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VOLUME 2

INTERNATIONAL URANIUM CARTEL

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

DECEMBER 8, 1977

Serial 95–95

Printed for the use of the
Committee on Interstate and Foreign Commerce

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U.S. GOVERNMENT PRINTING OFFICE
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CONTENTS

Page

Testimony of—
Jackson, Roy D., Jr., former counsel, Gulf Oil Corp---- 68, 124
McCabe, John, vice president and director, Getty Oil Co., and general manager, Southern Exploration and Production Division, Getty Oil Co---- 5
Muessig, Siegfried, manager, Minerals Exploration, Getty Oil Co---- 5
O'Hara, Frank R., associate general counsel, Gulf Oil Corp---- 124
Ramsey, M. W., senior manager, Financial Research and Project Reviews, Gulf Oil Corp---- 124
Walker, Edward B., III, president, Gulf Energy and Minerals Co., and member of the board, Gulf Oil Corp---- 124
Zagnoli, S. A., executive vice president, Gulf Minerals Resource Co. (a division of Gulf Oil Corp.)---- 124

Additional material submitted for the record by—
Gulf Energy Minerals Co., letter dated February 23, 1978, from Richard T. Colman, attorney, to Chairman Moss re dues paid---- 164

Oversight and Investigations Subcommittee:
OLOA No. 6—Telex from Mr. Riddell operating officer in Australia with Pancontinental dated March 30, 1973 re expenditure approval- 18
OLOA No. 18—Letter dated September 11, 1974, from G. A. Mackay, Pancontinental Mining Ltd., to Dr. S. Muessig, Getty Oil Co., with attachments re desirability of Getty Oil Co. joining Australian Uranium Producer's Forum---- 8
OLOA No. 22—Memorandum dated September 26, 1974, from J. C. Sample, Jr., to Dr. S. Muessig re Australian Uranium Producers Club---- 35
OLOA No. 23—Memorandum dated October 1, 1974, from S. Muessig to F. E. Carlton re Australian Government uranium policy---- 27
OLOA No. 24—Letter dated October 4, 1974, from Mr. Muessig, Getty Oil Co., to A. J. Grey, Pancontinental Mining Ltd., re strategy for dealing with "Connor's recent move"---- 56
OLOA No. 27—Letter dated October 23, 1974, from Dr. Muessig, Getty Oil Co., to A. J. Grey, Pancontinental Mining Ltd. re membership in the Producer's Forum---- 32
OLOA No. 30—Memorandum dated January 29, 1976, from L. C. Rove to Dr. S. Muessig re foreign and domestic uranium reserves: totals and comparisons---- 59
OLOA No. 31—Memorandum dated February 17, 1976, from Paul M. Carlton to J. B. McNeill re meeting of the board of directors of Getty Oil Co., March 5, 1976---- 45
OLOA No. 32—Telex dated March 19, 1976, from Paul E. Carlton to A. J. Grey of Pancontinental Mining Ltd. re schedule for visiting utilities re selling them uranium---- 39
OLOA No. 33—Telex dated April 6, 1976, from Dr. Muessig to Robert W. Adams, Western Nuclear excerpt from the new Foreign Investment Policy announced by Mr. Lynch on April 1---- 66
OLOA No. 34—Letter dated May 6, 1976, from Mr. Grey of Pancontinental Minning Ltd., to Dr. S. Muessig, Getty Oil Co., re subscribing to "Fuel Trac"---- 21
OLOA No. 58a—Draft report dated July 20, 1972, re Uranium Market Research Organization prepared by Mr. O'Hara of Gulf Oil Co---- 73
OLOA No. 59—Memorandum dated July 20, 1972, from Roy D. Jackson to M. E. Minks re antitrust evaluation---- 148
OLOA No. 66—Letter dated October 11, 1972, from Roy D. Jackson, Jr., Oil Insurance Ltd., to F. R. O'Hara, Gulf Oil Corp., re main points discussed at October 5 meeting in Hamilton---- 106

Additional material submitted for the record by—Continued
Oversight and Investigations Subcommittee—Continued
OLOA No. 68—Letter dated November 20, 1972, from Frank R. O'Hara, Gulf Oil Corp., to N. M. Ediger, Gulf Minerals Canada Ltd., re review of minutes of the Canadian Producers meeting of September 5, 1972 ..... Page 109
OLOA No. 83—Memorandum for the file dated October 15, 1973, from F. R. O'Hara re SERU 113
OLOA No. 93(a)—Memorandum from F. R. O'Hara to R. K. Allen with copy of letter dated February 1, 1974, from Frank R. O'Hara, Gulf Oil Corp., to N. M. Ediger, Gulf Minerals Canada Ltd. re Uranium Marketing Research Organization, with attachments 126
OLOA No. 99, No. 100, No. 109, and No. 110—Series of documents re sales to Ontario Hydro 167
Organizational chart of Gulf Oil Corp. (Gulf uranium personnel and entities prior to June 1975) 142
Appendix—Letter dated September 8, 1972, from Roy D. Jackson, Jr., to N. M. Ediger with opinion memorandum attached 187

INTERNATIONAL URANIUM CARTEL

THURSDAY, DECEMBER 8, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Sitting with the
NEW YORK STATE ASSEMBLY,
STANDING COMMITTEE ON CORPORATIONS,
AUTHORITIES, AND COMMISSIONS,
New York, N.Y.

The subcommittee met, pursuant to notice, at 10 a.m., in the Great Hall, New York Chamber of Commerce and Industry Building, Hon. Albert Gore, Jr., presiding. [Hon. John E. Moss, chairman].

Mr. GORE. The subcommittee will be in order.

The Subcommittee on Oversight and Investigations began its investigations into the possible existence of an international uranium producers' cartel in the summer of 1976, when a group of purloined Australian documents surfaced in California.

Since then, at the direction of our chairman, John Moss of California, we have pursued the cartel's existence from a bare possibility to an inescapable reality.

In the process we have held five sets of hearings. Notable among those were hearings in June of this year in Washington, in conjunction with the New York State Assembly's Standing Committee on Corporations and its Office of Legislative Oversight and Analysis.

On behalf of my colleagues, and especially Chairman Moss, we are happy today to once again join Assemblymen G. Oliver Koppell and L. Stephen Riford and the staff of the State assembly's oversight office for this unique joint effort. Mr. William F. Haddad is the director of the Office of Legislative Oversight and Analysis, New York State Assembly, and Mr. David Langdon is a staff member of the Office of Legislative Oversight and Analysis.

Evidence in the record thus far has established in considerable detail the inception and ongoing operation of the cartel.

I might add that the record that we have compiled so far is available to the public. It has been printed as a committee document.[1]

In 1971, the Canadian Government was approached by representatives of a private London-based conglomerate, Rio Tinto Zinc, or RTZ as it is known, about forming a cartel to control uranium markets.

At that time uranium was selling for approximately $5 a pound, and because of new discoveries and healthy competition, threatening

[1] "International Uranium Cartel," vol. 1, hearings before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, 95th Congress, May 2, June 10, 16, and 17; and August 15, 1977—Serial No. 95–39.

to sink lower still. For a world demand for about 26,000 tons in 1971, there stood ready 100,000 tons of supply. A free market, of course, would have cured that imbalance in time. But nothing like a free market was allowed to operate.

In 1972, secret meetings were held in Paris, and later Johnannesburg, among producer representatives of Canada, Australia, South Africa, France, and RTZ, resulting in a fullblown classic cartel that effectively fixed prices, rigged bids, and allocated markets.

The cartel was well organized indeed. It established a secretariat in Paris, policy and operations committees, a budget covered by dues from its members, and a method for punishing violators of the cartel's directives.

Bids to purchasing utilities were rigged with precision, with a designated fixed-price leader and a prearranged runner-up fixed-price follower, to create the deceptive appearance of competition. And it worked well for about 3 years. That much is no longer an issue.

But the debate over the legal implications of the cartel's formation goes on. How did the members get around antitrust laws? Or, more correctly, will they get around antitrust laws?

The argument proffered by Gulf Oil, a cartel participant, has it that Gulf's membership was compelled by the Canadian Government, and that in any event there was no economic impact on domestic American commerce, or for that matter, Canadian commerce. Canada, it should be noted, has its own antitrust laws known as combines laws.

We will be reexamining those questions today, but with a healthy skepticism born of our already voluminous record. In hearings of this subcommittee in Tennessee in August, we learned of direct impact on American commerce.

Shortly after those hearings, the Tennessee Valley Authority felt strongly enough about the evidence revealed to date to file suit against 13 cartel members. TVA, of course, had the misfortune of purchasing some 20 million pounds of uranium from three cartel members.

The reactions to antitrust dangers among uranium producers throughout the world were by no means uniform. They ranged from outright refusal to participate for fear of breaking a criminal law, to wholehearted adoption of the cartel's objectives and practices.

One company here in the United States, Getty Oil, was a would-be member until its lawyers overruled the wishes of others in the company, because of American antitrust laws. We will hear this morning from two representatives of that company, Mr. McCabe and Mr. Muessig.

The legal opinions in vogue at Gulf Oil were startlingly different. Back in June, the subcommittee and the New York State Assembly, in joint hearings, heard that when Gulf determined to join the cartel, it relied chiefly on the legal opinion of one man, Mr. Roy D. Jackson, Jr.

We heard as well that Mr. Jackson had recommended that a presentation in the form of a white paper on the cartel be submitted to appropriate Federal authorities for approval, a plan which later was inexplicably abandoned. Mr. Jackson is with us today.

Part of the white paper was to be an economic impact statement, prepared by Mr. M. W. Ramsey, who is with us today for the second time.

We also welcome for a second time Mr. S. A. Zagnoli, who, as executive vice president of Gulf Minerals Resource Co. and its Canadian subsidiary, Gulf Minerals Canada, Ltd., had the line authority for Gulf's uranium activities in Canada.

Finally, we welcome a very senior Gulf official to these hearings, Mr. Edward B. Walker. Mr. Walker, we hope, will be able to tell us things Mr. Jerry McAfee, Gulf's chief executive officer, was unable to last June. Mr. McAfee, after all, was not directly involved in the company's uranium dealings in Canada. Mr. Walker was.

I should state for the record that by agreement with the witnesses and the New York State Assembly, we are operating today under the Rules of the House of Representatives, which are nearly the same as those of the State assembly.

I would like to recognize now the New York State assemblyman, Oliver Koppell, for his statement.

Mr. KOPPELL. Thank you, Congressman.

When we began these hearings, there was widespread skepticism that a cartel existed to control world prices of uranium. As a result of these hearings, which arose out of investigations of the New York State Assembly and of the Congress, there is no doubt that producers and governments on four continents met secretly to divide up the world market and to fix prices.

There is no longer any doubt that the Gulf Oil Co. participated in the cartel and that other U.S. companies were aware of its existence. Getty Oil, for example, was privy to the development and the operations of the cartel.

There is also no longer any doubt that, under the unique process which controls energy prices, the consumer in New York State has paid—and will continue to pay—the costs or increased costs generated by the cartel.

Increased energy costs are passed down the interlocking chain of energy corporations and end up in the bills of New York State's industrial and family consumers.

When the cartel began, uranium could be purchased for under $5 a pound. Only a few years later, today, the prices are over $40 a pound. These increases, over the short run, will cost New York consumers almost $1 billion.

The New York State interest in this subject grew out of the assembly's creation of a task force on natural gas to monitor the impact of rising prices of natural gas on industries and families. Quickly, because of information developed through those hearings, the interest of the New York Assembly turned to uranium and uranium pricing.

It should be remembered that we were sold on atomic energy plants to produce electricity because, it was said, nuclear energy was inexpensive, efficient, and in ready supply. For these reasons, large capital construction costs for plants were rationalized. New York State permitted the construction and continues to do so, notwithstanding the fact that some of the reasons for the initial approval are no longer the case, in part due to the activities of the uranium pricing cartel.

The cartel has, in fact, brought into serious question the advisability of constructing new atomic facilities. This question will be addressed this year by the New York State legislature in its hearings over the

continuation of approval of siting of nuclear generating facilities under article 8 of our public service Law.

President Carter has addressed the problems of windfall profits of the oil and gas industries. Today, from Getty and Gulf, documents obtained through subpena, we will learn precisely how large windfall profits are, and attempt to learn whether there is anything that we or the National Legislature can do about it.

It is clear from the reading of documents that I reviewed prior to this hearing that uranium producers not only abandoning competition, but escalating their unfirm prices in tandem with rising oil prices, aimed for one-price energy policy pegged not to production costs, but, in fact, to a partially self-induced crisis.

New York does not, of course, have the power to compel divestiture of the oil companies of competing fuel sources that they control—a course that has been recommended by a majority of the members of the natural gas task force—nor do we have the power to curb the predatory actions of multinational corporations.

What if, for example, Gulf's arguments hold, and are, in fact, sustained, and it is judged that they did not violate U.S. antitrust laws because of their multinational status and the presumed requirements to follow foreign law? Would current laws then permit U.S. corporations to engage in price fixing overseas, or to join with others in dividing up world energy markets?

New York does have the ability, however, to let the Congress know how we feel and to do so in the most effective manner, by working together with this congressional committee to bring about change.

It is unique for the assembly of the State of New York to work with the Congress, and, of course, it is unique for the Congress to come and work with us. We believe that in this instance the partnership has been profitable for both parties, enabling each with somewhat limited resources to carry forward.

Our speaker, Stanley Steingut, has asked me to covey his welcome to the Congressmen who are here today. I hope we will continue to cooperate ultimately to the benefit of the consumers in New York State and in the Nation.

Thank you.

Mr. GORE. Thank you, Assemblyman Koppell.

The cooperation indeed has been very helpful in uncovering a lot of information.

We welcome also Assemblyman L. Stephen Riford and we are glad to have you with us again today.

Congress Tom Luken is recognized for any remarks that he would care to make.

Mr. LUKEN. Mr. Chairman, I would like to observe that this is a subcommittee of the Interstate and Foreign Commerce Committee and for those not familiar with the committee it is one of the busiest, if not the busiest, committee in the House of Representatives. That is by way of introducing the fact that I have been unable to attend many of the previous hearings because of conflicts with other subcommittees.

But I would like to say this. In reviewing some of this material, I can see that Chairman Moss has done his usual outstanding job. I extend my congratulations to the chairman and to Mr. Gore and

Mr. Walgren they have done up to the present time in exposing what amounts to scandalous matters and are vital matters to the whole country.

Thank you, Mr. Chairman.

Mr. GORE. Thank you.

Congressman Walgren?

Mr. WALGREN. I will defer for the moment.

Mr. GORE. That is fine.

As I said at the outset, the members of the cartel came from Canada, Australia, South Africa, France, and Great Britain.

This morning we have two American companies with us, that is, representatives of two American companies. I would like to call first Mr. John McCabe and Dr. Siegfried Muessig from the Getty Oil Co.

Gentlemen, if you would please, approach the witness table and be sworn, we would appreciate it.

Would you raise your right hand?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MCCABE. I do.

Mr. MUESSIG. I do.

Mr. GORE. Would you state your name for the record?

Mr. BALL. Mr. Chairman, I am Mr. Ball. I represent Mr. McCabe. At this time we would like to invoke rule 11 and exclude television and cameras.

Mr. GORE. Mr. Ball has invoked, on behalf of the Getty Oil witnesses, rule 11 of the House, which does afford witnesses the protection of the opportunity to exclude or to shut off cameras and like live microphones.

I would like to add a personal note. I think the rule ought to be changed. I think the American people deserve access to information about matters such as this through the electronic media as well as through the notes of print journalism.

Nevertheless, I am constrained under the present House rules to honor your request and ask that all live cameras be turned off and all live microphones be shut off and that only the print journalist be allowed to make a record of these proceedings.

[The television cameras were excluded.]

Mr. GORE. Would you state to the official reporter your names and your positions?

TESTIMONY OF JOHN McCABE, VICE PRESIDENT AND DIRECTOR, GETTY OIL CO., AND GENERAL MANAGER, SOUTHERN EXPLORATION AND PRODUCTION DIVISION; AND SIEGFRIED MUESSIG, MANAGER, MINERALS EXPLORATION

Mr. MCCABE. My name is John McCabe. I am a vice president and director of Getty Oil Co. I am also general manager of our Southern Exploration and Production Division in Houston, Tex.

Mr. MUESSIG. I am Siegfried Muessig. I am the exploration manager for the company.

Mr. GORE. Thank you, very much.

I would like to recognize for questioning Mr. William Haddad, director of the assembly Office of Oversight.

Mr. HADDAD. Dr. Muessig, in order to save time I would like to establish the relationship of the Getty Oil Co. and the Getty Development Co. and Continental in Australia and the various individuals whose names will be mentioned today.

As I understand it, the Getty Development Co. was established in early 1971 for exploration in Australia; is that correct?

Mr. MUESSIG. That is correct.

Mr. HADDAD. It is a Delaware corporation?

Mr. MUESSIG. It is the Getty Oil Development Co. It is a Delaware corporation.

Mr. HADDAD. What is your relationship?

Mr. MUESSIG. I am president of that company.

Mr. HADDAD. Do you have an office in Sydney run by Paul Riddell?

Mr. MUESSIG. Yes; we do.

Mr. HADDAD. To whom does he report?

Mr. MUESSIG. He reports to me.

Mr. HADDAD. Are you involved in a joint venture with Pancontinental in Australia?

Mr. MUESSIG. Yes.

Mr. HADDAD. Could you give us in brief the relationship between Pancontinental and yourself?

Mr. MUESSIG. The joint venture is between Getty Oil Development Co. and Pancontinental Oil Co. It is a normal joint venture.

Mr. HADDAD. Is it 65 to 35 or what? What is the percentage of the relationship and who has management?

Mr. MUESSIG. Pancontinental has 65 percent and Getty Oil Development has 35 percent. Pancontinental manages.

Mr. HADDAD. And Mr. Grey is the director or president?

Mr. MUESSIG. Mr. A. J. Grey is the chairman of Pancontinental Mining.

Mr. HADDAD. Whom does he report to?

Mr. MUESSIG. To his shareholders.

Mr. HADDAD. What is Mr. Riddell's relationship to Mr. Grey?

Mr. MUESSIG. There is none.

Mr. HADDAD. And your relationship to Mr. Grey?

Mr. MUESSIG. There is none.

Mr. HADDAD. In other words, it is your contention that Pancontinental operates as a free entity in a joint venture?

Mr. MUESSIG. That is correct.

Mr. HADDAD. With no direction or control from Getty Oil Development Corp.?

Mr. MUESSIG. We have a business relationship with Pancontinental and we have responsibilities as do they, under our agreement.

Mr. HADDAD. Did you put up all the money, that is 100 percent of the money, for Pancontinental, that is, did you finance it entirely?

Mr. MUESSIG. No.

Mr. HADDAD. What was the relationship in the financing between Getty Oil Development and Pancontinental?

Mr. MUESSIG. Under our agreement we were required to spend 100 percent of the funds up to the first $1 million that we spent for

exploration. After that time the two parties spent money in the proportionate interest of 65 to 35.

At the time when we determined jointly that a discovery had been made, Getty Oil is required under the contract to put up funds until such time as Pancontinental can, that is, the words are "can or can be reasonably expected" to get its own financing.

Mr. HADDAD. Did there come a time when you became aware of the Australian Uranium Producers' Forum?

Mr. MUESSIG. Yes.

Mr. HADDAD. When was that?

Mr. MUESSIG. I cannot tell you exactly, Mr. Haddad. Probably sometime in 1973 or so.

Mr. HADDAD. What was your understanding of that organization?

Mr. MUESSIG. My understanding was that it was a producers group in Australia whose main purpose was public relations. A concerted effort was made to get from the Australian Government title to the properties, which none of us had.

It was a medium whereby the producers spoke to the Government. That is the main medium we had.

Mr. HADDAD. Did that forum have any relationship with any other international organization?

Mr. MUESSIG. We found out subsequently yes, that it did.

Mr. HADDAD. When did you find that out?

Mr. MUESSIG. In 1974.

Mr. HADDAD. What did you find out?

Mr. MUESSIG. We found out they were members of the international group.

Mr. HADDAD. The club?

Mr. MUESSIG. Yes.

Mr. HADDAD. What was the club, in your mind, at that time? What did you learn about the club? What did the club do?

Mr. MUESSIG. In 1974, that is, in September 1974, I found out that there are a group of countries and producers who had meetings regularly. They had a system whereby prices were set and markets allocated.

Mr. HADDAD. I would like to show you a document. It is the Office of Legislative Oversight and Analysis Document No. 18.

It is a letter to you dated September 11, 1974, from Mr. G. A. Mackay, chairman, Australian Uranium Producers Forum.

Mr. GORE. Without objection, that document will be inserted into the record at this point.

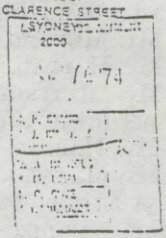
[The document referred to follows:]

Ex # 4

PANCONTINENTAL MINING LIMITED (INCORPORATED IN QUEENSLAND) OLOR #18

TELEPHONE: 29 1958
TELEX: AA 22852

9th FLOOR
40 CLARENCE STREET
SYDNEY 2000



September 11, 1974

Dr S. Muessig,
Getty Oil Company,
3810 Wilshire Boulevard,
LOS ANGELES CALIFORNIA 90010
U.S.A.

Dear Sig,

Pursuant to our telephone conversation today, I think it would be most desirable for Getty to join the Australian Uranium Producers' Forum. The Forum is an unincorporated association in Australia of all the potential uranium producers, save and except for Mary Kathleen and the Lake Frome joint venture. In its capacity of representing Australia the Forum is also a member of SERU, the international uranium producers' club. SERU consists of South Africa, Canada, France, Australia and RTZ and purports to act for and on behalf of the uranium industry in the western world outside of the U.S.A.

I brought up the question of Getty's membership at the last AUPF meeting. The Chairman stated that if Getty sent a letter requesting membership that it would be discussed by the Forum. I think that it would be in order, subject to your domestic legal requirements being satisfied and your decision to seek membership, that you write a letter to the Forum indicating your willingness to join. Pancontinental would be most pleased to recommend highly to the Forum that you become a member.

The person to write to is:

Mr G.A. Mackay
Chairman
Australian Uranium Producers' Forum
C/- Electrolytic Zinc Company of
Australasia Limited
390 Lonsdale Street
MELBOURNE 3001 AUSTRALIA

I enclose for your information a copy of a letter from Mr Mackay to me outlining the functions of the AUPF, together with a draft copy of the Constitution. I would appreciate it if you would keep both documents in the strictest confidence.

DEFENDANTS Exhibit 11 For Ident. 4/18/77

Best regards,

Tom

000000

AJG/ej

Encl. 2

ELECTROLYTIC ZINC COMPANY OF AUSTRALASIA LIMITED

TELEPHONE: 60 0881
TELEX: AA30463
TELEGRAMS & CABLES "ELECTZINC" MELBOURNE

G.P.O. BOX 6156K, MELBOURNE
AUSTRALIA, 3001

REGISTERED OFFICE:
390 LONSDALE STREET,
MELBOURNE, AUSTRALIA, 3001

26th June, 1974.
GAM:S

Mr. A.J. Grey,
Chairman and Managing Director,
Pancontinental Mining Limited,
6th Floor,
40/50 Clarence Street,
SYDNEY, N.S.W. 2000

Dear Mr. Grey,

AUSTRALIAN URANIUM PRODUCERS' FORUM

Thank you for your letter of 24th May, 1974, from which I was pleased to note your interest in the Australian Uranium Producers' Forum. Your application for Membership was considered by the Forum at the meeting held on 31st May.

The object of the Forum is to provide an opportunity for all significant potential Australian uranium producers to discuss matters of common interest and to provide a mechanism whereby the members can present a unified and industry-based point of view. We believe that we may still have an opportunity, and certainly have a duty, to contribute to the orderly and rational development of the uranium industry, both nationally and internationally. We have seen Pancontinental develop into a position of major significance in the Northern Territory uranium area. As a consequence, the Forum has asked me to invite you to become a member of A.U.P.F.

For your information, I give below some of the salient points concerning the Forum: -

(a) The Forum is an informal body and relies on the understanding, goodwill and co-operation of its members.

(b) Although the Forum is essentially informal, each member is requested to accept the Constitution, a copy of which is attached. You will be requested to indicate to the Forum your acceptance of the Constitution by signing and returning the copy of the Constitution attached to this letter.

(c) It has been agreed that all costs will be shared equally by Forum members. The Forum is currently operating on an annual budget of $42,000. Pancontinental's share of this would be one-sixth.

(d) The Forum is an active supporter of the International Club. Membership of SERU (the Club) is based on a national representation and includes the main world producers outside the U.S.A.

(e) Under the "Club" rules each national group is given the opportunity of meeting a pre-determined share of the total non-U.S. world market. These quotas are agreed to by the members and every effort is made to fill the quota allocations evenly. This worked well in the past, but has become rather academic in today's market conditions.

(f) The "Club" Secretary is located in Paris. The Club consists of a "Policy Committee" and an "Operating Committee". The Chairman of the Forum is the official Australian spokesman on the Policy Committee, but all members of A.U.P.F. are invited to attend "Policy" meetings which are held once or twice a year. The "Operating Committee" consists of eleven: two each from the national groups and the Secretary.

Australia's representatives on the Operating Committee at present are Barry Lloyd and Peter Stork.

(g) Barry Lloyd is the Secretary of A.U.P.F. and is responsible for the co-ordination and distribution of communications both here in Australia and with the Club in Paris.

(h) In addition to the market intelligence flowing through the Club, it has been decided to establish a public body to be known as the Uranium Institute. The Uranium Institute will provide a forum for all those interested in the nuclear fuel cycle and will provide an opportunity for the industry to undertake more research into the future supply/demand picture and the long term trends in the industry.

I hope that the above will give you a brief insight into the workings of the Forum. We look forward to your active participation and we feel sure that your views will be of great benefit.

Please let me know if I can be of any further help.

Yours sincerely,

G.A. MACKAY,
CHAIRMAN,
AUSTRALIAN URANIUM PRODUCERS' FORUM.

OBJECTIVES

1. To act as a co-ordinating body for the Australian uranium industry as a whole in discussions with, or representations to, various Australian Government Departments or Authorities concerned with the industry.

2. To perform a similar function to (1) above in relation to discussions with participants in the international and Australian uranium industries.

3. Generally to promote the development of a viable Australian uranium mining industry and the interchange of uranium production, supply-demand and other statistical data on a world basis.

MEMBERSHIP AND VOTING RIGHTS

4. The membership shall comprise the following Companies and any additional Companies admitted to membership pursuant to Clause 5 hereof, each of which shall have equal voting rights :

Electrolytic Zinc Company of Australasia Limited
Noranda Australia Limited
Peko Mines Limited
Queensland Mines Limited
Western Mining Corporation Limited.

5. The Forum may invite other Australian-based Companies considered to have potential for significant uranium production from domestic resources to become members of the Forum.

ORGANISATION

6. The Forum shall operate through a General Committee comprising not more than two representatives from each of the Member Companies. There shall be a Chairman and Deputy Chairman of the General Committee and other members thereof shall be known as Ordinary Members.

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7. The Member Companies shall nominate one of their representatives on the General Committee as Senior Representative and all of the Senior Representatives shall comprise an Executive Committee who shall from time to time meet to elect office bearers of the General Committee and shall also meet when necessary for important "ad hoc" or policy discussions. A Member Company may appoint an alternate for any Senior Representative.

8. The Chairman and Deputy Chairman shall be elected every two years by the Executive Committee.

9. The two persons holding the posts of Chairman and Deputy Chairman concurrently shall not belong to the same Member Company or Joint Venture.

10. In high level discussions on behalf of the Forum with any Commonwealth Government Department or Authority (say at the Minister, Secretary or Commissioner level) at least two of the following persons, namely the Chairman, Deputy Chairman or another Member of the Executive Committee shall attend together.

11. A Representative and Deputy Representative shall be appointed to attend the Operating Committee meetings of the International Uranium Producers' Association. In the event of a Secretary ex officio being appointed under Clause 14 then such Secretary shall automatically become the Representative to the Operating Committee and the Deputy Representative shall be appointed for a period of two years. In the event of the Forum failing to appoint a Secretary ex officio then the Representative and the Deputy Representative shall be elected for a two year period provided, however, that the first elected Deputy Representative shall hold office for one year only. Thereafter the Deputy Representative shall be elected every two years in similar fashion to the Representative.

12. In the event of a Secretary ex officio not being appointed then each of the Representatives and Deputy Representatives to the Operating Committee shall assume the role of Forum Secretary for a period of one year. This shall occur during the second year of their two-year term, except in the case of the first elected Deputy Representative when it shall occur in his one year term.

26-608 O - 78 - 2

13. The Forum Secretary's responsibilities shall include :

(i) handling of all necessary arrangements for Forum meetings in collaboration with the Chairman and/or Deputy Chairman;

(ii) preparation of agenda and summarised discussion notes for each Forum meeting and

(iii) liaison with the International Uranium Producers' Association as necessary and distribution of all telex, written communications and other relevant data to Member Companies.

14. The Executive Committee may appoint a Secretary ex officio for a period of one year or such longer period as may be agreed. Such Secretary need not be a representative of a Member Company.

MEETINGS

15. Meetings of the General Committee shall be known as "Forum Meetings" and shall be held at such times as the Member Companies determine.

16. Meetings shall be held, provided that it is convenient in rotation at the offices of the various Member Compa

REIMBURSEMENT OF EXPENDITURE

17. The Secretary shall arrange for (a) the transmittal to Member Companies on a quarterly basis, invoices coverin reimbursement for out-of-pocket expenditure, such as attendance at overseas meetings, telex messages and postage, incurred by any one or more of the Member Companies, and (b) financial contributions arising from the Forum's participation in the International Uranium Producers' Association, as authorised by the Forum.

18. Expenses shall be shared equally between all Member Companies. By agreement the allocation of expenses may be changed at a later date to a different basis which may, for example, be related to actual sales tonnages achieved.

AMENDMENTS TO CONSTITUTION

19. The Constitution may be amended by resolution passed by Member Companies, each being entitled to one vote only, attending a meeting at which all Companies are represented and at which no more than one dissenting vote is recorded against the resolution.

RELEASE OF INFORMATION

20. The release of information about Forum affairs shall, unless the individual member is obliged by law to make disclosure, be by the Forum itself and not by an individual member.

Dated this day of 1974

Signed on behalf of PANCONTINENTAL MINING LIMITED

by

Mr. HADDAD. Are you familiar with that document?

[Witness examines document.]

Mr. MUESSIG. I am familiar with this document. It is not a letter to me from Mr. Mackay.

What I have in front of me—it is to me from Mr. Grey.

Mr. HADDAD. Attached to it is a memo, a letter to Mr. Grey from Mr. Mackay. I stand corrected.

Did there come a time—I would like you to keep that document in front of you.

Did there come a time when the Getty Oil Co. desired to participate in the Australian Forum?

Mr. MUESSIG. Yes; that is correct.

Mr. HADDAD. Why?

Mr. MUESSIG. For the reasons I have mentioned previously. The Forum was a voice that we felt could speak most effectively to the Government in the whole areas of trying to get the industry off the ground and to try to get title. We had no title. That is an important thing in all the industry.

Mr. HADDAD. Was that the only reason?

Mr. MUESSIG. That was the only reason that we were interested in, yes.

Mr. HADDAD. Did not the Forum, through its participation in the club, participate in the allocation of world quotas, as well as quotas within Australia and that some of your competitors had more than one member of the board of the forum and that you thought that with Pancontinental on the board that they were not as effectively represented and that you could be there and you could get your piece of the action?

Mr. MUESSIG. That is such a complex question. Break it up.

Mr. HADDAD. Let us refer to page 2 in the Grey, I mean, the Mackay letter. I address your attention to paragraph (e):

"Under the 'Club' rules . . ."—and this is coming from the chairman of the forum and it is coming to your president, that is, the president of your joint venture company and being sent to you—"Under the 'Club' rules each national group is given the opportunity of meeting a predetermined share of the total non-U.S. world market. These quotas are agreed to by the members and every effort is made to fill the quota allocations evenly. This worked well in the past, but has become rather academic in today's market conditions."

I would like to refer you now to the next paragraph, paragraph (f):

The "Club" Secretary is located in Paris. The club consists of a "Policy Committee" and an "Operating Committee." The chairman of the Forum is the official Australian spokesman on the Policy Committee, but all members of AUPF are invited to attend policy meetings which are held once or twice a year. The "Operating Committee" consists of eleven: two each from the national groups and the Secretary.

In other words, from our reading here and from the documents we have from the Gulf Oil Co., the club set world quotas so that they were consistent with world demand. At the outset there were 100,000 tons of uranium available and a demand for only 26,000 tons until approximately 1977.

The club set about to reduce world quotas and to raise world prices, so that you got less uranium at higher prices.

The way the club worked was that each country was allocated a portion of the quota. Australia's quota was allocated to the Forum and then within the forum they picked who would sell what amount of uranium.

Is that your understanding of how the forum and the club worked?

Mr. MUESSIG. I only know what I have read here.

Mr. HADDAD. Did you believe at the time that this was the way the club and the forum worked?

Mr. MUESSIG. I did not give it much thought because we were not members. We were not interested in being members. I have testified previously that we felt it was nonsense. I did not give it very much thought, nor did the company.

Mr. GORE. If counsel would yield briefly, Mr. Muessig, your name is on several of the documents that we have been looking at in preparation of this meeting. Perhaps you could shed a little more light on this than Mr. McCabe can.

Let me direct your attention to Document No. 6 and it will be placed in the record, without objection.

[The document referred to follows:]

5-6-075-097-00-0456

OLOR #6

TELEX

MARCH 30, 1973
LOS ANGELES

GEBTHEN AA24554
NORTH SYDNEY, AUSTRALIA

LAX 210 FOR RIDDELL.

ONE., STONAKERS CALLED ME 29TH AND WE PLAN TO MEET ON WEST COAST IN APRIL. NOTHING TO REPORT ON THAT SCENE FROM HERE UNTIL AFTER MEETING WITH KAISER AND AL NEXT WEEK.

TWO. REUR 401. WAS AWARE OF SANDLER'S OPINION. REFER YOU TO YOUR 13 APRIL 72 LETTER TO SYMMES AND YOUR AUGUST 18 TO GREY FOR FURTHER ENLIGHTENMENT ON DAVIES QUESTION. NOTE IN SYMMES' LETTER PREPARATION OF DAU PROGRAM WAS TO BE $3000 TO $5000. ACTUAL, ACCORDING TO MOTHERSPOON AUGUST 2, WAS $7564. AM NOT WILLING PAY to OVEREXPENDITURES THIS ITEM.

PROJECT MANAGEMENT ITEMS 4021-4025 WERE OVEREXPENDED $11,205 AND I DOUBT TH THESE DID GO "TO BENEFIT OF PROGRAM."

YOU HAVE ASK MY APPROVAL TO PAY OTHER ITEMS IF, REPEAT IF, YOU REALISTICALLY FEEL THAT YOUR SITUATION WOULD GET INTOLERABLE UNLESS YOU DO SO.

PLEASE WRITE GREY WITH COPY TO ME THAT IN FUTURE NO EXPENDITURES WILL BE PAID UNLESS PREVIOUSLY APPROVED BY YOU IN WRITING.

THREE. REMINISCENT REVACATION, HAVE FUN. McCABE'S TRIP DEFINITELY OUT AS WE WILL BE REPORTING TO NEW V.P., PAUL CARLSTON, STARTING APRIL 3. MEMO WILL FOLLOW ON THIS.

FOUR. OUR ACQUISITION PROCEDURE FILE DIED WITH LAX 70. WHAT IS STATUS FYI. GREY CALLED ME TWO DAYS AGO ABOUT OUR PURCHASING 10% ADDITIONAL INTEREST IN OUR JOINT PROPERTIES. CONSIDERING THAT WE HAVE RIGHT OF FIRST REFUSAL AND THAT THE MARKET FOR A 10% INTEREST MUST BE PRETTY SMALL, I DO NOT PROPOSE THAT WE MAKE AN OFFER. I WILL CALL GREY APRIL 5 AND TELL HIM

A21.16 A07.10 1973 031356
A07.10 A02.21 ~~[illegible]~~ A21.72-2

DEFENDANT'S 47
Exhibit
For Identification
L. A. R. Jr. 4-19-77

WE CANNOT PLACE A VALUE ON THE PROPERTY BUT WILL CAREFULLY REVIEW AN OFFER HE MIGHT MAKE OR ANY HE MIGHT RECEIVE FROM THIRD PARTIES. I MADE ALTERNATE PROPOSAL THAT WE WOULD CARRY HIM FOR AN ADDITIONAL SUM IN RETURN FOR BECOMING OPERATOR. HE WAS NOT ENTHUSIASTIC BUT MAY BECOME MORE REALISTIC AS HIS NEEDS GET MORE BINDING. PLEASE GIVE ME YOUR VIEWS EARLIEST AND SOME BALL PARK ESTIMATE OF WHAT THE PROPERTY MIGHT BE WORTH. KLEIN RECOGNIZES THAT ANY INTEREST SALE WOULD BE SUBJECT TO GOVERNMENT APPROVAL.

SIX. REF 404. AGREE ON STUDY. WHEN IS 1973 BUDGET COMING OUT?

SEVEN. ARE STILL WAITING ON REPORT OF LAST SEASON'S WORK FROM PANCON. IS IT EVER COMING OUT?

EIGHT. WE ARE MISSING SID 399. MAY WE HAVE COPY.

REGARDS.

MUESSIG

KLEIN

APPROVED FOR RELEASE:

Mr. GORE. I would like the witness to be given Document No. 6.

[Witness examines document.]

Mr. GORE. This appears to me to be a telex from you to Mr. Riddell, the operating officer in Australia with Pancontinental. You say: "Please write Grey with copy to me that in future no expenditure will be paid unless previously approved by you in writing."

Is that correct?

Mr. MUESSIG. Yes.

Mr. GORE. Does that indicate a large degree of control by Getty over Pancontinental's decisions?

Mr. MUESSIG. No; I would not say that does. Under our agreement, Getty Oil has the responsibility for approving moneys that are spent.

I am not sure at what stage in our joint venture we were in 1974. I think we were still putting up all the money, but I would have to look at the record to be sure.

It is no different from any of our joint ventures that we have.

Mr. GORE. But at any rate you sought to assert veto power over any expenditures by Pancontinental; is that correct?

Mr. MUESSIG. I have stated in this telex that we wanted it proven in writing.

Mr. HADDAD. That seems to be a little bit in contrast with what you said earlier when I was trying to establish the management control of the Getty Oil Development Co. and Pancontinental.

It would seem that you were into management decisions relatively deeply if you controlled expenditures.

Mr. MUESSIG. I do not think that is inconsistent. Our operating agreement, which is basically no different from any that we have with other joint venture partners, calls for certain responsibilities. As long as we were spending the money, then we had to approve of those funds.

Mr. HADDAD. How deep did this approval go? Was it major or minor expenditures or what?

Mr. MUESSIG. You would have to have some records. We had to approve the budget.

Mr. HADDAD. Broad policy rather than intimate daily details?

Mr. MUESSIG. There were no intimate daily details involved.

Mr. HADDAD. I would like to show you a document, OLOA No. 34, a letter to you from Mr. Grey dated May 6, 1976.

Would you look at that a moment and tell me what "Fuel Trac" services is?

[Witness examines document.]

Mr. GORE. Without objection, that document will appear in the record at this point.

[The document referred to follows:]

PAN CONTINENTAL MINING LIMITED OLOA #34

(INCORPORATED IN QUEENSLAND)

TELEPHONE: 27 1136 (3 Lines)
TELEX: AA 22652

ADMINISTRATION OFFICE
16th LEVEL
No. 1 YORK STREET
SYDNEY 2000

May 6, 1976

Our Ref: 6-101-7

COMPUTER DEP
MAY 06 '76
TYPE | MAINT
JA | INT
JMC | CAN
HF | EB
DSK | INT
CAL |
FILE SAL 226

Dr S. Muessig,
Getty Oil Company,
3810 Wilshire Boulevard,
LOS ANGELES
CALIFORNIA 90010 U.S.A..

Dear Sig,

I think it would be a good idea for us to subscribe to the "Fuel Trac" services offered by Nuclear Assurance Corporation. Peter Moore and Peter Stork should have access particularly to the computer print out data it provides. This will be important for our initial discussions with the Government but even more important in connection with the actual marketing in view of the fact that the Australian Atomic Energy Commission has a data bank for marketing information. Since we will be in an adversary stance to some extent, vis-a-vis the AAEC and its views on market price, the joint venture should have access to the best information available.

Would you kindly let me know whether you agree that the joint venture should go ahead and take the Fuel Trac services. I would suggest that one subscription would be sufficient and that the material be xeroxed.

I attach hereto a copy of the memorandum which Peter Stork wrote recommending the subscription.

I would appreciate an early decision on this matter since Peter needs the print out data to assist us in compiling our final marketing submission to the Department of National Resources. We propose to compile our submission as soon as Peter Stork and Peter Moore return from Europe at the end of May.

Best regards,

Tony

c.c. D. Carlos
P.R. Stork

Enclosure

CALT = A.001580

DEFENDANTS 48
Exhibit
For Ident.
L.R.L. Jr. 11-17-77

Mr. MUESSIG. As far as I know, "Fuel Trac" is a service which is sold.

Mr. HADDAD. What does it cost? It is a trade magazine or a trade service which sells for what, approximately $500 a year?

Mr. MUESSIG. I cannot answer that question.

Mr. HADDAD. Roughly, $1,000?

Mr. MUESSIG. I do not know what the services cost. We bought one particular package, but what the regular service costs were, I cannot tell you.

Mr. GORE. If counsel will yield again briefly, there are two threads here. One is Getty's direct participation in the cartel in the United States which as the records, I believe, will show, your lawyers considered and rejected.

The second is the participation through the Australian AIF by Pancontinental.

In developing that second threat, it is important to know exactly how much responsibility Getty, here in America, had over the decisions made by Pancontinental.

This document that Mr. Haddad has just put into the record seems to indicate that Pancontinental had to have your permission even to buy a magazine.

Mr. MUESSIG. I do not think this is a magazine.

Mr. GORE. What is it? What is "Fuel Trac" services?

Mr. MUESSIG. We bought a package.

Mr. GORE. It refers to a subscription.

Go ahead; excuse me.

Mr. MUESSIG. We ended up buying the package that I think cost $7,500.

Mr. HADDAD. Our information is that this particular expenditure was a request for $500.

In fairness, the inconsistency, Doctor, is that at the outset you established the independence of these corporations. We have a series of documents that we have introduced and can introduce that shows, in effect, you were in bed together and that Mr. Riddell did not do anything without your permission. In fact, he was relegated to being a lobbyist at a later point in the development.

Do you have any comment on that?

Mr. MUESSIG. I am not sure what you mean by "being in bed together." We had a normal business relationship.

Mr. HADDAD. In which he did not move, that is, in which Pancontinental did not move without Getty's direction, that is, Getty Oil Development's direction.

Mr. MUESSIG. I cannot comment when you say that "Pancontinental did not move." They moved quite freely.

Mr. HADDAD. They are asking you if they can subscribe to a service. That is not a major budget annual policy decision. That is a minor decision.

I do not want to harp on this.

Mr. MUESSIG. I do not remember why the request was made. This sort of thing was, that is, if this represents a $500 expenditure, then it did not normally come to us. I think there were some other considerations in connection with "Fuel Trac."

Mr. GORE. The witness will suspend briefly. The Chair is constrained to enforce the rule even though the Chair disagrees with the rule.

The Chair is constrained to enforce the rule of banning cameras from the hearing room because the witnesses have invoked rule 11.

The Chair would request that members of the news media with cameras comply with the rule voluntarily so that we will not have to enforce it with a representative of the sergeant at arms.

Pleased proceed.

Mr. HADDAD. I want to read into the record one paragraph, Mr. Chairman. It is from the May 6, 1976, letter from Tony Riddell to Dr. Muessig. It is addressed to him at the Getty Oil Co.:

Would you kindly let me know whether you agree that the joint venture should go ahead and take the Fuel Trac services. I would suggest that one subscription would be sufficient and that the material be xeroxed.

Throughout the documents that we have read, it would appear that you and your agent, Mr. Riddell, really controlled Pancontinental's movements and actions.

Now I would like to move to the second thread.

Would you, in your own words, describe to us so I do not have to put a lot of documents in the record, your attempts to get into the forum and through the forum into the cartel and let us know what happened and why you did not get into the forum and through the forum participate in the cartel?

Mr. MUESSIG. We were not interested at the outset. I should say that we were interested in getting into the forum. We were not interested in getting into the cartel.

Mr. HADDAD. Let us clarify that.

Did you know that the forum was a member of the cartel? I do not want to play word games. Did you know that the forum was a member of the cartel? Yes or no?

Mr. MUESSIG. When?

Mr. HADDAD. In 1974 when you received this document.

Mr. MUESSIG. This is the first time I knew about it, yes.

Mr. HADDAD. When did you start negotiating to get into the cartel, into the club?

Mr. MUESSIG. I think the record shows sometime in 1974 we started looking at the question of joining the AUPF. There were no negotiations involved in this. Our partner urged us to join. We saw business reasons for joining, which I have stated.

Mr. HADDAD. You saw business reasons for joining, and you tried to get in; is that correct?

Mr. MUESSIG. That is correct; I saw business reasons for joining the AUPF, but did not try to get in. We never tried to get in. We never made application to join.

Mr. HADDAD. There is a whole series of documents from you and Mr. Riddell back and forth saying, "Yes, we would like to get in."

Mr. MUESSIG. That is different from trying to get in. We never made application to get in.

Mr. HADDAD. Why did you not make application to get in?

Mr. MUESSIG. Why did we not?

Mr. HADDAD. Yes.

Mr. MUESSIG. We were advised, as a result of these papers we have in front of us, that it was not proper for us to join.

Mr. HADDAD. Would you expand on what you mean by 'not proper for us to join"?

Mr. MUESSIG. Our legal counsel told us as a matter of policy that we should not join.

Mr. HADDAD. What is that?

Mr. MUESSIG. On the basis of legal advice.

Mr. HADDAD. What was the legal advice; that you would be breaking the Sherman antitrust law or what? Why did counsel tell you not to join?

Mr. MUESSIG. It posed legal risks that we should not take. It is a legal decision. I am not a lawyer.

Mr. HADDAD. Do you have that decision? Did you read the decision?

Mr. MUESSIG. Yes.

Mr. HADDAD. Did it talk about antitrust violations?

Mr. MUESSIG. Yes.

Mr. HADDAD. Criminal antitrust violations?

Mr. MUESSIG Yes.

Mr. HADDAD. Because the cartel was in operation and the forum was a member of the cartel and that you would expose yourself unnecessarily to antitrust?

Mr. MUESSIG. That is correct.

Mr. HADDAD. Basically you did not get in because the lawyers said it would break U.S. antitrust laws?

Mr. MUESSIG. Yes.

Mr. KOPPELL. When you say you did not get in, who were you referring to?

Mr. MUESSIG. Getty Oil Co.

Mr. KOPPELL. But Pancontinental was a member of the forum; was it not?

Mr. MUESSIG. That is correct.

Mr. KOPPELL. You were informed of the activities of Pancontinental; were you not?

Mr. MUESSIG. What kind of activities?

Mr. KOPPELL. All the activities.

Mr. MUESSIG. We have never been informed of all activities.

Mr. KOPPELL. Were you informed of the activities of Pancontinental and its participation in the forum?

Mr. MUESSIG. Only insofar as the forum was the very important medium for pushing the business interests in Australia of the producers, or would-be producers.

Mr. KOPPELL. You were aware in 1974, at least, that the forum was a participant in the club or the cartel; is that right?

Mr. MUESSIG. We made that very clear. We became aware of that with this letter that came from Tony Grey.

Mr. KOPPELL. After you became aware of that, did you request further information from the Pancontinental joint venture in which you participated as to the nature of what the cartel was doing at that time?

Mr. MUESSIG. No.

Mr. KOPPELL. Did you ever receive documents with respect to minutes or summary of minutes of the activities of the cartel?

Mr. MUESSIG. No.

Mr. KOPPELL. Never?

Mr. MUESSIG. No.

Mr. KOPPELL. You never asked anybody working in Pancontinental, that is, the joint venture that you were a minority interest in, that is, you never asked them what they were doing when they met in London or Paris or Johannesburg or wherever?

Mr. MUESSIG. I am not aware that they necessarily met. We have never asked such questions.

Mr. KOPPELL. You were never told by Pancontinental what prices were established on the world market by the cartel?

Mr. MUESSIG. No.

Mr. KOPPELL. Thank you, Mr. Chairman.

Mr. HADDAD. That is a little hard to believe, obviously.

There was a second reason why you did not get into the cartel. Would you like to explain that for us? Were you not blackballed by the club? I am sorry, were you not blackballed by the forum?

The other powerful members of the forum exerted their influence and you were told, just about this time, that you could not get in?

Mr. MUESSIG. I think the timing is important. We had made the decision that we would not apply for membership. We found out, just shortly afterwards——

Mr. HADDAD. A day or two later?

Mr. MUESSIG. Yes; I think that is right. You have the record.

Mr. HADDAD. The letters crossed in the mail; is that correct?

Mr. MUESSIG. I think that is correct, yes.

Mr. HADDAD. So within approximately a 48-hour time frame your lawyers told you it would violate antitrust laws and the Australians told you that you were blackballed; is that right?

Mr. MUESSIG. Sure.

Mr. HADDAD. It is your testimony that it was the antitrust decision that kept Getty out of the cartel?

Mr. MUESSIG. The record is clear on that point. We received this material from Mr. Grey, that is, the Mackay material, and when I saw it I took it immediately to our counsel. Our counsel immediately, the same day, reacted and told us no. That was it.

Mr. HADDAD. It was that clear a decision? It was that clear a violation of the antitrust laws that within 24 hours they could tell you?

Mr. MUESSIG. I am sorry.

Mr. HADDAD. It was such a clear violation of U.S. antitrust laws—by clear violation I mean Getty's participation in the Forum which was a member of the club.

It was such a clear violation that within 24 hours counsel told you that you could not go in; is that correct?

Mr. MUESSIG. I cannot make a judgment as to how clear that was. Our counsel's recommendation to us was very clear to me. We acted accordingly.

Mr. HADDAD. It is your feeling that it was the last letter from Mackay that did it?

Mr. MUESSIG. That is not my feeling. I reacted immediately and took it to our counsel. Our counsel, the same day, said no. That was it.

Mr. HADDAD. All right.

Subsequently, Pancontinental remained in the forum; is that correct?

Mr. MUESSIG. Yes; I think they are a member of the forum.

Mr. HADDAD. Did they keep you advised as to the forum's activities?

Mr. MUESSIG. Only insofar as the forum's activities involved discussions with the Australian Government and public relations work.

Mr. HADDAD. They did not inform you of the allocation given to Australia or of the prices set by the cartel?

Mr. MUESSIG. Never.

Mr. HADDAD. I want to put into the record one other item. It is the Office of Legislative Oversight and Analysis Document No. 23.

It is from Dr. Muessig to Mr. P. E. Carlton, who I believe was the successor to Mr. McCabe. It is dated October 1, 1974.

Mr. GORE. Without objection, that document will be placed in the record at this point.

[The document referred to follows:]

10/8 copy: MY [illegible] - F Y.I
cc PEC

OLOA #23

OCT - 2'74

October 1, 1974
Los Angeles

TO: MR. F. E. CARLTON

FROM: S. MUESSIG

SUBJECT: AUSTRALIAN GOVERNMENT URANIUM POLICY

On September 26, Mr. Connor, the Australian Minister for Minerals and Energy, announced in Parliament that he will recommend to the Cabinet that the Australian AEC build and operate a uranium mill in the Northern Territory having a capacity of 7 million pounds U_3O_8 per year. Plant construction would start soon with first yellowcake production slated within 3-1/2 years. He will recommend that all U_3O_8 sales be made on a "government to government basis" and that the uranium export embargo should be kept on for at least the next 2-1/2 years. He stated that "due consideration will be given to the work that has been done by the respective mining interests."

Mr. Connor has given no amplification of his statement nor has he yet been willing to meet with representatives of the industry to explain his proposed policy.

If we assume that his reference to the work of the companies, implies an allocation of production based on present reserves held by companies, we estimate that the Pancon/Getty share of production would be at the rate of 800 to 900 tons of ore per day. Assuming further that our initial production would come from an open pit at Jabiluka One at 900 tons a day, our annual production would be in the order of 1.5 million pounds of yellowcake.

It is not clear from Mr. Connor's announcement whether the AAEC intends to buy the ore from the companies prior to processing or whether it intends to toll mill the ore through the mill and allow the companies to sell on the open market. However, Connor stated in Parliament yesterday that he will not accept the present royalty rates, which are 1.5%. The implication read into his statement by Tony Grey is that Connor may be thinking of a toll mill with increased royalty rates on the yellowcake.

The proposed rate of production, 7 million lbs/year, considering that Australian uranium reserves now stand at about 600 million pounds, is a drop in the bucket, and I think it can safely be assumed that this rate of production - even if Government keeps full control - would be materially increased in the late '70's and early '80's. (Australian anticipated cumulative demand through the year 2000 is estimated to be about 70 million pounds.)

According to Mr. Grey of Pancon, the proposed policy by Connor does not require Parliamentary approval but does require approval by the Labor Cabinet and by Labor Caucus, which is made up of all the Labor members of the Parliament. Prior to Caucus review, the proposal will be reviewed by the 11-man Resource Committee of the Caucus, several of whose members have voiced dissent.

The Australian Uranium Producers Forum, made up of all Australian reserve holders except Rio Tinto, Getty Oil and Western Nuclear, met on September 23.

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and will issue a press statement shortly. Additionally, the Forum has asked for an urgent interview with Mr. Connor to seek amplification of his proposed policy. In the meantime, the Forum is mounting a press campaign in which it will attempt to characterize Connor's policy as "nationalization" of the industry. The thought is that if the policy can be so characterized, the Labor Government might back off because of its extreme sensitivity to the worsening economic situation in Australia. Part of the press campaign will emphasize the economic benefits accruing to Australia from the early exploitation of its uranium resources.

There is no way of predicting now whether this proposed policy will be adopted by the Government. There has been strong reaction in the press against it, but we have to recognize that the Government is left-wing and instituting such a policy is fully in keeping with some of its past statements.

However, according to one press report, there is a strong school of thought within the Labor Party that would like to see far less direct Government involvement in the industry with the Government's share coming instead from much higher royalty rates, and a rapid rate of exploitation.

Our joint venture partner, through Tony Grey, has in the last two years made many friends in the Australian financial and political communities, and among representatives of the news media. We can take comfort in this and in the fact that he has kept his fences well mended. He is now spending most of his time in lobbying efforts and, I feel, doing a good political job for our joint venture.

I will keep you posted as new developments occur.

SM:jj

cc: Mr. J. C. Sample

Mr. HADDAD. I draw your attention to the final paragraph.

This postdates your decision. This is about 1 month after you decided not to get in; is that approximately right?

[Witness examines document.]

Mr. MUESSIG. Yes; it is 1974.

Mr. HADDAD. I will quote from it:

Our joint venture partner, through Tony Grey, has in the last two years made many friends in the Australian financial and political communities, and among representatives of the news media. We can take comfort in this and in the fact that he has kept his fences well mended. He is now spending most of his time in lobbying efforts and, I feel, doing a good political job for our joint venture.

When I referred to his role being that of a lobbyist rather than a manager, it was that paragraph in the correspondence that I was referencing.

Do you have any comment?

Mr. MUESSIG. I thought you previously said Mr. Riddell. You are referring now to Tony Grey.

Mr. HADDAD. I am sorry.

Mr. MUESSIG. I have no comment on that. Three years ago that represented my view. That was perfectly legitimate at that time in the middle of the Labor government for our partner to take this kind of a stand.

Again, I want to emphasize that we had no title. The government was not giving us any approvals. The industry was languishing and we had a considerable investment. Mr. Grey, as our partner, was using all his efforts to try to get our venture off the ground.

Mr. HADDAD. What has troubled us in questioning of American companies is that there seems to be a pattern of associated companies of the cartel. You were in through Pancontinental, indirectly.

Mr. MUESSIG. We were not in the cartel.

Mr. HADDAD. You were not in the cartel in the literal sense, but indirectly represented in the cartel. You are saying that the flow of information did not come—when you are asked for permission to subscribe to a magazine and you were that deep into financial affairs it is difficult to believe you did not know what is going on politically. I have other documents here which indicate the daily visits to the political parties. You were deep into that.

Yet you did not get a word back on world prices and world quotas and information about your quota within a quota. We call that associated membership, indirect membership, a pattern for American companies.

Thank you, Mr. Gore.

Mr. GORE. Were you disappointed when you could not join the cartel?

Mr. MUESSIG. Yes, and you have the record on that. I had urged that we join the AUPF. We are not talking about the cartel. We are talking about the AUPF. I was disappointed for business reasons.

Mr. GORE. They were members of the cartel; correct?

Mr. MUESSIG. We are talking about Getty Oil Co. possibility of joining the AUPF and not the cartel. We did not know.

When I was urging and when the Getty Oil Co. was considering joining the AUPF, we had no knowledge of its activities with the outside group.

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Mr. HADDAD. Just to emphasize what you said before, you said you became aware in September 1974 that they were members of the club. You subsequently said, and have written, that you were disappointed that you could not get in.

So, at the time you were disappointed you knew that they were a member of the club.

Mr. MUESSIG. That is correct and I said I was disappointed for perfectly good business reasons.

Again, I want to emphasize that we had no title. The AUPF was the vehicle for working with the Government and for that reason, and that reason alone, I was disappointed like anyone would be.

Mr. GORE. By "good business reasons" you mean the fact that profits could be greater in the absence of competition?

Mr. MUESSIG. I do not know what kind of involved thinking goes into that question.

Mr. GORE. Please comment on that. Is that not what you mean by good business reasons?

Mr. MUESSIG. Mr. Gore, we had no material to sell. We had no title. The good business reasons were for us to do anything we legitimately could do to gain title for the company. Those are the business reasons. We had nothing to sell. We were not even worrying about selling anything at that time.

Mr. HADDAD. To clarify, you had to get the Australian Government's permission to sell uranium overseas; is that right?

Mr. MUESSIG. No. What we were worrying about at that time was gaining title to our ground.

Mr. HADDAD. You were still in the legal debate as to whether you had legal title to the land that you were planning to exploit; is that right?

Mr. MUESSIG. We had no title. We had an exploration license which only gave us rights to explore and nothing more. We do not even have that now. We had no rights to mine and no rights to begin production.

Mr. HADDAD. Why?

Mr. MUESSIG. The Government would not give them and has not to this day.

Mr. GORE. Let me clarify the point.

In fairness you referred to "business reasons." That was the source of your disappointment. That is the explanation of your disappointment for not being allowed to join the cartel through the group in Australia.

By that you meant that you thought you could gain title to uranium within Australia through membership in the Australian group; is that right? You were not looking forward to active participation in bid rigging and the rest; is that right?

Mr. MUESSIG. I do not like to get tied up in words either, Mr. Gore.

I stated, and I state now, that we were interested, and I was interested, in having Getty Oil Co. join the Australian Uranium Producers" Forum, not the cartel, for perfectly good business reasons. Those business reasons, I repeat, were the AUPF being the vehicle for the producers to try to lean on the Government and get the industry off the ground.

Mr. GORE. Your statement is that you did not know that the Australian group was a member of the cartel until September 1974; is that correct?

Mr. MUESSIG. That is correct.

Mr. GORE. To elaborate on the record, I would like to introduce into the record, without objection, Document No. 27, a letter from you to Mr. Grey with Pancontinental Mining Ltd.

[The document referred to follows:]

OLOA #27

SC

October 23, 1974

Mr. A. J. Grey
Pancontinental Mining Limited
60 Clarence Street
Sydney, Australia 2000

Dear Tony:

Thanks very much for sending me a copy of the letter from Mr. Mackay to you regarding membership in the Producers Forum for Getty Oil.

Paul has probably already told you that, in the opinion of our Law Department, membership in the Forum is impossible for us. I had another talk with Jack about this yesterday and he feels that there is absolutely no chance for us to apply for membership.

I personally am very sorry about this as I feel membership for us could be helpful from a business standpoint. However, the legal aspects seem to be clear-cut and we, therefore, have to bow to the opinion of the Law Department.

I quite agree with you, incidentally, that the Forum's view that we would not be eligible for membership is unwarranted. Of course, this is all academic now anyway.

It is too bad that the Forum is dominated by E-Z and Peko but I take some comfort in the fact that we are represented - albeit indirectly - by the forceful and articulate Chairman of our partner.

Kind regards.

Sincerely,

SPECIALLY CONFIDENTIAL
PRODUCED UNDER STIPULATION RE
SUBPOENAS DUCES TECUM AND
ORDER FILED 4/7/77
U.S. DIST. CT., C.D.CAL.
MISC. NO. 5412

CH:jj

bcc: Mr. P. A. Riddell

000763

DEFENDANTS
Exhibit
For Ident.

Mr. GORE. We will provide a copy to the witness.

[Witness examines document.]

Mr. GORE. I will not elaborate, but I would note in paragraph 3 and 5 you say:

I personally am very proud about this as I feel membership for us could be helpful from a business standpoint. However, the legal aspects seem to be clear-cut and we, therefore, have to bow to the opinion of the Law Department.

Skipping down you conclude:

It is too bad that the Forum is dominated by D-Z and Peko but I take some comfort in the fact that we are represented—albeit indirectly—by the forceful and articulate Chairman of our partner.

This is dated October 23, 1974, after you stated that you were aware that they were members of the cartel.

Mr. MUESSIG. That is correct. This is October 23.

Mr. GORE. At this point you were taking comfort from the fact that you were represented in the cartel indirectly by the forceful and articulate chairman of your partner company.

Did you have communications with the chairman of Pancontinental about the activities of the cartel after this date?

Mr. MUESSIG. Mr. Gore, I have testified and I will testify again that the chairman of Pancontinental did not advise us of any activities of the international group.

Mr. GORE. So, the answer to the question is no, you had no communications with Pancontinental about the activities of the cartel; is that right?

Mr. MUESSIG. That is correct.

Mr. HADDAD. I have one question to clarify the record. You know the uranium business relatively well. You have been in it since what year? How long have you been in the uranium business?

Mr. MUESSIG. Since 1966.

Mr. HADDAD. You know the business relatively well. You read the literature. You follow the press. You know who gets what, where, the range of discoveries and of other matters. You are knowledgeable about the uranium business.

When did you first learn about the cartel, that is, the Club?

Mr. MUESSIG. The first knowledge that I had of the existence of an international group was in a document that I saw in 1972 that came to us from our attorney in Brisbane, Australia, talking about, I guess, some of the initial meetings.

However, that document, which was a report to a senate subcommittee of the Australian Government, did not use any terms like "club" or "cartel" but it talked about some of the initial meetings.

That report, as I say, came in, I think, in April 1972. I read it. It went to the files. I frankly forgot about it until I saw it again in preparation for a deposition that I gave earlier this year.

Mr. HADDAD. So you never read anything about the cartel or learned anything about the cartel in 1973–74, in the media or in the press or in the specialized trade press or in conversations?

Mr. MUESSIG. I was aware of the existence of this group, yes, but I cannot tell you specifically where I got what information because it is a matter of common knowledge.

Mr. HADDAD. But you knew there was a club in existence?

Mr. MUESSIG. Yes.

Mr. LUKEN. Mr. Muessig, you have been testifying about an opinion from your law department. I do not believe we have that in the record. Do you have a copy of it?

Mr. MUESSIG. No.

Mr. LUKEN. Do you know what I am referring to?

Mr. MUESSIG. I do not have a copy of it.

Mr. LUKEN. Can you produce a copy at a later date for the committee while we hold the record open?

Mr. MUESSIG. Of course.

Mr. GORE. Without objection, so ordered.

[The document referred to follows:]

OLOA #

Los Angeles
September 26, 1974

TO: DR. S. MUESSIG

FROM: J. C. SAMPLE, JR.

SUBJECT: AUSTRALIAN URANIUM PRODUCERS CLUB

Please refer to certain materials which you recently forwarded to me, particularly the article from the Australian newspaper entitled "New uranium ball game confronts Mr. Connor" and the material received from Tony Grey relating to the activities of the club.

With this new information I feel it is necessary for me to now recommend that we should not become a member of the producers club since it would appear to involve unsatisfactory legal risks.

In addition, the newspaper article indicates that perhaps it would be unsatisfactory politically as well as legally to become a member of the club and I believe that we should be able to bow out gracefully on the basis of political concern and thereby avoid any major problems with the present members of the club. Tony Grey certainly knows the U.S. laws in this area and will understand why we have declined participation in the group.

JOHN C. SAMPLE, JR.

JCS:ems

Mr. LUKEN. We have established, Mr. Muessig, that the opinion was prepared prior to October 23, 1974, because you referred to it in your letter of October 23, 1974, about which you just testified.

Mr. MUESSIG. Mr. Luken, I am sorry. I was just told that the exhibit that you are referring to that you would like to see is No. 22.

Mr. LUKEN. No. 22 that we have?

Mr. MUESSIG. Yes.

I have a copy of it here [see p. 35].

Mr. LUKEN. Is Mr. Sample in your law department?

Mr. MUESSIG. Yes.

Mr. LUKEN. I will read the last paragraph so we will know what we are talking about. The first two paragraphs reference the new uranium ballgame. It says:

We should not become a member of the producers club.

Then the last paragraph says:

In addition, a newspaper article indicates that perhaps it would be unsatisfactory, politically as well as legally, to become a member of the Club.

I will stop there.

We have been using here some terminology that the club is the cartel; right?

Mr. MUESSIG. I think we have, yes.

Mr. LUKEN. Is Mr. Sample referring to the club here as the cartel?

Mr. MUESSIG. No; I think it is very clear that he is referring to the Australian Uranium Producers' Club. The subject of the memo is Australian Uranium Producers' Club. That is a loose term. It should be Australian Uranium Producers' Forum.

Mr. LUKEN. Let us get down to cases. Is he not using it interchangeably? In the context of this letter he does not see any difference, does he, that is, between the Club and the Producers' Forum?

Mr. MUESSIG. I would not draw that inference at all. I would not. This letter refers——

Mr. LUKEN. It is sloppy, then, because it does not draw any distinction. Is Mr. Sample usually that precise?

