

DAY 6

NOVEMBER 15, 1995

**WESTRAY MINE**

**PUBLIC INQUIRY**

HEARD BEFORE: The Honourable Justice K. Peter Richard,  
Commissioner

PLACE: Stellarton, Nova Scotia

COUNSEL:

**Solicitor for the Commission:** Mr. J. Merrick, Q.C., and  
Ms. Ena MacDonald, document coordinator

**Solicitors for the Department of Justice Canada:** Ms. L.  
Gillis

**Solicitors for the Department of Justice Nova Scotia:**  
Messrs. R. Endres, Q.C., J. Traves, and Wm. Wilson, Q.C.

**Solicitors for the United Steelworkers of America and the  
Nova Scotia Federation of Labour:** Mr. David Roberts

**Solicitor for the Bank of Nova Scotia:** Mr. M. MacDonald

**Solicitor for the Westray Families Group:** Mr. B. Hebert

**Representing the Town of Stellarton:** Mr. Clarence  
Porter, Mayor, and Mr. John Murphy, Town Councillor

**INDEX**

<u>Witness</u>	<u>Page</u>	<u>Volume</u>
<b>Mr. Adrian Golbey</b>		
Examination by Mr. Endres	958	6
Examination by Mr. Merrick	1176	6

1 November 15, 1995 - 9:30 a.m.

2 COMMISSIONER Good morning.

3 ALL Good morning.

4 COMMISSIONER Now, Mr. Endres --

5 MR. ENDRES Thank you. Good morning.

6 MR. ENDRES -- at the risk of repeating myself, I hope  
7 you don't repeat yourself.

8 MR. ENDRES I will try not to. It might assist us,  
9 before I go into examination, to clarify, sort out one  
10 issue that we came across last night as a result of us  
11 having been provided with Exhibits 1, 2 and 3 for the  
12 first time. 1, 2 and 3, of course, is made up of the  
13 Kilborn No. 1 Report, the 1988 Report. And as we read  
14 through it, at least in part, skipped through it, we  
15 realized soon enough that the exhibit that the Commission  
16 has in front of it is actually a draft of the Kilborn  
17 Report; it is not the final report. And then we tried to  
18 make some comparison between the original and the draft,  
19 and there are, indeed, differences between them. Now I  
20 have not been -- I have not had the time, of course, to  
21 go through both sets completely and identify all of the  
22 differences, but I have given Mr. Merrick last night five  
23 pages or six where I said I've made comparisons between  
24 those pages and there are significant differences, so we  
25 do something about it, what are we going to do. I'm not

DISCUSSION

1 so sure what we can do about it at this point but can I  
2 just perhaps proceed by asking Mr. Golbey a few questions  
3 around that area?

4 COMMISSIONER Mr. Merrick, do you have any --

5 MR. MERRICK No, Mr. Commissioner. Mr. Endres raised  
6 with me yesterday the fact that he thought that we were -  
7 - that the '88 report that was in our volumes. These are  
8 volumes, incidentally, that have been available for some  
9 months, I guess, for people to look at. We hadn't copied  
10 all of them because of the vast bulk of copying of these  
11 technical reports. In any event, the '88 Kilborn report  
12 that we have in our data bank is stamped "preliminary."  
13 We've done a canvass last night and this morning to see  
14 if we've got any other version of it that is not stamped  
15 "preliminary" or "draft." We do not. That seems to be  
16 the only copy we have. I did take the pages that Mr.  
17 Endres gave me last night that he says are copies of a  
18 final '88 report, not the '89 report, but a final '88  
19 report. Mr. --

20 COMMISSIONER Does the '89 report override that?

21 MR. MERRICK I believe it does and this is what --

22 COMMISSIONER We have that?

23 MR. MERRICK We have that and it's in final form. And  
24 I asked Mr. Golbey to compare the information contained  
25 in the couple of pages that Mr. Endres gave me last night

DISCUSSION

1 to see how significantly it varied. I think Mr. Golbey  
2 will testify to that this morning, but I'm not aware of  
3 any significant data in the final '88 report that is not  
4 contained in the '89 report which we have. But that's  
5 something that Mr. Endres may want to explore with Mr.  
6 Golbey.

7 COMMISSIONER Okay.

8 **MR. ADRIAN GOLBEY**, recalled, previously affirmed,  
9 testified:

10 MR. ENDRES Yes. To respond to your question, Mr.  
11 Commissioner, the significance of the issue lies in this,  
12 the lease application was assessed in the context of  
13 Kilborn No. 1, Kilborn's first report of 1988, but yet,  
14 and Mr. Golbey, I'll address that question to you, in  
15 your report, Exhibit 57, on page 25, you don't refer to -  
16 - at least I find no reference to Kilborn No. 1.

17 A. Sorry, what was the page?

18 Q. In your report at page 25, this is Exhibit A --  
19 Appendix A, I'm sorry, the way it was provided to me, and  
20 it starts at page 25. And they list -- it's a  
21 chronological listing of major documents reviewed. And  
22 the first item is "1989, January, Kilborn Project  
23 Review." Are you able to locate that?

24 A. Yes, I did.

25 Q. It is page 25, is it not?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Yes.

2 Q. Yes.

3 A. Under Tab 2, yes.

4 Q. All right. And that's the first page of Appendix A.  
5 And the first item that you identify as having reviewed  
6 is Kilborn No. 2?

7 A. That is correct.

8 Q. 1989 report. Where do you say that you reviewed  
9 Kilborn No. 1?

10 A. Specifically in this listing, at that time I hadn't.  
11 But I have reviewed it subsequent to this list being  
12 prepared.

13 Q. Have you reviewed Kilborn No. 1, the final report?

14 A. I reviewed Kilborn 1 as in the Commission's files.

15 Q. Which you would agree with me is a draft report and  
16 it purports to say that; it has a stamp right on the  
17 front cover?

18 A. It does.

19 Q. And you would agree with me, Mr. Golbey, having  
20 reviewed the excerpts that I provided to counsel last  
21 night, that there are differences between the draft and,  
22 which is the Commission document No. 1, and the final  
23 Kilborn No. 1 report?

24 A. I found differences and, if you wish, I can now  
25 point out where those differences are.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Now let me put one to you, for example. In the  
2 draft report that you reviewed, Kilborn No. 1, the '88  
3 report, Exhibit 1, can you find and point out for my  
4 benefit any reference to the fact that Kilborn advised  
5 the recipients of the reports that detailed data for his  
6 study was available at Kilborn's Westray Toronto offices?

7 A. I'm going to ask your indulgence in helping me to  
8 find that because --

9 Q. Well, it's --

10 A. -- to be honest, I --

11 Q. -- not there, that's the problem. You'll find no  
12 reference in the Commission Exhibit 1, Kilborn No. 1,  
13 where Kilborn states in fact that backup detail data for  
14 this study is available at Kilborn's and/or Westray  
15 Toronto offices. I suggest to you, Mr. Golbey, that you  
16 will find no reference to that effect in the draft that  
17 you reviewed. Would you agree with me? Can you agree  
18 with me?

19 A. From memory, I believe that to be correct.

20 Q. Yes. And that must be so because you never read the  
21 final draft of No. 1?

22 A. In, as I said, I read the draft that we discussed  
23 had a "preliminary" stamp on it.

24 Q. And are you in any position to disagree with me,  
25 having read the excerpts that are provided to counsel,

MR. GOLBEY, EXAM. MR. ENDRES

1 Mr. Merrick, last night, that in fact the final report of  
2 Kilborn, the No. 1 report, does state, as I read, "backup  
3 detail data for the study is available at Kilborn's  
4 and/or Westray's Toronto offices." This is at paragraph  
5 1.1, the second main paragraph, the last sentence.

6 A. It is.

7 Q. Yes. And would you agree with that that is an  
8 important statement for Kilborn to make?

9 A. Yes, it is.

10 Q. Because you testified that if you do not have the  
11 detailed data in the report, that's all right as long as  
12 you make reference to where it could be found?

13 A. That is correct.

14 Q. Are you in a position, Mr. Golbey, to tell us now  
15 whether or not there are significant differences between  
16 the final Kilborn No. 1 Report and the Exhibit 1, 2, and  
17 3 of the Commission exhibits?

18 A. The outline design parameters used in both are  
19 identical and the really significant difference is in the  
20 alignment for the tunnels.

21 Q. And how do you know that?

22 A. Pardon?

23 Q. And how do you know that?

24 A. By looking at the relevant plans in each of the two  
25 documents.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Have you actually read the final report of Kilborn  
2 No. 1?

3 A. If you mean the Kilborn '88 --

4 Q. Yes.

5 A. -- as we keep coming back to --

6 Q. Yes.

7 A. -- we have a stamp that says "preliminary draft."

8 Q. Yeah. So you have not, I put it to you, read the  
9 final draft of Kilborn No. 1?

10 A. Because I've never seen it.

11 Q. You've never seen it so you can't tell us whether or  
12 not there are significant differences between it and the  
13 Commission Exhibit No. 1, 2, and 3?

14 A. In that sense, that is correct. What I can tell  
15 you, however, is the excerpt that was given late last  
16 night which I've compared with, shall we call it, the  
17 Kilborn '89 issued in January, the wording appears to be  
18 identical with the January '89 study.

19 Q. All right.

20 A. And it is not unusual practice for a preliminary  
21 draft to be issued to a client for their review before  
22 the final draft is issued. And, therefore, I find it  
23 quite usual that the final draft in '88 may well be  
24 virtually identical, and, in many cases, identical  
25 wording in the examples you provided, to the '89 study.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Well, let's take a look at it. If you say it's  
2 virtually identical, let's look at paragraph 1.1 of the  
3 excerpt that I provided to you with.

4 MR. ROBERTS Mr. Chairman, I'm sorry to interrupt Mr.  
5 Endres, but he's reading from excerpts, I guess, that  
6 were given to counsel for the Commission last night. I  
7 don't -- none of the other parties have had an  
8 opportunity to see those excerpts. I wonder if it would  
9 be possible for Mr. Endres to provide us with copies of  
10 the final '88 document? Or at least the excerpts that  
11 he's referring to?

12 COMMISSIONER Mr. Endres?

13 MR. ENDRES Well, I know the difficulty and I  
14 appreciate that. I was hoping that we could avoid that  
15 somehow but --

16 COMMISSIONER How many pages are involved?

17 MR. ENDRES There are five pages involved.

18 COMMISSIONER Well, let's get them done. Yeah, let's  
19 get them done.

20 MR. ENDRES Do it right now?

21 COMMISSIONER Yeah.

22 MR. ENDRES The one I have is all marked up so I don't  
23 think I want to use --

24 MR. ROBERTS Mr. Golbey's --

25 MR. ENDRES Mr. Golbey has a clean copy.

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER Do you have a clean copy of those?

2 A. Unfortunately not. I did not realize it was going  
3 to be potentially used for a master copy.

4 COMMISSIONER No.

5 MS. MACDONALD I can actually [inaudible] a copy.

6 COMMISSIONER Yeah, we'll be able to block the -- we'll  
7 be able to block all the goodies out.

8 A. Well, there's not exactly that many "goodies" in it.

9 COMMISSIONER Yeah. Maybe you can go on with another  
10 matter then, Mr. Endres, while we're doing that.

11 MR. ENDRES All right. Mr. Golbey, from your evidence  
12 on Wednesday last week and forward from there, it  
13 appeared that Westray documents in support of the lease  
14 application were insufficient? Do you recall your  
15 evidence on that?

16 A. Yes, I do.

17 Q. And that the Department of Mines and Energy did not  
18 do very much by way of review before the Minister, and  
19 this was Minister Cameron, wrote to advise Westray that  
20 it could expect to receive a lease. You agree with my  
21 summary of your evidence?

22 A. Through not finding information in the Commission  
23 files, yes.

24 Q. You testified specifically, did you not, that the  
25 materials in support of the application were inadequate

MR. GOLBEY, EXAM. MR. ENDRES

1 because they did not constitute a feasibility study, in  
2 your view?

3 A. I did.

4 Q. And you said that it appeared from the records  
5 available to you that a proper request for more  
6 information had been made by Don Jones. Do you recall  
7 that?

8 A. Yes.

9 Q. But that Westray never properly responded, never  
10 answered the queries set out in Don Jones' letter. And  
11 yet Cameron, shortly thereafter, advises Westray that the  
12 lease was forthcoming?

13 A. He did.

14 Q. And that was your evidence?

15 A. Yes.

16 Q. You were asked by Mr. Merrick and you answered that  
17 you could find no explanation why the lease would be  
18 granted without further explanation. Do you recall that?

19 A. Yes.

20 Q. Mr. Golbey, is it not true that there is a very  
21 detailed cohesive sequence of events between March 14,  
22 '88, when the application for the lease was first  
23 presented and the actual granting of the lease? There's  
24 a very careful sequence that we can track through very  
25 readily. Do you recall that when you reviewed the

MR. GOLBEY, EXAM. MR. ENDRES

1 materials?

2 A. There is a sequence of events, yes.

3 Q. And are you in a position to readily identify that  
4 sequence of events?

5 A. With some assistance.

6 Q. All right. You know that the -- perhaps we can do  
7 that so we -- and the point I want to make, simply, is  
8 that there is logical sequence of events documented in  
9 the Commission documents from the beginning of the  
10 license application to the granting of the license. The  
11 "lease," I should not call it a "license, " you  
12 understand, it's a lease. So Exhibit 35-C, page 29 -- we  
13 don't need to go to these. I'm just going to give you  
14 the pointers and if you can agree with me, we needn't go  
15 to them. Exhibit --

16 A. Well, I need to refresh my memory. I'm sorry, I --

17 Q. Then we'll have to flip books, I'm afraid, because  
18 that's unfortunately what we're faced with. You  
19 understand, the reason I want to get into this is because  
20 the documents are spread throughout several books.

21 A. No, I --

22 Q. There's not one volume, would you agree, that we can  
23 go to that sets out a sequence of events? Do you agree  
24 with that?

25 A. Yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. All right. So let's look at Exhibit 35-C, page 29-  
2 95. That sets out the application for the lease by  
3 Westray, correct?

4 COMMISSIONER Where?

5 MR. ENDRES This is Exhibit 35-C.

6 COMMISSIONER Yeah.

7 MR. ENDRES Starting at page 29.

8 COMMISSIONER 29, okay.

9 MR. ENDRES Where it is a blank page, cover page. And  
10 the next document is page 30 and in that we learn, of  
11 course, that Pelley writes to Phalen, March 14, '88,  
12 saying here is the application for a mining lease. And  
13 he says, "Included in this report are details pertaining  
14 to background and geology, mine plans, mill plans,  
15 tailings, and waste disposal and other relative  
16 information. And, indeed, that is the information that  
17 is attached, is it not?

18 A. There is that style of information attached.

19 Q. And that is between pages 31 and 95. On April 6 of  
20 1988 we know there was a meeting between Pelley and  
21 Phalen. Do you recall that?

22 A. There was, yes.

23 Q. Do you recall telling us about that before?

24 A. I do.

25 Q. You do? Let's look at Exhibit 35-C, p.98, and that

MR. GOLBEY, EXAM. MR. ENDRES

1 documents -- 35-C, page 98, that documents that there was  
2 a meeting because Pelley says, "Further to a meeting..."  
3 Do you see that?

4 A. I do, yes.

5 Q. So we have the lease application coming in with a  
6 package of materials in support, which we looked at. And  
7 the next thing is Phillips makes a note -- or Pelley  
8 makes a note in writing to Phalen at page 98, Exhibit 35-  
9 C, saying, "During our meeting which took place April  
10 6th..." In the same volume, 35-C, page 96, is the letter  
11 that you spoke of from Don Jones to Curragh. And he  
12 says, "It was good to see you again..." referring  
13 obviously to that meeting on April the 6th, correct?

14 A. That would be a reasonable assumption, yes.

15 Q. So far a very --

16 A. Yeah.

17 Q. -- clear path. And in that letter, of course, as  
18 you have already testified, Jones records a number of  
19 items which he thought Westray had agreed to provide or  
20 offered to provide in that meeting on April 6th?

21 A. Yes.

22 Q. Now this is not a demand for particulars, is it, Mr.  
23 Golbey? This is simply a record of what Westray had  
24 offered to provide at that meeting on April 6th. It's  
25 not a demand for information or particulars or anything

MR. GOLBEY, EXAM. MR. ENDRES

1 of the kind?

2 A. It is not phrased as a demand, I will agree.

3 Q. No. Do you recall using that language, demand for  
4 particulars?

5 A. It is my opinion that if the company received a  
6 letter like this at the time of an application, it would  
7 be regarded as a very strong request. Maybe "demand" is  
8 overstating, but certainly an extremely strong request  
9 for additional information.

10 Q. Yeah. But, look, Mr. Golbey, look at the last page,  
11 97. The second page of that letter. Jones makes the  
12 point very clearly that there isn't even an application  
13 before him at that point, so there would be no reason for  
14 him to make a demand for particulars of any kind. He's  
15 saying here's what you offered to provide in order to  
16 assist me to review your possible mining lease  
17 application. And what Jones is saying is I don't have a  
18 proper application before me because I haven't got the  
19 information. If you want to provide it, fine. He's not  
20 making any demands or anything. He's not asking for  
21 anything. Would you agree with me? It's not a demand  
22 for particulars.

23 A. In my opinion, as a company, that's not the way it  
24 would be perceived.

25 Q. But you do agree with me that this is what Jones

MR. GOLBEY, EXAM. MR. ENDRES

1 thought Westray had agreed to provide in that April 6th  
2 meeting?

3 A. Yes, I -- that's --

4 Q. And then -- yes?

5 A. Yeah, that's the wording, yes.

6 Q. And then, of course, we have that letter we just  
7 touched on which comes from Pelley and it's at page 98.  
8 And that's the next logical step in the sequence of  
9 events on the mining lease. And that you said is no  
10 response to Jones' letter, is it? Because the  
11 information provided does not match, as you testified,  
12 that which is recorded in Don Jones' letter?

13 A. That's right, it doesn't totally match.

14 Q. Now would it surprise you really if you look  
15 carefully that these two letters perhaps don't match,  
16 that is, the Jones' letter and the Pelley letter; they're  
17 back to back? Pelley isn't even writing to Jones. Do  
18 you notice that? You didn't point that out. He's  
19 writing to Pat Phalen. He's not answering Jones' letter  
20 at all. Did you notice that before?

21 A. I -- he -- I agree the letter is addressed to Mr.  
22 Phalen, yes.

23 Q. Yeah. Why did you get so concerned about Phalen not  
24 -- Pelley not responding to Jones when Pelley isn't even  
25 purporting to write back to Jones? He's writing to

MR. GOLBEY, EXAM. MR. ENDRES

1 somebody else. It's a different party, a different  
2 person. You said to us, did you not, Mr. Golbey, that  
3 Pelley's response to Jones does not answer Jones'  
4 concerns. Did you not say that?

5 A. I did.

6 Q. And I put it to you, Mr. Golbey, that Pelley never  
7 even tried to write to Jones; he wrote to somebody else  
8 altogether. He did not try to respond to that letter.  
9 There's no indication of that.

10 Q. I can see how you can draw that conclusion, yes.

11 COMMISSIONER These guys work for the same department  
12 though, don't they?

13 MR. ENDRES They do work in the same department, yes.

14 COMMISSIONER Oh yeah, okay. Just kind of confused  
15 there for a minute.

16 MR. ENDRES But it could be, Mr. Golbey --

17 A. They're in fact -- in fact, Mr. Commissioner, that  
18 could even be a misunderstanding by the company of the  
19 relationship of the staff within the Department.

20 Q. No, but look at it this way, Mr. Golbey. Don Jones  
21 writes to Pelley and the date of that is April 18, '88.  
22 April 21, '88, Pelley writes to Phalen. So the letters  
23 obviously crossed in the mail. One is not a response to  
24 the other, isn't that -- isn't that easy to see?

25 A. Maybe I gave the mail system more credit for speedy

MR. GOLBEY, EXAM. MR. ENDRES

1 delivery.

2 Q. What I'm saying is that we should not be terribly  
3 surprised if Pelley's letter is not a complete response  
4 to Jones' letter because Pelley never purported to write  
5 to Jones, correct?

6 A. That is a reasonable assumption.

7 Q. The next step we go through is -- and this is an  
8 additional exhibit which we provided yesterday, that is  
9 an exhibit which was not part of the Commission exhibits,  
10 and this is a memorandum from Dr. Potter, Assistant  
11 Deputy Minister of Mines and Energy. And this is at 6 --  
12 the blue binder. 64, Tab 14. If you could pull that up,  
13 please.

14 A. If you'll excuse me. I have to go and get --  
15 retrieve the copy.

16 COMMISSIONER Tab 14 is the McInnes Cooper & Robertson  
17 letter in my book. Is that what we're looking for?

18 MR. ENDRES It should --

19 MR. MERRICK There are other documents underneath.

20 COMMISSIONER Oh.

21 A. Sorry, Mr. Endres.

22 MR. ENDRES Have you been able to find -- I'm sorry.

23 A. Which page reference?

24 Q. To explain what happened is that yesterday -- yes,  
25 it's page 10.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Thank you.

2 Q. -- we -- on Friday we were invited by Mr. Merrick to  
3 adduce documents which had not been made Commission  
4 exhibits, and we did that as best we could over the  
5 weekend and we provided copies of those early yesterday,  
6 well, actually Sunday evening. And they were copied.  
7 And they were then inserted as Tab 14 under Exhibit 64.  
8 So if we can look at page 10, that is a memorandum from  
9 Dr. Potter to his Minister, the Honourable Ken Stretch.  
10 You have that?

11 A. I do.

12 Q. And in that Potter writes, Transmitting No. 1, a  
13 memorandum to Cabinet; No. 2, a report and recommendation  
14 to the Executive Council, both on the Westray project, do  
15 you see that?

16 A. Yes.

17 Q. I take it you haven't reviewed the memorandum to  
18 Cabinet?

19 A. That is correct, I haven't.

20 Q. Since you did not refer to it in your evidence in  
21 any way. Nor, I put it to you, have you reviewed Dr.  
22 Potter's memorandum to Ken Stretch?

23 A. I haven't.

24 Q. You haven't. And do you have any reason to tell me  
25 why you haven't? Those are Commission documents.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Because they obviously -- or I obviously overlooked  
2 them or did not find them during a review of the files.

3 Q. But that is a significant step, would you not agree,  
4 in the course of the lease application and the ultimate  
5 lease grant?

6 A. I agree.

7 Q. It's a communication at the very highest level  
8 between a Deputy Minister and his Minister about the  
9 Westray project in the course of the application. The  
10 next thing we have is August 8th, '88, and that is in  
11 Volume 35-E, at page 1. And before I go to that, while  
12 we're looking for it, maybe I could --

13 A. Okay.

14 Q. -- just take you back to that document on page 10  
15 for a moment and just tell -- go through it quickly to  
16 make sure we understand what's in there, to make sure  
17 that we understand the significance of it. In that  
18 memorandum Potter advises his Minister on virtually all  
19 the essential aspects of the Westray proposal, is that  
20 not correct? Can you see that by looking at it?  
21 Westray --

22 A. On an extremely brief review, it --

23 Q. Yes?

24 A. -- does review a number of issues that would be  
25 considered, yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Well, all right. Let's take a look at the next  
2 document. That's page 13. This is a memorandum to  
3 Cabinet from Pat Phalen, drafted by Pat Phalen to his  
4 Minister, Ken Stretch, and Stretch submits that to  
5 Cabinet. And the summary of the memorandum to Cabinet  
6 states, at page 13 -- do you have it?

7 A. Yeah, there's --

8 Q. It says, "Westray Coal have conditionally offered to  
9 purchase the interests of Suncor Special License No. 2-  
10 86. Westray are prepared to develop an underground coal  
11 mine on the area if they complete the purchase. Westray  
12 are asking for several concessions which are normally not  
13 granted by the Crown." So here we are, the government  
14 looking at special accommodation that Westray was looking  
15 for. And the Minister is going to Cabinet saying give us  
16 instructions on what to do with this. And previous to  
17 that, Potter had advised his Minister to turn Westray  
18 down on all of these special concessions? You're nodding  
19 your head, sir?

20 A. Yes.

21 Q. Okay. Attached to the memorandum to Cabinet is  
22 Appendix "A" which is a profile of the Westray project,  
23 is it not?

24 A. It is.

25 Q. It sets out where the location is of the mine, the

MR. GOLBEY, EXAM. MR. ENDRES

1 type of mine. And under "Type of mine" it says  
2 "underground room-and-pillar with partial pillar  
3 extraction." It gives the reserves, production. A  
4 million tonnes per year. It talks about the coal  
5 quality. It talks about the markets. Nova Scotia Power  
6 Corporation tentative agreement: 275,000 tonnes, et  
7 cetera. It talks about the project of the life [sic]: 17  
8 years. When construction is to start, when it is to end,  
9 the capital investment: \$105 million initially, 17  
10 million continued investment, replacing equipment and so  
11 on. It talks about annual operating costs. So it's a  
12 scope of the Westray project, is it not?

13 A. I -- yes, it's --

14 Q. So that was clearly delineated by July of 1988,  
15 correct?

16 A. Yes.

17 Q. Which would indicate that officials at the  
18 Department were doing something about the Westray  
19 application?

20 A. It would.

21 Q. And the next document I referred you to is at  
22 Exhibit 35-E, page one. That's that very small exhibit.  
23 And that is the report and recommendation to the  
24 Executive Council which Potter referred to --

25 A. It is.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. -- is it not?

2 A. Yes.

3 Q. And the summary of that, on page one, this is  
4 Commission exhibit, page one, states "To grant a special  
5 mining lease to Westray Inc. for the purpose of  
6 developing an underground coal mine in the Foord seam  
7 near Stellarton, Nova Scotia." And it sets out the  
8 description of the land.

9 The next document zero -- page three, is the Order-  
10 in-Council.

11 A. It is.

12 Q. Whereby the Executive Council of the Province of  
13 Nova Scotia authorized the Minister of Natural Resources  
14 to grant a licence. A lease. I made the mistake again.  
15 Grant a lease to Westray, correct?

16 A. Yes, it is.

17 Q. That is dated September 13, '88. And appended to  
18 that is a draft lease of minerals documents. You have  
19 that?

20 A. The lease 88-1, yes.

21 Q. Yes. 88-1. And then we come to Cameron's letter.  
22 He's the Minister of Trade and Technology, and he writes  
23 on September 9 of '88 at Exhibit 51, tab 33. And I do  
24 apologize for going through these volumes, I --

25 COMMISSIONER What was that exhibit, Mr. Endres?

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. ENDRES 51.

2 COMMISSIONER 51.

3 MR. ENDRES 33. At page -- at tab 33 this time.

4 There's no page. Cameron is writing to Westray. Do you  
5 have it in front of you now?

6 A. I do, yes.

7 Q. Saying that he has the assurance from the Minister  
8 of Mines and Energy that a mining lease will be granted.  
9 And then, of course, he goes on to speak about the  
10 provincial loan agreement and the take-or-pay agreement,  
11 correct?

12 A. He does.

13 Q. You would recognize right away, with your  
14 background, that the provincial loan agreement and the  
15 take-or-pay agreement are in the Minister's portfolio;  
16 that is, the Minister of Trade and Technology is the  
17 proper person to speak to these items, correct?

18 A. From my understanding of Nova --

19 Q. Sure.

20 A. -- Scotia legislation, yes.

21 Q. And he also points out, by the way, "I have  
22 assurance from my colleague, the Minister of Mines and  
23 Energy, that the lease is forthcoming." Correct?

24 A. Well, he was "pleased to advise the Province agreed  
25 to provide," which included the lease.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Would you agree with me that that review puts in  
2 perspective Mr. Larkin's concern yesterday of suddenly  
3 the Minister of Trade and Technology coming onto the  
4 scene, writing to Westray about the lease? The Minister  
5 was writing about the loan agreement. He was writing  
6 about the take-or-pay agreement which are two very  
7 significant things in his portfolio. And he said, "and  
8 I'm pleased to advise you that my colleague assures me  
9 that you will get your lease." Now would you not agree  
10 that that puts into perspective, for Mr. Larkin, his  
11 concern why it was the Minister of Industry, Trade and --  
12 Trade and Technology that was writing?

13 A. On that two out of the three items would be in --  
14 under his department, yes.

15 Q. Sure. But you agreed with Mr. Larkin yesterday that  
16 it seemed awfully strange that suddenly we have Cameron,  
17 who is the Industry, Trade and Technology Minister,  
18 coming onto the scene. Why did you agree with that?

19 A. Because we were following through the mining  
20 application as opposed to dealing with the other two --  
21 or actually, the second and third items in Cameron's  
22 letter.

23 Q. Do you now see anything objectionable at all about  
24 Cameron writing to Westray as he did saying I want you to  
25 know that I have assurance from my colleague that a lease

MR. GOLBEY, EXAM. MR. ENDRES

1 is forthcoming, but here's the stuff on financing, on --  
2 and on take-or-pay which are things that we talked about?

3 A. I have two observations.

4 Q. Yes?

5 A. One is that the word "assurance" does not appear in  
6 the letter and the other one, if he was writing for his  
7 own Department, I would have thought he would have put  
8 his own Department's two items first.

9 Q. You're right about that word "assurance" doesn't  
10 show up there and I'm going to get my colleague to check  
11 on something from --

12 MR. MERRICK Actually, it does.

13 MR. ENDRES Oh, does it?

14 MR. MERRICK If you look at the third line in the first  
15 paragraph --

16 MR. ENDRES All right.

17 MR. MERRICK -- it says "The Minister has assured  
18 me..."

19 MR. ENDRES Yes. So there it is. I'm sorry. Thank  
20 you, Mr. --

21 A. Sorry, my -- in that case, my -- am I even on the  
22 right --

23 MR. ENDRES I was too quick to agree with you.

24 A. Oh, my -- sorry. I was reading the introductory  
25 paragraph. My apologies.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. So really all he's saying is that look, I'm passing  
2 on --

3 A. Yeah. Okay.

4 Q. -- the message about --

5 A. Yeah.

6 Q. -- the lease. Isn't that right?

7 A. Sorry, I was --

8 Q. So now you're no longer surprised why Cameron writes  
9 to Westray, are you?

10 A. Is it -- no, just -- as I said, if he was writing  
11 for the Department of Industry and Trade, I would have  
12 thought he would have had those two paragraphs first and  
13 the comment from his colleague third.

14 Q. It is also obvious now, is it not, in the light of  
15 the sequence of events and that, of course, specifically  
16 are the two documents, the memorandum to Cabinet and the  
17 report and recommendation to Executive Council which we  
18 just looked at, that Cameron was privy to that? Cameron,  
19 being a member of the Executive Council, was privy to the  
20 fact that these documentations were before the  
21 government?

22 A. Presuming that --

23 Q. Yes.

24 A. -- he obviously read such correspondence. And I'm  
25 sure he did.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Yes. So all he was doing was he was passing out the  
2 word which the Minister of Mines could have done just as  
3 easily?

4 A. I think that's a reasonable assumption.

5 Q. The next thing we have in the sequence of events is  
6 September 9 of '88, the Department of Mines and Energy  
7 transfers a special licence, licence 286, for mineral  
8 resources from Suncor to Westray. And this is a new  
9 exhibit. The Commission document number is "NSDNR-71"  
10 which is in tab 14 now. I just have to pull the page  
11 out. Maybe we don't have it. Nothing turns on it so I  
12 wouldn't be worried about.

13 VOICE Was it provided last night?

14 MR. ENDRES It may not have been provided actually,  
15 but do you recall that in your review of the documents of  
16 the Commission that there was a transfer from Suncor to  
17 Westray of a special licence?

18 A. There was, yes.

19 Q. A special licence as opposed to a lease?

20 A. Yes.

21 Q. Which, of course, the exploration licence. So we  
22 know that.

23 MR. MERRICK It's in the exhibits, Mr. Commissioner.  
24 We just didn't refer to it because we didn't think it was  
25 that significant. But if necessary, it can be found in

MR. GOLBEY, EXAM. MR. ENDRES

1 the exhibit books.

