The Great Uranium Flap

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Westinghouse faces hefty financial losses, while the case puts Gulf Oil's reputation in peril.

By ANTHONY J. PARISI

PITTSBURGH — Beyond the motorized sliding door to his bright and modern office, Robert E. Kirby, chairman of the Westinghouse Electric Corporation, is playing with an electronic blackjack game. He's fascinated with the mathematics of gambling, he says, sidling up to his visitor for a demonstration. "You should always double-down in that position," he admonishes.

With his florid face, trim physique and sculpted good looks, Robert Kirby looks like a movie stereotype of a gambling man. In fact, he is a gambler. In 1975, after a horrendous year in which earnings plummeted to a fraction of their customary level because the company had to write off a quartet of bad business ventures, he put most of the assets of Westinghouse on the line by reneging on some $2 billion in uranium supply contracts.

He bet that an unusually sharp run-up in uranium prices — a run-up that had caught the company short some 65-million pounds — offered the same sort of legal umbrella that an "act of God" provides an insurer.

Then, in 1976, documents surfaced in Australia proving the existence of an international uranium cartel organized by producer governments to orchestrate sales and thereby control prices. The United States knew of the cartel but declined to participate.

Westinghouse, however, contended that the cartel, through a Canadian connection, had infiltrated the American market and was the culprit behind the unseemly price increase in uranium in this country. The alleged domestic ringleader: Westinghouse's corporate neighbor, the Gulf Oil Corporation. "This was one of the massive rip-offs of all times," he says, "and from what I have seen, it was directed from Pittsburgh."

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Gerry Gersten

What's at Stake

Blocks away, in Gulf's quaint, Art Deco tower, Jerry McAfee leans back on a couch in the homey sitting room of his office suite. The Gulf chairman doesn't look anything like a gambler. Heavy set and bespectacled, a thin smile cupped by his cheeks like a dash within parentheses, Mr. McAfee is flush with some recent, happy turns in the complex collection of cases that center on the uranium cartel. "I believe," he says, "that the wind is starting to blow our way."

In a sense, Gulf has far more at stake than its neighbor. To Westinghouse, the case of the cartel is mostly a matter of money. A lot of money, to be sure, but after out-of-court settlements and tax write-offs, perhaps only $300 million or so. To Gulf, however, its past tainted by political payoffs and the ouster of a disgraced chairman, its present marred by earnings setbacks and a round of belt-tightening, and its future clouded by critics of multinational oil companies who would force the company out of the uranium business, the cartel dispute is a matter of reputation on a grand scale.

It is also a personal concern to Jerry McAfee. With his untarnished image, Mr. McAfee was brought in two years ago from his post as head of Gulf Oil Canada Ltd. (the Gulf Oil Corporation owns 68.3 percent of Gulf Oil Canada) to wipe up after his predecessor. The accusations by Westinghouse, he says, his forefinger repeatedly tapping his chest, "tended to be a blot on my personal scutcheon."

Hydra-Headed Battle

Layer by layer, the case of the international uranium cartel has grown into the largest private legal battle ever — in terms of potential damages as well as overall ramifications. Scores of companies are now entwined in lawsuits all over the country; billions of dollars in damages are at stake. And like kings facing each other across a chessboard of pawns and pieces, Gulf and Westinghouse stare at each other.

What was to become a hydra-headed controversy started on Sept. 8, 1975, when Westinghouse shocked the corporate world by announcing that it would not honor its contracts to supply nuclear fuel to 27 electric utilities to which it had already sold nuclear reactors. Over the previous 20 months, the company pointed out, uranium oxide prices had shot up from about $6 a pound, a level they had hovered around for years, to $26 a pound. Something was clearly amiss in the market, Westinghouse said, and the company invoked a provision of commercial law that renders a contract void if it proves "commercially impracticable." Uranium prices continued their extraordinary climb after the Westinghouse announcement, reaching almost $40 a pound in April, 1976. The fuel now fetches close to $44.

Gulf doesn't dispute its cartel role, and Westinghouse admits breaking supply contracts.

The first round of lawsuits began with the utilities, who promptly sued Westinghouse for breach of contract. Most of the cases were joined in a single suit in Richmond, Va., where closing arguments were recently completed and where the judge has pushed hard for out-of-court settlements as the only reasonable solution. Some settlements have already come; extrapolating these suggests that, were Westinghouse to reach accords with all the utilities, the total pre-tax cost would be some $600 million, while the after-tax cost might be as little as $300 million.