Mr. MUESSIG. I cannot——

Mr. LUKEN. Is the use of that imprecise?

Mr. MUESSIG. He is a very good attorney.

Mr. LUKEN. So he has written a letter to you that refers to the "Club" and to the "Producers' Club." This is September 1974.

Did not you and Mr. Sample refer to the cartel as the club, when you discussed it?

Mr. MUESSIG. No. I think this letter is very clear. This memo is very clear. It refers to the Australian Uranium Producers' Forum. Mr. Sample unfortunately used the term "Club."

Mr. LUKEN. Twice.

Mr. MUESSIG. I have no idea how many times.

Mr. LUKEN. It is a very short memo.

Mr. MUESSIG. It is an inadvertent use, but the letter is very clear. It refers to the Australian group and not the international group. In the discussions we had, it was clear what we were talking about. We were talking about possible membership in the Australian Uranium Producers' Forum.

Mr. LUKEN. Is this the only memo you had from Mr. Sample on the subject?

Mr. MUESSIG. This is the memo that said that we could not join.

Mr. LUKEN. Is this the only one?

Mr. MUESSIG. We have dozens of memos.

On this particular subject there are several other previous memos.

Mr. LUKEN. In answer to the questions posed previously, you indicated that you had been advised by your counsel that joining—and I am not sure which—up would be a violation of the antitrust laws and a criminal violation. Mr. Sample had advised you of that; right?

Mr. MUESSIG. The memorandum of September 26 is that one.

Mr. LUKEN. This just says "unsatisfactory legal risks."

Mr. MUESSIG. I think it refers to a previous memo.

Mr. LUKEN. So, in previous memos he had detailed what those risks were; is that right?

Mr. MUESSIG. Yes.

Mr. LUKEN. He does not really refer to a previous memo as to the unsatisfactory legal risks. That seems to be what is new in this memo.

Mr. MUESSIG. I guess this does not refer to the previous memo, but there was one. I am sure it is in the record. It gives detailed reasons.

Mr. LUKEN. Then the legal opinions that you have, it is your position, do not restrain or did not restrain you from joining the cartel; right, only from joining the Australian Producers' Club?

Mr. MUESSIG. There was never any discussion about joining the cartel.

Mr. LUKEN. What is the Australian Uranium Producers' Club? Is that the cartel?

Mr. MUESSIG. The Australian Uranium Producers' Forum referred to in this September 26, 1974, memorandum is the association of Australian would-be uranium producers, except for Getty and several other people not involved.

Mr. LUKEN. All right.

You were advised not to join it because of the criminal violations under the American antitrust laws; correct?

Mr. MUESSIG. That is correct.

Mr. LUKEN. This correspondence would indicate that, aside from the fact that it was illegal, you were in favor of joining; right?

Mr. MUESSIG. I had previously recommended that the company join; that is correct.

Mr. LUKEN. So, you would be in favor except for the fact that it was illegal and so you would have approved of what the Australian Producers' Club was doing except for the fact that it was illegal; is that right?

Mr. MUESSIG. I have stated that I approved and I felt that, as a legitimate purpose, that the forum had in dealing with the Australian Government to get the industry off the ground, that was the only reason that I was in favor of joining. The record is very clear on that.

Mr. LUKEN. I have nothing further at this time, Mr. Chairman.

Mr. GORE. Mr. Muessig, I personally feel that Getty is to be complimented on its decision not to participate directly in the cartel. I wish all American corporations had as much sensitivity to the antitrust laws.

At the same time, I still have some questions in my own mind about the relationship between Getty and Pancontinental and whether or not there was this indirect representation.

I would like to explore that in questions on a final memo before I recognize Mr. Koppell.

I would like for staff to give Document No. 32 to the witness.

Without objection, that will be inserted in the record at this point.

[The document referred to follows:]

OLOA #32

☐ RUSH

TELEGRAM

11-9-8-814-500-21
ACCOUNT CHARGEABLE

Company Name PANCONTINENTAL MINING LTD

Person's Name MR. A. J. GREY

Complete Company Address TORONTO, ONTARIO (CANADA)

TELEX: 0623500

LOS ANGELES, CALIFORN
MARCH 19, 1976

WE ARE IN AGREEMENT WITH PROPOSED SCHEDULE FOR VISITING UTILITIES STARTING MARCH 29, BUT ARE VERY CONCERNED ABOUT HAVING B&W REPRESENTATIVES PRESENT DURING MEETINGS. WE STRONGLY RECOMMEND THAT YOU REQUEST THAT THEY NOT PARTICIPATE. GOC HAS NOT REQUESTED NOR AGREED TO B&W ACTING AS ITS AGENT ON ANY MARKETING ARRANGEMENTS AND HAS SO INFORMED B&W. SINCE PANCON MADE THE ARRANGEMENTS WITH B&W, GOC IS NOT IN A POSITION TO ASK THEM NOT TO PARTICIPATE. FOR THEM NOT TO PARTICIPATE WOULD BE CONSISTENT WITH THE AUSTRALIAN GOVERNMENT STATEMENT THAT THEY WOULD NOT PERMIT SALES TO BROKERS OR MIDDLEMEN.

WE DO NOT BELIEVE WE WILL BE ABLE TO OBTAIN AS FIRM A COMMITMENT FROM UTILITIES AS OUTLINED IN YOUR TELEX OF MARCH 12, BUT AGREE WE CAN TRY. OUR LEGAL DEPARTMENT WILL NOT PERMIT US TO DISCUSS PRICES AT THESE MEETINGS AND WE SUGGEST SEPARATE LETTERS BE OBTAINED FOR PANCON AND GOC'S PROPORTIONATE SHARE OF PRODUCTION. WE WILL BE LIMITED IN OUR COMMITMENTS TO THE UTILITIES TO NEGOTIATE IN GOOD FAITH WITHIN REQUIREMENTS SET FORTH BY AUSTRALIAN GOVERNMENT. OUR CONSULTANT, PETE MOORE, WILL DISCUSS THIS TELEX WITH STORK ON SUNDAY NIGHT. WILL CALL YOU

NEXT WEEK TO DISCUSS IN MORE DETAIL AFTER STORK AND MOORE HAVE HAD FURTHER DISCUSSIONS.

PAUL E. CARLTON

PEC:EP
1:30PM

APPROVED FOR RELEASE:
Original signed by
PAUL E. CARLTON

cc- H Fader
CJ Kundert
S Muessig
JC Sample, Jr.
P Moore (NFS)

Mr. GORE. I would like to explore this with you. It is a telegram from Mr. Carlton to Mr. Grey with Pancontinental. Mr. Carlton succeeded Mr. McCabe; is that right?

Mr. MCCABE. That is correct.

Mr. GORE. He is writing Mr. Grey who is the head of your joint venturer, Pancontinental of Australia.

It would appear from this telegram that you are discussing with Pancontinental a schedule for visiting utilities to talk about selling them uranium and that Pancontinental has requested that B. & W. act as a middleman. Am I correct in arriving at that conclusion?

Mr. MUESSIG. Well, I was not directly involved in this, Mr. Gore. As far as I know, B. & W. was apparently asked by Pancontinental—but I am not sure about it—to act as its agent or possible agent. But again, I want to be sure we understand. We had nothing to sell. We just had some hopes and some expectations——

Mr. GORE. What were you talking about with utilities?

Mr. MUESSIG. This trip was basically to present to the utilities our project with the anticipated size, if we ever got approval to do anything and to sound them out to see what the size of the market might be with a view of going back to the Australian Government with some letters. We solicited letters from each of the utilities. We would go back to the Australian Government and throwing the letters out and saying: "Look here. This is the kind of market we envision in the United States. So, let us get off the ground."

Mr. GORE. B. & W. is a middleman; is that correct?

Mr. MUESSIG. I am not sure in what sense you are using that.

Mr. GORE. A broker?

Mr. MUESSIG. I am not that familiar with B. & W. B. & W. is a reactor manufacturer.

Mr. GORE. It would appear from the telegram that they were intended to serve as a broker.

The previous record of this investigation indicates quite clearly that one of the precepts or rules of the cartel was that brokers not be used.

And here your joint venturer has asked a broker to attend the meetings between them and the utilities.

Getty is telexing Pancontinental and reminding Pancontinental that the participation of brokers is inconsistent with the Australian Government's statement about the uranium marketing rules and asking that a broker not be used.

Mr. MUESSIG. May I make a couple of comments?

Mr. GORE. Certainly.

Mr. MUESSIG. The only private sale that Getty has made in the United States of uranium was to B. & W. some time ago.

Second, the various producers were told very clearly in early 1976 by the Australian Government, by Mrs. James Scully, who is Secretary to the Department of National Resources, that in the contractual terms that the Australian Government will approve, that is, that there will be a stipulation there that all sales made from Australia and approved by the Department of National Resources, would only be approved if they were made directly to the end consumer.

Mr. GORE. That is what the procedure was followed by the Australian group, the Canadian group, the French group, and the South

African group, and all members of the cartel. They all followed that rule. That was one of the rules of the cartel.

What I am asking you is this. Did you remind Pancon about this simply in order to protect them against the enforcement of the rules that cartel members are following or because of some totally independent reason?

Mr. MUESSIG. We informed Pancon because of the Australian Government stipulations. We were not thinking in any way about what was going on outside of Australia. We were trying to go along with the Australian Government with Jim Scully's comments to us, that is, stipulations, that in the event of sales they could only be made to inproduct members. That is part of Australia's nonproliferation policy.

Mr. GORE. Pancon is the Australian member of the joint venture. They have 65 percent and Getty has 35 percent. The 35 percent member is in the United States and is advising or reminding the 65 percent member, that is Australian, not to violate this rule. That seems strange to me.

Mr. MUESSIG. I cannot comment on that. Again, I was not directly involved in this.

Mr. GORE. You were not directly involved?

Mr. MUESSIG. No.

Mr. GORE. Mr. McCabe, can you shed some light on this?

Mr. MCCABE. No; I know nothing about that particular operation.

Mr. HADDAD. I am sorry; I missed that.

Mr. MCCABE. I know nothing about this particular operation, but it is not unusual for Getty first to be in joint ventures. It is not unusual to have a minority position in a joint venture.

We feel that as a member of a joint venture we have a responsibility to keep the operator of the joint venture along the proper track and performing the way he should in accordance with the operating agreement.

So, this is not unusual at all.

Mr. GORE. Well, there were a lot of unusual things happening in the uranium market about this time. It is not clear to me that this was totally in the ordinary.

But I would like to recognize Assemblyman Koppell now.

Mr. KOPPELL. Mr. Muessig, I have one follow-up question to the Congressman's question.

Mr. Scully is an Australian Minister?

Mr. MUESSIG. He is Secretary of the Department of National Resources which has the primary responsibilities in the area that we are talking about.

Mr. KOPPELL. What did you mean when you said a few moments ago: "Mr. Scully's comments to us"?

Mr. MUESSIG. Mr. Scully called in the Australian producers in February of 1976 and, among other things, said that one of the requirements of eventual approval, that is, before we could get approval and before production and sales would be the contractual stipulation.

Mr. KOPPELL. So at least in that context you see yourself, that is, Getty, as being part of the Australian producers; is that right?

Mr. MUESSIG. No.

Mr. KOPPELL. You said, "comments to us." Who is "us"?

Mr. MUESSIG. We were there as Getty at the meeting called by the Government.

Mr. KOPPELL. Getty as a participant in Pancontinental?

Mr. MUESSIG. We were not a participant. We have a joint venture with Pancontinental, a business relationship.

Mr. KOPPELL. A participant in the joint venture?

Mr. MUESSIG. That is correct.

Mr. KOPPELL. The joint venture is an Australian producer?

Mr. MUESSIG. We hope we will be one day, yes.

Mr. KOPPELL. So as a participant in a joint venture you are an Australian producer; is that right?

Mr. MUESSIG. We hope the joint venture will be producing; that is correct.

Mr. KOPPELL. Let me turn to a most important, at least from my point of view, question because I am interested in how the price of uranium ultimately gets determined for U.S. consumers.

Do you have anything to do with the pricing of uranium?

Mr. MUESSIG. No.

Mr. KOPPELL. Personally?

Mr. MUESSIG. Not at all.

Mr. KOPPELL. Who determines the price that the uranium is sold by Getty?

Mr. MUESSIG. Executive management approves.

Mr. KOPPELL. What do you mean by "executive management"?

Mr. MUESSIG. Could you be more specific?

Mr. KOPELL. Who determines the prices at which the uranium produced or mined by Getty or its affiliated companies is sold?

Mr. MUESSIG. Well——

Mr. KOPPELL. Let me be more specific. Let us take for instance the uranium in the United States. You have certain uranium reserves in the United States?

Mr. MUESSIG. That is correct.

Mr. KOPPELL. Do you produce from those reserves?

Mr. MUESSIG. We are not producing at the present. We hope to be producing and we will be producing next year.

Mr. KOPPELL. Have you in the past produced?

Mr. MUESSIG. Yes.

Mr. KOPPELL. Which years?

Mr. MUESSIG. We produced from our operation in Wyoming starting, I think, in 1962 through 1974. That is when it stopped.

Mr. KOPPELL. Let us take this. When it was producing in 1974 and entering into contracts for sale, who determined the prices in your company?

Mr. MUESSIG. There was a negotiating group set up to negotiate to sales. I was not part of that group. They negotiated a sales contract or sales contracts, I should say. That contract was approved by executive management.

Mr. KOPPELL. You were not involved in the negotiation or the development of the prices?

Mr. MUESSIG. No.

Mr. KOPPELL. Mr. McCabe, were you?

Mr. McCabe. I was not on the first of the sales. I was working overseas, but on the second sale I did negotiate the price with a company called NFS, which was another subsidiary owned by Getty Oil Co. and Skelly Oil Co.: Nuclear Fuel Services.

Mr. Koppell. Do they operate in New York?

Mr. McCabe. Yes; they have a processing plant in New York.

Mr. Koppell. Yes.

You negotiated for prices at which they were selling; is that it?

Mr. McCabe. At which they would buy. We had it in stock and they needed it, so we sold it to NFS.

Mr. Koppell. When you negotiated that price to NFS, what year was that?

Mr. McCabe. I will have to guess. It would be 1973, I think, something like that.

Mr. Koppell. Were you involved in any pricing policy establishment where ultimately there were sales or not, but were you involved in any pricing in the establishment of pricing policy after 1973?

Mr. McCabe. For our company, no.

Mr. Koppell. You were not for anybody?

Mr. McCabe. We had nothing left to sell. We shut our operation down because it was depleted.

Mr. Koppell. Your operation in the United States?

Mr. McCabe. In Wyoming, yes.

Mr. Koppell. What about your operations—and your operations in Australia were handled entirely in the joint venture; is that it?

Mr. McCabe. There is no mine operation in Australia.

Mr. Koppell. Were you involved in the sale of uranium since 1973?

Mr. McCabe. Not since the sale date, no. That was the last one I was involved in.

Mr. Koppell. That the company was involved in?

Mr. McCabe. Yes.

Mr. Koppell. You are only involved in the Australians with the joint venture, but not in actual pricing of sales; is that right?

Mr. McCabe. I was involved in uranium until March of 1973 when it was transferred to another vice president.

Mr. Koppell. How about you, Dr. Muessig? You were not involved since 1973 in any pricing activities?

Mr. Muessig. No.

Mr. Koppell. We have here in the record this Document OLOA No. 31 which is from Mr. Carlton to Mr. McNeill. The subject is the board of directors meeting of the Getty Oil Co. of March 5, 1976.

Mr. Gore. Without objection, that document will be placed in the record at this point.

[The document referred to follows:]

GLTM

NX-31-82. SC

OLOA # 31

Los Angeles, California
February 17, 1976

TO: MR. J. B. McNEILL

FROM: PAUL E. CARLTON

SUBJECT: MEETING - BOARD OF DIRECTORS OF GETTY OIL COMPANY
MARCH 5, 1976

We suggest the following item for the agenda of the upcoming Board of Directors Meeting:

URANIUM SALES CONTRACT
SHIRLEY BASIN, WYOMING

A five-year uranium sales contract has been negotiated with a consortium of electric utilities represented by Wisconsin Electric Power Company and Pacific Service Company of New Hampshire. Sales will be for Getty Oil Company's 60-2/3% net share of uranium production from the main ore body (Sections 4 and 33) in the Shirley Basin, Wyoming, for the period commencing between October, 1977 and October, 1978, and will terminate under this agreement at the end of 1982, with the buyers having the option to offer to purchase uranium production subsequent to 1982. Sales will be between .8 million and 1.2 million pounds of uranium per year.

The buyers have agreed to purchase the uranium at the higher of market price or a base price of $31 per pound, adjusted for inflation. Getty Oil's net maximum cash exposure for the five-year term of this contract is estimated to be $36 million. Net economics for the five-year period, using the base price and the highest estimates of capital and operating costs, result in an after-tax profit of $43 million, a present worth of $11 million, a rate of return of 33%, and payout in July, 1980. However, using Getty Oil Company's current view of market price estimates, this five-year contract could result in as high as a 55% rate of return. At the end of the contract, less than one-half of the 13 million pounds of Getty Oil Company's net uranium reserves in Sections 4 and 33 will have been sold. In addition, Getty Oil Company currently has another 6 million pounds of net uranium reserves and resources in the Shirley Basin area.

JHC/MT

Original Signed By PC
PAUL E. CARLTON

DEFENDANTS 4/8
Exhibit
For Ident.
L. R. L. Jr 8.7.77

SPECIALLY CONFIDENTIAL

PRODUCED UNDER STIPULATION RE
SAFEGUARD OF CONFIDENTIAL AND
ORDER FILED 4/7/77
U.S. DIST. CT., C.D.CAL.
MISC. NO. 5412

Mr. KOPPELL. Are you familiar with that, Mr. Muessig?

Mr. MUESSIG. This is the first time I have seen it.

Mr. KOPPELL. Mr. McCabe, are you familiar with it?

Mr. MCCABE. I am familiar with the contents, but I have never seen the document before. I was put on the Board on February 1977.

Mr. KOPPELL. In this they are talking about a 5-year uranium contract negotiated by Getty; is that not right?

Mr. MCCABE. That is correct.

Mr. KOPPELL. But you are not familiar as to how the base price of $31 per pound was arrived at?

Mr. MCCABE. I did not participate in it. I understand it was a negotiated contract between Getty and the utility companies.

Mr. KOPPELL. Could you repeat that?

Mr. MCCABE. I did not participate in the contract or the sales, but it is my understanding that the price was negotiated between Getty Oil Co., and the end user, the utilities.

This mine is in operation. We have stripped it but we have not produced any uranium as yet.

Mr. KOPPELL. Are you familiar with the fact that this document states that at that price you can anticipate as high as a 55 percent rate of return on investment?

Mr. MCCABE. Yes, I am familiar with that.

Mr. KOPPELL. Could you tell me, since you have been involved in pricing before—and I guess you can testify with respect to how this purchase price of $31 a pound—but could you tell me whether you would regard 55 percent of rate of return as extraordinary?

Mr. MCCABE. I think it is wonderful, to tell you the truth. The reason you need this type of rate of return is, for example, in the last 10 years Getty Oil Co., has spent an average of $2 million per year looking for uranium. That is $20 million in the United States. We have found nothing.

It is like going to the horse race. If you lose the first eight races and win on the ninth and make your money back, then I do not think that is an exorbitant profit. You are getting even.

If you win more than you lose, you have money to invest again. This is what we are talking about.

Mr. KOPPELL. What is your average rate of return on invested capital?

Mr. MCCABE. It is 7 to 8 percent.

Mr. KOPPELL. Yes, 7 to 8 percent?

Mr. MCCABE. Yes.

Mr. KOPPELL. Would you say that this projected 55 percent rate of return was the result of normal competitive market forces?

Mr. MCCABE. Yes, I would say that. If I understand your question, I would say that, yes.

Mr. KOPPELL. What I am saying is this. Do you believe that you can achieve a 55 percent rate of return notwithstanding the fact that there are normal competitive market forces that play in the uranium market?

Mr. MCCABE. I still do not get you.

Mr. KOPPELL. OK. Do you believe that the $31 per pound price, at which this contract price is, more or less, but it says it is adjusted for

inflation and I do not know what that means, but let us take it at $31 for the sake of argument. That produces a rate of return as high as 55 percent. You say this was the product in your mind of a normal competitive market?

Mr. McCabe. I believe so. It is the law of supply and demand.

Mr. Koppell. You believe also that this market price bears no relationship to a world price of uranium which is at least in part from the document that are in the public record here, set by a producers' group?

Mr. McCabe. I cannot tell you whether this price is influenced. As a businessman, if the utility could buy the uranium overseas for $10, they will not buy from us for $31. This is the going market price in the United States.

Mr. Koppell. I want to think you, Mr. McCabe. You took the words right out of my mouth. That is exactly the issue, is it not? If they could buy it overseas for $10, then they would not buy it for $31 in the United States.

Mr. McCabe. If they could, but there is a shortage of uranium.

Mr. Koppell. There may be a shortage of uranium.

Mr. McCabe. There is a shortage. That is why the price goes up.

Mr. Koppell. Can you tell me, sir, why it was projected back in 1972 or 1973 that the world price would be down below $10 a pound for at least 10 years into the future by surveys that were done at that time? I can produce those surveys if you want.

Mr. McCabe. I do not know who made the projections and I do not know why they were made, but I am familiar with that type of reasoning. It made common sense. There are a lot of factors involved.

Mr. Koppell. What type of reasoning and what made common sense?

Mr. McCabe. There are a lot of factors involved in this particular business. One, it takes reactors. They have to be fueled and they use uranium You are familiar with this.

In those days, the utilities were coming up with schedules, AEC was publishing them, on the number of reactors to be built by years. That unfortunately, in my opinion, did not come to fruition because of AEC's regulations. There is pollution in other agencies that stopped this growth in the electrical business.

Had that growth happened at that time, there was not enough uranium in this country to fuel those reactors. If you have more demand than supply, then the price has to go up.

As soon as the industry sees that the Government is delaying the reactor—and it takes about 9 or 10 years to build a reactor and it used to be much less than that—the industry will project that since there is no demand the price will not go over $10. That is my opinion. That is why I think that happened.

Mr. Koppell. But then the price did, in fact, go over $10 even though these reactors were not built.

Mr. McCabe. But they are still projecting more reactors.

Mr. Koppell. The fact of the matter is that in 1972 I think the projections showed more reactors than the projections did in 1974. Yet, the price between 1972 and 1975 jumped up about sixfold while the number of reactors projected began to decline so that it is exactly the opposite from what you said.

Mr. McCabe. I cannot comment on 1974 and 1975. I do not know.

Mr. Koppell. I have one more question to you, Dr. Muessig.

You were in regular communication, I take it, with the Australian producers in your joint venture there?

Mr. Muessig. No.

Mr. Koppell. You were not?

Mr. Muessig. No.

Mr. Koppell. Who was responsible for the company, that is, liaison between Getty and the joint venture in Pancontinental?

Mr. Muessig. I had responsibility and Mr. Riddell had responsibility. The primary responsibility was with Mr. Riddell. I also had responsibility.

Mr. Koppell. That is what I was trying to get at.

Mr. Muessig. I thought you said "producers." If you meant contact with Pancontinental, then, yes, I had responsibility for that.

Mr. Koppell. Did anyone in the company ever ask you, that is, anyone in Getty Oil, ever ask you to communicate with Pancontinental and get for them the world price or the cartel price as established at the various cartel meetings that we have now documented?

Mr. Muessig. Never. We were not interested in that.

Mr. Koppell. Even though you were establishing prices for uranium at that time?

Mr. Muessig. As I said, I was not involved in that. As far as I knew, and know now, the negotiations that went on between Getty and the utilities which bought this material were free and above board and they were just hard negotiations.

Mr. Koppell. If you were negotiating prices to sell uranium, would you not be interested in what the price it was selling for in France, Germany, Australia, and so on?

Mr. Muessig. Obviously.

Mr. Koppell. You would be interested in that, would you not?

Mr. Muessig. Yes, I would be most interested. That is correct.

Mr. Koppell. You would be a fool not to?

Mr. Muessig. Yes.

Mr. Koppell. That is why I am curious that no one ever asked Pancontinental, who was your joint venture partner, to give them information that Pancontinental must have received.

Mr. Muessig. We are law-abiding citizens. That was a bad thing. We were told not to do that sort of thing and we did not do it.

Mr. Koppell. Did your lawyers tell you not to ask for information or did they tell you not to participate?

Mr. Muessig. They told us to stay away from them. We did not ask for information. We stayed away from them in all ways.

Mr. Koppell. So, you regard that injunction not only as not to participate, but not to ask for information; is that right?

Mr Muessig. I not only regarded it, but I regard it today. We are law-abiding citizens. We were told not to do this and we do not. It is simple. It does not give us any problems.

Mr. Koppell. That is very intresting, especially given the participation of other American firms that you were told not only not to participate but not even to request information.

Mr. Muessig. We were told and we did not.

Mr. Koppell. Thank you.

Thank you, Mr. Chairman.

Mr. GORE. Mr. Walgren?

Mr. WALGREN. Dr. Muessig, you say that Getty Oil was a law-abiding citizen and that this was a bad thing and you were told not to participate in it and you did not.

My question is not so much what was, but what should be. Getty tried to participate in some sense at some stages in that international club that, as you stated at the start of your testimony, allocated markets and set prices.

Mr. MUESSIG. That is not correct. We tried to participate—and the record is clear on this—and at my recommendation we tried to participate in the Australian Uranium Producers' Forum.

The record is also clear that when we found out that the forum was doing other things than lobbying with the government that we said no.

Mr. WALGREN. Was Getty damaged economically by not being able to participate in the Australian forum? If somehow or other you could unwind this thing and project it forward, would Getty be better off if they had been able to participate?

Mr. MUESSIG. That is obviously a tough question. The Australian Government is still looking to the Australian Uranium Producers' Forum as our Government looks to the American Mining Congress, for instance, for various things.

Insofar as the forum still does PR work with the government, the Forum speaks, as does the American Mining Congress here, to the government. Insofar as those legitimate activities are concerned, yes, I think that I personally, from a business standpoint, think that it would be good for us to be a member of that, just as we are a member of the American Mining Congress, for those legitimate purposes.

Mr. WALGREN. Apparently what we have at this point are a number of American companies coming forward and saying they were damaged, either by the cartel or from being excluded from the cartel.

I come from Pittsburgh, Pa., and Westinghouse, in pursuit of their uranium business, alleged that they were literally almost put under by the uranium cartel.

You are saying that from Getty Oil's private business position, that you were harmed by not being able to participate in that group.

Mr. MUESSIG. May I just qualify my comment? I want to repeat. We had nothing to sell. We have nothing to sell at the moment.

So, in that sense and considering that, we have not been harmed.

Mr. WALGREN. There is no way to measure harm, but there is in Getty's history, from the initial applications to join the cartel, that is, not to join the cartel but to join the Australian Forum, and there is an obvious interest in pursuing their business interests in that group.

Mr. MUESSIG. Sure.

Mr. WALGREN. I understand that was 1974. In 1975 Getty was making further inquiries about the proposed Uranium Institute. I would gather that was to pursue your business interests in the international uranium market. You were advised, again by Mr. Sample, that there were severe antitrust implications of joining in the proposed Uranium Institute because there would be no way to control the other members from not violating the U.S. antitrust laws.

The thing that I am interested in is that other American firms, particularly Gulf, did join the cartel and are now coming forward with the defense that they were compelled to join.

I am wondering whether compulsion should be a defense to join this kind of international organization. I wonder whether this bothers you because it bothers me.

If a substantial American company, such as Gulf, is free to join an international marketing organization, and the actions of that organization, either impact firms like Westinghouse or exclude firms like Getty from, in your case, the Australian forum, and if that damages those firms, then should compulsion be a defense for an American company to engage in an international cartel?

Mr. MUESSIG. Mr. Walgren, I think you are asking a legal question. I do not think I can comment on that.

Mr. WALGREN. No, I am asking this question. What kind of business environment do you feel is proper for you to operate in and proper for everyone else to operate in? What rules should we operate under? That is why I say that I am not trying to say what it was or what was Getty's participation or Gulf's participation, but what rules should we operate under if we are to have a fair economic system.

I am very concerned that multi-national corporations can damage the American economy and particularly damage the economic interests of firms which our Nation relies on for its economic strength.

So, what I am asking is this. Should compulsion be a defense to an American corporation joining an international marketing arrangement which has the potential to do what was done to Getty or to do what was done to Westinghouse?

Mr. MUESSIG. I want to be responsive, but I do not think I can answer whether compulsion should be the defense.

Let me say this. If an American company, pursuing its legitimate interests overseas, is required to do something by a foreign government as a condition of either continuing to do business or making sales or whatever, then that American company finds itself in a bind.

What it does, I do not think I can comment on the legal aspects of that.

But an American company finds itself in a heck of a bind there if it is put in that position. On the one hand, I would like to believe that our system is a pretty good system. It has citizens like Mr. McCabe and me who are just average guys who are trying to do a job. We are just as lawful and honest as the next guy.

We are trying to pursue our legitimate interest and to work for our stockholders and our company. We are doing business in a country like Australia. Let us say the Australians put certain conditions on our continued existence there, you might say.

Let us say that those conditions are at odds with our laws. We are in a heck of a bind.

But I do not think I can answer whether or how you get out of that bind. I think that our Government, the U.S. Government, has responsibilities to companies operating overseas. If a company finds itself in a bind, then I think the Government ought to help its citizens and corporations are our citizens.

Mr. McCabe. Perhaps, Mr. Walgren, you might have the Aramco and OPEC situation. You recall some years ago the Saudi Government decided the price of oil should go up along with OPEC.

They tell Aramco at what price to sell that oil. The price of oil goes up and the price of energy goes up. This has something to do with the price of uranium also.

So they are coerced into following the edicts of the foreign government.

I think that is a defense. If I understand your question, I think that is it.

Mr. Walgren. I yield to Mr. Gore.

Mr. Gore. I would like to make a comment at that point. Dr. Muessig, I think your answer was a thoughtful one. It raises the possibility, however, that you can have the kind of dance between American companies and foreign governments that was performed by Gulf and the Canadian officials. The record will be further clarified on that point later in this hearing today. To allow the assertion of compulsion as a defense invites the kind of complicity in encouraging the foreign governments to write up some document that would serve as evidence of compulsion It just invites abuse.

You recommended, Dr. Muessig, asking the Government, that is, that the American companies ask the U.S. Government for help if they face this kind of compulsion. The record will show later today that Gulf's lawyer advised that they do just that—consult with the Government.

But on further examination of the evidence, they decided that even that was too risky and they had better not breathe a thing about participation in the cartel.

Then, Mr. McCabe, you referred to the OPEC cartel as an analogy. I must say that, after going through these lengthy hearings, that I have serious questions in my mind about the relationship between American oil companies and the nations in the Middle East as to whether or not there was a similar dance between American companies and foreign governments inviting coercion and laying it all out for foreign governments to say: "Well, if you make us do it, then everything will be OK."

I think that illustrates the danger that I alluded to earlier of allowing the assertion of compulsion as a defense.

I thank the gentleman for yielding.

Mr. McCabe. Mr. Gore, if I may, with respect to the OPEC situation, what you will find is that the American participants in OPEC, the American companies working overseas, are making less profit today per barrel of oil than they made prior to OPEC. The price is up, but the government gets the money. The company did not conspire in any way.

Mr. Gore. I welcome any comments that you have on that, but I do not think they can be termed as definitive. The profits immediately after the formation of OPEC were, of course, very bloated. The recent figures are subject to a different analysis, but that is not a subject for discussion here today. I wanted to add that comment, since you brought up the OPEC analogy. I welcome the interchange with you.

Mr. Walgren?

Mr. WALGREN. I would just like to invite you to give some thought to what the rules ought to be. I, as one Member of Congress, would be very interested in your particular opinions because Getty is apparently a sort of unique breed, or at least you have a unique experience. That is, that you came very close to being involved in something which I think poses great dangers for our economy.

You had what the movies now call a "Close Encounter of the Third Kind." You were not only talking with, but had direct experience with that cartel.

I feel that you have an obligation to the country to go further than just following your own business instincts. I think you ought to give some thought to what the rules ought to be.

I, for one, would be very interested in knowing what you think about compulsion. You might have a competitor selected by a foreign government and they might get into some improper actions. I feel the same way about other defenses that might be raised by multinational corporations when they are substantially affecting our economy.

Thank you very much, Mr. Chairman.

Mr. GORE. Mr. Riford?

Mr. RIFORD. I have a couple of questions. They are based on my interest, as a New York State legislator, rather than as a Congressman.

We have time allotted to the minority in this situation.

I have always looked upon uranium as a commodity in the same sense that corn or wheat is a commodity. It is traded in a world-wide market. I would assume that the information that comes to you gentlemen who are directing the operations of your company are comparable.

When a sale is made in Australia or in Britain or somewhere else, that information does not really take very long to get around the world in the network of world-wide commodity traders. Would that be a fair statement?

Mr. MCCABE. We usually see it in the press. This is true in the past also.

Mr. RIFORD. Or the representatives in The Hague, or Johannesburg, or wherever.

Mr. MCCABE. We would like the Getty representatives wherever they are to know; yes.

Mr. RIFORD. They keep you posted on market developments, do they not?

Mr. MCCABE. We hopefully think they will, yes.

Mr. RIFORD. You anticipate it, do you not?

[No response.]

Mr. RIFORD. That is their job; is it not?

Mr. MCCABE. Yes, I think so.

Mr. RIFORD. They have to keep you posted so you know how to respond?

Mr. MCCABE. They ought to try to get the information. If they cannot get it, then——

Mr. RIFORD. A change in the price of uranium then is probably comparable in the change in any other commodity price. It is based

on what the buyer and seller are going to pay and you, as a seller, if you can get the price, then that is the market. If you cannot get it, then it goes down; is that right?

Mr. McCabe. That has been our experience. We try to sell our uranium and we ask more than we finally get. The buyer wants to pay less and then he finally pays. We negotiate.

Mr. Riford. During the time you were in domestic production and in the future when you are going to be in it again, the price that you trade at then, as you pointed out earlier on, would be determined, in part at least, in large part, I guess, by the world markets. If they can buy it for $30 a ton somewhere else, they will rather than pay you $31; is that right?

Mr. McCabe. Yes, they should.

Mr. Muessig. I am not sure what you mean when you say a world market. The market price that someone gets for uranium is the price that is determined by the negotiators involved. That is our experience. There is no posted world market price.

Mr. Riford. The trade took place somewhere else, yes, that is correct.

I am interested in this effect. I have heard it said this morning that a change of a dollar a ton in the price of coal would have an equal effect on the price of electricity to the consumer as a $50 per pound increase would have in the price of uranium.

Would your experience enable you to comment on the accuracy of that statement?

Mr. McCabe. I cannot.

Mr. Muessig. Someone has taken a pencil out and worked on the numbers in terms of the amounts of Btu's in a dollar's worth of coal versus an amount of Btu's in $50 worth, or an additional $50 worth of uranium. You would have to do that exercise.

Mr. Riford. I will keep asking that question as the day goes on because I really would like to know, from the standpoint of the New York State electricity consumers, what the magnitude of this price change that we are concerned with, or the effect that magnitude is on the consumers.

Thank you, Mr. Chairman.

Mr. Gore. Mr. Koppell?

Mr. Koppell. Just to clarify, Mr. Riford was, I think, trying to establish that there was a normal world supply-demand market for uranium and a supply-demand market price, like the price quoted for corn or soybeans or pork bellies or whatever you have on the commodities market in New York.

Is that the case?

Mr. Muessig. No. There is no market price for uranium. At least I am not aware of any.

Mr. Koppell. So there are individual negotiations and, in the case of certain nations, taking aside those excluded from the cartel, is pretty clear that the producers establish the price, not necessarily independent of every market consideration, but it is established jointly and there were limited bids. Is that not correct?

Mr. Muessig. I am sorry. I am not sure what your question is. You are talking about the activities of the foreign producers group?

Mr. Koppell. Yes. They established the price, did they not, in a meeting?

Mr. MUESSIG. The record is clear as to what they have done. At least it is in the record.

Mr. KOPPELL. I just want to not leave the record saying that there was a normal price setting mechanism that is established, as in the case with other commodities. This was the unique situation, or at least somewhat unique, as is the oil price setting mechanism.

Mr. MUESSIG. Yes.

Mr. GORE. Mr. Luken?

Mr. LUKEN. Mr. Muessig, as I read this record, I am not yet ready to join the chorus, if there is a chorus, of congratulations to Getty.

You say that Getty is a law-abiding citizen and because you are a law-abiding citizen, you would not do the bad thing by joining the club. I think that is what you said; right?

Mr. MUESSIG. Yes.

Mr. LUKEN. But yet the record shows, as previously indicated, that the chairman of the club wrote a letter to Pancontinental on October 17 saying that Pancontinental could be considered as only one entity and, therefore, Getty would not be eligible.

Is that correct?

Mr. MUESSIG. Is this the producers' forum?

Mr. LUKEN. Yes. That is all we have been talking about; have we not? That is the club, is it not?

Mr. MUESSIG. What are we talking about? Are we talking about the Australian Uranium Producers' Forum?

Mr. LUKEN. Yes, the forum.

Mr. HADDAD. I messed up the terminology. The forum is a member of the club. I sometimes said club when I meant forum. The forum in Australia is a charter member of the club and the club is the cartel.

Mr. MUESSIG. I am trying to be responsive to Mr. Luken. I am thinking of the previous exchange we had in which you were using the word "club" to refer to the foreign group, that is, interchangeably with the word "forum."

Mr. GORE. If the gentleman will yield, you previously testified that as early as September 1974 you were aware that the forum was the Australian group within the club or the cartel and the date on this piece of correspondence that Mr. Luken is referring to is October 1974.

So, I think the distinction between the Australian branch of the club and the club in its totality, is a rather fine distinction. You certainly have the right to make it, but it does not seem to have much substance to me.

Mr. LUKEN. We are talking about three different organizations. I am using the term "organization" loosely.

One is the cartel, which has been referred to as "The Club," correct? The cartel has been referred to as "The Club." Have you ever heard it so designated?

Mr. MUESSIG. Sure.

Mr. LUKEN. Then we have the uranium producers, that is, the Australian Uranium Producers' Forum. You have referred to that as the "Club," have you not?

Mr. MUESSIG. That was referred to as a club in the memo that you referred to previously from Mr. Sample to Mr. Muessig.

Mr. LUKEN. Then there are two clubs?

Mr. MUESSIG. There are these two organizations.

Mr. LUKEN. All right.

You were denied membership in the Uranium Producers' Club of Australia?

Mr. MUESSIG. We never applied. I tried to make that clear.

Mr. LUKEN. You may make those distinctions, but your associate, your 35 percent in the organization for which you put up all the initial capital, and the organization which is referred to by the Australian Uranium Producers' Forum Chairman as one entity with you—that is my point. They say you are one entity.

As I read this correspondence, document number 24, you write to them and talk with them about what "we" are going to do and the way you treat it and the way the club treated it and you are one entity.

Mr. GORE. Without objection, that document will be placed in the record at this point.

[The document referred to follows:]

EXH #35

OLOA #24

Gelly Oil Company | 3310 Wilshire Boulevard, Los Angeles, California 90010 • Telephone: (213) 381-7151

Minerals Exploration Department Siegfried Muessig, Manager

October 4, 1974

Mr. A. J. Grey
Pancontinental Mining, Limited
40 Clarence St.
Sydney, N.S.W., Australia 2000

Dear Tony:

I have been thinking about Connor's recent move, how it might affect us, and what we might do to improve whatever position we might be put in by whatever policy finally results. In what follows, I want to propose a course of action based on the assumption that some sort of production allocation based on reserves will be made by Government. (I realize this may not happen, but some of our strategy has been and should continue to be based on this assumption, especially now.)

I have reviewed the data that have gone into the computations of the last ore reserve estimate and I am aware that the published indicated reserves are understated by about 18% over what they are when using the actual (that is, undiminished) grades encountered in the drill holes. On strictly technical grounds, I can see no reason for cutting the grades of high-grade intervals when most holes have one or more such intervals. The diminution of grade is technically acceptable practice when there is only the odd high-grade sample; that is not the case here. However, I understand the reasons the grades were cut back; they seemed prudent at the time.

For purposes of planning strategy, I think we have to assume that in the event of allocation, the Government will send in a civil servant to review our reserves, and will want to use its own numbers. In any event, however, I would consider it highly unlikely that the Government would (or could, from a political standpoint) use a reserve number higher than the one we've published.

The number we've published is about 18% too low for the indicated, and much lower for the inferred. The question is, how do we get higher numbers into the record, thereby giving ourselves a better chance at a higher allocation? We certainly can't do so on the basis of our present drilling without an extra ingredient.

May I suggest that we push the drilling of the two step out holes as rapidly as possible. There would be the extra ingredient. If these holes show significant thicknesses and grades in one or both, and thereby show continuity of the ore body, we should recalculate the indicated and inferred reserves along the following lines:

DEFENDANTS
Exhibit 35
For Ident.
L R. L. J. 4-18-77

P. 020071

1. The outer perimeter of the new indicated reserves should be extended to include most of what we now have as "inferred."

2. The grade of the intercepts used should be undiluted in both "indicated" and "inferred."

3. The new inferred reserves should obviously be extended to include one or both new holes.

A good case, technically, can be made that the ore body as now defined by the holes on 60-meter spacing, should be called "measured" and what we now call "inferred" should be "indicated." I think we should seriously consider doing this when we announce the new reserves. Our next press release could incorporate words as follows: "The two most recent drill holes, which are located _____ meters from the nearest previous closely spaced holes in the ore body, intersected _____ grades and thicknesses of mineralization, thereby showing the uninterrupted lateral continuity of the ore body. This uninterrupted continuity is further confirmed by the fact that all holes within the perimeter of the ore body have significant ore grades and thicknesses. Accordingly, following accepted engineering practice, the ore reserves for Jabiluka Two have been recalculated, etc."

I've discussed this with Chuck Kundert, who agrees on technical grounds.

By copy of this, I'm asking Paul Riddell to give you a copy of Dennis Catley's intercepts and calculations for the 1974 data, which show 41,000 short tons U_3O_8 indicated vs. the 30,700 that we published.

Give this some thought. I'd hate to lose the allocation that the 10,000 tons plus might bring us in the event the Government moves in the direction of allocation.

Best regards.

Sincerely,

SM:jj

cc: Messrs. C. J. Kundert
P. A. Riddell

Mr. LUKEN. As a matter of fact, you are one entity because when the document comes out to you, Dr. Muessig, and this is Document No. 30, it shows the world reserves and deposits of uranium. Pancontinental is considered to have 9.53 percent, based on 65 percent of Pancontinental. Getty Oil has 6.22 percent.

[The document referred to follows:]

OLOA #30

Los Angeles, California
January 29, 1976

TO: DR. S. MUESSIG

FROM: L. C. ROVE

SUBJECT: FOREIGN AND DOMESTIC URANIUM RESERVES: TOTALS AND COMPARISONS

On November 25, 1975, I wrote a memo on this same subject. In view of the new official reserve total for Jabiluka, I thought it would be proper to revise the November 25 memo. I will also include revisions due to your noting that Rio Tinto Zinc does not own 100% of either Rio Algom or Rossing, and some additional data published by ERDA.

UNITED STATES

The U.S. uranium reserve list originally presented in a memo from C.J. Kundert to S. Muessig on January 10, 1975 was updated by the Salt Lake City office for the November 25, 1975 memo and I have no reason to alter it now. This revised tabulation listed total reserves of about 330,000 tons of U_3O_8 in known deposits of the western United States. About one-half of these reserves are controlled by four companies:

	MM Pounds U_3O_8
Kerr-McGee	119
Gulf	96
United Nuclear	63
Utah International	51
TOTAL	329

CANADA

The Toronto office prepared a similar list for known Canadian uranium deposits. The list was compiled from published data and accounts for 236,000 tons of yellowcake. This represents 45% of the total $30 uranium reserves of 526,000 tons (81,000 T measured; 124,000 T indicated; 321,000 T inferred) which were officially announced in early September, and undoubtedly represents a very large percentage of the presently identified economic ore.

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Four companies control 91% of the listed reserves:

	MM Pounds U_3O_8
Denison Mines (Blind River, Ont.)	268.5
Rio Algom (Blind River, Ont.)	73
Gulf Minerals (Rabbit Lake, Sask.)	50
Amok Ltd. (Cluff Lake, Sask.)	38
TOTAL	429.5

I see no reason to change the 236,000-ton figure derived by the Toronto office. ERDA figures give "reasonably assured" reserves of Canada (at $15/lb.) as 190,000 tons U_3O_8, while the comparable Canadian government figures (above) are 205,000 tons.

AUSTRALIA

The announced uranium reserves of Australia have now reached 462,500 s.t. U_3O_8. Fully 84% of these reserves are located in the four known deposits in the Northern Territory: Jabiluka (49.4%); Ranger (23.9%); Koongara (8.6%); and Nabarlek (2.1%).

Four companies control 73% of the Australian reserves:

	MM Pounds U_3O_8
Pancontinental (Jabiluka)	297.2
Getty Oil (Jabiluka)	160.0
Electrolytic Zinc (Ranger)	110.8
Peko-Wallsend (Ranger)	110.8
TOTAL	678.8

EUROPE

In my November 25, 1975 memo, I quoted an OECD report giving the $10 uranium reserves of Europe as 77,200 tons of U_3O_8 with 47,500 tons of that being in France. John Patterson of ERDA, in a paper presented at a Grand Junction, Colorado meeting in October, gives the $15 reserves of France and Spain as being 50,000 tons and 10,000 tons, respectively, with lesser reserves in Portugal, Sweden, and Yugoslavia. It would seem reasonable to estimate the European reserves at 80,000 tons of U_3O_8, none of which occurs in large deposits.

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AFRICA

The OECD report cited above gives the $10 uranium reserves of Africa as 353,800 tons of U_3O_8. Patterson of ERDA gives the $15 reserves as being about 400,000 tons located as follows:

	Tons U_3O_8
South and South West Africa	260,000
Niger	50,000
Algeria	40,000
Gabon	30,000
Others (Zaire, Central African Rep.)	20,000 (est.)
TOTAL	400,000

Major portions of the South African total given above are contained as very low-grade uranium which can be recovered as a by-product of the Witwatersrand gold-mining operations and the Palabora copper-mining operations.

The three largest African deposits (all of which have complicated, split owners hips) are:

	MM Pounds U_3O_8
Rossing (South West Africa)	250
Arlit (Niger)	90
Mounana (Gabon)	30

SOUTH AMERICA AND ASIA

No large uranium deposits are known in South America or Asia but Patterson of ERDA gives an estimate of 50,000 tons of U_3O_8 as the $15 reserves for the entire area.

WORLD RESERVES

Combining the figures given above, we can estimate the world's reasonably assured U_3O_8 reserves as follows:

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		Thousands of Tons U_3O_8	% of Total
1.	Australia	462.5	29.7
2.	United States	330	21.2
3.	South and South West Africa	260	16.7
4.	Canada	236	15.1
5.	Niger	50	3.2
6.	France	50	3.2
7.	Algeria	40	2.6
8.	Gabon	30	1.9
9.	Spain	10	0.6
10.	Other Africa	20	1.3
11.	Other Europe	20	1.3
12.	South America and Asia	50	3.2
	WORLD TOTAL	1558.5	100.0

Individual orebodies can be listed as follows:

	Deposit Name	Location	Grade in Pounds U_3O_8/Ton	Reserves in Short Tons U_3O_8
1.	Jabiluka	Australia	7-8.5	228,600
2.	Denison	Canada	2.5	134,250
3.	Rossing	South West Africa	1.2	125,000
4.	Ranger	Australia	6-7	110,770
5.	Yeelirie	Australia	3	50,890
6.	Arlit	Niger	5 (?)	45,000
7.	Koongara	Australia	6 (?)	40,000
8.	Rio Algom	Canada	2.4	36,500
9.	Gulf (Bokum)	United States	6	33,000
10.	Gulf (Rabbit Lake)	Canada	6	25,000
11.	Kerr-McGee (Ambrosia Lake)	United States	4.6	25,000
12.	United Nuclear (Church Rock)	United States	4.6	21,500
13.	Paguate/Jackpile	United States	4	20,000
14.	Cluff Lake	Canada	8 (?)	19,000
15.	Gulf (Keradamex)	United States	6	15,000
16.	Mounana	Gabon	?	15,000
17.	UJV-Shirley Basin	United States	5.4	14,300
18.	Kerr-McGee-Church Rock	United States	4	14,000
19.	Exxon-Powder River Basin	United States	3	13,500
20.	Kerr-McGee-Powder River	United States	4	10,000

On a "company reserve" basis, using all of the deposits listed in the appendices to the November 25, 1975 memo (not just the 20 largest given above), I can rank the various companies world-wide as follows:

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	Company	Deposits	Reserves in MM Pounds U_3O_8		% of World Reserves
1.	Pancontinental Mining	Jabiluka (Australia) 65%		297.2	9.53
2.	Denison Mines	Elliot Lake (Canada)		268.5	8.61
3.	Getty Oil Company (including interest in Skelly Oil Co. reserves)	Jabiluka (Australia) 35%	160		
		U.J.V. Shirley Basin	25.6		
		C.C.I. Excluded	6.9		
		C.C.I. Thunderbird	1.3	193.8	6.22
4.	Rio Tinto Zinc	Rio Algom(Canada)51.3%	37.4		
		Rio Algom(U.S.) 51.3%	6.1		
		Rossing(S.W.A.) 53.6%	134.0		
		Mary Kathleen (Australia) 41.1%	6.3	183.8	5.90
5.	Gulf Oil Company	Rabbit Lake (Canada)51%	25.5		
		Several (United States)	96	121.5	3.90
6.	Kerr-McGee Corp.	Several (United States)		119	3.82
7.	Electrolytic Zinc	Ranger (Australia) 50%		110.8	3.55
8.	Peko-Wallsend	Ranger (Australia) 50%		110.8	3.55
9.	Western Mines	Yeelirie (Australia)		101.8	3.27
10.	Noranda Mines	Koongara (Australia)		80	2.57
11.	United Nuclear	Several (United States)		63	2.02
12.	Utah International	Several (United States)		51	1.64
					54.58

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Mr. LUKEN. So, between the two of you, you have a pretty good chunk of it. That includes the 35 percent which is Pancontinental.

I do not want to jockey around anymore with making these fine distinctions which do not exist, but Pancontinental and Getty are the same. They are one entity. Getty got all the fruits and all the benefits from belonging to the club and from being a bad citizen and from doing a bad thing. You got all the fruits of it.

That is obvious. It would have done your organization no particular good to join the club since you were already in it, except to exercise more clout within the club. You were already in it. That is my point.

Mr. MUESSIG. That is your characterization.

Mr. LUKEN. Exactly. I do not intend to quibble with you on it anymore. There has been too much of that.

But you did get all the benefits through Pancontinental. Pancontiental was the 35 percent, that is, you own 35 percent of it and maybe more. That was the one doing business in Australia.

Mr. MUESSIG. That was 35 percent of the joint venture.

Mr. MCCABE. We do not own 35 percent of Pancontinental.

Mr. MUESSIG. We own no shares in Pancontinental. Let us make it straight.

Mr. LUKEN. But of the joint venture, the 100 percent would add up to something like 13 percent of the world reserves, so we are talking about a big chunk, are we not?

[No response.]

Mr. LUKEN. There is 9.5 percent of Pancontinental and the 35 percent.

Mr. MUESSIG. Those are very impressive numbers, but we have not taken a dime out of this joint venture yet. You talk about benefits. I really do not know what you are saying. We do not even have title, for heaven's sake. We have not gotten anything. We have a hope that sometime down the line the Australian Government will allow us to produce.

Mr. LUKEN. But you do have membership in the Club?

Mr. MUESSIG. We have no membership in the Club.

Mr. LUKEN. You are one entity with Pancontinental.

Mr. MUESSIG. Joint venture does not mean a membership in the club. It is clear. The record is clear. The record is clear as to who is the member of the Australian Uranium Producers' Forum.

Mr. LUKEN. A rose is a rose and in this case Pancontinental that is, Getty is Pancontinental because you are getting all the fruits of it.

I have nothing further, Mr. Chairman.

Mr. GORE. I have one final question, Dr. Muessig.

Are you familiar with a document called the World Market Price Clause? This was a pricing formula that was sent from RTZ to various uranium companies in the United States, and I presume elsewhere. Are you familiar with that at all?

Mr. MUESSIG. No.

Mr. GORE. Mr. McCabe, are you?

Mr. MCCABE. No.

Mr. GORE. Let me ask the staff to give you a copy of this.

Without objection, that will be placed in the record at this point.

[See p. 385, volume I.]

Mr. GORE. This document is already in the record of the subcommittee's proceedings at an earlier hearing and basically involves the pricing formula that RTZ was promulgating to the rest of the uranium market encouraging others to use the world market price concept which has a rachet effect of keeping all prices at the world market price level.

After examining it, do you have any recollections of seeing that or any familiarity with it?

Mr. MCCABE. I do not.

Mr. MUESSIG. I have never seen it.

Mr. GORE. One of the documents that we got was a letter that you, Dr. Muessig, sent to the recipient of this other letter. This is to Mr. Adams with Western Nuclear.

Mr. HADDAD. This is an April 6, 1976 letter from Dr. Muessig to Mr. Adams.

Mr. GORE. The staff is getting you a copy of it. It is not very complex. I think you will be familiar with it when I show it to you.

Without objection, that document will be placed in the record at this point.

[The document referred to follows:]

OLOR #33

Getty Oil Company | 3810 Wilshire Boulevard, Los Angeles, California 90010 - Telephone: (213) 381-7151

Minerals Exploration Department | Siegfried Muessig, Manager

TELECOPIER TO

APRIL 6, 1976

MR. ROBERT W. ADAMS
Western Nuclear
Denver, Colorado
Telephone: (303) 255-0471

The following is the excerpt from the new Foreign Investment Policy in Australia announced by Mr. Lynch April 1:

"The 75% Rule:

"Because of its unique status, the government has decided that special conditions should apply to Australian investment in uranium. In this sector a project involving investments by foreign interests not already in production, will only be allowed to proceed provided it has a minimum of 75% Australian equity and is Australian controlled. This is to be achieved by the time the project comes into production. In this area the government will have regard to foreign portfolio investment. Uranium enrichment, and other investments in the nuclear fuel cycle apart from mining and production to the yellowcake stage, are not covered by this rule and will be looked at separately."

Sig Muessig

SM:jj

4/6/75 following sent by mail :-

Complete text of Foreign Investment Policy
Copies of pricing formulas used by Japanese, French & Italian

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DEFENDANTS Exhibit For Ident. 19 E.R.C.E. 4-11-77

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Mr. GORE. You indicated at the bottom of the letter that you have sent Mr. Adams this telex and you indicate that you have sent Mr. Adams copies of the pricing formulas used by the Japanese, French, and Italians. Are you familiar with that?

Mr. MUESSIG. Yes.

Mr. GORE. This is a communication by you, Dr. Muessig, to the head of a competing company sending them pricing formulas.

Is that something that is common practice? Is there an explanation for that?

Mr. MUESSIG. May I explain that?

Mr. GORE. Yes.

Mr. MUESSIG. It was a quid pro quo on my part. I talked with Bob Adams about his ability to, that is, his ability for his joint venture in South Australia to get the South Australian government's help with the Australian government, that is, to try to get their project off center.

Bob Adams said that he would send me some material that they were sending to the Australian Government. This was all over the telephone.

As a quid pro quo I volunteered but I do not remember the details of the conversation, but I volunteered to send him these three contractural, that is, parts of contracts, I guess you would say, as a way of determining what you might get paid for uranium.

It interested me philosophically because we do not have a market like corn. There is no posted price. It means that you usually have to engage in long negotiations to come up with a price.

If you come up with a formula, then you can do that.

Mr. GORE. Unless you are a member of the cartel.

Mr. MUESSIG. I cannot comment on that.

But if you come up with a formula that is fair to both parties, then you can arrive at a price without hassle. So, it would be good.

Mr. GORE. What pricing formula has Getty determined to use?

Mr. MUESSIG. I have never seen the contract that was signed between Getty and the utilities that we referred to earlier, that is, the sale we have just made. I know that negotiations are involved. What they are in detail, I do not know.

Mr. GORE. Does it include the world market price concept?

Mr. MUESSIG. I have not seen the language. Personally I do not think there is a world market price. I am not aware of one.

Mr. GORE. There is a world market price clause that many——

Mr. MUESSIG. I have used the term in some of my correspondence.

Mr. GORE. Is this clause used in the Getty uranium contract signed with the utilities?

Mr. MUESSIG. I do not think so, no.

Mr. GORE. Mr. McCabe?

Mr. MCCABE. I do not think so. The way I understand that it works—and we can produce it, of course—the utility names the price and we name a price. Then it is negotiated. That much I do know.

Mr. MUESSIG. Then it goes to arbitration.

Mr. MCCABE. Yes, it goes to arbitration. If they do not agree, then it comes up every half year or quarterly.

Mr. MUESSIG. It just finished. We have just gone for the next delivery year to arbitration and the arbitrator set a price. He picked a price and he could only pick one of either the price that we proposed or the price that the utilities proposed. He can only pick one. He cannot pick in between.

Mr. GORE. Could you provide that to the subcommittee?

Mr. MCCABE. I believe so. We will give you anything we can. It depends on the utilities, I suppose.

Mr. GORE. Very well.

Without objection, so ordered.

[The information requested was not supplied to the subcommittee by the time of printing.]

Mr. GORE. Thank you very much.

Let me thank you both again for appearing this morning as witnesses. You have improved our understanding of this area and of the uranium market.

Again, putting aside the questions of the relationship between Pancontinental and Getty, as far as Getty's direct participation in the cartel was concerned, I personally believe that Getty is to be complimented for having a decision with 24 hours that the potential violations of the antitrust laws were so blatant that you would not directly participate in this cartel.

Again, I thank you gentlemen for appearing.

We will now hear from Mr. Roy D. Jackson, Jr.

He is an attorney at law and previously associate general counsel of Gulf Oil Corp.

I might say that after Mr. Jackson's testimony and before the testimony of the four witnesses who will join him at the witness table, we intend to take a 10 minute break.

Mr. Jackson, would you stand and be sworn, please?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. JACKSON. I do.

Mr. GORE. Would you please state your name for the reporter?

STATEMENT OF ROY D. JACKSON, JR., FORMER COUNSEL, GULF OIL CORP.

Mr. JACKSON. My name is Roy D. Jackson, Jr.

Mr. GORE. Mr. Haddad?

Mr. HADDAD. Mr. Jackson, could you quickly tell us of your relationship with the Gulf Oil Co. in the period 1970–73 and your relationship to Gulf Oil today?

Mr. JACKSON. Yes, I can.

I believe perhaps I should begin by thanking Mr. Gore for the promotion. I was not an associate general counsel, Mr. Gore. I was simply one of several attorneys in Pittsburgh. I had no title.

Getting back to your question, sir, my involvement with the matters that you are now concerned with began, to the best of my knowledge, in the spring of 1972. They extended until approximately the summer of 1972.

Mr. HADDAD. Late summer?

Mr. JACKSON. I will answer that in just a moment, sir. And, then terminated with one exception, which was a one-time ad hoc advice that I gave to Mr. Frank O'Hara in October of 1972.

Since that date, I have had no involvement other than approximately 4 or 5 months ago, I was subpoenaed by Westinghouse in the Richmond litigation and was deposed for 2 days in Houston.

I was subsequently asked to give a deposition in what is referred to as, I believe, it is the UNC litigation, the New Mexico State litigation. That was also taken in Houston for a complete full day.

Getting back to the cut-off point with my former client, that occurred, to the best of my recollection, about August 1, 1972. That is the date on which I went off the payroll of the corporation.

Mr. HADDAD. And you were succeeded in this matter by Mr. O'Hara?

Mr. JACKSON. Effectively I was succeeded by Mr. O'Hara. The sequence of events involving myself and Mr. O"Hara really goes back to my reason for having become involved, from the legal standpoint, of course, in the uranium cartel matter at all.

The gentleman in the Gulf Oil Corp., who had the responsibility from an antitrust standpoint, was Mr. Irwin Coleman. Mr. Coleman was an associate general counsel. He was in charge of antitrust matters of the corporation. Mr. Coleman was at the point of retiring. I had been selected to succeed him. Mr. Coleman asked me to help him in his evaluation of the situation that came to his attention involving Canada. That, to the best of my recollection, probably occurred in March 1972. In any event, it was during the spring of 1972.

After I had been tapped on the shoulder, so to speak, to succeed Mr. Coleman, I was offered employment without the knowledge of Gulf Oil Co., by another company in which Gulf, incidentally, had a very small interest, but they had no knowledge of the offer of employment to me.

I accepted that offer of employment. The circumstances of the employment were such that I regarded it as mandatory that I sever the umbilical cord completely with Gulf.

Mr. HADDAD. We are talking about August of what year?

Mr. JACKSON. 1972.

Mr. HADDAD. In the pre-August 1972 period, to short-circuit some of the questioning, you reported to what chain of command? What were your responsibilities in this matter?

Mr. JACKSON. In this particular matter, my responsibility was as an assistant to Mr. Irwin Coleman, who was the associate general counsel of Gulf Oil Corporation in charge of antitrust matters. His superior, in turn, was Mr. Merle Minks. Mr. Minks was the general counsel of Gulf Oil Corporation. That was my particular chain of command.

Mr. HADDAD. It gets confused later on.

Mr. JACKSON. Perhaps it would help. Apparently it did help a little bit in taking a deposition.

Mr. HADDAD. Let me interrupt you. As a matter of curiosity, did you have access to the Gulf records in putting together your deposition? Did Gulf make their files available to you when you were deposed?

Mr. JACKSON. The answer to that is categorically no.

Mr. HADDAD. Why?

Mr. JACKSON. I think that question perhaps ought to be directed to Gulf Oil. I have been available, but I have made no examination of the Gulf Oil files, and as I have testified under oath, when I left Gulf Oil Corp., I took no papers with me at all.

Mr. HADDAD. I just wanted to make that clear for the record.

Mr. JACKSON. I should add, however, that in the course of having been deposed with the result that I have apparently generated several thousand pages now of transcripts and exhibits, I suppose that by now I probably have seen everything that I ever touched upon because the attorney-client privilege, of course, effectively has been disregarded in this matter.

Mr. HADDAD. We are not sure that we have seen everything. Let me go back a little bit.

When did you first hear about the club or cartel? Let us refer to it as "The Club" for the purposes of semantics. It is the international cartel and it met in various places around the world and involved four countries and one private company.

Mr. JACKSON. While we are speaking of semantics—I do not know that it makes any substantive difference—I myself have used the term "cartel" purely as a matter of convenience. If I ever used the word "club" it was inadvertent. I used the word "cartel" as a matter of convenience, because when I was educated and tried to become a lawyer, a cartel was defined as an association, a voluntary association, of private entities put together for the purpose of defeating all the effects of competition.

In this particular case it was, and is, my opinion that the "cartel" was inter-governmentally sponsored and directed.

Mr. HADDAD. When did you first learn about the club or cartel?

Mr. JACKSON. To the best of my recollection, I was called into Mr. Coleman's office, let us say, in the spring of 1972 and was asked to assist him. I do not recall the exact briefing that Mr. Coleman gave me, but thereafter I attempted to familiarize myself with all of the facts that seemed to me to be pertinent to the question of making an antitrust determination. That was my technical function.

Mr. HADDAD. Who was your client in that matter?

Mr. JACKSON. My client in that matter was Gulf Oil Corp., and secondarily, Gulf Minerals Canada, Limited, GMCL.

Mr. HADDAD. In terms of that relationship, you set about to do some investigation. What date did you say?

Hr. JACKSON. I said the early spring of 1972.

Mr. HADDAD. So at that time there had been producers' meetings in Canada involving Gulf Oil Co. personnel and, I believe, a meeting in Paris.

Were you privy to the minutes of those meetings and the subsequent minutes to meetings up until the time that you left Gulf?

Mr. JACKSON. I believe from this side of the table, at least, you have asked two questions. Let me deal with both of them, if I may.

First, I can tell you what I found and then I can give you the progression of events.

Mr. HADDAD. Maybe——

Mr. JACKSON. If you will excuse me, this is one instance where I may be able to help you.

Mr. HADDAD. Certainly.

Mr. JACKSON. The reason I say that is that there has been a fearsome collection of papers generated by this investigation. This is not a criticism of the investigation at all. It apparently is a natural result of it.

But it does now appear to me that it has reached the point where it is most difficult to get a general perspective on what took place. There are literally thousands of pieces and, to me, at least, it becomes a bit confusing to attempt to deal with individual pieces.

So, I think that perhaps, if I may give you a general perspective, as I recall it, then it may permit the committee to better hone its questions and enable you to ask whatever it is you are after.

I will make it as brief as I can.

What I found was that the U.S. Government thought it to be in the national interest of this country to create a closed market for uranium. I was not then nor am I now privy to what went on in the Government's mind. I suspect it was not a great deal different in principle than what went on in the Canadian Government's mind.

In any event, my understanding of the situation was that the U.S. Government felt that the development of an essential resource, namely uranium, was very much in the national interest and the Governemnt did not want to do it itself, but it preferred that job be done by private industry.

In order to do that, it was necessary to have a market price structure that had some element of stability in it, so as to encourage the necessary investment and risk taking.

I do not comment on the wisdom or lack of it. That is my understanding of it.

I understand very well the result of it, however. The result of it was that the world's richest potential market for the sale of uranium was thereupon foreclosed to the rest of the world as an effective practical matter.

This was particularly upsetting to the Canadian Government. I suppose it was for these reasons. One was, perhaps a narrow economic reason, which was that the Canadian Government had a very practical political problem on its hands, which was sustaining the economies of the mining communities.

In fact, it was for this particular reason that the Canadian Government established a company, a Crown company, in other words, one owned by the Canadian Government.

Excuse me,——

Mr. HADDAD. We have had some testimony on that and I appreciate the generalizations which we do need, but——

Mr. JACKSON. May I think——

Mr. HADDAD. What did you learn about the cartel and why were you called in?

Mr. JACKSON. Let me make my point then, if you are not interested in the additional explanation.

The Canadian Government, because of the U.S. Government action, regarded the U.S. market as being foreclosed. The Canadians did

not have an adequate internal market to support their uranium industry, to bring about that development that they wanted. They, therefore, had to look to export sales in the world market.