2 MR. ENDRES All right. We haven't found it either,  
3 obviously, or I would have had the page.

4 COMMISSIONER Well, if it's not significant.

5 MR. ENDRES No, it really isn't that important, but,  
6 Mr. Golbey, does it not make sense that there was reason  
7 for the delay between the time of the application on the  
8 one hand and the granting of the lease on the other,  
9 because until Westray had the mineral resources licence,  
10 they couldn't even obtain the lease. You know that, do  
11 you not?

12 A. That is -- that is good explanation for the delay.

13 Q. Yes. And then finally on September 13 of 1988, we  
14 have the Order-in-Council, which we already looked at  
15 Exhibit 35-E, page three. That's the Commission number,  
16 the Order-in-Council authorizing the Minister to grant  
17 the mining lease?

18 A. Right.

19 Q. We looked at it under tab 14?

20 A. Yes, that's --

21 Q. And that is the chronology of events, which seems  
22 pretty straightforward, does it not?

23 A. [No audible response]

24 Q. Yes --

25 A. It's --

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. -- or no?

2 A. It's a good record of events, yes.

3 Q. And there is no inexplicable delay in that sequence  
4 of events, is there?

5 A. No.

6 Q. But you are still concerned about the Jones' letter  
7 and the Pelley letter, those two that we looked at from -  
8 - we'll get to that. We'll get back to that. You're  
9 still not happy about that, I take it?

10 A. That is correct. And possibly, because I'm think --  
11 I'm still, in my opinion, thinking in an industry way  
12 that I agree you have shown a, if you like, conformity  
13 with the process as in the Act, and I suppose my  
14 hesitancy is still whether all the technical issues have  
15 been fully dealt with prior to the recommendation being  
16 made.

17 Q. Okay. And we'll come back to that. I wonder, were  
18 the copies made available now of the --

19 COMMISSIONER Yes.

20 MR. ENDRES Perhaps we can take another look at that  
21 before I go on to another area. So now we all have in  
22 front of us Exhibit 1, which is Kilborn No. 1, volume  
23 one.

24 A. Um --

25 Q. I'm sorry? Yes?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Yes.

2 Q. We also have --

3 A. Assuming that the front page really is a -- is the  
4 true cover page. There is no date on it, however.

5 Q. All right. Well, this is a Commission exhibit. You  
6 tell me about it.

7 MR. MERRICK Wait a minute now. The pages that you've  
8 submitted are from Kilborn '88, final version?

9 MR. ENDRES Yes. No, I'm just talking about Exhibit 1  
10 at the moment.

11 MR. MERRICK All right. Exhibit 1.

12 A. Oh sorry, I think I misunderstood.

13 MR. ENDRES Page one, Exhibit 1.

14 A. All right. Page one, Exhibit 1 is a Commission  
15 document, yes.

16 Q. It's a Commission document. So you have that? And  
17 let's take a look at the page 1-1 and it's --  
18 introduction 1.0 of the five or so page excerpt that's  
19 now in front of us. It is five pages, actually.

20 Altogether. And this, I put to you, is a copy from the  
21 final Kilborn No. 1 Report. And immediately, if we look  
22 at the first three paragraphs under 1.1, they don't look  
23 the same, do they?

24 A. That is correct.

25 Q. And, indeed, the first paragraph of the final

MR. GOLBEY, EXAM. MR. ENDRES

1 Kilborn Report does not show up in the draft that you  
2 reviewed?

3 A. That too is correct.

4 Q. And amongst other things in that first paragraph it  
5 says, "And all of Sun," -- well, let's read the whole  
6 paragraph:

7 "Westray Coal Inc. (Westray) purchased the rights of  
8 the Pictou," or "...to the Pictou County coalfield from  
9 Suncor Inc. in December '87, and all of Suncor's  
10 information relating to this coalfield, including the  
11 Placer Development Limited feasibility study of July '87,  
12 became the property of Westray."

13 So Westray inherited all of the background that  
14 Placer and Suncor, the previous owners, had gathered on  
15 the Pictou coalfield?

16 A. Yes, they did.

17 Q. And Kilborn, who was Westray's consultant, would  
18 have had all of those in front of him? Or of them.

19 A. They would have had access to them.

20 Q. Sure. And that paragraph doesn't show up in the  
21 draft that you reviewed, does it?

22 A. That is correct.

23 Q. And similarly, the second paragraph, and I've  
24 already read that out, the last sentence, "backup detail  
25 data for the study," et cetera, that doesn't show up in

MR. GOLBEY, EXAM. MR. ENDRES

1 the draft that you reviewed but it does show up in the  
2 final report?

3 A. It does.

4 Q. And we identified and you agreed that that's an  
5 important point?

6 A. Yes.

7 Q. And there are other differences on paragraph two.  
8 It doesn't even look the same. Correct?

9 A. Correct.

10 Q. Paragraph two of the draft that is Commission  
11 Exhibit No. 1, at page one, says, "Kilborn was requested  
12 to develop production plans, capital and operating costs  
13 budgets, cash flows, and estimates of gross revenues."  
14 First sentence. The first sentence of paragraph two of  
15 the final Kilborn No. 1 Report says:

16 "Mr. Clifford Frame, Chairman and Chief Executive  
17 Officer of Westray Coal, commissioned Kilborn to prepare  
18 a technical and cost review study of the feasibility of  
19 developing a coal mine in the Pictou County coalfield,  
20 bituminous coal deposit based on all the information  
21 provided by Westray.

22 Specifically, Kilborn in association with Dames and  
23 Moore was requested to prepare a detailed overview of  
24 production plans and capital and operating costs  
25 estimates. This report summarizes Kilborn's findings."

MR. GOLBEY, EXAM. MR. ENDRES

1 We don't find that in the draft that you reviewed.

2 A. You don't find the second part of that paragraph.

3 Q. Yes. Which -- the first part you say we do find?

4 A. Well, the "Mr. Clifford Frame" was the original  
5 opening paragraph in the preliminary.

6 Q. All right. So the first sentence is there. Or the  
7 first sentence of the draft report, essentially, shows  
8 up --

9 A. Yeah.

10 Q. -- in the final report and the rest is new?

11 A. [No audible response]

12 Q. Yes or no?

13 A. It does.

14 Q. Sorry?

15 A. It's -- yes.

16 Q. It's there.

17 A. It's there.

18 Q. And if we go through the rest of the pages, we find  
19 similar points, do we not?

20 A. There are -- there are differences, but I would not  
21 consider many of them to be major and significant.

22 Q. Would you agree with me that the Westray proposal  
23 for a lease was based on Kilborn No. 1?

24 A. I do.

25 Q. Not Kilborn 2?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. I believe -- what I also did was review, if you  
2 like, the five pages or so that you gave us against  
3 Kilborn '89, as we call it, which was January '89, which  
4 is the final Kilborn, and all the wording in the final  
5 version of '88 agree with Kilborn '89. So by using  
6 Kilborn '89 with the one major exception of the tunnels,  
7 I believe it to be identical through the sample you  
8 submitted, to late '88 version.

9 Q. Well, we'll get to Kilborn 2 shortly. For the time  
10 being, all I want you to focus on, if you would please,  
11 is that the Westray application was based on Kilborn 1  
12 and it was granted on the basis of Kilborn 1. Correct?

13 A. Yes.

14 Q. Which is not -- and you haven't read that report?

15 A. [No audible response]

16 Q. Correct?

17 A. I haven't read it in its final form.

18 Q. Correct. You are saying that Kilborn No. 1 is a --  
19 less than a feasibility study. That was your evidence.  
20 And what you really are saying to us, that Kilborn No. 1,  
21 the draft that I reviewed, is less than a feasibility  
22 study?

23 A. In fact, it wasn't even headed a feasibility study;  
24 it was technical and cost review.

25 Q. All right. Well, let me put the question to you

MR. GOLBEY, EXAM. MR. ENDRES

1 again, it's a very simple question. In fact, the draft  
2 that you reviewed, you told us, constitutes less than a  
3 feasibility study?

4 A. Yes, it does.

5 Q. Can you point us to a textbook somewhere, Mr.  
6 Golbey, that helps us in getting these definitions about  
7 pre-feasibility study, feasibility study, engineering  
8 phase, development phase, whatever, so that we can be  
9 satisfied that you are using the right terminology? Is  
10 there such a thing?

11 A. Sitting here at the moment, no, I cannot think of  
12 such texts, but I'm sure with some library re -- well, I  
13 know with library research I can identify at least a  
14 number of industry papers on that very topic.

15 Q. Those categories, "watertight compartments," you  
16 list a number of them in your report. You go through the  
17 very early development phases. I don't know if I can  
18 recall them; you can, I'm sure. What are they? From the  
19 beginning through to production.

20 A. Well, if you wish to start at the very beginning,  
21 there would be an expiration, initial assessment, pre-  
22 feasibility, feasibility, detailed engineering,  
23 construction and development. Or, sorry, construction  
24 and production.

25 Q. So the detailed engineering comes after feasibility?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Yes.

2 Q. So we don't go to the feasibility study to look for  
3 detailed engineering, correct?

4 A. You use the feasibility study as the basis for the  
5 detailed engineering.

6 Q. Yeah. We do not go to the feasibility study to look  
7 for detailed engineering plans --

8 A. That's --

9 Q. -- do we?

10 A. That is correct. No, I wouldn't.

11 Q. So when we look at the Kilborn Report, whether we  
12 call it one thing or another, we wouldn't necessarily  
13 look for detailed engineering work in that?

14 A. Yeah, that is true, and I wasn't looking for  
15 detailed engineering work.

16 Q. Are you telling us that these various categories of  
17 a development, an industrial development such as a mine,  
18 are, indeed, watertight compartments? In other words,  
19 everyone understands readily the difference between pre-  
20 feasibility, feasibility, detailed engineering, and  
21 whatever else there is, or are there crossovers? Are  
22 there bridges? Are there people that look at things a  
23 little differently?

24 A. Within the mining industry there would be a general  
25 understanding of what was in each phase.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Would --

2 A. But in terms of having an absolutely, precise,  
3 almost accounting style of definition, I doubt if there  
4 are such things.

5 Q. All right. Is there a lot of magic, Mr. Golbey,  
6 about the terminology anyway? Should we focus a lot on  
7 the label of "feasibility" as opposed to "pre-  
8 feasibility," whatever?

9 A. In the -- I think focusing on the label indicates  
10 almost maybe in a shorthand way, the amount of detail and  
11 information, assumptions, technical analysis and items  
12 that like that would have gone into the study.

13 Q. But if we look at this in the context of the  
14 application for the lease, if a document does in fact  
15 contain all the information that is required in order to  
16 properly assess a project and to grant a lease properly,  
17 then it really doesn't matter, does it, what we call it?  
18 Whether it's a pre-feasibility study or feasibility --

19 A. As long --

20 Q. -- study whatever.

21 A. As long as it meets the requirement, I believe, for  
22 the efficient and safe usage or extraction of the  
23 provincial resource, it can be entitled anything. My  
24 reason for referring to "feasibility study" is that is  
25 traditionally the level of study that would provide the

MR. GOLBEY, EXAM. MR. ENDRES

1 information that would enable the efficient and safe use  
2 of the commodity to be examined.

3 Q. Mr. Golbey, I must say I'm still a little confused  
4 about your use of the term, and I want to just have one  
5 other run at this. The term "feasibility study."

6 There's no doubt that you testified, repeatedly, that  
7 Kilborn No. 1 does not constitute a feasibility study?

8 A. That is correct.

9 Q. And neither does Kilborn 2?

10 A. That is also correct.

11 Q. When we look at your report, Exhibit 57, at page 32,  
12 you give us the terminology which you just recited.

13 "From exploration to," this is called -- headed "The  
14 Addendum," but it's consecutively numbered.

15 A. Yeah, and that's tab three --

16 Q. So this is the --

17 A. -- in -- that's tab three in --

18 Q. -- terminology that you've just offered?

19 A. Yes.

20 Q. So we see, "Exploration: The stages followed in the  
21 development of a mining property. Exploration, initial  
22 assessment, pre-feasibility study, feasibility study,  
23 detailed engineering," et cetera.

24 Now I say you're confusing me still because --  
25 because in that same report of yours, at page 25 of

MR. GOLBEY, EXAM. MR. ENDRES

1 Appendix "A", and we already looked at that for a moment  
2 early on when were trying to find out what it was that  
3 you reviewed -

4 VOICE Appendix "A" under tab two.

5 MR. ENDRES Appendix "A". You have it?

6 VOICE Under tab two.

7 MR. ENDRES Do you have it?

8 A. Yes.

9 Q. Page 25. What do you say about Kilborn? Read that  
10 for us if you will.

11 A. "It is called a project review."

12 Q. Yeah. "Kilborn project review." Read the next  
13 line.

14 A. "Feasibility study based on earlier studies by  
15 various companies and consultants."

16 Q. Yes. So what are you calling the Kilborn Report?

17 A. In that line, a feasibility study.

18 Q. Yeah. Find that confusing at all?

19 A. I do. It should have been --

20 Q. Yeah.

21 A. -- a change of terminology used.

22 Q. But in your report, which is your expert report to  
23 the Commission, you called Kilborn "a feasibility study"  
24 did you not?

25 A. In that one case, yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Yeah. And you did that report in 1992?

2 A. I did.

3 Q. Which was right after you reviewed it? That is,  
4 Kilborn.

5 A. [No audible response]

6 Q. Correct?

7 A. Yes.

8 Q. It was contemporaneous to your review of the Kilborn  
9 report?

10 A. Yes.

11 Q. And now we are in 1995, and you're saying it's no  
12 longer a feasibility study?

13 A. [No audible response]

14 Q. Correct?

15 A. I --

16 Q. In order to make that point more clear, because I  
17 fear a lot does turn on it ultimately, would you be  
18 willing to go through with me your report, specifically  
19 on the requirements of a feasibility study, and compare  
20 that to your evidence that you gave over the last few  
21 days and compare that to Kilborn No. 1? Do you follow  
22 what I'm trying to do?

23 A. [No audible response]

24 Q. Take your report, say here's what you're saying  
25 about what makes a feasibility study, then look at what

MR. GOLBEY, EXAM. MR. ENDRES

1 your evidence has been over the last few days, and then  
2 look at, indeed, we can add what is in the Westray  
3 application documents pertaining to that step, and then  
4 finally look at what's in the Kilborn No. 1 Report.

5 And I suggest to you, Mr. Golbey, that when we're  
6 finished with that exercise, you will probably agree with  
7 me that Kilborn No. 1 is really, properly to be called a  
8 feasibility study after all. Shall we try it?

9 A. If you wish.

10 Q. In your --

11 COMMISSIONER Just before you start. I'm sort of  
12 confused on -- there was the draft '88 Kilborn; there was  
13 the final '88 Kilborn; there was the '89 Kilborn. Now  
14 there seems to be -- the evidence seems to be that there  
15 were fairly substantial differences between the draft '88  
16 Kilborn and the final '88 Kilborn, but the '88 Kilborn  
17 and the '89 Kilborn were, for all intents and purposes,  
18 identical except for some reference to tunnels.

19 A. That is still my understanding, Mr. Commissioner,  
20 yes.

21 COMMISSIONER Now where does that get us?

22 MR. ENDRES Well, I'm not so sure where it gets us.  
23 I'm not anywhere near there, Mr. --

24 COMMISSIONER Well, I'd like to get somewhere.

25 MR. ENDRES -- Commissioner.

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER You know.

2 MR. ENDRES We haven't really looked at Kilborn 2. Do  
3 you have exhibits -- the Kilborn 2 Report in front of  
4 you?

5 COMMISSIONER Did -- I suppose my point is, Mr. Golbey,  
6 did you make most of your assumptions in your report  
7 based on the preliminary or based on '89?

8 A. It was based on '89, but from what I've reviewed, it  
9 would appear that, and I agree with Mr. Endres, there is  
10 changes in the wording in certain -- particularly in the  
11 exhibits he gave us.

12 COMMISSIONER Yeah.

13 A. But a lot, in my opinion, and from my experience, a  
14 lot of those wording changes are not atypical once a  
15 preliminary report has been given to a client for their  
16 review.

17 COMMISSIONER But my --

18 A. For --

19 COMMISSIONER My point is, I want to get this clear in  
20 my own mind, that you used '89 for most of your --

21 A. I did.

22 COMMISSIONER -- report? And '89 is substantially the  
23 same as the final '88?

24 A. In fact, Mr. Commissioner, at --

25 COMMISSIONER Am I off base here, Mr. Endres? Is

MR. GOLBEY, EXAM. MR. ENDRES

1 that --

2 MR. ENDRES Well, you know --

3 A. It's --

4 Q. -- there is --

5 A. May --

6 Q. -- a dilemma that I have was that, Mr. Commissioner,  
7 and it is a very simple one, I don't have Kilborn 2. The  
8 '89 report. We haven't got it yet.

9 COMMISSIONER It's here.

10 MR. ENDRES We've never had a chance to see it. I  
11 mean, sure, my friend says, well, it's accessible at the  
12 Commission office but, I mean, we were given boxes and  
13 boxes of exhibits and --

14 COMMISSIONER Yeah, but you were also told that some of  
15 the exhibits, because of their volume --

16 MR. ENDRES Yes.

17 COMMISSIONER -- were not going to be reproduced.

18 MR. ENDRES And I was told precisely that, plus they  
19 are available, I was told, on request. And so I  
20 requested them and I don't have them yet. Now I'm not  
21 blaming anyone for it. It's just that we don't have the  
22 reports; it's a fact. So I'm in no position to talk to  
23 Mr. Golbey about Kilborn 2 because I don't have the  
24 report.

25 COMMISSIONER Okay.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Mr. Commissioner, this may help. Page 3-2 in the  
2 handout you've just been given, in -- this is the five  
3 pages that we've just been given. It's page 3-2 and it's  
4 also section 3.2, gives mining conditions and very  
5 quickly tabulates the basic parameters for the study.  
6 That table is identical as in the '89 study. Because I  
7 checked that this morning.

8 COMMISSIONER This is pretty hard data, then?

9 A. Yes, it is.

10 COMMISSIONER Yeah. And significant data?

11 A. Yes. And section 3.3 that follows is also  
12 identical. Or that part of it which is photocopied here  
13 is, in turn, identical to Kilborn '89.

14 Q. All right, well.

15 MR. MERRICK If I can just make sure I'm following  
16 where you're going, Mr. Endres, I understand, Mr. Golbey,  
17 your evidence of the '88 final seems to be identical to  
18 the '89 which you've looked at. As I understand the  
19 inquiry though, it's a question of whether the  
20 information submitted in support of the application for  
21 the mining permit met sufficient technical detail to have  
22 allowed an assessment of the efficient and safe mining of  
23 the mine. And that application was the final '88  
24 Kilborn, I guess.

25 A. Yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. MERRICK All right, I understand.

2 MR. ENDRES I'm just retrieving from across Kilborn 2  
3 and I just want to look at -- it's not there, oh.

4 MR. MERRICK Incidentally, we had advis -- I checked  
5 into this when Mr. Reinhold asked me about access to the  
6 Kilborn studies. He was advised, I'm told by Commission  
7 staff, that they were available and would be copied for  
8 them if they were prepared to undertake the cost of  
9 copying. We did not hear back from them in response to  
10 that until the commencement of these hearings, at which  
11 time, I guess, you now want -- you're prepared to pay the  
12 cost of photocopying them.

13 MR. ENDRES That's an interesting point to make.  
14 We're digging deeper, but that fax came to us on the  
15 weekend, so -- this past weekend.

16 MR. MERRICK Well, I'm told that that was the position  
17 that was advised to you by staff. But let's not get into  
18 a quibble over getting copies. They're there; you can  
19 have them. If you want copies --

20 MR. ENDRES Sure.

21 MR. MERRICK -- we'll make them at your cost and  
22 everybody will be happy.

23 MR. ENDRES But I think we should look at that at some  
24 stage, and we probably should get beyond this at the  
25 moment. I'm unable, Mr. Commissioner, to deal with it

MR. GOLBEY, EXAM. MR. ENDRES

1 because the books aren't on the shelf, so I can't even  
2 follow Mr. Golbey's review of the table of contents  
3 because I don't have it. I only have it for the No. 1  
4 report, which is the Exhibit 1. But we can get to that  
5 at some point. We would need Volume 4, I'm told, Exhibit  
6 4.

7 COMMISSIONER Do I understand you, Mr. Endres, to say  
8 that without these documents before you, you're  
9 handicapped in your further cross-examination of Mr.  
10 Golbey?

11 MR. ENDRES I am troubled in my ability to respond to  
12 you, to your query about where does it all take us.

13 COMMISSIONER Well, I'm -- maybe that was -- what I was  
14 trying to -- I thought I was trying to clarify the issue.

15 MR. ENDRES Sure.

16 COMMISSIONER By getting or having Mr. Golbey assure me  
17 that his analysis was based upon Kilborn '89, which is  
18 substantially identical to Kilborn final '98, or '88.

19 A. I believe it to be, yes.

20 COMMISSIONER But you're not sure of that yourself?

21 MR. ENDRES No, I cannot be sure, and I'm certainly  
22 not willing to agree because --

23 COMMISSIONER I understand that.

24 MR. ENDRES -- we already know that Mr. Golbey never,  
25 ever reviewed the Kilborn long final reports. I don't

MR. GOLBEY, EXAM. MR. ENDRES

1 know where he's coming from and how he can say these  
2 things. And I haven't reviewed the No. 2 report, so --  
3 COMMISSIONER You're just going by the pages you've seen  
4 of it.

5 A. And also the number or fair quantity engineering  
6 data is the same between the preliminary draft and  
7 Kilborn '88. For example, the table of parameters is  
8 identical in, if you like, the three documents we're  
9 discussing.

10 MR. ENDRES Well, if we look at this, and there is a  
11 limit to what we can do on this point, but let me try  
12 that with you, Mr. Golbey. I've now been given Volume 4,  
13 Exhibit 4, all right? Let's take that and put Exhibit 1  
14 side by side, four and one.

15 COMMISSIONER Exhibit 1 is the preliminary?

16 MR. ENDRES Yes, yes.

17 COMMISSIONER That's way off base.

18 MR. ENDRES No, but I want to try something here.

19 COMMISSIONER Okay.

20 MR. MERRICK Just before we go further, Mr.  
21 Commissioner, one thing I think that should be clarified  
22 is that we're not sure yet whether there are significant  
23 changes between the draft '88 and the final '88. There  
24 are changes. Whether they are significant or not I don't  
25 think has been established on the evidence.

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. ENDRES Well, I can't have that. Mr. Golbey  
2 already testified that there is at least one significant  
3 change and I've only asked him two questions about it,  
4 so --

5 MR. MERRICK Well, that can be assessed on its own  
6 merits by identifying the changes. I'll get out of your  
7 way. You put your questions, Mr. Endres.

8 MR. ENDRES Thank you. Do you have Volumes 1 and 4 in  
9 front of you?

10 A. I do, yes.

11 Q. And we know one is the preliminary draft of the  
12 report, one -- four is the final whatever of the second  
13 Kilborn report. Can you take a look at that -- and I  
14 think that's what you were just doing for us. If you  
15 take a look at the table of contents, and it strikes me  
16 when we look at that that it's virtually identical. In  
17 fact, it probably is identical except for one item that I  
18 see right off under 1.3. It says "Historical data" in  
19 Exhibit 4, while in Exhibit 1 it says "Property  
20 ownership" which is probably the same thing by different  
21 names.

22 A. More than likely when you get there, yes.

23 Q. The rest is the same, "Scope of work, property  
24 location, access." Look at "geology and reserves, 2.1,  
25 general" match. 2.2 "geological setting," match. 2.3,

MR. GOLBEY, EXAM. MR. ENDRES

1 "history of production and exploration," match. 2.4  
2 "deposit geology," match. 2.4(1) "General extent,  
3 structure, thickness," match. We can go through this,  
4 and I'm putting it to you already, not having finished  
5 reading it that these tables of content are virtually  
6 identical.

7 A. I agree.

8 Q. And that's between the draft of No. 1 and Kilborn 2,  
9 so what do we draw from that -- nothing -- I suggest to  
10 you. The layout is the same but the text is different;  
11 we know that. All right?

12 A. The text is different, but it revolves around is the  
13 text substantially different in technical parameters or  
14 changes.

15 Q. But surely you wouldn't advocate to the Commission  
16 that all we should be content with is the general  
17 parameters, in other words, the table of contents. As  
18 long as the table of contents matches, don't worry about  
19 the text. We do worry about the text, correct?

20 A. If the text contains changes of substance, yes.

21 Q. And we already know that despite the fact that it's  
22 the same table of contents between the preliminary draft  
23 No. 1 and Kilborn No. 2, despite the fact that they're  
24 the same table of contents, we know that there's at least  
25 one significant change. We've identified that already in

MR. GOLBEY, EXAM. MR. ENDRES

1 the text.

2 A. Well, there is a change in the text.

3 Q. Yes, and it's a very significant change in the text,  
4 isn't it?

5 A. There is a change in the text.

6 Q. And it's a significant change, I put it to you,  
7 because you've already said that to us, have you not?

8 A. I will admit I cannot recall my exact phraseology.

9 Q. You know what I'm referring to, do you not?

10 A. Actually, I'm not certian.

11 Q. No, I'm referring to the sentence that talked about  
12 if you want to have detailed studies, you can have them  
13 at the Westray office or at Kilborn's Toronto office.

14 A. That one is significant, yes.

15 Q. Sure, it is. It has to be in the course of what  
16 you said to us. All right. So we shouldn't be just  
17 content with what's in the table of contents, should we?  
18 You've got to read the text.

19 A. I agree.

20 Q. I was at the point of trying to take a walk with you  
21 through the requirements of a feasibility study, and for  
22 that you need not refer to documents necessarily if your  
23 recollection assists you, otherwise I will tell you where  
24 you can find them. Exhibit 57, by way of background,  
25 that is your expert report?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. It is.

2 Q. And in your report you speak of the detailed mining  
3 development plans would be developed, and I'd better  
4 refer you to -- do you know where I am? This is where  
5 you discuss the nature of a feasibility study. This is  
6 at page 33 of your report and it's the update -- and  
7 there again, we have an update from you, 1995, which is  
8 an update of your 1992 report.

9 COMMISSIONER Is that Tab 3?

10 MR. ENDRES It's Exhibit 57, the Golbey report, and  
11 all I have is page 33.

12 MR. MERRICK Tab 3.

13 COMMISSIONER Tab 3, okay, page 33.

14 MR. ENDRES Page 33. Without reading from it, am I  
15 correctly paraphrasing that what you are saying, number  
16 one, the number one requirement for a detailed -- and I  
17 don't mean a ranking. I don't mean to give it a certain  
18 class, but I just -- the first point you make is that a  
19 requirement of a feasibility study is that there be  
20 detailed mining development plans, that they would be  
21 developed based on a thorough knowledge of the geological  
22 structure of the area. And these mining plans would show  
23 the method of reaching the mineral, how the working  
24 places will be established and then how the mineral will  
25 be mined.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Yes.

2 Q. That's one of the things you look for in a  
3 feasibility study. You did not expressly speak to that  
4 in your evidence, that I recall. Do you recall it  
5 differently?

6 A. Most probably not specifically.

7 Q. The Westray lease application, do you recall that?  
8 This would be, of course, Exhibit 35-C, starting at  
9 page --

10 A. Is it not page 30 or 31?

11 Q. Page 30, actually, 31. Do you recall that it  
12 contains the background and geological information in  
13 part 1?

14 A. On page 32, yes.

15 Q. In fact, that's what it says in the table of  
16 contents, if we can use that for the time being. It also  
17 contains material and information and data on the shape,  
18 size, and geological description?

19 A. Yes.

20 Q. Parts 1 and 3. And it contains information on the  
21 mine plans, part 2, part 2, section 3.

22 A. It's somewhere.

23 MR. MERRICK It's the stamped pages you're referring  
24 to.

25 MR. ENDRES I have it.

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. MERRICK The exhibit book has got stamped pages.

2 MR. ENDRES Yes, these ones too and I would like to  
3 use them but I don't have them.

4 MR. MERRICK Sorry, 35-C.

5 MR. ENDRES It's not so difficult because the question  
6 is a very general question, Mr. Golbey. Perhaps you'd  
7 just -- rather than looking at the document, if you just  
8 thought about the question for a moment. You reviewed  
9 the license application documents?

10 A. Yes.

11 Q. Which are in Exhibit 35-C. Do you not recall that  
12 there is information there about mine plans?

13 A. That's just what I was going to refresh my memory  
14 on.

15 Q. All right, it's part 2, section 3.

16 A. Which is page 55 in the exhibit.

17 Q. Thank you. And it's headed "mine plans," of course,  
18 right?

19 A. It is.

20 Q. And so there is information in the application form  
21 about the Westray Mine plans?

22 A. There is information there, yes.

23 Q. And also there is information on the mining of the  
24 mineral itself under part 2, section 4, and that should  
25 be easy to find now since we know where we are. Page 59,

MR. GOLBEY, EXAM. MR. ENDRES

1 a detailed description that is headed of the proposed  
2 mining method equipment to be used, number and skills of  
3 workers required during each phase of the development.  
4 It talks about room-and-pillar mining, pillar extraction,  
5 overused. It talks about the entry numbers, dimensions,  
6 pillar dimensions, et cetera. Do you see that?

7 A. This area is what I would describe as a summary of  
8 the mining method shown there.

9 Q. And would you not agree that in your review of the  
10 Kilborn report, and I know we have to allow you to draw  
11 from Kilborn 2 as opposed to 1, that there is the  
12 information there to the geology and coal reserves? Do  
13 you recall that? And there is information in Kilborn 2  
14 as well on mining.

15 A. There is.

16 Q. And it's not surprising because a lot of the  
17 material that came with the license application came from  
18 the Kilborn report.

19 A. I think we've all agreed on that.

20 Q. So is there anything missing? Having established  
21 that first element -- not necessarily the first in a  
22 sense of ranking, but the element that you identified in  
23 your report, Exhibit 57, at page 33, about detailed  
24 mining development plans will be developed based on a  
25 thorough knowledge of the geological structure of the

MR. GOLBEY, EXAM. MR. ENDRES

1 area, et cetera. Is that information provided?

2 MR. MERRICK Just before you do that, read to the  
3 witness the rest of this paragraph on page 34 where he's  
4 setting out the description of what he considers a  
5 feasibility study, in particular the sentence that picks  
6 up where you left off. It says "The reasons for  
7 selecting the mining method should be stated..."

8 MR. ENDRES Are you on page 34?

9 MR. MERRICK Oh, sorry.

10 MR. ENDRES Of his report?

11 MR. MERRICK 57. You're comparing the data in the  
12 application to the criteria that he set out under his  
13 definition of a feasibility study. You've put to the  
14 witness only a portion of his criteria of what he would  
15 consider a feasibility study, mining method, mining  
16 plans, et cetera. I'm just asking that you also refer  
17 him to the rest of his paragraph so that that's in front  
18 of him when you ask him whether this satisfies his  
19 criteria. On page 34, the rest of his paragraph reads  
20 that included in it should be the reasons for selecting  
21 the mining method should be stated together with reasons  
22 as to why alternatives were rejected. From these plans,  
23 et cetera, et cetera such support services such as  
24 ventilation, et cetera, can be determined.

25 MR. ENDRES Okay, I appreciate your reminder, Mr.

MR. GOLBEY, EXAM. MR. ENDRES

1 Merrick. It's always helpful to have a double check on  
2 this process. Indeed, what you are asking me to do was  
3 the second point I was going to come to, so just bear  
4 with me, please.

5 MR. MERRICK Certainly.

6 MR. ENDRES The second point, my friend just  
7 illustrated it for you already that you make at the top  
8 of page 34 is that a feasibility requirement or a  
9 requirement for a feasibility study -- that they should  
10 have reasons for selecting the mining method and they  
11 should be stated, together with reasons as to why  
12 alternatives are rejected. Do you recall your evidence,  
13 Mr. Golbey, that you added or you put it this way, "And  
14 in such a study I would expect to find the reasons as to  
15 why a particular mining method was selected and also  
16 reasons why others may have been rejected." Same thing.