On October 15, 1976, Westinghouse kicked off the second stage of the complex litigation, by bringing a price-fixing suit against 29 uranium producers, including Gulf. That case, filed in a Chicago court, is only in preliminary stages; observers do not expect it to get underway until early 1980. Westinghouse charges that Gulf's uranium subsidiary in Canada (Gulf Mineral Resources Company, which is wholly-owned by the Gulf Oil Corporation) provided the link between the American uranium producers and an international "marketing" organization consisting mainly of producer governments but also some companies.

Everyone agrees that a cartel was formed early in 1972, though whether it did anything illegal under international law is disputed. And Gulf concedes that its Canadian subsidiary joined the group — by order of the Canadian Government and without running afoul of United States law. But Gulf insists that the organization specifically excluded the American market from its plans. The company further argues that the cartel, which was formed at a time when global supplies had outrun demand, broke up after the world worked off the surplus on its own and market

Continued on Page 13

The Great Westinghouse-Gulf Uranium Battle

Continued from Page 1

forces started boosting prices. That point, however, is in dispute, since it is generally believed that the organization operated until 1975, after prices began to spiral.

Last May 9, Gulf retaliated against its Pittsburgh neighbor with a countersuit in Chicago. There Gulf alleged that Westinghouse, in promising to supply uranium it did not have, was conspiring

Everyone agrees there was a cartel; whether it did anything illegal is in dispute.

to monopolize the markets for nuclear reactors, fabricated nuclear fuel and uranium. Through affiliates, including the San Diego-based General Atomic Company, Gulf is in all three businesses, though it is no longer actively trying to sell reactors. Gulf owns 50 percent of General Atomic; the other half is owned by a subsidiary of the Royal/Dutch Shell Group.

The third round of cartel cases involves Gulf, General Atomic and several domestic uranium producers. These Gulf adversaries have contracted to supply uranium to General Atomic, which in turn has middleman contracts to furnish nuclear fuel to a number of utilities. Although several of the producers who are now suing Gulf and General Atomic were named by Westinghouse in its Chicago complaint, these suppliers have latched onto the theory that the price run-up was inspired by the cartel to which Gulf — and indirectly General Atomic — belonged. Thus, they argue that their agreements with General Atomic are invalid. If they succeed in getting out of the contracts, they will be free to sell their uranium at today's premium prices, taking windfalls of some 300 percent.

The most publicized of these cases is a confrontation with United Nuclear, a large independent producer that has won a default judgment against General Atomic in a New Mexico state court. Recently, however, United Nuclear's case has been hurt by appellate court rulings that, General Atomic contends, may invalidate that judgment and force the suit into arbitration instead. Attention has riveted on this Santa Fe case, because the judge there has made it clear that he believes Gulf tried to conceal documentary evidence by shipping it to Canada, where the Government has impounded all documents relating to the cartel and has prohibited any of its citizens from testifying on the subject.

By Gulf's estimates, the dollar outcome for all its cartel-related cases ranges all the way from a loss of "several hundred million" to a gain of "$300 to $400 million."

Given the plethora of private lawsuits charging price-fixing and conspiracy, there has been surprisingly little Government action.

Indeed, after considering testimony against the company for 18 months, a Federal grand jury came up dry. Although the Justice Department nonetheless charged Gulf with a misdemeanor, observers considered that action nothing more than a face-saving wrist slap. Gulf pleaded nolo contendere to the charge and paid a fine of $40,000 — $10,000 less than the maximum that could have been levied.

'It's Not Personal'

"As you might well imagine, relations between us are a little strained these days." Mr. McAfee was warming up to the question. "I see Mr. Kirby at social affairs. It's not personal. Well, I say it's not personal, but for me it's intensely personal. My integrity is at stake, and this thing is a setback for our efforts to get Gulf back on track."

Gulf has had its troubles of late. Earnings dropped nearly 8 percent last year to $752 million, then another 7 percent or so in the first quarter. The company has stretched itself a little too thin in recent years with a series of ambitious development programs, shrinking its cash reserves to an uncomfortable level. Austerity has set in — Mr. McAfee recently reduced capital spending and ordered cuts in the work-force. Understandably, he would like to concentrate on these problems; yet always there's the cartel business.