The world market was unstable, and the prices were considerably lower than those prices in the United States. So, what the Canadian Government set out to do, as it perceived in its own national interest to be the thing to do, was simply to get rid of a free market abroad to the extent that it could. In other words, it sought to stabilize the price of uranium at a higher level in order to permit the carrying on of exploration programs inside Canada.

Now, at the time—and I get more precisely to your question—what I found was that there had been two developments of considerable importance. The first was that the Canadian Government had engaged in bilateral discussions with a variety of governments during, I believe, 1970 and 1971.

Those governments included West Germany, Japan, France, South Africa, perhaps Australia—I have no clear record on that—but I never saw any minutes of those meetings. I do not know the results.

Mr. HADDAD. You are saying that Canada organized the cartel?

Mr. JACKSON. I am saying that Canada carried on bilateral discussions with countries, some of whom were consumers and some of whom were producing countries. That was the first development.

The second development was this. I am not aware of who took the initiative in it. But, the second development, from my particular perspective, was that in early February of 1972, there was a meeting held in Paris. According to the information I have, Gulf was neither a party to that meeting nor did it attend it. That meeting was comprised really of two sections.

One was a meeting of governmental personnel and the second phase of it was a meeting of producers.

Mr. HADDAD. That, in effect, brought you into the picture?

Mr. JACKSON. Not quite.

That occurred before I came into the picture.

Mr. GORE. If counsel will yield briefly, let me say this.

We have a document here, and I will ask the staff to give you a copy. It was a preliminary draft prepared by Mr. O'Hara who succeeded you as the lawyer responsible for determining the relationship between Gulf and the cartel and the implications of that point.

Without objection, document OLOA No. 58a will be inserted into the record at this point.

[The document referred to follows:]

OLOA No. 58a

0000995

VX-32-477

July 20, 1972
(Draft - FRO:is)

(PRIVATE AND CONFIDENTIAL)

Re: Uranium Market Research Organization

Meeting was held in offices of GMCL in Toronto, Canada on July 19, 1972 to discuss the present status of Uranium Market Research Organization ("Organization"). Present were:

S. A. Zagnoli
R. D. Jackson
N. Ediger
M. W. Ramsey
L. T. Gregg
R. Allen
Bud Estey
F. R. O'Hara

A. General Factual Background

The general background facts developed during discussion were:

(1) Initiative in formation of the organization was taken by governments. Initial discussions were between governments of Canada and Australia. In this connection it is noted that there is some indication that three of the participants in the present Organization (Nufcor, Rio Tinto Zinc and Uranex) had their own group prior to governments taking initiative for formation of the present Organization.

(2) The basic purposes of Governments in directing the formation of this Organization was:

> To bring about cooperation between industry and government in stabilizing world-wide uranium market in order to preserve long-term supply of this material. This is to be accomplished by setting minimum prices and allocating quotas to each producing country during this present period of oversupply in order to avoid shortages in future periods of increased demand.

(3) The initial Canadian government contacts with Canadian producers did not involve Gulf Minerals of Canada Limited (GMCL) or UCL, its German partner in the Rabbit Lake project.

(4) Neither GMCL nor UCL participated in the first meetings of the Organization in Paris on February 7 and 8, 1972.

(5) Subsequent meetings were held in Paris in March and April 1972. GMCL's first participation was at meeting in Johannesburg, S. A. on May 31, June 1 and 2, 1972.

At this meeting it was agreed that a Secretariat should be established and that it should be temporarily located in Paris. Ultimately it should be located in a neutral country. The Secretariat

is directed by an Operating Committee which consists of a member and alternate from each of the five participating groups.

A list of the five groups presently participating in the Organization is attached hereto (Exhibit No. 1) along with the minutes of the first Operating Committee meeting in Johannesburg, S.A.

A second meeting of the Operating Committee was held in Cannes, France on July 6 and 7, 1972. A copy of the minutes of this meeting is attached.

Subsequent Operating Committee meetings are scheduled in Sydney, Australia on October 2 and 3, 1972 and Toronto, Canada on November 17, 1972.

(6) Two of the five participating groups (Australia and Canada) have private enterprise participation; the share of the group quota for each of the participants in these groups has not yet been determined.

(7) The domestic markets of France, South Africa, Australia, Canada and the United States are open. All participants in the Organization can quote on each of these markets without restriction. (Note: There is an indication that some of the participants want to review the question of exclusion of the U.S. market if and when U. S. A.E.C. ban on imports is lifted.)

(8) Though the Organization was formed through government impetus, there is no written inter-government agreement. Also there is no written agreement among participants. Only documents embodying agreement of participants are the minutes of the Operating Committee meetings.

(9) Minutes of the Johannesburg meeting (p. 4) indicate quite clearly that the effects of the Organization's activities will extend well beyond 1980; in fact effects are open ended. This is true even though present participants view term of Organization as extending only through 1980. (Original term was through 1977.)

(10) Price in the U.S. market will ultimately depend on what RTZ, Uranex and Nafcor are willing to quote for movement of non-U.S. material into U.S. if USAEC import ban is lifted. (Latest word on this is that USAEC will make a decision sometime in 1974 but nobody in the industry anticipates import ban will be lifted before 1978.)

(11) In theory it is possible to use non-U.S. material in a U.S. reactor. Import ban effectively results from fact that non-U.S. uranium can not be enriched in U.S. Since ex-U.S. cost of enrichment is about double U.S.A.E.C. cost, there is an effective a ban on imports into U.S. of non-U.S. material. (Note: This cost picture is changing as technology develops outside the U.S.).

(12) References to Westinghouse competition for Sweden and Yugoslavia business (p. 6, 7 and 8 of Johannesburg minutes) do not necessarily refer to U.S. source uranium. However, Westinghouse purchased in 1967 some New Mexico uranium from Anaconda and apparently is in a short term oversupply position.

(13) Proven uranium reserves in U.S. are all in the hands of U. S. producers except for small part held by Rio Algom (Canadian producer 53% owned by RTZ). This small part all committed to Duke Power through 1985.

Noranda, a rough and tough Canadian company with about 20,000 shareholders, is engaged in exploration in the U.S. This company is a potential private litigant if it were adversely affected by Organization's activities; e.g. Noranda is presently challenging Saskatchewan provincial export regulations on potash.

(14) American companies active in uranium exploration abroad include GMCL in Rabbit Lake and Getty which has 35% interest in an Australian discovery. These are only non-U.S. reserves held by U.S. companies. Some U.S. companies which are active in exploration abroad are:

Phelps Dodge (owns Western Nuclear and Western Mining) - active in Australian exploration

Jersey Nuclear - active in Australian and African exploratio

Mobil - active in Australia

Cities Service - active in Australia

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(15) Canadian Government officials concerned with the Organization are:

Mr. McDonald - Minister of Department of Energy and Mineral Resources (EMR)

Mr. Austin - Deputy Minister of EMR

Mr. G. M. MacNabb - Director of Bureau of Energy in EMR

Bud Estey says McDonald is key man; unfortunately, much of his authority is delegated to Austin who seems to be less reliable.

Also involved is Mr. John Runnalls who is Senior Advisor for Uranium and Nuclear Energy to the Department of EMR. (Note: Transcript of telephone conversation between N. Ediger and Mr. Runnals which outlines the means by which the Canadian government will require Canadian producers to participate in the Organization will be sent to R. D. Jackson.)

(16) Prices set in minutes of Johannesburg meeting (p.4) are higher for Japan, Taiwan and Korea than for the rest of world. Reason for this is because in these countries business must be done through agents and this results in increased sales costs.

(17) Bud Estey sees maximum protection in Canada by keeping the Canadian Federal Bureaucracy involved as much as possible. He also suggests that there be nothing in writing. Bud also feels that there should not be too much of a problem with the Attorney General of the Province.

B. United States Antitrust Considerations

The basic U. S. Antitrust considerations are:

(a) Whether immunity from prosecution from U.S. Antitrust Laws is afforded by virtue of the government of Canada "requiring" that all Canadian producers participate in the Organization; and

(b) Even if no immunity is provided under (a) above, can we conclude that there is no unreasonable antitrust risk involved because the operations of the Organization have little or no impact on U. S. foreign commerce.

1. Canadian Government Requirements. The nature of the Canadian government activity in fostering the Organization is still a bit fuzzy; however, it is beginning to crystallize and it would appear that we have a fairly strong position in this connection.

The Canadian Government involvement in this matter was apparently first publicly announced on June 19, 1969,

in a statement of "the government's policy with respect to future sales of uranium to other countries . . ."; this statement was given on June 19, 1969, in the House of Commons by Otto E. Lang, then Minister of Energy (now Minister of Justice). In his statement Mr. Lang said

> ". . . we will henceforth require that all contracts covering the export of uranium or thorium be examined and approved by the appropriate federal agency before any application for an export permit is considered. The examination will cover all aspects and implications of the contract such as nuclear safeguards, the relationship between contracting parties, reserves, rate of exploitation, domestic requirements, domestic processing facilities, and selling and pricing policy. Approval will not normally be given to contracts of more than ten years' duration unless provision is made for renegotiation of price."

Atomic Energy Control Act (Section 9) provides for regulations to be issued by Atomic Energy Control Board (AECB); Act also provides that Board will act in accordance with Ministerial Directives issued from time to time. (Section 7).

As indicated above the Canadian Government control is to be exercised via the export permit route. Three direct steps which have been or are about to be taken are:

(a) A regulation will be issued by AECB under Section 9 of the Act and it will reaffirm the obligation imposed on AECB to respond to Ministerial directives issued from time to time concerning such things as prices, quantities, etc. This regulation will become a matter of public record.

(b) Next step is issuance of Ministerial Directive which is not published (however, it may be possible for us to obtain a copy). This directive (which apparently was issued on July 14, 1972, at least in draft form) will say something to the effect that "the following prices and conditions will apply to all export contracts not disposed of by AECB (i.e. for which no export license has been granted) at the time of the coming into effect of these regulations." (This is quoted as N. Ediger took it down over the telephone.)

The above reference to "prices and conditions"

is to the prices and rules of the Organization as set forth in the minutes of the Johannesburg meeting.

(c) Sometime in August, the Minister of EMR will issue a public statement to the effect that the above ministerial directive has been issued "in the public interest". He will also state that it is not in "public interest" for details of these export license conditions to be made public and, therefore, they will not be published.

2. Impact on U. S. Commerce. The following points were made:

(a) Position here seems to be weakened a bit by the extension of the term of Organization until 1980 and the fact that effects of Organization rules may extend well beyond 1980.

(b) U. S. source uranium can be exported from the U.S. This requires a license which is relatively easy to obtain. Practically speaking, there have been very few exports because U.S. prices are too

high; (they are higher than the prices set at Johannesburg.) and because U. S. producers with only U. S. reserves are reluctant to sell overseas because of projected large U.S. demand at these higher prices.

To date export deals (for delivery during period 1966-1975) have been made to extent of about 5,000 tons. Included in this 5,000 tons are government to government deals, e.g. sale of U.S. uranium for purchase by the Germans of starfighter airplanes.

(c) Possible Argument: If world uranium market becomes more orderly U. S. exports will be promoted, thus impact on U. S. commerce will be favorable.

(d) Possible Problem: Private U. S. company (e.g. Westinghouse) may argue that Organization rules have adversely affected their ability to make package export deals, i.e. reactor and first fuel core. (This can be countered by showing willingness of non-U.S. producers to make non-U.S. material available at price presumably lower than in U. S. market.)

Exhibit 1

Uranium Market Research Organization

Canadian Group

Rio Algom	- 53% - RTZ
Denison	- Strictly Private
Eldorado	- Canadian Government
U Can	- " "
R L Joint Venture	- UCL - Canadian Sub. of German Group GMCL

South Africa

Nufcor	- (28 producers) basically S.A. Govt. Chamber of Mines

France

Uranex	(Gabon/Niger/France) Cent. Afr. Republic

Rio Tinto Zinc

Palaboro/MKU	- Multiple country production Australia, SWA, So Africa

Australia

5 Potential Producers QML	(All private Consortium (Marketing or Production may evolve under Government direction.)

Mr. JACKSON. Permit me one minor interruption. I have already thanked you for the promotion you gave me, but I want to make it clear. I think it is important to make this clear.

While I would be very happy to be recognized as the lawyer who had the sole responsibility——

Mr. GORE. I did not say the sole responsibility.

Mr. JACKSON. But the fact is that there was a legal team. I have so testified before.

Mr. GORE. Mr. Jackson, were you asked to examine the implications of the relationship between Gulf and the cartel?

Mr. JACKSON. At the time that I came in, the question was that Gulf was being placed in a position where cartel membership was a distinct possibility.

The basic anatomy of the cartel and the basic terms and rules were actually put together in Paris at a meeting in the latter part of February.

Mr. GORE. Were you asked to determine the implications of Gulf's decision to join the cartel?

Mr. JACKSON. I am answering that.

The question that was put to me was not one of examining the implications of the cartel. The cartel was not then in existence.

Mr. GORE. Were you asked to determine whether or not it would be legal for Gulf to join the cartel?

Mr. JACKSON. I was asked to determine the antitrust hazards that were incident to possible involvement of a Gulf subsidiary in the uranium cartel, yes.

Mr. GORE. So the answer to my question is yes?

Mr. JACKSON. I was asked to examine the implications of antitrust exposure in the United States of Gulf Oil Corp., as to the involvement of a Canadian company, wholly owned by Gulf Corp., GMCL in a uranium cartel that was considering being put together, yes.

Mr. GORE. So, you were asked to determine the legal consequences of a decision by Gulf for one of its wholly owned subsidiaries to join a cartel; is that right?

Mr. JACKSON. Yes. My principal assignment was to work in collaboration with a team of lawyers to look at the various aspects of that, including both Canadian lawyers and American lawyers, so yes.

Mr. GORE. Were you primarily responsible for answering the questions raised by Gulf's decision to join the cartel?

Mr. JACKSON. I was not.

Mr. GORE. Who was the lawyer in charge of that team?

Mr. JACKSON. The General Counsel of Gulf Oil Corp., has the responsibility for determining the position of the Legal Department of Gulf Oil Corp.

Mr. GORE. Did he delegate to you the task of answering that question?

Mr. JACKSON. No, sir, he did not.

Mr. GORE. Who did he delegate that that to?

Mr. JACKSON. He did not delegate it, to my knowledge.

Mr. GORE. Then you are disputing here today that you were asked to play the primary role in investigating this question of whether Gulf could legally join the cartel or not; is that right?

Mr. JACKSON. I dislike the term "dispute." That is your word, Mr. Gore. I was one of a team of lawyers that had been asked to analyze a rather complicated situation. I was never given the primary responsibility.

Mr. GORE. You were the author of the legal opinion that Gulf relied on as its justification for joining the cartel, were you not?

Mr. JACKSON. I have two points on that.

Mr. GORE. Is the answer to that question yes or no?

Mr. JACKSON. The answer is neither yes nor no.

Mr. GORE. Were you the author of the document that Gulf relied on as its version of why it was legal for it to join the cartel? You are familiar with the Jackson memorandum of September 8, 1972. Was that document prepared by you?

Mr. JACKSON. The answer to the question as to whether the September 8 document that has my name on it was prepared by me, is yes.

Mr. GORE. Was that document relied upon by Gulf as its justification for joining the cartel legally?

Mr. JACKSON. No, sir, it was not.

Mr. GORE. It was certainly cited by Gulf officials quite frequently as the study that they relied upon in their determination that they were not violating the antitrust laws.

If we are going to haggle about as simple and obvious a point as that, we will not make much progress with you here today on the witness stand. That seems obvious to me.

Mr. JACKSON. Mr. Gore, you will make as much progress with me as you desire, and I will cooperate as fully as possible if you will let me answer the question from my perspective. I think I can clarify what I mean by that.

Mr. GORE. I am beginning to have my doubts, but please proceed.

Mr. JACKSON. I shall, with your permission, of course.

The principles included in the legal opinion were certainly relied upon by the business side of the house in making their decision. There is no question about that.

The decision of Gulf to participate in the cartel, however, from my perspective, was made in advance of the date of that opinion.

The decision to participate was made, to the best of my recollection, either shortly before the Johannesburg meeting, which was the end of May or the first of June 1972, or shortly thereafter.

I, of course, have so testified to that.

Mr. GORE. What was the date of that decision, that is, to join the cartel?

Mr. JACKSON. What is that?

Mr. GORE. You say the decision to join the cartel was made in advance of the opinion prepared.

Mr. JACKSON. Categorically, yes.

Mr. GORE. What purpose did your opinion have, then?

Mr. HADDAD. That is late May, 1972.

Mr. GORE. Your testimony is that from your perspective Gulf decided to join the cartel before you prepared the legal opinion in May 1972; is that right?

Mr. JACKSON. My testimony is that the legal opinion is dated and signed September 8, 1972, and that it contains the legal advice upon which the Gulf business side of the house made its decision, to the best of my recollection, either shortly before the Johannesburg meeting or shortly after.

Mr. GORE. Did you render legal opinions favoring entry into the cartel or saying that it was all right to enter the cartel prior to the decision that was made to enter the cartel?

Mr. JACKSON. Yes, I did.

Mr. HADDAD. Is that a written decision in May?

Mr. JACKSON. No, sir, it is not.

The opinion of September 8—and again——

Mr. HADDAD. Maybe I can walk you through this. I am familiar with the subject.

You investigated the situation and on some date in late May, right about the time of the Johannesburg meeting, you went to Pittsburgh and you met with a number of people. As a result of those conferences, a legal opinion was made and you have to answer to me whether this legal opinion was recorded and then you can walk it up the ladder for me.

Would you talk with us about that day in specific details about who was in the meeting and around what table you sat when they said: "Go."

I wonder if you did anything on May 8 in writing or whatever day it was in May. I would like you to speak to that.

Mr. JACKSON. Yes, with the qualification that I am speaking from my perspective only. That, of course, is the only basis for knowledge that I have.

The point at which a Gulf decision was made, to the best of my recollection, was in late May or early June, either immediately preceding or immediately, shortly, after the Johannesburg meeting.

I regard the Johannesburg meeting—again from my perspective—as that point in time at which the cartel actually came into being.

The day that I am referring to was a single day, whatever the precise date was, and there were three meetings held on that day.

The first meeting I held with Mr. Irwin Coleman, whom I have already described as Gulf's Associate General Counsel in charge of antitrust matters.

Mr. Frank O'Hara may or may not have been there. I am really not too clear on that. Mr. Edward Howrey of the Howrey & Simon firm was present. At that time we reviewed the salient legal considerations and arrived at a consensus of view as to what we would recommend to the general counsel.

Mr. HADDAD. What was your input into that meeting? Did your view coincide with other people? Were you the impetus for that decision at that level? What independent research and knowledge did they bring into that meeting? Had they looked at the minutes of the cartel meeting? Had they done any of the in-house legal work, or was that all on your shoulders?

Mr. JACKSON. No, the team truly worked as a team. There was no specific assignment of responsibility.

Mr. HADDAD. Did they look at the minutes as well?

Mr. JACKSON. I do not recall that part. I am virtually certain that Irwin Coleman would have because Irwin was the one who had the primary responsibility with respect to Mr. Minks and also with respect to the outside counsel in the United States.

But let me say that the lawyers cross-pollinated beyond any doubt.

Mr. HADDAD. Mr. Jackson, the reason we are into this is that Gulf has told us repeatedly that "it is the Jackson memo; the Jackson brief; and the Jackson this and the Jackson that." That is why we want to know. They put it all on your shoulders. That is what Mr. Gore meant.

So you had meeting number one. You met with Coleman; right?

What was meeting No. 2? Who was in meeting No. 2 and what did you do?

Mr. JACKSON. I will answer that, but it may clarify things, Mr. Gore, if I will say this. I am not attempting in any way to avoid responsibility for what I put my name on, and I never have.

What I am trying to say to you, sir, is, that the opinion was the composite result of a very complicated and extensive legal team effort that involved a minimum of half a dozen lawyers from time to time occupying varying roles and a continuing exchange of viewpoints.

Mr. HADDAD. Including executives of Gulf who are not lawyers?

Mr. JACKSON. The only contacts I had with executives of Gulf—perhaps we should define the word "executive."

Mr. HADDAD. I am not talking about the executive of Gulf——

Mr. JACKSON. Are you talking about people on the business side of the house?

Mr. HADDAD. Yes.

Mr. JACKSON. I can tell you about that quickly. In Canada my point of contact was Nick Ediger. He was in charge of GMCL's Toronto office. As far as the American side of the house was concerned, I had contacts with Mr. Zagnoli. I believe he was the executive vice president of Gulf Minerals Co. In any event, it was the company headquartered in Denver which had the administrative responsibility for GMCL.

Mr. Zagnoli's superior was Mr. Ed Walker. My contacts were primarily, of course, with Mr. Zagnoli, but on the day in question there was a contact with Mr. Ed Walker.

The remaining contacts that I had with what we can call the business side of the house were with Mr. Wen Ramsey. I spent several hours and had several meetings with Wen Ramsey. In fact, I believe, that he may have gone with me to Toronto in mid-July when we had a definitive meeting with Mr. Ediger.

Does that answer the question?

Mr. HADDAD. Yes. I believe Mr. Ediger was there.

The second meeting was what? You left Coleman's office and you went to Minks' office?

Mr. JACKSON. That is right.

Mr. HADDAD. Who was there when you went into Minks' office?

Mr. JACKSON. The second meeting was with Mr. Minks. My recollection is—and I ask your forebearance because it has been 5½ busy years ago—that Jack Howrey was there, Mr. Edward Howrey, Mr. Irwin Coleman, and myself. I am less clear about whether Frank was there or not, but I am certain about the rest of it.

Mr. HADDAD. Were you working from a piece of paper or was it all verbal?

Mr. JACKSON. All oral.

Mr. HADDAD. Then you left Mr. Minks' office and you went where?

Mr. JACKSON. The same day there was a meeting with Mr. Ed Walker in Mr. Walker's office.

Mr. HADDAD. He was what at this time?

Mr. JACKSON. That is a good question. I have been asked that in both depositions.

Ed was the president of Gulf Minerals Co. in Denver. He got promoted and made an officer, I believe, of the parent corporation as well. Whether at this particular point in time Ed was living in Denver or had moved to Pittsburgh to assume his new duties, I do not know. He can tell you that.

Mr. HADDAD. He is what you call the executive; was he not? He was a member of the executive committee with responsibility in this matter for the general counsel, the outside counsel, and the in-house counsel. When they all went into Mr. Walker's office, what did they say to him?

Mr. JACKSON. One of the purposes of describing my confusion in the recollection of the exact status of Mr. Walker at that time gets to this question that you just put.

I do not recall whether at that time Mr. Walker was a member of the executive, the capital "E" meaning the top echelon of the corporation that has responsibility for running it.

I do remember quite well—and I have so testified—that Mr. Walker was Mr. Zagnoli's superior and that from my perspective and the part that I was playing in this, Mr. Walker was the "top of the pyramid" from the business side of the house.

Mr. HADDAD. What happened at that point? Did you tell him, "It is all right to join."? What did you tell him?

Mr. JACKSON. It does not make any difference, but I am not entirely clear in my recollection that I went in to see Mr. Walker. I probably did.

But I know that Mr. Minks did and perhaps Mr. Howrey did, but, whatever, I know what took place. It was simply to pass along to Mr. Walker the views of the legal department on antitrust exposure involved here because Mr. Walker was, understandably, looking to the lawyers.

This was the question he had.

Mr. HADDAD. I understand.

I want to pinpoint two things. No. 1, Mr. Walker, whatever his title, made the decision within Gulf that it was safe to participate in the cartel with full knowledge that the cartel was fixing prices, setting quotas, disciplining members, and all the information that you collected and which I assume somebody transmitted to Mr. Walker on that eventful day.

Mr. JACKSON. If I may answer that by changing the order around a little bit, I would say this.

There, of course, was never any doubt about what the "cartel" intended to accomplish. It was to completely frustrate free competition.

Mr. HADDAD. Would you say that again?

Mr. JACKSON. I said that the purpose of the cartel was unquestionably clear. It was to frustrate all of the effects of normal, free competition. This is what a cartel is about.

Mr. HADDAD. This is what they knew?

Mr. JACKSON. Mr. Walker did not need to be informed on that. This is precisely what gave him the point of concern. This is why he turned to the lawyers. He said:

Look here, I have an antitrust problem. It is clear to me from a business standpoint that it is not any great problem. You can either stay in business or go out of business. But the question is: What are the dimensions of the legal hazards?

Mr. HADDAD. So somebody had talked with Mr. Walker about the problem, and he, being the top executive at Gulf, had brought in counsel which led precisely to what we are talking about?

Mr. JACKSON. No, sir. I would agree with you in part and either disagree or make an exception in part.

Unquestionably Mr. Walker was fully informed. He was fully informed by the lawyers, and he was fully informed by his own subordinate, Mr. Zagnoli.

From my perspective I cannot tell you, and I did not know then and I do not know now, that Mr. Walker was the top of the pyramid as far as the executive is concerned.

Mr. JACKSON. All I know is that he was the top ranking officer, if you please, from the business standpoint and he did have full knowledge of it.

But what Mr. Walker's chain of command was is something that I am not privy to. I do not know. I did not know then.

Mr. HADDAD. What was the basis of your collective decision that it was all right for Gulf to go ahead and join the restraint to free trade?

Mr. JACKSON. The basis of the decision, stated very simply, was that there was no violation of U.S. antitrust laws and that the U.S. antitrust laws did not compel Gulf to make a decision between being subjected to the full penalties of American law for an antitrust violation or getting out of Canada.

The second basis of the decision was that there was no substantial adverse impact foreseen, as the cartel was structured, on U.S. exports of uranium or on U.S. imports of uranium. Those were the two basic points. Each was interdependent and each stood on its own feet.

Mr. HADDAD. In all fairness you also said something else. In all fairness to yourself you said something else. You said: "We will have to watch it like a hawk because cartels change everyday," or words to that effect.

Mr. JACKSON. I do not remember the precise words, but I think I can make that point very clear to you.

Mr. LUKEN. May I ask a question here?

Mr. GORE. Certainly.

Mr. LUKEN. Something was stated earlier that I think we should clear up. You said that the decision for Gulf to enter the cartel was made in late May 1972; correct?

Mr. JACKSON. No. I said that from my perspective the decision made by Mr. Walker, and I believe by the corporation, was made either in late May 1972 or probably early in June 1972, either shortly before or shortly after the Johannesburg meeting.

The Johannesburg meeting, from my perspective, was when the cartel came into being.

Mr. LUKEN. I think your answer was yes, it was made in late May 1972.

Mr. JACKSON. No, sir, I am not answering it that way.

Mr. LUKEN. Do you want to clear it up for me?

Mr. JACKSON. Yes.

Mr. LUKEN. What is the difference?

Mr. JACKSON. I do not know that it makes any difference at all. The difference is one of timing. It was either late May or early June. That is all.

Mr. LUKEN. The only distinction is that it may be early June?

Mr. JACKSON. Yes.

Mr. LUKEN. When did you learn of that decision?

Mr. JACKSON. At the Ed Walker level——

Mr. LUKEN. When did you learn about that decision?

Mr. JACKSON. At the Ed Walker level, I effectively participated in the decision.

Mr. LUKEN. Then you knew when it was made?

Mr. JACKSON. I knew when it made with Mr. Walker, yes.

Mr. LUKEN. Then the September date is not the date but it was back in May or early June of 1972?

Mr. JACKSON. Which is what I told Mr. Gore earlier in order to clarify because Mr. Gore made the statement—and I can understand perfectly well why he made it, and I am not indulging in semantics—that the legal opinion, dated September 8, was the basis for Gulf's decision. My answer to that was that the legal opinion of September 8, 1972 was the composite result of what the various lawyers had studied for months. The principles contained in it were those principles which were enunciated to the corporation and which were accepted by the corporation, and upon which it proceeded.

But it proceeded and made its fundamental practical decision for participation either in late May or early June.

Mr. LUKEN. I heard you say that before and I hear you again. I would like to get some information about the context in which that decision was made.

Was it made in a meeting? You say you were there.

Mr. JACKSON. I have said that decision, from my perspective, was made——

Mr. LUKEN. At a meeting?

Mr. JACKSON. No, that is not what I said. I said that decision, from my perspective, was made in Pittsburgh where I was stationed at the time, incidentally, on a day, that is, a single day either in late May or early June. On that day there were three meetings that took place.

The first was a meeting with Mr. Irwin Coleman.

Mr. LUKEN. This was May or June?

Mr. JACKSON. Yes, the same time.

Mr. LUKEN. Not the September meeting that you were talking about earlier?

Mr. JACKSON. I had no September meeting.

Mr. LUKEN. I am afraid I am contributing to the confusion here.

Mr. JACKSON. I am trying to do the best I can.

Mr. LUKEN. You are talking about May meetings, Mr. Counsel? These are the meetings that you are talking about were in May?

Mr. HADDAD. Yes. We do not have the exact date, but they were late May and the Johannesburg meetings took place the last day of May and the first couple days of June. You had some phone calls that I know about from Johannesburg in that period of time.

So, if you figure out whether you got those phone calls before or after the meeting, then you could pinpoint the date further.

That is not that necessary at the moment, however.

Mr. JACKSON. I cannot pinpoint them any closer than that. There was one telephone call which I do remember from Roger Allen made to me from Johannesburg. He was one of the lawyers from Denver. But I do not recall whether the decision made from my perspective was before the Johannesburg meeting or after. I do not think it makes any difference.

Mr. LUKEN. The decision that was made was the result of these meetings? You are not saying that the decision was made earlier and staff approval was given at these meetings; are you?

Mr. JACKSON. That is precisely what I am saying. That is when the decision was made from my perspective.

Mr. LUKEN. When these meetings occurred?

Mr. JACKSON. Yes. I am not trying to be evasive. I am attempting to tell you what I know of my own knowledge.

What Mr. Walker's relationships were with the rest of the executive, I do not know. I was asked in my depositions, for example, several times if I discussed the matter with Bob Dorsey. I told him I did not. Or, with Mr. Bill Henry. I did not discuss the matter with the executive of Gulf and I do not know now or then what Mr. Walker's relationship was with the rest of the executive echelon. That is all I am trying to say.

Mr. LUKEN. I want to make sure about this. There were a series of meetings on one fateful day, either in late May or early June, and the results were contained in the September 8 memo; is that correct?

Mr. JACKSON. No.

Mr. HADDAD. You had the verbal meetings in May. When did you put that down on paper?

Mr. JACKSON. I do not remember the particular point in time at which I began the drafting work on the comprehensive legal opinion that you now refer to as the "Jackson memorandum." Quite obviously that was done over a period of time.

Mr. HADDAD. In answer to the Congressman's question, it was completed approximately September 8 or some period of time in September?

Mr. JACKSON. That is correct.

Mr. HADDAD. When did you leave Gulf?

Mr. JACKSON. I went off their payroll the first of August.

Mr. HADDAD. Did you put the memo together when you were off their payroll, or was it in the works?

Mr. JACKSON. I can answer that this way. At the time that the legal opinion was transmitted to Mr. Ediger, there was also a cover letter that went with it dated September 8, 1972.

My recollection is that in that cover letter, I note the fact that the opinion had been written or dictated earlier in its final form.

But there had been one event which took place in late July or the early part of August. I therefore had prepared a separate addendum to the opinion. When that occurred, that is when I signed the final opinion.

Mr. HADDAD. You are at the heart of the issue. You are a very good lawyer.

But before I get to that I have to ask you one question. You are not sure yet whether you were in the meeting at which Mr. Walker said: "All right, boys, go."

But it was that same day. The decision was made on the verbal information that same day. You do not know what Mr. Walker did on the other side, above him, but you know that, as far as you are concerned, that decision was made that day by Mr. Walker, not Mr. Zagnoli?

Mr. JACKSON. That is correct.

Mr. HADDAD. Getting back to the meeting in May, you had two lines of defense which convinced you that if they watched it carefully they would be safe under antitrust law. One of those was compulsion. What did you base that compulsion on in May, not July, but in May? What was the basis of that decision on compulsion?

Mr. JACKSON. I would appreciate it very much. Mr. Langdon of your staff and Mr. Atkisson of the congressional staff have very kindly offered me the opportunity of presenting a written statement. I asked to do that because this thing had gotten so complicated that I felt a relatively simple statement would save everybody time.

They graciously gave me permission to do that. Then I ungraciously got so busy that I did not do it. For this I apologize.

Mr. HADDAD. No apology is needed.

Mr. JACKSON. Hopefully in the course of our discussions today I can tell you everything that I know of my own knowledge.

Would you please be kind enough to tell me precisely the point you are getting at?

Mr. HADDAD. I am now in the three meetings. I am in Pittsburgh. It is May. One of the two legs that Gulf stands on is compulsion.

From your perspective, what constituted compulsion? What were the ingredients of compulsion that you used in May? We know about the regulations in July. I am talking about May.

What led you independently to that belief?

Mr. JACKSON. The primary purpose from my perspective of preparing what is now called the "Jackson memorandum," which is the opinion dated September 8, was to document those facts upon which my conclusion was reached on the question of effective Canadian Government direction.

I would very much appreciate it, if that opinion is not a matter of record for the committee, that it be included in the record.

Mr. HADDAD. You are talking about the written opinion of the 8th?

Mr. JACKSON. Yes.

Mr. GORE. Without objection, that will be included in the record at this point.

[See appendix, p. 187, this hearing.]

Mr. HADDAD. Specifically on that question, it is compulsion and it is May and the decision is made. But what constitutes compulsion on

the record in late May before the Johannesburg or after the Johannesburg meeting in 1972?

Mr. JACKSON. It is composed of two elements. Again, the question calls for an extended answer. I am glad that the chairman has graciously accepted that to go into the record because it will detail what I cannot now recall.

The general answer, however, is that there was a general background perspective of the attitude of the Canadian Government, that is, what the government at the very highest levels regarded as being in the national interest, specifically directed to uranium and all of its aspects.

This began with a statement by the Prime Minister in 1965. It extended through a variety of other ministers in 1969, 1970, 1971, 1972, and perhaps right now. I do not know.

It was abundantly clear—and I think that a reading of my opinion will show it because I did not create these opinions of the top people in Canada—that the Canadian Government regarded it as being in the national interest that they control absolutely every aspect of the conduct of the uranium business in Canada.

Mr. HADDAD. We do not have any disagreement about that.

I am narrowly focused, Mr. Jackson, on compulsion. Compulsion, to me, is force. Compulsion is submission under dire threat.

What in May constituted compulsion? Leave aside the statements of the Canadian Government, which I think are very clear. They wanted to do it. They set out to do it.

What is there on the record in May? I am sitting here, as you know, with contrary information. Before I put it in the record I am trying to get your expression and documentation for your argument.

Mr. JACKSON. Give or take a few inaccuracies in date, this is what was on the record as of that period of time.

Mr. HADDAD. On the specific point of compulsion.

Mr. JACKSON. Yes.

I do not want to take up the committee's time.

Mr. HADDAD. We have all day.

Mr. JACKSON. Thank you.

But if we are both using the same word "compulsion" and mean something different——

Mr. HADDAD. Define it for me. I mean arm-twisting.

Mr. JACKSON. "Compulsion" means to me whether in an economic sense Gulf wanted to stay and participate in the uranium industry in Canada or get out.

Mr. HADDAD. You are saying the threat from the Canadian Government was that you would either join the cartel or you would be thrown in the lake; is that right?

Mr. JACKSON. The Canadian Government was far too sophisticated, as indeed is our own, when talking in terms of sugar cartels or steel arrangements or other arrangements for whatever the reasons may be to make explicit threats

Mr. HADDAD. Let me stop you there. This is a very important point.

In May there was no explicit threat to Gulf in terms of compulsion? Is that your testimony?

Mr. JACKSON. No, sir, not as I interpret the word "compulsion." I am not playing games with you on words.

Mr. HADDAD. It is simple. Compulsion is that I take his arm and I twist it. You give or it breaks. We have gone through these semantic arguments before. Compulsion is required and forced.

I am looking for one example or one incident or one memo or one record or one conversation or one follow-through or one example, something that demonstrates compulsion in the simple-minded Webster's dictionary definition of compulsion and in the simple-minded antitrust definition of compulsion.

Mr. Koppell wanted to say something.

Mr. KOPPELL. Was there a Canadian law that compelled you? Mr. Haddad keeps talking about arm-twisting. We are not talking about someone forcing at the point of a gun or twisting any individual's arm.

Was there Canadian law? Why do we not go down that situation? Was that a law that required your participation?

Mr. JACKSON. Apart from reading the opinion which details the facts that in my judgment constituted legal compulsion, if the committee will indulge me just a few moments, I can tell you, whether you agree with me or not, what my opinion was based on.

I said that it was based upon the general background perspective of government declarations at the highest level as to what the national interest of Canada was with particular reference to control of every aspect of the uranium industry.

Second, I suppose it was either right before or right after the meeting of the so-called specialists in Paris in late February, the government's position with respect to GMCL completely changed. The position prior to that time, as I understood it from my perspective, was that GMLC was not required to participate in any type of producers' arrangement to control prices or fix production quotas or allocate or anything else.

The simple reason was that at that point in time GMCL was not a Canadian producer. GMCL did not become a Canadian producer until some 2 or 3 years after the cartel came into being.

A second reason for this was that GMCL, having some 9 to 10 percent of the probable recoverable uranium reserves in Canada, was, in a sense, faced with exactly the same problem that other Canadian producers were. That was that they had no market.

Gulf solved its problem or thought it had by working out a private joint venture arrangement with a subsidiary, a Canadian subsidiary, of another subsidiary of RWE, which is perhaps the largest utility in Western Germany.

Without getting into the details of that arrangement, what it provided was an assured market for an adequate amount of uranium to justify an economic recovery for Gulf.

In order to get that provision, Gulf, of course, sold or disposed of a substantial portion of what it owned. So, Gulf was in excellent condition, and Gulf attempted not to get involved in the cartel.

The Canadian Government, however, took the position under the pressure of negotiations with other producers world-wide that GMCL did, that is, GMCL's potential production had to be considered in arriving at market quotas.

Mr. KOPPELL. Let us take two things.

First of all, you said that Gulf tried not to be in the cartel. That was the first thing you said.

Mr. JACKSON. Yes.

Mr. KOPPELL. What is the evidence of that?

Mr. JACKSON. The evidence of that, from my perspective, is that there was no economic rationale for Gulf to join the cartel.

Mr. KOPPELL. Do you recall any document or anything of that sort that indicated that Gulf tried not to participate in the cartel?

Mr. JACKSON. Yes, I do. I recall correspondence and statements with my clients. The general background is that Gulf was "invited" to a meeting of the so-called Canadian producers at the direction of some of the ministerial people after the Paris meetings had already started.

Mr. GORE. Mr. Jackson, that was the invitation that was drafted and typed by a Gulf employee and then presented to the Canadian official for signature; is that right?

Mr. JACKSON. Not to my knowledge.

Mr. GORE. I think the record will show that.

That was the invitation to Mr. Gregg to be a member of the operating committee. I stand corrected on that.

Mr. JACKSON. Yes, because Mr. Gregg at that point in time was unknown to me and had nothing to do with it.

Mr. GORE. If counsel will yield further, you said that you based your argument that Gulf was compelled to join the cartel on statements by Canadian officials. You do not cite any specific statements.

I would like to refer you to a document that is already in the record [p. 547, vol. I]. It is the statement by Canadian officials. It is document No. 47, if the staff would provide you with it.

It is a confidential memorandum prepared by Mr. Runnalls, a minister in the Canadian Government and sent to Mr. Austin. It is summarizing the Johannesburg meeting. It is the Canadian producers part of the meeting at Johannesburg.

Mr. Austin makes the statement about the Canadian Government's policy at page six. I quote:

Mr. Austin went on to say that there was a second tenet, namely that the government had had, as its policy stance from the beginning, that it would not force Canadian producers into an arrangement.

I refer you now to a second document. This is No. 58A that I began referring to earlier several minutes ago. This is a draft of an opinion by Mr. O'Hara who succeeded you. I refer to page 7.

I would add that the memorandum refers to and summarizes a meeting which you attended along with Mr. Zagnoli, Mr. Ediger, Mr. Ramsey, and others [see p. 73].

Mr. GORE. In reviewing the compulsion argument in this legal document or legal opinion, the memorandum says:

The nature of the Canadian Government activity in fostering the organization is still a bit fuzzy. However, it is beginning to crystallize and it would appear that we have a fairly strong position in this connection.

Then at the top of the page along the same line the document, an internal Gulf document, says:

Bud Estey sees maximum protection in Canada by keeping the Canadian federal bureaucracy involved as much as possible. He also suggested there be nothing in writing.

Going down a bit, it continues:

The basic antitrust considerations are (a) whether immunity from protection from U.S. antitrust laws is afforded by virtue of the government of Canada "requiring" that all Canadian producers participate in the organization.

I will pause there to reflect upon the fact that when a word is put in quotes in the way it is put in quotes there, it usually indicates that it has a certain dubiousness about it.

"By virtue of the government of Canada 'requiring' that all Canadian producers participate . . ." Gulf summarized the situation at that time. This is in June 1972. This is the date of the memo.

At the same time, this other memo was written by Canadian officials saying that the government has had as its policy stance from the beginning that it would not force Canadian producers into an arrangement.

Now, with that as background, you were asked by counsel for an explanation as to what you relied upon for evidence that there was compulsion by the Canadian Government. But I get the impression from the internal Gulf memoranda that it was one of the briar patch deals: "Please do not throw us in the briar patch." You wanted compulsion. You wanted regulations. You wanted them to "require" Gulf of participate, and you wanted the Canadian bureauracy involved as much as you could involve them in order to provide a semblance of a defense if you were later caught with your hands in the cookie jar.

What other evidence can you give us that there was any compulsion on the part of the Canadian government?

Without objection the subcommittee will have a short recess.

[Brief recess.]

Mr. GORE. The subcommittee will come back to order.

Mr. Jackson, before our brief recess that we just concluded, I asked you a rather lengthy question. I want now to afford you an opportunity to reply

Mr. JACKSON. Thank you. I will do the best I can.

You inadvertently referred to, I think it was, Mr. O'Hara's legal document as being dated in June.

Mr. GORE. Perhaps I did. It is July 20, 1972. The Canadian document is dated June of 1972. It is dated June 15, 1972.

Mr. JACKSON. That is correct.

You also characterized Mr. O'Hara's document as a legal opinion. I do not know whether it is or is not. This is the first time I have ever seen it.

Mr. GORE. It is a very intriguing document. There is no question about it. It is the first time that it has been introduced into the public record. It contradicts several impressions that have been laid on the public record heretofore. One of them you mentioned at the very beginning of your testimony, that the government has initiated all of this.

I am quoting from page 1. He says:

It is noted that there is some indication that three of the participants in the present organization—Nufcor, Rio Tinto Zinc, and Uranex—had their own group prior to government taking initiative for formation of the present organization.

I agree with you that it is an intriguing document.

Mr. JACKSON. I have not had time to read it. My recollection is that Nufcor is really an alter ego for the Government of the Republic of South Africa. RTZ is another matter. That is a private organization. I have no knowledge of that one.

I was trying to keep in mind the questions that I think you were putting to me, Mr. Gore. Directing myself to the exhibit which I think is numbered 47, [see Volume 1], which is the June 15th letter from Mr. Runnalls who is a representative of the Canadian Government——

Mr. GORE. This is the document where it says that the government had had as its policy stance from the beginning that it would not force Canadian producers into an arrangement.

Mr. JACKSON. Yes. I am pleased to comment on that. I will try to keep this as brief as I can.

From the antitrust practitioner's standpoint there were two areas of ambiguity or lack of certainty, in any event, about who was saying what as far as the Canadian Government was concerned. Both of these bothered me, particularly up to the point in time shortly preceding the finalizing of my document.

One was that people, specifically Mr. Austin and Mr. MacNabb, occupied a dual position. They wore two hats.

Mr. Austin was the Deputy Minister of EMR and Mr. MacNabb was the Assistant Deputy Minister. Each of those gentlemen was also a corporate official in one of the crown companies. I think it was UCL.

There was difficulty in my mind in determining at any particular point in time whether either of these gentlemen might be speaking with his business hat on or whether he was speaking in a governmental capacity.

Another difficulty that I had was that these same gentlemen, on occasions, would say that, "This is just me talking." They would say they did not know what the Cabinet's position was and they would not purport to talk for the Cabinet, and at other times it was the reciprocal.

So from the standpoint of the only American-based company in Canada, it was difficult for me, as a practitioner, particularly thinking on down the road as to how I would be able to deal with this question of compulsion and effective direction or however you care to characterize it. I knew what it was, but how was I going to be able to prove it if I had a situation of this sort?

Mr. Austin's statement and the one to which you are referring is a prime example of that. He is saying that from the very start from the point of view of the producers to go out there and enter into a voluntary arrangement. This is not the case.

Mr. GORE. Where does he say, "We want you producers——"

Mr. JACKSON. I don't recall the exact language. You called my attention to it on page 6. I was really directing myself to the principle of the exhibit. I was directing myself to the principle that we said from the very beginning it was to be done by the producers, but that is not so. That is Mr. Austin's statement made in a position of posturing, as far as I am concerned.

The government, Mr. Gore, from my perspective, had some problems inside, interdepartmentally, and perhaps with other governments. In any event, the posture that it wanted to assume was that

the producers were voluntarily getting together whether they were crown companies or private companies.

They ran into what proved to be an insurmountable obstacle in that regard, which was the Canadian Combines Investigation Act.

Mr. GORE. In other words, the individuals in the Canadian Government faced the possibility of violating the antitrust laws in Canada or the combines laws in Canada. Is that what you are saying?

Mr. JACKSON. I am saying that the producer companies who were Canadian by nationality, because you had to be or you could not be in the uranium business, including the two crown corporations that were owned, yes, they distinctly had the danger of violating criminal Canadian law.

Mr. GORE. This is very interesting. If the Government compelled Gulf Oil to join the cartel, then it would be a violation of Canadian antitrust law. If Gulf did it on its own voluntarily, then it would be a violation of American antitrust law.

Mr. JACKSON. I wish it had been that clear-cut. I can see how you would arrive at that conclusion.

Mr. GORE. Where am I going wrong?

Mr. JACKSON. I hate to have to expose you to a little bit of legal stuff here and also it is in the opinion, of course, but this is from the standpoint of determining what actually took place.

The reason that the Canadian Government, by which I mean the Cabinet, which is the highest authority in the country, was unable to carry through with its original plan of having the cartel put together simply by producer companies without visible Canadian Government intervention was that the Canadian Combines Investigation Act provided for an absolute defense in the case of exports from Canada.

But, as always, there were two qualifications. Both of them were very troublesome. One of the qualifications was that unless all of the producers in that particular industry were members of the organization, then there was no defense under the Canadian Combines Act, or law, or whatever it is called.

Mr. GORE. Was Uranerz a member of the cartel? It formally refused, didn't it?

Mr. JACKSON. I have been asked that question before, Mr. Gore. Again, please permit me to explain it this way. I think it will be helpful to this committee.

No. 1, I do recall very clearly that the German partner Uranerz said that they had an antitrust problem in Germany.

Mr. GORE. With the German antitrust laws.

Mr. JACKSON. That is correct. This was not my point of concern. I have never dealt with the Germans. I do not know the reality in back of that statement or the circumstances.

I think in one of the depositions that I have been through someone said to me, "Why did Gulf come into the cartel and Uranerz did not?"

I answered that by saying that after the explicit government direction, by which I mean the creation of the Atomic Energy Control Board in August or September, or whenever it was, cartel membership in terms of its effect on the ability to operate in Canada and export from Canada really became a non sequitur. It was not all that important because nobody could export uranium from Canada unless

they got permission from the Uranium Exporting Control Board. The only way to get permission from them was to comply with the cartel rules.

Mr. GORE. Was Uranerz a member of the cartel? The answer is no, isn't it? They had representatives who went to Johannesburg and Paris who sat outside the door basically. They floated around the cartel but they formally refused to participate in the cartel.

That seems to me to knock a big hole in the contention that you made earlier that all of the companies had to formally join or else would be a violation of the Canadian antitrust law.

If it is a violation of the Canadian antitrust law for the government officials to compel you to join, then that is an awfully weak compulsion. If they cannot compel you, under their own law they are prohibited from compelling you, how can you assert compulsion as a defense?

Mr. JACKSON. The primary thrust of my work for my client was to take care of his interest. I don't mean to sound crass about it, but I was relatively disinterested in the Germans or what happened to them.

To say, however, that the Germans were not members of the cartel is a statement that as of the time I left this, when my involvement ceased, I could not agree that they were not. I cannot do that for two or three reasons.

One, for example, the document you have just given me, which is Exhibit No. 47, was about a meeting of Canadian uranium producers. It describes the meeting of the Canadian uranium producers.

Mr. GORE. In Johannesburg.

Mr. JACKSON. Yes. It includes Mr. Kegel but I don't know the gentleman, but he was from Uranerz.

Also, I have seen literally hundreds and perhaps thousands of documents. I do not have the precise document in mind at the moment but I can find it. You gentlemen may already have it. In fact——

Mr. HADDAD. They did not join the cartel because they were worried about German antitrust laws and common market laws. They did sit in on some of the producers' meetings, but they did not set foot into the cartel in any way, shape, or form.

I guess the point the Congressman was just making was that the Canadian Government took no action against them up to and including the current date.

Mr. JACKSON. I have two responses. I am not quarreling with you. I want to give you my viewpoint.

At the time I left, one could not make the statement, from my perspective, that the Germans were not members of the cartel. For example, the meeting following the Johannesburg meeting was held in Cannes in France. That was the meeting at which the club dues, if you want to put it that way, were determined. The minutes of that meeting were sent to Uranerz along with part of the tab.

Mr. GORE. Let me pursue this point briefly. The question originally was this. What can you cite as evidence of compulsion by the Canadian Government?

All of these memoranda put "requiring" in quotes, and the government says that they are not going to require you to do it. Mr. O'Hara, the counsel for Gulf, says the nature of the Canadian Government

activities still is a bit fuzzy. What you are giving us to counter all of this record is a general and vague impression, based upon statements dating back to 1965, that the wishes of the Canadian Government would be that the companies voluntarily ban together and join a cartel.

Is that a defense for an American oil company to fix prices?

Mr. JACKSON. I understand how you would look at it from your side of the table, Mr. Gore. I would not characterize the effective direction of the Canadian Government as either general or vague. There is difficulty when one deals with the legal concept of "compulsion" in the context of the American antitrust law in order to know exactly what that constitutes. Is that somebody with a smoking pistol in his hand or is it a set of circumstances which reasonably justify a given conclusion?

There is no point in my taking any more of your time on it. I refer you to my opinion.

I can only answer this way. The Canadian Government's national interest and their declaration of it at the very highest levels made it plain that participation by GMCL was required and was very much in the interest of the Canadian Government

Mr. LUKEN. What evidence is there of that? You say that, but what evidence is there that the Canadian Government did that? You have been persistently asked to document that in some way. You are a good lawyer. You have been accused of that today. You have not denied it. You know what evidence is. You know what facts are. You are giving us conclusions. All the evidence you say is to the contrary and you call that posturing, but all the evidence is to the contrary.

With all you know about this you have not one scintilla, shall we say, of evidence that the Canadian Government compelled this enlistment?

Mr. JACKSON. Let me comment.

Mr. LUKEN. You have been commenting. Forget the comments. Just tell us what the evidence is.

Mr. JACKSON. May I suggest reading on your part? For example, there is the legal opinion written by Jackson and telegrams or telexes sent by the Deputy Minister of EMR.

Mr. LUKEN. You can't remember one bit of evidence?

Mr. JACKSON. I not only remember but I documented it in black and white in my opinion. There was a telex from the Minister.

Mr. GORE. Do we have the telex in the record?

Mr. JACKSON. We do.

Mr. GORE. We are looking for it now.

Mr. JACKSON. It constitutes an effective direction. I am not trying to be evasive.

Mr. LUKEN. While they are looking for that, you mentioned earlier that the original agreement cartel was an agreement between governments, and the United States was a part?

Mr. JACKSON. No.

Mr. LUKEN. You said that the reason was you did not think that this was a cartel by your definition but cartel is an agreement between private parties and this was an agreement between governments, and I believe you said that the United States was——

Mr. JACKSON. I can see the reason for your confusion.

Mr. LUKEN. You said the United States was in it, didn't you? That is in the business of fixing prices. Didn't you say that?

Mr. JACKSON. That is a separate question. If you want to direct yourself to that line of inquiry, the U.S. Government is certainly in the business of fixing prices. The petroleum industry is a prime example.

Mr. LUKEN. Not in uranium?

Mr. JACKSON. No.

Mr. LUKEN. Didn't you say the U.S. Government had decided that it was in the national interest that the uranium industry be controlled? That is what you said.

Mr. JACKSON. Let me clarify that statement.

Mr. LUKEN. You didn't say that?

Mr. JACKSON. Let me clarify that statement.

What I said was that the U.S. Government decided that it did not want free competition inside the United States in the uranium industry. Therefore, it effectively foreclosed the rest of the world from access to the U.S. market. That is what I said.

Mr. LUKEN. You did not say anything about participating in the cartels?

Mr. JACKSON. No, sir. I said the reason for the cartel's existence from the standpoint of Canada was generated by the fact that Canada was deprived of this market.

Mr. LUKEN. But the U.S. Government participated in it? In other words, did the United States have any representatives in Johannesburg?

Mr. JACKSON. No.

Mr. LUKEN. Direct or indirect?

Mr. JACKSON. If they did, I wouldn't know about it.

Mr. LUKEN. Not any emissaries?

Mr. JACKSON. Not that I am aware of. The United States was informed generally by the Canadian Government but I don't know about that.

Mr. LUKEN. The U.S. Government had decided that this was a matter of policy and here was the charter meeting of the cartel and the United States didn't even pay any attention to it. Is that what you are saying?

Mr. JACKSON. We are suffering a little bit of difficulty here. I am sure the fault is mine.

Mr. LUKEN. We are having difficulty in your answering questions.

Mr. JACKSON. The U.S. Government did not have any sort of partnership arrangement cartelwise or otherwise.

Mr. LUKEN. That is what I just said. Isn't that strange that the U.S. Government had this grand design in mind with regard to prices and production of uranium and yet took no interest in this charter meeting of the world organization?

Mr. JACKSON. What I intended to say was——

Mr. LUKEN. No CIA people there or anybody?

Mr. JACKSON. I intended to say that the U.S. Government did not want free competition in the uranium industry in the United States. It took the necessary legal measures to achieve that result.

Mr. LUKEN. I understand that you don't want to answer the question.

Mr. JACKSON. Let the record stand.

Mr. GORE. I will jump back into this.

We have searched the subcommittee documents, and we have not received any document, to our knowledge, that resembles the one that you stated, that is, a telex from the Canadian Government ordering, compelling, or putting pressure on Gulf to participate in the cartel. Do you have a copy of such a document?

Mr. JACKSON. No, sir, I do not but I refer to telexes from, in particular, two individuals. One was the Deputy Minister and the other was the Assistant Deputy Minister. A copy of those telexes are included in my opinion. There are copies of the actual telexes sent.

But, Mr. Gore, if there is difficulty—and I can understand how there would be with this mass of material—I would be glad to go through my files when I get back to Houston and send that to you.

Mr. GORE. That will not be necessary. I have reviewed the document that we put in the record earlier to which you refer. I believe I am safe in saying that it does not constitute evidence of compulsion on the part of the Canadian Government. But that is my characterization, and you characterize it as evidence.

We pressed you hard to supply some kind of evidence. The reason we have is that it is my belief that this compulsion was a sham and that Gulf wanted to be "required," as they indicated.

Let me now recognize Mr. Atkisson, counsel for the subcommittee.

Mr. ATKISSON. Thank you, Mr. Chairman.

Mr. Jackson, did you have occasion after you left the employ of Gulf Oil to live and work in Bermuda?

Mr. JACKSON. Yes, sir. I did.

Mr. ATKISSON. Hamilton, Bermuda?

Mr. JACKSON. That's the principal city in Bermuda. That is where the office in which I worked was located.

Mr. ATKISSON. You became president of an entity known as Oil Insurance, Ltd.; is that correct?

Mr. JACKSON. That is correct.

Mr. ATKISSON. After you left the employ of Gulf and went to Hamilton, Bermuda, and worked for Oil Insurance, Ltd., did you have further contact with any individuals in Gulf's legal department?

Mr. JACKSON. Yes, I did.

Mr. ATKISSON. Did you have contact specifically with Frank O'Hara?

Mr. JACKSON. Yes, I had really one contact with Frank, and possibly two. One was in person and one was by telephone.

Mr. ATKISSON. He came to Bermuda to see you, didn't he?

Mr. JACKSON. Frank was in Bermuda on other business and we did see each other in Bermuda, which is where I was living and working.

Mr. ATKISSON. At that time, when you met Mr. O'Hara, did you go over the minutes of cartel meetings and other documents to get yourself up to speed on what had been happening since you had left Gulf?

Mr. JACKSON. My recollection is that Frank had minutes. Indeed, that may be your Exhibit No. 47. It had language in it which troubled him. He and I discussed it.

Mr. ATKISSON. As a matter of fact, there was language in it that so troubled you that subsequently, on October 11, 1972, you wrote Mr. O'Hara. You were concerned particularly about the language you saw in those minutes which reads as follows:

The consensus finally reached was that if the club was to survive as a viable entity it would be necessary to delineate where the competition was and the nature of its strength as a prelude to eliminating it once and for all.

That bothered you, didn't it?

Mr. JACKSON. Yes.

Mr. ATKISSON. As a matter of fact, when you first got into the business of advising Gulf on the cartel, you had a very limited charge, didn't you? You were passing judgment on entry into the cartel, and you specifically recommended, did you not, that the cartel situation should be very closely monitored?

Mr. JACKSON. That is correct.

Mr. ATKISSON. You never know what a cartel might later do.

Mr. JACKSON. Your characterization in both respects is correct. Mine was a limited responsibility, and it was related to antitrust. The second was that my thrust was to develop essentially what the legal hazards of Gulf were for entry.

Being a lawyer, my preoccupation did not end at that point. My preoccupation also included what happens thereafter.

Mr. ATKISSON. I appreciate that. When you saw language in the minutes that Frank O'Hara brought to you, you were shocked enough to include it in a letter back to him saying that you were very concerned and that you thought that Gulf personnel in future cartel meetings should be sure to posture their annoyance with such predatory language—is that correct?

Mr. JACKSON. No, sir. It was stronger than that.

Mr. ATKISSON. Stronger than that?

Mr. JACKSON. Yes.

Mr. ATKISSON. I quote:

My inclination is that Gulf representatives should always record their strong objection and total disagreement with any such predatory cartel action affecting or intended to affect American trade or commerce.

Mr. JACKSON. Yes, that is stronger.

Mr. ATKISSON. A little later on in the same paragraph you say:

There is a further practical consideration that Gulf's recorded objection and disagreement will in all likelihood just be noted and overridden by other cartel members.

Mr. JACKSON. I think it almost certainly would have been. My reason for inserting that was not that I had some callous disregard for the situation. It was quite the opposite. Gulf did not control the cartel. Gulf was inside a cartel.

Mr. ATKISSON. Exactly, and it couldn't control what the other members might do.

Mr. JACKSON. That in my judgment was a continuing hazard, depending on what the cartel did.

Mr. HADDAD. You characterized that rather interestingly, and I think it sums it up very well when you saw that "eliminating competition." Did you say that your antitrust belly twitched when you read that document?

Mr. JACKSON. I did and it does.

I might add by way of further explanation that I had all of my basic antitrust training in the United States. When one takes that sort of training and then is exposed, as I unfortunately or fortunately had been in a number of other countries, there is no similarity between the two. You cannot forget how you were brought up.

Mr. ATKISSON. After your "antitrust belly twitched" and you had met with Mr. Frank O'Hara, you did in fact reduce to writing your thoughts on this subject to him.

Mr. JACKSON. Yes, I wrote Frank a letter.

Mr. ATKISSON. I will ask the staff to put document No. 66 and document No. 68 in front of the witness to verify that.

[The documents referred to follow:]

✓ OLOA #66

OIL INSURANCE LIMITED
BOX 1751
HAMILTON, BERMUDA

Specially CONFIDENTIAL

ey D. Jackson, Jr.
SIDENT

Confidential

11th October 1972

F. R. O'Hara Esq.
Gulf Oil Corporation
P.O. Box 1166
Pittsburgh
Pennsylvania 15230
U.S.A.

Dear Frank:

Uranium Cartel

The following confirms the main points discussed at our 5th October meeting in Hamilton relating to the copy you handed me of the Minutes of the Canadian Uranium Producers Meeting held in Ottawa on 5th September 1972, and forwarded with the 25th September 1972 letter of Dr. O. J. C. Runnalls to representatives of the Canadian Producers (other than UCAN).

1. Nick Ediger should be complimented for his grasp of the legal importance of the point covered by the following quotation from the confidential Minutes:

"Mr Ediger said he wished to repeat his position as expressed at the previous meeting. He felt it was very important for continuity to reside in the Department of E.M. & R."

Whatever the occasion for expression of this position, Gulf representatives should take advantage of the occasion and recognise it as the party line. The more intricately involved the Canadian Government and any of its agencies or Departments becomes and remains in this uranium matter, the better the degree of protection for Gulf. This is basically the same sentiment expressed by Gulf's Canadian outside counsel, W. Z. Estey, at our last meeting in Toronto.

2. An inherent problem in this whole matter from its very inception has been the interchanging and ambiguous capacities in which the Canadian Government has acted. From my particular perspective, it is a fact that the Government, at the highest level, has determined as a matter of policy (a) that there should be a cartel arrangement shaped by and satisfactory for the Canadian Government, and (b) that the actual Canadian Government influence and role should be obscured as much as possible, while pushing the Canadian producers into the forefront of action. I would guess that this has been done for a dual purpose: first, to avoid inter-governmental problems; and, secondly, to avoid to the extent possible the outward appearance of overly controlling management aspects of the uranium industry, while still exercising a broad surveillance in the public interest.

The consideration just noted has manifested itself in various ways and will continue to do so.

Whatever the motives of the Canadian Government may be, their actual course of conduct has emerged as I have just described it. It follows from this that the primary objective of the Canadian uranium export regulation is basically to implement the overall cartel arrangement. A secondary objective is to implement the overall cartel in the safest possible manner with a view to the hazards of the Combines Act.

3. One aspect which seems to me to be of considerable importance for Gulf is reflected in the following language from the confidential report of 21st September 1972 from Runnalls to Austin:

"There followed a general discussion of the impact of Westinghouse bidding in Europe. It was believed that the maximum amount of uranium available to Westinghouse at the moment was 3,000 tons U_3O_8, considerably less than that required to fill the SSPB order, for example. Some members thought that Westinghouse should be approached directly, whereas other views were that it would be a dangerous move. The consensus finally reached was that if the club was to survive as a viable entity, it would be necessary to delineate where the competition was and the nature of its strength, as a prelude to eliminating it once and for all."

As you and I have discussed on several occasions, one of the factors we have taken into account in our legal evaluation of the cartel is the possibility that it will fall of its own weight, one of the reasons being that its structure and ground rules did not appear to be set up to eliminate or satisfactorily regulate the competitive effects of new uranium discoveries, whether in or outside of the countries participating in the uranium cartel. The quoted language emphasizes this rationale and is the third (and most) explicit statement in this regard that I recall from the file material available.

It occurs to me that we should give serious thought to the instructions to be given Gulf personnel with respect of this aspect of cartel operation, which involves possible predatory action against American interests by the cartel, or any of its members.

The obvious reason for my concern is possible Gulf vulnerability under the American Antitrust laws with respect of cartel conduct having an adverse and substantial effect on U.S. trade or commerce.

My inclination is that Gulf representatives should always record their strong objection and total disagreement with any such predatory cartel action affecting or intended to affect American trade or commerce. I do not think that recorded expressions of this sort will seriously hurt Gulf as far as the Canadian Government is concerned, because surely that Government will recognise the unique hazard presented as far as Gulf is concerned. There is the further practical consideration that Gulf's recorded objection and disagreement will in all likelihood just be noted and overridden by other cartel members.

4. Finally, I do not understand the significance of the amendment to the Direction referred to in the last paragraph beginning on page 6 of Dr. Runnalls' confidential report. I am sure the significance will be clear to Nick Ediger and suggest that you simply familiarise yourself with the matter for whatever bearing it may have on the trade regulatory aspects with which you are primarily concerned.

I may have some availability in Pittsburgh the 13th October or the afternoon of 20th October.

Yours very truly,

Roy D. Jackson, Jr.

RDJ:jl

OLOA No. 68

Gulf Oil Corporation
LAW DEPARTMENT

Specially CONFIDENTIAL

Frank R. O'Hara
Attorney

Gulf Building
Pittsburgh, Pa. 15230

November 20, 1972

Confidential

Mr. N. M. Ediger
Manager
Gulf Minerals Canada Limited
10 King Street East
Toronto, Ontario, Canada

Dear Nick:

I recently had a chance to review the minutes of the Canadian Producers Meeting of September 5, 1972, which were attached to Mr. O.J.C. Runnalls' letter to you of September 25, 1972. I noted the following points with respect to them and I thought it would be worth passing these on to you.

(1) My compliments for your grasp of the legal importance of the point covered by the following quotation from the confidential Minutes:

"Mr. Ediger said he wished to repeat his position as expressed at the previous meeting. He felt it was very important for continuity to reside in the Department of E.M. & R."

Whatever the occasion for expression of this position, Gulf representatives should take advantage of the occasion and recognize it as the party line. The more intricately involved the Canadian Government and any of its agencies or Departments becomes and remains in this uranium matter, the better the degree of protection for Gulf. This is basically the same sentiment expressed by Bud Estey at our last meeting in Toronto.

(2) An inherent problem in this whole matter from its very inception has been the interchanging and ambiguous capacities in which the Canadian Government has acted. From my particular perspective, it is a fact that the

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Government, at the highest level, has determined as a matter of policy (a) that there should be a cartel arrangement shaped by and satisfactory for the Canadian Government, and (b) that the actual Canadian Government influence and role should be obscured as much as possible, while pushing the Canadian producers into the forefront of action. This probably has been done for a dual purpose: first, to avoid inter-governmental problems; and, secondly, to avoid to the extent possible the outward appearance of overly controlling management aspects of the uranium industry, while still exercising a broad surveillance in the public interest.

The consideration just noted has manifested itself in various ways and will continue to do so.