17 A. I believe I've said that --

18 Q. You recall your evidence on that?

19 A. -- in the last few days.

20 Q. Do I understand it, that is the point my friend was  
21 getting at?

22 A. I believe so, yes.

23 Q. Now let's take a look at where we find some  
24 information on that. Surely there is some. The Westray  
25 lease application, mining method, part 2, section 4, we

MR. GOLBEY, EXAM. MR. ENDRES

1 looked at that. So we have a full detail of the mining  
2 method proposed by Westray.

3 A. In my opinion, there is a summary of what they  
4 intend to do.

5 Q. On the mining method?

6 A. On the mining method.

7 Q. Well, isn't that all that we're looking for in a  
8 feasibility study?

9 A. In my opinion, no.

10 Q. So what more do you want? Let's take a look at it.  
11 Page 59, Exhibit 35-C, (4) a detailed description of the  
12 proposed mining method. And Westray tells the regulators  
13 here's our mining method. "The proposed mining method  
14 was selected with regard to the following requirements:  
15 annual coal production, coal extraction height, extent  
16 and configuration of reserve area, layout flexibility to  
17 cope with faulting," the very thing that we've heard you  
18 speak of and we've heard the previous witness, Mr.  
19 Smales, talk of, when you have a difficult coal seam, you  
20 may well want to choose room-and-pillar because that's  
21 particularly suitable for difficult seams, correct?

22 A. Yes.

23 Q. So they've given us a fair picture of what they want  
24 to do and that is room-and-pillar, correct? And they've  
25 given us a fair reason as to why they want to do it,

MR. GOLBEY, EXAM. MR. ENDRES

1 correct?

2 A. In summary, yes.

3 Q. Sure. They go on. They tell us that they want to  
4 do room-and-pillar mining with partial pillar extraction,  
5 bottom of page 59. They continue to say "A general layout  
6 of the mine is shown on the following map entitled  
7 `mining layout.'" And then they talk about entry numbers  
8 and dimensions and pillar dimensions will vary with the  
9 depth of cover and seam inclination according to the  
10 findings of rock -- rock mechanics investigations, that  
11 is, reported by Golder. And then they go on talking more  
12 about the mining method at page 62, page 63, and there  
13 are some charts, page 65, and there we are.

14 So would you not agree with me, Mr. Golbey, they've  
15 given -- that Westray submitted to the regulators a very  
16 comprehensive picture about the mining method that they  
17 have chosen?

18 A. I agree they have given what I would term a summary  
19 of the method they intend to use.

20 Q. But they have not provided, of course, Westray, in  
21 the submission with the lease application is the reason  
22 why they prefer room-and-pillar over any other mining  
23 method, such as long or shortwall?

24 A. That is correct.

25 Q. And you've identified that as being a requirement,

MR. GOLBEY, EXAM. MR. ENDRES

1 normally, of a feasibility study.

2 A. Yes.

3 Q. But you know that that information was available to  
4 the regulators, do you not? You do know that.

5 A. If the regulators, no doubt, were, in turn, made  
6 aware of it.

7 Q. Well, we can look at the Kilborn report, all right?  
8 And in the Kilborn report, which is the final Kilborn  
9 report, at pages 3 to 5, there is a discussion as to why  
10 room-and-pillar was chosen over longwall or anything  
11 else. Do you recall that?

12 A. There are, if I recall, a few sentences on -- or  
13 maybe a paragraph on that topic.

14 Q. This is Kilborn 1, the Kilborn 1 report, which you  
15 don't have, actually.

16 A. Well, I'm making the assumption that in those  
17 matters the two reports are not considerably different.

18 Q. I put it to you, Mr. Golbey, that you haven't read  
19 Kilborn 1, so you're at a great disadvantage to talk to  
20 me about that.

21 A. I've read early one then.

22 Q. You've read an early one. And I'm referring to the  
23 final one, the one that was the basis for the lease  
24 application, never mind the draft now, all right? I put  
25 it to you, Mr. Golbey, that at pages 3 to 5 of the

MR. GOLBEY, EXAM. MR. ENDRES

1 Kilborn number one report there is a detailed discussion  
2 why Kilborn recommends room-and-pillar over longwall or  
3 any other mining method. And you cannot disagree with me  
4 on that, can you?

5 A. As having not seen that specific document, I cannot  
6 disagree.

7 Q. My colleague just points out, and correctly so, that  
8 that -- just to make the point, that the Kilborn No. 1  
9 report was provided to the regulators by -- which we  
10 looked at -- Pelley's letter of April 21, '88, much  
11 before the lease --

12 A. Yes.

13 Q. -- was granted. So there's no dispute about that.  
14 If we assume then, as you must, because you have no way  
15 of contradicting me that there is discussion on room-and-  
16 pillar versus longwall before the regulators, and we know  
17 -- we've looked at it, that there is a mining method  
18 description in the lease application documents, then  
19 would you agree that we've in fact got the information  
20 that you want when it comes to selecting a mining method,  
21 your second point, with reasons as to why alternatives  
22 are rejected?

23 A. I would agree it's there and the topic has been  
24 raised.

25 Q. Are you willing to take a chance with me and agree

MR. GOLBEY, EXAM. MR. ENDRES

1 that in fact all of the elements that you identify in  
2 your expert report, Exhibit 57, as making up a  
3 feasibility study were in fact present between the  
4 Westray license -- lease application and the Kilborn No.  
5 1 report. Are you willing to take a chance with me,  
6 because if you don't, we have to go through the rest.

7 A. I believe each item would have been addressed. The  
8 question, obviously, becomes was it addressed in, what is  
9 becoming my opinion, of whether it would be sufficient  
10 detail to allow the regulators to be able to determine if  
11 the resource was going to be operated to the efficient  
12 and safe method.

13 Q. Now you see, that troubles me because if we're going  
14 to hedge our bets this way, then I can't work with that.  
15 So let me go back and maybe use that as an example  
16 because we've spent considerable time on it already.  
17 Page 59 of Exhibit 35-C. That's the application  
18 document. What more would you like to see as part of a  
19 feasibility study of a description for the proposed  
20 mining method, more than what's there already?

21 A. I would like to see at least the first five years'  
22 production plan in detail.

23 Q. What else?

24 A. I would like to see an electrical plan for  
25 underground to know where various switchboxes,

MR. GOLBEY, EXAM. MR. ENDRES

1 transformers, and similar major equipment would be  
2 placed.

3 Q. Are we not talking about equipment, transformers,  
4 things like that?

5 A. Yes.

6 Q. No, but I'm not into that at the moment. I'm only  
7 asking you about the description of the mining method.

8 A. That is all part of a description of the mining  
9 method because while a transformer would not cut a tonne  
10 of coal, you cannot cut a tonne of coal without having  
11 one there.

12 Q. Well, I think we're going to have a difficulty with  
13 that because the next point I was going to raise with  
14 you, after talking about the mining method, is from your  
15 expert report, the third element of a feasibility, to me,  
16 would appear to be from these plans, mining method and so  
17 on, the method of mining, the production equipment to be  
18 used, the support equipment required, and the support  
19 services, such as ventilation can be determined. And I  
20 will come to that. I see that as a separate item. But  
21 let me go back to your point. You said I would like to  
22 see a five-year production schedule.

23 A. Yes.

24 Q. In your evidence, I'm just looking at a copy of the  
25 transcript, you are recorded as having said "And in such

MR. GOLBEY, EXAM. MR. ENDRES

1 a study I would expect to find reasons as to why a  
2 particular mining method was selected and also the  
3 reasons why others may have been rejected," which is the  
4 same we talked about. And then you go on and say "And  
5 generally, the planning would be done at least by month  
6 for the first couple of years, usually by quarter for the  
7 next two to three years, and a consideration of annual  
8 plans up to year 10 and sometimes even up to year 15."

9 A. Yes.

10 Q. Well, is that all part of feasibility?

11 A. Yes, it is.

12 Q. Now the Westray plan itself that was approved does  
13 give us a fair picture of how Westray was going to  
14 proceed. Do we not have a plan here -- you know the  
15 plan, that talks about the various development stages,  
16 going through the periods of time. Just -- if you want  
17 to take a look at Exhibit 1, since it's the most handy,  
18 immediately after page 8, and this is very difficult to  
19 find because of the way the pages are numbered in that  
20 exhibit.

21 A. Are you looking at a plan or --

22 Q. Yeah, there's a plan immediately after page 8.

23 A. Could you --

24 Q. It's called the "mining layout plan," figure 3.3.

25 Q. Is it, in effect a similar plan to the one that's --

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. It's similar. All I'm trying to look for, Mr.  
2 Golbey, is to see -- does that not -- that plan -- do you  
3 have the plan?

4 A. Not yet.

5 Q. 3.3.

6 A. But I believe that's the one that shows years one to  
7 three and a coloured block in the right-hand corner?

8 Q. Yeah, coloured blocks, pre-'91, and then there are  
9 three blocks, '91, '92, '93. So that shows where Westray  
10 was going to go over the next four years between '91 and  
11 '93?

12 A. Well, three years' production.

13 Q. '91, '92, '93. Right. So we know there's a three-  
14 year plan anyway.

15 A. That I will agree the plan shows where Westray  
16 intended -- the outline of the areas Westray intended to  
17 mine for three years.

18 Q. Yeah.

19 A. It does not show the specific and coming to earlier  
20 testimony, the specific monthly areas they will be  
21 mining, how they intend specifically to access the areas  
22 and what other production parameters such as ash control  
23 would have been in the plan, which I would expect to find  
24 in any feasibility study.

25 Q. All right. In fact, the original Westray plan that

MR. GOLBEY, EXAM. MR. ENDRES

1 was approved showed the full life for the mine anyway,  
2 did it not?

3 A. It showed --

4 Q. A full plan for the life of the Pictou coal mine,  
5 for the Westray Coal Mine, that's similar to the plan  
6 that's up here?

7 A. I think I agree that it shows a proposed layout for  
8 the full life of the mine.

9 Q. Sure.

10 A. I think we will disagree on whether it shows a  
11 particular mining method and layouts for that period.

12 Q. Okay. Now let's take a look at the equipment, the  
13 point I made for the next -- third element of your  
14 requirement for a feasibility study, from the plans, the  
15 method of mining, the production equipment to be used,  
16 support equipment required, and the support services such  
17 as ventilation can be determined. And that is  
18 essentially what you testified to?

19 A. Yes.

20 Q. And you also pointed out in your expert report that  
21 from these plans all the supporting facilities can be  
22 identified and designed so that the overall layout of the  
23 site can be drawn?

24 A. That's correct.

25 Q. And in the license application we have a list of the

MR. GOLBEY, EXAM. MR. ENDRES

1 equipment that is projected to be used. Do you recall  
2 that?

3 A. Yes.

4 Q. We have a list of support equipment to be used. We  
5 have a description of the ventilation to be employed,  
6 correct?

7 A. It is there, yes.

8 Q. And we have a description of the electrical system  
9 for the proposed mine in the license application.

10 A. If you could help me with that last item?

11 Q. Yeah, it's at part five.

12 A. Sorry, it's --

13 Q. Part five of the -- now this is part five of the  
14 license application documentation.

15 VOICE Can you give me the page numbers?

16 MR. ENDRES Yeah, I will. I'm just looking for it,  
17 patience. It's not always that easy when you have --  
18 five -- no, the document -- you know what part of the  
19 problem is, the documents are out of sync. The documents  
20 in Exhibit 35-C are out of sync. Page 78, stamped "78"  
21 is actually page 68 -- 71 is actually page 68. It makes  
22 it hard to find things.

23 A. Thank you.

24 MR. ROBERTS Our [inaudible] page 92.

25 MR. ENDRES Is it, 92? All right.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Thank you.

2 COMMISSIONER That's Exhibit 1?

3 MR. ENDRES No.

4 MR. MERRICK No, this is Exhibit 35-C.

5 COMMISSIONER Oh, no wonder I'm off base.

6 MR. ENDRES You haven't been able to find it, Mr.  
7 Golbey, the electrical -- statement on electrical  
8 equipment?

9 A. Well, I believe we're referring to the mine  
10 electrical system, no, I haven't.

11 Q. Okay. So that's fine.

12 A. The reference on page 89 is electrical supply or  
13 "electricity supply under the assessment of the impact of  
14 the project on the local community and services.

15 COMMISSIONER Maybe this would be an appropriate time to  
16 take our break so we can --

17 MR. ENDRES I'll get the page -- all right.

18 COMMISSIONER -- get these things organized.

19 MR. ENDRES That will be fine. Thank you, I  
20 appreciate that.

21 COMMISSIONER Okay.

22 INQUIRY RECESSED (TIME: 11:03 a.m.)

23 INQUIRY RESUMED (TIME: 11:18 a.m.)

24 COMMISSIONER Mr. Endres?

25 MR. ENDRES Thank you and I do appreciate the

MR. GOLBEY, EXAM. MR. ENDRES

1 opportunity to check a couple of things. Before we go to  
2 the electrical and that is what I was checking for,  
3 question, I also had the opportunity to take another look  
4 through Exhibit 1. In the context of, Mr. Golbey, your  
5 concern about the lack of detailed information pertaining  
6 to the proposed production for the mine, and if you would  
7 please take a look at -- now my friend is going to say  
8 what page is it and, I'm sorry, there aren't any pages on  
9 it here.

10 MR. MERRICK Let's start with the exhibit number.

11 MR. ENDRES It's Exhibit 1. I gave that number out  
12 already --

13 MR. MERRICK All right, thank you.

14 MR. ENDRES -- Exhibit 1, so we know that. And then  
15 it would be after page 10.

16 VOICE ...the yellow dividers.

17 VOICE We have copies. Ena is making copies.

18 MR. ENDRES Which -- it's in the book. We didn't  
19 realize it was in the book. We were going to get copies  
20 made, but it is actually in the book. And where do we  
21 find page 10? Maybe Mr. Merrick can help me with that.

22 MR. MERRICK How many -- let's use the yellow dividers  
23 as guides. Which way do you want to work in?

24 MR. ENDRES Well, that's interesting. Well, after all  
25 these plans, how about that?

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. MERRICK Okay.

2 MR. ENDRES And then there is page 9, top right-hand  
3 corner?

4 MR. MERRICK Yes, got it.

5 MR. ENDRES Page 10.

6 MR. MERRICK The first set of plans and then page 9,  
7 yeah.

8 MR. ENDRES All right. Are you with us, Mr. Golbey?

9 A. Yes, I am.

10 Q. So go over to, I'm sorry, page -- flip over to page  
11 10 --

12 A. Yes.

13 Q. -- of your schedule.

14 A. Yes.

15 Q. Do we all have it now? The schedule which is --  
16 says, "Initial Production Schedule."

17 A. And it's a bar chart --

18 Q. It's a bar chart.

19 A. -- schedule.

20 Q. Yes, it's a bar chart and it looks like --

21 A. It's following page 10, Mr. Commissioner.

22 Q. It looks like this. It has --

23 COMMISSIONER Well, I've got one page 10 here but,  
24 obviously, it's the wrong one. What's --

25 MR. ENDRES It looks this way, Mr. Commissioner.

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER Oh, yeah. Yeah.

2 MR. MERRICK Right after the first batch of plans,  
3 there's a section of plans in there, double folded.

4 COMMISSIONER Okay, yeah.

5 MR. MERRICK Right after that we go to page 9.

6 COMMISSIONER Well, these -- these things?

7 MR. MERRICK No, that's

8 A. If I might be of assistance.

9 COMMISSIONER Sure. Okay, thank you.

10 MR. ENDRES All right. What do you say that is, Mr.  
11 Golbey? What does it represent?

12 A. It represents a summary of districts of the mine  
13 where coal will be produced.

14 Q. Over the years 1990 through 1993?

15 A. Correct.

16 Q. And that is part of what we were looking for, is it  
17 not?

18 A. It's as described, I think, in Initial Production  
19 Schedule. And it outlines which area only the operation  
20 or the area of the mine the operation will be. It does  
21 not show any specific criteria as to how that was  
22 developed.

23 Q. All right. Well, we were looking for some evidence  
24 of production projections, detailed production  
25 projections and that does that, does it not?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. That, to me, would summarize the results of the  
2 detailed projections.

3 Q. Yes.

4 A. But I haven't found the details of those  
5 projections --

6 Q. You know, of course --

7 A. -- or at least in the volume I looked at.

8 Q. -- from Kilborn 1, the sentence that we read this  
9 morning first thing, that if we want further details in  
10 support of summaries in the report, then we go to the  
11 Westray office or to Kilborn's office in Toronto to find  
12 them, correct?

13 A. That sentence is in there.

14 Q. Yes. And you don't have any problem with that idea  
15 of having summaries in the feasibility study and details  
16 available elsewhere?

17 A. The full detail, I would still expect, as I gave in  
18 earlier testimony, at least the first five years to be  
19 detailed.

20 Q. Let's take a look at page -- well, if we go over to  
21 page 11, 12, 13 -- there's no number there, actually, at  
22 all. So I'm just calling it -- which would then be 14.  
23 If we were -- if the pages were numbered, and that is a  
24 thing called "Table 3.1." Do you have that?

25 A. Which gives annual run-of-mine production.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Yeah. And does that not represent Westray's  
2 projection of the annual production of coal on a  
3 quarterly -- first, on a monthly basis for 1990 and then  
4 on a quarterly basis through '93 and then on an annual  
5 basis through to 2005?

6 A. On a very -- as it -- on a summary chart, yes.

7 Q. Of course, yes. But we now know pretty well what  
8 Westray projected by way of production during the first  
9 three years of the life of the mine, indeed, during the  
10 15 years projected for the mine.

11 A. On a summary basis.

12 Q. Correct. Now as far as the electrical goes, you  
13 said you found nothing in Exhibit 1. Let's take a look  
14 at the -- there's no page number, I'm afraid, that I can  
15 give you but it's called "Item 9.0, Services," and it's  
16 after a yellow divider.

17 COMMISSIONER It that the next set of plans?

18 MR. ENDRES I'm sorry? We're just --

19 VOICE From where we were --

20 MR. ENDRES We're just counting it up. I think it's  
21 the 6th divider.

22 COMMISSIONER 5.0?

23 MR. ENDRES It's 9.0, Mr. Commissioner. The heading  
24 is "Services."

25 COMMISSIONER "Services," yeah.

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. ENDRES And it's headed "9.1, Electrical Energy."

2 A. Yes, it is.

3 Q. So there is some discussion there about the  
4 operation's need for electricity and the projected amount  
5 of electricity that is required?

6 A. It gives the project's total demand, yes.

7 Q. And it breaks it down. The total is broken down  
8 between the preparation plant, the surface and buildings  
9 and the mine itself?

10 A. It does.

11 Q. So it's not just a total; it's also a breakdown of  
12 the three essential aspects of the mine, correct?

13 A. In extreme summary, yes.

14 Q. Sure. But we do now have some reference to  
15 electrical requirements for the Westray project in  
16 Exhibit 1? In summary terms, yes. We do not know where  
17 it is going -- where and how it is going to be used.

18 Q. But it's at least better than saying I found  
19 nothing, wouldn't you agree?

20 A. There is an extreme summary here, yes.

21 Q. Which is better than nothing at all, correct?

22 A. Yes.

23 Q. And it can go to the Kilborn -- no, not the Kilborn  
24 but Exhibit 35-C, which of course is the lease  
25 application. And at page 92 there also is a discussion,

MR. GOLBEY, EXAM. MR. ENDRES

1 in a summary, very brief fashion, of the mine's  
2 requirements for electricity. Correct?

3 A. As I read it, is virtually a one-sentence summary.

4 Q. Uh huh. But at least it shows that Westray has  
5 given thought to how much power they need in order to  
6 operate the mine, correct?

7 A. I would assume that's how the number --

8 Q. It also shows --

9 A. -- was derived, yeah.

10 Q. -- that Westray has gone further and analyzed the  
11 availability of power of that magnitude?

12 A. They have identified a supplier, yes.

13 Q. They have identified a supplier.

14 COMMISSIONER The supplier of?

15 A. The electricity to the mine.

16 COMMISSIONER Oh. Oh, they had a choice, did they?

17 MR. ENDRES No, the question, Mr. Commissioner, was  
18 whether or not there was capability to supply --

19 COMMISSIONER Okay.

20 MR. ENDRES -- the quantity that Westray would need.  
21 And they'd need huge quantities of electricity.

22 A. As an aside, Mr. Commissioner, they did have a  
23 choice. I suppose they could have generated their own,  
24 which is outside the scope, I appreciate.

25 MR. ENDRES In your evidence, Mr. Golbey, you told us

MR. GOLBEY, EXAM. MR. ENDRES

1 that part of the feasibility study is planning would be  
2 done at least by month for the first couple of years.  
3 Usually by quarter for the next two to three years and  
4 consideration of annual plans. And that's virtually the  
5 quote I read to you a few minutes ago. You recall that?

6 A. Well, the annual plans, yes.

7 Q. And in the application documentation we just looked  
8 at that and that does appear to be there, at least in  
9 summary fashion?

10 A. I would say in extreme summary.

11 Q. All right. The next point you raised in your  
12 evidence which does not, to my way of thinking, come out  
13 of your expert report as an item being part of a  
14 feasibility study but in your evidence you said,  
15 "Similarly, a plan would also address the marketing  
16 issues and these would be usually to show that a product  
17 being produced is of commercial, marketable quality and  
18 also an indication of the unit price." Now we can take a  
19 look at Kilborn, the Kilborn report, at Exhibit 35 -- at  
20 Exhibit 1, the draft report, and see if there's anything  
21 there. And this would be under -- at page 10-1, if it's  
22 there. If it matches the final Kilborn report. Yeah,  
23 and you see this page numbering isn't going to match.

24 A. Okay, Section 10 in Exhibit 1 is general and  
25 administration.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Yeah. And the dilemma I have, of course, is that in  
2 my analysis I went through Kilborn 1 that we had, which  
3 was the final report. I put it to you, Mr. Golbey, you  
4 tell me if you disagree, in which case we'll dig out the  
5 document and see exactly what it says, that marketing and  
6 coal quality are addressed by Kilborn in the final  
7 Kilborn report No. 1.

8 A. For the benefit of keeping on track at the moment, I  
9 will be believe -- I will accept your comment on that.

10 Q. The next item you raised, and this is in your expert  
11 report, "This, in turn, would enable any environmental  
12 abatement requirements to be considered." You gave  
13 similar evidence to that effect. And, again, I point you  
14 to page 7-1 and 7-19 of the Kilborn final report, No. 1,  
15 and there is in that document environmental background.  
16 Can you disagree with me?

17 A. In -- this is '88 final?

18 Q. This is the '88 final.

19 A. As you know by now, I've not reviewed that.

20 Q. You spoke in your evidence next about the method of  
21 transporting the coal. That should be covered in the  
22 feasibility study. There is -- and this is transporting  
23 it in the mine, I take it? Correct?

24 A. It depends which section it comes in. It --

25 Q. All right, let's take a look at Part 2, Section 4,

MR. GOLBEY, EXAM. MR. ENDRES

1 of the license -- the lease application. And I will give  
2 you the page number as soon as I have it. All right.  
3 It's item 7.0 and it's headed "Environmental." Do you  
4 have that?

5 A. No, I don't.

6 MR. MERRICK What page are we on?

7 MR. ENDRES All right. Let's find it in Exhibit 1,  
8 towards the last third. Do you have it?

9 A. Yes, I do.

10 Q. So there is a discussion there, is there not, Mr.  
11 Golbey, about environmental aspects pertaining to the  
12 Westray Mine?

13 A. There is some discussion there, yes.

14 Q. Uh huh. All right. The next item you have in your  
15 list, and we're getting almost to the end of what makes a  
16 feasibility study, is that the anticipated costs, both  
17 operating and capital, are able to be estimated to about  
18 plus or minus 10 percent level. The capital costs and  
19 operating costs appear at page 13-1 of the Kilborn 1  
20 Report. They're not in the license application  
21 documents. Not in Exhibit 1. But they do -- there is a  
22 heading, Item 13.0 in the full Kilborn 1 Report which  
23 says Summary of Capital and Operating Costs and Project  
24 Construction Schedule, Capital Costs Summary. And then  
25 it goes through all these numbers. Next page, 13-2, a

MR. GOLBEY, EXAM. MR. ENDRES

1 whole accounting statement on capital costs. The next  
2 page on that full report, 13-3, initial capital costs  
3 details. 13-4 -- you don't have that, I'm afraid. I'm  
4 the only one that has --

5 A. If -- could you just see if this is going to work.  
6 I'm in Exhibit 4.

7 Q. Exhibit --

8 A. 4.

9 Q. -- 4, yes.

10 A. And could you look at page 13-1 --

11 Q. All right. Did you find --

12 A. -- in Exhibit 4, please.

13 Q. -- it in that? Well, that would be helpful as long  
14 as we have a reference for it. That's very good, thank  
15 you.

16 MR. MERRICK What page, Mr. Golbey?

17 A. 13-1 in Exhibit 4. --

18 MR. ENDRES As long as we recognize -- as long as we  
19 recognize that Exhibit 4 will help us in looking at the  
20 subject --

21 A. Well, I believe if you could put the two pages side  
22 by side --

23 Q. -- but it is not going to help myself in showing  
24 that there was a feasibility study available at the time  
25 of the grant of the lease. So we know that.

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. MERRICK But as I understand it, Exhibit 4 is the  
2 '89 Kilborn Report.

3 MR. ENDRES Correct.

4 MR. MERRICK And what the witness is suggesting is that  
5 Section 13, at least, Capital Costs Summary, will be  
6 pretty well word for word what was in the final Kilborn  
7 '88?

8 A. I have a pretty good feeling that that would be the  
9 case.

10 MR. MERRICK So that will tell us what was available on  
11 this issue, whether there was enough detail on capital  
12 costs in the final '88?

13 MR. ENDRES Well, subject to the fact that the witness  
14 hasn't read the report, I'm quite happy to go along with  
15 that. Because all I'm asking, Mr. Golbey --

16 A. I'm trying to speed up the events.

17 Q. -- all I'm asking is there not a good detailed  
18 statement about the capital and operating costs for the  
19 Westray project?

20 A. It does give, again, in summary form, capital and  
21 operating costs. It --

22 Q. Transportation --

23 A. Okay.

24 Q. -- you --

25 MR. MERRICK Just a second.

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. ENDRES Yes.

2 MR. MERRICK Were you finished, Mr. Golbey?

3 A. Yeah, I think so.

4 MR. MERRICK All right. Thank you.

5 MR. ENDRES In your evidence you spoke of the method  
6 of transportation, per se. I do not see that in your  
7 expert report as an item that makes up a feasibility  
8 study. We can look for transportation in the Westray  
9 lease application documents at Part 2, Section 4. And it  
10 will take me a moment to find that.

11 COMMISSIONER Where is that?

12 MR. MERRICK 35-C. I'm just waiting for the page.

13 MR. ENDRES While my friend is looking for that  
14 perhaps we can turn to volume -- or Exhibit 1 because we  
15 have the same information there anyway, and that's at the  
16 top of -- the heading is "11.0, Transportation."  
17 Commission Exhibit No. 1.

18 MR. MERRICK This would be from the back, just a few  
19 sections in?

20 A. Yeah, it's --

21 MR. ENDRES Yes.

22 MR. MERRICK Got it.

23 A. It's about two sections in from the back.

24 MR. MERRICK Yeah.

25 COMMISSIONER Page?

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. ENDRES I can't -- there are no --

2 A. It's Section 11 --

3 MR. ENDRES -- page numbers.

4 A. -- which is --

5 MR. MERRICK There are -- you go past --

6 COMMISSIONER Okay. I've got it. I've got 11. I  
7 haven't got the page.

8 MR. ENDRES There's the heading, "11.0," headed  
9 "Transportation."

10 COMMISSIONER Yeah.

11 A. There is.

12 MR. ENDRES And he talks about the yard being located  
13 wherever it is located and what transportation  
14 arrangements they have in mind or not. Item 11.2,  
15 Proposed Transportation System. 11.3, Estimated  
16 Transportation Costs. And then there is a table,  
17 Estimated Transportation Costs. So we have reference to  
18 transportation costs in the Kilborn No. 1 draft report  
19 which is Exhibit 1. And would you agree with me that in  
20 your study of the lease application documents, you came  
21 across as well a discussion on transportation? Do you  
22 agree with me or do you recall it?

23 A. I immediately don't recall but I --

24 Q. All right.

25 A. -- must admit there's been --

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Well, let's take a look at page 63 of --

2 A. Thank you.

3 Q. -- Exhibit 35-C, second main paragraph. And this is  
4 about the transportation in the mine. "Coal  
5 transportation will be by 1.07 meter-wide conveyor belts  
6 delivering onto 1.22 meter conveyors in the main entries  
7 and No. 2 (return) incline tunnel." Discussion about  
8 transportation.

9 A. Well --

10 Q. Next paragraph, "diesel powered materials,  
11 transporters, and personnel carriers will be used..."

12 A. All right, my engineering mind would have considered  
13 this part of the mine plan or the mining aspect as  
14 opposed to transportation that we've just been looking at  
15 which was moving the product to the consumer.

16 Q. All right.

17 MR. MERRICK Just before we leave that, Mr. Endres, you  
18 were reading from that middle paragraph on page 63,  
19 "diesel powered material, transporters and personnel  
20 carriers will be used for underground transportation.  
21 Rail-mounted cars will be used for transportation in No.  
22 1 incline tunnel."

23 MR. ENDRES All right, I've got it. Thanks. So we  
24 have some discussion about transportation, but your point  
25 is --

MR. GOLBEY, EXAM. MR. ENDRES

1 A. That the page 63 here refers to the mine as opposed  
2 to the section in the Kilborn report we've just looked  
3 at.

4 Q. Oh, yeah. I know. I'm just saying that they're two  
5 discussions of transportation, one dealing in mine, one  
6 out of the mine, correct?

7 A. As I said, in --

8 Q. I'm not saying they're the same. I'm not giving  
9 you --

10 A. Oh okay. That was the --

11 Q. Don't take it wrong, I'm not --

12 A. Sorry. That was the --

13 Q. -- giving you --

14 A. -- impression that was --

15 Q. -- duplicates of --

16 A. That was the impression --

17 Q. -- I'm trying to say there are --

18 A. -- that was being given.

19 Q. -- discussions in both places. All right. And the  
20 last item, and this has been a very -- and I apologize  
21 for that, a bit of a tedious process. In your expert  
22 report you say that "initial studies on the method of  
23 treating the run-of-mine mineral would have been  
24 completed." And for that, we look for the mill plans  
25 which would be at part three of Exhibit 35-C, at page 73.

MR. GOLBEY, EXAM. MR. ENDRES

1 Then there's a discussion here about, and it said in  
2 fact, "A description of the design of the mill, including  
3 site and building plans, indicate all process equipment  
4 to be used," and the "Mill Plans" is the main heading.  
5 And if we look at the Kilborn reports, there is a  
6 discussion, particularly, on the coal preparation plant.  
7 Do you recall that?

8 A. Yes, there is.

9 Q. It's Exhibit 1.

10 A. Yes.

11 Q. So we needn't go through it; you know it's there.  
12 And that is, of course, with reference to method of  
13 treating the run-of-mine mineral --

14 A. Yes.

15 Q. -- correct? And now I have, I believe, gone through  
16 your statement on what a feasibility study consists of.  
17 And, of course, you know we were looking at your report,  
18 your expert report, starting at page 33 through 35. And  
19 I put it to you, Mr. Golbey, that having said all of this  
20 and having done all of this, we are left with the  
21 conclusion that all of the significant items that make up  
22 a feasibility study were, in fact, either part of the  
23 lease application itself or contained in Kilborn No. 1,  
24 the final report. Do you agree or disagree with that?

25 A. I agree that the headings have been addressed; I do

MR. GOLBEY, EXAM. MR. ENDRES

1 not agree that the detail of a feasibility study is in --  
2 and making the assumption that Kilborn final is not  
3 substantially different from Kilborn '89, that is in fact  
4 a feasibility study. And to some extent I feel I'm  
5 supported in this by Exhibit 35-C, page 96, which is  
6 Donald Jones' letter to the company seeking additional  
7 information.

8 Q. Sure. And we'll get to that. I assure you we will  
9 get to that. So you say there isn't quite as much detail  
10 as you would like to see for a feasibility study?

11 A. That is correct.

12 Q., And you are having in mind, are you not, that you  
13 said to us it is in order, it is all right for a  
14 feasibility study to treat matters in a more general way  
15 as long as there's reference to the specifics elsewhere?

