.
The contention was that a means or standard for ascertaining a
40 price had not to be prescribed where the price is to be fixed by
arbitration. References were made to Godecke v. Kirwan (1973)
129 C.L.R. 629, 643, P.G. Sykes (Wessex) Ltd. v. Fine Fair, Ltd.
(1967) 1 Lloyd's Rep. and Attorney-General v. Barker Bros. Ltd.
(1976) 2 N.Z.L.R. 495, 500. However, there is no need to decide
the question for it seems to me that a means or standard is
50 sufficiently indicated in the present case. In determining
a new pricing structure, the arbitrator has not to start de
novo; he has an existing price and a complicated pricing

structure to work from. The implication is that his function is not to dismantle the pricing structure and substitute another in its stead but to review or revise it following the failure of the parties to agree.

10

Consequently, my opinion is that both declarations were properly made and the appeal should be dismissed.

No. 19

Order of Full Court of Queensland granting final leave to Appeal to Privy Council - 7th February 1984

IN THE SUPREME COURT OF QUEENSLAND

No. 902 of 1983

IN THE MATTER of the Rules regulating Appeals from Queensland to Her Majesty in Council (Imperial Order in Council of 18th October 1909)

- and -

IN THE MATTER of an Application for Leave to Appeal to Her Majesty in Council by THE QUEENSLAND ELECTRICITY GENERATING BOARD

40

BETWEEN:

THE QUEENSLAND ELECTRICITY GENERATING BOARD
(Plaintiff) Applicant

AND:

NEW HOPE COLLIERIES PTY. LTD.
(Defendant) Respondent

50

BEFORE THE FULL COURT (THE HONOURABLE THE CHIEF JUSTICE SIR WALTER CAMPBELL, THE HONOURABLE MR. JUSTICE KELLY and THE HONOURABLE MR. JUSTICE MACROSSAN)

THE SEVENTH DAY OF FEBRUARY 1984

UPON MOTION this day made into this Court by Messrs. Russell

60

uplicate Original
No. of Judgment or Ord 655
Date of Entry
Fee paid on original

office

ORDER

633

FILED
SERIALS
- 8. FEB. 1984
SUPREME COURT OF QUEENSLAND

In the Supreme Court of Queensland

No. 19
Order of Full Court of Queensland granting final leave to Appeal to Privy Council
7th February 1984
(Contd.)

10

WILLIAMS & WILLIAMS
Solicitors
National Bank House
255 Adelaide Street
BRISBANE.

Telephone: 221.7899
GNM

and Campbell of Counsel for THE QUEENSLAND ELECTRICITY GENERATING BOARD ("the Applicant") AND UPON HEARING Mr. Muir of Counsel for NEW HOPE COLLIERIES PTY. LTD. ("the Respondent") AND UPON READING the Notice of Motion filed herein on the Third day of February 1984, the Order of the Full Court made on the 23rd day of December 1983 and the Notice of Security filed herein by the Applicant on the 6th day of January 1984 THIS COURT DOETH HEREBY ORDER that the Applicant be and is hereby granted final leave to appeal to Her Majesty in Council from the Judgment and Orders made the 6th day of December 1983 by the Full Court of Queensland made in this action whereby the Full Court dismissed the appeal of the Appellant against the Judgment of the Supreme Court of Queensland pronounced on the 26th day of July 1983 wherein it was adjudged that the Plaintiff's claims in this action be dismissed and it was declared:

20

30

40

50

1. That the Defendant is entitled to have determined by arbitration pursuant to the agreement made between the Plaintiff and the Defendant dated the Twelfth day of July 1978, as subsequently varied, the following questions disputes or differences, namely whether during the period from the First day of July 1978 to the Thirty First day of December 1982, the escalation provisions referred to in Clause 9.1 of the said Agreement properly reflected the effects of changes in costs in the cost of producing and supplying coal under the said Agreement as so varied and whether there should be any and if so what alterations in the price variation provisions of the said Agreement as so varied in respect of all or part of such period.

60

or differences, namely, the terms of supply of the additional quantities of coal after the Thirty First day of December 1982 and, in particular, but without limitation the manner and extent to which the price or prices for such additional quantities of coal shall reflect all the changes in costs to the Defendant, including economies resulting from the amortisation of capital items still in use, technological advances and items of expenditure not repeated, including the restoration of any open-cut workings for which special allowances have been made in the Base Price, as well as changes in costs resulting from changes in mining conditions, new mining plant and the scale of operations.

10

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to this motion abide the event unless Her Majesty in Council should otherwise order AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to this motion be paid by the Applicant in the event of the appeal not being proceeded with or being dismissed for non-prosecution.

20

30



BY THE COURT

REGISTRAR

40

50