Whatever the motives of the Canadian Government may be, their actual course of conduct has emerged as just described. It follows from this that the primary objective of the Canadian uranium export regulation is basically to implement the overall cartel arrangement. A secondary objective is to implement the overall cartel in the safest possible manner with a view to the hazards of the Combines Act.

(3) One aspect which seems to be of considerable importance for Gulf is reflected in the following language from the minutes which are part of the confidential report of 21st September, 1972 from Mr. O.J.C. Runnalls to Mr. J. Austin:

"There followed a general discussion of the impact of Westinghouse bidding in Europe. It was believed that the maximum amount of uranium available to Westinghouse at the moment was 3,000 tons U_3O_8, considerably less than that required to fill the SSPB order, for example. Some members thought that Westinghouse should be approached directly, whereas other views were that it would be a dangerous move. The consensus finally reached was that

if the club was to survive as a viable entity, it would be necessary to delineate where the competition was and the nature of its strength."

As we have discussed on several occasions, one of the factors we have taken into account in our legal evaluation of the cartel is the possibility that it will fall of its own weight, one of the reasons being that its structure and ground rules did not appear to be set up to eliminate or satisfactorily regulate the competitive effects of new uranium discoveries, whether in or outside of the countries participating in the uranium cartel. The quoted language emphasizes this rationale. Also this is the third (and most) explicit statement with respect to Westinghouse which I have seen in the file material available.

The obvious reason for my concern is possible Gulf vulnerability under the U. S. antitrust laws with respect of cartel conduct having an adverse and substantial effect on U. S. trade or commerce.

Gulf representatives should always record their strong objection and total disagreement with any predatory cartel action which might affect or is intended to affect U. S. trade or commerce. I do not think that recorded expressions of this sort will seriously hurt Gulf as far as the Canadian Government is concerned, because surely that Government will recognize the unique hazard presented as far as Gulf is concerned. There is the further practical consideration that Gulf's recorded objection and disagreement will in all likelihood just be noted and overridden by other cartel members.

Best regards.

Sincerely,

Frank

Frank R. O'Hara

FRO:is

cc: Messrs. R. K. Allen
W. Z. Estey
J. McAfee
M. E. Minks
J. C. Phillips
S. A. Zagnoli

Mr. ATKISSON. Did you know at the time you wrote that letter to Frank O'Hara on October 11 that a little less than a month later he would send your advice verbatim over his signature to certain Gulf executives?

Mr. JACKSON. No, sir. I find a number of things I wrote had a much broader publication experience than I had counted on.

Mr. ATKISSON. You were not even getting credit for it. You were head of an insurance company at that time.

Mr. JACKSON. Yes, no fees.

Mr. ATKISSON. There is one little difference, however, between Mr. O'Hara's letter to Nick Ediger parroting your advice to Mr. O'Hara with that quote that I just read about eliminating competition. Curiously enough, he noted your concerns by parroting your language and adopting yours as his own. However, when he quoted the minutes, this time he said:

The consensus finally reached was that if the club was to survive as a viable entity it would be necessary to delineate where the competition was and the nature of its strength.

That is quite a bit different from saying "and to eliminate it once and for all."

Perhaps it is a good thing that your name is not attached to the O'Hara version of the Jackson advice.

Let me ask you this. I have only one final question.

Would your opinion to Gulf, basically sanctioning entry into the arrangement as you perceived it, have been any different had you known—and I will ask the staff to put before you Document No. 83—had you known that on October 15, 1973, Mr. Frank O'Hara would be writing memoranda to the files, "Subject: SERU", which is the nomenclature for the operating committee of the cartel in Paris, and I quote from Frank O'Hara's memo:

Roger Allen called the other day to report that Nick Ediger was currently in London attending a meeting of the SERU group. Nick called to report to Roger two significant developments as follows:

(1) The period of the existence of this group has been extended from 1980 to 1983.

Mr. JACKSON. That would bother me.

Mr. ATKISSON. Yes.

Statement No. 2 is:

The Canadian Government has changed its position and stated that it will not approve exports of Canadian uranium into the United States at less than group prices.

Would that bother you?

Mr. JACKSON. That would have bothered me, and bothered me seriously, had that been the case, because I neglected to mention that the United States was exempt from the terms of the cartel. That was a factor of great importance to me.

[The document referred to follows]

INTERNAL CORRESPONDENCE
ILF 873

0000102

OLOA #83

FROM Mr. F. R. O'Hara AT

Memorandum for File AT

IN REPLY REFER TO

DATE October 15, 1973

SUBJECT SERU

INSERT K

Roger Allen called the other day to report that Nick Ediger was currently in London attending a meeting of the SERU group. Nick called to report to Roger two significant developments as follows:

(1) The period of the existence of this group has been extended from 1980 to 1983:

(2) The Canadian Government has changed its position and stated that it will not approve exports of Canadian uranium into the United States at less than group prices.

These two developments could have a bearing on the U.S. anti-trust posture of the existence of this group and Roger suggested that we might get together and discuss these latest developments with Nick Ediger sometime in the near future.

I indicated to Roger that I might be in Denver during the week of November 5 and we agreed that I would be in touch with Roger on Monday, October 29 to see if we can set a firm date for a meeting.

FRO

Frank R. O'Hara

FRO:is

Mr. ATKISSON. We will ask the executives who will come up here in a minute whether or not Gulf responded to this remarkable information by getting immediately out of the cartel.

But you would have advised Gulf to get immediately out of the cartel had this evidence been in front of you, would you not?

Mr. JACKSON. I want to get this clear in my mind. There are two different questions there.

I do not know what I might have done under a given set of circumstances. But if you are asking me if this had been the situation at the time I was being asked about entry, then I would certainly have had a different reaction than the one I had, yes.

Mr. ATKISSON. I appreciate that.

We talked in our previous hearings about the so-called white paper. Your memorandum of April 28, 1972, and your later memorandum of June 1972, and indeed virtually all of the correspondence, refers in some manner to the preparation of a "White Paper."

It was, among other things, to include an economic impact statement. Are you familiar with all those items?

Mr. JACKSON. I am. My recollection is not—you are probably correct. I am not entirely clear that the "White Paper" phase was to include a separate economic impact. It may or may not. I don't remember. It doesn't make any difference.

Mr. ATKISSON. Your recommendation was that such a white paper be prepared in order to submit it to appropriate authorities in Washington, D.C. Is that correct?

Mr. JACKSON. If I may, I think a bit of explanation may be helpful.

Mr. ATKISSON. Was it your notion that such a white paper was to be submitted to the Department of Justice and perhaps Commerce and Treasury and the Department of State for some sort of Government approval, chiefly the Department of Justice?

Mr. JACKSON. At one stage it was a possibility receiving serious consideration but not limited to the Department of Justice.

Mr. ATKISSON. Your four memos assumed that that was the game plan, and then suddenly, somewhere after your September 8, 1972, legal opinion, the whole matter was dropped and the plan was abandoned. Do you know why?

Mr. JACKSON. I do not know why anything was done after September 8, 1972.

As far as the period before that time, to my knowledge—and I picked up on this with a couple of depositions—there was what I characterized as a three-phase process. The first was the consideration of a request to the Department of Justice for the railroad clearance, the business letter, that type of thing. The second was the white paper approach. The third and final, and the one that was done, was the preparation of an extensive legal opinion documenting the facts to show why the company had moved and on what facts it had moved.

Mr. ATKISSON. Did you think that that latter document to which you refer would be submitted to the Justice Department? Did you think that legal opinion would be submitted to the Justice Department?

Mr. JACKSON. It was not as far as I had anything to do with it, no.

Mr. ATKISSON. Do you recall referring in a memorandum to having Claude Wild initiate Washington contacts?

Mr. JACKSON. Yes.

Mr. ATKISSON. Who was Claude Wild?

Mr. JACKSON. He was in charge of the Gulf Governmental Operations Office in Washington. At that time he was the head man in an organization whose primary purpose, I thought, was to maintain an interface with the various departments, bureaus, and agencies of the Government on corporation business.

Mr. ATKISSON. To your knowledge did he initiate any so-called appropriate Washington contacts?

Mr. JACKSON. Not to my knowledge, he did not.

Mr. GORE. Mr. Koppell?

Mr. KOPPELL. First of all, I have in front of me Document 58(a). I think it has been referenced before [see p. 123]. It is a draft of a memorandum with respect to the operations of the cartel and the rationale for Gulf's participation. It is dated July 20, 1972. Are you familiar with that?

Mr. JACKSON. No; I have never seen that document before today.

Mr. KOPPELL. I will ask Mr. O'Hara some questions about that later. If you would look at it, I would appreciate it.

[Witness examines document.]

Mr. KOPPELL. I am interested in the nature of compulsion you thought was there when you advised Gulf to participate in this cartel. I don't have the telegram to which you referred.

Look at page 8 of the memorandum 58(a). He quotes a statement by Mr. Lang, Minister of Energy. He talks about contracts for the export of uranium to be subject to rather detailed approval by the Government.

Do you see the quotation in the middle of the page?

We will henceforth require that all contracts covering export uranium be examined and approved by appropriate Federal agencies. Examination will cover all aspects and implications of contracts, such as nuclear safeguards, the relationships between contracting parties, domestic requirements, domestic processing, et cetera.

Do you see that?

Mr. JACKSON. Yes.

Mr. KOPPELL. This is cited in this memorandum by Mr. O'Hara as being the nature of the Government's concern, if you will, or the Government's directions that justify participation in the cartel.

Is this the type of statement that you relied upon also when you issued your opinion, your verbal opinion, in May?

Mr. JACKSON. I do not think so. I would have to look at that more carefully and get it in the proper time context.

Mr. KOPPELL. The proper time context is this. It was issued in 1969 but, frankly speaking, it is the only statement quoted by Mr. O'Hara prior to certain regulations that are quoted on pages 9 and so on, most of which seem to have been actually thought of by Mr. O'Hara at the time he wrote this memo but they had not been actually promulgated.

So if you look backward from July, the only thing concrete on the record is this quotation that he gives.

Mr. JACKSON. I think I understand your question now. The quotation is from Otto Lang's 1969 statement which was——

Mr. KOPPELL. Is that what you considered to be compulsion? I am talking about the statement by Mr. Lang.

Mr. JACKSON. This statement, incidentally, was——

Mr. KOPPELL. The statement right there. It is not that long. You can read it. I will wait until you read it.

Mr. JACKSON. Obviously the statement made in 1969 is not in and of itself compulsion to undertake an action in 1972.

Mr. KOPPELL. Assume the statement had been made in April right before May when you gave your opinion. Let's assume this statement had been made in April. Would you regard this statement as in the nature of compulsion for Gulf to enter the cartel?

Mr. JACKSON. If the statement had been made in April over the period of time to which you refer, I would have regarded the cartel as nonsense.

Mr. KOPPELL. As nonsense?

Mr. JACKSON. Yes. There would be no reason for it. This is explicit control of every aspect of the business.

Mr. KOPPELL. It is control by the Government, all right, but it does not say one way or the other how the Government or what standards the Government is going to apply.

Mr. JACKSON. Mr. Koppell, the only thing I can say is this. I can see how it can be confusing, but the appearance in the action, or the profile if you will, of the Canadian Government was not at all constant.

Mr KOPPELL. You were advising an American company as to whether they could participate in a cartel. It seems to me—and I think this distinction is being lost today—that there is a distinction between participating in a cartel and following the policy guidelines as set down by a foreign government.

If the foreign government says that uranium should be priced at $10 a pound and you follow that pricing structure, that does not, in my opinion, mean participation in a cartel.

It is quite another matter when your company actively was involved in establishing that $10 price or the $20 price and sat on a policy committee establishing that price.

Isn't there a distinction?

Mr. JACKSON. The difficulty I find with your position is that the Government's policy in the area about which you are talking was not general. It was explicit. The directive of the Minister was, in fact, designed solely to implement the terms and conditions of the cartel.

Mr. KOPPELL. Are you saying that the Minister told Gulf that they should come to cartel meetings and help establish prices? Are you saying that is what the directive of the Canadian Government was?

Mr. JACKSON. The Canadian Government did not make any such directive while I had an exposure to the problem.

Mr KOPPELL. Let me ask you this. Did you regard it as sufficient justification for participation in the cartel that the Canadian Government, as a government matter, might be interested in the price of uranium in the world market? Is that the kind of compulsion about which you are talking?

Mr. JACKSON. In and of itself and completely divorced from all the other circumstances, it might have been acting on its own but that is not what I am saying, however.

Mr. KOPPELL. I don't have the telegram to which you made reference before but that telegram didn't tell Gulf to participate in the cartel, did it?

Mr. JACKSON. This gets back to the point I made between what I called the smoking pistol theory and the set of facts which justifies a reasonable person under the circumstances to draw conclusions. The sort of legal compulsion I am talking about is the latter.

Mr. KOPPELL. In the context of the advice you gave, did you ever consider whether you might have advised the Gulf executives not to participate in deliberations in the cartel but to follow the prices that were determined if the Government told them to? Did you ever consider giving that advice?

Mr. JACKSON. Please repeat your question I am not sure I understood it.

Mr. KOPPELL. You knew of the existence of the cartel. Was it not an option to inform the Government that though the company should not participate in making determinations, if in fact the Government of Canada insisted that company prices for Canadian exports be at a certain level, then the company would have to comply? Wasn't that an option for you to give the company?

Mr. JACKSON. I am still not with you. The functioning of the cartel when it was put together in Johannesburg and thereafter—there were essentially four delegations, as I understand it. Bear in mind that my effective participation cut off about the time it was created.

But the position of the Canadian producing group was determined by the Canadian Government, if that is what you are saying. There is no question about it.

Mr. KOPPELL. Are you saying that the Canadian Government directed Gulf to participate in the meeting of the cartel?

Mr. JACKSON. I am saying——

Mr. KOPPELL. Answer that. Are you saying that?

Mr. JACKSON. Effective direction, yes.

Mr. KOPPELL. But you cannot give me an indication of that direction. Is that right?

Mr. JACKSON. I cannot give you a smoking gun illustration. I can only repeat that, viewed against the general background of the policy statements by the Government over a period of years and the specific actions which occurred and specific statements which were made by the Canadian Government officials, it was my judgment that Gulf had two choices. One was to participate in the cartel to accomplish what the Canadian Government at the highest level considered to be their national interest or run an extremely serious danger of losing its investment.

Mr. KOPPELL. Would it have been possible for Gulf to have said to the Government of Canada, "We don't want to participate in this. We don't think we can. But if you tell us to charge a certain price or ship a certain amount, we will comply with such directives."? Would that not have been an alternative for you?

Mr. JACKSON. I don't know. It was not one that was presented.

Mr. KOPPELL. It wasn't presented but it was one that you could have presented, wasn't it?

Mr. JACKSON. Excuse me, but this is a misconception. I respectfully suggest it is. If you are suggesting that there was some sort of conspiracy between the Canadian Government and Gulf, of course there was not.

Mr. KOPPELL. I am suggesting that there was no compulsion on the part of the Canadian Government for Gulf to actively participate in the operations, activities, and price-setting market division functions of the cartel and that you were not compelled to do that.

Whether you would or would not have ultimately been compelled to follow certain prices that the Government set is another thing.

From the point of view of American law, it seems to me that there is a clear distinction that either can be made under present law or certainly, if the Congress is considering new law, could be made under new law between participation in a cartel as an active member and being forced by clear Government directive to follow certain prices or market allocation rules established by a cartel that is made up of Government officials rather than company officials. It seems to me there is a distinction that has been lost here.

Mr. JACKSON. Respectfully, I can only say this. If I understand your viewpoint, we disagree as to the time frame or what took place in 1972.

Mr. KOPPELL. Why is it that you didn't go to the U.S. Justice Department to get clearance of this activity?

Mr. JACKSON. Had it been entirely up to me, that possibility would never have been considered in the first instance.

Mr. KOPPELL. Which possibility?

Mr. JACKSON. The possibility of going to the Department of Justice and asking for clearance.

Mr. KOPPELL. You never would have considered that?

Mr. JACKSON. Never.

Mr. KOPPELL. Why is that?

Mr. JACKSON. For a variety of reasons. The first one is that we were dealing with operating facts which were changing day by day. A Department of Justice clearance is useless if the facts you represent to the Department of Justice change after you get approval.

In addition, I have never known of a Department of Justice ruling that was granted quickly. Gulf had to move.

Mr. KOPPELL. Thank you, Mr. Chairman.

Mr. GORE. Who did suggest that you submit a white paper to the Justice Department?

Mr. JACKSON. I do not recall.

I think I said earlier—and if I didn't, I should have—I cannot recall any distinct hermetically sealed phases. These were gradual overlappings.

The first thought advanced for consideration and never firmly adopted was to go to the Department of Justice for clearance. This eventually phased into the concept of a white paper. I use white paper in the sense that government frequently uses it, with which you are certainly familiar. That was to lay out the facts of what was being done and the circumstances under which it was being done and put the responsible agencies of the Government on notice.

I did that knowing that this would not constitute a legal defense in any sense of the word, but it would at least alert them. Then if they had some serious reaction to it, they would come back and tell us or they might not. In other words, it was essentially informational.

Mr. GORE. Who killed the idea?

Mr. JACKSON. I think probably the Canadian Government killed the idea as it became more explicit. It became unnecessary to do it.

Mr. GORE. The Canadian Government told Gulf not to ask the U.S. Justice Department? Who killed the idea of asking the Justice Department?

Mr. JACKSON. No; I didn't mean that.

I suppose in the direct sense, in the sense in which you were asking the question, the lawyers did. The reason the lawyers did was that they no longer saw a necessity for doing it because of the visibility of the Canadian Government direction which became so explicit that they had no reason to.

Mr. GORE. The visibility of something became so explicit that you decided not to go to the Justice Department. I think the record will allow people to come to their own conclusions as to what became explicit. You indicated earlier that your antitrust belly began to twitch. I think others may have also.

Mr. JACKSON. I agree with the chairman, of course, that the record should permit people to draw their own conclusions.

Mr. GORE. Mr. Walgren?

Mr. WALGREN. I want to briefly explore the attitude toward the impact on the price that the officials within Gulf had at the time that they entered the cartel. We are talking about the end of May and the beginning of June.

Mr. JACKSON. Yes.

Mr. WALGREN. Was there discussion about the impact of the cartel on domestic U.S. prices at that time?

Mr. JACKSON. No, sir, not to my knowledge. My only exposure to that was the economic impact statement which I requested and obtained from Mr. Ramsey. That was directed in its last phase essentially to the question of whether the cartel structure and prices would adversely and substantially affect either the export of uranium from the United States or the import of uranium into the United States under conditions existing at that time.

Mr. WALGREN. There was discussion of that subject at the meeting on July 19 between yourself and Mr. Zagnoli and others. There is more in the July 20 minutes, exhibit No. 58(a). At least that subject is raised at that time.

Mr. JACKSON. Because of my total unfamiliarity with the document, I think it might be better if you would direct my attention to what it is in there. Then perhaps I can deal with it. Otherwise I am lost.

Mr. WALGREN. I am wondering whether in the antitrust considerations it is stated that, even if the compulsion defense is found wanting, we can conclude that there is no unreasonable antitrust risk involved because the operations of the organization have little or no impact on U.S. foreign commerce. I gather that "U.S. foreign commerce" must be U.S. commerce.

Mr. JACKSON. Specifically what we meant in that context was exports of uranium from the United States. In other words, we meant sales by U.S.-based producers of uranium to purchasers abroad or the reverse.

Mr. WALGREN. Certainly any intent to affect the price abroad which was the cartel's purpose would have affected U.S. exports or imports, for that matter, because goods would only flow if there was incentive for them to flow given the right price. Is that right?

Mr. JACKSON. Mr. Walgren, I was not then nor am I now an economist but the conclusion reached was the opposite under the circumstances existing at that time. There were basically two reasons for that. One was that there was an effective prohibition against the importation of uranium from outside of the country. I never got into the details of that. I accepted the facts that were given to me.

It was certainly borne out by actual market experience. People didn't do it.

I think what it really meant was that there was no valid economic objective to be accomplished by importing uranium into the United States.

In terms of the export of uranium, the situation was, at least as I saw it—and I repeat that I am not an economist—the price that the cartel wished to fix was substantially lower than the U.S. price, even though the cartel price was higher than the free world price. At least to me, there appeared to be no economic incentive for the U.S. to be selling uranium abroad. I am talking about the circumstances at the time.

Mr. GORE. If the gentleman will yield, to quickly clarify the record once more on the question of import embargo, there was no embargo on the importation of foreign uranium or the purchase of foreign uranium by the U.S. utilities during the period that we are discussing. The ban was only on the enrichment of foreign uranium for use.

As you are aware, Mr. Jackson, many U.S. utilities, including the Tennessee Valley Authority purchased large quantities of uranium from cartel members during the period in question. So the question of an import ban has to be cleared up, it seems to me, for the record once again.

Mr. JACKSON. Mr. Chairman, I certainly agree that it needs to be cleared up because, of course, the question of impact is essential. That is a valid purpose of your investigation, of course.

Your understanding of the bar on importation of uranium is almost certainly better informed than mine but at variance with mine.

My understanding was that yellowcake or enriched uranium could not be used in the United States if it came from foreign sources.

Mr. GORE. I said it could not be enriched for use in the United States. It could be purchased.

Mr. JACKSON. If it could not be used, it gets to the question of why bring it in.

Mr. GORE. Because it could be purchased, and it was purchased at prices that were higher than they would have been if the cartel had not fixed prices.

Mr. JACKSON. Again I cannot dispute that because I simply do not know. I am not at all familiar with the TVA's situation.

Mr. GORE. Mr. Walgren?

Mr. WALGREN. Do you recall in your conversations with the other Gulf officials discussion of any interrelationship between the price domestically and the foreign price?

Mr. JACKSON. Yes; I recall that because I had a number of meetings with Ramsey and his associates. He made a detailed, thorough study over a period of some weeks. I attempted to explain to Mr. Ramsey what the legal reasons for asking for an informed economic impact statement were. I participated in discussions to the extent of explaining the then-contemplated structure and operation of the cartel, and that obviously included pricing.

However, the correlation was one, as I said, that had to be left to the people who understood uranium marketing. It is not a simple subject. I did not understand it. I did not intend to. That is why I went to the experts to get an accurate economic analysis.

So to answer your question more pointedly, yes, I think it must have been considered but the conclusion reached was that the anticipated adverse effect was insignificant or nonexistent. That is the conclusion, incidentally, that I accepted for the purpose of counseling my client.

Mr. WALGREN. The difficulty I have is this. Although the conclusion that you reached may have been accepted on good faith from people who may have been more knowledgeable about economics than most lawyers are—and I include myself in that—it seems to be at variance with almost every statement that can be found within Gulf's internal communications and even at variance, if this is an accurate record, with the meeting in which you were included, as was Mr. Ramsey and Mr. Zagnoli, in which again and again there is direct allusion to the fact that the international price as set by the cartel is going to affect the domestic price.

To be specific, on page 4 of the Document No. 58(a) in subparagraph 9—I will pass over that for 1 minute. Subparagraph 10 says:

Prices in the U.S. market will ultimately depend on what RTZ, Uranex, and Nufcor are willing to quote for movement of non-U.S. material into the U.S.

Mr. JACKSON. This is an observation. This is the first time I have seen this document. There is an important qualification. It says, ". . . if the USAEC import ban is lifted."

Mr. WALGREN. Yes. At that time it was not, but I have to go by implication, trying to get out what was in the minds of the people in that meeting.

They talk about the ban being lifted or anticipated being lifted in 1978. That is in subparagraph 10.

In subparagraph 9, just previously, it says:

The minutes of the Johannesburg meeting indicate quite clearly that the effect of the cartel organization's activities will extend well beyond 1980.

Even on the level of being reduced to writing, there is the thought that we are directly anticipating the international ban being removed and the effect on price continuing well beyond the time that it is removed. In effect the domestic price, "the price on the U.S. market," will then be affected by the prices that have been achieved in the foreign market.

That is backed up by internal Gulf memoranda in terms of their marketing strategy. In the memorandum from Mr. Hunter to

Mr. Hoffman, dated June 8, 1972, it clearly sets out that there should be a total interrelationship between Gulf marketing price strategies domestically with their international price experience.

It says:

The overall strategy must reflect the interrelationship existing between the foreign and domestic markets.

I will continue but I want to find the exact part that makes sense.

Mr. JACKSON. May I comment up to this point?

Mr. WALGREN. Let me finish.

Foreign and domestic marketing activities are inseparable and indeed should be treated integrally if we are to optimize the company's position.

Then he goes on further to say that not only did they treat them integrally but they made decisions on domestic production based on the foreign price, to wit, "based on input"—they thought about making decisions based on that basis. The quote is:

Based on input provided by Gulf Minerals, we conclude that corporation profit is greater if New Mexican production begins in 1978 rather than 1976.

The clear meaning of that to me is that Gulf specifically managed their domestic marketing of uranium activities to optimize their corporate benefit in relationship to the foreign prices that were being received.

My problem is this. Everything in writing seems to contradict the no-effect-on-price position of the corporation. I can understand you as a lawyer saying:

If there is no effect on price, then that will not create unusual liabilities in the antitrust area.

However, in communicating that to business people within the Gulf structure, we find them thinking that there is an effect on price. How is that explained?

Mr. JACKSON. You have covered several different points. The "effects" that you refer to in Mr. O'Hara's memorandum, or whatever it is, which I saw today—and I do not say this to be evasive, but I think you had better ask Frank about that.

You talk about "effects." I don't know what Frank had in mind.

Insofar as contradictory, or apparently contradictory, statements are concerned within the Gulf organization relating to economic effects—and I am tempted to add almost any other subject that one can conceive—that is not a rarity. There is a great deal of it. I suppose that it would in a sense be bad if it were otherwise.

Now I must say to you, sir, that at the time that I rendered my opinion, which is all I can talk about and all I am qualified to talk about, I was not aware of any contradictory market anlysis within the Gulf organization. Indeed, I carried out no separate investigation nor was I informed concerning the domestic uranium marketing industry. I knew nothing about it.

So I can understand your concern, but I am not sure you have the right person here to satisfy your curiosity on that point. I would like to, but I am not qualified to do it.

Mr. WALGREN. Do you have any recollection—and by that I mean actual recollection—of the meeting that these minutes memorialize? That is the July 19, 1972, meeting?

Mr. JACKSON. It's sketchy but I remember the meeting, yes.

This was the first occasion when I informed Mr. Ediger directly as to what the parent company's position was and what the law department's position was. The two went together at that time.

Mr. WALGREN. Do you recall discussion about the impact on domestic price at that meeting?

Mr. JACKSON. No, sir, in truth I have no recollection. It may very well have been discussed, but I have no recollection of it. That is all I can tell you.

Mr. WALGREN. You also have no recollection of—well, after you sent your memorandum of October 11 to Mr. O'Hara and Mr. O'Hara then a month later incorporated that into advice to Mr. Ediger, was there any conversation with you about the deletion of those damning words about eliminating the competition once and for all?

Mr. JACKSON. No, sir, there was not.

Mr. WALGREN. Did anyone talk to you about whether or not those words should be deleted?

Mr. JACKSON. No.

Mr. WALGREN. Thank you.

Mr. GORE. Mr. Jackson, we appreciate your testimony. You will stay on the panel, if you will, please. We will ask four other witnesses to join you. These are four officials of the Gulf Oil Corp.

If you gentlemen would come forward, we would appreciate it.

These gentlemen are M. W. Ramsey, senior manager, Financial Research and Project Reviews; F. R. O'Hara, associate general counsel; S. A. Zagnoli, executive vice president of Gulf Minerals Resource Co.; and E. B. Walker, president, Gulf Energy and Minerals Co., and executive vice president of Gulf Oil Corp.

Mr. COLMAN. At this time I would like, pursuant to an earlier conversation I have had with committee counsel, Mr. Atkisson, to invoke the proteceion of rule 11 of the House rules with respect to the testimony of these witnesses.

Mr. GORE. Before ruling on your request, I would ask whether you as the representative of these gentlemen are complying with the subpena duces tecum by providing the copy of the October 18, 1972, letter along with attachments thereto that are described in the subpoena.

Mr. COLMAN. Which subpoena?

Mr. GORE. This is the subpoena to Mr. Frank O'Hara, Gulf Oil Corp., Pittsburgh, Pa.

Mr. COLMAN. Mr. O'Hara is prepared to address that in his testimony. We were unable to locate the documents called for.

Mr. GORE. You have not been able to locate the documents that were subpoenaed?

Mr. COLMAN. That is correct.

Mr. GORE. Once again, the Chair is constrained to rule that cameras and live microphones of the news media be turned off because the witnesses have invoked rule 11 of the House. Once again, I disagree with this rule. I think it is wrong but the rule stands and it must be enforced. So I request the news media to comply and turn off the cameras, lights, and live microphones.

Mr. COLMAN. I could only comment that I recall your earlier remark this morning, Mr. Chairman. At least from this side of the

table it is distracting, and I think the witnesses will be better able to address the questions from the Chair and from the other members without that distracting influence. Thank you for your courtesy.

Mr. GORE. We will honor your request.

Will the witnesses come forward, please?

Raise your right hands, gentlemen, and be sworn in, please.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

[Chorus of "I do's" by four witnesses.]

Mr. GORE. Be seated, please.

For the reporter would you state your name and position with the corporation?

TESTIMONY OF S. A. ZAGNOLI, EXECUTIVE VICE PRESIDENT, GULF MINERALS RESOURCE CO. (A DIVISION OF GULF OIL CORP.); FRANK R. O'HARA, ASSOCIATE GENERAL COUNSEL, GULF OIL CORP.; M. W. RAMSEY, SENIOR MANAGER, FINANCIAL RESEARCH AND PROJECT REVIEWS, GULF OIL CORP.; EDWARD B. WALKER III, PRESIDENT, GULF ENERGY AND MINERALS CO., AND MEMBER OF THE BOARD, GULF OIL CORP.; AND FURTHER TESTIMONY OF ROY D. JACKSON, FORMER COUNSEL, GULF OIL CORP.

Mr. ZAGNOLI. I am S. A. Zagnoli, executive vice president of Gulf Minerals Resource Co., a division of the Gulf Oil Corp.

Mr. O'HARA. I am Frank O'Hara, associate general counsel with Gulf Oil.

Mr. RAMSEY. I am M. W. Ramsey, senior manager, Financial Research and Project Reviews of the Gulf Oil Corp.

Mr. WALKER. I am Edward B. Walker III, president of Gulf Energy and Minerals Co. and member of the board of directors of Gulf Oil Corp.

Mr. GORE. Mr. O'Hara, the subcommittee subpenaed the letter of October 18, 1972, along with attachments thereto. A subpena was served on you in Pittsburgh. Where are the attachments?

Mr. O'HARA. Mr. Colman accepted the subpena pursuant to my authorization.

Mr. GORE. Fine.

Mr. O'HARA. The document that you have requested has been located, and I think previously produced for the committee if I am not mistaken. Nothing was found in the Pittsburgh files or the Denver files. I have a letter from one of the lawyers in Gulf's law department who conducted the search. It has not been located.

Mr. GORE. Does any other member of the panel have any indication where these attachments might be located?

[No response.]

Mr. GORE. Might they be in Canada?

Mr. O'HARA. I don't know.

Mr. GORE. Do you, Mr. O'Hara, have any knowledge as to whether any documents relating to this matter have been sent out of the country or destroyed?

Mr. O'HARA. No, sir, none.

Mr. GORE. Do any of the other members of the panel have knowledge of such events?

Mr. WALKER. I do not.

Mr. RAMSEY. I do not.

Mr. ZAGNOLI. I believe at some point several years ago there were some documents sent from Denver back to Canada from the law department in Pittsburgh.

Mr. GORE. Was that at the direction of the law department in Pittsburgh?

Mr. ZAGNOLI. I do not know.

Mr. GORE. What was the year?

Mr. ZAGNOLI. It would just be a guess. I do not know.

Mr. HADDAD. Can you date it in relationship to something else, such as a grand jury subpena or something?

Mr. ZAGNOLI. At least a year before—I am guessing 1974 or 1975.

Mr. HADDAD. What precisely was sent back?

Mr. ZAGNOLI. I do not know.

Mr. GORE. Mr. O'Hara, as a lawyer working for Gulf, have you ever prepared a brief on the question of whether or not documents sent out of the United States by Gulf could be retrieved on a subpena?

Mr. O'HARA. No, sir, I have not.

Mr. GORE. Mr. Haddad?

Mr. HADDAD. You have not prepared that kind of memorandum for the corporations? I am talking about documents that leave the country not being subject to subpena or anything that question suggests. You did not prepare any legal memo for the corporation or make notes in that regard?

Mr. O'HARA. I do not recall preparing such things.

Mr. HADDAD. Are you familiar with anybody who might have prepared such a document?

Mr. O'HARA. No; I am not.

Mr. HADDAD. Thank you.

I would like to start with you, Mr. O'Hara, if you do not mind. I would like to put before you a couple of documents. The first document is the memo to file.

Mr. GORE. Let me interrupt at this point to clarify for the record that the documents we are asking you to supply to the subcommittee and the documents that we have subpenaed pursuant to the authority of the U.S. Congress under the Constitution include the minutes of a secret cartel meeting. These minutes were in the possession of Gulf Oil Corp. They are described in this letter that has been supplied to us, and they have now apparently disappeared.

None of you can give us any indication as to whether they were destroyed, sent out of the country, or have been shredded or what. We have no indication from any of you as to what has happened.

It is implausible to me that the documents described in this letter could have been simply misplaced.

Anyone may comment if they wish but I wanted to add that for the record.

[No response.]

Mr. HADDAD. Staff, would you provide Mr. O'Hara with Documents 58(a) [see p. 73], 83 [see p. 113], and 93(a).

[The document 93(a) follows:]

OLOA No. 93(a)

TO: R. K. ALLEN

ROOM _____ BLDG. _____

- ☐ PER OUR CONVERSATION
- ☐ PER YOUR REQUEST
- ☐ FOR YOUR INFORMATION
- ☐ FOR YOUR FILE
- ☐ FOR YOUR APPROVAL
- ☐ FOR YOUR SIGNATURE
- ☐ FOR FOLLOW-UP RECORD
- ☐ FOR DISCUSSION
- ☐ PLEASE COMMENT
- ☐ PLEASE DISTRIBUTE
- ☐ PLEASE PHONE _____
- ☐ PLEASE PROCESS
- ☐ PLEASE SEE ME
- ☐ PLEASE SEND ME FILE
- ☐ PLEASE RETURN TO: _____

REMARKS:

Roger:

I understand you will show this to Zag and I have, therefore, not sent him a copy.

F. R. O'Hara

SIGNATURE

February 1, 1974

Mr. N. M. Edigar
Gulf Minerals Canada Limited
10 King Street East
Toronto, Ontario, Canada

Re: Uranium Marketing Research Organization

Dear Nick:

This will confirm our several recent conversations with respect to the request of the Canadian Ministry of Energy, Mines and Resources ("EMR") that Gulf Minerals Canada Limited ("GMCL") make Mr. L. T. Gregg available to serve on the Operating Committee of the Uranium Marketing Research Organization ("Seru") for the calendar year, 1974.

You have requested my opinion on the question of whether the U. S. antitrust laws prohibit GMCL from complying with the Canadian Government's request.

Opinion:

The history of Seru, the facts surrounding GMCL's participation in it and the applicable U. S. antitrust considerations are outlined in detail in Roy D. Jackson's Opinion Memorandum of September 8, 1972 and it would serve no useful purpose to repeat it here. I have carefully reviewed Mr. Jackson's Opinion Memorandum and it demonstrates quite clearly that GMCL has become a participant in Seru only because it was required to do so by the Canadian Government. This Opinion also discusses in great detail the applicable U. S. antitrust cases and commentaries all of which remain in effect as of the present time.

On the basis of the foregoing review and the letters which you have furnished to me, it is my opinion that Mr. Gregg's service on the Operating Committee of Seru for the year 1974, in response to the request of the Canadian Government,

will not in itself involve any violation of the U. S. antitrust laws. Further, it is my view that this additional factor of Mr. Gregg's service on the Operating Committee when added to GMCL's present membership in Serv will not serve to materially increase GMCL's U. S. antitrust exposure.

Discussion:

I understand from our discussions that EMR's request was originally made to you orally in October, 1973 and that this was followed up by written requests from EMR on October 23, 1973 and January 8, 1974, copies of which you have provided to me.

The letter of October 24, 1973 to you from Mr. J. Austin, Deputy Minister of EMR, copy of which is attached hereto as Annex "A", states that the "Canadian Government favors" the practice of rotation of nominees to the Operating Committee among the Canadian uranium ministry. The letter points out that several representatives of other Canadian producers have already served on the Committee and that "under this rotation, it is now the turn of Gulf Minerals Canada Limited . . . to provide one of its members to serve." The letter concludes with the statement that the request by the Canadian Government to have one of GMCL's officers take his place in the line of representation is made "according to policies being administered by my Department."

The follow-up letter of January 8, 1974 to you from Mr. G. M. MacNabb, copy of which is attached hereto as Annex "B", makes it quite clear that the Canadian Government deems it "to be in the public interest" for Mr. Gregg to serve on the Operating Committee along with the permanent representative of the Canadian Government, Dr. O. J. C. Runnalls, Senior Advisor-Nuclear, Department of EMR. Mr. MacNabb's letter concludes with the request that GMCL "make every effort to assign Mr. Gregg to this task for the period calendar year 1974."

You have also indicated to me your strong belief, arising from your discussions with various officials in EMR, that

GMCL's refusal to honor this request would materially impair the good will and spirit of cooperation which EMR has demonstrated toward GMCL to date and which is so necessary to the orderly and efficient development of GMCL's uranium business in Canada.

One of the authorities cited in Mr. Jackson's Opinion is the paper presented by the U. S. Department of Justice on January 25, 1972 to the U. S. Senate Subcommittee on Foreign Commerce and Tourism. One part of that paper seems particularly relevant to EMR's most recent request and I am, therefore, repeating it in full below:

> "A foreign government may, because of its economic or national interest in 'rationalizing' competition in certain industries, promote certain private cooperative agreements or understandings by companies within that industry. It may, therefore, expect a U. S. company seeking to do business in its territory to agree to abide by the governmentally desired—but not officially imposed--system of private arrangements as a condition of securing (and keeping) the necessary permits and approvals.
>
> "Such officially encouraged arrangements may involve, for example, the agreed pricing of products at a level which will not take markets away from competing products important to the local economy, or the entering into by competitors of cooperative agreements for joint utilization of existing production facilities rather than the construction of new ones which might create overcapacity.
>
> "Official encouragement of arrangements of this sort is especially likely where necessary raw materials or labor or transportation facilities are in short supply, foreign exchange may be limited or the government may wish to prevent a single company from becoming too important to the national economy.
>
> "In general, restrictions such as these applying to commerce in the host country and imposed by the

host government will create no antitrust hazards for the American company. In particular, price or capacity restrictions in the foreign market imposed at the insistence of the foreign government and not involving exports to the United States should not violate U. S. antitrust laws."

In conclusion, I should also like to note my belief that it is potentially more dangerous for GMCL to be a member of an association in which it has no voice in what is going on than it is for GMCL to occupy a position which assures access to accurate, current information about the activities of the group and an opportunity to register a negative vote should action outside the reasonable scope of the arrangement be proposed without Canadian Government direction.

The cornerstone of GMCL's U. S. antitrust position is the effective Canadian government direction that GMCL participate in this organization, buttressed by the projected minimal impact of this organization on the foreign trade or commerce of the U. S. These are the matters that fundamentally shape GMCL's antitrust position -- not participation in the reasonable scope of the activities of the association in which GMCL has been directed to participate.

Sincerely,

Frank R. O'Hara

FRO:is

Attachments

Senior Assistant Deputy Minister
of
Energy, Mines and Resources

CANADA

Sous-ministre adjoint principal
de
l'Énergie, des Mines et des Ressources

Ottawa, Ontario,
K1A 0E4,
January 8, 1974.

Mr. N.M. Ediger,
Manager,
Gulf Minerals of Canada Limited,
10 King St. East,
Toronto, Ontario - M5C 1C3.

Dear Mr. Ediger:

I would like to confirm that it is deemed to be in the public interest that Mr. L.T. Gregg should be one of the two Canadian representatives on the Operating Committee of the international uranium producers group. I am writing to ask, therefore, that you make every effort to assign Mr. Gregg to this task for the period of calendar year 1974.

Yours sincerely,

G. M. MacNabb.

RECEIVED

CANADA

Ottawa, Ontario,
K1A 0E4,
October 24, 1973.

Mr. N.M. Ediger,
Manager,
Gulf Minerals Canada Limited,
10 King St. East, Suite 1300,
Toronto 1, Ontario.

Dear Mr. Ediger:

As you are aware, meetings of representatives of international uranium producers have been held periodically since mid-1972. One of the groups which meets is referred to as the Operating Committee; Canada may nominate two individuals to this committee.

Regarding representation, the practice which the Canadian Government favours is a rotation amongst nominees from the Canadian uranium industry and several such representatives have already served on the committee. Under this rotation, it is now the turn of Gulf Minerals Canada Limited as a member of the Canadian uranium corporate group to provide one of its members to serve.

I trust that your Company will agree to this request by the Canadian Government to have one of your officers take his place in the line of representation according to policies being administered by my Department.

Yours sincerely,

A. Austin, Q.C.

Mr. HADDAD. Mr. O'Hara, when did you take over—why don't you provide me with the details of your employment with Gulf Oil and your responsibilities in the 1972–73 period up to date? When did you join Gulf Oil in matters related to the cartel?

Mr. O'HARA. My first recollection I have is the attendance of the meeting in Toronto in July 1972.

Mr. HADDAD. July 1972?

Mr. O'HARA. Yes.

Mr. HADDAD. You were not a participant or in any way involved in the earlier decision of Gulf to join, which was in May of 1972?

Mr. O'HARA. No, sir, I was not.

Mr. HADDAD. How did you get into the situation? How did you come to represent Gulf?

Mr. O'HARA. I believe I was asked to work on this either by Mr. Colman——

Mr. HADDAD. Did you know at that time that you would be taking over for Mr. Jackson?

Mr. O'HARA. I am not sure at that time. I believe, yes. Mr. Jackson was leaving. I knew that.

Mr. HADDAD. You became effectively active in this at the meeting on July 19?

Mr. O'HARA. That was my first recollection.

Mr. HADDAD. At that time you prepared a Document No. 58(a). Is that right? Did you prepare that document?

Mr. O'HARA. Let me look at it.

[Witness examines document.]

Mr. O'HARA. I think there were some things attached to the other.

Mr. HADDAD. There were two documents. We first received a stripped version of it and then received a fuller version.

The one I am talking about goes 11 pages and has an exhibit A attached. Did you prepare that document?

Mr. O'HARA. I prepared it, the 11 pages, and then there is an exhibit 1, and then the attachments I did not prepare.

Mr. HADDAD. This document records your understanding of the situation at that time. Is that right?

Mr. O'HARA. These were some notes that I made after attending the meeting in Toronto.

Mr. HADDAD. I would like to move for a moment to another document, No. 83. It is the O'Hara memorandum for the file, October 15, 1973. We were questioning earlier about this document.

Could you tell us the circumstances under which this document was prepared and if it accurately reflects your viewpoint?

Mr. O'HARA. It was prepared by me after a telephone conversation with Mr. Allen.

Mr. HADDAD. The two points mentioned were accurate at the time?

Mr. O'HARA. This was told to me by Mr. Allen, but subsequently I learned that point No. 2 was not accurate.

Mr. HADDAD. When did you learn that point No. 2 was not accurate?

Mr. O'HARA. I subsequently received a copy—I don't remember exactly when—of the Canadian price directive dated sometime after this, on October 30 I believe, which contained the same exclusion of

the U.S. market. Therefore, I concluded that item No. 2 was erroneous. Mr. Allen had received that and it was erroneous.

Mr. HADDAD. Did you talk to Mr. Allen about it?

Mr. O'HARA. I did, sir, yes.

Mr. HADDAD. At what time?

Mr. O'HARA. I don't know exactly but it was subsequent to the telephone conversation, and I think about the time we received the Canadian price directive.

Mr. HADDAD. You don't remember that particular date?

Mr. O'HARA. No.

Mr. HADDAD. Was it prior to February 1, 1974?

Mr. O'HARA. Yes; I believe it was.

Mr. HADDAD. I do not see any rescinding of that information in any of the documents that we received. Did you correct that in the file anywhere?

Mr. O'HARA. I never wrote another file memorandum correcting this one.

Mr. HADDAD. You didn't refer to it again in negative terms, that it was not true?

Mr. O'HARA. No, sir. It turned out to be in error.

Mr. HADDAD. Did you tell anybody else that it turned out to be inaccurate?

Mr. O'HARA. Mr. Allen and I discussed it. I don't recall anybody else.

Mr. HADDAD. The first part stands, I take it?

Mr. O'HARA. I'm not sure about it. I don't know.

Mr. HADDAD. I don't understand. Is it accurate or inaccurate? "The period has been extended from 1980 to 1983."

Mr. O'HARA. That also turned out to be an erroneous report.

Mr. HADDAD. This is reported in the cartel minutes which I assume you have read. It is extension of the cartel dates. You are saying that both of these things turned out to be wrong?

Mr. O'HARA. Certainly No. 2 did, and I am saying I do not know about No. 1.

Mr. HADDAD. You never did anything about No. 2?

Mr. O'HARA. I discussed it with Mr. Allen and we established that it was an erroneous report.

Mr. HADDAD. That is the first erroneous report that we have run across. The cartel was efficient. It communicated its information directly, precisely, and succinctly. It is the first error in either allocations or markets that I have seen come back from the cartel.

Mr. O'HARA. When I say "erroneous," I mean erroneous in the sense that the subsequent directive issued by the Canadian Government continued to exclude the U.S. market from the terms of the directive laid down by the Canadian Government.

Mr. GORE. On what do you base your statement that it later turned out to be erroneous?

Mr. O'HARA. As I just said, Mr. Gore, subsequently a directive issued by the Canadian Government, I believe dated October 30, 1973, continued to state that the markets of the United States and the other markets, like South Africa and the other four markets, were excluded from the terms of the directive.

Mr. GORE. But the Canadian group consistently sold into the U.S. market at cartel prices. Prices that were offered below that were disapproved. We have TVA and Duke Power. It was correct. The U.S. market was——

Mr. O'HARA. It was my judgment that it was erroneous because subsequently the Canadian Government issued that directive stating the U.S. market was excluded.

Mr. GORE. I have asked for evidence as to why that is incorrect. You cite this memo but the record stands that all uranium which came into the United States during this period from Canada was purchased at prices dictated at or above the prices that were cartel prices.

Mr. O'HARA. I don't know.

Mr. GORE. I looked at the record. I will welcome any correction by anyone but that is the case. The people I represent are paying a lot more money because of it.

Mr. HADDAD. You don't have any contrary information about the price, do you, in the U.S. market?

Mr. O'HARA. Contrary to what?

Mr. HADDAD. To what Mr. Gore just said.

Mr. O'HARA. As to what time?

Mr. HADDAD. As of any time, mid-1974.

Mr. O'HARA. September 1972, that is the date of the Jackson opinion. It was my understanding that the prices at that time which the cartel was setting were less than the price inside the United States.

Mr. HADDAD. When you joined Gulf in this matter, were you told the decision had been made to join the cartel?

Mr. O'HARA. I do not recall being told that, no.

Mr. HADDAD. You do not recall being told?

Mr. O'HARA. No.

Mr. HADDAD. What was your assumption, that the decision had not been made?

Mr. O'HARA. My assumption was that I would work with Mr. Jackson and Hr. Coleman on this opinion and that at the meeting in Toronto, which was the first one I attended, Mr. Jackson gave the oral advice which was subsequently documented in the September 8 letter.

Mr. HADDAD. Mr. Jackson never told you that the decision had been made?

Mr. O'HARA. I don't recall being told that.

Mr. HADDAD. Mr. Jackson, did you tell him the decision had been made?

Mr. JACKSON. I think perhaps Frank and I are not entirely together on that because my recollection is that at the mid-July meeting in Toronto one of the principal purposes of it from my standpoint was to explain, particularly to Mr. Ediger, the position of the corporation both on law and on business.

Mr. HADDAD. I understood you to say that earlier. I understood you to say that earlier under oath, that you had communicated the corporate decision to Mr. Ediger at this meeting.

Mr. O'Hara, you are saying you were not aware the decision had been made?

Mr. O'HARA. I do not recall that decision being communicated at that meeting.

Mr. HADDAD. This is a major policy decision. This is your responsibility. You do not remember?

Mr. O'HARA. I do not remember. I do not remember that decision being communicated. This was my first involvement in the matter. I was attempting to get involved in what was a very complex situation. I was trying to begin to understand it in anticipation of assisting Mr. Jackson and Mr. Coleman in writing an opinion which would confirm the advice that Mr. Jackson gave at that meeting because, as I just said, it was the view of the lawyers that there was government compulsion here and certainly there was lack of impact on U.S. commerce.

Mr. HADDAD. You remember one and two but you don't remember——

Mr O'HARA. I don't remember the words "the decision had been made."

Mr. HADDAD. Who did you report to during this period of time?

Mr. O'HARA. I reported to Mr. Minks who was head of the law department.

Mr. HADDAD. He did not tell you the decision had been made?

Mr. O'HARA. At that time, no, I don't believe so.

Mr. HADDAD. When was the decision made, as far as you are concerned, for Gulf to join the cartel and on what basis?

Mr. O'HARA. As far as I am concerned, the decision was made at that July meeting, which was the advice Mr Jackson gave that it was the law department's view that there was compulsion and that, in any event, there was minimal, if any, impact on U.S. commerce, and that was our recommendation and it would be placed in the form of a legal opinion.

Mr. HADDAD. Recommendation to whom?

Mr. O'HARA. Recommendation of the law department to the corporation.

Mr. HADDAD. Whom in the corporation did you communicate that decision to?

Mr. O'HARA. I don't believe I ever told anybody.

Mr. HADDAD. So it just hung in the air? You didn't tell it to Mr. Minks or Mr. Walker?

Mr. O'HARA. I had discussions subsequently with Mr. Minks about the July meeting, yes.

Mr. HADDAD. The decision was made and not communicated, as to the best of your knowledge?

Mr. O'HARA. I would not say that. Mr. Jackson has said the decision was communicated but I do not recall discussing it with anyone other than Mr. Ediger at that time.

Mr. HADDAD. Mr. Zagnoli, when were you told the decision was made?

Mr. ZAGNOLI. I do not recall any meeting where the decision was communicated.

After the passage of the regulations and the final legal opinion, we proceeded. I have no recollection of a meeting. I have nothing in writing. I do not recall being told explicitly.

We followed the Canadian regulations.

Mr. HADDAD. First of all, you did not make the decision? You are leaving it on the record—and you may want to clear this up—but you are saying that you were told by the law department at a July meeting, without a written document, that you had a go sign. You also did not hear that the corporate executive had decided it. You took that information and made your decision and went ahead with the cartel?

Mr. ZAGNOLI. I have absolutely no recollection of being told at that meeting time that the executive had made the decision.

Mr. HADDAD. So you disagree with Mr. Jackson? Nobody communicated with you, I take it.

Mr. ZAGNLOI. I do not recall specific communication.

Mr. HADDAD. But you began to take actions on the part of Gulf with the cartel and participated in the meetings. So you made the decision then, didn't you?

Mr. ZAGNOLI. That is your characterization of it.

Mr. HADDAD. Disabuse me of the idea.

Mr. ZAGNOLI. We had attended meetings. My recollection as to what happened evolved over a period of time. The decisions that were taken were one step at a time.

We made decisions, after being directed to attend certain meetings and so forth, to do so and so.

As I testified before, for me we were going to follow the Canadian regulations and two things happened.

Mr. HADDAD. Let me stay with this question. It is a very simple question. It is an important one to me and to us.

Mr. ZAGNOLI. Yes.

Mr. HADDAD. You took a series of actions relating to the cartel. You directed a series of actions relative to the cartel beginning in July.

Mr. ZAGNOLI. I don't know what you are saying as to what actions I took.

Mr. HADDAD. That Gulf participated. What was the chain of command? The chain of command was you to Walker and you to Ediger, right? Who was underneath you? It was Ediger; is that correct?

Mr. ZAGNOLI. Pardon?

Mr. HADDAD. Who reported to you?

Mr. ZAGNOLI. In Canada it was Ediger.

Mr. HADDAD. Ediger began to participate. He had a great worry about participating in these meetings. Did you ever talk to Ediger and tell him it was okay to go to those meetings?

[No response.]

Mr. HADDAD. You yourself were at some of the meetings earlier than that. I am trying to figure out how you did it. How did Ediger know he could do it and not go to jail? How did he know it was legal?

Mr. ZAGNOLI. We had legal counsel.

Mr. HADDAD. Who made the decision?

Mr. ZAGNOLI. If he asked me after having received legal counsel, I would say yes.

Mr. HADDAD. Did you tell Mr. Ediger that it was safe to proceed with the cartel? Yes or no? At any point in any way in any shape or any form did you do that? Did you ever tell Ediger it was "go"?

Mr. ZAGNOLI. I do not recall that I said, "Ediger, it is go." Ediger would have to get permission from me from the management side to go to certain meetings not in Canada, as long as he had legal clearance.

Mr. HADDAD. You gave him the permission to go to cartel meetings abroad, didn't you?

Mr. ZAGNOLI. I approved his attendance, yes.

Mr. HADDAD. Did you do that on your own authority or did you receive instructions from the corporation, not the lawyers of the corporation but the chain of command of the corporation? The lawyers are staff. They don't make decisions. They don't set policy. They advise. They advise the executive, and the executive carries out a decision.

Did you initiate the action or were you told to initiate the action; the action of authorizing Ediger to participate in the cartel, a cartel which troubled a number of people at Gulf enough to call for a series of legal opinions.

Mr. ZAGNOLI. I cannot answer that.

Mr. HADDAD. Why not?

Mr. ZAGNOLI. Once it was established that there was nothing illegal about it—these things were discussed with my superiors.

Mr. HADDAD. Who?

Mr. ZAGNOLI. I had discussions with Mr. Walker.

Mr. HADDAD. When?

Mr. ZAGNOLI. Specifically with relation to what?

Mr. HADDAD. What we are talking about.

Mr. GORE. The decision to join the cartel.

Mr. ZAGNOLI. I do not recall having a meeting with Mr. Walker and saying we will or we will not join the cartel. I was not in such a meeting.

This had evolved to the point, as I said, where once the Canadian regulations were passed and we had the legal opinion, then we just proceeded to operate under the Canadian regulations.

Mr. HADDAD. Mr. Zagnoli, to whom did you report the actions of the cartel? Did you talk to Mr. Walker about them?

Mr. ZAGNOLI. Mr. Walker was my contact.

Mr. HADDAD. How often did you speak to him in a month, 1 time, 5 times, 10 times? How often were you in contact with him about the cartel?

Mr. ZAGNOLI. I really don't know.

Mr. HADDAD. Do you talk to him frequently? How frequently were you in contact with Mr. Walker?

Mr. ZAGNOLI. Certainly more than once in a month. There was no routine of calling on the phone. I went to Pittsburgh once a month.

Mr. HADDAD. Did you inform his about the fact that Ediger was attending these meetings with others from Gulf?

Mr. ZAGNOLI. He was informed.

Mr. HADDAD. By whom?

Mr. ZAGNOLI. I did, or he was informed perhaps by the law department. He was informed about the meetings, not international meetings. I am talking about the Canadian meetings after September. It became more routine. It was partly combined with the Canadian directives.

Mr. HADDAD. What about the international meetings? How were they reported back? Through you? Ediger worked for you.

Mr. ZAGNOLI. Yes.

Mr. HADDAD. Did Gregg work for you?

Mr. ZAGNOLI. No; he worked for Ediger.

Mr. HADDAD. How did they communicate what happened in Johannesburg, for example?

Mr. ZAGNOLI. I believe sometime after the meeting I may have seen a report from Ediger or when he saw me he talked to me about it. I may have seen the Canadian document that reported on the meeting. I am not sure.

Mr. HADDAD. I feel that you are being very evasive.

To whom did you communicate this information to—that is, information that came to you from the international cartel, from Gregg, Ediger, and so on? Who did you tell? Did you tell Mr. Walker? Mr. Minks? Mr. O'Hara? Mr. Henry? Mr. Dorsey?

Mr. ZAGNOLI. I had no communications with Mr. Dorsey. I communicate on the basis of a need to know. Above me my contact executive was Mr. Walker. There were references to some of the meetings in some newsletters that were passed on to management.

Mr. HADDAD. Mr. Walker, maybe you can help us resolve this issue. Mr. Jackson has testified under oath that on a particular day in May—and maybe a calendar will help us pinpoint that day—there were three meetings which ended up in a meeting in your office at which you were told that it would be legally safe for Gulf to join the cartel and that you on that day gave the okay to go ahead with the cartel. Is that your recollection?

Mr. WALKER. No.

Mr. HADDAD. Could you provide us with your recollection?

Mr. WALKER. Yes.

In the first place, when I talk about club and cartel, I am referring to the marketing arrangements. When I say Gulf, I may be referring to GMCL. This will be for brevity only.

My recollection of it is very similar to that of Mr. Zagnoli. The thing did evolve, and the only meeting that I remember—and I can't place any time except that it was before the Johannesburg meeting—was one with Merle Minks. Whether someone else was there or not, I do not know. The only recollection I have was talking with Mr. Minks.

My recollection of that meeting is not that Gulf would join the cartel, because I do not recall a decision to go with the cartel, but rather whether Mr. Ediger would attend the Johannesburg meeting, that is, whether it would be proper to attend that meeting.

It is my recollection that the decision had already been made. In effect, it was made by the Canadian Government that we would attend the meeting. The question was whether we could do this legally in both countries and properly or, if not, do we risk losing our investment up there.

Mr. HADDAD. We are talking about internal authorizations. I am addressing myself to internal authorizations.

Mr. WALKER. That is what I am saying. We had the Government insisting——

Mr. GORE. If the gentleman will excuse me. Complete your response if you prefer.

Mr. WALKER. No; that is all right. Go ahead.

Mr. GORE. Is it your testimony then, Mr. Walker, that Gulf did not join the uranium cartel?

Mr. WALKER. I do not recall any formal joining of the uranium cartel. The fact that we were a member of the cartel, I am not denying that. Don't misunderstand me. But I do not recall any decision that Gulf would join the cartel and sign on the dotted line.

Mr. GORE. Who authorized the payment of dues to the cartel?

Mr. WALKER. I don't know. I am not familiar with that at all.

Mr. GORE. Who would authorize such payments in the corporation?

Mr. WALKER. The payment of dues?

Mr. GORE. Yes.

Mr. WALKER. That's at the operating level. I am purely guessing. My guess would be Mr. Ediger.

Mr. GORE. Let's go up and down the ladder of responsibility a little bit.

Somebody is paying dues to the cartel. Mr. Zagnoli got the impression somehow that it was all right for him to attend these meetings. Who paid the dues, Mr. Zagnoli? Who authorized them?

Mr. ZAGNOLI. I think it was probably within Mr. Ediger's authorities.

Mr. GORE. Did you tell him it was all right to pay the dues?

Mr. ZAGNOLI. If I had been asked—in fact, I was requested one day as to what they should be charged to, and there was a document with my writing on it and it was charged to marketing.

Mr. GORE. Mr. Walker, would you agree with me that paying dues to an organization and participation in an organization and participation on the operating board of directors of an organization and compliance with all the directives of an organization over a continued period of time is evidence of membership in that organization?

Mr. WALKER. I didn't say it was not. I said that I do not recall our formally joining.

Mr. GORE. So you joined but there was no decision to join?

Mr. WALKER. I don't recall it. As I recall, it evolved through the compulsory attendance at these meetings.

Mr. GORE. Mr. Walker, I believe that if multinational organizations are going to be subject to the rule of law, that individuals within those corporations must be held legally responsible for violations of criminal law. A violation of criminal law occurred here, in my opinion. That is under investigation now by the appropriate authorities.

But what you are telling us is that the corporation, this amorphous entity, took this action without any individual making the decision authorizing that action.

What I am asking you is this. Who said, "It is all right for Gulf to join the cartel"?

Mr. WALKER. I do not know the answer to the question.

Mr. GORE. Were you in a position of responsibility to make that decision?

Mr. WALKER. I was a member of the executive at that time. I do not recall being asked to make that decision.

Mr. HADDAD. But they reported to you at this point.

Mr. WALKER. Who?

Mr. HADDAD. Did Mr. Zagnoli report to you at this time?

Mr. WALKER. What time are we talking about?

Mr. GORE. Spring, summer, and fall of 1972.

Mr. WALKER. I had an executive contact point with respect to exploration and production worldwide for oil, gas, and minerals up through the end of July 1972.

After July 1972 I was the official contact executive for Gulf Mineral Resources Co. I was not the contact executive except for the exploration and production functions before that.

Mr. HADDAD. What happened in May? Why did Mr. Minks come in and talk to you in May if you were not the contact point on the Canadian situation?

Mr. WALKER. The whole situation depends on exploration. We were going to lose the property.

Mr. HADDAD. I understand but that is not what he talked to you about. We have testimony that he came in and said, "It's legal for us to join the cartel."

I would even accept your language. Your language is, "We never made the decision to join the cartel and we merely authorized people to go to the meetings."

Who authorized them to go to the meetings? Why were they coming in to you to say it was all right to go to meetings and they would not have to worry about the antitrust laws? Why did Minks come to you?

Mr. WALKER. It certainly impinged on our uranium business in Canada.

Mr. HADDAD. So you were the contact point on the cartel in May 1972?

Mr. WALKER. No; I was not. I don't consider myself the contact point.

Mr. HADDAD. Did you communicate Mr. Minks' information with anybody else at Gulf at that time?

Mr. WALKER. I don't have a specific recollection, but normally I would have communicated it to the other members of the executive, yes.

Mr. HADDAD. Normally you did?

Mr. WALKER. Yes.

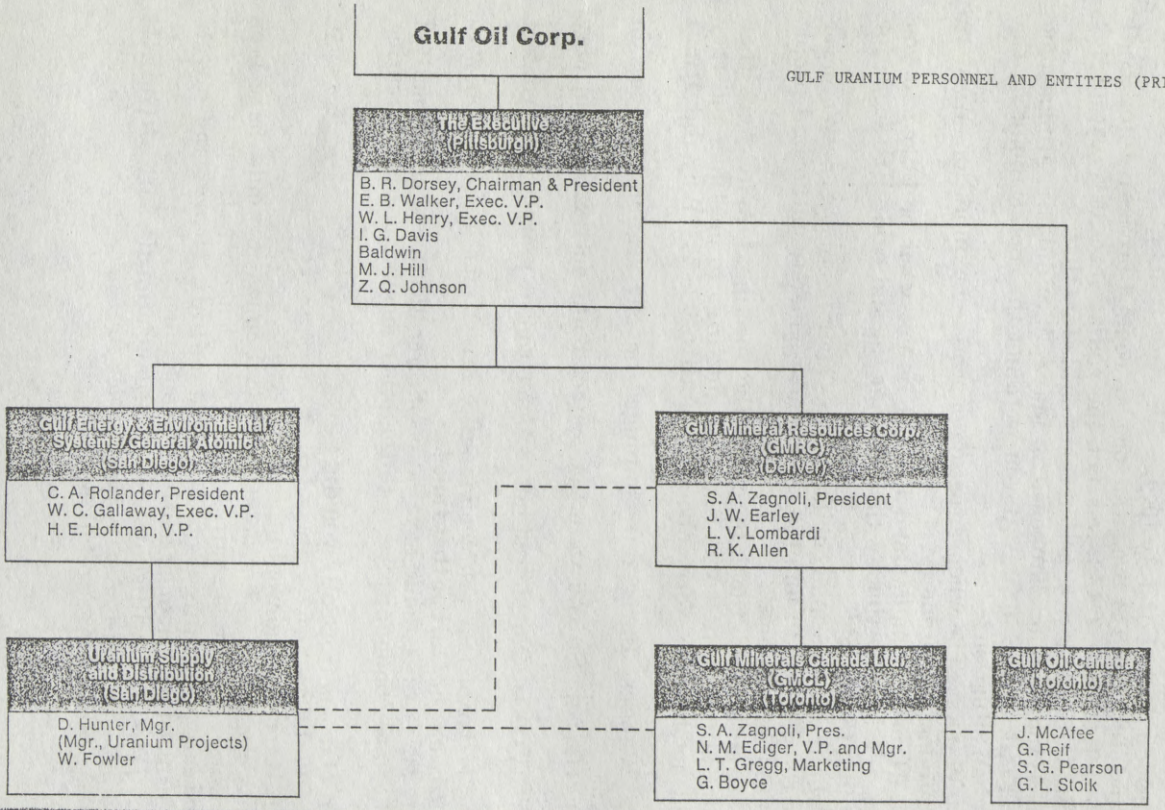
Mr. HADDAD. Who would they have been?

Mr. WALKER. At this point in time I guess it would have been Mr. Dorsey, who was chairman and president; Mr. Davis, who was an executive vice president; Mr. Johnson; Mr. Henry; and myself. Mr. Minks did sit in on executive sessions.

Mr. HADDAD. I will show you an organizational chart of Gulf. If you don't mind, please verify its accuracy for us.

[The chart referred to follows:]

GULF URANIUM PERSONNEL AND ENTITIES (PRIOR TO JUNE, 1975)



Mr. HADDAD. There is a serious discrepancy between what Mr. Jackson has testified under oath and what you have said. I alert you to that fact.

In May the general counsel for Gulf, after three meetings, comes in to you and says that it is all right to join the cartel or send people to the meetings.

There had to be a reason, and either you made the decision, as Mr. Jackson believes, or you communicated that information to somebody else.

You said you did not make the decision at that point. Have you said you did not communicate it had the decision been made at that point?

Mr. WALKER. We were operating under a policy which had been set up some time back. I don't remember just how long ago it was. The first I recall of that was—I can only fix these dates in terms of documents that I have seen recently, so I really do not have a good recollection of these dates. It was probably early in 1972.

Mr. Zagnoli contacted me and said that Ediger was getting great pressure to attend meetings.

Mr. HADDAD. He contacted you as his contact in early 1972?

Mr. WALKER. With respect to exploration and production because we were concerned with developing and producing of the mine.

Mr. HADDAD. The cartel fell under that category?

Mr. WALKER. Not necessarily. I didn't even know we were talking about a cartel at that time.