16 A. Yes.

17 Q. And you do recall early this morning that there is a  
18 paragraph in Kilborn No. 1 Report which says additional  
19 reports and background material are available at  
20 Westray's office and Kilborn's offices in Toronto?

21 A. But as we have gone through these documents, there  
22 are no specific references that I have noticed while  
23 we've been going through the documents to particular  
24 reports or sections thereof which I would expect to find.

25 Q. But it may well be that Kilborn has the exact data

MR. GOLBEY, EXAM. MR. ENDRES

1 that you expect to find?

2 A. If they do, I would expect to see it referenced in  
3 each section or chapter as it arose.

4 Q. Did you, Mr. Golbey, make an effort to contact  
5 Kilborn and find out if there were reports available that  
6 supported the No. 1 Kilborn Report?

7 A. I did not because I viewed that as being not using  
8 documents that would be available to me through the  
9 Commission.

10 Q. All right.

11 COMMISSIONER I presume, Mr. Endres, that there will be  
12 evidence coming from provincial officials indicating that  
13 they availed themselves of that clause in the Kilborn  
14 report and indeed sought out these detailed analyses  
15 prior to approval of the plan?

16 MR. ENDRES Oh, indeed, Mr. Commissioner. I'll be  
17 dealing with this --

18 COMMISSIONER Okay. Fine.

19 MR. ENDRES -- today. It's not a matter of evidence.  
20 I'll be dealing with that in the context of Jones' letter  
21 and Pelley's letter.

22 COMMISSIONER Okay.

23 MR. ENDRES Yes. Now, Mr. Golbey, take a look at  
24 Exhibit 57 at -- that's your report. And you, as well,  
25 updated your report, did you not? You filed a report in

MR. GOLBEY, EXAM. MR. ENDRES

1 '92?

2 A. The changes are the addenda only.

3 Q. All right. Take a look at page one.

4 COMMISSIONER At tab three?

5 MR. ENDRES I think so, yes. Exhibit 57, tab three,  
6 page one. Your first comment. Would you please read it?

7 A. "Studies of the property by previous owners or their  
8 consultants were all of a feasibility type..."

9 Q. Okay, I'm sorry. Your first comment. Would you  
10 please read it?

11 A. On page one?

12 Q. Yes.

13 A. I believe I was.

14 Q. Well, you were reading --

15 COMMISSIONER Comment.

16 MR. ENDRES -- the first paragraph.

17 A. Oh, my apologies. "The Kilborn review, like those  
18 preceding it, was also a feasibility report..."

19 MR. ENDRES Stop. "Kilborn review, like those  
20 preceding it, was also a feasibility report." Are you  
21 trying to confuse us?

22 A. No, sir. I'm suggesting that having review -- re-  
23 reviewed it, and also bearing in mind the document title  
24 which was a technical and cost review, I may have been  
25 wrongly classifying it or suggesting it had a higher

MR. GOLBEY, EXAM. MR. ENDRES

1 level of classification in '92 when I wrote that than I  
2 am now.

3 Q. So even you might have had some doubts about how we  
4 should classify the Kilborn report, whether we should  
5 look at it as a feasibility report or not, between '92  
6 and '95?

7 A. I've had those -- I now do not consider it to be at  
8 a feasibility study level.

9 Q. Not now, but then you did?

10 A. Then I -- that is what I wrote.

11 Q. And nothing happened in the meantime except you  
12 changed your view on it, I take it?

13 A. My -- I agree, my view changed.

14 Q. Do you recall what view Kilborn itself took of the  
15 nature of its report? Did they tell you what it should  
16 constitute?

17 A. It's title, if I recall, was a cost -- technical and  
18 cost review or cost and technical review.

19 Q. Yes, of what?

20 A. Of, I believe, the property. And I don't have the  
21 exact title immediately in front of me.

22 Q. Take a look at the excerpt I gave you this morning,  
23 these five pages from the Kilborn No. 1 final report.

24 A. Okay. "Technical and cost review of the Pictou  
25 County coal project, Nova Scotia."

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Yes. Where did you read that from, the first  
2 paragraph?

3 A. It was on the cover page.

4 Q. Okay. Let's go to page 1-1, second paragraph.  
5 "Westray," I already read this, you know, Mr, Golbey.  
6 "Westray Coal Inc. commissioned Kilborn Limited to  
7 prepare a technical and cost review study of the  
8 feasibility." Is Kilborn not saying that this is what  
9 they did, a feasibility study? It doesn't say pre-  
10 feasibility.

11 A. In that context it --

12 Q. Yeah [inaudible]

13 A. -- they are classifying it as a feasibility study.

14 Q. So we can say that Kilborn themselves, who did the  
15 work, set out to do a feasibility study and thought they  
16 did?

17 A. I expect that's what they thought.

18 Q. What do you know about Kilborn? Who are they?

19 A. They are a Canadian-based mining consulting company.  
20 And -- well, mining and mineral processing consulting  
21 company.

22 Q. Would you consider them to be experts in their field  
23 or are they experts that we ought not to trust in?

24 A. They are well known in this field and have done a  
25 number of these studies.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. When you say "these studies," what do you mean?

2 A. Meaning studies for mineral processing and for  
3 mining.

4 Q. Would you expect that Kilborn would appreciate a  
5 difference between a pre-feasibility and a feasibility  
6 study?

7 A. I am sure they would, yes.

8 Q. All right. Kilborn relies -- we're moving to  
9 another area. Kilborn relies on a number of previous  
10 studies undertaken by other experts, we know that.

11 A. Yes, they do.

12 Q. Amongst others, they relied on the Norwest Study?

13 A. [No audible response]

14 Q. Correct?

15 A. Yes, they did.

16 Q. You recall that?

17 A. Or they make reference to that, yes.

18 Q. And in your evidence, Mr. Golbey, you told us that  
19 the Norwest Study is a full feasibility report or study.

20 A. Yes.

21 Q. Do you recall that?

22 A. Yes.

23 Q. Can you explain, then, for my benefit, Mr. Golbey,  
24 how it can be that Kilborn who seeks to rely on Norwest  
25 and builds on Norwest can be anything less than a

MR. GOLBEY, EXAM. MR. ENDRES

1 feasibility study, because you've agreed that Norwest is  
2 a feasibility study. How can Kilborn's be any less than  
3 that?

4 A. By taking -- very selectively taking certain  
5 comments and statements, they can use them in a report  
6 but not necessarily do and check the background data and  
7 engineering for their subsequent use.

8 Q. But Norwest has already done that.

9 A. They -- yes, Norwest has done that. But Kilborn can  
10 take a general idea from a previous report and just treat  
11 it as a conceptual idea or an indicator in an area to do  
12 work and not actually incorporate all the data  
13 themselves.

14 Q. It's a very simple picture from my perspective, Mr.  
15 Golbey. Take two baskets, in the one basket you've got  
16 Norwest feasibility study, correct?

17 A. All right.

18 Q. In the other basket -- take a scale, they're hanging  
19 on a scale. You have Norwest, same thing, plus Kilborn.  
20 So how can that be any less than a feasibility study?  
21 That's the part I don't understand.

22 MR. MERRICK In fairness to the witness --

23 A. Be --

24 MR. MERRICK -- does your question pre-assume that the  
25 Northwest mining method was the same as the Kilborn

MR. GOLBEY, EXAM. MR. ENDRES

1 mining method?

2 MR. ENDRES Did you say "does the witness"?

3 MR. MERRICK Yeah.

4 MR. ENDRES I don't know --

5 MR. MERRICK When you're saying to compare the two  
6 plans, are you asking him to assume that the Norwest  
7 mining method was a room-and-pillar mining method?

8 MR. ENDRES Well, we know all about that. Norwest  
9 recommended room-and-pillar, don't you agree?

10 A. In one area.

11 Q. Yes. And they said room-and-pillar mixed with  
12 longwall but using a continuous miner, something like  
13 that?

14 A. And that is why I believe I said Kilborn may have  
15 used Norwest --

16 Q. Sure.

17 A. -- to provide ideas and background, but that does  
18 not mean they incorporated Norwest's skilled engineering  
19 into that plan. And if they used an idea and did not  
20 develop it further, that means the plan could in fact be  
21 at a lower level, if I can use that term, than the  
22 Norwest plan.

23 Q. In fact, if we go to the Norwest plan, you recall  
24 your evidence that Norwest proposed that there might be  
25 these two mining methods used at this one mine or room-

MR. GOLBEY, EXAM. MR. ENDRES

1 and-pillar might be used throughout.

2 A. That is --

3 Q. Do you recall that?

4 A. [No audible response]

5 Q. Do you recall that?

6 A. Well, they -- I believe they actually suggested  
7 room-and-pillar as a -- sorry, a variant of longwall as a  
8 production technique following a trial by room-and-pillar  
9 to confirm the conditions prior to the longwall being  
10 established.

11 Q. So Norwest was fully in tune with the concept that  
12 room-and-pillar may be the appropriate method depending  
13 on conditions encountered?

14 A. That would be the import from the report.

15 Q. And we've already gone through the matter of Kilborn  
16 explaining why they preferred room-and-pillar over any  
17 other mining method? We dealt with that --

18 A. They gave some brief reason for that, yes.

19 Q. Now if we can't totally agree on that, and that is  
20 Kilborn incorporating Norwest and so why is Kilborn less  
21 than a feasibility study, let's take a look at something  
22 else then. In Kilborn report, No. 1 Report, 1-1, and  
23 this is in that excerpt that I gave you, Kilborn refers,  
24 as you felt they should, to other groups that have looked  
25 at the coalfield, such as Dames and Moore. Do you see

MR. GOLBEY, EXAM. MR. ENDRES

1 that reference?

2 A. In that Dames and Moore was asked to work with  
3 Kilborn on the study.

4 Q. They worked with Kilborn on selecting the mining  
5 method?

6 A. Yes.

7 MR. MERRICK Where are you reading from?

8 MR. ENDRES The excerpt. The five-page excerpt from  
9 the full Kilborn report.

10 MR. MERRICK But where? On what page?

11 MR. ENDRES Oh, it's page 1-1. Is that the one --

12 MR. MERRICK Just a second now. Let me just find it.

13 COMMISSIONER I guess that would be the Dames and Moore.

14 MR. MERRICK Oh yes. Do you want to refer the witness  
15 as well to the second reference for that on page 3-1, the  
16 last paragraph?

17 MR. ENDRES Sure.

18 MR. MERRICK Just so the witness has got the full text  
19 in front of him. That's the one that reads "Mine design,  
20 planning and scheduling have been completed under time  
21 restraints and are largely based on the work of Suncor,  
22 Norwest, Golder Associates," et cetera, et cetera.

23 "Whilst the current mining proposals represent a  
24 reasonable and realistic approach, future work will  
25 consider alternative technical practices and approaches

MR. GOLBEY, EXAM. MR. ENDRES

1 in order to further approve." All right. Thank you.

2 MR. ENDRES All right. Would I be correct in saying  
3 that it was your position, although not quite expressed  
4 that way, that officials at Mines and Energy should  
5 second guess Kilborn despite the fact that Kilborn  
6 carried out whatever work they felt was necessary to do  
7 their expert report?

8 A. I'm sorry, I don't understand what you mean by  
9 "second..."

10 Q. Well --

11 A. "...guessed" or how you're applying that term.

12 Q. Would you suggest that officials of the regulatory  
13 body should second guess, challenge in every way, an  
14 expert report signed by professional engineers, engineers  
15 who are licensed to practice in Nova Scotia, which gives  
16 a detailed engineering review of a project? Or should  
17 they be able to take the word of the licensed Nova Scotia  
18 engineer?

19 A. I, in fact, see there room for being both of  
20 accepting the word and, if in their opinion, they are  
21 either unclear, uncertain or consider the areas have not  
22 been sufficiently explained or demonstrated, then there  
23 is no need for them to take the word of the report. They  
24 can seek their own counsel and/or return to the report's  
25 authors for clarification.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. All right. But if they are generally satisfied and  
2 they have an understanding of the reputation of the  
3 engineer, then would you agree that they may well just  
4 take the engineer's word?

5 A. They always have the choice to do that, yes.

6 Q. You would agree with me that it is not possible at  
7 all for officials to simply redo all the work that goes  
8 into an engineer -- even a feasibility study?

9 A. I would agree and I would not necessarily anticipate  
10 their doing so. That is why they can approach the  
11 applicant for more details and expressly request areas  
12 that they wish more information.

13 Q. Yeah. So you would not advocate, I take it, Mr.  
14 Golbey, then that officials simply redo the work of the  
15 engineer who has done the feasibility study but to  
16 identify questions and raise them and get the information  
17 to satisfy their concerns?

18 A. They could do that or they could redo it is, again,  
19 their choice is the method they wish to deal with the  
20 application.

21 Q. Well, why should they redo it? Let me ask you this:  
22 Here we have a professional engineer, licensed to  
23 practice engineering, signing off on a professional  
24 document, saying this is my report. Why would you say  
25 that they might want to redo it? That officials might

MR. GOLBEY, EXAM. MR. ENDRES

1 want to redo this whole study?

2 A. I'm far from suggesting redo the whole report. My  
3 experience have been there are areas often that one would  
4 examine in more detail, either through personal interest  
5 or maybe known problems in other areas which, in their  
6 opinion, were not adequately addressed.

7 Q. All right. Would you agree with this, Mr. Golbey,  
8 that for the purposes of the regulators, whether or not  
9 Kilborn's report is a true feasibility study is largely  
10 irrelevant?

11 A. If -- I believe my opinion is, if the regulators  
12 choose to issue a licence or a lease on this report, that  
13 is a matter of their professional judgment.

14 Q. Yes. So you would agree with me that it doesn't --  
15 the regulators do not have to have a true feasibility  
16 study before they can recommend the grant of a licence?  
17 Or a lease.

18 A. No, I believe they have to have sufficient  
19 information to ensure the efficient and safe working of a  
20 provincial resource.

21 Q. Yes.

22 A. And therefore they must be in possession of whatever  
23 information in their opinion will enable them to do that.

24 Q. All right. And you're not willing to agree with me  
25 that that may not entail what you refer to as a full

MR. GOLBEY, EXAM. MR. ENDRES

1 feasibility study?

2 A. It is my opinion that a study of the feasibility  
3 level would be the document or the vehicle that would  
4 allow such an analysis to be done.

5 Q. Let me ask this then, as a follow up. You have  
6 reviewed the Mineral Resources Act?

7 A. I have.

8 Q. Not the current one but the one that was in place  
9 when Westray applied for the licence?

10 A. I have.

11 Q. And do you see any reference in the Mineral  
12 Resources Act for the requirement of a feasibility study  
13 in the context of a lease application?

14 A. A feasibility study, to my recollection, is not  
15 referred to in those two words. But from the list of  
16 requirements, I remain of the opinion that a document of  
17 the feasibility type would have satisfied what I consider  
18 to be the intent if not the exact written word of that  
19 Act.

20 Q. Indeed, though, would you not agree that a true  
21 feasibility study the way you see it, such a study is  
22 made up, may be more than what Section 83 of the Mineral  
23 Resources Act requires?

24 A. In some areas it may be more than the Act requires,  
25 yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. So it may be prudent to have the information or it  
2 may not be. It may be helpful or it may not be, but the  
3 Act doesn't necessarily require it.

4 A. As I said, the Act, from my recollection, does not  
5 refer to feasibility study in those words.

6 Q. Because we know exactly what the Act requires;  
7 Section 83 is very straightforward. It simply says that  
8 "Before an application for a lease is accepted, the  
9 applicant submits to the Minister for approval the known  
10 location and boundaries of the mineral deposit." That  
11 was present, correct?

12 A. [No audible response]

13 Q. Yes? You answer yes or no --

14 A. I believe so, yeah.

15 Q. -- because --

16 A. Yeah.

17 Q. "The place at which is proposed to sink or drive any  
18 shaft or slope or make any opening or surface pit." That  
19 was clearly present?

20 A. Right.

21 Q. "The location of all surface buildings and  
22 installations, tailings, waste disposal areas."

23 A. There was -- I believe there was a surface plan that  
24 showed that.

25 Q. "The number of openings proposed to be made and the

MR. GOLBEY, EXAM. MR. ENDRES

1 size of each."

2 A. I presume that refers to an underground mine plan.

3 Q. Yes.

4 A. And, in extreme generalities, I believe that was  
5 shown.

6 Q. Yeah. It might also just refer to the openings  
7 going underground, I don't know.

8 A. Well, the -- all right. The size of the decline was  
9 shown.

10 Q. "The method by which work is to be carried on and  
11 the method of roof support." There was information on  
12 that?

13 A. There was information on it, but I am not sure there  
14 was sufficient technical information.

15 Q. And then the Act requires any other engineering  
16 plans as the Minister determines, whatever that means.  
17 And to accompany the report, that is, the lease  
18 application, the plan itself has to be accompanied by  
19 reports stating the quantity of mineral proven and  
20 possible. That was clearly established. The Pictou  
21 coalfield has been studied since the early --

22 A. I believe 1700s, was it not?

23 Q. -- 1700s. Some quality and grade of mineral  
24 deposit, that was clearly done, was it not?

25 A. It was stated, I believe, in a short table.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Shape and size of the mineral deposit, that was  
2 pretty clear. Pictou coalfield is well understood?

3 A. The hesitancy is the overall coalfield is the  
4 specific areas, I believe, we've seen may have been  
5 interrupted and had geological constraints.

6 Q. Certainly. The system of working proposed to be  
7 followed, there was lots of information on that?

8 A. I think we will disagree on the word "lots" but  
9 there was, I would say, summary information on that.

10 Q. And, finally, the percentage of mineral proposed to  
11 be extracted. And there was information on that?

12 A. There was.

13 Q. Because we know that in Kilborn at one point he  
14 spoke about 50 percent extraction --

15 A. That's -- yeah.

16 Q. -- by room-and-pillar which might have been a bit  
17 optimistic. And that's all. That's what the legislation  
18 requires. And if that information is available, the  
19 Minister is in a position to grant a lease. It says  
20 nowhere, does it, that there should be a feasibility  
21 study or detailed whatever you said?

22 A. I agree it does not -- and I believe I've said a few  
23 moments ago, it does not say "feasibility study." But I  
24 still remain of the opinion, to be able to adequately  
25 assess the efficient and safe use of a provincial

MR. GOLBEY, EXAM. MR. ENDRES

1 resource, a study of that level would be required.

2 Q. Well, take a look at Exhibit 35-C at page 99. From  
3 that we know that the regulatory authority was provided  
4 with not just the lease application, which is Exhibit 35-  
5 C, but also a host of reports and studies pertaining to  
6 the Pictou coalfield, correct?

7 A. That seems to be a list to that effect.

8 Q. And the list is extensive, is it not?

9 A. There are a fair number of items on the list, yes.

10 Q. And these items are expert reports, are they not?

11 A. I believe them to be.

12 Q. Yes. And they refer to such experts as Jacques  
13 Whitford and Associates on geotechnical site  
14 investigation, AMCL on coal resources and reserves,  
15 correct?

16 A. Yes.

17 Q. Placer on Pictou feasibility study, geology, and so  
18 on. It also includes the Kilborn No. 1 Report, which is  
19 Item 1-7, the first one of those. You see "Kilborn  
20 Limited, Re Technical and..."

21 A. Yes.

22 Q. "...cost review of Pictou County Coal Project  
23 Summary."

24 A. Yes.

25 Q. And Item 6, "Placer Development, Pictou Feasibility

MR. GOLBEY, EXAM. MR. ENDRES

1 Mining," we know what that is, don't we? We know that  
2 that's the Norwest report.

3 A. Placer, no.

4 Q. No?

5 A. Placer was an AMCL report.

6 Q. All right. Which one is the Norwest report then, of  
7 these?

8 A. It is not there.

9 Q. Okay. We'll take a look at that and see if we can  
10 find it. I can't find it now either, frankly. Okay, I  
11 can get back to that.

12 So we know from Pelley's letter at page 99 that he  
13 forwarded a host of expert reports in relation to the  
14 Pictou coalfield. And that would give Mines and Energy,  
15 you would have a view on that, approximately a box full,  
16 if not more, of expert reports relating to the Pictou  
17 coalfield?

18 A. There would be certainly a quantity of paper there,  
19 yes.

20 Q. You expressed concern about the correlation between  
21 that letter and Jones' letter --

22 A. I did.

23 Q. -- and you talked about that just early on just to  
24 establish that fact?

25 A. Yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Can we then take another look together at these two  
2 letters and, of course, they are at pages 99, the  
3 relevant page, and the 96 of Exhibit 35-C. You were very  
4 troubled, aren't I right, by the fact, as you put it,  
5 that Pelley did not respond at all to Dr. Jones' list of  
6 information that Westray was to provide?

7 A. Right.

8 Q. And that is an important point that you brought up  
9 over and over, correct?

10 A. Yes.

11 Q. Let's take a look at the two and see how far apart  
12 they are. Recognizing we've already established that  
13 Pelley was not really responding, not purporting to  
14 respond to Dr. Jones anyhow, correct?

15 A. Or assuming there was a confusion in the Department  
16 as to who the correct person was.

17 Q. Well, no, but it's easier than that. Pelley does  
18 not write to Jones, simple as that, correct?

19 A. Right, that is not who the letter was for.

20 Q. Now beyond introduction, Jones said -- Dr. Jones at  
21 Mines and Energy says you agreed to provide, number one,  
22 updated geological information, a proposed meeting with  
23 Dr. Bielenstein would be beneficial.

24 A. Yes.

25 Q. Let's flip over and this is the way we're going to

MR. GOLBEY, EXAM. MR. ENDRES

1 have to do this, I'm afraid, flipping back and forth.  
2 Page 98, first thing that Pelley sends to Pat Phalen is  
3 matters pertaining to geology and reserves, correct?  
4 It's right there.

5 A. It is --

6 Q. The heading.

7 COMMISSIONER It says here that you requested additional  
8 information and he enumerates these. It doesn't say it  
9 was sent.

10 MR. ENDRES I'm sorry, you are where? Oh, yes. You  
11 requested -- this is --

12 COMMISSIONER I'm on page --

13 MR. ENDRES -- Pat Phalen requested information, okay?

14 COMMISSIONER Yeah, he's just confirming the request.  
15 He's not saying --

16 MR. ENDRES No, no, but I'll go through that.

17 COMMISSIONER -- delivered the goods. Um?

18 MR. ENDRES I'll go through that, Mr. Commissioner.

19 COMMISSIONER Okay, yeah.

20 MR. ENDRES Just one more question, I'm right with  
21 you. I'll be with you in one -- with the next question.  
22 So we can agree that Dr. Jones says you agreed to provide  
23 updated geological information?

24 A. He does.

25 Q. Pelley writes to Phalen and says you requested

MR. GOLBEY, EXAM. MR. ENDRES

1 additional information, No. 1 geology and reserves?

2 A. Yes.

3 Q. And then Pelley, of course, doesn't just write to  
4 confirm that, Pelley writes to send forward information.  
5 Correct?

6 A. Yes.

7 Q. We know that from page 99. So all we have to do now  
8 is go through that list and correlate, if we can, the  
9 reports that Pelley sent to the regulators and see if  
10 there is any concurrence.

11 A. Any correlation.

12 Q. And I suggest to you, Mr. Golbey, that No. 1 on page  
13 99, Associate Mining Consultants Coal Resources Reserves  
14 Report addresses precisely No. 1 of Dr. Jones.

15 A. We -- sorry, we -- there is a problem in the date of  
16 the reports on --

17 Q. Yes.

18 A. -- page 99 was not given. The letter is dated --  
19 the letter for the request is dated April the 18th, '88.  
20 We have established that.

21 Q. Yes.

22 A. And by "updated," I would assume information would  
23 be requested that had been compiled or correlated in at  
24 around that period, maybe a couple of months or so  
25 previously. From my recollection, the Associated Mining

MR. GOLBEY, EXAM. MR. ENDRES

1 Consultants' document and the Placer document  
2 considerably predate 1988, so could not, in my opinion,  
3 be construed as updated geological information.

4 Q. Well, let me ask you this now.

5 MR. MERRICK Just --

6 MR. ENDRES Are you -- yes?

7 MR. MERRICK Just before you do, Mr. Rienhold, can I  
8 assist you, Mr. Golbey, in your answer when you said that  
9 you were predating. Can you turn to Exhibit 35-A.

10 A. Okay.

11 MR. MERRICK I just want to make sure that you have the  
12 document in front of you to which you were referring in  
13 your answer. And turn to page 7. That is a memo from  
14 Mr. Bielenstein --

15 A. Sorry, which --

16 MR. MERRICK Page 7.

17 A. 35?

18 MR. MERRICK 35-A.

19 A. 35-A on page 7.

20 MR. MERRICK An AMCL --

21 A. Yes.

22 MR. MERRICK -- signed by Mr. Bielenstein.

23 A. It's dated '89, Mr. Merrick.

24 MR. MERRICK Yes. Are you looking for something else?

25 A. Sorry, the -- I believe the period we're talking

MR. GOLBEY, EXAM. MR. ENDRES

1 around here --

2 MR. MERRICK Yes. I'm sorry, I missed --

3 A. -- is around the '80, April, '88, so --

4 MR. ENDRES All right. So let's go back. You're  
5 saying well enough. What Jones was talking about was  
6 updated geologic information, and you're saying,  
7 essentially, that I'm not so sure that the AMCL coal  
8 resources reserves is what he's asking for.

9 A. I am saying that because that was incorporated, I  
10 believe, into the studies we've spent some time  
11 discussing.

12 Q. Uh huh. All right. Also on Item 1, Jones says the  
13 proposed meeting with Dr. Hans Bielenstein would be  
14 beneficial.

15 A. He does.

16 Q. And we know that Pelley addressed that, don't we?  
17 If we look at the first main paragraph on page 99, "as  
18 discussed previously, if you require discussions with  
19 respect to the above..." and Bielenstein is AMCL, we know  
20 that.

21 A. Yes, he is.

22 Q. "...I would be very pleased to set up conference  
23 calls with the pertinent expert (s) and/or, if necessary,  
24 will arrange for the experts to meet with you and your  
25 people." That's a response?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. That's a -- yes.

2 Q. All right.

3 A. I don't know if that occurred, but it was certainly  
4 offered.

5 Q. Take a look at No. 2, corporate ownership, he --  
6 Jones records that it was agreed that information would  
7 be provided on corporate ownership. Item 2 at page 96.

8 A. Yes.

9 Q. All right. So we go to page 98 and what do we find,  
10 item 9, background information on Westray coal, that's  
11 corporate ownership. In other words, correct?

12 A. It is listed as an item that was requested. I don't  
13 know where it was sent or when it was sent.

14 Q. All right.

15 A. That -- the second paragraph, full paragraph on page  
16 99 says it would be available.

17 Q. Yeah. With regard to 9, Pelley says, "I'm preparing  
18 a document at this time and will forward it to you within  
19 three to four weeks. The delay is incurred by  
20 availability of annual financial reports from the  
21 existing companies with Westray." Probably meant the  
22 unavailability, I suppose. But --

23 A. Yeah, so --

24 Q. -- and you're quite right in pointing it out. So he  
25 did not provide that information at that time?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. One presumably must make the assumption that --

2 Q. Yes.

3 A. -- it was --

4 Q. But he did provide, Mr. Golbey, he did provide  
5 Kilborn No. 1 report. And in Kilborn No. 1 there is, in  
6 fact, a statement on the corporate ownership. Do you  
7 recall it?

8 A. We've gone in --

9 Q. There's a full page on it.

10 A. We spent a long time on one. I, as you know --

11 Q. A full page on it.

12 A. -- have not read it but, yeah.

13 Q. You --

14 A. For the moment I'll accept that comment.

15 Q. All right. And we know that Pelley came through  
16 with his promise for additional information pertaining to  
17 corporate ownership because we know that there is a  
18 report from Price Waterhouse which analyzes the corporate  
19 ownership in great detail which was available and  
20 reviewed by the regulating authority. If you look at  
21 page 13 of the same volume, 35-C, there is a report dated  
22 November 3, '87, okay. And that talks about -- that's  
23 Commission Exhibit 35-C, page 13, 14, 15 -- 14-A, it now  
24 goes, and then 14-B. I see the pages are scrambled,  
25 actually. If you read the document --

MR. GOLBEY, EXAM. MR. ENDRES

1 A. No, I can see the document you're referring to.

2 Q. Yeah, and you can see that the pages are mixed up  
3 quite easily. But anyway that is obviously corporate  
4 history, corporate ownership of Westray, Curragh and all  
5 the related companies, correct?

6 A. Although initially it was sent to NSPC?

7 Q. Yeah. But you're not telling us that that wasn't  
8 available to the regulators, are you?

9 A. I have no idea because --

10 Q. No, I know you don't know --

11 A. -- until I see if there's a letter from Price  
12 Waterhouse --

13 Q. I'm saying to you --

14 A. -- to NSPC.

15 Q. -- you can't say it wasn't? You cannot tell me that  
16 it wasn't available to the regulators, can you?

17 A. I cannot tell you that. But I can also observe that  
18 it was addressed to Mr. Lethbridge of NSPC.

19 Q. Sure. But I put it to you, Mr. Golbey, that it was  
20 in fact available to the regulators.

21 A. If you wish to advise me of that, I'll bear it in  
22 mind.

23 Q. So there was information there on corporate  
24 ownership. Next item, "Marketing Plans for the Coal  
25 Production," Item 3. If you look at page -- this is --

MR. GOLBEY, EXAM. MR. ENDRES

1 I'm looking, first, 96, page 96, we look at Jones' letter  
2 saying you agree to provide information on marketing  
3 plans for coal production. If we look at page 98, the  
4 response, so to speak, and what do we find under Item 4,  
5 marketing information. It seems like the same thing,  
6 does it not?

7 A. I would assume that.

8 Q. So we look to the next page, 99, and do we find any  
9 information on 4?

10 A. As a specific -- just a minute. As a specific  
11 topic, I don't.

12 Q. Actually, I'm jumping. It's 3. I'm getting myself  
13 -- getting ahead. "Marketing Plans" is Item 3. Let me  
14 backtrack. And it is Item 4 in Pelley's letter, okay.  
15 And we look for it now on page 99, and I'm suggesting to  
16 you, Mr. Golbey, that marketing information is, in fact,  
17 contained in the Kilborn No. 1 Report and we actually  
18 touched on that earlier. Kilborn No. 1 says what they're  
19 going to do with the coal, correct? They were talking  
20 about the contract with the Power Company and that  
21 another market --

22 A. It does but --

23 Q. Yes.

24 A. Just a minute, I need my memory refreshed. I assume  
25 then that Kilborn No. 1 was not sent as part of the

MR. GOLBEY, EXAM. MR. ENDRES

1 original application --

2 Q. Right.

3 A. -- way back in March. Is that a correct assumption?

4 Q. I think you're correct. But it was sent on April 21  
5 of '88 as part of Pelley's letter to Pat Phalen because  
6 we see it listed there, "1-7." All right. Let's take  
7 Item 4 from the Jones' letter, "A Projection of Financial  
8 Information (Price Waterhouse Report)." Now there Pelley  
9 is cagey, isn't he, last paragraph on page 99. He says,  
10 "With regard to Question 10 being of a sensitive nature,  
11 as you understand, I propose that I give a presentation  
12 to give you comfort on this matter. I do not, however,  
13 propose providing a hard copy of this information." We  
14 know it's available, it's a Price Waterhouse report. And  
15 do you have any evidence to tell us that this information  
16 was not reviewed by the regulators?

17 A. I have no evidence to show you either it was or it  
18 was not reviewed.

19 Q. Fair enough. And let me go to Exhibit 64 which is  
20 the plastic binder, the blue one, at Tab 14. All right,  
21 page 19 through to pages 38. That's a report from Price  
22 Waterhouse?

23 A. It is.

24 Q. Which is now Commission Exhibit 64, page 19. And it  
25 is, in fact, a very comprehensive financial report on the

MR. GOLBEY, EXAM. MR. ENDRES

1 Pictou coal project, correct?

2 A. It seems to be that.

3 Q. And it goes over many, many pages and it has all  
4 kinds of calculations, tables.

5 A. In that it's only recently been received, I've done  
6 nothing more than skim through it extremely quickly.

7 Q. When you skimmed through it, did you notice  
8 something at the top of the page in handwriting which  
9 says, "c.c. Pat Phalen, June 29, '88?"