Key Uranium Cartel Lawsuits Involving Gulf and Westinghouse

27 Utilities Sue Westinghouse
for reneging on uranium supply contracts. Trial is now ending in Federal court in Richmond, Va.

Westinghouse Sues Gulf And 28 Other Uranium Producers
in Chicago, for alleged price-fixing. Gulf countersues, charges Westinghouse with conspiracy to monopolize entire nuclear market.

Four Uranium Producers Sue Gulf And Its Affiliate, General Atomic
to break contracts to supply uranium to General Atomic. Producers cite Gulf's connection with cartel.

"We decided months ago that whether we like it or not, I've got to spend a substantial part of my time on this. Not because the financial implications are so tremendous — we could come out plus or minus — but because it's such a complex can of worms and has such a bearing on morale. This is a cloud hanging over our head."

Among other things, the cartel dispute threatens some of Gulf's promising new ventures in uranium. In addition to its interest in General Atomic, which has contracts to buy and deliver some 34 million pounds of uranium, Gulf has its own uranium business "that we're pretty pleased with," said Mr. McAfee.

The company is now opening up several new mines, including one of the biggest in the world, at Mt. Taylor, N.M. "When that one is set up," he added, "why, we'll be a significant factor in the uranium business."

Aware of the broader impact that an unfavorable outcome in its jumble of cartel cases could have, Mr. McAfee recently set up a Uranium Strategy Coordinating Committee to deal with the whole controversy. It consists of a troika of executives and a growing staff.

All told, Mr. McAfee estimated, some 50 people now spend more than half their time working on cartel matters, "forgetting outside lawyers and General Atomic people."

The company has a half dozen law firms engaged in as many cities, and legal fees are substantial. "Every time I think of them I get sick in my stomach," he said. "It's several million dollars a year."

Gulf lawyers think the Westinghouse plea of commercial impracticability strikes at the very heart of the Western world's system of commerce. "Westinghouse," Mr. McAfee said, "is trying to mitigate a terrible business judgment error. One can't berate them for that, unless and until they begin to hurt someone else — mainly us!

"We've made mistakes in our time, but I don't think any this big. Basically, we don't believe in playing the market in any area where we don't know what we're doing. We'd never speculate. When you speculate, you know, you're gambling. I've got no reason to quarrel with Westinghouse or anyone alse who wants to gamble — so long as they take the penalty if they're wrong."

Clearing Up the Cloud

"I like Jerry McAfee," Mr. Kirby was saying. "I can be mad at the corporation without being mad at the individuals at the corporation. What should I do? *Stick pins in dolls that look like Jerry McAfee?*"

The most important thing, he insisted, was to conclude the whole unhappy business as soon as possible. "We want to get this uranium cloud over with. We want to get on with our regular business. I spend 50 percent of my time in Pittsburgh, 50 percent on the road and 50 percent on legal matters."

Mr. Kirby recently named Douglas D. Danforth vice chairman and chief operating officer of the corporation to allow himself to devote most of his time to the uranium litigation. And like his adversary at Gulf, Mr. Kirby has set up a cartel troika. "I've given instructions to the rest of the corporation to go about business," Mr. Kirby said. "But it's distracting for people, whether I order them to ignore it or not."

Not that business is suffering all that much. Even after writing off extraordinary losses of $20.5 million to cover out-of-court settlements with seven utilities for about 5 percent of the uranium in dispute, the company increased earnings in 1977 by more than 12 percent, to $250.8 million — a far cry from the $28.1 million it made in 1974, when it had to write off some bad businesses. But Mr. Kirby pointed out that the corporation's total outside legal fees last year were $25 million.

"I think we were caught in a web that no one understood." Mr. Kirby was musing over the events of the past three years. "If I knew then what I know now, there are things I would have done differently. But I didn't know the cartel was operating."

Settlements?

Now Mr. Kirby is talking about settling with his adversary neighbor. "I don't think it's ever too early to talk about settlement," he says. "But they *have a problem. If they settle, they can* leave themselves open to suits from any other company that believes it has been damaged."

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Mr. McAfee considers the question. "There's got to be a way to put these pieces together," he answers. "I think even now a fair settlement of this very complex case ought to be possible and, indeed, in the national interest."