He had strong pressure from the Canadian Government. He was going to have to do something about it. He had been turning them down.

At that time we recognized that there were antitrust implications. We faced a decision as to whether we were going to turn the antitrust determination not to the legal office of the Gulf Mineral Resources Co. but to the corporate legal office.

Mr. HADDAD. You said "we"?

Mr. WALKER. Zagnoli and myself.

Mr. HADDAD. So the two of you made that decision?

Mr. WALKER. Yes; I would accept responsibility for that decision, if it will make you feel better.

Mr. HADDAD. I'm just trying to fill it in. It has been vague.

Mr. WALKER. Obviously we will not do anything that is done contrary to the laws of the United States and Canada. We will not voluntarily do something that might be contrary——

Mr. HADDAD. When did that become apparent to you? When was that legal opinion rendered to you?

Mr. WALKER. It was rendered to me orally by Merle Minks sometime before the Johannesburg meeting. I cannot fix the date.

Mr. HADDAD. You took no action after that? You made no communication to anybody about that decision? Did you instruct Mr. Minks, Mr. Jackson, or somebody or did you tell the operating company or did the secretary tell the operating company? How did the information get to Mr. Zagnoli in May?

Mr. WALKER. I cannot answer that because I don't recall whether Mr. Zagnoli was present or not, but I am sure that the legal opinion

was communicated to him. I am sure that the various lawyers were in contact with each other, but I have no specific recollection.

Mr. HADDAD. You cannot pinpoint whether you discussed this problem with any other members of the executive?

Mr. WALKER. I cannot. I don't have the recollection.

Mr. HADDAD. Does the executive keep minutes?

Mr. WALKER. They have changed from time to time. Sometimes they did and sometimes they took minutes of decisions. I am not sure that they kept complete minutes. I know that we would keep minutes of some decisions sometimes but it changed from time to time.

Mr. HADDAD. Have you searched the minutes for any reference to the uranium cartel?

Mr. WALKER. I have not searched the minutes. I am sure the lawyers involved have done that.

Mr. HADDAD. Mr. Jackson, may I take you over this ground again?

Mr. JACKSON. Certainly.

Mr. HADDAD. It is your testimony that there were three meetings and the third meeting was with Mr. E. B. Walker. You were not certain whether you were in that meeting or not but you believe that you probably were. Whether you were or not, the information was communicated to you that the decision was made to "go," whether that meant "go" to the cartel or authorize people to attend the meetings, that decision was made.

Subsequently you communicated that decision to the Canadian meeting on the 19th. Is that the substance of your testimony?

Mr. JACKSON. It is.

Mr. HADDAD. You have heard the evidence and you do desire to change your statement?

Mr. JACKSON. No; I do not change it. However, I think perhaps, as a point of clarification on it, there never was any constitutive document as such signed. I don't believe there was. There certainly was not up until the time I left.

Mr. HADDAD. I see. Mr. Gore made the point that if you dress like a sheep and look like a sheep and eat like a sheep and walk like a sheep, then you are a sheep. That is exactly what we are talking about.

Mr. Walker, did there come a time subsequent to May when you again were confronted with the decision about the cartel? I specifically refer to the written document.

Mr. WALKER. I do not have any recollection of the written document at all.

Mr. HADDAD. Do you have any recollection of conversations about the cartel subsequent to May 1972?

Mr. WALKER. I have no specific recollections. I have seen newsletters that I received that mentioned it and so forth, but I have no specific recollection.

Mr. HADDAD. No one came to you for any further decisions?

Mr. WALKER. I do not recall any.

Mr. HADDAD. What does that mean?

Mr. WALKER. It means I do not remember.

Mr. HADDAD. I know you are a busy executive but Gulf has had special problems with antitrust, as many oil companies have. You

have a corporate policy to scare the hell out of all your executives about antitrust. I do not believe this is a matter that is taken lightly.

Mr. WALKER. You are quite right. It was not. That is one reason that it was brought to my attention back there, presumably in May. As I say, I cannot fix the date.

I think that you should bear in mind that I was the corporate executive vice president. I am a scientist. I am not a lawyer. We recognized the importance of antitrust, and we involved the corporate general counsel, which I think is a rather extreme step. Other than that, the Rabbit Lake deposit represented—even today when it's operating it represents two-tenths of a percent of the total assets.

Mr. HADDAD. I saw that, but I do not see any synopse between Zagnoli and yourself nor any synopse between Zagnoli and Ediger, and I do not see any connection between you and the counsel that includes documents. There seems to be an executive void in one of the largest companies in the history of mankind. We have everybody up here involved in the situation with the exception of Mr. Dorsey and Mr. McAfee, who at this time is still in Canada. You never talked to Dorsey, so somebody at this table made that decision.

Mr. Zagnoli, did you make the decision to send Ediger?

Mr. ZAGNOLI. I cannot answer that simply. I would like to comment on joining the cartel.

There is no question that we were required by the Canadian Government to attend meetings, to inform the Canadian Government and to help them, if you will. That was a regulation of Canada. We follow the regulations and the laws wherever they are.

I admit that this is not a routine matter. We have a legal document that says that we are not violating U.S. law. We have another document saying we were not violating any law.

Mr. GORE. Are you familiar with the day of the regulations to which you are referring?

Mr. ZAGNOLI. I think it is toward the end of August 1972.

Mr. GORE. August 23, 1972.

Mr. ZAGNOLI. Yes.

Mr. GORE. On April 20 and 21 you attended a meeting in Paris. The morning session was devoted to more arguing over allotments for various participants in the cartel.

Mr. ZAGNOLI. Mr. Gore, I was not in the international meeting. I attended a producers' meeting the night before.

Mr. GORE. That could not have been pursuant to the regulations because the regulations were adopted several months after that.

Who told you it was all right to go to the meeting?

Mr. ZAGNOLI. There was a specific discussion pertaining to attendance of that meeting in Pittsburgh.

Mr. GORE. With whom?

Mr. ZAGNOLI. There were several lawyers and me.

Mr. GORE. Who were the lawyers?

Mr. ZAGNOLI. Mr. Minks, I think both Mr. Coleman and Mr. Jackson, Mr. Allen, Mr. Howrey, and me.

Mr. GORE. Did you rely on the lawyers for the authority to go to Paris and attend this meeting or did you make that decision yourself?

Mr. ZAGNOLI. I relied on the lawyers for legal advice.

Mr. GORE. Right. There was also a policy question involved as to whether or not to attend this meeting in Paris. Did you take it upon yourself as an individual to involve Gulf Oil Corp. in this meeting?

Mr. ZAGNOLI. I could have. I will tell you directly that I do not remember meeting with one of the executives.

Mr. GORE. Mr. Walker, did you tell him it was all right to go to the meeting?

Mr. WALKER. I have no recollection of the meeting at all, although I know I must have known about it because in preparation for these hearings I have seen some documents with my name on them, but I have no recollection.

Mr. GORE. Mr. Jackson, do you remember the meeting that Mr. Zagnoli recalls your attendance at?

Mr. JACKSON. No, sir, I don't. But if I were in Pittsburgh, I would have attended it. There is no doubt about it.

Mr. GORE. Who do you think made the decision, Mr. Jackson, to join the cartel?

Mr. JACKSON. It is my recollection—as I think I have already testified—that Ed Walker was the top man on the business side of the house and he is the one to whom Mr. Minks made the explanation of the law department decision with his recommendation.

I also said that I did not know what Ed's contacts were in the rest of the executive hierarchy. That is my understanding.

Mr. GORE. That leaves the ball in your court, Mr. Walker. You are the guy who made the decision to join the cartel. Is that right?

Mr. WALKER. I have already answered the question. I have no recollection of the decision being made by anyone to join the cartel.

Mr. GORE. I want to recognize Mr. Walgren to ask a final question of Mr. Jackson. As a courtesy, we are going to excuse Mr. Jackson early to make his airplane.

Mr. Walgren?

Mr. WALGREN. Inasmuch as you have to go, Mr. Jackson, I thought Mr. O'Hara said that you backed up both the price and the compulsion basis for saying the cartel was okay at this relatively amorphous meeting where you gave the report, is that right, on the legal implications of joining the cartel? Is that right?

Mr. JACKSON. You are referring, I think, to the mid-July meeting in Toronto. If you are, that is my recollection, yes.

Mr. WALGREN. You backed up both the price and the compulsion theories with evidence? By that I mean you did not say, "If there is no impact on price and if there is a compulsion, then you're all right." But you said, "On my investigation of this there is compulsion and there is no impact on price." Is that the feeling that you gave to the Toronto meeting?

Mr. JACKSON. Basically that is correct with one modification. I said that in my judgment—and I am sure I must have said this—there is no doubt in my mind that there was effective direction from the Canadian Government.

Second, with regard to the economic impact problem, I did not profess to be an economist. I asked the help of economists as part of my work product, and as a lawyer I relied upon what they said.

Mr. WALGREN. That is what I recall. Certainly from your own

feeling you felt secure on the compulsion background but not secure on the economic background.

Mr. JACKSON. With this exception: To the limited extent that I understood it, the economic impact analysis seemed to me to make sense. I didn't quarrel with it.

Mr. WALGREN. What was the backup on the economic conclusion when you say in this meeting between you and Mr. O'Hara that you were satisfied both as to compulsion and as to price? What made you satisfied at the price? What documents were we operating on at that point?

Mr. JACKSON. Is this addressed to me?

Mr. WALGREN. Yes.

Mr. JACKSON. My reliance was on Mr. Ramsey. I trusted him then and now, and I trust his judgment.

Mr. WALGREN. Was that a verbal meeting as such?

Mr. JACKSON. The sequence of events is that there had been a draft opinion prepared by Wen earlier. I don't remember when. Let's say perhaps in April. I don't recall exactly but it became necessary to change that basically for two reasons that I recall.

One was that it seemed to me that Wen had worked into the draft too much of an evaluation of what the economic impact was on Gulf Oil Corp. While obviously Gulf was my employer and I had an interest in that, from the legal standpoint my primary interest was the adverse effect on exports of uranium from the United States and imports of uranium into the United States.

My second point of concern, as I recall, was that when I first asked Wen to prepare an economic impact statement I told him to look at the period of 1972 to 1977. As a result of the Canadians finding themselves in certain trading positions, prompted primarily by the Australian, there was a necessity to extend the period of the cartel.

At the time of my last request to Wen Ramsey it was in the context of a period extending for certain effects, as I recall, beyond 1977. I think it was 1980, that is, 1978 to 1980.

I remember that also because the farther down the trail you get, the less precise the economic analysis can be. I do not care who makes it.

Mr. WALGREN. The person who prepared those economic analyses was Mr. Ramsey?

Mr. JACKSON. Yes.

Mr. WALGREN. Are those part of the record?

Mr. GORE. The backup papers are not part of the record. Mr. Ramsey's economic analysis is part of the record. Of course, he is with us here today.

Mr. WALGREN. Thank you very much.

Mr. HADDAD. Mr. Jackson, before you leave, would you look at Document 59. I think it reinforces your opinion as stated.

[The document referred to follows:]

OLOA No. 59

SPECIALLY

July 20, 1972

M. E. MINKS CONFIDENTIAL

Uranium

Frank O'Hara and I met yesterday in Toronto with Messrs. Allen, Ediger, Estey, Gregg, Ramsey, and Zagnoli.

Although the factual situation is still somewhat fluid, the basic pattern now seems sufficiently stabilized to permit preparation of the legal opinion discussed with Jack Howrey. Frank and I will work on this, collaborating with Irwin and Roger.

On the basis of yesterday's session, I advised Mr. Zagnoli that the basic antitrust viewpoints and conclusions reached at the last Pittsburgh meeting in your office remained valid.

The antitrust evaluation boils down to this: (a) the economic impact study being prepared by Wen Ramsey will necessarily be less precise; but (b) in my judgment, the basic fact of Canadian Government direction is even clearer than before. The latter fact is of predominant and overriding importance in again concluding that the degree of antitrust risk involved is acceptable.

At the Paris meeting in April, you will recall that tentative agreement was reached in the context of a January 1, 1972 through 1977 period. Term was one of the main points considered in our antitrust evaluation. At Johannesburg, the Australian group insisted upon extending the international marketing arrangement through 1980. Further, the Operating Committee ground rules adopted at Johannesburg indicate a probable extension of some aspects of the arrangement even beyond 1980. This really gets too far down the road for meaningful impact analysis, especially since the supply and demand curves are estimated to cross somewhere around 1978 or 1979, at which time the economic reason for the international marketing arrangement disappears. Accordingly, I suggested to Wen that there was really no valid purpose to be served in attempting an impact projection beyond 1980; and his final impact statement, which will constitute part of the definitive legal opinion, will deal only with the announced period of the marketing arrangement; that is, 1972 through 1980.

Extension of the time line also generated a new line of thinking on the part of the Canadian Government, which should prove helpful to us since their plans, which are now in the process of implementation, will more clearly evidence what has been the actual fact from the inception, namely, that Gulf has no viable alternative: it must either submit to effective Canadian Government direction or get out of Canada (insofar as uranium is concerned).

Without getting into too much detail, the Canadian Government has decided the following: Acting under relevant sections of the legislation controlling the functioning of the Canadian Atomic Energy Board, the Minister of Energy and Resources has issued a Directive to the Board. Pursuant to this unpublished Directive (which may or may not be made public at a later date), the Board has prepared the equivalent of Regulations for Cabinet approval. Under these Regulations, the end result is that the Canadian Government will only permit the granting of licenses to Canadian producers for the export of uranium when the Board approves both the amount and price. Effectively, the Board's standard for approval will be compliance with the international marketing arrangement worked out in Paris and Johannesburg. This arrangement constitutes an actual, but informal, intergovernmental agreement. The Canadian Government, for policy reasons of its own, has avoided any treaty or other formal arrangement, and, according to Mr. Estey, will probably continue to do so. Quantities and prices set by the Board will not be made public.

We probably will secure a copy of the Regulations as soon as the Cabinet has given its formal approval and released the same for publication. The Regulations (prepared in mid-July for Cabinet approval) will be published concurrently with a Public Policy Statement by the Minister (probably in August). The Minister's Statement, which is the practical equivalent of a general directive or instruction, will likely be made in the Commons. Thus, the explicit Canadian Government direction will be evidenced by (1) the general background material we already have, including public policy declarations of certain Canadian Government officials; (2) the Ministerial Directive; (3) the Board's Regulations as concurred on by the Canadian Cabinet; and (4) a Public Policy Statement by the Canadian Minister of Mines and Energy.

Gulf Minerals Canada Limited (GMCL) is not presently represented on the Operating Committee set up to implement the international marketing agreement, working through a Secretariat located at CEA's offices in Paris; however, GMCL is in contact with the Canadian representative on the Operating Committee; his alternate; relevant Canadian Government officials, as required; and, initially at least, will receive club material directly from the Secretary out of the Secretariat's Paris office.

GMCL will be participating (in a non-control capacity) in a continuing variety of market allocation and pricing arrangements under the overall plan adopted by the Canadian Government. Although it is not possible to delineate precisely the probable scope of these arrangements, it appears to be the fact that the Canadian Government will continue to maintain effective control of what they have directed all the Canadian producers to do and Gulf's actions, therefore, must necessarily be the result of and remain within the area of such governmental direction. Nevertheless, it will be advisable that Frank be kept adequately and currently informed of significant developments which might affect Gulf's overall antitrust posture.

Messrs. O'Hara, Ramsey, and I did not participate in subsequent detailed discussions concerning GMCL problems with their German partners concerning interpretation and implementation of the Rabbit Lake joint venture documentation. It seems probable, however, on the basis of those facts known to us that a substantial restructuring of the joint venture arrangement might well be required. This fact, coupled with open-ended Canadian Government control of production and prices of all exports of Rabbit Lake production, make economic forecasting of the venture far more speculative than before.

As mentioned to you, I will continue to collaborate with Messrs. Coleman, O'Hara, Allen and others until we have a reasonably definitive work product in hand.

Roy D. Jackson, Jr.

RDJJr:ps

cc: R. K. Allen, Denver
I. W. Coleman, Pittsburgh
W. Z. Estey, Q.C., Toronto
N. M. Ediger, Toronto
P. R. O'Hara, Pittsburgh
M. W. Ramsey, Pittsburgh
S. A. Zagnoli, Denver

[Witness examines document.]

Mr. HADDAD. Paragraph 3, and this is July 1972, and it says you came back from Toronto and you met with these fellows and you are outlining it to Mr. Minks.

On the basis of yesterday's session, I advised Mr. Zagnoli that the basic antitrust viewpoints and conclusions reached at the last Pittsburgh meeting in your office remained valid.

I have two questions to ask you. One, what do you mean by "the antitrust situation boils down to this: (a) the economic impact study being prepared by Wen Ramsey will necessarily be less precise . . . "?

Mr. JACKSON. I have been asked that question before. The answer is that I do not know. I wish I did.

The only explanation I can give is the one I gave Congressman Walgren. That is that the longer the probable period of the intended duration of the cartel, the more difficult it became to predict with any degree of accuracy the forecasted economic impact.

Mr. HADDAD. In other words, the economic impact is not worthy of the paper that it is written on after a certain date, like 1977?

Mr. JACKSON. Any economic analysis becomes less valid the longer you extend the term.

Mr. HADDAD. Your viewpoint was carried to many meetings by the Gulf executives who attended, saying after 1977 we're in trouble.

I know you are in a hurry but this is an important point. On page 2, paragraph 2, the stage is set for compulsion.

Without getting into too much detail, the Canadian Government has decided the following: Acting under relevant sections of the legislation controlling the functioning of the Canadian Atomic Energy Board, the Minister of Energy and Resources has issued a Directive to the Board. Pursuant to this unpublished Directive (which may or may not be made public at a later date), the Board has prepared the equivalent of Regulation for Cabinet approval. Under these Regulations, the end result is that the Canadian Government will only permit the granting of licenses to Canadian producers for the export of uranium when the Board approves both the amount and price. Effectively, the Board's standard for approval will be compliance with the international marketing arrangement worked out in Paris and Johannesburg. This arrangement constitutes an actual, but informal, intergovernmental agreement. The Canadian Government, for policy reasons of its own, has avoided any treaty or other formal arrangement, and, according to Mr. Estey, will probably continue to do so.

When we talked earlier about the additional information in July, you said there was one exception. Is this the July compulsion exception to which you referred?

Mr. JACKSON. Yes.

Mr. HADDAD. It was staged, was it not? It is window dressing by the Canadian Government to hide its collaboration in the decisions in Johannesburg, isn't it? This was discussed at Johannesburg, and the Canadians said to the producers, "Look, you guys do not want regulations. We told you in the beginning that the only way to do this is with regulations." The producers said, "All right, give us regulations."

So they set up this staging and kept it secret from the Canadian people. The cartel agreements were then carried out in a way that was not easily perceptible by the general public. Isn't that right?

Mr. JACKSON. The minutes of the Johannesburg meeting reflect that the result was that there would be a request from the Canadian producers, other than GMCL, on which the Cabinet would act favorably. The Cabinet did thereafter act favorably in amending the regulations and having the Minister issue the appropriate directive. That is correct.

Mr. HADDAD. Thank you.

Mr. GORE. In that regard, this intrigued me from the Runnalls' memorandum. You decided finally that the regulations were the route to go, that this was the best way to do it to avoid violating Canadian antitrust law and American law.

I quote from page 7 of the Runnalls' memo.

Mr. Albino could see no disadvantage as to Canadian producers if such a regulation was to be invoked. Mr. Austin said that there should be none except it meant more government regulation of private industry.

In this context that really strikes me.

I want to ask you one question before you leave, Mr. Jackson.

Did you recommend that there be ongoing monitoring of the participation by Gulf in the cartel?

Mr. JACKSON. I distinctly did.

Mr. GORE. Because it was your opinion that any change in the circumstances that you looked at in preparation of the memorandum could significantly alter the legal consequences of participation in the cartel?

Mr. JACKSON. Any antitrust clearance given by anybody or any antitrust opinion, Mr. Gore, is made in the context of material facts. If those material facts change, then the opinion may or may not change.

Mr. GORE. Whose responsibility in Gulf would it have been to do that ongoing monitoring?

Mr. JACKSON. The general counsel.

Mr. GORE. Mr. Coleman?

Mr. JACKSON. No, sir, Merle Minks whose responsibility it was to head up the legal department. If they accepted my recommendation in that respect, it was his responsibility to take that up with the business side of the house and get it done.

Mr. GORE. Thank you for your appearance here today, Mr. Jackson. You have been an engaging witness. You have assisted our understanding of this series of events. You are now excused.

Mr. JACKSON. I appreciate your courtesy.

Mr. GORE. Mr. Zagnoli, you testified earlier that you received clearance or the impression of clearance to attend the Paris meeting at a meeting in Pittsburgh where several lawyers were present.

Did you ever communicate with any member of the executive about your participation in the Paris meeting?

Mr. ZAGNOLI. I do not recall specifically, but I believe I would have.

Mr. GORE. Do you recall talking to Mr. Walker about the participation in the Paris meeting?

Mr. ZAGNOLI. I do not.

Mr. GORE. Is that the person you would have or could have talked to?

Mr. ZAGNOLI. As Mr. Walker indicated before, after that time, a period of about 6 months from January of 1972 to June or July, I had two contact executives, Mr. W. L. Henry and Mr. Walker.

Mr. Walker, of course, was exploration and production. He had a great deal of knowledge which Mr. Henry did not possess, but beyond the production Mr. Henry was by contact.

Mr. GORE. All right.

Mr. Walker, we did establish earlier that Gulf did belong to the cartel.

Mr. WALKER. De facto, yes.

Mr. GORE. Not just de facto, but they did belong.

Mr. WALKER. They did not formally sign something but they did belong.

Mr. GORE. I do not want to go back over that. You did belong, right?

Mr. WALKER. Yes.

Mr. GORE. An act like that, that is, joining a cartel whose purpose was to fix prices and pretend that they were real but actually lie about it and to submit phony bids and allocate markets worldwide—would require some decision, wouldn't it?

Mr. WALKER. The decision I guess was to stay in business in Canada or to get out. As far as Gulf was concerned, we had our uranium sold to the point that we could pay out the project. We had given up 49 percent of very valuable property to the German company in order to get the German market.

We did not want to join that cartel. Mr. Jackson pointed that out earlier.

We had the market. We had the uranium sold. We were the only one that did. We would have been insane to have done it voluntarily.

Again I repeat what I said before. As I recall the decision, it was not whether we should join the cartel but it was whether Ediger should attend the meeting in Johannesburg.

Mr. GORE. We have established that Gulf joined the cartel. We can fence about the compulsion argument. I personally believe it is a sham. I think the record demonstrates that. You are entitled to your opinion.

What I am asking you is this. A decision to join a cartel would have required a decision within Gulf Oil Co., wouldn't it?

Mr. WALKER. The decision was really made by the Canadian authorities.

Mr. GORE. Would it have required a decision within the Gulf Oil Corp.?

Mr. WALKER. If it were a clean-cut decision, yes, but we got phased into this thing.

Mr. GORE. Would it have required a decision within the Gulf Oil Corp.? I am talking about joining of the cartel. Would that have required a decision by Gulf?

Mr. WALKER. It depends on the circumstances.

Mr. GORE. Under these circumstances would that have required a decision by Gulf?

Mr. WALKER. Under the circumstances that actually existed, I do not recall that there was a decision. One would not have been required if there wasn't one as such.

Mr. GORE. Let me restate that one. It did not require a decision and one would not have been required if it didn't? One was not made and one would not have been required if one wasn't made? I think that is the way you phrased it.

I don't believe you. I just don't believe you.

Please, try to be forthcoming a little bit.

A decision was made, wasn't it? Corporations just don't float around in the stratosphere and do things on a pure chance basis. A decision was made, wasn't it?

Mr. WALKER. A decision was made that Ediger would go to Johannesburg, and obviously we did attend the rest of the meetings so somewhere the decision was made. I don't know where or by whom it was made. It could have been anyone.

Mr. GORE. Could it have been you?

Mr. WALKER. I do not think so because I do not remember that. I think I would have remembered it.

Mr. GORE. Who could it have been?

Mr. WALKER. It could have been Ediger, for that matter. I just do not know. I am speculating. I am not even speculating that it was him.

Let me give you an example of what is going on right now in our company. We have a maior negotiation going on with a foreign country right now involving a tremendous amount of money. We have given the local manager some guidelines. There is no way in the world that anyone could make the final decision but him because he cannot say, "I have to call my boys back in the U.S.A." I do not know who would make the decision.

Mr. GORE. Mr. Zagnoli, did Ediger make the decision? Come on, he didn't make the decision, did he?

Mr. ZAGNOLI. No, not really.

I can appreciate your skepticism about such an important thing and how it evolved. However, please realize that this had been considered and talked about for a long period of time.

I think you could accept my reason readily if there were such a thing. Once it was established that it did not violate any law and once Canada adopted this as a regulation, then it is OK.

Mr. GORE. August 23, 1972? You joined before then.

Mr. ZAGNOLI. But before then we had legal advice every step of the way. We made a decision at a special meeting for Paris, in a special meeting for going to Johannesburg.

Mr. GORE. Wait a minute. Did you have legal advice every step of the way along the road to joining the cartel? Is that right?

Mr. ZAGNOLI. Yes.

Mr. GORE. You had legal advice every step of the way?

Mr. ZAGNOLI. Yes.

Mr. GORE. Did it come from the lawyers or from the executive? Did you discuss it with the executives?

Mr. ZAGNOLI. I do not recall. Jackson's opinion, with the executive.

Mr. GORE. You say you appreciate my skepticism but every time we get to a critical point as to where the responsibility passes, then somebody cannot recall.

Mr. Jackson said, Mr. Walker, that you were the guy in the position to make the decision. Now you would have us believe that no decision

was made. That is what you are telling us, isn't it, that no decision was made?

Gulf joined the cartel without anyone deciding.

Mr. WALKER. I said I did not know who made the decision. I don't think one necessarily was made. I am not saying that one was not made.

Mr. GORE. You say that somebody could have done it. Then I ask you who could have done it, and you said that you didn't think you could have but maybe Ediger could have, but Mr. Zagnoli said that Ediger didn't. Who else could have?

Mr. WALKER. I don't know.

Mr. GORE. You don't know who else? So it is either Ediger or you? Are there any other possibilities?

Mr. WALKER. I would say Ediger, Zagnoli, or me. They would be the possibilities. I do not recall any of us making it.

Mr. GORE. Mr. Zagnoli, you didn't make the decision, did you?

I think somebody at this table made the decision. We tried to subpena everybody that had a piece of the action here, who had responsibility for getting Gulf into this thing.

Did you make the decision?

Mr. ZAGNOLI. The decision to join the cartel?

Mr. GORE. Right.

Mr. ZAGNOLI. If I had made the decision, it would be that we would obey the Canadian regulations.

It evolved into this. I cannot say that I sat down and said that I made the decision. I could not speak for the Gulf Oil Corp.

Mr. GORE. Mr. Walker could, couldn't he?

Mr. ZAGNOLI. You will have to ask him.

Mr. GORE. At that time he was the one in the position to make that kind of decision, wasn't he?

Mr. ZAGNOLI. You would have to ask Mr. Walker.

Mr. GORE. Mr. Walker, let me ask you about a document that I will ask the staff to hand to you. It is dated February 27, 1973. It is from you to Gulf headquarters. It is a message that you dictated on the airplane. It has been retyped. The original is stapled to the back of it.

Mr. GORE. If you look carefully at the original, you can verify that the words on the version which has been cleared up are indeed the words.

Let me quote from this message that you sent to Mr. Lee and to other members of the executive. "Possibility of staying short on uranium. Stop." Staying short, I might add parenthetically, is of course, the practice of selling uranium that one does not have firmly in hand but rather speculating on the possibility of guaranteeing supply at a later date. "Possibility of staying short on uranium. Stop. This is extremely dangerous because when price moves, it will be large and rapid. Stop."

On what did you base that advice?

Mr. WALKER. First of all, I am against any kind of unlimited risk as a matter of prudent business judgment. Any time you make a short sale, whether it be stock or uranium or coal or peanuts or whatever, in my opinion that is an unacceptable business risk. I would never do it.

Mr. GORE. I would agree with you.

Mr. WALKER. "Price moves large and rapid"—my rationale for that probably was—I don't remember but I am trying to reconstruct my thinking and I have seen this also—the Atomic Energy Commission put out annually a demand-reserve forecast. It showed that there was ultimately a shortage of low-cost uranium. By "low cost uranium," I am talking about production cost.

So at some point in time when the low-production-cost uranium is used up, the supply and demand line crosses and the marginal uranium thereafter is going to be expensive.

So while I have no idea about the timing of this thing, that is the reason we went into the uranium business in the first place. We saw the AEC predictions.

Mr. GORE. So when you say, "when the price moves, it will be large and rapid," you are not referring to any inside information that you had about the price suddenly going up?

Mr. WALKER. This refers strictly to the U.S. market. This has nothing to do with the international market. The U.S. market was effectively closed at that time. You have gone through that. We know the background on that.

Mr. GORE. My constituents are paying a great deal of money because of that, I might say.

Mr. WALKER. That is a matter of opinion.

But in this case I was referring only to the U.S. market because, as I recall, General Atomic were the ones who were short temporarily in connection with reactors.

Mr. GORE. So when you were saying that the price was going to move rapidly and be large, then you were referring to other factors generally widely known within the uranium business. Is that right?

We still don't know how the decision was made and who made it. We are left with the totally implausible assertion that no decision was made.

Mr. Koppell?

Mr. KOPPELL. Mr. O'Hara, I am referring now to the draft memorandum of July 19. Do you have it in front of you? That is 58(a).

Mr. O'HARA. Yes.

Mr. KOPPELL. How was it at that meeting that people who were at that meeting knew in advance, and I quote from page 10 of this memorandum, "Sometimes in August the Minister of EMR," which is Canada, "will issue a public statement to the effect that the above ministerial direction has been issued 'in the public interest.'"

How did you know in July what some Minister was going to do in August?

Mr. O'HARA. I believe, Mr. Koppell, that Mr. Estey had seen a draft of the proposed release.

Mr. KOPPELL. Also, on page 9 it says, "A regulation will be issued by the AECB." That is Atomic Energy Control Board. Is that what that is?

Mr. O'HARA. Yes.

Mr. KOPPELL. "It will reaffirm the obligation to respond to ministerial directives."

How did you know at that meeting that the regulation would be issued?

Mr. O'HARA. That was Mr. Estey's advice. I believe page 9 refers to three steps that had been or were about to be taken.

Mr. KOPPELL. Then you said, "The next step is the issuance of the ministry directive which is not published. This directive will say something to the effect . . . "

How did you know what it would say when it might not have even been fully formulated?

Mr. O'HARA. At the bottom of that paragraph you will see a reference to the fact that this is quoted as Ediger took it down over the telephone. Mr. Ediger was GMCL's manager and had contact with the Canadian Government.

Mr. KOPPELL. A, B, and C—were those the primary reasons for the legal opinion that there was a legal compulsion, if you will, or directive? Those are the only specific things mentioned here. Were those the primary backup?

Mr. O'HARA. I don't know whether it is primary but to me that certainly constituted effective government direction.

Mr. KOPPELL. Were there any other things there? There is nothing else specifically mentioned. Is there anything specific there in terms of government direction?

Mr. O'HARA. I had seen other documents prior to that meeting, yes.

Mr. KOPPELL. In this memorandum you are supposedly capsulizing, and those seem to be the primary props on which you rely. Is that right?

Mr. O'HARA. I am not sure about "primary." I would not characterize this as primary but I would say it is one of the key elements in it, yes.

Mr. KOPPELL. Those are the key elements, and yet I will point out to you that none of those key elements were promulgated, except for one which you had not seen but heard something over the telephone about. Two were not promulgated. One perhaps was promulgated but you had not seen it. This is in July, and yet the real decision that was made to participate in the cartel—in fact, you did participate in the cartel going back to May. Isn't that so?

Mr. O'HARA. That is what was testified to today, yes.

Mr. KOPPELL. Since you participated in May and these things were not around in May, what then was the Canadian compulsion that you acted under?

Mr. O'HARA. With respect to the May meeting—and my first involvement was with the July meeting—but with respect to the May meeting, there are attached to Mr. Jackson's opinion, attachment No. 5, three telexes from the Canadian Government directing Mr. Ediger to appear at the meeting and advising him that it was determined to be in the national interest of Canada that he do so.

Mr. KOPPELL. I have seen the summary of these regulations, but is there anything in the regulations that states specifically that a representative of Gulf should participate in the deliberations of the cartel?

Mr. O'HARA. In these three regulations?

Mr. KOPPELL. Yes.

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Mr. O'HARA. I have not studied them recently but I do not believe there is anything in there that specifically says a representative of Gulf will attend the meeting.

Mr. KOPPELL. Or participate?

Mr. O'HARA. No, not specifically.

Mr. KOPPELL. Do the regulations suggest that your pricing policy may be dictated at those meetings? That is what the regulations indicate, isn't it?

Mr. O'HARA. Attachment 7 to Mr. Jackson's opinion stated that export permits would not be granted unless the terms and conditions of the export sales contract meet the terms and conditions set down in the directive.

Mr. KOPPELL. The issue is that you have to meet certain terms and conditions but not that you have to participate in formulating those terms and conditions, isn't that so?

Mr. O'HARA. The regulations say you have to meet certain conditions.

Mr. KOPPELL. But not that you have to participate in the formulation of those conditions.

Mr. O'HARA. The regulations don't say you have to participate but there is other oral and written advice to Mr. Ediger advising him that it was in the national interest of Canada for him to participate in the meetings.

Mr. KOPPELL. Are those the so-called telegrams attached to Mr. Jackson's opinion?

Mr. O'HARA. Yes.

Mr. KOPPELL. Are there others?

Mr. O'HARA. Yes; as I recall, there were others later.

Mr. KOPPELL. Have they been produced?

Mr. O'HARA. Yes; I believe they have.

Mr. KOPPELL. I don't know what they are but it would be interesting to see them. They are not summarized in this particular memorandum.

Mr. O'HARA. This was in July. There were things subsequent to this.

Mr. KOPPELL. But I am talking about the justification, and the justification is what went before and not what went after. The justification was presented in this meeting, and in fact, it was presented before this meeting.

Mr. O'HARA. Yes, but the three telegrams were prior to this meeting. I believe there were other attachments in the Jackson opinion that indicate advice and direction to Mr. Ediger by the Government of Canada saying it was in the national interest of Canada that they participate in the meeting.

Mr. KOPPELL. I want to turn now to the second justification. There were two. One was compulsion. I think there is some dispute as to whether, in fact, there was compulsion and as to whether it was staged.

Let's talk about the impact on U.S. commerce which we have not discussed at such great length so far.

It is my understanding that the argument set forth in here, if you look at pages 10 and 11, it is twofold. One is that inasmuch as you could not import uranium into the United States at the time when

this cartel was established, then there could not be any impact on U.S. buyers. Is that correct? Is that part of the rationale?

Mr. O'HARA. Yes; as Mr. Gore points out, we view it as an effective embargo.

Mr. KOPPELL. So that is half the argument. The other half is that since the world price was lower than the U.S. price, the level of the world price would not affect the U.S. price. Is that the second part of the argument?

Mr. O'HARA. The second part with respect to exports I think is what you are talking about. I am not an economist.

Mr. KOPPELL. But you wrote the legal memo. Your legal conclusion has to be based on a certain understanding of economic consequences.

As I read this, your understanding of the economic consequences was that, because the world price was lower than the U.S. price, it didn't matter what the world price would be because it would have no affect on the U.S. market. Is that right? I am talking about the export market.

Mr. O'HARA. If the price in the United States was higher than the price outside the United States, if I were a uranium producer I would not sell outside but inside.

Mr. KOPPELL. But the moment the world price went higher than the U.S. price that rationale was defeated, isn't that so? That rationale was no longer legitimate as a defense to a violation of the antitrust laws which hold that there is no U.S. economic effect. Is that correct?

Mr. O'HARA. Those were the facts at that time.

Mr. KOPPELL. Once the world price went higher than the U.S. price, the rationale which we just went over did no longer exist, isn't that right?

Mr. O'HARA. I will not say that.

Mr. KOPPELL. What was the rationale? You just told me, did you not, that the rationale for no U.S. effect was that the world price was lower than the U.S. price. Is that right?

Mr. O'HARA. That was my lawyer's analysis of it, yes.

Mr. KOPPELL. So the moment the world price went above the U.S. price, that rationale disappeared, did it not?

Mr. O'HARA. At that point I would have to look at the facts and see what the situation was.

Mr. KOPPELL. Did you? When the world price went above the U.S. price in the fall of 1973, did you look at that?

Mr. O'HARA. To my knowledge, the price outside the United States did not, during the period that I am familiar with, go above the U.S. price.

Mr. KOPPELL. So that chart we have over here is not the correct statement of the pricing of the uranium [indicating chart]?

Mr. O'HARA. I cannot understand that chart.

Mr. KOPPELL. But your understanding is that before the end of 1975 the world price exceeded the U.S. price? Is that your understanding?

Mr. O'HARA. My understanding is that throughout the period of the existence of the cartel it was almost universally true that the price outside the United States did not exceed the price of the U.S. market.

Mr. KOPPELL. Mr. Walker, is that your understanding?

Mr. WALKER. That is my understanding as well. I notice you are comparing apples and oranges with that chart. You are comparing spot prices with long-term contracts.

Mr. KOPPELL. Mr. Walker, do you know Mr. W. D. Fowler?

Mr. WALKER. Mr. Fowler is either an employee or a former employee of General Atomic, I believe.

Mr. KOPPELL. Is that a Gulf subsidiary?

Mr. WALKER. It was at one time. It is now a partnership.

Mr. KOPPELL. Was it a Gulf subsidiary in March of 1974?

Mr. WALKER. I don't remember.

Mr. KOPPELL. I want to read you a statement. You don't recall whether it was or not?

Mr. WALKER. No.

Mr. KOPPELL. I don't have the record here of whether it was or not but I assume it was because this was produced in connection with this proceeding.

I want to read you a statement by Mr. Fowler with respect to pricing. He says:

I view the $12.50 as yielding a 1984 price of $16 or $17. What appears to be happening is that the international producers are in effect setting the world prices via (a) establishing a floor that is higher than the U.S. offers to buy; (b), the U.S. producers refuse to sell at any price that does not give them a substantial margin above the floor being quoted by the non-U.S. producers; (c), thus, in essence the international producers can stop any transactions by simply constantly nudging the floor upward.

Is that your understanding of what was happening to the uranium price in 1974?

Mr. WALKER. I would not agree with that because it was always my understanding that the two markets were separate. I am really not qualified to comment.

Mr. GORE. If the gentleman will yield, this memorandum that I introduced into the record a moment ago deals with your analysis of market behavior.

Mr. WALKER. My analysis?

Mr. GORE. Yes. It says:

The possibility of staying short on uranium stock is extremely dangerous because when price moves, it will be large and rapid.

Mr. WALKER. I thought I explained that. I was referring to the AEC supply-demand curve for the United States.

Mr. GORE. But he is asking you for your comment on the dynamic outlined in the internal Gulf document which was prepared as an analysis of the effect of the cartel. That document concludes that the cartel price would constantly nudge the domestic price upward. He asked you for your comment on that analysis.

Mr. WALKER. I told him I don't agree. I am not very qualified.

Mr. KOPPELL. It was prepared within the Gulf system.

Mr. WALKER. It may have been. I am not sure that that was not a partnership.

Mr. KOPPELL. Given the advice given to you—and Mr. Zagnoli can answer this question, too—in legal memoranda by Mr. Jackson and Mr. O'Hara——

Mr. WALKER. I do not recall having seen that statement.

Mr. KOPPELL. Did you ever order anybody in Gulf to watch carefully to be sure that once the world price went above the U.S. price that you got out of the cartel? Was that advice ever given to anybody?

Mr. WALKER. I certainly never gave that to anyone. It was my understanding, as Mr. Jackson pointed out, that we would have ongoing legal review of the circumstances. I simply did not have the time to do that sort of thing.

Mr. KOPPELL. Mr. Zagnoli, did you ever give anybody that advice?

Mr. WALKER. Incidentally, I don't ever recall having seen the memorandum from which you are reading until quite recently in preparation for these hearings.

Mr. KOPPELL. I did not say you saw the O'Hara memorandum. This is a draft memorandum but I assume that at some point somebody saw the final Jackson-O'Hara legal opinion.

Mr. WALKER. I don't think I ever saw it.

Mr. ZAGNOLI. I read that. That is a Fowler memo. I never saw any evidence that would lead me to believe that that linkage existed.

Did you ask if we ever gave our people any direction on the price going above?

Mr. KOPPELL. Yes.

Mr. ZAGNOLI. The thing that they were told constantly was that the United States is not a part of this arrangement and the United States is a free market. They were not to discuss any business that had anything to do with the United States, its domestic market, or its major corporations, with anybody.

Mr. KOPPELL. That may be, but if someone in your company knew or if your company knew that the world pricing was directly affecting the U.S. market, which is what Mr. Fowler said, then certainly at that point that should have rung a bell if Mr. O'Hara's memorandum had been adhered to. Someone should have responded.

Let me ask you another question. Before I go to that, I have one last point.

In a submission made by Gulf Oil on this point—and this is in the committee hearing transcript—you quote with approval the following statement from Nuclear Exchange Corp.

It says:

Third, and perhaps most important, the prices reportedly established by the cartel at its periodic gatherings were by the time such prices were implemented below those prevailing in the domestic market as opposed to leading it. But the appearance of foreign buyers in the domestic market was not due to the fact that the foreign prices were higher but because relatively secure uranium supplies were available in the U.S. whereas the overseas situation was less definite.

So they make much of the fact that the foreign prices were presumably below domestic prices, also. Is that right? That is the implication of that statement quoted with approval.

If that statement were wrong, then the opposite conclusion could be drawn. In other words, if the foreign prices were, in fact, higher than the U.S. prices, then the opposite conclusion could be drawn and one of the main buttresses of your position in the cartel would be knocked out.

If the committee's chart up here is correct, it seems to me that portion of your argument rests on a weak reed. Any comment? Do you disagree?

Mr. WALKER. I really don't have any comments. Mr. Ramsey ought to comment on that chart because he is the economic expert, but it does not look like you are comparing apples with apples.

Mr. KOPPELL. Mr. Ramsey?

Mr. RAMSEY. I don't recognize the chart. I do not think it is properly prepared.

Mr. KOPPELL. Thank you.

It would be interesting for me to get your analysis of the world as opposed to the U.S. prices for the years in question if you want to submit that. I would regard that as being interesting.

Mr. RAMSEY. You made reference to Mr. Fowler's memo. Mr. Fowler's memo was discussed thoroughly at the June hearing. In my opinion he disavowed the impact of that memo, saying that it was based on observation and not based on fact and it was a theory that he had. He saw no evidence to prove that it was happening.

In addition, in my opinion, it was a situation that was very unlikely to happen. It is not very likely that the domestic producer would refuse to sell at a price merely because a foreign producer was quoting prices at some different level than he thought should be quoted.

Mr. KOPPELL. Perhaps you could provide us with a memorandum on how you would compare world and domestic prices in the years in question. Could you do that?

Mr. RAMSEY. I think that has already been done by Canada. There is a press release here which was released back in October. It is by the Honorable Allister Gillespie. I think if you would look at that, that would be a source.

Mr. KOPPELL. I will look at it.

Mr. O'Hara, the other element in terms of effect on U.S. price is the question of imports or, if not imports, the use of foreign uranium.

As I understand it, at the time when the legal opinion was given, the reason for saying that the foreign price would have no impact is that at that point the foreign uranium cannot be used in the United States. Is that right?

Mr. O'HARA. It could not be enriched for use, yes.

Mr. KOPPELL. I see.

At the time when the U.S. embargo, if you want to call it that, or restriction was lifted, do you recall when that was?

Mr. O'HARA. I believe just this year, effective January 1, 1977, 10 percent—that is, there is a gradual phaseout, and I forget what the number goes to in 1978.

Mr. KOPPELL. In the conversations earlier and the questioning of Mr. Jackson it was clear that there was some concern on the part of Gulf about the prospective lifting of those restrictions and the fact that the cartel plans to extend its effect into years subsequent to 1977. Isn't that so?

Mr. O'HARA. Well, I think Mr. Jackson said the further out you got, the less precise you are. This is a lawyer talking economics, of course, but I do not disagree with what Mr. Jackson said. I would not disagree with it.

Mr. KOPPELL. Did you ever issue any directive to the executives of the corporation with respect to cautioning them about participation

in the cartel if the cartel projected its activities with respect to contracts beyond a certain point?

Mr. O'HARA. No, sir, I did not.

Mr. KOPPELL. Mr. Zagnoli, did you?

Mr. ZAGNOLI. I can recall at least one memorandum that Ediger wrote which was discussed with me to suggest to Austin or to the EMR, stating that we objected to any extension of this beyond 1980. I am almost certain that we did not want to extend it.

We were subject to their control, but there is the other element. Effectively the U.S. market was closed to foreign uranium.

Mr. KOPPELL. In 1974 the U.S. utilities tried to make purchases, didn't they?

Mr. ZAGNOLI. Yes.

Mr. KOPPELL. At that point did anyone ever say, either from the legal department or from the executive department, "We ought to pull out now because there may be some effect on U.S. commerce in the sense of price of uranium for U.S. utilities"? Did anyone say that?

Mr. O'HARA. From my standpoint I would say this. By 1974—and I don't know when the domestic purchases were made from U.S. utilities—during 1974, and as 1974 progressed, it is my understanding and impression that the cartel was gradually withering on the vine and had become very inactive.

Mr. KOPPELL. Mr. Walker, did you as part of the executive or did the executives or did any senior official of Gulf ever make the decision to withdraw from the cartel?

Mr. WALKER. No.

Mr. KOPPELL. Dues were paid to the cartel until the fall of 1975. Is that right?

Mr. WALKER. I do not know when the dues were paid. I am not aware of that.

Mr. GORE. Could you provide that for the record?

Mr. WALKER. I am sure we could.

Mr. GORE. Without objection, so ordered.

[The following letter was received for the record:]

HOWREY & SIMON
1730 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
(202) 783-0800

US FEB 23 PM 2:03
SUBCOMMITTEE ON
OVERSIGHT & INVESTIGATIONS

February 23, 1978

The Honorable John E. Moss
Chairman
Subcommittee on Oversight and
Investigations of the Committee
on Interstate and Foreign Commerce
2323 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The following information is furnished pursuant to your letter to me of February 9, 1978, and the request of Congressman Gore at the Subcommittee's hearings held in New York City on December 8, 1977.

As a result of its involuntary participation in the foreign uranium marketing arrangement, pursuant to Canadian Government direction, Gulf Minerals Canada Limited ("GMCL") received invoices for the Rabbit Lake project's portion of Canada's expenses in connection with the arrangement for the period August 1972 to February 1973, and GMCL issued checks in the amounts set forth below. GMCL's share of these expenses was 51% and UCL's was 49%. (UCL was GMCL's Rabbit Lake partner.) GMCL billed UCL for its share as also indicated below.

Date	Amount	Billed to UCL
August 1972	$ 954.00	$467.46
November 1972	714.60	350.15
February 1973	876.61	429.46
February 1973	1,560.00	764.40

For the same reasons, GMCL received invoices for its portion of Canada's expenses for the period August 1973 to September 1975 and issued checks in the amounts indicated below.

It is Gulf's belief that UCL was billed separately for its share of Canada's expenses beginning in August 1973.

Date	
August 1973	549.45
September 1973	1,048.50
November 1973	1,068.75
March 1974	913.50
May 1974	918.00
August 1974	580.50
November 1974	775.80
February 1975	931.50
June 1975	1,034.37
September 1975	1,498.77

On September 21, 1976, the Government of Canada sent GMCL a check in the amount of $792.90 as a partial refund of its September 1975 assessment.

Sincerely yours,

Richard T. Colman

Mr. KOPPELL. There was never any affirmative decision to withdraw from the cartel?

Mr. WALKER. I am not aware of any.

Mr. KOPPELL. Is it your understanding that there is anything like a cartel organization of producers in existence today?

Mr. WALKER. I know of no such organization, no.

Mr. KOPPELL. Is Gulf engaged in any activities at present establishing with any other corporation jointly—excuse me. Strike that.

Why not answer it? Don't strike that. I will ask it that way and see if you can answer it.

Is there any current activity by Gulf jointly with any other corporation establishing prices for the sale of uranium?

Mr. WALKER. I certainly know of none. I will be willing to bet my bottom dollar that there is not.

Mr. KOPPELL. There is no such arrangement?

Mr. ZAGNOLI. No such arrangement in any activity in which I am involved.

Mr. KOPPELL. So the last such arrangement that you were involved in, to your knowledge, was the cartel which is now no longer in existence.

Mr. WALKER. The Canadian portion of the cartel, yes.

Mr. KOPPELL. Thank you, Mr. Chairman.

Mr. GORE. Mr. Walgren?

Mr. WALGREN. I defer at this time.

Mr. GORE. Mr. Haddad?

Mr. HADDAD. There is a 1976 situation which has troubled us. It has to do with Ontario Hydro and the supplies from Rabbit Lake.

Earlier I think Mr. O'Hara said that everything had to be cleared in terms of price, cleared through the Atomic Energy Control Board. Is that accurate?

Mr. O'HARA. My understanding is that you have to get an export permit to export uranium out of Canada and the export permit is granted by the Atomic Energy Control Board pursuant to a directive issued by the Minister of EMR. Perhaps Mr. Zagnoli can clarify that.

Mr. HADDAD. Documents 100, 99, 109, and 110 are a series that involve Mr. Walker and Mr. Zagnoli. They have to do with Ontario Hydro and the pricing.

I take it that you are probably familiar with them.

[The document referred to follow:]

OLOA #99

412·28·4·61

B420000046

FROM: Mr. N. M. Ediger AT Toronto

Mr. S. A. Zagnoli AT Denver

IN REPLY REFER TO

DATE March 8, 1974.

Subject: Proposal for Uranium Supply to Ontario Hydro

Approval is requested to submit a proposal for uranium supply to Ontario Hydro. The uranium would be delivered as U_3O_8 in the period 1980-85 for use as part of the nuclear fuel requirements of the Hydro nuclear power program.

Hydro is currently holding discussions with all Canadian producers about supply from 1980 on, prior to formal solicitation of bids. They have requested, and we have agreed, that we furnish them an indication no later than March 15 of the annual quantities which we would be prepared to bid on for the period 1980-85. They would then send a letter to us formally requesting the bid, which would form the basis for our proposal. Since these discussions are still in the preliminary stage, we have not as yet prepared a draft proposal, but would do so and would forward it for your review prior to submitting it to Hydro. We anticipate the formal written proposal should be delivered to Hydro around mid or late April. Hydro specifically asked that we consider a bid on a minimum of 600,000 lbs. U_3O_8 per year for the period 1980-85 inclusive. We feel this is a prudent fraction of our remaining uncommitted production to bid on at this time.

The pricing structure which we propose is the same as that submitted to ENUSA, i.e. $12.50/lb. U_3O_8 base price, with escalation beginning from 1973 on 80% of the price. We have elected to use 40% labour and 40% materials, with our standard Canadian indices. Assuming that this escalation formula results in a yearly increase of 6%, which we believe to be realistic in view of today's conditions, the escalated prices and projected revenues are:

Year	Escalated Price $/lb. U_3O_8	Lbs. U_3O_8	Revenue, $M
1980	18.80	600,000	11.280
1981	19.92	600,000	11.952
1982	21.12	600,000	12.672
1983	22.39	600,000	13.434
1984	23.73	600,000	14.238
1985	25.15	600,000	15.090
		3,600,000	78.666

The above prices are considerably higher than either the current world market price or the latest prices established by the Department of Energy, Mines and Resources as being the minimum for export of Canadian uranium. All prices and revenues are in Canadian dollars, F.O.B. conversion plant of Eldorado Nuclear Limited, Port Hope, Ontario.

Our proposal would incorporate the clause developed for the ENUSA bid on

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protection against new taxes, royalties, production cost increases, etc. but suitably modified to take account of the fact that this would not be an export sale and thus there would not be any taxes, duties, etc. imposed outside Canada. Other terms and conditions in the proposal would be standard.

Our uncommitted production for the period of interest is (million lbs. U_3O_8):

1980	1.486
1981	1.546
1982	1.546
1983	1.546
1984	0.239
1985	-

We feel it is highly desirable from a political standpoint to be responsive to Hydro's request and to submit a proposal to them. The Minister of Energy, Mines and Resources recently issued a policy statement that said, among other things:

- "Known reserves of uranium will be required to be held at all times to meet, as a minimum, the fuelling requirements of Canadian reactors whether in existence or committed."

- "Existing and potential production capacity must also be shown to be capable of producing at a rate to meet future domestic needs."

While it is not yet clear exactly how these policies will be implemented, EMR has suggested to the Canadian producers that a mechanism might be developed in the near future whereby each producer "reserves" a portion of its uncommitted production for Canadian domestic requirements. The EMR staff does, however, recognize that Canadian utilities must be prepared to pay the same prices that we could achieve from export sales. Considering the size of our uncommitted reserves and production at Rabbit Lake, we believe this proposal to Hydro will be evidence of our willingness to participate, within the limit of our current capabilities, in supplying the domestic market.

N. H. Ediger

/gm

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B420000048

Gulf Minerals Canada Limited - Rabbit Lake 3/13/74

Cluff Lake Project

Year	Sales Price Escalated @ 8% $/lb	Gen Costs Escalated @ 6% $/lb	Capital Recovery $/lb	Royalty 9% $/lb	O.R.T. 20% $/lb	Taxes $/lb	Volume lbs	Cash Flow $000's
1973	Base 12.50							
	13.25							
	14.05							
	14.89							
	15.78							
	16.73							
	17.73							
50	18.80	3.96	1.25	1.77	2.47	9.90	600,000	5,250
	19.94	4.27	1.25	1.80	2.67	10.48	600,000	6,285
	21.14	4.62	1.25	1.87	2.78	11.10	600,000	6,660
	22.38	4.98	1.25	1.95	2.94	11.75	600,000	7,050
	23.74	5.39	1.25	1.54	3.11	12.43	600,000	7,458
	25.15	5.84	1.25	1.63	3.29	13.16	600,000	7,896
Contract Average	21.85	4.81	1.25	1.44	2.87	11.47	3,600,000	41,394

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OLOA # 100

S. A. Zagnoli — Denver

Mr. R. M. Baldwin — Pittsburgh — 3/27/74

URANIUM SUPPLY TO ONTARIO HYDRO

Approval is requested to offer 3.6 million pounds of U_3O_8 to Ontario Hydro for delivery in the 1980-1985 period at a rate of 600,000 pounds per year. The base price proposed is $12.50 per pound with escalation beginning now on 80% of the price (same as offer to EMUSA).

As discussed and emphasized by Mick, we must be responsive. The proposed conditions of sale are very attractive, and I recommend approval without any reservation.

[redacted]

S. A. Zagnoli

SAZ:ach

Attachment - AFE Ontario Hydro

Copies of AFE:

EB W (2)
FBerning (1)
PEH (1)

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2258-26

RP 02790

GM26 [redacted]

TM 24223

X-32-285

B4200Ø0038

AUTHORITY FOR COMMITMENT

REGION OR SUBSIDIARY	SPONSOR	DATE
Gulf Minerals Canada Limited, Toronto, Ontario	N. M. Ediger, Vice-President	April 1974.

NAME & DESCRIPTION: Proposal to Ontario Hydro for the supply of U_3O_8. The U_3O_8 would be produced by Gulf Minerals Canada Limited at the Rabbit Lake Project in northern Saskatchewan and delivered to the conversion plant of Eldorado Nuclear Limited, Port Hope, Ontario. The quantity to be supplied is 600,000 lbs. U_3O_8 per year for the period 1980 through 1985, total 3,600,000 lbs. U_3O_8.

BUSINESS JUSTIFICATION AND BASIS OF ECONOMICS

This proposal, if it is successful and a sales contract results, will increase Gulf's sales of its share of production from the Rabbit Lake Project.

The pricing structure is considerably above the current world market price for deliveries in the applicable period.

COMMITMENT DATA

	TOTALS FOR BASE PERIOD	TOTALS WITH RENEWAL OPTIONS
DURATION	6 YRS.	YRS.
TOTAL AMOUNTS	$72,600,000	$
MAXIMUM EXPOSURE (1)	$	$
(1) Do not anticipate an operating loss that could exceed sales price		

ECONOMIC INDICATORS

DOLLARS IN THOUSANDS	BEFORE U.S. INCOME TAX	AFTER U.S. INCOME TAX
Profit Margin	$21,960,000*	$21,960,000
Profit Margin	28%	28%
Profit Margin, per lb. U_3O_8	$6.10	$6.10
* After Canadian taxes of $10,332,000 which exceeds estimated U.S. tax liability	-	-

WILL THE PROJECT HAVE ENVIRONMENTAL IMPACT	YES		NO	X

EFFECT ON CORPORATE NET INCOME (LOSS) AFTER U.S. INCOME TAX

1980	1981	1982
$ 2,970,000	$ 3,564,000	$ 3,230,000

SIGNIFICANT COMMITMENT PROVISIONS:
Provisions are included in the proposal for (1) price escalation from 1975 for increases in labour and material costs, (2) payment by the customer of new taxes and increases in GML's production cost incurred as a result of governmental action in Canada.

AVAILABLE ALTERNATIVES:
To maintain good political relationships with both the Federal and Provincial governments, it is highly important that GML be responsive to requests to supply Canadian domestic uranium requirements.

BUSINESS PLAN/BUDGET DATA:
The proposal, if successful, is consistent with the objectives in the GML business plan, viz. to achieve additional sales contracts to increase Gulf's base-load for its share of production from the Rabbit Lake Project.

SENSITIVITY & FACTORS NOT CAPABLE OF BEING EVALUATED:
The profit margin could be reduced in the event that actual operating costs increase more rapidly than indices used in escalating the selling price.

FINANCING: None

PRESIDENT	OPERATING OFFICER	COMPTROLLER
S. A. Zagnoli	N. M. Ediger	[illegible]

PITTSBURGH APPROVAL ▷ DATE ▷

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GM26

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OLOM #109

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INTERNAL CORRESPONDENCE
CDS 13-73-A

B420000401

R. J. Goeken AT Denver IN REPLY REFER TO

Mr. Edward B. Walker, III AT Houston DATE 2/3/76

SALE OF U_3O_8 TO ONTARIO HYDRO

Approval is requested for the sale to Ontario Hydro of 3,700,000 pounds of U_3O_8 in concentrates to be produced from GMCL's Rabbit Lake Mine for delivery during the period 1980 through 1985.

Background

In March of 1974, prior to submitting a proposal to Ontario Hydro, an AFC and accompanying documents were submitted to Pittsburgh for approval. A draft agreement did not accompany this as discussions were only in the preliminary stages and a bid to Hydro was required by March 15, 1974. The AFC was reviewed by the Corporate Comptroller and Planning and Economics Departments and a favorable recommendation was made.

GMCL received verbal approval to proceed in April of 1974, and a proposal was submitted to Hydro on May 7, 1974. This proposal was accepted in a letter of intent dated May 21, 1974. This acceptance was subject to further negotiations concerning sales price increases arising from: (1) increases in the royalty payable to the Province of Saskatchewan, and (2) increased operating costs due to the imposition of more stringent rules and regulations dealing with health, safety and the environment. Agreement between both parties was reached concerning these items.

A draft agreement which had undergone executive and legal review by GMCL was then submitted to Hydro on August 22, 1974. Since that time, meetings have been held with Hydro to finalize the remaining details of the agreement. Enclosed for your convenience is a final draft agreement acceptable to us and which we believe will be acceptable to Hydro.

Economics

The pricing structure in the Ontario Hydro draft sales agreement is identical to those in GMCL's export sales agreements with ENUSA (Spain), Hokuriku (Japan), and TVO (Finland) which have now been approved by the Atomic Energy Control Board. The structure consists of a base price of $12.50 per pound of U_3O_8, 90% of which is subject to escalation based upon labor and materials indexes published by the Canadian Government and with the month of January, 1974, as the base. At the time of the original proposal, prices were considerably above the prevailing world market price for delivery during the applicable period

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and within the guidelines established by the Department of Energy, Mines and Resources as being the minimum price for export of Canadian uranium. Price protection is also afforded against increases in the royalty payable to the Province of Saskatchewan, and from increased operating costs due to the imposition of more stringent health, safety and environmental legislation. This latter protection can trigger the termination of the agreement if the amount of such price increases reaches 35% of the base price plus escalation.

Based upon our projections for the labor and materials indexes, we have estimated the sales prices that would be in effect during the term of our agreement with Hydro, as shown in the table below.

Year	Commitment (lbs. U_3O_8)	Price ($/lb.)*	Value ($ Million)*
1980	400,000	22.28	8.9
1981	700,000	23.81	16.7
1982	700,000	25.44	17.8
1983	700,000	27.20	19.0
1984	600,000	29.05	17.4
1985	600,000	31.03	18.6
Totals	3,700,000		98.4

*Canadian Dollars

Reserve Estimates

Uncommitted reserves of the Rabbit Lake Mine are sufficient in quantity to meet delivery of U_3O_8 under the terms of this contract. A schedule of sales commitments is attached to the AFC.

Political Implications

In 1975, the Federal Government established a policy to provide assured supplies of uranium for existing nuclear reactors and those committed or planned for construction in Canada from now to 1985. This policy effectively allocates approximately 25% of each producer's ore reserves for sale to domestic utilities. GMCL is required to allocate 5,562,000 pounds of U_3O_3 for such domestic sales. The potential sale to Hydro of 3,700,000 pounds of U_3O_3 would represent approximately 67% of this domestic allocation.

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TH 24588

On the basis of the foregoing, your approval is solicited for authority to execute the Sales Agreement when finalized in accordance with the terms contained in the attached draft.

R. J. Goeken

Attachments

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TH 24589

B420D0404

RABBIT LAKE PRODUCTION COMMITMENTS

Year	Gulf's Share of Production	Gulf's Commitments	Ontario Hydro Proposal	Remaining Uncommitted
1975	370	370		0
1976	2,295	2,295		0
1977	2,295	2,295		0
1978	2,295	2,295	—	0
1979	2,295	2,083		212
1980	2,295	1,035	400	860
1981	2,295	1,100	700	495
1982	2,295	900	700	695
1983	2,295	900	700	695
1984	2,295	900	600	795
1985	1,333	900	600	(167)
TOTALS	22,358	15,073	3,700	3,585

NOTES: 1. Deficit in 1985 will be supplied from production in 1984.

2. Total Gulf production is based upon a Rabbit Lake reserve estimate of 43,839,000 lbs. U_3O_8.

2/03/76

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TM 24590

412-28-4-62

OLOA #110

B4200 00405

MAR 2 1976

Edward B. Walker AT Houston

Mr. J. E. Harbaugh AT Pittsburgh

IN REPLY REFER TO

DATE 2-27-76

Sale of Uranium to Ontario Hydro

Attached for Pittsburgh approval is an AFC in the amount of $93.4 MM (Canadian) for the sale of 3.7 MM pounds of U_3O_8 in concentrates to Ontario Hydro. The reason that this AFC requires Pittsburgh approval is that the term (6 years) is longer than the 5 years allowed the Strategy Centers.

Edward B. Walker

Edward B. Walker

cc: Mr. J. L. Murdy
Mr. B. W. Miller

RP 02928

MAR 3 1976

GU 26 055

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GENERAL CORRESPONDENCE
B420000406

J. V. Quigley
J. S. Stoffer
AT Houston

IN REPLY REFER TO

Mr. Edward B. Walker
AT Houston

DATE 2-26-76

SALE OF URANIUM TO ONTARIO HYDRO
FROM THE RABBIT LAKE MINE AND MILL

The attached AFC in the amount of $98.4 MM (Canadian) for the sale of 3.7 MM pounds of U_3O_8 in concentrates to Ontario Hydro will require both your approval and Pittsburgh approval.

This proposed contract is not a warranty contract although it provides for a specified amount of U_3O_8 to be sold at a specified price over a specified period subject to escalation and force majeure clauses. In this regard, the staff has the following comments:

PRICE

The Canadian Federal Government has established a firm policy that sale of uranium outside of Canada will be permitted only after domestic needs are satisfied for all nuclear plants planned for operation by 1985. The current Canadian domestic market is therefore one of several large producers selling into a small domestic market with only a few buyers. While the domestic price in Canada is a matter of speculation, it is no doubt higher than the $12.50/lb. in the Ontario Hydro agreement. However, it is certainly not the $30 or $40 that has been quoted in the U.S. press as representative of sales outside Canada. The proposal to Ontario Hydro, and their acceptance, are now almost two years old. At the time the proposal was made, $12.50 plus 90% escalation plus protection from government action was at the top of the market. The subject agreement is the formalization of a long negotiation through which we still anticipate to make attractive profits.

QUANTITIES

This sale will now have committed approximately 85 per cent of the Gulf Rabbit Lake reserve to sale contracts. Even though back-up reserves are available nearby, to commit more of the estimated reserve to firm sale now would appear to be imprudent as reserves are based on estimates.

TERM

The contract does contain a clause that allows the delivery schedule to be changed by a written agreement between Seller and Buyer.

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B420000407

FORCE MAJEURE

The contract contains a comprehensive force majeure clause so that Gulf will be excused from performance when caused by reasons beyond its control and other specified reasons. This clause is still under negotiation.

Considering the economics of the contract as well as the political implications of operating this mine and mill in Canada, we feel that this AFC should be approved.

J. V. Quigley

J. S. Stoffer

cc: Mr. R. J. Goeken
Mr. G. F. Shroyer, Jr.
Mr. J. T. Steiner

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TN 24593

B420D0040S 412.28.4.52 71

AUTHORITY FOR COMMITMENT

[illegible]	Gulf Minerals Canada Limited Toronto, Ontario	SPONSOR	A. Janisch, Vice-President	DATE	December 4, 1975.

NAME & DESCRIPTION: Sale of U_3O_8 to Ontario Hydro. The U_3O_8 will be produced by Gulf Minerals Canada Limited from the Rabbit Lake Project in northern Saskatchewan and delivered to the conversion plant of Eldorado Nuclear Limited, Port Hope, Ontario. The quantity to be supplied is 5,700,000 lbs. of U_3O_8 for delivery during the period 1980 through 1982. This proposed sale is on behalf of both GMCL (90%) and Gulf Oil Canada Limited (10%). The Base Price is $12.50 per lb. with 90% of the Base Price subject to escalation from January, 1974.