10 A. Actually, when I skimmed it through it that quickly,  
11 no, I didn't in fact.

12 Q. Okay. Do you see it now?

13 A. I do now it's been brought to my attention, yes.

14 Q. Okay. So Pat Phalen had that for sure, we know  
15 that. So even though Pelley wasn't going to give it  
16 right away, it was provided?

17 A. It eventually got into the system somehow, it would  
18 seem.

19 Q. Yeah, so we have that information. Item 5, page 96,  
20 "Detailed Mining Plans, Including Ventilation Plans and  
21 Equipment Selection." Would you agree that that was part  
22 of the Kilborn No. 1 Report?

23 A. I will -- in my opinion it was merely addressed in  
24 summary. There was not, for example, what I would  
25 consider a ventilation plan in that document.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. What about mining plans in the Kilborn report?

2 A. I would not consider there to be a detailed mining  
3 plan in that report.

4 Q. All right. But there is some information at least  
5 about it in the Kilborn report?

6 A. It is what I would call summary information, yes.

7 Q. Uh huh. And as I said so many times, if we want  
8 more details on Kilborn, I guess we'd go back to Kilborn  
9 and say you've given me the summary, let's have the  
10 support.

11 A. That route was always possible.

12 Q. And there's no reason to suggest that that wasn't  
13 available to the regulators if they felt it was required?

14 A. It's just that in review of the Commission files we  
15 found no reference or evidence to that.

16 Q. The next item, "Detailed Surface Facilities, Layout,  
17 On-site Coal Stockpiles." We know that that matches.  
18 Pelley's No. 2, "Technical Design Information," right?  
19 That's technical design information, is it not? Page 98.

20 A. Thinking in engineering terms, no, I would  
21 describe --

22 Q. No?

23 A. -- it differently, but I can see how you arrive at  
24 that conclusion.

25 Q. All right. And you know that there is some

MR. GOLBEY, EXAM. MR. ENDRES

1 discussion on this. In -- we look at page 99, again, in  
2 the Kilborn report, right? That's what it was all about.  
3 Kilborn was supposed to summarize all these things.  
4 Correct?

5 A. Or was -- it would appear Kilborn summarized them,  
6 yes.

7 Q. So but not all of that information was in the lease  
8 application document, correct?

9 A. That's correct.

10 Q. So Westray's response to saying you're going to give  
11 us more information on this, surely? They say, yes, we  
12 will, we'll give you the full Kilborn report which is  
13 three volumes, correct?

14 A. Yes.

15 Q. As opposed to a mere 50, 60 pages that went with the  
16 license application.

17 A. But it is also at times one can get more information  
18 in 50 or 60 pages than three volumes.

19 Q. Yes, of course. All we're trying to do is see if  
20 there's any correlation between these letters. And I  
21 think we're getting there. 7, Jones says there was to be  
22 information on subsidence predictions and proposed  
23 monitoring systems. If you look at page 98, Pelley says  
24 I'm going to provide information on subsidence, same  
25 thing.

MR. GOLBEY, EXAM. MR. ENDRES

1           If you look over at page 99, the second report,  
2 Placer Developments, Pictou Feasibility Study Geology.  
3 Then we have the second Golder report, Rock Mechanics  
4 Advice Pictou Coal Project. Then we have the Pictou  
5 County District Planning Commission, Re Pictou County  
6 Underground Mining Subsidence. And then we have Suncor  
7 Re Subsidence Sensitivity on Pictou Mines. Plenty of  
8 information on subsidence, I see.

9           A.    Yeah.

10          Q.    "Legal issues. Mining under private property. "  
11 Jones thought that information was to be provided on  
12 that. Item 8. That matches to item 5? Surface land  
13 owners. And I see you're nodding your head.

14          A.    Yes, it does.

15          Q.    And on item 5 we have some discussion, I say to you,  
16 in the Kilborn No. 1 Report. Kilborn talks about the  
17 rights of property owners.

18          A.    Again, there is a brief discussion on that.

19          Q.    "(9) Spontaneous combustion." According to Jones  
20 spontaneous combustion is addressed, I submit to you, by  
21 technical design information. Or am I off on that?

22          A.    That is -- it's a reasonable assumption.

23          Q.    All right. And if we look to the next page, at page  
24 99, we see nothing there per se on spontaneous  
25 combustion, do we?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. That is correct.

2 Q. So there is that one discrepancy. Finally, we have  
3 an item called "Employee Planning" and we look to  
4 Pelley's letter and he has an item number 6, "Manpower  
5 and Training Requirements." That's the same thing, is it  
6 not?

7 A. It's in essence the same thing.

8 Q. Then we go over to page 99 and we see a Placer  
9 Development, Pictou Feasibility Study on Mining. And I  
10 suggest to you that there is discussion in there about  
11 employee planning or not?

12 A. I, in a moment, cannot immediately recall everything  
13 in that volume.

14 Q. All right.

15 COMMISSIONER It's 12:30, Mr. Endres.

16 MR. ENDRES Yeah.

17 COMMISSIONER Would this be an appropriate --

18 MR. ENDRES One question to close that subject.

19 COMMISSIONER Okay. Mr. Merrick, are you planning or do  
20 you propose any lengthy re-direct?

21 MR. MERRICK I would expect that my re-direct could  
22 take about five minutes that would be about it.

23 COMMISSIONER You'll have plenty of time then to finish  
24 up before then, then, Mr. Endres?

25 MR. ENDRES Well, "plenty" is being very -- that would

MR. GOLBEY, EXAM. MR. ENDRES

1 be a very ambitious --

2 COMMISSIONER Well --

3 MR. ENDRES -- thing, but --

4 COMMISSIONER -- be ambitious.

5 MR. ENDRES If -- I'm under your guidance, I know  
6 that, so --

7 COMMISSIONER Well, I -- if we finish the cross-  
8 examination by 4:15 and give Mr. Merrick a few minutes of  
9 re-direct, because we have another witness coming on  
10 tomorrow.

11 MR. ENDRES I'll do my very best.

12 COMMISSIONER Okay. Thank you very much.

13 MR. ENDRES I will reassess during lunch.

14 COMMISSIONER I'm sure you will. Thank you.

15 MR. ENDRES Thank you. Now there's -- should I just  
16 ask that one question so --

17 COMMISSIONER Oh sure. I'm sorry.

18 MR. ENDRES -- that we can come back to that?

19 COMMISSIONER Yes. I misunderstood. Yeah.

20 MR. ENDRES Having run through these lists, Mr.  
21 Golbey, the point of the exercise was to hopefully  
22 demonstrate that even though Pelley was not responding to  
23 Dr. Jones, there is not a great discrepancy between  
24 Pelley's perception of what was to be provided and Jones'  
25 perception. Do you agree?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. The perception of what was to be provided appears  
2 very similar, yes.

3 Q. Similar. Indeed, we find the same type of headings  
4 in Pelley's letter as we find in Jones' letter?

5 A. In heading format, yes.

6 Q. And Pelley, in fact, provides very much the  
7 information that Jones said that was to be provided  
8 subject to what you said about the currency of the  
9 information pertaining to the geological resources?  
10 Or geological conditions.

11 A. And there was, I think, a couple of minor items we  
12 found. Going through the comparing a heading list yes,  
13 it appears to be there.

14 Q. So would you agree with me that in total there is  
15 not a great difference between Dr. Jones setting out  
16 here's what the -- here is the list of information that  
17 you said we would get and the information that was  
18 actually shipped back to Phalen?

19 A. As I said, doing it on a "compare the title" basis,  
20 as we just have done, with that constraint, it would  
21 appear to have reasonably satisfied that letter.

22 Q. And, indeed, you would agree with me in most cases  
23 the information, in most all cases, the information  
24 provided was the information that was anticipated to be  
25 provided?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Well, there was -- I know I have variously described  
2 it as sort of summary information or background  
3 information.

4 Q. But in other cases we've got it all.

5 A. In other cases --

6 Q. Look at the Price Waterhouse reports.

7 A. In other cases there is more detail, yes.

8 Q. All right. Thank you.

9 COMMISSIONER We'll recess until 2:00.

10 INQUIRY RECESSED (TIME: 12:34 p.m.)

11 INQUIRY RESUMED (TIME: 2:01 p.m.)

12 COMMISSIONER Okay, Mr. Endres.

13 MR. ENDRES Thank you. Mr. Golbey, we've looked at  
14 the licence application process and I would like to talk  
15 to you about this stage. The realignments that were done  
16 to the main seam, as we know there are at least three  
17 realignments that were carried out in fairly short order.

18 A. Right. There were, yes.

19 Q. And the first -- with regard to the first  
20 realignment, and before I even get into that, could I ask  
21 you to confirm your knowledge that the tunnel driving was  
22 done by CMD, not by Westray?

23 A. It was initially -- it was proposed to be done by  
24 CMD and was initially started by CMD.

25 Q. And would CMD, would you expect to have its own

MR. GOLBEY, EXAM. MR. ENDRES

1 engineering work done to drive the tunnels? Or where  
2 would they get their work?

3 A. In this specific example, I don't know exactly what  
4 they would have done. But in industry practice the  
5 contractor would review the bid documents and more than  
6 likely would use some of their own engineering, in-house  
7 engineering ability to determine, if it's a bid  
8 situation, the prices bid and conditions and general,  
9 well, commercial matters.

10 Q. So it's another one of these joint initiatives, I  
11 take it? CMD would make a proposal and provide  
12 engineering work to support its proposal?

13 A. It would do whatever engineering work it needed to  
14 be able to bid the job, if it was a bid situation. In  
15 the manner that any normal construction bid would be let.

16 Q. So we would anticipate CMD to do some engineering  
17 work pertaining to the mains? Or the driving of the  
18 mains.

19 A. Engineering work in relation to their own bid and  
20 their own, if you like, hole digging process, yes.

21 Q. Is it obvious to me -- to you, Mr. Golbey, that how  
22 the request for the first realignment came about?

23 A. No, it isn't.

24 Q. Perhaps we can help each other on that then because  
25 I think it should be.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. I'm sure it should but I must admit I'm getting a  
2 little --

3 Q. And I submit to you that -- suggest to you that it  
4 should be obvious to you on the review of the Commission  
5 records. Let me help you.

6 Westray submits the Kilborn No. 2 Report in January  
7 of 1989 to Mines and Energy. No disagreement with that?

8 A. It was -- I believe that was done, yes.

9 Q. To that Kilborn No. 2 Report is attached a plan  
10 showing a mine layout, including the entries, and it  
11 showed that the entries had been changed compared to the  
12 approved plan.

13 A. Right.

14 Q. And I think you actually mentioned on that Wednesday  
15 in your testimony.

16 A. The two -- well, yeah, the version I saw and so on  
17 are two different plans.

18 Q. So the change is noted by officials at Mines and  
19 Energy? They see the report, Kilborn 2, they say they're  
20 different alignments for the mains. And I suggest to  
21 you, Mr. Golbey, that it was Phillips -- it was Phalen,  
22 Pat Phalen, of the Department of Mines and Energy who  
23 took it upon himself to contact Phillips at Westray  
24 regarding that. And that's at Exhibit 35-A at page four.  
25 And we don't need to get it unless you want to.

MR. GOLBEY, EXAM. MR. ENDRES

1           Phalen identifies in his letter to Phillips the  
2           change to the approved plan and advises Phillips that if  
3           Westray wants to change the alignment of the mains, a  
4           revised plan plus supporting documentation would be  
5           required. Do you recall seeing that?

6           A. Yes. And I would prefer just to turn to it.

7           Q. So we do start to see how the first realignment  
8           issue came about? It wasn't the case of Westray going to  
9           the regulators and saying we want this change, approve it  
10          or what, it was the other way around; the regulators  
11          found out indirectly.

12          MR. MERRICK      Mr. Endres, we've been through this. This  
13          was the evidence of the witness. Do you want him to go  
14          over it again? He pointed that out in his direct  
15          evidence.

16          MR. ENDRES      Well, I thought when I started out, Mr.  
17          Merrick, the -- Mr. Commissioner, that Mr. Golbey agreed  
18          that he did not have a fair concept of how the change  
19          came about. I'm trying to assist him to make sure we all  
20          understand how the change came about. And I think it's  
21          important because I think the Commissioner needs to know  
22          whether or not this was in the nature of an application  
23          for a change which was dealt with in one way or another,  
24          or if this is an instance where the regulatory authority  
25          became aware of things Westray was doing which were not

MR. GOLBEY, EXAM. MR. ENDRES

1 legitimate and they did something about it.

2 MR. MERRICK Well, my only concern is this, we have a  
3 full history from this witness of Mr. Phalen writing to  
4 Westray, pointing out that they would need approval, Mr.  
5 Phillips writing back to Mr. Phalen submitting  
6 information. I thought you were going to address why  
7 Kilborn changed the directions. That's the one thing  
8 this witness wasn't able to testify to, but we seem to  
9 have gone by that.

10 MR. ENDRES Well, I just -- I haven't even asked more  
11 than a couple of questions.

12 MR. MERRICK All right.

13 MR. ENDRES Be patient and we'll see --

14 MR. MERRICK I will be patient.

15 MR. ENDRES See where it takes us and maybe I'm not  
16 doing it the way you thought I would, in which case you  
17 have the perfect opportunity to follow-up after I'm done,  
18 I would think.

19 COMMISSIONER Carry on.

20 MR. ENDRES Thank you. Phalen advises Phillips at  
21 page 4 of 35-A that if a change is re -- is wanted then  
22 they have to provide supporting documentation. The next  
23 thing we have is Phillips writes to Phalen on February  
24 15, '89 at page five of Exhibit 35-A requesting approval  
25 for a proposed realignment of the Mains and he attaches a

MR. GOLBEY, EXAM. MR. ENDRES

1 sketch. That's the sketch that failed to impress you and  
2 the Commissioner was looking at it as well. It's the --

3 A. I believe I described it as rudimentary --

4 Q. Rudimentary --

5 A. -- at the time --

6 Q. -- plan.

7 A. -- or some similar language, yes.

8 Q. And, obviously, that's just what it is? It's not a  
9 proper engineering drawing. You expressed concerns  
10 specifically, Mr. Golbey, that it wasn't drawn to scale;  
11 do you recall that?

12 A. I did.

13 Q. Yes. And do recall looking at the bottom of the  
14 plan where it says exactly that, not drawn to scale?

15 A. Yes.

16 Q. So why are you making a point of it? It says it  
17 right on the document.

18 A. Because, I believe I also said at the time that it -  
19 - there was a scale plan available because it was in  
20 Kilborn's '89 study that would have been reasonably and  
21 correctly drawn-to-scale plan that would have been as  
22 easy to attach as it would appear developing this special  
23 plan.

24 Q. Sure. More than that, we have specific information  
25 about the proposal because Phillips, in his letter to

MR. GOLBEY, EXAM. MR. ENDRES

1 Phalen, gives the alignment that he's proposing for the  
2 change of the mains, correct?

3 A. That's in the letter.

4 Q. Page five.

5 A. Yes.

6 Q. It's right in front of us. So you know precisely,  
7 and everyone else knows, what it is that Westray is  
8 trying do? Never mind the sketch, we don't have to use  
9 it. We can just ignore it.

10 COMMISSIONER Is the first alignment this one down,  
11 straight here?

12 MR. ENDRES Yes.

13 A. That's the first change --

14 COMMISSIONER That's number one. Okay. Number two and  
15 then number three?

16 A. Yeah.

17 COMMISSIONER Okay. Thank you.

18 MR. ENDRES So we know precisely what Westray is  
19 proposing to do without worrying about the sketch? That's  
20 the only point I want to make.

21 A. I think it would be good practice to include a  
22 diagram or -- if available, because that way it avoids  
23 any possible misunderstanding and should somebody be  
24 reading this letter who does not have acc -- immediate  
25 access to a full report, through using a plan, it is far

MR. GOLBEY, EXAM. MR. ENDRES

1 easier to see where and what is being portrayed.

2 Q. Yeah, but Mr. Golbey, that's the point. The Kilborn  
3 No. 2 Report had the plan in it that you're looking for,  
4 which showed the realignment, and that's the one that the  
5 Department officials were concerned about, saying you're  
6 doing something that you're not authorized to do. So we  
7 have the plan. It's in the Kilborn No. 2 Report. That's  
8 how we got wind of the fact that they wanted a change.  
9 Right?

10 A. I think what we're discussing is whether it would  
11 have been better procedure to have included that with the  
12 letter or just let the letter stand on --

13 Q. So it's a --

14 A. -- its own.

15 Q. -- pretty small point you're making --

16 A. It really is.

17 Q. -- there? A minuscule point, really.

18 A. But --

19 Q. So instead of attaching it to the Kilborn No. 2  
20 Report, it should have been attached to the letter?

21 A. It would have been better attached to the letter in  
22 place of the one that was there.

23 Q. But the fact is that there was a plan provided  
24 showing the No. 1 realignment and it was an approved  
25 plan, correct?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. It was -- as you say, that was presumably in the  
2 Department at the time.

3 Q. At page five of his letter, Phillips explains, this  
4 is February '89, that he's seeking to -- seeking approval  
5 for the first realignment in support of the request for a  
6 proposal that would allow Westray to access the Southwest  
7 Section for coal." Do you recall that?

8 A. Yes. It's --

9 Q. You can take a look at it. It's right there in --

10 A. It's --

11 Q. -- our letter.

12 A. -- item 1.

13 Q. In your evidence on Wednesday, I may have  
14 misunderstood you, but did you say that that was the  
15 first reference to mining in Southwest Section?

16 A. It's -- from the way it is written in the letter, I  
17 understand it to mean it will be almost immediate access  
18 to the Southwest, the extension, reserve area, rather  
19 than the plan which shows commencing of coaling  
20 operations towards the north of the --

21 Q. All righty.

22 A. -- property.

23 Q. But the point is, surely, isn't it, that we always  
24 knew from the beginning that Westray was trying to mine a  
25 Southwest Block? That was part of the initial plan.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. It was identified as a block to be mined.

2 Q. Sure. And we have it right there on the map. The  
3 blue.

4 A. But --

5 Q. Isn't that right? It's the blue outline?

6 A. It's outlined in blue, but what is not shown on that  
7 plan is the period in which it was to be mined.

8 Q. Precisely. And where does Phillips in his letter to  
9 Phalen say that when they are going to mine Southwest?  
10 He just says it will allow us to go to Southwest.

11 A. In terms of those few words, saying he is now going  
12 to do it, it is not there. But as it is item 1, it would  
13 appear to me that the intent is to go into that area  
14 considerably sooner rather than later.

15 Q. All right. And we also know though that there was  
16 an assessment of what was to be taken out of the  
17 Southwest Block before Phillips writes to Phalen asking  
18 for the realignment, do we not? We know the tonnage --

19 A. There --

20 Q. -- that was to come out of the --

21 A. There was a --

22 Q. -- Southwest Block.

23 A. There was a tonnage calculated for that block.

24 Q. We know that 4.3 million tonnes, or tonnes, metric  
25 tonnes, were to be taken out of the Southwest Block, and

MR. GOLBEY, EXAM. MR. ENDRES

1 we know that as early as Kilborn No. 2, correct?

2 A. Yes. As shown on, if I recall, on that bar chart.

3 Q. So we know all along that Westray's trying to mine -  
4 - is planning to mine the Southwest. We just don't know  
5 exactly when?

6 A. We don't know when. We do actually.

7 Q. There is a difference, obviously, Mr. Golbey,  
8 between production coal and development coal. And I'm  
9 sure you appreciate that.

10 A. There is a difference, yes.

11 Q. Phillips, in his letter of February 15, '89, we're  
12 still at page five of that exhibit, states "That the  
13 realignment provides for access to coal at drill hole  
14 269." Correct?

15 A. He does.

16 Q. And he shows that on his little drawing? To the  
17 right there's a drill hole, DH-269.

18 A. That is there.

19 Q. We have that same information that is about that  
20 drill hole 269, which apparently contains coal, from Joe  
21 Tatak's underground development plan, correct? Do you  
22 remember that?

23 A. [No audible response]

24 Q. This is referenced in Exhibit 35-C at page 109.

25 A. It is.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. And that drill hole 269 also shows up on Kilborn's  
2 plan in their No. 1 report. Do you recall that?

3 A. It's shown as a hole location.

4 Q. You testified now on Wednesday that you could not  
5 see how Westray was going to get into coal as a result of  
6 the realignment. Do you recall that?

7 A. It's -- I believe that's what I said.

8 Q. I submit to you now, and I suggest to you, that it  
9 is obvious how Westray was going to get into coal with  
10 the realignment: because they had data that showed coal  
11 at drill hole 269. So when they changed the realignment,  
12 they were heading straight towards to that. Straight  
13 towards the coal.

14 A. They -- yeah, they were heading straight towards a  
15 drill hole with coal recorded. But coming back to the  
16 problem of detailed geological interpretation, there was  
17 no certainty ahead of reaching that hole precisely where  
18 the coal would be.

19 Q. Sure. Except when we get to drill hole 269. We  
20 know there's coal there because they've got the core?

21 A. We do.

22 Q. Yeah. And the alignment proposed is remarkably  
23 close to drill hole 269; it almost goes right at it.  
24 Correct?

25 A. It gets close to it.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Sure. Obviously, this was not a case of producing  
2 coal in the course of production by some mining method,  
3 this was a case of drawing coal in a course of driving  
4 the mains and that's what Phillips was talking about,  
5 correct?

6 A. I think -- the interpretation, yes.

7 Q. So we know Phillips is trying to get into coal very  
8 early and that's one of the reason he said "please  
9 approve that realignment No. 1." And you wouldn't look,  
10 knowing the difference between production coal and  
11 development coal, you wouldn't look for room-and-pillar  
12 or mining methods or anything, because you know the coal  
13 is gotten as the tunnels are advanced?

14 A. It would be, yes.

15 Q. And is that a problem for Westray to propose that?  
16 To say look, we can get coal early if we just changed a  
17 realignment. It gives us cash flow. Is that a  
18 difficulty?

19 A. It becomes a two-stage -- it has to be a two-stage  
20 answer. The getting of coal for processing to cash flow  
21 can be achieved, but at the same time, as this is the  
22 main entry to the mine, whatever he does has to satisfy  
23 long-term geotechnical and other parameters to ensure  
24 that the structures will remain standing during the life  
25 of the mine.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. All right. But it is a point for a company in the  
2 early development stages, especially a company that has  
3 cash flow problems, if they can identify coal and they  
4 can move towards that at a less expense or have coal for  
5 cash flow. That's desirable, is it not?

6 A. If they can sustain remaining in the coal, it would  
7 be.

8 Q. Sure. Now Dr. Jones' response to Phillips, this is  
9 at Exhibit 35-A, page 209. That's Dr. Jones to Phillips.  
10 And Jones points out a number of concerns regarding the  
11 proposal and he lists those by headings. Do you recall  
12 that?

13 A. They are --

14 Q. And you agreed with Dr. Jones, the concerns that he  
15 identified.

16 A. Yes. It included faults, abandoned shafts and --

17 Q. And with regard to faults --

18 A. -- other items.

19 Q. -- Dr. Jones specifically says, and you agreed with  
20 him on that as well as you agreed with everything else he  
21 said, "We recognize," right under the heading of  
22 "Faults", "We recognize that the geological  
23 interpretation of faults in the Pictou area is not  
24 conclusive; however, it is prudent to consider all  
25 possible alternatives when planning the tunnel

MR. GOLBEY, EXAM. MR. ENDRES

1 alignment." You would agree with that?

2 A. Yes, that's --

3 Q. And appended to that, of course, to that letter, we  
4 have a drawing that was prepared by Dr. Jones, and we'll  
5 get to that.

6 COMMISSIONER I just want to clarify a point here. Mr.  
7 Golbey, my recollection of your evidence with respect to  
8 the realignment on three separate occasions of the main  
9 tunnels going into the mine was more or less predicated  
10 upon the fact that these things were done without any new  
11 information available to the developer or to the  
12 operator, and your only question was not the efficacy of  
13 whether they got the appropriate approvals, but why did  
14 they make these sort of ad hoc changes on the basis of no  
15 new information. Was that -- did I have that correct?

16 A. That is certainly -- I still believe so in the case  
17 for the one we're discussing --

18 COMMISSIONER Yeah.

19 A. -- Mr. Commissioner, because as of -- well, this now  
20 is early '89, but certainly as we saw this morning in '88  
21 there was still discussion going on as to the requirement  
22 of regional geological interpretation. And if my memory  
23 serves me correctly, the AMCL letter of about this period  
24 also makes reference to confirming geological structure,  
25 strike, faults, and such like.

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER But the point is what you were -- as I got  
2 it, the point you were trying to get across was sort of  
3 the ad hoc nature of the planning?

4 A. Apart from these few details there -- well, summary  
5 comments, there is no background or detailed nature.

6 COMMISSIONER Okay. That's --

7 A. That is correct.

8 COMMISSIONER That's all I wanted. Thank you.

9 MR. ENDRES But it is a simple fact that Phillips  
10 gives three reasons for proposing the realignment?  
11 That's in his letter.

12 A. He does, but I submit there is a difference between  
13 giving three reasons and providing, in my opinion, what  
14 would be sound technical report to substantiate those  
15 three reasons.

16 Q. Well, what's missing? You tell me then, Mr. Golbey.  
17 When Phillips says one of the reasons I want to move on  
18 that new extension, the first realignment, is that it  
19 allows us to access the Southwest area which contains 4.3  
20 million tonnes of coal reserves. So they think they want  
21 to get coal a little sooner than they had planned  
22 originally --

23 A. But --

24 Q. -- isn't that a good reason?

25 A. But I believe if you look at the plan, they were

MR. GOLBEY, EXAM. MR. ENDRES

1 still aiming at that particular area and they still could  
2 have got the same volume of coal. So that, in a sense,  
3 becomes --

4 Q. So --

5 A. -- a silent issue.

6 Q. Yeah. So Phillips gives you a second reason. He  
7 says if we take the realignment, we'll go to drill hole  
8 269 which has coal. If they had stuck to the original  
9 alignment they would not have been into coal that early.

10 A. It would have taken them, in that case, a little  
11 longer to get --

12 Q. Yeah. So Phillips has a new --

13 A. -- possibly get into coal, because I haven't seen  
14 the detail of exactly where the other --

15 Q. Well --

16 A. -- ones would.

17 Q. -- neither have I. But Phillips provides a new  
18 reason for changing the main, saying it gets us to 269  
19 which has coal.

20 A. He gives that as a reason.

21 Q. And he also talks about stratigraphy of the  
22 sequence, saying it's pretty much the same so we're not  
23 really making a major change.

24 A. He makes that point but with no further technical  
25 qualification.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. So Jones responds to Phillips and he identifies  
2 these concerns. And with regard to faults, we just  
3 looked at that. Next, Phillips writes back with a point  
4 by point response. You recall that? This is at page 105  
5 of 35-C. Is it not true then, Mr. Golbey, that if you  
6 look at page 105 of 35-C that Phillips writes back to  
7 Jones in response to Jones' letter and gives a point by  
8 point response to the concerns identified by Jones.  
9 Correct?

10 MR. MERRICK In fairness to the witness --

11 A. The --

12 MR. MERRICK -- you missed two documents in between.  
13 There was the March 17th letter from the Department to  
14 Phillips pointing out a series of concerns at page 209.  
15 And then a memo from AMCL to Phillips at page seven. I'm  
16 not sure if you intended to miss those or not?

17 MR. ENDRES I don't know how I could have missed it.  
18 I just talked about Dr. Jones' letter to Phillips; that's  
19 page 209. Sorry about that.

20 MR. MERRICK That's all right. And then the AMCL  
21 report to Phillips.

22 MR. ENDRES I'm not sure where you are with that.

23 MR. MERRICK Page seven.

24 MR. ENDRES What's that? Is that Bielenstein's  
25 letter? I don't know what that is --

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. MERRICK Sorry. 35.

2 MR. MERRICK Sorry, wrong exhibit.

3 MR. ENDRES Page?

4 MR. MERRICK Seven.

5 MR. ENDRES Seven. Oh, I'll get to that, you can bank  
6 on it. I'm not skipping that for any reason at all. If  
7 you look at the date though, if you want to know why I'm  
8 waiting, it's out of sequence by date. That's why I'm  
9 not referring to it right now. I'm trying to keep the  
10 chronology going as best we can so that we can all follow  
11 this step by step. And that letter will figure very  
12 prominently, I assure you. All right. That is a  
13 response, is it not, at 105, to Jones' letter?

14 A. It certainly seems to be that.

15 Q. Now Larkin asked you about -- Mr. Larkin cross-  
16 examined you yesterday about this in the context of the  
17 first realignment and he suggested to you, and the reason  
18 I bring it up is that you agreed with him that Phillips  
19 had not responded to Jones. Obviously, he was mixed up  
20 in the letters because that letter where there was no  
21 response, as the evidence had developed earlier, was in  
22 relation to the lease approval process. It had nothing  
23 to do with this. Do you follow? Let me back up.

24 A. No I -- if you could please, I'm --

25 Q. Yeah. Do you recall the question from Mr. Larkin

MR. GOLBEY, EXAM. MR. ENDRES

1 yesterday in the context of the first realignment?

2 A. Yes.

3 Q. He suggested to you that Jones makes all these  
4 concerns known and then there is no response and you  
5 agreed with that. But Larkin was clearly mistaken  
6 because what he was talking about is the Jones' letter in  
7 the course of the lease application which has nothing to  
8 do with the first realignment --

9 MR. ROBERTS Mr. Chairman --

10 MR. ENDRES -- correct?

11 MR. ROBERTS -- in fairness to the evidence that was  
12 adduced yesterday, Mr. Larkin -- the issue was not  
13 whether or not there was no response, it was whether the  
14 response was responsive. And I think the point was that  
15 the letter that you see here, the point that Mr. Larkin  
16 was making, it was not responsive to the concerns.

17 MR. ROBERTS Well, we can look at the transcript maybe,  
18 if you want to take time out.

19 MR. MERRICK That must be it because this witness  
20 replied to that when I took him through the sequence step  
21 by step. And he did acknowledge that that was a response  
22 by Phillips to Jones. Whether it was responsive was  
23 another point.

24 MR. ENDRES All right. Let's take a look.

25 MR. ENDRES First realignment, my notes show Larkin

MR. GOLBEY, EXAM. MR. ENDRES

1 asking "This was a change made to," -- "...made in light  
2 of Jones' letter and concerns which Phillips doesn't  
3 answer?" and you say "yes." Those are my notes.

4 COMMISSIONER That's exactly what he said.

5 MR. ENDRES It doesn't answer. But the point is he  
6 did answer, that's what I'm saying. Because we have it  
7 right in front of us. Page 105 of Exhibit 35-C. There  
8 is confusion, Mr. Commissioner, between the Jones' letter  
9 in relation to the lease approval. And you heard a lot  
10 of evidence until this morning that there was no proper  
11 response to it; we say there was. That's on the lease  
12 approval. And this instance of the first realignment,  
13 people are mixing up this correspondence and that's not  
14 working.

15 MR. MERRICK With all due respect. There is no  
16 confusion here except possibly at the desk behind me. I  
17 took this witness step by step by step each of the  
18 documents in chronological sequence. I took him  
19 specifically to this letter that you're now referring him  
20 to as being a response to Jones' letter. That's clear as  
21 bell in his direct evidence.

22 MR. ENDRES I wasn't talking about Mr. Merrick; I was  
23 talking about Mr. Larkin. So I don't know why --

24 COMMISSIONER Well --

25 MR. ENDRES -- Mr. Merrick's getting into this.

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER -- we could go on like this all afternoon  
2 and --

3 MR. ENDRES No, but the point -- all I want to make  
4 really is, look, there was a response and the answer is  
5 yes, there was a response. It can't be --

6 COMMISSIONER Yeah.

7 MR. ENDRES -- countenanced. It can't be  
8 contradicted, that's obvious.

9 COMMISSIONER But I think the point is it wasn't  
10 responsive.

11 MR. ENDRES Well, that I haven't even asked.

12 COMMISSIONER And that comes down to, I suppose,  
13 argument.

14 MR. ENDRES All right. So tell me then in which way  
15 Phillips' response is not a proper response to Jones.  
16 We're out of shortcuts -- let's go look at the letters  
17 side by side. Phillips' is at -- Jones' letter was at  
18 what, page?