BUSINESS JUSTIFICATION AND BASIS OF ECONOMICS

1. A Proposal was submitted to Ontario Hydro in May of 1974. At that time the pricing structure in the Proposal was considerably above the prevailing world market price for delivery during the applicable period. The Proposal was accepted by Ontario Hydro on May 21, 1974.

2. The Canadian Federal Government has recently instituted a policy which requires each uranium producer to allocate approximately 25% of its reserves for sale to domestic utilities. This proposed sale represents 67% of GMCL's obligations to the Canadian domestic market and therefore has important political significance.

COMMITMENT DATA

	TOTALS FOR BASE PERIOD	TOTALS WITH RENEWAL OPTIONS
DURATION	6 YRS.	YRS.
TOTAL AMOUNTS (\$ Canadian)	\$95.4 million	\$
MAXIMUM EXPOSURE	\$	\$

ECONOMIC INDICATORS

DOLLARS IN THOUSANDS	BEFORE U.S. INCOME TAX	AFTER U.S. INCOME TAX
Profit Margin (6 Yr. Total Amount)	\$26,150*	\$26,150
Profit Margin (% of Revenue)	28.6%	28.6%
Profit Margin (\$ per lb.)	\$ 7.07	\$ 7.07
*After Canadian Taxes of \$24,139 which exceeds estimated U.S. Tax liability		

WILL THE PROJECT HAVE ENVIRONMENTAL IMPACT — YES [ ] NO [X]

EFFECT ON CORPORATE NET INCOME (LOSS) AFTER U.S. INCOME TAX

1980	1981	1982
\$ 2,228	\$ 4,249	\$ 4,509

SIGNIFICANT COMMITMENT PROVISIONS:

Price escalation from Jan/74 based upon increases in Canadian labour & material indexes.

Limited protection from increases in the Saskatchewan mining royalty, from new uranium taxes & from increases in GMCL's production cost incurred as a result of more stringent regulations dealing with health, safety & environment

AVAILABLE ALTERNATIVES:

Ontario Hydro is the only potential customer having U_3O_8 requirements within the time frame for Rabbit Lake production to meet the Canadian Federal Government policy of a 25% allocation to domestic utilities.

BUSINESS PLAN/BUDGET DATA:

The finalization of this proposed sale is consistent with GMCL's Statement of Strategy, and the potential impact upon GMCL has been incorporated into our Business Plan.

SENSITIVITY & FACTORS NOT CAPABLE OF BEING EVALUATED:

None

FINANCING:

N/A

J. B. Walker

PRESIDENT	OPERATING OFFICER	COMPTROLLER
[signature]	A. Janisch [signature]	R. E. Byrd, Manager Financial Services

PITTSBURGH APPROVAL | DATE

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TM 24594

Mr. ZAGNOLI. Not recently.

I would like to clarify that. All exports out of Canada must be approved by the Atomic Energy Control Board. You must secure a license from Industry, Trade, and Commerce. This is subject to review, incidentally. I think you apply for a license every year for exports.

Mr. HADDAD. What about imports?

Mr. ZAGNOLI. I don't know about imports. I do not believe there is any restriction. I do not know of any.

As for domestic sales in Canada, as far as I know, I do not think they need to be approved.

Mr. HADDAD. We have Documents 109, 99, and 100.

In June 1976, Gulf Oil sold Ontario Hydro a substantial amount of uranium. Is that correct?

Mr. ZAGNOLI. Yes; that is correct.

Mr. HADDAD. What was the price of that uranium?

Take a look at Document 100, the authority for commitment.

Mr. Walker, are you familiar with this?

Mr. WALKER. I saw a couple of these in the last few days.

Mr. ZAGNOLI. The base price is $12.50. I see that.

Mr. HADDAD. Right. Are you still looking at the document?

It appears that you are able to sell to the Canadian market at a higher price than the published regulations. It seems strange to me that can happen.

Is there a price-fixing schedule? Aren't you regulated as to what you can sell to Canada?

Mr. ZAGNOLI. No; Canada is a free market.

Mr. HADDAD. I mean from your Rabbit Lake. You can sell from Rabbit Lake at any price to the Canadians?

Mr. ZAGNOLI. Whatever you can negotiate.

Mr. HADDAD. Why did you negotiate this above what you might have been able to purchase elsewhere at world market prices?

Take a look at that commitment page. I think you will see what I am driving at. It shows a profit margin of 26 percent.

Is that a normal profit margin?

Mr. ZAGNOLI. Mr. Haddad, that is the good side of the story.

Mr. HADDAD. What is the bad side?

There is 26 percent profit on something sold to the Canadians in which the Canadians organized a world cartel to protect themselves.

Mr. ZAGNOLI. That must be on sales as far as the profit margin is concerned.

Mr. HADDAD. We have heard 55 percent today:

At the time of the original proposal, prices were considerably above the prevailing world market price for delivery during the applicable period and within the guidelines established by the Department of Energy, Mines and Resources as being the minimum price for export of Canadian uranium. Price protection is also afforded against increases in the royalty payable, et cetera.

Then you have the schedule there.

Were you making a 26-percent profit on the uranium you sell into Canada from their own mine?

Mr. ZAGNOLI. That could be possible. It is hard to look at these things in isolation.

Mr. HADDAD. How should I look at them?

Mr. ZAGNOLI. You have to look at the losers and the money we invest in exploration and the risk involved.

If you have the good fortune of finding a high grade deposit of uranium, then the margin that you sell out will have you make more money. This happens to be a high grade deposit.

Mr. HADDAD. But production costs relative to this—we are talking about this yellowcake and that hydro plant.

Mr. ZAGNOLI. Yes.

Mr. HADDAD. Let me pursue one more point.

Mr. WALKER. Excuse me. Let me come in on that.

In evaluating the prospect, if you get 1 in 50, you are very fortunate.

Mr. HADDAD. Are you losing money on uranium?

Mr. WALKER. To date, yes, we are.

Mr. HADDAD. What are your projections?

Mr. WALKER. Ultimately we will make money if our New Mexico deposit is economic, but we don't know that.

Mr. HADDAD. I read a Forbes article—the one that called us McCarthyites—that also said you were a genius in minerals and that was the reason Gulf Oil was in such good shape. I do not think you are losing on uranium, are you?

Mr. WALKER. Right now, to date we have lost money, yes.

Mr. HADDAD. Over what period of time?

Mr. ZAGNOLI. It started in 1967.

Mr. HADDAD. When does it turn black?

Mr. ZAGNOLI. Profit and loss? We are talking overall.

Mr. WALKER. All the money back in profit would be well into the 1980's, I suppose. In other words——

Mr. HADDAD. What you said in Paris and in Johannesburg, was that if you could get $6 for Rabbit Lake, you would be very happy. You were worried that the price was going down to $5. You were worried that the Australians would sell at $4. You thought that you could make all the profit that you needed plus money for exploration at the $6 price. The price is much higher and you are using the same argument.

You had a fixed price with escalations built in and you were very happy with it when you rigged the price around the world. Then you upped it and upped it.

Mr. Zagnoli, were you made aware at Paris of a statement by Mr. Gilcrist that the Australians were threatening and were already negotiating with the U.S. market to sell new uranium?

Mr. ZAGNOLI. I have no recollection of that.

Mr. HADDAD. Have you heard that at all from Mr. Gilchrist or from anyone else? It was in the minutes that went to you. It said that one of the things that you had to worry about was that the Australians might sell below cost to the United States and, in fact, they were in negotiations with the United States. That doesn't ring a bell?

Mr. ZAGNOLI. It does not.

Mr. HADDAD. The premise is that cartel effectively kept the Australians out of the American market. If the Australians were brought into the cartel, then any of these negotiations with the United States would not have taken place. The cartel arrangement would cut their

quota and would seriously curtail production to the point where they would not have enough uranium to sell to the U.S. market.

That doesn't make sense to you?

Mr. ZAGNOLI. In 1972?

Mr. HADDAD. Yes, 1972.

Mr. ZAGNOLI. The cartel kept the Australians out of U.S. market?

Mr. HADDAD. Yes.

Mr. ZAGNOLI. I have not contemplated that.

Mr. HADDAD. Mr. Ramsey, does that ring a bell with you? Do you have anything on that? Did you come across that in your economic studies?

Mr. RAMSEY. I think they are talking about two different time periods here.

Mr. HADDAD. I am talking about the first quarter of 1972 when this statement was made. Did you ever come across that in your studies about the possible impact on the American market of Australian uranium being bought for the future at low prices?

Mr. RAMSEY. Insofar as I know, there was no problem in that regard. The United States was excluded from the cartel. There was no reason to expect that there would be any prohibition or any problem or any difficulty in selling into the United States.

The real problem was the embargo and the price differential.

Mr. HADDAD. What they were going to do was to come in very cheaply for the future. What I am suggesting to you is that by drying up the Australian supply, which you did when you made the Australians cut back dramatically in the amount that they could produce, then you did not leave any for them to sell to the U.S. market. That was the cartel's big fight with the Australians. Then the Australian Government stepped in. Isn't that correct?

Mr. ZAGNOLI. It is my impression that the Australian thing was a political decision. They proceeded to develop their properties. What they did with producing property, I am not sure.

Mr. HADDAD. In Paris the big fight was with the Australians. They took the biggest cut in production. They took the biggest immediate cut. So they did not produce what they could have produced, aside from the political decision.

Were there aspects of this market which you were not considering in your economic analysis?

Mr. ZAGNOLI. I do not follow you.

Mr. HADDAD. Mr. Ramsey, last time we talked I understood there were wheelbarrows full of documents that led to your economic paper. We still have not received that information nor received the names of the people who had worked on those documents.

There is a subpena out now for that material. I hope that counsel might be able to give me some idea of when we will receive it.

We have extended the due date until the 19th. Have you been contacted to produce that information?

Mr. RAMSEY. I was aware of receiving the subpena. It was directed to Gulf. I refer you to my attorney here to respond to that question.

Mr. HADDAD. Are you prepared to respond?

Mr. COLMAN. I have previously identified myself.

I believe Mr. Haddad stated correctly that an arrangement has been reached. I was not a party to it but I was advised of it. It was

between a representative of Gulf and a representative of the New York State Assembly committee. A return on the subpena was agreed upon, which is December 19.

Mr. HADDAD. As I understand it, you will comply with that and provide the documents?

Mr. COLMAN. That is my understanding but I was not a party to it. I was advised by a member of your staff.

Mr. HADDAD. Thank you.

Who put the final paper together, the September 8 paper, Mr. O'Hara? The legal decision.

Mr. O'HARA. The mechanics of assembling it, that was my job.

Mr. HADDAD. Who wrote it?

Mr. O'HARA. Mr. Jackson—it was a joint effort. Mr. Jackson wrote the bulk of it. I wrote a section of it or helped write a section of it.

Mr. HADDAD. Who approved it?

Mr. O'HARA. I don't know if anybody approved it. Mr. Jackson signed it. It was issued as the law department's opinion.

Mr. HADDAD. You had input into it?

Mr. O'HARA. Following the July meeting, that is when I first got involved in it. Subsequent to that, I didn't even——

Mr. HADDAD. How did that memo become corporate policy? How was the memo transformed into corporate policy?

Mr. O'HARA. It is the opinion of the law department. I don't know whether it become corporate policy. It was given to Mr. Ediger. The opinion was furnished to him.

Mr. HADDAD. You did not clear the opinion with the executive committee or the executive? There was no clearance process?

Mr. O'HARA. No.

Mr. HADDAD. It came from the law department and went to Canada with nobody reviewing it within Gulf?

Mr. O'HARA. It was a law department opinion. It is a matter of course.

Mr. HADDAD. Even on a matter of this nature?

Mr. O'HARA. Yes. It is an important matter but legal opinions are given by the law department in that way.

Mr. HADDAD. You were bound in writing by the decisions made in Toronto on July 19? Where were the guidelines for writing that? Where were they established? In May in Mr. Walker's office or in July in Toronto?

Mr. O'HARA. As far as I know, my first involvement was in the July meeting in Toronto. I came into the problem at that time. At that meeting Mr. Jackson gave the oral advice to Mr. Ediger which was subsequently documented in detail in the Jackson opinion.

Mr. HADDAD. Who was outside counsel?

Mr. O'HARA. At that meeting?

Mr. HADDAD. No. I am talking about outside counsel participating in the preparation of the documents.

Mr. O'HARA. I do not think the drafting was participated in by outside counsel. Mr. Jack Howrey.

Mr. HADDAD. That was the other party in the May meeting?

Mr. O'HARA. Previously referred to by Mr. Jackson.

Mr. HADDAD. So it was the same group in May and the same group in July?

Mr. O'HARA. No; I was later involved, in July.

Mr. HADDAD. Thank you.

Mr. GORE. I have one final question, Mr. O'Hara.

Did you make the decision not to approach the Justice Department for their opinion, the decision not to prepare a white paper?

Mr. O'HARA. No.

Mr. GORE. Who made that decision?

Mr. O'HARA. I do not really know. I think Mr. Jackson testified earlier that it was a three-stage, evolutionary process where he had the question of approaching the Justice Department for the review. He testified earlier that he wouldn't have considered that at all. The second consideration was the white paper and the third was the Jackson memorandum, which was subsequently issued. I do not know who made that decision.

Mr. GORE. Mr. Walker, do you know who decided not to approach the Justice Department?

Mr. WALKER. I do not recall the white paper being discussed at all. I do not think I have ever read it.

Mr. GORE. Mr. Zagnoli, do you know who made that decision?

Mr. ZAGNOLI. I do not.

Mr. GORE. Mr. Ramsey?

Mr. RAMSEY. No, sir, I do not know who made that decision.

Mr. GORE. It has been a long day. I want to thank each one of you individually for appearing and answering and responding to the questions that we have put to you.

The subcommittee intends to continue its exploration of the international uranium cartel.

Before today's hearing is adjourned, there are a number of documents that should be made a part of the record. Without objection, it is so ordered.

This hearing will stand adjourned.

[Whereupon, at 5:00 p.m., the hearing was adjourned.]

APPENDIX

September 8, 1972

Mr. N. M. Ediger
Manager
Gulf Minerals Canada Limited
10 King Street East
Toronto, Ontario, Canada

Re: Uranium Cartel

Dear Mr. Ediger:

This will serve to confirm and elaborate upon the views I expressed on behalf of Gulf's Law Department at our July 19, 1972 meeting in Toronto based on our discussions and review of the relevant written material in further response to your request for legal counsel.

Although at the time of our Toronto meeting certain Canadian Government formal actions were not known to have transpired, the degree of probability was thought sufficient to justify documenting the detailed, definitive legal opinion you requested, based on then available material and certain stated assumptions. Since the original of my opinion was dictated (shortly after our Toronto meeting), the anticipated formal actions of the Canadian Government have occurred; consequently, the original opinion along with an addendum section, has been put in final form and is attached hereto.

Sincerely,

ROY D. JACKSON, JR.

RDJ:is

Attachment

OPINION MEMORANDUM

FOR

GULF MINERALS CANADA, LIMITED

September 8, 1972

TABLE OF CONTENTS

		Page
I.	Summary of Oral Advice at Toronto Meeting of July 19, 1972	
II.	General Factual Background	2
III.	Canadian Government Policy	5
IV.	Implementation of Canadian Government Policy	12
V.	Nature and Operation of the Cartel	40
	A. Paris Meeting - February 21-24, 1972	41
	B. Johannesburg Meeting - May 31-June 2, 1972	41
	C. Cannes Meeting - July 6-7, 1972	45
VI.	United States Antitrust Laws	47
	A. Government Compulsion	47
	B. State Action	57
	C. Any Substantial Impact On U.S. Foreign Commerce?	66
	(1) Case Law	66
	(2) Other Authorities	71
	(a) Attorney General's Report	71
	(b) Supplement to Attorney General's Report	76
	(c) Restatement of Foreign Relations Law	78
	(3) Effects Necessary to Sustain Application of Sherman Act	79
	D. Summary	84
VII.	Conclusions	88
VIII.	Addendum	93

26-608 O - 78 - 13

LIST OF ATTACHMENTS — PAGE

#1. Description of Rabbit Lake Project. 2

#2. "Joint Summary of Understandings as Regards to the Main Points Discussed at the Meeting of February 21-24,1972, Paris, France" (Confidential). 26, 27

#3. (a) Telex of April 4, 1972 - J. Austin to N. M. Ediger 29, 30
(b) Telex of March 21, 1972 - G. MacNabb to N. M. Ediger
(c) Telex of March 21, 1972 - N. M. Ediger to G. MacNabb

#4. File Note, R. K. Allen: "Canadian Uranium Producers Meeting - Ottawa, April 10, 1972." 30, 31,32

#5. Telexes of April 14, 1972 32
(a) J. Austin to N. M. Ediger 33
(b) N. M. Ediger to J. Austin
(c) D. S. MacDonald to N. M. Ediger

#6. Confidential Note to File of Meeting of Operating Committee - Cannes, July 6 and 7, 1972 and July 12, 1972 - Confidential Transmittal Letter from Alan F. Lowell of Rio Algom (RTZ) to O. J. C. Runnals, Senior Advisor, Uranium, Department of EMR. 45

#7. Memorandum of September 8, 1972, from M. W. Ramsey to F. R. O'Hara entitled "Foreign Uranium Marketing Arrangement". 88

#8. (a) J. Austin Letter of September 5, 1972 to N. M. Ediger, "Direction to Atomic Energy Control Board (Confidential)." 87, 93

(b) Page 1465, Canada Gazette, Part II, Vol. 106, No. 16, dated August 23, 1972, publishing amended Section 201 of Atomic Energy Control Act.

(c) August 17, 1972 Letter of Minister of EMR to President of Atomic Energy Control Board with attached "Directive to the Atomic Energy Control Board pursuant to Section 7 of the Atomic Energy Control Act."

(d) Statement by Minister of EMR dated August 23, 1972.

OPINION MEMORANDUM

I. Summary of Oral Advice at Toronto Meeting (July 19, 1972)

Briefly, I advised at our Toronto meeting that, although a detailed written legal opinion should be delayed until it could be addressed to a fact situation which had further stabilized, the basic fact of effective Canadian Government direction to Gulf Minerals Canada Limited (GMCL) to participate in the inter-governmentally sponsored arrangement among international uranium producers agreed on at Johannesburg was clear beyond reasonable dispute; and that this, in turn, plainly meant that only by compliance with such direction could GMCL reasonably expect to retain a significant role as a Canadian uranium producer.

I said that the U. S. antitrust laws were not so inflexible and unrealistic as to compel GMCL to get out of Canada; and, further, that based on M. W. Ramsey's assessment of the economic impact of the arrangement for the period 1972-1980, it seemed reasonably clear that GMCL's compliance would not have any material adverse effect on U. S. trade or commerce.

Under these circumstances, I advised that U. S. antitrust considerations should not be regarded as a bar to GMCL's compliance with the cartel arrangement within the reasonable scope of the Johannesburg understandings.

II. General Factual Background

In October 1968, Gulf discovered a major uranium ore reserve in a remote region of Northern Saskatchewan. This evolved into the Rabbit Lake Project described in Attachment #1. This Project is the reason for Gulf's involvement in the matters dealt with in this opinion.

Fifty Million ($50,000,000.) Dollars were committed in discovering and evaluating the Rabbit Lake uranium reserve, which is currently estimated to represent 9% to 10% of Canada's estimated total recoverable uranium reserves. Operating costs during the estimated life of the mine will be substantially in excess of One Hundred Million ($100,000,000.) Dollars, with operations scheduled to commence in 1975.

The Project is being developed as a joint venture between GMCL and Uranerz Canada Limited (UCL), which is principally owned by Rheinisch-Westfalisches Elektrizitatswerk (RWE), a major West German utility. UCL is a Canadian corporation and holds a 49% operating interest in the joint venture.

Gulf Oil Canada Limited, a Canadian company in which Gulf Oil Corporation owns a majority interest, has a 5.1% operating interest; and the remaining operating interest of 45.9% is held by GMCL.

GMCL, a successor company to Gulf Minerals Company, a Delaware corporation and wholly-owned subsidiary of Gulf Oil Corporation, was incorporated in Canada as a Dominion Company on October 7, 1970, in order to comply with Canadian laws pertaining to the mining, processing, sale and export of uranium.

As noted in more detail at a later point in this opinion, the Government of Canada in March 1970 announced a new and more restrictive policy on foreign ownership of Canadian uranium. The point at issue was whether sale of a 49% undivided ownership interest in the Rabbit Lake ore-body to UCL was in conflict with the new foreign ownership policy. After prolonged examination of the facts, the Canadian Government agreed to allow the Rabbit Lake joint venture to proceed as a 100% foreign-owned enterprise.

Early start-up of the Project was considered to be in the national interest because of the economic benefits which would accrue to Canada and the fact that a substantial amount of the production through 1977 was committed, under the terms of the joint venture agreement between GMCL and UCL, to West Germany's nuclear power program at a time when the U. S. market

was closed and penetration of other markets in Europe and Japan on a profitable basis was virtually impossible.

From GMCL's standpoint, it had become statistically apparent in late 1969 that there was a worldwide oversupply of uranium and, since U. S. law effectively prohibited U. S. importation of uranium, GMCL would have critical difficulty in developing a market for Rabbit Lake production before 1978 or 1979, if then.

The joint venture arrangement with UCL was shaped predominately by UCL's ability to guarantee GMCL an economically feasible market outlet for early production. The joint venture was also of advantage because of the front-end payment by UCL to GMCL of Six Million ($6,000,000.) Dollars and UCL's commitment to pay GMCL a royalty on each pound of UCL production (based on defined "gross profit margin"). In this manner, GMCL was able to start production earlier and spread its risks, while still realizing a rate of return appropriate to high risk resource development ventures in remote areas. And, of course, the Province of Saskatchewan was understandably encouraging GMCL to start construction.

The international uranium producers' arrangements described herein are neither clearly profitable nor unprofitable in their economic implications for GMCL. Generally, however, they have severely complicated the contractual arrange-

ments for the mining, milling, and distribution from Rabbit Lake--and this in midstream, so to speak--while holding forth the virtual certainty of enforced reduced production and marketing quotas where none existed before.

In 1971 it became apparent that because of setbacks in the Free World's nuclear power programs, uranium stockpiles and surplus productive capacity were reaching a critical state. Certain foreign producers were selling at distress prices, causing chaos in the market place--and all this against the background of significant new discoveries in Australia adding to potential oversupply. The world price on contracts for uranium supply signed during 1971 dropped by about One ($1.00) Dollar per pound; and some producers faced the virtually certain prospect of having to renegotiate existing contracts to provide lower prices competitive with the lower world market prices.

III. Canadian Government Policy

In this factual context it is pertinent to examine the history and present status of Canadian Government policy concerning uranium exploration and marketing, as reflected by policy statements of Government officials.

In June 1965, the then Prime Minister Pearson stated to the House of Commons a policy based on close governmental

concern with matters related to uranium. Under market conditions then prevailing, the Prime Minister's policy provided for (a) exports of uranium under safeguards to ensure use for peaceful purposes, and (b) the stockpiling of uranium to enable operation of Canadian uranium mines to be continued while markets developed.

On June 19, 1969, the Hon. Otto E. Lang, Minister, Energy and Water Resources, made a Canadian Uranium Policy Statement in the House of Commons, which included the following:

> "Many significant changes have taken place since 1965 in the world uranium market...increasing dependence on uranium fuel for future electrical power generation is providing an incentive for many countries to become concerned with uranium activities in other countries. These developments will have an impact on the Canadian uranium industry. Accordingly, the government is now setting out its uranium policy in greater detail to ensure that full account is taken of the Canadian public interest in these new circumstances. The basis of Canada's uranium policy is stated in the preamble to the Atomic Energy Control Act, namely, that 'it is essential in the national interest to make provision for the control and supervision of the development, application and use of atomic energy, and to enable Canada to participate effectively in measures of international control of atomic energy which may hereafter be agreed upon.'"
>
> "To protect the national interest in the different circumstances which now face us, we will henceforth require that all contracts covering the export of uranium or thorium be examined and approved by the appropriate federal agency before any application

for an export permit is considered...We will continue to require that all persons engaged in uranium or thorium mining in Canada be incorporated under federal or provincial legislation; that they operate under license from the Atomic Energy Control Board and that they provide information as required under the regulations of the Board."

On March 19, 1970, the Hon. J. J. Greene, Minister of Energy, Mines and Resources, issued another Government policy statement regarding foreign ownership in the Canadian uranium industry, which included:

"I should like, pursuant to the Prime Minister's statement of March 2, to inform the House of the Government's position with regard to ownership in the Canadian uranium industry. That position rests upon the special importance of this industry in relation to the national interest, as reflected, for example, in the Atomic Energy Control Act and in a number of statements of general policy of which the most recent was made in the House on June 19 of last year. In light of that special importance, the ownership and control of enterprises in Canada engaged in the extraction and processing of this vital mineral are matters of important concern to the national interest...regulations (of the Atomic Energy Control Board) will require...the (uranium) property or plant to be owned legally and beneficially by a company incorporated in Canada. With regards to existing mines, our regulations will be effective as from the date of the Prime Minister's statement of March 2 but will not be retroactive in the sense of requiring foreign interests then holding more of the ownership than the prescribed limits to divest themselves of those surplus holdings...Furthermore, we shall require, in the case of foreign holdings by an individual or group of associated investors amounting to 50% of total ownership or higher, that while such holdings may be retained by their present owners,

> any transfer of them must be to Canadians only, down to the 33% aggregate foreign ownership limit..."

On May 5, 1970, the Hon. J. J. Greene made another statement on uranium policy supplementing and refining foreign ownership restrictions noted in his prior statement. And on September 18, 1970, the Minister noted more recent legal advice to the effect that some of the restrictive ownership provisions would require legislation, rather than regulations, which was being prepared by the Government. The statement noted that the Government would advise Gulf Minerals Company that no exception would be taken to its application for transfer of interests in uranium properties in Canada to foreign owners, provided the transfer was according to terms not inconsistent with those entered into in writing by the parties as evidencing their intent and signed prior to March 2, 1970.

On March 28, 1972, the Hon. Donald S. MacDonald, Minister of Energy, Mines and Resources (EMR) noted to the Standing Committee on National Resources and Public Works:

> "...I would like to take this opportunity to add some thoughts of a policy-oriented character to my previous remarks (in his February 24 address to the House of Commons)...our energy demands are projected as likely to quadruple between now and the year 2000. To meet such a startling requirement will necessitate total energy sector planning

which will, in turn, require national policies for coordination and development. We are going to have to understand whether market demands are rational, long-term and stable or transitional and unable to bear the responsibility for amortization...The Federal Government must accept the responsibility for setting the broad policy options which reflect the way in which Canadians want to live and develop their country; and to administer such a policy and to influence developments, we have available to us a large number of levers. I refer to national policies for ... export and import controls of various kinds...and, generally, our legal and constitutional powers...the Federal Government has the responsibility for ensuring full consultation amongst energy project groups on such matters as the desirability, timing and magnitude of their investment programs...Committee members will be aware that established communities in Canada, particularly at...Uranium City, Saskatchewan, have been undergoing considerable economic and social difficulty as a result of depressed conditions in the international market for the uranium-producing industry...Committee members will be aware that the Government of Canada has taken steps for the holding of discussions at an international level regarding the state of the uranium industry and of the development of nuclear programs. We firmly believe that the unduly depressed prices for uranium, which are prevailing, act as the major disincentive to the active exploration of a very considerable geological potential in Canada. In addition, the search for uranium in Canada, because of the remoteness of many of the most promising areas, has a somewhat higher cost than in some other parts of the world, including Australia, which has recently developed some interesting new prospects. In the absence of international market stability, the development of the resource required for the nuclear power industry in the 1980's will not be ensured, with the possible consequence of a critical shortage of supply developing in that period. Mining exploration and development of uranium requires a period of between 6 to 10 years, and the

time for commencement of new initiatives in exploration is now short...The share of market for uranium concentrates which Eldorado (a Crown Company) will obtain is very difficult to forecast at this time, but it is obvious that the Western world production of uranium must quadruple by 1980 if the power reactors already in service, under construction or committed are to be supplied with fuel...Critical to the national stance with respect to our resource industries is the international environment in which they compete for markets and for capital. All indications point to huge capital requirements in the energy and resource sector to the year 2000."

On April 21, 1972, the Hon. Donald MacDonald, Minister of EMR made the following public statements:

"...it is, I think, particularly appropriate that I should make my first remarks as the new Minister of Energy, Mines and Resources on matters affecting the uranium industry, to a public audience here in Elliot Lake...you know how vital it is that its problems be dealt with in the context of a close working relationship between government and industry. These are problems relating to our national economic goals, and there are complex obstacles to the success of the uranium industry which have disrupted exploration programs at home and produced chaotic market conditions abroad...Perhaps the central theme of my remarks tonight is the Federal government's concern for the stability of resource communities generally, and the close working relationship required between government and industry to deal with unstable world prices and markets which drive producers to the wall. The Government of Canada has taken steps for the holding of discussions at an international level regarding the state of the uranium industry and of the development of nuclear programs. We firmly believe that the unduly depressed prices for uranium which are prevailing act as the major disincentive to the active exploration of a very considerable geological potential in Canada...In the absence of international market stability, the development of the reserves required for the nuclear power industry in the 1980's will not

be ensured, with the possible consequence of a critical shortage of supply developing in that period. The demand for uranium is doubling every five years and likely to continue near this rate for the next twenty years. Exploration for and development of new uranium mining and milling facilities requires a period of between 6 to 10 years and the time for the commencement of new initiatives in exploration is now short. Moreover, the current recession in uranium exploration stands in sharp contrast to the clear portent of the strong future awaiting uranium mining as evidenced by the acceleration in the ordering of nuclear power stations...Any utility or nation which bases an appreciable and expanding portion of its electrical power generating capacity on nuclear energy should make sure that it has firm sources of supply for a major part of the reactor fuel required for the life span of each reactor in its power complex. I would stress that the price paid for a pound of uranium must be high enough to cover not only production and profit, but also to compensate for the cost of finding and developing the orebody which contained that pound. The prices prevelant today cannot possibly satisfy this condition for the uranium mining industry as a whole...Across the broad spectrum of price and market considerations affecting our mineral and energy resources, there is a need for national approaches supported by industry and government to enhance our industrial base and protect our regionally located resource industries and communities from the games people play with commodities. The Government of Canada's concern...fits into a larger national mineral policy, in which government and industry work together for a stronger resource sector in which mineral and energy commodoties are husbanded and developed to meet national economic goals... and enhanced Canadian ownership and control... We are determined to bring long term stability to our resource communities and make sure their marketing difficulties are ironed out so that these industries continue their important contribution to Canada's national wealth...It is critical that a resource exporter like Canada derives the capital from minerals and energy commodities to achieve much broader industrial goals and to make sure the national interest is protected in the international market place..."

I have dealt at some length with Canadian Government policy statements because a proper perspective requires that more particularized governmental statements and actions relating to the international uranium producers' arrangement, as well as its development and implementation, be evaluated in light of what the Canadian Government conceives the national interest of Canada to be. The overriding consideration is the attitude and policy of the host government-Canada.

IV. Implementation of Canadian Government Policy

On February 14, 1972, Mr. Gordon M. McNabb, Assistant Deputy Minister, EMR, Ottawa, advised Mr. N. M. Ediger by telephone that Mr. Jack Austin, Deputy Minister, EMR, had called a meeting of Canadian uranium producers for 1500 hours, Wednesday, February 16, 1972, to review results of the separate discussions held in Paris on February 7 and 8, 1972, between governments at one level and producers at another. Mr. Ediger was advised that the objective of the Paris meetings was to determine whether or not the uranium-producing nations, including Australia, and the companies who have stockpiles and uncommitted production capacity could agree on a formula whereby they could satisfy the free world demand (outside of the United States) for the period to the end of 1977 in an orderly fashion; and that the Canadian participation had the full approval of the Cabinet. The Canadian company representation in Paris had been:

Uranium Canada Ltd.	(a Crown Corporation formed for stockpiling and marketing purposes only, not a producer)
Eldorado Nuclear Ltd.	(a Crown Corporation)
Denison Mines Ltd.	
Rio Algom Mines Ltd.	(in which Rio Tinto Zinc -RTZ- holds a controlling interest)

GMCL was not invited to attend the Paris sessions; and, in fact, Mr. Ediger declined to attend an informal meeting of Canadian producers in Ottawa on January 27 to discuss the forthcoming Paris meetings.

Mr. Ediger reported Mr. MacNabb's verbatim statement that "It is very essential that Gulf Minerals attend the meeting on Wednesday from Canada's point of view and in Gulf's best long-term interest." Mr. MacNabb was particularly concerned because he felt that the production from Rabbit Lake during the period in question could be regarded as totally uncommitted and, therefore, subject to any machinery that might be agreed upon to allocate demand and establish floor prices. He went on to state that they would also like to discuss a Canadian position and strategy for the upcoming sessions of "specialists" representing the uranium producing companies from Canada, France and South Africa. Uranex (France) and Nufcor (South Africa), governmentally controlled entities, attended the Paris talks of February 7 and 8, 1972.

Following on the Assistant Deputy Minister's February 14th call, Mr. Ediger, on February 15th, received a phone call from the Deputy Minister, Mr. Austin, extending "a very strong invitation" for Gulf Minerals to attend the February 16 Ottawa meeting. Mr. Austin assured Mr. Ediger that these were simply exploratory talks being held with the full knowledge and approval of the Canadian Government. Mr. Austin went on to point out that because the Rabbit Lake project represented a significant percentage of the Canadian supply picture, GMCL would be acting irresponsibly if it chose to ignore the discussions.

Under the circumstances, Mr. Ediger attended the February 16th meeting, accompanied by Canadian counsel, W. Z. Estey, in the Board Room of the Department of EMR, 588 Booth Street, Ottawa. At this meeting the official position of the Canadian Government was expressed by the Deputy Minister, who stated that the Paris February 7 and 8 meetings arose out of governmental bilateral discussions occurring during the past year between Canada and France, Japan, South Africa and Germany, in an attempt to arrive at a more orderly marketplace for uranium. Specifically, the Cabinet was reported as having sanctioned participation by the Department of EMR and the two Crown corpo-

rations in any exploratory discussions concerned with a working mechanism to allocate demand and establish a floor price, and as having expressed a present intention of not approving consideration of Commodity Agreements nor establishing a Uranium Marketing Board nor any other legislative means of imposing restrictions on the ability of producers to market outside of Canada.

We understand that the Paris February 7 and 8 meetings were preceded by the Department of EMR canvassing the existing Canadian producers (which, of course, does not include UCL or GMCL, as Rabbit Lake is not scheduled to commence production until early 1975). Mr. Austin stated he hoped the meeting of "specialists" on February 21 and 22, 1972, would arrive at a formula which could be explored further at a more senior level of meetings in Paris on March 12 and 13, 1972.

The Assistant Deputy Minister stated there was general agreement at the Paris meetings between governments and the meetings between producers that there was a need for measures which would assure an orderly marketplace and prices during the next six years, so as to provide an incentive for the exploration effort that would be required to define the reserves necessary to meet the requirements of the 1980's. He went on to state the generally accepted estimate that for the

period through to the end of 1980 there was at least 120,000 tons of available stockpile and existing uncommitted production capacity to supply a potential market of 75,000 tons. The Paris group also felt that if the U. S. and other captive markets were excluded, the supply would equal demand in 1982 or 1983; whereas, if the U. S. market were opened to foreign uranium, the supply and demand would reach a balance in the 1978-80 period. A serious shortage was predicted thereafter, if exploration continued to decline. In this connection, the facts are that in 1969 the Canadian Atomic Energy Control Board (AECB) issued over 70 uranium exploration permits; in 1970 this number declined to 15; in 1971 only two companies in Canada held permits.

The Assistant Deputy Minister stated there was a concensus among the groups in Paris that the U_3O_8 floor price should be $6.25/lb. in 1972 with escalation of $.25 per year for European markets and $6.55/lb. in 1972 for the Japanese market because of special commissions, etc. It was thought that these floor prices would be sufficient to provide an incentive for further exploration without encouraging the possible marketing of incremental production from sources outside the group.

It is pertinent to note also Mr. Ediger's report that all present at the Ottawa meeting accepted his description of the Rabbit Lake agreements and regarded the production starting in 1975 as committed and, therefore, could properly be left out of

any discussions of allocation formulae--an attitude which was shortly to be reversed as Canada's quota was reduced in subsequent negotiations.

Mr. Ediger summarized the Rabbit Lake deal by stating that UCL had an obligation to take all of GMCL's share of production that was put to them, for the life of the project, in addition to their own share; and further had a specific obligation to take the first 3,000 tons of GMCL's share during the first three years at a guaranteed floor price. Mr. Ediger also advised the meeting that Rabbit Lake production, at an approximate rate of 2,000 tons per year was scheduled to begin early in 1975.

On February 28, 1972, Mr. MacNabb called Mr. Ediger and reported on the outcome of the "specialists" meetings in Paris on February 21 and 22, 1972, and to further inquire about GMCL's position with respect to the status of Rabbit Lake production. Mr. MacNabb advised that the meeting was attended by representatives of the existing Canadian producers, Uranex, and Nufcor. Mr. MacNabb attended ostensibly in his capacity as Vice President of Uranium Canada Ltd.

Despite his assurances that the Government of Canada (i.e., the Cabinet) looked with favor on the Rabbit Lake project and would not take any action which would cause GMCL to postpone its construction program, or subsequently jeopardize Rabbit Lake

productive capacity, it is clear to me in retrospect that Canada's trading posture on exclusion of tonnage sold to Spain and the trading aspirations of non-Canadian company producers (in particular, Australian producers) added up to an intention to reduce the amount of Rabbit Lake production regarded as committed and, therefore, not subject to group allocation.

Although it had previously been accepted that Rabbit Lake production would be outside the scope of any international producers' allocation and price fixing agreement, Mr. MacNabb, in effect, reopened the status of Rabbit Lake production and also raised certain Canadian legal problems (Combines Investigation Act) in the stated context of an assumption that GMCL as a Canadian producer (which it was not, then or now, but which it became) had to be a party to any such agreement, even if it were acknowledged that GMCL would not be affected by the agreement.

Mr. MacNabb, in any event, stated that in view of the fact that Gulf had a viable production capacity starting in 1975, it was necessary for GMCL to be represented at the Paris meeting on March 12 and 13, 1972, either in person or by written statement defining GMCL's position, and added that the meetings would be attended by senior officials of the producing companies.

Clearly, Mr. MacNabb was acting in his governmental capacity of Assistant Deputy Minister in EMR in making this call; and in this connection, two specific aspects merit additional comment:

(1) As noted above, all actions and comments of Canadian Government officials relating to the principal subject of this Opinion must be considered against the background of interest of the Canadian Government, which stems from its constitutional responsibility for the uranium industry (and other resource industries) as evidenced by the various public policy statements I have quoted above, and from the fact that the Government of Canada is the sole shareholder in Eldorado Nuclear Limited and Uranium Canada Limited.

At the present time the Canadian Federal Government investment in uranium mining and stockpiling of uranium amounts to several hundred million dollars, with Government involvement increasing.

The extent to which this responsibility and the underlying policy affect the Government is well illustrated by the Canadian Federal Government's

action in interrupting a transaction whereby the shareholders of Denison Mines Limited proposed to sell control of that company to Continental Oil Company, a U. S. based company. The Government did so on the announced basis that it was contrary to the national interest. As noted by your Canadian counsel, on closer examination of the Atomic Energy Control Act and other legislation then existing, it became apparent that there was no precise legal authority for this action. The proposed transaction remains dead, although Canadian counsel has also advised (a) that the proposed corrective legislation with reference to the ownership of uranium undertakings was circulated among Canadian uranium operators for their comments and (b) that the Government seems to have abandoned its proposal.

As has been reported by Mr. Ediger and Canadian Counsel who participated with him in all of the initial meetings, from time to time it has been indicated in varying intensity that should the arrangement fail by reason of a lack of Canadian producer

participation, the Government would have to examine the advisability of establishing a Uranium Marketing Board that would enter into an appropriate world arrangement.

Canadian counsel has advised that constitutionally there seems little doubt that the Government of Canada, under the only cases so far tested, has the authority to set up a marketing agency and to prohibit any export sales not approved by or handled through that agency; and that it would appear to be natural policy to take this route if Canadian producers failed to respond to any available world proposal having the endorsement of, or being the result of affirmative intervention by the Government of Canada.

(2) As GMCL's Canadian counsel has advised, the Combines Investigation Act (referred to above) remains the paramount statutory authority in the trade restraint field. The regulation of competition in Canada is governed, apart from the civil common law, by criminal legislation of the Parlia-

ment of Canada (the Combines Investigation Act). Historically, this statute has been classified by the courts as criminal legislation and, therefore, properly enacted by the federal Parliament of Canada. Latterly, the courts have tended to consider this as equally valid from the point of view of federal regulation of trade and commerce.

It is important to remember, as also noted by Canadian counsel, that under the Combines Investigation Act any citizen of Canada can cause charges to be filed (similar to the manner in which private litigants can invoke American antitrust law in the U.S.), and that each Attorney General of the Provinces (unlike the Attorney General of a U. S. state) can act similarly. However, in the last 50 years this statute has been enforced by proceedings instituted by the Minister of Justice of Canada. A comprehensive code for the regulation of competition was introduced in the Canadian House of Commons last year and could have made substantial changes to the Act now in force, but this new bill was withdrawn. The result is that we are left with the Act as described above.

Subsection 4 of Section 32 of the Combines Investigation Act sets forth a precise defense relating to exports. This defense is subject to the restrictions applied under subsection 5 of the Act. Subsection 5 (a) notes that Subsection 4 does not apply if the conspiracy, combination, agreement or arrangement "has resulted or is likely to result in a reduction or limitation of the volume of exports of an article" and 5 (b) establishes a defense if the agreement or arrangement "has restrained or injured or is likely to restrain or injure the export business of any domestic competitor who is not a party to the conspiracy, combination, agreement or arrangement."

Subsection 5 (b) is likely the primary reason for the Government's concern with the Combines Investigation Act. If all producers were parties to an export arrangement, the subsection 5 (b) limitation on the subsection 4 defense would not apply.

The applicability of the subsection 5 (a) restriction on the subsection 4 defense may turn on whether "volume" refers to physical or monetary units.

The latter is thought to be the correct standard. Another interpretative issue is the term "reduction or limitation," and GMCL will be guided on this point by Canadian counsel, as on other matters of Canadian law.

Because of the various legal issues involved, GMCL's Canadian counsel emphasized at the February 16, 1972, Ottawa meeting that GMCL's attendance was in response to a strong invitation from the Department of EMR to provide information with respect to Rabbit Lake, and that GMCL had no intention of entering into discussions intended to allocate export markets or set prices. In fact, it was the reported position of GMCL's Representatives at this meeting, as well as the understanding of Government Representatives, that at least up until the commencement of the meeting the Rabbit Lake production was programmed as committed to the German market, as a direct consequence of which GMCL was not a proper or intended party in whatever marketing arrangements might be entered into by the rest of Canada's uranium operators or producers.

GMCL was not invited, nor did it seek an invitation to the February 22 Paris meeting of "specialists", nor the scheduled March 12 and 13 Paris meeting of "senior officials."

Following on the Ottawa meeting of February 16, the Deputy Minister announced that a legal opinion was being sought from the Minister of Justice of Canada, and thereafter Mr. Ediger and GMCL's Canadian counsel met with the Minister of EMR who reiterated this statement. The Minister also informed the representatives of GMCL that it was in the national interest that all uranium producers in Canada participate in any arrangement ultimately reached by world producers.

At the request of the Minister of EMR, GMCL's Canadian counsel, Mr. W. Z. Estey, met with the Minister of Justice and later discussed the legal aspects of the arrangement from the Canadian viewpoint with representatives from the Minister's office. From all these discussions, as reported by Mr. Estey, it became clear that the Canadian participants were to be furnished with:

(a) a written communication from the Minister of EMR confirming his oral statements that the proposed world arrangement was in the national interest and asking that they join it;

(b) a copy of a Minute from the Cabinet determining that Canadian participation in a world arrangement was in the national interest and authorizing the two Crown corporations to so join; and

(c) a legal opinion to the two Crown agencies to the effect that their participation in the arrangement would not constitute a violation of the Combines Investigation Act.

It was on this basis that the various discussions proceeded in a general way between producers situated in Canada, Australia, South Africa and West Africa (French). RTZ is a producer in South West Africa (Rossing) and, consequently, under the effective control of the Republic of South Africa.

Reverting to the scheduled February 21 and 22 Paris meeting of "specialists" referred to in the February 16 Ottawa meeting and Mr. MacNabb's February 28 telephone call noted above, Attachment #2 is a "Joint Summary of Understandings As Regards To The Main Points Discussed at the Meetings of February 21-24, 1972 - Paris, France."

Attachment #2 deals with the proposed Private Secretariat designed to administer the arrangements; pending quotations; the terms and conditions of uranium sales, including floor prices, payment, currency, flexibility for variations on contract quantities, force majeure provisions, taxation, storage, call options and post-1978 prices (the term then being considered was 1972 through 1977); a working mechanism for

allocations of contracted quantities among the group members; and quotations to fuel, reactor manufacturers, or any other middlemen.

The "Joint Summary" also provided: "It was agreed that if a producer from outside the group is quoting under the minimum price, the lead bidder will not match that quotation and the Executive Committee will meet as soon as possible to review the situation and decide a course of action." Clearly, a cartel arrangement was visualized.

The meetings which were held in Paris on March 13 and 14, 1972 (to which GMCL was not invited) resulted in a substantial erosion of Canada's position vis-a-vis France, South Africa and Australia, and a declaration by other foreign producers that they would apply severe economic sanctions on the Canadian sales effort if Rabbit Lake production potentially available on the open market was not curtailed by a significant amount. GMCL was, therefore, under increasing pressure from both the Government of Canada and Canadian producers to participate in the discussions and "agree" to limit the amount of uranium which could be offered from the Rabbit Lake project over and above that allotted to RWE.

At about noon on March 20, 1972, Mr. Ediger received a call from Gordon MacNabb, the Assistant Deputy Minister, EMR, with respect to a meeting of Canadian uranium producers scheduled

for 1830 hours that day in Toronto. On advice of counsel, Mr. Ediger informed MacNabb that GMCL's participation was only possible if specifically instructed by the Government of Canada, that he was meeting with GMCL's Canadian counsel, Mr. Estey, to discuss the matter further, and that UCL was as much a Canadian producer as GMCL and because a joint venture was involved, UCL should be apprised of developments. Mr. MacNabb agreed to do this.

Following Mr. MacNabb's March 20 telecon, Mr. Jack Austin, the Deputy Minister, EMR, then called in the presence of Mr. Estey and Mr. Ediger stating:

(a) that he wanted GMCL to attend an informal dinner party meeting of Canadian producers to be held that night at a private home (owned by Rio Algom), so as to bring GMCL up to date on discussions and operations;

(b) he wanted Mr. Estey and Mr. Ediger to know that the meeting was not for the purpose of seeking out new commitments or incurring obligations, but simply to restate the Canadian Government position as a uranium producer and world marketer; and

(c) that they were very much aware of the sensitivity of the participants to the Combines Investigation Act and their Department was making a submission to Cabinet reporting on the various discussions and asking that the Department of Justice be directed to give information as to the applicability of the Act to the discussion.

When Mr. Ediger informed Mr. Austin of GMCL's continuing willingness to cooperate with the Government in the formulation and implementation of a national uranium policy but a reluctance to participate in actions of possibly a sensitive legal nature, he responded to Mr. Estey and Mr. Ediger by pointing out that the Government in any case had control of uranium through export permits and other means.

On March 23, 1972, pursuant to the telex exchange appearing in items (b) and (c) of Attachment #3, Messrs. Ediger, Estey and R. K. Allen met with the Hon. Donald S. MacDonald, Minister of EMR. The Minister pointed out that he believed a world producers' arrangement to be in the Canadian national interest and urgently hoped GMCL would participate. He informed the three GMCL representatives that the discussions in Paris had been followed closely by the Cabinet and the results to date

met with the Cabinet's approval. He strongly implied that if the Canadian producers could not unanimously arrive at a position regarded as acceptable by the Government, the Government was prepared to enforce agreement by creating a uranium marketing board or in some other formal compulsory fashion.

On April 4, 1972, the Deputy Minister, as evidenced by item (a) of Attachment #3, asked GMCL to attend a meeting in the Department's Board Room in Ottawa on April 10, 1972, to discuss uranium marketing, noted that UCL had also been asked to attend and suggested that GMCL bring its legal counsel along. Accompanied by legal counsel, Messrs. Allen and Estey, Mr. Ediger attended the April 10 Ottawa meeting, which is reported in Mr. Allen's File Note (Attachment #4). Mr. Allen's File Note makes several points clear, including:

(a) The Deputy Minister was explicit in pointing out that all world producers, other than Canadian, were in agreement as to allocations; and, unless Canadian producers agreed on a unified position, further Paris meetings would serve no useful purpose -- this is in the context of the distinct concern of the Government of Canada as to uranium

prices, which distinct concern had led to the positive Government interest and action in furthering discussions in Paris.

(b) It was noted that some non-Canadian producers thought the arrangement should be extended to the year 1980, rather than 1977.

(c) When GMCL advised the Deputy Minister its participation would be dependent upon determination of its counsel that GMCL would not be in violation of antitrust or trade restraint laws, including those of the U. S., Mr. Austin countered, as he had in the past, that GMCL and UCL were Canadian corporations operating in Canada with respect to uranium ore reserves located in Canada and were, accordingly, subject to the laws of Canada.

(d) Mr. Austin again stressed the Cabinet's desire that the producers implement what the Government wanted without the necessity of direct Government implementation, observing quite pointedly, however, that if direct Government implementation became necessary, it would be forthcoming, although he

would not speak for the Cabinet nor state precisely the course of action that would be followed.

(e) Mr. Austin stated GMCL and UCL would be directed to participate in the arrangement if the other Canadian producers acquiesced in being so directed. Neither GMCL nor UCL were given an opportunity to agree or object to the Canadian Government's effective direction to participate in the arrangement.

(f) Mr. Austin polled the Canadian producers, with the exception of GMCL and UCL, as to what should be the Canadians' response concerning the proposed meeting in Paris in late April.

Items (a) and (c) of Attachment #5 constitute direct, authoritative, explicit Government direction to GMCL to participate in the international uranium producers' arrangement. Item (a) from the Deputy Minister states that "the Canadian Government endorses the principle of such an arrangement as in the national interest and will look to GMCL as a Canadian producer to take every reasonable step to ensure compliance." Item (c) from the Minister EMR refers to authorization from the Cabinet, which is the Government of Canada, to advise GMCL, inter alia:

(a) that the Canadian Government's concern with unstable world uranium marketing conditions had

caused the Cabinet to follow carefully discussions among world producers;

(b) that in order for the world producers' arrangement to be workable, all Canadian producers should participate;

(c) that all existing Canadian producers had proposed to so participate; and

(d) that the Canadian Government regarded an arrangement as being in the "national interest", and request GMCL "to make every effort to adhere to the common terms."

The national uranium producers met in Paris on April 20-21, 1972, with Mr. Ediger and GMCL's Canadian counsel, Mr. Estey, representing GMCL. Mr. O.J.C. Runnalls, Special Advisor on Uranium, Department of EMR, stated in his report (classified "secret") of May 1, 1972, to the Deputy Minister, "The purpose of the meeting was to discuss a possible arrangement for stabilizing the price of uranium, and an allocation of available markets for some years into the future." Mr. Runnalls' report noted Mr. Austin's statement that the Canadian Government was interested in supporting an arrangement which would set floor prices and market allocations and that "In fact, the Minister

of Energy, Mines and Resources had communicated to each of the (Canadian) entities involved the Government's view that it considered an arrangement to be in the national interest."

Mr. Austin also added that at the mid-March Paris meeting, the Canadian delegation did not have all of the pertinent information on the role that might be played by GMCL-UCL.

In the course of what appeared to have been rather intense negotiations, Mr. Taranger of Uranex was reported as expressing the view that "they had reached the point where there was a last chance to obtain an agreement...if there was unanimity, an agreement would be possible, but if one or more of the groups answered in the negative, then no further meetings should be held."

At a Canadian caucus the morning of April 21, Deputy Minister Austin:

> foresaw a classic inversion in the supply/demand curve for uranium at about the end of the 1970's. The demand pressures then would be very high, and there would be just as much need to regulate the situation then, as now, when there was such an over-abundance of supply. He felt that an agreement for the period 1972-77 would hinge on what was seen to be possible during the period 1978-80...It certainly seemed clear that some guidelines were needed beyond 1977 to complement what had been done so far...The present supply/demand situation would invert in the early 1980's, it seemed clear, and at that time there would be posed just as serious a management problem as existed today. If there was no attempt made to control the situation then, there would likely later still be another inversion of the type already experienced by many uranium producers around the world.

As a consequence of this longer term, the Canadian group was prepared to exchange ideas as to the possible situation beyond 1977." (Emphasis added.)

Mr. Taranger was reported as summarizing:

"the French position, recalling that when the first meetings had been held in early February, their studies up to that time had led to the conclusion that there should be four (4) entities involved in a marketing arrangement, namely, Nufcor, Uranex, Canada (excluding Rio Algom), and RTZ (including Rio Algom and Rossing). They did have in mind a fifth entity at that time, namely, Australia, once the new facilities there had come into operation. The French thinking had been that the four producing entities mentioned above should have about the same allocations. It would now appear that the fifth entity, Australia, should be given about the same weight. In other words, there should be five groups with each receiving about one-fifth of the estimated uncommitted market of 45,000 tons of U_3O_8 during the period 1978-80."

Under these circumstances and pressures, GMCL and UCL "agreed" to withhold approximately 1,000 tons of Rabbit Lake production from the market, subject to the caveat that a determination would be made that there was no violation of applicable trade restraint laws. As noted above, all prior discussions among world producers revolved around the period 1972 through 1977; but a number of producers, and particularly the Australians, openly favored an allocation arrangement through 1980.

Up until these meetings, GMCL maintained the position that because the United States embargo on importation of foreign uranium might be lifted to some degree in 1978, GMCL did not

agree with the concept of any arrangement beyond 1977. The other producers countered this argument with the assertion that any international uranium producers' arrangement would leave the Canadian and United States markets open to free and unrestrained competition whenever such markets became available.

The Canadian Government consistently maintained the firm position that GMCL as a Canadian company had to comply with those matters deemed to be in the Canadian national interest. Every expression on GMCL's part regarding the intention and need for assuring compliance with any applicable U. S. trade restraint laws as a prerequisite of GMCL participation, even if that were to prevent GMCL from acting in accordance with the stated Canadian national interest, acted as a very strong irritant and was regarded by many of the Canadians as an affront to, or a violation of, Canadian sovereignty.

It was agreed that the next meetings would be held in Johannesburg on May 29 and 30, 1972. Mr. Ediger and Mr. H. Hoffman represented GMCL at the meeting of international uranium producers in Johannesburg, May 29-30, 1972. Again, Mr. Runnalls' report of June 20, 1972 (classified "secret") to the Deputy Minister, EMR, Mr. J. Austin, stated that the purpose of the meeting "was to discuss a possible arrangement for

stabilizing the price of uranium and an allocation of available markets for some years into the future."

Mr. J. W. Shilling of Nufcor, as leader of the host delegation, was requested to act as chairman. He reminded the group that the proposed allocations during the period 1972-77 were as follows:

Producers	Allocation %	Allocation Tons U_3O_8
Canada	33.5	8,710
Nufcor	23.75	6,180
Uranex	21.75	5,650
Rossing & Palabora	2.0	520
MKU	2.0	520
Australia	17.0	4,420
TOTAL	100.00	26,000

Mr. Proud, speaking for the Australian delegation, made it clear that Australian producers were planning to begin production by 1977 with full production envisaged for 1978, as a consequence of which it was imperative to talk about and deal with the total demand for the period 1972-80; and that he preferred to do so on the ratio of production capacity to the available market. There ensued some very difficult negotiations occasioned by the trading leverage of the Australians and their insistence on a substantial market allocation for the period 1978-80.

It was also noted that the "future situation could change, of course, because of any discoveries and the entry of new producers into the market, so one should avoid making too firm a commitment for too long a period."

At the general session on the evening of May 30, "Mr. Proud announced that Australia would agree to the proposal of a quota of 11,000 tons during the period 1978-80, plus 1,000 tons to be sold by Australia to Uranex in 1980. This decision was stated to be an executive one, subject to later approval by the Board of Directors of the various groups and the Australian Government."

The final proposal accepted by the Australians resulted in Canada's previous quota of 10,575 tons being further reduced to 10,450 tons, representing 23.22% of the total, and "Mr. Austin remarked that the Canadians would have to sort out how the 10,450 tons was to be subdivided."

It was also agreed that the subgroup would meet on June 1 in Johannesburg.

A meeting of the Canadian uranium producers was held in Johannesburg on May 28, which meeting was attended by Mr. Ediger and Messrs. R. K. Allen, H. Hoffman and D. Hunter on behalf of GMCL. Mr. Runnalls' "Confidential" written report of this meeting dated June 15, 1972, to the Deputy Minister noted:

"All of the parties with the exception of Canada would insist on an agreement to the end of 1980...Mr. Austin thought that there was not only a commercial problem but a legal one. It had been necessary to measure the risks of falling within the confines of the Combines Investigation Act. It had seemed to be a reasonable business risk to accept an arrangement up to 1977. Beyond that, however, the risk of infraction of the Act was substantial. Hence, the Government of Canada, having listened to the advice of three separate departments on the issue, had decided that 1977 should be the limit of any arrangement...The Government was sympathetic to a longer term that would apply not only during the demand scarcity but later on when there was a shortage of supply. Mr. Kostuik (Denison Mines) reiterated at this point that Denison would be willing to extend the period to 1980. Mr. Austin stated that since Denison wished to extend the term, as did Rio Algom, then it would be necessary in his view for them to request the Government to promulgate a regulation to that effect under the Atomic Energy Control Act...Mr. Austin continued that a regulation of the type envisaged which would apply to all Canadian producers could be proclaimed under Section 9 (d) of the Atomic Energy Control Act...Mr. Albino (Rio Algom) thought that such a regulation would improve the positions of all Canadian producers because it would reduce everyone's risk. Mr. Allen said that the risk had been accepted by Gulf up to the end of 1977 because of a Directive from the Minister, but what would be the position after 1977? Mr. Austin replied that an executive directive was not binding in a court of law, but a regulation would be...Mr. Austin replied that the action could be initiated with requests from the existing Canadian producers. Neither Gulf nor UCL would be asked to agree. Nevertheless, he wondered what their position might be. Mr. Allen replied that from Gulf's standpoint, compliance with the laws of the host Government would be an overriding consideration." (Emphasis added.)

At a meeting of Canadian uranium producers in Ottawa on June 9, 1972, at which Mr. Ediger represented GMCL, Mr. Runnalls' confidential memorandum to the Deputy Minister states, among other things:

> "...that one of the major tasks before the Canadian group was to decide how the 27% quota for Canada was to be distributed...Mr. MacNabb noted that the next meeting of the Operating Committee would be held in Nice July 6 and 7...Mr. Gilchrist (Eldorado) suggested that Dr. Runnalls take on the responsibility (of running a Canadian secretariat to supplement the international secretariat) for the next few months until the Regulation or Direction was passed. Mr. Austin then agreed that the responsibility would be retained in Ottawa and the CEA (French Government Agency) should be informed to that effect. Mr. Austin felt that there would have to be government-to-government consultations between Canada and Australia to make sure that the Australians were working with unanimity... Mr. Austin then returned to the question of subdivision of the Canadian quota and asked about the Gulf-UCL position...when it became apparent...that the problem was not going to be resolved immediately, Mr. Austin suggested that the producers should settle the question among themselves and inform him of the result the following week."

V. Nature and Operation of the Cartel

A determination of the intended nature and operation of the uranium producers' cartel, as distinguished from how the cartel came into being and the manner in which the Canadian Government effectively required GMCL's involvement, can best be made by examining the record of the Uranium Operating Committee.

This consists of official, but unsigned, Minutes or Notes of three meetings:

(1) Paris - Attachment #2 (noted above), which is a "Joint Summary of Understandings As Regards To The Main Points Discussed at the Meetings of February 21-24, 1972 - Paris, France." (GMCL did not attend);

(2) Johannesburg - May 31 and June 1-2, 1972. (GMCL did not attend); and

(3) Cannes - July 6 and 7, 1972. (GMCL did not attend).

A. Paris Meeting

This document (Attachment #2) sets forth the basic anatomy of the intended cartel arrangement. This basic anatomy has remained essentially unaltered in its main substantive parts.

B. Johannesburg Meeting

The Assistant Deputy Minister, G. M. MacNabb, wrote Mr. Ediger on June 5, 1972, as follows:

> "Enclosed herewith is a copy of the agreed record of discussions held in Johannesburg on May 31 and June 1 and 2. I am today providing a copy of this confidential document to each of the Canadian participants at the Johannesburg meeting.
>
> "I will be contacting you by telephone to establish a date for a meeting in Ottawa to discuss the attached document, the action now required by the Government

of Canada, and the question of Canadian participation at the next meeting of the Operating Committee which is tentatively scheduled for Nice in early July." (Note: Actually held in Cannes, France on July 6 and 7).

The "Confidential" document forwarded by Mr. MacNabb included the following salient points:

(a) On a temporary basis, the Secretariat should be located in Paris; and the "permanent location" was to be in a "neutral country."

(b) The Secretariat would be directed by an operating committee consisting of one representative and an alternate from five groups: Canada, Nufcor (Republic of South Africa), Uranex (France), Australia and RTZ.

(c) Expenses of the Secretariat were to be borne by the five groups "in relation to their average market quotas over the period 1972-80 inclusive"; and the Secretariat was to be called the "Uranium Market Research Organization."

(d) The recorded market quotas were:

Group	1972-77	1978-80
Canada	33.50%	23.22%
Nufcor	23.75%	19.26%
Uranex	21.75%	19.26%
Australia	17.00%	24.44%
RTZ	4.00%	13.82%

(e) The United States "domestic market" and the "domestic markets" of France, South Africa, Australia and Canada were excluded from the cartel. The term "domestic market" means, with respect of the pertinent country, uranium sold for use in that country.

(f) Certain sales from January 1, 1972, were included in the quotas and some were excluded. Rabbit Lake sales to RWE of 3,300 tons during 1972-77 and 1,000 tons per annum during 1978-80 inclusive were excluded.

(g) The following tabulation shows the minimum prices for future bids and re-bids for U_3O_8 and UF_6 1972-78 inclusive for (i) Japan, Taiwan and Korea and (ii) "Others".

"For future bids and re-bids the following minimum prices were agreed to for U_3O_8, c.i.f. conversion facilities:

Years	Japan, Taiwan & Korea U.S. $/lb. U_3O_8	Others U.S. $/lb. U_3O_8 c.i.f.
1972	5,60	5,40
1973	5,95	5,75
1974	6,30	6,10
1975	6,65	6,45
1976	7,00	6,80
1977	7,35	7,15
1978	7,70	7,50

"In the case of quotations expressed in terms of UF_6, these prices will become in U.S. $ per pound of U contained in UF_6 delivered franco U.S.A.E.C. :

Years	Japan, Taiwan & Korea	Others
1972	7,90	7,65
1973	8,35	8,10
1974	8,80	8,55
1975	9,30	9,05
1976	9,75	9,50
1977	10,20	9,95
1978	10,70	10,45

"These prices include weighing, sampling, conversion losses but exclude interest charges.

"It was agreed that the preceding c.i.f. prices would apply to any converter. If f.o.b. prices are requested then reductions of up to 10¢/lb. U_3O_8 through 1975 and 15¢/lb. 1976-78 can be made."

(h) It was agreed that there would be two basic restraints on post 1980 business, although the agreed cartel period at this time was 1972-1978:

(1) Each participant would be obligated to report post 1980 business to the Secretariat (directed by the Operating Committee);

(2) Quotations "after 1978" were to be made on the basis of escalation from a base price not less than the appropriate minimum price or a negotiated world price with or without a floor.

The agreed record also provided that "there should be no escalation with a ceiling on the rate of escalation" nor any "effective ceiling price quoted lower than the world market price." Neither the actual method of applying these restraints nor penalizing violation of the rules is clear.

(i) The unrealistic restraint against imposition of force majeure in the case of nuclear plant breakdown or permit withdrawal or lack of operating licenses, as stated earlier in Item No. 1 above, was continued. Neither the logical relationship of this to the stated objects of the cartel nor the method of realistic enforcement is clear. It is virtually certain, however, that an effective concerted effort to deny nuclear plant customers the relief normally afforded when performance is made impossible for reasons beyond the control of the customer will generate hostility and invite retaliation.

(j) The agreed record also deals with the intended mechanisms for allocation of sales; quarterly reports on markets, contracts, deliveries, and positions vis-a-vis quotas; giving to the Secretariat copies of all contracts and invoices of actual deliveries; disclosure of contract, price and quantity information; and procedures for quotations (including bidding restraints and rules, and selection of "leader" and "runner-up").

(k) As agreed, the Secretary "will attempt to resolve with the contracting supplier any apparent discrepancies or deviations from the rules" but failure to do so results only in a referral to the Operating Committee which "may review the situation at its next meeting."

(l) The agreed record does not really deal effectively with a critical point of workability of the cartel; namely, what to do with uncooperative competitive suppliers, a point discussed in more depth later in this opinion. The Minutes simply state the agreement "that if a supplier not associated with the organization should quote under the minimum price, the leader will not match that quotation and the Operating Committee will review the situation and decide on a course of action as soon as possible."

(m) It is stated that with respect to fuel, reactor manufacturers, or "any other middlemen," all quotations should be made on the basis of the minimum prices applicable to Japan plus $.15/lb. for U_3O_8 or $.20/lb. in UF_6--with no quotations being made unless the end use of the material is known.

C. Cannes Meeting

Attachment #6 (Confidential letter dated 12th July 1972, from Alan F. Lowell of Rio Algom (RTZ) to O.J.C. Runnals,

Senior Advisor, Uranium and Nuclear Energy, Department of EMR, Ottawa, transmitting confidential notes of the Operating Committee meeting of July 6 and 7, 1972 in Cannes) is included in this opinion in its entirety, because it shows the detailed nature and problems encountered in attempting to practically implement the cartel principles and rules previously summarized. Attachment #6 further serves to illustrate the certainty of future difficulties, inherent in implementing the agreed cartel.

VI. U. S. Antitrust & Laws

This Section of the opinion will discuss the cases and authorities dealing with the question whether compulsion by a foreign sovereign provides a complete defense to a charge of violation of the U. S. antitrust laws. In addition, it will also cover those cases which hold "state action" to be exempt from antitrust sanctions.

The subject of impact on U. S. foreign commerce is also a very important consideration in this matter and the law on this point is discussed separately in the following section.

A. Governmental Compulsion

The Report of the Attorney General's National Committee to study the Antitrust Laws (March 31, 1955) said:

> "Similarly, we believe that should, for example, the laws of another country require uniform non-competitive prices by companies doing business there, then compliance with that law should constitute a defense in this country to an antitrust charge of price-fixing solely in that country."

The case of Interamerican Refining Corp. v. Texaco Maracaibo, Inc., 307 F Supp. 1291 (D. Del. 1970) is a recent case which clearly supports the above statement. This case involved a private treble damage action by a U. S. East Coast

independent refiner against several oil companies. The plaintiff charged a concerted boycott designed to deny plaintiff the Venezuelan crude oil required for its operations. The principal shareholders of plaintiff had a history of political activity in Venezuela adverse to the government then in power. After several deliveries of Venezuelan crude oil were made by the defendants to plaintiff, the Coordinating Commission (an arm of the Ministry of Mines and Hydrocarbons) instructed the defendants that no further Venezuelan crude oil was to reach plaintiff; thereupon defendants ceased deliveries to plaintiff.

The defendants moved for summary judgement on ground that the compulsion of the Venezuelan government was a complete defense to an action under the antitrust laws based on the boycott of plaintiff.

In granting summary judgement the court noted the lack of dispositive authorities in this area and pointed to the fact that defendants were relying only some dicta in a few cases and the language of several consent decrees. (Including mainly the Gulf decree in the cartel case.) In spite of this the court went on to say:

> "Without more, these would be scant authority. It requires no precedent, however, to acknowledge that sovereignty includes the right to regulate

commerce within the nation. When a nation compels a trade practice, firms there have no choice but to obey. Acts of business become effectively acts of the sovereign. The Sherman Act does not confer jurisdiction on United States courts over acts of foreign sovereigns. By its terms, it forbids only anticompetitive practices of persons and corporations.

"In his book, Antitrust and American Business Abroad Professor (now President) Kingman Brewster states a proposition which should be self-evident. Anticompetitive practices compelled by foreign nations are not restraints of commerce, as commerce is understood in the Sherman Act, because refusal to comply would put an end to commerce. Brewster 94. American business abroad does not carry with it the freedom and protection of competition it enjoys here, and our courts cannot impose them. Commerce may exist at the will of the government, and to impose liability for obedience to that will would eliminate for many companies the ability to transact business in foreign lands. Were compulsion not a defense, American firms abroad faced with a government order would have to choose one country or the other in which to do business. The Sherman Act does not go so far."

The court also rejected Plaintiff's argument that even if compulsion is a good defense the acts of compulsion must be valid under Venezuelan laws. In this connection, the plaintiff presented an affidavit of a Venezuelan attorney that the order of the Ministry of Mines and Hydrocarbons was unlawful because it was not published in writing in the Official Gazette.

The court in rejecting this argument said:

"This Court may not undertake such an inquiry. In Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964), the

Supreme Court held that it could not explore the validity under Cuban laws of acts of expropriation by the Castro government. The act of state doctrine, based upon proper concepts of sovereignty and separation of powers, commands that conduct of foreign policy reside exclusively in the executive. For our courts to look behind the acts of a foreign government would impinge upon and perhaps impede the executive in that function. Whether or not Venezuelan officials acted within their authority and by legitimate procedures is therefore not relevant to the instant case.

"Plaintiff's attempt to limit Sabbatino to expropriation decrees finds no support either in the holding or the rationale of that case. The principal decision relied on in Sabbatino dealt with a tort claim for refusal to grant a passport, unjustified confinement, assault, and abuse. Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897). Other cases have applied it to lesser government acts. Vanity Fair Mills, Inc. v. T. Eaton Co., 234 F.2d 633, 646-647 (2d Cir. 1956) cert. denied 352 U.S. 871, 77 S.Ct. 96, 1 L.Ed.2d 76 (1956) (trademark). The reasons of policy which support the doctrine would hardly be served by limiting it to acts of expropriation. "

In this latter connection, see also Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 1971 Trade Cases P. 73525 (C.D.Calif. 1970).

The dicta on which defendants relied in the Texaco case was contained in the case of Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962). In this case defendants' subsidiary Electro Met of Canada had been appointed by the Canadian government to be its exclusive wartime agent

for the purchase of vanadium. Electro acting in concert with an affiliated U. S. company used its position to exclude a competitor of the U. S. affiliate from the Canadian market. The U. S. Supreme Court held that the governmental compulsion doctrine did not apply:

> "In the present case petitioners do not question the validity of any action taken by the Canadian Government or by its Metals Controller. Nor is there left in the case any question of the liability of the Canadian Government's agent, for Electro Met of Canada was not served. What the petitioners here contend is that the respondents are liable for actions which they themselves jointly took, as part of their unlawful conspiracty, to influence or to direct the elimination of Continental from the Canadian market. As in Sisal, the conspiracy was laid in the United States, was effectuated both here and abroad, and respondents are not insulated by the fact that their conspiracy involved some acts by the agent of a foreign government.
>
> "From the evidence which petitioners offered, it appears that Continental complained to the Canadian Metals Controller that Continental had lost its Canadian business. The Controller referred Continental to one of the respondents. But there is no indication that the Controller or any other official within the structure of the Canadian Government approved or would have approved of joint efforts to monopolize the production and sale of vanadium or directed that purchases from Continental be stopped. The exclusion, Continental claims, resulted from the action of Electro Met of Canada, taken within the area of its discretionary powers granted by the Metals Controller and in concert with or under the direction of the respondents. The offer of proof at least presented an issue for the jury's resolution as to whether the loss of Continental's Canadian business was occasioned by respondents' activities. Respondents are afforded no defense from the fact that Electro

(Dicta on which Texaco relied is underscored.)

> Met of Canada, in carrying out the bare act of purchasing, vanadium from respondents rather than Continental, was acting in a manner pemitted by Canadian law. There is nothing to indicate that such law in any way compelled discriminatory purchasing, and it is well settled that acts which are in themselves legal lose that character when they become constituent elements of an unlawful scheme."

The fact that a foreign government participates in a Section 1 violation, and cannot itself be charged, does not mean that other participants cannot be held subject to the Sherman Act. U. S. v. Watchmakers of Switzerland Information Center, 1963 Trade Cases P. 70600 (SDNY 1962) clearly demonstrates this. In this case the court held that even though officials of the Swiss Government consented to and assisted in carrying out collective practices permitted by Swiss law the agreement was not immune from the Sherman Act.

However, as pointed out in the Texaco case, the court in the Watchmakers case clearly stated:

> "If, of course, the defendants activities had been required by Swiss law this court could indeed do nothing."

In short, this matter boils down to the question of whose acts are the subject of inquiry. Wilbur Fugate states the issue as follows:

> "The real question is whose acts are the subject of inquiry. If the acts are those of a foreign government within its own jurisdiction, then the

> antitrust exception applies. The situation is the same if the foreign government through its laws, regulations, or orders, requires private parties to perform the anticompetitive acts. If, on the other hand, the acts complianed of are in reality those of private parties who seek to hide behind the cloak of foreign law, the courts will attach antitrust liability."
>
> See Fugate, Antitrust Jurisdiction and Foreign Sovereignty, 49 Va.L.Rev. 925 (1962).

It is clear on the basis of the above that Canadian government sponsorship is the key factor in Gulf's participation in this uranium organization. The record must be absolutely clear that Gulf's participation in this organization is compelled by the Canadian government. There must be no side-bar private actions engaged in by Gulf and all discussions must be under the direction of the Canadian government. To the extent that we deviate from this course, the risk increases that the governmental compulsion exception will be found inapplicable. This is demonstrated in the following quotation from 1 Von Kalinowski, Antitrust Laws and Trade Regulation:

> "The courts of the United States will refuse to assume jurisdiction over a case involving an anticompetitive restraint of foreign commerce if the restraint was an 'act of state'. To be deemed an act of state, however, the anticompetitive restraint must either have been the act of, or specifically compelled by, the foreign sovereign. Moreover, the act of state must be the only act

constituting the assailed restraint if the exception is to be applicable and the courts are to refuse to assume jurisdiction. If the anticompetitive restraint results from other factors, in addition to the act of the foreign sovereign, the courts will assume jurisdiction on the basis of such other factors."

The court in the Texaco case referred to the 1960 consent decree entered against Gulf in the Petroleum Cartel case. The pertinent language of this decree is as follows:

"The injunctions provided for (in this decree) . . . shall not apply in the following cases:

(1) Where the combination of the kind referred to in subsection (A) of this Section is participated in by Gulf pursuant to requirement of law of the foreign nation or nations within which the transactions which are the subject of such combination take place, or of any supra-national authority having jurisdiction over such transactions within such foreign nation or nations;

(2) Where the combination of the kind referred to in said subsection is participated in by Gulf pursuant to request or official pronouncement of policy of the foreign nation or nations within which the transactions which are the subject of

such combination take place, or of any supra-national authority having jurisdiction over such transactions within such nation or nations, and where failure to comply with which request or policy would expose Gulf to the risk of the present or future loss of the particular business in such foreign nation or nations which is the subject of such request or policy."

George W. Haight in an article titled Some Aspects of United States Antitrust Laws and Foreign Commerce (1 Landau, Doing Business Abroad, 1962) makes the point that even if certain conduct has a direct and substantial effect on U.S. commerce, there may be extenuating circumstances that would lead a court to abstain from applying rules applicable to domestic per se violations. Mr. Haight states:

> "The acts complained of may have been officially ordered or requested where they were performed, or they may have been in conformity with official policy. They may have been 'thrust upon' the American companies involved by economic circumstances, or such companies may have been 'invited' to participate in a restrictive arrangement under threat of expulsion from the market if they did not. In such a situation, the court might consider that the elimination of foreign commerce was avoided rather than that exports or imports were restrained."

Finally, a recent memorandum of the U. S. Department of Justice concerning antitrust and foreign commerce is of interest. This memorandum was presented on January 25, 1972 to the U. S. Senate Subcommittee on Foreign Commerce and Tourism. The memorandum is entitled "Memorandum of the Department of Justice Concerning Antitrust and Foreign Commerce" and it analyzes the antitrust issues underlying twelve hypothetical cases. CCH Trade Regulation Reporter, Vol. V, Para. 5129. Case No. 12 which is of particular interest in our situation reads as follows:

> "A foreign government may, because of its economic or national interest in "rationalizing" competition in certain industries, promote certain private cooperative agreements or understandings by companies within that industry. It may, therefore, expect a U. S. company seeking to do business in its territory to agree to abide by the governmentally desired--but not officially imposed--system of private arrangements as a condition of securing (and keeping) the necessary permits and approvals.
>
> "Such officially encouraged arrangements may involve, for example, the agreed pricing of products at a level which will not take markets away from competing products important to the local economy, or the entering into by competitors of cooperative agreements for joint utilization of existing production facilities rather than the construction of new ones which might create overcapacity.
>
> "Official encouragement of arrangements of this sort is especially likely where necessary raw materials or labor or transportation facilities are in short supply, foreign exchange may be limited or the

government may wish to prevent a single company from becoming too important to the national economy.

"In general, restrictions such as these applying to commerce in the host country and imposed by the host government will create no antitrust hazards for the American company. In particular, price or capacity restrictions in the foreign market imposed at the insistence of the foreign government and not involving exports to the United States should not violate U. S. antitrust laws."

B. State Action

The cases on state or local government action exemption from the antitrust laws, while not precisely on point with our fact situation are, nevertheless, worthy of review.

The leading case on the antitrust immunity afforded to state action is Parker v. Brown, 317 U. S. 341 (1943). In this case the Supreme Court held a 1940 California raising marketing program conducted by a state commission to be exempt from Sherman Act sanctions, even assuming the action would have been violative of the antitrust laws had the same plan been adopted by private individuals operating outside the state's direction. In so holding, the court laid down the following rule:

"We may assume for present purposes that the California prorate program would violate the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons, individual or corporate."

"But it is plain that the prorate program here was never intended to operate by force of individual agreement or combination. It derived its authority and its efficacy from the legislative command of the state and was not intended to operate or become effective without that command. We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature."

"True, a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful, Northern Securities Co. v. United States, 193 U. S. 197, 332, 344-347, 48 L ed 679, 698, 703, 704 24 S Ct 436; and we have no question of the state or its municipality becoming a participant in a private agreement or combination by others for restraint of trade, cf. Union P.R. v. United States, 313 U.S. 450, 85 L ed 1453, 61 S Ct 1064. Here the state command to the Commission and to the program committee of the California Prorate Act is not rendered unlawful by the Sherman Act since, in view of the latter's words and history, it must be taken to be a prohibition of individual and not state action. It is the state which has created the machinery for establishing the prorate program. Although the organization of a prorate zone is proposed by producers, and a prorate program, approved by the Commission must also be approved by referendum of producers, it is the state, acting through the Commission, which adopts the program and which enforces it with penal sanctions, in the execution of a governmental policy. The prerequisite approval of the program upon referendum by a prescribed number of producers is not the imposition by them of their will upon the minority by force of agreement or combination which the Sherman Act prohibits. The State itself exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required vote on the referendum is one of these conditions.

> "The state in adopting and enforcing the prorate program made no contract or agreement and entered into no conspiracy in restraint of trade or to establish monopoly but, as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertate to prohibit."

In two subsequent decisions the U.S. Supreme Court has described its ruling in the Parker case in very broad terms. In Eastern R.R. President's Conference v. Noerr, 365 U.S. 027 (1961), which dealt primarily with the question of whether joint efforts to influence public officials in the passage of laws restricting the operations of the trucking industry were prohibited by the antitrust laws (the Court unanimously held they were not), the Court described the Parker ruling as follows:

> "It has been recognized, at least since the landmark decision of this Court in Standard Oil Co. v. United States, that the Sherman Act forbids only those trade restraints and monopolizations that are created, or attempted, by the acts of 'individuals or combinations of individuals or corporations.' Accordingly, it has been held that where a restraint upon trade or monopolization is the result of valid governmental action, as opposed to private action, no violation of the Act can be made out. These decisions rest upon the fact that under our form of government the question whether a law of that kind should pass, or if passed be enforced, is the responsibility of the appropriate legislative or executive branch of government so long as the law itself does not violate some provision of the Constitution."

Very recently in California Transport v. Trucking Unlimited, 30 L. Ed. 2d 642 (1972) a case whose facts were similar to Noerr the Court again described the Parker rule in very broad terms. (See p. 650).

The various federal circuit courts have split in their application of the broadly worded Parker doctrine.

In Washington Gas Light v. Va. Elec. & Power Company, 438 F2d 248 (4th Cir. 1971), the appellate court found that an electric utility's promotion practices were not in violation of the Sherman Act as alleged by a competing gas company. The gas company claimed that the electric utility violated the antitrust laws when it offered to furnish underground residential distribution lines free of charge, or at a substantially reduced rate, if a home builder went "all electric." The court noted that the exemption under the Parker doctrine applies when the actions complained of are the result of state action, either by state officials or by private individuals "under the active supervision" of the state. Here the State Corporation Commission was aware of the electric utility's activities and made no move to investigate the alleged practices and took no action against the electric utilities. When the state legislature in 1966 empowered the Commission to investigate the practices, the Commission in its regulatory authority moved to investigate and eventually stopped them.

Gas Light Co. of Columbus v. Georgia Power Co., 440 F2d 1135 (5th Cir.1971) cert. den. 40 U.S. Law Week 3352 (1-25-72) held that the rate schedules of an electric power company, allegedly used as a part of a nationwide conspiracy to eliminate natural gas companies from competition in the energy supply field, constituted state action as products of a state regulatory commission. The Appellate Court noted that the challenged rates had been subjected to lengthy consideration by the State commission and modified by the commission after full adversary hearings. Therefore, the conduct of the electric company could not be characterized as independent action considering the state's intimate involvement with the rate making process. Accordingly, the rate schedules were exempt from the antitrust laws under the doctrine of Parker v. Brown. See also Ladue Local Lines, Inc. v. Bi-State Development Agency, 433 F2d 131 (8th Cir. 1970) (public transportation agency which acquired 15 motor bus companies held not subject to antitrust laws); and Heath v. Aspen Skiing Corp., 325 F. Supp. 223 (D. Colo. 1971) (ski promoters operating on public lands under 30-year Forest Service use permits, who allegedly conspired to eliminate from business all individual ski instructors from four ski resorts were exempt from liability under Sherman Act).

Other federal courts have refused to interpret the Parker doctrine so broadly. Hecht v. Pro Football, Inc.,

444 F2d 931 (D.C. Cir. 1971) cert. den. 40 U.S. Law Week 3336 (Jan. 18, 1972), dealt with a D.C. statute in which Congress authorized the D.C. Armory Board to control and manage a public stadium "without regard to any other provision of law." In reversing the District Court, the D.C. Circuit Court of Appeals refused to grant the Armory Board exemption from the antitrust laws when the Board leased a public stadium to a professional football team for a period of 30 years with the proviso that no other football games could be presented at the stadium without approval by the lessee. The court refused to grant the exemption even though it found that the Board was acting as an agency or instrumentality of the District of Columbia pursuant to a legislative mandate imposed upon it by Congress to maintain and operate the stadium. The court also noted that since Congress enacted both the antitrust laws and the statute authorizing the construction of the stadium, the proper inquiry was to determine to what extent, if any, Congress intended the action of the Board resembling a state governmental agency not to be subject to previously existing national antitrust policy. The Court of Appeals refused to apply the exemption under the Parker v. Brown due to its conclusion that the Board action was not in fact governmental action.

Woods Exploration & Producing Co., Inc. v. Alcoa, 438 F2d 1286 (5th Cir. 1971) cert. den. 40 U.S. Law Week 3336 (1-18-72) extensively analyzed the Parker rationale and held that where two large tract natural gas operators allegedly conspired to file false forecasts with a state regulatory agency as to the amount of gas that each expected to market, they were not exempt from the antitrust laws under the Supreme Court's decision in Parker v. Brown. Because the basic premise of Parker v. Brown is that the antitrust laws are directed against individual and not state action, the court rejected the conclusion that action by any public official automatically confers exemption. The defendants asserted that since their nominations became part of the Texas R.R. Commission's production allowable orders the plaintiff's alleged injury was solely the result of state action. In support of this assertion, defendants relied on a prior 5th Cir. decision in case of Okefenokee Rural Elec. Corp. v. Fla. P. & L. Co., 214 F2d 413 (5th Cir. 1954). The court distinguished its earlier decision in these words:

> "We think Okefenokee is distinguishable and does not compel affirmance of the judgment below. It is true that both Okefenokee and the instant case involve state participation. That proposition, however, only begins the analysis, for it is not every governmental act that points a path to an antitrust shelter. We reject 'the facile conclusion that action by any public official automatically confers exemption.'

> "The concept of state action is not susceptible to rigid, bright-line rules. Each case must be considered on its own facts in order to determine whether or not the anticompetitive consequence is truly the action of the state. Bearning this in mind, we think that the exaggerated and misleading argument made by defendants in Okefenokee is fundamentally different from the filing of false factual data with regard to gas production. While in Okefenokee there was state action in the sense that the state can be said to have intended the resulting final order which adversely affected plaintiffs, the same cannot be said of the consequences of the Railroad Commission order at issue here."

See also Normans on the Waterfront, Inc. v. Wheatley, 1971 Trade Cases, Paragraph 73,606 (3rd Cir. 1971) in which the court affirmed a trial court's ruling that the mandatory price filing program of the Virgin Islands Alcoholic Beverage Fair Trade Law did not invoke governmental action sufficient to invoke antitrust immunity under Parker v. Brown. The court noted that under the fair trade program, the producer, importer or wholesaler is required to file with the Board of Alcoholic Beverages the wholesale price of its liquor, and the brand owner or his licensee must file the minimum retail price for its product. The court noted that "the Board has no power to approve, disapprove, or modify the price fixed by private persons." The court pointed out that "the relevant distinction

is between genuine governmental action controlling the anti-competitive practice, and an attempt by government officials to authorize individuals to perform acts which violate the antitrust laws."

The state action cases are in conflict and their application of the doctrine of Parker v. Brown. The U. S. Supreme Court has recently rejected several opportunities to clarify the law in this area by denying certiorari in several cases including the Hecht case (p. 13 above); the Gas Light Company case (p. 12 above); and the Woods case (p. 14 above). This is particularly unfortunate in view of the increasing importance of the public contract as a instrument of state and local governments. (In this connection it should be noted that three of the Supreme Court judges i.e., White, Stewart and Marshall felt that the writ of certiorari should have been granted in the Hecht case.)

For additional commentary on the government action cases, see White, Participant Governmental Action Immunity From the Antitrust Laws: Fact or Fiction?, Texas Law Review, p. 474, 1972 and Whitten v. Paddock: The Sherman Act and The "Government Action Immunity Reconsidered, 1971 Columbia Law Review 140 (1971).

C. Any Substantial Impact on U. S. Foreign Commerce?

Section 1 of the Sherman Act prohibits "every contract combination...or conspiracy in restraint of trade or commerce ...with foreign nations...". While the jurisdictional element of "foreign commerce" has been the subject of much discussion and comment among the text writers, there is no clear U. S. Supreme Court authority on the subject.

This section of the opinion will review the case law and the comments of the various authorities who have considered the question of whether there can be a violation of the U. S. antitrust laws if the conduct or practice involved has no substantial impact on U. S. foreign commerce.

(1) Case Law

The first foreign commerce antitrust case to reach the Supreme Court was American Banana Co. v. United Fruit Co., 213, U. S. 347 (1909) in which the Supreme Court adopted a somewhat restrictive interpretation of the extraterritorial reach of the Sherman Act. Plaintiff, an American corporation, alleged that Defendant, United Fruit Co., also an American corporation,

had monopolized and restrained the banana trade between Central America and the United States. The acts and contracts complained of took place solely in Central America and included interference by the Costa Rican government and seizure of property by Costa Rican soldiers and officials allegedly at the instigation of defendant. Among some of the other acts alleged were acquisitions of competitors, fixing prices, and outbidding other purchasers for the purpose of preventing plaintiff from buying for export. The Supreme Court held that the complaint did not state a cause of action, construing the Sherman Act as not applicable to acts occurring outside the territorial jurisdiction of the United States, at least where they were not wrongful in the nation where committed. Mr. Justice Holmes stated: "We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned."

Subsequent decisions and dicta have modified the rather narrow interpretation given in the American Banana case, except for the part of its holding relating to the acts of a foreign government. In United States v. Pacific & Arctic Ry. & Nav. Co., 228 U.S. 87 (1913), the Court sustained an indictment alleging a conspiracy between a United States corporation

and foreign corporations to restrain and monopolize steamship and rail transportation between United States ports and Canada and Alaska. The Court indicated that to deny jurisdiction would put the transportation routes beyond the control of either the United States or Canada. It also stated: "If we may not control foreign citizens or corporations operating in foreign territory, we certainly may control such citizens and corporations operating in our territory, as we undoubtedly may control our own citizens and our own corporations."

In Thomsen v. Cayser, 243 U.S. 66 (1917), the Supreme Court held that a combination formed in a foreign country between a group of steamship lines operating between the United States and South Africa was within the reach of the Sherman Act because "the combination affected the foreign commerce of this country and was put into operation here." The complaint had alleged establishment of uniform rates, a deposit charge refunded only to shippers who used defendants' lines exclusively, and the use of "fighting ships" to cut rates.

In United States v. Sisal Sales Corp., 274 U.S. 268 1042 (1927), the Supreme Court affirmed an injunction under the Sherman Act and Section 73 of the Wilson Tariff Act against

a conspiracy entered into in the United States between United States banks and corporations and a Mexican concern to monopolize import trade in sisal, a Mexican plant used to make binder twine. Most of the acts took place in Mexico and Yucatan, consisting of obtaining discriminatory legislation and purchasing all of the sisal available, financed by large loans made by the United States banks. In upholding application of the anti-trust laws, the Court, per Mr. Justice McReynolds, distinguished the Sisal case from the American Banana case upon the grounds that the conspiracy was entered into in the United States, that acts took place in the United States and that there were effects within the United States.

The trend of these decisions in emphasizing the effects upon United States commerce culminated in United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945), in which one of the issues involved was whether the Sherman Act applied to a contract to establish export quotas made in Switzerland between foreign corporations. (This case was heard by the Second Circuit Court of Appeals because a quorum of Supreme Court justices could not be obtained; four Justices having disqualified themselves from hearing the case it was certified

to the Second Circuit, see 322 U.S.716(1944)). This decision has been widely cited and is of importance because of its holding that the Sherman Act may reach agreements made in other nations between only foreign concerns if they are intended to restrain American foreign trade and result in such restraints. Judge Leonard Hand in reaching this conclusion stated:

> "We are concerned only with whether Congress chose to attach liability to the conduct outside the United States of persons not in allegiance to it. That being so, the only question open is whether Congress intended to impose the liability, and whether our own Constitution permitted it to do so: as a court of the United States, we cannot look beyond our own law. Nevertheless, it is quite true that we are not to read general words, such as those in this Act, without regard to the limitations customarily observed by nations upon the exercise of their powers; limitations which generally correspond to those fixed by the 'Conflict of Laws.' We should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States. On the other hand, it is settled law--as 'limited' itself agrees--that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends; and these liabilities other states will ordinarily recognize.
>
> "It may be argued that this Act extends further. Two situations are possible. There may be agreements made beyond our borders not intended to affect imports, which do affect them, or which affect exports. Almost any limitation of the supply of goods in Europe, for example, or in South America, may have repercussions in the United States if there is trade between the two. Yet when one considers the international complications likely to arise from an effort in this country to treat such agreements as unlawful, it is safe to

assume that Congress certainly did not intend the Act to cover them. Such agreements may on the other hand intend to include imports into the United States, and yet it may appear that they have had no effect upon them. That situation might be thought to fall within the doctrine that intent may be a substitute for performance in the case of a contract made within the United States; or it might be thought to fall within the doctrine that a statute should not be interpreted to cover acts abroad which have no consequence here. We shall not choose between these alternatives; but for argument we shall assume that the Act does not cover agreements, even though intended to affect imports or exports, unless its performance is shown actually to have had some effect upon them. Where both conditions are satisfied, the situation certainly falls within such decisions as United States v. Pacific & Artic R. & Navigation Co., 228 U.S. 87, 33 S.Ct. 443, 57 L.Ed.742; Thomsen v. Cayser, 243 U.S. 66, 37 S.Ct. 353, 61 L.Ed. 597, Ann.Cas.1971D, 322 and United States v. Sisal Sales Corporation 274 U.S. 268, 47 S.Ct. 592, 71 L.Ed. 1042.

(2) Other Authorities

(a) Attorney General's Report

On June 26, 1953, the then Attorney General of the United States, Herbert Brownell, Jr., announced his intention to establish a national committee to study the antitrust laws. The Committee was appointed over the next few months and on March 31, 1955, submitted its report to the Attorney General.

The Attorney General's Report has become one of the basic texts in the antitrust field, and the comments

contained therein with respect to the application of the U.S. antitrust laws to foreign commerce are worthy of close examination because of the expertise of the members of the Committee.

After reviewing the case law (referred to in Section A above) concerning the extraterritorial application of the U.S. antitrust laws the Committee concluded:

> "We feel that the Sherman Act applies only to those arrangements between Americans alone, or in concert foreign firms, which have such substantial anti-competitive effects on this country's 'trade or commerce' . . . with foreign nations' as to constitute unreasonable restraints.
>
> "We believe that conspiracies between foreign competitors alone should come within the Sherman Act only where they are intended to, and actually do, result in substantial anticompetitive effects on our foreign commerce. The 'international complications likely to arise' from any contrary view convince us, as they did the Court in Alcoa 'that Congress certainly did not intend the Act to cover' such arrangements when they have no restrictive purpose and effect on our commerce.
>
> "Finally, in formulating decree provisions, sound judicial discretion requires, in the language of the General Electric case, inclusion of 'safeguards' to protect any defendant 'from being caught between the jaws of . . . /any/ judgment and the operations of law in foreign countries where it does its business.' For we must assume, as Alcoa suggests, that Congress did not intend the 'general words' of the Sherman Act to be read 'without regard to the limitations customarily observed by nations upon the exercise of their powers.' " (Attorney General's Report, p.76)

In addition, one of the Committee members submitted the following concurring and clarifying comment in connection with the Alcoa case:

> "This and the other cases cited in the Report show that the Congressionally intended application of the Sherman Act does not comprise cases involving interference with another nation's sovereignty. The Sherman Act is not an exception to the Supreme Court rule that broad and sympathetic standards must be applied in applying regulatory statutes to cases involving any interference with the sovereignty of another nation. The Supreme Court has stated:
>
> '. . . considerations of comity, reciprocity and long-range interest have developed to define the domain which each nation will claim as its own . . . in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application for our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction.' Lauritzen v. Larsen, 345 U.S. 571, 582 (1953).
>
> Nothing involves another nation's sovereignty more intimately than its own laws regulating the ownership and control of development programs, production, distribution and commercial activities within its own territorial limits." (Attorney General's Report, p. 77, fn. 64.)

After stating the above general rule that the Sherman Act applies only to conduct having a substantial effect on U.S. commerce, the Committee went on to deal with the question of the scope and content of the phrase "trade or commerce with foreign nations". The Committee noted that there has been some

indication, at least by way of dicta in the cases, that this phrase may be limited to the export-import product trade of the U. S. and to services ancillary to its flow. The Committee announced its disapproval of such an implication noting the fact that "the same words in the same statute when applied to interstate commerce include finance, investment, and indeed the entire range of economic activity." (Attorney General's Report, p. 77)

The Committee concluded that the words "trade and commerce . . . with foreign nations" should be construed broadly "to include not only the import and export flow of finished products, their component parts and adjunct services, but also, as in domestic commerce, capital investment and financing. So interpreted, foreign commerce would also comprehend all types of industrial property rights in patents, trade-marks, trade secrets and know-how and other confidential technological information. In the absence of requisite effects on this country's 'trade or commerce . . . with foreign nations,' however, it is clear that the mere financing by Americans of manufacturing, mining or other local activities abroad does not come within the Sherman Act." (Attorney General's Report, p. 80)

Finally the Committee examined the question of what inquiries are relevant in determining the existence of undue limitations on competitive conditions on foreign commerce.

The Committee said that the starting point in such an examination should be, in the words of Chief Justice Hughes, that the "restrictions the Sherman Act imposes are not mechanical or artificial. Its general phrases interpreted to attain its fundamental objects, set up the essential standard of reasonableness." Applachian Coals, Inc. v. United States, 288 U.S. 344, 360 (1933)

The Committee went on to point out that in all cases the nature and effect of the challenged conduct may be determined only in the context of a particular market. In conclusion, the Committee stated

> "Thus, the inquiry required by the Rule of Reason may in some foreign commerce cases involve consideration of market factors not operative in domestic commerce. As one dissenting Justice put it in the Timken case, 'the circumstances of foreign trade may alter the incidence of what in the setting of domestic commerce would be a clear case of unreasonable restrain.' The possibility of such differences should be recognized by the Department of Justice and the Federal Trade Commission as well as the Courts."

> "Generally we emphasize, as a dissenting Justice put it in Timken, that 'the circumstances of foreign

trade may alter the incidence of what in the setting of domestic commerce would be a clear case of unreasonable restraints. Thus, we approve, for example, judicial recognition that, under the Rule of Reason, defendants may proffer evidence that their activities abroad constitute no undue restraint on our foreign commerce since, even absent the challenged conduct, trade and investment in a particular foreign area would be virtually impossible. We believe that defendants should be allowed to show that, due to foreign economic or political barriers, their conduct at bar was prerequisite to trade or investment in a foreign country."

(b) Supplement to Attorney General's Report

In June of 1968, the Antitrust Section of the American Bar Association published a volume titled "Antitrust Developments 1955-1968, Supplement to Report of the Attorney General's National Committee to Study the Antitrust Laws, 1955" (hereinafter called the "Supplement").

This Supplement notes that at the time of the issuance of the Attorney General's report the principle was "firmly established" that the Sherman Act must be construed to prohibit activities abroad by American nationals where there are such substantial anticompetitive effects on this country's foreign commerce as to constitute unreasonable restraint. The Supplement goes on to conclude that "this principle continues to be applied". (Supplement, p. 45)

An important post-1955 case is Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962) in which it was alleged that the American defendant, in attempting to monopolize the vanadium market, had caused its wholly-owned Canadian subsidiary to take action in Canada which eliminated the plaintiff from the Canadian market. The U. S. Supreme Court in a unanimous decision (one Justice not participating) held that a "a conspiracy to monopolize or restrain the domestic or foreign commerce of the United States is not outside the reach of the Sherman Act just because part of the conduct complained of occurrences in foreign countries." The respondents relied on American Banana Co. v. United Fruit Co., but the Court rested its decision instead on United States v. Sisal Sales Corp. Both cases were discussed in the Attorney General's Report and are referred to in Section A above. The Continental Ore opinion interprets the Sisal case as limiting American Banana to a situation where the acts complained of were not shown to have had substantial impact on United States foreign commerce. "Since the activities of the defendants (in the Sisal case) had an impact within the United States and upon its foreign trade, American Banana was expressly held not to be controlling." See 370 U.S. at 705.

(c) Restatement of Foreign Relations Law

The principle enunciated in the Attorney General's Report emphasized the effects on U. S. foreign trade as a basis for jurisdiction and gave no importance to the location of the conduct producing the forbidden effects. The Restatement (Second) of the Foreign Relations Law of the U. S. is in accord with this position. Section 30(1) provides that a state has jurisdiction to prescribe a rule of law attaching legal consequences to the conduct of a national of that state wherever the conduct occurs.

The rule stated in Section 30(1) is qualified by Section 38 which provides

> "Rules of United States statutory law, whether prescribed by federal or state authority, apply only to conduct occurring within, or having effect within, the territory of the United States, unless the contrary is clearly indicated by the statute."

These two sections when read together confirm that the scope of our antitrust laws includes the conduct of American nationals wherever it occurs if such conduct has substantial anticompetitive effects on the commerce of the U. S. with foreign nations. See also The Restatement (Second) Foreign Relations Law of the U. S., (1966) Sections 18 and 40.

The Supplement also notes that both the restatement and the Attorney General's report apparently would exclude from the operation of the U. S. antitrust laws unexecuted conspiracies or ineffective attempts to monopolize involving Americans acting only abroad, even where a clear specific intent to restrain or monopolize U. S. foreign trade could be proved. However, there are no decisions on this point. (Supplement, p.47, fn. 39)

(3) Effects Necessary to Sustain Application of Sherman Act

The general rule that restraints which affect foreign commerce give rise to federal jurisdiction under the antitrust laws raises the fundamental question of what kinds of effects are necessary to sustain jurisdiction? Must the effect be direct and substantial or will an indirect and substantial effect be sufficient?

One commentator has said that the meaning of the term "effect" is not capable of ready definition for two reasons:

(1) The number of cases in which the nature of the effect is discussed is relatively small.

(2) Those cases which do discuss or use the term "effect" do not define the word uniformly.

The cases that use the word "affect" have said that a restraint must (1) "directly affect," or (2) "substantially affect," or (3) "directly and substantially affect," or (4) simply "affect" the flow of foreign commerce. See cases cited in 1 Von Kalinowski, Antitrust Laws and Trade Regulations, Section 5.02(2) p. 5-120.

It is clear that restraints which directly affect the flow of foreign commerce into or out of this country are subject to the provisions of Section 1. Whether a restraint whose effect upon foreign commerce is indirect will support federal jurisdiction is not quite so clear. The cases which have used the term "substantial" have used it either in conjunction with the word "direct" or in situations where the effect was, in fact, direct.

There is critical comment that suggests an indirect effect on foreign commerce will not give rise to jurisdiction under Section 1. (See Attorney General's Report, p. 70) However, Mr. Von Kalinowski states that the better view would seem to be that any effect that is not both insubstantial and indirect will support federal jurisdiction under Section 1. See 1 Von Kalinowski, Antitrust Laws and Trade Regulations, Section 5.02(2) (1969) p. 5-122 and the cases there cited.

Wilbur L. Fugate in his book titled "Foreign Commerce and the Antitrust Laws" (1958) states that most of the law concerning the antitrust aspects of practices in foreign trade has resulted from the prosecution of typical cartels or at least the American participants therein; it is, therefore, most difficult to determine the legality of a particular practice which has been condemned in the context of a cartel arrangement among dominant producers. Mr. Fugate goes on, however, to note that Justice Frankfurter has said that "Even 'cartel' is not a talismanic word, so as to displace the rule of reason by which breaches of the Sherman Act are determined." (Timken Roller Bearing Co. v. United States, 341 U.S. 593, 605, 71 Sup. Ct. 971, 978, 95 L.Ed. 1199, 1210 (1951).)

Mr. Fugate concludes:

"At the outset, the two aspects of practices in foreign trade should be clearly delineated. The first turns on whether the activities in a particular case are part of, or substantially affect, the interstate or foreign commerce of the United States; if not, the inquiry ends right there. It is possible for a company, American or foreign, in effect to do business in two worlds, one the United States and the other one or more foreign countries. As long as the company's activities are strictly confined to the internal commerce of a foreign country and do not substantially affect United States foreign commerce, there is no jurisdiction under the Sherman Act. Price-fixing solely within a foreign

> country of goods manufactured abroad, without more, and not part of a wider conspiracy, would appear to fall within this category." (See also Fugate, pages 29-35, 125-126, and 329.)

How far the test of reasonableness in the case of a foreign restraint on foreign commerce differs from the corresponding test applicable to interstate commerce is a question that cannot be answered with any precision. George W. Haight in an article entitled, Some Aspects of United States Antitrust Laws and Foreign Commerce (1 Landau, Doing Business Abroad, p.206), points out that there are many factors that compel a different measure where the conduct complained of has occurred in a foreign country and "not the least of these is the impact of foreign law, foreign governmental orders or requests, and foreign official policies." Mr. Haight draws an analogy to the tort-law standard of "reasonable man" as follows:

> "Of course, the very concept of 'reasonableness' requires a judgment of conduct in the context of particular circumstances. What is reasonable in France may be quite unreasonable in Ohio. While there is a basic standard of competitiveness that is expected of American business wherever it may go, its behavior cannot always be judged according to level of business conduct enforced under the Sherman Act within the United States. There is perhaps an analogy to the standard of good care required to avoid negligence: it is what 'a reasonable man is expected to do under all the circumstances,' with the qualification that the reasonable man here is expected to avoid restrictive practices unless there are sound reasons for accepting

them and American competitors are not shut out. Cf. Report op.cit.supra note 5, at 80-81, 83; BREWSTER, ANTITRUST AND AMERICAN BUSINESS ABROAD 84, 85, 88-96 (1958) hereinafter cited as BREWSTER)."

In discussing the difficulties involved in a strict application of domestic per se rules to foreign commerce, Mr. Haight emphasizes two factors:

"There is, first of all, the basic question of whether foreign commerce is affected at all. Although this question arises also in relation to interestate commerce, the complexities of foreign commerce make it more difficult to decide when American trade is involved and when it is not.

"It is unlikely, however, that federal courts would seriously entertain an antitrust charge where the effect of conduct occurring in a foreign area on United States exports and imports is remote and other important factors have intervened to inhibit United States trade or investment in such area. Thus, competition from the United States might be effectively foreclosed by the high capital costs and risks involved; unfamiliarity with the foreign language; customs and social and economic conditions, difficulties of transportation and communication; governmental controls on currencies, exports and imports and the employment of foreign labor; and risks of administrative interference and nationalization. Such factors may be decisive and the consequent impact of restrictive trade practices on U. S. foreign commerce theoretical and remote.

"In the second place the relevant market is not easy to define when it is a foreign market. The Sherman Act speaks of commerce 'with foreign nations.' Is the relevant market commerce with or in a particular nation? Or is the market to be judged in relation to the entire export or import trade involved with a group of countries or a particular continent? The concept of 'nation' has undergone a radical change since the Sherman Act was enacted. Originally, the

United Nations was composed of 51 members; today there are 104 with many more on the way. Nor is the meaning of 'nation' altogether clear, as there are 'protected' states, such as Bahrein and Sarawak, and dependent areas such as the East African and West Indian Federations. Moreover, independent nations are beginning to submerge their economic independence in regional groups such as the European Common Market. There would appear to be considerable room for the argument that a restraint on competition with one 'nation', or even with a few such political units, is not conclusive even in so called per se cases, but that regard must be paid to the existence of other equally suitable available markets."

D. Summary

(1) Governmental Compulsion and State Action

Under the Texaco case (governmental compulsion) and Parker v. Brown and its progeny (governmental action), the key issue is the same - are the acts complained of truly the acts of the government? On the basis of the facts set forth above, Gulf can sustain the position that it is participating in the cartel (labeled "Uranium Marketing Research Organization") only because of Canadian government direction. While the facts indicate that there is no (or very little) adverse effect on U. S. commerce, it really makes no difference if there is since the Canadian government compulsion

provides a complete defense to any charge that Gulf has violated the antitrust laws. Furthermore, failure to participate in the organization would compel Gulf to take action that the Texaco case clearly indicates that the Sherman Act does not require it to take, i.e. withdraw from uranium production in Canada.

The Parker v. Brown line of cases dictates the same result. A conservative reading of these cases indicates that there are two conditions required for its application: there must be action by the state through its representatives, and "there must also be a clear indication of governmental dissatisfaction with open competition in the area, and provision for an alternative form of regulation through the agent or agency effecting the restraint." (71 Columbia Law Review, p. 148).

The detailed facts demonstrate that the Canadian Government, as a matter of official policy and

action, believes that open competition in the production and sale of uranium (and UF_6) is contrary to the national interest and that the national interest will be best served by regulation through control of all uranium exports by the Canadian Atomic Energy Board, implementing in this manner the de facto intergovernmental understanding of Australia, Canada, France and the Republic of South Africa, as expressed in the Uranium Marketing Research Organization.

The Canadian Government (that is, the Cabinet acting through the Ministry of EMR) has been and is effectively directing Gulf's participation in the organization. Gulf's choice from the inception has been to comply or cease to play an effective economic role in the Canadian uranium picture.

Any anti-competitive effects on U. S. commerce (and, fortunately, as pointed out elsewhere herein, there do not appear to be any at this time) are the result of explicit Canadian Government direction

and action -- not any truly voluntary action on Gulf's part. Gulf's private actions are the necessary consequence of reasonable compliance with such governmental direction and control.

(2) Impact on U. S. Foreign Commerce

The authorities referred to above demonstrate the viability of the principle that the Sherman Act must be construed to prohibit activities abroad by American nationals (this would include foreign corporations controlled by an American corporation), only where there are such substantial anticompetitive effects on U. S. foreign commerce as to constitute unreasonable restraints.

The memorandum of September 8, 1972, prepared by M. W. Ramsey entitled "Foreign Uranium Marketing Arrangement" (Attachment #8) demonstrates that GMCL's activities as participant in the Uranium Marketing Research Organization will have little, if any, impact on U. S. foreign commerce. For this reason and the reasons stated in the previous

section dealing with governmental compulsion, it is my opinion that GMCL's participation in the cartel involves no unacceptable degree of risk from the U. S. antitrust standpoint.

VII. Conclusions

(1) The Facts and the record show that, as far as Canada is concerned, the cartel is government-sponsored and government-directed. Gulf's area of concern from every viewpoint has been the Canadian Government. Gulf has had no realistic choice other than to comply with effective Canadian Government direction. To have done otherwise would have imperiled a substantial investment and risked the probability of elimination from the Canadian uranium industry. It is unlikely this situation will change as long as the Canadian Government believes cartel control to be in the national interest.

(2) The economic impact study carried out by M. W. Ramsey (Attachment #7) indicates no realistic probability that the cartel, as presently structured, will substantially and adversely affect U. S. trade or commerce during the period 1972-1980.

The salient economic characteristics appear to be: surplus uranium in the U. S. and abroad; an effective U. S. ban on uranium imports; an historical pattern of minimal U. S. exports of uranium; free world prices (outside the U. S.) lower than the cartel floor prices, which prices, in turn, are lower than the free market U. S. domestic prices; and the prospect of worldwide supply and demand curves crossing near the end of this decade or the early part of the next.

(3) The explicit terms and structure of the cartel do not appear to me to have the intrinsic capability of dealing with the market effects of substantial new discoveries of uranium reserves, either within or without the host countries of the cartel participants, in a manner consistent with the rationale (or reason for being) of the cartel.

The announced purpose of the cartel has been consistently stated by the various government representatives to be the imposition of price and volume controls so as to preserve that degree of economic return necessary to assure the vigorous on-going uranium exploration effort required to avoid a severe shortage of uranium supply. (However, the cartel has no explicit penalty provisions enforceable by cartel members with respect to any attempt to subvert the rules.)

Regardless of what the present picture is thought to be, it would seem clear that the discovery of substantial new uranium reserves, whether by the present participants or others -- whether within the participating countries or not -- would impose severe competitive pressures. Those countries or private concerns having the new reserves would not want to simply preserve an idle asset. The likelihood is that they would want to develop and market their uranium reserves. In this event, their broad choices would be (a) to join the cartel or adhere to its terms, or (b) ignore the cartel and not adhere to its terms. If this happens, the cartel is faced with a severe challenge, dependent on the quantities and prices involved. The instinctive reaction of the cartel's Operating Committee will likely be to exert pressure to suppress the new competition, one way or another.

It is this crucial point that is left unresolved by the present cartel; and the problem is aggravated by the effective, but ambiguous, role played by the cartel governments. The governments, as far as I can tell, have signed nothing among themselves and yet have actually sponsored, shaped, and required the cartel arrangement.

It could well be that the governments involved would tacitly approve (or effectively direct) predatory actions by

the cartel producer members to suppress outside competition from any source. Should this occur, Gulf must look at each situation on an ad hoc basis; and if any such action is advocated (whether by the cartel's Operating Committee, the producers, the governments acting officially or otherwise, or any of them) which could affect U. S. trade or companies owned or controlled by U. S. interests, then Gulf's opposition must be announced and recorded, as appropriate.

Apart from the possible adverse effects which a contrary course of action might provoke as far as U. S. Government agencies are concerned, private treble damage litigants in the U.S. will not likely be motivated by the same broad public interest policies or constraints applicable to responsible U.S. government agencies.

(4) Although no unreasonable risk of U.S. antitrust violation exists with respect of the format and scope of the cartel as reflected at this time by the Minutes and Summaries of Government/Producer Meetings, and the Operating Committee of the temporary Cartel Secretariat housed in the French Government (CEA) offices in Paris, or other related writings reviewed in detail above, it is improbable that either the cartel structure or operation will remain static.

It follows that the scope and nature of the cartel can change for a variety of reasons. Therefore, either a periodic updating of legal risks or, preferably, a continuous Gulf Law Department interface with GMCL's foreign uranium marketing operation, inside or outside the cartel host countries, would be a desirable precautionary measure for the due protection of GMCL's interests.

(5) There being no violation of U.S. antitrust laws involved under the circumstances detailed in this opinion, no valid purpose would be served by seeking clearances of any kind from the Department of Justice, the Federal Trade Commission, or the Atomic Energy Commission.

VIII. Addendum

Attachment #8 (Deputy Minister Austin's September 5, 1972, confidential letter and attachments to Mr. Ediger in his capacity as Manager of GMCL) confirms and formalizes the effective Canadian Government direction previously described.

As stated by Mr. Austin, amendment of Section 201 of the Atomic Energy Control Regulations was done for the purpose of "ensuring that the terms and conditions of the uranium export contracts entered into by Canadian producers on or after January 1, 1972 and covering the export sale of uranium during the period 1972-78 inclusive, which have not been disposed of by the Board by August 23, 1972, are in accord with new Government policy regarding volumes of exports and export prices."

The new Government policy referred to is commented on generally in the Minister's (EMR) 23rd August 1972 public statement, which is a normal part of the composite procedural process of asserting export control through the Board, and states, inter alia:

> "In order to stabilize the current uranium marketing situation and to promote the development of the Canadian uranium industry, I have today issued a Direction to the Atomic Energy Control Board covering such aspects as minimum selling prices and volumes of sales to export markets."

The contract details regulated by the Canadian Government are basically the minimum price levels and volumes, as well as market quotas, fixed by the cartel, which was sponsored and remains effectively directed, as far as Canada and Canadian uranium operators and producers are concerned, by the Canadian Government. The amendment of Section 201 of the AEC Regulations is intended to be, and is, governmentally directed implementation of the governmentally sponsored cartel.

The Minister's August 17, 1972, confidential letter to the President of the AEC Board in its entirety comprises the formal Direction referred to in the Minister's public statement and was approved "by Cabinet" on July 13, 1972, as stated in the third paragraph of the Minister's letter. The Cabinet also approved on June 29, 1972, that the Direction would be issued together with a proposed amendment of Section 201, which amendment was approved on July 27, 1972, by an Order-in-Council (i.e., in law the Government of Canada).

Both the amendment and the Direction were made fully effective August 23, 1972. The Direction, a normal part of the composite procedural process, was made pursuant to Section 7 of the Atomic Energy Control Act and is not published.

Section 7 of the Act requires the AEC Board to "comply with any general or special Direction given by the Minister with reference to carrying out of its purposes." When this is related to Section 9 of the Act, it gives the Minister complete control of the uranium industry in Canada. Section 9 provides, inter alia, that the AEC Board may, with the approval of the Governor-in-Council make regulations... regulating the production, import, export, transportation... use or sale of prescribed substances..."

The amendment, made by the AECB on July 19, 1972, to the AEC Regulations was, as noted above, approved by the Governor General in Council, and was published at page 1465 in the 23/8/72 issue of the Canada Gazette, Part II, Vol. 106, No. 16.

In short, Attachment #8 constitutes effective Canadian Government direction as uranium export sales can only be made in accordance with the cartel terms incorporated in the Minister's Direction, as approved by the Government of Canada.

As pointed out in Attachment #8, the Minister of EMR is "in the process of proposing an amendment to this Direction which will make it abundantly clear that in addition to the

market allocations indicated therein there is a 'captive market' for the Rabbit Lake production of 3200 and 3000 tons of U_3O_8 in 1972-77 and 1978-80 respectively, which is exempt from all but the pricing criteria of the agreement (note: the cartel), provided it is sold to and consumed by RWE."

ROY D. JACKSON, JR.

Attachment #1 *

Rabbit Lake Project

Description and Location of Project

Gulf discovered and proved up substantial uranium reserves in Northern Sasketchawan in 1968. The discovery and development has since evolved into the Rabbit Lake Project, which is a joint operation between the Gulf Companies and UCL to mine and mill uranium. Presently estimated recoverable reserves probably represent 9 to 10% of Canada's total.

UCL is a Canadian corporation in which the controlling interest is held by RWE, the largest German electrical utility.

The operating interests are distributed as follows:

Gulf Companies	
Gulf Minerals Canada Limited	45.9%
Gulf Oil Canada Limited	5.1%
UCL	49.0%

UCL's interest is limited to approximately 130 acres surrounding the ore body, the production facilities, and two million pounds of U_3O_8 from within 30 miles of Rabbit Lake if additional ore is discovered.

Each party is obligated to take its proportional share of production and market it independently. Gulf has the option, however, of selling up to two million pounds per year of its production to UCL at an established price in the first three years of production. The total amount at this guaranteed price is limited to six million pounds. Gulf production beyond this amount can be sold to UCL, at Gulf's option, at the average UCL sales price less marketing commission, nominally 10% of the sales price.

To participate in the project, UCL paid Gulf six million dollars and will pay Gulf a royalty on each pound of UCL production, based on a defined "Gross Profit Margin."

* The material contained in this attachment is essentially a summary of the AFE presentation to the Gulf Board of Directors meeting of February 2, 1972.

Except for a specified range of Gross Profit Margin where the royalty remains constant at $0.50 per pound of U_3O_8, the royalty increases with Gross Profit Margin. As the sales prices increase, Gulf benefits from increased revenue on its share of production and increased royalty payments from UCL.

If the price at which UCL wishes to sell its own share of production is below what Gulf feels the market price is, Gulf may overcall UCL on its share of production.

It is presently anticipated that the personnel will commute from an existing city via air bus to a bachelor housing facility, rather than live in a conventional town to be constructed at the project site. Although the commuter system is expected to be more costly, it provides greater operational flexibility. Should a conventional community be necessary at a later date; i.e., 1976-77, an additional economic penalty would be incurred.

Estimated capital requirements for project development are substantial. Total Project capital costs (1969-1975) are estimated at about $50 million, and operating costs from 1975-1984 (estimated production life) total some $112 million. The Joint Venture with UCL offered some distinct advantages. Because of the front-end payment and royalties, Gulf was able to come into production at an earlier date and still enjoy an appropriate rate of return on its capital investment. In addition, UCL was able to guarantee Gulf an outlet for early production.

Economics

1. Price

The prices used in the economic analysis were supplied by the Uranium Marketing Department of Gulf Energy & Environmental Systems. These include the prices at which UCL has guaranteed to purchase the major share of Gulf's production in the first three years of operation and the estimated prices at which the remaining production could be sold today in the Free World outside of the U.S. The price schedule is attached. Prices are stated f.o.b. Saskatchewan delivery point.

The UCL prices assumed for the purposes of calculating

Gulf's royalty are those recommended by the Uranium Marketing Department of Gulf Energy & Environmental Systems.

2. Capital Costs

The capital costs are based on a definitive engineering study (the subject of a previous AFE) and include mine development, mine capital, mill capital, provisions for working capital and pre-1972 capitalized expenditures.

Each participant in the Joint Operation pays its proportional share of capital requirements.

Capital costs were escalated at 5% per year from 1971 estimates, except the actual expenditures prior to 1971.

3. Operating Costs

The operating costs were also developed from the results of the detailed engineering study. These costs include all costs associated with start-up, mining, milling and operation of the housing facility. A percentage of Gulf Mineral Resources Company's fixed marketing costs are included. Costs of packaging and delivery to the Saskatchewan delivery point are included.

Participants also pay their proportionate share of operating costs.

4. Depreciation

For book purposes, unit of production depreciation has been used. For tax and cash-flow purposes, accelerated depreciation has been used in accordance with Canadian statutes.

5. Taxes

Tax rates for Canada and the Province of Saskatchewan were provided by the Tax Department. For U.S. tax purposes, Gulf Minerals Canada Limited will be taxed as a "Western Hemisphere Trading Corporation."

6. NCO Payment

Net profits payments to NCO, the original leaseholder, are made in accordance with the Agreement signed between Gulf

Minerals Company and NCO on October 5, 1970. The Agreement provides for NCO to be paid 10% of net profits prior to the Joint Operation's recovery of capital and 20% thereafter.

7. Foreign currency Conversions

All values are expressed in U.S. dollars. No attempt has been made to predict the relative value of foreign currencies to the U.S.dollar for the 1972-1984 period with the result that the effects of currency reevaluations are not included.

Favorable Factors Not Evaluated

1. Additional indicated reserves of 1.7 million pounds of U_3O_8 underground and smaller amounts in the open pit may be recoverable. The economics of recovering these reserves is presently being analyzed.

2. Additional reserves in the vicinity of Rabbit Lake may be discovered, prolonging the life of the mill and associated capital investment.

3. Latest estimates from milling consultant, A. H. Ross, are that the mill recovery factor will be slightly higher than that used in the economics presented herein, thereby increasing the amount of U_3O_8 recovered.

Unfavorable Factors Not Evaluated

1. The "soft" market that presently exists may continue for an indefinite period with the result that the expected price schedule cannot be achieved.

2. An accord may be reached between the Canadian, Australian, French and Republic of South Africa Governments to allocate production and establish floor prices. Should the presently planned production level of the Rabbit Lake project be substantially reduced by action of the Canadian Government, the project's profitability level could be decreased or eliminated. Renegotiation or arbitration of the Agreement with UCL should ensue or Gulf might have to explore methods of retiring from the project.

SUMMARY FACT SHEET

Production Begins	April 1975
Production Life	9.18 Years
Annual Mill Capacity	532,000 Tons of Ore
Average Grade	8.82 Lbs. U_3O_8 per Ton of Ore
Mill Recovery	95.8%
Annual Production Rate	4.5 million Lbs. U_3O_8
Total U_3O_8 Production	41.3 million Lbs.
Number of Employees	217
Total Project Capital Costs (1969-1975)	$49,280,000
Total Project Operating Costs (1975-1984)	$111,763,000
Gulf Minerals Canada Limited -	
Capital Expenditures: (1969-1975)	$23,653,000
(1972-1975)	$20,580,000
Gulf Minerals Canada Limited	
Net Profits: (1969-1984)	$38,325,000
(1972-1984)	$32,925,000
Years to Payout After Beginning of Production	
Cash Flows Commencing in 1969	2.6 Years
Cash Flows Commencing in 1972	3.0 Years
DCF - Total Project from 1969-1984	25.2%
Incremental Cash Flows (1972-1984)	21.1%

PRICE SCHEDULE PROVIDED
BY
URANIUM MARKETING DEPARTMENT OF GE&ES(1)

Production Year	Price (Current Yr. US$/lb.)(2)		Price Guaranteed to Gulf by UCL for Six Million Lbs. ($/lb.)	
	Gulf	UCL	Gross(3)	Net(4)
1975	5.35	5.35	6.65	6.07
1976	5.50	5.50	6.76	6.15
1977	5.70	5.65	6.89	6.23
1978	6.00	5.85	7.01	6.31
1979	6.35	6.05		
1980	6.70	6.30		
1981	7.00	6.60		
1982	7.35	6.85		
1983	7.65	7.15		
1984	7.95	7.45		

(1) All prices f.o.b. Saskatchewan Delivery Point

(2) Gulf price begins to increase relative to UCL's because it was assumed that Gulf would be able to import some production into higher U.S. market as the embargo is lifted.

(3) Before UCL Marketing Fee

(4) After UCL Marketing Fee

JOINT SUMMARY OF UNDERSTANDINGS
AS REGARDS TO THE
MAIN POINTS DISCUSSED AT THE MEETINGS
OF FEB. 21 - 24, 1972
PARIS, FRANCE

Attachment #2

CONFIDENTIAL

PRIVATE SECRETARIAT

All Companies would provide to the Secretariat appropriate particulars of all enquiries, quotations and contracts and of all deliveries under the quota system. The Secretariat would make regular summaries of this information which would then be provided to the Members. The Secretariat to have no executive discretion, but should be in a position to supervise the application of the regulations and if a discrepancy is noted, to ask for explanations. The Secretariat should also do market research work.

All members would be looking for possible candidates for the Secretariat. A temporary organization should be established by March 15. Location: in London or Paris.

We suggest that this could be paid for prorata to the quota allocations to the various groups.

The criteria for the selction of the Secretariat would be such that the person in question would be capable of administrating the quota allocations.

The establishment of a Secretariat should not be given any publicity. However, if in due course, any announcement is necessary concerning the Secretariat, it should be described as a joint market research organization.

PENDING QUOTATIONS

Following the propcsal made by the Policy Group on February 4, January 1, 1972 will be the effective date for commencement of orderly marketing arrangements. On this basis it is recommended that existing and pending quotations be dealt with as follows:

Sales which will count against quota allocations include Spain, Neckar, Sweden, H.E.W., Mexico, Taiwan, Leibstadt and Gosgen in Switzerland, Shikoku, Japco, Kyushu (long term), Chubu and any other business which may show up in the future. Excluded are Brazil, Westinghouse 1972 delivery for Beznau in Switzerland, Tohoku, Chugoku, Kansai spot sales 1974-1975 and Gundremmingen in West Germany.

With reference to the Spanish contract, reservation was expressed by the Canadian representatives as to its inclusion and it was suggested, because of its imminence and large tonnages, some special arrangements will have to be developed in relation to the quota allocations and be decided upon by March 14 Policy Group meeting.

The Policy Group will have to consider the treatment of contracts entered into before January 1, 1972 which involved on-going sales to other than utilities during the period 1972 to 1977 included. Examples are SOMAIR contracts with Italian and German partners, the R.T.Z. Rossing contract with Urangesellschaft, and the Gulf contracts with Uranerz. A clear cut decision by the Policy Group on the above contracts as affecting the quota allocations will have to be made by March 14.

TERMS AND CONDITIONS

1. Prices

At February 3 policy meeting lines of minimum prices have been agreed, but for practical purposes the Executive Committee found more easy to quote U_3O_8 C.I.F. conversion facility and in order to take into account additional charges, it is now recommended minimum prices are:

Years	Japan, Taiwan & Korea	Others
1972	U.S. $/lb. U_3O_8 $5.60	$5.30
1973	5.95	5.65
1974	6.30	6.00
1975	6.65	6.35
1976	6.90	6.60
1977	7.15	6.85
1978	7.40	7.10

In case of quotations expressed in terms of UF_6, these prices will become U.S. $ per pound of U contained in UF_6 delivered franco U.S.A.E.C.

Years	Japan, Taiwan & Korea	Others
1975	9.50	9.15
1976	9.85	9.50
1977	10.20	9.85
1978	10.55	10.20

.../3

These prices include weighing, sampling, conversion losses and interest costs on U_3O_8 for 3 months processing time at the rate of 8% a year.

2. Conditions

Payment

Standard minimum conditions for payment are:

- 95% within 30 days after delivery at converter's facility or U.S.A.E.C. as the case may be.
- the balance upon final acceptance or within 60 days after the delivery, whichever is the earlier, provided that if the final weight is not known within 60 days, adjustment can be made afterwards.

Any other terms of payment which deviate from the minimum will have to take into consideration a basic standard minimum rate of interest at 8% per year.

Currency

For any quotations, if not made under the U.S. $ system, they would be made out under the par rate existing at the time of quotation; if a par rate does not exist, then at the average of buying and selling rates at that time.

Quotations can be made in either the buyer's or seller's currency in U.S. Dollars or in any major European country.

Flexibility

On tonnages, for initial cores or unspecified requirements:
10% maximum on the contracted quantities.

Reloads: ± 15% on maximum on the contracted quantities.

Flexibility for a variation in tails assay content could be given in addition to the above.

Lead time for flexibility condition

18 months before the start of any delivery year, the customer must identify provisional delivery months within that year.

3 months before the provisional delivery month or the actual delivery month, whichever is the earlier, the exact delivery date will have to be fixed within ± 2 months from the provisional delivery month.

In case this flexibility leads to delivery in a following year, the minimum prices set for that year should apply and are to be considered as absolute minimum.

Force Majeure

A) It was agreed that producers would not accept nuclear plant shut down or permit withdrawal or lack of operating licenses as a force majeure item.

B) In addition it was agreed that no one would accept a consequential damage clause.

C) It was agreed that no producer would waive a force majeure condition for any period in order to guarantee delivery.

Replacement of late deliveries or Rejected Material

Liability for late delivery would be limited to converter's surcharges in the case of delivery in U_3O_8 and U.S.A.E.C. surcharges in the case of delivery in UF_6.

In any short fall or rejection situation a minimum of one month should be required to make up the material. If contract specifications for U_3O_8 or UF_6 are to be altered, any consequential increase or decrease in costs to be for the buyer's account.

Taxation

Suppliers will accept taxes and duties in their own country, but not in any other country.

Storage

Suppliers will provide free storage of U_3O_8 if there is space available. If there are any additional costs involved for storage, they would be for purchaser's account.

If storage is required after the agreed delivery date, then full payment shall be made on that date subject to adjustment later on determination of final weights and assays.

Storage in UF_6

Any storage charges for UF_6 would be at the buyer's cost.

Call Option

No tonnage option will be granted to the consumer.

Validity period

The maximum validity period for any quotation shall be 90 days unless there is a prior agreement to the contrary.

Post-1978 Prices

For quotations extending beyond 1978 for which prices and pricing procedure could not be agreed upon by the Executive Committee, guidance by the Policy Group is requested.

Pending a decision by the Policy Group no member of the group will quote any price indication after the beginning of 1980.

WORKING MECHANISM FOR ALLOCATIONS

For practical reasons it is recommended by the Executive Committee that the allocations to be based on contracted quantities and not on delivered tonnages.

Allocations to be fixed for a period instead of annually provided however the building up of allocations is made at a uniform rate amongst each group. To achieve this a leader is to be suggested to the Secretariat according to a roster allocation guide line provided to the Secretariat.

Where a contract overlaps the quota period, such overlap will be taken into account by the Secretariat in designating the group leader but will not be taken into account for quota purposes. It was suggested that the designated leader for any quotation will have the right to go down to the minimum prices, while the other bidders will only have the right of going down to minimum plus 15 cents per pound U_3O_8 if the quotation is made in terms of U_3O_8 and to minimum plus 20 cents per pound of U contained in UF_6 if the quotation is made in terms of UF_6.

It was also realized that pending a decision of the Policy Group about group allocations, it is difficult to designate a leader for outstanding quotations. In the meantime the consensus was that no one will consider himself as a leader.

1. Uranium producers (other)

It was agreed that if a producer from outside the group is quoting under the minimum price, the lead bidder will not match that quotation and the Executive Committee will meet as soon as possible to review the situation and decide a course of action.

2. Fuel, reactor manufacturers, or any other middlemen

All quotations to this type of organization should be made on the basis of minimum prices applicable for Japan.

It was also agreed that no quotations will be made unless the end use of the material is known.

In making quotations to such organizations, it is recognized that the producer will have the right to quote direct to the end user.

The above shall not be applied to effectively exclude any group from any market.