19 MR. MERRICK 209 --

20 MR. ENDRES Page --

21 MR. MERRICK -- of 35-A?

22 MR. ENDRES 209 at 35-C. "A". Okay. 35-A. Of  
23 course, some of the difficulty that one faces is that  
24 these documents show up in different volumes and that  
25 makes it difficult.

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER Well, it would be kind of unwieldy if we  
2 had them all in one volume, wouldn't it?

3 MR. ENDRES No, but if you have a letter from and to,  
4 it might be possible to put it in the same book.

5 A. So if I understand --

6 Q. Now --

7 A. -- you correctly --

8 Q. Yes?

9 A. -- we are -- I'm now looking at March the 17th to  
10 Mr. Phillips and comparing that with the responses of  
11 March the 27th?

12 Q. Yes. And you said that that they are not -- that  
13 the letter at 105, the March 27, was not a response.  
14 Where is the difference? Where is the problem?

15 A. One of the differences is at the moment I don't have  
16 a copy of AMCL's review, but I believe there was still no  
17 new interpretation of geology of the previous workers so  
18 there would be no new geological information.

19 Q. All right. Can you take it one at a time. You  
20 don't have a copy of AMCL's review. That's not attached.

21 A. It was not attached to the letter I reviewed.

22 Q. Do you know why it isn't attached to the Commission  
23 exhibit?

24 A. Because it's most probably somewhere else and I --

25 Q. Yeah. And isn't that the Bielenstein letter that my

MR. GOLBEY, EXAM. MR. ENDRES

1 friend referred to earlier?

2 A. Uh huh. And that --

3 Q. It's the AMCL letter, surely, isn't it?

4 A. Well, the AMCL letter in that case --

5 Q. Yeah.

6 A. -- ends up requesting more geological information be  
7 done and a review be completed.

8 Q. Yeah. But let's do one at a time. You're saying,  
9 well, for one it's different because I don't have the  
10 attached AMCL consultants --

11 A. I stand corrected on that, and if it's the  
12 Bielenstein letter, it's the one I just referred to.

13 Q. And we have that, of course, at page 7 of Volume 35-  
14 A, if you want to take a quick look to make sure that  
15 that is it.

16 A. Okay. I'm not juggling all of them.

17 Q. Sorry?

18 A. I'm now juggling all of them.

19 Q. You have that now, that page 7?

20 A. Yes.

21 Q. Of 35-A. That's the letter that we're looking for,  
22 is it not?

23 A. It is, yes.

24 Q. So what's different about Phillips letter that does  
25 not respond to what Jones' points are?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. All right then through, in that case, as I  
2 understand it, we go through Phillips' letter, in that  
3 case, into the Bielenstein letter. And the first page,  
4 as we've gone through previously, there's a list of  
5 various items pertaining to the change. And --

6 Q. The first page of what?

7 A. Of Bielenstein's letter.

8 Q. Well, let's go beyond that. We're trying to find  
9 the difference between what Jones raised as concerns and  
10 Phillips' response. And you say that Phillips isn't  
11 really responding, so tell me why he isn't responding?

12 A. I was going to refer you to the second page of the  
13 Bielenstein letter.

14 Q. Yes?

15 A. And the recommendations that there be more  
16 geological interpretation being done.

17 Q. Yes?

18 A. So in that I would interpret in a professional  
19 opinion that to mean that the detail required, the  
20 geological detail required that would be needed for the  
21 geotechnical and design work prior to changing an  
22 alignment was based on old and maybe now outdated  
23 information. And, in my opinion, it would be good  
24 practice to follow the Bielenstein recommendation prior  
25 to finalizing the plans and alignment as shown on the, if

MR. GOLBEY, EXAM. MR. ENDRES

1 you like, the changed plan.

2 Q. Yeah, and I don't necessarily disagree with you, Mr.  
3 Golbey. Take a look at that plan that's in front of you.  
4 It's now marked Exhibit 68. That just came through this  
5 morning. It's a new plan that we pulled out of the  
6 Commission records last night. Open that up, please and  
7 take a look. That's in relation to the second  
8 realignment, but I'm showing it to you for another  
9 purpose altogether. You're telling us it would be  
10 prudent, if I paraphrase you correctly, to do some more  
11 exploratory work. And look at that plan, does it not  
12 show new drill holes, 425, 428, 424. And since they are  
13 sequentially numbered, usually, there probably are drill  
14 holes in between 25 and 28 which don't show up on this  
15 plan. I'm just showing you that there might -- maybe some  
16 work was done and you've missed it because you haven't  
17 seen that plan before?

18 A. I have not seen this specific plan before. I've  
19 taken your point about sequentially drilled holes or  
20 holes drilled in sequence are numbered sequentially, it  
21 does not follow that they follow in exact line across the  
22 countryside. So the intervening holes may be on a  
23 totally different part of the property.

24 Q. But at least what we have on this plan which is now  
25 marked Exhibit 68 is an indication that further drilling

MR. GOLBEY, EXAM. MR. ENDRES

1 was done and the holes are marked right on the plan.

2 A. Unfortunately, the plan does not show the dates the  
3 drill holes were made so I have no direct evidence of  
4 that.

5 Q. Okay. You recognize that this is the plan for the  
6 second realignment which comes later than the one we're  
7 talking about right now?

8 A. The other plan is dated 1991.

9 Q. All right. So he does make that comment at the  
10 second page, Bielenstein, is quite right and you're  
11 correct to point that out. I'm suggesting to you there  
12 was additional geological work done, and it shows you  
13 that some of it's done. I don't have the whole --

14 A. Well, we can debate whether those holes were post --  
15 were in, in fact, response to Bielenstein's letter.

16 Q. Okay. So we would have to take a look at that.  
17 Well, why didn't you do that already to help us? You're  
18 the expert.

19 A. Because, as you know, the plan was presented very  
20 recently.

21 Q. But it was available to you?

22 MR. MERRICK Wait. Wait a minute. Can I just get a  
23 moment of clarification? Are you suggesting that those  
24 drill holes were done in time for Mr. Phillips to put it  
25 in his letter in 1989? That's the point in time that

MR. GOLBEY, EXAM. MR. ENDRES

1 we're talking about. Bielenstein says you ought to do  
2 more geological testing. Phillips writes back on March  
3 the 27th, 1989, and refers to no new geological testing.

4 MR. ENDRES No, no. You missed the point, Mr.  
5 Merrick, with --

6 MR. MERRICK Maybe I did.

7 MR. ENDRES -- all due respect, because Mr. Golbey is  
8 talking about Bielenstein pointing out that it would be  
9 prudent to do additional geological work which, of  
10 course, would be after Bielenstein's letter, naturally.  
11 It couldn't have meant before.

12 MR. MERRICK And before this first change is approved  
13 and before Phillips writes on March the 27th. Are you  
14 putting to this witness that those drill holes were done  
15 prior to March 27th, '89?

16 MR. ENDRES Anyway, I'm sorry if we -- I'm not sure if  
17 this is helpful to the Commissioner if we start  
18 exchanging and talking about what the evidence is or  
19 isn't.

20 COMMISSIONER Well, I think the point, as I see it, is  
21 were these drill holes done in response to Bielenstein's  
22 request? Is it --

23 MR. ENDRES I'm suggesting to Mr. Golbey that he's the  
24 best person to tell us about that because he's the  
25 expert. He knows about all the geological work that was

MR. GOLBEY, EXAM. MR. ENDRES

1 done. I'm not a geologist. I don't have --

2 COMMISSIONER He's not clairvoyant. It's got to have a  
3 date on it somewhere --

4 MR. ENDRES Well, this is the plan that --

5 COMMISSIONER -- when it was done.

6 MR. ENDRES This is the plan we have and that's all I  
7 can give you. And it's a plan we pulled out of the  
8 Commission documents and --

9 COMMISSIONER Yeah, but which were pulled out of your  
10 offices, too, eh?

11 MR. ENDRES Beg your pardon?

12 COMMISSIONER Originally?

13 MR. ENDRES What?

14 COMMISSIONER Were pulled out of your office originally,  
15 these plans?

16 MR. ENDRES These plans? I have no idea --

17 COMMISSIONER No?

18 MR. ENDRES -- where they came from. I couldn't tell  
19 you.

20 COMMISSIONER See, you're saying which came from the  
21 Inquiry office. But the Inquiry got all its documents  
22 from -- most of these things from you people to start  
23 with.

24 MR. ENDRES Well, yeah. From the Department and --

25 COMMISSIONER Uh huh.

MR. GOLBEY, EXAM. MR. ENDRES

1 MR. ENDRES -- from Westray.

2 COMMISSIONER Okay.

3 MR. ENDRES From Westray. A lot of plans came from  
4 Westray, of course. But I think -- I'm afraid that what  
5 I haven't made clear in that is that all I'm saying is  
6 that this isn't something brand new; this is a plan that  
7 was available as part of Commission documents. It's all  
8 I'm saying. But let me go back then to --

9 COMMISSIONER Yeah. Carry on.

10 MR. ENDRES -- the point, Mr. Golbey, is this, that  
11 Bielenstein's letter is written supporting the change for  
12 the first realignment, correct?

13 A. It would -- well, it was presented by Phillips in  
14 that light, yes.

15 Q. Well --

16 A. And one must presume it was done for that purpose.

17 Q. He's presenting comments on this change and that  
18 change being the new access tunnel alignment, right?

19 A. He presents comments on that, yeah.

20 Q. And that's all he's doing. The rest is just a  
21 reminder saying, you know, we were under some time  
22 constraints with previous studies so we should probably  
23 do some more of this.

24 Q. But of itself it's not a definitive document in  
25 that, for example, the last sentence in the third bullet

MR. GOLBEY, EXAM. MR. ENDRES

1 on the first page, the new tunnel alignment is marginally  
2 further south which I don't think we'll question, and  
3 therefore one may expect at least the same amount of  
4 competent sandstone. It's -- the one they expect is far  
5 from being a definitive engineering document or even  
6 indicating there had been additional geological studies  
7 carried out.

8 Q. In the interest of time, can I put it this way and  
9 tell me if you're content with that, Mr. Golbey, the two  
10 letters are before us, both of them. I understand what  
11 you're saying, they are not necessarily -- that is  
12 Phillips isn't giving a complete response to Jones.  
13 We've spent the last 20 minutes or so talking about one  
14 item. I don't think I have the luxury of time to go  
15 through the rest of it.

16 A. No, there -- the letter was --

17 Q. We'll leave that for what they are.

18 A. -- in response but perhaps a number of details may  
19 not have been --

20 Q. Okay.

21 A. -- or are not fully addressed.

22 Q. So maybe it's another one of these instances where  
23 Phillips could have provided more details?

24 A. In my opinion, I would have anticipated more detail  
25 here, yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Would you agree that you chose a poor example when  
2 you talked about Bielenstein's involvement because he  
3 gives a whole list of reasons why the realignment is  
4 preferable?

5 A. He gives a number of reasons but, again, we can  
6 discuss the detail that may not have been included.

7 Q. Do you know Dr. Bielenstein?

8 A. I did.

9 Q. Did you know him; he's deceased.

10 A. He is.

11 Q. Yeah. And you knew him to be an expert?

12 A. I knew him through the industry as being regarded as  
13 a highly competent and well regarded coal geologist.

14 Q. And did you realize -- or do you realize that  
15 Bielenstein was one of two foremost experts on the Pictou  
16 coalfield?

17 A. I didn't know that.

18 Q. And that he probably has more knowledge on the  
19 Pictou coalfield than most anyone else, more background?

20 A. By your definition of expert, no doubt.

21 Q. Bielenstein --

22 COMMISSIONER You eventually will have some  
23 documentation to back that up, will you, Mr. Endres?

24 MR. ENDRES Well, certainly --

25 COMMISSIONER Otherwise I'd have to swear you; you're

MR. GOLBEY, EXAM. MR. ENDRES

1 giving evidence.

2 MR. ENDRES Well, surely. I think the evidence will  
3 come together --

4 COMMISSIONER Okay.

5 MR. ENDRES -- sooner or later --

6 COMMISSIONER That's all I ask.

7 MR. ENDRES -- who he is and --

8 COMMISSIONER If you're making suggestions, then I would  
9 like to see some assurance that the evidence is going to  
10 come out.

11 MR. ENDRES Certainly our department officials when  
12 they're called can speak to their knowledge of  
13 Bielenstein. There's no problem about that. You know,  
14 for example, though that Bielenstein wrote for AMCL,  
15 wrote the reports for Placer in 1987 and for Curragh in  
16 1987 and '88?

17 A. I know he --

18 Q. He'd done a lot of reports.

19 A. I know that he was working -- had worked on them,  
20 yes.

21 Q. Did you review those reports, the Placer reports by  
22 AMCL?

23 A. I did.

24 Q. Yes. And did you see in those reports that  
25 Bielenstein had studied the geological aspects in detail

MR. GOLBEY, EXAM. MR. ENDRES

1 of the Pictou coalfield?

2 A. Yes, I think it's also fair to say that the study of  
3 geology and interpretation is a continuing process and I  
4 would anticipate as even change -- from year to year the  
5 situation be reviewed as new information became  
6 available.

7 Q. All right. Again, those reports are there and I  
8 guess we'll have to look --

9 A. We can --

10 Q. -- at those in due course. Bielenstein, if we can  
11 take a look at page 7. Mr. Merrick was very anxious for  
12 me to get to that, 35-A, page 7. Let's take a look at  
13 it. It speaks, of course, of the advantage of decreasing  
14 the slope by way of the proposed realignment, and we're  
15 still on the first realignment.

16 A. Yes.

17 Q. As well he speaks of the idea that the proposed  
18 realignment has the advantage of intersecting a fall at  
19 right angles. And we had a considerable -- well, some  
20 people have some difficulty with that. Do you recall  
21 that?

22 A. There is a -- presumably on what is now page 9 is an  
23 indication of a fault.

24 Q. Yeah. He draws a fault and his proposed realignment  
25 shows it going through at right angles, more or less?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. More or less.

2 Q. Yes. But there was some concern about that  
3 depiction by Dr. Bielenstein about the crossing a fault  
4 at right angles, do you recall that?

5 A. Sorry, concern?

6 Q. Yeah.

7 A. The --

8 Q. As to whether he was possibly -- could possibly be  
9 correct?

10 A. In the light of Jones --

11 Q. Jones --

12 A. -- showing -- actually, if we can call it the  
13 "Bielenstein fault" and others that were also shown.

14 Q. Uh huh. Let's take the first one in order. You  
15 testified that you have problems with both of his points  
16 and you were unable specifically, on point No. 1, unable  
17 to see how the proposed realignment would reduce the  
18 slope of the entries. You could not understand, if I  
19 remember your evidence correctly, how Bielenstein's or  
20 Bielenstein's rationale regarding the intersection of a  
21 fault, that's the second point. On the decline reduction  
22 you said specifically, Mr. Golbey, that you have trouble  
23 understanding that. Do you recall that?

24 A. Yes.

25 Q. All right. What exactly was your problem in

MR. GOLBEY, EXAM. MR. ENDRES

1 understanding Bielenstein's proposal that the new  
2 alignment had the obvious advantage of decreasing the  
3 slope from 24 percent, 22 percent and 17 percent, reading  
4 from his letter? What's your problem?

5 A. That was stated as such in his letter --

6 Q. Yes?

7 A. -- but through looking at the alignment from the  
8 Kilborn Study which was were the -- more of the  
9 engineering studies, I believe it showed some different  
10 slopes.

11 Q. Okay. Let's take a look, 35-C, page 56. Kilborn --  
12 do you have it?

13 A. I do.

14 Q. All right. That's a map signed by Dames & Moore.

15 A. Yes, it is.

16 Q. Yes. And it shows the original decline of the  
17 original mains --

18 A. It does.

19 Q. -- as approved. And it shows them at -- it's very  
20 difficult to read but we can read it.

21 COMMISSIONER 13.59.

22 MR. ENDRES Yes. 13. --

23 COMMISSIONER I've got good eyes.

24 MR. ENDRES -- 6, let' round it off. You have very  
25 good eyes. 13.6 for the No. 2 and 13.9 for the No. 1,

MR. GOLBEY, EXAM. MR. ENDRES

1 correct?

2 A. Yes.

3 Q. And that's where your problem is, isn't it? Because  
4 Bielenstein says it has the opposite advantage of  
5 reducing or decreasing the slope from 24 to 22 and 17.  
6 And here we have an original of 13.6, 13.9.

7 A. Yes.

8 Q. Now in your evidence, I'm just looking at it, you  
9 said, "I still have trouble working on how going from the  
10 original plan of 13 would be reduced when those two are  
11 23 and 16." And this is in round numbers though.

12 A. Well --

13 Q. See if I can help you with that. Exhibit 35-C, page  
14 56, shows the declines or the mains in terms of degrees.  
15 Yes?

16 A. It does.

17 Q. Yes. Exhibit 35-A 7, which is Bielenstein's letter,  
18 says that the proposed realignment will decrease the  
19 slope from 24 percent to 22 and 17 percent, respectively.  
20 Correct?

21 A. It does.

22 Q. Does that help you to find some --

23 A. When I --

24 Q. -- solution --

25 Q. When I was reading from this with --

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Yes, what did it help you to do?

2 A. -- I inevitably misread "degrees" for "percent."

3 Q. Yeah, and it tells you that your evidence is wrong,  
4 that you made light of --

5 A. It was --

6 Q. -- Bielenstein for no good reason.

7 A. It was misreading a plan, I will admit, while  
8 sitting up here.

9 Q. Yeah. That you made light of Bielenstein for no  
10 good reason whatsoever, correct?

11 A. I said I misread the plan which gave rise to that  
12 comment.

13 Q. It didn't take you very long to spot it this time,  
14 Mr. Golbey.

15 A. Because I was very conveniently led to it, thank  
16 you.

17 Q. So all we have to do is convert the percentage to  
18 degrees and we find out that Bielenstein was right on the  
19 ticket, correct?

20 A. If --

21 Q. Do you want to do it? Do you want to do the  
22 calculation?

23 A. I will accept that no doubt you've had your  
24 colleagues check that.

25 Q. And you are wise to do so. Traversing the fall at

MR. GOLBEY, EXAM. MR. ENDRES

1 right angles, this is another justification offered for  
2 the proposed realignment by Dr. Bielenstein, and it's  
3 obvious that there are significant differences between  
4 what he is proposing, Bielenstein on the one hand and Dr.  
5 Jones on the other. Now Dr. Jones, in his letter, simply  
6 recites the fault lines and plots them as found by  
7 others. You know that?

8 A. Which -- yes.

9 Q. Yes. He doesn't determine --

10 A. Or at least I assume that's how he obtained --

11 Q. Yeah, Jones doesn't determine fault lines. He  
12 doesn't go and do any studies or drilling or  
13 seismographic work, correct? You have to say yes or no  
14 because the nods don't show up.

15 A. The -- I assume that's how he put the plan together.  
16 I mean, I wasn't there --

17 Q. So you assume --

18 A. -- when he --

19 Q. -- assume correctly. I put to you, that all that  
20 Jones did is he took the data from various reports and  
21 plotted the various reports, findings, of the fault line?

22 A. That is, I presume, what he did.

23 Q. The Commission had put it to you when we were  
24 talking -- when you were talking about this subject  
25 earlier, it appears as though Jones and Dr. Bielenstein

MR. GOLBEY, EXAM. MR. ENDRES

1 are reading from two different books. Do you remember  
2 that?

3 A. In that there seemed to be a difference in number of  
4 faults, yes.

5 Q. You yourself would accept readily, and I think you  
6 already have, if I recall correctly, that it is difficult  
7 to predict faulting in general --

8 A. It's certainly --

9 Q. -- to precisely delineate it?

10 A. The general trend generally can be predicted but  
11 precise location may sometimes be a little bit off.

12 Q. I take it that you -- take a look at page 212 at 35-

13 A.

14 COMMISSIONER Excuse me. Would it be fair to say that  
15 the determination of the -- or the exact determination of  
16 faulting would depend almost entirely on the frequency of  
17 boreholes?

18 A. It's -- that is one good way of determining --  
19 sometimes if there is, for example, no topsoil, you can  
20 look at the surface rock and determine from the  
21 juxtaposition of certain types of rock if there was  
22 likely to be a fault. And from that --

23 COMMISSIONER Okay, the basic -- yeah.

24 A. -- and from that information continue and assess  
25 where it would be at depth.

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER But the -- let's put it the other way  
2 around, the fewer the boreholes, the less accurate can be  
3 your -- will be your geological data?

4 A. That would be --

5 COMMISSIONER Okay.

6 A. -- fair, yes.

7 COMMISSIONER Sorry.

8 MR. ENDRES Thank you. Not at all, not at all. Let's  
9 take a look at page 212, Exhibit 35-A. That's the  
10 drawing --

11 A. That's --

12 Q. -- that we have courtesy of Dr. Jones.

13 A. We call it the "Jones' geology," yes.

14 Q. And he lists a number of faults. He shows a number  
15 of faults.

16 A. He does.

17 Q. Yes. And the first one at the very bottom is the  
18 Norwest fault --

19 A. Yes.

20 Q. -- which, by the way, does that indicate that Jones  
21 had the Norwest Report?

22 A. No. Norwest or Noreast?

23 Q. It's not Northwest, it's Norwest.

24 A. All right, that would indicate most probably it was  
25 a fault that was shown in the Norwest Report and

MR. GOLBEY, EXAM. MR. ENDRES

1 presumably at that figure number.

2 Q. Yeah. So it would indicate that Jones had the  
3 Norwest Report available --

4 A. Yes.

5 Q. -- to him?

6 A. I presume so.

7 Q. All right.

8 A. Or at least the geological section.

9 Q. All right. And it's not the Northwest but the  
10 Northeast fault, that's what its name is, according to  
11 this.

12 A. Well, there are, in fact, two faults shown parallel.

13 Q. Two of them parallel, which indicates that Norwest  
14 wasn't sure where the fault was running. They plotted  
15 two.

16 A. Not necessarily. They could, in fact, have  
17 determined there was a second fault which happened to be  
18 parallel to the previously named or alternatively named  
19 one.

20 Q. All right. And for the proposed realignment, it  
21 does look on the -- on the picture of Jones that there  
22 may be as many as three faults being intersected?

23 A. That's true. yes.

24 Q. While Bielenstein only identified one fault.

25 A. Or for some reason only chose to put one on his

MR. GOLBEY, EXAM. MR. ENDRES

1 diagram, yes.

2 Q. Uh huh. So do I take it that from your evidence we  
3 should read Jones' plan as showing three definitive  
4 faults as opposed to three possible faults which may be  
5 the same fault located somewhat differently by different  
6 experts?

7 A. I think what a comparison of the documents shows is  
8 that there was a degree of latitude in interpretation  
9 and/or use of base data which, in fact, does support  
10 Bielenstein's comment of requiring further detailed  
11 interpretative work being completed.

12 Q. All right.

13 A. And I believe also enhances the argument that prior  
14 to the realignment is a detailed geological assessment  
15 should be completed.

16 Q. Mr. Golbey, that's why I showed you that plan  
17 earlier, Exhibit 66. There are drill holes shown there  
18 which shows that there was more drilling ongoing. Not?

19 MR. MERRICK Mr. Commissioner, again that plan is being  
20 put forward with the proposition that the drill holes  
21 were done prior to Mr. Phillips' response. Now if Mr.  
22 Endres has got evidence to that, we'd appreciate having  
23 it. There's nothing on that plan that indicates that.  
24 Indeed, it indicates it was done later. In fact, I  
25 looked at Mr. Phillips' response that we've got in front

MR. GOLBEY, EXAM. MR. ENDRES

1 of us where he makes no reference to any new geological  
2 information and, in fact, tries to reinterpret himself  
3 the existing ones.

4 Now let's not put that map forward as suggesting  
5 that it reflects that new geological testing was done  
6 prior to March 27th, '89, unless we can establish that.

7 MR. ENDRES Well, we -- first of all, I'm not putting  
8 that plan there for that purpose. The plan is there for  
9 the second realignment which I said initially.

10 Number two, if we have additional -- if we come  
11 across additional things, we will make them available,  
12 but we're struggling with exactly the same thing my  
13 friend was struggling with. We don't have all the  
14 answers, by all means or by any means.

15 COMMISSIONER If you did, we probably wouldn't be here.

16 MR. ENDRES Why do you suggest, Mr. Golbey, if I heard  
17 you correctly, that there are three fault lines or is it  
18 -- are you say merely there could be three fault lines?

19 A. The Jones -- and I said, the map that we're calling  
20 "Jones' geology," for want of a better title, would have  
21 used, obviously, some background and, as you pointed out,  
22 perhaps Norwest was one of the sources.

23 Q. Uh huh, but --

24 A. And I believe I also previously said that,  
25 generally, if a fault has a name, it is a well-recognized

MR. GOLBEY, EXAM. MR. ENDRES

1 structure in an area.

2 Q. And I do recall you saying that.

3 A. And that is why I'm suggesting that perhaps the  
4 Jones' compilation does give one interpretation of the  
5 area. Obviously, Bielenstein gave another and the  
6 comparison of the two does not match, which I still  
7 return to the same point, for detailed work to be  
8 conducted prior to a major change, particularly in an  
9 access to a mine being contemplated.

10 Q. Jones, in his letter at page 209 says, "There may be  
11 three intersecting faults." It doesn't say that there  
12 are. He says there "may be," correct?

13 A. He says "may be" which --

14 Q. Yeah.

15 A. -- again, is pointing to the lack of geological  
16 interpretation.

17 Q. Yeah. And you make a lot about the names given to  
18 the faults. One of the faults is named "AMCL fault,"  
19 right?

20 A. It is, I believe. Yes, it is.

21 Q. The other one -- the other two that run Northeast  
22 are called the Norwest fault or faults, we don't know;  
23 and the other one is called the East River Road fault,  
24 and we don't know who identified that one because it  
25 doesn't tell us.

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER What's the AMCL fault? Let's go over that  
2 again.

3 A. The AMCL fault is the one that --

4 MR. ENDRES AMCL is the one that --

5 A. -- Bielenstein is -- sort of the Bielenstein fault -

6 Q. Is it --

7 A. -- running roughly east/west.

8 Q. Is it conceivable that, in your mind, having looked  
9 at this now and having thought about Bielenstein's  
10 analysis, considering Bielenstein knows a lot about the  
11 Pictou coalfields, that we're talking about one fault  
12 line only and all the experts have provided is different  
13 places for the same fault line. These are not  
14 necessarily different faults.

15 A. Looking at the map and the differing angles of the  
16 faults, I would have found it difficult to assume the  
17 interpretation, one to another, would be that different.

18 Q. But you don't know that?

19 A. I have -- I'm far from an expert on the geology of  
20 the Pictou coalfield and have not reviewed the -- all the  
21 data in a geological manner for this.

22 Q. So we are between two positions, Jones says there  
23 could be as many as three. You think it's likely that  
24 there might be three or not? Can you even go so far as  
25 to say that?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. I believe Jones would not write in a letter or a  
2 memo that -- such a comment without having good reason  
3 for it.

4 Q. Yeah.

5 A. And if his map is a compilation of all the work that  
6 has been done, perhaps it included work that others  
7 hadn't fully considered. It -- this now moves into the  
8 realm of my supposition of how the maps were compiled.

9 Q. So we have to contrast what Dr. Jones puts in by way  
10 of a summary of what he reads from reports and what Dr.  
11 Bielenstein puts in his reports for AMCL?

12 A. There is a -- in your terminology, there is a  
13 contrast, yes.

14 Q. Yeah. And it is not unusual for experts to disagree  
15 on the precise location of a fault, even a major fault?

16 A. Not on the precise location. But here we're talking  
17 numbers and directions rather than just the location of  
18 one.

19 Q. And the only way to be sure is to carry out a lot of  
20 seismic work or what? How can you ever be sure about  
21 faults?

22 A. Seismic work is one technique which may -- again, it  
23 depends -- it's geologically specific. Seismic may work.  
24 there are geophysic -- other geophysical techniques,  
25 drilling, are all methods which could be used.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. You indicated that it might be possible that  
2 Bielenstein was not aware of other experts about faults  
3 in that area or what other experts said about faults?

4 A. That was -- that is what I said.

5 Q. But you do remember, do you not, that AMCL,  
6 Bielenstein is AMCL, did work on the Pictou coalfield for  
7 Suncor, correct?

8 A. Through -- yes.

9 Q. For Placer, correct?

10 A. Yes.

11 Q. And for Westray, correct?

12 A. Yes.

13 Q. And if it turns out that there is only one fault  
14 line anyway, then Bielenstein may well prove to be  
15 correct, ultimately?

16 A. if that is demonstrated, yes.

17 COMMISSIONER What sort of tolerances do you usually get  
18 in a plan like this? You know, what margin of error in  
19 distances would be -- you know -- maybe that's a  
20 rhetorical question, I don't know. I look at this and I  
21 see those two lines, the Norwest fault and the Northeast  
22 fault. On that plan they look to be fairly close, but  
23 when you scale it out, it's 200 meters. You know, that's  
24 600 feet. Is that a margin of error that's acceptable in  
25 mining technology?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. I would -- and here I'm, again, moving for this area  
2 into the realm more of supposition, but I would think two  
3 faults that far apart, if it was done geophysically would  
4 show up as two distinct, if you like, blips on an  
5 electrical recording chart.

6 COMMISSIONER That was my point.

7 MR. ENDRES Would you think there would be an  
8 advantage, Mr. Golbey, in having someone with expertise  
9 testify to that? Somebody who has particular expertise?

10 A. The detail, as I think you can tell, this detailed  
11 knowledge of geology in this coalfield is beyond my  
12 expertise and beyond what I reviewed for the Commission.

13 COMMISSIONER This is about time for the recess, but I  
14 just want to make one observation on that point, and it's  
15 not to denigrate against Mr. Golbey in any extent, but  
16 you know, my feeling over these last couple of days is --  
17 everyone, and I don't mean anyone in particular, but  
18 everyone seems to have the feeling, and maybe it's a  
19 natural one, that this is the last time we're going to  
20 get to ask a question, and this witness has all the  
21 answers to all the questions. That's just not so. I  
22 mean, we have a line-up of experts coming in here who are  
23 well known in their field. Mr. Golbey is an expert in  
24 the field of mine financing, and I think we have taken  
25 him beyond that on many occasions. And although his

MR. GOLBEY, EXAM. MR. ENDRES

1 evidence may be his best effort in those things, maybe it  
2 will be overrun by evidence of other experts in the  
3 specific fields, such as ventilation or whatever. So I  
4 just caution you, that you know, Mr. Golbey is not our  
5 last kick at the cat.

6 MR. ENDRES If I can respond to that. It will be very  
7 quick, and I think it's constructive. Just to your  
8 comment.

9 COMMISSIONER Okay, thank you.

10 MR. ENDRES I'm quite happy with that, and I think  
11 probably we have gone beyond Mr. Golbey, but all that I'm  
12 trying to do is respond to things that he's already  
13 testified to in direct.

14 COMMISSIONER And my criticism wasn't directed at anyone  
15 in particular. I think we've all done the same thing,  
16 including me. There's no -- I had no business in asking  
17 Mr. Golbey what his expert opinion is on the tolerances  
18 on maps. I mean, heavens, that's not his area of  
19 expertise, so mea culpa, sir. We'll recess for ten  
20 minutes.

21 INQUIRY RECESSED (3:04 p.m.)

22 INQUIRY RESUMED (3:16 p.m.)

23 COMMISSIONER Okay, Mr. Endres.

24 MR. ENDRES Thank you. Mr. Golbey, just a few  
25 comments more on the first realignment and then it would

MR. GOLBEY, EXAM. MR. ENDRES

1 be my intention to move on to the second and third. Mr.  
2 Merrick asked you specifically if you had located the  
3 plan showing the first realignment, and you replied that  
4 you had not. Do you recall that?

5 A. I understood the question, I believe, to mean a plan  
6 other than the one shown in the Kilborn study, Kilborn  
7 '89.