Attachment #3

ULFMINSCO TOR

MAR OTT
TTAWA ONTARIO 4/4/72
IR N M EDIGER
I WOULD LIKE TO MEET WITH YOU IN OTTAWA AT 2:00 P.M. ON APRIL 10, TO DISCUSS CANADA'S POSITION WITH REGARD TO URANIUM MARKETING. I HAVE PROMISED THE NON-CANADIAN PRODUCERS THAT WE WILL ADVISE THEM OF OUR POSITION BY TELEX ON APRIL 11. IN ADDITION I HAVE ASKED URANERZBERGBAU CANADA LIMITED TO ATTEND THE MEETING OF APRIL 10 SO THAT ALL CANADIAN PRODUCERS WILL BE REPRESENTED. I WOULD SUGGEST THAT YOU BRING YOUR COUNSEL WITH YOU AS THE LEGAL ASPECTS OF AN ARRANGEMENT WILL BE AN IMPORTANT AGENDA ITEM. THE MEETING WILL BE IN OUR BOARD ROOM AT 568 BOOTH STREET
MR J AUSTIN DEPUTY MINISTER ENERGY MINES AND RESOURCES
MAR OTT

GULFMINSCO TOR

MAR OTT
TTAWA ONTARIO 21/3/72
MR N M EDIGER
ULF MINERALS
HE HONOURABLE DONALD MACDONALD WOULD LIKE TO MEET WITH YOU AND ANY OTHER OFFICIALS OF GULF MINERALS YOU FEEL WOULD BE APPROPRIATE TO HAVE THE BENEFIT OF YOUR VIEWS ON THE PRESENT URANIUM MARKETING ITUATION. THE TIME AVAILABLE FOR THE MEETING WOULD BE FROM 3:30 TO 4:00 PM ON THURSDAY MARCH 23 IN MR MACDONALD'S OFFICE IN THE HOUSE OF COMMONS. COULD YOU PLEASE ADVISE WHETHER IT WILL BE OSSIBLE FOR YOU TO ATTEND AND INDICATE THE NAMES OF THE PEOPLE HO WILL BE ACCOMPANYING YOU.
G M MACNABB ASSISTANT DEPUTY MINISTER ENERGY
ENERGY MINES AND RESOURCES
MAR OTT

ULFMINSCO TOR

SSISTANT DEPUTY MINISTER ENERGY,
NERGY MINES AND RESOURCES, OTTAWA

N RESPONSE TO YOUR TELEX 21/3/72. I WILL BE PLEASED TO MEET WITH OUR MINISTER, THE HONOURABLE DONALD MACDONALD FROM 3:30 TO 4:00 M ON THURSDAY, MARCH 23 IN ORDER TO PRESENT TO HIM OUR VIEWS WITH RESPECT TO THE PRESENT URANIUM MARKETING SITUATION. I WILL BE ACCOMPANIED BY MR W Z FOSEY, COUNSEL, TORONTO AND MR ROGER K ALLEN, GENERAL COUNSEL, GULF MINERALS CANADA LIMITED, DENVER.

N M EDIGER
GULF MINERALS CANADA LIMITED

Attachment #4

FILE NOTE

CANADIAN URANIUM PRODUCERS' MEETING

OTTAWA, APRIL 10, 1972

On April 4, 1972, we received the following Telex from Mr. J. Austin, Deputy Minister, Department of Energy, Mines and Resources:

"Mr. N. M. Ediger

"I would like to meet with you in Ottawa at 2:00 p.m., on April 10, to discuss Canada's position with regard to uranium marketing. I have promised the non-Canadian producers that we will advise them of our position by Telex on April 11. In addition, I have asked Uranerzbergbau Canada Limited to attend the meeting of April 10 so that all Canadian producers will be represented. I would suggest that you bring your counsel with you as the legal aspects of an arrangement will be an important agenda item. The meeting will be in our Board Room at 588 Booth Street.

"Mr. J. Austin Deputy Minister"

The meeting took place as scheduled at 2:00 p.m. in the Board Room, Department of Energy, Mines and Resources, 588 Booth Street, Ottawa. In attendance were:

J. Austin	Deputy Minister, Energy, Mines and Resources President, Uranium Canada Limited
G. M. MacNabb	Assistant Deputy Minister (Energy), Energy, Mines and Resources Vice President, Uranium Canada Limited
O. J. C. Runnalls	Special Advisor - Uranium, Department of Energy, Mines and Resources
W. M. Gilchrist	President, Eldorado Nuclear Limited
J. Kostuik	President, Denison Mines Ltd.
N. O'Brien	Director of Engineering, Denison Mines Ltd.

might serve some useful purpose. At this point Mr. Austin presented the following agenda:

1. Discussion of legal aspects of producers' arrangement
2. Period of arrangement
3. Assessment of available markets
4. Market allocations required
   - A. for Canada
   - B. for each existing Canadian producer
5. Rabbit Lake allocation
6. Protection of existing contracts and captive markets, Canada and United States markets excluded
7. Policing of arrangement
8. Discussion of possible Telex to other producers
9. Attendance at April 20-21 meeting

The agenda was not followed in the order set forth but will be summarized in the order in which it was discussed.

2. Period of arrangement

The period of the arrangement as discussed to date would be from the date of the arrangement to December 31, 1977. It was pointed out that a view had been expressed by some producers that the arrangement should be extended to the year 1980. Mr. Austin and Mr. Kostuik's view was that arrangements should not be extended at this time, but the producers should remain flexible with the thought that if circumstances should dictate, the arrangement could be extended at a later date. One of the devices offered by the

foreign producers was an offer to give Canada additional allocations for the years 1978 and 1979, if such an extension was possible. Mr. Albino expressed the opinion that Rio Algom was not opposed to extending the period and thought this matter should be pursued. If extended, the total world demand for this period was estimated at 44,000 tons, of which Canada would receive 10,500 tons. It was pointed out that all producers would be free to compete in the United States and Canadian markets. The problem was discussed as to what happens if the United States' market opens during this period, but no answer was arrived at in the Paris meetings. An additional problem is: what if the bid calls for deliveries beyond the agreed period? It was recognized that this could produce a strange result, as it is obvious that a producer could meet the agreed price for the period of the arrangement, but sweeten the arrangement by lower prices after such period. No further discussion was held as to how this might be corrected. One possible solution was that no producer would quote prices beyond the fixed period of the arrangement.

3. Assessment of available markets

At this point it was stated that the figure 26,000 tons was a generally acceptable estimate of the uncommitted world demand to 1977. This figure, of course, is only important as a working number inasmuch as each country would be allocated a fixed percentage of the world demand whatever the same may be for this period.

and 5. Market allocations required - Rabbit Lake allocation

The other world producers offered Canada a 31% allocation or approximately 8,100 tons for the period. Translating this to the existing

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situation 4,500 would be subtracted by reason of the Government-Denison Spanish sale. In Paris Rabbit Lake's capacity was treated as 5,500 tons of which 3,200 tons was regarded as committed to RME, with the result that 2,300 tons of Rabbit Lake would be regarded as uncommitted, and further subtracting this uncommitted amount from Canada's allocation leaves 1,300 tons to be shared by the remaining Canadian producers. Rio Algom, Denison and Eldorado Nuclear are in agreement that this allocation is unacceptable and they will not join unless it is increased. Their goal is to increase their allocation to 3,000 tons, but indicated they would accept 2,500 tons to be shared 37½% each by Rio Algom and Denison and 25% by Eldorado.

This led to a request for Gulf to state its position, at which point Mr. Ediger stated that Gulf was in a special position by reason of its right to require UCL to purchase its share. Accordingly, Gulf suggested that UCL should state Rabbit Lake's position.

Kegel pointed out that the assumed 5,500 tons capacity for Rabbit Lake was erroneous in that the General Work Plan attached to the Agreement of December 30, 1970, clearly states that Rabbit Lake capacity will be 6,190, with the result that instead of the 2,300 tons uncommitted figure used in Paris, the correct amount is 2,990.

Kegel's injection of the 6,190 ton figure resulted in strong comments from the other Canadian producers that Rabbit Lake's productive capacity was at this point solely on paper with the result that Gulf and UCL had considerable flexibility to alter it either by deferring start-up or cutting back the planned rate of production. Kegel countered with the argument that

either course of action would seriously alter the projected economics of the project. However, Kegel did indicate that subject to management approval of both Gulf and UCL, a sales allocation of 5,500 tons might permit the Rabbit Lake project to proceed. Further discussions of market allocations were deferred while brief discussions were had on Agenda items 1 and 7 as hereinafter set forth, after which the discussions continued with a combination of Agenda items 4 and 5 relating to Canadian allocations and the Rabbit Lake allocation. Mr. Kostuik again asserted that he failed to see why Rabbit Lake would not benefit by either deferring or cutting back production in view of the fact that the arrangement would result in higher prices. Mr. Albino stated that if Rabbit Lake held to its present position of 5,500 tons there was nothing further to discuss as Rio Algom would not completely remove itself from the market for this five-year period in order that the desires of Rabbit Lake producers could be attained. It was also stressed that Canada would thus be asking other world producers to give up a total of 1,200 tons. A recess was requested by Mr. Kegel at which time the Gulf and UCL representatives met to consider the suggestion of Mr. Phllips that Rabbit Lake agree to reduce sales from the 5,500 ton figure to 5,350 tons. When the meeting was reconvened, such position was advanced by Mr. Kegel subject to approval by the management of both Gulf and UCL. The proposal was not well received as it would require other world producers to give up 1,050 tons, but in view of the lateness of the hour, further discussions were directed to item 8 of the Agenda as hereinafter set forth.

1. Discussion of legal aspects of producers arrangement.

Mr. Austin opened discussion of this item by pointing out that the

Canadian Combines Act is very vague with the result that it can be interpreted in many ways; that in his opinion it was not intended to cover the situation contemplated by the arrangement under discussion, but that admittedly a Court could later determine that it was applicable. He further stressed that the Cabinet is in favor of the arrangement and believes it to be in the best interest of Canada for the five-year period under discussion. He further stated that the Canadian government wanted to leave it to each producer to determine the legality of the arrangement. At this point, Gulf inquired concerning the opinion that was to be obtained from the Minister of Justice as to the legality of the arrangement under the Canadian Combines Act. Mr. Austin replied by stating that an opinion had been obtained from the Director of the Combines Investigative Branch that the arrangement is legal as it is presently understood by the Director but that it could later become illegal if orders have to be declined by Canadian producers as a result of the arrangement. The reasoning of the Director is that Section 4 exempts arrangements relating only to exports of articles from Canada unless such arrangement also falls within Section 5(a) and is one which is likely to result in a reduction or limitation of the volume of exports. As the Director interpreted the word "volume" to refer to quantity, his reasoning was that a later new order submitted to a Canadian producer which was rejected solely because of the arrangement would result in a violation of the Combines Act. Mr. Estey stated that in his opinion the Director was in error in interpreting the word "volume" to mean solely quantity and considering the purpose of Section 5(a) it should be interpreted to mean "economic volume" and if so interpreted, the arrangement would result in an increase in the dollar value of Canadian exports and consequently would not

violate the Combines Act. Mr. Mullin and Mr. Sherriff apparently concurred in Mr. Estey's interpretation of the Act.

Both Gulf and UCL advised Mr. Austin that their participation would be dependent upon a determination that it would not result in violations of United States or German antitrust laws. Mr. Austin countered as he has done in the past when Gulf raised this point that both Gulf and UCL are Canadian corporations operating in Canada and are accordingly subject to the laws of Canada. He again stressed the Cabinet's desire for the producers to implement the arrangement without the necessity of direct government implementation such as creating a uranium marketing board. However, if government implementation proved necessary he would advise that he felt sure that it would be considered by the Cabinet, although he was not in a position to predict what course of action would then be followed. Mr. Austin advised that a formal declaration would be sought from the Cabinet (with the Minister of Justice present) that the arrangement is in the national interest of Canada. He further stated that an opinion would be obtained from the Minister of Justice as to the legality of the arrangement insofar as the two Crown companies were concerned. After so obtaining a more official and definitive definition of the Canadian government's position, he stated that Gulf and UCL would be directed to participate in the arrangement if the other Canadian producers acquiesced in being so directed. Eldorado and Rio Algom agreed that in such event they would be willing to be so directed. Denison's agreement in this regard was given halfheartedly and with some reluctance. Neither Gulf nor UCL were given an opportunity to agree or object to the Canadian government's direction to participate in the arrangement.

7. Policing of arrangement

Mr. MacNabb outlined the general nature as to how the arrangement would be implemented by stating that there would be a permanent secretary who would keep track of all contracts and advise who would be the leader with respect to any forthcoming demand, and would in general maintain the arrangement. If any producer overfills its quota, he would have to buy from another to balance such sale with his allocation. All companies would file particulars, furnish inquiry from buyers and other information with the secretary. The question was raised as to whether there would be a contract between the world producers and it was stated that such had really not been discussed. It had been assumed there would be a document, but as to whether it would be signed no decision had been reached. Mr. Phillips inquired if Mr. MacNabb's notes regarding the policing of the arrangement would be available to other producers. Mr. MacNabb stated that he would furnish the same on request. Mr. Ediger subsequently obtained a more comprehensive description of the manner in which the arrangement would be implemented which had been prepared by a drafting committee among the world producers.

8. Discussion of possible Telex to other producers

Mr. Austin polled the Canadian producers with the exception of Gulf and UCL as to what should be the Canadian's response concerning the proposed meeting in Paris on March 21 and 22. Mr. Albino stated that all of the Canadian producers appear to be too far apart; that Rio Algom would still be willing to go to Paris and voted to go even though it meant that the Canadian producers were asking the rest of the world to give up approximately 1,050 tons. Mr. Gilchrist stated that in Eldorado's opinion, we must have the next

meeting, but that he frankly saw little hope of success. Mr. Kostuik was of the view that Canada would be breaking faith with the other world producers unless it first apprised them of the new facts that had been developed in regard to Rabbit Lake, and that all of the Canadian producers could offer was a reduction of 150 tons. He felt that after making this disclosure Canada should inquire as to whether there is any basis for a further meeting. Kostuik felt that by so apprising the other producers and getting their reaction as to whether they would be even willing to hold further discussion, at least some of the onus would be placed on them for the breakdown of discussions. At this point, Mr. Austin prepared the following draft of a Telex:

> "CANADIAN PRODUCERS BELIEVE MEETINGS SHOULD PROCEED APRIL 20 and 21. DISCUSSIONS IN CANADA SHOW DIFFICULT POSITION OF CANADIAN PRODUCERS BECAUSE GULF-UCL PRODUCTION LARGER THAN PREVIOUSLY KNOWN WITH 2990 TONS PROBABLY IN MARKET RATHER THAN 2300 TONS.
>
> "IT APPEARS TOTAL DIFFERENCE BETWEEN CANADIAN AND OTHER PRODUCERS IS ABOUT 5% OF TOTAL ESTIMATED MARKET IN THE FIVE-YEAR TERM. ISSUES ARE SO VITAL TO ALL THAT A FURTHER EFFORT SHOULD BE MADE TO BRIDGE THE GAP."
>
> R. K. Allen

EMAR OTT
OTTAWA ONTARIO 14/4/72

Attachment #5

GULFMINSCO TOR

EMAR OTT
OTTAWA ONTARIO 14/4/72
N N EDIGER
TELEX FROM TARANGER OF URANEX HAS CONFIRMED THAT APRIL 20 - 21
MEETINGS WILL BE HELD IN PARIS STARTING AT 10:30 A.M. APRIL 20.
AS YOU KNOW, THE CANADIAN GOVERNMENT ENDORSES THE PRINCIPLE OF
SUCH AN ARRANGEMENT AS IN THE NATIONAL INTEREST AND WILL LOOK
WITH GULF MINERALS CANADA LTD AS A CANADIAN PRODUCER TO TAKE
EVERY REASONABLE STEP TO ENSURE COMPLIANCE. PLEASE CONFIRM THAT
YOUR COMPANY WILL BE REPRESENTED AND LET ME KNOW THE NAMES OF
YOUR TWO DELEGATES BY TELEX. A SIMILAR MESSAGE HAS BEEN SENT TO
GAERTNER OF URANERZ CANADA LTD
J AUSTIN DEPUTY MINISTER ENERGY MINES AND RESOURCES
EMAR OTT

GULFMINSCO TOR

EMAR OTT

GULFMINSCO TOR
APRIL 14, 1972

CONFIDENTIAL

TO J AUSTIN, DEPUTY MINISTER ENERGY MINES AND RESOURCES, OTTAWA

RE YOU HAVE ADVISED THAT IT IS IN THE NATIONAL INTEREST OF CANADA
THAT GULF MINERALS CANADA LIMITED TO BE REPRESENTED AT THE PARIS
MEETING OF PRODUCERS, PLEASE BE ADVISED THAT PURSUANT TO YOUR
DIRECTION, GULF WILL BE REPRESENTED BY N M EDIGER AND N Z ESTEY.
I MUST BE STRESSED THAT SUCH REPRESENTATIVES' ABILITY TO ACQUIESCE
ON BEHALF OF GULF TO ANY ARRANGEMENT WHICH MAY BE ACCEPTABLE TO
OTHER PRODUCERS DETERMINED TO BE IN THE BEST INTEREST OF CANADA,
WILL BE CONTINGENT UPON A SUBSEQUENT DETERMINATION THAT THE SAME
DOES NOT RESULT IN GULF VIOLATING ANY APPLICABLE LAW ON RESTRAINT
OF COMPETITION, AND FURTHER, ITS ACCEPTABILITY TO URANERZ CANADA
LIMITED AS CO-OWNER OF RABBIT LAKE.

N M EDIGER
MANAGER, GULF MINERALS CANADA LIMITED
GULFMINSCO TOR

EMAR OTT
OTTAWA ONTARIO 14/4/72
N M EDIGER
I HAVE BEEN AUTHORIZED BY CABINET TO ADVISE YOU THAT THE
CANADIAN GOVERNMENT IS CONCERNED WITH THE UNSTABLE SITUATION
IN WORLD URANIUM MARKETING., HAS FOLLOWED CAREFULLY DISCUSSIONS
AMONGST WORLD PRODUCERS., IS PREPARED TO ALLOW URANIUM CANADA
LTD. AND ELDORADO NUCLEAR LTD. TO ENTER INTO AN INFORMAL
WORLD PRODUCERS' ARRANGEMENT., THAT IN ORDER TO BE WORKABLE,
ALL CANADIAN PRODUCERS SHOULD PARTICIPATE., TO ADVISE YOU,
AS ALL EXISTING CANADIAN PRODUCERS HAVE PROPOSED TO
PARTICIPATE IN SUCH AN ARRANGEMENT, AND THE CANADIAN
GOVERNMENT IS OF THE OPINION THAT SUCH AN ARRANGEMENT WOULD
BE IN THE NATIONAL INTEREST, YOUR COMPANY IS REQUESTED TO
MAKE EVERY EFFORT TO ADHERE TO THE COMMON TERMS.
D S MACDONALD MINISTER ENERGY MINES AND RESOURCES
EMAR OTT

GULFMINSCO TOR

Attachment #6

12th July, 1972

Mr. O. J. C. Runnalls,
Senior Adviser, Uranium and
Nuclear Energy,
Department of Energy, Mines and Resources,
588 Booth Street,
Ottawa, Ontario

Dear John,

Enclosed please find my notes on the recent Operating Committee meetings in Cannes on July 6 and 7. Mario de Bastiani and I agreed that I would prepare and distribute these to Canadian Group members. If Mario finds any errors or omissions he will no doubt so advise.

Mario and I suggest that there is no compelling need for another meeting of the Canadian Group in the immediate future to discuss the Cannes meetings. However, if you or anyone else desire a meeting it can doubtless be arranged.

You will note that in the Committee's approval of the Secretariat's budget proposal, we agreed to a working capital floor of FF 50,000, of which FF 13,500 is due from Canada and requested before July 31. May I take it that you will make this remittance and recharge the individual companies for their portions?

Sincerely,

Alan Howela

cc: Messrs. M. de Bastiani (Denison), J. C. Burger (Eldorado)
N. M. Ediger (Gulf), K. E. Kegel (Uranerz Canada)

Note to File: U-Marketing -- Agreements

Meeting of Operating Committee -- Cannes, July 6, 7, 1972.

Present:	Michel Houdaille	(Uranex)
	Philippe de Penanros	(")
	Andre' Petit	(CEA)
	Reginald Worrall.	(NUFCOR).
	William Lawrence	(" - Director)
	Barry Lloyd	(Peko EZ)
	Peter Stork	(QML)
	Mario de Bastiani	(Denison)
	Alan Lowell	(Rio Algom)
	Louis Mazel	(RTZ)
	France Millet	(RTZ)

1. Secretariat Organization and Budget

In private discussion and at the meetings Andre' Petit made a good impression. He is in his forties, educational background - political science, economics and law. Present position as personal assistant to Goldschmidt, director of CEA, on international affairs, including Euratom Treaty, safeguards, and international relations in gaseous diffusion technology. He speaks and understands English well.

Agreed that Club would make use of Petit's services on an interim basis, subject to review early in 1973, and that the facilities of CEA in Paris would also be used as a locale for the secretariat. From the security aspect it was thought convenient that Petit would be "buried" in the large CEA HQ building.

Agreed that Petit would move to a completely independent office within CEA, and, administratively, would come under a wholly-owned subsidiary of CEA -- Societe' d'Etudes et de Recherches d'Uranium (S.E.R.U.).

Petit will continue to work part-time only for Goldschmidt, eliminating some of his present responsibilities and retaining only those relating to Euratom and gaseous diffusion relations (which are related to uranium). On this basis CEA had offered to continue to pay his salary, all other expenses of the Secretariat being rechargeable to Club members. Agreed we would review early in 1973 desirability of the Club being responsible also for Petit's salary, or an appropriate portion thereof.

Petit submitted an approximate annual budget (copy attached) less his own salary, to be shared by the 5 Groups according to their average quotas for the total of the 2 periods through 1980. He also requested an advance of FF 50,000 by July 31 to defray operating expenses following commencement of operations of the Secretariat. For committee meetings it was agreed that all members would continue to pay their own travel and hotel expenses and that the "host country" members would pay the bulk of other local expenses. After discussion, Petit's budget was approved.

In discussion on procedures for communications with the Secretariat, it was agreed that:

(i) that Petit would be directly responsible to the Operating Committee, and not to CEA, on all Club matters;

(ii) after discussion on the relative merits of appointing a chairman to the Operating Committee for Secretariat reporting purposes versus reporting to the single reporting centre of each of the 5 Groups, that reporting would be to the 5 Groups, on a trial basis. The argument for this procedure is that modern communications should enable it, and in any case, if there were a chairman, in most instances he could not resolve issues without referring to the others;

(iii) that the Secretary will be responsible for redistribution of information received from individual members, who will normally not copy information to the others. If they should need to do so they should indicate to the Secretary in their communication to him that they have so copied, to avoid duplication of messages and effort.

(iv) that Operating Committee members would make a point of advising their own secretaries always where they can be located if they are away from their offices;

(v) Petit hopes to have his own telex at CEA, for Secretariat use, in about a month. Meanwhile members should communicate to the Uranex telex, attention Mr. Petit. Otherwise, Mr. Petit's CEA location is: -

Mr. Andre' Petit,
Societe' d'Etudes et de Recherches d'Uranium,
c/o Commissariat a l'Energie Atomique,
29-33, Rue de la Federation
Paris XV' (telephone 273-60-00 ext. 5090)

Private address: -

39 Avenue de Breteuil,
Paris VII

(private telephone 783-72-92)

Also agreed that the Secretary would take minutes of the meetings of the Operating Committee, but that the distributed version to Committee members would be brief, informal, without signature, and containing a summary of decisions made only.

2. Specific Issues Raised by Canadian Group

(i) Proposal made on benalf of Gulf/UEBG that the 1,000 t.p.a. 1978 through 1980 for RWE business outside the Canadian quota should be considered as 3,000 tons total for the same period, irrespective of the actual annual amounts sold to RWE. This was agreed to.

(ii) Proposal that the same rules applying to offers made respecting deliveries prior to 1981 (outside the pricing rules for post 1978 delivery years which have already been defined) should apply equally to delivery years after 1980 in offers involving "overlap" deliveries before 1981 and after 1980). It was agreed that this was the intent of the parties, and that it should be incorporated in the rules (by way of the Secretary's minutes of the Cannes meetings).

(iii) Proposed that the rules should specifically provide that offers and contracts be left "open-ended" as regards origin of uranium, so that tonnage could be switched among Club members if quotas were exceeded or if anyone got too far out of line (also to facilitate joint supply in large contracts). NUFCOR thought the principle had always been implied. The Australians advised that they would probably find it difficult, as new producers, to adhere to it as their buyers, when the Australians were lead bidders, would probably want assurance as to specific source of ore. They would consider the proposal in Australia. Otherwise, it was agreed that members would use best efforts to avoid defining source.

3. New Business Concluded Since January 1, 1972

Members tabled details of new business concluded since January 1, 1972 for inclusion in quotas, including prices. This data is given in an attachment hereto. Most of the transactions were already known to members, but 2, by QML, are new. The new business tabled in summary was: -

RTZ-Kyushu	-- 2,700 s.t.	U_3O_8,	1977	through	1986
NUFCOR-Kyushu	-- 900	"	1977	"	1985
Ranger-Kyushu	-- 2,000	"	1977	"	1986
QML-Kyushu (new)	-- 1,000	"	1977	"	1983
NUFCOR-Chubu	-- 1,300	"	1975	"	1978
QML-Chugoku (new)	-- 500	"	1976	"	1985

Other points arising out of this discussion were: -

(i) Peter Stork of QML reported that the Australian Government has not yet approved any of the recent Australian contracts. As they are all at pre-club prices there is some risk they will not be approved, and hence will be renegotiated or cancelled. While the future Australian producers would like to force the Japanese to pay the higher, club, prices, as a result of their own Government's intervention, they are in fact putting pressure on the Government to approve them on moral grounds and in order not to spoil the industry's reputation in the eyes of the Japanese right from the start.

(ii) Peter Stork further advised that the Australian Government has informed Proud that it wants price renegotiation provisions for all deliveries after 1980. Further, the Australian Government will only consider contracts (for approval); not letters of intent.

(iii) A long, tedious, and rather acrimonious debate took place on an issue raised by Louis Mazel of RTZ. Mitsubishi, the RTZ Group agents in Japan had, according to Louis Mazel, accepted 200 tons of business from Chubu in each of the years 1977 and 1978 at prices equivalent to the previously negotiated NUFCOR prices to Chubu. (U.S. $6.95 and $7.20 CIF Springfields respectively), without specific RTZ sanction. Louis Mazel, while not endorsing Mitsubishi's action, felt that for a wide range of reasons affecting RTZ it was desirable to uphold Mitsubishi in this one specific instance. He therefore pleaded with the committee to allow this transaction to go through. Other members felt strongly (particularly the French and South Africans) that this would be a most undesirable precedent. In the end, a compromise solution was found under which RTZ would reduce the sale to 100 tons in each of the two years and accept a nominal "penalty" for infringing Club rules amounting to a 5% addition to the total amount (10 tons) to be deducted from the RTZ quota on the further understanding that such an event would not be allowed to re-occur. Michel Houdaille of URANEX pointed out that they had been offered 3,100 tons of Chubu business on previous NUFCOR terms, had refused it, and would continue to do so notwithstanding pressure from their agents Nissho-Iwai. Houdaille believed that the Japanese trading companies would continuously manoeuvre to try to upset the Club arrangements.

(iv) Relative to the problem of equalized pricing, NUFCOR and URANEX repeated their original objection to the RTZ method of quoting WMP with a fixed floor. Louis Mazel argued again that as a new producer Rossing needed a floor stated for purposes of its bankers. The others argued that this would be more tolerable if the floor price were escalated annually on some reasonable basis. Louis Mazel said he would try for an escalated floor price in subsequent offers.

(v) From the discussions it emerged that the Australians have not yet resolved among themselves how the Australian quotas will be split up internally. For example, Peter Stork mentioned that out of the first period 4,420 ton Australian quota, QML had so far only been allocated 200 tons. Barry Lloyd mentioned also that all contracts made by Ranger will be split equally between PEKO and EZ for tax reasons.

4. Current Offers Outstanding

(1) SSPB Sweden

Michel Houdaille confirmed that the Swedes have told Uranex they will not make a decision before August (if then). Actually both French offers (for different tonnages) expired on July 1, and a renewal has not so far been requested. The 2 French offers made are as follows: -

	I		II	
	S.T. U_3O_8	U in UF_6	S.T. U_3O_8	U in UF_6
1975	400	U.S.$19.18	-	-
1976	870	U.S.$20.05	370	U.S.$20.9
1977	900	U.S.$20.95	400	U.S.$21.9
1978	580	U.S.$21.90	85	U.S.$23.0
1979	500	WMP	-	-
1980	500	"	-	-
1981	500	"	-	-
1982	500	"	-	-
1983	500	"	-	-
1984	500	"	-	-
1985	500	"	-	-

SSPB claim they have firm prices from one supplier through 1985. They prefer to buy at fixed prices. Philippe de Penanros still believes the Uranex offer for the large quantities is the best. R. Worrall believed that both Westinghouse and GE combined would have nothing like the quantities required by SSPB through 1978. Louis Mazel reported that Commonwealth Edison had requested of RTZ the right to resell contracted MKU uranium to a reactor manufacturer. This had been refused by RTZ. Di Salvo of Westinghouse had told Mazel that no U.S. material is on offer in Sweden, despite U.S. Eximbank financing, because U.S. uranium is too expensive.

Insofar as any conclusions can be drawn now, it was felt there was a chance the Swedes were bluffing. It was also recognized that they do not have to make a decision now and that they might be willing to gamble that the Club arrangements would break down. Alan Lowell expressed the view that the Club could well be in for a "war of nerves" for quite a while, with little business being done in the short term as there were

no substantial new needs requiring delivery much before 1975. Strong buyers, like SSPB, might well be tempted to wait in the hope of new developments favourable to them.

Michel Houdaille offered the comment (warning) that Westinghouse might look for a joint venture arrangement starting in 1980, and then go to the market for advanced deliveries.

(ii) Germany - HEW

By prior arrangement NUFCOR and RTZ are offering independently with a view to splitting the business. The proposed sharing arrangements are fairly complex, but the two offers were tabled as follows: -

	Actual Requirements (s.t. U_3O_8)	RTZ Prices	NUFCOR Prices
1976	740	U.S.$6.65 c.i.f. French port	U.S.$6.61 c.i.f. Spri
1977	--	U.S.$6.90*	U.S.$6.81*
1978	--	U.S.$7.20*	U.S.$7.12*
1979	210 - 290	plus escalation on 1978 price	
1980	210 - 290	subject to ceiling of 5% p.a.	

* if any deliveries are delayed from 1976

RTZ has actually offered 150 - 200 tons 1976, and 100 t.p.a. 1978 through 1981, and would accept 150 - 200 tons from NUFCOR, if NUFCOR gets the whole business.

The RTZ offer expires July 31. The NUFCOR offer expired on June 30.

Both groups have also offered UF_6 as an alternative, as follows: -

	RTZ ($ Kg U in UF_6)	NUFCOR ($ Kg U in UF_6)
1976	20.30	20.19
1977	21.10	20.92
1978	22.10	21.64

Alan Lowell tabled the outstanding offer to HEW previously reported to him by UEBG, as follows: -

1976	U.S. $6.65
1977	U.S. $6.95
1978	U.S. $7.20

The UEBG offer is still outstanding. The Canadians were first requested to confirm to the Secretary the expiry date of the UEBG offer and that it would not be renewed, as the UEBG prices are dangerously close to those of NUFCOR/RTZ

Michel Boudaille tabled the Uranex offer to HEW as follows: -

Uranex

1976	U.S. $6.70 c.i.f. converter
1977	U.S. $6.95 "
1978	U.S. $7.20 "

He gave the opinion that HEW is in no hurry. They specifically asked Uranex and Ranger to reduce their prices below $6.00 (both refused). The reactor itself is not yet ordered. He felt HEW will let all offers expire and then ask for new bids. New bids made would of course then be at the Club prices.

5. Potential New Business

The only potential new business involving offers in the near to fairly near future which appears to exist and which was discussed at these meetings involves offers from Yugoslavia and Taiwan, both difficult and unusual markets.

The Yugoslav requirements are about 455 s.t. U_3O_8 1975/6 and about 168 s.t. 1978 to 1983. Offers have been requested by July 20. Gulf have advised that there is already keen competition from Westinghouse and KWU (Germany) based on reactor plus fuel for first core (probably turnkey offers).

Probable Taiwan requirements came through at the time of the meetings. They are, if believable, surprisingly large:

	S.T. U_3O_8	
1975	450	
1976	620	(440)
1977	745	(565)
1978	320	
1979	550	
1980	480	
1981	410	
1982	410	
1983	410	
1984	410	
1985	410	
	5,215	(1,855)

NUS (Washington) is handling this business on behalf of the Taiwanese. Reg. Worrall believes this will be handled on a sealed bid basis, with little or no opportunity to switch business from one Club member to another if found to be desirable. Also the Taiwanese will almost certainly want long-term finance. The Australians are not certain whether they will be allowed by their Government to offer to Taiwan. They promised to check quickly in Australia and advise the Secretariat.

In the absence (and probable continued absence) of buyer decisions in Sweden and Germany, it was recognized that there was considerable difficulty in deciding who should properly be the lead bidders in the cases of Yugoslavia and Taiwan. As an interim solution it was agreed that Uranex should lead again on Yugoslavia, and the Australians (if they could do so) on Taiwan, with NUFCOR as runners up in both cases. Prices quoted would be such that the lead could be switched in both cases if negotiation were possible and if it seemed desirable to do so. The Australians will report as soon as possible to the Secretariat whether they are allowed to offer to Taiwan. There was a further understanding that if the Australians do get the Taiwan business, the 1975 delivery portion will, if possible, go to NUFCOR.

In the case of Yugoslavia, it was agreed that Uranex would open at U.S. $6.55 f.o.b. (1975) (compared with the Club price of U.S. $6.45 c.i.f.), that NUFCOR would open 3 - 5 cents higher, and that all others should offer at least 15 cents higher. Louis Mazel stated that RTZ would offer at $6.75.

Assuming all the new business goes the way it is planned, Canada should have a good claim for whatever emerges as the next piece of business, particularly with regard to the low Canadian portion so far filled in the second period.

On other potential business, JAPCO was considered to be most uncertain. They are short of money and must have Eximbank financing. JAPCO also wants to deal purely in terms of enriched uranium. Reg Worrall of NUFCOR indicated that NUFCOR might make an offer, but had not yet decided whether it was worth the effort. In any case they had very little hope.

As potential new business to emerge from Hokuriku, Hokkaido and Mexico had not yet become concretised, it was agreed to defer consideration of these markets until the next meeting.

6. Matters Relating to Club Rules

(i) RTZ presented a paper (copy attached), containing a suggested formula for dealing with the currency risk question. It was agreed that this was too complex an issue for immediate study and that it would be deferred for consideration at the next meeting. Canadian group simply commented that because of the close relationship of the Canadian and U.S. economies, Canadian producers would normally "take their chances" on the U.S. dollar.

(ii) Louis Mazel for RTZ proposed a minor change to Page 5 of the Rules regarding timing of balance of payment if U_3O_8 deliveries were made f.o.b. instead of c.i.f. He suggested that in view of normal conversion and shipping time the period of 60 days now given in the Rules should be extended to 90 days in case of f.o.b. delivery. This was agreed to.

(iii) Louis Mazel also raised the question of how price negotiations should be dealt with (in conformity with Club Rules) in those existing contracts where WMP formulae were stipulated. Reg Worrall of NUFCOR reported they had just been caught in a squeeze in one of their poorer contracts (with Kansai) calling for price negotiation 6 years in advance of delivery (normally they negotiate 3 years in advance). Because they were obliged just recently to fix a 1979 price with Kansai, before the firm establishment of Club prices they had been obliged to agree to $10.13 lb./U in UF_6, which is about $1.00 below the Club price for that year. He confirmed

this would not be repeated. NUFCOR's next price negotiation is not due until end 1973, by which time Club prices should be firmly established. He undertook to report to the Secretariat before commencing this next round of negotiations. RTZ and URANEX reported that they have no price negotiations until 1975. When this issue does come up again with NUFCOR (1980 price fixing), the difficulty was noted that there is as yet no firm Club price for 1980.

7. Other Matters

Louis Mazel for RTZ distributed to members the following tables (copies attached), prepared by France Millet, for their information.

(i) RTZ estimate of free world demand through 1985 (before deduction of contracts made after January 1, 1972);

(ii) RTZ estimate of current uncommitted demand through 1980 (non U.S.A., as of July 1972);

(iii) Recent contracts concluded, as of July 1972.

Members expressed appreciation to RTZ for this data, and it was agreed that they would advise the Secretary as soon as possible of their comments and/or differences of opinion, if any.

8. Next Meeting

As a result of some private discussion among members prior to open discussion at the meeting, it was agreed: -

(i) that there should be a fall meeting, after the summer vacation period was over, as there could well be new developments in the market requiring consideration and action;

(ii) that while the next meeting would normally have been in Canada, it would be more convenient to members to hold a Canadian meeting around the time of the USAIF Conference in Washington (November 13-16);

(iii) that it would be desirable to bind the Australians more closely at these early stages of the Club, and that the next meeting should be in Sydney on October 2 and 3;

(iv) that there would be a meeting in Toronto, following USAIF, on November 17 at 9.00 a.m.

AFL/ak

July 12, 1972

ATTACHMENT 1 (Oslo Meeting, July 6, 7, 1972)

SUMMARY OF NEW BUSINESS CONCLUDED FROM JANUARY 1, 1972 UP TO TIME OF MEETING

RTZ-KYUSHU (S.T. U_3O_8)

				Price
1977	100			U.S.$6.85 f.o.b. major port
	100			U.S.$7.10 " "
1978		100		WMP with floor of U.S.$7.50
1979		100		(still subject to negotiation)
1980		200		"
		400		"
1981			200	"
1982			200	"
1983			200	"
1984			400	"
1985			600	"
1986			600	"
			2,200	

NUFCOR-CHUBU (S.T. U_3O_8)

			Price
1975	400		U.S.$6.40 c.i.f. Springfields
1976	300		U.S.$6.70 "
1977	300		U.S.$6.95 "
	1,000		
1978		300	U.S.$7.20 "
		300	

(prices to be adjusted if another converter is used)

NUFCOR-KYUSHU (S.T. U_3O_8)

				Price
1977	100			U.S.$6.88 f.o.b. Durban
	100			
1978		100		U.S.$7.13 "
1979		100		negotiated annually thereafter
1980		100		3 years in advance. If no
		300		agreement then NUFCOR may
1981			100	cancel (NUFCOR's option to
1982			100	cancel).
1983			100	
1984			100	
1985			100	
			500	

RANGER-KYUSHU (S.T. U_3O_8)				Price (payable in Australian dollars at $A 1.00 = U.S. $1.19
1977	50			U.S. $6.48 f.o.b. Aust. port
	50			
1978		50		U.S. $6.63 "
1979		100		U.S. $6.78 "
1980		100		U.S. $7.17 "
		250		
1981			200	U.S. $7.45 "
1982			200	U.S. $7.72 "
1983			300	U.S. $7.95-8.18 (floor & ceili
1984			300	U.S. $8.19-8.67 "
1985			300	U.S. $8.43-9.20 "
1986			400	to be negotiated (no floor)
			1,700	(subject to ½% discount after 1,500 tons)

RANGER-CHUBU (S.T. U_3O_8)				Price (payable in Australian dollars at $A1.00 = U.S. $1.
1977	200			U.S. $6.55 c.i.f. BNFL
	200			
1978		200		U.S. $6.70 "
1979		200		U.S. $6.85 "
1980		300		U.S. $7.25 "
		700		
1981			200	U.S. $7.50 "
1982			200	U.S. $7.75 "
			400	

QML-KYUSHU (S.T. U_3O_8)				Price (payable in Australian dollars at $A1.00 = U.S. $1.1
1977	75			U.S. $6.49 f.o.b. Darwin
	75			
1978		75		U.S. $6.62 "
1979		150		U.S. $6.76 "
1980		150		U.S. $7.12 "
		375		
1981			150	U.S. $7.44 "
1982			200	U.S. $7.62 "
1983			200	U.S. $7.86 "
			550	

QMI-CHUGOKU (S.T. U_3O_8)				Price (letter of intent only, Australian dollar rate not yet fixed)
1976	50			U.S.$6.40
1977	50			U.S.$6.54
	100			
1978		50		U.S.$6.69
1979		50		U.S.$6.84
1980		50		U.S.$7.22
		150		
1981			50	U.S.$7.54
1982			50	U.S.$7.73
1983			50	U.S.$8.00
1984			50	U.S.$8.32
1985			50	U.S.$8.65
			250	

SECRETARIAT BUDGET ESTIMATE
(French Francs - annuel basis)

The following budget estimate is based on the assumption that the COMMISSARIAT A L'ENERGIE ATOMIQUE provides without charge the offic and its maintenance, and the work of the Secretary himself.

- Wages expenses of the typist-secretary .. (including overhead and social charges)	55 000
- Hiring of material ..... (typewriting and computing machine, etc.)	6 000
- Fittings of office	5 000
- Téléphon and telex (1)	35 000
- Travelling and receptions expenses (2) ..	60 000
- Books and publications	2 000
- Office requisites	2 000
- Miscellaneous (10 % of the above)	15 000
	180 000

Extensive market research analysis other than aggregating studies made by the partners would have eventually to be financed on top of the above budget.

The expenses will be paid by the "SOCIETE D'ETUDES ET DE RECHERCHE D'URANIUM" (S.E.R.U.), an existing firm 100 % controlled by C.E.A.

To cope with starting expenses I propose a working capital of 50 000 Francs being supplied by the partners before July 31st, accordingly following payments :

- CANADA	13 500 F.
- AUSTRALIA	11 000 F.
- NUFCOR	10 500 F.
- URANEX	10 000 F.
- R.T.Z.	5 000 F.

based on average quota for each partner

will have to be sent to S.E.R.U. under the heading "participation to uranium economic studies".

Justification of expenses established by the Secretary shall be sent by S.E.R.U. to the partners on the first of October, January, April and July.

A. PETIT

(1) including 11 000 advanced payment paid as a deposit
(2) this figure do not include any expense for the organization the meetings of partners.

(Current, July 6, 1977)

CURRENCY CLAUSE

1. The parties intend to share equally any costs arising from any relevant exchange rate changes. The parties recognize that a potentially inequitable situation could arise in the event of a substantial change of value of the United States dollar, with respect to the currency of the country in which production of the U_3O_8 occurs.

2. It is Minserve's present intention to supply the U_3O_8 to be delivered under this Agreement from affiliated concentrate supply companies in Australia, Canada or Southern Africa. Not less than [ ] months prior to each Delivery Year, Minserve shall notify [ ] of the country or countries of origin of the U_3O_8 at that time. Notice may be given to cover one or more Delivery Years.

3. As used in this article, the following terms shall have the meanings specified: (a) "Exchange Rate" shall mean the spot selling price of a specified currency (expressed in U.S. dollars) for bank transfers in the United States for payment outside the United States quoted by First National City Bank, New York, New York, at 4:00 p.m. (New York time) on the date of delivery of the U_3O_8 and (b) "Base Exchange Rate" shall mean the Exchange Rate of a specified currency on the effective date of this Agreement which are for the Australian $, Canadian $ and Rand:

1 Australian dollar = [ ] U.S. dollars

1 Canadian dollar = [ ] U.S. dollars

1 Rand = [ ] U.S. dollars

4. (a) A Currency Factor representing the deviation of the Exchange Rate from the Base Exchange Rate shall be determined for the currency of the country of origin selected in accordance with Para 2 as follows:

$$\text{Currency Factor} = \left[1 - \frac{\text{Exchange Rate}}{\text{Base Exchange Rate}}\right] \times \frac{\text{Base Local Costs}}{\text{Base Price}}$$

(b) If the Currency Factor equals or does not exceed ± no adjustment in price shall be made for currency revaluation.

(c) If the Currency Factor exceeds ± but does not exceed ± then:

(i) If the Currency Factor is positive, a downward adjustment in the price equal to the product of one-half of such factor and the price shall be made.

(ii) If the Currency Factor is negative, an upward adjustment in the price equal to the product of one-half of such factor and the price shall be made.

(d) If the Currency Factor exceeds ± , the parties shall negotiate in good faith toward an equitable adjustment of the price; in the event the parties are unable to agree, then Minserve shall have the right to terminate this Agreement.

5. (a) If the date of delivery occurs on a Saturday, Sunday or holiday, then the following business day shall be used to determine the Exchange Rate

(b) If no Exchange Rate is quoted for the applicable currencies, no adjustment in price due to currency revaluation shall be made.

(c) The Currency Factor shall be determined to the closest four decimal places.

Attachment #7

Ottawa, Ontario
K1A 0E4

CONFIDENTIAL

September 5, 1972

Mr. N.M. Ediger,
Manager,
Gulf Minerals Canada Limited,
Suite 1300,
10 King St. E.,
Toronto 1, Ontario.

Dear Mr. Ediger:

Direction to the Atomic Energy Control Board

You will now be aware that on August 23rd of this year an amendment to Section 201 of the Atomic Energy Control Regulations was published in the Canada Gazette. I am attaching for your information a copy of that amendment.

At the same time as this change in regulations took place the Minister issued a Direction to the Atomic Energy Control Board which is aimed at ensuring that the terms and conditions of the uranium export contracts entered into by Canadian producers on or after January 1, 1972 and covering the export sale of uranium during the period 1972 - 78 inclusive which have not been disposed of by the Board by August 23, 1972, are in accord with new government policy regarding volumes of exports and export prices.

I am attaching for your confidential information a copy of the Direction which has gone to the Board and, in so doing, I should note that we are in the process of proposing an amendment to this Direction which will make it abundantly clear that in addition to the market allocations indicated therein there is a "captive market" for the Rabbit Lake production of 3700 and 3000 tons of U_3O_8 in 1972-77 and 1973-80 respectively, which is exempt from all but the pricing criteria of the agreement, provided it is sold to and consumed by RWE.

Yours sincerely,

J. Austin

Attach.

Registration
No. Date
SOR/72-301 2 August, 1972

ATOMIC ENERGY CONTROL ACT

Atomic Energy Control Regulations, amendment

P.C. 1972-1719 27 July, 1972

His Excellency the Governor General in Council, on the recommendation of the Minister of Energy, Mines and Resources, pursuant to section 9 of the Atomic Energy Control Act, is pleased hereby to approve the annexed amendment, made by the Atomic Energy Control Board on the 19th day of July, 1972, to the Atomic Energy Control Regulations approved by Order in Council P.C. 1960-348 of 17th March, 1960[1], as amended[2], in accordance with the Schedule hereto.

SCHEDULE

1. Section 201 of the *Atomic Energy Control Regulations* is amended by adding thereto the following subsection:

"(2) A permit to export prescribed substances shall not be granted unless the Board is satisfied that the prices stipulated for, and the quantities of, the prescribed substance proposed to be exported meet such criteria, if any, respecting price levels and quantities as may be specified in the public interest in a direction given to the Board by the Minister."

[1] SOR/60-119, *Canada Gazette* Part II, Vol. 94, No. 7, April 13, 1960

[2] SOR/64-458, *Canada Gazette* Part II, Vol. 98, No. 22, November 25, 1964

QUEEN'S PRINTER FOR CANADA, OTTAWA, 1972

Enregistrement
N° Date
DORS/72-301 2 août 1972

LOI SUR LE CONTRÔLE DE L'ÉNERGIE ATOMIQUE

Règlements sur le contrôle de l'énergie atomique—Modification

C.P. 1972-1719 27 juillet 1972

Sur avis conforme du ministre de l'Énergie, des Mines et des Ressources et en vertu de l'article 9 de la Loi sur le contrôle de l'énergie atomique, il plaît à Son Excellence le Gouverneur général en conseil de ratifier la modification que la Commission de contrôle de l'énergie atomique a apportée le 19 juillet 1972, conformément aux Règlements sur le contrôle de l'énergie atomique, ratifiés par le décret C.P. 1960-348 du 17 mars 1960[1], dans leur forme modifiée[2].

ANNEXE

1. L'article 201 des *Règlements sur le contrôle de l'énergie atomique* est modifié par l'adjonction du paragraphe suivant:

«(2) Aucun permis d'exportation de substances prescrites ne doit être accordé sans qu'il soit établi à la satisfaction de la Commission que les prix stipulés et la quantité de la substance prescrite qu'il est proposé d'exporter se conforment aux critères s'il en est, concernant les niveaux de prix et les quantités que le Ministre peut spécifier dans l'intérêt public par instruction donnée à la Commission.»

[1] DORS/60-119, *Gazette du Canada* Partie II, Vol. 94, n° 7, 13 avril 1960

[2] DORS/64-458, *Gazette du Canada* Partie II, Vol. 98, n° 22, 25 novembre 1964

IMPRIMEUR DE LA REINE POUR LE CANADA, OTTAWA, 1972

ENERGY, MINES AND RESOURCES — L'ENERGIE, DES MINES ET DES RESSOURCES

Ottawa K1A 0E4, Ontario
August 17, 1972

CONFIDENTIAL

Dr. D.G. Hurst
President
Atomic Energy Control Board
307 Sparks Street
Ottawa, Ontario

Dear Dr. Hurst;

Uranium Marketing Arrangement

On June 29, 1972, Cabinet approved the terms of a uranium export marketing arrangement proposed by producers in Canada and several other countries. In order to enforce compliance with the terms of the marketing arrangements Cabinet also approved a proposal to issue an appropriate Regulation pursuant to section 9 of the Atomic Energy Control Act together with a Direction to be given to the Board pursuant to section 7 of the Act.

On July 27, 1972, an amendment to section 201 of the Atomic Energy Control Regulations was approved by Order-in-Council P.C. 1972-1719 (copy attached). The amendment is scheduled for publication on August 23, 1972.

The text of the proposed Direction having been agreed upon interdepartmentally and subsequently approved by Cabinet on July 13, 1972, is attached hereto.

You are hereby instructed to ensure that the terms and conditions of uranium export contracts entered into by Canadian producers on or after January 1, 1972 and covering the export sale of uranium during the period 1972 to 1978 inclusive which have not been disposed of by the Board by August 23, 1972 are in accord with the criteria set forth in the above-mentioned Direction.

Yours sincerely,

Donald S. Macdonald

Donald S. Macdonald

CONFIDENTIAL

DIRECTION TO THE ATOMIC ENERGY CONTROL BOARD PURSUANT TO SECTION 7 OF THE ATOMIC ENERGY CONTROL ACT

When reviewing contracts for the export of the prescribed substances referred to in the attached Regulation pursuant to the Canadian Uranium Policy Statement dated June 19, 1969, you are also instructed to ensure that such contracts are in accord with the following minimum price levels and volumes of sales of the prescribed substances intended for export.

The following schedule of minimum price levels is to apply to export contracts which have not been disposed of by the Board at the time of the coming into force of this Direction made pursuant to section 7 of the Atomic Energy Control Act.

U_3O_8 and UF_6 Minimum Prices in U.S. Dollars

Year	For Contracts to Japan, Korea and Taiwan		For all other Contracts to end users (1)	
	(2)	(3)	(2)	(3)
	U_3O_8	UF_6	U_3O_8	UF_6
1972	5.60	7.90	5.40	7.65
1973	5.95	8.35	5.75	8.10
1974	6.30	8.80	6.10	8.55
1975	6.65	9.30	6.45	9.05
1976	7.00	9.75	6.80	9.50
1977	7.35	10.20	7.15	9.95
1978	7.70	10.70	7.50	10.45

(1) Excluding those in Canada, Australia, France, South Africa and the United States.

(2) Expressed in U.S. $ per lb. U_3O_8 c.i.f. conversion facilities.

(3) Expressed in U.S. $ per lb. of U contained in UF_6 delivered to the U.S.A.E.C. diffusion plant.

These prices include charges for weighing, sampling and conversion losses but exclude interest charges. The above c.i.f. prices apply to any converter. If f.o.b. prices are quoted then reduction of up to 10¢ per lb. U_3O_8 through 1975 and 15¢ per lb. U_3O_8 from 1976 to 1978 can be made.

.../2

The following market quotas have been established:

Group	1972-77	1978-80
Canada	33.50%	23.22%
Nufcor	23.75	19.26
Uranex	21.75	19.26
Australia	17.00	24.44
Rio Tinto Zinc	4.00	13.82

The agreed distribution of the Canadian 1972-77 quota is as follows:

Supplier	Amount: Tons U_3O_8	Percentage
Denison Mines Limited-Uranium Canada Limited*	4,500	51.67
Gulf Minerals-Uranerz Canada Limited	1,900	21.81
Denison Mines Limited	865	9.93
Rio Algom Mines Limited	865	9.93
Eldorado Nuclear Limited	580	6.66
TOTAL	8,710	100.00

*To be supplied to Spain from the Joint Venture Stockpile and the General Government Stockpile. The minimum price schedule will not apply to the Spanish contract because a bid had been submitted to Spain by Denison Mines prior to the internationally-agreed exclusion date of January 1, 1972.

The tonnages quoted are based on an assumed uncommitted market during the period 1972-77 of 26,000 tons U_3O_8. Since that estimate may be either too high or too low, the definitive figure is the percentage of the actual market.

Canada's allocation for the period 1978-80 is 23.22% of an assumed uncommitted market of 45,000 tons U_3O_8, i.e. 10,450 tons. The distribution of this quota has not been settled as yet among the Canadian producers. Once it has been established, a further Direction will be issued.

EMR

From the Office of the Minister DEPARTMENT OF ENERGY, MINES AND RESOURCES, Ottawa, Canada

STATEMENT BY THE MINISTER OF ENERGY, MINES AND RESOURCES

August 23, 1972

The Honourable Donald S. Macdonald, Minister of Energy, Mines and Resources, issued today the following statement regarding the Government's policy with respect to future sales of uranium to other countries:

"On June 19, 1969, the Government announced a uranium policy providing for the examination of all contracts covering the export of uranium and thorium to ensure that the terms and conditions of such contracts would be in the national interest. The examination is carried out by the Atomic Energy Control Board in consultation with the Department of Industry, Trade and Commerce. Approval of such contracts and issuance of the necessary export permits only take place when all aspects and implications have been found to be in the national interest. A copy of the June 19, 1969, policy statement is attached.

In order to stabilize the current uranium marketing situation and to promote the development of the Canadian uranium industry, I have today issued a Direction to the Atomic Energy Control Board covering such aspects as minimum selling prices and volumes of sales to export markets. Because of the nature of uranium export contracts it would not be in the public interest to disclose further contract details at this time."

STATEMENT IN THE HOUSE OF COMMONS

BY THE HONOURABLE OTTO E. LANG

MINISTER, ENERGY AND WATER RESOURCES

June 19, 1969

Canadian Uranium Policy Statement

I should like to inform the House of the government's policy with respect to future sales of uranium to other countries.

On June 3, 1965, Prime Minister Pearson outlined to this House a policy regarding uranium exports which provided for such exports under safeguards to ensure that the uranium was used only for peaceful purposes, and which also provided for the stockpiling of uranium to enable operation of Canadian uranium mines to be continued while markets developed for this material.

Many significant changes have taken place since 1965 in the world uranium market. There is a growing world requirement in relation to available supply and a demand for long-term contracts. The increasing dependence on uranium fuel for future electrical power generation is providing an incentive for many countries to become concerned with uranium activities in other countries. At the same time the recent signature by many countries of the Non-Proliferation Treaty will, we hope and believe, curtail the spread of nuclear armaments.

26-608 O - 78 - 22

These developments will have an impact on the Canadian uranium industry. Accordingly the government is now setting out its uranium policy in greater detail to ensure that full account is taken of the Canadian public interest in these new circumstances.

The basis of Canada's uranium policy is stated in the preamble to the Atomic Energy Control Act, namely that "it is essential in the national interest to make provision for the control and supervision of the development, application, and use of atomic energy, and to enable Canada to participate effectively in measures of international control of atomic energy which may hereafter be agreed upon".

To protect the national interest in the different circumstances which now face us we will henceforth require that all contracts covering the export of uranium or thorium be examined and approved by the appropriate federal agency before any application for an export permit is considered. The examination will cover all aspects and implications of the contract such as nuclear safeguards, the relationship between contracting parties, reserves, rate of exploitation, domestic requirements, domestic processing facilities, and selling and pricing policy. Approval will not normally be given to contracts of more than ten years' duration unless provision is made for renegotiation of price.

Once an export contract is approved, export permits covering the actual shipment of uranium or thorium may be issued annually provided that the conditions of the contract have been maintained. Approval will be granted only for the supply of uranium and thorium

for peaceful purposes to customers in countries with which Canada has completed a safeguards agreement, or following the coming into effect of the Non-Proliferation Treaty, with customers in countries which have concluded the necessary safeguards agreement with the International Atomic Energy Agency.

Canada will permit stockpiling of Canadian uranium in foreign countries to meet the succeeding five-year requirements of each country to fuel existing or committed nuclear reactors. Additional stockpiling in Canada will not be precluded, but actual export shipment will be limited to a moving five-year requirement of the foreign country. The shipment of small quantities of materials for atomic energy research projects will continue to be permitted without safeguards arrangements.

We will continue to require that all persons engaged in uranium or thorium mining in Canada be incorporated under federal or provincial legislation, that they operate under license from the Atomic Energy Control Board and that they provide information as required under the regulations of the Board.

The government believes that the administration of Canada's uranium policy in this manner, with regulations such as the foregoing, will enable the Canadian primary and secondary uranium industry to grow and take advantage of its opportunities in the world uranium market.

In the implementation and administration of these national policies, the federal government will maintain close contact with provincial governments on matters of common concern with respect to the uranium industry.

Attachment #8

M. W. Ramsey AT Pittsburgh IN REPLY REFER TO

Mr. F. R. O'Hara AT DATE September 8, 1972

SUBJECT Foreign Uranium Marketing Arrangement

As Roy Jackson and you requested, we have updated our paper on expected economic impact of this uranium marketing arrangement on U. S. trade. We have omitted those portions of the previous paper that have now been incorporated into the draft prepared by Roy Jackson and have endeavored to cover the longer time period (through 1980) now envisioned for the marketing arrangement.

M. W. Ramsey

MWR:pg

Attachment

Foreign Uranium Marketing Arrangement

The following information has been compiled at the request of Gulf's lawyers as part of their work product for purposes of counseling a course of action for Gulf with respect to the matters discussed.

This paper outlines the expected impact of the proposed Foreign Uranium Marketing Organization on U.S. trade, including: (1) U.S. exports, and (2) U.S. imports. The proposed Foreign Uranium Marketing arrangement would commence during 1972 and terminate at the end of 1980.

U.S. Exports

U.S. uranium exports have been very limited in quantity and have always been a very small percentage of U.S. production. Table I shows U.S. production and exports. Exports beyond 1972 are based on existing contracts. Part of the export sales are tied to sales of nuclear reactors or are connected to U.S. Balance of Payment matters. The low level of U.S. exports relates to two basic conditions -- the uranium oversupply situation outside the U.S. and the relation of world versus U.S. uranium prices.

Table II shows that uranium capacity at existing foreign production centers is expected to exceed foreign uranium demand until at least 1978. This projection was made nearly a year ago -- there has been slippage since then in bringing nuclear power plants on-stream and it is very likely that further slippage will occur in the future due to licensing and other problems. Therefore, this

uranium supply/demand balance point will probably be delayed beyond 1980. In addition, it is estimated that on the order of 36,000 tons of uranium have been stockpiled outside the U.S. While a working inventory is required for operations, it is obvious that liquidation of one of this magnitude in the short or intermediate term would lengthen the time period of excess producing capacity.

Table III shows a comparison of expected Foreign and U.S. uranium prices. The first column is Gulf's forecast of foreign uranium prices without the foreign marketing arrangement. Column 2 shows the higher prices posted by this group. The third column shows a projection of U.S. uranium prices. Comparison of these three columns shows that, although the posted prices established by the foreign marketing arrangement are considerably higher than the projected world market prices, these posted prices are still substantially lower than U.S. prices.

There are a number of reasons for the higher U.S. prices -- the most important being the combination of embargo on imports into the U.S. and higher operating costs in U.S. mines. There is, in addition, the depressing effect on sales outside the U.S. of a significant amount of South African uranium production being available as a by-product material from gold ore tailings. Also, the possibility exists that some large new discovery will be made in some other country, such as the recent discovery in Australia, that could have world-wide impact on prices, at least within this decade.

In view of the excess supply available in the foreign market and the much lower prices for foreign versus U.S. uranium, it seems very unlikely that U.S. exports will become any greater factor in the future than in the past. Since the proposed foreign marketing arrangement would increase, or at least prevent a decrease in foreign uranium prices, this would narrow the gap between U.S. and foreign prices and would, if anything, encourage greater exports of U.S. uranium.

U.S. Imports

The AEC effectively currently prohibits importation of foreign uranium and has indicated as late as March, 1972, that it plans to continue this prohibition until late in the decade, probably 1978.

The productive capacity of existing and announced U.S. producers exceeds domestic demand until at least 1976 and probably longer, due to expected slippage in nuclear reactor programs. In addition, new additional productive capacity will probably be brought on-stream by 1976. In view of the U.S. oversupply position and these AEC restrictions, there would appear to be little likelihood for importation of foreign uranium during the life span of the foreign uranium marketing arrangement (through 1980).

TABLE I

U. S. URANIUM PRODUCTION
AND
EXPORTS - TONS OF U_3O_8
(NOT INCLUDING EXPORT OF FABRICATED FUEL)

	Exporting U.S. Producers									
Year	Anaconda	Atlas Corp.	Cotter Corp.	Kerr McGee	Susque-hanna	United Nuclear	Utah Mining	Western Nuclear	Total Exported	Total U Produc
965						310				12,8
969										12,5
970		500	500		850		1,790			13,0
971										13,0
972										11,0
973										13,0
974				260				450		15,0
975	700									18,0
otal	700	500	500	260	850	310	1,790	450	5,360	108,5

1. $\frac{\text{5,360 Tons } U_3O_8 \text{ Exported}}{\text{108,518 Tons } U_3O_8 \text{ Produced}} = 4.9\%$
2. Prior to 1968, no exports made.
3. Subsequent to 1975, no record of export sales.
4. Exports based on best available information. Total production based on AEC production statistics and estimates.

* Estimated

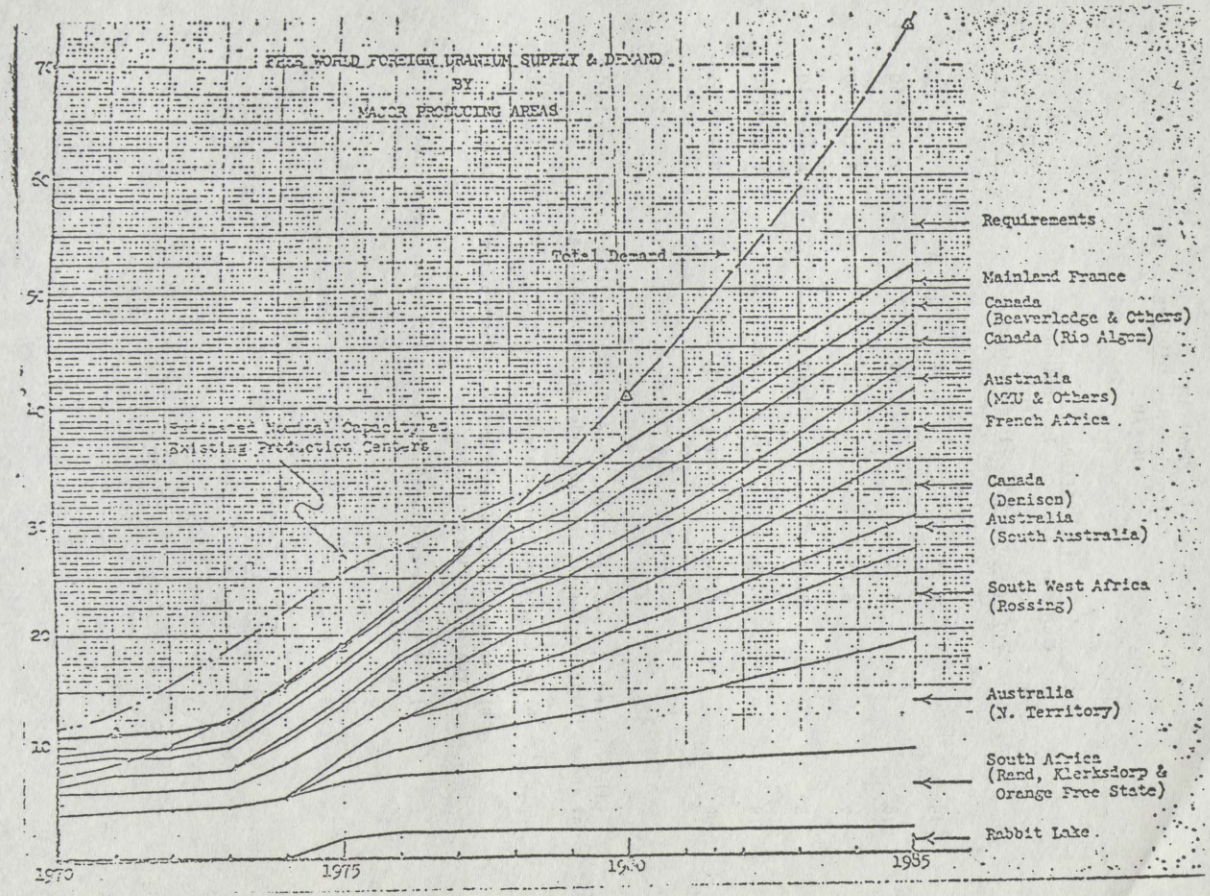
FREE WORLD FOREIGN URANIUM SUPPLY & DEMAND
BY
MAJOR PRODUCING AREAS
Requirements
Total Demand
Mainland France
Canada
(Beaverlodge & Others)
Canada (Rio Algom)
Australia
(NAU & Others)
French Africa
Canada
(Denison)
Australia
(South Australia)
South West Africa
(Rossing)
Australia
(N. Territory)
South Africa
(Rand, Klerksdorp &
Orange Free State)
Rabbit Lake
Estimated Normal Capacity of
Existing Production Centers
1970
1975
1980
1985

Table III
Uranium Sales Prices
US $/lb.

	Foreign		
	Gulf Forecast of Foreign Prices	International Producers Posted Price	US Price Range
75	5.35	6.45	
76	5.50	6.80	7.30-8.50
7	5.65	7.15	7.70-9.00
78	5.85	7.50	8.10-9.30
79	6.05	Not Available	8.50-9.80
80	6.30	Not Available	8.90-10.30

prices refer to the average of long- and short-term sales for delivery in the ear shown. Uranium is typically sold under three conditions:

a) Spot sales for immediate delivery.

b) Base loads for reactor cores; delivery normally 3 to 5 years from time of sale.

c) Reloads for reactors, delivery 5 to 15 years from time of sale.

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