8 Q. Well, are you agreeable that there is a proper plan  
9 signed by an engineer, licensed in Nova Scotia, to  
10 document the first realignment?

11 A. It was presented this morning.

12 Q. Correct, we dug it out last night. It wasn't  
13 presented this morning; it was presented yesterday. This  
14 morning's was the second realignment. We're talking  
15 about the first.

16 A. Sorry, on -- right.

17 Q. Correct?

18 A. Yeah, I'm going through too many changes here.

19 Q. No, I realize. This is the Joe Tatak plan. Does  
20 that help? And it was just presented to you yesterday,  
21 and it is now at Exhibit 64, page 44, and we needn't put  
22 it up on the board in the interests of conserving time.  
23 I'll just put it to you, Mr. Golbey, that there is in  
24 fact an approved plan showing the first realignment and  
25 it was signed by Joe Tatak, who is a Nova Scotia

MR. GOLBEY, EXAM. MR. ENDRES

1 engineer?

2 A. It is and --

3 Q. You have it in front of you.

4 A. If I can hold it up here, yes.

5 Q. Good. And then we go to the second realignment, if  
6 you will. This is the second realignment of the mains.  
7 Westray requests a second change in alignment of the  
8 mains on February 25 of '91. This is Exhibit 35-A at  
9 page 13. You agreed with Mr. Merrick in your evidence  
10 that there was no support provided for the proposal, that  
11 the need for the change should have been anticipated much  
12 earlier and that nothing was done by officials at Mines  
13 and Energy between the request and the approval. Do you  
14 recall your evidence?

15 A. I do.

16 Q. And am I stating it correctly?

17 A. I presume you are, not having benefit of a  
18 transcript.

19 Q. At that point, Mr. Golbey, at that point in time the  
20 tunnel had been through the fault that Mr. -- that Dr.  
21 Bielenstein had predicted.

22 A. Yes.

23 Q. And it had gone through the fault pretty much at  
24 right angles, as he said it would?

25 A. Yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. And then Westray decided, having gone through the  
2 fault, to go north immediately? And that is the second  
3 realignment, correct?

4 A. If you'll bear with me one moment, I seem to recall  
5 if it were, if you like, the second leg of that crook  
6 going through the fault, in which case they wouldn't have  
7 gone through that fault.

8 Q. I'm sorry, you seem to recall what?

9 A. I'm temporarily lost. I need the Bielenstein or the  
10 Jones' letter.

11 MR. MERRICK Page 9, 35-A.

12 A. Under the diagram, as I've just been advised, 35-9,  
13 page 9, the request for the next turn came before, as it  
14 is drawn on that plan, Point B would have been reached,  
15 the portals being Point A and Point B being the bottom of  
16 the first leg of the second change.

17 MR. ENDRES So it would indicate that the fault was  
18 hit sooner than anticipated?

19 A. No, they hadn't hit the fault.

20 COMMISSIONER Point B would be here, would it?

21 A. Point B would be there, Mr. Commissioner, yes.

22 MR. ENDRES All right, well, you're not sure whether  
23 or not the first realignment had actually gone through  
24 any major fault?

25 A. I do not recall it having done so.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Let's take a look at Exhibit 17 now. I wasn't  
2 anticipating that. I hope that's available to you. This  
3 is the AMCL monthly reporting to the bank under Tab 1.

4 A. 17.

5 Q. At page 6.

6 COMMISSIONER Six?

7 MR. ENDRES Six. The paragraph states: "Total  
8 advanced since our last report is 267 meters in 31 days,  
9 equivalent to 8.6 meters per day." And you see, of  
10 course, that this is the February 25, '91 report of AMCL  
11 to the Bank of Nova Scotia, the lenders.

12 A. It is.

13 Q. "The first major risk to meet projected schedule has  
14 been removed now that the major fault has been  
15 encountered and driven through. The slopes are now being  
16 turned to the north and will be driven basically within  
17 the Foord horizon." Do you remember that? No?

18 A. Yeah, well, I said it's difficult to remember every  
19 reference.

20 Q. Will you agree with me, Mr. Golbey, that Westray had  
21 gone through the fault earlier than anticipated and they  
22 were then, of course, seeking to go north into coal.

23 A. I -- my hesitancy is because if we compare going  
24 back to comparing the page 9, which is the diagram with  
25 Bielenstein's report and the meterage given for the

MR. GOLBEY, EXAM. MR. ENDRES

1 lengths of drivage of the decline would place crossing  
2 the fault nearer A than B on the new alignment.

3 Q. Uh-huh, sure. Well, can we say at least that it is  
4 possible that that happened?

5 A. There was a fault crossed.

6 Q. A fault was crossed, and it may or may not be the  
7 one that Bielenstein identified. And if he did identify  
8 the fault, and if it is the one that was crossed, it was  
9 crossed earlier than he thought it would be?

10 A. Yes.

11 MR. MERRICK Could I, just to assist the witness, refer  
12 him to Jones' memorandum at page 212 in 35-A, which may  
13 help explain whether there was an earlier fault that's  
14 being referred to.

15 MR. ENDRES So the East River fault I think Mr.  
16 Merrick is suggesting to you which might well be the same  
17 one that Dr. Bielenstein was plotting --

18 MR. MERRICK No, no, no, no.

19 A. As I interpret the plan shown on 212, the East River  
20 fault is a separate and distinct fault from the one that  
21 Bielenstein was predicting. And in fact comes back again  
22 to the comments that have been made about a detailed  
23 geological study being done of the area. And this, to my  
24 mind, is indicating some of the complexities of the area,  
25 and as I said, at the risk of repetition, the requirement

MR. GOLBEY, EXAM. MR. ENDRES

1 for detailed work.

2 MR. ENDRES How many faults were crossed by the first  
3 realignment? We know of one.

4 A. On this evidence there's one fault crossed.

5 Q. Do you know of any fault that was crossed by the  
6 second realignment?

7 A. Again, I cannot remember the progress reports well  
8 enough to be able to -- without rereading to confirm  
9 that.

10 Q. The second realignment, Mr. Golbey, you indicated to  
11 us, saved the company over four million dollars.

12 A. The AMCL report indicated that. I merely quoted it.

13 Q. Pointed that out to us?

14 A. Yes.

15 Q. Four million dollar saving for a company that's  
16 developing a mine is a smart move, is it not?

17 A. I think it would be regarded as that.

18 Q. Especially after the fault that they were worried  
19 about had been crossed, correct?

20 A. Well, a fault had been crossed and they were  
21 continuing, yes.

22 Q. Well, it had been crossed very efficiently, as  
23 efficient as possible in as much a right angle as  
24 possible?

25 A. Yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. And that's, of course, one of the underlying themes  
2 in mining. You want to cross a fault as much as possible  
3 at right angles?

4 A. That's generally regarded as the best way of doing  
5 it, yes.

6 Q. And the obvious reason is what, there may be more  
7 than one?

8 A. If there's any disturbed ground involved with a  
9 fault, it minimizes the distance to go through that and,  
10 again, getting somewhat outside of my area, I believe  
11 there are better geotechnical reasons for so doing.

12 Q. It's largely a question of costs, correct? And a  
13 question of support.

14 A. If you equate cost with ease and speed of mining,  
15 yes.

16 Q. The second realignment, if we can take a look at  
17 that plan which you got this morning, and that is the one  
18 we wanted to go to earlier, and we looked at it once. If  
19 you can see that in the larger scheme of things,  
20 essentially it took Westray back or took Westray --

21 COMMISSIONER What's the number of the plan, please?

22 MR. ENDRES I'm sorry.

23 A. Exhibit 68.

24 MR. ENDRES Exhibit 68.

25 COMMISSIONER Exhibit 68. Always be careful to get the

MR. GOLBEY, EXAM. MR. ENDRES

1 exhibit numbers in there because a plan doesn't mean much  
2 to me six months down the road.

3 MR. ENDRES This is the plan for the second  
4 realignment, correct?

5 A. It is.

6 Q. It is signed by a professional engineer?

7 A. It's signed by Mr. Atherton.

8 Q. And yes, and you know him to be a professional  
9 engineer, do you not?

10 A. Well, I -- sorry, that was implicit in my reply. I  
11 suppose I should have been more specific. Atherton  
12 signed it, undated, and it has a stamp of Nova Scotia  
13 professional engineer.

14 Q. Thank you. And there are these drill holes that I  
15 pointed out to you, and you had some concerns as to when  
16 were they drilled, or you said I don't know when they  
17 were drilled, and frankly, I wasn't able to help you with  
18 that.

19 A. Right. @

20 Q. Can you take a look at Kevin Atherton's letter of --  
21 which is still in front of us, at Page 13 in Volume 35-A,  
22 and he talks about the same two drill holes, 425 and 428,  
23 that you see on Exhibit 68.

24 A. I'm sorry, which page was that in 35-A?

25 Q. 13, page 13. It's at paragraph 4.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. Yes.

2 Q. And it doesn't tell us exactly, but it gives us some  
3 indication, correct?

4 A. The drill holes, presumably, were well prior  
5 February of '91, as I referenced in that letter.

6 Q. It says "The revised alignment has been developed  
7 after considering the latest geological information  
8 available from drill holes 425 and 428, geological  
9 mapping in the tunnels, and the latest geological  
10 interpretations." So it appears, number one, that there  
11 is geological work being done at that time?

12 A. That's, I think, inherent in the letter.

13 Q. And it's apparent that these drill holes were done  
14 prior to February, '91?

15 A. Yes, but all it does is make that bald statement.  
16 It gives no indica-- or this specific letter gives no  
17 indication of why or how there was any reinterpretation  
18 done.

19 Q. Agreed with you, but it does give us a start?

20 A. It gives a start.

21 Q. And if we are really keen on finding out, we can now  
22 go at it and talk to Atherton and find out?

23 A. Or I would anticipate there being a plan in addition  
24 just to the layout of the drifts with showing the revised  
25 geology in support of the letter.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. Are you saying there is no such plan?

2 A. I'm saying I have not seen a revised geological plan  
3 that went with this letter. I agree that the layout of  
4 the decline is referenced in the first paragraph, and  
5 that in fact is that plan number.

6 Q. Because, I mean, we do have that plan in 68. It  
7 would have surprised me if you had said there's no such  
8 plan which does show the drill holes.

9 A. What I'm saying is that we have that plan but we  
10 have no additional plan or diagram showing a new  
11 geological interpretation.

12 Q. You agreed with Mr. Larkin yesterday that it was a  
13 very -- and he was concerned about that -- it was a very  
14 bad error on the part of Westray to turn north sooner  
15 than they previously had planned. Do you recall that?

16 A. Ultimately, it seemed to be the case, yes.

17 Q. Larkin concluded saying "Here we have a further  
18 change without technical support" and I think you agreed  
19 with him, if I recall correctly. Is that so?

20 A. And I would suggest that I made a very similar  
21 comment to you a matter of moments ago saying there is no  
22 particular geological data here indicating why it was  
23 done.

24 Q. But there may be data elsewhere to be found,  
25 including data in the Commission records. Would you

MR. GOLBEY, EXAM. MR. ENDRES

1 agree with that?

2 A. There may be, but that's the point -- if it was a  
3 letter of this type, I would anticipate seeing it there,  
4 or I suppose, at least, referenced to where the detailed  
5 information would be.

6 Q. The geological search, if I can call it that way, is  
7 an ongoing process at that time. This is in 1990, '91.  
8 It's not something you do or finish over?

9 A. It's a continuing process generally through the life  
10 of a property.

11 Q. And we know as early as November 15 of 1990 that  
12 AMCL is referring to Westray's continued investigation to  
13 improve mine layout as geological data becomes available.  
14 Do you recall that statement? I can give you the  
15 reference. It's at Exhibit 16, tab 4, page 2, and that  
16 is the -- you needn't go to it unless you wish. That is  
17 the AMCL progress reports to the Bank of Nova Scotia of  
18 November 15, 1990. So here are the bank's experts in  
19 geology recording way back in November of 1990 that as  
20 geological data becomes available, we continue to improve  
21 -- or Westray is continuing to improve the mine layout.

22 And indeed, that has been the history of the Westray  
23 development, as new data was made available, the mine  
24 layout would change to correspond to the data that was  
25 made available, correct?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. I have had to make the assumption that such data was  
2 incorporated because what I've generally been able to  
3 find have been plans with new layouts with no technical  
4 supporting data or memos to file or information of that  
5 type. So I cannot apply where that information is being  
6 used.

7 Q. But we can look at AMCL as kind of being the  
8 watchdog because they are watching over their 100 million  
9 dollars for the bank.

10 A. Yes, that was their charge.

11 Q. And they were every month making contractual reports  
12 to the Bank of Nova Scotia. They attended at the site?

13 A. They did.

14 Q. And of course, Westray has its own geologist working  
15 on site, correct?

16 A. I thought -- Think there was somebody with that --  
17 yeah, there was a geologist on site. I was trying to  
18 think of his name and I can't.

19 Q. Did you come across the name of Arden Thompson?

20 A. Thank you. As I said, I was trying to think of his  
21 name.

22 Q. Did you come across the name of Jim Reeves as  
23 another geologist?

24 A. As a second one, no.

25 Q. Anyway, so Westray is being watched by AMCL on a

MR. GOLBEY, EXAM. MR. ENDRES

1 monthly -- on an ongoing basis for monthly reports to the  
2 Bank of Nova Scotia to protect the investment. And we  
3 can look, and I'll give you the citations, and if you  
4 want to look at them, by all means. This is an ongoing  
5 reporting of AMCL. I've given you Exhibit 16, tab 4,  
6 page 2, where it states that they are changing the mine  
7 layout as geological data becomes available, the same  
8 thing we see in Exhibit 16 at tab 5, at page 2. This is  
9 the December 21, 1990 report by AMCL to the bank. AMCL  
10 attaches Kilborn's report at that point, and there is  
11 discussion there about continuing geological work. And  
12 similarly we can find it in Exhibit 16, tab 6, page 2,  
13 January 21, 1991 report by AMCL to the bank. It appears,  
14 Mr. Golbey, I put it to you, that there was an ongoing  
15 geological effort or initiative under way to improve, on  
16 an ongoing basis, the mine layout. And it's been  
17 reported, certainly by AMCL.

18 A. That is the usual way in which a property develops,  
19 but the problem I'm having is looking, for example, at  
20 this letter of the 25th of February, '91. If indeed  
21 Westray was continually updating and revising its  
22 geology, I come back to the point, I would have expected  
23 to see reference to that or even a letter report  
24 supporting this type of letter. And I have found no  
25 evidence of such a letter or a report.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. But if AMCL, who are the engineers, Mr. Golbey, who  
2 attend the site, who have a contractual obligation to the  
3 bank to report on activities of Westray to ensure the  
4 safety of the hundred-million-dollar investment, if they  
5 say that this is going on, should we not at least take  
6 that seriously?

7 A. They are reporting on what is happening for one  
8 entity and it is, in my opinion, it is not up to AMCL as  
9 an independent engineer to write the geological report  
10 for Westray because that would immediately compromise  
11 their position as being an independent engineer and place  
12 them in a position they were not hired to be.

13 Q. All right. I take your point on that. My last  
14 point, Mr. Golbey, on the second realignment is a simple  
15 one. It is apparent, and has been in our discussion, I  
16 believe, and tell me if you disagree, that Westray turned  
17 into coal -- or turned north sooner than anticipated and  
18 that's why they wanted the second --

19 A. Um-hmm.

20 Q. -- realignment to get into coal sooner. You have to  
21 speak.

22 A. That was -- that was quoted in one or two places,  
23 yes.

24 Q. And if that is so, we would have a complete answer,  
25 I suggest to you, to Mr. Larkin's concern, and don't

MR. GOLBEY, EXAM. MR. ENDRES

1 forget you agreed with his proposition about the validity  
2 of the Westray permit, March '91. Do you remember that  
3 sequence of questions?

4 A. I remember that sequence of questions, and I recall  
5 it involves with saleable coal versus coal that is mined  
6 before being processed.

7 Q. Do you remember that he referred you to the section  
8 in the legislation, in the new -- what's it called?

9 Mineral Resources Act --

10 A. Resources Act.

11 Q. -- which speaks of, the definition speaks of  
12 "winning coal for sale." Not selling it or anything.  
13 "Winning coal for sale." That is getting coal that can  
14 be sold, right?

15 A. That -- all right. That would be the winning of  
16 coal, yes --

17 Q. Sure.

18 A. I --

19 Q. And they may well want to sell it. What do they  
20 want to do with the coal? Tell me that.

21 A. Well, in its state as, if you like, in that context  
22 in its state as "won," it was not saleable.

23 Q. Yeah. Well, let's take a look at the wording of the  
24 legislation and see exactly what it provides. We've  
25 already referred you to, for another purpose, but still

MR. GOLBEY, EXAM. MR. ENDRES

1 with the same point, Exhibit 17. And if you pull that up  
2 we'll take another look at that in a moment, but let me  
3 go to that legislation quickly. Section 181 is the one  
4 that speaks about the grandfathering of the mining -- of  
5 the lease becoming a mining permit. Correct?

6 A. Yes.

7 Q. And Mr. Larkin took you through that and went  
8 through the definition of "production" in the new Mineral  
9 Resources Act. And "production," of course, says -- or  
10 the Act says it's defined as meaning "the winning, taking  
11 or carrying away for sale," it doesn't mean that it's to  
12 be sold, that it is sold, it's getting it for the purpose  
13 of selling it, "or exchange of a mineral," and it goes on  
14 from there. And the rest we don't have to worry about  
15 because it's irrelevant to this purpose.

16 So the question that arose is: did Westray have a  
17 mining per -- a proper mining permit when they -- were  
18 they entitled to a mining permit on the transition from  
19 the old to the new legislation. And that surely turns on  
20 the question of whether or not Westray was or was not  
21 into coal which, of course, they would sell? Right?  
22 Follow me?

23 A. I follow your line of argument. I would place a  
24 different interpretation on "production."

25 Q. Yes. But "production," we just looked at. It says

MR. GOLBEY, EXAM. MR. ENDRES

1 "winning coal for sale."

2 A. And my difference in interpretation would be winning  
3 through mining, as in a mine -- a room-and-pillar system  
4 as opposed to almost encountering it by chance as one was  
5 driving the mains to get to the production area.

6 Q. Why would you say "by chance"?

7 A. I said all -- because it is conceivable a mine plan  
8 could go through rock to get to a production area or --

9 Q. But Mr. --

10 A. -- the -- to my mind, the -- driving the mains, the  
11 main object is to open areas for mining. It's not for  
12 the production of coal.

13 Q. Yes, I know. But we've covered the turf on that  
14 already. Westray asked for the second realignment so  
15 they could get into coal earlier. And they were taking  
16 coal out of the tunnel, correct?

17 A. They were.

18 Q. And that coal, surely, they would want to sell,  
19 correct?

20 A. Ultimately, yes.

21 Q. And they were doing that, I put to you, in February  
22 of '91, correct?

23 A. Yeah, I -- yes, I think -- seems rea -- about that  
24 time anyhow.

25 Q. And we know that from?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. From various records.

2 Q. All right. The third realignment, Mr. Golbey.  
3 Exhibit 35-A at page 34. Phillips writes to Phalen and  
4 he sends Phalen a plan drawn to two scales indicating  
5 "Slight changes may be made depending on the conditions  
6 encountered." In other words, slight changes beyond that  
7 which is being sent over to Phalen. I might just as a --  
8 parenthetically, I might just note that Mr. Merrick spoke  
9 to you in terms of two plans, two separate plans, but I  
10 think if you read the letter correctly, carefully, it's  
11 quite obvious that this is one plan drawn to two  
12 different scales. Can you take a look at that for me?

13 A. I would admit I've wrestled with that paragraph and  
14 have alternated between the two interpretations.

15 Q. But it looks very much like it's one plan, does it  
16 not?

17 A. I --

18 Q. You're hesitant?

19 A. As I said I've alternated. I --

20 Q. Well, let's see what it says. "Enclosed are two  
21 copies of our proposed mining plan." No plural.

22 A. Well --

23 Q. "One at 1:5,000 and one at 1:10,000." So it's -- so  
24 we'll read it for ourselves. Thank you. And that plan  
25 is attached at page 35.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. It is. And it's --

2 Q. And we looked at that in the past. And that plan  
3 contains to jog to the east, do you recall that?

4 A. Yes, it does.

5 Q. And it also contains a totally different mine layout  
6 throughout?

7 A. Yes.

8 Q. Different from that which had been approved?

9 A. Right, it --

10 Q. A radical change of mining for the Westray Mine?

11 A. That's what it shows.

12 Q. And Dr. Jones wasn't slow to pick up on that. He  
13 writes to Pat Phalen, his boss, and it's Exhibit 35-A at  
14 page 36. You needn't go to it if you don't want; I'll  
15 just tell you quick what he says. And Dr. Jones compares  
16 the original plan, the approved plan, with the proposed  
17 plan sent by Phillips, pointing out that this is a whole  
18 new layout and he comments that "in retrospect," and we  
19 talked about that, "the original alignment might have  
20 been better except for the question of the slope."

21 Phalen then writes to the Deputy Minister of Mines  
22 and Energy, Exhibit 35-A at page 39, expressing his  
23 concern about Westray's proposed change to the mine  
24 layout and the mine plan. Correct?

25 A. Yes, he does.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. And there was no input from a professional engineer  
2 for that proposed mine layout, correct?

3 A. It's not -- it's not signed or stamped in that  
4 manner --

5 Q. No stamp --

6 A. -- no.

7 Q. -- or signed from a Nova Scotia engineer. The same  
8 day, Exhibit 35-A at page 40, Phalen writes to Phillips  
9 stating that the proposed mine plan is totally  
10 unacceptable. He might not use the word "totally" but he  
11 says it's unacceptable. And reminding Westray "that  
12 proceeding contrary to the approved plan, which is the  
13 one that we have up on the board, can lead to forfeiture  
14 of the permit." Do you have that in front of you?

15 A. I do, yes.

16 Q. And he does that communication by referencing  
17 Sections 93, 94, 95 of the Mineral Resources Act, and  
18 that's the new Act, which in Section 93(3), if you'll  
19 just give me a moment please, says, and I'll just read it  
20 to make it easier: "Where the approval of the Director of  
21 Mines is not obtained pursuant to clause (c) of  
22 subsection (2)," that's for a change, "...the mining  
23 permit may be forfeited." That's a pretty clear cut  
24 message from Phalen to Phillips, is it not?

25 A. I would think that's fair -- a fair summary.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. It's a -- kind of a tough letter, isn't it? To say  
2 that I've come across something here and I'm telling you,  
3 Phalen [sic], that if you proceed contrary to the  
4 approved plan, your permit is in jeopardy. The Minister  
5 may revoke your permit and that's the end of the mine.

6 MR. MERRICK Sorry, just --

7 A. It's --

8 MR. MERRICK -- to help the witness. Where are we  
9 finding this wording in the letter? We see he's referred  
10 to three sections of the Act, but I can't find anything  
11 else that supports your paraphrasing.

12 MR. ENDRES I was reading from the statute. I wasn't  
13 paraphrasing.

14 MR. MERRICK Yes, all right. I'm sorry, I thought you  
15 were reading from the letter.

16 MR. ENDRES No, no, but I have, my friend. Let me go  
17 back. I obviously didn't make that all that clear. Let  
18 me go back. At page 40.

19 COMMISSIONER Is that --

20 MR. ENDRES Phillips and Phalen write --

21 COMMISSIONER -- the second paragraph? It's the third  
22 paragraph really?

23 MR. ENDRES The third paragraph.

24 COMMISSIONER Yeah.

25 MR. ENDRES Phalen writes to Phillips, and from my

MR. GOLBEY, EXAM. MR. ENDRES

1 reading, the main message he's delivering to Phillips is  
2 that this proposal that you shipped to us, or whatever it  
3 is, is unacceptable. It is in conflict with the approved  
4 plan and if you persist and pursue that proposal, then  
5 you are putting your operation in jeopardy. Is that not  
6 what it says, Mr. Golbey?

7 A. That would be my interpretation.

8 Q. Sure.

9 A. But, if I may, just coming back a stage, I would  
10 hardly describe the one-page letter and that proposed  
11 layout exactly as a mine plan.

12 Q. As a mine plan. No, that's right. And, of course,  
13 we know if we wait a little bit we'll get to it, this  
14 proposal or whatever it was of Westray was rejected?

15 Totally.

16 A. Yes.

17 Q. So I think the officials agreed with you: it was not  
18 an official, proper mine plan. But that isn't why we're  
19 doing this at the moment. We're doing it simply to say  
20 all right, here's Phalen writing Phillips saying you've  
21 gone too far now. You are trying to mine different from  
22 what is approved, and if you persist in doing that, then  
23 the operation is going to be wiped out because the permit  
24 is going to be revoked. Or could be revoked. You can't  
25 nod because they won't record that. You have to say

MR. GOLBEY, EXAM. MR. ENDRES

1 something.

2 A. All right. That is, as we've just commented, that  
3 is the third paragraph of that letter.

4 Q. Mr. Merrick thought it was an unduly soft letter. I  
5 take it you don't share his view on that?

6 A. I -- I'm surprised at the order of the events -- or  
7 the order of paragraphs in the letter. And I can see  
8 where some changes in wording might have made it --  
9 somewhat different and maybe --

10 Q. Agreed.

11 A. -- a more direct approach.

12 Q. Agreed. Look at Exhibit 35-C at page 110. This is  
13 a memorandum from Nancy Ripley Hood who is the  
14 Department's solicitor, that is, Department of Mines and  
15 Energy, and she writes to her Deputy Minister, John  
16 Mullally, on the same subject.

17 COMMISSIONER What number again?

18 MR. ENDRES 110 at Exhibit 35-C.

19 COMMISSIONER Okay.

20 MR. ENDRES Do you know why she is writing to her  
21 Deputy, Mr. Golbey?

22 A. She is warning of potential forfeiture under the  
23 clauses you read as in paragraph three of --

24 Q. Sure.

25 A. -- Phalen's letter.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. She is alerting her Deputy that there are some  
2 serious concerns arising with the West -- the way Westray  
3 is going about the mine plan, correct?

4 A. That's correct.

5 Q. And she does that on the strength of Pat Phalen's  
6 letter to Westray, correct?

7 MR. ROBERTS Mr. Chairman, that's where I have a little  
8 bit of problem. She seems to be doing it on the basis of  
9 Pat Phalen's letter to Mr. Mullally. And that she says,  
10 "Further to Mr. Phalen's letter to you dated November  
11 22nd," not the letter to Westray.

12 MR. ENDRES All right.

13 COMMISSIONER That's the way it appears, yes.

14 MR. ENDRES Sure. So let's go back to Phalen, Exhibit  
15 35-A at page 39, writing to Mullally. Let's take a look  
16 at what he says there. Paragraph two. Well, actually  
17 let's read the whole thing. It's short:

18 "November 22, '91. For your information I'm  
19 attaching a copy of a letter to Gerald Phillips dated  
20 today in which I have advised him that the revised mine  
21 plan recently submitted by Westray is not acceptable. I  
22 have also attached a copy of a memo prepared by Don Jones  
23 which summarized the major changes to Westray's original  
24 mine plan that was approved when the mining lease was  
25 issued."

MR. GOLBEY, EXAM. MR. ENDRES

1           It goes on -- are you with us, Mr. Golbey, on that?

2           A.    I'm following, yes.

3           Q.    Would you agree with me that in total, just taking a  
4           short step here, one little shortcut. The way it works  
5           is that Phalen writes to Westray -- first of all, Jones  
6           writes to Phalen complaining about this new thing about  
7           Westray, correct?

8           A.    The new --

9           Q.    Phalen writes --

10          A.    -- mine plan.

11          Q.    -- to Westray, correct?

12          A.    Yes.

13          Q.    Saying, hey, your permit might be in jeopardy?

14          A.    Yes.

15          Q.    Phalen writes to his Deputy Minister saying the same  
16          thing? What we just looked at.

17          A.    Yeah.

18          Q.    Page 39. Correct?

19          A.    Yes.

20          Q.    And on the strength of that the solicitor of the  
21          Department of Mines and Energy writes to her Deputy  
22          saying I think we are obliged to write to the bank?

23          A.    On --

24          Q.    About what Westray --

25          A.    On -- okay.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. -- is seemingly doing here.

2 A. Following through that correspondence, yes.

3 Q. Would you agree with me, maybe my friend Mr. Roberts  
4 won't, that Nancy Ripley is writing on the strength of  
5 Pat Phalen's correspondence?

6 A. Included in her first line is a reference to  
7 Phalen's letter.

8 Q. Exactly.

9 A. Or -- yeah, it would be Phalen's memo.

10 Q. And, indeed, Nancy Ripley Hood writes to the bank  
11 and we know that, correct?

12 A. We have found evidence that she wrote, yes.

13 Q. And that will be picked up at the end when we talk  
14 about the bank writing to Westray?

15 A. The --

16 Q. Because we know the bank didn't do anything at all,  
17 complaining to Westray, until after they got the letter  
18 from Nancy Hood?

19 A. I believe that's so. We'll get there, no doubt.

20 Q. Yeah. Pat Phalen, of course, raised other concerns,  
21 specific concerns, with the new plan submitted. It  
22 wasn't just that the point my friend, Mr. Merrick,  
23 pointed out, you know that.

24 A. Yeah, I --

25 Q. He raised some very specific concerns beyond the

MR. GOLBEY, EXAM. MR. ENDRES

1 fact that the mine plan sent was not approved. Correct?

2 A. Well, was not -- all right. The plan portion or the  
3 drawing portion wasn't signed by a professional engineer.

4 Q. That was the first thing he raises.

5 A. Yeah. And then --

6 Q. And he raises some other things. So let's stop at  
7 the moment for that. He gives several reasons for saying  
8 this proposal is unacceptable, correct?

9 A. He does.

10 Q. The first one he gives, of course, as you pointed  
11 out, is the fact that the plan is not signed by an  
12 engineer?

13 A. He does.

14 Q. And that's the one Mr. Merrick picked up on  
15 carefully and deliberately, correct?

16 A. That was -- that's his first paragraph.

17 Q. You agreed with Mr. Merrick that the lack of an  
18 approval of a professional engineer, or by a professional  
19 engineer, was not significant, that it was a relatively  
20 minor detail. Do you recall your evidence on that?

21 A. I do. And that was said in the context of having  
22 previously read the third paragraph.

23 Q. Put yourself, if you can, in another position for  
24 the moment. What is the role of a professional engineer  
25 when it comes to mine plans?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. To ensure that they can be safely carried out and  
2 are in compliance with whatever regulations and  
3 requirements they operate under.

4 Q. And the engineer puts his reputation, indeed, his  
5 career, his licence, everything on the line by signing a  
6 plan?

7 A. He does.

8 Q. And if we get a plan that has no engineer's  
9 signature, it's meaningless, isn't it?

10 A. In -- yes, it would be in that context.

11 Q. In official terms?

12 A. Yes.

13 Q. Because it is not a document that you can in any way  
14 rely on?

15 A. That is correct.

16 Q. So we know why the professional engineers are  
17 involved; there's a very good reason for it.

18 A. To maintain the integrity of the planning, yes.

19 Q. Put yourself in the position of the regulator, Pat  
20 Phalen, or any of the people at Mines and Energy. As the  
21 regulator, would you be concerned about the apparent lack  
22 of a professional engineer's signature and stamp on a  
23 mine plan?

24 A. In -- worked around in that context it -- I can see  
25 the reason in the Act and other -- I'm not sure if it's

MR. GOLBEY, EXAM. MR. ENDRES

1 Act or Regulations -- for requiring it, yes.

2 Q. I was going to suggest that to you. You would be  
3 very concerned about the lack of signature by an engineer  
4 because the law requires an engineer to sign off on a  
5 mine plan, correct?

6 A. It does.

7 Q. So if you get a document, no matter how nice it  
8 looks, no matter how professional it looks, if it doesn't  
9 have the professional engineer's stamp on it or  
10 signature, it is of no consequence because it does not  
11 meet the requirements of the law?

12 A. In that interpretation it's of no consequence.

13 Q. And the regulating authority has the task to either  
14 approve a plan or to reject it, correct?

15 A. It does.

16 Q. And the most simplest way to reject a plan is for  
17 saying hey, there is no professional engineers on this.  
18 There's no signature. It's no good.

19 A. In that case the simplest way of doing it is for  
20 that reason, yes.

21 Q. Why bother going into any details about the proposal  
22 if the proposal doesn't meet the first primary statutory  
23 obligation requirement? And that is, the professional  
24 engineer's approval. Why bother going into details? Why  
25 not say this is no good, we're rejecting it because

MR. GOLBEY, EXAM. MR. ENDRES

1 there's no engineer's signature?

2 A. Possibly because with my background, training, and  
3 experience, the engineering world in something like -- in  
4 a letter like this, I think would generally indicate  
5 areas where there would have been concern in a sense of  
6 helping and aiding in the preparation of the submission  
7 that would, no doubt, be following.

8 Q. Well, do you think it would be appropriate for the  
9 regulator to take some comfort in the fact that there is  
10 an approval, an apparent approval, by an engineer on a  
11 plan?

12 A. It would -- well, as we've just been discussing, it  
13 would give them that level of comfort.

14 Q. And you would readily agree with me that a regulator  
15 ought not to even entertain a plan that does not have a  
16 professional engineer's signature on it?

17 A. Well, that is a legal requirement.

18 Q. Coming back so as not to lose the train of thought,  
19 the important point to make at this juncture would be,  
20 and do you not agree with me, that the third realignment  
21 request as proposed by Westray with this unapproved plan,  
22 was rejected by the Department?

23 A. I recall it being rejected.

24 Q. Phillips then responds to that rejection, and I  
25 might just interject, Mr. Commissioner, Mr. Merrick has

MR. GOLBEY, EXAM. MR. ENDRES

1 kindly offered that if I needed it, he would be prepared  
2 to give me his 15 minutes at the tail end of the hearing,  
3 and I probably do need it, because he thought he could  
4 pick up tomorrow morning with his scheduling. And I very  
5 much appreciate that.

6 COMMISSIONER Okay. That's fair enough. Yeah.

7 MR. ENDRES Thank you. Phillips writes back to Pat  
8 Phalen, Exhibit 35-A at page 42, and Phillips now says --  
9 and he responds to Pat Phalen's letter where he quotes  
10 about possibly losing a permit, "There really aren't any  
11 significant changes to the original plan," is what he's  
12 saying, but he presents "an interim plan to develop," and  
13 that plan was prepared by a professional engineer, "...an  
14 interim plan for the development of nothing else but  
15 approvals to adjust the alignment of the mains including  
16 the jog to the east and the jog around the Allan Mine."  
17 Remember there were two --

18 A. That's right.

19 Q. -- jogs?

20 A. I can see that in the plan.

21 Q. Nothing like before? This is a total departure on  
22 the part of Phillips, obviously.

23 A. It is.

24 Q. He's now coming back licking his wounds saying,  
25 okay, obviously, we can't do this, so let's just have

MR. GOLBEY, EXAM. MR. ENDRES

1 approval for a minor realignment of the mains and the two  
2 jogs, correct?

3 A. That's what --

4 Q. At page 42.

5 A. That's what the plan shows, yes.

6 Q. We know that Pat Phalen writes back. And if we take  
7 a look at page 46, Exhibit 35-A, very short letter:  
8 "Thank you for yours of the 17th of '91, copy of your  
9 revised mine plan," -- "mine development plan number,"  
10 and he gives the number, "and your current short-range  
11 plan for the Southwest Block." So Pat responds -- Pat  
12 Phalen responds to two things. The request to change the  
13 mains' realignment by some small measure and the two  
14 jogs, number one. And he responds to the proposal for  
15 mining the Southwest Block. A short-range plan for the  
16 Southwest Block.

17 And Pat Phalen concludes by saying that "Further to  
18 my letter of November 22nd, I wish to advise that these  
19 plans are acceptable and you are now in compliance with  
20 93 of the Mineral Resources Act." So you know what he's  
21 saying, do you not?

22 A. [No audible response]

23 Q. Do you know what Phalen was saying?

24 A. He --

25 Q. He's saying you weren't in compliance before but

MR. GOLBEY, EXAM. MR. ENDRES

1 now --

2 A. But now you are.

3 Q. -- you've come back to where you were on the  
4 approved plan and you are in compliance.

5 A. That's as I read that last paragraph of the letter.

6 Q. So Phalen didn't change his position because he was  
7 being now asked to do something wholly different from  
8 what he had been asked to do before, correct?

9 A. Yeah, the -- I suppose the difficulty I have in  
10 following this is from Mr. Phillips' letter of the 17th  
11 of December, I find it difficult to see where, in my  
12 opinion, there would be enough technical information to  
13 enable Pat Phalen to come to the conclusion he did.

14 Q. On what?

15 A. On the changes as requested.

16 Q. For the mains?

17 A. Yes.

18 Q. All right. The point I'm making --

19 A. And the --

20 Q. I beg your pardon.

21 A. Sorry. And at the end of that second paragraph,  
22 "The current short-range plan for the Southwest Block  
23 dated December the 17th," again, I've not been able to  
24 find anything in the way of what I would con -- in my  
25 opinion, would be technical information to support such a

MR. GOLBEY, EXAM. MR. ENDRES

1 plan, arrangement, and layout.

2 Q. Well, that depends on how technical we want to get,  
3 Mr. Golbey. Look at page 45 of Exhibit 35-A. That's a  
4 plan proposing the two jogs as well as the minor  
5 realignment of the main to the north, correct?

6 A. Yes, it is.

7 Q. What more do you want? It's a plan.

8 MR. MERRICK Could I interject for a moment?

9 A. I seem --

10 MR. MERRICK Just a second, Mr. Golbey. When I took  
11 Mr. Golbey through his evidence, we indicated that we had  
12 some difficulty in identifying what the second plan was  
13 for the short-term development of the Southwest. In my  
14 questions to Mr. Golbey I proposed to him that it may  
15 have been the plan that is attached in Exhibit 45, tab  
16 four, which happens to be a detailed layout for the  
17 Southwest, dated December the 17th, 1991. Seeing as you  
18 are now at this point on cross-examination and talking  
19 about what was approved, can the Department confirm to us  
20 what that second plan was and whether we are correct in  
21 our assumption?

22 MR. ENDRES I'll have to speak to Mr. Phalen. I'm  
23 quite happy if you want to talk to him about it. He's  
24 here.

25 MR. MERRICK All right. Perhaps we could clarify that

MR. GOLBEY, EXAM. MR. ENDRES

1 when you're now cross-examining the witness on this  
2 point?

3 MR. ENDRES Well, I don't want to interrupt my  
4 examination if I can help it, but --

5 MR. MERRICK All right. Well, that plan may be --

6 MR. ENDRES We can --

7 MR. MERRICK -- significant as to whether --

8 MR. ENDRES But it's -- it is obvious that there is  
9 some misapprehension as to what Phalen was doing. He was  
10 responding to two distinct --

11 COMMISSIONER It will be subject to any further --

12 MR. ENDRES -- things.

13 COMMISSIONER -- clarification.

14 MR. ENDRES And I think we should clarify that, of  
15 course. I just prefer to do it a little later if we  
16 could.

17 Now there is a proper plan for the realignment  
18 proposal? The third realignment proposal, correct?

19 A. The one that we were -- yeah, the one here that was  
20 signed by Atherton, I --

21 Q. Yeah. And in your evidence you are recorded as  
22 saying "the reason for having it," and that's having a  
23 signature by an engineer I think, "...is to ensure that  
24 whatever plans are submitted have been duly considered  
25 and have taken into account relevant background

MR. GOLBEY, EXAM. MR. ENDRES

1 information and are therefore a well-considered plan."

2 I'm just saying to you that we get a plan like this at  
3 page 45, at 35-A, that it is signed by an engineer, then  
4 can we not assume that the engineer took all proper  
5 considerations into account or the plan wouldn't be  
6 there?

7 A. That is a fair assumption to make. And while I was  
8 reviewing the legislation and, unfortunately, I can't  
9 remember which clause it was, there was a requirement  
10 under alteration of plans and I believe some wording in  
11 the regulations as to which items should be addressed,  
12 forms filled in or similar procedure. And I do not see  
13 any, from what I have found in the Commission files, I do  
14 not see any evidence of that type of information having  
15 been submitted.

16 Q. You agreed, Mr. Golbey, with Ray Larkin doing his  
17 cross-examination, that Pat Phalen shifted his position  
18 dramatically between his first position where he sent  
19 that letter to Westray saying this is unacceptable and  
20 the second letter when he says you are now back in  
21 compliance. Where is that shift on the part of Pat  
22 Phalen, I'm asking you? You agreed with that.

23 A. The -- perhaps "shift" is a poor choice of words.  
24 I, return, I am having difficulty understanding or  
25 finding any documentation or, as I said, I believe in the

MR. GOLBEY, EXAM. MR. ENDRES

1 Act there's a requirement if you've a change of layout,  
2 that Mr. Phalen's decision would have been based upon.

3 Q. I appreciate that. What I'm interested in at the  
4 moment is did Phalen change his position or not? Or did  
5 he simply respond to a totally different proposal the  
6 second time around?

7 A. He was presumably responding to the, if you like,  
8 the change in mains layout.

9 Q. Which was radically different from what Westray was  
10 trying to do before?

11 A. That is -- well, it seems to follow the trend of  
12 radically different changes.

13 Q. You were asked by the Commissioner whether you  
14 agreed that it would be prudent to have a reporting  
15 system during the development phase giving notice of  
16 change in the mine operation or the mine plan, and you  
17 agreed that that would be a good thing. Do you recall  
18 that?

19 A. I do.

20 Q. And do you not now know that that is exactly what  
21 Pat Phalen was trying to do when he wrote to Westray at  
22 Exhibit 35-A, page 47. Let's take a look at that.  
23 That's a letter of December 31st, 1991. And in that  
24 letter Pat Phalen basically lays down the law saying to  
25 Westray, you are the operator; you are responsible to

MR. GOLBEY, EXAM. MR. ENDRES

1 plan and operate the mine. And I am or we are the  
2 regulatory authority and we approve or not. So Phalen is  
3 telling Phillips, if we read the whole letter, that it is  
4 your obligation to bring to us information about change.  
5 We don't want to find out indirectly. That is your  
6 obligation, and if you don't meet it, there are some  
7 problems. Isn't that what he's doing?

8 A. That, I think, is a fair assessment to the letter  
9 and I believe it also, in a way, supports my previous  
10 comment of the lack of the technical data that has been  
11 provided earlier and, therefore, the difficulty of making  
12 or having seen how decisions were made.

13 Q. Phalen, who is an engineer, you can see that, of  
14 course, from the signature, he starts off in paragraph  
15 two by saying, "I would first like to say that we  
16 appreciate that the Foord seam is proving to be  
17 structurally complex and it's therefore impractical to  
18 develop a detailed plan you will be able to follow for  
19 the life of the mine," and he appreciates something else  
20 he says. But then he goes on to say, "We believe that it  
21 is the operator's responsibility to plan and operate the  
22 mine so we will not refuse a request unless..." and he  
23 covers that later on. So would you agree that Phalen is  
24 trying to do what he can to tell Westray what the layout  
25 of the land is? That they cannot simply operate as they

MR. GOLBEY, EXAM. MR. ENDRES

1 wish, that there are certain rules to be followed?

2 A. I think that is what he's trying to say and I, as I  
3 said, cannot remember which part of the Act it is but I  
4 believe it's also mentioned in the Act as well.

5 Q. You were asked by Mr. Merrick if you had found any  
6 recent exploration data or mapping or anything of an  
7 unexpected fault in the context of Phillips' letter of  
8 April 9 of '91 and his letter of October 3, '91. And you  
9 responded, no. Do you recall that?

10 A. Yes.

11 Q. You said there was a gap in the data. And I submit  
12 to you, and I put it to you that you were correct in your  
13 answer there. But what I do not recall you saying at  
14 that juncture, and that's where it fits, is that the plan  
15 at page 35 was of no consequence. It was rejected out of  
16 hand because it didn't have the signature of an engineer.  
17 So why on earth would you expect to find exploration data  
18 or mapping or anything else? This is Westray trying to  
19 pull a fast one; don't you see that?

20 A. And thereby any follow-up reports I would anticipate  
21 -- I would anticipate there being follow-up report and/or  
22 submission with back-up data.

23 Q. You spend a great deal of time, Mr. Golbey, walking  
24 us through the changes that Westray was trying to put in  
25 place with the plan which was never approved. You spent

MR. GOLBEY, EXAM. MR. ENDRES

1 a lot of time talking about the various things they were  
2 trying to do.

3 A. Right.

4 Q. But nowhere did you say that the Department rejected  
5 the plan.

6 MR. MERRICK I'm sorry, Mr. Commissioner, but that is  
7 not the evidence. Mr. Golbey went through each of these  
8 steps, including the letter that Mr. Phalen wrote saying  
9 that they weren't approving the plan. I called it a  
10 "soft" letter, and then subsequently the letter that  
11 approved the changed plan. It was never his evidence, as  
12 you're putting it.

13 MR. ENDRES But I thought Mr. Golbey just agreed with  
14 me, frankly. But maybe I'm mistaken. Anyway, it's no  
15 matter. All we want to do is make sure that we get the  
16 right facts in front of the Commission. And the facts  
17 now are clearly established, are they not, Mr. Golbey,  
18 that the Westray effort to radically change the Westray  
19 Mine was never entertained, never approved? Correct?

20 A. As in the plan we've just been discussing, yes.

21 Q. So we don't need to look for any mapping or any  
22 other studies or anything else pertaining to that effort?  
23 Correct?

24 A. In relation to that one application.

25 Q. Page 45. At some point, Mr. Golbey, you seem to

MR. GOLBEY, EXAM. MR. ENDRES

1 agree, and correct me if I'm wrong, that there was a  
2 fourth change in the alignment. Do you know of a fourth  
3 change in the alignment of the mains?

4 A. Not -- no, I don't.

5 Q. No. All right. All right, a few little things.  
6 This is it on the realignment, Mr. Commissioner and Mr.  
7 Golbey. With regards to -- and I am skipping through a  
8 few things because I'm alert to the time.

9 Looking at the question of mining the Southwest  
10 section, you testified, Mr. Golbey, that you could find  
11 no record of an application or an approval for mining the  
12 Southwest area. Do you recall that?

13 A. Depending where in the last few days I was asked  
14 that, yes.

15 Q. So I think we need to look at that Exhibit 64,  
16 Southwest, is all I know.

17 MR. MERRICK No, the question was whether has he ever  
18 seen anything for Southwest 2 where they were actually  
19 mining. Anyway, let's look at --

20 MR. ENDRES Well --

21 MR. MERRICK -- Exhibit 64.

22 MR. ENDRES -- let's look at the exhibit for a minute.  
23 64. I think it's in -- it's one of those additional  
24 documents that we pulled out, so it should be in Exhibit  
25 64 at Tab 14. And I'll give you a page number in a

MR. GOLBEY, EXAM. MR. ENDRES

1 moment. Now the first thing I have, and I don't know if  
2 I have the approval yet, but I have page 46. We're  
3 getting a little swamped with documents here.

4 COMMISSIONER Page 46?

5 MR. ENDRES 46 of Tab 14 of 64. And it is a short  
6 letter from Phillips to Pat Phalen. "Enclosed for your  
7 information is a copy of our current short-range plan for  
8 the Southwest section." Okay. December 1991, Phillips  
9 writes to Phalen, submitting a short-range plan and  
10 that's the one I just read to you from. And at Exhibit  
11 45 at Tab 4 we see the plan for the Southwest proposal.  
12 And that's the one that my friend, Mr. Merrick, has had  
13 in front of him for the last hour and a half, this one.

14 A. That --

15 Q. All right?

16 A. Okay.

17 Q. And we're obviously interested in that.

18 COMMISSIONER What number is that?

19 MR. ENDRES It's at Tab 4 of Exhibit 45 --

20 COMMISSIONER Oh, okay.

21 MR. ENDRES -- book of plans. All right. The first  
22 thing we notice, Mr. Golbey, is that the plan at Tab 4 is  
23 not signed by a professional engineer, is it?

24 A. That is correct.

25 Q. Do you have any explanation for that? That may be

MR. GOLBEY, EXAM. MR. ENDRES

1 an awful question to ask you.

2 A. Other than --

3 Q. You don't know why?

4 A. -- I can observe, like you, that it's not signed,  
5 no.

6 Q. But you now know that there is another plan  
7 available which shows the same thing which is Exhibit 64  
8 at page 45 --

9 A. Which I have.

10 Q. -- which is one of the extra plans -- at Tab 14,  
11 that we dug up over the weekend. And it shows the same  
12 thing, the proposed development of the Southwest panel  
13 and it is signed by "Kevin Atherton," whom we all know is  
14 a professional engineer in Nova Scotia, correct?

15 A. It's signed by him. He must have forgotten his  
16 stamp that day but it is signed by him.

17 Q. Well, it was received by the Department of Natural  
18 Resources on December 20 as well as the letter from  
19 Phillips at the same time. So I think what happened is  
20 somewhere in the copying process, something didn't come  
21 through. So here we have a plan that does show the  
22 signature of the engineer and we all know that that's  
23 important. Because if there isn't one there, we don't  
24 even need to look further.

25 And somehow we want to be careful with the exhibits

MR. GOLBEY, EXAM. MR. ENDRES

1 and be very careful because on the exhibit that we have  
2 there isn't a signature showing up at Tab 4. And I'm not  
3 saying this to blame you in any way. I understand that  
4 there's other reasons for that.

5 The next thing we have is Phalen writing to Phillips  
6 at Exhibit 35-A at page 46. And Phillips says -- that's  
7 a letter we already read, you know, talks about the  
8 realignment of the mains and the jogs. And he also says  
9 -- refers to your current short-range plan for the  
10 Southwest Block, December 17, '91. "Further to my  
11 letter, I wish to advise that there plans are acceptable,  
12 both of them, and you are now in compliance." So there  
13 is approval for the Southwest mining, correct?

14 A. That's what that letter --

15 Q. Yeah. And do you remember when Mr. Merrick put it  
16 to you, he gave you those two plans, the Southwest Panel  
17 plan which we just looked at as well as the plan that  
18 shows the minor realignment of the North and the two jogs  
19 and thought they were the ones that came with the letter  
20 of Phillips as two plans? Do you remember the confusion  
21 at that point?

22 A. We -- as you recall, there was confusion --

23 Q. Yes.

24 A. -- at the time and --

25 Q. And now we know --

MR. GOLBEY, EXAM. MR. ENDRES

1 A. -- this now seems to resolve --

2 Q. Now we know that's resolved, don't we? Yes?

3 A. It certainly seems to be.

4 Q. Yes.

5 MR. MERRICK All the questions that were put yesterday  
6 were based on the correct assumption, is that what you're  
7 telling me?

8 MR. ENDRES I don't know if I draw that conclusion,  
9 frankly.

10 MR. MERRICK Well, I will then unless you tell me  
11 otherwise. All right, sorry.

12 MR. ENDRES With regard to provincial financing, and I  
13 am getting to the end of my examination, and I'll be very  
14 short, Mr. Golbey.

15 COMMISSIONER I would agree with that.

16 MR. ENDRES I was afraid you would do that. From your  
17 evidence, Mr. Golbey, it appeared that the province made  
18 two loans, one of \$8 million and one of \$12 million to  
19 Westray.

20 A. That's what I found from Commission records, yes.

21 Q. All right. There were, in fact, two loans, I think  
22 we can all agree, and that is apparent from Exhibit 64 at  
23 Tabs 5 and 6. As well as the agreement under Tab 6  
24 refers to the interim \$8 million loan at page 123. I  
25 don't think you need to look unless you want to.

MR. GOLBEY, EXAM. MR. ENDRES

1 A. No, I can, in essence, remember some of those  
2 documents.

3 Q. We know that that \$8 million loan was an interim  
4 loan referred to as such.

5 A. Yes, it was.

6 Q. And we know that that \$8 million loan was repaid?

7 A. Yes.

8 Q. Yes. I thought I recalled, you tell me if I'm  
9 wrong, that you could not find any evidence of the  
10 repayment of the interim loan. I thought that was your  
11 evidence the last time?

12 A. In the form of the cancelled demand note or a  
13 receipt or indication of that type, no, I have not seen  
14 evidence of that but --

15 Q. But you --

16 A. -- I've seen, shall we say, sufficient comments from  
17 other nonrelated documentation to be satisfied that that  
18 loan was repaid.

19 Q. Uh huh. Well, indeed. Can we look at Exhibit 64,  
20 just for the sake of noting it, really. There are two  
21 documents at Tab 14, pages 1 and 8 respectively. And I  
22 put it to you, Mr. Golbey, that in that correspondence  
23 one comes from McInnes Cooper & Robertson who negotiated  
24 the loan on behalf of the Province of Nova Scotia. The  
25 other one comes from the Department of Industry Trade and

MR. GOLBEY, EXAM. MR. ENDRES

1 Technology. It is quite obvious from those two documents  
2 that the \$8 million loan was, in fact, repaid.

3 A. I accept that. And I think you can appreciate when  
4 I was looking at things earlier, I either couldn't find  
5 or had overlooked these.

6 Q. The bank loaned Westray \$100 million and syndicated  
7 that loan.

8 A. I actually don't know if they syndicated it. The  
9 term sheet was written in that manner.

10 Q. All right.

11 A. I believe they didn't but that's --

12 Q. The loan structured --

13 A. -- a degree of supposition.

14 Q. -- in a way that it could be syndicated?

15 A. Judging by the language of the loan, yes.

16 Q. The bank, we've covered that and I am getting very  
17 close, Mr. Commissioner, to the end, had the expert  
18 review of project consultants AMCL?

19 A. It did.

20 Q. AMCL is a world-renowned mining consultant firm?

21 A. I would certainly say Canadian. It has affiliates  
22 world-wide.

23 Q. AMCL had long-term involvement in the Pictou coal  
24 project?

25 A. Dating back to Suncor's days, yes.

MR. GOLBEY, EXAM. MR. ENDRES

1 Q. And AMCL concluded, and we have to take a look at  
2 Exhibit 16, Tab 2, AMCL in its assessment of the Westray  
3 operation and reporting to the Bank of Nova Scotia, the  
4 main lender, page 1, second paragraph after saying, "We  
5 have the pleasure of submitting our initial review on the  
6 Westray coal project. AMCL..." and this is signed by  
7 Allen Craven. "A report such as this inevitably tends to  
8 highlight the negative aspects of the project. For this  
9 reason we would like to emphasize that AMCL believed the  
10 project as a whole to be technically sound and  
11 economically viable. There are adequate reserves of low  
12 sulphur, bituminous coal..." skip the next sentence, if  
13 you will. "The mining system selected should allow the  
14 planned production to be met at realistic productivity  
15 rates. The surface facilities are adequate to support  
16 the mining operation." The last paragraph on page 1,  
17 "The strongest features of the project are the 15-year  
18 sales contract with NSPC and the agreement with the  
19 Province of Nova Scotia to formalize a take-or-pay  
20 contract for additional coal." That's Westray's initial  
21 -- that's AMCL's initial report to the bank. They have a  
22 very positive assessment, do they not, of the Westray  
23 project to that date?

24 A. They --

25 Q. Correct?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. In their second paragraph, as you said, they believe  
2 the project, as a whole, to be technically sound and  
3 economically viable. In my reading of that letter I am a  
4 little surprised to find that they would quote "strongest  
5 features," in fact, not to be directly project related  
6 but to -- in the sense that one is almost -- the take-or-  
7 pay contract which we've discussed at length which is a  
8 little unusual for a project of this type.

9 Q. And, indeed, the only concern the bank ever raised  
10 with Westray about their \$100 million loan, that's the  
11 only concern the bank has, of course, is by way of the  
12 letter to which reference has been made at Exhibit 35-B,  
13 page 16. And we already agreed -- I think Mr. Golbey  
14 agreed with me that that letter did not come about until  
15 after Nancy Ripley Hood, the solicitor for Mines and  
16 Energy, alerted the bank.

17 A. I have a problem recalling -- could you just --

18 Q. Yeah.

19 A. If you don't mind, the reference again?

20 Q. Do you have a problem hearing me?

21 A. No, I have a problem recalling precisely the letter.

22 Q. I'm sorry. Yes, of course. Exhibit 35-B, 16. The  
23 bank writes to Ian Shaw of Curragh Resources and a pretty  
24 stern letter at that. And that's the terminology that  
25 was used, correct?

MR. GOLBEY, EXAM. MR. ENDRES

1 A. If you can bear with me a moment, please.

2 Q. Page 16 of Exhibit 35-B. The date of that letter is  
3 December 13, 1991.

4 A. Yeah, I now have that.

5 Q. Let's take a look at Nancy Ripley Hood's letter to  
6 the bank, Exhibit 35-C at 108. And while we're looking  
7 for that, of course, we can see in paragraph 2 of the  
8 bank's letter to Curragh, that the bank has been informed  
9 by the Department of Natural Resources of the Province of  
10 Nova Scotia and so on. And that is exactly what the bank  
11 is talking about, the letter from Nancy Hood of December  
12 2nd, '91.

13 A. Yes. No, I have the letter now.

14 Q. So would you agree with me that the Department went  
15 a fair distance to alert Westray that they cannot make  
16 these wholesale changes without proper support? Would  
17 you agree with that?

18 A. They, through this mechanism, that seems to have  
19 been certainly done, yes.

20 Q. And, indeed, the Department alerted the bank saying  
21 that you better watch out as well?

22 A. It did.

23 Q. All right. Thank you, Mr. Golbey.

24 MR. MERRICK I can clean it up, my re-direct, if you  
25 would like, Mr. Commissioner?

MR. GOLBEY, EXAM. MR. ENDRES

1 COMMISSIONER Go for it.

2 MR. MERRICK All right.

3 COMMISSIONER I don't have legal Latin maxim for that  
4 but --

5 MR. MERRICK The English is okay.

6 EXAMINATION BY MR. MERRICK

7 Q. Mr. Golbey, very quickly, I'm just going to hit a  
8 couple of the spots that you were asked on cross-  
9 examination over the last day and a half. The first  
10 change, and you were challenged on that as to whether  
11 there was sufficient technical data to justify that first  
12 change in the main tunnels. I'm assuming that whether  
13 there was one fault or two faults or five faults or  
14 whether it was two or three geologists' interpretation of  
15 one fault and one of them thought there were five or  
16 whatever, that's not really the point, is it? The point  
17 is that comment made by -- BELL-enstein?

18 A. Bielenstein, yeah.

19 Q. -- Bielenstein, in Exhibit 35-A at page 7 where the  
20 consultant retained by Westray and who has been gone to  
21 for backup support by Mr. Phillips when he has been  
22 challenged by the Department for detail, says on the  
23 second page, "Gerald, remember that the geology  
24 interpretation for Placer Development was carried out  
25 under rather stringent time constraints. Now that the

MR. GOLBEY, EXAM. BY MR. MERRICK

1 Pictou project is a reality, the geological data base and  
2 its reinterpretation must be high on your priority list.  
3 The following must be included..." We have here a  
4 consultant saying, look, whatever my view of where the  
5 fault is and whatever Mr. Jones' view of the faults may  
6 be, somebody has got to take a closer look at this?

7 A. I believe that is largely the opinion I've been  
8 expressing over the last few days. And while it doesn't  
9 mean any one interpretation is incorrect, it does point  
10 out to the need for a continual revision of the geology  
11 or the interpretation as new data comes about or as it is  
12 about to be applied to specific items, for example,  
13 opening a new district or a realignment of a tunnel or  
14 whatever other excavations may be considered.

15 Q. And over the whole of the time that you've been here  
16 and with the direct that I took you through, the  
17 documents that we were able to pull out and the cross-  
18 examination of documents that people were able to pull  
19 out, has anybody shown you where further geological  
20 investigation was done as recommended by this consultant  
21 prior to the initial changes taking place in the  
22 declines?

23 A. The changes -- given the chronology of events, I  
24 don't see these changes having been done at the time --  
25 well, at the time -- the changes at the time this

MR. GOLBEY, EXAM. BY MR. MERRICK

1 correspondence was being written and reviewed.

2 Q. And apart from perhaps the evidence of a couple of  
3 more, two more, I think, boreholes or at least a couple  
4 of more boreholes, according to the map which is now  
5 Exhibit 68, have you seen any evidence that anybody  
6 really took the time to do a reinterpretation of the  
7 geological data base?

8 A. I've seen, as I believe I've said earlier this  
9 afternoon, no geological report or support or even  
10 internal notes on any re-evaluation.

11 Q. All right. Now let me come to the basic question.  
12 You were asked a lot about whether you had seen the '88  
13 final report of Kilborn.

14 A. I was.

15 Q. You had not read it prior to today but you were  
16 given some pages out of it which you compared with '89  
17 Kilborn?

18 A. I did.

19 Q. You found those pages to be identical to '89 Kilborn  
20 and expressed the opinion that, therefore, the '88 final  
21 must be pretty close to the '89 Kilborn?

22 A. I based that opinion on the technical parameters  
23 that were quoted in both reports were identical. A  
24 considerable amount of the wording I was shown was  
25 identical. There were minor differences in wording, I

MR. GOLBEY, EXAM. BY MR. MERRICK

1 will admit, but I didn't consider them to be that much  
2 different from what I would expect in comparing a  
3 preliminary to a final report.

4 Q. And subject to us receiving a copy of the '88 final  
5 Kilborn report from the Province and actually looking at  
6 it, are you comfortable operating at the present time on  
7 the presumption that by having read the '89 Kilborn, you  
8 have, in effect, read the substance of the '88 final?

9 A. As I've said with -- definitely with the knowledge  
10 of the change of access tunnels, I believe the rest of  
11 the reports would be extremely similar.

12 Q. All right.

13 A. Possibly identical. But at least extremely similar.

14 Q. So we're going to operate on the premise that you're  
15 not missing any critical data. Now I come to my key  
16 question. Assuming for the moment that the criteria to  
17 be adopted in evaluating plans and in deciding to make  
18 changes and in laying out plans is a criteria of safe and  
19 efficient mine operation. And I'm not worried here about  
20 making a distinction between whether that may be a  
21 criteria applied by a mine operator or by a mine  
22 regulator, but using that criteria that in order to  
23 evaluate whether you can have a safe and efficient mine  
24 operation, what is your opinion as to whether there was  
25 sufficient data available to Westray and to the regulator

MR. GOLBEY, EXAM. BY MR. MERRICK

1 at the time of the initial mine plan approval?

2 A. I still believe, given what I have seen in terms of  
3 reports, there would have been difficulty using the data  
4 in the form provided for that purpose.

5 Q. And using that same criteria, and again leaving for  
6 a moment whether this is regulator or an operator that is  
7 applying it, but based on what you have seen to date and  
8 at the end of all the questions that have been put to  
9 you, what is your opinion as to whether the data is  
10 submitted in support of each of the changes to the mine  
11 plan was sufficient to determine whether you could have a  
12 safe and efficient mine operation?

13 A. I believe, as I've said earlier this afternoon, I  
14 could not find any technical backup or often  
15 recommendation for making those changes.

16 Q. So your opinion stays the same?

17 A. It does.

18 Q. The last point I'll put to you and it's not really  
19 in the way of a question, other than rhetorical. You  
20 said something I think yesterday in answer to some other  
21 counsel that I think just deserves to be repeated. You  
22 were asked what effect planning might have had on whether  
23 -- on this explosion or what might happen to the safe  
24 operation of the plan. And you said that proper planning  
25 would prevent a combination of factors that might

MR. GOLBEY, EXAM. BY MR. MERRICK

1 otherwise come together to cause a disaster. Those are  
2 your words. You would prove them. They may be  
3 prophetic. That's all I have, Mr. Commissioner.

4 COMMISSIONER Mr. Golbey. We'll adjourn until 9:30.

5 Thank you.

6 INQUIRY ADJOURNED (TIME: 4:36 p.m.)

## REPORTER'S CERTIFICATE

I, Margaret E. Graham, Court Reporter, certify that the foregoing is a true and accurate transcript of the evidence taken by way of recording and reduced to typewritten copy.

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Margaret E. Graham

DATED this 15th day of November, 1995, at Stellarton,  
Nova Scotia.